

## PREFACE

Superintendent of Public Instruction Elsie Arntzen offers this compilation, School Laws of Montana 2017, pursuant to Mont. Code Ann. §20-3-105(5) (2017). This volume contains Montana statutory law affecting schools, including acts of the 65th Montana Legislature of 2017 in regular session.

### Arrangement and Scope

School Laws of Montana, like the Montana Code Annotated (MCA), is arranged topically. Title 13, for example, contains most of the laws pertaining to elections. The legal staff of the Office of Public Instruction (OPI) attempted to include Montana statutory law that directly applies to Montana schools in this volume. It does not include all Montana laws. You may access the entire MCA online at <http://leg.mt.gov/bills/mca/index.html>. Please do not rely exclusively on this one volume compilation; other code sections not included in this volume may apply to your particular legal question. Other rules, regulations, or local ordinances or policies may also apply.

### Numbering System

The Montana code uses a three-element numbering system. (For example, Mont. Code Ann. § 20-1-101.) The number to the far left designates the title number, the number between the hyphens designates the chapter number, and the number to the right designates the part and section number. Numbering is sequential, but some numbers have been “reserved” to leave room for future expansion.

### Annotations

The annotations to the code include the legislative history of the code section and cross-references to administrative rules, case notes, and attorney general opinions. Given space constraints, we were unable to include a full set of annotations for the code sections included in the School Laws of Montana. We included history annotations and statutory cross-references for Title 20 (Education) and history annotations for the other titles. The full set of annotations for each title is updated biennially and appears in separate volumes published by the Montana Code Commissioner.

### Abbreviations

The following abbreviations are used in the annotations.

Ad. — Adopted  
amd. — Amended  
Ap.p. — Appears in part  
C. — Code  
C. Civ. Proc. — Code of Civil Procedure  
Cal. — California  
Ch. — Chapter  
Civ. C. — Civil Code  
Cod. — Codified  
Comp. — Compiled  
Const. Amend. No. — Constitutional Amendment Number  
Div. — Division  
En. — Enacted  
Exec. Ord. — Executive Order  
Field — Field Code of New York

I.M. No. — Initiative Measure Number  
L. — Laws of  
MCA — Montana Code Annotated  
p. — Page  
Pen. C. — Penal Code  
Pol. C. — Political Code  
R.C.M. — Revised Codes of Montana  
redes. — Redesignated  
re-en. — Reenacted  
Ref. No. — Referendum Number  
rep. — Repealed  
Rev. — Revised  
Sec. — Section  
Sp. L. — Special Session Laws  
Stat. — Statutes  
Sup. Ct. Ord. — Supreme Court Order

**Expression of Thanks**

On behalf of the Superintendent, I wish to extend words of thanks to all who dedicated their precious time to this compilation. In particular, I would like to thank Beverly Marlow here at the Office, who has worked tirelessly to keep this project on track, and Lee Cook, who will soon be diligently working to ensure this project is available to all who request it. I would also like to offer a sincere word of thanks to those who offered constructive criticism; your feedback helps us to make this a more useful resource we can use to the benefit of our state's students.

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# TABLE OF CONTENTS

Preface.....	i
The Constitution of the State of Montana.....	1
<b>Parts or all of the following Mont. Code Ann. chapters are included in this compilation</b>	
<b>TITLE 1 – GENERAL LAWS AND DEFINITIONS</b>	
Ch. 1    General Provisions.....	27
Ch. 2    Statutory Construction .....	39
Ch. 6    Oaths.....	44
<b>TITLE 2 – GOVERNMENT STRUCTURE AND ADMINISTRATION</b>	
Ch. 1    Sovereignty and Jurisdiction.....	45
Ch. 2    Standards of Conduct .....	49
Ch. 3    Public Participation in Governmental Operations.....	60
Ch. 4    Administrative Procedure Act .....	64
Ch. 5    Montana Negotiated Rulemaking Act.....	88
Ch. 6    Public Records .....	92
Ch. 7    Studies, Reports, and Audits .....	103
Ch. 9    Liability Exposure and Insurance Coverage.....	110
Ch. 11   Legal Authority for Government Action.....	124
Ch. 15   Executive Branch Officers and Agencies.....	125
Ch. 16   Public Officers .....	134
Ch. 17   Property and Systems Development and Management .....	147
Ch. 18   State Employee Classification, Compensation, and Benefits .....	159
<b>TITLE 5 – LEGISLATIVE BRANCH</b>	
Ch. 5    Legislative Procedures .....	181
Ch. 20   Educational Committees.....	186
<b>TITLE 7 – LOCAL GOVERNMENT</b>	
Ch. 1    General Provisions.....	187
Ch. 4    Officers and Employees.....	188
Ch. 5    General Operation and Conduct of Business.....	193
Ch. 6    Financial Administration and Taxation.....	194
Ch. 7    Debt Management .....	203
Ch. 8    Acquisition, Transfer, and Management of Property and Buildings .....	209
Ch. 11   General Provisions Related to Services.....	212
Ch. 16   Culture, Social Services, and Recreation .....	214
<b>TITLE 10 – MILITARY AFFAIRS AND DISASTER AND EMERGENCY SERVICES</b>	
Ch. 1    Militia.....	214
<b>TITLE 13 – ELECTIONS</b>	
Ch. 1    General Provisions.....	220
Ch. 2    Registration of Electors .....	235
Ch. 3    Precincts and Polling Places.....	243
Ch. 4    Election Judges .....	246
Ch. 10   Primary Elections and Nominations .....	249
Ch. 12   Election Supplies and Ballots.....	250
Ch. 13   Election Procedure.....	253
Ch. 14   Nonpartisan Elections.....	267
Ch. 15   Canvassing, Returns, and Certificates .....	269
Ch. 16   Recounts and Tie Votes.....	278
Ch. 17   Voting Machines .....	284
Ch. 19   Mail Ballot Systems.....	290
Ch. 21   Montana Absent Uniformed Services and Overseas Elector Voting Act.....	296
Ch. 22   Youth Voting Act.....	301
Ch. 36   Contests .....	302

**TITLE 15 – TAXATION**

Ch. 1	Tax Administration .....	306
Ch. 7	Appraisal .....	313
Ch. 10	Property Tax Levies.....	314
Ch. 16	Collection of Property Taxes.....	318
Ch. 23	Centrally Assessed Property .....	319
Ch. 24	Special Property Tax Applications.....	322
Ch. 30	Individual Income Tax .....	328
Ch. 31	Corporate Income Tax or Alternative Corporate Income Tax .....	333
Ch. 35	Coal Severance Tax .....	335
Ch. 36	Oil and Gas Production Tax .....	337
Ch. 37	Mining License Taxes.....	343
Ch. 70	Gasoline and Vehicle Fuels Taxes .....	344

**TITLE 17 – STATE FINANCE**

Ch. 3	Federal Revenues and Endowments .....	345
-------	---------------------------------------	-----

**TITLE 18 – PUBLIC CONTRACTS**

Ch. 1	Public Contracts Generally.....	348
Ch. 2	Construction Contracts .....	354
Ch. 4	Montana Procurement Act .....	375
Ch. 5	Special Purchasing Conditions.....	389
Ch. 6	Sales .....	390
Ch. 7	Printing and Legal Notices.....	391
Ch. 8	Procurement of Services.....	396
Ch. 11	State-Tribal Cooperative Agreements.....	398

**TITLE 19 – PUBLIC RETIREMENT SYSTEM**

Ch. 1	Social Security.....	401
Ch. 2	Public Employees' Retirement General Provisions.....	408
Ch. 3	Public Employees' Retirement System.....	439
Ch. 20	Teachers' Retirement .....	475
Ch. 50	Deferred Compensation .....	522

**TITLE 20 – EDUCATION**

Ch. 1	General Provisions.....	527
Ch. 2	State Boards and Commissions.....	553
Ch. 3	Elected Officials .....	560
Ch. 4	Teachers, Superintendents, and Principals .....	587
Ch. 5	Pupils .....	607
Ch. 6	School Districts .....	629
Ch. 7	School Instruction and Special Programs .....	658
Ch. 8	Montana School for the Deaf and Blind .....	700
Ch. 9	Finance.....	704
Ch. 10	Transportation and Food Services .....	805
Ch. 15	Community College Districts .....	824
Ch. 20	School Elections .....	842
Ch. 25	University System .....	849
Ch. 26	Student Financial Assistance.....	893
Ch. 31	Fire Services Training School.....	904
Ch. 32	Montana Educational Telecommunications Network .....	905

**TITLE 22 – LIBRARIES, ARTS AND ANTIQUITIES**

Ch. 1	Libraries.....	908
-------	----------------	-----

**TITLE 26 – EVIDENCE**

Ch. 1	Statutory Provisions on Evidence .....	914
-------	--	-----

**TITLE 32 – FINANCIAL INSTITUTIONS**

Ch. 1	Banks and Trust Companies.....	916
-------	--------------------------------	-----

## TITLE 33 – INSURANCE AND INSURANCE COMPANIES

Ch. 22	Disability Insurance .....	916
--------	----------------------------	-----

## TITLE 37 – PROFESSIONS AND OCCUPATIONS

Ch. 8	Nursing .....	917
Ch. 11	Physical Therapy .....	920
Ch. 15	Speech-Language Pathologists and Audiologists .....	920
Ch. 23	Professional Counseling .....	922
Ch. 24	Occupational Therapy .....	923
Ch. 25	Nutritionists .....	924
Ch. 36	Athletic Trainers .....	925
Ch. 48	Private Alternative Adolescent Residential or Outdoor Programs .....	927

## TITLE 39 – LABOR

Ch. 2	The Employment Relationship .....	930
Ch. 4	Hours of Labor in Certain Employments .....	932
Ch. 29	Veterans' Public Employment Preference .....	933
Ch. 31	Collective Bargaining for Public Employees .....	936
Ch. 71	Workers' Compensation .....	946

## TITLE 40 – FAMILY LAW

Ch. 4	Termination of Marriage, Child Custody, Support .....	948
Ch. 6	Parent and Child .....	948

## TITLE 41 – MINORS

Ch. 1	Rights and Obligations of Minors .....	954
Ch. 2	Child Labor .....	958
Ch. 3	Child Abuse and Neglect .....	963
Ch. 4	Interstate Placement of Children .....	1011
Ch. 5	Youth Court Act .....	1015
Ch. 7	Montana Family Policy Act .....	1063

## TITLE 44 – LAW ENFORCEMENT

Ch. 2	Investigation, Communication, and Identification .....	1064
-------	--	------

## TITLE 45 – CRIMES

Ch. 5	Offenses Against the Person .....	1067
Ch. 8	Offenses Against Public Order .....	1072
Ch. 9	Dangerous Drugs .....	1075

## TITLE 49 – HUMAN RIGHTS

Ch. 1	Basic Rights .....	1075
Ch. 2	Illegal Discrimination .....	1076
Ch. 3	Governmental Code of Fair Practices .....	1091
Ch. 4	Rights of Persons with Disabilities .....	1094

## TITLE 50 – HEALTH AND SAFETY

Ch. 1	Administration of Public Health Laws .....	1101
Ch. 2	Local Boards of Health .....	1104
Ch. 3	State Fire Prevention and Investigation Program .....	1105
Ch. 40	Smoking in Public Places .....	1106
Ch. 61	Fire Safety in Public Buildings .....	1109
Ch. 78	Employee and Community Hazardous Chemical Information Act .....	1111

## TITLE 52 – FAMILY SERVICES

Ch. 1	Administration .....	1117
Ch. 2	Children's Services .....	1118

## TITLE 53 – SOCIAL SERVICES AND INSTITUTIONS

Ch. 21	Mentally Ill .....	1124
--------	--------------------	------

TITLE 61 – MOTOR VEHICLES	
Ch. 2	Highway Safety..... 1126
Ch. 5	Driver’s Licenses..... 1128
Ch. 8	Traffic Regulation ..... 1162
Ch. 9	Vehicle Equipment ..... 1165
TITLE 69 – PUBLIC UTILITIES AND CARRIERS	
Ch. 3	Regulation of Utilities ..... 1166
TITLE 72 – ESTATES, TRUSTS, AND FIDUCIARY RELATIONSHIPS	
Ch. 5	UPC — Persons Under Disability — Guardianship and Conservatorship... 1166
TITLE 80 – AGRICULTURE	
Ch. 8	Pesticides ..... 1170
TITLE 87 – FISH AND WILDLIFE	
Ch. 1	Organization and Operation..... 1171
TITLE 90 – PLANNING, RESEARCH, AND DEVELOPMENT	
Ch. 4	Energy Development and Conservation..... 1172
Ch. 6	Community Impact — Planning and Abatement ..... 1176
General Index..... 1179	

# THE CONSTITUTION OF THE STATE OF MONTANA

CONSTITUTION OF MONTANA  
AS ADOPTED BY THE CONSTITUTIONAL CONVENTION  
MARCH 22, 1972, AND AS RATIFIED BY THE PEOPLE,  
JUNE 6, 1972, REFERENDUM NO. 68

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## PREAMBLE

We the people of Montana grateful to God for the quiet beauty of our state, the grandeur of our mountains, the vastness of our rolling plains, and desiring to improve the quality of life, equality of opportunity and to secure the blessings of liberty for this and future generations do ordain and establish this constitution.

## ARTICLE I COMPACT WITH THE UNITED STATES

All provisions of the enabling act of Congress (approved February 22, 1889, 25 Stat. 676), as amended and of Ordinance No. 1, appended to the Constitution of the state of Montana and approved February 22, 1889, including the agreement and declaration that all lands owned or held by any Indian or Indian tribes shall remain under the absolute jurisdiction and control of the congress of the United States, continue in full force and effect until revoked by the consent of the United States and the people of Montana.

## ARTICLE II DECLARATION OF RIGHTS

**Section 1. Popular sovereignty.** All political power is vested in and derived from the people. All government of right originates with the people, is founded upon their will only, and is instituted solely for the good of the whole.

**Section 2. Self-government.** The people have the exclusive right of governing themselves as a free, sovereign, and independent state. They may alter or abolish the constitution and form of government whenever they deem it necessary.

**Section 3. Inalienable rights.** All persons are born free and have certain inalienable rights. They include the right to a clean and healthful environment and the rights of pursuing life's basic necessities, enjoying and defending their lives and liberties, acquiring, possessing and protecting property, and seeking their safety, health and happiness in all lawful ways. In enjoying these rights, all persons recognize corresponding responsibilities.

**Section 4. Individual dignity.** The dignity of the human being is inviolable. No person shall be denied the equal protection of the laws. Neither the state nor any person, firm, corporation, or institution shall discriminate against any person in the exercise of his civil or political rights on account of race, color, sex, culture, social origin or condition, or political or religious ideas.

**Section 5. Freedom of religion.** The state shall make no law respecting an establishment of religion or prohibiting the free exercise thereof.

**Section 6. Freedom of assembly.** The people shall have the right peaceably to assemble, petition for redress or peaceably protest governmental action.

**Section 7. Freedom of speech, expression, and press.** No law shall be passed impairing the freedom of speech or expression. Every person shall be free to speak or publish whatever he will on any subject, being responsible for all abuse of that liberty. In all suits and



prosecutions for libel or slander the truth thereof may be given in evidence; and the jury, under the direction of the court, shall determine the law and the facts.

**Section 8. Right of 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.

**Section 11. Searches and seizures.** The people shall be secure in their persons, papers, homes and effects from unreasonable searches and seizures. No warrant to search any place, or seize any person or thing shall issue without describing the place to be searched or the person or thing to be seized, or without probable cause, supported by oath or affirmation reduced to writing.

**Section 12. Right to bear arms.** The right of any person to keep or bear arms in defense of his own home, person, and property, or in aid of the civil power when thereto legally summoned, shall not be called in question, but nothing herein contained shall be held to permit the carrying of concealed weapons.

**Section 13. Right of suffrage.** All elections shall be free and open, and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.

**Section 14. Adult rights.** A person 18 years of age or older is an adult for all purposes, except that the legislature or the people by initiative may establish the legal age for purchasing, consuming, or possessing alcoholic beverages.

**Section 15. Rights of persons not adults.** The rights of persons under 18 years of age shall include, but not be limited to, all the fundamental rights of this Article unless specifically precluded by laws which enhance the protection of such persons.

**Section 16. The administration of justice.** Courts of justice shall be open to every person, and speedy remedy afforded for every injury of person, property, or character. No person shall be deprived of this full legal redress for injury incurred in employment for which another person may be liable except as to fellow employees and his immediate employer who hired him if such immediate employer provides coverage under the Workmen's Compensation Laws of this state. Right and justice shall be administered without sale, denial, or delay.

**Section 17. Due process of law.** No person shall be deprived of life, liberty, or property without due process of law.

**Section 18. State subject to suit.** The state, counties, cities, towns, and all other local governmental entities shall have no immunity from suit for injury to a person or property, except as may be specifically provided by law by a 2/3 vote of each house of the legislature.

**Section 19. Habeas corpus.** The privilege of the writ of habeas corpus shall never be suspended.

**Section 20. Initiation of proceedings.** (1) Criminal offenses within the jurisdiction of any court inferior to the district court shall be prosecuted by complaint. All criminal actions in district court, except those on appeal, shall be prosecuted either by information, after examination and commitment by a magistrate or after leave granted by the court, or by indictment without such examination, commitment or leave.

(2) A grand jury shall consist of eleven persons, of whom eight must concur to find an indictment. A grand jury shall be drawn and summoned only at the discretion and order of the district judge.

**Section 21. Bail.** All persons shall be bailable by sufficient sureties, except for capital offenses, when the proof is evident or the presumption great.



**Section 22. Excessive sanctions.** Excessive bail shall not be required, or excessive fines imposed, or cruel and unusual punishments inflicted.

**Section 23. Detention.** No person shall be imprisoned for the purpose of securing his testimony in any criminal proceeding longer than may be necessary in order to take his deposition. If he can give security for his appearance at the time of trial, he shall be discharged upon giving the same; if he cannot give security, his deposition shall be taken in the manner provided by law, and in the presence of the accused and his counsel, or without their presence, if they shall fail to attend the examination after reasonable notice of the time and place thereof.

**Section 24. Rights of the accused.** In all criminal prosecutions the accused shall have the right to appear and defend in person and by counsel; to demand the nature and cause of the accusation; to meet the witnesses against him face to face; to have process to compel the attendance of witnesses in his behalf, and a speedy public trial by an impartial jury of the county or district in which the offense is alleged to have been committed, subject to the right of the state to have a change of venue for any of the causes for which the defendant may obtain the same.

**Section 25. Self-incrimination and double jeopardy.** No person shall be compelled to testify against himself in a criminal proceeding. No person shall be again put in jeopardy for the same offense previously tried in any jurisdiction.

**Section 26. Trial by jury.** The right of trial by jury is secured to all and shall remain inviolate. But upon default of appearance or by consent of the parties expressed in such manner as the law may provide, all cases may be tried without a jury or before fewer than the number of jurors provided by law. In all civil actions, two-thirds of the jury may render a verdict, and a verdict so rendered shall have the same force and effect as if all had concurred therein. In all criminal actions, the verdict shall be unanimous.

**Section 27. Imprisonment for debt.** No person shall be imprisoned for debt except in the manner provided by law, upon refusal to deliver up his estate for the benefit of his creditors, or in cases of tort, where there is strong presumption of fraud.

**Section 28. Criminal justice policy — rights of the convicted.** (1) Laws for the punishment of crime shall be founded on the principles of prevention, reformation, public safety, and restitution for victims.

(2) Full rights are restored by termination of state supervision for any offense against the state.

**Section 29. Eminent domain.** Private property shall not be taken or damaged for public use without just compensation to the full extent of the loss having been first made to or paid into court for the owner. In the event of litigation, just compensation shall include necessary expenses of litigation to be awarded by the court when the private property owner prevails.

**Section 30. Treason and descent of estates.** Treason against the state shall consist only in levying war against it, or in adhering to its enemies, giving them aid and comfort; no person shall be convicted of treason except on the testimony of two witnesses to the same overt act, or on his confession in open court; no person shall be attainted of treason or felony by the legislature; no conviction shall cause the loss of property to the relatives or heirs of the convicted. The estates of suicides shall descend or vest as in cases of natural death.

**Section 31. Ex post facto, obligation of contracts, and irrevocable privileges.** No ex post facto law nor any law impairing the obligation of contracts, or making any irrevocable grant of special privileges, franchises, or immunities, shall be passed by the legislature.

**Section 32. Civilian control of the military.** The military shall always be in strict subordination to the civil power; no soldier shall in time of peace be quartered in any house without the consent of the owner, nor in time of war, except in the manner provided by law.

**Section 33. Importation of armed persons.** No armed person or persons or armed body of men shall be brought into this state for the preservation of the peace, or the suppression of domestic violence, except upon the application of the legislature, or of the governor when the legislature cannot be convened.

**Section 34. Unenumerated rights.** The enumeration in this constitution of certain rights shall not be construed to deny, impair, or disparage others retained by the people.

**Section 35. Servicemen, servicewomen, and veterans.** The people declare that Montana servicemen, servicewomen, and veterans may be given special considerations determined by the legislature.

**Section 36. Rights of crime victims.** (1) To preserve and protect a crime victim's right to justice, to ensure a crime victim has a meaningful role in criminal and juvenile justice systems, and to ensure that a crime victim's rights and interests are respected and protected by law in a manner no less vigorous than the protections afforded to a criminal defendant and a delinquent youth, a crime victim has the following rights, beginning at the time of victimization:

- (a) to due process and to be treated with fairness and respect for the victim's dignity;
- (b) to be free from intimidation, harassment, and abuse;
- (c) to be reasonably protected from the accused and any person acting on the accused's behalf;

- (d) to have the victim's safety and welfare considered when setting bail and making release decisions;

- (e) to prevent the disclosure of information that could be used to locate or harass the victim or that contains confidential or privileged information about the victim;

- (f) to privacy, including the right to refuse an interview, deposition, or other discovery request and to set reasonable conditions on the conduct of any interaction to which the victim consents;

- (g) to receive reasonable, accurate, and timely notice of and to be present at all proceedings involving the criminal conduct, plea, sentencing, adjudication, disposition, release, or escape of the defendant or youth accused of delinquency and any proceeding implicating the rights of the victim;

- (h) to be promptly notified of any release or escape of the accused;

- (i) to be heard in any proceeding involving the release, plea, sentencing, disposition, adjudication, or parole of the defendant or youth accused of delinquency and any proceeding implicating the rights of the victim;

- (j) to confer with the prosecuting attorney;

- (k) to provide information regarding the impact the offender's conduct had on the victim for inclusion in the presentence or predisposition investigation report and to have the information considered in any sentencing or disposition recommendations submitted to the court;

- (l) to receive a copy of any presentence report and any other report or record relevant to the exercise of a right of the victim, except for those portions made confidential by law;

- (m) to the prompt return of the victim's property when no longer needed as evidence in the case;

- (n) to full and timely restitution. All money and property collected from a person who has been ordered to make restitution must be applied first to the restitution owed to the victim before paying any amounts owed to the government.

- (o) to proceedings free from unreasonable delay and to a prompt and final conclusion of the case and any related postjudgment proceedings;

- (p) to be informed of the conviction, sentence, adjudication, place and time of incarceration, or other disposition of the offender, including any scheduled release date, actual release date, or escape;

- (q) to be informed of clemency and expungement procedures; to provide information to the governor, the court, any clemency board, or any other authority and to have that information considered before a decision is made; and to be notified of any decision before the release of the offender; and

- (r) to be informed of the above rights and to be informed that the victim may seek the advice and assistance of an attorney with respect to the above rights. This information must be made available to the general public and provided to all crime victims on what is referred to as a Marsy's card.

(2) A victim, the victim's attorney, the victim's legal representative, or the prosecuting attorney at the request of the victim may assert and seek enforcement of the rights enumerated in this section and any other right afforded to the victim by law in any trial or appellate court or any other authority with jurisdiction over the case as a matter of right. The court or other authority shall act promptly on the request, affording a remedy by due course of law for the violation of any right. The reasons for any decision regarding disposition of a victim's right must be clearly stated on the record.

(3) This section may not be construed to deny or disparage other rights possessed by victims. This section applies to criminal and youth court proceedings, is self-executing, and requires no further action by the legislature.

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

(a) “Crime” means an act defined as a felony, misdemeanor, or delinquency under state law.

(b) “Victim” means a person who suffers direct or threatened physical, psychological, or financial harm as a result of the commission or attempted commission of a crime.

(i) The term includes:

(A) a spouse, parent, grandparent, child, sibling, grandchild, or guardian of the victim;

(B) a person with a relationship to the victim that is substantially similar to a relationship described in subsection (4)(b)(i)(A); and

(C) a representative of a victim who is a minor or who is deceased, incompetent, or incapacitated.

(ii) The term does not include the accused or a person who the court believes would not act in the best interests of a minor or of a victim who is deceased, incompetent, or incapacitated.

## ARTICLE III GENERAL GOVERNMENT

**Section 1. Separation of powers.** The power of the government of this state is divided into three distinct branches—legislative, executive, and judicial. No person or persons charged with the exercise of power properly belonging to one branch shall exercise any power properly belonging to either of the others, except as in this constitution expressly directed or permitted.

**Section 2. Continuity of government.** The seat of government shall be in Helena, except during periods of emergency resulting from disasters or enemy attack. The legislature may enact laws to insure the continuity of government during a period of emergency without regard for other provisions of the constitution. They shall be effective only during the period of emergency that affects a particular office or governmental operation.

**Section 3. Oath of office.** Members of the legislature and all executive, ministerial and judicial officers, shall take and subscribe the following oath or affirmation, before they enter upon the duties of their offices: “I do solemnly swear (or affirm) that I will support, protect and defend the constitution of the United States, and the constitution of the state of Montana, and that I will discharge the duties of my office with fidelity (so help me God).” No other oath, declaration, or test shall be required as a qualification for any office or public trust.

**Section 4. Initiative.** (1) The people may enact laws by initiative on all matters except appropriations of money and local or special laws.

(2) Initiative petitions must contain the full text of the proposed measure, shall be signed by at least five percent of the qualified electors in each of at least one-half of the counties and the total number of signers must be at least five percent of the total qualified electors of the state. Petitions shall be filed with the secretary of state at least three months prior to the election at which the measure will be voted upon.

(3) The sufficiency of the initiative petition shall not be questioned after the election is held.

**Section 5. Referendum.** (1) The people may approve or reject by referendum any act of the legislature except an appropriation of money. A referendum shall be held either upon order by the legislature or upon petition signed by at least five percent of the qualified electors in each of at least one-third of the legislative representative districts. The total number of signers must be at least five percent of the qualified electors of the state. A referendum petition shall be filed with the secretary of state no later than six months after adjournment of the legislature which passed the act.

(2) An act referred to the people is in effect until suspended by petitions signed by at least 15 percent of the qualified electors in a majority of the legislative representative districts. If so suspended the act shall become operative only after it is approved at an election, the result of which has been determined and declared as provided by law.

**Section 6. Elections.** The people shall vote on initiative and referendum measures at the general election unless the legislature orders a special election.

**Section 7. Number of electors.** (1) The number of qualified electors required in each legislative representative district and in the state shall be determined by the number of votes cast for the office of governor in the preceding general election.

(2) For the purposes of a constitutional amendment, the number of qualified electors in each county and in the state shall be determined by the number of votes cast for the office of governor in the preceding general election.

(3) For the purposes of a statutory initiative, the number of qualified electors required in each county and in the state shall be determined by the number of votes cast for the office of governor in the preceding general election.

**Section 8. Prohibition.** The provisions of this Article do not apply to CONSTITUTIONAL REVISION, Article XIV.

**Section 9. Gambling.** All forms of gambling, lotteries, and gift enterprises are prohibited unless authorized by acts of the legislature or by the people through initiative or referendum.

## ARTICLE IV SUFFRAGE AND ELECTIONS

**Section 1. Ballot.** All elections by the people shall be by secret ballot.

**Section 2. Qualified elector.** Any citizen of the United States 18 years of age or older who meets the registration and residence requirements provided by law is a qualified elector unless he is serving a sentence for a felony in a penal institution or is of unsound mind, as determined by a court.

**Section 3. Elections.** The legislature shall provide by law the requirements for residence, registration, absentee voting, and administration of elections. It may provide for a system of poll booth registration, and shall insure the purity of elections and guard against abuses of the electoral process.

**Section 4. Eligibility for public office.** Any qualified elector is eligible to any public office except as otherwise provided in this constitution. The legislature may provide additional qualifications but no person convicted of a felony shall be eligible to hold office until his final discharge from state supervision.

**Section 5. Result of elections.** In all elections held by the people, the person or persons receiving the largest number of votes shall be declared elected.

**Section 6. Privilege from arrest.** A qualified elector is privileged from arrest at polling places and in going to and returning therefrom, unless apprehended in the commission of a felony or a breach of the peace.

**Section 7. Ballot issues — challenges — elections.** (1) An initiative or referendum that qualifies for the ballot under Article III or Article XIV shall be submitted to the qualified electors as provided in the Article under which the initiative or referendum qualified unless a new election is held pursuant to this section.

(2) A preelection challenge to the procedure by which an initiative or referendum qualified for the ballot or a postelection challenge to the manner in which the election was conducted shall be given priority by the courts.

(3) If the election on an initiative or referendum properly qualifying for the ballot is declared invalid because the election was improperly conducted, the secretary of state shall submit the issue to the qualified electors at the next regularly scheduled statewide election unless the legislature orders a special election.

**Section 8. Limitation on terms of office.** (1) The secretary of state or other authorized official shall not certify a candidate's nomination or election to, or print or cause to be printed on any ballot the name of a candidate for, one of the following offices if, at the end of the current term of that office, the candidate will have served in that office or had he not resigned or been recalled would have served in that office:

(a) 8 or more years in any 16-year period as governor, lieutenant governor, secretary of state, state auditor, attorney general, or superintendent of public instruction;

- (b) 8 or more years in any 16-year period as a state representative;
  - (c) 8 or more years in any 16-year period as a state senator;
  - (d) 6 or more years in any 12-year period as a member of the U.S. house of representatives;
- and
- (e) 12 or more years in any 24-year period as a member of the U.S. senate.
- (2) When computing time served for purposes of subsection (1), the provisions of subsection (1) do not apply to time served in terms that end during or prior to January 1993.
- (3) Nothing contained herein shall preclude an otherwise qualified candidate from being certified as nominated or elected by virtue of write-in votes cast for said candidate.

## ARTICLE V THE LEGISLATURE

**Section 1. Power and structure.** The legislative power is vested in a legislature consisting of a senate and a house of representatives. The people reserve to themselves the powers of initiative and referendum.

**Section 2. Size.** The size of the legislature shall be provided by law, but the senate shall not have more than 50 or fewer than 40 members and the house shall not have more than 100 or fewer than 80 members.

**Section 3. Election and terms.** A member of the house of representatives shall be elected for a term of two years and a member of the senate for a term of four years each to begin on a date provided by law. One-half of the senators shall be elected every two years.

**Section 4. Qualifications.** A candidate for the legislature shall be a resident of the state for at least one year next preceding the general election. For six months next preceding the general election, he shall be a resident of the county if it contains one or more districts or of the district if it contains all or parts of more than one county.

**Section 5. Compensation.** Each member of the legislature shall receive compensation for his services and allowances provided by law. No legislature may fix its own compensation.

**Section 6. Sessions.** The legislature shall meet each odd-numbered year in regular session of not more than 90 legislative days. Any legislature may increase the limit on the length of any subsequent session. The legislature may be convened in special sessions by the governor or at the written request of a majority of the members.

**Section 7. Vacancies.** A vacancy in the legislature shall be filled by special election for the unexpired term unless otherwise provided by law.

**Section 8. Immunity.** A member of the legislature is privileged from arrest during attendance at sessions of the legislature and in going to and returning therefrom, unless apprehended in the commission of a felony or a breach of the peace. He shall not be questioned in any other place for any speech or debate in the legislature.

**Section 9. Disqualification.** No member of the legislature shall, during the term for which he shall have been elected, be appointed to any civil office under the state; and no member of congress, or other person holding an office (except notary public, or the militia) under the United States or this state, shall be a member of the legislature during his continuance in office.

**Section 10. Organization and procedure.** (1) Each house shall judge the election and qualifications of its members. It may by law vest in the courts the power to try and determine contested elections. Each house shall choose its officers from among its members, keep a journal, and make rules for its proceedings. Each house may expel or punish a member for good cause shown with the concurrence of two-thirds of all its members.

(2) A majority of each house constitutes a quorum. A smaller number may adjourn from day to day and compel attendance of absent members.

(3) The sessions of the legislature and of the committee of the whole, all committee meetings, and all hearings shall be open to the public.

(4) The legislature may establish a legislative council and other interim committees. The legislature shall establish a legislative post-audit committee which shall supervise post-auditing duties provided by law.



(5) Neither house shall, without the consent of the other, adjourn or recess for more than three days or to any place other than that in which the two houses are sitting.

**Section 11. Bills.** (1) A law shall be passed by bill which shall not be so altered or amended on its passage through the legislature as to change its original purpose. No bill shall become law except by a vote of the majority of all members present and voting.

(2) Every vote of each member of the legislature on each substantive question in the legislature, in any committee, or in committee of the whole shall be recorded and made public. On final passage, the vote shall be taken by ayes and noes and the names entered on the journal.

(3) Each bill, except general appropriation bills and bills for the codification and general revision of the laws, shall contain only one subject, clearly expressed in its title. If any subject is embraced in any act and is not expressed in the title, only so much of the act not so expressed is void.

(4) A general appropriation bill shall contain only appropriations for the ordinary expenses of the legislative, executive, and judicial branches, for interest on the public debt, and for public schools. Every other appropriation shall be made by a separate bill, containing but one subject.

(5) No appropriation shall be made for religious, charitable, industrial, educational, or benevolent purposes to any private individual, private association, or private corporation not under control of the state.

(6) A law may be challenged on the ground of noncompliance with this section only within two years after its effective date.

**Section 12. Local and special legislation.** The legislature shall not pass a special or local act when a general act is, or can be made, applicable.

**Section 13. Impeachment.** (1) The governor, executive officers, heads of state departments, judicial officers, and such other officers as may be provided by law are subject to impeachment, and upon conviction shall be removed from office. Other proceedings for removal from public office for cause may be provided by law.

(2) The legislature shall provide for the manner, procedure, and causes for impeachment and may select the senate as tribunal.

(3) Impeachment shall be brought only by a two-thirds vote of the house. The tribunal hearing the charges shall convict only by a vote of two-thirds or more of its members.

(4) Conviction shall extend only to removal from office, but the party, whether convicted or acquitted, shall also be liable to prosecution according to law.

**Section 14. Districting and apportionment.** (1) The state shall be divided into as many districts as there are members of the house, and each district shall elect one representative. Each senate district shall be composed of two adjoining house districts, and shall elect one senator. Each district shall consist of compact and contiguous territory. All districts shall be as nearly equal in population as is practicable.

(2) In the legislative session following ratification of this constitution and thereafter in each session preceding each federal population census, a commission of five citizens, none of whom may be public officials, shall be selected to prepare a plan for redistricting and reapportioning the state into legislative districts and a plan for redistricting the state into congressional districts. The majority and minority leaders of each house shall each designate one commissioner. Within 20 days after their designation, the four commissioners shall select the fifth member, who shall serve as chairman of the commission. If the four members fail to select the fifth member within the time prescribed, a majority of the supreme court shall select him.

(3) Within 90 days after the official final decennial census figures are available, the commission shall file its final plan for congressional districts with the secretary of state and it shall become law.

(4) The commission shall submit its plan for legislative districts to the legislature at the first regular session after its appointment or after the census figures are available. Within 30 days after submission, the legislature shall return the plan to the commission with its recommendations. Within 30 days thereafter, the commission shall file its final plan for legislative districts with the secretary of state and it shall become law.

(5) Upon filing both plans, the commission is then dissolved.

## ARTICLE VI THE EXECUTIVE

**Section 1. Officers.** (1) The executive branch includes a governor, lieutenant governor, secretary of state, attorney general, superintendent of public instruction, and auditor.

(2) Each holds office for a term of four years which begins on the first Monday of January next succeeding election, and until a successor is elected and qualified.

(3) Each shall reside at the seat of government, there keep the public records of his office, and perform such other duties as are provided in this constitution and by law.

**Section 2. Election.** (1) The governor, lieutenant governor, secretary of state, attorney general, superintendent of public instruction, and auditor shall be elected by the qualified electors at a general election provided by law.

(2) Each candidate for governor shall file jointly with a candidate for lieutenant governor in primary elections, or so otherwise comply with nomination procedures provided by law that the offices of governor and lieutenant governor are voted upon together in primary and general elections.

**Section 3. Qualifications.** (1) No person shall be eligible to the office of governor, lieutenant governor, secretary of state, attorney general, superintendent of public instruction, or auditor unless he is 25 years of age or older at the time of his election. In addition, each shall be a citizen of the United States who has resided within the state two years next preceding his election.

(2) Any person with the foregoing qualifications is eligible to the office of attorney general if an attorney in good standing admitted to practice law in Montana who has engaged in the active practice thereof for at least five years before election.

(3) The superintendent of public instruction shall have such educational qualifications as are provided by law.

**Section 4. Duties.** (1) The executive power is vested in the governor who shall see that the laws are faithfully executed. He shall have such other duties as are provided in this constitution and by law.

(2) The lieutenant governor shall perform the duties provided by law and those delegated to him by the governor. No power specifically vested in the governor by this constitution may be delegated to the lieutenant governor.

(3) The secretary of state shall maintain official records of the executive branch and of the acts of the legislature, as provided by law. He shall keep the great seal of the state of Montana and perform any other duties provided by law.

(4) The attorney general is the legal officer of the state and shall have the duties and powers provided by law.

(5) The superintendent of public instruction and the auditor shall have such duties as are provided by law.

**Section 5. Compensation.** (1) Officers of the executive branch shall receive salaries provided by law.

(2) During his term, no elected officer of the executive branch may hold another public office or receive compensation for services from any other governmental agency. He may be a candidate for any public office during his term.

**Section 6. Vacancy in office.** (1) If the office of lieutenant governor becomes vacant by his succession to the office of governor, or by his death, resignation, or disability as determined by law, the governor shall appoint a qualified person to serve in that office for the remainder of the term. If both the elected governor and the elected lieutenant governor become unable to serve in the office of governor, succession to the respective offices shall be as provided by law for the period until the next general election. Then, a governor and lieutenant governor shall be elected to fill the remainder of the original term.

(2) If the office of secretary of state, attorney general, auditor, or superintendent of public instruction becomes vacant by death, resignation, or disability as determined by law, the governor shall appoint a qualified person to serve in that office until the next general election and until a successor is elected and qualified. The person elected to fill a vacancy shall hold the office until the expiration of the term for which his predecessor was elected.



**Section 7. 20 departments.** All executive and administrative offices, boards, bureaus, commissions, agencies and instrumentalities of the executive branch (except for the office of governor, lieutenant governor, secretary of state, attorney general, superintendent of public instruction, and auditor) and their respective functions, powers, and duties, shall be allocated by law among not more than 20 principal departments so as to provide an orderly arrangement in the administrative organization of state government. Temporary commissions may be established by law and need not be allocated within a department.

**Section 8. Appointing power.** (1) The departments provided for in section 7 shall be under the supervision of the governor. Except as otherwise provided in this constitution or by law, each department shall be headed by a single executive appointed by the governor subject to confirmation by the senate to hold office until the end of the governor's term unless sooner removed by the governor.

(2) The governor shall appoint, subject to confirmation by the senate, all officers provided for in this constitution or by law whose appointment or election is not otherwise provided for. They shall hold office until the end of the governor's term unless sooner removed by the governor.

(3) If a vacancy occurs in any such office when the legislature is not in session, the governor shall appoint a qualified person to discharge the duties thereof until the office is filled by appointment and confirmation.

(4) A person not confirmed by the senate for an office shall not, except at its request, be nominated again for that office at the same session, or be appointed to that office when the legislature is not in session.

**Section 9. Budget and messages.** The governor shall at the beginning of each legislative session, and may at other times, give the legislature information and recommend measures he considers necessary. The governor shall submit to the legislature at a time fixed by law, a budget for the ensuing fiscal period setting forth in detail for all operating funds the proposed expenditures and estimated revenue of the state.

**Section 10. Veto power.** (1) Each bill passed by the legislature, except bills proposing amendments to the Montana constitution, bills ratifying proposed amendments to the United States constitution, resolutions, and initiative and referendum measures, shall be submitted to the governor for his signature. If he does not sign or veto the bill within 10 days after its delivery to him, it shall become law. The governor shall return a vetoed bill to the legislature with a statement of his reasons therefor.

(2) The governor may return any bill to the legislature with his recommendation for amendment. If the legislature passes the bill in accordance with the governor's recommendation, it shall again return the bill to the governor for his reconsideration. The governor shall not return a bill for amendment a second time.

(3) If after receipt of a veto message, two-thirds of the members of each house present approve the bill, it shall become law.

(4) (a) If the legislature is not in session when the governor vetoes a bill approved by two-thirds of the members present, he shall return the bill with his reasons therefor to the secretary of state. The secretary of state shall poll the members of the legislature by mail and shall send each member a copy of the governor's veto message. If two-thirds or more of the members of each house vote to override the veto, the bill shall become law.

(b) The legislature may reconvene as provided by law to reconsider any bill vetoed by the governor when the legislature is not in session.

(5) The governor may veto items in appropriation bills, and in such instances the procedure shall be the same as upon veto of an entire bill.

**Section 11. Special session.** Whenever the governor considers it in the public interest, he may convene the legislature.

**Section 12. Pardons.** The governor may grant reprieves, commutations and pardons, restore citizenship, and suspend and remit fines and forfeitures subject to procedures provided by law.

**Section 13. Militia.** (1) The governor is commander-in-chief of the militia forces of the state, except when they are in the actual service of the United States. He may call out any part or all of the forces to aid in the execution of the laws, suppress insurrection, repel invasion, or protect life and property in natural disasters.

(2) The militia forces shall consist of all able-bodied citizens of the state except those exempted by law.

**Section 14. Succession.** (1) If the governor-elect is disqualified or dies, the lieutenant governor-elect upon qualifying for the office shall become governor for the full term. If the governor-elect fails to assume office for any other reason, the lieutenant governor-elect upon qualifying as such shall serve as acting governor until the governor-elect is able to assume office, or until the office becomes vacant.

(2) The lieutenant governor shall serve as acting governor when so requested in writing by the governor. After the governor has been absent from the state for more than 45 consecutive days, the lieutenant governor shall serve as acting governor.

(3) He shall serve as acting governor when the governor is so disabled as to be unable to communicate to the lieutenant governor the fact of his inability to perform the duties of his office. The lieutenant governor shall continue to serve as acting governor until the governor is able to resume the duties of his office.

(4) Whenever, at any other time, the lieutenant governor and attorney general transmit to the legislature their written declaration that the governor is unable to discharge the powers and duties of his office, the legislature shall convene to determine whether he is able to do so.

(5) If the legislature, within 21 days after convening, determines by two-thirds vote of its members that the governor is unable to discharge the powers and duties of his office, the lieutenant governor shall serve as acting governor. Thereafter, when the governor transmits to the legislature his written declaration that no inability exists, he shall resume the powers and duties of his office within 15 days, unless the legislature determines otherwise by two-thirds vote of its members. If the legislature so determines, the lieutenant governor shall continue to serve as acting governor.

(6) If the office of governor becomes vacant by reason of death, resignation, or disqualification, the lieutenant governor shall become governor for the remainder of the term, except as provided in this constitution.

(7) Additional succession to fill vacancies shall be provided by law.

(8) When there is a vacancy in the office of governor, the successor shall be the governor. The acting governor shall have the powers and duties of the office of governor only for the period during which he serves.

**Section 15. Information for governor.** (1) The governor may require information in writing, under oath when required, from the officers of the executive branch upon any subject relating to the duties of their respective offices.

(2) He may require information in writing, under oath, from all officers and managers of state institutions.

(3) He may appoint a committee to investigate and report to him upon the condition of any executive office or state institution.

## ARTICLE VII THE JUDICIARY

**Section 1. Judicial power.** The judicial power of the state is vested in one supreme court, district courts, justice courts, and such other courts as may be provided by law.

**Section 2. Supreme court jurisdiction.** (1) The supreme court has appellate jurisdiction and may issue, hear, and determine writs appropriate thereto. It has original jurisdiction to issue, hear, and determine writs of habeas corpus and such other writs as may be provided by law.

(2) It has general supervisory control over all other courts.

(3) It may make rules governing appellate procedure, practice and procedure for all other courts, admission to the bar and the conduct of its members. Rules of procedure shall be subject to disapproval by the legislature in either of the two sessions following promulgation.

(4) Supreme court process shall extend to all parts of the state.

**Section 3. Supreme court organization.** (1) The supreme court consists of one chief justice and four justices, but the legislature may increase the number of justices from four to six. A majority shall join in and pronounce decisions, which must be in writing.

(2) A district judge shall be substituted for the chief justice or a justice in the event of disqualification or disability, and the opinion of the district judge sitting with the supreme court shall have the same effect as an opinion of a justice.

**Section 4. District court jurisdiction.** (1) The district court has original jurisdiction in all criminal cases amounting to felony and all civil matters and cases at law and in equity. It may issue all writs appropriate to its jurisdiction. It shall have the power of naturalization and such additional jurisdiction as may be delegated by the laws of the United States or the state of Montana. Its process shall extend to all parts of the state.

(2) The district court shall hear appeals from inferior courts as trials anew unless otherwise provided by law. The legislature may provide for direct review by the district court of decisions of administrative agencies.

(3) Other courts may have jurisdiction of criminal cases not amounting to felony and such jurisdiction concurrent with that of the district court as may be provided by law.

**Section 5. Justices of the peace.** (1) There shall be elected in each county at least one justice of the peace with qualifications, training, and monthly compensation provided by law. There shall be provided such facilities that they may perform their duties in dignified surroundings.

(2) Justice courts shall have such original jurisdiction as may be provided by law. They shall not have trial jurisdiction in any criminal case designated a felony except as examining courts.

(3) The legislature may provide for additional justices of the peace in each county.

**Section 6. Judicial districts.** (1) The legislature shall divide the state into judicial districts and provide for the number of judges in each district. Each district shall be formed of compact territory and be bounded by county lines.

(2) The legislature may change the number and boundaries of judicial districts and the number of judges in each district, but no change in boundaries or the number of districts or judges therein shall work a removal of any judge from office during the term for which he was elected or appointed.

(3) The chief justice may, upon request of the district judge, assign district judges and other judges for temporary service from one district to another, and from one county to another.

**Section 7. Terms and pay.** (1) All justices and judges shall be paid as provided by law, but salaries shall not be diminished during terms of office.

(2) Terms of office shall be eight years for supreme court justices, six years for district court judges, four years for justices of the peace, and as provided by law for other judges.

**Section 8. Selection.** (1) Supreme court justices and district court judges shall be elected by the qualified electors as provided by law.

(2) For any vacancy in the office of supreme court justice or district court judge, the governor shall appoint a replacement from nominees selected in the manner provided by law. If the governor fails to appoint within thirty days after receipt of nominees, the chief justice or acting chief justice shall make the appointment from the same nominees within thirty days of the governor's failure to appoint. Appointments made under this subsection shall be subject to confirmation by the senate, as provided by law. If the appointee is not confirmed, the office shall be vacant and a replacement shall be made under the procedures provided for in this section. The appointee shall serve until the election for the office as provided by law and until a successor is elected and qualified. The person elected or retained at the election shall serve until the expiration of the term for which his predecessor was elected. No appointee, whether confirmed or unconfirmed, shall serve past the term of his predecessor without standing for election.

(3) If an incumbent files for election and there is no election contest for the office, the name of the incumbent shall nevertheless be placed on the general election ballot to allow the voters of the state or district to approve or reject him. If an incumbent is rejected, the vacancy in the office for which the election was held shall be filled as provided in subsection (2).

**Section 9. Qualifications.** (1) A citizen of the United States who has resided in the state two years immediately before taking office is eligible to the office of supreme court justice or district court judge if admitted to the practice of law in Montana for at least five years prior to the date of appointment or election. Qualifications and methods of selection of judges of other courts shall be provided by law.

(2) No supreme court justice or district court judge shall solicit or receive compensation in any form whatever on account of his office, except salary and actual necessary travel expense.

(3) Except as otherwise provided in this constitution, no supreme court justice or district court judge shall practice law during his term of office, engage in any other employment for which salary or fee is paid, or hold office in a political party.

(4) Supreme court justices shall reside within the state. During his term of office, a district court judge shall reside in the district and a justice of the peace shall reside in the county in which he is elected or appointed. The residency requirement for every other judge must be provided by law.

**Section 10. Forfeiture of judicial position.** Any holder of a judicial position forfeits that position by either filing for an elective public office other than a judicial position or absenting himself from the state for more than 60 consecutive days.

**Section 11. Removal and discipline.** (1) The legislature shall create a judicial standards commission consisting of five persons and provide for the appointment thereto of two district judges, one attorney, and two citizens who are neither judges nor attorneys.

(2) The commission shall investigate complaints, and make rules implementing this section. It may subpoena witnesses and documents.

(3) Upon recommendation of the commission, the supreme court may:

(a) Retire any justice or judge for disability that seriously interferes with the performance of his duties and is or may become permanent; or

(b) Censure, suspend, or remove any justice or judge for willful misconduct in office, willful and persistent failure to perform his duties, violation of canons of judicial ethics adopted by the supreme court of the state of Montana, or habitual intemperance.

## ARTICLE VIII REVENUE AND FINANCE

**Section 1. Tax purposes.** Taxes shall be levied by general laws for public purposes.

**Section 2. Tax power inalienable.** The power to tax shall never be surrendered, suspended, or contracted away.

**Section 3. Property tax administration.** The state shall appraise, assess, and equalize the valuation of all property which is to be taxed in the manner provided by law.

**Section 4. Equal valuation.** All taxing jurisdictions shall use the assessed valuation of property established by the state.

**Section 5. Property tax exemptions.** (1) The legislature may exempt from taxation:

(a) Property of the United States, the state, counties, cities, towns, school districts, municipal corporations, and public libraries, but any private interest in such property may be taxed separately.

(b) Institutions of purely public charity, hospitals and places of burial not used or held for private or corporate profit, places for actual religious worship, and property used exclusively for educational purposes.

(c) Any other classes of property.

(2) The legislature may authorize creation of special improvement districts for capital improvements and the maintenance thereof. It may authorize the assessment of charges for such improvements and maintenance against tax exempt property directly benefited thereby.

**Section 6. Highway revenue non-diversion.** (1) Revenue from gross vehicle weight fees and excise and license taxes (except general sales and use taxes) on gasoline, fuel, and other energy sources used to propel vehicles on public highways shall be used as authorized by the legislature, after deduction of statutory refunds and adjustments, solely for:

(a) Payment of obligations incurred for construction, reconstruction, repair, operation, and maintenance of public highways, streets, roads, and bridges.

(b) Payment of county, city, and town obligations on streets, roads, and bridges.

(c) Enforcement of highway safety, driver education, tourist promotion, and administrative collection costs.



(2) Such revenue may be appropriated for other purposes by a three-fifths vote of the members of each house of the legislature.

**Section 7. Tax appeals.** The legislature shall provide independent appeal procedures for taxpayer grievances about appraisals, assessments, equalization, and taxes. The legislature shall include a review procedure at the local government unit level.

**Section 8. State debt.** No state debt shall be created unless authorized by a two-thirds vote of the members of each house of the legislature or a majority of the electors voting thereon. No state debt shall be created to cover deficits incurred because appropriations exceeded anticipated revenue.

**Section 9. Balanced budget.** Appropriations by the legislature shall not exceed anticipated revenue.

**Section 10. Local government debt.** The legislature shall by law limit debts of counties, cities, towns, and all other local governmental entities.

**Section 11. Use of loan proceeds.** All money borrowed by or on behalf of the state or any county, city, town, or other local governmental entity shall be used only for purposes specified in the authorizing law.

**Section 12. Strict accountability.** The legislature shall by law insure strict accountability of all revenue received and money spent by the state and counties, cities, towns, and all other local governmental entities.

**Section 13. Investment of public funds and public retirement system and state compensation insurance fund assets.** (1) The legislature shall provide for a unified investment program for public funds and public retirement system and state compensation insurance fund assets and provide rules therefor, including supervision of investment of surplus funds of all counties, cities, towns, and other local governmental entities. Each fund forming a part of the unified investment program shall be separately identified. Except as provided in subsections (3) and (4), no public funds shall be invested in private corporate capital stock. The investment program shall be audited at least annually and a report thereof submitted to the governor and legislature.

(2) The public school fund and the permanent funds of the Montana university system and all other state institutions of learning shall be safely and conservatively invested in:

(a) Public securities of the state, its subdivisions, local government units, and districts within the state, or

(b) Bonds of the United States or other securities fully guaranteed as to principal and interest by the United States, or

(c) Such other safe investments bearing a fixed rate of interest as may be provided by law.

(3) Investment of public retirement system assets shall be managed in a fiduciary capacity in the same manner that a prudent expert acting in a fiduciary capacity and familiar with the circumstances would use in the conduct of an enterprise of a similar character with similar aims. Public retirement system assets may be invested in private corporate capital stock.

(4) Investment of state compensation insurance fund assets shall be managed in a fiduciary capacity in the same manner that a prudent expert acting in a fiduciary capacity and familiar with the circumstances would use in the conduct of a private insurance organization. State compensation insurance fund assets may be invested in private corporate capital stock. However, the stock investments shall not exceed 25 percent of the book value of the state compensation insurance fund's total invested assets.

**Section 14. Prohibited payments.** Except for interest on the public debt, no money shall be paid out of the treasury unless upon an appropriation made by law and a warrant drawn by the proper officer in pursuance thereof.

**Section 15. Public retirement system assets.** (1) Public retirement systems shall be funded on an actuarially sound basis. Public retirement system assets, including income and actuarially required contributions, shall not be encumbered, diverted, reduced, or terminated and shall be held in trust to provide benefits to participants and their beneficiaries and to defray administrative expenses.

(2) The governing boards of public retirement systems shall administer the system, including actuarial determinations, as fiduciaries of system participants and their beneficiaries.

**Section 16. Limitation on sales tax or use tax rates.** The rate of a general statewide sales tax or use tax may not exceed 4%.

**Section 17. Prohibition on real property transfer taxes.** The state or any local government unit may not impose any tax, including a sales tax, on the sale or transfer of real property.

## ARTICLE IX ENVIRONMENT AND NATURAL RESOURCES

**Section 1. Protection and improvement.** (1) The state and each person shall maintain and improve a clean and healthful environment in Montana for present and future generations.

(2) The legislature shall provide for the administration and enforcement of this duty.

(3) The legislature shall provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources.

**Section 2. Reclamation.** (1) All lands disturbed by the taking of natural resources shall be reclaimed. The legislature shall provide effective requirements and standards for the reclamation of lands disturbed.

(2) The legislature shall provide for a fund, to be known as the resource indemnity trust of the state of Montana, to be funded by such taxes on the extraction of natural resources as the legislature may from time to time impose for that purpose.

(3) The principal of the resource indemnity trust shall forever remain inviolate in an amount of one hundred million dollars (\$100,000,000), guaranteed by the state against loss or diversion.

**Section 3. Water rights.** (1) All existing rights to the use of any waters for any useful or beneficial purpose are hereby recognized and confirmed.

(2) The use of all water that is now or may hereafter be appropriated for sale, rent, distribution, or other beneficial use, the right of way over the lands of others for all ditches, drains, flumes, canals, and aqueducts necessarily used in connection therewith, and the sites for reservoirs necessary for collecting and storing water shall be held to be a public use.

(3) All surface, underground, flood, and atmospheric waters within the boundaries of the state are the property of the state for the use of its people and are subject to appropriation for beneficial uses as provided by law.

(4) The legislature shall provide for the administration, control, and regulation of water rights and shall establish a system of centralized records, in addition to the present system of local records.

**Section 4. Cultural resources.** The legislature shall provide for the identification, acquisition, restoration, enhancement, preservation, and administration of scenic, historic, archeologic, scientific, cultural, and recreational areas, sites, records and objects, and for their use and enjoyment by the people.

**Section 5. Severance tax on coal — trust fund.** The legislature shall dedicate not less than one-fourth (1/4) of the coal severance tax to a trust fund, the interest and income from which may be appropriated. The principal of the trust shall forever remain inviolate unless appropriated by vote of three-fourths (3/4) of the members of each house of the legislature. After December 31, 1979, at least fifty percent (50%) of the severance tax shall be dedicated to the trust fund.

**Section 6. Noxious weed management trust fund.** (1) The legislature shall provide for a fund, to be known as the noxious weed management trust of the state of Montana, to be funded as provided by law.

(2) The principal of the noxious weed management trust fund shall forever remain inviolate in an amount of ten million dollars (\$10,000,000) unless appropriated by vote of three-fourths (3/4) of the members of each house of the legislature.

(3) The interest and income generated from the noxious weed management trust fund may be appropriated by a majority vote of each house of the legislature. Appropriations of the interest

and income shall be used only to fund the noxious weed management program, as provided by law.

(4) The principal of the noxious weed management trust fund in excess of ten million dollars (\$10,000,000) may be appropriated by a majority vote of each house of the legislature. Appropriations of the principal in excess of ten million dollars (\$10,000,000) shall be used only to fund the noxious weed management program, as provided by law.

**Section 7. Preservation of harvest heritage.** The opportunity to harvest wild fish and wild game animals is a heritage that shall forever be preserved to the individual citizens of the state and does not create a right to trespass on private property or diminution of other private rights.

## ARTICLE X EDUCATION AND PUBLIC LANDS

### Section

1. Educational goals and duties.
2. Public school fund.
3. Public school fund inviolate.
4. Board of land commissioners.
5. Public school fund revenue.
6. Aid prohibited to sectarian schools.
7. Nondiscrimination in education.
8. School district trustees.
9. Boards of education.
10. State university funds.
11. Public land trust, disposition.

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### Article Cross-References

Superintendent of Public Instruction as Executive Branch officer, Art. VI, sec. 1 through 4, 6, and 7, Mont. Const.

Education, Title 2, ch. 15, part 15; Title 20.

State Lands, Title 77.

**Section 1. Educational goals and duties.** (1) It is the goal of the people to establish a system of education which will develop the full educational potential of each person. Equality of educational opportunity is guaranteed to each person of the state.

(2) The state recognizes the distinct and unique cultural heritage of the American Indians and is committed in its educational goals to the preservation of their cultural integrity.

(3) The legislature shall provide a basic system of free quality public elementary and secondary schools. The legislature may provide such other educational institutions, public libraries, and educational programs as it deems desirable. It shall fund and distribute in an equitable manner to the school districts the state's share of the cost of the basic elementary and secondary school system.

### Cross-References

Public school fund, Art. X, sec. 2 and 3, Mont. Const.

Nondiscrimination in education, Art. X, sec. 7, Mont. Const.; 49-2-307; 49-3-203.

State university funds, Art. X, sec. 10, Mont. Const.

State Board of Education, 2-15-1501.

Board of Regents of Higher Education, 2-15-1505.

Commissioner of Higher Education, 2-15-1506.

Board of Public Education, 2-15-1507.

Property tax exemption of property used for educational purposes, 15-6-201.

Education, Title 20.

Vocational and technical education, Title 20, ch. 7, part 3.

Montana State School for the Deaf and Blind, Title 20, ch. 8.

State equalization aid, Title 20, ch. 9, part 3.

Community college districts, Title 20, ch. 15.

University System, Title 20, ch. 25.

Charges for tuition — waivers, 20-25-421.

Libraries, Title 22, ch. 1.

### Constitutional Convention Transcript Cross-References

Adoption, Trans. 2939, 2940.

Committee report, Vol. II 718, 721 through 725, 993, 996, 1002, 1003, 1069.

Cross-references, 1889 and 1972 Constitutions, Vol. II 757.



Debate — committee report, Trans. 1949 through 1989, 2022, 2151 through 2159.  
 Debate — style and drafting report, Trans. 2572, 2573, 2928.  
 Delegate proposals, Vol. I 95, 139, 143, 169, 170, 204, 284.  
 Final consideration, Trans. 2665 through 2667.  
 Text as adopted, Vol. II 1099.

**Section 2. Public school fund.** The public school fund of the state shall consist of:

- (1) Proceeds from the school lands which have been or may hereafter be granted by the United States,
- (2) Lands granted in lieu thereof,
- (3) Lands given or granted by any person or corporation under any law or grant of the United States,
- (4) All other grants of land or money made from the United States for general educational purposes or without special purpose,
- (5) All interests in estates that escheat to the state,
- (6) All unclaimed shares and dividends of any corporation incorporated in the state,
- (7) All other grants, gifts, devises or bequests made to the state for general educational purposes.

**Cross-References**

Public school fund inviolate, Art. X, sec. 3, Mont. Const.  
 Board of Land Commissioners, Art. X, sec. 4, Mont. Const.  
 Public school fund revenue, Art. X, sec. 5, Mont. Const.  
 State university funds, Art. X, sec. 10, Mont. Const.  
 Public land trust — disposition, Art. X, sec. 11, Mont. Const.  
 Public school fund as separate investment fund, 17-6-203.  
 Permissible investments for public school fund, 17-6-211.  
 Public school fund, Title 20, ch. 9, part 6.  
 Escheated Estates Act, Title 72, ch. 14.  
 State Lands, Title 77.

**Constitutional Convention Transcript Cross-References**

Adoption, Trans. 2939, 2940.  
 Committee report, Vol. II 583, 596, 718, 725, 726, 993, 996, 997, 1002, 1003, 1069.  
 Cross-references, 1889 and 1972 Constitutions, Vol. II 757.  
 Debate — committee report, Trans. 1957, 1989, 1990, 1995, 2143.  
 Debate — style and drafting report, Trans. 2573, 2574, 2928.  
 Final consideration, Trans. 2667, 2668.  
 Text as adopted, Vol. II 1099.

**Section 3. Public school fund inviolate.** The public school fund shall forever remain inviolate, guaranteed by the state against loss or diversion.

**Cross-References**

Public school fund, Art. X, sec. 2, Mont. Const.; Title 20, ch. 9, part 6.  
 Public school fund revenue, Art. X, sec. 5, Mont. Const.  
 State university funds, Art. X, sec. 10, Mont. Const.

**Constitutional Convention Transcript Cross-References**

Adoption, Trans. 2939, 2940.  
 Committee report, Vol. II 718, 726, 741, 742, 993, 997, 1003, 1004, 1069.  
 Cross-references, 1889 and 1972 Constitutions, Vol. II 757.  
 Debate — committee report, Trans. 1539 through 1544, 1948, 1990, 2146, 2148, 2245, 2246.  
 Debate — style and drafting report, Trans. 2574, 2927, 2928.  
 Delegate proposals, Vol. I 169, 176.  
 Final consideration, Trans. 2668, 2669.  
 Text as adopted, Vol. II 1100.

**Section 4. Board of land commissioners.** The governor, superintendent of public instruction, auditor, secretary of state, and attorney general constitute the board of land commissioners. It has the authority to direct, control, lease, exchange, and sell school lands and lands which have been or may be granted for the support and benefit of the various state educational institutions, under such regulations and restrictions as may be provided by law.

**Cross-References**

Members as Executive Branch officers, Art. VI, sec. 1, Mont. Const.  
 Public land trust — disposition, Art. X, sec. 11, Mont. Const.  
 Governor as member, 2-15-201.  
 Secretary of State as member, 2-15-401.  
 Attorney General as member, 2-15-501.  
 Approval of Board required for state building leases required under some circumstances, 18-3-105.  
 Sale or lease of state land to school district, 20-6-621.  
 Deposit of interest and income of public school fund by Board, 20-9-342.

Community college trustees may accept funds, income, and property from Board, 20-15-225.

Board of Regents may accept funds, income, and property from Board, 20-25-301.

Power to accept recreational and camping ground, 23-1-103.

Montana Natural Areas Act of 1974, Title 76, ch. 12, part 1.

Board's role in protection of forest resources, Title 76, ch. 13, parts 1 and 2.

State Lands, Title 77.

Exchanges of state land, Title 77, ch. 2, part 2.

Sales of state land, Title 77, ch. 2, part 3.

Board's role in reclamation, Title 82, ch. 4.

#### **Constitutional Convention Transcript Cross-References**

Adoption, Trans. 2939, 2940.

Committee report, Vol. II 718, 719, 726, 727, 994, 997, 1002, 1004, 1069, 1070.

Cross-references, 1889 and 1972 Constitutions, Vol. II 757.

Debate — committee report, Trans. 860, 863 through 865, 869, 874, 917, 1280, 1990 through 2002.

Debate — style and drafting report, Trans. 2574, 2575, 2928.

Delegate proposal, Vol. I 329.

Final consideration, Trans. 2669, 2670.

Text as adopted, Vol. II 1100.

**Section 5. Public school fund revenue.** (1) Ninety-five percent of all the interest received on the public school fund and ninety-five percent of all rent received from the leasing of school lands and all other income from the public school fund shall be equitably apportioned annually to public elementary and secondary school districts as provided by law.

(2) The remaining five percent of all interest received on the public school fund, and the remaining five percent of all rent received from the leasing of school lands and all other income from the public school fund shall annually be added to the public school fund and become and forever remain an inseparable and inviolable part thereof.

#### **Cross-References**

Public school fund, Art. X, sec. 2, Mont. Const.; Title 20, ch. 9, part 6.

Public school fund inviolate, Art. X, sec. 3, Mont. Const.

Deposit of interest and income money, 20-9-341, 20-9-342.

State Lands, Title 77.

#### **Constitutional Convention Transcript Cross-References**

Adoption, Trans. 2939, 2940.

Committee report, Vol. II 719, 727, 728, 994, 997, 1002, 1004, 1070.

Cross-references, 1889 and 1972 Constitutions, Vol. II 757.

Debate — committee report, Trans. 149, 1948, 1977, 2006 through 2008.

Debate — style and drafting report, Trans. 2575, 2928.

Delegate proposals, Vol. I 146, 169, 170.

Final consideration, Trans. 2670, 2671.

Text as adopted, Vol. II 1100.

**Section 6. Aid prohibited to sectarian schools.** (1) The legislature, counties, cities, towns, school districts, and public corporations shall not make any direct or indirect appropriation or payment from any public fund or monies, or any grant of lands or other property for any sectarian purpose or to aid any church, school, academy, seminary, college, university, or other literary or scientific institution, controlled in whole or in part by any church, sect, or denomination.

(2) This section shall not apply to funds from federal sources provided to the state for the express purpose of distribution to non-public education.

#### **Cross-References**

Freedom of religion, Art. II, sec. 5, Mont. Const.

Religious discrimination in public schools prohibited — advocating sectarian tenets in public schools prohibited, Art. X, sec. 7, Mont. Const.

Religious instruction released time program, 20-1-308.

Religious exemption for immunization requirements, 20-5-405.

Accreditation of nonpublic high schools, 20-7-102.

Sectarian publications prohibited — prayer permitted in public schools, 20-7-112.

#### **Constitutional Convention Transcript Cross-References**

Adoption, Trans. 2939, 2940.

Committee report, Vol. II 629, 716, 719, 728 through 730, 743 through 747, 994, 997, 1002, 1004, 1070.

Cross-references, 1889 and 1972 Constitutions, Vol. II 757.

Debate — committee report, Trans. 1646, 1960, 2008 through 2031, 2235.

Debate — style and drafting report, Trans. 2575, 2576, 2928.

Delegate proposals, Vol. I 137, 189, 222, 276, 311 through 313.

Final consideration, Trans. 2671, 2672.

Text as adopted, Vol. II 1100.

**Section 7. Nondiscrimination in education.** No religious or partisan test or qualification shall be required of any teacher or student as a condition of admission into any public educational institution. Attendance shall not be required at any religious service. No sectarian tenets shall be advocated in any public educational institution of the state. No person shall be refused admission to any public educational institution on account of sex, race, creed, religion, political beliefs, or national origin.

**Cross-References**

Equal protection, Art. II, sec. 4, Mont. Const.  
 Freedom of religion, Art. II, sec. 5, Mont. Const.  
 Aid to sectarian schools prohibited, Art. X, sec. 6, Mont. Const.  
 Religious instruction released time program, 20-1-308.  
 Teachers, superintendents, and principals, Title 20, ch. 4.  
 Attendance of Indian children, 20-5-108.  
 Religious exemption for immunization requirements, 20-5-405.  
 Sectarian publications prohibited — prayer permitted in public schools, 20-7-112.  
 University System to instruct men and women equally, 20-25-101.  
 Freedom from discrimination, 49-1-102.  
 Discrimination in education prohibited, 49-2-307.  
 Discrimination in educational, counseling, and vocational guidance programs prohibited, 49-3-203.

**Constitutional Convention Transcript Cross-References**

Adoption, Trans. 2939, 2940.  
 Committee report, Vol. II 719, 730, 731, 994, 997, 998, 1002, 1004, 1070.  
 Cross-references, 1889 and 1972 Constitutions, Vol. II 757.  
 Debate — committee report, Trans. 2031 through 2045.  
 Debate — style and drafting report, Trans. 2576, 2928.  
 Final consideration, Trans. 2672 through 2674.  
 Text as adopted, Vol. II 1100.

**Section 8. School district trustees.** The supervision and control of schools in each school district shall be vested in a board of trustees to be elected as provided by law.

**Cross-References**

Filing of audit report and financial report, 2-7-514.  
 Consent of trustees to appointment of District Superintendent as Municipal Superintendent, 7-3-1348.  
 Management of school money, Title 7, ch. 6, part 28.  
 Education, Title 20.  
 School district trustees generally, Title 20, ch. 3, part 3.  
 Attachment of property under control of trustees, 27-18-406.  
 Governmental code of fair practices — application to school districts, 49-3-102.

**Constitutional Convention Transcript Cross-References**

Adoption, Trans. 2939, 2940.  
 Committee report, Vol. II 719, 731, 735, 994, 998, 1002, 1004, 1070.  
 Cross-references, 1889 and 1972 Constitutions, Vol. II 757.  
 Debate — committee report, Trans. 1971, 1977, 2046 through 2048, 2050, 2060 through 2062, 2103, 2165.  
 Debate — style and drafting report, Trans. 2576, 2928.  
 Delegate proposals, Vol. I 122, 340.  
 Final consideration, Trans. 2674, 2675.  
 Text as adopted, Vol. II 1100.

**Section 9. Boards of education.** (1) There is a state board of education composed of the board of regents of higher education and the board of public education. It is responsible for long-range planning, and for coordinating and evaluating policies and programs for the state's educational systems. It shall submit unified budget requests. A tie vote at any meeting may be broken by the governor, who is an ex officio member of each component board.

(2) (a) The government and control of the Montana university system is vested in a board of regents of higher education which shall have full power, responsibility, and authority to supervise, coordinate, manage and control the Montana university system and shall supervise and coordinate other public educational institutions assigned by law.

(b) The board consists of seven members appointed by the governor, and confirmed by the senate, to overlapping terms, as provided by law. The governor and superintendent of public instruction are ex officio non-voting members of the board.

(c) The board shall appoint a commissioner of higher education and prescribe his term and duties.

(d) The funds and appropriations under the control of the board of regents are subject to the same audit provisions as are all other state funds.

(3) (a) There is a board of public education to exercise general supervision over the public school system and such other public educational institutions as may be assigned by law. Other duties of the board shall be provided by law.

(b) The board consists of seven members appointed by the governor, and confirmed by the senate, to overlapping terms as provided by law. The governor, commissioner of higher education and state superintendent of public instruction shall be ex officio non-voting members of the board.

#### **Cross-References**

Governor and Superintendent of Public Instruction as executive officers, Art. VI, sec. 1, Mont. Const.

Board of Regents exempt from Montana Administrative Procedure Act, 2-4-102.

Governor as member of State Board of Education, 2-15-201.

Superintendent of Public Instruction, 2-15-701; Title 20, ch. 3, part 1.

State Board of Education, 2-15-1501.

Board of Regents, 2-15-1505.

Commissioner of Higher Education, 2-15-1506.

Board of Public Education, 2-15-1507.

Appointments to Boards, 2-15-1508.

Agencies allocated to State Board of Education, 2-15-1511.

Application of portions of state employee classification requirements to Board of Regents and Board of Public Education, 2-18-103.

Approval of gubernatorial appointments, Title 5, ch. 5, part 3.

The Legislative Audit Act, Title 5, ch. 13.

Submission of University System budget, 17-7-112.

Construction of buildings by Board of Regents without legislative approval, 18-2-102.

University System buildings exempt from certain preconstruction requirements, 18-2-103.

Education, Title 20.

State boards and commissions generally, Title 20, ch. 2.

University System, Title 20, ch. 25.

Charges for tuition — waivers, 20-25-421.

#### **Constitutional Convention Transcript Cross-References**

Adoption, Trans. 2939, 2940.

Committee report, Vol. II 719, 720, 731 through 740, 994, 995, 998, 999, 1002, 1004, 1005, 1070, 1071.

Cross-references, 1889 and 1972 Constitutions, Vol. II 757.

Debate — committee report, Trans. 858, 862, 864, 873, 2046, 2049 through 2091, 2096 through 2142, 2159 through 2174, 2894.

Debate — style and drafting report, Trans. 2576 through 2593, 2928.

Delegate proposals, Vol. I 196, 197, 230, 256, 282, 283, 287, 324.

Final consideration, Trans. 2675, 2676.

Text as adopted, Vol. II 1100.

**Section 10. State university funds.** The funds of the Montana university system and of all other state institutions of learning, from whatever source accruing, shall forever remain inviolate and sacred to the purpose for which they were dedicated. The various funds shall be respectively invested under such regulations as may be provided by law, and shall be guaranteed by the state against loss or diversion. The interest from such invested funds, together with the rent from leased lands or properties, shall be devoted to the maintenance and perpetuation of the respective institutions.

#### **Cross-References**

The Legislative Audit Act, Title 5, ch. 13.

University funds within treasury, 17-2-102.

Fiscal year and financial reports of university units, 17-2-110.

Endowments to University System, Title 17, ch. 3, part 10.

University funds as separate investment fund, 17-6-203.

University finance, Title 20, ch. 25, part 4.

#### **Constitutional Convention Transcript Cross-References**

Adoption, Trans. 2939, 2940.

Committee report, Vol. II 720, 740, 995, 999, 1002, 1005, 1071.

Cross-references, 1889 and 1972 Constitutions, Vol. II 757.

Debate — committee report, Trans. 2056, 2142.

Debate — style and drafting report, Trans. 2593, 2594, 2928.

Delegate proposals, Vol. I 170, 196, 197, 283.

Final consideration, Trans. 2676, 2677.

Text as adopted, Vol. II 1100, 1101.

**Section 11. Public land trust, disposition.** (1) All lands of the state that have been or may be granted by congress, or acquired by gift or grant or devise from any person or corporation, shall be public lands of the state. They shall be held in trust for the people, to be disposed of

as hereafter provided, for the respective purposes for which they have been or may be granted, donated or devised.

(2) No such land or any estate or interest therein shall ever be disposed of except in pursuance of general laws providing for such disposition, or until the full market value of the estate or interest disposed of, to be ascertained in such manner as may be provided by law, has been paid or safely secured to the state.

(3) No land which the state holds by grant from the United States which prescribes the manner of disposal and minimum price shall be disposed of except in the manner and for at least the price prescribed without the consent of the United States.

(4) All public land shall be classified by the board of land commissioners in a manner provided by law. Any public land may be exchanged for other land, public or private, which is equal in value and, as closely as possible, equal in area.

#### **Cross-References**

Board of Land Commissioners, Art. X, sec. 4, Mont. Const.

State Lands, Title 77.

Exchanges of state land, Title 77, ch. 2, part 2.

Sales of state land, Title 77, ch. 2, part 3.

#### **Constitutional Convention Transcript Cross-References**

Adoption, Trans. 2939, 2940.

Committee report, Vol. II 748 through 752, 1000 through 1002, 1006, 1071, 1072.

Cross-references, 1889 and 1972 Constitutions, Vol. II 757.

Debate — committee report, Trans. 2142 through 2150.

Debate — style and drafting report, Trans. 2593, 2594, 2928.

Delegate proposals, Vol. I 266, 267, 329.

Final consideration, Trans. 2677, 2678.

Text as adopted, Vol. II 1101.

## **ARTICLE XI LOCAL GOVERNMENT**

**Section 1. Definition.** The term “local government units” includes, but is not limited to, counties and incorporated cities and towns. Other local government units may be established by law.

**Section 2. Counties.** The counties of the state are those that exist on the date of ratification of this constitution. No county boundary may be changed or county seat transferred until approved by a majority of those voting on the question in each county affected.

**Section 3. Forms of government.** (1) The legislature shall provide methods for governing local government units and procedures for incorporating, classifying, merging, consolidating, and dissolving such units, and altering their boundaries. The legislature shall provide such optional or alternative forms of government that each unit or combination of units may adopt, amend, or abandon an optional or alternative form by a majority of those voting on the question.

(2) One optional form of county government includes, but is not limited to, the election of three county commissioners, a clerk and recorder, a clerk of district court, a county attorney, a sheriff, a treasurer, a surveyor, a county superintendent of schools, an assessor, a coroner, and a public administrator. The terms, qualifications, duties, and compensation of those offices shall be provided by law. The Board of county commissioners may consolidate two or more such offices. The Boards of two or more counties may provide for a joint office and for the election of one official to perform the duties of any such office in those counties.

**Section 4. General powers.** (1) A local government unit without self-government powers has the following general powers:

(a) An incorporated city or town has the powers of a municipal corporation and legislative, administrative, and other powers provided or implied by law.

(b) A county has legislative, administrative, and other powers provided or implied by law.

(c) Other local government units have powers provided by law.

(2) The powers of incorporated cities and towns and counties shall be liberally construed.

**Section 5. Self-government charters.** (1) The legislature shall provide procedures permitting a local government unit or combination of units to frame, adopt, amend, revise,



or abandon a self-government charter with the approval of a majority of those voting on the question. The procedures shall not require approval of a charter by a legislative body.

(2) If the legislature does not provide such procedures by July 1, 1975, they may be established by election either:

- (a) Initiated by petition in the local government unit or combination of units; or
- (b) Called by the governing body of the local government unit or combination of units.
- (3) Charter provisions establishing executive, legislative, and administrative structure and organization are superior to statutory provisions.

**Section 6. Self-government powers.** A local government unit adopting a self-government charter may exercise any power not prohibited by this constitution, law, or charter. This grant of self-government powers may be extended to other local government units through optional forms of government provided for in section 3.

**Section 7. Intergovernmental cooperation.** (1) Unless prohibited by law or charter, a local government unit may

- (a) cooperate in the exercise of any function, power, or responsibility with,
- (b) share the services of any officer or facilities with,
- (c) transfer or delegate any function, power, responsibility, or duty of any officer to one or more other local government units, school districts, the state, or the United States.
- (2) The qualified electors of a local government unit may, by initiative or referendum, require it to do so.

**Section 8. Initiative and referendum.** The legislature shall extend the initiative and referendum powers reserved to the people by the constitution to the qualified electors of each local government unit.

**Section 9. Voter review of local government.** (1) The legislature shall, within four years of the ratification of this constitution, provide procedures requiring each local government unit or combination of units to review its structure and submit one alternative form of government to the qualified electors at the next general or special election.

(2) The legislature shall require an election in each local government to determine whether a local government will undertake a review procedure once every ten years after the first election. Approval by a majority of those voting in the decennial general election on the question of undertaking a local government review is necessary to mandate the election of a local government study commission. Study commission members shall be elected during any regularly scheduled election in local governments mandating their election.

## ARTICLE XII DEPARTMENTS AND INSTITUTIONS

**Section 1. Agriculture.** (1) The legislature shall provide for a Department of Agriculture and enact laws and provide appropriations to protect, enhance, and develop all agriculture.

(2) Special levies may be made on livestock and on agricultural commodities for disease control and indemnification, predator control, and livestock and commodity inspection, protection, research, and promotion. Revenue derived shall be used solely for the purposes of the levies.

**Section 2. Labor.** (1) The legislature shall provide for a Department of Labor and Industry, headed by a Commissioner appointed by the governor and confirmed by the senate.

(2) A maximum period of 8 hours is a regular day's work in all industries and employment except agriculture and stock raising. The legislature may change this maximum period to promote the general welfare.

**Section 3. Institutions and assistance.** (1) The state shall establish and support institutions and facilities as the public good may require, including homes which may be necessary and desirable for the care of veterans.

(2) Persons committed to any such institutions shall retain all rights except those necessarily suspended as a condition of commitment. Suspended rights are restored upon termination of the state's responsibility.

(3) The legislature may provide such economic assistance and social and rehabilitative services for those who, by reason of age, infirmities, or misfortune are determined by the legislature to be in need.

(4) The legislature may set eligibility criteria for programs and services, as well as for the duration and level of benefits and services.

**Section 4. Montana tobacco settlement trust fund.** (1) The legislature shall dedicate not less than two-fifths of any tobacco settlement proceeds received on or after January 1, 2001, to a trust fund, nine-tenths of the interest and income of which may be appropriated. One-tenth of the interest and income derived from the trust fund on or after January 1, 2001, shall be deposited in the trust fund. The principal of the trust fund and one-tenth of the interest and income deposited in the trust fund shall remain forever inviolate unless appropriated by a vote of two-thirds of the members of each house of the legislature.

(2) Appropriations of the interest, income, or principal from the trust fund shall be used only for tobacco disease prevention programs and state programs providing benefits, services, or coverage that are related to the health care needs of the people of Montana and may not be used for other purposes.

(3) Appropriations of the interest, income, or principal from the trust fund shall not be used to replace state or federal money used to fund tobacco disease prevention programs and state programs that existed on December 31, 1999, providing benefits, services, or coverage of the health care needs of the people of Montana.

## ARTICLE XIII GENERAL PROVISIONS

**Section 1. Nonmunicipal corporations.** (1) Corporate charters shall be granted, modified, or dissolved only pursuant to general law.

(2) The legislature shall provide protection and education for the people against harmful and unfair practices by either foreign or domestic corporations, individuals, or associations.

(3) The legislature shall pass no law retrospective in its operations which imposes on the people a new liability in respect to transactions or considerations already passed.

**Section 2. Consumer counsel.** The legislature shall provide for an office of consumer counsel which shall have the duty of representing consumer interests in hearings before the public service commission or any other successor agency. The legislature shall provide for the funding of the office of consumer counsel by a special tax on the net income or gross revenues of regulated companies.

**Section 3. Repealed.** Sec. 1, Const. Amend. No. 16, approved Nov. 4, 1986.

**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.

**Section 5. Exemption laws.** The legislature shall enact liberal homestead and exemption laws.

**Section 6. Perpetuities.** No perpetuities shall be allowed except for charitable purposes.

**Section 7. Marriage.** Only a marriage between one man and one woman shall be valid or recognized as a marriage in this state.

## ARTICLE XIV CONSTITUTIONAL REVISION

**Section 1. Constitutional convention.** The legislature, by an affirmative vote of two-thirds of all the members, whether one or more bodies, may at any time submit to the qualified electors the question of whether there shall be an unlimited convention to revise, alter, or amend this constitution.

**Section 2. Initiative for constitutional convention.** (1) The people may by initiative petition direct the secretary of state to submit to the qualified electors the question



of whether there shall be an unlimited convention to revise, alter, or amend this constitution. The petition shall be signed by at least ten percent of the qualified electors of the state. That number shall include at least ten percent of the qualified electors in each of two-fifths of the legislative districts.

(2) The secretary of state shall certify the filing of the petition in his office and cause the question to be submitted at the next general election.

**Section 3. Periodic submission.** If the question of holding a convention is not otherwise submitted during any period of 20 years, it shall be submitted as provided by law at the general election in the twentieth year following the last submission.

**Section 4. Call of convention.** If a majority of those voting on the question answer in the affirmative, the legislature shall provide for the calling thereof at its next session. The number of delegates to the convention shall be the same as that of the larger body of the legislature. The qualifications of delegates shall be the same as the highest qualifications required for election to the legislature. The legislature shall determine whether the delegates may be nominated on a partisan or a non-partisan basis. They shall be elected at the same places and in the same districts as are the members of the legislative body determining the number of delegates.

**Section 5. Convention expenses.** The legislature shall, in the act calling the convention, designate the day, hour, and place of its meeting, and fix and provide for the pay of its members and officers and the necessary expenses of the convention.

**Section 6. Oath, vacancies.** Before proceeding, the delegates shall take the oath provided in this constitution. Vacancies occurring shall be filled in the manner provided for filling vacancies in the legislature if not otherwise provided by law.

**Section 7. Convention duties.** The convention shall meet after the election of the delegates and prepare such revisions, alterations, or amendments to the constitution as may be deemed necessary. They shall be submitted to the qualified electors for ratification or rejection as a whole or in separate articles or amendments as determined by the convention at an election appointed by the convention for that purpose not less than two months after adjournment. Unless so submitted and approved by a majority of the electors voting thereon, no such revision, alteration, or amendment shall take effect.

**Section 8. Amendment by legislative referendum.** Amendments to this constitution may be proposed by any member of the legislature. If adopted by an affirmative roll call vote of two-thirds of all the members thereof, whether one or more bodies, the proposed amendment shall be submitted to the qualified electors at the next general election. If approved by a majority of the electors voting thereon, the amendment shall become a part of this constitution on the first day of July after certification of the election returns unless the amendment provides otherwise.

**Section 9. Amendment by initiative.** (1) The people may also propose constitutional amendments by initiative. Petitions including the full text of the proposed amendment shall be signed by at least ten percent of the qualified electors of the state. That number shall include at least ten percent of the qualified electors in each of at least one-half of the counties.

(2) The petitions shall be filed with the secretary of state. If the petitions are found to have been signed by the required number of electors, the secretary of state shall cause the amendment to be published as provided by law twice each month for two months previous to the next regular state-wide election.

(3) At that election, the proposed amendment shall be submitted to the qualified electors for approval or rejection. If approved by a majority voting thereon, it shall become a part of the constitution effective the first day of July following its approval, unless the amendment provides otherwise.

**Section 10. Petition signers.** The number of qualified electors required for the filing of any petition provided for in this Article shall be determined by the number of votes cast for the office of governor in the preceding general election.

**Section 11. Submission.** If more than one amendment is submitted at the same election, each shall be so prepared and distinguished that it can be voted upon separately.

Done in open convention at the city of Helena, in the state of Montana, this twenty-second day of March, in the year of our Lord one thousand nine hundred and seventy-two.

Leo Graybill, Jr., President  
Jean M. Bowman, Secretary  
Magnus Aasheim  
John H. Anderson, Jr.  
Oscar L. Anderson  
Harold Arbanas  
Franklin Arness  
Cedor B. Aronow  
William H. Artz  
Thomas M. Ask  
Betty Babcock  
Lloyd Barnard  
Grace C. Bates  
Don E. Belcher  
Ben E. Berg, Jr.  
E. M. Berthelson  
Chet Blaylock  
Virginia H. Blend  
Geoffrey L. Brazier  
Bruce M. Brown  
Daphne Bugbee  
William A. Burkhardt  
Marjorie Cain  
Bob Campbell  
Jerome J. Cate  
Richard J. Champoux  
Lyman W. Choate  
Max Conover  
C. Louise Cross  
Wade J. Dahood  
Carl M. Davis  
Douglas Delaney  
Maurice Driscoll  
Dave Drum  
Dorothy Eck  
Marian S. Erdmann  
Leslie Eskildsen  
Mark Etchart  
James R. Felt  
Donald R. Foster  
Noel D. Furlong  
J. C. Garlington  
E. S. Gysler  
Otto T. Habedank  
Rod Hanson  
R. S. Hanson  
Gene Harbaugh  
Paul K. Harlow  
George Harper  
Daniel W. Harrington  
George B. Heliker  
David L. Holland  
Arnold W. Jacobsen  
George H. James

Torrey B. Johnson  
Thomas F. Joyce  
A. W. Kamhoot  
Robert Lee Kelleher  
John H. Leuthold  
Jerome T. Loendorf  
Peter "Pete" Lorello  
Joseph H. McCarvel  
Russell C. McDonough  
Mike McKeon  
Charles B. McNeil  
Charles H. Mahoney  
Rachell K. Mansfield  
Fred J. Martin  
J. Mason Melvin  
Lyle R. Monroe  
Marshall Murray  
Robert B. Noble  
Richard A. Nutting  
Mrs. Thomas Payne  
Catherine Pemberton  
Donald Rebal  
Arlyne E. Reichert  
Mrs. Mae Nan Robinson  
Richard B. Roeder  
George W. Rollins  
Miles Romney  
Sterling Rygg  
Don Scanlin  
John M. Schiltz  
Henry Siderius  
Clark E. Simon  
Carman M. Skari  
M. Lynn Sparks  
Lucile Speer  
R. J. Studer, Sr.  
Mrs. John Justin (Veronica) Sullivan  
William H. Swanberg  
John H. Toole  
Mrs. Edith M. Van Buskirk  
Robert Vermillion  
Roger A. Wagner  
Jack K. Ward  
Margaret S. Warden  
Archie O. Wilson  
Robert F. Woodmansey

## TRANSITION SCHEDULE

**Transition Schedule.** The following provisions shall remain part of this Constitution until their terms have been executed. Once each year the attorney general shall review the following provisions and certify to the secretary of state which, if any, have been executed. Any provisions so certified shall thereafter be removed from this Schedule and no longer published as part of this Constitution.

**Section 1. Accelerated effective date.** Executed (certified by letter, December 4, 1974).

**Section 2. Delayed effective date.** Executed (certified by letter, December 4, 1974).

**Section 3. Prospective operation of declaration of rights.** Any rights, procedural or substantive, created for the first time by Article II shall be prospective and not retroactive.

**Section 4. Terms of judiciary.** Executed (certified by letter, December 20, 1978).

**Section 5. Terms of legislators.** Executed (certified by letter, February 22, 1977).

**Section 6. General transition.** (1) The rights and duties of all public bodies shall remain as if this Constitution had not been adopted with the exception of such changes as are contained in this Constitution. All laws, ordinances, regulations, and rules of court not contrary to, or inconsistent with, the provisions of this Constitution shall remain in force, until they shall expire by their own limitation or shall be altered or repealed pursuant to this Constitution.

(2) The validity of all public and private bonds, debts, and contracts, and of all suits, actions, and rights of action, shall continue as if no change had taken place.

(3) Executed (certified by letter, February 22, 1977).

# TITLE 1

## GENERAL LAWS AND DEFINITIONS

### CHAPTER 1

#### GENERAL PROVISIONS

#### Part 1

##### Meaning of Law

**1-1-101. Definition of law.** “Law” is a solemn expression of the will of the supreme power of the state.

**History:** En. Sec. 5150, Pol. C. 1895; re-en. Sec. 3550, Rev. C. 1907; re-en. Sec. 5670, R.C.M. 1921; Cal. Pol. C. Sec. 4466; re-en. Sec. 5670, R.C.M. 1935; R.C.M. 1947, 12-101.

**1-1-102. How expressed.** The will of the supreme power is expressed by:

- (1) the constitution;
- (2) statutes.

**History:** En. Sec. 5151, Pol. C. 1895; re-en. Sec. 3551, Rev. C. 1907; re-en. Sec. 5671, R.C.M. 1921; Cal. Pol. C. Sec. 4467; re-en. Sec. 5671, R.C.M. 1935; R.C.M. 1947, 12-102.

**1-1-103. Laws — written or unwritten.** Laws, whether organic or ordinary, are either written or unwritten.

**History:** En. Sec. 3183, C. Civ. Proc. 1895; re-en. Sec. 7901, Rev. C. 1907; re-en. Sec. 10545, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1895; re-en. Sec. 10545, R.C.M. 1935; R.C.M. 1947, 93-1001-7.

**1-1-104. Written law defined.** A written law is that which is promulgated in writing and of which a record is in existence.

**History:** En. Sec. 3184, C. Civ. Proc. 1895; re-en. Sec. 7902, Rev. C. 1907; re-en. Sec. 10546, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1896; re-en. Sec. 10546, R.C.M. 1935; R.C.M. 1947, 93-1001-8.

**1-1-105. Constitution and statutes.** The organic law is the constitution of government and is altogether written. Other written laws are denominated statutes. The written law of this state is therefore contained in its constitution and statutes and in the constitution and statutes of the United States.

**History:** En. Sec. 3185, C. Civ. Proc. 1895; re-en. Sec. 7903, Rev. C. 1907; re-en. Sec. 10547, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1897; re-en. Sec. 10547, R.C.M. 1935; R.C.M. 1947, 93-1001-9.

**1-1-106. Public and private statutes.** Statutes are public or private. A private statute is one which concerns only certain designated individuals and affects only their private rights. All other statutes are public, in which are included statutes creating or affecting corporations.

**History:** En. Sec. 3186, C. Civ. Proc. 1895; re-en. Sec. 7904, Rev. C. 1907; re-en. Sec. 10548, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1898; re-en. Sec. 10548, R.C.M. 1935; R.C.M. 1947, 93-1001-10.

**1-1-107. Unwritten law defined.** Unwritten law is the law that is not promulgated and recorded, as mentioned in 1-1-104, but that is, nevertheless, observed and administered in the courts of the country. It has no certain repository but is collected from the reports of the decisions of the courts and treatises of learned people.

**History:** En. Sec. 3187, C. Civ. Proc. 1895; re-en. Sec. 7905, Rev. C. 1907; re-en. Sec. 10549, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1899; re-en. Sec. 10549, R.C.M. 1935; R.C.M. 1947, 93-1001-11; amd. Sec. 1, Ch. 61, L. 2007.

**1-1-108. Common law — applicability of.** In this state there is no common law in any case where the law is declared by statute. But where not so declared, if the same is applicable and of a general nature and not in conflict with the statutes, the common law shall be the law and rule of decision.

**History:** En. Sec. 3452, C. Civ. Proc. 1895; re-en. Sec. 8060, Rev. C. 1907; re-en. Sec. 10703, R.C.M. 1921; re-en. Sec. 10703, R.C.M. 1935; R.C.M. 1947, 12-104.

**1-1-109. Common law of England — when rule of decision.** The common law of England, so far as it is not repugnant to or inconsistent with the constitution of the United States or the constitution or laws of this state, is the rule of decision in all the courts of this state.

**History:** En. p. 356, Bannack Stat.; re-en. p. 388, Cod. Stat. 1871; re-en. Sec. 144, 5th Div. Rev. Stat. 1879; re-en. Sec. 201, 5th Div. Comp. Stat. 1887; amd. Sec. 5152, Pol. C. 1895; re-en. Sec. 3552, Rev. C. 1907; re-en. Sec. 5672, R.C.M. 1921; Cal. Pol. C. Sec. 4468; re-en. Sec. 5672, R.C.M. 1935; R.C.M. 1947, 12-103.

## Part 2

### General Definitions of Terms Used in Code

**1-1-201. Terms of wide applicability.** (1) Unless the context requires otherwise, the following definitions apply in the Montana Code Annotated:

- (a) “Oath” includes an affirmation or declaration.
- (b) “Person” includes a corporation or other entity as well as a natural person.
- (c) “Several” means two or more.
- (d) “State”, when applied to the different parts of the United States, includes the District of Columbia and the territories.
- (e) “United States” includes the District of Columbia and the territories.

(2) Wherever the word “man” or “men” or a word that includes the syllable “man” or “men” in combination with other syllables, such as “workman”, appears in this code, the word or syllable includes “woman” or “women” unless the context clearly indicates a contrary intent and unless the subject matter of the statute relates clearly and necessarily to a specific sex only.

(3) Whenever the term “heretofore” occurs in any statute, it must be construed to mean any time previous to the day the statute takes effect. Whenever the word “hereafter” occurs, it must be construed to mean the time after the statute containing the term takes effect.

**History:** (1)En. Sec. 16, Pol. C. 1895; re-en. Sec. 16, Rev. C. 1907; amd. Sec. 4, Ch. 4, L. 1921; re-en. Sec. 16, R.C.M. 1921; Cal. Pol. C. Sec. 17; re-en. Sec. 16, R.C.M. 1935; amd. Sec. 1, Ch. 25, L. 1947; amd. Sec. 11-114, Ch. 264, L. 1963; amd. Sec. 3, Ch. 309, L. 1977; Sec. 19-103, R.C.M. 1947; (2)En. 12-216 by Sec. 61, Ch. 535, L. 1975; Sec. 12-217, R.C.M. 1947; (3)En. Sec. 4670, Civ. C. 1895; re-en. Sec. 6232, Rev. C. 1907; re-en. Sec. 8782, R.C.M. 1921; re-en. Sec. 8782, R.C.M. 1935; Sec. 19-104, R.C.M. 1947; R.C.M. 1947, 12-217, 19-103(part), (6), (7), (14), (27), (29), 19-104; amd. Sec. 2, Ch. 61, L. 2007.

**1-1-202. Terms relating to procedure and the judiciary.** Unless the context requires otherwise, the following definitions apply in the Montana Code Annotated:

(1) “Deposition” means a written declaration under oath or affirmation, made upon notice to the adverse party for the purpose of enabling the adverse party to attend and cross-examine.

(2) “Judicial officers” means justices of the supreme court, judges of the district courts, justices of the peace, municipal judges, and city judges.

(3) “Judicial record” means the record of official entry of the proceedings in a court of justice or of the official act of a judicial officer in an action or special proceeding.

(4) “Oral examination” means an examination in the presence of the jury or tribunal that is to decide the fact or act upon it or the spoken testimony of the witness being heard by the jury or tribunal.

(5) “Process” means a writ or summons issued in the course of judicial proceedings.

(6) “Registered mail”, for purposes of legal notification, means registered or certified mail.

(7) “Testify” means every mode of oral statement under oath or affirmation.

(8) “Writ” means an order in writing issued in the name of the state or of a court or judicial officer.

**History:** Ap. p. Sec. 16, Pol. C. 1895; re-en. Sec. 16, Rev. C. 1907; amd. Sec. 4, Ch. 4, L. 1921; re-en. Sec. 16, R.C.M. 1921; Cal. Pol. C. Sec. 17; re-en. Sec. 16, R.C.M. 1935; amd. Sec. 1, Ch. 25, L. 1947; amd. Sec. 11-114, Ch. 264, L. 1963; amd. Sec. 3, Ch. 309, L. 1977; Sec. 19-103, R.C.M. 1947; (1)En. Sec. 3322, C. Civ. Proc. 1895; re-en. Sec. 7989, Rev. C. 1907; re-en. Sec. 10633, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 2004; re-en. Sec. 10633, R.C.M. 1935; Sec. 93-1601-3, R.C.M. 1947; (3)En. Sec. 3192, C. Civ. Proc. 1895; re-en. Sec. 7910, Rev. C. 1907; re-en. Sec. 10554, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1904; re-en. Sec. 10554, R.C.M. 1935; Sec. 93-1001-16, R.C.M. 1947; (5)En. Sec. 3323, C. Civ. Proc. 1895; re-en. Sec. 7990, Rev. C. 1907; re-en. Sec. 10634, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 2005; Sec. 10634, R.C.M. 1935; Sec. 93-1601-4, R.C.M. 1947; (7)En. Sec. 1, Ch. 5, L. 1967; Sec. 19-122, R.C.M. 1947; R.C.M. 1947, 19-103(part), (9), (10), (13), (30), (31), (33), 19-122, 93-1001-16, 93-1601-3, 93-1601-4; amd. Sec. 248, Ch. 800, L. 1991; amd. Sec. 3, Ch. 61, L. 2007.

**1-1-203. Terms relating to instruments and other writings.** Unless the context requires otherwise, the following definitions apply in the Montana Code Annotated:

(1) “Affidavit” means a sworn written declaration made before an officer authorized to administer oaths or an unsworn written declaration made under penalty of perjury as provided in 1-6-105.



(2) “Execution” of an instrument means subscribing and delivering it, with or without affixing a seal.

(3) “Folio”, when used as a measure for computing fees, means 100 words, counting every two letters or numbers necessarily used as a word. Any portion of a folio, when in the whole paper there is not a complete folio and when there is an excess over the last folio exceeding one-half, may be computed as a folio.

(4) “Printing” means the act of reproducing a design on a surface by any process.

(5) “Signature” or “subscription” includes the mark of a person who cannot write if the person’s name is written near the mark by another person who also signs that person’s own name as a witness.

(6) “Subscribing witness” means a person who sees a writing executed or hears it acknowledged and at the request of the party signs the person’s name as a witness.

(7) “Writing” includes printing.

**History:** Ap. p. Sec. 16, Pol. C. 1895; re-en. Sec. 16, Rev. C. 1907; amd. Sec. 4, Ch. 4, L. 1921; re-en. Sec. 16, R.C.M. 1921; Cal. Pol. C. Sec. 17; re-en. Sec. 16, R.C.M. 1935; amd. Sec. 1, Ch. 25, L. 1947; amd. Sec. 11-114, Ch. 264, L. 1963; amd. Sec. 3, Ch. 309, L. 1977; Sec. 19-103, R.C.M. 1947; (1) En. Sec. 3224, C. Civ. Proc. 1895; re-en. Sec. 7937, Rev. C. 1907; re-en. Sec. 10581, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1933; re-en. Sec. 10581, R.C.M. 1935; Sec. 93-1101-5, R.C.M. 1947; (2) En. Sec. 4618, Pol. C. 1895; re-en. Sec. 3151, Rev. C. 1907; re-en. Sec. 4899, R.C.M. 1921; re-en. Sec. 4899, R.C.M. 1935; Sec. 25-215, R.C.M. 1947; (3) En. Sec. 1, Ch. 267, L. 1969; amd. Sec. 11, Ch. 100, L. 1973; Sec. 19-103.1, R.C.M. 1947; (5) En. Sec. 3226, C. Civ. Proc. 1895; re-en. Sec. 7939, Rev. C. 1907; re-en. Sec. 10583, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1935; re-en. Sec. 10583, R.C.M. 1935; Sec. 93-1101-7, R.C.M. 1947; R.C.M. 1947, 19-103(part), (28), (32), 19-103.1, 25-215, 93-1101-5, 93-1101-7; amd. Sec. 4, Ch. 61, L. 2007; amd. Sec. 1, Ch. 238, L. 2011.

**1-1-204. Terms denoting state of mind.** Unless the context requires otherwise, the following definitions apply in the Montana Code Annotated:

(1) “Corruptly” means a wrongful design to acquire or cause some pecuniary or other advantage to the person guilty of the act or omission referred to or to some other person.

(2) “Knowingly” means only a knowledge that the facts exist which bring the act or omission within the provisions of this code. It does not require any knowledge of the unlawfulness of the act or omission.

(3) “Malice” and “maliciously” mean a wish to vex, annoy, or injure another person or an intent to do a wrongful act, established either by proof or presumption of law.

(4) “Neglect”, “negligence”, “negligent”, and “negligently” mean a want of the attention to the nature or probable consequences of the act or omission that a prudent person would ordinarily give in acting in the person’s own concerns.

(5) “Willfully”, when applied to the intent with which an act is done or omitted, means a purpose or willingness to commit the act or make the omission referred to. It does not require any intent to violate the law, to injure another, or to acquire any advantage.

**History:** En. Sec. 16, Pol. C. 1895; re-en. Sec. 16, Rev. C. 1907; amd. Sec. 4, Ch. 4, L. 1921; re-en. Sec. 16, R.C.M. 1921; Cal. Pol. C. Sec. 17; re-en. Sec. 16, R.C.M. 1935; amd. Sec. 1, Ch. 25, L. 1947; amd. Sec. 11-114, Ch. 264, L. 1963; amd. Sec. 3, Ch. 309, L. 1977; R.C.M. 1947, 19-103(part), (19) thru (23); amd. Sec. 5, Ch. 61, L. 2007.

**1-1-205. Terms relating to property and decedents’ estates.** Unless the context requires otherwise, the following definitions apply in the Montana Code Annotated:

(1) “Personal property” means money, goods, chattels, things in action, and evidences of debt.

(2) “Pledge”, “mortgage”, “conditional sale”, “lien”, “assignment”, and like terms, when used in referring to a security interest in personal property, include a corresponding type of security interest under the Uniform Commercial Code—Secured Transactions.

(3) “Property” means real and personal property.

(4) “Real property” means lands, tenements, hereditaments, and possessory title to public lands.

(5) “Will” includes codicils.

**History:** En. Sec. 16, Pol. C. 1895; re-en. Sec. 16, Rev. C. 1907; amd. Sec. 4, Ch. 4, L. 1921; re-en. Sec. 16, R.C.M. 1921; Cal. Pol. C. Sec. 17; re-en. Sec. 16, R.C.M. 1935; amd. Sec. 1, Ch. 25, L. 1947; amd. Sec. 11-114, Ch. 264, L. 1963; amd. Sec. 3, Ch. 309, L. 1977; R.C.M. 1947, 19-103(part), (1), (2), (3), (8), (26).

**1-1-206. Terms relating to obligations and transactions.** Unless the context requires otherwise, the following definitions apply in the Montana Code Annotated:

(1) “Customary” means according to usage.

(2) “Third persons” means all persons who are not parties to the obligation or transaction concerning which the phrase is used.

(3) “Usage” means a reasonable and lawful public custom concerning transactions of the same nature as those which are to be affected thereby, existing at the place where the obligation is to be performed, and either known to the parties or so well established, general, and uniform that the parties must be presumed to have acted with reference thereto.

(4) “Usual” means according to usage.

**History:** En. Sec. 16, Pol. C. 1895; re-en. Sec. 16, Rev. C. 1907; amd. Sec. 4, Ch. 4, L. 1921; re-en. Sec. 16, R.C.M. 1921; Cal. Pol. C. Sec. 17; re-en. Sec. 16, R.C.M. 1935; amd. Sec. 1, Ch. 25, L. 1947; amd. Sec. 11-114, Ch. 264, L. 1963; amd. Sec. 3, Ch. 309, L. 1977; R.C.M. 1947, 19-103(part), (15) thru (18).

**1-1-207. Miscellaneous terms.** Unless the context requires otherwise, the following definitions apply in the Montana Code Annotated:

(1) “Bribe” means anything of value or advantage, present or prospective, or any promise or undertaking to give anything of value or advantage, that is asked, given, or accepted with a corrupt intent to unlawfully influence the person to whom it is given in the person’s action, vote, or opinion in any public or official capacity.

(2) “Peace officer” has the meaning as defined in 46-1-202.

(3) “Vessel”, when used in reference to shipping, includes ships of all kinds, steamboats and steamships, canal boats, and every structure adapted to be navigated from place to place.

**History:** En. Sec. 16, Pol. C. 1895; re-en. Sec. 16, Rev. C. 1907; amd. Sec. 4, Ch. 4, L. 1921; re-en. Sec. 16, R.C.M. 1921; Cal. Pol. C. Sec. 17; re-en. Sec. 16, R.C.M. 1935; amd. Sec. 1, Ch. 25, L. 1947; amd. Sec. 11-114, Ch. 264, L. 1963; amd. Sec. 3, Ch. 309, L. 1977; R.C.M. 1947, 19-103(part), (11), (12), (24); amd. Sec. 249, Ch. 800, L. 1991; amd. Sec. 1, Ch. 189, L. 1997; amd. Sec. 1, Ch. 491, L. 1999.

**1-1-208. Terms relating to legislature.** (1) Unless the context requires otherwise, the following definitions apply in the Montana Code Annotated:

(a) “Majority leader” means the leader of the majority party, elected by the caucus as provided in 5-2-221.

(b) “Majority party” means the party with the most members in a house of the legislature, subject to subsection (2).

(c) “Minority leader” means the leader of the minority party, elected by the caucus as provided in 5-2-221.

(d) “Minority party” means the party with the second most members in a house of the legislature, subject to subsection (2).

(2) If there are an equal number of members of each party in a house of the legislature, then the majority party is the party of the president of the senate or the speaker of the house and the minority party is the other party with an equal number of members.

**History:** En. Sec. 1, Ch. 4, Sp. L. May 2007.

**1-1-209 through 1-1-213 reserved.**

**1-1-214. Repealed.** Sec. 2, Ch. 17, L. 1991.

**History:** En. Sec. 2, Ch. 431, L. 1987.

**1-1-215. Residence — rules for determining.** Every person has, in law, a residence. In determining the place of residence, the following rules are to be observed:

(1) It is the place where a person remains when not called elsewhere for labor or other special or temporary purpose and to which the person returns in seasons of repose.

(2) There may be only one residence. If a person claims a residence within Montana for any purpose, then that location is the person’s residence for all purposes unless there is a specific statutory exception.

(3) A residence cannot be lost until another is gained.

(4) The residence of an unmarried minor is:

(a) the residence of the minor’s parents;

(b) if one of the parents is deceased or the parents do not share the same residence, the residence of the parent having legal custody;

(c) if neither parent has legal custody, the residence of the legal guardian or custodian appointed by a court of competent jurisdiction; or

(d) if the conditions in 20-5-502 are met, the residence of the caretaker relative.



(5) In the case of a controversy, the district court has jurisdiction over which residence is the residence of an unmarried minor.

(6) Except as provided in Title 20, chapter 5, part 5, and this section, the residence of an unmarried minor who has a parent living cannot be changed by either the minor's own act or an act of the minor's guardian.

(7) The residence can be changed only by the union of act and intent.

**History:** En. Sec. 72, Pol. C. 1895; re-en. Sec. 32, Rev. C. 1907; re-en. Sec. 33, R.C.M. 1921; Cal. Pol. C. Sec. 52; re-en. Sec. 33, R.C.M. 1935; amd. Sec. 4, Ch. 164, L. 1975; R.C.M. 1947, 83-303; amd. Sec. 1, Ch. 367, L. 1997; amd. Sec. 4, Ch. 442, L. 2007; amd. Sec. 1, Ch. 211, L. 2011.

**1-1-216. Legal holidays and business days.** (1) The following are legal holidays in the state of Montana:

- (a) Each Sunday;
- (b) New Year's Day, January 1;
- (c) Martin Luther King Jr. Day, the third Monday in January;
- (d) Lincoln's and Washington's Birthdays, the third Monday in February;
- (e) Memorial Day, the last Monday in May;
- (f) Independence Day, July 4;
- (g) Labor Day, the first Monday in September;
- (h) Columbus Day, the second Monday in October;
- (i) Veterans' Day, November 11;
- (j) Thanksgiving Day, the fourth Thursday in November;
- (k) Christmas Day, December 25;
- (l) State general election day.

(2) (a) If any of the holidays in subsection (1)(b) through (1)(l) fall on a Sunday, the Monday following is a holiday.

(b) If any of the holidays in subsection (1)(b) through (1)(l) fall on a Saturday, the Friday preceding is a holiday.

(c) All other days are business days.

**History:** En. Sec. 10, Pol. C. 1895; re-en. Sec. 10, Rev. C. 1907; amd. Sec. 1, Ch. 21, L. 1921; re-en. Sec. 10, R.C.M. 1921; Cal. Pol. C. Secs. 10-11; re-en. Sec. 10, R.C.M. 1935; amd. Sec. 1, Ch. 209, L. 1955; amd. Sec. 1, Ch. 6, L. 1965; amd. Sec. 1, Ch. 89, L. 1969; amd. Sec. 6, Ch. 32, L. 1971; amd. Sec. 1, Ch. 16, L. 1974; R.C.M. 1947, 19-107(part); amd. Sec. 1, Ch. 431, L. 1987; amd. Sec. 1, Ch. 17, L. 1991; amd. Sec. 1, Ch. 131, L. 2013.

**1-1-217. Notice — actual and constructive.** (1) Notice is:

- (a) actual whenever it consists of express information of a fact;
- (b) constructive whenever it is imputed by law.

(2) Each person who has actual notice of circumstances sufficient to put a prudent person upon inquiry as to a particular fact has constructive notice of the fact itself in all cases in which, by prosecuting the inquiry, the person might have learned the facts.

**History:** (1)En. Sec. 4666, Civ. C. 1895; re-en. Sec. 6228, Rev. C. 1907; re-en. Sec. 8780, R.C.M. 1921; Cal. Civ. C. Sec. 18; Based on Field Civ. C. Secs. 2009, 2010; re-en. Sec. 8780, R.C.M. 1935; amd. Sec. 4, Ch. 309, L. 1977; Sec. 19-105, R.C.M. 1947; (2)En. Sec. 4667, Civ. C. 1895; re-en. Sec. 6229, Rev. C. 1907; re-en. Sec. 8781, R.C.M. 1921; Cal. Civ. C. Sec. 19; Based on Field Civ. C. Sec. 2011; re-en. Sec. 8781, R.C.M. 1935; R.C.M. 1947, 19-106; R.C.M. 1947, 19-105, 19-106; amd. Sec. 6, Ch. 61, L. 2007.

**1-1-218. Words giving joint authority.** Words giving a joint authority to three or more public officers or other persons are construed as giving such authority to a majority of them unless it is otherwise expressed in the act giving the authority.

**History:** En. Sec. 14, Pol. C. 1895; re-en. Sec. 14, Rev. C. 1907; re-en. Sec. 14, R.C.M. 1921; Cal. Pol. C. Sec. 15; re-en. Sec. 14, R.C.M. 1935; R.C.M. 1947, 19-101.

**1-1-219. Relationship by affinity.** (1) Unless the context requires otherwise, in this code "affinity" means the relation that one spouse has, by virtue of the marriage, to blood relatives of the other. Therefore, a person has the same relation by affinity to that person's spouse's blood relatives as that person's spouse has to them by consanguinity and vice versa.

(2) Degrees of relationship by affinity are computed in the same manner as degrees of relationship by consanguinity.

(3) Notwithstanding subsection (1), the term "affinity" includes the relation of husband and wife. Husband and wife are considered to be related by affinity in the first degree.

**History:** En. Sec. 1, Ch. 119, L. 1979; amd. Sec. 7, Ch. 61, L. 2007.

**1-1-220 through 1-1-223 reserved.**

**1-1-224. Observance of right to keep and bear arms.** The week beginning the first Monday in March is an official week of observance to commemorate Montana's valued heritage of the right of each person to keep and bear arms in the defense of the person's home, person, or property or in aid of civil power. During this week, all Montanans are urged to reflect on their right to keep and bear arms and to celebrate this right in lawful ways.

**History:** En. Sec. 1, Ch. 421, L. 1991; amd. Sec. 8, Ch. 61, L. 2007.

**1-1-225. Arbor Day as official day of observance.** (1) To increase public awareness of the vital importance of conserving and propagating trees and forests to the everyday life of Montana citizens, the last Friday in April is designated Arbor Day and an official day of observance. On this day, there may be special observances and exercises throughout the state to celebrate and emphasize the importance of cultivating forest, fruit, and ornamental trees.

(2) The governor shall encourage the observances and exercises described in this section and, by proclamation, call the public's attention to the importance of the state's forest resources.

**History:** En. Sec. 1, Ch. 16, L. 1989.

**1-1-226. Official observance of Montana's hunting heritage.** The week beginning the third Monday in September is an official week of observance in Montana to commemorate this state's valued heritage of hunting game animals. During this week, all Montanans are urged to:

(1) reflect on hunting as an expression of our culture and heritage;

(2) acknowledge that it is our community of hunters who have made the greatest contributions to the establishment of current game animal populations; and

(3) celebrate this culture and heritage in all lawful ways.

**History:** En. Sec. 1, Ch. 455, L. 1991; amd. Sec. 9, Ch. 61, L. 2007.

**1-1-227. Bill of rights day.** There is established a bill of rights day for the state of Montana. The bill of rights day is December 15 of each year to commemorate the day in 1791 in which three-fourths of the states ratified the bill of rights as part of the U.S. constitution.

**History:** En. Sec. 1, Ch. 477, L. 2007.

**1-1-228. American Indian heritage day.** There is established an American Indian heritage day for the state of Montana. American Indian heritage day is the last Friday in September of each year and is recognized as a day of observance to commemorate this state's American Indians and their valued heritage and culture. On this day, all Montanans are urged to:

(1) reflect on American Indian culture and heritage; and

(2) celebrate American Indians and their culture and heritage in all lawful ways.

**History:** En. Sec. 1, Ch. 93, L. 2009.

**1-1-229. State teen driver safety day.** (1) To increase public awareness and promote teen driver safety, the third Tuesday in October is designated as teen driver safety day and is an official day of observance.

(2) All Montanans are encouraged to participate in special observances and exercises throughout the state on this day in order to educate teens about the fatal consequences of distractions while driving and to promote teen driver safety. The governor and the office of public instruction may officially recognize and encourage the observances and exercises described in this section.

**History:** En. Sec. 1, Ch. 333, L. 2009.

**1-1-230. Welcome home Vietnam veterans day.** There is established a welcome home Vietnam veterans day for the state of Montana. The welcome home Vietnam veterans day is March 30 of each year and commemorates the day in 1973 when all combat units and combat support units arrived home from the former South Vietnam.

**History:** En. Sec. 1, Ch. 89, L. 2011.

**1-1-231. Juneteenth national freedom day.** The third Saturday in June is designated as Juneteenth national freedom day to commemorate African-American emancipation from slavery, to celebrate the freedom won by people in many countries, and to rededicate ourselves to the cause of liberty.

**History:** En. Sec. 1, Ch. 291, L. 2017.

**Compiler's Comments**

*Effective Date:* This section is effective October 1, 2017.

### Part 3 Rules Concerning Time

**1-1-301. Definitions.** Unless the context requires otherwise, the following definitions apply in the Montana Code Annotated:

- (1) A “day” is the period of time between any midnight and the midnight following.
- (2) “Daytime” is the period of time between sunrise and sunset, and “nighttime” is the period of time between sunset and sunrise.
- (3) “Month” means a calendar month.
- (4) A “week” consists of 7 consecutive days.
- (5) “Year” means a calendar year.

**History:** Ap. p. Sec. 16, Pol. C. 1895; re-en. Sec. 16, Rev. C. 1907; amd. Sec. 4, Ch. 4, L. 1921; re-en. Sec. 16, R.C.M. 1921; Cal. Pol. C. Sec. 17; re-en. Sec. 16, R.C.M. 1935; amd. Sec. 1, Ch. 25, L. 1947; amd. Sec. 11-114, Ch. 264, L. 1963; amd. Sec. 3, Ch. 309, L. 1977; Sec. 19-103, R.C.M. 1947; (3)En. Sec. 3143, Pol. C. 1895; re-en. Sec. 2030, Rev. C. 1907; re-en. Sec. 4280, R.C.M. 1921; Cal. Pol. C. Sec. 3258; re-en. Sec. 4280, R.C.M. 1935; Sec. 90-404, R.C.M. 1947; (4)En. Sec. 3144, Pol. C. 1895; re-en. Sec. 2031, Rev. C. 1907; re-en. Sec. 4281, R.C.M. 1921; Cal. Pol. C. Sec. 3259; re-en. Sec. 4281, R.C.M. 1935; Sec. 90-405, R.C.M. 1947; (5)En. Sec. 3145, Pol. C. 1895; re-en. Sec. 2032, Rev. C. 1907; re-en. Sec. 4282, R.C.M. 1921; Cal. Pol. C. Sec. 3260; re-en. Sec. 4282, R.C.M. 1935; Sec. 90-406, R.C.M. 1947; R.C.M. 1947, 19-103(part), (4), (5), 90-404, 90-405, 90-406.

**1-1-302. Computation of time — what calendar used.** Time is computed according to the Gregorian or new style, and January 1 in every year passed since 1752 or to come must be reckoned as the first day of the year.

**History:** En. Sec. 3140, Pol. C. 1895; re-en. Sec. 2027, Rev. C. 1907; re-en. Sec. 4277, R.C.M. 1921; Cal. Pol. C. Sec. 3255; re-en. Sec. 4277, R.C.M. 1935; R.C.M. 1947, 90-401.

**1-1-303. Leap year.** Except the year 1900, every fourth year which, by usage in this state, is considered a leap year is a leap year consisting of 366 days.

**History:** En. Sec. 3141, Pol. C. 1895; re-en. Sec. 2028, Rev. C. 1907; re-en. Sec. 4278, R.C.M. 1921; Cal. Pol. C. Sec. 3256; re-en. Sec. 4278, R.C.M. 1935; R.C.M. 1947, 90-402.

**1-1-304. Computation of fractions of a year.** Fractions of a year are computed by the number of months; thus, half a year is 6 months.

**History:** En. Sec. 16, Pol. C. 1895; re-en. Sec. 16, Rev. C. 1907; amd. Sec. 4, Ch. 4, L. 1921; re-en. Sec. 16, R.C.M. 1921; Cal. Pol. C. Sec. 17; re-en. Sec. 16, R.C.M. 1935; amd. Sec. 1, Ch. 25, L. 1947; amd. Sec. 11-114, Ch. 264, L. 1963; amd. Sec. 3, Ch. 309, L. 1977; R.C.M. 1947, 19-103(part).

**1-1-305. Computation of time — when fractions of a day disregarded.** Fractions of a day are disregarded in computations which include more than 1 day and involve no questions of priority.

**History:** En. Sec. 16, Pol. C. 1895; re-en. Sec. 16, Rev. C. 1907; amd. Sec. 4, Ch. 4, L. 1921; re-en. Sec. 16, R.C.M. 1921; Cal. Pol. C. Sec. 17; re-en. Sec. 16, R.C.M. 1935; amd. Sec. 1, Ch. 25, L. 1947; amd. Sec. 11-114, Ch. 264, L. 1963; amd. Sec. 3, Ch. 309, L. 1977; R.C.M. 1947, 19-103(part).

**1-1-306. Computation of time — which days counted.** The time in which any act provided by law is to be done is computed by excluding the first day and including the last unless the last day is a holiday, and then it is also excluded.

**History:** En. Sec. 430, p. 130, Bannack Stat.; amd. Sec. 501, p. 233, L. 1867; re-en. Sec. 578, p. 153, Cod. Stat. 1871; re-en. Sec. 519, p. 176, L. 1877; re-en. Sec. 519, 1st Div. Rev. Stat. 1879; re-en. Sec. 536, 1st Div. Comp. Stat. 1887; amd. Sec. 3459, C. Civ. Proc. 1895; re-en. Sec. 8067, Rev. C. 1907; re-en. Sec. 10707, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 12; re-en. Sec. 10707, R.C.M. 1935; R.C.M. 1947, 90-407.

**1-1-307. Postponement of day appointed for an action when it falls on a holiday or Saturday.** Whenever any act of a secular nature, other than a work of necessity or mercy, is appointed by law or contract to be performed upon a particular day, which day falls upon a holiday or a Saturday, such act may be performed upon the next business day with the same effect as if it had been performed upon the day appointed.

**History:** En. Sec. 12, Pol. C. 1895; re-en. Sec. 12, Rev. C. 1907; re-en. Sec. 12, R.C.M. 1921; Cal. Pol. C. Sec. 13; re-en. Sec. 12, R.C.M. 1935; R.C.M. 1947, 19-109; amd. Sec. 2, Ch. 69, L. 1987.

## Part 4 Citizenship

**1-1-401. People defined.** The people, as a political body, consist of:

- (1) electors;
- (2) citizens not electors.

**History:** En. Sec. 70, Pol. C. 1895; re-en. Sec. 30, Rev. C. 1907; re-en. Sec. 31, R.C.M. 1921; Cal. Pol. C. Sec. 55; re-en. Sec. 31, R.C.M. 1935; R.C.M. 1947, 83-301.

**1-1-402. Citizens defined.** The citizens of the state are:

- (1) all persons born in this state and residing within it, except the children of transient aliens;
- (2) all persons born out of this state who are citizens of the United States and residing within this state.

**History:** En. Sec. 71, Pol. C. 1895; re-en. Sec. 31, Rev. C. 1907; re-en. Sec. 32, R.C.M. 1921; Cal. Pol. C. Sec. 51; re-en. Sec. 32, R.C.M. 1935; R.C.M. 1947, 83-302.

**1-1-403. Allegiance.** Allegiance is the obligation of fidelity and obedience which every citizen owes to the state.

**History:** En. Sec. 81, Pol. C. 1895; re-en. Sec. 34, Rev. C. 1907; re-en. Sec. 35, R.C.M. 1921; Cal. Pol. C. Sec. 55; re-en. Sec. 35, R.C.M. 1935; R.C.M. 1947, 83-402.

**1-1-404. Allegiance — how renounced.** Allegiance may be renounced by a change of residence.

**History:** En. Sec. 82, Pol. C. 1895; re-en. Sec. 35, Rev. C. 1907; re-en. Sec. 36, R.C.M. 1921; Cal. Pol. C. Sec. 56; re-en. Sec. 36, R.C.M. 1935; R.C.M. 1947, 83-403.

**1-1-405. Persons not citizens.** Persons in this state not its citizens are either:

- (1) citizens of other states; or
- (2) aliens.

**History:** En. Sec. 83, Pol. C. 1895; re-en. Sec. 36, Rev. C. 1907; re-en. Sec. 37, R.C.M. 1921; Cal. Pol. C. Sec. 57; re-en. Sec. 37, R.C.M. 1935; R.C.M. 1947, 83-404.

**1-1-406 through 1-1-410 reserved.**

**1-1-411. Certain state services denied to illegal aliens.** (1) To the extent allowed by federal law and the Montana constitution and except as provided in 44-4-1502, a state agency may not provide a state service to an illegal alien and shall comply with the requirements of this section.

(2) To determine whether an applicant for a state service is an illegal alien, the agency may use the systematic alien verification for entitlements program provided by the United States department of homeland security or any other lawful method of making the determination.

(3) A state agency shall notify appropriate personnel in immigration and customs enforcement under the United States department of homeland security or its successor of any illegal alien applying for a state service.

(4) An agency shall require a person seeking a state service to provide proof of United States citizenship or legal alien status.

(5) A state agency shall execute any written agreement required by federal law to implement this section.

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

(a) “Agency” means a department, board, commission, committee, authority, or office of the legislative or executive branches of state government, including a unit of the Montana university system.

(b) “Illegal alien” means an individual who is not a citizen of the United States and who has unlawfully entered or remains unlawfully in the United States.

(c) “State service” means a payment of money, the grant of a state license or permit, or the provision of another valuable item or service under any of the following programs and provisions of law:

- (i) employment with a state agency;
- (ii) qualification as a student in the university system for the purposes of a public education, as provided in 20-25-502;

- (iii) student financial assistance, as provided in Title 20, chapter 26;
- (iv) issuance of a state license or permit to practice a trade or profession, as provided in Title 37;
- (v) unemployment insurance benefits, as provided in Title 39, chapter 51;
- (vi) vocational rehabilitation, as provided in Title 53, chapter 7;
- (vii) services for victims of crime, as provided in Title 53, chapter 9;
- (viii) services for the physically disabled, as provided in Title 53, chapter 19, parts 3 and 4;
- (ix) a grant, as provided in Title 90.

**History:** En. Sec. 1, Ch. 308, L. 2011; amd. Sec. 15, Ch. 285, L. 2015.

## Part 5

### State Symbols — Official Designations

**1-1-501. Great seal.** The great seal of the state is as follows: a central group representing a plow and a miner's pick and shovel; upon the right, a representation of the Great Falls of the Missouri River; upon the left, mountain scenery; and underneath, the words "Oro y Plata". The seal must be 2 ½ inches in diameter and surrounded by these words, "The Great Seal of the State of Montana".

**History:** En. Sec. 1, p. 42, L. 1893; re-en. Sec. 1130, Pol. C. 1895; re-en. Sec. 430, Rev. C. 1907; re-en. Sec. 526, R.C.M. 1921; re-en. Sec. 526, R.C.M. 1935; R.C.M. 1947, 19-111.

**1-1-502. State flag.** There is hereby established a state flag of Montana. The state flag of Montana shall be a flag having a blue field with a representation of the great seal of the state in the center and with golden fringe along the upper and lower borders of the flag; the same being the flag borne by the 1st Montana Infantry, U.S.V., in the Spanish-American War, with the exception of the device, "1st Montana Infantry, U.S.V."; and above the great seal of the state shall be the word "MONTANA" in helvetica bold letters of gold color equal in height to one-tenth of the total vertical measurement of the blue field.

**History:** En. Secs. 1, 2, Ch. 42, L. 1905; re-en. Secs. 432, 433, Rev. C. 1907; re-en. Secs. 528, 529, R.C.M. 1921; re-en. Secs. 528, 529, R.C.M. 1935; R.C.M. 1947, 19-113, 19-114; amd. Sec. 1, Ch. 49, L. 1981; amd. Sec. 1, Ch. 335, L. 1985.

**1-1-503. State floral emblem.** The flower known as *Lewisia rediviva* (bitterroot) shall be the floral emblem of the state of Montana.

**History:** En. Sec. 3282, Pol. C. 1895; re-en. Sec. 2097, Rev. C. 1907; re-en. Sec. 530, R.C.M. 1921; re-en. Sec. 530, R.C.M. 1935; R.C.M. 1947, 19-115.

**1-1-504. State bird.** The bird known as the western meadowlark, *Sturnella neglecta* (Audubon), as preferred by a referendum vote of Montana school children, shall be designated and declared to be the official bird of the state of Montana.

**History:** En. Sec. 1, Ch. 149, L. 1931; re-en. Sec. 530.1, R.C.M. 1935; R.C.M. 1947, 19-116.

**1-1-505. State gem stones.** The sapphire and the Montana agate are the official Montana state gem stones.

**History:** En. Sec. 1, Ch. 20, L. 1969; R.C.M. 1947, 19-123.

**1-1-506. State grass.** The grass known as bluebunch wheatgrass, *Agropyron spicatum* (pursh), shall be designated and declared to be the official grass of the state of Montana.

**History:** En. 19-124 by Sec. 1, Ch. 378, L. 1973; R.C.M. 1947, 19-124.

**1-1-507. State fish.** The blackspotted cutthroat trout, *Salmo clarki*, is the official Montana state fish.

**History:** En. Sec. 1, Ch. 6, L. 1977; R.C.M. 1947, 19-125.

**1-1-508. State animal.** The grizzly bear, *Ursus arctos horribilis*, as preferred by a vote of Montana schoolchildren, is the official Montana state animal.

**History:** En. Sec. 1, Ch. 407, L. 1983.

**1-1-509. State fossil.** The duck-billed dinosaur *Maiasaura peeblesorum* is the official Montana state fossil.

**History:** En. Sec. 1, Ch. 37, L. 1985.

**1-1-510. English as official and primary language of state and local governments.**  
(1) English is the official and primary language of:



- (a) the state and local governments;
- (b) government officers and employees acting in the course and scope of their employment; and
- (c) government documents and records.

(2) A state statute, local government ordinance, or state or local government policy may not require a specific foreign language to be used by government officers and employees acting in the course and scope of their employment or for government documents and records or require a specific foreign language to be taught in a school as a student's primary language.

(3) This section is not intended to violate the federal or state constitutional right to freedom of speech of government officers and employees acting in the course and scope of their employment. This section does not prohibit a government officer or employee acting in the course and scope of employment from using a language other than English, including use in a government document or record, if the employee chooses, or prohibit the teaching of other languages in a school for general educational purposes or as secondary languages.

(4) This section is not intended to limit the use of any other language by a tribal government. A school district and a tribe, by mutual agreement, may provide for the instruction of students that recognizes the cultural identity of Native American children and promotes the use of a common language for communication.

**History:** En. Sec. 1, Ch. 319, L. 1995.

**1-1-511. State ballad.** The song "Montana Melody", written by Carleen Harvey and LeGrande Harvey, is the official state ballad of the state of Montana.

**History:** En. Sec. 1, Ch. 56, L. 1983.

**1-1-512. State Vietnam veterans' memorial.** (1) The memorial located in Rose Park, Missoula, Montana, dedicated to the individuals who served the United States in the Republic of Vietnam, is the official state Vietnam veterans' memorial.

(2) The department of commerce and the department of transportation are directed to reference the location of the official state Vietnam veterans' memorial in Rose Park, Missoula, Montana, on official state maps.

**History:** En. Secs. 1, 2, Ch. 53, L. 1987; amd. Sec. 10, Ch. 61, L. 2007.

**1-1-513. State arboretum.** The campus of the university of Montana-Missoula, is the state arboretum.

**History:** En. Sec. 1, Ch. 332, L. 1991; amd. sec. 36, Ch. 308, L. 1995.

**1-1-514. State butterfly.** The mourning cloak, *Nymphalis antiopa*, is the official Montana state butterfly.

**History:** En. Sec. 1, Ch. 155, L. 2001.

**1-1-515. Montana medal of valor established.** (1) The governor is authorized to present, in the name of the people of Montana, a medal to be known as the Montana medal of valor, bearing a suitable inscription and ribbon, to any citizen of the state who displays extraordinary courage in a situation threatening the lives of one or more people.

(2) The governor may award the Montana medal of valor to anyone whose behavior, in the governor's judgment, merits the recognition. The award must be made in a public ceremony at the recipient's city or town of residence or at a city or town designated by the recipient, except under the circumstances indicated in subsection (3).

(3) If the recipient of the medal of valor dies before the medal is awarded, the governor shall present the medal to the recipient's spouse, eldest surviving child, eldest surviving sibling, or either parent or to a person designated by one of these. If the medal is presented to a person who is not a resident of Montana, the award ceremony must be held at the state capitol in Helena.

**History:** En. Sec. 1, Ch. 537, L. 1985; amd. Sec. 11, Ch. 61, L. 2007.

**1-1-516. State Korean war veterans' memorial — Butte.** (1) The Korean war veterans' memorial located in Stodden Park, Butte, Montana, dedicated to the individuals who served the United States in the Republic of Korea, is an official state Korean war veterans' memorial.

(2) The department of commerce and the department of transportation are directed to reference the location of the state Korean war veterans' memorial on official state maps.

**History:** En. Sec. 1, Ch. 319, L. 1997; amd. Sec. 1, Ch. 130, L. 2005; amd. Sec. 12, Ch. 61, L. 2007.

**1-1-517. State Korean war veterans' memorial — Missoula.** (1) The Missoula memorial rose garden, located in Missoula, Montana, is officially designated as a state Korean war veterans' memorial.

(2) The department of commerce and the department of transportation shall identify the Missoula memorial rose garden on official state maps as a state Korean war veterans' memorial.

**History:** En. Sec. 2, Ch. 296, L. 1999; amd. Sec. 1, Ch. 7, L. 2001.

**1-1-518. State veterans' memorial rose garden.** (1) The Missoula memorial rose garden, located in Missoula, Montana, is officially designated as a state veterans' memorial rose garden.

(2) In addition to the reference required under 1-1-512, the department of commerce and the department of transportation shall identify the Missoula memorial rose garden on official state maps as a state veterans' memorial rose garden.

**History:** En. Sec. 1, Ch. 296, L. 1999.

**1-1-519. Montana state firefighters' memorial.** (1) The site chosen by the city of Laurel, Montana, as "firefighters' memorial park" is officially designated as the location of the Montana state firefighters' memorial.

(2) The department of commerce and the department of transportation shall identify the memorial in Laurel on official state maps and, where appropriate, on state highway signs as the official state firefighters' memorial.

**History:** En. Sec. 1, Ch. 70, L. 2003.

**1-1-520. Renumbered 1-1-540.** Code Commissioner, 2013.

**1-1-521. State Iraq and Afghanistan veterans' memorial.** (1) The grateful nation Montana memorial at the university of Montana, located in Missoula, Montana, dedicated to the men and women who served the United States in Iraq and Afghanistan, is an official state Iraq and Afghanistan veterans' memorial.

(2) The department of commerce and the department of transportation are directed to reference the location of the grateful nation Montana memorial at the university of Montana on official state maps as a state veterans' memorial for Iraq and Afghanistan.

**History:** En. Sec. 1, Ch. 91, L. 2013.

**1-1-522. Repealed.** Sec. 10, Ch. 106, L. 2017. (*Repealer effective January 1, 2018.*)

**History:** En. Sec. 1, Ch. 290, L. 2013; amd. Sec. 8, Ch. 106, L. 2017.

**1-1-523. Montana veterans' memorial.** (1) The Montana veterans memorial in Great Falls, Montana, is officially designated as a Montana veterans' memorial.

(2) The department of commerce and the department of transportation shall identify the Montana veterans memorial in Great Falls, Montana, on official state maps as a Montana veterans' memorial.

(3) The Montana veterans memorial in Great Falls, Montana, recognizes and honors all veterans, men, women, and canine service members, living or deceased, from all branches of the U.S. armed forces who served in peacetime or in war.

**History:** En. Sec. 1, Ch. 257, L. 2015.

**1-1-524. Northeast Montana veterans memorial park.** The department of commerce and the department of transportation shall identify the northeast Montana veterans memorial park in Fort Peck, Montana, on official state maps.

**History:** En. Sec. 1, Ch. 243, L. 2015.

**1-1-525. Montana cowboy hall of fame.** (1) There is a Montana cowboy hall of fame. Once the recipient of the grant for site development and project planning authorized pursuant to section 4(7), Chapter 3, Special Laws of May 2007, determines the location of the Montana cowboy hall of fame, the grant recipient shall notify the department of commerce and the department of transportation.

(2) Once notified that the location of the Montana cowboy hall of fame is determined, the department of commerce and the department of transportation shall identify the site as the location of the Montana cowboy hall of fame on official state maps. When existing road signs need replacement, the department of transportation shall provide appropriate markers to recognize the site.

**History:** En. Sec. 1, Ch. 2, L. 2003; amd. Sec. 1, Ch. 165, L. 2011.

**1-1-526. Official home of Evelyn Cameron gallery — Terry.** (1) The town of Terry is designated the “official home of the Evelyn Cameron gallery”.

(2) The department of commerce and the department of transportation shall identify the town of Terry as the official home of the Evelyn Cameron gallery on official state maps.

(3) The department of transportation shall erect and maintain signs designating the town of Terry as the official home of the Evelyn Cameron gallery along highways in the vicinity of Terry and shall accomplish the signing changes in accordance with the department’s normal sign maintenance and replacement schedule.

**History:** En. Sec. 1, Ch. 274, L. 2005.

**1-1-527. Shelby veterans’ memorial flag monument.** (1) The Shelby veterans’ memorial flag monument in Shelby, Montana, is officially designated as a Montana veterans’ memorial.

(2) The department of commerce and the department of transportation shall identify the Shelby veterans’ memorial flag monument in Shelby, Montana, on official state maps as a Montana veterans’ memorial.

(3) The Shelby veterans’ memorial flag monument in Shelby, Montana, recognizes and honors all veterans, men, women, and canine service members, living or deceased, from all branches of the U.S. armed forces who served in peacetime or in war.

**History:** En. Sec. 1, Ch. 57, L. 2017.

**Compiler’s Comments**

*Effective Date:* This section is effective October 1, 2017.

**1-1-528 and 1-1-529 reserved.**

**1-1-530. State lullaby.** The song “Montana Lullaby”, written by Ken Overcast and Wylie Gustafson, is the official lullaby of Montana.

**History:** En. Sec. 1, Ch. 243, L. 2007.

**1-1-531. State soil.** The soil series known as Scobey, of the taxonomic class fine, smectitic, frigid Aridic Argiustolls, is the official Montana state soil.

**History:** En. Sec. 1, Ch. 321, L. 2015.

**1-1-532 through 1-1-539 reserved.**

**1-1-540. Display of historical writings or documents in or on public buildings or on state land — definitions.** (1) Subject to the provisions of subsection (3), a state agency or unit of local government may display the national motto, “in God we trust”, as adopted by congress in 1998 (36 U.S.C. 302), in or on public buildings or state-owned land occupied by a state agency or unit of local government. For purposes of this section, the use of the word “God” is not intended to further the establishment of any specific religion or set of religious beliefs or to dissuade the free exercise of any religion or set of religious beliefs.

(2) In addition to the national motto, the legislature encourages the display of other historical documents in or on public buildings and state-owned land, including but not limited to:

- (a) the Declaration of Independence;
- (b) the United States constitution;
- (c) the pledge of allegiance;
- (d) the national anthem;
- (e) the Mayflower Compact;
- (f) the writings, speeches, documents, and proclamations of the founders and the presidents of the United States;
- (g) writings from United States supreme court decisions;
- (h) organic documents from the precolonial, colonial, revolutionary, federalist, and postfederalist eras;
- (i) acts of the United States congress, including the published text of the Congressional Record;
- (j) United States treaties; and
- (k) any other writings, documents, or proclamations that are permanently displayed in a historic context in the United States capitol.

(3) The content of any writing, document, or record described in subsection (2) may not be censored solely because the writing, document, or record contains religious references, nor may any writings, documents, or material be selected for display in order to advance a particular religious, partisan, or sectarian purpose.

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

(a) “Local government” has the meaning provided in 1-2-116.

(b) “State agency” has the meaning provided in 1-2-116.

**History:** En. Sec. 1, Ch. 372, L. 2005; Sec. 1-1-520, MCA 2011; redes. 1-1-540 by Code Commissioner, 2013.

**1-1-541. Display of POW/MIA flag.** (1) The POW/MIA flag must be displayed on or in front of the locations specified in subsection (2) on any day when the flag of the United States of America is displayed. The display of the POW/MIA flag is to symbolize Montana’s concern and commitment to achieving the fullest possible accounting of United States military personnel who, having been prisoners of war or missing in action, still remain unaccounted for or who in the future may become prisoners of war, missing in action, or otherwise unaccounted for as a result of hostile action.

(2) The POW/MIA flag must be displayed pursuant to subsection (1) at the following locations:

(a) the state capitol;

(b) any building that serves as the location of a state district court;

(c) any building that serves as the location of a city or town hall for an incorporated city or town; and

(d) any building that serves as the main administrative building of a county.

(3) The POW/MIA flag may be no larger than the national flag and must be displayed as follows:

(a) if the national and the POW/MIA flags are flown on the same flagpole, the POW/MIA flag must be directly below the national flag;

(b) if the national and state flags are flown on the same flagpole, the POW/MIA flag must be directly below the national flag;

(c) if the national and state flags are flown on two different flagpoles, the POW/MIA flag must be on the pole with and directly below the national flag;

(d) if the national and POW/MIA flags are flown on separate flagpoles, the POW/MIA flag must occupy the pole to the left of the national flag;

(e) if the national, state, and POW/MIA flags are to be flown on three separate flagpoles, the national flag must occupy the right pole, the POW/MIA flag must occupy the middle pole, and the state flag must occupy the far left pole.

(4) As used in this section, “POW/MIA flag” means the flag designated in 36 U.S.C. 902 as the symbol of concern about United States military personnel taken as prisoners of war or listed as missing in action.

**History:** En. Sec. 1, Ch. 411, L. 2015.

## CHAPTER 2 STATUTORY CONSTRUCTION

### Part 1 General Provisions

**1-2-101. Role of the judge — preference to construction giving each provision meaning.** In the construction of a statute, the office of the judge is simply to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted or to omit what has been inserted. Where there are several provisions or particulars, such a construction is, if possible, to be adopted as will give effect to all.

**History:** En. Sec. 612, p. 198, L. 1877; re-en. Sec. 612, 1st Div. Rev. Stat. 1879; re-en. Sec. 630, 1st Div. Comp. Stat. 1887; re-en. Sec. 3134, C. Civ. Proc. 1895; re-en. Sec. 7875, Rev. C. 1907; re-en. Sec. 10519, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1858; re-en. Sec. 10519, R.C.M. 1935; R.C.M. 1947, 93-401-15(part).

**1-2-102. Intention of the legislature — particular and general provisions.** In the construction of a statute, the intention of the legislature is to be pursued if possible. When a

general and particular provision are inconsistent, the latter is paramount to the former, so a particular intent will control a general one that is inconsistent with it.

**History:** En. Sec. 613, p. 198, L. 1877; re-en. Sec. 613, 1st Div. Rev. Stat. 1879; re-en. Sec. 631, 1st Div. Comp. Stat. 1887; re-en. Sec. 3135, C. Civ. Proc. 1895; re-en. Sec. 7876, Rev. C. 1907; re-en. Sec. 10520, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1859; re-en. Sec. 10520, R.C.M. 1935; R.C.M. 1947, 93-401-16(part).

**1-2-103. Statutes in derogation of the common law — liberal construction.** The rule of the common law that statutes in derogation thereof are to be strictly construed has no application to the statutes of the state of Montana. The statutes establish the law of this state respecting the subjects to which they relate, and their provisions and all proceedings under them are to be liberally construed with a view to effect their objects and to promote justice.

**History:** En. Sec. 4, Pol. C. 1895; re-en. Sec. 4, Rev. C. 1907; amd. Sec. 2, Ch. 4, L. 1921; re-en. Sec. 4, R.C.M. 1921; Cal. Pol. C. Sec. 4; re-en. Sec. 4, R.C.M. 1935; R.C.M. 1947, 12-202.

**1-2-104. Preference to construction favoring natural right.** When a statute is equally susceptible of two interpretations, one in favor of natural right and the other against it, the former is to be adopted.

**History:** En. Sec. 620, p. 200, L. 1877; re-en. Sec. 620, 1st Div. Rev. Stat. 1879; re-en. Sec. 638, 1st Div. Comp. Stat. 1887; re-en. Sec. 3142, C. Civ. Proc. 1895; re-en. Sec. 7883, Rev. C. 1907; re-en. Sec. 10527, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 1866; re-en. Sec. 10527, R.C.M. 1935; R.C.M. 1947, 93-401-23(part).

**1-2-105. General definitional rules — verb tense, gender, and number.** The following rules apply in this code:

- (1) The present tense includes the future as well as the present.
- (2) Words used in the masculine gender include the feminine and neuter.
- (3) The singular includes the plural and the plural the singular.

**History:** En. Sec. 16, Pol. C. 1895; re-en. Sec. 16, Rev. C. 1907; amd. Sec. 4, Ch. 4, L. 1921; re-en. Sec. 16, R.C.M. 1921; Cal. Pol. C. Sec. 17; re-en. Sec. 16, R.C.M. 1935; amd. Sec. 1, Ch. 25, L. 1947; amd. Sec. 11-114, Ch. 264, L. 1963; amd. Sec. 3, Ch. 309, L. 1977; R.C.M. 1947, 19-103(part).

**1-2-106. Construction of words and phrases.** Words and phrases used in the statutes of Montana are construed according to the context and the approved usage of the language, but technical words and phrases and such others as have acquired a peculiar and appropriate meaning in law or are defined in chapter 1, part 2, as amended, are to be construed according to such peculiar and appropriate meaning or definition.

**History:** En. Sec. 15, Pol. C. 1895; re-en. Sec. 15, Rev. C. 1907; amd. Sec. 3, Ch. 4, L. 1921; re-en. Sec. 15, R.C.M. 1921; Cal. Pol. C. Sec. 16; re-en. Sec. 15, R.C.M. 1935; R.C.M. 1947, 19-102.

**1-2-107. Applicability of definitions.** Whenever the meaning of a word or phrase is defined in any part of this code, such definition is applicable to the same word or phrase wherever it occurs, except where a contrary intention plainly appears.

**History:** En. Sec. 4661, Civ. C. 1895; re-en. Sec. 6223, Rev. C. 1907; re-en. Sec. 8776, R.C.M. 1921; Field Civ. C. Sec. 2000; re-en. Sec. 8776, R.C.M. 1935; R.C.M. 1947, 12-215.

**1-2-108. Reference to other titles, chapters, parts, sections, or subsections — subsequent amendments.** (1) A statute which refers to a title, chapter, part, section, or subsection number without further identification or attribution is presumed, unless the context clearly indicates otherwise, to refer to a title, chapter, part, section, or subsection of the Montana Code Annotated.

(2) A specific or implied reference to a title, chapter, part, section, or subsection of the Montana Code Annotated is presumed to be a reference to that title, chapter, part, section, or subsection as it may be amended or changed from time to time. This presumption may be overcome only by a clear showing that a subsequent amendment or change in the title, chapter, part, section, or subsection is inconsistent with the continued purpose or meaning of the section referring to it.

(3) The presumption contained in subsection (2) applies retroactively as well as prospectively to any reference to a title, chapter, part, section, or subsection of the Montana Code Annotated, regardless of when the reference was created.

**History:** En. Sec. 1, Ch. 4, L. 1975; amd. Sec. 1, Ch. 309, L. 1977; R.C.M. 1947, 12-216; amd. Sec. 1, Ch. 30, L. 1979; amd. Sec. 1, Ch. 6, L. 1983.

**1-2-109. When laws retroactive.** No law contained in any of the statutes of Montana is retroactive unless expressly so declared.



**History:** En. Sec. 3, Pol. C. 1895; re-en. Sec. 3, Rev. C. 1907; amd. Sec. 1, Ch. 4, L. 1921; re-en. Sec. 3, R.C.M. 1921; Cal. Pol. C. Sec. 3; re-en. Sec. 3, R.C.M. 1935; R.C.M. 1947, 12-201.

**1-2-110. All statutes subject to repeal.** Any statute may be repealed at any time except when it is otherwise provided therein. Persons acting under any statute are deemed to have acted in contemplation of this power of repeal.

**History:** En. Sec. 294, Pol. C. 1895; re-en. Sec. 121, Rev. C. 1907; re-en. Sec. 95, R.C.M. 1921; Cal. Pol. C. Sec. 326; re-en. Sec. 95, R.C.M. 1935; R.C.M. 1947, 43-512.

**1-2-111. Effect of code on special, local, and private statutes.** Nothing in this code affects any of the provisions of any special, local, or private statutes; but such statutes are recognized as continuing in force notwithstanding the provisions of this code, except so far as they have been repealed or affected by subsequent laws.

**History:** En. Sec. 18, Pol. C. 1895; re-en. Sec. 18, Rev. C. 1907; re-en. Sec. 18, R.C.M. 1921; Cal. Pol. C. Sec. 19; re-en. Sec. 18, R.C.M. 1935; R.C.M. 1947, 12-209.

**1-2-112. Statutes imposing new local government duties.** (1) As provided in subsection (3), a law enacted by the legislature that requires a local government unit to perform an activity or provide a service or facility that requires the direct expenditure of additional funds and that is not expected of local governments in the scope of their usual operations must provide a specific means to finance the activity, service, or facility other than a mill levy. Any law that fails to provide a specific means to finance any activity, service, or facility is not effective until specific means of financing are provided by the legislature from state or federal funds.

(2) Subsequent legislation may not be considered to supersede or modify any provision of this section by implication. Subsequent legislation may supersede or modify the provisions of this section if the legislation does so expressly.

(3) The mandates that the legislature is required to fund under subsection (1) are legislatively imposed requirements that are not necessary for the operation of local governments but that provide a valuable service or benefit to Montana citizens, including but not limited to:

(a) entitlement mandates that provide that certain classes of citizens may receive specific benefits;

(b) membership mandates that require local governments to join specific organizations, such as waste districts or a national organization of regulators; and

(c) service level mandates requiring local governments to meet certain minimum standards.

(4) Subsection (1) does not apply to:

(a) mandates that are required of local governments as a matter of constitutional law or federal statute or that are considered necessary for the operation of local governments, including but not limited to:

(i) due process mandates;

(ii) equal treatment mandates;

(iii) local government ethics mandates;

(iv) personnel and employment mandates;

(v) recordkeeping requirements; or

(vi) mandates concerning the organizational structure of local governments;

(b) any law under which the required expenditure of additional local funds is an insubstantial amount that can be readily absorbed into the budget of an existing program. A required expenditure of the equivalent of approximately 1 mill levied on taxable property of the local government unit or \$10,000, whichever is less, may be considered an insubstantial amount.

(c) a law necessary to implement the National Voter Registration Act of 1993, Public Law 103-31.

**History:** En. 43-517, 43-518 by Secs. 1, 2, Ch. 275, L. 1974; R.C.M. 1947, 43-517, 43-518; amd. Sec. 1, Ch. 217, L. 1979; amd. Sec. 1, Ch. 416, L. 1995; amd. Sec. 1, Ch. 246, L. 1997; amd. Sec. 4, Ch. 574, L. 2001.

**1-2-113. Statutes imposing new duties on a school district to provide means of financing.** (1) Any law enacted by the legislature that requires a school district to perform an activity or provide a service or facility and that will require the direct expenditure of additional funds must provide a specific means to finance the activity, service, or facility other than the existing property tax mill levy. Any law that fails to provide a specific means to finance the service or facility is not effective until a specific means of financing meeting the requirements of subsection (2) is provided by the legislature.

(2) Financing must be by means of a remission of money by the state for the purpose of funding the activity, service, or facility. Financing must bear a reasonable relationship to the actual cost of performing the activity or providing the service or facility.

(3) Legislation passed and approved may not supersede or modify any provision of this section, except to the extent that the legislation expressly does so.

(4) This section does not apply to any law under which the required expenditure of additional funds by the board of trustees is an insubstantial amount that can be readily absorbed into the budget of an existing program.

**History:** En. Sec. 1, Ch. 596, L. 1981; amd. Sec. 2, Ch. 416, L. 1995.

**1-2-114. Bill restriction.** (1) A bill may not be introduced enacting a new law or amending an existing law to require a local government unit to perform an activity or provide a service or facility that requires a direct expenditure of additional funds without a specific means to finance the activity, service, or facility in violation of 1-2-112 or 1-2-113.

(2) The estimate of fiscal impact provided in accordance with 5-4-210 must be considered in determination of whether a bill is introduced in violation of subsection (1).

**History:** En. Sec. 3, Ch. 416, L. 1995.

**1-2-115. Enforcement.** (1) A local government unit may use a remedy provided in subsection (2), (3), or (4) to prevent the application of a law enacted in violation of 1-2-112 or 1-2-113.

(2) A local government may, with the consent of a state agency charged with the implementation of the law, arbitrate the application of the law pursuant to the Uniform Arbitration Act.

(3) A local government unit may request a hearing before an administrative agency charged with the administration of the law. A hearing held pursuant to this section is a contested case proceeding pursuant to the Montana Administrative Procedure Act. The decision of the agency may be appealed in accordance with Title 2, chapter 4, part 7.

(4) A local government unit may bring a civil action in the district court of the county in which the local government unit is located to prevent the application of a law enacted in violation of 1-2-112 or 1-2-113. The state of Montana may be named as the respondent or defendant in an action brought pursuant to this section.

**History:** En. Sec. 5, Ch. 416, L. 1995.

**1-2-116. State agencies not to shift cost to local governments.** (1) A state agency may not take any action prohibited by subsection (2) without authorization in state law.

(2) A state agency may not demand, bill, request, or otherwise require a local government to take any of the following actions or make the provision of a service to a local government that is required by state law to be provided to that government contingent on the local government taking any of the following actions:

(a) pay for all or part of the administrative costs of a program, activity, or undertaking required by state law to be carried out primarily by a state agency;

(b) pay for costs of computer hardware or software used in the operation of a state program, activity, or undertaking or pay for the application of either hardware or software in a state program;

(c) pay for forms required to be completed either by a local government or by third persons through a local government office and used by or filed with a state agency; or

(d) pay for the filing in a state office of forms required by state law to be completed by a local government.

(3) (a) A local government may refuse to pay for services billed or charged to it by a state agency in violation of this section. Upon refusal by the local government, the state agency may send to the local government a written notice of the program or activity for which the local government is billed, a detailed statement of the amount of the bill or charge, and a citation to the legal authority requiring the local government to pay the bill or charge.

(b) Within 30 days of receipt of the notice required by this subsection (3), the local government shall pay the bill or charge or request a hearing before the state agency. Upon request, the state agency shall provide a hearing. If a local government fails to pay the bill or charge and fails to request a hearing, the state agency may initiate a contested case proceeding.

Proceedings authorized by this subsection must be held in accordance with the provisions of the Montana Administrative Procedure Act governing contested cases. A decision of the state agency following opportunity for a hearing may be appealed to the district court as provided in 2-4-702.

(4) The remedy provided in subsection (3) is exclusive of any other remedy provided in law for a state agency claiming a right to recover an administrative cost from a local government and is exclusive of any other remedy provided in law for a local government refusing to pay a bill or charge of a state agency.

(5) This section does not apply to services provided by a state agency pursuant to a written or oral contract.

(6) The following definitions apply to this section:

(a) “Administrative cost” means the cost of administering a program, activity, or undertaking, including costs for salaries, wages, rent, heat, electricity, computer hardware, computer software, telephone, travel, equipment, supplies, or postage.

(b) “Local government” means a county, city, town, township, school district, or other district or local public entity with the authority to spend or receive public funds.

(c) “State agency” means a department, board, commission, office, bureau, or other public authority of state government.

**History:** En. Sec. 1, Ch. 496, L. 1995.

## Part 2

### Effect of Legislature’s Actions

**1-2-201. Statutes — effective date.** (1) (a) Except as provided in subsection (1)(b), (1)(c), or (1)(d), every statute adopted after January 1, 1981, takes effect on the first day of October following its passage and approval unless a different time is prescribed in the enacting legislation.

(b) Subject to subsection (1)(d), every statute providing for appropriation by the legislature for public funds for a public purpose takes effect on the first day of July following its passage and approval unless a different time is prescribed in the enacting legislation.

(c) Subject to subsection (1)(d), every statute providing for the taxation of or the imposition of a fee on motor vehicles takes effect on the first day of January following its passage and approval unless a different time is prescribed in the enacting legislation.

(d) Every statute enacted during a special session of the legislature takes effect upon passage and approval unless a different time is prescribed in the enacting legislation.

(2) “Passage”, as used in subsection (1), means the enactment into law of a bill, which has passed the legislature, either with or without the approval of the governor, as provided in the constitution.

**History:** (1)En. Sec. 3466, C. Civ. Proc. 1895; re-en. Sec. 8074, Rev. C. 1907; amd. Sec. 1, Ch. 92, L. 1921; re-en. Sec. 90, R.C.M. 1921; Cal. Pol. C. Sec. 323; re-en. Sec. 90, R.C.M. 1935; Sec. 43-507, R.C.M. 1947; (2)En. Sec. 3467, C. Civ. Proc. 1895; re-en. Sec. 8075, Rev. C. 1907; re-en. Sec. 91, R.C.M. 1921; re-en. Sec. 91, R.C.M. 1935; amd. Sec. 20, Ch. 100, L. 1973; amd. Sec. 9, Ch. 309, L. 1977; Sec. 43-508, R.C.M. 1947; R.C.M. 1947, 43-507, 43-508; amd. Sec. 2, Ch. 119, L. 1979; amd. Sec. 1, Ch. 466, L. 1981; amd. Sec. 1, Ch. 604, L. 1991; amd. Sec. 1, Ch. 18, L. 1995; amd. Sec. 1, Ch. 104, L. 2003.

**1-2-202. Joint resolutions — effective date.** Every joint resolution, unless a different time is prescribed therein, takes effect from its passage.

**History:** En. Sec. 291, Pol. C. 1895; re-en. Sec. 118, Rev. C. 1907; re-en. Sec. 92, R.C.M. 1921; Cal. Pol. C. Sec. 324; re-en. Sec. 92, R.C.M. 1935; R.C.M. 1947, 43-509.

**1-2-203. Effect of amendment of statute.** Where a section or a part of a statute is amended, it is not to be considered as having been repealed and reenacted in the amended form, but the portions which are not altered are to be considered as having been the law from the time when they were enacted, and the new provisions are to be considered as having been enacted at the time of the amendment.

**History:** En. Sec. 292, Pol. C. 1895; re-en. Sec. 119, Rev. C. 1907; re-en. Sec. 93, R.C.M. 1921; Cal. Pol. C. Sec. 325; re-en. Sec. 93, R.C.M. 1935; R.C.M. 1947, 43-510.

**1-2-204. Amendment of repealed act void.** An act amending a section of an act repealed is void.

**History:** En. Sec. 297, Pol. C. 1895; re-en. Sec. 124, Rev. C. 1907; re-en. Sec. 98, R.C.M. 1921; Cal. Pol. C. Sec. 330; re-en. Sec. 98, R.C.M. 1935; R.C.M. 1947, 43-515.

**1-2-205. Repeal of law creating criminal offense.** The repeal of any law creating a criminal offense does not constitute a bar to an indictment or information and the punishment of an act already committed in violation of the law so repealed unless the intention to bar such indictment or information and punishment is expressly declared in the repealing act.

**History:** En. Sec. 8, p. 390, Cod. Stat. 1871; re-en. Sec. 152, 5th Div. Rev. Stat. 1879; re-en. Sec. 209, 5th Div. Comp. Stat. 1887; amd. Sec. 296, Pol. C. 1895; re-en. Sec. 123, Rev. C. 1907; re-en. Sec. 97, R.C.M. 1921; Cal. Pol. C. Sec. 329; re-en. Sec. 97, R.C.M. 1935; R.C.M. 1947, 43-514.

**1-2-206. Repeal of repealed statute.** The repeal of any statute or part of a statute heretofore repealed must not be so construed as a declaration, express or by implication, that such statute or part of a statute has been in force at any time subsequent to such first repeal.

**History:** En. Sec. 5180, Pol. C. 1895; re-en. Sec. 3560, Rev. C. 1907; re-en. Sec. 5526, R.C.M. 1921; Cal. Pol. C. Sec. 4504; re-en. Sec. 5526, R.C.M. 1935; R.C.M. 1947, 12-213.

**1-2-207. Repeal of repealing act — no revival.** No act or part of an act repealed by another act of the legislature is revived by the repeal of the repealing act without express words reviving such repealed act or part of an act.

**History:** En. Sec. 2, p. 390, Cod. Stat. 1871; re-en. Sec. 146, 5th Div. Rev. Stat. 1879; re-en. Sec. 203, 5th Div. Comp. Stat. 1887; amd. Sec. 295, Pol. C. 1895; re-en. Sec. 122, Rev. C. 1907; re-en. Sec. 96, R.C.M. 1921; Cal. Pol. C. Sec. 328; re-en. Sec. 96, R.C.M. 1935; R.C.M. 1947, 43-513.

**1-2-208. Provisions of law not codified in Montana Code Annotated because redundant.** (1) Whenever a provision of law codified in the Montana Code Annotated is amended in such a way that it conflicts with a provision of law that was not codified in the Montana Code Annotated because such uncoded provision was redundant with such codified provision, the codified provision, as amended, governs and must be given effect over the uncoded provision.

(2) Repeal or deletion of a provision of the Montana Code Annotated also repeals or deletes a provision of law that was not codified in the Montana Code Annotated because it was redundant with the repealed or deleted provision of the Montana Code Annotated, whether or not the repealed or deleted provision of the Montana Code Annotated was amended prior to its repeal or deletion.

**History:** En. Sec. 1, Ch. 79, L. 1985.

## CHAPTER 6 OATHS

### Part 1 General Provisions

**1-6-101. Officers who may administer oaths.** Every court, judge, clerk of any court, justice, notary public, and officer or person authorized to take testimony in any action or proceeding or to decide upon evidence has power to administer oaths or affirmations.

**History:** En. Sec. 360, p. 118, Bannack Stat.; re-en. Sec. 418, p. 219, L. 1867; re-en. Sec. 492, p. 135, Cod. Stat. 1871; amd. Sec. 671, p. 214, L. 1877; re-en. Sec. 671, 1st Div. Rev. Stat. 1879; re-en. Sec. 693, 1st Div. Comp. Stat. 1887; amd. Sec. 3430, C. Civ. Proc. 1895; re-en. Sec. 8049, Rev. C. 1907; re-en. Sec. 10693, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 2093; re-en. Sec. 10693, R.C.M. 1935; R.C.M. 1947, 93-2401-1.

**1-6-102. Form of ordinary oath.** An oath or affirmation in an action or proceeding may be administered by the person who swears or affirms expressing that person's assent when addressed with "You do solemnly swear (or affirm, as the case may be) that the evidence you will give in this issue (or matter), pending between .... and ....., is the truth, the whole truth, and nothing but the truth, so help you God".

**History:** En. Sec. 3431, C. Civ. Proc. 1895; re-en. Sec. 8050, Rev. C. 1907; re-en. Sec. 10694, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 2094; re-en. Sec. 10694, R.C.M. 1935; R.C.M. 1947, 93-2401-2; amd. Sec. 32, Ch. 61, L. 2007.

**1-6-103. Variation of oath to suit witness's belief.** The court shall vary the mode of swearing or affirming to accord with the witness's beliefs whenever it is satisfied that the witness has a distinct mode of swearing or affirming.

**History:** En. Sec. 3432, C. Civ. Proc. 1895; re-en. Sec. 8051, Rev. C. 1907; re-en. Sec. 10695, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 2095; re-en. Sec. 10695, R.C.M. 1935; R.C.M. 1947, 93-2401-3; amd. Sec. 9, Ch. 119, L. 1979.

**1-6-104. Affirmation or declaration in lieu of oath.** Any person who desires it may instead of taking an oath make a solemn affirmation or declaration by assenting when addressed with “You do solemnly affirm (or declare), etc.”, as provided in 1-6-102.

**History:** En. Sec. 362, p. 118, Bannack Stat.; en. Sec. 420, p. 219, L. 1867; re-en. Sec. 494, p. 135, Cod. Stat. 1871; amd. Sec. 673, p. 215, L. 1877; re-en. Sec. 673, 1st Div. Rev. Stat. 1879; re-en. Sec. 695, 1st Div. Comp. Stat. 1887; amd. Sec. 3434, C. Civ. Proc. 1895; re-en. Sec. 8053, Rev. C. 1907; re-en. Sec. 10697, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 2097; re-en. Sec. 10697, R.C.M. 1935; R.C.M. 1947, 93-2401-5; amd. Sec. 33, Ch. 61, L. 2007.

**1-6-105. Unsworn declarations — penalty of perjury.** (1) Whenever, under any law of this state or under any rule, order, or requirement made under the law of this state, any matter is required or permitted to be supported, evidenced, established, or proved by a person’s sworn written declaration, verification, certificate, oath, or affidavit, the matter may with like force and effect be supported, evidenced, established, or proved by an unsworn written declaration, certificate, verification, or statement that is subscribed by the person as true under penalty of perjury in substantially the following form:

(a) If executed within the state:

“I declare under penalty of perjury that the foregoing is true and correct.

.....  
Date and place

.....  
Signature”

(b) If executed in any place outside the state:

“I declare under penalty of perjury and under the laws of the state of Montana that the foregoing is true and correct.

.....  
Date and place

.....  
Signature”

(2) A deliberate falsification in any declaration pursuant to this section constitutes the offense of perjury as provided in 45-7-201 and is punishable as the offense of false swearing as provided in 45-7-202. A declaration under penalty of perjury executed in accordance with any provision of this code is not limited to the official proceedings referenced in 45-7-201.

(3) This section does not apply to writings requiring an acknowledgment, deposition, oath of office, or oath required to be taken before a special official other than a notary public.

**History:** En. Sec. 2, Ch. 238, L. 2011.

## TITLE 2

### GOVERNMENT STRUCTURE AND ADMINISTRATION

#### CHAPTER 1

#### SOVEREIGNTY AND JURISDICTION

##### Part 3

##### Jurisdiction on Indian Lands and Indian Culture

**2-1-301. Assumption of criminal jurisdiction of Flathead Indian country.** The state of Montana hereby obligates and binds itself to assume, as herein provided, criminal jurisdiction over Indians and Indian territory of the Flathead Indian reservation and country within the state in accordance with the consent of the United States given by the act of August 15, 1953 (Public Law 280, 83rd congress, 1st session).

**History:** En. Sec. 1, Ch. 81, L. 1963; R.C.M. 1947, 83-801.

**2-1-302. Resolution of Indian tribes requesting state jurisdiction — governor’s proclamation — consent of county commissioners.** (1) Whenever the governor of this state receives from the tribal council or other governing body of the Confederated Salish and Kootenai Indian tribes or any other community, band, or group of Indians in this state, a resolution expressing its desire that its people and lands be subject to the criminal or civil jurisdiction, or both, of the state to the extent authorized by federal law and regulation, the governor shall



issue within 60 days a proclamation to the effect that the specified jurisdiction applies to those Indians and their territory or reservation in accordance with the provisions of this part.

(2) The governor may not issue the proclamation until the resolution has been approved in the manner provided for by the charter, constitution, or other fundamental law of the tribe, if the document provides for approval, and there has been first obtained the consent of the board of county commissioners of each county that encompasses any portion of the reservation of the tribe.

**History:** En. Sec. 2, Ch. 81, L. 1963; R.C.M. 1947, 83-802; amd. Sec. 2, Ch. 184, L. 1979; amd. Sec. 34, Ch. 61, L. 2007.

**2-1-303. Date of assumption of jurisdiction — application of state law in Indian country.** Sixty days from the date of issuance of the proclamation of the governor as provided for by 2-1-302, the state of Montana shall assume jurisdiction over offenses committed by or against Indians in the lands prescribed in the proclamation to the same extent that this state has jurisdiction over offenses committed elsewhere within this state. The criminal and/or civil laws of this state shall have the same force and effect within such lands as they have elsewhere within this state.

**History:** En. Sec. 3, Ch. 81, L. 1963; R.C.M. 1947, 83-803.

**2-1-304. Rights, privileges, and immunities reserved to Indians.** Nothing in this part shall:

(1) authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States;

(2) authorize regulation of the use of such property in a manner inconsistent with any federal treaty, agreement, or statute or with any regulation made pursuant thereto;

(3) confer jurisdiction upon the state of Montana to adjudicate, in probate proceedings or otherwise, the ownership or right to possession of such property or any interest therein; or

(4) deprive any Indian or any Indian tribe, band, or community of any right, privilege, or immunity afforded under federal treaty, agreement, statute, or executive order with respect to hunting, trapping, fishing, or the control, licensing, or regulation thereof.

**History:** En. Sec. 4, Ch. 81, L. 1963; R.C.M. 1947, 83-804.

**2-1-305. Indian culture protected.** Nothing in this part shall deprive the Indian tribe, band, or community from carrying on its age-old tribal dances, feasting, or customary Indian celebrations or in any way try to destroy the Indian culture.

**History:** En. Sec. 5, Ch. 81, L. 1963; R.C.M. 1947, 83-805.

**2-1-306. Withdrawal of consent to state jurisdiction.** (1) No sooner than 6 months after April 24, 1993, and after consulting with local government officials concerning implementation, the Confederated Salish and Kootenai tribes may, by tribal resolution, withdraw consent to be subject to the criminal jurisdiction of the state of Montana. Within 6 months after receipt of the resolution, the governor shall issue a proclamation to that effect.

(2) The Confederated Salish and Kootenai tribes may, by separate resolution, withdraw consent to be subject to those areas of civil jurisdiction of the state of Montana that are delineated in tribal ordinance 40-A (revised and enacted May 5, 1965). The withdrawal is limited to those delineated areas of civil jurisdiction agreed upon in writing by the governor after consultation with the attorney general and officials of affected local governments. The tribes shall initiate this process by sending a certified letter to the governor. After consultation and execution of a written agreement between the governor and the tribes, the agreed-upon civil areas must be incorporated into a tribal resolution to be enacted by the tribes. Within 6 months after receipt of the tribal resolution, the governor shall issue a proclamation to that effect that reflects the terms of the written agreement.

(3) Subsections (1) and (2) do not alter the existing jurisdiction or authority of the Confederated Salish and Kootenai tribes or the state of Montana, except as expressly provided for in subsections (1) and (2).

**History:** En. Sec. 6, Ch. 81, L. 1963; R.C.M. 1947, 83-806; amd. Sec. 1, Ch. 542, L. 1993; amd. Sec. 1, Ch. 406, L. 2017.

**Compiler's Comments**

*2017 Amendment:* Chapter 406 in (1) substituted “criminal jurisdiction” for “criminal misdemeanor jurisdiction”. Amendment effective May 19, 2017.

**2-1-307. Service of process.** All legal process of the state, both civil and criminal, may be served upon persons and property found on any Indian reservation in all cases where the United States has not exclusive jurisdiction.

**History:** En. Sec. 41, Pol. C. 1895; re-en. Sec. 22, Rev. C. 1907; re-en. Sec. 21, R.C.M. 1921; re-en. Sec. 21, R.C.M. 1935; R.C.M. 1947, 83-103(part).

**2-1-308 through 2-1-314 reserved.**

**2-1-315. Tribal regalia and objects of cultural significance — allowed at public events.** (1) The purpose of this section is to help further the state’s recognition of the distinct and unique cultural heritage of the American Indians and the state’s commitment to preserving the American Indians’ cultural integrity as provided in Article X, section 1(2), of the Montana constitution.

(2) A state agency or a local government may not prohibit an individual from wearing traditional tribal regalia or objects of cultural significance at a public event.

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

(a) “Individual” means a human being regardless of age.

(b) “Local government” has the meaning provided in 2-2-102.

(c) “Public event” means an event held or sponsored by a state agency or a local government, including but not limited to an award ceremony, a graduation ceremony, or a public meeting.

(d) “State agency” has the meaning provided in 1-2-116.

**History:** En. Sec. 1, Ch. 229, L. 2017.

**Compiler's Comments**

*Effective Date:* Section 4, Ch. 229, L. 2017, provided: “[This act] is effective on passage and approval.” Approved April 21, 2017.

## Part 4 Federal Mandates Act

**2-1-401. Short title.** This part may be cited as the “Federal Mandates Act”.

**History:** En. Sec. 1, Ch. 385, L. 1995.

**2-1-402. Legislative declaration.** (1) (a) In enacting this part, the legislature employs its legislative authority to establish that the people of the state of Montana, acting through their elected officials in state government, have the responsibility and authority to establish policy in and for Montana pertaining to federal programs mandated in federal statutes.

(b) The intent of the legislature is to ensure the primacy of the state of Montana’s legal and political authority to implement in and for Montana the policy mandated by federal statutes and to vigorously challenge and scrutinize the extent and scope of authority asserted by federal executive branch agencies when federal agency actions and interpretations are inconsistent with Montana policy and exceed the lawful authority of the federal government or are not required by federal law.

(c) In this regard, the Montana legislature finds and declares that:

(i) the power to implement federal policies in and for Montana is central to the ability of the people of Montana to govern themselves under a federal system of government; and

(ii) any implementation of federal policies in and for Montana by federal executive branch agencies that is contrary to fundamental notions of federalism and self-determination must be identified and countered.

(2) The legislature further finds and declares that:

(a) there is an urgent need to modify federal mandates because the implementation of these mandates by the state wastes the financial resources of local governments, the citizens of Montana, and the state and does not properly respect the rights of local governments, citizens, and the state;

(b) the state government has an obligation to the public to do what is necessary to protect the rights of Montana citizens under federal law while minimizing or eliminating any additional cost or regulatory burden on any citizen of the state;

(c) the 10th amendment to the United States constitution directs that powers that are not delegated to the United States are reserved to the states or to the people. Montana, as one of the sovereign states within the union, has constitutional authority to enact laws protecting the environment of the state and safeguarding the public health, safety, and welfare of the citizens of Montana. However, this authority has too often been ignored by the federal government. The federal government has intruded more and more into areas that must be left to the states. It is essential that the dilution of the authority of state and local governments be halted and that the provisions of the 10th amendment be accorded proper respect.

(d) current federal regulatory mandates, as reflected in federal administrative regulations, guidelines, and policies, often do not reflect the realities of the Rocky Mountain region, and federal regulators frequently do not understand the needs and priorities of the citizens of Montana;

(e) the citizens of this state can create and wish to create innovative solutions to Montana's problems, but the current manner in which legal challenges to state policies and federal programmatic substitutions of state programs are handled does not allow the state the flexibility it needs. It is not possible for the state of Montana to effectively and efficiently implement the provisions of federal statutes unless the burden to prove the insufficiency of the state's efforts to implement federal requirements is shifted to the person or agency who asserts the insufficiency.

(f) the provisions of this part will better balance the exercise of the powers of the federal government and the powers reserved to the states. In addition, the application of this part ultimately will bring about greater protection for the state and the nation because it will direct the state to implement federal statutes at the least possible cost and will make more money available for other needs.

(g) the purpose of this part is to ensure that federal mandates existing on or adopted after April 12, 1995, that are implemented in Montana comply with state policy as established by the legislature;

(h) nothing in this part may be construed to create a private cause of action.

**History:** En. Sec. 2, Ch. 385, L. 1995.

**2-1-403. Definitions.** As used in this part, unless the context otherwise requires, the following definitions apply:

(1) "Federal statute" means a federal statute that is in accord with the United States constitution and that imposes mandates on state or local governments.

(2) "Legislative council" means the statutory committee established in 5-11-101.

**History:** En. Sec. 3, Ch. 385, L. 1995.

**2-1-404. State programs to implement federal statutes.** (1) A state official or employee charged with the duty of implementing a federal statute shall implement the law as required by the federal statute in good faith and with a critical view toward the provisions of any federal regulation, guideline, or policy in order to identify those provisions of any federal regulation, guideline, or policy that are inconsistent with Montana policy or do not advance Montana policy in a cost-effective manner.

(2) An executive branch agency of state government that is authorized to develop a state program to respond to any mandates contained in a federal statute shall develop the state program and promulgate any necessary rules, using the following criteria:

(a) State programs should be developed by the state agency to meet the requirements of federal statutes in good faith and with a critical view toward any federal regulations, guidelines, or policies.

(b) State programs should be developed with due consideration of the financial restraints of local governments, the citizens of Montana, and the state, including the limitation imposed by Article VIII, section 9, of the Montana constitution.

(c) A state program that implements the goals of the federal statute should provide for the most efficient method possible, with careful consideration given to the cost of the program and the impact of the program on local governments and Montana citizens and on the long-range public health, safety, and welfare of citizens of the state.

**History:** En. Sec. 4, Ch. 385, L. 1995.

**2-1-405. Requirement for budget recommendation — reporting on federal mandates — savings.** Prior to recommending to the legislature a budget for a state agency that is charged with implementing federal mandates, the governor shall require that the state agency provide information regarding any monetary savings for the state and any reduction in regulatory burdens on local governments and on the public that could be or have been achieved through the development of state policies that meet the intent of applicable federal statutes but do not necessarily follow all applicable federal regulations, guidelines, or policies. The state agency shall also provide advice to the governor regarding any changes in state statutes that are necessary to provide the state agency the authority to implement state policies in such a way as to create additional savings or greater reductions in regulatory burdens. The governor shall review and compile the information received from state agencies pursuant to this section and shall include recommendations in the governor's budget based upon the information.

**History:** En. Sec. 5, Ch. 385, L. 1995.

**2-1-406. Information regarding federal mandates.** (1) The information prepared pursuant to 2-1-405 must be received by the governor prior to the governor's preparation of the state budget for the ensuing biennium. The governor may prepare additional requests for information to follow up and obtain further details regarding the initial responses that were received.

(2) In considering the legality or cost-effectiveness of a federal mandate, federal statute, or state program, the governor may request assistance from the legislative council or its staff, but assistance is at the discretion of the legislative council.

**History:** En. Sec. 6, Ch. 385, L. 1995.

**2-1-407. Report — recommendations.** (1) The governor shall examine the information received pursuant to 2-1-405 and, based upon the information, shall present a report to the legislature meeting in its next regular session that includes the following:

(a) recommendations regarding contracts that the state may enter into with specified persons or entities to conduct research, to analyze certain subjects, or to provide other services regarding federal mandates; and

(b) estimates of the cost of the federal mandate efforts submitted to the governor under the provisions of 2-1-405.

(2) If there is a finding that a federal mandate does not meet Montana's cost-effective needs, does not serve Montana public policy, or does not conform to Montana customs and culture, the governor may issue an executive order declaring the intention of Montana to not implement the mandate and may direct the attorney general to vigorously represent the state of Montana in any action that results from or that is necessary to effect the executive order.

**History:** En. Sec. 7, Ch. 385, L. 1995.

**2-1-408. Legislative review and oversight.** (1) In exercising its authority as an equal branch of state government, the legislature may conduct any legal review or fiscal analysis that it considers necessary to effect the purpose and intent of this part. The governor, the director or chief executive officer of any agency within the executive branch, or any officer listed in Article VI, section 1, of the Montana constitution shall, upon request by the legislature, immediately provide any information prepared, compiled, developed, detailed, described, referenced, analyzed, reported, or in any other manner considered in conjunction with this part.

(2) In receiving the information described in subsection (1), the legislature is bound by the provisions of Article II, sections 9 and 10, of the Montana constitution.

(3) For the purposes of this section, the legislature includes the senate and the house of representatives, acting jointly or separately, and includes the legislative council.

(4) The legislature may request the assistance of any staff employed by the legislature.

**History:** En. Sec. 8, Ch. 385, L. 1995.

## CHAPTER 2

### STANDARDS OF CONDUCT

**2-2-101. Statement of purpose.** The purpose of this part is to set forth a code of ethics prohibiting conflict between public duty and private interest as required by the constitution of

Montana. This code recognizes distinctions between legislators, other officers and employees of state government, and officers and employees of local government and prescribes some standards of conduct common to all categories and some standards of conduct adapted to each category. The provisions of this part recognize that some actions are conflicts per se between public duty and private interest while other actions may or may not pose such conflicts depending upon the surrounding circumstances.

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

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

(1) “Business” includes a corporation, partnership, sole proprietorship, trust or foundation, or any other individual or organization carrying on a business, whether or not operated for profit.

(2) “Compensation” means any money or economic benefit conferred on or received by any person in return for services rendered or to be rendered by the person or another.

(3) (a) “Gift of substantial value” means a gift with a value of \$50 or more for an individual.

(b) The term does not include:

(i) a gift that is not used and that, within 30 days after receipt, is returned to the donor or delivered to a charitable organization or the state and that is not claimed as a charitable contribution for federal income tax purposes;

(ii) food and beverages consumed on the occasion when participation in a charitable, civic, or community event bears a relationship to the public officer’s or public employee’s office or employment or when the officer or employee is in attendance in an official capacity;

(iii) educational material directly related to official governmental duties;

(iv) an award publicly presented in recognition of public service; or

(v) educational activity that:

(A) does not place or appear to place the recipient under obligation;

(B) clearly serves the public good; and

(C) is not lavish or extravagant.

(4) “Local government” means a county, a consolidated government, an incorporated city or town, a school district, or a special district.

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

(6) “Private interest” means an interest held by an individual that is:

(a) an ownership interest in a business;

(b) a creditor interest in an insolvent business;

(c) an employment or prospective employment for which negotiations have begun;

(d) an ownership interest in real property;

(e) a loan or other debtor interest; or

(f) a directorship or officership in a business.

(7) “Public employee” means:

(a) any temporary or permanent employee of the state;

(b) any temporary or permanent employee of a local government;

(c) a member of a quasi-judicial board or commission or of a board, commission, or committee with rulemaking authority; and

(d) a person under contract to the state.

(8) (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.

(9) “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.

(10) (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.

(11) “State officer” includes all elected officers and directors of the executive branch of state government as defined in 2-15-102.

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

**2-2-103. Public trust — public duty.** (1) The holding of public office or employment is a public trust, created by the confidence that the electorate reposes in the integrity of public officers, legislators, and public employees. A public officer, legislator, or public employee shall carry out the individual’s duties for the benefit of the people of the state.

(2) A public officer, legislator, or public employee whose conduct departs from the person’s public duty is liable to the people of the state and is subject to the penalties provided in this part for abuse of the public’s trust.

(3) This part sets forth various rules of conduct, the transgression of any of which is a violation of public duty, and various ethical principles, the transgression of any of which must be avoided.

(4) (a) The enforcement of this part for:

(i) state officers, legislators, and state employees is provided for in 2-2-136;

(ii) legislators, involving legislative acts, is provided for in 2-2-135 and for all other acts is provided for in 2-2-136;

(iii) local government officers and employees is provided for in 2-2-144.

(b) Any money collected in the civil actions that is not reimbursement for the cost of the action must be deposited in the general fund of the unit of government.

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

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

(1) Proof of commission of any act enumerated in this section is proof that the actor has breached the actor’s public duty. A public officer, legislator, or public employee may not:

(a) disclose or use confidential information acquired in the course of official duties in order to further substantially the individual’s personal economic interests; or

(b) accept a gift of substantial value or a substantial economic benefit tantamount to a gift:

(i) that would tend improperly to influence a reasonable person in the person’s position to depart from the faithful and impartial discharge of the person’s public duties; or

(ii) that the person knows or that a reasonable person in that position should know under the circumstances is primarily for the purpose of rewarding the person for official action taken.

(2) An economic benefit tantamount to a gift includes without limitation a loan at a rate of interest substantially lower than the commercial rate then currently prevalent for similar loans and compensation received for private services rendered at a rate substantially exceeding the fair market value of the services. Campaign contributions reported as required by statute are not gifts or economic benefits tantamount to gifts.

(3) (a) Except as provided in subsection (3)(b), a public officer, legislator, or public employee may not receive salaries from two separate public employment positions that overlap for the hours being compensated, unless:

(i) the public officer, legislator, or public employee reimburses the public entity from which the employee is absent for the salary paid for performing the function from which the officer, legislator, or employee is absent; or

(ii) the public officer’s, legislator’s, or public employee’s salary from one employer is reduced by the amount of salary received from the other public employer in order to avoid duplicate compensation for the overlapping hours.

(b) Subsection (3)(a) does not prohibit:

(i) a public officer, legislator, or public employee from receiving income from the use of accrued leave or compensatory time during the period of overlapping employment; or

(ii) a public school teacher from receiving payment from a college or university for the supervision of student teachers who are enrolled in a teacher education program at the college or university if the supervision is performed concurrently with the school teacher’s duties for a public school district.

(c) In order to determine compliance with this subsection (3), a public officer, legislator, or public employee subject to this subsection (3) shall disclose the amounts received from the two separate public employment positions to the commissioner of political practices.

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

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

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

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

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

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

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

**2-2-106. Disclosure.** (1) (a) Prior to December 15 of each even-numbered year, each state officer, holdover senator, supreme court justice, and district court judge shall file with the commissioner of political practices a business disclosure statement on a form provided by the commissioner. An individual filing pursuant to subsection (1)(b) or (1)(c) is not required to file under this subsection (1)(a) during the same period.

(b) Each candidate for a statewide or a state office elected from a district shall, within 5 days of the time that the candidate files for office, file a business disclosure statement with the commissioner of political practices on a form provided by the commissioner.

(c) An individual appointed to office who would be required to file under subsection (1)(a) or (1)(b) is required to file the business disclosure statement at the earlier of the time of submission of the person's name for confirmation or the assumption of the office.

(2) Except as provided in subsection (4), the statement must provide the following information:

(a) the name, address, and type of business of the individual;

(b) each present or past employing entity from which benefits, including retirement benefits, are currently received by the individual;

(c) each business, firm, corporation, partnership, and other business or professional entity or trust in which the individual holds an interest;

(d) each entity not listed under subsections (2)(a) through (2)(c) in which the individual is an officer or director, regardless of whether or not the entity is organized for profit; and

(e) all real property, other than a personal residence, in which the individual holds an interest. Real property may be described by general description.

(3) An individual may not assume or continue to exercise the powers and duties of the office to which that individual has been elected or appointed until the statement has been filed as provided in subsection (1).

(4) An individual required to file a business disclosure statement may certify that the information required by subsection (2) has not changed from the most recent statement filed by the individual. The commissioner shall provide a certification form.

(5) The commissioner of political practices shall make the business disclosure statements and certification forms available to any individual upon request.

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

**Compiler's Comments**

*2017 Amendment:* Chapter 166 in (2) at beginning inserted exception clause; inserted (4) relating to certified information on forms provided by the commissioner; in (5) after "business disclosure statements" inserted "and certification forms"; and made minor changes in style. Amendment effective October 1, 2017.

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

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

(1) accept a fee, contingent fee, or any other compensation, except the official compensation provided by statute, for promoting or opposing the passage of legislation;

(2) seek other employment for the legislator or solicit a contract for the legislator's services by the use of the office; or

(3) accept a fee or other compensation, except as provided for in 5-2-302, from a Montana state agency or a political subdivision of the state of Montana for speaking to the agency or political subdivision.

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

**2-2-112. Ethical requirements for legislators.** (1) The requirements in this section are intended as rules for legislator conduct, and violations constitute a breach of the public trust of legislative office.

(2) A legislator has a responsibility to the legislator's constituents to participate in all matters as required in the rules of the legislature. A legislator concerned with the possibility of a conflict may briefly present the facts to the committee of that house that is assigned the determination of ethical issues. The committee shall advise the legislator as to whether the legislator should disclose the interest prior to voting on the issue pursuant to the provisions of subsection (5). The legislator may, subject to legislative rule, vote on an issue on which the legislator has a conflict, after disclosing the interest.

(3) When a legislator is required to take official action on a legislative matter as to which the legislator has a conflict created by a personal or private interest that would directly give rise to an appearance of impropriety as to the legislator's influence, benefit, or detriment in regard to the legislative matter, the legislator shall disclose the interest creating the conflict prior to participating in the official action, as provided in subsections (2) and (5) and the rules of the legislature. In making a decision, the legislator shall consider:

(a) whether the conflict impedes the legislator's independence of judgment;

(b) the effect of the legislator's participation on public confidence in the integrity of the legislature;

(c) whether the legislator's participation is likely to have any significant effect on the disposition of the matter; and

(d) whether a pecuniary interest is involved or whether a potential occupational, personal, or family benefit could arise from the legislator's participation.

(4) A conflict situation does not arise from legislation or legislative duties affecting the membership of a profession, occupation, or class.

(5) A legislator shall disclose an interest creating a conflict, as provided in the rules of the legislature. A legislator who is a member of a profession, occupation, or class affected by legislation is not required to disclose an interest unless the class contained in the legislation is so narrow that the vote will have a direct and distinctive personal impact on the legislator. A legislator may seek a determination from the appropriate committee provided for in 2-2-135.

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

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

**2-2-121. Rules of conduct for public officers and public employees.** (1) Proof of commission of any act enumerated in subsection (2) is proof that the actor has breached a public duty.

(2) A public officer or a public employee may not:

(a) subject to subsection (7), use public time, facilities, equipment, supplies, personnel, or funds for the officer's or employee's private business purposes;

(b) engage in a substantial financial transaction for the officer's or employee's private business purposes with a person whom the officer or employee inspects or supervises in the course of official duties;

(c) assist any person for a fee or other compensation in obtaining a contract, claim, license, or other economic benefit from the officer's or employee's agency;

(d) assist any person for a contingent fee in obtaining a contract, claim, license, or other economic benefit from any agency;

(e) perform an official act directly and substantially affecting to its economic benefit a business or other undertaking in which the officer or employee either has a substantial financial interest or is engaged as counsel, consultant, representative, or agent; or

(f) solicit or accept employment, or engage in negotiations or meetings to consider employment, with a person whom the officer or employee regulates in the course of official duties without first giving written notification to the officer's or employee's supervisor and department director.

(3) (a) Except as provided in subsection (3)(b), a public officer or public employee may not use public time, facilities, equipment, supplies, personnel, or funds to solicit support for or opposition to any political committee, the nomination or election of any person to public office, or the passage of a ballot issue unless the use is:

(i) authorized by law; or

(ii) properly incidental to another activity required or authorized by law, such as the function of an elected public officer, the officer's staff, or the legislative staff in the normal course of duties.

(b) As used in this subsection (3), "properly incidental to another activity required or authorized by law" does not include any activities related to solicitation of support for or opposition to the nomination or election of a person to public office or political committees organized to support or oppose a candidate or candidates for public office. With respect to ballot issues, properly incidental activities are restricted to:

(i) the activities of a public officer, the public officer's staff, or legislative staff related to determining the impact of passage or failure of a ballot issue on state or local government operations;

(ii) in the case of a school district, as defined in Title 20, chapter 6, compliance with the requirements of law governing public meetings of the local board of trustees, including the resulting dissemination of information by a board of trustees or a school superintendent or a designated employee in a district with no superintendent in support of or opposition to a bond issue or levy submitted to the electors. Public funds may not be expended for any form of commercial advertising in support of or opposition to a bond issue or levy submitted to the electors.

(c) This subsection (3) is not intended to restrict the right of a public officer or public employee to express personal political views.

(d) (i) If the public officer or public employee is a Montana highway patrol chief or highway patrol officer appointed under Title 44, chapter 1, the term "equipment" as used in this subsection (3) includes the chief's or officer's official highway patrol uniform.

(ii) A Montana highway patrol chief's or highway patrol officer's title may not be referred to in the solicitation of support for or opposition to any political committee, the nomination or election of any person to public office, or the passage of a ballot issue.

(4) (a) A candidate, as defined in 13-1-101(8)(a), may not use or permit the use of state funds for any advertisement or public service announcement in a newspaper, on radio, or on television that contains the candidate's name, picture, or voice except in the case of a state or national emergency and then only if the announcement is reasonably necessary to the candidate's official functions.

(b) A state officer may not use or permit the use of public time, facilities, equipment, supplies, personnel, or funds to produce, print, or broadcast any advertisement or public service announcement in a newspaper, on radio, or on television that contains the state officer's name, picture, or voice except in the case of a state or national emergency if the announcement is reasonably necessary to the state officer's official functions or in the case of an announcement directly related to a program or activity under the jurisdiction of the office or position to which the state officer was elected or appointed.

(5) A public officer or public employee may not participate in a proceeding when an organization, other than an organization or association of local government officials, of which the public officer or public employee is an officer or director is:

(a) involved in a proceeding before the employing agency that is within the scope of the public officer's or public employee's job duties; or

(b) attempting to influence a local, state, or federal proceeding in which the public officer or public employee represents the state or local government.

(6) A public officer or public employee may not engage in any activity, including lobbying, as defined in 5-7-102, on behalf of an organization, other than an organization or association of local government officials, of which the public officer or public employee is a member while performing the public officer's or public employee's job duties. The provisions of this subsection do not prohibit a public officer or public employee from performing charitable fundraising activities if approved by the public officer's or public employee's supervisor or authorized by law.

(7) A listing by a public officer or a public employee in the electronic directory provided for in 30-17-101 of any product created outside of work in a public agency is not in violation of subsection (2)(a) of this section. The public officer or public employee may not make arrangements for the listing in the electronic directory during work hours.

(8) A department head or a member of a quasi-judicial or rulemaking board may perform an official act notwithstanding the provisions of subsection (2)(e) if participation is necessary to the administration of a statute and if the person complies with the disclosure procedures under 2-2-131.

(9) Subsection (2)(d) does not apply to a member of a board, commission, council, or committee unless the member is also a full-time public employee.

(10) Subsections (2)(b) and (2)(e) do not prevent a member of the governing body of a local government from performing an official act when the member's participation is necessary to obtain a quorum or to otherwise enable the body to act. The member shall disclose the interest creating the appearance of impropriety prior to performing the official act.

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

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

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

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

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

**2-2-131. Disclosure.** A public officer or public employee shall, prior to acting in a manner that may impinge on public duty, including the award of a permit, contract, or license, disclose the nature of the private interest that creates the conflict. The public officer or public employee shall make the disclosure in writing to the commissioner of political practices, listing the amount of private interest, if any, the purpose and duration of the person's services rendered, if any, and the compensation received for the services or other information that is necessary to describe the interest. If the public officer or public employee then performs the official act involved, the officer or employee shall state for the record the fact and summary nature of the interest disclosed at the time of performing the act.

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

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

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



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

**2-2-135. Ethics committees.** (1) Each house of the legislature shall establish an ethics committee. Subject to 5-5-234, the committee must consist of two members of the majority party and two members of the minority party. The committees may meet jointly. Each committee shall educate members concerning the provisions of this part concerning legislators and may consider conflicts between public duty and private interest as provided in 2-2-112. The joint committee may consider matters affecting the entire legislature.

(2) Pursuant to Article V, section 10, of the Montana constitution, the legislature is responsible for enforcement of the provisions of this part concerning legislators.

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

**2-2-136. Enforcement for state officers, legislators, and state employees — referral of complaint involving county attorney.** (1) (a) A person alleging a violation of this part by a state officer, legislator, or state employee may file a complaint with the commissioner of political practices. The commissioner does not have jurisdiction for a complaint concerning a legislator if a legislative act is involved in the complaint. The commissioner also has jurisdiction over complaints against a county attorney that are referred by a local government review panel pursuant to 2-2-144 or filed by a person directly with the commissioner pursuant to 2-2-144(6). If a complaint is filed against the commissioner or another individual employed in the office of the commissioner, the complaint must be resolved in the manner provided for in 13-37-111(5). The commissioner may request additional information from the complainant or the person who is the subject of the complaint to make an initial determination of whether the complaint states a potential violation of this part.

(b) The commissioner may dismiss a complaint that is frivolous, does not state a potential violation of this part, or does not contain sufficient allegations to enable the commissioner to determine whether the complaint states a potential violation of this part. If the issues presented in a complaint have been addressed and decided in a prior decision and the commissioner determines that no additional factual development is necessary, the commissioner may issue a summary decision without holding an informal contested case hearing on the complaint.

(c) Except as provided in subsection (1)(b), if the commissioner determines that the complaint states a potential violation of this part, the commissioner shall hold an informal contested case hearing on the complaint as provided in Title 2, chapter 4, part 6. The commissioner shall issue a decision based upon the record established before the commissioner.

(2) (a) Except as provided in subsection (2)(b), if the commissioner determines that a violation of this part has occurred, the commissioner may impose an administrative penalty of not less than \$50 or more than \$1,000.

(b) If the commissioner determines that a violation of 2-2-121(4)(b) has occurred, the commissioner may impose an administrative penalty of not less than \$500 or more than \$10,000.

(c) If the violation was committed by a state employee, the commissioner may also recommend that the employing state agency discipline the employee. The employing entity of a state employee may take disciplinary action against an employee for a violation of this part, regardless of whether the commissioner makes a recommendation for discipline. The commissioner may assess the costs of the proceeding against the person bringing the charges if the commissioner determines that a violation did not occur or against the officer or employee if the commissioner determines that a violation did occur.

(3) A party may seek judicial review of the commissioner's decision, as provided in chapter 4, part 7, of this title, after a hearing, a dismissal, or a summary decision issued pursuant to subsection (1)(b).

(4) Except for records made public in the course of a hearing held under subsection (1) and records that are open for public inspection pursuant to Montana law, a complaint and records obtained or prepared by the commissioner in connection with an investigation or complaint are confidential documents and are not open for public inspection. The complainant and the person who is the subject of the complaint shall maintain the confidentiality of the complaint and any related documents released to the parties by the commissioner until the commissioner issues a decision. However, the person who is the subject of a complaint may waive, in writing, the right of confidentiality provided in this subsection. If a waiver is filed with the commissioner, the

complaint and any related documents must be open for public inspection. The commissioner's decision issued after a hearing is a public record open to inspection.

(5) When a complaint is filed, the commissioner may issue statements or respond to inquiries to confirm that a complaint has been filed, to identify against whom it has been filed, and to describe the procedural aspects and status of the case.

(6) The commissioner may adopt rules to carry out the responsibilities and duties assigned by this part.

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

**2-2-144. Enforcement for local government.** (1) Except as provided in subsections (5) and (6), a person alleging a violation of this part by a local government officer or local government employee shall notify the county attorney of the county where the local government is located. The county attorney shall request from the complainant or the person who is the subject of the complaint any information necessary to make a determination concerning the validity of the complaint.

(2) If the county attorney determines that the complaint is justified, the county attorney may bring an action in district court seeking a civil fine of not less than \$50 or more than \$1,000. If the county attorney determines that the complaint alleges a criminal violation, the county attorney shall bring criminal charges against the officer or employee.

(3) If the county attorney declines to bring an action under this section, the person alleging a violation of this part may file a civil action in district court seeking a civil fine of not less than \$50 or more than \$1,000. In an action filed under this subsection, the court may assess the costs and attorney fees against the person bringing the charges if the court determines that a violation did not occur or against the officer or employee if the court determines that a violation did occur. The court may impose sanctions if the court determines that the action was frivolous or intended for harassment.

(4) The employing entity of a local government employee may take disciplinary action against an employee for a violation of this part.

(5) (a) A local government may establish a three-member panel to review complaints alleging violations of this part by officers or employees of the local government. The local government shall establish procedures and rules for the panel. The members of the panel may not be officers or employees of the local government. The panel shall review complaints and may refer to the county attorney complaints that appear to be substantiated. If the complaint is against the county attorney, the panel shall refer the matter to the commissioner of political practices and the complaint must then be processed by the commissioner pursuant to 2-2-136.

(b) In a local government that establishes a panel under this subsection (5), a complaint must be referred to the panel prior to making a complaint to the county attorney.

(6) If a local government review panel has not been established pursuant to subsection (5), a person alleging a violation of this part by a county attorney shall file the complaint with the commissioner of political practices pursuant to 2-2-136.

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

## **Part 2**

### **Proscribed Acts Related to Contracts and Claims**

**2-2-201. Public officers, employees, and former employees not to have interest in contracts.** (1) Members of the legislature; state, county, city, town, or township officers; or any deputies or employees of an enumerated governmental entity may not be interested in any contract made by them in their official capacity or by any body, agency, or board of which they are members or employees if they are directly involved with the contract. A former employee may not, within 6 months following the termination of employment, contract or be employed by an employer who contracts with the state or any of its subdivisions involving matters with which the former employee was directly involved during employment.

(2) In this section, the term:

(a) "be interested in" does not include holding a minority interest in a corporation;

(b) "contract" does not include:

(i) contracts awarded based on competitive procurement procedures conducted after the date of employment termination;

(ii) merchandise sold to the highest bidder at public auctions;

(iii) investments or deposits in financial institutions that are in the business of loaning or receiving money;

(iv) a contract with an interested party if, because of geographic restrictions, a local government could not otherwise reasonably afford itself of the subject of the contract. It is presumed that a local government could not otherwise reasonably afford itself of the subject of a contract if the additional cost to the local government is greater than 10% of a contract with an interested party or if the contract is for services that must be performed within a limited time period and no other contractor can provide those services within that time period.

(c) “directly involved” means the person directly monitors a contract, extends or amends a contract, audits a contractor, is responsible for conducting the procurement or for evaluating proposals or vendor responsibility, or renders legal advice concerning the contract;

(d) “former employee” does not include a person whose employment with the state was involuntarily terminated because of a reduction in force or other involuntary termination not involving violation of the provisions of this chapter.

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

**2-2-202. Public officers not to have interest in sales or purchases.** State, county, town, township, and city officers must not be purchasers at any sale or vendors at any purchase made by them in their official capacity.

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

**2-2-203. Voidable contracts.** Every contract made in violation of any of the provisions of 2-2-201 or 2-2-202 may be avoided at the instance of any party except the officer interested therein.

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

**2-2-204. Dealings in warrants and other claims prohibited.** The state officers, the several county, city, town, and township officers of this state, their deputies and clerks, are prohibited from purchasing or selling or in any manner receiving to their own use or benefit or to the use or benefit of any person or persons whatever any state, county, or city warrants, scrip, orders, demands, claims, or other evidences of indebtedness against the state or any county, city, town, or township thereof except evidences of indebtedness issued to or held by them for services rendered as such officer, deputy, clerk, and evidences of the funded indebtedness of such state, county, city, township, town, or corporation.

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

**2-2-205. Affidavit to be required by auditing officers.** Each officer whose duty it is to audit and allow the accounts of other state, county, city, township, or town officers shall, before allowing the accounts, require each of the officers to make and file with the auditing officer an affidavit that the affiant has not violated any of the provisions of this part.

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

**2-2-206. Officers not to pay illegal warrant.** Officers charged with the disbursement of public moneys must not pay any warrant or other evidence of indebtedness against the state, county, city, town, or township when the same has been purchased, sold, received, or transferred contrary to any of the provisions of this part.

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

**2-2-207. Settlements to be withheld on affidavit.** (1) Each officer charged with the disbursement of public money who is informed by affidavit establishing probable cause that an officer whose account is about to be settled, audited, or paid has violated any of the provisions of

this part shall suspend the settlement or payment and cause the officer to be prosecuted for the violation by the county attorney.

(2) If there is a judgment for the defendant upon prosecution, the proper officer may proceed to settle, audit, or pay the account as if an affidavit had not been filed.

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

### **Part 3 Nepotism**

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

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

**2-2-302. Appointment of relative to office of trust or emolument unlawful — exceptions — publication of notice.** (1) Except as provided in subsection (2), it is unlawful for a person or member of any board, bureau, or commission or employee at the head of a department of this state or any political subdivision of this state to appoint to any position of trust or emolument any person related or connected by consanguinity within the fourth degree or by affinity within the second degree.

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

(a) a sheriff in the appointment of a person as a cook or an attendant;  
(b) school district trustees if all the trustees, with the exception of any trustee who is related to the person being appointed and who must abstain from voting for the appointment, approve the appointment of a person related to a trustee;

(c) a school district in the employment of a person as a substitute teacher who is not employed as a substitute teacher for more than 30 consecutive school days as defined by the trustees in 20-1-302;

(d) the renewal of an employment contract of a person who was initially hired before the member of the board, bureau, or commission or the department head to whom the person is related assumed the duties of the office;

(e) the employment of election judges;

(f) the employment of pages or temporary session staff by the legislature; or

(g) county commissioners of a county with a population of less than 10,000 if all the commissioners, with the exception of any commissioner who is related to the person being appointed and who must abstain from voting for the appointment, approve the appointment of a person related to a commissioner.

(3) Prior to the appointment of a person referred to in subsection (2)(b) or (2)(g), written notice of the time and place for the intended action must be published at least 15 days prior to the intended action in a newspaper of general circulation in the county in which the school district is located or the county office or position is located.

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

**2-2-303. Agreements to appoint relative to office unlawful.** It shall further be unlawful for any person or any member of any board, bureau, or commission or employee of any department of this state or any political subdivision thereof to enter into any agreement or any promise with other persons or any members of any boards, bureaus, or commissions or employees of any department of this state or any of its political subdivisions thereof to appoint to any position of trust or emolument any person or persons related to them or connected with them by consanguinity within the fourth degree or by affinity within the second degree.

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

**2-2-304. Penalty for violation of nepotism law.** A public officer or employee or a member of any board, bureau, or commission of this state or any political subdivision who, by virtue of the person's office, has the right to make or appoint any person to render services to this state or any subdivision of this state and who makes or appoints a person to the services or

enters into any agreement or promise with any other person or employee or any member of any board, bureau, or commission of any other department of this state or any of its subdivisions to appoint to any position any person or persons related to the person making the appointment or connected with the person making the appointment by consanguinity within the fourth degree or by affinity within the second degree is guilty of a misdemeanor and upon conviction shall be punished by a fine not less than \$50 or more than \$1,000, by imprisonment in the county jail for not more than 6 months, or both.

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

## CHAPTER 3 PUBLIC PARTICIPATION IN GOVERNMENTAL OPERATIONS

### Part 1 Notice and Opportunity to Be Heard

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

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

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

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

- (a) the legislature and any branch, committee, or officer thereof;
- (b) the judicial branches and any committee or officer thereof;
- (c) the governor, except that an agency is not exempt because the governor has been designated as a member thereof; or
- (d) the state military establishment and agencies concerned with civil defense and recovery from hostile attack.

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

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

- (a) statements concerning only the internal management of an agency and not affecting private rights or procedures available to the public; or
- (b) declaratory rulings as to the applicability of any statutory provision or of any rule.

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

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

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



(2) The governor shall ensure that each board, bureau, commission, department, authority, agency, or officer of the executive branch of the state adopts coordinated rules for its programs. The guidelines must provide policies and procedures to facilitate public participation in those programs, consistent with subsection (1). These guidelines must be adopted as rules and published in a manner so that the rules may be provided to a member of the public upon request.

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

**2-3-104. Requirements for compliance with notice provisions.** An agency shall be considered to have complied with the notice provisions of 2-3-103 if:

(1) an environmental impact statement is prepared and distributed as required by the Montana Environmental Policy Act, Title 75, chapter 1;

(2) a proceeding is held as required by the Montana Administrative Procedure Act;

(3) a public hearing, after appropriate notice is given, is held pursuant to any other provision of state law or a local ordinance or resolution; or

(4) a newspaper of general circulation within the area to be affected by a decision of significant interest to the public has carried a news story or advertisement concerning the decision sufficiently prior to a final decision to permit public comment on the matter.

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

**2-3-105. Supplemental notice by radio or television.** (1) An official of the state or any of its political subdivisions who is required by law to publish a notice required by law may supplement the publication by a radio or television broadcast of a summary of the notice or by both when in the official's judgment the public interest will be served.

(2) The summary of the notice must be read without a reference to any person by name who is then a candidate for political office.

(3) The announcements may be made only by duly employed personnel of the station from which the broadcast emanates.

(4) Announcements by political subdivisions may be made only by stations situated within the county of origin of the legal notice unless a broadcast station does not exist in that county, in which case announcements may be made by a station or stations situated in any county other than the county of origin of the legal notice.

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

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

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

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

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

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

**2-3-111. Opportunity to submit views — public hearings.** (1) Procedures for assisting public participation must include a method of affording interested persons reasonable opportunity to submit data, views, or arguments, orally or in written form, prior to making a final decision that is of significant interest to the public.

(2) When a state agency other than the board of regents proposes to take an action that directly impacts a specific community or area and a public hearing is held, the hearing must be held in an accessible facility in the impacted community or area or in the nearest community or area with an accessible facility.

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

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

(1) an agency decision that must be made to deal with an emergency situation affecting the public health, welfare, or safety;

(2) an agency decision that must be made to maintain or protect the interests of the agency, including but not limited to the filing of a lawsuit in a court of law or becoming a party to an administrative proceeding; or

(3) a decision involving no more than a ministerial act.

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

**2-3-113. Declaratory rulings to be published.** The declaratory rulings of any board, bureau, commission, department, authority, agency, or officer of the state which is not subject to the Montana Administrative Procedure Act shall be published and be subject to judicial review as provided under 2-4-623(6) and 2-4-501, respectively.

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

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

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

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

## Part 2 Open Meetings

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

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

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

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

**2-3-203. Meetings of public agencies and certain associations of public agencies to be open to public — exceptions.** (1) All meetings of public or governmental bodies, boards, bureaus, commissions, agencies of the state, or any political subdivision of the state or organizations or agencies supported in whole or in part by public funds or expending public funds, including the supreme court, must be open to the public.

(2) All meetings of associations that are composed of public or governmental bodies referred to in subsection (1) and that regulate the rights, duties, or privileges of any individual must be open to the public.

(3) The presiding officer of any meeting may close the meeting during the time the discussion relates to a matter of individual privacy and then if and only if the presiding officer determines that the demands of individual privacy clearly exceed the merits of public disclosure. The right of individual privacy may be waived by the individual about whom the discussion pertains and, in that event, the meeting must be open.

(4) (a) Except as provided in subsection (4)(b), a meeting may be closed to discuss a strategy to be followed with respect to litigation when an open meeting would have a detrimental effect on the litigating position of the public agency.

(b) A meeting may not be closed to discuss strategy to be followed in litigation in which the only parties are public bodies or associations described in subsections (1) and (2).

(5) The supreme court may close a meeting that involves judicial deliberations in an adversarial proceeding.

(6) Any committee or subcommittee appointed by a public body or an association described in subsection (2) for the purpose of conducting business that is within the jurisdiction of that agency is subject to the requirements of this section.

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

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

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

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

**Compiler's Comments**

*2017 Amendment:* Chapter 138 at beginning substituted "A person" for "Accredited press representatives"; after "televising" inserted "transmitting images or audio by electronic or digital means"; and made minor changes in style. Amendment effective October 1, 2017.

**2-3-212. Minutes of meetings — public inspection.** (1) Appropriate minutes of all meetings required by 2-3-203 to be open must be kept and must be available for inspection by the public. If an audio recording of a meeting is made and designated as official, the recording constitutes the official record of the meeting. If an official recording is made, a written record of the meeting must also be made and must include the information specified in subsection (2).

(2) Minutes must include without limitation:

- (a) the date, time, and place of the meeting;
- (b) a list of the individual members of the public body, agency, or organization who were in attendance;
- (c) the substance of all matters proposed, discussed, or decided; and
- (d) at the request of any member, a record of votes by individual members for any votes taken.

(3) If the minutes are recorded and designated as the official record, a log or time stamp for each main agenda item is required for the purpose of providing assistance to the public in accessing that portion of the meeting.

(4) Any time a presiding officer closes a public meeting pursuant to 2-3-203, the presiding officer shall ensure that minutes taken in compliance with subsection (2) are kept of the closed portion of the meeting. The minutes from the closed portion of the meeting may not be made available for inspection except pursuant to a court order.

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

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

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

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

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

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

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

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

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

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

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

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

### Part 3 Use of Electronic Mail Systems

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

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

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

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

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

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

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

## CHAPTER 4 ADMINISTRATIVE PROCEDURE ACT

### Part 1 General Provisions

**2-4-101. Short title — purpose — exception.** (1) This chapter is known and may be cited as the "Montana Administrative Procedure Act".

(2) The purposes of the Montana Administrative Procedure Act are to:

(a) generally give notice to the public of governmental action and to provide for public participation in that action;

(b) establish general uniformity and due process safeguards in agency rulemaking, legislative review of rules, and contested case proceedings;

(c) establish standards for judicial review of agency rules and final agency decisions; and

(d) provide the executive and judicial branches of government with statutory directives.

(3) Effective July 1, 2016, this chapter does not apply to the operations of the state compensation insurance fund provided for in Title 39, chapter 71, part 23. Administrative rules adopted by the state fund board of directors prior to July 1, 2016, apply to new and renewal policies issued by the state fund that are effective prior to July 1, 2016. The state fund is subject to rules adopted by any agency that by law apply to the state fund.

**History:** En. Sec. 1, Ch. 2, Ex. L. 1971; amd. Sec. 1, Ch. 285, L. 1977; R.C.M. 1947, 82-4201; amd. Sec. 1, Ch. 152, L. 2009; amd. Sec. 2, Ch. 320, L. 2015.

**2-4-102. Definitions.** For purposes of this chapter, the following definitions apply:

(1) “Administrative rule review committee” or “committee” means the appropriate committee assigned subject matter jurisdiction in Title 5, chapter 5, part 2.

(2) (a) “Agency” means an agency, as defined in 2-3-102, of state government, except that the provisions of this chapter do not apply to the following:

(i) the state board of pardons and parole, which is exempt from the contested case and judicial review of contested cases provisions contained in this chapter. However, the board is subject to the remainder of the provisions of this chapter.

(ii) the supervision and administration of a penal institution with regard to the institutional supervision, custody, control, care, or treatment of youth or prisoners;

(iii) the board of regents and the Montana university system;

(iv) the financing, construction, and maintenance of public works;

(v) the public service commission when conducting arbitration proceedings pursuant to 47 U.S.C. 252 and 69-3-837.

(b) The term does not include a school district, a unit of local government, or any other political subdivision of the state.

(3) “ARM” means the Administrative Rules of Montana.

(4) “Contested case” means a proceeding before an agency in which a determination of legal rights, duties, or privileges of a party is required by law to be made after an opportunity for hearing. The term includes but is not restricted to ratemaking, price fixing, and licensing.

(5) (a) “Interested person” means a person who has expressed to the agency an interest concerning agency actions under this chapter and has requested to be placed on the agency’s list of interested persons as to matters of which the person desires to be given notice.

(b) The term does not extend to contested cases.

(6) “License” includes the whole or part of an agency permit, certificate, approval, registration, charter, or other form of permission required by law but does not include a license required solely for revenue purposes.

(7) “Licensing” includes an agency process respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal, limitation, transfer, or amendment of a license.

(8) “Party” means a person named or admitted as a party or properly seeking and entitled as of right to be admitted as a party, but this chapter may not be construed to prevent an agency from admitting any person as a party for limited purposes.

(9) “Person” means an individual, partnership, corporation, association, governmental subdivision, agency, or public organization of any character.

(10) “Register” means the Montana Administrative Register.

(11) (a) “Rule” means each 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 an agency. The term includes the amendment or repeal of a prior rule.

(b) The term does not include:

(i) statements concerning only the internal management of an agency or state government and not affecting private rights or procedures available to the public, including rules



implementing the state personnel classification plan, the state wage and salary plan, or the statewide accounting, budgeting, and human resource system;

(ii) formal opinions of the attorney general and declaratory rulings issued pursuant to 2-4-501;

(iii) rules relating to the use of public works, facilities, streets, and highways when the substance of the rules is indicated to the public by means of signs or signals;

(iv) seasonal rules adopted annually or biennially relating to hunting, fishing, and trapping when there is a statutory requirement for the publication of the rules and rules adopted annually or biennially relating to the seasonal recreational use of lands and waters owned or controlled by the state when the substance of the rules is indicated to the public by means of signs or signals; or

(v) uniform rules adopted pursuant to interstate compact, except that the rules must be filed in accordance with 2-4-306 and must be published in the ARM.

(12) (a) “Significant interest to the public” means agency actions under this chapter regarding matters that the agency knows to be of widespread citizen interest. These matters include issues involving a substantial fiscal impact to or controversy involving a particular class or group of individuals.

(b) The term does not extend to contested cases.

(13) “Small business” means a business entity, including its affiliates, that is independently owned and operated and that employs fewer than 50 full-time employees.

(14) “Substantive rules” are either:

(a) legislative rules, which if adopted in accordance with this chapter and under expressly delegated authority to promulgate rules to implement a statute have the force of law and when not so adopted are invalid; or

(b) adjective or interpretive rules, which may be adopted in accordance with this chapter and under express or implied authority to codify an interpretation of a statute. The interpretation lacks the force of law.

**History:** (1), (3), (9)En. by Code Commissioner, 1979; (2), (4) thru (8), (10), (11)En. Sec. 2, Ch. 2, Ex. L. 1971; amd. Sec. 2, Ch. 285, L. 1977; Sec. 82-4202, R.C.M. 1947; R.C.M. 1947, 82-4202; amd. Sec. 4, Ch. 184, L. 1979; amd. Sec. 2, Ch. 243, L. 1979; amd. Sec. 1, Ch. 671, L. 1985; amd. Sec. 1, Ch. 340, L. 1991; amd. Sec. 6, Ch. 546, L. 1995; amd. Sec. 28, Ch. 349, L. 1997; amd. Sec. 1, Ch. 489, L. 1997; amd. Sec. 1, Ch. 19, L. 1999; amd. Sec. 1, Ch. 181, L. 2003; amd. Sec. 1, Ch. 2, L. 2009; amd. Sec. 2, Ch. 318, L. 2013; amd. Sec. 1, Ch. 64, L. 2015.

**2-4-103. Rules and statements to be made available to public.** (1) Each agency shall:

(a) make available for public inspection all rules and all other written statements of policy or interpretations formulated, adopted, or used by the agency in the discharge of its functions;

(b) upon request of any person, provide a copy of any rule.

(2) Unless otherwise provided by statute, an agency may require the payment of the cost of providing such copies.

(3) No agency rule is valid or effective against any person or party whose rights have been substantially prejudiced by an agency’s failure to comply with the public inspection requirement herein.

**History:** En. Sec. 3, Ch. 2, Ex. L. 1971; amd. Sec. 1, Ch. 240, L. 1974; amd. Sec. 3, Ch. 285, L. 1977; R.C.M. 1947, 82-4203(1)(c), (1)(d), (2); amd. Sec. 3, Ch. 243, L. 1979.

**2-4-104. Subpoenas and enforcement — compelling testimony.** (1) An agency conducting any proceeding subject to this chapter may require the furnishing of information, the attendance of witnesses, and the production of books, records, papers, documents, and other objects that may be necessary and proper for the purposes of the proceeding. In furtherance of this power, an agency upon its own motion may and, upon request of any party appearing in a contested case, shall issue subpoenas for witnesses or subpoenas duces tecum. The method for service of subpoenas, witness fees, and mileage must be the same as required in civil actions in the district courts of the state. Except as otherwise provided by statute, witness fees and mileage must be paid by the party at whose request the subpoena was issued.

(2) In case of disobedience of any subpoena issued and served under this section or of the refusal of any witness to testify as to any material matter with regard to which the witness may be interrogated in a proceeding before the agency, the agency may apply to any district court in the state for an order to compel compliance with the subpoena or the giving of testimony. If

the agency fails or refuses to seek enforcement of a subpoena issued at the request of a party or to compel the giving of testimony considered material by a party, the party may make an application to the district court. The court shall hear the matter as expeditiously as possible. If the disobedience or refusal is found to be unjustified, the court shall enter an order requiring compliance. Disobedience of the order must be punishable by contempt of court in the same manner and by the same procedures as is provided for similar conduct committed in the course of civil actions in district courts. If another method of subpoena enforcement or compelling testimony is provided by statute, it may be used as an alternative to the method provided for in this section.

**History:** En. Sec. 20, Ch. 2, Ex. L. 1971; amd. Sec. 19, Ch. 285, L. 1977; R.C.M. 1947, 82-4220(1), (2); amd. Sec. 40, Ch. 61, L. 2007.

**2-4-105. Representation by counsel.** Any person compelled to appear in person or who voluntarily appears before any agency or representative thereof shall be accorded the right to be accompanied, represented, and advised by counsel. In a proceeding before an agency, every party shall be accorded the right to appear in person or by or with counsel but this chapter shall not be construed as requiring an agency to furnish counsel to any such person.

**History:** En. Sec. 21, Ch. 2, Ex. L. 1971; amd. Sec. 20, Ch. 285, L. 1977; R.C.M. 1947, 82-4221.

**2-4-106. Service.** Except where a statute expressly provides to the contrary, service in all agency proceedings subject to the provisions of this chapter and in proceedings for judicial review thereof shall be as prescribed for civil actions in the district courts.

**History:** En. Sec. 22, Ch. 2, Ex. L. 1971; amd. Sec. 21, Ch. 285, L. 1977; R.C.M. 1947, 82-4222.

**2-4-107. Construction and effect.** Nothing in this chapter shall be considered to limit or repeal requirements imposed by statute or otherwise recognized law. No subsequent legislation shall be considered to supersede or modify any provision of this chapter, whether by implication or otherwise, except to the extent that such legislation shall do so expressly.

**History:** En. Sec. 23, Ch. 2, Ex. L. 1971; amd. Sec. 22, Ch. 285, L. 1977; R.C.M. 1947, 82-4223.

**2-4-108 and 2-4-109 reserved.**

**2-4-110. Departmental review of rule notices.** (1) The head of each department of the executive branch shall appoint an existing attorney, paralegal, or other qualified person from that department to review each departmental rule proposal notice, adoption notice, or other notice relating to administrative rulemaking. Notice of the name of the person appointed under this subsection and of any successor must be given to the secretary of state and the appropriate administrative rule review committee within 10 days of the appointment.

(2) The person appointed under subsection (1) shall review each notice by any division, bureau, or other unit of the department, including units attached to the department for administrative purposes only under 2-15-121 unless otherwise excepted, for compliance with this chapter before the notice is filed with the secretary of state. The reviewer shall pay particular attention to 2-4-302 and 2-4-305. The review must include but is not limited to consideration of:

(a) the adequacy of the statement of reasonable necessity for the intended action and whether the intended action is reasonably necessary to effectuate the purpose of the code section or sections implemented;

(b) whether the proper statutory authority for the rule is cited;

(c) whether the citation of the code section or sections implemented is correct;

(d) whether the intended action is contrary to the code section or sections implemented or to other law; and

(e) for a rule that initially implements legislation, whether the intended action is contrary to any comments submitted to the department by the primary sponsor of the legislation for the purposes of 2-4-302.

(3) The person appointed under subsection (1) shall sign each notice for which this section requires a review. The act of signing is an affirmation that the review required by this section has been performed to the best of the reviewer's ability. The secretary of state may not accept for filing a notice that does not have the signature required by this section.

**History:** En. Sec. 1, Ch. 8, L. 1987; amd. Sec. 1, Ch. 3, L. 1991; amd. Sec. 2, Ch. 19, L. 1999; amd. Sec. 1, Ch. 210, L. 2001; amd. Sec. 1, Ch. 21, L. 2009; amd. Sec. 1, Ch. 99, L. 2011.

**2-4-111. Small business impact analysis — assistance.** (1) Prior to the adoption of a proposed rule, the agency that has proposed the rule shall determine if the rule will significantly and directly impact small businesses. If the agency determines that the proposed rule will impact small businesses, the determination must be published in the register when the proposed rule is published. If the agency determines that the proposed rule may have a significant and direct impact on small businesses and if subsection (4) does not apply, the agency shall prepare a small business impact analysis that, at a minimum, must:

- (a) identify by class or group the small businesses probably affected by the proposed rule;
- (b) include a statement of the probable significant and direct effects of the proposed rule on the small businesses identified in subsection (1)(a); and
- (c) include a description of any alternative methods that may be reasonably implemented to minimize or eliminate any potential adverse effects of adopting the proposed rule while still achieving the purpose of the proposed rule.

(2) The agency shall provide documentation for the estimates, statements, and descriptions required under subsection (1).

(3) The office of economic development, established in 2-15-218, shall advise and assist agencies in complying with this section.

(4) An agency is not required to prepare a separate small business impact analysis under this section if the agency pursuant to 2-4-405 is preparing or has prepared an economic impact statement regarding adoption, amendment, or repeal of a rule.

(5) The final adoption, amendment, or repeal of a rule is not subject to challenge in any court as a result of the inaccuracy or inadequacy of a small business impact analysis required under this section.

**History:** En. Sec. 1, Ch. 318, L. 2013.

## **Part 2**

### **Organizational and Procedural Rules**

**2-4-201. Rules describing agency organization and procedures.** In addition to other rulemaking requirements imposed by law, each agency shall:

(1) adopt as a rule a description of its organization, stating the general course and method of its operations and the methods whereby the public may obtain information or make submissions or requests. The notice and hearing requirements contained in 2-4-302 do not apply to adoption of a rule relating to a description of its organization.

(2) adopt rules of practice, not inconsistent with statutory provisions, setting forth the nature and requirements of all formal and informal procedures available, including a description of all forms and instructions used by the agency.

**History:** En. Sec. 3, Ch. 2, Ex. L. 1971; amd. Sec. 1, Ch. 240, L. 1974; amd. Sec. 3, Ch. 285, L. 1977; R.C.M. 1947, 82-4203(1)(a), (1)(b).

**2-4-202. Model rules.** (1) The secretary of state shall prepare a model form for a rule describing the organization of agencies and model rules of practice for agencies to use as a guide for the rulemaking process and in fulfilling the requirements of 2-4-201. The attorney general shall prepare model rules of practice for agencies to use as a guide for contested case hearings and declaratory rulings. The secretary of state and attorney general shall add to, amend, or revise the model rules from time to time as necessary for the proper guidance of agencies.

(2) The model rules and additions, amendments, or revisions to the model rules must be appropriate for the use of as many agencies as is practicable and must be filed with the secretary of state and provided to any agency upon request. The adoption by an agency of all or part of the model rules does not relieve the agency from following the rulemaking procedures required by this chapter.

**History:** En. Sec. 3, Ch. 2, Ex. L. 1971; amd. Sec. 1, Ch. 240, L. 1974; amd. Sec. 3, Ch. 285, L. 1977; R.C.M. 1947, 82-4203(3); amd. Sec. 41, Ch. 61, L. 2007; amd. Sec. 1, Ch. 88, L. 2007.

### Part 3

#### Adoption and Publication of Rules

**2-4-301. Authority to adopt not conferred.** Except as provided in part 2, nothing in this chapter confers authority upon or augments the authority of any state agency to adopt, administer, or enforce any rule.

**History:** En. 82-4204.1 by Sec. 9, Ch. 285, L. 1977; R.C.M. 1947, 82-4204.1(part).

**2-4-302. Notice, hearing, and submission of views.** (1) (a) Prior to the adoption, amendment, or repeal of any rule, the agency shall give written notice of its proposed action. The proposal notice must include a statement of either the terms or substance of the intended action or a description of the subjects and issues involved, the reasonable necessity for the proposed action, and the time when, place where, and manner in which interested persons may present their views on the proposed action. The reasonable necessity must be written in plain, easily understood language.

(b) The agency shall state in the proposal notice the date on which and the manner in which contact was made with the primary sponsor as required in subsection (2)(d). If the notification to the primary sponsor was given by mail, the date stated in the proposal notice must be the date on which the notification was mailed by the agency. If the proposal notice fails to state the date on which and the manner in which the primary sponsor was contacted, the filing of the proposal notice under subsection (2)(a)(i) is ineffective for the purposes of this part and for the purposes of the law that the agency cites in the proposal notice as the authority for the proposed action.

(c) If the agency proposes to adopt, increase, or decrease a monetary amount that a person shall pay or will receive, such as a fee, cost, or benefit, the notice must include an estimate, if known, of:

(i) the cumulative amount for all persons of the proposed increase, decrease, or new amount; and

(ii) the number of persons affected.

(2) (a) (i) The proposal notice must be filed with the secretary of state for publication in the register, as provided in 2-4-312. Except as provided in subsection (2)(a)(ii), within 3 days of publication, a copy of the published proposal notice must be sent to interested persons who have made timely requests to the agency to be informed of its rulemaking proceedings, and to the office of any professional, trade, or industrial society or organization or member of those entities who has filed a request with the appropriate administrative rule review committee when the request has been forwarded to the agency as provided in subsection (2)(b).

(ii) In lieu of sending a copy of the published proposal notice to an interested person who has requested the notice, the agency may, with the consent of that person, send that person an electronic notification that the proposal notice is available on the agency's website and an electronic link to the part of the agency's website or a description of the means of locating that part of the agency's website where the notice is available.

(iii) Each agency shall create and maintain a list of interested persons and the subject or subjects in which each person on the list is interested. A person who submits a written comment or attends a hearing in regard to proposed agency action under this part must be informed of the list by the agency. An agency complies with this subsection if it includes in the proposal notice an advisement explaining how persons may be placed on the list of interested persons and if it complies with subsection (7).

(b) The appropriate administrative rule review committee shall forward a list of all organizations or persons who have submitted a request to be informed of agency actions to the agencies that the committee oversees that publish rulemaking notices in the register. The list must be amended by the agency upon request of any person requesting to be added to or deleted from the list.

(c) The proposal notice required by subsection (1) must be published at least 30 days in advance of the agency's proposed action. The agency shall post the proposal notice on a state electronic access system or other electronic communications system available to the public.

(d) (i) When an agency begins to work on the substantive content and the wording of a proposal notice for a rule that initially implements legislation, the agency shall contact, as provided in subsection (8), the legislator who was the primary sponsor of the legislation to:



(A) obtain the legislator's comments;  
(B) inform the legislator of the known dates by which each step of the rulemaking process must be completed; and

(C) provide the legislator with information about the time periods during which the legislator may comment on the proposed rules, including the opportunity to provide comment to the appropriate administrative rule review committee.

(ii) If the legislation affected more than one program, the primary sponsor must be contacted pursuant to this subsection (2)(d) each time that a rule is being proposed to initially implement the legislation for a program.

(iii) Within 3 days after a proposal notice covered under subsection (2)(d)(i) has been published as required in subsection (2)(a)(i), a copy of the published notice must be sent to the primary sponsor contacted under this subsection (2)(d).

(3) If a statute provides for a method of publication different from that provided in subsection (2), the affected agency shall comply with the statute in addition to the requirements contained in this section. However, the notice period may not be less than 30 days or more than 6 months.

(4) Prior to the adoption, amendment, or repeal of any rule, the agency shall afford interested persons at least 20 days' notice of a hearing and at least 28 days from the day of the original notice to submit data, views, or arguments, orally or in writing. If an amended or supplemental notice is filed, additional time may be allowed for oral or written submissions. In the case of substantive rules, the notice of proposed rulemaking must state that opportunity for oral hearing must be granted if requested by either 10% or 25, whichever is less, of the persons who will be directly affected by the proposed rule, by a governmental subdivision or agency, by the appropriate administrative rule review committee, or by an association having not less than 25 members who will be directly affected. If the proposed rulemaking involves matters of significant interest to the public, the agency shall schedule an oral hearing.

(5) An agency may continue a hearing date for cause. In the discretion of the agency, contested case procedures need not be followed in hearings held pursuant to this section. If a hearing is otherwise required by statute, nothing in this section alters that requirement.

(6) If an agency fails to publish a notice of adoption within the time required by 2-4-305(7) and the agency again proposes the same rule for adoption, amendment, or repeal, the proposal must be considered a new proposal for purposes of compliance with this chapter.

(7) At the commencement of a hearing on the intended action, the person designated by the agency to preside at the hearing shall:

(a) read aloud the "Notice of Function of Administrative Rule Review Committee" appearing in the register; and

(b) inform the persons at the hearing of the provisions of subsection (2)(a) and provide them an opportunity to place their names on the list.

(8) (a) For purposes of contacting primary sponsors under subsection (2)(d), a current or former legislator who wishes to receive notice shall keep the current or former legislator's name, address, e-mail address, and telephone number on file with the secretary of state. The secretary of state may also use legislator contact information provided by the legislative services division for the purposes of the register. The secretary of state shall update the contact information whenever the secretary of state receives corrected information from the legislator or the legislative services division. An agency proposing rules shall consult the register when providing sponsor contact.

(b) An agency has complied with the primary bill sponsor contact requirements of this section when the agency has attempted to reach the primary bill sponsor at the legislator's address, e-mail address, and telephone number on file with the secretary of state pursuant to subsection (8)(a). If the agency is able to contact the primary sponsor by using less than all of these three methods of contact, the other methods need not be used.

(9) This section applies to the department of labor and industry adopting a rule relating to a commercial drug formulary as provided in 39-71-704. This section does not apply to the automatic updating of department of labor and industry rules relating to commercial drug formularies as provided in 39-71-704.

**History:** En. Sec. 4, Ch. 2, Ex. L. 1971; amd. Sec. 5, Ch. 410, L. 1975; amd. Sec. 1, Ch. 482, L. 1975; amd. Sec. 8, Ch. 285, L. 1977; R.C.M. 1947, 82-4204(part); amd. Sec. 4, Ch. 243, L. 1979; amd. Sec. 1, Ch. 381, L. 1981; amd. Sec. 1, Ch. 429, L. 1983; amd. Sec. 1, Ch. 152, L. 1997; amd. Sec. 1, Ch. 340, L. 1997; amd. Sec. 2, Ch. 489,



L. 1997; amd. Sec. 3, Ch. 19, L. 1999; amd. Sec. 1, Ch. 41, L. 1999; amd. Sec. 2, Ch. 210, L. 2001; amd. Sec. 2, Ch. 88, L. 2007; amd. Sec. 1, Ch. 207, L. 2007; amd. Sec. 2, Ch. 394, L. 2007; amd. Sec. 2, Ch. 21, L. 2009; amd. Sec. 2, Ch. 41, L. 2011; amd. Sec. 1, Ch. 53, L. 2011; amd. Sec. 1, Ch. 433, L. 2017.

**Compiler's Comments**

*2017 Amendment:* Chapter 433 inserted (9) regarding department of labor and industry rules relating to adoption and automatic updating of commercial drug formularies. Amendment effective July 1, 2017.

**2-4-303. Emergency or temporary rules.** (1) (a) If an agency finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule upon fewer than 30 days' notice and states in writing its reasons for that finding, it may proceed upon special notice filed with the committee, without prior notice or hearing or upon any abbreviated notice and hearing that it finds practicable, to adopt an emergency rule. The rule may be effective for a period not longer than 120 days, after which a new emergency rule with the same or substantially the same text may not be adopted, but the adoption of an identical rule under 2-4-302 is not precluded. Because the exercise of emergency rulemaking power precludes the people's constitutional right to prior notice and participation in the operations of their government, it constitutes the exercise of extraordinary power requiring extraordinary safeguards against abuse. An emergency rule may be adopted only in circumstances that truly and clearly constitute an existing imminent peril to the public health, safety, or welfare that cannot be averted or remedied by any other administrative act. The sufficiency of the reasons for a finding of imminent peril to the public health, safety, or welfare is subject to judicial review upon petition by any person. The matter must be set for hearing at the earliest possible time and takes precedence over all other matters except older matters of the same character. The sufficiency of the reasons justifying a finding of imminent peril and the necessity for emergency rulemaking must be compelling and, as written in the rule adoption notice, must stand on their own merits for purposes of judicial review. The dissemination of emergency rules required by 2-4-306 must be strictly observed and liberally accomplished.

(b) An emergency rule may not be used to implement an administrative budget reduction.

(2) A statute enacted or amended to be effective prior to October 1 of the year of enactment or amendment may be implemented by a temporary administrative rule, adopted before October 1 of that year, upon any abbreviated notice or hearing that the agency finds practicable, but the rule may not be filed with the secretary of state until at least 30 days have passed since publication of the notice of proposal to adopt the rule. The temporary rule is effective until October 1 of the year of adoption. The adoption of an identical rule under 2-4-302 is not precluded during the period that the temporary rule is effective.

**History:** En. Sec. 4, Ch. 2, Ex. L. 1971; amd. Sec. 5, Ch. 410, L. 1975; amd. Sec. 1, Ch. 482, L. 1975; amd. Sec. 8, Ch. 285, L. 1977; R.C.M. 1947, 82-4204(2); amd. Sec. 5, Ch. 243, L. 1979; amd. Sec. 1, Ch. 261, L. 1987; amd. Sec. 1, Ch. 5, L. 1991; amd. Sec. 3, Ch. 489, L. 1997; amd. Sec. 1, Ch. 265, L. 2005.

**2-4-304. Informal conferences and committees.** (1) An agency may use informal conferences and consultations as a means of obtaining the viewpoints and advice of interested persons with respect to contemplated rulemaking.

(2) An agency may also appoint committees of experts or interested persons or representatives of the general public to advise it with respect to any contemplated rulemaking. The powers of the committees shall be advisory only.

(3) Nothing herein shall relieve the agency from following rulemaking procedures required by this chapter.

**History:** En. Sec. 4, Ch. 2, Ex. L. 1971; amd. Sec. 5, Ch. 410, L. 1975; amd. Sec. 1, Ch. 482, L. 1975; amd. Sec. 8, Ch. 285, L. 1977; R.C.M. 1947, 82-4204(4).

**2-4-305. Requisites for validity — authority and statement of reasons.** (1) (a) The agency shall fully consider written and oral submissions respecting the proposed rule, including comments submitted by the primary sponsor of the legislation prior to the drafting of the substantive content and wording of a proposed rule that initially implements legislation.

(b) (i) Upon adoption of a rule, an agency shall issue a concise statement of the principal reasons for and against its adoption, incorporating in the statement the reasons for overruling the considerations urged against its adoption. If substantial differences exist between the rule as proposed and as adopted and the differences have not been described or set forth in the adopted rule as that rule is published in the register, the differences must be described in the

statement of reasons for and against agency action. When written or oral submissions have not been received, an agency may omit the statement of reasons.

(ii) If an adopted rule that initially implements legislation does not reflect the comments submitted by the primary sponsor, the agency shall provide a statement explaining why the sponsor's comments were not incorporated into the adopted rule.

(2) Rules may not unnecessarily repeat statutory language. Whenever it is necessary to refer to statutory language in order to convey the meaning of a rule interpreting the language, the reference must clearly indicate the portion of the language that is statutory and the portion that is an amplification of the language.

(3) Each proposed and adopted rule must include a citation to the specific grant of rulemaking authority pursuant to which the rule or any part of the rule is adopted. In addition, each proposed and adopted rule must include a citation to the specific section or sections in the Montana Code Annotated that the rule purports to implement. A substantive rule may not be proposed or adopted unless:

(a) a statute granting the agency authority to adopt rules clearly and specifically lists the subject matter of the rule as a subject upon which the agency shall or may adopt rules; or

(b) the rule implements and relates to a subject matter or an agency function that is clearly and specifically included in a statute to which the grant of rulemaking authority extends.

(4) Each rule that is proposed and adopted by an agency and that implements a policy of a governing board or commission must include a citation to and description of the policy implemented. Each agency rule implementing a policy and the policy itself must be based on legal authority and otherwise comply with the requisites for validity of rules established by this chapter.

(5) To be effective, each substantive rule adopted must be within the scope of authority conferred and in accordance with standards prescribed by other provisions of law.

(6) Whenever by the express or implied terms of any statute a state agency has authority to adopt rules to implement, interpret, make specific, or otherwise carry out the provisions of the statute, an adoption, amendment, or repeal of a rule is not valid or effective unless it is:

(a) consistent and not in conflict with the statute; and

(b) reasonably necessary to effectuate the purpose of the statute. A statute mandating that the agency adopt rules establishes the necessity for rules but does not, standing alone, constitute reasonable necessity for a rule. The agency shall also address the reasonableness component of the reasonable necessity requirement by, as indicated in 2-4-302(1) and subsection (1) of this section, stating the principal reasons and the rationale for its intended action and for the particular approach that it takes in complying with the mandate to adopt rules. Subject to the provisions of subsection (8), reasonable necessity must be clearly and thoroughly demonstrated for each adoption, amendment, or repeal of a rule in the agency's notice of proposed rulemaking and in the written and oral data, views, comments, or testimony submitted by the public or the agency and considered by the agency. A statement that merely explains what the rule provides is not a statement of the reasonable necessity for the rule.

(7) A rule is not valid unless notice of it is given and it is adopted in substantial compliance with 2-4-302, 2-4-303, or 2-4-306 and this section and unless notice of adoption of the rule is published within 6 months of the publishing of notice of the proposed rule. The measure of whether an agency has adopted a rule in substantial compliance with 2-4-302, 2-4-303, or 2-4-306 and this section is not whether the agency has provided notice of the proposed rule, standing alone, but rather must be based on an analysis of the agency's substantial compliance with 2-4-302, 2-4-303, or 2-4-306 and this section. If an amended or supplemental notice of either proposed or final rulemaking, or both, is published concerning the same rule, the 6-month limit must be determined with reference to the latest notice in all cases.

(8) (a) An agency may use an amended proposal notice or the adoption notice to correct deficiencies in citations of authority for rules and in citations of sections implemented by rules.

(b) An agency may use an amended proposal notice but, except for clerical corrections, may not use the adoption notice to correct deficiencies in a statement of reasonable necessity.

(c) If an agency uses an amended proposal notice to amend a statement of reasonable necessity for reasons other than for corrections in citations of authority, in citations of sections being implemented, or of a clerical nature, the agency shall allow additional time for oral or

written comments from the same interested persons who were notified of the original proposal notice, including from a primary sponsor, if primary sponsor notification was required under 2-4-302, and from any other person who offered comments or appeared at a hearing already held on the proposed rule.

(9) If a majority of the members of the appropriate administrative rule review committee notify the committee presiding officer that those members object to a notice of proposed rulemaking, the committee shall notify the agency in writing that the committee objects to the proposal notice and will address the objections at the next committee meeting. Following notice by the committee to the agency, the proposal notice may not be adopted until publication of the last issue of the register that is published before expiration of the 6-month period during which the adoption notice must be published, unless prior to that time, the committee meets and does not make the same objection. A copy of the committee's notification to the agency must be included in the committee's records.

(10) This section applies to the department of labor and industry adopting a rule relating to a commercial drug formulary as provided in 39-71-704. This section does not apply to the automatic updating of department of labor and industry rules relating to commercial drug formularies as provided in 39-71-704.

**History:** Ap.p. Sec. 4, Ch. 2, Ex. L. 1971; amd. Sec. 5, Ch. 410, L. 1975; amd. Sec. 1, Ch. 482, L. 1975; amd. Sec. 8, Ch. 285, L. 1977; Sec. 82-4204, R.C.M. 1947; App. 82-4204.1 by Sec. 9, Ch. 285, L. 1977; Sec. 82-4204.1, R.C.M. 1947; R.C.M. 1947, 82-4204(part), 82-4204.1(part); amd. Sec. 6, Ch. 243, L. 1979; amd. Sec. 2, Ch. 381, L. 1981; amd. Sec. 1, Ch. 78, L. 1983; amd. Sec. 1, Ch. 466, L. 1983; amd. Sec. 1, Ch. 420, L. 1989; amd. Sec. 1, Ch. 3, L. 1995; amd. Sec. 2, Ch. 152, L. 1997; amd. Sec. 1, Ch. 335, L. 1997; amd. Sec. 4, Ch. 489, L. 1997; amd. Sec. 4, Ch. 19, L. 1999; amd. Sec. 3, Ch. 210, L. 2001; amd. Sec. 3, Ch. 21, L. 2009; amd. Sec. 2, Ch. 152, L. 2009; amd. Sec. 1, Ch. 270, L. 2009; amd. Sec. 1, Ch. 303, L. 2009; amd. Sec. 2, Ch. 433, L. 2017.

**Compiler's Comments**

*2017 Amendment:* Chapter 433 inserted (10) regarding department of labor and industry rules relating to adoption and automatic updating of commercial drug formularies. Amendment effective July 1, 2017.

**2-4-306. Filing and format — adoption and effective dates — dissemination of emergency rules.** (1) Each agency shall file with the secretary of state a copy of each rule adopted by it or a reference to the rule as contained in the proposal notice. A rule is adopted on the date that the adoption notice is filed with the secretary of state and is effective on the date referred to in subsection (4), except that if the secretary of state requests corrections to the adoption notice, the rule is adopted on the date that the revised notice is filed with the secretary of state.

(2) Pursuant to 2-15-401, the secretary of state may prescribe rules to effectively administer this chapter, including rules regarding the printed or electronic format, style, and arrangement for notices and rules that are filed pursuant to this chapter, and may refuse to accept the filing of any notice or rule that is not in compliance with this chapter and the secretary of state's rules. The secretary of state shall keep and maintain a permanent register of all notices and rules filed, including superseded and repealed rules, that must be open to public inspection and shall provide copies of any notice or rule upon request of any person. Unless otherwise provided by statute, the secretary of state may require the payment of the cost of providing copies.

(3) If the appropriate administrative rule review committee has conducted a poll of the legislature in accordance with 2-4-403, the results of the poll must be published with the rule if the rule is adopted by the agency.

(4) Each rule is effective after publication in the register, as provided in 2-4-312, except that:

(a) if a later date is required by statute or specified in the rule, the later date is the effective date;

(b) subject to applicable constitutional or statutory provisions:

(i) a temporary rule is effective immediately upon filing with the secretary of state or at a stated date following publication in the register; and

(ii) an emergency rule is effective at a stated date following publication in the register or immediately upon filing with the secretary of state if the agency finds that this effective date is necessary because of imminent peril to the public health, safety, or welfare. The agency's finding and a brief statement of reasons for the finding must be filed with the rule. The agency

shall, in addition to the required publication in the register, take appropriate and extraordinary measures to make emergency rules known to each person who may be affected by them.

(c) if, following written administrative rule review committee notification to an agency under 2-4-305(9), the committee meets and under 2-4-406(1) objects to all or some portion of a proposed rule before the proposed rule is adopted, the proposed rule or portion of the proposed rule objected to is not effective until the day after final adjournment of the regular session of the legislature that begins after the notice proposing the rule was published by the secretary of state, unless, following the committee's objection under 2-4-406(1):

(i) the committee withdraws its objection under 2-4-406 before the proposed rule is adopted; or

(ii) the rule or portion of a rule objected to is adopted with changes that in the opinion of a majority of the committee members, as communicated in writing to the committee presiding officer and staff, make it comply with the committee's objection and concerns.

(5) An agency may not enforce, implement, or otherwise treat as effective a rule proposed or adopted by the agency until the effective date of the rule as provided in this section. Nothing in this subsection prohibits an agency from enforcing an established policy or practice of the agency that existed prior to the proposal or adoption of the rule as long as the policy or practice is within the scope of the agency's lawful authority.

(6) This section applies to the department of labor and industry adopting a rule relating to a commercial drug formulary as provided in 39-71-704. This section does not apply to the automatic updating of department of labor and industry rules relating to commercial drug formularies as provided in 39-71-704.

**History:** En. Sec. 5, Ch. 2, Ex. L. 1971; amd. Sec. 10, Ch. 285, L. 1977; amd. Sec. 2, Ch. 561, L. 1977; R.C.M. 1947, 82-4205(part); amd. Sec. 7, Ch. 243, L. 1979; amd. Sec. 12, Ch. 268, L. 1979; amd. Sec. 2, Ch. 261, L. 1987; amd. Sec. 2, Ch. 335, L. 1997; amd. Sec. 5, Ch. 489, L. 1997; amd. Sec. 5, Ch. 19, L. 1999; amd. Sec. 4, Ch. 210, L. 2001; amd. Sec. 1, Ch. 370, L. 2005; amd. Sec. 1, Ch. 87, L. 2007; amd. Sec. 1, Ch. 337, L. 2007; amd. Sec. 2, Ch. 303, L. 2009; amd. Sec. 1, Ch. 489, L. 2009; amd. Sec. 3, Ch. 433, L. 2017.

**Compiler's Comments**

*2017 Amendment:* Chapter 433 inserted (6) regarding department of labor and industry rules relating to adoption and automatic updating of commercial drug formularies. Amendment effective July 1, 2017.

**2-4-307. Omissions from ARM or register.** (1) An agency may adopt by reference any model code, federal agency rule, rule of any agency of this state, or other similar publication if:

(a) the publication of the model code, rule, or other publication would be unduly cumbersome, expensive, or otherwise inexpedient; and

(b) it is reasonable for the agency to adopt the model code, rule, or other publication for the state of Montana.

(2) The model code, rule, or other publication must be adopted by reference in a rule adopted under the rulemaking procedure required by this chapter. The rule must contain a citation to the material adopted by reference and a statement of the general subject matter of the omitted rule and must state where a copy of the omitted material may be obtained. Upon request of the secretary of state, a copy of the omitted material must be filed with the secretary of state.

(3) (a) The model code, rule, or other publication to be adopted by an agency pursuant to subsection (1):

(i) must be in existence at the time that the agency's notice of proposed rulemaking is published in the register;

(ii) must be available to the public for comment, through either publication in the register or publication in an electronic format on the agency's web page, during the time that the rule adopting the model code, rule, or other publication is itself subject to public comment; and

(iii) except as provided in subsection (3)(b), may not be altered between the time of publication of the notice of proposed rulemaking and the publication of the notice of adoption by the agency proposing the rule unless the alteration is required in order to respond to comments in the rulemaking record of the adopting agency.

(b) If the model code, rule, or other publication is altered by the agency between the time of the publication of the notice of proposed rulemaking and the notice of adoption, the part of the model code, rule, or other publication that is altered by the agency is not adopted unless that part is also subject to a separate process of adoption as provided in this section.



(c) If the model code, rule, or other publication is made available on the agency's website, the website may provide either the full text of the model code, rule, or other publication or a link to the source of the official electronic text of the model code, rule, or other publication.

(4) A rule originally adopting by reference any model code or rule provided for in subsection (1) may not adopt any later amendments or editions of the material adopted. Except as provided in subsection (6), each later amendment or edition may be adopted by reference only by following the rulemaking procedure required by this chapter.

(5) If requested by a three-fourths vote of the appropriate administrative rule review committee, an agency shall immediately publish the full or partial text of any pertinent material adopted by reference under this section. The committee may not require the publication of copyrighted material. Publication of the text of a rule previously adopted does not affect the date of adoption of the rule, but publication of the text of a rule before publication of the notice of final adoption must be in the form of and is considered to be a new notice of proposed rulemaking.

(6) Whenever later amendments of federal regulations must be adopted to comply with federal law or to qualify for federal funding, only a notice of incorporation by reference of the later amendments must be filed in the register. This notice must contain the information required by subsection (2) and must state the effective date of the incorporation. The effective date may be no sooner than 30 days after the date upon which the notice is published unless the 30 days causes a delay that jeopardizes compliance with federal law or qualification for federal funding, in which event the effective date may be no sooner than the date of publication. A hearing is not required unless requested under 2-4-315 by either 10% or 25, whichever is less, of the persons who will be directly affected by the incorporation, by a governmental subdivision or agency, or by an association having not less than 25 members who will be directly affected. Further notice of adoption or preparation of a replacement page for the ARM is not required.

(7) If a hearing is requested under subsection (6), the petition for hearing must contain a request for an amendment and may contain suggested language, reasons for an amendment, and any other information pertinent to the subject of the rule.

(8) This section does not apply to the automatic updating of department of labor and industry rules relating to commercial drug formularies as provided in 39-71-704.

**History:** En. Sec. 6, Ch. 2, Ex. L. 1971; amd. Sec. 11, Ch. 285, L. 1977; R.C.M. 1947, 82-4206(3); amd. Sec. 8, Ch. 243, L. 1979; amd. Sec. 1, Ch. 591, L. 1981; amd. Sec. 6, Ch. 19, L. 1999; amd. Sec. 1, Ch. 333, L. 2011; amd. Sec. 4, Ch. 433, L. 2017.

**Compiler's Comments**

**2017 Amendment:** Chapter 433 inserted (8) providing that the section does not apply to the automatic updating of rules relating to commercial drug formularies. Amendment effective July 1, 2017.

**2-4-308. Adjective or interpretive rule — statement of implied authority and legal effect.** (1) Each adjective or interpretive rule or portion of an adjective or interpretive rule to be adopted under implied rulemaking authority must contain a statement in the historical notations of the rule that the rule is advisory only but may be a correct interpretation of the law. The statement must be placed in the ARM when the rule in question is scheduled for reprinting.

(2) The appropriate administrative rule review committee may file with the secretary of state, for publication with any rule or portion of a rule that it considers to be adjective or interpretive, a statement indicating that it is the opinion of the appropriate administrative rule review committee that the rule or portion of a rule is adjective or interpretive and therefore advisory only. If the committee requests the statement to be published for an adopted rule not scheduled for reprinting in the ARM, the cost of publishing the statement in the ARM must be paid by the committee.

**History:** En. Sec. 1, Ch. 637, L. 1983; amd. Sec. 7, Ch. 19, L. 1999.

**2-4-309. Rulemaking authority for laws not yet effective — rule not effective until law effective.** Unless otherwise provided in the statute, an agency may proceed with rulemaking under this chapter after the enactment of a statute to be implemented by rule, but a rule may not become effective prior to the effective date of the statute.

**History:** En. Sec. 1, Ch. 185, L. 2001.

**2-4-310 reserved.**



**2-4-311. Publication and arrangement of ARM.** (1) The secretary of state shall compile, index, arrange, rearrange, correct errors or inconsistencies without changing the meaning, intent, or effect of any rule, and publish all rules filed pursuant to this chapter in the ARM. The secretary of state shall supplement, revise, and publish the ARM or any part of the ARM as often as the secretary of state considers necessary. The secretary of state may include editorial notes, cross-references, and other matter that the secretary of state considers desirable or advantageous. The secretary of state shall publish supplements to the ARM at the times and in the form that the secretary of state considers appropriate.

(2) The secretary of state shall publish the ARM, including supplements or revisions to the ARM, in a printable electronic format and make the electronic version of the ARM freely available through the secretary of state's website.

(3) The ARM must be arranged, indexed, and published or duplicated in a manner that permits separate publication of portions relating to individual agencies. An agency may make arrangements with the secretary of state for the printing or electronic distribution of as many copies of the separate publications as it may require. The secretary of state may charge a fee for any separate printed or electronic publications. The fee must be set and deposited in accordance with 2-15-405 and must be paid by the agency.

**History:** En. Sec. 6, Ch. 2, Ex. L. 1971; amd. Sec. 11, Ch. 285, L. 1977; R.C.M. 1947, 82-4206(part); amd. Sec. 9, Ch. 243, L. 1979; amd. Sec. 8, Ch. 19, L. 1999; amd. Sec. 3, Ch. 396, L. 2001; amd. Sec. 3, Ch. 303, L. 2009; amd. Sec. 1, Ch. 80, L. 2017.

**Compiler's Comments**

*2017 Amendment:* Chapter 80 in (1) in first sentence after "publish" deleted "in the appropriate format"; inserted (2) concerning publication of the ARM; and made minor changes in style. Amendment effective March 20, 2017.

**2-4-312. Publication and arrangement of register.** (1) The secretary of state shall publish in the register all notices, rules, and interpretations filed with the secretary of state at least once a month but not more often than twice a month.

(2) The secretary of state shall publish the register in a printable electronic format and make each issue of the register freely available through the secretary of state's website. The secretary of state shall maintain a permanent archive of the register.

(3) The register must contain three sections, including a rules section, a notice section, and an interpretation section, as follows:

(a) The rules section of the register must contain all rules filed since the compilation and publication of the preceding issue of the register, together with the statements required under 2-4-305(1).

(b) The notice section of the register must contain all rulemaking notices filed with the secretary of state pursuant to 2-4-302 since the compilation and publication of the preceding register.

(c) The interpretation section of the register must contain all opinions of the attorney general and all declaratory rulings of agencies issued since the publication of the preceding register.

(4) Each issue of the register must contain the issue number and date of the register and a table of contents. Each page of the register must contain the issue number and date of the register of which it is a part. The secretary of state may include with the register information to help the user in relating the register to the ARM.

**History:** En. Sec. 6, Ch. 2, Ex. L. 1971; amd. Sec. 11, Ch. 285, L. 1977; R.C.M. 1947, 82-4206(2), (9); amd. Sec. 10, Ch. 243, L. 1979; amd. Sec. 3, Ch. 277, L. 1983; amd. Sec. 1, Ch. 580, L. 1987; amd. Sec. 9, Ch. 19, L. 1999; amd. Sec. 4, Ch. 396, L. 2001; amd. Sec. 3, Ch. 88, L. 2007; amd. Sec. 4, Ch. 21, L. 2009; amd. Sec. 2, Ch. 80, L. 2017.

**Compiler's Comments**

*2017 Amendment:* Chapter 80 substituted current (2) concerning electronic publication of the register for former (2) that read: "(2) The secretary of state shall send the register without charge to each person listed in 2-4-313(1) and to each member of the legislature requesting the register. The secretary of state shall send the register to any other person who pays a subscription fee, which must be established and deposited in accordance with 2-15-405. The register must be sent in electronic format unless a hard copy is requested." Amendment effective March 20, 2017.

**2-4-313. Copies — subscriptions — fees.** (1) The secretary of state may make printed copies, subscriptions, supplements, or revisions to the ARM or the register available to any person for a fee set in accordance with subsection (4). Fees are not refundable.

(2) The secretary of state may charge agencies a filing fee for all material to be published in the ARM or the register.

(3) In addition to the fees authorized by 2-4-311 and other fees authorized by this section, the secretary of state may charge fees for internet or other computer-based services requested by state agencies, groups, or individuals.

(4) The secretary of state shall set and deposit the fees authorized in this section in accordance with 2-15-405.

**History:** En. Sec. 6, Ch. 2, Ex. L. 1971; amd. Sec. 11, Ch. 285, L. 1977; R.C.M. 1947, 82-4206(5) thru (8), (10), (11); amd. Sec. 11, Ch. 243, L. 1979; amd. Sec. 1, Ch. 163, L. 1983; amd. Sec. 3, Ch. 277, L. 1983; amd. Sec. 1, Ch. 397, L. 1985; amd. Sec. 2, Ch. 580, L. 1987; amd. Sec. 1, Ch. 6, Sp. L. January 1992; amd. Sec. 1, Ch. 411, L. 1993; amd. sec. 36, Ch. 308, L. 1995; amd. Sec. 5, Ch. 42, L. 1997; amd. Sec. 10, Ch. 19, L. 1999; amd. Sec. 5, Ch. 396, L. 2001; amd. Sec. 4, Ch. 88, L. 2007; amd. Sec. 4, Ch. 303, L. 2009; amd. Sec. 3, Ch. 80, L. 2017.

**Compiler's Comments**

*2017 Amendment:* Chapter 80 deleted former (1) and (2) that read: "(1) The secretary of state shall distribute copies of the ARM and supplements or revisions to the ARM to the following in an electronic format unless a hard copy is requested:

- (a) attorney general, one copy;
- (b) clerk of United States district court for the district of Montana, one copy;
- (c) clerk of United States court of appeals for the ninth circuit, one copy;
- (d) county commissioners or governing body of each county of this state, for use of county officials and the public, at least one but not more than two copies, which may be maintained in a public library in the county seat or in the county offices as the county commissioners or governing body of the county may determine;
- (e) state law library, one copy;
- (f) state historical society, one copy;
- (g) each unit of the Montana university system, one copy;
- (h) law library of the university of Montana-Missoula, one copy;
- (i) legislative services division, two copies;
- (j) library of congress, one copy;
- (k) state library, one copy.

(2) The secretary of state, each county in the state, and the librarians for the state law library and the university of Montana-Missoula law library shall maintain a complete, current set of the ARM, including supplements or revisions to the ARM. The designated persons shall also maintain the register issues published during the preceding 2 years. The secretary of state shall maintain a permanent set of the registers. An entity required by this section to maintain a copy or set of the ARM and supplements or revisions to it and a copy of the register complies with this section if it provides access to an electronic version of the current ARM and the current year's issues of the register or the current year's issue and register archives for the prescribed period of time"; in (1) after "secretary of state" substituted "may make printed copies, subscriptions, supplements, or revisions to the ARM or the register" for "shall make printed or electronic copies of and subscriptions to the ARM and supplements or revisions to the ARM and the register"; in (3) after "the fees authorized by 2-4-311" deleted "and 2-4-312"; and made minor changes in style. Amendment effective March 20, 2017.

**2-4-314. Biennial review by agencies — recommendations by committee.** (1) Each agency shall at least biennially review its rules to determine if any new rule should be adopted or any existing rule should be modified or repealed.

(2) The committee may recommend to the legislature those modifications, additions, or deletions of agency rulemaking authority which the committee considers necessary.

**History:** En. Sec. 4, Ch. 2, Ex. L. 1971; amd. Sec. 5, Ch. 410, L. 1975; amd. Sec. 1, Ch. 482, L. 1975; amd. Sec. 8, Ch. 285, L. 1977; R.C.M. 1947, 82-4204(6); amd. Sec. 4, Ch. 600, L. 1979; amd. Sec. 3, Ch. 381, L. 1981; amd. Sec. 1, Ch. 63, L. 1983.

**2-4-315. Petition for adoption, amendment, or repeal of rules.** An interested person or, when the legislature is not in session, a member of the legislature on behalf of an interested person may petition an agency requesting the promulgation, amendment, or repeal of a rule. Each agency shall determine and prescribe by rule the form for petitions and the procedure for their submission, consideration, and disposition. Within 60 days after submission of a petition, the agency either shall deny the petition in writing or shall initiate rulemaking proceedings in accordance with 2-4-302 through 2-4-305. A decision to deny a petition or to initiate rulemaking proceedings must be in writing and based on record evidence. The written decision must include the reasons for the decision. Record evidence must include any evidence submitted by the petitioner on behalf of the petition and by the agency and interested persons in response to the petition. An agency may, but is not required to, conduct a hearing or oral presentation on the petition in order to develop a record and record evidence and to allow the petitioner and interested persons to present their views.

**History:** En. Sec. 7, Ch. 2, Ex. L. 1971; amd. Sec. 2, Ch. 236, L. 1974; amd. Sec. 12, Ch. 285, L. 1977; R.C.M. 1947, 82-4207; amd. Sec. 1, Ch. 110, L. 1997.

**2-4-316 through 2-4-320 reserved.**

**2-4-321. Repealed.** Sec. 63, Ch. 16, L. 1991.

History: En. Sec. 1, Ch. 600, L. 1979.

**2-4-322. Repealed.** Sec. 63, Ch. 16, L. 1991.

History: En. Sec. 2, Ch. 600, L. 1979.

**2-4-323. Repealed.** Sec. 63, Ch. 16, L. 1991.

History: En. Sec. 3, Ch. 600, L. 1979.

## Part 4 Legislative Review of Rules

**2-4-401. Repealed.** Sec. 49, Ch. 19, L. 1999.

History: (1)En. 82-4203.4 by Sec. 3, Ch. 410, L. 1975; amd. Sec. 6, Ch. 285, L. 1977; Sec. 82-4203.4, R.C.M. 1947; (2), (3)En. 82-4203.3 by Sec. 2, Ch. 410, L. 1975; amd. Sec. 9, Ch. 103, L. 1977; Sec. 82-4203.3, R.C.M. 1947; R.C.M. 1947, 82-4203.3, 82-4203.4; amd. Sec. 1, Ch. 302, L. 1993; amd. Sec. 7, Ch. 545, L. 1995.

**2-4-402. Powers of committees — duty to review rules.** (1) The administrative rule review committees shall review all proposed rules filed with the secretary of state.

(2) The appropriate administrative rule review committee may:

(a) request and obtain an agency's rulemaking records for the purpose of reviewing compliance with 2-4-305;

(b) prepare written recommendations for the adoption, amendment, or rejection of a rule and submit those recommendations to the department proposing the rule and submit oral or written testimony at a rulemaking hearing;

(c) require that a rulemaking hearing be held in accordance with the provisions of 2-4-302 through 2-4-305;

(d) institute, intervene in, or otherwise participate in proceedings involving this chapter in the state and federal courts and administrative agencies;

(e) review the incidence and conduct of administrative proceedings under this chapter.

History: En. 82-4203.5 by Sec. 4, Ch. 410, L. 1975; amd. Sec. 7, Ch. 285, L. 1977; amd. Sec. 1, Ch. 561, L. 1977; R.C.M. 1947, 82-4203.5(1)(a) thru (1)(e); amd. Sec. 12, Ch. 243, L. 1979; amd. Sec. 11, Ch. 268, L. 1979; amd. Sec. 4, Ch. 381, L. 1981; amd. Sec. 2, Ch. 78, L. 1983; amd. Sec. 1, Ch. 572, L. 1989; amd. Sec. 11, Ch. 19, L. 1999.

**2-4-403. Legislative intent — poll.** (1) If the legislature is not in session, the committee may poll all members of the legislature by mail to determine whether a proposed rule is consistent with the intent of the legislature.

(2) If 20 or more legislators object to a proposed rule, the committee shall poll the members of the legislature.

(3) The poll must include an opportunity for the agency to present a written justification for the proposed rule to the members of the legislature.

History: En. 82-4203.5 by Sec. 4, Ch. 410, L. 1975; amd. Sec. 7, Ch. 285, L. 1977; amd. Sec. 1, Ch. 561, L. 1977; R.C.M. 1947, 82-4203.5(1)(d), (1)(e); amd. Sec. 2, Ch. 87, L. 2007.

**2-4-404. Evidentiary value of legislative poll.** If the appropriate administrative rule review committee has conducted a poll of the legislature in accordance with 2-4-403, the results of the poll must be admissible in any court proceeding involving the validity of the proposed rule or the validity of the adopted rule if the rule was adopted by the agency. If the poll determines that a majority of the members of both houses find that the proposed rule or adopted rule is contrary to the intent of the legislature, the proposed rule or adopted rule must be conclusively presumed to be contrary to the legislative intent in any court proceeding involving its validity.

History: En. Sec. 2, Ch. 561, L. 1977; R.C.M. 1947, 82-4205(3); amd. Sec. 12, Ch. 19, L. 1999; amd. Sec. 3, Ch. 87, L. 2007.

**2-4-405. Economic impact statement.** (1) Upon written request of the appropriate administrative rule review committee based upon the affirmative request of a majority of the members of the committee at an open meeting, an agency shall prepare a statement of the economic impact of the adoption, amendment, or repeal of a rule as proposed. The agency shall also prepare a statement upon receipt by the agency or the committee of a written request for a statement made by at least 15 legislators. If the request is received by the committee, the committee shall give the agency a copy of the request, and if the request is received by

the agency, the agency shall give the committee a copy of the request. As an alternative, the committee may, by contract, prepare the estimate.

(2) Except to the extent that the request expressly waives any one or more of the following, the requested statement must include and the statement prepared by the committee may include:

(a) a description of the classes of persons who will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule;

(b) a description of the probable economic impact of the proposed rule upon affected classes of persons, including but not limited to providers of services under contracts with the state and affected small businesses, and quantifying, to the extent practicable, that impact;

(c) the probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenue;

(d) an analysis comparing the costs and benefits of the proposed rule to the costs and benefits of inaction;

(e) an analysis that determines whether there are less costly or less intrusive methods for achieving the purpose of the proposed rule;

(f) an analysis of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule;

(g) a determination as to whether the proposed rule represents an efficient allocation of public and private resources; and

(h) a quantification or description of the data upon which subsections (2)(a) through (2)(g) are based and an explanation of how the data was gathered.

(3) A request to an agency for a statement or a decision to contract for the preparation of a statement must be made prior to the final agency action on the rule. The statement must be filed with the appropriate administrative rule review committee within 3 months of the request or decision. A request or decision for an economic impact statement may be withdrawn at any time.

(4) Upon receipt of an impact statement, the committee shall determine the sufficiency of the statement. If the committee determines that the statement is insufficient, the committee may return it to the agency or other person who prepared the statement and request that corrections or amendments be made. If the committee determines that the statement is sufficient, a notice, including a summary of the statement and indicating where a copy of the statement may be obtained, must be filed with the secretary of state for publication in the register by the agency preparing the statement or by the committee, if the statement is prepared under contract by the committee, and must be mailed to persons who have registered advance notice of the agency's rulemaking proceedings.

(5) This section does not apply to rulemaking pursuant to 2-4-303.

(6) The final adoption, amendment, or repeal of a rule is not subject to challenge in any court as a result of the inaccuracy or inadequacy of a statement required under this section.

(7) An environmental impact statement prepared pursuant to 75-1-201 that includes an analysis of the factors listed in this section satisfies the provisions of this section.

**History:** En. Sec. 1, Ch. 480, L. 1979; amd. Sec. 1, Ch. 665, L. 1983; (6)En. Sec. 2, Ch. 665, L. 1983; amd. Sec. 13, Ch. 19, L. 1999; amd. Sec. 1, Ch. 46, L. 1999; amd. Sec. 6, Ch. 339, L. 1999; amd. Sec. 2, Ch. 265, L. 2005; amd. Sec. 1, Ch. 189, L. 2007.

**2-4-406. Committee objection to violation of authority for rule — effect.** (1) If the appropriate administrative rule review committee objects to all or some portion of a proposed or adopted rule because the committee considers it not to have been proposed or adopted in substantial compliance with 2-4-302, 2-4-303, and 2-4-305, the committee shall send a written objection to the agency that promulgated the rule. The objection must contain a concise statement of the committee's reasons for its action.

(2) Within 14 days after the mailing of a committee objection to a rule, the agency promulgating the rule shall respond in writing to the committee. After receipt of the response, the committee may withdraw or modify its objection.

(3) If the committee fails to withdraw or substantially modify its objection to a rule, it may vote to send the objection to the secretary of state, who shall, upon receipt of the objection,

publish the objection in the register adjacent to any notice of adoption of the rule and in the ARM adjacent to the rule, provided an agency response must also be published if requested by the agency. Costs of publication of the objection and the agency response must be paid by the committee.

(4) If an objection to all or a portion of a rule has been published pursuant to subsection (3), the agency bears the burden, in any action challenging the legality of the rule or portion of a rule objected to by the committee, of proving that the rule or portion of the rule objected to was adopted in substantial compliance with 2-4-302, 2-4-303, and 2-4-305. If a rule is invalidated by court judgment because the agency failed to meet its burden of proof imposed by this subsection and the court finds that the rule was adopted in arbitrary and capricious disregard for the purposes of the authorizing statute, the court may award costs and reasonable attorney fees against the agency.

**History:** En. Sec. 1, Ch. 589, L. 1983; amd. Sec. 14, Ch. 19, L. 1999.

#### **2-4-407 through 2-4-409 reserved.**

**2-4-410. Report of litigation.** Each agency shall report to the appropriate administrative rule review committee any judicial proceedings in which the construction or interpretation of any provision of this chapter is in issue and may report to the committee any proceeding in which the construction or interpretation of any rule of the agency is in issue. Upon request of the committee, copies of documents filed in any proceeding in which the construction or interpretation of either this chapter or an agency rule is in issue must be made available to the committee by the agency involved.

**History:** En. Sec. 6, Ch. 381, L. 1981; amd. Sec. 15, Ch. 19, L. 1999.

**2-4-411. Report.** The committee may recommend amendments to the Montana Administrative Procedure Act or the repeal, amendment, or adoption of a rule as provided in 2-4-412 and make other recommendations and reports as it considers advisable.

**History:** En. 82-4203.5 by Sec. 4, Ch. 410, L. 1975; amd. Sec. 7, Ch. 285, L. 1977; amd. Sec. 1, Ch. 561, L. 1977; R.C.M. 1947, 82-4203.5(2); amd. Sec. 3, Ch. 112, L. 1991; amd. Sec. 3, Ch. 349, L. 1993.

**2-4-412. Legislative review of rules — effect of failure to object.** (1) The legislature may, by bill, repeal any rule in the ARM. If a rule is repealed, the legislature shall in the bill state its objections to the repealed rule. If an agency adopts a new rule to replace the repealed rule, the agency shall adopt the new rule in accordance with the objections stated by the legislature in the bill. If the legislature does not repeal a rule filed with it before the adjournment of that regular session, the rule remains valid.

(2) The legislature may also by joint resolution request or advise or by bill direct the adoption, amendment, or repeal of any rule. If a change in a rule or the adoption of an additional rule is advised, requested, or directed to be made, the legislature shall in the joint resolution or bill state the nature of the change or the additional rule to be made and its reasons for the change or addition. The agency shall, in the manner provided in the Montana Administrative Procedure Act, adopt a new rule in accordance with the legislative direction in a bill.

(3) Rules and changes in rules made by agencies under subsection (2) must conform and be pursuant to statutory authority.

(4) Failure of the legislature or the appropriate administrative rule review committee to object in any manner to the adoption, amendment, or repeal of a rule is inadmissible in the courts of this state to prove the validity of any rule.

**History:** En. 82-4203.1 by Sec. 1, Ch. 239, L. 1973; amd. Sec. 1, Ch. 236, L. 1974; amd. Sec. 4, Ch. 285, L. 1977; R.C.M. 1947, 82-4203.1; amd. Sec. 5, Ch. 381, L. 1981; amd. Sec. 1, Ch. 164, L. 1983; amd. Sec. 16, Ch. 19, L. 1999.

## **Part 5**

### **Judicial Notice and Declaratory Rulings**

**2-4-501. Declaratory rulings by agencies.** Each agency shall provide by rule for the filing and prompt disposition of petitions for declaratory rulings as to the applicability of any statutory provision or of any rule or order of the agency. A copy of a declaratory ruling must be filed with the secretary of state for publication in the register. A declaratory ruling or the refusal



to issue such a ruling shall be subject to judicial review in the same manner as decisions or orders in contested cases.

**History:** En. Sec. 18, Ch. 2, Ex. L. 1971; R.C.M. 1947, 82-4218; amd. Sec. 13, Ch. 243, L. 1979.

**2-4-502 through 2-4-504 reserved.**

**2-4-505. Judicial notice of rules.** The courts shall take judicial notice of any rule filed and published under the provisions of this chapter.

**History:** En. Sec. 8, Ch. 2, Ex. L. 1971; amd. Sec. 13, Ch. 285, L. 1977; R.C.M. 1947, 82-4208.

**2-4-506. Declaratory judgments on validity or application of rules.** (1) A rule may be declared invalid or inapplicable in an action for declaratory judgment if it is found that the rule or its threatened application interferes with or impairs or threatens to interfere with or impair the legal rights or privileges of the plaintiff.

(2) A rule may also be declared invalid in the action on the grounds that the rule was adopted with an arbitrary or capricious disregard for the purpose of the authorizing statute as evidenced by documented legislative intent.

(3) A declaratory judgment may be rendered whether or not the plaintiff has requested the agency to pass upon the validity or applicability of the rule in question.

(4) The action may be brought in the district court for the county in which the plaintiff resides or has a principal place of business or in which the agency maintains its principal office. The agency must be made a party to the action.

**History:** En. Sec. 19, Ch. 2, Ex. L. 1971; amd. Sec. 5, Ch. 560, L. 1977; R.C.M. 1947, 82-4219; amd. Sec. 14, Ch. 243, L. 1979; amd. Sec. 2, Ch. 589, L. 1983; amd. Sec. 42, Ch. 61, L. 2007.

## **Part 6 Contested Cases**

**2-4-601. Notice.** (1) In a contested case, all parties must be afforded an opportunity for hearing after reasonable notice.

(2) The notice must include:

(a) a statement of the time, place, and nature of the hearing;

(b) a statement of the legal authority and jurisdiction under which the hearing is to be held;

(c) a reference to the particular sections of the statutes and rules involved;

(d) a short and plain statement of the matters asserted. If the agency or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon application, a more definite and detailed statement must be furnished.

(e) a statement that a formal proceeding may be waived pursuant to 2-4-603.

**History:** En. Sec. 9, Ch. 2, Ex. L. 1971; R.C.M. 1947, 82-4209(1), (2); amd. Sec. 1, Ch. 277, L. 1979.

**2-4-602. Discovery.** Each agency shall provide in its rules of practice for discovery prior to a contested case hearing.

**History:** En. Sec. 19, Ch. 285, L. 1977; R.C.M. 1947, 82-4220(3).

**2-4-603. Informal disposition and hearings — waiver of administrative proceedings — recording and use of settlement proceeds.** (1) (a) Unless precluded by law, informal disposition may be made of any contested case by stipulation, agreed settlement, consent order, or default. A stipulation, agreed settlement, consent order, or default that disposes of a contested case must be in writing.

(b) Unless otherwise provided by law, if a stipulation, agreed settlement, consent order, or default results in a monetary settlement involving an agency or the state, settlement proceeds must be deposited in the account or fund in which the penalty, fine, or other payment would be deposited if the contested case had proceeded to final decision. If there is no account or fund designated for the fine, penalty, or payment in the type of action, then the settlement must be deposited in the general fund.

(c) If a stipulation, agreed settlement, consent order, or default results in a nonmonetary settlement involving an agency or the state, settlement proceeds, whether received by the state or a third party, must be recorded in a nonstate, nonfederal state special revenue account established pursuant to 17-2-102(1)(b)(i) for the purpose of recording nonmonetary settlements.

(2) Except as otherwise provided, parties to a contested case may jointly waive in writing a formal proceeding under this part. The parties may then use informal proceedings under 2-4-604. Parties to contested case proceedings held under Title 37 or under any other provision relating to licensure to pursue a profession or occupation may not waive formal proceedings.

(3) If a contested case does not involve a disputed issue of material fact, parties may jointly stipulate in writing to waive contested case proceedings and may directly petition the district court for judicial review pursuant to 2-4-702. The petition must contain an agreed statement of facts and a statement of the legal issues or contentions of the parties upon which the court, together with the additions it may consider necessary to fully present the issues, may make its decision.

**History:** En. Sec. 9, Ch. 2, Ex. L. 1971; R.C.M. 1947, 82-4209(4); amd. Sec. 2, Ch. 277, L. 1979; amd. Sec. 1, Ch. 451, L. 1999; amd. Sec. 1, Ch. 305, L. 2001; amd. Sec. 1, Ch. 347, L. 2005.

**2-4-604. Informal proceedings.** (1) In proceedings under this section, the agency shall, in accordance with procedures adopted under 2-4-201:

(a) give affected persons or parties or their counsel an opportunity, at a convenient time and place, to present to the agency or hearing examiner:

(i) written or oral evidence in opposition to the agency's action or refusal to act;

(ii) a written statement challenging the grounds upon which the agency has chosen to justify its action or inaction; or

(iii) other written or oral evidence relating to the contested case;

(b) if the objections of the persons or parties are overruled, provide a written explanation within 7 days.

(2) The record must consist of:

(a) the notice and summary of grounds of the opposition;

(b) evidence offered or considered;

(c) any objections and rulings on the objections;

(d) all matters placed on the record after ex parte communication pursuant to 2-4-613;

(e) a recording of any hearing held, together with a statement of the substance of the evidence received or considered, the written or oral statements of the parties or other persons, and the proceedings. A party may object in writing to the statement or may order at that party's cost a transcription of the recording, or both. Objections become a part of the record.

(3) Agencies shall give effect to the rules of privilege recognized by law.

(4) In agency proceedings under this section, irrelevant, immaterial, or unduly repetitious evidence must be excluded but all other evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs is admissible, whether or not the evidence is admissible in a trial in the courts of Montana. Any part of the evidence may be received in written form, and all testimony of parties and witnesses must be made under oath. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but it is not sufficient in itself to support a finding unless it is admissible over objection in civil actions.

(5) A party may petition for review of an informal agency decision pursuant to part 7 of this chapter.

**History:** En. Sec. 3, Ch. 277, L. 1979; amd. Sec. 43, Ch. 61, L. 2007.

**2-4-605 through 2-4-610 reserved.**

**2-4-611. Hearing examiners — legal services unit — conduct of hearings — disqualification of hearing examiners and agency members.** (1) An agency may appoint hearing examiners for the conduct of hearings in contested cases. A hearing examiner must be assigned with due regard to the expertise required for the particular matter.

(2) An agency may elect to request a hearing examiner from an agency legal assistance program, if any, within the attorney general's office or from another agency. If the request is honored, the time, date, and place of the hearing must be set by the agency, with the concurrence of the legal assistance program or the other agency.

(3) Agency members or hearing examiners presiding over hearings may administer oaths or affirmations; issue subpoenas pursuant to 2-4-104; provide for the taking of testimony by deposition; regulate the course of hearings, including setting the time and place for continued

hearings and fixing the time for filing of briefs or other documents; and direct parties to appear and confer to consider simplification of the issues by consent of the parties.

(4) On the filing by a party, hearing examiner, or agency member in good faith of a timely and sufficient affidavit of personal bias, lack of independence, disqualification by law, or other disqualification of a hearing examiner or agency member, the agency shall determine the matter as a part of the record and decision in the case. The agency may disqualify the hearing examiner or agency member and request another hearing examiner pursuant to subsection (2) or assign another hearing examiner from within the agency. The affidavit must state the facts and the reasons for the belief that the hearing examiner should be disqualified and must be filed not less than 10 days before the original date set for the hearing.

**History:** En. Sec. 11, Ch. 2, Ex. L. 1971; R.C.M. 1947, 82-4211(part); amd. Sec. 1, Ch. 467, L. 1979; amd. Sec. 2, Ch. 3, L. 1985.

**2-4-612. Hearing — rules of evidence, cross-examination, judicial notice.**

(1) Opportunity shall be afforded all parties to respond and present evidence and argument on all issues involved.

(2) Except as otherwise provided by statute relating directly to an agency, agencies shall be bound by common law and statutory rules of evidence. Objections to evidentiary offers may be made and shall be noted in the record. When a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written form.

(3) Documentary evidence may be received in the form of copies or excerpts if the original is not readily available. Upon request, parties shall be given an opportunity to compare the copy with the original.

(4) All testimony shall be given under oath or affirmation.

(5) A party shall have the right to conduct cross-examinations required for a full and true disclosure of facts, including the right to cross-examine the author of any document prepared by or on behalf of or for the use of the agency and offered in evidence.

(6) Notice may be taken of judicially cognizable facts. In addition, notice may be taken of generally recognized technical or scientific facts within the agency's specialized knowledge. Parties shall be notified either before or during the hearing or by reference in preliminary reports or otherwise of the material noticed, including any staff memoranda or data. They shall be afforded an opportunity to contest the material so noticed.

(7) The agency's experience, technical competence, and specialized knowledge may be utilized in the evaluation of evidence.

**History:** En. Secs. 9, 10, 11, Ch. 2, Ex. L. 1971; R.C.M. 1947, 82-4209(3), 82-4210, 82-4211(part).

**2-4-613. Ex parte consultations.** Unless required for disposition of ex parte matters authorized by law, the person or persons who are charged with the duty of rendering a decision or to make findings of fact and conclusions of law in a contested case, after issuance of notice of hearing, may not communicate with any party or a party's representative in connection with any issue of fact or law in the case except upon notice and opportunity for all parties to participate.

**History:** En. Sec. 14, Ch. 2, Ex. L. 1971; R.C.M. 1947, 82-4214; amd. Sec. 44, Ch. 61, L. 2007.

**2-4-614. Record — transcription.** (1) The record in a contested case must include:

- (a) all pleadings, motions, and intermediate rulings;
- (b) all evidence received or considered, including a stenographic record of oral proceedings when demanded by a party;
- (c) a statement of matters officially noticed;
- (d) questions and offers of proof, objections, and rulings on those objections;
- (e) proposed findings and exceptions;
- (f) any decision, opinion, or report by the hearings examiner or agency member presiding at the hearing, which must be in writing;
- (g) all staff memoranda or data submitted to the hearings examiner or members of the agency as evidence in connection with their consideration of the case.

(2) The stenographic record of oral proceedings or any part of the stenographic record must be transcribed on request of any party. Unless otherwise provided by statute, the cost of the transcription must be paid by the requesting party.

**History:** En. Sec. 9, Ch. 2, Ex. L. 1971; R.C.M. 1947, 82-4209(5), (6); amd. Sec. 2, Ch. 347, L. 2005.

**2-4-615 through 2-4-620 reserved.**

**2-4-621. When absent members render decision — proposal for decision and opportunity to submit findings and conclusions — modification by agency.** (1) When in a contested case a majority of the officials of the agency who are to render the final decision have not heard the case, the decision, if adverse to a party to the proceeding other than the agency itself, may not be made until a proposal for decision is served upon the parties and an opportunity is afforded to each party adversely affected to file exceptions and present briefs and oral argument to the officials who are to render the decision.

(2) The proposal for decision must contain a statement of the reasons for the decision and of each issue of fact or law necessary to the proposed decision and must be prepared by the person who conducted the hearing unless that person becomes unavailable to the agency.

(3) The agency may adopt the proposal for decision as the agency's final order. The agency in its final order may reject or modify the conclusions of law and interpretation of administrative rules in the proposal for decision but may not reject or modify the findings of fact unless the agency first determines from a review of the complete record and states with particularity in the order that the findings of fact were not based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with essential requirements of law. The agency may accept or reduce the recommended penalty in a proposal for decision but may not increase it without a review of the complete record.

(4) A hearings officer who is a member of an agency adjudicative body may participate in the formulation of the agency's final order, provided that the hearings officer has completed all duties as the hearings officer.

**History:** En. Sec. 12, Ch. 2, Ex. L. 1971; amd. Sec. 14, Ch. 285, L. 1977; R.C.M. 1947, 82-4212(part); amd. Sec. 4, Ch. 277, L. 1979; amd. Sec. 45, Ch. 61, L. 2007.

**2-4-622. When hearings officer unavailable for decision.** (1) If the person who conducted the hearing becomes unavailable to the agency, proposed findings of fact may be prepared by a person who has read the record only if the demeanor of witnesses is considered immaterial by all parties.

(2) The parties may waive compliance with 2-4-621 and this section by written stipulation.

**History:** En. Sec. 12, Ch. 2, Ex. L. 1971; amd. Sec. 14, Ch. 285, L. 1977; R.C.M. 1947, 82-4212(part); amd. Sec. 6, Ch. 42, L. 1997.

**2-4-623. Final orders — notification — availability.** (1) (a) A final decision or order adverse to a party in a contested case must be in writing. A final decision must include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, must be accompanied by a concise and explicit statement of the underlying facts supporting the findings. Except as provided in 75-2-213 and 75-20-223, a final decision must be issued within 90 days after a contested case is considered to be submitted for a final decision unless, for good cause shown, the period is extended for an additional time not to exceed 30 days.

(b) If an agency intends to issue a final written decision in a contested case that grants or denies relief and the relief that is granted or denied differs materially from a final agency decision that was orally announced on the record, the agency may not issue the final written decision without first providing notice to the parties and an opportunity to be heard before the agency.

(2) Findings of fact must be based exclusively on the evidence and on matters officially noticed.

(3) Each conclusion of law must be supported by authority or by a reasoned opinion.

(4) If, in accordance with agency rules, a party submitted proposed findings of fact, the decision must include a ruling upon each proposed finding.

(5) Parties must be notified by mail of any decision or order. Upon request, a copy of the decision or order must be delivered or mailed in a timely manner to each party and to each party's attorney of record.

(6) Each agency shall index and make available for public inspection all final decisions and orders, including declaratory rulings under 2-4-501. An agency decision or order is not valid or effective against any person or party, and it may not be invoked by the agency for any purpose until it has been made available for public inspection as required in this section. This provision

is not applicable in favor of any person or party who has actual knowledge of the decision or order or when a state statute or federal statute or regulation prohibits public disclosure of the contents of a decision or order.

**History:** (1), (3) thru (6) En. Sec. 13, Ch. 2, Ex. L. 1971; amd. Sec. 15, Ch. 285, L. 1977; Sec. 82-4213, R.C.M. 1947; (2) En. Sec. 9, Ch. 2, Ex. L. 1971; Sec. 82-4209, R.C.M. 1947; R.C.M. 1947, 82-4209(7), 82-4213; amd. Sec. 3, Ch. 347, L. 2005; amd. Sec. 1, Ch. 571, L. 2005; amd. Sec. 2, Ch. 445, L. 2009.

**2-4-624 through 2-4-630 reserved.**

**2-4-631. Licenses.** (1) When the grant, denial, renewal, revocation, suspension, annulment, withdrawal, limitation, transfer, or amendment of a license is required by law to be preceded by notice and opportunity for hearing, the provisions of this chapter concerning contested cases apply.

(2) When a licensee has made timely and sufficient application for the renewal of a license or a new license with reference to any activity of a continuing nature, the existing license does not expire until the application has been finally determined by the agency and, in case the application is denied or the terms of the new license limited, until the last day for seeking review of the agency order or a later date fixed by order of the reviewing court.

(3) Whenever notice is required, no revocation, suspension, annulment, withdrawal, or amendment of any license is lawful unless the agency gave notice by mail to the licensee of facts or conduct which warrant the intended action. If the agency finds that public health, safety, or welfare imperatively requires emergency action and incorporates a finding to that effect in its order, summary suspension of a license may be ordered pending proceedings for revocation or other action. These proceedings shall be promptly instituted and determined.

**History:** En. Sec. 15, Ch. 2, Ex. L. 1971; amd. Sec. 16, Ch. 285, L. 1977; R.C.M. 1947, 82-4215; amd. Sec. 1, Ch. 465, L. 1979.

## **Part 7**

### **Judicial Review of Contested Cases**

**2-4-701. Immediate review of agency action.** A preliminary, procedural, or intermediate agency action or ruling is immediately reviewable if review of the final agency decision would not provide an adequate remedy.

**History:** En. Sec. 16, Ch. 2, Ex. L. 1971; amd. Sec. 17, Ch. 285, L. 1977; R.C.M. 1947, 82-4216(part).

**2-4-702. (Temporary) Initiating judicial review of contested cases.** (1) (a) Except as provided in 75-2-213 and 75-20-223, a person who has exhausted all administrative remedies available within the agency and who is aggrieved by a final written decision in a contested case is entitled to judicial review under this chapter. This section does not limit use of or the scope of judicial review available under other means of review, redress, relief, or trial de novo provided by statute.

(b) A party who proceeds before an agency under the terms of a particular statute may not be precluded from questioning the validity of that statute on judicial review, but the party may not raise any other question not raised before the agency unless it is shown to the satisfaction of the court that there was good cause for failure to raise the question before the agency.

(2) (a) Except as provided in 75-2-211, 75-2-213, and subsections (2)(c) and (2)(e) of this section, proceedings for review must be instituted by filing a petition in district court within 30 days after service of the final written decision of the agency or, if a rehearing is requested, within 30 days after the written decision is rendered. Except as otherwise provided by statute or subsection (2)(d), the petition must be filed in the district court for the county where the petitioner resides or has the petitioner's principal place of business or where the agency maintains its principal office. Copies of the petition must be promptly served upon the agency and all parties of record.

(b) The petition must include a concise statement of the facts upon which jurisdiction and venue are based, a statement of the manner in which the petitioner is aggrieved, and the ground or grounds specified in 2-4-704(2) upon which the petitioner contends to be entitled to relief. The petition must demand the relief to which the petitioner believes the petitioner is entitled, and the demand for relief may be in the alternative.



(c) If a petition for review is filed pursuant to 33-16-1012(2)(c), the workers' compensation court, rather than the district court, has jurisdiction and the provisions of this part apply to the workers' compensation court in the same manner as the provisions of this part apply to the district court.

(d) If a petition for review is filed challenging a licensing or permitting decision made pursuant to Title 75 or Title 82, the petition for review must be filed in the county where the facility is located or proposed to be located or where the action is proposed to occur.

(e) (i) A party who is aggrieved by a final decision on an application for a permit or change in appropriation right filed under Title 85, chapter 2, part 3, may petition the district court or the water court for judicial review of the decision. If a petition for judicial review is filed in the water court, the water court rather than the district court has jurisdiction and the provisions of this part apply to the water court in the same manner as they apply to the district court. The time for filing a petition is the same as provided in subsection (2)(a).

(ii) If more than one party is aggrieved by a final decision on an application for a permit or change in appropriation right filed under Title 85, chapter 2, part 3, the district court where the appropriation right is located has jurisdiction. If more than one aggrieved party files a petition but no aggrieved party files a petition in the district court where the appropriation right is located, the first judicial district, Lewis and Clark County, has jurisdiction.

(3) Unless otherwise provided by statute, the filing of the petition may not stay enforcement of the agency's decision. The agency may grant or the reviewing court may order a stay upon terms that it considers proper, following notice to the affected parties and an opportunity for hearing. A stay may be issued without notice only if the provisions of 27-19-315 through 27-19-317 are met.

(4) Within 30 days after the service of the petition or within further time allowed by the court, the agency shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding under review. By stipulation of all parties to the review proceedings, the record may be shortened. A party unreasonably refusing to stipulate to limit the record may be required by the court to pay the additional costs. The court may require or permit subsequent corrections or additions to the record. (*Terminates September 30, 2025—sec. 6, Ch. 126, L. 2017.*)

**2-4-702. (Effective October 1, 2025) Initiating judicial review of contested cases.** (1) (a) Except as provided in 75-2-213 and 75-20-223, a person who has exhausted all administrative remedies available within the agency and who is aggrieved by a final written decision in a contested case is entitled to judicial review under this chapter. This section does not limit use of or the scope of judicial review available under other means of review, redress, relief, or trial de novo provided by statute.

(b) A party who proceeds before an agency under the terms of a particular statute may not be precluded from questioning the validity of that statute on judicial review, but the party may not raise any other question not raised before the agency unless it is shown to the satisfaction of the court that there was good cause for failure to raise the question before the agency.

(2) (a) Except as provided in 75-2-211, 75-2-213, and subsection (2)(c) of this section, proceedings for review must be instituted by filing a petition in district court within 30 days after service of the final written decision of the agency or, if a rehearing is requested, within 30 days after the written decision is rendered. Except as otherwise provided by statute or subsection (2)(d), the petition must be filed in the district court for the county where the petitioner resides or has the petitioner's principal place of business or where the agency maintains its principal office. Copies of the petition must be promptly served upon the agency and all parties of record.

(b) The petition must include a concise statement of the facts upon which jurisdiction and venue are based, a statement of the manner in which the petitioner is aggrieved, and the ground or grounds specified in 2-4-704(2) upon which the petitioner contends to be entitled to relief. The petition must demand the relief to which the petitioner believes the petitioner is entitled, and the demand for relief may be in the alternative.

(c) If a petition for review is filed pursuant to 33-16-1012(2)(c), the workers' compensation court, rather than the district court, has jurisdiction and the provisions of this part apply to the workers' compensation court in the same manner as the provisions of this part apply to the district court.

(d) If a petition for review is filed challenging a licensing or permitting decision made pursuant to Title 75 or Title 82, the petition for review must be filed in the county where the facility is located or proposed to be located or where the action is proposed to occur.

(3) Unless otherwise provided by statute, the filing of the petition may not stay enforcement of the agency's decision. The agency may grant or the reviewing court may order a stay upon terms that it considers proper, following notice to the affected parties and an opportunity for hearing. A stay may be issued without notice only if the provisions of 27-19-315 through 27-19-317 are met.

(4) Within 30 days after the service of the petition or within further time allowed by the court, the agency shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding under review. By stipulation of all parties to the review proceedings, the record may be shortened. A party unreasonably refusing to stipulate to limit the record may be required by the court to pay the additional costs. The court may require or permit subsequent corrections or additions to the record.

**History:** En. Sec. 16, Ch. 2, Ex. L. 1971; amd. Sec. 17, Ch. 285, L. 1977; R.C.M. 1947, 82-4216(part); amd. Sec. 1, Ch. 520, L. 1985; amd. Sec. 1, Ch. 290, L. 1995; amd. Sec. 1, Ch. 361, L. 2003; amd. Sec. 4, Ch. 347, L. 2005; amd. Sec. 3, Ch. 445, L. 2009; amd. Sec. 1, Ch. 126, L. 2017.

**Compiler's Comments**

*2017 Amendment:* Chapter 126 in (2)(a) after "75-2-213, and" substituted "subsections (2)(c) and (2)(e)" for "subsection (2)(c)"; inserted (2)(e) regarding petition for review of a final decision in district court or water court and filing in a certain district court when more than one party is aggrieved by a final decision. Amendment effective October 1, 2017, and terminates September 30, 2025.

*Applicability:* Section 5, Ch. 126, L. 2017, provided: "[This act] applies to final decisions on an application for a permit or change in appropriation right issued after October 1, 2017."

*Termination:* Section 6(2), Ch. 126, L. 2017, provided: "Petitions filed on or before September 30, 2025, may proceed after the termination of [this act] and are not affected by this section."

**2-4-703. Receipt of additional evidence.** If, before the date set for hearing, application is made to the court for leave to present additional evidence and it is shown to the satisfaction of the court that the additional evidence is material and that there were good reasons for failure to present it in the proceeding before the agency, the court may order that the additional evidence be taken before the agency upon conditions determined by the court. The agency may modify its findings and decision by reason of the additional evidence and shall file that evidence and any modifications, new findings, or decisions with the reviewing court.

**History:** En. Sec. 16, Ch. 2, Ex. L. 1971; amd. Sec. 17, Ch. 285, L. 1977; R.C.M. 1947, 82-4216(5).

**2-4-704. Standards of review.** (1) The review must be conducted by the court without a jury and must be confined to the record. In cases of alleged irregularities in procedure before the agency not shown in the record, proof of the irregularities may be taken in the court. The court, upon request, shall hear oral argument and receive written briefs.

(2) The court may not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because:

- (a) the administrative findings, inferences, conclusions, or decisions are:
  - (i) in violation of constitutional or statutory provisions;
  - (ii) in excess of the statutory authority of the agency;
  - (iii) made upon unlawful procedure;
  - (iv) affected by other error of law;
  - (v) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record;
  - (vi) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or
- (b) findings of fact, upon issues essential to the decision, were not made although requested.

(3) If a petition for review is filed challenging a licensing or permitting decision made pursuant to Title 75 or Title 82 on the grounds of unconstitutionality, as provided in subsection (2)(a)(i), the petitioner shall first establish the unconstitutionality of the underlying statute.

**History:** En. Sec. 16, Ch. 2, Ex. L. 1971; amd. Sec. 17, Ch. 285, L. 1977; R.C.M. 1947, 82-4216(6), (7); amd. Sec. 2, Ch. 83, L. 1989; amd. Sec. 3, Ch. 361, L. 2003.

**2-4-705 through 2-4-710 reserved.**

**2-4-711. Appeals — staying agency decision.** An aggrieved party may obtain review of a final judgment of a district court under this part by appeal to the supreme court within 60 days after entry of judgment. Such appeal shall be taken in the manner provided by law for appeals from district courts in civil cases. Unless otherwise provided by statute or unless the agency has granted a stay through the completion of the judicial review process:

(1) if appeal is taken from a judgment of the district court affirming an agency decision, the agency decision shall not be stayed except upon order of the supreme court; except that, in cases where a stay is in effect at the time of the filing of notice of appeal, the stay shall be continued by operation of law for 20 days from the date of filing of the notice;

(2) if appeal is taken from a judgment of the district court reversing or modifying an agency decision, the agency decision shall be stayed pending final determination of the appeal unless the supreme court orders otherwise.

**History:** En. Sec. 17, Ch. 2, Ex. L. 1971; amd. Sec. 18, Ch. 285, L. 1977; R.C.M. 1947, 82-4217.

## CHAPTER 5 MONTANA NEGOTIATED RULEMAKING ACT

### Part 1 General Provisions

**2-5-101. Short title.** This part may be cited as the “Montana Negotiated Rulemaking Act”.

**History:** En. Sec. 1, Ch. 400, L. 1993.

**2-5-102. Purpose.** The purpose of this part is to establish a framework for the conduct of negotiated rulemaking consistent with the Montana Administrative Procedure Act and the constitutional right of Montanans to participate in the operation of governmental agencies and to encourage agencies to use negotiated rulemaking when it enhances the rulemaking process. As authorized by 2-4-304, it is the intent of the legislature that state agencies, whenever appropriate, use the negotiated rulemaking process to resolve controversial issues prior to the commencement of the formal rulemaking process. However, negotiated rulemaking is not a substitute for the public notification and participation requirements of the Montana Administrative Procedure Act, and a consensus agreement by a negotiated rulemaking committee may be modified by an agency as a result of the subsequent rulemaking process. This part may not be construed as an attempt to limit innovation and experimentation with the negotiated rulemaking process.

**History:** En. Sec. 2, Ch. 400, L. 1993.

**2-5-103. Definitions.** As used in this part, the following definitions apply:

(1) “Agency” means any board, bureau, commission, department, authority, or officer of the executive branch of state government authorized or required by law to make rules.

(2) “Consensus” means unanimous concurrence among the interests represented on a negotiated rulemaking committee established under 2-5-106 unless the committee agrees upon another specified definition.

(3) “Convener” means a person who impartially assists an agency in determining whether establishment of a negotiated rulemaking committee is feasible and appropriate for a particular rulemaking procedure.

(4) “Facilitator” means a person who impartially aids in the discussions and negotiations among the members of a negotiated rulemaking committee to develop a proposed rule. A facilitator does not have decisionmaking authority.

(5) “Interest” means, with respect to an issue or matter, multiple parties that have a similar point of view or that are likely to be affected in a similar manner.

(6) “Negotiated rulemaking” means rulemaking through the use of a negotiated rulemaking committee.

(7) “Negotiated rulemaking committee” or “committee” means an advisory committee established under 2-5-106 and authorized under 2-4-304 to consider and discuss issues for the purpose of reaching a consensus in the development of a proposed rule.

(8) “Person” means an individual, partnership, corporation, association, governmental subdivision, agency, or public or private organization of any character.

(9) “Rule” means an 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 an 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;

(b) formal opinions of the attorney general and declaratory rulings issued pursuant to 2-4-501;

(c) rules relating to the use of public works, facilities, streets, and highways when the substance of the rules is indicated to the public by means of signs or signals;

(d) rules implementing the state personnel classification plan, the state wage and salary plan, or the statewide accounting, budgeting, and human resource system;

(e) uniform rules adopted pursuant to an interstate compact, except that the rules must be filed in accordance with 2-4-306 and must be published in the Administrative Rules of Montana.

**History:** En. Sec. 3, Ch. 400, L. 1993; amd. Sec. 2, Ch. 2, L. 2009.

**2-5-104. Determination of need for negotiated rulemaking committee.** (1) An agency may establish a negotiated rulemaking committee to negotiate and develop a proposed rule if the agency director determines that the use of the negotiated rulemaking procedure is in the public interest. In making that determination, the agency director shall consider whether:

(a) there is a need for a rule;

(b) there are a limited number of identifiable interests that will be significantly affected by the rule;

(c) there is a reasonable likelihood that a committee can be convened with a balanced representation of persons who:

(i) can adequately represent the interests identified under subsection (1)(b); and

(ii) are willing to negotiate in good faith to reach a consensus on the proposed rule;

(d) there is a reasonable likelihood that a committee will reach a consensus on the proposed rule within a fixed period of time;

(e) the negotiated rulemaking procedure will not unreasonably delay the notice of proposed rulemaking and the issuance of the final rule;

(f) the agency has adequate resources and is willing to commit those resources, including technical assistance, to the committee; and

(g) the agency, to the maximum extent possible consistent with the legal obligations of the agency, will use the consensus of the committee as the basis for the rule proposed by the agency.

(2) An agency may use the services of a convener to assist in making the determination of need pursuant to subsection (1) and to assist the agency in:

(a) identifying persons who will be significantly affected by a proposed rule; and

(b) conducting discussions with affected persons on the issues of concern and ascertaining whether the establishment of a negotiated rulemaking committee is feasible and appropriate for the particular rulemaking procedure.

(3) The convener shall report findings and make recommendations to the agency. Upon request of the agency, the convener shall ascertain the names of persons who are willing and qualified to represent the interests that will be significantly affected by the proposed rule. The report and any recommendations of the convener must be made available to the public upon request.

**History:** En. Sec. 4, Ch. 400, L. 1993.

**2-5-105. Application for membership on committees — publication of notice.** (1) If an agency decides to establish a negotiated rulemaking committee, the agency shall publish in the Montana Administrative Register and, as appropriate, in newspapers and other publications, a notice that includes:

(a) an announcement that the agency intends to establish a negotiated rulemaking committee to negotiate and develop a proposed rule;

(b) a description of the subject and scope of the rule to be developed and the issues to be considered;

(c) a list of interests likely to be significantly affected by the proposed rule;

- (d) a list of the persons proposed to represent the affected interests and the agency;
- (e) a proposed schedule for completing the work of the committee; and
- (f) an explanation of how a person may apply for or nominate another person for membership on the committee.

(2) An agency may include the notice required in subsection (1) in the notice of intent to promulgate rules made pursuant to 2-4-302.

(3) The agency shall provide a period of at least 30 days for the submission of comments and applications for membership on a negotiated rulemaking committee.

**History:** En. Sec. 5, Ch. 400, L. 1993.

**2-5-106. Establishment of committee — determination.** (1) If, after considering comments and applications submitted under 2-5-105, the agency determines that a negotiated rulemaking committee can adequately represent the interests of the persons that will be significantly affected by a proposed rule and that it is feasible and appropriate in the particular rulemaking, the agency may establish a negotiated rulemaking committee.

(2) If, after considering comments and applications submitted under 2-5-105, the agency decides not to establish a negotiated rulemaking committee, the agency shall notify the persons who commented on or applied for membership on the negotiated rulemaking committee of the reasons for the decision. The agency shall also publish a notice in the Montana Administrative Register and, as appropriate, in newspapers and other publications.

(3) The agency shall provide appropriate administrative support to the negotiated rulemaking committee, including technical support.

(4) A negotiated rulemaking committee terminates upon adoption of the final rule under consideration, unless the agency, after consulting the committee, or the committee itself specifies an earlier termination date.

**History:** En. Sec. 6, Ch. 400, L. 1993.

**2-5-107. Expansion of committee membership.** (1) A negotiated rulemaking committee may by consensus expand its membership, either by contacting and recruiting persons whose participation the committee believes is essential to the success of the negotiated rulemaking process or upon reviewing a petition submitted pursuant to subsection (2).

(2) Persons who will be significantly affected by a proposed rule and who believe that their interests will not be adequately represented by any person on a negotiated rulemaking committee may petition for or nominate another person for membership on the negotiated rulemaking committee. Each petition or nomination must be submitted to the negotiated rulemaking committee and must include:

(a) the name of the petitioner or nominee and a description of the interests the person represents;

(b) evidence that the petitioner or nominee is authorized to represent parties related to the interests the person proposes to represent;

(c) a written commitment that the petitioner or nominee will actively participate in good faith in the development of the rule under consideration; and

(d) an explanation of reasons that the persons already on the negotiated rulemaking committee do not adequately represent the interests of the person submitting the petition or nomination.

(3) Upon receiving a petition pursuant to subsection (2), a negotiated rulemaking committee shall decide by consensus at its next meeting whether or not to expand its membership.

**History:** En. Sec. 7, Ch. 400, L. 1993.

**2-5-108. Committee — duties — procedures — report.** (1) A negotiated rulemaking committee shall consider the matter proposed by the agency for consideration and shall attempt to reach consensus concerning a proposed rule and any other matter the committee determines is relevant to the proposed rule.

(2) The person representing the agency on a negotiated rulemaking committee shall participate in the deliberations of the committee with the same rights and responsibilities of other members of the committee and is authorized to fully represent the agency in the discussions and negotiations of the committee.



(3) A negotiated rulemaking committee may adopt procedures or ground rules for the operation of the committee.

(4) If a negotiated rulemaking committee achieves consensus on a proposed rule, at the conclusion of the negotiations, the committee shall transmit to the agency that established the committee a report containing the proposed rule.

(5) If a negotiated rulemaking committee does not reach a consensus on the proposed rule, the committee shall transmit to the agency a report specifying areas in which the committee reached consensus and the issues that remain unresolved. The committee may include in the report any other information, recommendations, or materials that the committee considers appropriate. Any member of the committee may include as an addendum to the report additional information, recommendations, or materials.

(6) Title 2, chapter 3, part 2, applies to meetings of a negotiated rulemaking committee.

**History:** En. Sec. 8, Ch. 400, L. 1993.

**2-5-109. Facilitator — selection and duties.** (1) An agency may nominate a person to serve as a facilitator for the negotiations of the committee, subject to the approval of the committee by consensus. If the committee does not approve the agency's nomination for facilitator, the agency shall submit a substitute nomination. If a committee does not approve the substitute nomination of the agency for facilitator, the committee shall select by consensus a person to serve as facilitator. A person designated to represent the agency in substantive issues may not serve as facilitator or presiding officer for the committee.

(2) A facilitator approved or selected by a committee shall:

(a) preside at the meetings of the committee in an impartial manner;

(b) impartially assist the members of the committee in conducting discussions and negotiations and achieving consensus; and

(c) manage the keeping of minutes and records.

**History:** En. Sec. 9, Ch. 400, L. 1993.

**2-5-110. Expenses — convener — facilitator — committee members.** (1) An agency may employ or enter into a contract for the services of an organization or individual to serve as a convener or facilitator for a negotiated rulemaking committee or may use the services of a government employee to act as a convener or facilitator for a committee.

(2) An agency shall determine whether a person under consideration as a convener or facilitator of a negotiated rulemaking committee has any financial or other interest that would preclude the person from serving in an impartial and independent manner. A person disqualified under this criterion must be dropped from further consideration.

(3) Members of a negotiated rulemaking committee are responsible for their own expenses of participation. However, an agency may pay for a committee member's reasonable travel and per diem expenses, expenses to obtain technical assistance, and a reasonable rate of compensation if:

(a) the committee member certifies a lack of adequate financial resources to participate in the committee; and

(b) the agency determines that the committee member's participation in the committee is necessary to ensure an adequate representation of the interests of the members.

(4) An agency may accept grants or gifts from any source to fund the negotiated rulemaking process, provided that:

(a) information on the name of the person giving the grant or gift and the amount of the grant or gift is available to the public;

(b) the grant or gift is given to and accepted by the agency without placing any condition on the membership of a negotiated rulemaking committee or the outcome of the negotiated rulemaking process; and

(c) there is consensus among the members of the negotiated rulemaking committee established pursuant to 2-5-106 that the acceptance of the grant or gift will not diminish the integrity of the negotiated rulemaking process.

**History:** En. Sec. 10, Ch. 400, L. 1993.

## CHAPTER 6 PUBLIC RECORDS

### Part 10 General Provisions

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

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

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

(1) “Confidential information” means information that is accorded confidential status or is prohibited from disclosure as provided by applicable law. The term includes information that is:

(a) constitutionally protected from disclosure because an individual privacy interest clearly exceeds the merits of public disclosure;

(b) related to judicial deliberations in adversarial proceedings;

(c) necessary to maintain the security and integrity of secure facilities or information systems owned by or serving the state; and

(d) designated as confidential by statute or through judicial decisions, findings, or orders.

(2) “Constitutional officer” means the governor, lieutenant governor, attorney general, secretary of state, superintendent of public instruction, or auditor, who are the constitutionally designated and elected officials of the executive branch of government.

(3) “Constitutional officer record” means a public record prepared, owned, used, or retained by a constitutional officer.

(4) “Essential record” means a public record immediately necessary to:

(a) respond to an emergency or disaster;

(b) begin recovery or reestablishment of operations during and after an emergency or disaster;

(c) protect the health, safety, and property of Montana citizens; or

(d) protect the assets, obligations, rights, history, and resources of a public agency, its employees and customers, and Montana citizens.

(5) “Executive branch agency” means a department, board, commission, office, bureau, or other public authority of the executive branch of state government.

(6) “Historic record” means a public record found by the state archivist to have permanent administrative or historic value to the state.

(7) “Local government” means a city, town, county, consolidated city-county, special district, or school district or a subdivision of one of these entities.

(8) “Local government records committee” means the committee provided for in 2-6-1201.

(9) “Permanent record” means a public record designated for long-term or permanent retention.

(10) “Public agency” means the executive, legislative, and judicial branches of Montana state government, a political subdivision of the state, a local government, and any agency, department, board, commission, office, bureau, division, or other public authority of the executive, legislative, or judicial branch of the state of Montana.

(11) “Public information” means information prepared, owned, used, or retained by any public agency relating to the transaction of official business, regardless of form, except for confidential information that must be protected against public disclosure under applicable law.

(12) “Public officer” means any person who has been elected or appointed as an officer of state or local government.

(13) “Public record” means public information that is:

(a) fixed in any medium and is retrievable in usable form for future reference; and

(b) designated for retention by the state records committee, judicial branch, legislative branch, or local government records committee.

(14) “Records manager” means an individual designated by a public agency to be responsible for coordinating the efficient and effective management of the agency’s public records and information.

(15) “State records committee” means the state records committee provided for in 2-6-1107.  
**History:** En. Sec. 2, Ch. 348, L. 2015.

**2-6-1003. Access to public information — safety and security exceptions — Montana historical society exception.** (1) Except as provided in subsections (2) and (3), every person has a right to examine and obtain a copy of any public information of this state.

(2) A public officer may withhold from public scrutiny information relating to individual or public safety or the security of public facilities, including public schools, jails, correctional facilities, private correctional facilities, and prisons, if release of the information jeopardizes the safety of facility personnel, the public, students in a public school, or inmates of a facility. A public officer may not withhold from public scrutiny any more information than is required to protect individual or public safety or the security of public facilities.

(3) The Montana historical society may honor restrictions imposed by private record donors as long as the restrictions do not apply to public information. All restrictions must expire no later than 50 years from the date the private record was received. Upon the expiration of the restriction, the private records must be made accessible to the public.

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

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

**2-6-1006. Public information requests — fees.** (1) A person may request public information from a public agency. A public agency shall make the means of requesting public information accessible to all persons.

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

(a) making the public information maintained by the public agency available for inspection and copying by the requesting person; or

(b) providing the requesting person with an estimate of the time it will take to fulfill the request if the public information cannot be readily identified and gathered and any fees that may be charged pursuant to subsection (3).

(3) A public agency may charge a fee for fulfilling a public information request. Except where a fee is otherwise provided for by law, the fee may not exceed the actual costs directly incident to fulfilling the request in the most cost-efficient and timely manner possible. The fee must be documented. The fee may include the time required to gather public information. The public agency may require the requesting person to pay the estimated fee prior to identifying and gathering the requested public information.

(4) A public agency is not required to alter or customize public information to provide it in a form specified to meet the needs of the requesting person.

(5) If a public agency agrees to a request to customize a records request response, the costs of the customization may be included in the fees charged by the agency.

(6) (a) The secretary of state is authorized to charge fees under this section. The fees must be set and deposited in accordance with 2-15-405. The fees must be collected in advance.

(b) The secretary of state may not charge a fee to a member of the legislature or public officer for any search relative to matters pertaining to the duties of the member’s office or for a certified copy of any law or resolution passed by the legislature relative to the member’s official duties.

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

**2-6-1007. Special fees allowable for certain information.** (1) In addition to the fee allowed under 2-6-1006, the department of revenue may charge an additional fee as reimbursement for the cost of developing and maintaining the property valuation and assessment system database from which the information is requested. The fee must be charged to persons, federal agencies, state agencies, and other entities requesting the database or any part of the database from any department property valuation and assessment system. The fee may not be charged to the governor’s office of budget and program planning, the state tax appeal board, or any legislative body or its members or staff.

(2) The department of revenue may not charge a fee for information provided from any department property valuation and assessment system database to a local taxing jurisdiction

for use in taxation and other governmental functions or to an individual taxpayer concerning the taxpayer's property.

(3) All fees received by the department of revenue under 2-6-1006 and this section must be deposited in the property value improvement fund as provided in 15-1-521.

(4) In accordance with the fees allowed under 2-6-1006, the Montana historical society may charge fees as approved by its board of trustees for copies of materials contained in its collections, based on documentable curatorial duties as set forth in 22-3-101.

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

**2-6-1008. Certified copies of records — historic records and constitutional officer records — exception.** (1) A person may request a certified copy of a public record from a public agency subject to the provisions of 2-6-1003. The public agency may charge a fee for the certified copy in accordance with 2-6-1006.

(2) A person may request a certified copy of a historic record or a constitutional officer record from the Montana historical society subject to the provisions of 2-6-1003. The Montana historical society may charge a fee for the certified copy in accordance with 2-6-1006 and 2-6-1007(4).

(3) A certified copy created by the Montana historical society of a historic record or a constitutional officer record has the same force in law as if made by the original public agency that created the record.

(4) Pursuant to 2-15-403, this section does not apply to certified copies provided by the secretary of state for information contained in the secretary of state's corporate and uniform commercial code electronic filing system.

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

**2-6-1009. Written notice of denial — civil action — costs to prevailing party in certain actions to enforce constitutional or statutory rights.** (1) A public agency that denies an information request to release information or records shall provide a written explanation for the denial.

(2) If a person who makes an information request receives a denial from a public agency and believes that the denial violates the provisions of this chapter, the person may file a complaint pursuant to the Montana Rules of Civil Procedure in district court.

(3) A person alleging a deprivation of rights who prevails in an action brought in district court to enforce the person's rights under Article II, section 9, of the Montana constitution or under the provisions of Title 2, chapter 6, parts 10 through 12, may be awarded costs and reasonable attorney fees.

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

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

**2-6-1012. Management of public records — disposal and destruction.** (1) (a) Each public officer is responsible for properly managing the public records within the public officer's possession or control through an established records management plan that satisfies the requirements of this chapter.

(b) Executive branch agencies shall manage public records according to the provisions of Title 2, chapter 6, part 11, and the rules and guidelines established by the secretary of state, the state records committee, and the Montana historical society.

(c) Local governments shall manage public records according to the provisions of Title 2, chapter 6, part 12, and the rules and guidelines established by the secretary of state, the local government records committee, and the Montana historical society.

(d) Pursuant to 5-2-503 and 5-11-105, the legislative council shall administer the records management plan for the legislative branch. The legislative branch shall cooperate with the secretary of state, the state records committee, the local government records committee, and the Montana historical society in the development, implementation, and administration of the legislative records management plan using Title 2, chapter 6, part 11, as guidance.

(e) The judicial branch shall establish a records management plan. The judicial branch may seek assistance from the secretary of state, the state records committee, the local government records committee, and the Montana historical society regarding development, implementation, and administration of the judicial records management plan.

(2) When a public record has reached the end of its retention period, the public officer shall ensure the record is disposed of, destroyed, or transferred according to the provisions of this chapter.

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

**2-6-1013. Preservation of public records — possession of public records.** (1) All public records are and remain the property of the public agency possessing the records. The public records must be delivered by outgoing public officers and employees to their successors and must be preserved, stored, transferred, destroyed, or disposed of and otherwise managed only in accordance with the provisions of this chapter.

(2) If an outgoing public officer or employee refuses or fails to deliver to the current public officer or employee any public records that pertain to that public office, the current public officer or employee may file a complaint in the district court of the county where the outgoing public officer or employee resides, pursuant to the Montana Rules of Civil Procedure, to compel the outgoing public officer or employee to deliver any public records still in the outgoing public officer or employee's possession to the current public officer or employee.

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

**2-6-1014. Protection and storage of essential records.** (1) To provide for the continuity and preservation of civil government, each public officer shall designate certain public records as essential records. The list must be continually maintained by the public officers to ensure its accuracy. Each public officer shall collaborate with the appropriate continuity of government programs to ensure essential records are identified and maintained.

(2) Each public officer shall ensure essential records are efficiently and effectively secured. Each public officer shall look to the guidance provided by the state records committee or the local government records committee in choosing appropriate methods to protect, store, back up, and recover essential records.

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

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

**2-6-1017. Prohibition on dissemination or use of distribution lists — exceptions — penalties.** (1) Except as provided in subsections (3) through (10), to protect the privacy of those who deal with state and local government:

(a) a public agency may not distribute or sell a distribution list without first securing the permission of those on the list; and

(b) a list of persons prepared by a public agency may not be used as a distribution list without first securing the permission of those on the list except by that agency.

(2) As used in this section, "distribution list" means any list of personal contact information collected by a public agency and used to facilitate unsolicited contact with individuals on the distribution list.

(3) This section does not prevent an individual from compiling a distribution list by examination of records that are otherwise open to public inspection.

(4) This section does not apply to the lists of:

(a) registered electors and the new voter lists provided for in 13-2-115;

(b) the names of employees governed by Title 39, chapter 31;

(c) persons holding driver's licenses or Montana identification cards provided for under 61-5-127;

(d) persons holding professional or occupational licenses governed by Title 23, chapter 3; Title 37, chapters 1 through 4, 6 through 20, 22 through 29, 31, 34 through 36, 40, 47, 48, 50, 51, 53, 54, 60, 65 through 69, 72, and 73; and Title 50, chapters 39, 72, 74, and 76; or

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

(5) This section does not prevent an agency from providing a list to persons providing prelicensing or continuing education courses subject to state law or subject to Title 33, chapter 17.

(6) This section does not apply to the right of access by Montana law enforcement agencies.

(7) This section does not apply to the secretary of state's electronic filing system developed pursuant to 2-15-404 and containing corporate and uniform commercial code information.



(8) This section does not apply to the use by the public employees' retirement board of a list of board-administered retirement system participants to send materials on behalf of a retiree organization formed for board-administered retirement system participants and with tax-exempt status under section 501(c)(4) of the Internal Revenue Code, as amended, for a fee determined by rules of the board, provided that the list is not released to the organization.

(9) This section does not apply to lists of individuals who sign attendance sheets or sign-in sheets at a hearing or meeting of a public agency.

(10) This section does not apply to a public school providing lists of graduating students to representatives of the armed forces of the United States or to the national guard for the purposes of recruitment.

(11) A person violating the provisions of subsection (1)(b) is guilty of a misdemeanor.

**History:** En. Sec. 11, Ch. 348, L. 2015.

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

**2-6-1020. Concealment of public hazards prohibited — concealment of information related to settlement or resolution of civil suits prohibited.** (1) This section may be cited as the "Gus Barber Antisecrecy Act".

(2) As used in this section, "public hazard" means a device, instrument, or manufactured product or a condition of a device, instrument, or manufactured product that endangers public safety or health and has caused injury, as defined in 27-1-106.

(3) Except as otherwise provided in this section, a court may not enter a final order or judgment that has the purpose or effect of concealing a public hazard.

(4) Any portion of a final order or judgment entered or a written final settlement agreement entered into that has the purpose or effect of concealing a public hazard is contrary to public policy, is void, and may not be enforced. This section does not prohibit the parties from keeping the monetary amount of a written final settlement agreement confidential.

(5) A party to civil litigation may not request, as a condition to the production of discovery, that another party stipulate to an order that would violate this section.

(6) This section does not apply to:

(a) trade secrets, as defined in 30-14-402, that are not pertinent to public hazards and that are protected pursuant to Title 30, chapter 14, part 4;

(b) other information that is confidential under state or federal law; or

(c) a health care provider, as defined in 27-6-103.

(7) Any affected person, including but not limited to a representative of the news media, has standing to contest a final order or judgment or written final settlement agreement that violates this section by motion in the court in which the case was filed.

(8) The court shall examine the disputed information or materials in camera. If the court finds that the information or materials or portions of the information or materials consist of information concerning a public hazard, the court shall allow disclosure of the information or materials. If allowing disclosure, the court shall allow disclosure of only that portion of the information or materials necessary or useful to the public concerning the public hazard.

(9) This section does not apply to a protective order issued under Rule 26(c) of the Montana Rules of Civil Procedure or to any materials produced under the order. Materials used as exhibits may be publicly disclosed pursuant to the provisions of subsections (7) and (8).

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

## **Part 11**

### **Executive Branch Records**

**2-6-1101. Secretary of state — powers and duties — rulemaking authority.** (1) To ensure the proper management and safeguarding of public records, the secretary of state shall:

(a) establish guidelines based on accepted industry standards for managing public records;

(b) upon request of another executive branch agency, review, analyze, and make recommendations regarding executive branch agency filing systems and procedures;

(c) operate the state records center for the purpose of storing and servicing public records not retained in office space;

(d) provide information and training materials for all phases of efficient and effective records management;

(e) approve microfilming projects and microfilm equipment purchases undertaken by all state agencies;

(f) consult with the department of administration pursuant to 2-6-1102;

(g) adopt rules regarding management of public records;

(h) adopt rules to implement the objectives of the state records committee and local government records committee; and

(i) upon request, assist and advise in the establishment of records management procedures in the legislative and judicial branches of state government and provide services similar to those available to the executive branch.

(2) In addition to the requirements under subsection (1), the secretary of state may operate a central microfilm unit to microfilm, on a cost recovery basis, all records approved for filming by the office of origin and the secretary of state.

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

**2-6-1102. Department of administration — powers and duties.** (1) To ensure compatibility with the information technology systems of state government and to promote adherence to records management principles and best practices, the department of administration, in consultation with the secretary of state, shall establish standards for technological compatibility for state agencies for records management equipment or systems used to electronically capture, store, or retrieve public records through computerized, optical, or other electronic methods.

(2) The department of administration, in consultation with the secretary of state, shall approve all acquisitions of executive branch agency records management equipment or systems used to electronically capture, store, or retrieve public records through computerized, optical, or other electronic methods to ensure compatibility with the standards developed under subsection (1).

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

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

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

(1) coordinate all aspects of the agency records management function in accordance with procedures prescribed by the secretary of state and the state records committee;

(2) analyze records inventory data and examine and compare all inventories within the agency to minimize duplication of records;

(3) review and approve records disposal requests for submission to the retention and disposition subcommittee;

(4) review established records retention schedules to ensure they are complete and current and make recommendations to the secretary of state and the state records committee regarding minimal retentions for all copies of public records within the agency;

(5) incorporate records management requirements into the agency information technology plan provided for in 2-17-523;

(6) ensure that all agency employees receive appropriate and ongoing records management training; and

(7) after considering guidance from the state records committee regarding records manager qualifications, officially designate a qualified agency records manager to manage the functions provided for in this section.

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

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

**2-6-1107. State records committee — composition and meetings.** (1) There is a state records committee composed of:

(a) representatives of:

(i) the department of administration;

- (ii) the legislative auditor;
  - (iii) the attorney general;
  - (iv) the secretary of state;
  - (v) the Montana historical society;
  - (vi) the governor;
  - (vii) the clerk of the supreme court; and
  - (viii) the state chief information officer; and
- (b) five members representing executive branch agencies designated pursuant to subsections (4) and (5).

(2) The state records committee is administered by the secretary of state, and the secretary of state's representative serves as the presiding officer for the committee.

(3) The committee members representing the agencies in subsection (1)(a) are designated by the heads of the respective agencies, and their appointments must be submitted in writing to the secretary of state. These committee members serve at the pleasure of the heads of their respective agencies.

(4) To implement subsection (1)(b), the committee members in subsection (1)(a) shall develop a rotation by which each of the executive branch agencies is designated to select a representative to serve a 2-year term as a committee member. The secretary of state shall adopt the rotation by administrative rule.

(5) The committee shall establish guidelines for the heads of executive branch agencies in appointing representatives to ensure the executive branch representatives provide a balance of perspectives from records management, information technology, and legal professionals.

(6) The committee shall meet at least quarterly.

(7) Committee members shall serve without additional salary but are entitled to reimbursement for travel expenses incurred while engaged in committee activities as provided for in 2-18-501 through 2-18-503. Expenses must be paid from the appropriations made for operation of their respective agencies.

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

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

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

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

**2-6-1109. Retention and disposition subcommittee — approval required for record disposal.** (1) There is a subcommittee of the state records committee to be known as the retention and disposition subcommittee. The subcommittee is composed of the members of the state records committee who represent the following offices:

- (a) the department of administration;
- (b) the legislative auditor;
- (c) the attorney general;
- (d) the secretary of state; and
- (e) the Montana historical society.

(2) The subcommittee shall approve, modify, or disapprove the recommendations on retention schedules of all public records.

(3) Except as provided in subsection (4), no public record may be disposed of or destroyed without the unanimous approval of the subcommittee. When approval is required, a request for the disposal or destruction must be submitted to the subcommittee by the agency concerned.

(4) The subcommittee may by unanimous approval establish categories of records for which no disposal request is required if those records are retained for the designated retention period.

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

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

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

(1) establish and operate the state archives as authorized by appropriation for the purpose of storing, preserving, and providing access to historic records transferred to the custody of the state archives;

(2) in cooperation with the secretary of state, the local government records committee, and the state records committee, establish guidelines to inventory, catalog, retain, transfer, and provide access to all historic records;

(3) maintain and enforce restrictions on access to historic records in the custody of the state archives in accordance with the provisions of this part; and

(4) in accordance with the guidelines established pursuant to subsection (2), remove and destroy duplicate records and records considered to have no historical value.

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

**2-6-1113. Constitutional officer records — Montana historical society.** (1) All constitutional officer records are the property of the state. The records must be delivered by outgoing constitutional officers to their successors, who shall preserve, store, transfer, destroy, or dispose of and otherwise manage them in accordance with the provisions of this section.

(2) Within 2 years after taking office as a constitutional officer, the current constitutional officer shall consult with staff members of the Montana historical society and transfer to the Montana historical society all of the constitutional officer records of the prior officeholder that are not necessary to the current operation of that office and are considered worthy of preservation.

(3) An outgoing constitutional officer, in consultation with staff members of the Montana historical society, shall review constitutional officer records and isolate any items of a purely personal nature. The personal papers are not subject to this section, but they may be deposited along with the constitutional officer records at the Montana historical society at the constitutional officer's discretion.

(4) An outgoing constitutional officer, in consultation with staff members of the Montana historical society, may restrict access to certain segments of that officer's records. Restrictions may not be longer than the lifetime of the depositing official. Restricted access may be imposed only to protect the confidentiality of personal information contained in the records. Restricted access may not be imposed unless the demand of individual privacy clearly exceeds the merits of public disclosure.

(5) Any question concerning the transfer or other status of constitutional officer records arising between the state archives and a constitutional officer's office must be decided by a four-fifths vote of the members of the retention and disposition subcommittee provided for in 2-6-1109.

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

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

(1) All permanent records no longer required in the current operation of the office where they are made or kept and all records of each agency or activity of the executive branch of state government that has been abolished or discontinued must be maintained by the agency or transferred to the state records center in accordance with approved records retention schedules.

(2) When records are transferred to the state records center, the transferring agency does not lose its rights of control and access. The state records center is merely a custodian of the agency records, and access is only by agency approval. Agency records for which the state

records center acts as custodian may not be subpoenaed from the state records center but must be subpoenaed from the agency to which the records belong. The state records center may charge fees to cover the cost of records storage and servicing.

(3) Prior to transferring a permanent record to the state records center, the transferring agency shall consult with the state archivist to determine whether the record is also a historic record. If the record is found to be a historic record, it must be transferred to the Montana historical society in accordance with the provisions of 2-6-1112.

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

## **Part 12**

### **Local Government Records**

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

(1) There is a local government records committee.

(2) The committee consists of the following eight members:

(a) the state archivist;

(b) the state records manager;

(c) a representative of the department of administration;

(d) two local government records managers appointed by the director of the Montana historical society;

(e) two local government records managers appointed by the secretary of state; and

(f) a person representing the Montana state genealogical society, appointed by the secretary of state, who shall serve as a volunteer.

(3) Committee members subject to appointment shall hold office for a period of 2 years beginning January 1 of the year following their appointment.

(4) Vacancies must be filled in the same manner they were filled originally.

(5) The committee shall elect a presiding officer and a vice presiding officer.

(6) The committee shall meet at least twice a year upon the call of the secretary of state or the presiding officer.

(7) Except for the member appointed in subsection (2)(f), members of the committee not serving as part of their compensated government employment must be compensated in accordance with 2-18-501 through 2-18-503 for each day in committee attendance. Members who serve as part of their compensated government employment may not receive additional compensation, but the employing governmental entity shall furnish, in accordance with the prevailing per diem rates, a reasonable allowance for travel and other expenses incurred in attending committee meetings.

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

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

(1) approve, modify, or disapprove proposals for local government records retention and disposition schedules;

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

(3) establish a retention and disposition schedule for categories of records for which a disposal request is not required. The local government records committee shall publish the



retention and disposition schedules. Updates to those schedules, if any, must be published at least annually.

(4) develop guidance for local governments to identify, maintain, and secure their essential records;

(5) respond to requests for technical advice on matters relating to local government records; and

(6) provide leadership and coordination in matters affecting the records of multiple local governments.

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

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

**2-6-1205. Disposal of local government public records prohibited prior to offering — central registry — notification.** (1) A local government public record more than 10 years old may not be destroyed unless it is first offered to the Montana historical society, the state archives, Montana public and private universities and colleges, local historical museums, local historical societies, Montana genealogical groups, and the general public.

(2) The availability of a public record to be destroyed must be noticed to the entities listed in subsection (1) at least 60 days prior to disposal.

(3) (a) Claimed records must be given to entities in the order of priority listed in subsection (1).

(b) All expenses for the removal of claimed records must be paid by the entity claiming the records.

(c) The local government records committee shall establish procedures by which public records must be offered and claimed pursuant to this section.

(d) The local government records committee shall develop and maintain a central registry of the entities identified in subsection (1) who are interested in receiving notice of the potential destruction of public records pursuant to this section. The registry must be constructed to allow a local government entity to notify the local government records committee when the entity intends to destroy documents covered under this section and allow the local government records committee to subsequently notify the entities in the registry. A local government entity's notice to the local government records committee pursuant to this subsection (3)(d) and the records committee's notice to the entities listed on the registry fulfill the notification requirements of this section.

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

## **Part 15**

### **State Agency Protection of Personal Information**

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

(1) "Breach of the security of a data system" or "breach" means the unauthorized acquisition of computerized data that:

(a) materially compromises the security, confidentiality, or integrity of the personal information maintained by a state agency or by a third party on behalf of a state agency; and

(b) causes or is reasonably believed to cause loss or injury to a person.

(2) "Individual" means a human being.

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

(4) (a) "Personal information" means a first name or first initial and last name in combination with any one or more of the following data elements when the name and data elements are not encrypted:

(i) a social security number;

(ii) a driver's license number, an identification card number issued pursuant to 61-12-501, a tribal identification number or enrollment number, or a similar identification number issued by any state, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, or American Samoa;

(iii) an account number or credit or debit card number in combination with any required security code, access code, or password that would permit access to a person's financial account;

- (iv) medical record information as defined in 33-19-104;
- (v) a taxpayer identification number; or
- (vi) an identity protection personal identification number issued by the United States internal revenue service.

(b) The term does not include publicly available information from federal, state, local, or tribal government records.

(5) “Redaction” means the alteration of personal information contained within data to make all or a significant part of the data unreadable. The term includes truncation, which means that no more than the last four digits of an identification number are accessible as part of the data.

(6) (a) “State agency” means an agency, authority, board, bureau, college, commission, committee, council, department, hospital, institution, office, university, or other instrumentality of the legislative or executive branch of state government. The term includes an employee of a state agency acting within the course and scope of employment.

(b) The term does not include an entity of the judicial branch.

(7) “Third party” means:

(a) a person with a contractual obligation to perform a function for a state agency; or

(b) a state agency with a contractual or other obligation to perform a function for another state agency.

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

**2-6-1502. Protection of personal information — compliance — extensions.** (1) Each state agency that maintains the personal information of an individual shall develop procedures to protect the personal information while enabling the state agency to use the personal information as necessary for the performance of its duties under federal or state law.

(2) The procedures must include measures to:

(a) eliminate the unnecessary use of personal information;

(b) identify the person or state agency authorized to have access to personal information;

(c) restrict access to personal information by unauthorized persons or state agencies;

(d) identify circumstances in which redaction of personal information is appropriate;

(e) dispose of documents that contain personal information in a manner consistent with other record retention requirements applicable to the state agency;

(f) eliminate the unnecessary storage of personal information on portable devices; and

(g) protect data containing personal information if that data is on a portable device.

(3) Except as provided in subsection (4), each state agency that is created after October 1, 2015, shall complete the requirements of this section within 1 year of its creation.

(4) The chief information officer provided for in 2-17-511 may grant an extension to any state agency subject to the provisions of the Montana Information Technology Act provided for in Title 2, chapter 17, part 5. The chief information officer shall inform the information technology board, the office of budget and program planning, and the legislative finance committee of all extensions that are granted and of the rationale for granting the extensions. The chief information officer shall maintain written documentation that identifies the terms and conditions of each extension and the rationale for the extension.

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

**2-6-1503. Notification of breach of security of data system.** (1) (a) Upon discovery or notification of a breach of the security of a data system, a state agency that maintains computerized data containing personal information in the data system shall make reasonable efforts to notify any person whose unencrypted personal information was or is reasonably believed to have been acquired by an unauthorized person.

(b) The notification must be made without unreasonable delay, consistent with the legitimate needs of law enforcement as provided in subsection (3) or with any measures necessary to determine the scope of the breach and to restore the reasonable integrity of the data system.

(2) (a) A third party that receives personal information from a state agency and maintains that information in a computerized data system to perform a state agency function shall:

(i) notify the state agency immediately following discovery of the breach if the personal information is reasonably believed to have been acquired by an unauthorized person; and

(ii) make reasonable efforts upon discovery or notification of a breach to notify any person whose unencrypted personal information is reasonably believed to have been acquired by an unauthorized person as part of the breach. This notification must be provided in the same manner as the notification required in subsection (1).

(b) A state agency notified of a breach by a third party has no independent duty to provide notification of the breach if the third party has provided notification of the breach in the manner required by subsection (2)(a) but shall provide notification if the third party fails to do so in a reasonable time and may recover from the third party its reasonable costs for providing the notice.

(3) The notification required by this section may be delayed if a law enforcement agency determines that the notification will impede a criminal investigation and requests a delay of notification. The notification required by this section must be made after the law enforcement agency determines that the notification will not compromise the investigation.

(4) All state agencies and third parties to whom personal information is disclosed by a state agency shall develop and maintain:

(a) an information security policy designed to safeguard personal information; and

(b) breach notification procedures that provide reasonable notice to individuals as provided in subsections (1) and (2).

(5) A state agency or third party that is required to issue a notification to an individual pursuant to this section shall simultaneously submit to the state's chief information officer at the department of administration and to the attorney general's consumer protection office an electronic copy of the notification and a statement providing the date and method of distribution of the notification. The electronic copy and statement of notification must exclude any information that identifies the person who is entitled to receive notification. If notification is made to more than one person, a single copy of the notification that includes the number of people who were notified must be submitted to the chief information officer and the consumer protection office.

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

## CHAPTER 7 STUDIES, REPORTS, AND AUDITS

### Part 5 Audits of Political Subdivisions

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

(1) "Audit" means a financial audit and includes financial statement and financial-related audits as defined by government auditing standards as established by the U.S. comptroller general.

(2) "Board" means the Montana board of public accountants provided for in 2-15-1756.

(3) "Department" means the department of administration.

(4) (a) "Financial assistance" means assistance provided by a federal, state, or local government entity to a local government entity or subrecipient to carry out a program. Financial assistance may be in the form of grants, contracts, cooperative agreements, loans, loan guarantees, property, interest subsidies, insurance, direct appropriations, or other noncash assistance. Financial assistance includes awards received directly from federal and state agencies or indirectly when subrecipients receive funds identified as federal or state funds by recipients. The granting agency is responsible for identifying the source of funds awarded to recipients. The recipient is responsible for identifying the source of funds awarded to subrecipients.

(b) Financial assistance does not include direct federal, state, or local government cash assistance to individuals.

(5) "Financial report" means a presentation of financial statements, including applicable supplemental notes and supplemental schedules, that are prepared in a format published by the department using the Budgetary Accounting and Reporting System for Montana Cities, Towns, and Counties Manual and that reflect a current financial position and the operating results for the 1-year reporting period.

(6) “Independent auditor” means:

(a) a federal, state, or local government auditor who meets the standards specified in the government auditing standards; or

(b) a certified public accountant who meets the standards in subsection (6)(a).

(7) (a) “Local government entity” means a county, city, district, or public corporation that:

(i) has the power to raise revenue or receive, disburse, or expend local, state, or federal government revenue for the purpose of serving the general public;

(ii) is governed by a board, commission, or individual elected or appointed by the public or representatives of the public; and

(iii) receives local, state, or federal financial assistance.

(b) Local government entities include but are not limited to:

(i) airport authority districts;

(ii) cemetery districts;

(iii) counties;

(iv) county housing authorities;

(v) county road improvement districts;

(vi) county sewer districts;

(vii) county water districts;

(viii) county weed management districts;

(ix) drainage districts;

(x) fire companies;

(xi) fire districts;

(xii) fire service areas;

(xiii) hospital districts;

(xiv) incorporated cities or towns;

(xv) irrigation districts;

(xvi) mosquito districts;

(xvii) municipal fire departments;

(xviii) municipal housing authority districts;

(xix) port authorities;

(xx) solid waste management districts;

(xxi) rural improvement districts;

(xxii) school districts, including a district’s extracurricular funds;

(xxiii) soil conservation districts;

(xxiv) special education or other cooperatives;

(xxv) television districts;

(xxvi) urban transportation districts;

(xxvii) water conservancy districts;

(xxviii) regional resource authorities; and

(xxix) other miscellaneous and special districts.

(8) “Revenues” means all receipts of a local government entity from any source excluding the proceeds from bond issuances.

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

**2-7-502. Short title — purpose.** (1) This part may be cited as the “State of Montana Single Audit Act”.

(2) The purposes of this part are to:

(a) improve the financial management of local government entities with respect to federal, state, and local financial assistance;

(b) establish uniform requirements for financial reports and audits of local government entities;

(c) ensure constituent interests by determining that compliance with all appropriate statutes and regulations is accomplished;

- (d) ensure that the financial condition and operations of the local government entities are reasonably conducted and reported;
- (e) ensure that the stewardship of local government entities is conducted in a manner to preserve and protect the public trust;
- (f) ensure that local government entities accomplish, with economy and efficiency, the duties and responsibilities of the entities in accordance with the legal requirements imposed and the desires of the public; and
- (g) promote the efficient and effective use of audit resources.

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

**2-7-503. Financial reports and audits of local government entities.** (1) (a) The governing body or managing or executive officer of a local government entity, other than a school district or associated cooperative, shall ensure that a financial report is made every year. A school district or associated cooperative shall comply with the provisions of 20-9-213. The financial report must cover the preceding fiscal year, be in a form prescribed by the department, and be completed and submitted to the department for review within 6 months of the end of the reporting period.

(b) The financial report of a local government that has authorized the use of tax increment financing pursuant to 7-15-4282 must include a report of the financial activities related to the tax increment financing provision.

(2) The department shall prescribe a uniform reporting system for all local government entities subject to financial reporting requirements, other than school districts. The superintendent of public instruction shall prescribe the reporting requirements for school districts.

(3) (a) The governing body or managing or executive officer of each local government entity receiving revenue or financial assistance in the period covered by the financial report that is in excess of \$500,000 and that is also in excess of the threshold dollar amount established by the director of the office of management and budget pursuant to 31 U.S.C. 7502(a)(3), regardless of the source of revenue or financial assistance, shall cause an audit to be made at least every 2 years. The audit must cover the entity's preceding 2 fiscal years. The audit must commence within 9 months from the close of the last fiscal year of the audit period. The audit must be completed and submitted to the department for review within 1 year from the close of the last fiscal year covered by the audit.

(b) The governing body or managing or executive officer of a local government entity that does not meet the criteria established in subsection (3)(a) shall at least once every 4 years, if directed by the department, or, in the case of a school district, if directed by the department at the request of the superintendent of public instruction, cause a financial review, as defined by department rule, to be conducted of the financial statements of the entity for the preceding fiscal year.

(4) An audit conducted in accordance with this part is in lieu of any financial or financial and compliance audit of an individual financial assistance program that a local government is required to conduct under any other state or federal law or regulation. If an audit conducted pursuant to this part provides a state agency with the information that it requires to carry out its responsibilities under state or federal law or regulation, the state agency shall rely upon and use that information to plan and conduct its own audits or reviews in order to avoid a duplication of effort.

(5) In addition to the audits required by this section, the department may at any time conduct or contract for a special audit or review of the affairs of any local government entity referred to in this part. The special audit or review must, to the extent practicable, build upon audits performed pursuant to this part.

(6) The fee for the special audit or review must be a charge based upon the costs incurred by the department in relation to the special audit or review. The audit fee must be paid by the local government entity to the state treasurer and must be deposited in the enterprise fund to the credit of the department.

(7) Failure to comply with the provisions of this section subjects the local government entity to the penalties provided in 2-7-517.



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

**Compiler's Comments**

*2017 Amendments — Composite Section:* Chapter 278 inserted (1)(b) concerning tax increment financing reporting; and made minor changes in style. Amendment effective October 1, 2017.

Chapter 439 in (3)(a) after "\$500,000" inserted "and that is also in excess of the threshold dollar amount established by the director of the office of management and budget pursuant to 31 U.S.C. 7502(a)(3)"; and made minor changes in style. Amendment effective July 1, 2017.

**2-7-504. Accounting methods.** (1) Unless otherwise required by law, the department shall prescribe by rule the general methods and details of accounting for the receipt and disbursement of all money belonging to local government entities and shall establish in those offices general methods and details of accounting. All local government entity officers shall conform with the accounting standards prescribed by the department.

(2) The rules adopted by the department must be in accordance with generally accepted accounting principles established by the governmental accounting standards board or its generally recognized successor.

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

**2-7-505. Audit scope and standards.** (1) Each audit must be a comprehensive audit of the affairs of the local government entity and must be made in accordance with auditing standards and in accordance with federal regulations adopted by the department by rule.

(2) The department, with cooperation from state agencies, shall prepare a local government compliance supplement that contains state and federal regulations applicable to local government entities. Auditors shall use the compliance supplement adopted pursuant to this section in conjunction with government auditing standards adopted by the department to determine the compliance testing to be performed during an audit.

(3) When auditing a county or a consolidated government, auditors shall perform tests for compliance with state laws relating to receipts and disbursements of agency funds maintained by the entity. Findings related to compliance tests must be reported in accordance with the reporting standards for financial audits prescribed in government auditing standards adopted by the department.

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

**2-7-506. Audit by independent auditor.** (1) The department may prepare and maintain a roster of independent auditors authorized to conduct audits of local government entities. The roster must be available to local government entities subject to the reporting requirements of 2-7-503.

(2) The department, in consultation with the board, shall adopt rules governing the:

- (a) criteria for the selection of the independent auditor;
- (b) procedures and qualifications for placing applicants on the roster;
- (c) procedures for reviewing the qualifications of independent auditors on the roster to justify their continuance on the roster; and
- (d) fees payable to the department for application for placement on the roster.

(3) An audit made by an independent auditor must be pursuant to a contract entered into by the governing body or managing or executive officer of the local government. The department must be a party to the contract and the contract may not be executed until it is signed by the department. All contracts for conducting audits must be in a form prescribed or approved by the department.

(4) The department shall notify the local government entity of a required audit, the date the report is due, and the requirement that the local government entity, the independent auditor, and the department must be parties to the contract.

(5) If a local government entity fails to present a signed contract to the department for approval within 90 days of receipt of the audit notice, the department may designate an independent auditor to perform the audit. The costs incurred by the department in arranging the audit must be paid by the local government entity to the department in the manner of other claims against the local government entity.

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

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

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

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

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

**2-7-509. Audits of school-related organizations — costs — criteria.** (1) The legislative auditor may conduct or have conducted an audit of the records of organizations referred to in 2-3-203(2).

(2) Before public funds are transferred to the organization, a member shall obtain the organization's written consent to:

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

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

**2-7-510 reserved.**

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

(1) The independent auditor may count the cash, verify the bank accounts, and verify all accounts of a public officer whose accounts the independent auditor is examining under law.

(2) If an officer of any county, city, town, school, or other local government entity refuses to provide the independent auditor access during an audit of the officer's accounts to cash, bank accounts, or any of the papers, vouchers, or records of that office or if the independent auditor finds a shortage of cash, the independent auditor shall immediately file a preliminary report showing the refusal of that officer or the existence of the shortage and the approximate amount of the shortage with the respective county, city, or town attorney and the governing body of the local government entity.

(3) Upon filing of the statement, the officer of the local government entity shall after notice and the opportunity for a hearing be suspended from the duties and emoluments of office and the governing body of the local government entity shall appoint a qualified person to the office pending completion of the audit.

(4) Upon the completion of the audit by the independent auditor, if a shortage of cash existed in the accounts of the officer, the independent auditor shall notify the governing body of the local government entity of the shortage.

(5) If the governing body finds that a shortage exists and that the officer suspended is, by act or omission, responsible for the shortage, the officer's right to the office is forfeited and the report of the audit must be referred to the county attorney.

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

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

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

**2-7-513. Content of audit report and financial report.** (1) The audit reports must comply with the reporting requirements of government auditing standards issued by the U.S. comptroller general and federal regulations adopted by department rule.

(2) The department shall prescribe general methods and details of accounting for the financial report for local government entities other than schools. The financial report must be submitted in a form required by the department. The superintendent of public instruction shall prescribe the general methods and details of accounting for financial reports for schools.

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

**2-7-514. Filing of audit report and financial report.** (1) Completed audit reports must be filed with the department. Completed financial reports must be filed with the department as provided in 2-7-503(1). The state superintendent of public instruction shall file with the department a list of school districts subject to audit under 2-7-503(3). The list must be filed with the department within 6 months after the close of the fiscal year.

(2) At the time that the financial report is filed or, in the case of a school district, when the audit report is filed with the department, the local government entity shall pay to the department a filing fee. The department shall charge a filing fee to any local government entity required to have an audit under 2-7-503, which fee must be based upon the costs incurred by the department in the administration of this part. Notwithstanding the provisions of 20-9-343, the filing fees for school districts required by this section must be paid by the office of public instruction. The department shall adopt the fee schedule by rule based upon the local government entities' revenue amounts, except that a local government meeting the requirements of 2-7-503(3)(b) shall pay only the administrative fee set by the department in rule.

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

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

**Compiler's Comments**

*2017 Amendment:* Chapter 439 in (2) in last sentence after "revenue amounts" inserted exception clause; and made minor changes in style. Amendment effective July 1, 2017.

**2-7-515. Actions by governing bodies.** (1) Upon receipt of the audit report, the governing bodies of each audited local government entity shall review the contents and within 30 days shall notify the department in writing as to what action they plan to take on any deficiencies or recommendations contained in the audit report. If no deficiencies or recommendations appear in the audit report, notification is not required.

(2) Notification to the department shall include a statement by the governing bodies that noted deficiencies or recommendations for improvement have been acted upon by adoption as recommended, adoption with modification, or rejection.

(3) The local government entity shall adopt measures to correct the report findings and submit a copy of the corrective action plan to the department and, if the local government entity is a school district, shall also send a copy to the superintendent of public instruction. The department shall notify the entity of the acceptance of the corrective measures. If the department and the local government entity fail to agree, a conference between the parties must be held. Failure to resolve findings or implement corrective measures shall result in the withholding of financial assistance in accordance with rules adopted by the department pending resolution or compliance.

(4) In cases where a violation of law or nonperformance of duty is found on the part of an officer, employee, or board, the officer, employee, or board must be proceeded against by the attorney general or county, city, or town attorney as provided by law. If a written request to do so is received from the department, the county, city, or town attorney shall report the proceedings instituted or to be instituted, relating to the violations of law and nonperformance of duty, to the department within 30 days after receiving the request. If the county, city, or town attorney fails or refuses to prosecute the case, the department may refer the case to the attorney general to prosecute the case at the expense of the local government entity.

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

**2-7-516. Audit fees.** (1) The compensation to the independent auditor for conducting an audit must be agreed upon by the governing body or managing or executive officer of the local government entity and the independent auditor and must be paid in the manner that other claims against the local government entity are paid.

(2) The compensation for an audit conducted by the department must be paid by the local government entity to the state treasurer and be deposited in an enterprise fund to the credit of the department.

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

**2-7-517. Penalties — rules to establish fine.** (1) Except as provided in 15-1-121(12)(b), when a local government entity has failed to file a report as required by 2-7-503(1) or to make the payment required by 2-7-514(2) within 60 days, the department may issue an order stopping payment of any state financial assistance to the local government entity or may charge a late payment penalty as adopted by rule. Upon receipt of the report or payment of the filing fee, all financial assistance that was withheld under this section must be released and paid to the local government entity.

(2) In addition to the penalty provided in subsection (1), if a local government entity has not filed the audits or reports pursuant to 2-7-503 within 180 days of the dates required by 2-7-503, the department shall notify the entity of the fine due to the department and shall provide public notice of the delinquent audits or reports.

(3) When a local government entity has failed to make payment as required by 2-7-516 within 60 days of receiving a bill for an audit, the department may issue an order stopping payment of any state financial aid to the local government entity. Upon payment for the audit, all financial aid that was withheld because of failure to make payment must be released and paid to the local government entity.

(4) The department may grant an extension to a local government entity for filing the audits and reports required under 2-7-503 or may waive the fines, fees, and other penalties imposed in this section if the local government entity shows good cause for the delinquency or demonstrates that the failure to comply with 2-7-503 was the result of circumstances beyond the entity's control.

(5) The department shall adopt rules establishing a fine, not to exceed \$100, based on the cost of providing public notice under subsection (2), for failure to file audits or reports required by 2-7-503 in the timeframes required under that section.

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

**Compiler's Comments**

*2017 Amendment:* Chapter 173 in (1) at beginning inserted exception clause; and made minor changes in style. Amendment effective July 1, 2017.

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

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

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

**2-7-521. Publication.** (1) (a) After the expiration of the 30-day period provided for in 2-7-515(1), the local government entity shall send a copy of each audit report to a newspaper of general circulation in the area of the local government entity. However, each county audit report must be sent to the official newspaper of the county.

(b) For an audit report of a county or an incorporated city or town, the county, city, or town shall send to the appropriate newspaper a copy of a summary of significant findings regarding the audit report. The summary, which may not exceed 800 words, must be prepared by the independent auditor and contain a statement indicating that it is only a summary and is not intended to be used as an audit report.

(2) For an audit report of a county or incorporated city or town, a newspaper is required to publish only:

(a) the summary of significant findings provided for in subsection (1)(b); and

(b) a statement to the effect that the audit report is on file in its entirety and open to public inspection.

(3) For an audit report of a local government entity other than a county or incorporated city or town, the newspaper is required to publish only the statement provided for in subsection (2)(b) and a statement providing that the audited local government entity will send a copy of the audit report to any interested person upon request.

(4) Publication costs must be borne by the audited local government entity.

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

**2-7-522. Report review.** (1) The department shall determine whether the provisions of this part have been complied with by the independent auditor.

(2) Upon receipt of the audit report from the local government entity the department shall review the report. If the department determines the reporting requirements have not been met, the department shall notify the local government entity and the independent auditor submitting the report of the significant issues of noncompliance. The notification must include issuance of a statement of deficiencies by the department. The department shall allow the independent auditor 60 days to correct the identified deficiencies.

(3) If the corrections are not made within 60 days of the department's notice, the department shall notify the local government entity that the report has not been received. Failure to submit a report shall result in the withholding of payment of the audit fee pending resolution of the identified deficiencies or receipt of a corrected report.

(4) Upon review of the report, if the department determines the independent auditor has issued a report that fails to meet the auditing standards referred to in 2-7-513 or contains false or misleading information, the department shall notify the board.

(5) The department shall review the audit report findings and the response of the governing body or executive or managing officer of the local government entity submitted under 2-7-515. When the findings concern financial assistance, the department shall notify the state agency that is responsible for disbursing the state or federal funding.

(6) The department must have access in its office to the working papers of the independent auditor.

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

## CHAPTER 9 LIABILITY EXPOSURE AND INSURANCE COVERAGE

### Part 1 Liability Exposure

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

(1) "Claim" means any claim against a governmental entity, for money damages only, that any person is legally entitled to recover as damages because of personal injury or property damage caused by a negligent or wrongful act or omission committed by any employee of the governmental entity while acting within the scope of employment, under circumstances where



the governmental entity, if a private person, would be liable to the claimant for the damages under the laws of the state. For purposes of this section and the limit of liability contained in 2-9-108, all claims that arise or derive from personal injury to or death of a single person, or damage to property of a person, regardless of the number of persons or entities claiming damages, are considered one claim.

(2) (a) “Employee” means an officer, employee, or servant of a governmental entity, including elected or appointed officials, and persons acting on behalf of the governmental entity in any official capacity temporarily or permanently in the service of the governmental entity whether with or without compensation.

(b) The term does not mean a person or other legal entity while acting in the capacity of an independent contractor under contract to the governmental entity to which parts 1 through 3 apply in the event of a claim.

(3) “Governmental entity” means the state and political subdivisions.

(4) “Personal injury” means any injury resulting from libel, slander, malicious prosecution, or false arrest and any bodily injury, sickness, disease, or death sustained by any person and caused by an occurrence for which the state may be held liable.

(5) “Political subdivision” means any county, city, municipal corporation, school district, special improvement or taxing district, other political subdivision or public corporation, or any entity created by agreement between two or more political subdivisions.

(6) “Property damage” means injury or destruction to tangible property, including loss of use of the property, caused by an occurrence for which the state may be held liable.

(7) “State” means the state of Montana or any office, department, agency, authority, commission, board, institution, hospital, college, university, or other instrumentality of the state.

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

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

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

**2-9-103. Actions under invalid law or rule — same as if valid — when.** (1) If an officer, agent, or employee of a governmental entity acts in good faith, without malice or corruption, and under the authority of law and that law is subsequently declared invalid as in conflict with the constitution of Montana or the constitution of the United States, that officer, agent, or employee, any other officer, agent, or employee of the represented governmental entity, or the governmental entity is not civilly liable in any action in which the individuals or governmental entity would not have been liable if the law had been valid.

(2) If an officer, agent, or employee of a governmental entity acts in good faith, without malice or corruption, and under the authority of a duly promulgated rule or ordinance and that rule or ordinance is subsequently declared invalid, that officer, agent, or employee, any other officer, agent, or employee of the represented governmental entity, or the governmental entity is not civilly liable in any action in which liability would not attach if the rule or ordinance had been valid.

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

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

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

**2-9-108. Limitation on governmental liability for damages in tort.** (1) The state, a county, municipality, taxing district, or any other political subdivision of the state is not liable in tort action for damages suffered as a result of an act or omission of an officer, agent, or employee of that entity in excess of \$750,000 for each claim and \$1.5 million for each occurrence.

(2) The state, a county, municipality, taxing district, or any other political subdivision of the state is not liable in tort action for damages suffered as a result of negligence of an officer, agent, or employee of that entity by a person while the person was confined in or was otherwise in or on the premises of a correctional or detention institution or facility to serve a sentence imposed upon conviction of a criminal offense. The immunity granted by this subsection does not extend to serious bodily injury or death resulting from negligence or to damages resulting from medical malpractice, gross negligence, willful or wanton misconduct, or an intentional tort. This subsection does not create an exception from the dollar limitations provided for in subsection (1).

(3) An insurer is not liable for excess damages unless the insurer specifically agrees by written endorsement to provide coverage to the governmental agency involved in amounts in excess of a limitation stated in this section, in which case the insurer may not claim the benefits of the limitation specifically waived.

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

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

**2-9-111. Immunity from suit for legislative acts and omissions.** (1) As used in this section:

(a) the term “governmental entity” means only the state, counties, municipalities, school districts, and any other local government entity or local political subdivision vested with legislative power by statute;

(b) the term “legislative body” means only the legislature vested with legislative power by Article V of The Constitution of the State of Montana and that branch or portion of any other local governmental entity or local political subdivision empowered by law to consider and enact statutes, charters, ordinances, orders, rules, policies, resolutions, or resolves;

(c) (i) the term “legislative act” means:

(A) actions by a legislative body that result in creation of law or declaration of public policy;

(B) other actions of the legislature authorized by Article V of The Constitution of the State of Montana; or

(C) actions by a school board that result in adoption of school board policies pursuant to 20-3-323(1);

(ii) the term legislative act does not include administrative actions undertaken in the execution of a law or public policy.

(2) A governmental entity is immune from suit for a legislative act or omission by its legislative body, or any member or staff of the legislative body, engaged in legislative acts.

(3) Any member or staff of a legislative body is immune from suit for damages arising from the lawful discharge of an official duty associated with legislative acts of the legislative body.

(4) The acquisition of insurance coverage, including self-insurance or group self-insurance, by a governmental entity does not waive the immunity provided by this section.

(5) The immunity provided for in this section does not extend to:

(a) any tort committed by the use of a motor vehicle, aircraft, or other means of transportation; or

(b) any act or omission that results in or contributes to personal injury or property damage caused by contamination or other alteration of the physical, chemical, or biological properties of surface water or ground water, for which a cause of action exists in statutory or common law or at equity. This subsection (b) does not create a separate or new cause of action.

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

**2-9-112. Immunity from suit for judicial acts and omissions.** (1) The state and other governmental units are immune from suit for acts or omissions of the judiciary.

(2) A member, officer, or agent of the judiciary is immune from suit for damages arising from the lawful discharge of an official duty associated with judicial actions of the court.

(3) The judiciary includes those courts established in accordance with Article VII of The Constitution of the State of Montana.

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

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

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

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

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

## **Part 2**

### **Comprehensive State Insurance Plan**

**2-9-201. Comprehensive insurance plan for state.** (1) The department of administration is responsible for the acquisition and administration of all the insurance purchased for protection of the state, as defined in 2-9-101.

(2) The department of administration shall, after consultation with the departments, agencies, commissions, and other instrumentalities of the state, provide a comprehensive insurance plan for the state providing insurance coverage to the state in amounts determined and set by the department of administration and may purchase, renew, cancel, and modify all policies according to the comprehensive insurance plan. The plan may include property, casualty, liability, crime, fidelity, and any such other policies of insurance as the department of administration may from time to time deem reasonable and prudent.

(3) The department of administration may in its discretion elect to utilize a deductible insurance plan, either wholly or in part.

(4) Only the department of administration may procure insurance under parts 1 through 3 of this chapter except as otherwise provided herein.

(5) All offices, departments, agencies, authorities, commissions, boards, institutions, hospitals, colleges, universities, and other instrumentalities of the state hereafter called state participants shall comply with parts 1 through 3 and the insurance plan developed by the department of administration.

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

**2-9-202. Apportionment of costs — creation of deductible reserve.** (1) The department of administration shall apportion the costs of all insurance purchased under 2-9-201 to the individual state participants, and the costs must be paid to the department subject to appropriations by the legislature.

(2) The department, if it elects to use a deductible insurance plan, is authorized to charge the individual state participants an amount equal to the cost of a full-coverage insurance plan until such time as a deductible reserve is established. In each subsequent year, the department may charge a sufficient amount over the actual cost of the deductible insurance to replenish the deductible reserves.

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

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

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

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

**2-9-211. Political subdivision insurance.** (1) All political subdivisions of the state may procure insurance separately or jointly with other subdivisions and may elect to use a deductible or self-insurance plan, wholly or in part. Political subdivisions that elect to procure insurance jointly (pooled fund) under this section may obtain excess coverage from a surplus lines insurer without proceeding under the provisions of 33-2-302(2)(a)(ii) through (2)(a)(iv). Political subdivisions that are not in a pooled fund may obtain excess coverage from a surplus lines insurer without proceeding under the provisions of 33-2-302(2)(a)(ii) through (2)(a)(iv) only if the insurer carries an A rating or better by a nationally recognized rating company or is a Lloyd's of London underwriter.

(2) A political subdivision that elects to establish a deductible plan may establish a deductible reserve separately or jointly with other subdivisions.

(3) A political subdivision that elects to establish a self-insurance plan may accumulate a self-insurance reserve fund, separately or jointly with other subdivisions, sufficient to provide self-insurance for all liability coverages that, in its discretion, the political subdivision considers should be self-insured. Payments into the reserve fund must be made from local legislative appropriations for that purpose or from the proceeds of bonds or notes authorized by subsection (5). Proceeds of the fund may be used only to pay claims under parts 1 through 3 of this chapter and for actual and necessary expenses required for the efficient administration of the fund.

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

(5) A political subdivision may issue and sell its bonds or notes for purposes of funding a self-insurance or deductible reserve fund and costs incident to the reserve fund in an amount not exceeding 0.18% of the total assessed value of taxable property, determined as provided in 15-8-111, within the political subdivision as of the date of issuance. The bonds or notes must be authorized by resolution of the governing body, are payable from the taxes authorized by 2-9-212, may be sold at public or private sale, do not constitute debt within the meaning of any statutory debt limitation, and may contain other terms and provisions as the governing body determines. Two or more political subdivisions may agree pursuant to an interlocal agreement to exercise their respective borrowing powers under this section jointly and may authorize a joint board created pursuant to the agreement to exercise powers on their behalf.

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

**2-9-212. Political subdivision tax levy to pay contributions.** (1) Subject to 15-10-420 and subsection (2) of this section, a political subdivision, except for a school district, may levy an annual property tax in the amount necessary to fund the contribution for insurance, deductible reserve fund, and self-insurance reserve fund as authorized in this section and to pay the principal and interest on bonds or notes issued pursuant to 2-9-211(5).

(2) (a) If a political subdivision makes contributions for group benefits under 2-18-703, the amount in excess of the base contribution as determined under 2-18-703(4)(c) for group benefits under 2-18-703 is not subject to the mill levy calculation limitation provided for in 15-10-420. Levies implemented under this section must be calculated separately from the mill levies calculated under 15-10-420 and are not subject to the inflation factor described in 15-10-420(1)(a).

(i) Contributions for group benefits paid wholly or in part from user charges generated by proprietary funds, as defined by generally accepted accounting principles, are not included in the amount exempted from the mill levy calculation limitation provided for in 15-10-420.

(ii) If tax-billing software is capable, the county treasurer shall list separately the cumulative mill levy or dollar amount on the tax notice sent to each taxpayer under 15-16-101(2). The amount must also be reported to the department of administration pursuant to 7-6-4003. The mill levy must be described as the permissive medical levy.

(b) Each year prior to implementing a levy under subsection (2)(a), after notice of the hearing given under 7-1-2121 or 7-1-4127, a public hearing must be held regarding any proposed increases.

(c) A levy under this section in the previous year may not be included in the amount of property taxes that a governmental entity is authorized to levy for the purposes of determining the amount that the governmental entity may assess under the provisions of 15-10-420(1)(a).



When a levy under this section decreases or is no longer levied, the revenue may not be combined with the revenue determined in 15-10-420(1)(a).

(3) (a) For the purposes of this section, “group benefits” means group hospitalization, health, medical, surgical, life, and other similar and related group benefits provided to officers and employees of political subdivisions, including flexible spending account benefits and payments in lieu of group benefits.

(b) The term does not include casualty insurance as defined in 33-1-206, marine insurance as authorized in 33-1-209 and 33-1-221 through 33-1-229, property insurance as defined in 33-1-210, surety insurance as defined in 33-1-211, and title insurance as defined in 33-1-212.

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

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

**2-9-220. Loss mitigation program — purpose.** (1) There is a loss mitigation program administered by the department of administration.

(2) Funds for the program must be used by the department solely for the purpose of mitigating losses generated through claims against the state related to property, automobiles, aviation, and general liability.

(3) An agency seeking funds from the loss mitigation program shall present to the department a written request that:

- (a) identifies the risk of loss and potential costs associated with the risk of loss;
- (b) identifies matching funds from the agency to address or reduce the risk of loss; and
- (c) provides a detailed explanation of how the funds will be spent to mitigate the risk of loss.

(4) Prior to distributing funds for an agency seeking funds from the loss mitigation program, the department of administration shall review the information provided by the agency and confirm the existence of a significant risk of loss to be mitigated with the requested funds.

(5) A distribution over \$30,000 for each written request, not including matching funds available to the agency, from the loss mitigation program to a single agency is subject to approval by the office of budget and program planning.

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

## **Part 3 Claims and Actions**

**2-9-301. Filing of claims against state and political subdivisions — disposition by state agency as prerequisite.** (1) All claims against the state arising under the provisions of parts 1 through 3 of this chapter must be presented in writing to the department of administration.

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

(3) All claims against a political subdivision arising under the provisions of parts 1 through 3 shall be presented to and filed with the clerk or secretary of the political subdivision.

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

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

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



**2-9-303. Compromise or settlement of claim against state.** (1) The department of administration may compromise and settle any claim allowed by parts 1 through 3 of this chapter, subject to the terms of insurance, if any. A settlement from the self-insurance reserve fund or deductible reserve fund exceeding \$10,000 must be approved by the district court of the first judicial district except when suit has been filed in another judicial district, in which case the presiding judge shall approve the compromise settlement.

(2) All terms, conditions, and details of the governmental portion of a compromise or settlement agreement entered into or approved pursuant to subsection (1) are public records available for public inspection unless a right of individual privacy clearly exceeds the merits of public disclosure.

(3) An employee who is a party to a compromise or settlement entered into or approved pursuant to subsection (1) may waive the right of individual privacy and allow the state to release all records or details of the compromise or settlement, such as personnel records, that pertain to the employee personally and that would otherwise be protected by the right of individual privacy subject to the merits of public disclosure.

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

**Compiler's Comments**

*2017 Amendment:* Chapter 306 inserted (3) allowing employee who is a party to a settlement to waive right of individual privacy in order to release records or details of settlement that pertain to the employee personally. Amendment effective May 4, 2017.

*Retroactive Applicability — Applicability:* Section 6, Ch. 306, L. 2017, provided: “(1) For compromise or settlements entered into on or after July 1, 2010, until [the effective date of this act] [May 4, 2017], [this act] applies retroactively, within the meaning of 1-2-109, unless the compromise or settlement contract provides that the records or details of the compromise or settlement, such as personnel records, that pertain to the employee personally may not be released.

(2) [This act] applies without limitation to compromise or settlements entered into on or after [the effective date of this act] [May 4, 2017].”

**2-9-304. Compromise or settlement of claim against political subdivision.** (1) The governing body of each political subdivision, after conferring with its legal officer or counsel, may compromise and settle any claim allowed by parts 1 through 3 of this chapter, subject to the terms of insurance, if any.

(2) All terms, conditions, and details of the governmental portion of a compromise or settlement agreement entered into pursuant to subsection (1) are public records available for public inspection unless a right of individual privacy clearly exceeds the merits of public disclosure.

(3) An employee who is a party to a compromise or settlement entered into or approved pursuant to subsection (1) may waive the right of individual privacy and allow the state to release all records or details of the compromise or settlement, such as personnel records, that pertain to the employee personally and that would otherwise be protected by the right of individual privacy subject to the merits of public disclosure.

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

**Compiler's Comments**

*2017 Amendment:* Chapter 306 inserted (3) allowing employee who is a party to a settlement to waive right of individual privacy in order to release records or details of settlement that pertain to the employee personally. Amendment effective May 4, 2017.

*Retroactive Applicability — Applicability:* Section 6, Ch. 306, L. 2017, provided: “(1) For compromise or settlements entered into on or after July 1, 2010, until [the effective date of this act] [May 4, 2017], [this act] applies retroactively, within the meaning of 1-2-109, unless the compromise or settlement contract provides that the records or details of the compromise or settlement, such as personnel records, that pertain to the employee personally may not be released.

(2) [This act] applies without limitation to compromise or settlements entered into on or after [the effective date of this act] [May 4, 2017].”

**2-9-305. Immunization, defense, and indemnification of employees.** (1) It is the purpose of this section to provide for the immunization, defense, and indemnification of public officers and employees civilly sued for their actions taken within the course and scope of their employment.

(2) In any noncriminal action brought against any employee of a state, county, city, town, or other governmental entity for a negligent act, error, or omission, including alleged

violations of civil rights pursuant to 42 U.S.C. 1983, or other actionable conduct of the employee committed while acting within the course and scope of the employee's office or employment, the governmental entity employer, except as provided in subsection (6), shall defend the action on behalf of the employee and indemnify the employee.

(3) Upon receiving service of a summons and complaint in a noncriminal action against an employee, the employee shall give written notice to the employee's supervisor requesting that a defense to the action be provided by the governmental entity employer. If the employee is an elected state official or other employee who does not have a supervisor, the employee shall give notice of the action to the legal officer or agency of the governmental entity defending the entity in legal actions of that type. Except as provided in subsection (6), the employer shall offer a defense to the action on behalf of the employee. The defense may consist of a defense provided directly by the employer. The employer shall notify the employee, within 15 days after receipt of notice, whether a direct defense will be provided. If the employer refuses or is unable to provide a direct defense, the defendant employee may retain other counsel. Except as provided in subsection (6), the employer shall pay all expenses relating to the retained defense and pay any judgment for damages entered in the action that may be otherwise payable under this section.

(4) In any noncriminal action in which a governmental entity employee is a party defendant, the employee must be indemnified by the employer for any money judgments or legal expenses, including attorney fees either incurred by the employee or awarded to the claimant, or both, to which the employee may be subject as a result of the suit unless the employee's conduct falls within the exclusions provided in subsection (6).

(5) Recovery against a governmental entity under the provisions of parts 1 through 3 of this chapter constitutes a complete bar to any action or recovery of damages by the claimant, by reason of the same subject matter, against the employee whose negligence or wrongful act, error, omission, or other actionable conduct gave rise to the claim. In an action against a governmental entity, the employee whose conduct gave rise to the suit is immune from liability by reasons of the same subject matter if the governmental entity acknowledges or is bound by a judicial determination that the conduct upon which the claim is brought arises out of the course and scope of the employee's employment, unless the claim constitutes an exclusion provided in subsections (6)(b) through (6)(d).

(6) In a noncriminal action in which a governmental entity employee is a party defendant, the employee may not be defended or indemnified by the employer for any money judgments or legal expenses, including attorney fees, to which the employee may be subject as a result of the suit if a judicial determination is made that:

(a) the conduct upon which the claim is based constitutes oppression, fraud, or malice or for any other reason does not arise out of the course and scope of the employee's employment;

(b) the conduct of the employee constitutes a criminal offense as defined in Title 45, chapters 4 through 7;

(c) the employee compromised or settled the claim without the consent of the government entity employer; or

(d) the employee failed or refused to cooperate reasonably in the defense of the case.

(7) If a judicial determination has not been made applying the exclusions provided in subsection (6), the governmental entity employer may determine whether those exclusions apply. However, if there is a dispute as to whether the exclusions of subsection (6) apply and the governmental entity employer concludes that it should clarify its obligation to the employee arising under this section by commencing a declaratory judgment action or other legal action, the employer is obligated to provide a defense or assume the cost of the defense of the employee until a final judgment is rendered in that action holding that the employer did not have an obligation to defend the employee. The governmental entity employer does not have an obligation to provide a defense to the employee in a declaratory judgment action or other legal action brought against the employee by the employer under this subsection.

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

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

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

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

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

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

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

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

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

**2-9-314. Court approval of attorney fees.** (1) When an attorney represents or acts on behalf of a claimant or any other party on a tort claim against the state or a political subdivision of the state, the attorney shall file with the claim a copy of the contract of employment showing specifically the terms of the fee arrangement between the attorney and the claimant.

(2) The district court may regulate the amount of the attorney fees in any tort claim against the state or a political subdivision of the state. In regulating the amount of the fees, the court shall consider the time the attorney was required to spend on the case, the complexity of the case, and any other relevant matter the court may consider appropriate.

(3) Attorney fees regulated under this section must be made a part of the court record and are open to the public.

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

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

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

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

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

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

of a county, city, or school district may issue bonds pursuant to procedures established by law. Property taxes may be levied to amortize the bonds.

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

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

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

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

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

## Part 5 General Provisions Related to Official Bonds

**2-9-501. Application — bonds excepted.** The provisions of this part apply to the official bond of any executor, administrator, or guardian or to the bond or undertaking of any person when by law a bond or undertaking is required, except county, town, or township officers and state officers and employees.

**History:** En. Sec. 1084, Pol. C. 1895; amd. Sec. 7, p. 82, L. 1899; re-en. Sec. 412, Rev. C. 1907; re-en. Sec. 503, R.C.M. 1921; Cal. Pol. C. Sec. 981; amd. Sec. 1, Ch. 17, L. 1935; re-en. Sec. 503, R.C.M. 1935; amd. Sec. 7, Ch. 134, L. 1941; amd. Sec. 8, Ch. 177, L. 1965; R.C.M. 1947, 6-331; amd. Sec. 1, Ch. 209, L. 2005.

**2-9-502. Bonds of deputies.** Every officer or body appointing a deputy, clerk, or subordinate officer may require an official bond to be given by the person appointed and may fix the amount thereof.

**History:** En. Sec. 1088, Pol. C. 1895; re-en. Sec. 416, Rev. C. 1907; re-en. Sec. 507, R.C.M. 1921; Cal. Pol. C. Sec. 985; re-en. Sec. 507, R.C.M. 1935; R.C.M. 1947, 6-335.

**2-9-503. Bond of appointee.** Any person appointed to fill a vacancy, before entering upon the duties of the office, must give a bond corresponding in substance and form with the bond required of the officer originally elected or appointed, as herein provided.

**History:** En. Sec. 1074, Pol. C. 1895; re-en. Sec. 402, Rev. C. 1907; re-en. Sec. 493, R.C.M. 1921; Cal. Pol. C. Sec. 971; re-en. Sec. 493, R.C.M. 1935; R.C.M. 1947, 6-324.

**2-9-504. Conditions, form, and signatures.** (1) The condition of an official bond must be that the principal shall well, truly, and faithfully perform all official duties required of the principal by law and also any additional duties that may be imposed on the principal by any law of the state subsequently enacted and that the principal will account for, pay over, and deliver to the person or officer entitled to receive all money or other property that the principal receives as an officer.

(2) The principal and sureties upon an official bond are liable for the neglect, default, or misconduct in office of any deputy, clerk, or employee appointed or employed by the principal.

(3) Official bonds must be signed and executed by the principal and two or more sureties or by the principal and one or more surety companies organized under the laws of this state or licensed to do business in this state.

(4) Official bonds must be joint and several and made payable to the state of Montana in the amount and with the conditions required by this part or the law creating or regulating the duties of the office.

**History:** (1) thru (3) En. Sec. 1057, Pol. C. 1895; amd. Sec. 2, p. 79, L. 1899; re-en. Sec. 384, Rev. C. 1907; re-en. Sec. 475, R.C.M. 1921; Cal. Pol. C. Sec. 954; re-en. Sec. 475, R.C.M. 1935; Sec. 6-306, R.C.M. 1947; (4) En. Sec. 1061, Pol. C. 1895; re-en. Sec. 388, Rev. C. 1907; re-en. Sec. 479, R.C.M. 1921; Cal. Pol. C. Sec. 958; re-en. Sec. 479, R.C.M. 1935; Sec. 6-310, R.C.M. 1947; R.C.M. 1947, 6-306, 6-310; amd. Sec. 59, Ch. 61, L. 2007.

**2-9-505. Bonds of receivers, assignees — payable to state.** All bonds or undertakings given by trustees, receivers, assignees, or officers of a court in an action or proceeding for the faithful discharge of their duties, where it is not otherwise provided, must be in the name of and payable to the state and, upon the order of the court where such action or proceeding is pending, may be prosecuted for the benefit of any and all interested therein.



**History:** En. Sec. 1085, Pol. C. 1895; re-en. Sec. 413, Rev. C. 1907; re-en. Sec. 504, R.C.M. 1921; Cal. Pol. C. Sec. 982; re-en. Sec. 504, R.C.M. 1935; R.C.M. 1947, 6-332.

**2-9-506. Approval, filing, record, and custody.** (1) The approval of every official bond must be endorsed thereon and signed by the officer approving the same. No officer with whom any official bond is required to be filed must file such bond until approved.

(2) Every official bond must be filed in the proper office within the time prescribed for filing the oath unless otherwise expressly provided by statute.

(3) Official bonds must be recorded in a book kept for the purpose and entitled "Record of Official Bonds".

(4) Every officer with whom official bonds are filed must carefully keep and preserve the same and give certified copies thereof to any person demanding the same upon being paid the same fees as are allowable by law for certified copies of papers in other cases.

**History:** (1)Ap. p. Sec. 1055, Pol. C. 1895; re-en. Sec. 382, Rev. C. 1907; re-en. Sec. 473, R.C.M. 1921; Cal. Pol. C. Sec. 952; re-en. Sec. 473, R.C.M. 1935; Sec. 6-304, R.C.M. 1947; Ap. p. Sec. 1056, Pol. C. 1895; re-en. Sec. 383, Rev. C. 1907; re-en. Sec. 474, R.C.M. 1921; Cal. Pol. C. Sec. 953; re-en. Sec. 474, R.C.M. 1935; Sec. 6-305, R.C.M. 1947; (2)En. Sec. 1050, Pol. C. 1895; re-en. Sec. 377, Rev. C. 1907; re-en. Sec. 468, R.C.M. 1921; Cal. Pol. C. Sec. 947; re-en. Sec. 468, R.C.M. 1935; Sec. 6-301, R.C.M. 1947; (3)En. Sec. 1054, Pol. C. 1895; re-en. Sec. 381, Rev. C. 1907; re-en. Sec. 472, R.C.M. 1921; Cal. Pol. C. Sec. 951; re-en. Sec. 472, R.C.M. 1935; Sec. 6-303, R.C.M. 1947; (4)En. Sec. 1060, Pol. C. 1895; re-en. Sec. 387, Rev. C. 1907; re-en. Sec. 478, R.C.M. 1921; Cal. Pol. C. Sec. 957; re-en. Sec. 478, R.C.M. 1935; Sec. 6-309, R.C.M. 1947; R.C.M. 1947, 6-301, 6-303, 6-304, 6-305, 6-309.

**2-9-507. Sureties' qualifications.** (1) The individual sureties on all official bonds shall justify, before an officer authorized to administer oaths, by an affidavit to the effect that they are residents and householders or freeholders within the state and that each is worth the sum for which the individual becomes surety in the bond over and above the individual's just debts and liabilities, exclusive of property exempt from execution.

(2) A surety company or corporation organized under or that has complied with the laws of this state and that has been duly licensed to do business in this state may not be required to justify as a surety. A company or corporation may not be accepted as a surety in a case when its liabilities exceed its assets, as ascertained in the manner provided by law.

(3) A member of the board of county commissioners may not be accepted as a surety upon the official bond of any county, township, or school district officer in the commissioner's county, and a county officer may not be a surety upon the official bond of any other county officer.

**History:** En. Sec. 1058, Pol. C. 1895; amd. Sec. 3, p. 80, L. 1899; re-en. Sec. 385, Rev. C. 1907; re-en. Sec. 476, R.C.M. 1921; Cal. Pol. C. Sec. 955; re-en. Sec. 476, R.C.M. 1935; R.C.M. 1947, 6-307; amd. Sec. 60, Ch. 61, L. 2007.

**2-9-508 through 2-9-510 reserved.**

**2-9-511. Extent of sureties' liability — when less than full.** (1) An official bond executed by any officer pursuant to law is in force and obligatory upon the principal and sureties for any and all breaches of the conditions of the bond committed during the time the officer continues to discharge any of the duties of or hold the office and whether the breaches are committed or suffered by the principal officer or the officer's deputy or clerk.

(2) A surety bond is in force and obligatory upon the principal and sureties for the faithful discharge of all duties that may be required of the officer by any law enacted subsequently to the execution of the bond, and that condition must be expressed in the bond.

(3) When the penal sum of a bond required to be given amounts to more than \$1,000, the sureties may become severally liable for portions not less than \$500, making in the aggregate a liability of double the amount named as the penal sum of the bond. If a bond is forfeited, an action may be brought on the bond against any or all of the obligors and judgment may be entered against them, either jointly or severally, as they may be liable. The judgment may not be entered against a surety severally bound for a greater sum than that for which the surety is specially liable by the terms of the bond. Each surety is liable to contribute to the cosureties in proportion to the amount for which the surety is liable.

**History:** (1)En. Sec. 1062, Pol. C. 1895; re-en. Sec. 389, Rev. C. 1907; re-en. Sec. 480, R.C.M. 1921; Cal. Pol. C. Sec. 959; re-en. Sec. 480, R.C.M. 1935; Sec. 6-311, R.C.M. 1947; (2)En. Sec. 1063, Pol. C. 1895; re-en. Sec. 390, Rev. C. 1907; re-en. Sec. 481, R.C.M. 1921; Cal. Pol. C. Sec. 960; re-en. Sec. 481, R.C.M. 1935; Sec. 6-312, R.C.M. 1947; (3)En. Sec. 1059, Pol. C. 1895; amd. Sec. 1, p. 112, L. 1897; amd. Sec. 4, p. 80, L. 1899; re-en. Sec. 386, Rev. C. 1907; re-en. Sec. 477, R.C.M. 1921; Cal. Pol. C. Sec. 956; re-en. Sec. 477, R.C.M. 1935; Sec. 6-308, R.C.M. 1947; R.C.M. 1947, 6-308, 6-311, 6-312; amd. Sec. 61, Ch. 61, L. 2007.



**2-9-512. Defects not to affect liability.** (1) If an official bond does not contain the substantial matter or conditions required by law or there are any defects in the approval or filing of the bond, it is not void so as to discharge the officer and sureties. The sureties are equitably bound to the state or party interested, and the state or the party may, by action in any court of competent jurisdiction, suggest the defect in the bond, approval, or filing and recover the proper and equitable demand or damages from the officer and the persons who intended to become and were included as sureties in the bond.

(2) An official bond entered into by an officer or a bond, recognizance, or written undertaking taken by an officer in the discharge of the duties of office is not void for want of form, substance, recital, or condition or the principal or surety be discharged. The principal and surety must be bound by the bond, recognizance, or written undertaking to the full extent contemplated by the law requiring the bond and the sureties to the amount specified in the bond, recognizance, or written undertaking. In all actions on a defective bond, recognizance, or written undertaking, the plaintiff or relator may suggest the defect in the complaint and recover to the same extent as if the bond, recognizance, or written undertaking were perfect in all respects.

**History:** (1)En. Sec. 1066, Pol. C. 1895; re-en. Sec. 393, Rev. C. 1907; re-en. Sec. 484, R.C.M. 1921; Cal. Pol. C. Sec. 963; re-en. Sec. 484, R.C.M. 1935; Sec. 6-315, R.C.M. 1947; (2)En. Sec. 1, Ch. 193, L. 1907; re-en. Sec. 394, Rev. C. 1907; re-en. Sec. 485, R.C.M. 1921; re-en. Sec. 485, R.C.M. 1935; Sec. 6-316, R.C.M. 1947; R.C.M. 1947, 6-315, 6-316; amd. Sec. 62, Ch. 61, L. 2007.

**2-9-513. Insufficiency of sureties — action to vacate office.** (1) Whenever it is shown by the affidavit of a credible witness or otherwise comes to the knowledge of the court, judge, board, person, or body whose duty it is to approve the official bond of any officer that one or more sureties on a bond given pursuant to the provisions of this part have, since the bond was approved, died, left the state, become insolvent, or from any other cause have become incompetent or insufficient sureties on the bond, the court, judge, board, officer, or other person may issue a citation to the officer requiring the officer on a day named in the citation, not less than 5 or more than 10 days after the citation was issued, to appear and show cause why the office should not be vacated. The citation must be served and the return of the citation must be made as in other cases.

(2) If the officer fails to appear and show good cause why the office should not be vacated on the day named or fails to give ample additional security, the court, judge, board, officer, or other person shall make an order vacating the office. The office must be filled as provided by law.

**History:** En. Sec. 1067; Pol. C. 1895; amd. Sec. 5, p. 81, L. 1899; re-en. Sec. 395, Rev. C. 1907; re-en. Sec. 486, R.C.M. 1921. Cal. Pol. C. Sec. 964; re-en. Sec. 486, R.C.M. 1935; R.C.M. 1947, 6-317; amd. Sec. 63, Ch. 61, L. 2007.

**2-9-514. Additional security.** (1) The additional bond given pursuant to 2-9-513(2) must be in the penalty directed by the court, judge, board, officer, or other person and in all other respects similar to the original bond and approved by and filed with the same officer as required in case of the approval and filing of the original bond.

(2) Each additional bond filed and approved is of like force and obligation upon the principal and sureties from the time of its execution and subjects the officer and the sureties to the same liabilities, suits, and actions that are prescribed respecting the original bonds of officers.

(3) The original bond is not discharged or affected when an additional bond has been given, but the original bond remains of the same force and obligation as if the additional bond had not been given.

**History:** (1), (2)En. Sec. 1068, Pol. C. 1895; re-en. Sec. 396, Rev. C. 1907; re-en. Sec. 487, R.C.M. 1921; Cal. Pol. C. Sec. 965; re-en. Sec. 487, R.C.M. 1935; Sec. 6-318, R.C.M. 1947; (3)En. Sec. 1069, Pol. C. 1895; re-en. Sec. 397, Rev. C. 1907; re-en. Sec. 488, R.C.M. 1921; Cal. Pol. C. Sec. 966; re-en. Sec. 488, R.C.M. 1935; Sec. 6-319, R.C.M. 1947; R.C.M. 1947, 6-318, 6-319; amd. Sec. 9, Ch. 184, L. 1979; amd. Sec. 64, Ch. 61, L. 2007.

**2-9-515. Additional security — liability of officers and sureties.** The officer and the officer's sureties are liable to any party injured by the breach of any condition of an official bond, after the execution of the additional bond, upon either or both bonds. The injured party may bring an action upon either bond or may bring separate actions on the bonds respectively. The injured party may allege the same cause of action and may recover judgment in each suit.

**History:** En. Sec. 1070, Pol. C. 1895; re-en. Sec. 398, Rev. C. 1907; re-en. Sec. 489, R.C.M. 1921; Cal. Pol. C. Sec. 967; re-en. Sec. 489, R.C.M. 1935; R.C.M. 1947, 6-320; amd. Sec. 65, Ch. 61, L. 2007.

**2-9-516. Separate judgments.** If separate judgments are recovered on the surety bonds by an injured party for the same cause of action, the injured party is entitled to have execution issued on the judgments respectively but the injured party may collect, by execution or otherwise, only the amount actually adjudged on the same causes of action in one of the suits, together with the costs of both suits.

**History:** En. Sec. 1071, Pol. C. 1895; re-en. Sec. 399, Rev. C. 1907; re-en. Sec. 490, R.C.M. 1921; Cal. Pol. C. Sec. 968; re-en. Sec. 490, R.C.M. 1935; R.C.M. 1947, 6-321; amd. Sec. 66, Ch. 61, L. 2007.

**2-9-517. Contribution between sureties.** Whenever the sureties on either bond have been compelled to pay any sum of money on account of the principal obligor therein, they are entitled to recover in any court of competent jurisdiction of the sureties on the remaining bond a distributive part of the sum thus paid in the proportion which the penalties of such bonds bear one to the other and to the sums thus paid, respectively.

**History:** En. Sec. 1072, Pol. C. 1895; re-en. Sec. 400, Rev. C. 1907; re-en. Sec. 491, R.C.M. 1921; Cal. Pol. C. Sec. 969; re-en. Sec. 491, R.C.M. 1935; R.C.M. 1947, 6-322.

**2-9-518 through 2-9-520 reserved.**

**2-9-521. Discharge of sureties.** Whenever any sureties on the official bond of any officer wish to be discharged from their liability, they and such officer may procure the same to be done if such officer will execute a new bond in accordance with the provisions of this part in like form, penalty, and conditions, and to be approved and filed as the original bond. Upon the filing and approval of the new bond, such first sureties are exonerated from all further liability, but their bond remains in full force as to all liabilities incurred previous to the approval of such new bond. The liability of the principal and surety or sureties in such new bond is in all respects the same and may be enforced in like manner as the liability of the principal and sureties of the original bond.

**History:** En. Sec. 1073, Pol. C. 1895; amd. Sec. 6, p. 81, L. 1899; re-en. Sec. 401, Rev. C. 1907; re-en. Sec. 492, R.C.M. 1921; Cal. Pol. C. Sec. 970; re-en. Sec. 492, R.C.M. 1935; R.C.M. 1947; 6-323.

**2-9-522. Release of sureties.** Any surety on the official bond of any county, city, town, or township officer or on the official bond of any executor, administrator, guardian or on the bond or undertaking of any person where by law a bond or undertaking is required may be released from all liability thereon accruing from and after proper proceedings had therefor, as provided in this part.

**History:** En. Sec. 1075, Pol. C. 1895; re-en. Sec. 403, Rev. C. 1907; re-en. Sec. 494, R.C.M. 1921; Cal. Pol. C. Sec. 972; re-en. Sec. 494, R.C.M. 1935; amd. Sec. 1, Ch. 134, L. 1941; amd. Sec. 6, Ch. 177, L. 1965; R.C.M. 1947, 6-325.

**2-9-523. Proceedings to obtain release.** (1) A surety desiring to be released from liability on the bond of any county or township officer shall file a statement in writing, duly subscribed by the surety or someone on the surety's behalf setting forth the name and office of the bonded person, the amount for which the surety is liable, and the surety's desire to be released from further liability on account of the bond.

(2) A notice containing the object of the statement must be served personally on the principal unless the principal has left the state or the principal's whereabouts cannot after due and diligent search and inquiry be ascertained, in which case the notice may be served by publication once a week for four successive publications in a newspaper of general circulation published in the county where the bond is filed on record. The statement, except when the county clerk and recorder or county commissioners are principals, must be filed with the county clerk and recorder. When the county clerk and recorder or county commissioners are principals, the statement must be filed with the district court judge.

(3) A surety desiring to be released from liability on the bond of any city or town officer shall file and serve a similar statement with the city or town clerk or mayor.

(4) A surety desiring to be released from an executor's, administrator's, or guardian's bond or undertaking shall file and serve a similar statement with the proper officer, person, or authority with whom the bond is filed on record.

(5) All statements provided for in this section must be served personally on the principal as provided in this section if the principal can be found for service in the state. If the principal cannot be found in the state, the principal may be served by publication in a newspaper as

provided in subsection (2) or, if a newspaper is not published in that county, then in a newspaper published in an adjoining county, without any order from any court or other authority. In all cases for which publication is provided, a printed or written notice posted in at least 10 conspicuous places in the county for the time specified for publication of the notice is considered legal notice.

**History:** En. Sec. 2, Ch. 134, L. 1941; amd. Sec. 7, Ch. 177, L. 1965; R.C.M. 1947, 6-326; amd. Sec. 67, Ch. 61, L. 2007.

**2-9-524. Amount of new bond — failure to file.** (1) Whenever a statement is filed or filed and served as provided in this part, the proper authority shall prescribe the penalty or amount in which a new or additional bond or undertaking must be filed unless already provided by statute. If an order is not made, the new or additional bond or undertaking must be executed for the same amount as the original.

(2) If an officer or person fails to file a new or additional bond or undertaking within 20 days from the date of personal service or within 40 days from the date of the first publication or posting of notice as provided in this part, the office or appointment of the person or officer becomes vacant and the officer or person forfeits the office or appointment. The office or position must be filled as in other cases of vacancy and in the manner provided by law.

(3) The person applying to be released from liability on the bond or undertaking may not be held liable on the bond after the date provided for vacating and forfeiting of the office or appointment.

**History:** En. Secs. 3, 5, Ch. 134, L. 1941; R.C.M. 1947, 6-327, 6-329; amd. Sec. 68, Ch. 61, L. 2007.

**2-9-525. Liability of sureties when new bond is given.** In case a new or additional undertaking be filed, the sureties on the original undertaking not asking to be released and on the new or additional bond or undertaking shall be and continue liable for the official acts of such officer or person, jointly and severally, the same as if all were sureties on one and the same instrument. This shall not be deemed to provide retroactive liability on the new surety.

**History:** En. Sec. 4, Ch. 134, L. 1941; R.C.M. 1947, 6-328.

**2-9-526. Effect of discharge of sureties.** No surety must be released from damages or liabilities for acts, omissions, or causes existing or which arose before discharge of the surety as hereinbefore provided, but such legal proceedings may be had therefor in all respects as though no such discharge had been had.

**History:** En. Sec. 1083, Pol. C. 1895; re-en. Sec. 411, Rev. C. 1907; re-en. Sec. 502, R.C.M. 1921; Cal. Pol. C. Sec. 980; re-en. Sec. 502, R.C.M. 1935; amd. Sec. 6, Ch. 134, L. 1941; R.C.M. 1947, 6-330.

**2-9-527. Suit on bonds.** (1) An official bond executed by any officer pursuant to law is in force and obligatory upon the principal and sureties to and for the state and to and for the use and benefit of all persons who may be injured or aggrieved by the wrongful act or default of the officer in the officer's official capacity. A person injured or aggrieved may bring suit on the bond in the person's own name.

(2) A bond is not void on the first recovery of a judgment on the bond. Suit may be brought from time to time and judgment recovered on the bond by the state or by any person to whom a right of action has accrued against the officer and the sureties until the whole penalty of the bond is exhausted.

**History:** (1)En. Sec. 1064, Pol. C. 1895; re-en. Sec. 391, Rev. C. 1907; re-en. Sec. 482, R.C.M. 1921; Cal. Pol. C. Sec. 961; re-en. Sec. 482, R.C.M. 1935; Sec. 6-313, R.C.M. 1947; (2)En. Sec. 1065, Pol. C. 1895; re-en. Sec. 392, Rev. C. 1907; re-en. Sec. 483, R.C.M. 1921; Cal. Pol. C. Sec. 962; re-en. Sec. 483, R.C.M. 1935; Sec. 6-314, R.C.M. 1947; R.C.M. 1947, 6-313, 6-314; amd. Sec. 69, Ch. 61, L. 2007.

**2-9-528. Lien on real estate of surety — action to compel specific performance.** (1) When an action is commenced in any court in this state, for the benefit to the state, to enforce the penalty of or to recover money upon an official bond or obligation or any bond or obligation executed in favor of the state of Montana or of the people of this state, the attorney or other person prosecuting the action may file with the clerk of the court in which the action is commenced an affidavit stating either positively or on information and belief that the bond or obligation was executed by the defendant or one or more of the defendants (designating whom) and made payable to the people of the state or to the state and that the defendant or defendants have real estate or some interest in land (designating the county or counties in which the land is situated) and that the action is prosecuted for the benefit of the state. The clerk of the court receiving the affidavit shall certify to the county clerk and recorder of the county in which the

real estate is situated the names of the parties to the action, the name of the court in which the action is pending, and the amount claimed in the complaint, along with the date of the commencement of the suit.

(2) Upon receiving the certificate, the county clerk and recorder shall endorse upon the certificate the time of its receipt. The certificate must be filed in the same manner as notices of the pendency of action affecting real estate. Any judgment recovered in the action is a lien upon all real estate belonging to the defendant situated in any county in which the certificate is filed or to one or more of the defendants, for the amount the owner of the real estate is or may be liable upon the judgment, from the filing of this certificate.

(3) In any action to compel the specific performance of an agreement to sell real estate affected by the lien created by the filing of the certificate referred to in subsection (2), which agreement was made prior to the filing of the certificate but the purchase price of the real estate is not due until after the filing of the certificate, the judge of the district court in which the action for specific performance is tried shall, if the purchaser is otherwise entitled to specific performance of the agreement, order the purchaser to pay the purchase price or as much of the purchase price that may be due to the state treasurer, taking the state treasurer's receipt for the payment. Upon payment, the purchaser is entitled to enforce the specific performance of the agreement and take the real estate free from the liens created by the filing of the certificate. The money paid to the state treasurer must be held pending the litigation mentioned in the certificate and subject to the lien created by the filing of the certificate. If judgment is recovered against the defendant, the state treasurer in the treasurer's settlement shall pay to the county treasurer the amount due the county.

**History:** (1)En. Sec. 1086, Pol. C. 1895; re-en. Sec. 414, Rev. C. 1907; re-en. Sec. 505, R.C.M. 1921; Cal. Pol. C. Sec. 983; re-en. Sec. 505, R.C.M. 1935; Sec. 6-333, R.C.M. 1947; (2)En. Sec. 1087, Pol. C. 1895; re-en. Sec. 415, Rev. C. 1907; re-en. Sec. 506, R.C.M. 1921; Cal. Pol. C. Sec. 984; re-en. Sec. 506, R.C.M. 1935; Sec. 6-334, R.C.M. 1947; (3)En. Sec. 1090, Pol. C. 1895; re-en. Sec. 418, Rev. C. 1907; re-en. Sec. 509, R.C.M. 1921; Cal. Pol. C. Sec. 987; re-en. Sec. 509, R.C.M. 1935; Sec. 6-337, R.C.M. 1947; R.C.M. 1947, 6-333, 6-334, 6-337; amd. Sec. 70, Ch. 61, L. 2007.

## CHAPTER 11 LEGAL AUTHORITY FOR GOVERNMENT ACTION

### Part 1 Government Accountability Act

**2-11-101. Short title.** This part may be cited as the "Government Accountability Act".

**History:** En. Sec. 1, Ch. 502, L. 1997.

**2-11-102. Findings and purpose.** The purpose of this part is to require government entities to make known the legal authority upon which certain action is based. The benefits of this requirement will be that government officials will articulate and reaffirm their legal authority to act and that both the government and the people will have a fuller understanding of the limits of the law and the facts to which the law applies. This understanding will benefit both government and the people by helping to resolve disputes between government servants and the people, without lengthy and costly litigation, by instilling trust in government, and by helping to identify deficiencies in the law so that those deficiencies may be addressed by legislative action.

**History:** En. Sec. 2, Ch. 502, L. 1997.

**2-11-103. Definitions.** As used in this part, the following definitions apply:

(1) (a) "Government act" means the denial or issuance with conditions of a permit, certificate, license, or the equivalent of a permit, certificate, or license issued by a government entity.

(b) The term does not mean:

(i) litigation in which a government entity or other person litigates the authority of the government entity to take an act provided in subsection (1)(a);

(ii) an act provided in subsection (1)(a) for which a citation or warning is issued, other than the statement required by 2-11-104, on which a reference clearly appears to the legal authority for the government action; or

- (iii) a legislative act by the state of Montana.
- (2) “Government entity” means a state agency or a local government unit.
- (3) “Local government unit” means a city, county, town, unincorporated municipality or village, or special taxing unit or district and any commission, board, bureau, or other office of the unit.
- (4) “Rule” has the meaning provided in 2-4-102.
- (5) “State agency” has the meaning provided in 2-4-102(2)(a).
- (6) “Statement of government authority” or “statement” means the statement required by 2-11-104.

**History:** En. Sec. 3, Ch. 502, L. 1997; amd. Sec. 1, Ch. 51, L. 1999.

**2-11-104. Statement of government authority required.** (1) When a government entity takes a government act, as defined in 2-11-103, it shall provide upon request to the applicant a written statement of specific legal authority upon which the action is based. The statement must be provided within 30 days of the written request by the applicant for the written statement of specific legal authority or within 30 days after the government act, whichever occurs last.

(2) The statement must clearly cite the specific statute, rule, ordinance, resolution, or other legal authority for the government act and the specific reason for the government act.

**History:** En. Sec. 4, Ch. 502, L. 1997; amd. Sec. 1, Ch. 501, L. 2001.

## CHAPTER 15 EXECUTIVE BRANCH OFFICERS AND AGENCIES

### Part 1 General Provisions

**2-15-115. Notice of estimated turnaround time on application for permit or license.** (1) Except as provided in subsection (3), an application form issued by an agency that is an application for a permit or a license must include, either as an attachment or directly on the form, the estimated time it will take for the agency to process and act on a correctly completed application form.

(2) In specifying the estimated turnaround time, an agency may use either the average turnaround time for applications or an estimate based on the percentage of applications processed within the most common turnaround time.

(3) This section does not apply to an application processed on the same day that the application is received.

**History:** En. Sec. 1, Ch. 53, L. 1999.

**2-15-155. State agency board, committee, commission, or advisory council member information to be published.** (1) Whenever a board, committee, commission, or advisory council of the executive, legislative, or judicial branch publishes a report, such as an audit report, program evaluation report, research report, or statutorily required report, the board, committee, commission, or advisory council shall publish in the report:

- (a) the name of each board, committee, commission, or advisory council member;
- (b) an address, telephone number, or e-mail address for each board, committee, commission, or advisory council member; and
- (c) the term of each board, committee, commission, or advisory council member, including the date that the member’s term expires.

(2) Each executive, legislative, and judicial branch board, committee, commission, or advisory council shall ensure that the information required under subsection (1) is readily available on a website.

(3) This section is not intended to apply to administrative documents, such as memoranda or letters.

**History:** En. Sec. 1, Ch. 236, L. 2011.



## Part 2 Governor

### **2-15-225. Interagency coordinating council for state prevention programs.**

(1) There is an interagency coordinating council for state prevention programs consisting of the following members:

- (a) the attorney general provided for in 2-15-501;
- (b) the director of the department of public health and human services provided for in 2-15-2201;
- (c) the superintendent of public instruction provided for in 2-15-701;
- (d) the presiding officer of the Montana children's trust fund board;
- (e) two persons appointed by the governor who have experiences related to the private or nonprofit provision of prevention programs and services;
- (f) the administrator of the board of crime control provided for in 2-15-2306;
- (g) the commissioner of labor and industry provided for in 2-15-1701;
- (h) the director of the department of corrections provided for in 2-15-2301;
- (i) the state director of Indian affairs provided for in 2-15-217;
- (j) the adjutant general of the department of military affairs provided for in 2-15-1202;
- (k) the director of the department of transportation provided for in 2-15-2501;
- (l) the commissioner of higher education provided for in 2-15-1506; and
- (m) the designated representative of a state agency desiring to participate who is accepted as a member by a majority of the current coordinating council members.

(2) The coordinating council shall perform the following duties:

- (a) develop, through interagency planning efforts, a comprehensive and coordinated prevention program delivery system that will strengthen the healthy development, well-being, and safety of children, families, individuals, and communities;
- (b) develop appropriate interagency prevention programs and services that address the problems of at-risk children and families and that can be provided in a flexible manner to meet the needs of those children and families;
- (c) study various financing options for prevention programs and services;
- (d) ensure that a balanced and comprehensive range of prevention services is available to children and families with specific or multiagency needs;
- (e) assist in development of cooperative partnerships among state agencies and community-based public and private providers of prevention programs; and
- (f) develop, maintain, and implement benchmarks for state prevention programs. As used in this subsection, "benchmark" means a specified reference point in the future that is used to measure the state of affairs at that point in time and to determine progress toward or the attainment of an ultimate goal, which is an outcome reflecting the desired state of affairs.

(3) The coordinating council shall cooperate with and report to any standing or interim legislative committee that is assigned to study the policies and funding for prevention programs or other state programs and policies related to children and families.

(4) The coordinating council must be compensated, reimbursed, and otherwise governed by the provisions of 2-15-122.

(5) The coordinating council is attached for administrative purposes only to the governor's office, which may assist the council by providing staff and budgetary, administrative, and clerical services that the council or its presiding officer requests.

(6) Staffing and other resources may be provided to the coordinating council only from state and nonstate resources donated to the council and from direct appropriations by each legislature.

**History:** En. Sec. 1, Ch. 29, L. 1993; amd. Sec. 1, Ch. 25, L. 1995; amd. Sec. 6, Ch. 418, L. 1995; amd. Sec. 9, Ch. 546, L. 1995; amd. Sec. 1, Ch. 173, L. 1997; amd. Sec. 1, Ch. 215, L. 2001; amd. Sec. 1, Ch. 346, L. 2005; amd. Sec. 4, Ch. 164, L. 2009.

## Part 4 Secretary of State

### **2-15-406. Custody and reproduction of certain records by secretary of state.**

(1) The secretary of state is charged with the custody of:

- (a) the enrolled copy of the constitution;
- (b) all the acts and resolutions passed by the legislature;
- (c) the journals of the legislature;
- (d) the great seal;
- (e) all documents kept or deposited in the secretary of state's office pursuant to law.

(2) All records included in subsection (1) may be kept and reproduced in accordance with rules adopted by the secretary of state in consultation with the state records committee provided for in 2-6-1107.

(3) The state records committee may approve the disposal of original records once those records are reproduced as provided for in subsection (2) unless disposal takes the form of transfer of records. Reproduction is not necessary for transferred records. The reproduction or certified copy of a record may be used in place of the original for all purposes, including as evidence in any court or proceeding, and has the same force and effect as the original record.

**History:** En. Sec. 28, Ch. 348, L. 2015.

## Part 7 Superintendent of Public Instruction

**2-15-701. Superintendent of public instruction.** There is a superintendent of public instruction as provided in Article VI, section 1, of the Montana constitution. The election, qualifications, and term of office of the superintendent are provided for in Title 20, chapter 3.

**History:** En. by Code Commissioner, 1979.

## Part 10 Department of Administration

**2-15-1009. Public employees' retirement board — terms — allocation.** (1) There is a public employees' retirement board.

(2) The board consists of seven members appointed by the governor with the consent of the senate. The members are:

(a) three public employees who are active members of a public retirement system. Not more than one of these members may be an employee of the same department and at least one of these members must, no later than July 1, 2003, be a member of the defined contribution plan created pursuant to Title 19, chapter 3, part 21.

(b) one retired public employee who is a member of the public employees' retirement system;

(c) two members at large; and

(d) one member who has experience in investment management, counseling, or financial planning or who has other similar experience.

(3) The term of office for each member is 5 years.

(4) (a) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121.

(b) The board shall hire necessary employees as provided in 19-2-404.

(c) Consistent with its constitutional mandate to administer the retirement plans as a fiduciary of system participants and their beneficiaries, the board shall appoint its own existing attorney in lieu of the person appointed by the department, as provided for in 2-4-110, to have sole responsibility for the legal review of each board rule proposal notice, adoption notice, or other notice related to administrative rulemaking.

(5) Members of the board must be compensated and receive travel expenses as provided for in 2-15-124.

**History:** En. 82A-210 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 9, Ch. 190, L. 1974; amd. Sec. 94, Ch. 326, L. 1974; amd. Sec. 3, Ch. 132, L. 1977; amd. Sec. 22, Ch. 453, L. 1977; R.C.M. 1947, 82A-210; amd. Sec. 1, Ch. 117, L. 1983; amd. Sec. 2, Ch. 650, L. 1985; amd. Sec. 2, Ch. 532, L. 1997; amd. Sec. 1, Ch. 471, L. 1999; amd. Sec. 1, Ch. 562, L. 1999; amd. Sec. 1, Ch. 68, L. 2007; amd. Sec. 2, Ch. 99, L. 2011.

**2-15-1010. Teachers' retirement board — terms — allocation — definition.** (1) There is a teachers' retirement board.

(2) The board consists of six members appointed by the governor, as follows:

(a) three persons appointed from the teaching profession who, when appointed, are active members of the retirement system. At least one of the three appointees must be actively employed

as a public school classroom teacher and shall hold a class 1, 2, or 4 certificate pursuant to 20-4-106.

(b) two persons appointed as representatives of the public;

(c) one member who must be a retired teacher who was a member of the retirement system at the time of retirement.

(3) (a) Except as provided in subsection (3)(b), each appointed member of the board shall serve a term of 5 years. Each appointed member shall take and subscribe to the oath prescribed by Article III, section 3, of the Montana constitution. The oath must be filed in the office of the secretary of state.

(b) The first appointment of a member of the public after March 16, 2001, is for a 4-year term. After that appointment, each appointment of a member of the public is for a 5-year term.

(4) If a vacancy in an unexpired term occurs on the board, the governor shall appoint a person to fill the unexpired portion of the term.

(5) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121. However, the board may hire its own personnel, and 2-15-121(2)(d) does not apply.

(6) As used in this section, "classroom teacher" means a staff member who is assigned professional activities of instructing pupils in self-contained classes or courses or in classroom situations.

**History:** En. 82A-212 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 95, Ch. 326, L. 1974; amd. Sec. 1, Ch. 45, L. 1977; R.C.M. 1947, 82A-212; amd. Sec. 1, Ch. 388, L. 1997; amd. Sec. 1, Ch. 45, L. 2001.

## **Part 15**

### **Education**

**2-15-1501. State board of education.** The state board of education is created in Article X, section 9, subsection (1) of the Montana constitution and is provided for in Title 20, chapter 2.

**History:** En. 82A-501 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 4, Ch. 51, L. 1974; R.C.M. 1947, 82A-501.

**2-15-1502 through 2-15-1504 reserved.**

**2-15-1505. Board of regents of higher education.** The board of regents of higher education created in Article X, section 9, subsection (2), of the Montana constitution consists of seven members appointed by the governor and confirmed by the senate. The governor, superintendent of public instruction, and commissioner of higher education are ex officio nonvoting members of the board of regents.

**History:** En. Sec. 2, Ch. 344, L. 1973; R.C.M. 1947, 75-5610(2).

**2-15-1506. Commissioner of higher education.** (1) There is a commissioner of higher education who is appointed by the board of regents.

(2) The board of regents shall prescribe the term of the commissioner.

**History:** En. Sec. 3, Ch. 344, L. 1973; R.C.M. 1947, 75-5611(part).

**2-15-1507. Board of public education.** The board of public education created in Article X, section 9, subsection (3), of the Montana constitution consists of seven members appointed by the governor and confirmed by the senate. The governor, superintendent of public instruction, and commissioner of higher education are ex officio nonvoting members of the board of public education.

**History:** En. Sec. 2, Ch. 344, L. 1973; R.C.M. 1947, 75-5610(1).

**2-15-1508. Appointments to board of public education and board of regents — conditions — vacancy.** (1) Appointments to the board of public education and to the board of regents are subject to the following qualifications:

(a) Not more than four may be from one district provided for in 5-1-102.

(b) Not more than four may be affiliated with the same political party.

(c) The terms of members appointed to each board are 7 years except as provided in subsection (3).

(d) When a vacancy occurs, the governor shall appoint a member for the remainder of the term of the incumbent, and the appointment must preserve the balance required by subsections (1)(a) and (1)(b).

(e) A person may not be appointed to concurrent memberships on the board of public education and the board of regents.

(2) An appointed member of either board shall take and subscribe to the constitutional oath of office and file it with the secretary of state before the person may serve as a member of either board.

(3) (a) One seat of the appointed members on the board of regents is reserved for membership by a student appointed by the governor. The student must be registered as a full-time student at a unit of higher education under jurisdiction of the board of regents. The length of term of the student member is 1 year. The term begins July 1 and ends June 30. The student regent may be reappointed to succeeding terms subject to subsection (3)(b). The provisions of subsections (1)(a) and (1)(b) do not apply to the student member and may not affect the balance of the remaining appointive membership on the board of regents.

(b) The governor shall appoint the student provided for in subsection (3)(a) based upon a nomination provided by a student organization designated by the board of regents. The student organization shall nominate no fewer than three qualified students. If the governor finds that none of the students nominated are acceptable, the governor may request a new slate of nominees. Nominations must be forwarded to the governor in March immediately preceding the end of a regular term, and the governor shall make the appointment before the end of the succeeding June. In the event of a vacancy, a replacement must be appointed as soon as is practicable and in the same manner as the original appointment.

**History:** En. Secs. 2, 11, Ch. 344, L. 1973; R.C.M. 1947, 75-5610(part), 75-5619; amd. Sec. 1, Ch. 52, L. 1993; amd. Sec. 1, Ch. 206, L. 1999; amd. Sec. 1, Ch. 254, L. 2003; amd. Sec. 1, Ch. 120, L. 2007.

#### **2-15-1509 and 2-15-1510 reserved.**

**2-15-1511. Agencies allocated to state board of education.** The state historical society, the Montana arts council, and the state library commission are allocated to the state board of education for purposes of planning and coordination. Budget requests to the state for these agencies shall be included with the budget requests of the state board of education; however, the governance, management, and control of the respective agencies shall be vested respectively in the board of trustees of the state historical society, the Montana arts council, and the state library commission.

**History:** En. 82A-501.1 by Sec. 5, Ch. 51, L. 1974; R.C.M. 1947, 82A-501.1.

**2-15-1512. Boards and offices associated with state historical society.** (1) (a) There is a board of trustees of the state historical society that is created in Title 22, chapter 3.

(b) The composition, method of appointment, terms of office, and qualifications of board members remain as prescribed by law.

(2) (a) There is a preservation review board within the Montana historical society consisting of nine members.

(b) Members must be appointed by the governor in the following manner:

(i) five professional persons recognized in the fields of archaeology, history, paleontology, historic property administration, curation, planning, landscape architecture, conservation, folklore, cultural anthropology, traditional cultural property expertise, architecture, or architectural history. However, no more than two members may be appointed from any one of these fields; and

(ii) four members of the public who represent a broad spectrum of Montana society, who have demonstrated an interest in historic preservation, and whose views reflect the rich cultural heritage of the past as well as the opportunities of the future.

(c) Each member shall serve a 4-year term. A member may be reappointed.

(d) Members must be compensated and receive travel expenses as provided for in 2-15-124.

(3) (a) There is established the historic preservation office within the Montana historical society, to consist of a historic preservation officer and a qualified professional staff.

(b) The historic preservation officer is appointed by the governor from a list of three nominees submitted to the governor by the director of the Montana historical society with the approval of the Montana historical society board of trustees.

(c) The historic preservation officer is supervised by the director of the Montana historical society.

**History:** (1)En. 82A-507 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 7, Ch. 51, L. 1974; amd. Sec. 1, Ch. 203, L. 1975; amd. Sec. 23, Ch. 453, L. 1977; R.C.M. 1947, 82A-507(1), (2); (2), (3)En Secs. 1, 3, 6, Ch. 563, L. 1979; amd. Sec. 3, Ch. 650, L. 1985; amd. Sec. 1, Ch. 343, L. 1995.

**2-15-1513. Montana arts council.** (1) There is a Montana arts council which is created in Title 22, chapter 2.

(2) The composition, method of appointment, terms of office, compensation, reimbursement, and qualifications of council members remain as prescribed by law.

**History:** En. 82A-508 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 8, Ch. 51, L. 1974; R.C.M. 1947, 82A-508.

**2-15-1514. State library commission — natural resource data system advisory committee.** (1) (a) There is a state library commission created in Title 22, chapter 1.

(b) The composition, method of appointment, terms of office, compensation, reimbursement, and qualifications of commission members are as prescribed by law.

(2) (a) There is a natural resource data system advisory committee consisting of an employee of the legislative services division, of the department of administration, of the state library, and of each principal data source agency, appointed by the head of the respective state agency, and by the board of regents of higher education for the Montana university system.

(b) The state library shall provide staff support to the committee, within the limits of the library's available resources.

**History:** (1)En. 82A-509 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 9, Ch. 51, L. 1974; R.C.M. 1947, 82A-509; (2) En. Sec. 3, Ch. 650, L. 1983; amd. Sec. 1, Ch. 395, L. 1985; Sec. 2-15-1018, MCA 1983; redes. 2-15-1514(2) by Code Commissioner, 1985; amd. Sec. 9, Ch. 545, L. 1995; amd. Sec. 24, Ch. 313, L. 2001.

**2-15-1515. Commission on federal higher education programs.** (1) There is a commission on federal higher education programs that may be called into existence by the board of regents of higher education from time to time as the need arises. Whenever the commission is called into existence, the board shall request that the governor appoint members pursuant to subsection (2)(b).

(2) The commission consists of:

(a) ex officio, the appointed members of the board of regents of higher education; and

(b) a representative of each accredited private college or university in this state appointed by the governor from the board of trustees of each private college or university upon the request of the board of regents of higher education.

(3) The commission members appointed pursuant to subsection (2)(b) shall serve for the period of existence of the commission. However, the period of service may not exceed 4 years and is contingent upon continued status as a trustee. If a vacancy occurs in a position held by an individual appointed pursuant to subsection (2)(b), the governor shall appoint a replacement.

(4) The presiding officer of the board of regents of higher education is the presiding officer of the commission.

(5) The commissioner of higher education is the administrative officer of the commission.

(6) The commission is allocated to the board of regents of higher education for administrative purposes only as provided in 2-15-121.

(7) The commission members are entitled to compensation as provided in 2-15-124(7).

(8) The board of regents of higher education may terminate the commission from time to time when there is no need for its existence.

**History:** En. 82A-512 by Sec. 3, Ch. 220, L. 1974; R.C.M. 1947, 82A-512; amd. Sec. 1, Ch. 21, L. 1985; amd. Sec. 83, Ch. 61, L. 2007.

**2-15-1516. Fertilizer advisory committee.** (1) There is a fertilizer advisory committee.

(2) The committee is composed of seven members, appointed jointly by the director of the Montana agricultural experiment station and the director of the Montana cooperative extension service of Montana state university-Bozeman, as follows:

(a) five members involved in agriculture that includes the use of fertilizer in production; and

(b) two members from the fertilizer industry.

(3) The director of the department of agriculture shall serve as an ex officio member.

(4) The members shall serve staggered 5-year terms, except that members shall be initially appointed so that no more than two terms expire in any year.



**History:** En. Sec. 4, Ch. 397, L. 1971; Sec. 3-1732, R.C.M. 1947; amd. and redes. 82A-513 by Sec. 99, Ch. 218, L. 1974; R.C.M. 1947, 82A-513; amd. Sec. 1, Ch. 197, L. 1985; amd. sec. 36, Ch. 308, L. 1995.

**2-15-1517. Repealed.** Sec. 8, Ch. 21, L. 1985.

**History:** En. 75-9405 by Sec. 5, Ch. 515, L. 1977; R.C.M. 1947, 75-9405.

**2-15-1518. Director of fire services training school.** (1) The board of regents shall appoint the director of the fire services training school.

(2) The director may be removed for cause.

(3) The director must have the following qualifications:

(a) a bachelor's degree in a field of study related to fire protection; or

(b) 5 years' experience in an organized training program as an instructor and 7 years' experience as a firefighter or fire combat officer.

**History:** En. 75-7721 by Sec. 6, Ch. 104, L. 1977; R.C.M. 1947, 75-7721(part); amd. Sec. 1, Ch. 20, L. 1989.

**2-15-1519. Fire services training advisory council.** (1) The board of regents shall appoint a fire services training advisory council to work with the director of the fire services training school. The membership of the council must include the following:

(a) a fire chief;

(b) a volunteer firefighter;

(c) a paid firefighter;

(d) a fire service instructor;

(e) a person involved in fire prevention;

(f) a representative of the insurance industry; and

(g) a professional educator.

(2) The board shall solicit and consider the recommendations of appropriate organizations and associations of fire service personnel in making appointments under subsection (1).

(3) Members shall serve for 4-year terms and may be removed for cause. If a vacancy occurs, a member must be appointed to fill the unexpired term. A member may be reappointed.

(4) A representative of the state fire prevention and investigation section of the department of justice, a fire control officer designated by the director of the department of natural resources and conservation, and the director of the fire services training school are ex officio members of the council.

**History:** En. 75-7718 by Sec. 3, Ch. 104, L. 1977; R.C.M. 1947, 75-7718; amd. Sec. 1, Ch. 6, L. 1987; amd. Sec. 2, Ch. 20, L. 1989; amd. Sec. 2, Ch. 706, L. 1991; amd. Sec. 7, Ch. 418, L. 1995; amd. Sec. 2, Ch. 449, L. 2007.

**2-15-1520. Repealed.** Sec. 5, Ch. 39, L. 2013.

**History:** En. Sec. 1, Ch. 691, L. 1979; amd. Sec. 34, Ch. 658, L. 1987; amd. Sec. 1, Ch. 308, L. 1995; amd. Sec. 2, Ch. 243, L. 1997.

**2-15-1521. Cultural and aesthetic projects advisory committee.** (1) There is a cultural and aesthetic projects advisory committee.

(2) The committee consists of 16 members, appointed as follows:

(a) eight members appointed by the Montana historical society board of trustees; and

(b) eight members appointed by the Montana arts council.

(3) Members serve terms of 4 years beginning January 1 following their appointment.

(4) A member may be removed by the appointing authority.

(5) All vacancies must be filled by the original appointing authority.

(6) The committee shall elect a presiding officer and a vice presiding officer.

(7) Members of the committee are entitled to compensation of \$25 a day and travel expenses, as provided for in 2-18-501 through 2-18-503, for each day in attendance at a committee meeting.

**History:** En. Sec. 2, Ch. 99, L. 1983; amd. Sec. 84, Ch. 61, L. 2007.

**2-15-1522. Certification standards and practices advisory council.** (1) There is a certification standards and practices advisory council allocated to the board of public education.

(2) The council consists of seven members appointed by majority vote of the board of public education. The membership of the council must include:

(a) three teachers engaged in classroom teaching, including:

(i) one who teaches within kindergarten through grade 8;

(ii) one who teaches within grades 9 through 12; and

(iii) one additional teacher from any category in subsection (2)(a) or (2)(b);

- (b) one person employed as a specialist or K-12 specialist;
- (c) one faculty member from an approved teacher education program offered by an accredited teacher education institution;
- (d) one person employed as an administrator, with the certification required in 20-4-106(1)(c); and
- (e) one school district trustee.

(3) The board of public education shall select and appoint the members by June 1. If a vacancy occurs on the council, the board of public education shall appoint a person from the category of membership, as provided in subsection (2), in which the vacancy has occurred to serve the unexpired term.

(4) Members shall serve staggered 3-year terms and must be appointed so that no more than three appointments expire in any 1 year.

**History:** En. Sec. 2, Ch. 465, L. 1987; amd. Sec. 1, Ch. 124, L. 1991.

**2-15-1523. Ground water assessment steering committee.** (1) There is a ground water assessment steering committee consisting of an employee of each of the following state agencies that have responsibility for ground water protection, management, or information. The member must be appointed by the head of the respective state agency:

- (a) the department of natural resources and conservation;
- (b) the department of environmental quality;
- (c) the department of agriculture; and
- (d) the Montana state library, natural resource information system.

(2) The ground water assessment steering committee may include representatives of the following agencies and units of government with expertise or management responsibility related to ground water and representatives of the organizations and groups specified in subsection (2)(h), who shall serve as ex officio members:

- (a) the legislative services division;
- (b) the board of oil and gas conservation;
- (c) the Montana bureau of mines and geology;
- (d) a unit of the university system, other than the Montana bureau of mines and geology,

appointed by the board of regents of higher education for the Montana university system;

- (e) a county government, appointed by an organization of Montana counties;
- (f) a city, town, or city-county government, appointed by an organization of Montana cities and towns;

(g) each principal federal agency that has responsibility for ground water protection, management, or research, appointed by the Montana head of the respective federal agency; and

- (h) one representative of each of the following, appointed by the governor:
  - (i) agricultural water users;
  - (ii) industrial water users;
  - (iii) a conservation or ecological protection organization; and
  - (iv) the development community.

(3) The ground water assessment steering committee shall elect a presiding officer from its voting members.

(4) The Montana bureau of mines and geology shall provide staff support to the committee.

**History:** En. Sec. 8, Ch. 769, L. 1991; amd. Sec. 8, Ch. 418, L. 1995; amd. Sec. 10, Ch. 545, L. 1995; amd. Sec. 2, Ch. 436, L. 2009.

**2-15-1524. Governor's postsecondary scholarship advisory council — terms.**

(1) There is a three-member governor's postsecondary scholarship advisory council appointed by the governor.

(2) Members shall serve staggered 3-year terms and must include:

- (a) at least one member with experience in financial aid at a postsecondary institution; and
- (b) at least one member with experience in secondary or postsecondary education.

(3) A presiding officer must be selected by the council from among its membership at the first meeting of the council.

(4) The council shall:

(a) advise the board on issues related to the governor's postsecondary scholarship program and other student assistance programs; and

(b) report to the governor annually or at any time upon request by the governor.

(5) The council is attached to the commissioner of higher education for administrative purposes only, as provided in 2-15-121, and members are entitled to compensation as provided in 2-15-122(5).

**History:** En. Sec. 4, Ch. 489, L. 2005.

**2-15-1525. Seed laboratory advisory board — duties.** (1) There is a seed laboratory advisory board.

(2) (a) The board consists of:

(i) five members appointed by the director of the agricultural experiment station provided for in 20-25-222; and

(ii) the director of the agricultural experiment station, serving in an ex officio, nonvoting capacity.

(b) The five members appointed by the director of the agricultural experiment station must be selected as follows:

(i) three representatives from seed industry-related organizations;

(ii) a representative of the department of agriculture; and

(iii) a representative of the agricultural experiment station.

(c) The members appointed as representatives of seed industry-related organizations may not represent the same organization.

(3) The board shall advise the director of the agricultural experiment station on matters related to the Montana seed laboratory provided for in 20-25-229, including but not limited to:

(a) rates to be charged for seed analysis;

(b) staffing levels;

(c) budget matters; and

(d) operational procedures for the laboratory.

(4) The board shall meet at least annually and may meet more frequently as needed.

(5) Board members may request reimbursement for travel expenses as provided for in 2-18-501 through 2-18-503. The ex officio member is not entitled to travel expenses.

(6) The board is attached to the agricultural experiment station for administrative purposes. The agricultural experiment station shall establish operating procedures for the board that are consistent with the provisions of this section.

**History:** En. Sec. 1, Ch. 300, L. 2011.

**2-15-1526 through 2-15-1529 reserved.**

**2-15-1530. Montana university system interunit benefits advisory committee — composition.** (1) There is a Montana university system interunit benefits advisory committee with members appointed by the commissioner.

(2) The members must be selected from a diverse group in order to adequately represent the interests of the employees of the Montana university system.

(3) One-half of the members must be appointed based upon the recommendations of the labor organizations representing employees of the Montana university system.

(4) The provisions of 2-15-122(1) through (8) apply to the advisory committee and its members.

**History:** En. Sec. 4, Ch. 256, L. 1999.

## Part 17 Department of Labor and Industry

**2-15-1771. Board of athletic trainers.** (1) There is a board of athletic trainers.

(2) The board is composed of five members appointed by the governor as follows:

(a) one member who is a physician licensed under Title 37, chapter 3, preferably with a background in the practice of sports medicine;

(b) three members who are athletic trainers who have been engaged in the practice of athletic training in the state for at least 2 years prior to being appointed. After the initial appointments are made to establish the board, each of the three members must be licensed as an athletic trainer under Title 37, chapter 36. Of these three members, at the time of appointment:

(i) one must be employed by or retired from employment with a postsecondary institution in Montana;

(ii) one must be employed in or retired from a secondary school in Montana; and

(iii) one must be employed by or retired from a health care facility or an athletic facility in Montana.

(c) one member of the public who is not engaged in or directly connected with the practice of athletic training.

(3) There may be no more than one retired athletic trainer serving on the board at anytime.

(4) A vacancy on the board must be filled for an unexpired term to maintain the representation provided in subsection (2).

(5) The board is attached for administrative purposes only, as prescribed in 2-15-121, to the department of labor and industry.

(6) Members must be compensated as provided in 2-18-501 through 2-18-503.

(7) Members shall serve 4-year, staggered terms. A member may be reappointed for one consecutive term. A member who is reappointed must be eligible under the same criteria as when first appointed.

(8) For the purposes of this section, an appointment to fill an unexpired term does not constitute a full term.

(9) The governor may remove a member from the board for neglect of duty, for incompetency, or for cause.

**History:** En. Sec. 1, Ch. 388, L. 2007.

## **Part 22**

### **Department of Public Health and Human Services**

**2-15-2214. Montana children's trust fund board.** (1) There is a Montana children's trust fund board, consisting of seven members appointed by the governor and serving 3-year terms. Two board members must be chosen from state government agencies involved in education and social work relating to children. The governor shall ensure geographic distribution of appointees.

(2) The board is allocated to the department of public health and human services for administrative purposes only, as provided in 2-15-121. The board may employ staff to carry out its duties as described in Title 52, chapter 7, part 1.

**History:** En. Sec. 2, Ch. 610, L. 1985; amd. Sec. 11, Ch. 609, L. 1987; Sec. 2-15-2211, MCA 1985; redes. 2-15-2402 by Sec. 114, Ch. 609, L. 1987; amd. Sec. 1, Ch. 514, L. 1991; amd. Sec. 23, Ch. 546, L. 1995; Sec. 2-15-2402, MCA 1993; redes. 2-15-2214 by Sec. 568, Ch. 546, L. 1995.

## **CHAPTER 16**

### **PUBLIC OFFICERS**

#### **Part 1**

#### **General Provisions**

**2-16-101. Classification of public officers.** (1) The public officers of this state are classified as follows:

- (a) legislative;
- (b) executive;
- (c) judicial;
- (d) ministerial officers and officers of the courts.

(2) This classification is not to be construed as defining the legal powers of either class.

(3) Executive officers are either:

- (a) civil; or
- (b) military.

**History:** (1), (2)En. Sec. 140, Pol. C. 1895; re-en. Sec. 49, Rev. C. 1907; re-en. Sec. 50, R.C.M. 1921; Cal. Pol. C. Sec. 220; re-en. Sec. 50, R.C.M. 1935; Sec. 59-101, R.C.M. 1947; (3)En. Sec. 330, Pol. C. 1895; re-en. Sec. 125, Rev. C. 1907; re-en. Sec. 109, R.C.M. 1921; Cal. Pol. C. Sec. 341; re-en. Sec. 109, R.C.M. 1935; Sec. 59-201, R.C.M. 1947; R.C.M. 1947, 59-101, 59-201.

**2-16-102. Qualifications generally — age and citizenship.** (1) Provisions respecting disqualifications for particular offices are contained in the constitution and in the provisions of the laws concerning the various offices.

(2) A person is not eligible to hold civil office in this state who at the time of election or appointment is not 18 years of age or older and a citizen of this state.

**History:** (1)En. Sec. 961, Pol. C. 1895; re-en. Sec. 343, Rev. C. 1907; re-en. Sec. 411, R.C.M. 1921; Cal. Pol. C. Sec. 842; re-en. Sec. 411, R.C.M. 1935; Sec. 59-302, R.C.M. 1947; (2)En. Sec. 960, Pol. C. 1895; re-en. Sec. 342, Rev. C. 1907; re-en. Sec. 410, R.C.M. 1921; Cal. Pol. C. Sec. 841; re-en. Sec. 410, R.C.M. 1935; amd. Sec. 14, Ch. 240, L. 1971; amd. Sec. 1, Ch. 9, L. 1973; amd. Sec. 21, Ch. 94, L. 1973; Sec. 59-301, R.C.M. 1947; R.C.M. 1947, 59-301, 59-302; amd. Sec. 96, Ch. 61, L. 2007.

**2-16-103 through 2-16-106 reserved.**

**2-16-107. Use of Montana flag at funerals.** (1) A public official has the right to have a Montana state flag draped over the casket of the public official. The family of the public official is responsible for providing the flag.

(2) As used in this section, “public official” means a person who was ever elected to a statewide office, a state office from a district, or a countywide office.

**History:** En. Sec. 1, Ch. 219, L. 2005.

**2-16-108 through 2-16-110 reserved.**

**2-16-111. Residence of officers.** (1) The following officers must reside and keep their offices at the seat of government: the governor, secretary of state, state auditor, attorney general, superintendent of public instruction, justices of the supreme court, and clerk of the supreme court.

(2) Restrictions upon the residence of other officers are contained in the chapter or part relating to the respective officers.

**History:** (1)En. Sec. 970, Pol. C. 1895; re-en. Sec. 345, Rev. C. 1907; re-en. Sec. 413, R.C.M. 1921; Cal. Pol. C. Sec. 852; re-en. Sec. 413, R.C.M. 1935; amd. Sec. 3, Ch. 468, L. 1977; Sec. 59-304, R.C.M. 1947; (2)En. Sec. 974, Pol. C. 1895; re-en. Sec. 349, Rev. C. 1907; re-en. Sec. 417, R.C.M. 1921; re-en. Sec. 417, R.C.M. 1935; Sec. 59-308, R.C.M. 1947; R.C.M. 1947, 59-304, 59-308.

**2-16-112. Absence from state.** Except as provided in 10-1-1008, an officer mentioned in 2-16-111(1) or an officer appointed by the governor and confirmed by the senate may not be absent from the state for more than 60 consecutive days unless on business of the state or with the consent of the legislature.

**History:** En. Sec. 971, Pol. C. 1895; re-en. Sec. 346, Rev. C. 1907; re-en. Sec. 414, R.C.M. 1921; Cal. Pol. C. Sec. 853; re-en. Sec. 414, R.C.M. 1935; R.C.M. 1947, 59-305; amd. Sec. 19, Ch. 381, L. 2005.

**2-16-113. Seals.** (1) Each of the executive and state officers of the state must have a seal. Such seal must contain the same representations and motto as is found on the great seal and must be 2 inches in diameter, surrounded by the words “State of Montana” (giving the title of the office, “Secretary of State”, etc.).

(2) An impression of the seal of executive and state officers must be filed in the office of the secretary of state.

**History:** En. Sec. 1131, Pol. C. 1895; re-en. Sec. 431, Rev. C. 1907; re-en. Sec. 527, R.C.M. 1921; re-en. Sec. 527, R.C.M. 1935; amd. Sec. 3, Ch. 468, L. 1977; R.C.M. 1947, 19-112.

**2-16-114. Facsimile signatures and seals.** (1) As used in this section, the following definitions apply:

(a) “Authorized officer” means any official of this state or any of its departments, agencies, public bodies, or other instrumentalities or any of its political subdivisions whose signature to a public security or instrument of payment is required or permitted.

(b) “Facsimile signature” means a reproduction by engraving, imprinting, stamping, or other means of the manual signature of an authorized officer.

(c) “Instrument of payment” means a check, draft, warrant, or order for the payment, delivery, or transfer of funds.

(d) “Public security” means a bond, note, certificate of indebtedness, or other obligation for the payment of money issued by this state or by any of its departments, agencies, public bodies, or other instrumentalities or by any of its political subdivisions.

(2) An authorized officer, after filing with the secretary of state or, in the case of officers of any city, town, county, school district, or other political subdivision, with the clerk of the



subdivision, the officer's manual signature certified by the officer under oath, may execute or cause to be executed with a facsimile signature in lieu of the manual signature:

(a) any public security, provided that at least one signature required or permitted to be placed on the security must be manually subscribed, but manual subscription is not required for interest coupons attached to the security; and

(b) any instrument of payment.

(3) Upon compliance with this section by the authorized officer, the facsimile signature has the same legal effect as a manual signature.

(4) When the seal of this state or any of its departments, agencies, public bodies, or other instrumentalities or of any of its political subdivisions is required in the execution of a public security or instrument of payment, the authorized officer may cause the seal to be printed, engraved, stamped, or otherwise placed in facsimile on the security or instrument. The facsimile seal has the same legal effect as the impression of the seal.

(5) A person who with intent to defraud uses on a public security or an instrument of payment a facsimile signature or any reproduction of it of any authorized officer or any facsimile seal or any reproduction of it of this state or any of its departments, agencies, public bodies, or other instrumentalities or of any of its political subdivisions is guilty of a felony.

**History:** En. Secs. 1 thru 4, Ch. 260, L. 1959; R.C.M. 1947, 59-1301, 59-1302, 59-1303, 59-1304; amd. Sec. 97, Ch. 61, L. 2007.

**2-16-115. Signature of officer acting ex officio.** When an officer discharges ex officio the duties of an office other than that to which the officer is elected or appointed, the officer's official signature and attestation, except as otherwise provided by law, must be in the name of the office of which the officer discharges the duties.

**History:** En. Sec. 1135, Pol. C. 1895; re-en. Sec. 437, Rev. C. 1907; re-en. Sec. 454, R.C.M. 1921; Cal. Pol. C. Sec. 1031; re-en. Sec. 454, R.C.M. 1935; R.C.M. 1947, 59-511; amd. Sec. 98, Ch. 61, L. 2007.

**2-16-116. Power to administer oaths.** Every executive, state, and judicial officer may administer and certify oaths.

**History:** En. Sec. 1132, Pol. C. 1895; re-en. Sec. 434, Rev. C. 1907; re-en. Sec. 463, R.C.M. 1921; Cal. Pol. C. Sec. 1028; re-en. Sec. 463, R.C.M. 1935; R.C.M. 1947, 59-533.

**2-16-117. Office hours.** (1) Unless otherwise provided by law, state executive branch offices must be open for the transaction of business continuously from 8 a.m. until 5 p.m. each day except on Saturdays, Sundays, and holidays. Each office must also be open at other times as the accommodation of the public or the proper transaction of business requires.

(2) The state treasurer may, in the interest of safekeeping funds, securities, and records, close the state treasurer's office from noon to 1 p.m. each day.

(3) The Montana historical society, established in 22-3-101, may be open for public visitation at hours other than those prescribed in this section, including hours during evenings and weekends.

(4) The department of revenue may establish alternative office hours for its offices located in the various counties if:

(a) the office is staffed by four or fewer full-time employees;

(b) the department holds a public hearing on the alternative office hours in the county seat after providing public notice in a newspaper of general circulation published in the county at least 2 weeks prior to the hearing;

(c) the county commissioners of a county in which the department employees are located in a county building approve the proposed alternative office hours if the alternative hours are outside of the county's normal business hours;

(d) the alternative office hours are adopted by administrative rule; and

(e) the office hours adopted pursuant to subsection (4)(d) are published at least two times a year in a newspaper of general circulation published in the county where the office is located.

**History:** En. Sec. 1134, Pol. C. 1895; re-en. Sec. 436, Rev. C. 1907; re-en. Sec. 453, R.C.M. 1921; Cal. Pol. C. Sec. 1030; amd. Sec. 1, Ch. 5, L. 1931; re-en. Sec. 453, R.C.M. 1935; amd. Sec. 1, Ch. 22, L. 1951; amd. Sec. 1, Ch. 253, L. 1957; amd. Sec. 1, Ch. 2, L. 1961; R.C.M. 1947, 59-510(1)(part); amd. Sec. 1, Ch. 3, L. 1997; amd. Sec. 1, Ch. 295, L. 2011.

## Part 2

### Accession to Office

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

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

**2-16-202. Title contested — salary withheld.** (1) When the title of the incumbent of any office in this state is contested by proceedings instituted in any court for that purpose, a warrant may not be drawn or paid for any part of the incumbent's salary until the proceedings have been finally determined.

(2) As soon as the proceedings are instituted, the clerk of the court in which they are pending shall certify the facts to the officers whose duty it would otherwise be to draw the warrant or pay the salary.

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

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

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

**2-16-204. Gubernatorial commissions.** (1) The governor must commission:

- (a) all officers elected by the people whose commissions are not otherwise provided for;
- (b) all officers of the militia;
- (c) all officers appointed by the governor or by the governor with consent of the senate;
- (d) United States senators.

(2) The commissions of all officers commissioned by the governor must be issued in the name of the state and must be signed by the governor and attested by the secretary of state under the great seal.

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

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

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

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

**2-16-211. Oaths — form — before whom — when.** (1) Members of the legislature and all officers, executive, ministerial, or judicial, must, before they enter upon the duties of their respective offices, take and subscribe the following oath or affirmation: "I do solemnly swear (or affirm) that I will support, protect, and defend the constitution of the United States and the constitution of the state of Montana, and that I will discharge the duties of my office with fidelity (so help me God)."

(2) No other oath, declaration, or test must be required as a qualification for any office or public trust.

(3) Except when otherwise provided, the oath may be taken before any officer authorized to administer oaths.

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

**2-16-212. Filing.** (1) Unless a different time is prescribed by law, the oath of office must be taken, subscribed, and filed within 30 days after the officer has notice of election or appointment

or before the expiration of 15 days from the commencement of the term of office when a notice of election or appointment has not been given.

(2) An oath of office, certified by the officer before whom the oath was taken, must be filed within the time required by law, except when otherwise specially provided, as follows:

(a) the oath of all officers whose authority is not limited to any particular county, in the office of the secretary of state;

(b) the oath of all officers, elected or appointed for any county and of all officers whose duties are local or whose residence in any particular county is prescribed by law and of the clerks of the district courts, in the offices of the clerks of the respective counties.

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

**2-16-213. Term of office — holdover — assumption of office.** (1) An office for which the duration is not fixed by law is held at the pleasure of the appointing authority.

(2) An officer shall continue to discharge the duties of the office, although the term has expired, until a successor has qualified.

(3) Notwithstanding the provisions of subsection (2), an appointee who is by law subject to confirmation by the senate may, upon expiration of or vacancy in the previous term, assume the office to which appointed and is a de jure officer even though the senate has not yet confirmed the appointment. If the senate rejects the appointment, the office becomes vacant.

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

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

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

### Part 3 Deputies

**2-16-301. Appointment of deputies and subordinate officers — number.** (1) All assistants, deputies, and other subordinate officers whose appointments are not otherwise provided for must be appointed by the officer or body to whom they are respectively subordinate.

(2) When the number of such deputies or subordinate officers is not fixed by law, it is limited only by the discretion of the appointing power.

(3) The appointment of deputies not otherwise provided for must be made in writing filed in the office of the appointing power or the office of its clerk.

**History:** (1)En. Sec. 991, Pol. C. 1895; re-en. Sec. 352, Rev. C. 1907; re-en. Sec. 420, R.C.M. 1921; Cal. Pol. C. Sec. 876; re-en. Sec. 420, R.C.M. 1935; Sec. 59-402, R.C.M. 1947; (2)En. Sec. 992, Pol. C. 1895; re-en. Sec. 353, Rev. C. 1907; re-en. Sec. 421, R.C.M. 1921; Cal. Pol. C. Sec. 877; re-en. Sec. 421, R.C.M. 1935; Sec. 59-403, R.C.M. 1947; (3)En. Sec. 1005, Pol. C. 1895; re-en. Sec. 361, Rev. C. 1907; re-en. Sec. 429, R.C.M. 1921; Cal. Pol. C. Sec. 894; re-en. Sec. 429, R.C.M. 1935; Sec. 59-412, R.C.M. 1947; R.C.M. 1947, 59-402, 59-403, 59-412; amd. Sec. 1, Ch. 21, L. 1983.

**2-16-302. Oath of deputies.** Deputies must within 10 days after receiving notice of their appointment take and file an oath in the manner required of their principals.

**History:** En. Sec. 1015, Pol. C. 1895; re-en. Sec. 367, Rev. C. 1907; re-en. Sec. 435, R.C.M. 1921; Cal. Pol. C. Sec. 910; re-en. Sec. 435, R.C.M. 1935; R.C.M. 1947, 59-418; amd. Sec. 2, Ch. 21, L. 1983.

**2-16-303. Powers.** In all cases not otherwise provided for, each deputy possesses the powers and may perform the duties attached by law to the office of the principal.

**History:** En. Sec. 980, Pol. C. 1895; re-en. Sec. 350, Rev. C. 1907; re-en. Sec. 418, R.C.M. 1921; Cal. Pol. C. Sec. 865; re-en. Sec. 418, R.C.M. 1935; R.C.M. 1947, 59-404; amd. Sec. 102, Ch. 61, L. 2007.

## Part 5 Vacancy and Succession

**2-16-501. Vacancies created.** An office becomes vacant on the occurrence of any one of the following events before the expiration of the term of the incumbent:

- (1) the death of the incumbent;
- (2) a determination pursuant to Title 53, chapter 21, part 1, that the incumbent suffers from a mental disorder and is in need of commitment;
- (3) the effective date stipulated in the resignation of the incumbent;
- (4) removal of the incumbent from office;
- (5) the incumbent's ceasing to be a resident of the state or, if the office is local, of the district, city, county, town, or township for which the incumbent was chosen or appointed or within which the duties of the incumbent's office are required to be discharged;
- (6) except as provided in 10-1-1008, absence of the incumbent from the state, without the permission of the legislature, beyond the period allowed by law;
- (7) the incumbent's ceasing to discharge the duty of the incumbent's office for the period of 3 consecutive months, except when prevented by sickness, when absent from the state by permission of the legislature, or as provided in 10-1-1008;
- (8) conviction of the incumbent of a felony or of an offense involving moral turpitude or a violation of the incumbent's official duties;
- (9) the incumbent's refusal or neglect to file the incumbent's official oath or bond within the time prescribed;
- (10) the decision of a competent tribunal declaring void the incumbent's election or appointment.

**History:** En. Sec. 42, p. 385, Bannack Stat.; re-en. Sec. 42, p. 468, Cod. Stat. 1871; amd. Sec. 554, 5th Div. Rev. Stat. 1879; re-en. Sec. 1046, 5th Div. Comp Stat. 1887; amd. Sec. 1101, Pol. C. 1895; re-en. Sec. 420, Rev. C. 1907; re-en. Sec. 511, R.C.M. 1921; Cal. Pol. C. Sec. 996; re-en. Sec. 511, R.C.M. 1935; R.C.M. 1947, 59-602; amd. Sec. 26, Ch. 184, L. 1979; amd. Sec. 1, Ch. 490, L. 1997; amd. Sec. 20, Ch. 381, L. 2005; amd. Sec. 1, Ch. 266, L. 2011; amd. Sec. 1, Ch. 418, L. 2017.

### Compiler's Comments

*2017 Amendment:* Chapter 418 in first sentence substituted "occurrence" for "happening"; and in (3) substituted "the effective date stipulated in the resignation of the incumbent" for "resignation of the incumbent becoming effective". Amendment effective October 1, 2017.

**2-16-502. Resignations.** Resignations must be in writing, must stipulate an effective date, and must be submitted as follows:

- (1) by the governor and lieutenant governor, to the legislature if it is in session and, if not, then to the secretary of state;
- (2) by all officers commissioned by the governor, to the governor;
- (3) by senators and members of the house of representatives, if the legislature is not in session, to the secretary of state and, if it is in session, to the presiding officer of the branch to which the member belongs, who must immediately transmit the same to the secretary of state;
- (4) by all county and township officers not commissioned by the governor, to the clerk of the board of commissioners of their respective counties;
- (5) by all other appointed officers, to the body or officer that appointed them;
- (6) by all trustees of school districts, to the clerk of the respective school district, provided for in 20-3-325;
- (7) in all cases not otherwise provided for, by filing the resignation in the office of the secretary of state.

**History:** En. Sec. 41, p. 468, Cod. Stat. 1871; re-en. Sec. 553, 5th Div. Rev. Stat. 1879; re-en. Sec. 1045, 5th Div. Comp. Stat. 1887; amd. Sec. 1100, Pol. C. 1895; re-en. Sec. 419, Rev. C. 1907; amd. Sec. 1, Ch. 8, L. 1921; re-en. Sec. 510, R.C.M. 1921; Cal. Pol. C. Sec. 995; re-en. Sec. 510, R.C.M. 1935; R.C.M. 1947, 59-601; amd. Sec. 1, Ch. 68, L. 1981; amd. Sec. 1, Ch. 64, L. 1993; amd. Sec. 2, Ch. 418, L. 2017.

### Compiler's Comments

*2017 Amendment:* Chapter 418 in introduction substituted "must stipulate an effective date, and must be submitted as follows" for "and made as follows"; deleted former (2) that read: "(2) A resignation is effective 72 hours after its submission in the manner provided for in subsection (1) unless the resignation is withdrawn during that 72-hour period by the resigner through written notification of withdrawal made in the same manner as provided in subsection (1) for resignations"; and made minor changes in style. Amendment effective October 1, 2017.

**2-16-503. Notice of removal.** Whenever an officer is removed, committed pursuant to 53-21-127, or convicted of a felony or offense involving moral turpitude or a violation of the officer's official duty or whenever the officer's election or appointment is declared void, the body, judge, or officer before whom the proceedings were conducted shall give notice of the proceedings to the officer authorized to fill the vacancy.

**History:** En. Sec. 1102, Pol. C. 1895; re-en. Sec. 421, Rev. C. 1907; re-en. Sec. 512, R.C.M. 1921; Cal. Pol. C. Sec. 997; re-en. Sec. 512, R.C.M. 1935; R.C.M. 1947, 59-603; amd. Sec. 27, Ch. 184, L. 1979; amd. Sec. 2, Ch. 490, L. 1997.

**2-16-504. Elective officers' inability to perform — filling vacancy — notice.**

(1) When an incumbent in the office of lieutenant governor, secretary of state, attorney general, auditor, or superintendent of public instruction is found to be permanently unable to perform the functions of the position, a vacancy exists.

(2) When a written declaration, made as provided in subsection (4), is transmitted to the legislature that any officer enumerated in subsection (1) is unable to discharge the powers and duties of office, the legislature may convene in the manner provided for the convening of special sessions to determine whether the disability exists or it may defer a determination to the next regular session of the legislature.

(3) If the legislature within 21 days after convening, whether in regular or special session, determines by two-thirds vote of its members that the officer is unable to discharge the powers and duties of office, the office is declared to be vacant and must be filled as provided by the constitution of Montana or laws enacted pursuant to the constitution.

(4) The written declaration required under this section must be made and transmitted by the lieutenant governor and attorney general unless one of them is the officer whose disability is in question. If the lieutenant governor is the subject of the declaration, the declaration must be made by the governor and attorney general, and if the attorney general is the subject of the declaration, the declaration must be made by the governor and secretary of state.

**History:** En. Sec. 1, Ch. 343, L. 1973; R.C.M. 1947, 59-609; amd. Sec. 104, Ch. 61, L. 2007.

**2-16-505. Filling vacancies in certain elective offices.** A vacancy in the office of the secretary of state, state auditor, attorney general, clerk of the supreme court, or superintendent of public instruction must be filled by a person appointed by the governor. The appointee holds office until the first Monday in January after the next general election. At that election, the office must be filled by election for the unexpired term.

**History:** En. Sec. 1106, Pol. C. 1895; re-en. Sec. 425, Rev. C. 1907; re-en. Sec. 516, R.C.M. 1921; Cal. Pol. C. Sec. 1001; re-en. Sec. 516, R.C.M. 1935; amd. Sec. 3, Ch. 468, L. 1977; R.C.M. 1947, 59-607; amd. Sec. 105, Ch. 61, L. 2007.

**2-16-506. Filling vacancies — recess appointments.** (1) When any office becomes vacant and no mode is provided by law for filling the vacancy, the governor shall fill the vacancy by appointing a qualified person to fill the unexpired term of the person whose office became vacant.

(2) If the legislature or one house of the legislature must confirm an appointment of a person appointed by the governor to fill a vacancy, the governor may appoint the person to assume office before the legislature meets in its next regular session to consider the appointment. A person so appointed is vested with all the functions of the office upon assuming the office and is a de jure officer, notwithstanding the fact that the legislature has not yet confirmed the appointment. If the legislature does not confirm the appointment, the governor shall make a new appointment to fill the unexpired term.

**History:** En. Sec. 1104, Pol. C. 1895; re-en. Sec. 423, Rev. C. 1907; re-en. Sec. 514, R.C.M. 1921; Cal. Pol. C. Sec. 999; re-en. Sec. 514, R.C.M. 1935; amd. Sec. 1, Ch. 388, L. 1973; R.C.M. 1947, 59-605.

**2-16-507. Powers and duties of officer filling unexpired term.** A person elected or appointed to fill a vacancy, after filing the official oath and bond, possesses all the rights and powers and is subject to all the liabilities, duties, and obligations as if the person had been elected to the office for a full term.

**History:** En. Sec. 1107, Pol. C. 1895; re-en. Sec. 426, Rev. C. 1907; re-en. Sec. 517, R.C.M. 1921; Cal. Pol. C. Sec. 1004; re-en. Sec. 517, R.C.M. 1935; R.C.M. 1947, 59-608; amd. Sec. 106, Ch. 61, L. 2007.

**2-16-508 through 2-16-510 reserved.**



**2-16-511. Vacancy in office of governor and lieutenant governor.** (1) If the offices of both the governor and the lieutenant governor become vacant, the president of the senate shall become governor and shall appoint a lieutenant governor.

(2) If the president of the senate is unable to assume the office of governor, the speaker of the house shall become governor and a lieutenant governor shall be elected in accordance with the provision of 2-16-512.

**History:** En. Sec. 1, Ch. 29, L. 1973; R.C.M. 1947, 82-1304.1.

**2-16-512. Election by legislature if president of senate and speaker unable to assume office of governor.** (1) If neither the president of the senate nor the speaker of the house of representatives is able to assume the office of governor, the legislature, meeting in joint session, shall elect a governor and a lieutenant governor.

(2) When the speaker of the house becomes governor, the legislature will meet in joint session and shall elect a lieutenant governor.

**History:** En. Sec. 2, Ch. 29, L. 1973; R.C.M. 1947, 82-1304.2.

**2-16-513. Succession in case of termination or incapacitation of primary successors.** (1) If, because of an enemy attack upon the United States, the governor, lieutenant governor, president pro tempore of the senate, and speaker of the house are killed or rendered unable to serve as governor, the senior member of the legislature shall act as governor.

(2) The senior member of the legislature shall call an emergency session of the legislature at a safe location within the state. The legislature meeting in joint session shall elect a governor.

(3) For the purposes of this section, the member with seniority is the member who has served in the legislature for the longest continuous period of time up to and including the member's current term. If two or more members of the legislature have equal seniority, the line of succession among them is from eldest to youngest in age.

**History:** En. Sec. 1, Ch. 148, L. 1959; R.C.M. 1947, 82-1309; amd. Sec. 28, Ch. 184, L. 1979; amd. Sec. 107, Ch. 61, L. 2007.

**2-16-514. Successor to serve until next general election.** The successor to the governor and the lieutenant governor shall serve until the next general election and shall have all the powers, duties, and emoluments of the respective offices.

**History:** En. Sec. 3, Ch. 29, L. 1973; R.C.M. 1947, 82-1304.3.

**2-16-515. Governor and lieutenant governor incapacitated.** (1) If both the governor and lieutenant governor are unable to serve as governor, the president of the senate shall become acting governor until the governor or lieutenant governor is able to resume the duties of the office.

(2) If the president of the senate is unable to become acting governor, the speaker of the house of representatives shall become acting governor.

**History:** En. Sec. 4, Ch. 29, L. 1973; R.C.M. 1947, 82-1304.4.

**2-16-516 through 2-16-520 reserved.**

**2-16-521. Powers of acting governor.** (1) Every provision of the laws of this state in relation to the powers and duties of the governor and in relation to acts and duties to be performed by others toward the governor extends to the persons performing for the time being the duties of governor.

(2) An acting governor has all the rights, duties, and emoluments of the office of governor while acting as governor.

**History:** (1) En. Sec. 373, Pol. C. 1895; re-en. Sec. 148, Rev. C. 1907; re-en. Sec. 127, R.C.M. 1921; Cal. Pol. C. Sec. 383; re-en. Sec. 127, R.C.M. 1935; Sec. 82-1304, R.C.M. 1947; (2) En. Sec. 5, Ch. 29, L. 1973; Sec. 82-1304.5, R.C.M. 1947; R.C.M. 1947, 82-1304, 82-1304.5; amd. Sec. 108, Ch. 61, L. 2007.

## Part 6 Montana Recall Act

**2-16-601. Short title.** This part shall be cited as the "Montana Recall Act".

**History:** En. Sec. 1, I.M. No. 73, approved November 2, 1976; amd. Sec. 2, Ch. 364, L. 1977; R.C.M. 1947, 59-610.

**2-16-602. Definitions.** As used in this part, the following definitions apply:

(1) “Political subdivision” means a local government unit including but not limited to a county, city, or town established under authority of Article XI, section 1, of The Constitution of the State of Montana or a school district.

(2) “Public office” means a position of duty, trust, or authority created by the constitution or by the legislature or by a political subdivision through authority conferred by the constitution or the legislature that meets the following criteria:

(a) the position must possess a delegation of a portion of the sovereign power of government to be exercised for the benefit of the public;

(b) the powers conferred and the duties to be discharged must be defined, directly or impliedly, by the constitution, the legislature, or by a political subdivision through legislative authority;

(c) the duties must be performed independently and without control of a superior power other than the law, unless the legislature has created the position and placed it under the general control of a superior office or body; and

(d) the position must have some permanency and continuity and not be only temporary or occasional.

(3) “State-district” means a public service commission district, a legislative representative or senatorial district, or a judicial district.

**History:** En. 59-611 by Sec. 1, Ch. 364, L. 1977; R.C.M. 1947, 59-611.

**2-16-603. Officers subject to recall — grounds for recall.** (1) Any person holding a public office of the state or any of its political subdivisions, either by election or appointment, is subject to recall from office.

(2) A public officer holding an elective office may be recalled by the qualified electors entitled to vote for the elective officer’s successor. A public officer holding an appointive office may be recalled by the qualified electors entitled to vote for the successor or successors of the elective officer or officers who have the authority to appoint a person to that position.

(3) Physical or mental lack of fitness, incompetence, violation of the oath of office, official misconduct, or conviction of a felony offense enumerated in Title 45 are the only grounds for recall. A person may not be recalled for performing a mandatory duty of the office that the person holds or for not performing any act that, if performed, would subject the person to prosecution for official misconduct.

**History:** En. Sec. 2, I.M. No. 73, approved November 2, 1976; amd. Sec. 3, Ch. 364, L. 1977; R.C.M. 1947, 59-612; amd. Sec. 1, Ch. 398, L. 1979; amd. Sec. 109, Ch. 61, L. 2007.

**2-16-604 through 2-16-610 reserved.**

**2-16-611. Method of removal cumulative.** The recall is cumulative and additional to, rather than a substitute for, other methods for removal of public officers.

**History:** En. Sec. 3, I.M. No. 73, approved November 2, 1976; R.C.M. 1947, 69-613.

**2-16-612. Persons qualified to petition — penalty for false signatures.** (1) A person who is a qualified elector of this state may sign a petition for recall of a state officer.

(2) A person who is a qualified elector of a district of the state from which a state-district officer is elected may sign a petition for recall of a state-district officer of that district or appointed by an officer or the officers of that election district.

(3) A person who is a qualified elector of a political subdivision of this state may sign a petition for recall of an officer of that political subdivision.

(4) A person signing any name other than the person’s own to any petition or knowingly signing more than once for the recall or who is not at the time of the signing a qualified elector or a person who knowingly makes a false entry upon an affidavit required in connection with the filing of a petition for the recall of an officer is guilty of unsworn falsification or tampering with public records or information, as appropriate, and is punishable as provided in 45-7-203 or 45-7-208, as applicable.

**History:** En. Sec. 10, I.M. No. 73, approved November 2, 1976; amd. Sec. 7, Ch. 364, L. 1977; R.C.M. 1947, 59-620; amd. Sec. 110, Ch. 61, L. 2007; amd. Sec. 1, Ch. 188, L. 2009.

**2-16-613. Limitations on recall petitions.** (1) A recall petition may not name more than one officer to be recalled.

(2) A recall petition against an officer may not be approved for circulation, as required in 2-16-617(3), until an officer has held office for 2 months.

(3) A recall petition may not be filed against an officer for whom a recall election has been held for a period of 2 years during the officer's term of office unless the state or political subdivision or subdivisions financing the recall election are first reimbursed for all expenses of the preceding recall election.

**History:** (1) En. Sec. 4, I.M. No. 73, approved November 2, 1976; amd. Sec. 4, Ch. 364, L. 1977; Sec. 59-614, R.C.M. 1947; (2), (3) En. Sec. 5, I.M. No. 73, approved November 2, 1976; Sec. 59-615, R.C.M. 1947; R.C.M. 1947, 59-614(part), 59-615; amd. Sec. 1, Ch. 159, L. 1983; amd. Sec. 111, Ch. 61, L. 2007.

**2-16-614. Number of electors required for recall petition.** (1) Recall petitions for elected or appointed state officers must contain the signatures of qualified electors equaling at least 10% of the number of persons registered to vote at the preceding state general election.

(2) A petition for the recall of a state-district officer must contain the signatures of qualified electors equaling at least 15% of the number of persons registered to vote in the last preceding election in that district.

(3) (a) Except as provided in subsection (3)(b), recall petitions for elected or appointed county officers must contain the signatures of qualified electors equaling at least 15% of the number of persons registered to vote at the preceding county general election.

(b) If a recall petition is for a county commissioner in a county that is divided into commissioner districts pursuant to 7-4-2102, then the petition:

(i) must contain the signatures of qualified electors equaling at least 15% of the number of persons registered to vote at the preceding county general election; and

(ii) must also contain the signatures from at least 15% of the qualified electors residing in that commissioner's commission district.

(4) Recall petitions for elected or appointed officers of municipalities or school districts must contain the signatures of qualified electors equaling at least 20% of the number of persons registered to vote at the preceding election for the municipality or school district.

**History:** En. Sec. 4, I.M. No. 73, approved November 2, 1976; amd. Sec. 4, Ch. 364, L. 1977; R.C.M. 1947, 59-614(part), 59-615; amd. Sec. 1, Ch. 308, L. 1979; amd. Sec. 2, Ch. 188, L. 2009.

**2-16-615. Filing of recall petitions — mandamus for refusal.** (1) Recall petitions for elected officers shall be filed with the official who is provided by law to accept the declaration of nomination or petition for nomination for such office. Recall petitions for appointed state officers shall be filed with the secretary of state and for appointed county or municipal officers shall be filed with the county election administrator. Recall petitions for appointed officers from other political subdivisions shall be filed with the county election administrator if the boundaries of the political subdivisions lie wholly within one county or otherwise with the secretary of state.

(2) If the secretary of state, county election administrator or other filing official refuses to accept and file any petition for recall with the proper number of signatures of qualified electors, any elector may within 10 days after such refusal apply to the district court for a writ of mandamus. If it is determined that the petition is sufficient, the district court shall order the petition to be filed with a certified copy of the writ attached thereto, as of the date when it was originally offered for filing. On a showing that any filed petition is not sufficient, the court may enjoin certification, printing, or recall election.

(3) All such suits or appeals therefrom shall be advanced on the court docket and heard and decided by the court as expeditiously as possible.

(4) Any aggrieved party may file an appeal within 10 days after any adverse order or decision as provided by law.

**History:** En. Secs. 6, 12, I.M. No. 73, approved November 2, 1976; R.C.M. 1947, 59-616, 59-623; amd. Sec. 375, Ch. 571, L. 1979.

**2-16-616. Form of recall petition.** (1) The form of the recall petition must be substantially as follows:

#### WARNING

A person who knowingly signs a name other than the person's own to this petition, who signs the person's name more than once upon a petition to recall the same officer at one election, or who is not, at the time of signing this petition, a qualified elector of the state of Montana

entitled to vote for the successor of the elected officer to be recalled or the successor or successors of the officer or officers who have the authority to appoint a person to the position held by the appointed officer to be recalled is punishable by a fine of no more than \$500 or imprisonment in the county jail for a term not to exceed 6 months, or both, or a fine of \$500 or imprisonment in the state prison for a term not to exceed 10 years, or both.

### RECALL PETITION

To the Honorable ....., Secretary of State of the State of Montana (or name and office of other filing officer): We, the undersigned qualified electors of the State of Montana (or name of appropriate state-district or political subdivision) respectfully petition that an election be held as provided by law on the question of whether ....., holding the office of ....., should be recalled for the following reasons: (Setting out a general statement of the reasons for recall in not more than 200 words). Each signer certifies: I have personally signed this petition; I am a qualified elector of the state of Montana and (name of appropriate political subdivision); and my residence and post-office address are correctly written after my name to the best of my knowledge and belief.

(2) Numbered lines must follow the language in subsection (1). Each numbered line must contain spaces for the signature, post-office address, and printed last name of the signer. Each separate sheet of the petition must contain the heading and reasons for the proposed recall as prescribed in subsection (1).

**History:** En. Sec. 7, I.M. No. 73, approved November 2, 1976; amd. Sec. 5, Ch. 364, L. 1977; R.C.M. 1947, 59-617; amd. Sec. 112, Ch. 61, L. 2007.

**2-16-617. Form of circulation sheets.** (1) The signatures on each petition must be placed on sheets of paper known as circulation sheets. Each circulation sheet must be substantially 8½ x 14 inches or a continuous sheet may be folded so as to meet this size limitation. The circulation sheets must be ruled with a horizontal line 1½ inches from the top of the sheet. The space above the line must remain blank and must be for the purpose of binding.

(2) The petition, for purposes of circulation, may be divided into sections, each section to contain not more than 25 circulation sheets.

(3) Before a petition may be circulated for signatures, a sample circulation sheet must be submitted to the officer with whom the petition must be filed in the form in which it will be circulated. The filing officer shall review the petition for sufficiency as to form and approve or reject the form of the petition, stating the reasons for rejection, within 1 week of receiving the sheet.

(4) The petition form submitted must be accompanied by a written statement containing the reasons for the desired recall as stated on the petition. The truth of purported facts contained in the statement must be sworn to by at least one of the petitioners before a person authorized to administer oaths.

(5) The filing officer shall serially number all approved petitions continuously from year to year.

**History:** En. Sec. 8, I.M. No. 73, approved November 2, 1976; amd. Sec. 6, Ch. 364, L. 1977; R.C.M. 1947, 59-618; amd. Sec. 113, Ch. 61, L. 2007.

**2-16-618. Forms not mandatory.** The forms prescribed in this part are not mandatory, and if substantially followed, the petition shall be sufficient, notwithstanding clerical and merely technical errors.

**History:** En. Sec. 9, I.M. No. 73, approved November 2, 1976; R.C.M. 1947, 59-619.

**2-16-619. Submission of circulation sheets — certification of signatures.** (1) Signed circulation sheets or sections of a petition for recall must be submitted to the officer responsible for registration of electors in the county in which the signatures were obtained within 3 months of the date the form of the petition was approved under 2-16-617.

(2) An affidavit, in substantially the following form, must be attached to each circulation sheet or section submitted to the county officer:

(Name of person circulating petition), being first sworn, deposes and says: I circulated or assisted in circulating the petition to which this affidavit is attached, and I believe that the signatures on the petition are genuine and are the signatures of the persons whose names they purport to be and that the signers knew the contents of the petition before signing the petition.

..... (Signature)

Subscribed and sworn before me this .... day of ....., 20...

..... (Person authorized to take oaths)

Seal

..... (Title or notarial information)

**History:** En. 59-621 by Sec. 8, Ch. 364, L. 1977; R.C.M. 1947, 59-621; amd. Sec. 4, Ch. 51, L. 1999.

**2-16-620. County clerk to verify signatures.** (1) The county clerk in each county in which a recall petition is signed shall verify and compare the signatures of each person who has signed the petition to ensure that the person is an elector in that county and, if satisfied that the signatures are genuine, shall certify that fact to the officer with whom the recall petition is to be filed, in substantially the following form:

To the Honorable ....., Secretary of State of the State of Montana (or name and title of other officer):

I, ....., (title) of ..... County, certify that I have compared the signatures on ..... sheets (specifying number of sheets) of the petition for recall No. .... attached, in the manner prescribed by law, and I believe ..... (number) signatures are valid for the purpose of the petition. I further certify that the affidavit of the circulator of the (sheet) (section) of the petition is attached and that the post-office address is completed for each valid signature.

Signed: ..... (Date)

..... (Signature)

Seal

..... (Title)

(2) The certificate is prima facie evidence of the facts stated in the certificate, and the secretary of state or other officer receiving the recall petition may consider and count only the signatures that are certified. However, the officer with whom the recall petition is filed shall consider and count any remaining signatures of the registered voters that prove to be genuine, and those signatures must be considered and counted if they are attested to in the manner and form provided for initiative and referendum petitions.

(3) The county clerk and recorder may not retain any portion of a petition for more than 30 days following the receipt of that portion. At the expiration of that period, the county clerk and recorder shall certify the valid signatures on that portion of the petition and deliver the same to the person with whom the petition is required to be filed.

**History:** En. Sec. 11, I.M. No. 73, approved November 2, 1976; amd. Sec. 9, Ch. 364, L. 1977; R.C.M. 1947, 59-622; amd. Sec. 2, Ch. 159, L. 1983; amd. Sec. 114, Ch. 61, L. 2007.

**2-16-621. Notification to officer — statement of justification.** Upon filing the petition or a portion of the petition containing the number of valid signatures required under 2-16-614, the official with whom it is filed shall immediately give written notice to the officer named in the petition. The notice must state that a recall petition has been filed, must set forth the reasons contained in the petition, and must notify the officer named in the recall petition that the officer has the right to prepare and have printed on the ballot a statement containing not more than 200 words giving reasons why the officer should not be recalled. A statement of justification may not be printed on the ballot unless it is delivered to the filing official within 10 days of the date notice is given.

**History:** En. Sec. 14, I.M. No. 73, approved November 2, 1976; R.C.M. 1947, 59-625; amd. Sec. 3, Ch. 159, L. 1983; amd. Sec. 115, Ch. 61, L. 2007.

**2-16-622. Resignation of officer — proclamation of election.** (1) If the officer named in the petition for recall submits a resignation in writing, it must be accepted and become effective 72 hours after it is offered. The vacancy created by the resignation must be filled as provided by law. However, the officer named in the petition for recall may not be appointed to fill the vacancy. If the officer named in the petition for recall refuses to resign or does not resign within 5 days after the petition is filed, an election must be held. If the recall petition was filed between 145 days and 90 days before a general election, the recall election must be held at the same time as the general election. If the recall petition was filed more than 145 days or less than 90 days before a general election, a special election must be called.

(2) The call of a special election must be made by the governor in the case of a state or state-district officer or by the board or officer empowered by law to call special elections for a political subdivision in the case of any officer of a political subdivision of the state.

**History:** En. Sec. 13, I.M. No. 73, approved November 2, 1976; amd. Sec. 10, Ch. 364, L. 1977; R.C.M. 1947, 59-624; amd. Sec. 116, Ch. 61, L. 2007; amd. Sec. 11, Ch. 49, L. 2015.



**2-16-623 through 2-16-630 reserved.**

**2-16-631. Notice of recall election.** The notice of a recall election shall be in substantially the following form:

**NOTICE OF RECALL ELECTION**

Notice is hereby given pursuant to law that a recall election will be held on ..... (Date) for the purpose of voting upon the recall of ..... who holds the office of .....

DATED at ....., ..... (Date)

**History:** En. Sec. 15, I.M. No. 73, approved November 2, 1976; amd. Sec. 11, Ch. 364, L. 1977; R.C.M. 1947, 59-626.

**2-16-632. Conduct of special elections.** A special election for recall shall be conducted and the results canvassed and certified in the same manner that the law in effect at the time of the election for recall requires for an election to fill the office that is the subject of the recall petition, except as herein otherwise provided. In the case of an official holding a nonelective office, the election shall be conducted and the results canvassed and certified in the same manner that the law in effect at the time of the election for recall requires for an election to fill the office of the person who has the power to appoint such official. The powers and duties conferred or imposed by law upon boards of election, registration officers, canvassing boards, and other public officials who conduct general elections are conferred and imposed upon similar officers conducting recall elections under the provisions of this section together with the penalties prescribed for the breach thereof.

**History:** En. Sec. 18, I.M. No. 73, approved November 2, 1976; R.C.M. 1947, 59-629; amd. Sec. 2, Ch. 308, L. 1979.

**2-16-633. Form of ballot.** (1) The ballot at a recall election must set forth the statement contained in the recall petition stating the reasons for demanding the recall of the officer and the officer's statement of reasons why the officer should not be recalled. The question of whether the officer should be recalled must be placed on the ballot in a form similar to the following:

- ☐ FOR recalling ..... who holds the office of .....
- ☐ AGAINST recalling ..... who holds the office of .....

(2) The form of the ballot must be approved as provided in the election laws of this state.

**History:** En. Sec. 16, I.M. No. 73, approved November 2, 1976; amd. Sec. 12, Ch. 364, L. 1977; R.C.M. 1947, 59-627; amd. Sec. 117, Ch. 61, L. 2007.

**2-16-634. Expenses of election.** Expenses of a recall election shall be paid in the same manner as the expenses for any other election. The expenditure of such funds constitutes an emergency expenditure of funds, and the political subdivision affected may fund the costs of such an election through emergency funding procedures. In the event a recall election is held for a state or state-district officer, the legislature shall appropriate funds to reimburse the counties involved for costs incurred in running the election.

**History:** En. Sec. 19, I.M. No. 73, approved November 2, 1976; amd. Sec. 14, Ch. 364, L. 1977; R.C.M. 1947, 59-630.

**2-16-635. Officer to remain in office until results declared — filling of vacancy.** The officer named in the recall petition continues in office until the officer resigns or the results of the recall election are officially declared. If a majority of those voting on the question vote to remove the officer, the office becomes vacant and the vacancy must be filled as provided by law. However, the officer recalled may not be appointed to fill the vacancy.

**History:** En. Sec. 17, I.M. No. 73, approved November 2, 1976; amd. Sec. 13, Ch. 364, L. 1977; R.C.M. 1947, 59-628; amd. Sec. 118, Ch. 61, L. 2007.

## CHAPTER 17

### PROPERTY AND SYSTEMS DEVELOPMENT AND MANAGEMENT

#### Part 5

#### Information Technology — Internet Privacy

**2-17-501. Repealed.** Sec. 43, Ch. 313, L. 2001.

**History:** En. Sec. 1, Ch. 175, L. 1979; amd. Sec. 2, Ch. 486, L. 1983; MCA 1981, 18-4-111; redes. 2-17-501 by Code Commissioner, 1983; amd. Sec. 1, Ch. 207, L. 1985; amd. Sec. 1, Ch. 216, L. 1985; amd. Sec. 1, Ch. 76, L. 1993.

**2-17-502. Repealed.** Sec. 43, Ch. 313, L. 2001.

**History:** En. Sec. 3, Ch. 486, L. 1983; amd. Sec. 2, Ch. 76, L. 1993; amd. Sec. 1, Ch. 56, L. 1997.

**2-17-503. Renumbered 2-17-534.** Sec. 44(3), Ch. 313, L. 2001.

**2-17-504. Short title.** This part may be cited as the “Montana Information Technology Act”.

**History:** En. Sec. 2, Ch. 313, L. 2001.

**2-17-505. Policy.** (1) It is the policy of the state that information technology be used to improve the quality of life of Montana citizens by providing educational opportunities, creating quality jobs and a favorable business climate, improving government, and protecting individual privacy and the privacy of the information contained within information technology systems.

(2) It is the policy of the state that the development of information technology resources in the state must be conducted in an organized, deliberative, and cost-effective manner.

(3) It is the policy of the state that information technology is essential and vital to the people of the state of Montana, and the services, systems, and infrastructure are therefore considered to be an asset of the state.

(4) The following principles must guide the development of state information technology resources:

(a) There are statewide information technology policies, standards, procedures, and guidelines applicable to all state agencies and other entities using the state network.

(b) Mitigation of risks is a priority in order to protect individual privacy and the privacy of information contained within information technology systems as they become more interconnected and as the liabilities stemming from the risk to information technology, also known as cyber risk, have increased.

(c) Whenever feasible and not an undue cyber risk, common data is entered once and shared among government entities at any level or political subdivision.

(d) Third-party providers of data, such as citizens, businesses, and other government entities, are responsible for the accuracy and integrity of the data provided to government entities.

(e) Government entities are required to conduct business through open, transparent processes to ensure accountability to the citizenry, and information technology provides access to information through simple and expeditious procedures.

(f) In order to minimize unwarranted duplication, similar information technology systems and data management applications are implemented and managed in a coordinated manner.

(g) Planning and development of information technology resources are conducted in conjunction with budget development and approval.

(h) Information technology systems are deployed aggressively whenever it can be shown that it will provide improved services to Montana citizens.

(i) Public-private partnerships are used to deploy information technology systems when practical and cost-effective.

(j) State information technology systems are developed in cooperation with the federal government and local governments with the objective of providing seamless access to information and services to the greatest degree possible.

(k) State information technology systems are able to accommodate electronic transmissions between the state and its citizens, businesses, and other government entities, including providing financial incentives for citizens and businesses to use electronic government services.

(l) State information technology systems are able to embrace the economics of digitized records to avoid duplication and transport costs.

(m) Electronic record creation, management, storage, and retrieval processes and procedures are used to create and deliver professional records management experiences for the citizens of Montana.

(n) State information technology systems are able to embrace continuous process improvement initiatives in order to keep pace with new and emerging technologies and delivery channels in order to allow citizens to determine when, where, and how they interact with government agencies.

(5) It is the policy of the state that the department must be accountable to the governor, the legislature, and the citizens of Montana.

**History:** En. Sec. 3, Ch. 313, L. 2001; amd. Sec. 1, Ch. 166, L. 2013.

**2-17-506. Definitions.** In this part, unless the context requires otherwise, the following definitions apply:

(1) “Board” means the information technology board established in 2-15-1021.

(2) “Central computer center” means any stand-alone or shared computer and associated equipment, software, facilities, and services administered by the department for use by state agencies.

(3) “Chief information officer” means a person appointed by the director of the department to carry out the duties and responsibilities of the department relating to information technology.

(4) “Data” means any information stored on information technology resources.

(5) “Department” means the department of administration established in 2-15-1001.

(6) “Electronic access system” means a system capable of making data accessible by means of an information technology facility in a voice, video, or electronic data form, including but not limited to the internet.

(7) “Information technology” means hardware, software, and associated services and infrastructure used to store or transmit information in any form, including voice, video, and electronic data.

(8) “Private safety agency” has the same meaning as provided in 10-4-101.

(9) “Public safety agency” has the same meaning as provided in 10-4-101.

(10) “State agency” means any entity of the executive branch, including the university system.

(11) “Statewide telecommunications network” means any telecommunications facilities, circuits, equipment, software, and associated contracted services administered by the department for the transmission of voice, video, or electronic data from one device to another.

**History:** En. Sec. 4, Ch. 313, L. 2001; amd. Sec. 3, Ch. 106, L. 2015.

**2-17-507 through 2-17-510 reserved.**

**2-17-511. Chief information officer — duties.** The duties of the chief information officer include but are not limited to:

(1) carrying out all powers and duties of the department as assigned by the director of the department;

(2) serving as the chief policy advisor to the director of the department on statewide information technology issues; and

(3) assisting and advising the director of the department on the enforcement responsibilities provided in 2-17-514.

**History:** En. Sec. 5, Ch. 313, L. 2001.

**2-17-512. Powers and duties of department.** (1) The department is responsible for carrying out the planning and program responsibilities for information technology for state government, except the national guard. The department shall:

(a) encourage and foster the development of new and innovative information technology within state government;

(b) promote, coordinate, and approve the development and sharing of shared information technology application software, management systems, and information that provide similar functions for multiple state agencies;

(c) cooperate with the office of economic development to promote economic development initiatives based on information technology;

(d) establish and enforce a state strategic information technology plan as provided for in 2-17-521;

(e) establish and enforce statewide information technology policies and standards;

(f) review and approve state agency information technology plans provided for in 2-17-523;

(g) coordinate with the office of budget and program planning to evaluate budget requests that include information technology resources. The department shall make recommendations to the office of budget and program planning for the approval or disapproval of information technology budget requests, including an estimate of the useful life of the asset proposed for purchase and whether the amount should be expensed or capitalized, based on state accounting policy established by the department. An unfavorable recommendation must be based on a determination that the request is not provided for in the approved agency information technology plan provided for in 2-17-523.

(h) staff the information technology board provided for in 2-15-1021;

(i) fund the administrative costs of the information technology board provided for in 2-15-1021;

(j) review the use of information technology resources for all state agencies;

(k) review and approve state agency specifications and procurement methods for the acquisition of information technology resources;

(l) review, approve, and sign all state agency contracts and shall review and approve other formal agreements for information technology resources provided by the private sector and other government entities;

(m) operate and maintain a central computer center for the use of state government, political subdivisions, and other participating entities under terms and conditions established by the department;

(n) operate and maintain a statewide telecommunications network for the use of state government, political subdivisions, and other participating entities under terms and conditions established by the department;

(o) ensure that the statewide telecommunications network is properly maintained. The department may establish a centralized maintenance program for the statewide telecommunications network.

(p) coordinate public safety communications on behalf of public and private safety agencies as provided for in 2-17-543 through 2-17-545;

(q) manage the state 9-1-1 program as provided for in Title 10, chapter 4, part 3;

(r) provide electronic access to information and services of the state as provided for in 2-17-532;

(s) provide assistance to the legislature, the judiciary, the governor, and state agencies relative to state and interstate information technology matters;

(t) establish rates and other charges for services provided by the department;

(u) accept federal funds granted by congress or by executive order and gifts, grants, and donations for any purpose of this section;

(v) dispose of personal property owned by it in a manner provided by law when, in the judgment of the department, the disposal best promotes the purposes for which the department is established;

(w) implement this part and all other laws for the use of information technology in state government;

(x) report to the appropriate interim committee on a regular basis and to the legislature as provided in 5-11-210 on the information technology activities of the department; and

(y) represent the state with public and private entities on matters of information technology.

(2) If it is in the state's best interest, the department may contract with qualified private organizations, foundations, or individuals to carry out the purposes of this section.

(3) The director of the department shall appoint the chief information officer to assist in carrying out the department's information technology duties.

**History:** En. Sec. 6, Ch. 313, L. 2001; amd. Sec. 1, Ch. 92, L. 2003; amd. Sec. 5, Ch. 114, L. 2003; amd. Sec. 4, Ch. 106, L. 2015.

**2-17-513. Duties of board.** The board shall:

- (1) provide a forum to:
  - (a) guide state agencies, the legislative branch, the judicial branch, and local governments in the development and deployment of intergovernmental information technology resources;
  - (b) share information among state agencies, local governments, and federal agencies regarding the development of information technology resources;
- (2) advise the department:
  - (a) in the development of cooperative contracts for the purchase of information technology resources;
  - (b) regarding the creation, management, and administration of electronic government services and information on the internet;
  - (c) regarding the administration of electronic government services contracts;
  - (d) on the priority of government services to be provided electronically;
  - (e) on convenience fees prescribed in 2-17-1102 and 2-17-1103, if needed, for electronic government services; and
  - (f) on any other aspect of providing electronic government services;
- (3) review and advise the department on:
  - (a) statewide information technology standards and policies;
  - (b) the state strategic information technology plan;
  - (c) major information technology budget requests;
  - (d) rates and other charges for services established by the department as provided in 2-17-512(1)(t);
  - (e) requests for exceptions as provided for in 2-17-515;
  - (f) notification of proposed exemptions by the university system and office of public instruction as provided for in 2-17-516;
  - (g) action taken by the department as provided in 2-17-514(1) for any activity that is not in compliance with this part;
  - (h) the implementation of major information technology projects and advise the respective governing authority of any issue of concern to the board relating to implementation of the project; and
  - (i) financial reports, management reports, and other data as requested by the department;
- (4) study state government's present and future information technology needs and advise the department on the use of emerging technology in state government;
- (5) request information and reports that it considers necessary from any entity using or having access to the statewide telecommunications network or central computer center;
- (6) assist in identifying, evaluating, and prioritizing potential departmental and interagency electronic government services;
- (7) serve as a central coordination point for electronic government services provided by the department and other state agencies;
- (8) study, propose, develop, or coordinate any other activity in furtherance of electronic government services as requested by the governor or the legislature; and
- (9) prepare and submit to the state administration and veterans' affairs interim committee by September 15 in the year preceding the regular legislative session and in the manner provided in 5-11-210 a report including but not necessarily limited to a summary of the board's activities, a review of the electronic government program established under part 11 of this chapter, and any key findings and recommendations that the board presented to the department.

**History:** En. Sec. 7, Ch. 313, L. 2001; amd. Sec. 1, Ch. 237, L. 2015; amd. Sec. 1, Ch. 274, L. 2015.

**2-17-514. Department — enforcement responsibilities.** (1) If the department determines that an agency is not in compliance with the state strategic information technology plan provided for in 2-17-521, the agency information technology plan provided for in 2-17-523, or the statewide information technology policies and standards provided for in 2-17-512, the department may cancel or modify any contract, project, or activity that is not in compliance.



(2) Prior to taking action provided for in subsection (1), the department shall review with the board any activities that are not in compliance.

(3) Any contract entered into by an agency that includes information technology resources must include language developed by the department that references the department's enforcement responsibilities provided for in subsection (1). A contract that does not contain the required language is considered to be in violation of state law and is voidable pursuant to subsection (1). The language developed by the department may not be varied pursuant to 18-4-224.

**History:** En. Sec. 8, Ch. 313, L. 2001.

**2-17-515. Granting exceptions to state agencies.** Subject to 2-17-516, the department may grant exceptions to any policy, standard, or other requirement of this part if it is in the best interests of the state of Montana. The department shall inform the board, the office of budget and program planning, and the legislative finance committee of all exceptions that are granted and of the rationale for granting the exceptions. The department shall maintain written documentation that identifies the terms and conditions of the exception and the rationale for the exception.

**History:** En. Sec. 9, Ch. 313, L. 2001.

**2-17-516. Exemptions — university system — office of public instruction — national guard.** (1) Unless the proposed activities would detrimentally affect the operation of the central computer center or the statewide telecommunications network, the office of public instruction is exempt from 2-17-512(1)(k) and (1)(l).

(2) Unless the proposed activities would detrimentally affect the operation of the central computer center or the statewide telecommunications network, the university system is exempt from:

- (a) the enforcement provisions of 2-17-512(1)(d) and (1)(e) and 2-17-514;
- (b) the approval provisions of 2-17-512(1)(f), 2-17-523, and 2-17-527;
- (c) the budget approval provisions of 2-17-512(1)(g); and
- (d) the provisions of 2-17-512(1)(k) and (1)(l).

(3) The department, upon notification of proposed activities by the university system or the office of public instruction, shall determine if the central computer center or the statewide telecommunications network would be detrimentally affected by the proposed activity.

(4) For purposes of this section, a proposed activity affects the operation of the central computer center or the statewide telecommunications network if it detrimentally affects the processing workload, reliability, cost of providing service, or support service requirements of the central computer center or the statewide telecommunications network.

(5) When reviewing proposed activities of the university system, the department shall consider and make reasonable allowances for the unique educational needs and characteristics and the welfare of the university system as determined by the board of regents.

(6) When reviewing proposed activities of the office of public instruction, the department shall consider and make reasonable allowances for the unique educational needs and characteristics of the office of public instruction to communicate and share data with school districts.

(7) Section 2-17-512(1)(u) may not be construed to prohibit the university system from accepting federal funds or gifts, grants, or donations related to information technology or telecommunications.

(8) The national guard, as defined in 10-1-101(3), is exempt from 2-17-512.

**History:** En. Sec. 10, Ch. 313, L. 2001; amd. Sec. 2, Ch. 237, L. 2015.

**2-17-517. Legislative and judicial branch information sharing.** The legislative branch and the judicial branch shall provide their information technology plans to the department.

**History:** En. Sec. 11, Ch. 313, L. 2001.

**2-17-518. Rulemaking authority.** (1) The department shall adopt rules to implement this part, including the following:

(a) rules to guide the review and approval process for state agency software and management systems that provide similar functions for multiple state agencies, which must include but are not limited to:

- (i) identifying the software and management systems that must be approved;

(ii) establishing the information that state agencies are required to provide to the department; and

(iii) establishing guidelines for the department's approval decision;

(b) rules to guide the review and approval process for state agency acquisition of information technology resources, which must include but are not limited to processes and requirements for:

(i) agency submissions to gain approval for acquiring information technology resources;

(ii) approving specifications for information technology resources; and

(iii) approving contracts for information technology resources; and

(c) rules for granting exceptions from the requirements of this part, which must include but are not limited to:

(i) a process for applying for an exception; and

(ii) guidelines for determining the department's approval decision.

(2) The department may adopt rules to guide the development of state agency information technology plans. The rules may include:

(a) agency plan review procedures;

(b) agency plan content requirements;

(c) guidelines for the department's approval decision; and

(d) dispute resolution processes and procedures.

(3) Adequate rules for the use of any information technology resources must be adopted by the supreme court for judicial branch agencies.

(4) The legislative council shall adopt enterprise principles and technical standards within an enterprise architecture program as a part of the legislative branch information technology plan, as provided for in 5-11-405, that will fulfill the intent of adequate rules for use of information technology resources for the consolidated legislative branch, as provided for in 5-2-504.

**History:** En. Sec. 12, Ch. 313, L. 2001; amd. Sec. 1, Ch. 72, L. 2007; amd. Sec. 2, Ch. 284, L. 2013.

**2-17-519 and 2-17-520 reserved.**

**2-17-521. State strategic information technology plan — biennial report.** (1) The department shall prepare a state strategic information technology plan. The department shall seek the advice of the board in the development of the plan.

(2) The plan must:

(a) reflect the policies as set forth in 2-17-505 and be in accordance with statewide standards and policies established by the department;

(b) establish the statewide mission, goals, and objectives for the use of information technology, including goals for electronic access to government records, information, and services; and

(c) establish the strategic direction for how state agencies will develop and use information technology resources to provide state government services.

(3) The department shall update the plan as necessary. The plan and any updates must be distributed as provided in 2-17-522.

(4) The department shall prepare a biennial report on information technology based on agency information technology plans and performance reports required under 2-17-524 and other information considered appropriate by the department. The biennial report must include:

(a) an analysis of the state's information technology infrastructure, including its value, condition, and capacity;

(b) an evaluation of performance relating to information technology;

(c) an assessment of progress made toward implementing the state strategic information technology plan;

(d) an inventory of state information services, equipment, and proprietary software;

(e) agency budget requests for major projects; and

(f) other information as determined by the department or requested by the governor or the legislature.

**History:** En. Sec. 13, Ch. 313, L. 2001.

**2-17-522. State strategic information technology plan — distribution.** (1) The department shall distribute the state strategic information technology plan and the biennial report to the governor and to the legislature as provided in 5-11-210.

(2) Updates to the state strategic information technology plan must be provided to the governor by March 1 of each even-numbered year and to the legislative finance committee at its next scheduled meeting after March 1.

(3) By April 1 of each even-numbered year, the updated state strategic information technology plan must be distributed to all state agencies with instructions and schedules for updating and approving agency information technology plans in accordance with 2-17-527.

**History:** En. Sec. 14, Ch. 313, L. 2001.

**2-17-523. Agency information technology plans — policy.** (1) Each state agency is required to develop and maintain an agency information technology plan. The agency information technology plans must reflect the content and format requirements specified in 2-17-524.

(2) An agency information technology plan must be submitted to and approved by the department as described in 2-17-527.

(3) New investments in information technology can be included in the governor's budget only if the project is contained in the approved agency information technology plan.

**History:** En. Sec. 15, Ch. 313, L. 2001.

**2-17-524. Agency information technology plans—form and content—performance reports.** (1) Each agency's information technology plan must include but is not limited to the following:

(a) a statement of the agency's mission, goals, and objectives for information technology, including a discussion of how the agency uses or plans to use information technology to provide mission-critical services to Montana citizens and businesses;

(b) an explanation of how the agency's mission, goals, and objectives for information technology support and conform to the state strategic information technology plan required in 2-17-521;

(c) a baseline profile of the agency's current information technology resources and capabilities that:

(i) includes sufficient information to fully support state-level review and approval activities; and

(ii) will serve as the basis for subsequent planning and performance measures;

(d) an evaluation of the baseline profile that identifies real or potential deficiencies or obsolescence of the agency's information technology resources and capabilities;

(e) a list of new projects and resources required to meet the objectives of the agency's information technology plan. The investment required for the new projects and resources must be developed using life-cycle cost analysis, including the initial investment, maintenance, and replacement costs, and must fulfill or support an agency's business requirements.

(f) when feasible, estimated schedules and funding required to implement identified projects; and

(g) any other information required by law or requested by the department, the governor, or the legislature.

(2) Each agency's information technology plan must project activities and costs over a 6-year time period, consisting of the biennium during which the plan is written or updated and the 2 subsequent bienniums.

(3) Each agency shall prepare and submit to the department a biennial performance report that evaluates progress toward the objectives articulated in its information technology plan. The report must include:

(a) an evaluation of the agency's performance relating to information technology;

(b) an assessment of progress made toward implementing the agency information technology plan; and

(c) an inventory of agency information services, equipment, and proprietary software.

(4) State agencies shall prepare agency information technology plans and biennial performance reports using standards, elements, forms, and formats specified by the department.

**History:** En. Sec. 16, Ch. 313, L. 2001.

**2-17-525 reserved.**

**2-17-526. Information technology project budget summary.** (1) (a) The office of budget and program planning, in cooperation with the department, shall prepare a statewide summary of:

- (i) proposed major new information technology projects contained in the state budget; and
- (ii) proposed major information technology projects impacting another state agency or branch of government to be funded within the current operating budgets, including replacement of or upgrade to existing systems.

(b) The office of budget and program planning and the department shall jointly determine the criteria for classifying a project as a major information technology project.

(2) The information technology project summary must include:

(a) a listing by institution, agency, or branch of all proposed major information technology projects described in subsection (1). Each proposed project included on the list must include:

- (i) a description of what would be accomplished by completing the project;
- (ii) a list of the existing information technology applications for all branches of government that may be impacted by the project;

- (iii) an estimate, prepared in consultation with the impacted agencies, of the costs and resource impacts on existing information technology applications;

- (iv) the estimated cost of the project;

- (v) the source for funding the project, including funds within an existing operating budget or a new budget request; and

- (vi) the estimated cost of operating information technology systems.

(b) a listing of internal service rates proposed for providing information technology services. Each internal service rate included on the list must include:

- (i) a description of the services provided; and

- (ii) a breakdown, aggregated by fund type, of requests included in the state budget to support the rate.

(c) any other information as determined by the budget director or the department or as requested by the governor or the legislature.

(3) The information technology project summary must be presented to the legislative fiscal analyst in accordance with 17-7-111(4).

**History:** En. Sec. 18, Ch. 313, L. 2001; amd. Sec. 1, Ch. 106, L. 2005.

**2-17-527. Agency information technology plans — review and approval — updates.**

(1) Plans and reports required under 2-17-524 must be submitted to the department for review and approval according to a schedule adopted by the department. The schedule must provide for approval of plans no later than June 30 in each even-numbered year.

(2) The department may reject, require modification of, or approve agency information technology plans as considered appropriate by the department. The primary basis for evaluating agency information technology plans must be conformity to the state strategic information technology plan, as provided for in 2-17-521.

(3) Agency information technology plans must be updated and are subject to review and approval whenever substantive changes occur to an agency's information technology profile. Plan updates must be submitted to the department in a timely manner and may not be held until the next biennial reporting cycle.

**History:** En. Sec. 17, Ch. 313, L. 2001.

**2-17-528 through 2-17-530 reserved.**

**2-17-531. Repealed.** Sec. 3, Ch. 237, L. 2015.

**History:** En. 82-3325.1 and 82-3325.2 by Sec. 2, 3, Ch. 315, L. 1975; R.C.M. 1947, 82-3325.1, 82-3325.2; amd. Sec. 27, Ch. 313, L. 2001; Sec. 2-17-303, MCA 1999; redes. 2-17-531 by Sec. 44(3), Ch. 313, L. 2001.

**2-17-532. Establishment.** (1) The department shall establish and maintain appropriate electronic access systems for state agencies to use to provide direct electronic access to information and services by citizens, businesses, and other government entities. State agencies shall establish electronic access systems that meet minimum technical standards established by the department. Agencies involved in communicating information or providing services to the public shall use these systems to provide appropriate information to the public, including but not limited to:

- (a) descriptions of agency functions, including contact information;
- (b) agency program services provided to citizens, businesses, and other government entities;
- (c) environmental assessments;
- (d) rulemaking notices;
- (e) board vacancy notices as required by 2-15-201;
- (f) agency reports mandated by statute;
- (g) parks reports required by 23-1-110;
- (h) requests for bids or proposals; and
- (i) public meeting notices and agendas.

(2) The purpose of electronic access systems is to encourage the practice of providing for direct citizen, business, and other government entity access to state computerized information and services.

**History:** En. Sec. 2, Ch. 268, L. 1989; amd. Sec. 1, Ch. 166, L. 1993; amd. Sec. 2, Ch. 440, L. 1997; amd. Sec. 29, Ch. 313, L. 2001; Sec. 2-17-322, MCA 1999; redes. 2-17-532 by Sec. 44(3), Ch. 313, L. 2001.

**2-17-533. Responsibilities.** (1) The department shall:

- (a) establish policies, standards, and procedures for the electronic access systems;
- (b) establish appropriate services to support state agencies' use of the electronic access systems; and
- (c) develop user-friendly systems for entities regularly interacting with state government, including but not limited to citizens, businesses, and other government entities, and promote the systems' use to reduce copying and mailing costs for state government and as a means to obtain information and services faster and in a more cost-effective manner.

(2) The department shall provide security to protect the integrity of its electronic access systems.

(3) Each department is responsible for ensuring the integrity and appropriateness of the information that it places in the electronic access systems.

(4) The department shall provide for an equitable method for recovering the cost of operating the electronic access systems that the department provides.

**History:** En. Sec. 3, Ch. 268, L. 1989; amd. Sec. 2, Ch. 166, L. 1993; amd. Sec. 3, Ch. 440, L. 1997; amd. Sec. 30, Ch. 313, L. 2001; Sec. 2-17-323, MCA 1999; redes. 2-17-533 by Sec. 44(3), Ch. 313, L. 2001.

**2-17-534. Security responsibilities of department.** The department is responsible for providing centralized management and coordination of state policies for security of data and information technology resources and shall:

- (1) establish and maintain the minimum security standards and policies to implement 2-15-114, including the physical security of the central computer center, statewide telecommunications network, and backup facilities consistent with these standards;
- (2) establish guidelines to assist agencies in identifying information technology personnel occupying positions of special trust or responsibility or sensitive locations;
- (3) establish standards and policies for the exchange of data between any agency information technology resource and any other state agency, private entity, or public entity to ensure that exchanges do not jeopardize data security and confidentiality;
- (4) coordinate and provide for a training program regarding security of data and information technology resources to serve governmental technical and managerial needs;
- (5) include appropriate security requirements in the specifications for solicitation of state contracts for procuring data and information technology resources; and
- (6) upon request, provide technical and managerial assistance relating to information technology security.

**History:** En. Sec. 3, Ch. 592, L. 1987; amd. Sec. 31, Ch. 313, L. 2001; Sec. 2-17-503, MCA 1999; redes. 2-17-534 by Sec. 44(3), Ch. 313, L. 2001.

**2-17-535 through 2-17-540 reserved.**

**2-17-541. Repealed.** Sec. 6, Ch. 106, L. 2015.

**History:** En. Sec. 1, Ch. 228, L. 1983; Sec. 2-17-311, MCA 1999; redes. 2-17-541 by Sec. 44(3), Ch. 313, L. 2001.

**2-17-542. Repealed.** Sec. 6, Ch. 106, L. 2015.

**History:** En. Sec. 2, Ch. 228, L. 1983; Sec. 2-17-312, MCA 1999; redes. 2-17-542 by Sec. 44(3), Ch. 313, L. 2001.



**2-17-543. Rulemaking authority.** (1) The department may adopt rules to implement the mutual aid frequency manual provided for in 2-17-545.

(2) The department shall obtain input from all public and private safety agency users of mutual aid frequencies for land mobile radio.

**History:** En. Sec. 3, Ch. 228, L. 1983; Sec. 2-17-313, MCA 1999; redes. 2-17-543 by Sec. 44(3), Ch. 313, L. 2001; amd. Sec. 5, Ch. 106, L. 2015.

**2-17-544. Mutual aid frequency program for land mobile radio.** The mutual aid frequency program for land mobile radio is designed to provide public and private safety agencies with a set of land mobile radio frequencies and predetermined operational parameters that serve as a basis for initial, on-scene emergency coordination and the resolution of interoperability issues.

**History:** En. Sec. 1, Ch. 106, L. 2015.

**2-17-545. Mutual aid frequencies manual — land mobile radio.** The department shall develop and maintain a manual that includes policies and procedures for the effective and efficient use of mutual aid frequencies for land mobile radio.

**History:** En. Sec. 2, Ch. 106, L. 2015.

**2-17-546. Exemption of criminal justice information network — exception.** The provisions of this part do not apply to the criminal justice information network or its successor except for the provisions dealing with the purchase, maintenance, and allocation of telecommunication facilities. However, the department of justice shall cooperate with the department to coordinate the telecommunications networks of the state.

**History:** En. Sec. 9, Ch. 230, L. 1971; amd. Sec. 88, Ch. 326, L. 1974; R.C.M. 1947, 82-3331; amd. Sec. 28, Ch. 313, L. 2001; Sec. 2-17-306, MCA 1999; redes. 2-17-546 by Sec. 44(3), Ch. 313, L. 2001; amd. Sec. 2, Ch. 55, L. 2015.

**2-17-547 through 2-17-549 reserved.**

**2-17-550. Short title.** Sections 2-17-550 through 2-17-553 may be cited as the “Governmental Internet Information Privacy Act”.

**History:** En. Sec. 1, Ch. 219, L. 2001.

**2-17-551. Definitions.** As used in 2-17-550 through 2-17-553, the following definitions apply:

(1) “Collect” means the gathering of personally identifiable information about a user of an internet service, online service, or website by or on behalf of the provider or operator of that service or website by any means, direct or indirect, active or passive, including:

(a) an online request for the information by the provider or operator, regardless of how the information is transmitted to the provider or operator;

(b) the use of an online service to gather the information; or

(c) tracking or use of any identifying code linked to a user of a service or website, including the use of cookies.

(2) “Governmental entity” means the state and political subdivisions of the state.

(3) “Government website operator” or “operator” means a governmental entity that operates a website located on the internet or an online service and that collects or maintains personal information from or about the users of or visitors to the website or online service or on whose behalf information is collected or maintained.

(4) “Internet” means, collectively, the myriad of computer and telecommunications facilities, including equipment and operating software, that comprise the interconnected worldwide network of networks that use the transmission control protocol/internet protocol or any predecessor or successor protocols to communicate information of all kinds by wire or radio.

(5) “Online” means any activity regulated by 2-17-550 through 2-17-553 that is effected by active or passive use of an internet connection, regardless of the medium by or through which the connection is established.

(6) “Personally identifiable information” means individually identifiable information about an individual collected online, including:

(a) a first and last name;

(b) a residence or other physical address, including a street name and name of a city or town;

- (c) an e-mail address;
- (d) a telephone number;
- (e) a social security number; or
- (f) unique identifying information that an internet service provider or a government website operator collects and combines with any information described in subsections (6)(a) through (6)(e).

(7) “Political subdivision” means any county, city, municipal corporation, school district, or other political subdivision or public corporation.

(8) “State” means the state of Montana or any office, department, agency, authority, commission, board, institution, hospital, college, university, or other instrumentality of the state.

**History:** En. Sec. 2, Ch. 219, L. 2001.

**2-17-552. Collection of personally identifiable information — requirements.** (1) A government website operator may not collect personally identifiable information online from a website user unless the operator complies with the provisions of this section.

(2) A government website operator shall ensure that the website:

- (a) identifies who operates the website;
- (b) provides the address and telephone number at which the operator may be contacted as well as an electronic means for contacting the operator; and

- (c) generally describes the operator’s information practices, including policies to protect the privacy of the user and the steps taken to protect the security of the collected information.

(3) In addition to the requirements of subsection (2), if the personally identifiable information may be used for a purpose other than the express purpose of the website or may be given or sold to a third party, except as required by law, then the operator shall ensure that the website includes:

- (a) a clear and conspicuous notice to the user that the information collected could be used for other than the purposes of the website;

- (b) a general description of the types of third parties that may obtain the information; and

- (c) a clear, conspicuous, and easily understood online procedure requiring an affirmative expression of the user’s permission before the information is collected.

**History:** En. Sec. 3, Ch. 219, L. 2001.

**2-17-553. No change of privacy right or public right to know.** Sections 2-17-550 through 2-17-553 are not intended to expand or restrict the individual right of privacy or the public right to know or to change the rights and obligations of persons, state agencies, or local governments that are otherwise provided by law.

**History:** En. Sec. 4, Ch. 219, L. 2001.

**2-17-554 through 2-17-559 reserved.**

**2-17-560. Reappropriation of long-range information technology capital project funds.** The remaining balances for long-range information technology capital projects previously approved by the legislature and identified as long-range information technology capital projects in an appropriation act are reappropriated for the purposes of the original appropriation until the projects are completed.

**History:** En. Sec. 18, Ch. 3, Sp. L. May 2007.

**2-17-561. Approval required.** Amounts appropriated by the legislature to executive branch agencies, other than the university system, for long-range information technology capital projects may not be encumbered until project and security plans are approved by the chief information officer and the budget director if the legislature directs these approvals as a condition on the appropriations in the bill making the appropriations.

**History:** En. Sec. 19, Ch. 3, Sp. L. May 2007.

## Part 6

### Government Competition With Private Internet Providers

**2-17-601. Statement of purpose — policy.** (1) The legislature recognizes that access to affordable, high-speed internet services is critical to the state’s economic future and that the

planning, development, and delivery of quality internet services should be a coordinated effort among state government, local governments, and private enterprise.

(2) It is the policy of this state to:

(a) recognize that private sector enterprises engaged in the delivery of internet access and related services should have an opportunity to provide those services without undue interference or competition from the state or its political subdivisions; and

(b) encourage agencies and political subdivisions to publicly announce requirements for internet services and negotiate contracts for internet access with private enterprise to ensure that innovative technology is available to serve the public's needs at the most fair and reasonable cost.

**History:** En. Sec. 1, Ch. 547, L. 2001.

**2-17-602. Definitions.** As used in this part, the following definitions apply:

(1) "Agency" has the meaning provided for in 2-15-102.

(2) "Internet services provider" means a person or an entity that provides a service, available to the public, that enables the person's or entity's customers to access the internet, purchase internet server or file-hosting services, colocate internet equipment, or use data transmission over the internet for a fee.

(3) "Political subdivision" has the meaning provided for in 2-9-101.

**History:** En. Sec. 2, Ch. 547, L. 2001.

**2-17-603. Government competition with private internet services providers prohibited — exceptions.** (1) Except as provided in subsection (2)(a) or (2)(b), an agency or political subdivision of the state may not directly or through another agency or political subdivision be an internet services provider.

(2) (a) An agency or political subdivision may act as an internet services provider if:

(i) no private internet services provider is available within the jurisdiction served by the agency or political subdivision; or

(ii) the agency or political subdivision provided services prior to July 1, 2001.

(b) An agency or political subdivision may act as an internet services provider when providing advanced services that are not otherwise available from a private internet services provider within the jurisdiction served by the agency or political subdivision.

(c) If a private internet services provider elects to provide internet services in a jurisdiction where an agency or political subdivision is providing internet services, the private internet services provider shall inform the agency or the political subdivision in writing at least 30 days in advance of offering internet services.

(3) Upon receiving notice pursuant to subsection (2)(c), the agency or political subdivision shall notify its subscribers within 30 days of the intent of the private internet services provider to begin providing internet services and may choose to discontinue providing internet services within 180 days of the notice.

(4) Nothing in this section may be construed to prohibit an agency or political subdivision from:

(a) offering electronic government services to the general public; or

(b) acquiring access to the internet from a private internet services provider in order to offer electronic government services to the general public.

**History:** En. Sec. 3, Ch. 547, L. 2001.

**2-17-604. Alternatives to public internet services providers.** An agency or political subdivision is encouraged to publish its requirements for internet services and to use, to the maximum extent possible, private internet services providers to deliver internet services to the public.

**History:** En. Sec. 4, Ch. 547, L. 2001.

**CHAPTER 18**  
**STATE EMPLOYEE CLASSIFICATION,**  
**COMPENSATION, AND BENEFITS**

**Part 5**  
**Travel, Meals, and Lodging**

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

(1) Except as provided under subsection (3), for travel within the state of Montana, lodging must be authorized at the actual cost of lodging, not exceeding \$35 per day, and taxes on the allowable cost of lodging, except as provided in subsection (3), plus \$5 for the morning meal, \$6 for the midday meal, and \$12 for the evening meal except as provided in subsection (10). All claims for lodging expense reimbursement allowed under this section must be documented by an appropriate receipt.

(2) Except as provided in subsection (3), for travel outside the state of Montana and within the United States, the following provisions apply:

(a) Lodging must be reimbursed at actual cost, not to exceed the prescribed maximum standard federal rate per day for the location involved plus taxes on the allowable cost.

(b) Meal reimbursement may not exceed the prescribed maximum standard federal rate per meal.

(3) Except as provided in subsection (10), the department of administration shall designate the locations and circumstances under which the governor, other elected state officials, appointed members of boards, commissions, or councils, department directors, and all other state employees may be authorized the actual cost of the following:

(a) meals, not including alcoholic beverages, when the actual cost exceeds the maximum established in subsection (4)(a); and

(b) lodging when the actual cost exceeds the maximum established in subsection (1), (2)(a), or (4)(a).

(4) Except as provided in subsection (3), for travel to a foreign country, the following provisions apply:

(a) All elected state officials, all appointed members of boards, commissions, and councils, all department directors, and all other state employees must be reimbursed as follows:

(i) \$7 for the morning meal, \$11 for the midday meal, and \$18 for the evening meal; and

(ii) \$155 per night for lodging.

(b) All claims for meal and lodging reimbursement allowed under this subsection (4) must be documented by an appropriate receipt.

(5) When other than commercial, nonreceptable lodging facilities are used by a state official or employee while conducting official state business in a travel status, the amount of \$12 is authorized for lodging expenses for each day in which travel involves an overnight stay in lieu of the amount authorized in subsection (1) or (2)(a). However, when overnight accommodations are provided at the expense of a government entity, reimbursement may not be claimed for lodging.

(6) The actual cost of reasonable transportation expenses and other necessary business expenses incurred by a state official or employee while in an official travel status is subject to reimbursement.

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

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

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

(10) When the actual cost of meals exceeds the maximum standard allowed pursuant to subsection (1), the department of administration may authorize the actual cost of meals for firefighters.

(11) For the purposes of implementing subsection (10), the following definitions apply:

(a) “Firefighter” means a firefighter who is employed by the department of natural resources and conservation and who is directly involved in the suppression of a wildfire in Montana.

(b) “Wildfire” means an unplanned, unwanted fire burning uncontrolled and consuming vegetative fuels.

**History:** En. Sec. 2, Ch. 66, L. 1955; amd. Sec. 1, Ch. 207, L. 1957; amd. Sec. 1, Ch. 108, L. 1961; amd. Sec. 1, Ch. 116, L. 1963; amd. Sec. 1, Ch. 48, L. 1967; amd. Sec. 1, Ch. 273, L. 1969; amd. Sec. 1, Ch. 10, L. 1971; amd. Ch. 295, L. 1971; amd. Sec. 3, Ch. 495, L. 1973; amd. Sec. 22, Ch. 315, L. 1974; amd. Sec. 1, Ch. 439, L. 1975; amd. Sec. 1, Ch. 483, L. 1977; R.C.M. 1947, 59-538; amd. Sec. 1, Ch. 643, L. 1979; amd. Sec. 1, Ch. 338, L. 1981; amd. Sec. 1, Ch. 582, L. 1981; amd. Sec. 13, Ch. 575, L. 1981; amd. Sec. 1, Ch. 646, L. 1983; amd. Sec. 1, Ch. 399, L. 1987; amd. Sec. 5, Ch. 83, L. 1989; amd. Sec. 1, Ch. 207, L. 1989; amd. Sec. 1, Ch. 561, L. 1991; amd. Sec. 1, Ch. 439, L. 1997; amd. Sec. 1, Ch. 91, L. 2009; amd. Sec. 1, Ch. 251, L. 2011.

**2-18-502. Computation of meal allowance.** (1) Except as provided in subsections (2) and (4), an employee is eligible for the meal allowance provided in 2-18-501, only if the employee is in a travel status for more than 3 continuous hours during the following hours:

- (a) for the morning meal allowance, between the hours of 12:01 a.m. and 10 a.m.;
- (b) for the midday meal allowance, between the hours of 10:01 a.m. and 3 p.m.; and
- (c) for the evening meal allowance, between the hours of 3:01 p.m. and 12 midnight.

(2) An eligible employee may receive:

(a) only one of the three meal allowances provided, if the travel was performed within the employee’s assigned travel shift; or

(b) a maximum of two meal allowances if the travel begins before or was completed after the employee’s assigned travel shift and the travel did not exceed 24 hours.

(3) “Travel shift” is that period of time beginning 1 hour before and terminating 1 hour after the employee’s normally assigned work shift.

(4) An appointed member of a state board, commission, or council or a member of a legislative subcommittee or select or interim committee is entitled to a midday meal allowance on a day the individual is attending a meeting of the board, commission, council, or committee, regardless of proximity of the meeting place to the individual’s residence or headquarters. This subsection does not apply to a member of a legislative committee during a legislative session.

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

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

**2-18-503. Mileage — allowance.** (1) Members of the legislature, state officers and employees, jurors, witnesses, county agents, and all other persons who may be entitled to mileage paid from public funds when using their own motor vehicles in the performance of official duties are entitled to collect mileage for the distance actually traveled by motor vehicle and no more unless otherwise specifically provided by law.

(2) (a) When a state officer or employee is authorized to travel by motor vehicle and chooses to use a privately owned motor vehicle even though a government-owned or government-leased motor vehicle is available, the officer or employee may be reimbursed only at the rate of 48.15% of the mileage rate allowed by the United States internal revenue service for the current year.

(b) When a privately owned motor vehicle is used because a government-owned or government-leased motor vehicle is not available or because the use is in the best interest of the governmental entity and a notice of unavailability of a government-owned or government-leased motor vehicle or a specific exemption is attached to the travel claim, then a rate equal to the mileage allotment allowed by the United States internal revenue service for the current year must be paid for the first 1,000 miles and 3 cents less per mile for all additional miles traveled within a given calendar month.

(3) Members of the legislature, jurors, witnesses, county agents, and all other persons, except a state officer or employee, who may be entitled to mileage paid from public funds when using their own motor vehicles in the performance of official duties are entitled to collect mileage at a rate equal to the mileage allotment allowed by the United States internal revenue service for the current year for the first 1,000 miles and 3 cents less per mile for all additional miles traveled within a given calendar month.



(4) Members of the legislature, state officers and employees, jurors, witnesses, county agents, and all other persons who may be entitled to mileage paid from public funds when using their own airplanes in the performance of official duties are entitled to collect mileage for the nautical air miles actually traveled at a rate of twice the mileage allotment for motor vehicle travel and no more unless specifically provided by law.

(5) This section does not alter 5-2-301.

(6) The department of administration shall prescribe policies necessary for the effective administration of this section for state government. The Montana Administrative Procedure Act, Title 2, chapter 4, does not apply to policies prescribed to administer this part.

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

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

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

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

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

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

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

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

## Part 6 Leave Time

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

(1) (a) “Agency” means any legally constituted department, board, or commission of state, county, or city government or any political subdivision of the state.

(b) The term does not mean the state compensation insurance fund.

(2) “Break in service” means a period of time in excess of 5 working days when the person is not employed and that severs continuous employment.

(3) “Common association” means an association of employees established pursuant to 2-18-1310 for the purposes of employer and employee participation in the plan.

(4) “Continuous employment” means working within the same jurisdiction without a break in service of more than 5 working days or without a continuous absence without pay of more than 15 working days.

(5) “Contracting employer” means an employer who, pursuant to 2-18-1310, has contracted with the department of administration to participate in the plan.

(6) “Employee” means any person employed by an agency except elected state, county, and city officials, schoolteachers, members of the instructional or scientific staff of a community

college, persons contracted as independent contractors or hired under personal services contracts, and student interns.

(7) “Full-time employee” means an employee who normally works 40 hours a week.

(8) “Holiday” means a scheduled day off with pay to observe a legal holiday, as specified in 1-1-216 or 20-1-305, except Sundays.

(9) “Member” means an employee who belongs to a voluntary employees’ beneficiary association established under 2-18-1310.

(10) “Part-time employee” means an employee who normally works less than 40 hours a week.

(11) “Permanent employee” means a permanent employee as defined in 2-18-101.

(12) “Plan” means the employee welfare benefit plan established under Internal Revenue Code section 501(c)(9) pursuant to 2-18-1304.

(13) “Seasonal employee” means a seasonal employee as defined in 2-18-101.

(14) “Short-term worker” means:

(a) for the executive and judicial branches, a short-term worker as defined in 2-18-101; or

(b) for the legislative branch, an individual who:

(i) may be hired by a legislative agency without using a competitive process for an hourly wage established by the agency;

(ii) may not work for the agency for more than 6 months in a continuous 12-month period;

(iii) is not eligible for permanent status;

(iv) may not be hired into a permanent position by the agency without a competitive selection process;

(v) is not eligible to earn the leave and holiday benefits provided in this part; and

(vi) may be discharged without cause.

(15) “Sick leave” means a leave of absence with pay for:

(a) a sickness suffered by an employee or a member of the employee’s immediate family; or

(b) the time that an employee is unable to perform job duties because of:

(i) a physical or mental illness, injury, or disability;

(ii) maternity or pregnancy-related disability or treatment, including prenatal care, birth, or medical care for the employee or the employee’s child;

(iii) parental leave for a permanent employee as provided in 2-18-606;

(iv) quarantine resulting from exposure to a contagious disease;

(v) examination or treatment by a licensed health care provider;

(vi) short-term attendance, in an agency’s discretion, to care for a relative or household member not covered by subsection (15)(a) until other care can reasonably be obtained;

(vii) necessary care for a spouse, child, or parent with a serious health condition, as defined in the Family and Medical Leave Act of 1993; or

(viii) death or funeral attendance of an immediate family member or, at an agency’s discretion, another person.

(16) “Student intern” means a student intern as defined in 2-18-101.

(17) “Temporary employee” means a temporary employee as defined in 2-18-101.

(18) “Transfer” means a change of employment from one agency to another agency in the same jurisdiction without a break in service.

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

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

#### **Compiler’s Comments**

**2017 Amendments — Composite Section:** Chapter 175 in definition of short-term worker in (b)(i) at beginning substituted “may be” for “is” and after “legislative agency” inserted “without using a competitive process”, in (b)(iv) substituted “a permanent position” for “another position”, in (b)(v) after “benefits provided in this part” deleted “or the group insurance benefits provided in part 7”, and inserted (b)(vi) regarding discharge without cause; and made minor changes in style. Amendment effective July 1, 2017.

Chapter 370 in definition of employee near middle inserted “members of the instructional or scientific staff of a community college”; and made minor changes in style. Amendment effective May 9, 2017.

*Effective Date — Applicability:* Section 3, Ch. 370, L. 2017, provided: “[This act] is effective on passage and approval [approved May 9, 2017] and applies to contracts entered into and signed on or after [the effective date of this act].” Effective May 9, 2017.

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

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

**2-18-603. Holidays — observance when falling on employee’s day off.** (1) (a) A full-time employee who is scheduled for a day off on a day that is observed as a legal holiday, except Sundays, is entitled to receive a day off with pay either on the day preceding the holiday or on another day following the holiday in the same pay period or as scheduled by the employee and the employee’s supervisor, whichever allows a day off in addition to the employee’s regularly scheduled days off, provided the employee is in a pay status on the employee’s last regularly scheduled working day immediately before the holiday or on the employee’s first regularly scheduled working day immediately after the holiday.

(b) Part-time employees receive pay for the holiday on a prorated basis according to rules adopted by the department of administration or appropriate administrative officer under 2-18-604.

(c) A short-term worker may not receive holiday pay.

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

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

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

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

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

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

**2-18-606. Parental leave for state employees.** (1) The department of administration shall develop a parental leave policy for permanent state employees. The policy must permit an employee to take a reasonable leave of absence and permit the employee to use sick leave immediately following the birth or placement of a child for a period not to exceed 15 working days if:

(a) the employee is adopting a child; or

(b) the employee is a birth father.

(2) As used in this section, “placement” means placement for adoption as defined in 33-22-130.

(3) A state agency that is not subject to the provisions of the Family and Medical Leave Act of 1993, 29 U.S.C. 2601 through 2654, may extend the provisions of that act to the employees of the agency.

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

**2-18-607 through 2-18-610 reserved.**

**2-18-611. Annual vacation leave.** (1) Each permanent full-time employee shall earn annual vacation leave credits from the first day of employment. Vacation leave credits earned must be credited at the end of each pay period. However, employees are not entitled to any vacation leave with pay until they have been continuously employed for a period of 6 calendar months.

(2) Seasonal employees earn vacation credits. However, seasonal employees must be employed for 6 qualifying months before they may use the vacation credits. In order to qualify,

seasonal employees shall immediately report back for work when operations resume in order to avoid a break in service.

(3) Permanent part-time employees are entitled to prorated annual vacation benefits if they have worked the qualifying period.

(4) An employee may not accrue annual vacation leave credits while in a leave-without-pay status.

(5) Temporary employees earn vacation leave credits but may not use the credits until after working for 6 qualifying months.

(6) A short-term worker or a student intern, as both terms are defined in 2-18-601, may not earn vacation leave credits, and time worked as a short-term worker or as a student intern does not apply toward the person's rate of earning vacation leave credits.

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

**2-18-612. Rate earned.** (1) Vacation leave credits are earned at a yearly rate calculated in accordance with the following schedule, which applies to the total years of an employee's employment with any agency whether the employment is continuous or not:

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

(2) (a) For the purpose of determining years of employment under this section, an employee eligible to earn vacation credits under 2-18-611 must be credited with 1 year of employment for each period of:

(i) 2,080 hours of service following the date of employment. An employee must be credited with 80 hours of service for each biweekly pay period in which the employee is in a pay status or on an authorized leave of absence without pay, regardless of the number of hours of service in the pay period.

(ii) 12 calendar months in which the employee was in a pay status or on an authorized leave of absence without pay, regardless of the number of hours of service in any 1 month. An employee of a school district, a school at a state institution, or the university system must be credited with 1 year of service if the employee is employed for an entire academic year.

(b) State agencies, other than the university system and a school at a state institution, shall use the method provided in subsection (2)(a)(i) to calculate years of service under this section.

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

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

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

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

(1) having been ordered on active duty with the armed forces of the United States;

(2) voluntary service on active duty in the armed forces or on ships operated by or for the United States government; or

(3) direct assignment to the United States department of defense for duties related to national defense efforts if a leave of absence has been granted by the employer.

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

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

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

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

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

**2-18-617. Accumulation of leave — cash for unused — transfer.** (1) (a) Except as provided in subsection (1)(b), annual vacation leave may be accumulated to a total not to exceed two times the maximum number of days earned annually as of the end of the first pay period of the next calendar year. Excess vacation time is not forfeited if taken within 90 calendar days from the last day of the calendar year in which the excess was accrued.

(b) It is the responsibility of the head of an employing agency to provide reasonable opportunity for an employee to use rather than forfeit accumulated vacation leave. If an employee makes a reasonable written request to use excess vacation leave before the excess vacation leave must be forfeited under subsection (1)(a) and the employing agency denies the request, the excess vacation leave is not forfeited and the employing agency shall ensure that the employee may use the excess vacation leave before the end of the calendar year in which the leave would have been forfeited under subsection (1)(a).

(2) (a) An employee who terminates employment for a reason not reflecting discredit on the employee and who has worked the qualifying period set forth in 2-18-611 is entitled upon the date of termination to either:

(i) cash compensation for unused vacation leave if the employee is not subject to subsection (2)(a)(ii); or

(ii) conversion of the employee's unused vacation leave balance to an employer contribution to an employee welfare benefit plan health care expense trust account established pursuant to 2-18-1304 if:

(A) the employee is a member who belongs to a voluntary employees' beneficiary association established under 2-18-1310; and

(B) the contracting employer has entered into an agreement with members of the common association for an employer contribution based on unused vacation leave provided for in 2-18-611.

(b) Vacation leave contributed to the sick leave fund, provided for in 2-18-618, is nonrefundable and is not eligible for cash compensation upon termination.

(3) If an employee transfers between agencies of the same jurisdiction, cash compensation may not be paid for unused vacation leave. In a transfer, the receiving agency assumes the liability for the accrued vacation credits transferred with the employee.

(4) An employee may contribute accumulated vacation leave to a nonrefundable sick leave fund provided for in 2-18-618. The department of administration shall, in consultation with the state employee group benefits advisory council, provided for in 2-15-1016, adopt rules to implement this subsection.

(5) This section does not prohibit a school district from providing cash compensation for unused vacation leave in lieu of the accumulation of the leave, either through a collective bargaining agreement or, in the absence of a collective bargaining agreement, through a policy.

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

**2-18-618. Sick leave.** (1) A permanent full-time employee earns sick leave credits from the first day of employment. For calculating sick leave credits, 2,080 hours (52 weeks x 40 hours) equals 1 year. Sick leave credits must be credited at the end of each pay period. Sick leave credits are earned at the rate of 12 working days for each year of service without restriction as to the



number of working days that may be accumulated. Employees are not entitled to be paid sick leave until they have been continuously employed 90 days.

(2) An employee may not accrue sick leave credits while in a leave-without-pay status.

(3) Permanent part-time employees are entitled to prorated leave benefits if they have worked the qualifying period.

(4) Full-time temporary and seasonal employees are entitled to sick leave benefits provided they work the qualifying period.

(5) A short-term worker may not earn sick leave credits.

(6) Except as otherwise provided in 2-18-1311, an employee who terminates employment with the agency is entitled to a lump-sum payment equal to one-fourth of the pay attributed to the accumulated sick leave. The pay attributed to the accumulated sick leave must be computed on the basis of the employee's salary or wage at the time the employee terminates employment with the state, county, or city. Accrual of sick leave credits for calculating the lump-sum payment provided for in this subsection begins July 1, 1971. The payment is the responsibility of the agency in which the sick leave accrues. However, an employee does not forfeit any sick leave rights or benefits accrued prior to July 1, 1971. However, when an employee transfers between agencies within the same jurisdiction, the employee is not entitled to a lump-sum payment. In a transfer between agencies, the receiving agency shall assume the liability for the accrued sick leave credits earned after July 1, 1971, and transferred with the employee.

(7) An employee who receives a lump-sum payment pursuant to this section or who, pursuant to 2-18-1311, converts unused sick leave to employer contributions to a health care expense trust account and who is again employed by any agency may not be credited with sick leave for which the employee has previously been compensated or for which the employee has received an employer contribution to the health care expense trust account.

(8) Abuse of sick leave is cause for dismissal and forfeiture of the lump-sum payments provided for in this section.

(9) An employee of a state agency may contribute any portion of the employee's accumulated sick leave or accumulated vacation leave to a nonrefundable sick leave fund for state employees and becomes eligible to draw upon the fund if an extensive illness or accident exhausts the employee's accumulated sick leave, irrespective of the employee's membership or nonmembership in the employee welfare benefit plan established pursuant to 2-18-1304. The department of administration shall, in consultation with the state employee group benefits advisory council, provided for in 2-15-1016, administer the sick leave fund and adopt rules to implement this subsection.

(10) A local government may establish and administer through local rule a sick leave fund into which its employees may contribute a portion of their accumulated sick leave or vacation leave.

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

**2-18-619. Jury duty — service as witness.** (1) Each employee who is under proper summons as a juror shall collect all fees and allowances payable as a result of the service and forward the fees to the appropriate accounting office. Juror fees must be applied against the amount due the employee from the employer. However, if an employee elects to use annual leave to serve on a jury, the employee may not be required to remit the juror fees to the employer. An employee is not required to remit to the employer any expense or mileage allowance paid by the court.

(2) An employee subpoenaed to serve as a witness shall collect all fees and allowances payable as a result of the service and forward the fees to the appropriate accounting office. Witness fees must be applied against the amount due the employee from the employer. However, if an employee elects to use annual leave to serve as a witness, the employee may not be required to remit the witness fees to the employer. An employee is not required to remit to the employer any expense or mileage allowances paid by the court.

(3) Employers may request the court to excuse their employees from jury duty if they are needed for the proper operation of a unit of state or local government.

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

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

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

**2-18-621. Unlawful termination — unlawful payments.** (1) It is unlawful for an employer to terminate or separate an employee from employment in an attempt to circumvent the provisions of 2-18-611, 2-18-612, and 2-18-614. If a question arises under this subsection, it must be submitted to arbitration as provided in Title 27, chapter 5, as if an agreement described in 27-5-114 is in effect, unless there is an applicable collective bargaining agreement to the contrary.

(2) (a) An employee who terminates employment is entitled to receive only:

(i) payments for accumulated wages, vacation leave as provided in 2-18-617, sick leave as provided in 2-18-618, and compensatory time earned as provided in the rules or policies of the employer; and

(ii) if the termination is the result of a reduction in force, severance pay and a retraining allowance as provided for in 2-18-622.

(b) An employee who terminates employment may not receive severance pay, a bonus, or any other type of monetary payment not described in subsection (2)(a)(i) or (2)(a)(ii).

(3) Subsection (2) does not apply to:

(a) retirement benefits;

(b) a payment, settlement, award, or judgment that involves a potential or actual cause of action, legal dispute, claim, grievance, contested case, or lawsuit; or

(c) any other payment authorized by law.

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

**2-18-622. Reduction in force — severance pay and retraining allowance required.**

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

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

**2-18-623 through 2-18-625 reserved.**

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

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

**2-18-627. Paid leave for disaster relief volunteer service.** (1) An agency may grant to a state employee up to 15 days in a calendar year of a paid leave of absence for the employee to participate in specialized disaster relief services for the American red cross if:

(a) the employee is a certified American red cross disaster relief volunteer; and

(b) the American red cross has requested the employee's services.

(2) Leave time granted pursuant to this section:

(a) must be paid at the regular rate of compensation, including regular group, retirement, or leave accrual benefits, for the regular work hours during which the employee is absent from the employee's regular duties;

(b) commences upon approval of the employee's employing agency; and

(c) may not be charged against any other leave to which the employee is entitled.

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

(a) "Agency" has the meaning provided in 2-18-101.

(b) "Employee" means any person employed by an agency, except an elected official.

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

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

**2-18-641. Exemption — employees of certain county hospitals or rest homes and hospital districts.** (1) An employee of a county hospital or county rest home in a county having a taxable valuation of less than \$30 million or an employee of a hospital district is exempt from the provisions of this part.

(2) For any reduction in leave benefits for an employee subject to subsection (1), there must be an increase in compensation or benefits.

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

## **Part 7**

### **Group Insurance Generally**

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

- (1) “Dependent” has the meaning provided in 33-22-140.
- (2) “Employee”, as the term applies to a person employed in the executive, judicial, or legislative branches of state government, means:
  - (a) a permanent full-time employee, as provided in 2-18-601;
  - (b) a permanent part-time employee, as provided in 2-18-601, who is regularly scheduled to work 20 hours or more a week;
  - (c) a seasonal full-time employee, as provided in 2-18-601, who is regularly scheduled to work 6 months or more a year or who works for a continuous period of more than 6 months a year although not regularly scheduled to do so;
  - (d) a seasonal part-time employee, as provided in 2-18-601, who is regularly scheduled to work 20 hours or more a week for 6 months or more a year or who works 20 hours or more a week for a continuous period of more than 6 months a year although not regularly scheduled to do so;
  - (e) elected officials;
  - (f) officers and permanent employees of the legislative branch;
  - (g) judges and permanent employees of the judicial branch;
  - (h) academic, professional, and administrative personnel having individual contracts under the authority of the board of regents of higher education or the state board of public education;
  - (i) a temporary full-time employee, as provided in 2-18-601:
    - (i) who is regularly scheduled to work more than 6 months a year;
    - (ii) who works for a continuous period of more than 6 months a year although not regularly scheduled to do so; or
  - (iii) whose temporary status is defined through collective bargaining;
  - (j) a temporary part-time employee, as provided in 2-18-601:
    - (i) who is regularly scheduled to work 20 hours or more a week for 6 months or more a year;
    - (ii) who works 20 hours or more a week for a continuous period of more than 6 months a year although not regularly scheduled to do so; or
  - (iii) whose temporary status is defined through collective bargaining;
  - (k) a full-time short-term worker, as provided in 2-18-101 and 2-18-601, who is in a position that does not recur each year;
  - (l) a part-time short-term worker, as provided in 2-18-101 and 2-18-601, who is regularly scheduled to work 20 hours or more a week in a position that does not recur each year; and
  - (m) a part-time or full-time employee of the state compensation insurance fund. As used in this subsection, “part-time or full-time employee of the state compensation insurance fund” means an employee eligible for inclusion in the state employee group benefit plans under the rules of the department of administration.

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

#### **Compiler’s Comments**

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

**2-18-702. Group insurance for public employees and officers.** (1) (a) Except as provided in subsection (1)(c), all counties, cities, towns, school districts, and the board of regents shall upon approval by two-thirds vote of their respective officers and employees enter into group hospitalization, medical, health, including long-term disability, accident, or group life insurance contracts or plans for the benefit of their officers and employees and their dependents. The laws prohibiting discrimination on the basis of marital status in Title 49 do not prohibit bona fide group insurance plans from providing greater or additional contributions for insurance benefits to employees with dependents than to employees without dependents or with fewer dependents.

(b) The governing body of a county, city, or town may, at its discretion, consider the employees of private, nonprofit economic development organizations, hospitals, health centers, or nursing homes to be employees of the county, city, or town solely for the purpose of participation in group hospitalization, medical, health, including long-term disability, accident, or group life insurance contracts or plans as provided in subsection (1)(a). The governing body of the county, city, or town may require an employee, organization, hospital, health center, or nursing home to pay the actual cost of coverage required for participation or may, at its discretion and subject to any restriction on who may be a member of a group, pay all or part of the cost of coverage of the employee of the organization.

(c) The governing body of a county having a taxable valuation of less than \$30 million or the board of trustees of a hospital district may, at its discretion, exempt employees of a county hospital, county rest home or nursing home, or hospital district from participation in group hospitalization, medical, health, including long-term disability, accident, or group life insurance contracts or plans provided pursuant to subsection (1)(a) or (1)(b).

(2) State employees and elected officials, as defined in 2-18-701, may participate in state employee group benefit plans as are provided for under part 8 of this chapter.

(3) For state officers and employees, the premiums required from time to time to maintain the insurance in force must be paid by the insured officers and employees, and the state treasurer shall deduct the premiums from the salary or wages of each officer or employee who elects to become insured, on the officer's or employee's written order, and issue a warrant for the premiums to the insurer.

(4) For the purpose of this section, the plans of health service corporations for defraying or assuming the cost of professional services of licensees in the field of health or the services of hospitals, clinics, or sanitariums or both professional and hospital services must be construed as group insurance and the dues payable under the plans must be construed as premiums for group insurance.

(5) If the board of trustees of a school district implements a self-insured group health plan or if the board of regents implements an alternative to conventional insurance to provide group benefits to its employees, the board shall maintain the alternative plan on an actuarially sound basis.

**History:** (1)En. Sec. 1, Ch. 174, L. 1957; amd. Sec. 1, Ch. 83, L. 1965; amd. Sec. 1, Ch. 200, L. 1967; amd. Sec. 1, Ch. 220, L. 1969; amd. Sec. 1, Ch. 382, L. 1971; amd. Sec. 1, Ch. 188, L. 1974; amd. Sec. 1, Ch. 359, L. 1975; amd. Sec. 1, Ch. 437, L. 1975; amd. Sec. 1, Ch. 259, L. 1977; amd. Sec. 11, Ch. 563, L. 1977; Sec. 11-1024, R.C.M. 1947; (2)En. Sec. 11, Ch. 555, L. 1979; (3), (4)En. Sec. 1, Ch. 248, L. 1963; Sec. 40-3905.1, R.C.M. 1947; R.C.M. 1947, 11-1024(1), 40-3905.1; amd. Sec. 31, Ch. 184, L. 1979; amd. Sec. 11, Ch. 555, L. 1979; amd. Sec. 7, Ch. 421, L. 1981; amd. Sec. 10, Ch. 660, L. 1989; amd. Sec. 1, Ch. 139, L. 1991; amd. Sec. 1, Ch. 13, L. 1993; amd. Sec. 3, Ch. 325, L. 1995; amd. Sec. 1, Ch. 186, L. 1999; amd. Sec. 2, Ch. 559, L. 2001; amd. Sec. 1, Ch. 145, L. 2009; amd. Sec. 2, Ch. 128, L. 2011.

**2-18-703. Contributions.** (1) Each agency, as defined in 2-18-601, and the state compensation insurance fund shall contribute the amount specified in this section toward the group benefits cost.

(2) (a) For employees defined in 2-18-701 and for members of the legislature, the employer contribution for group benefits is \$1,054 a month from January 2017 through December 2019.

(b) For employees defined in 2-18-701 and for members of the legislature, beginning January 2020 and for each succeeding month, the cost of group benefits, including both the employer and employee contributions for group benefits and health flexible spending accounts, may not exceed the monthly amount for self-only coverage and coverage other than self-only that will trigger the excise tax under 26 U.S.C. 4980I, including any cost-of-living adjustments under 26 U.S.C. 4980I. This section limits contributions for group benefits only to the extent needed to avoid triggering the excise tax under 26 U.S.C. 4980I.



(c) For employees of the Montana university system, the employer contribution for group benefits is \$1,054 a month from July 2016 through the earlier of:

(i) June 2020; or

(ii) the month before the first month in which the excise tax under 26 U.S.C. 4980I applies.

(d) For employees of the Montana university system, beginning the earlier of July 2020 or the first month in 2020 in which the excise tax under 26 U.S.C. 4980I applies, and for each succeeding month, the cost of group benefits, including both the employer and employee contributions for group benefits and health flexible spending accounts, may not exceed the monthly amount for self-only coverage and coverage other than self-only that will trigger the excise tax under 26 U.S.C. 4980I, including any cost-of-living adjustments under 26 U.S.C. 4980I. This section limits contributions for group benefits only to the extent needed to avoid triggering the excise tax under 26 U.S.C. 4980I.

(e) If a state employee is terminated to achieve a reduction in force, the continuation of contributions for group benefits beyond the termination date is subject to negotiation under 39-31-305 and to the protections of 2-18-1205. Permanent part-time, seasonal part-time, and temporary part-time employees who are regularly scheduled to work less than 20 hours a week are not eligible for the group benefit contribution. An employee who elects not to be covered by a state-sponsored group benefit plan may not receive the state contribution. A portion of the employer contribution for group benefits may be applied to an employee's costs for participation in Part B of medicare under Title XVIII of the Social Security Act, as amended, if the state group benefit plan is the secondary payer and medicare the primary payer.

(3) For employees of elementary and high school districts, the employer's contributions may exceed but may not be less than \$10 a month.

(4) (a) For employees of political subdivisions, as defined in 2-9-101, except school districts, the employer's contributions may exceed but may not be less than \$10 a month.

(b) Subject to the public hearing requirement provided in 2-9-212(2)(b), the amount in excess of the base contribution of a local government's property tax levy for contributions for group benefits as determined in subsection (4)(c) is not subject to the mill levy calculation limitation provided for in 15-10-420.

(c) (i) Subject to subsections (4)(c)(ii) and (4)(c)(iii), the base contribution is determined by multiplying the average annual contribution for each employee on July 1, 1999, times the number of employees for whom the employer makes contributions for group benefits under 2-9-212 on July 1 of each fiscal year.

(ii) If a political subdivision did not make contributions for group benefits on or before July 1, 1999, and subsequently does so, the base contribution is determined by multiplying the average annual contribution for each employee in the first year the political subdivision provides contributions for group benefits times the number of employees for whom the employer makes contributions for group benefits under 2-9-212 on July 1 of each fiscal year.

(iii) If a political subdivision has made contributions for group benefits but has not previously levied for contributions in excess of the base contribution, the political subdivision's base is determined by multiplying the average annual contribution for each employee at the beginning of the fiscal year immediately preceding the year in which the levy will first be levied times the number of employees for whom the employer made contributions for group benefits under 2-9-212 in that fiscal year.

(5) Unused employer contributions for any state employee must be transferred to an account established for this purpose by the department of administration and upon transfer may be used to offset losses occurring to the group of which the employee is eligible to be a member.

(6) Unused employer contributions for any government employee may be transferred to an account established for this purpose by a self-insured government and upon transfer may be used to offset losses occurring to the group of which the employee is eligible to be a member or to increase the reserves of the group.

(7) The laws prohibiting discrimination on the basis of marital status in Title 49 do not prohibit bona fide group insurance plans from providing greater or additional contributions for insurance benefits to employees with dependents than to employees without dependents or with fewer dependents.



**History:** En. Sec. 1, Ch. 174, L. 1957; amd. Sec. 1, Ch. 83, L. 1965; amd. Sec. 1, Ch. 200, L. 1967; amd. Sec. 1, Ch. 220, L. 1969; amd. Sec. 1, Ch. 382, L. 1971; amd. Sec. 1, Ch. 188, L. 1974; amd. Sec. 1, Ch. 359, L. 1975; amd. Sec. 1, Ch. 437, L. 1975; amd. Sec. 1, Ch. 259, L. 1977; amd. Sec. 11, Ch. 563, L. 1977; R.C.M. 1947, 11-1024(2); amd. Sec. 13, Ch. 678, L. 1979; amd. Sec. 8, Ch. 421, L. 1981; amd. Sec. 1, Ch. 207, L. 1983; amd. Sec. 11, Ch. 710, L. 1983; amd. Sec. 8, Ch. 740, L. 1985; amd. Sec. 2, Ch. 370, L. 1987; amd. Sec. 10, Ch. 661, L. 1987; amd. Sec. 2, Ch. 171, L. 1989; amd. Sec. 11, Ch. 660, L. 1989; amd. Sec. 1, Ch. 171, L. 1991; amd. Sec. 10, Ch. 720, L. 1991; amd. Sec. 3, Ch. 758, L. 1991; amd. Sec. 2, Ch. 13, L. 1993; amd. Sec. 9, Ch. 640, L. 1993; amd. Sec. 12, Ch. 455, L. 1995; amd. Sec. 10, Ch. 417, L. 1997; amd. Sec. 9, Ch. 558, L. 1999; amd. Sec. 4, Ch. 314, L. 2001; amd. Sec. 2, Ch. 511, L. 2001; amd. Secs. 6, 9, Ch. 553, L. 2001; amd. Secs. 2, 4, Ch. 529, L. 2003; amd. Sec. 6, Ch. 552, L. 2003; amd. Sec. 5, Ch. 6, L. 2005; amd. Sec. 13, Ch. 81, L. 2007; amd. Sec. 5, Ch. 7, L. 2009; amd. Sec. 2, Ch. 412, L. 2009; amd. Sec. 3, Ch. 385, L. 2013; amd. Sec. 7, Ch. 438, L. 2015; amd. Sec. 4, Ch. 175, L. 2017.

**Compiler's Comments**

*2017 Amendment:* Chapter 175 in (2)(a) at end substituted "\$1,054 a month from January 2017 through December 2019" for "\$887 a month from January 2015 through December 2015, \$976 a month from January 2016 through December 2016, and \$1,054 a month from January 2017 through December 2017"; in (2)(b) near beginning substituted "January 2020" for "January 2018"; in (2)(c) after "contribution for group benefits is" deleted "\$887 a month from July 2014 through June 2016 and"; in (2)(c)(i) substituted "June 2020" for "June 2018"; and in (2)(d) substituted "the earlier of July 2020 or the first month in 2020" for "the earlier of July 2018 or the first month in 2018". Amendment effective April 10, 2017.

*Retroactive Applicability:* Section 7, Ch. 175, L. 2017, provided: "[Section 4] [2-18-703] applies retroactively, within the meaning of 1-2-109, to January 1, 2017."

**2-18-704. Mandatory provisions.** (1) An insurance contract or plan issued under this part must contain provisions that permit:

(a) the member of a group who retires from active service under the appropriate retirement provisions of a defined benefit plan provided by law or, in the case of the defined contribution plan provided in Title 19, chapter 3, part 21, a member with at least 5 years of service and who is at least age 50 while in covered employment to remain a member of the group until the member becomes eligible for medicare under the federal Health Insurance for the Aged Act, 42 U.S.C. 1395, unless the member is a participant in another group plan with substantially the same or greater benefits at an equivalent cost or unless the member is employed and, by virtue of that employment, is eligible to participate in another group plan with substantially the same or greater benefits at an equivalent cost;

(b) the surviving spouse of a member to remain a member of the group as long as the spouse is eligible for retirement benefits accrued by the deceased member as provided by law unless the spouse is eligible for medicare under the federal Health Insurance for the Aged Act or unless the spouse has or is eligible for equivalent insurance coverage as provided in subsection (1)(a);

(c) the surviving children of a member to remain members of the group as long as they are eligible for retirement benefits accrued by the deceased member as provided by law unless they have equivalent coverage as provided in subsection (1)(a) or are eligible for insurance coverage by virtue of the employment of a surviving parent or legal guardian.

(2) An insurance contract or plan issued under this part must contain the provisions of subsection (1) for remaining a member of the group and also must permit:

(a) the spouse of a retired member the same rights as a surviving spouse under subsection (1)(b);

(b) the spouse of a retiring member to convert a group policy as provided in 33-22-508; and

(c) continued membership in the group by anyone eligible under the provisions of this section, notwithstanding the person's eligibility for medicare under the federal Health Insurance for the Aged Act.

(3) (a) A state insurance contract or plan must contain provisions that permit a legislator to remain a member of the state's group plan until the legislator becomes eligible for medicare under the federal Health Insurance for the Aged Act if the legislator:

(i) terminates service in the legislature and is a vested member of a state retirement system provided by law; and

(ii) notifies the department of administration in writing within 90 days of the end of the legislator's legislative term.

(b) A former legislator may not remain a member of the group plan under the provisions of subsection (3)(a) if the person:

(i) is a member of a plan with substantially the same or greater benefits at an equivalent cost; or

(ii) is employed and, by virtue of that employment, is eligible to participate in another group plan with substantially the same or greater benefits at an equivalent cost.

(c) A legislator who remains a member of the group under the provisions of subsection (3)(a) and subsequently terminates membership may not rejoin the group plan unless the person again serves as a legislator.

(4) (a) A state insurance contract or plan must contain provisions that permit continued membership in the state's group plan by a member of the judges' retirement system who leaves judicial office but continues to be an inactive vested member of the judges' retirement system as provided by 19-5-301. The judge shall notify the department of administration in writing within 90 days of the end of the judge's judicial service of the judge's choice to continue membership in the group plan.

(b) A former judge may not remain a member of the group plan under the provisions of this subsection (4) if the person:

(i) is a member of a plan with substantially the same or greater benefits at an equivalent cost;

(ii) is employed and, by virtue of that employment, is eligible to participate in another group plan with substantially the same or greater benefits at an equivalent cost; or

(iii) becomes eligible for medicare under the federal Health Insurance for the Aged Act.

(c) A judge who remains a member of the group under the provisions of this subsection (4) and subsequently terminates membership may not rejoin the group plan unless the person again serves in a position covered by the state's group plan.

(5) A person electing to remain a member of the group under subsection (1), (2), (3), or (4) shall pay the full premium for coverage and for that of the person's covered dependents.

(6) An insurance contract or plan issued under this part that provides for the dispensing of prescription drugs by an out-of-state mail service pharmacy, as defined in 37-7-702:

(a) must permit any member of a group to obtain prescription drugs from a pharmacy located in Montana that is willing to match the price charged to the group or plan and to meet all terms and conditions, including the same professional requirements that are met by the mail service pharmacy for a drug, without financial penalty to the member; and

(b) may only be with an out-of-state mail service pharmacy that is registered with the board under Title 37, chapter 7, part 7, and that is registered in this state as a foreign corporation.

(7) An insurance contract or plan issued under this part must include coverage for:

(a) treatment of inborn errors of metabolism, as provided for in 33-22-131; and

(b) therapies for Down syndrome, as provided in 33-22-139.

(8) (a) An insurance contract or plan issued under this part that provides coverage for an individual in a member's family must provide coverage for well-child care for children from the moment of birth through 7 years of age. Benefits provided under this coverage are exempt from any deductible provision that may be in force in the contract or plan.

(b) Coverage for well-child care under subsection (8)(a) must include:

(i) a history, physical examination, developmental assessment, anticipatory guidance, and laboratory tests, according to the schedule of visits adopted under the early and periodic screening, diagnosis, and treatment services program provided for in 53-6-101; and

(ii) routine immunizations according to the schedule for immunization recommended by the immunization practice advisory committee of the U.S. department of health and human services.

(c) Minimum benefits may be limited to one visit payable to one provider for all of the services provided at each visit as provided for in this subsection (8).

(d) For purposes of this subsection (8):

(i) "developmental assessment" and "anticipatory guidance" mean the services described in the Guidelines for Health Supervision II, published by the American academy of pediatrics; and

(ii) "well-child care" means the services described in subsection (8)(b) and delivered by a physician or a health care professional supervised by a physician.

(9) Upon renewal, an insurance contract or plan issued under this part under which coverage of a dependent terminates at a specified age must continue to provide coverage for any dependent, as defined in the insurance contract or plan, until the dependent reaches 26 years of age. For insurance contracts or plans issued under this part, the premium charged for

the additional coverage of a dependent, as defined in the insurance contract or plan, may be required to be paid by the insured and not by the employer.

(10) Prior to issuance of an insurance contract or plan under this part, written informational materials describing the contract's or plan's cancer screening coverages must be provided to a prospective group or plan member.

(11) The state employee group benefit plans and the Montana university system group benefits plans must provide coverage for hospital inpatient care for a period of time as is determined by the attending physician and, in the case of a health maintenance organization, the primary care physician, in consultation with the patient to be medically necessary following a mastectomy, a lumpectomy, or a lymph node dissection for the treatment of breast cancer.

(12) (a) The state employee group benefit plans and the Montana university system group benefits plans must provide coverage for outpatient self-management training and education for the treatment of diabetes. Any education must be provided by a licensed health care professional with expertise in diabetes.

(b) Coverage must include a \$250 benefit for a person each year for medically necessary and prescribed outpatient self-management training and education for the treatment of diabetes.

(c) The state employee group benefit plans and the Montana university system group benefits plans must provide coverage for diabetic equipment and supplies that at a minimum includes insulin, syringes, injection aids, devices for self-monitoring of glucose levels (including those for the visually impaired), test strips, visual reading and urine test strips, one insulin pump for each warranty period, accessories to insulin pumps, one prescriptive oral agent for controlling blood sugar levels for each class of drug approved by the United States food and drug administration, and glucagon emergency kits.

(d) Nothing in subsection (12)(a), (12)(b), or (12)(c) prohibits the state or the Montana university group benefit plans from providing a greater benefit or an alternative benefit of substantially equal value, in which case subsection (12)(a), (12)(b), or (12)(c), as appropriate, does not apply.

(e) Annual copayment and deductible provisions are subject to the same terms and conditions applicable to all other covered benefits within a given policy.

(f) This subsection (12) does not apply to disability income, hospital indemnity, medicare supplement, accident-only, vision, dental, specific disease, or long-term care policies offered by the state or the Montana university system as benefits to employees, retirees, and their dependents.

(13) (a) The state employee group benefit plans and the Montana university system group benefits plans that provide coverage to the spouse or dependents of a peace officer as defined in 45-2-101, a game warden as defined in 19-8-101, a firefighter as defined in 19-13-104, or a volunteer firefighter as defined in 19-17-102 shall renew the coverage of the spouse or dependents if the peace officer, game warden, firefighter, or volunteer firefighter dies within the course and scope of employment. Except as provided in subsection (13)(b), the continuation of the coverage is at the option of the spouse or dependents. Renewals of coverage under this section must provide for the same level of benefits as is available to other members of the group. Premiums charged to a spouse or dependent under this section must be the same as premiums charged to other similarly situated members of the group. Dependent special enrollment must be allowed under the terms of the insurance contract or plan. The provisions of this subsection (13)(a) are applicable to a spouse or dependent who is insured under a COBRA continuation provision.

(b) The state employee group benefit plans and the Montana university system group benefits plans subject to the provisions of subsection (13)(a) may discontinue or not renew the coverage of a spouse or dependent only if:

(i) the spouse or dependent has failed to pay premiums or contributions in accordance with the terms of the state employee group benefit plans and the Montana university system group benefits plans or if the plans have not received timely premium payments;

(ii) the spouse or dependent has performed an act or practice that constitutes fraud or has made an intentional misrepresentation of a material fact under the terms of the coverage; or

(iii) the state employee group benefit plans and the Montana university system group benefits plans are ceasing to offer coverage in accordance with applicable state law.

(14) The state employee group benefit plans and the Montana university system group benefits plans must comply with the provisions of 33-22-153.

(15) An insurance contract or plan issued under this part and a group benefits plan issued by the Montana university system must provide mental health coverage that meets the provisions of Title 33, chapter 22, part 7. (*See compiler's comments for contingent termination of certain text.*)

**History:** En. Sec. 1, Ch. 174, L. 1957; amd. Sec. 1, Ch. 83, L. 1965; amd. Sec. 1, Ch. 200, L. 1967; amd. Sec. 1, Ch. 220, L. 1969; amd. Sec. 1, Ch. 382, L. 1971; amd. Sec. 1, Ch. 188, L. 1974; amd. Sec. 1, Ch. 359, L. 1975; amd. Sec. 1, Ch. 437, L. 1975; amd. Sec. 1, Ch. 259, L. 1977; amd. Sec. 11, Ch. 563, L. 1977; R.C.M. 1947, 11-1024(3), (4); amd. Sec. 1, Ch. 181, L. 1983; amd. Sec. 1, Ch. 738, L. 1991; amd. Sec. 1, Ch. 300, L. 1993; amd. Sec. 1, Ch. 274, L. 1995; amd. Sec. 14, Ch. 42, L. 1997; amd. Sec. 1, Ch. 282, L. 1997; amd. Sec. 1, Ch. 434, L. 1999; amd. Sec. 2, Ch. 471, L. 1999; amd. Sec. 2, Ch. 450, L. 2001; amd. Sec. 3, Ch. 356, L. 2007; amd. Sec. 1, Ch. 390, L. 2007; amd. Sec. 1, Ch. 463, L. 2007; amd. Sec. 1, Ch. 54, L. 2011; amd. Sec. 2, Ch. 97, L. 2013; amd. Sec. 2, Ch. 256, L. 2015; amd. Sec. 1, Ch. 245, L. 2017.

#### **Compiler's Comments**

**2017 Amendment:** Chapter 245 inserted (15) requiring mental health coverage for a group benefits plan issued by the Montana university system. Amendment effective January 1, 2018.

**Contingent Voidness:** Section 6, Ch. 54, L. 2011, provided: "(1) If provisions of Public Law 111-148, the Patient Protection and Affordable Care Act, or Public Law 111-152, the Health Care and Education Reconciliation Act, that mandate that a health insurance plan, such as a plan governed under 2-18-704, provide coverage for a dependent until the dependent reaches 26 years of age are amended, repealed, or determined by the U.S. supreme court to be unconstitutional or unenforceable, then the amendment in 2-18-704(9), as amended by [this act], striking "25" and inserting "26" is void as of the effective date of the amendment, repeal, or court decision.

(2) Upon determination by the department of administration that the contingency described in subsection (1) has been met, the department shall notify the code commissioner."

**2-18-705. Terminated.** Sec. 14, Ch. 363, L. 2013.

**History:** En. Sec. 6, Ch. 363, L. 2013.

**2-18-706 through 2-18-710 reserved.**

**2-18-711. Cooperative purchasing of employee benefit services and insurance products — procedures.** (1) To provide employee group benefits, an agency, as defined in 2-18-601, and the state compensation insurance fund may participate with other agencies, nonprofit organizations, or business entities and in voluntary disability insurance purchasing pools provided for under 33-22-1815 if the agency or the state fund determines that cooperative purchasing is in the agency's or the state fund's best interest.

(2) Cooperative purchases under this section may be conducted according to purchasing procedures developed by the participating parties if, for contracts valued at \$20,000 a year or more, purchasing procedures, at a minimum, include:

(a) public notice in three major Montana newspapers of requirements for submitting bids or offers; and

(b) consideration of all submitted bids or offers.

(3) For purposes of this section, "employee" also means a schoolteacher or a member of the instructional or scientific staff of a community college.

**History:** En. Sec. 1, Ch. 147, L. 1997; amd. Sec. 5, Ch. 314, L. 2001; amd. Sec. 2, Ch. 370, L. 2017.

#### **Compiler's Comments**

**2017 Amendment:** Chapter 370 in (3) at end inserted "or a member of the instructional or scientific staff of a community college". Amendment effective May 9, 2017.

**Effective Date — Applicability:** Section 3, Ch. 370, L. 2017, provided: "[This act] is effective on passage and approval [approved May 9, 2017] and applies to contracts entered into and signed on or after [the effective date of this act]." Effective May 9, 2017.

**2-18-712 through 2-18-714 reserved.**

**2-18-715. Legislative findings and purpose.** (1) The legislature finds that:

(a) air ambulance services provide a necessary, and sometimes lifesaving, means of transporting Montanans experiencing health emergencies;

(b) Montanans desire adequate access to air ambulance services;

(c) in many cases the high charges assessed by out-of-network air ambulance services and limited insurer and health plan reimbursements have resulted in Montanans incurring excessive out-of-pocket expenses; and

(d) the federal Airline Deregulation Act preempts states from enacting any law related to a price, route, or service of an air carrier, which is interpreted as applying to air ambulance services.



(2) The purpose of 2-18-715 through 2-18-720 is to prevent Montanans from incurring excessive out-of-pocket expenses in out-of-network air ambulance situations in a manner that is not preempted by the Airline Deregulation Act.

**History:** En. Sec. 1, Ch. 231, L. 2017.

**Compiler's Comments**

*Effective Date:* Section 13, Ch. 231, L. 2017, provided: "[This act] is effective on passage and approval." Approved April 25, 2017.

*Applicability:* Section 14, Ch. 231, L. 2017, provided: "[This act] applies to all air ambulance transports that occur on or after [the effective date of this act]." Effective April 25, 2017.

**2-18-716. Hold harmless.** (1) If a covered person receives services from a non-Montana hospital-controlled out-of-network air ambulance service for an emergency medical condition, an insurer or health plan shall assume the covered person's responsibility, if any, for amounts charged in excess of allowed amounts for covered services and supplies, applicable copayments, coinsurance, and deductibles.

(2) An insurer or health plan that assumes a responsibility pursuant to subsection (1) shall notify the air ambulance service of that assumption no later than the date the insurer or health plan issues payment under subsection (4).

(3) If an air ambulance service receives notice pursuant to subsection (2), with the exception of amounts owed for applicable copayments, coinsurance, and deductibles, the air ambulance service may not:

(a) bill, collect, or attempt to collect from the covered person for the responsibility assumed under subsection (1);

(b) report to a consumer reporting agency that the covered person is delinquent on the responsibility assumed under subsection (1); or

(c) obtain a lien on the covered person's property in connection with the responsibility assumed under subsection (1).

(4) (a) An insurer or health plan is responsible for payment or denial of a claim within 30 days after receipt of a proof of loss, except as provided in 33-18-232(1). Within the timeframe provided in this subsection (4)(a), the insurer or health plan shall notify the covered person of the amount of deductible, coinsurance, or copayment that is the covered person's responsibility to pay.

(b) The insurer or health plan responsible under subsection (1) shall make payment based on:

(i) the billed charges of the air ambulance service;

(ii) another amount negotiated with the air ambulance service; or

(iii) the median amount the insurer or health plan would pay to an in-network air ambulance service for the services performed.

(5) If after payment is made under subsection (4) the insurer or health plan and air ambulance service dispute whether any further payment obligation exists, the insurer or health plan and air ambulance service shall enter into the dispute resolution process set forth in 2-18-718 through 2-18-720. After the independent dispute resolution process is exhausted, the aggrieved party may pursue any available remedies in a court of competent jurisdiction.

(6) For the purposes of this section:

(a) "emergency medical condition" means a medical condition manifesting itself by acute symptoms of sufficient severity, including severe pain, so that a person who possesses knowledge of health and medicine could reasonably expect the absence of immediate medical attention to result in:

(i) placing the health of the individual or, with respect to a pregnant woman, the health of the woman or her unborn child in serious jeopardy;

(ii) serious impairment to bodily functions; or

(iii) serious dysfunction of any bodily organ or part; and

(b) "insurer" means a health insurance issuer as defined in 33-22-140 and includes issuers of health insurance under Titles 2 and 20.

(7) Sections 2-18-715 through 2-18-720 do not apply if a covered person used an air ambulance membership subscription, as provided in 50-6-320, for the services provided by the air ambulance service.

**History:** En. Sec. 2, Ch. 231, L. 2017.



**Compiler's Comments**

*Effective Date:* Section 13, Ch. 231, L. 2017, provided: "[This act] is effective on passage and approval." Approved April 25, 2017.

*Applicability:* Section 14, Ch. 231, L. 2017, provided: "[This act] applies to all air ambulance transports that occur on or after [the effective date of this act]." Effective April 25, 2017.

**2-18-717. Disclosures by air ambulance service.** An out-of-network nonhospital-controlled air ambulance service must disclose by July 1 of each year any relationships or financial arrangements with health care providers, insurers, or health plans. This includes but is not limited to employment arrangements, ownership interests, first call agreements, and board memberships. This information must be filed with the department of public health and human services and also posted prominently on the commissioner of insurance's website. The air ambulance service must ensure the continued accuracy of this information throughout the year by submitting written updates within 5 days of any changes to the information.

**History:** En. Sec. 3, Ch. 231, L. 2017.

**Compiler's Comments**

*Effective Date:* Section 13, Ch. 231, L. 2017, provided: "[This act] is effective on passage and approval." Approved April 25, 2017.

*Applicability:* Section 14, Ch. 231, L. 2017, provided: "[This act] applies to all air ambulance transports that occur on or after [the effective date of this act]." Effective April 25, 2017.

**2-18-718. Independent dispute resolution.** (1) If an insurer or health plan and air ambulance service enter into dispute resolution, the procedure in 2-18-719 is to be used to determine the fair market price of the services that are the subject of the claim.

(2) Payment of the fair market price calculated pursuant to 2-18-719 constitutes payment in full of the claim.

(3) A determination under this section is not binding on the insurer or health plan and the air ambulance service.

(4) Unless otherwise agreed to by the parties, each party shall:

(a) bear its own attorney fees and costs incurred under the procedure provided in 2-18-719; and

(b) equally bear all fees and costs of the independent reviewer.

(5) As used in this section, "fair market price" means the value of the services provided as determined by the independent reviewer based on the factors provided in 2-18-719(6).

**History:** En. Sec. 4, Ch. 231, L. 2017.

**Compiler's Comments**

*Effective Date:* Section 13, Ch. 231, L. 2017, provided: "[This act] is effective on passage and approval." Approved April 25, 2017.

*Applicability:* Section 14, Ch. 231, L. 2017, provided: "[This act] applies to all air ambulance transports that occur on or after [the effective date of this act]." Effective April 25, 2017.

**2-18-719. Independent dispute resolution procedure — exemptions.** (1) To initiate a dispute resolution procedure under 2-18-715 through 2-18-720, the parties shall file a written notice of dispute with the insurance commissioner.

(2) Except as provided in subsection (3), within 30 days after the date of receipt of the notice of dispute, and if no independent reviewer is mutually agreed to by the insurer or health plan and air ambulance service under subsection (3), the insurance commissioner shall appoint an independent reviewer having the qualifications listed in 2-18-720. The insurance commissioner shall select an independent reviewer randomly from a list established under 2-18-720.

(3) The insurer or health plan and air ambulance provider may by mutual agreement select an independent reviewer. The parties shall notify the insurance commissioner of the mutually agreed independent reviewer prior to the appointment of an independent reviewer under subsection (2).

(4) An independent reviewer's sole substantive determination under this part is the fair market price of the services that are the subject of the claim.

(5) The independent reviewer may make procedural rulings necessary to regulate the proceedings.

(6) The factors to be used in the independent reviewer's determination are:

(a) the training, qualifications, and composition of the air ambulance service personnel;

(b) the fees for rotor wing or fixed wing services originating or provided entirely within the state of Montana that are:

- (i) usually charged by the air ambulance service in Montana;
- (ii) usually accepted as payment in full by the air ambulance service in Montana;
- (iii) usually charged by other air ambulance services doing business in Montana;
- (iv) usually accepted as payment in full by other air ambulance services doing business in Montana; and
- (v) usually paid by the insurer or health plan for the service provided in Montana;
- (c) whether the air ambulance service was provided in a rural or urban context;
- (d) the applicable medicare rate of payment for the services that are the subject of the claim; and
- (e) any other factors the independent reviewer determines to be relevant in determining fair market price in accordance with established precedent.

(7) Participation in a dispute resolution procedure under 2-18-718 through 2-18-720 exempts an insurer from 33-18-201(6) and (8) and 33-18-232(2).

**History:** En. Sec. 5, Ch. 231, L. 2017.

**Compiler's Comments**

*Effective Date:* Section 13, Ch. 231, L. 2017, provided: "[This act] is effective on passage and approval." Approved April 25, 2017.

*Applicability:* Section 14, Ch. 231, L. 2017, provided: "[This act] applies to all air ambulance transports that occur on or after [the effective date of this act]." Effective April 25, 2017.

**2-18-720. Insurance commissioner duties — independent reviewer qualifications.**

(1) The insurance commissioner shall:

- (a) approve any independent reviewer that is eligible to adjudicate disputes under 2-18-715 through 2-18-720;
- (b) maintain a list of independent reviewers eligible to adjudicate disputes under 2-18-715 through 2-18-720;
- (c) terminate approval of an independent reviewer and remove the independent reviewer from the list of approved independent reviewers upon determining that an independent reviewer no longer meets the requirements to adjudicate disputes; and
- (d) adopt rules necessary to implement 2-18-715 through 2-18-720, including rules regarding discovery and other procedures regarding the dispute resolution process and eligibility of an independent reviewer.

(2) An individual is eligible to be an independent reviewer under 2-18-715 through 2-18-720 if the individual is knowledgeable and experienced in applicable principles of contract and insurance law.

(3) In approving an individual as an independent reviewer, the insurance commissioner shall ensure that the individual does not have a conflict of interest that would adversely impact the individual's independence and impartiality in rendering a decision in an independent dispute resolution procedure under 2-18-718 and 2-18-719. A conflict of interest includes but is not limited to an ownership or direct familial interest in an insurer, a health care provider, or an air ambulance service that may be involved in an independent dispute resolution procedure under 2-18-718 and 2-18-719.

(4) In approving an individual as an independent reviewer, the insurance commissioner may not approve an individual who is currently serving in any matter as a hearing officer for the commissioner.

**History:** En. Sec. 6, Ch. 231, L. 2017.

**Compiler's Comments**

*Effective Date:* Section 13, Ch. 231, L. 2017, provided: "[This act] is effective on passage and approval." Approved April 25, 2017.

*Applicability:* Section 14, Ch. 231, L. 2017, provided: "[This act] applies to all air ambulance transports that occur on or after [the effective date of this act]." Effective April 25, 2017.

## Part 12

### State Employee Protection Act

**2-18-1201. Short title.** This part may be cited as the "State Employee Protection Act".

**History:** En. Sec. 1, Ch. 477, L. 1993.

**2-18-1202. Definitions.** As used in this part, the following definitions apply:

(1) “Agency” has the meaning provided in 2-18-101 but does not include the Montana university system.

(2) (a) “Employee” means a person employed by the state who has achieved permanent status, as defined in 2-18-101, or officers and employees of the legislative branch and teachers under the authority of the department of corrections or department of public health and human services who have been employed for at least 6 continuous months.

(b) The term does not include a student intern, as defined in 2-18-101.

(3) “Privatization” means contracting with the private sector to provide a service normally or traditionally provided directly by an employee of an agency.

**History:** En. Sec. 2, Ch. 477, L. 1993; amd. Sec. 1, Ch. 524, L. 1995; amd. Sec. 15, Ch. 42, L. 1997; amd. Sec. 8, Ch. 75, L. 2005.

**2-18-1203. General protection.** (1) An employee whose position is eliminated as a result of privatization, reorganization of an agency, closure of or a reduction in force at an agency, or other actions by the legislature is entitled to:

(a) access to any job retraining and career development programs provided by the state through the service delivery areas dislocated worker programs under the Workforce Innovation and Opportunity Act, 29 U.S.C. 3101, et seq., provided that the employee begins participating in a program within 1 year after the elimination of the employee’s position; and

(b) inclusion in a special job register from which all agencies may attempt to hire employees prior to seeking applications from the general public. Nothing in this section requires an agency to attempt to hire employees from the special job register prior to seeking applications from the general public. An employee’s eligibility to participate in the job register terminates 2 years from the effective date of the employee’s layoff or 2 years from the date of the employee’s completion of job training provided under subsection (1)(a), whichever is later.

(2) Each state agency shall pay to the department of labor and industry a set amount that is equal to the department’s average cost of providing the retraining and development services for state employees in the previous fiscal year for each involuntarily terminated state employee who requests access to any job training and career development program provided by the department.

**History:** En. Sec. 3, Ch. 477, L. 1993; amd. Sec. 1, Ch. 24, Sp. L. November 1993; amd. Sec. 2, Ch. 524, L. 1995; amd. Sec. 1, Ch. 361, L. 1997; amd. Sec. 1, Ch. 502, L. 2003; amd. Sec. 1, Ch. 37, L. 2017.

**Compiler’s Comments**

*2017 Amendment:* Chapter 37 in (1)(a) substituted “Workforce Innovation and Opportunity Act, 29 U.S.C. 3101, et seq.” for “Workforce Investment Act of 1998, 29 U.S.C. 2801, et seq.” Amendment effective February 20, 2017.

**2-18-1204. Salary and benefits protection — employee transfer.** An employee whose position is eliminated as a result of privatization, reorganization of an agency, closure of or a reduction in force at an agency, or other actions by the legislature and who is subsequently transferred to a different position in a state agency is entitled to:

(1) the same hourly salary as previously received if the new position is the same classification or higher as the one previously held;

(2) retain all accrued sick leave credits;

(3) retain, cash out, or use accrued vacation leave credits to extend the employee’s effective layoff date; and

(4) relocation expenses as provided in agency policy.

**History:** En. Sec. 4, Ch. 477, L. 1993; amd. Sec. 3, Ch. 524, L. 1995; amd. Sec. 1, Ch. 111, L. 2005; amd. Sec. 5, Ch. 130, L. 2005; amd. Sec. 15, Ch. 81, L. 2007; amd. Sec. 6, Ch. 7, L. 2009; amd. Sec. 8, Ch. 430, L. 2017.

**Compiler’s Comments**

*2017 Amendment:* Chapter 430 in (1) after “if the new position is” substituted “the same classification” for “in the same competitive pay zone”. Amendment effective July 1, 2017.

**2-18-1205. Continuation of health insurance and employer contributions.**

(1) During the period of unemployment as a result of privatization, reorganization of an agency, closure of or a reduction in force at an agency, or other actions by the legislature, the employee is entitled to remain covered by the state’s group health insurance plan and to the continuation of the employer’s contribution to the employee’s group health insurance for 6 months from the effective date of layoff or until the employee becomes employed, whichever occurs first.

(2) For the purposes of this section, the term “agency” includes the Montana university system.

**History:** En. Sec. 5, Ch. 477, L. 1993; amd. Sec. 4, Ch. 524, L. 1995.

**2-18-1206. Notice.** (1) Except as provided in subsection (2), an employee and the employee's collective bargaining unit, if any, must be notified as soon as possible prior to privatization, reorganization of any agency, or closure of or a reduction in force at an agency. When 25 or more employees are affected, the notice must be given at least 60 days prior to the privatization, reorganization, agency closure, or reduction in force.

(2) When privatization, reorganization, an agency closure, or a reduction in force affects fewer than 25 employees, each employee affected must be notified at least 14 days prior to the privatization, reorganization, agency closure, or reduction in force.

**History:** En. Sec. 6, Ch. 477, L. 1993.

### **Part 13**

#### **Voluntary Employees' Beneficiary Association Act**

**2-18-1301. Short title.** This part may be cited as the "Voluntary Employees' Beneficiary Association Act".

**History:** En. Sec. 1, Ch. 272, L. 2001.

**2-18-1302. Purpose and intent.** The legislature finds that escalating health care expenses, particularly the increasing cost of medical treatment and health insurance, constitute a substantial financial burden during and after an employee's working career. The purpose of this part is to provide a means by which public employers may contribute to a plan established under a qualified tax-exempt trust organization to assist public employees, their dependents, and their beneficiaries with paying for qualified health care expenses. Under the plan, employer contributions, investment earnings, and payments for qualified health care expenses are tax-exempt. The legislature also finds that centralized statewide administration offers a consistent approach and is more cost-effective, especially for smaller employers. However, the legislature does not intend to prohibit an employer from establishing a similar program as an alternative or in addition to participation in the statewide program provided for in this part. Additionally, the legislature intends to facilitate a grassroots process to determine plan participation.

**History:** En. Sec. 2, Ch. 272, L. 2001.

**2-18-1303. Definitions.** As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Common association" means an association of employees established pursuant to 2-18-1310 for the purposes of employer and employee participation in the plan.

(2) "Contracting employer" means an employer who, pursuant to 2-18-1310, has contracted with the department to participate in the plan.

(3) "Department" means the department of administration established in 2-15-1001.

(4) (a) "Employee" means a person employed by an employer.

(b) The term does not include an independent contractor, a person hired by the employer under a personal services contract, or a student intern, as defined in 2-18-101.

(5) "Employer" means a legally constituted department, board, commission, or any other administrative unit of state government, a county, an incorporated city or town, or any other political subdivision of the state, including a school district, or a unit of the university system.

(6) "Health care expense trust account" or "account" means an account established for the payment of qualified health care expenses under the plan.

(7) "Member" means an employee who belongs to a voluntary employees' beneficiary association established under 2-18-1310.

(8) "Plan" means the employee welfare benefit plan established under Internal Revenue Code section 501(c)(9) pursuant to 2-18-1304.

(9) "Qualified health care expenses" means expenses paid by a member for medical care, as defined by 26 U.S.C. 213(d), for the member or the member's dependent as defined by 26 U.S.C. 152.

**History:** En. Sec. 3, Ch. 272, L. 2001; amd. Sec. 9, Ch. 75, L. 2005; amd. Sec. 1, Ch. 96, L. 2005.

**2-18-1304. Statewide employee welfare benefit plan established — health care expense trust accounts — investment of funds — account access — administrative expenses.** (1) The department shall establish, through contracted services, a plan under a tax-exempt entity that qualifies as a voluntary employees' beneficiary association trust pursuant to section 501(c)(9) of the Internal Revenue Code, 26 U.S.C. 501(c)(9). The plan must provide members with individual health care expense trust accounts to pay the qualified health care expenses of members, their dependents, and their beneficiaries.

(2) The department shall determine what investment vehicles will be offered to plan members. Each plan member is entitled to direct the investment of funds in the member's account among the investment vehicles offered. The department shall provide for a default investment vehicle if a member fails to direct how funds are to be invested.

(3) At any time after a member's account has been established, the member may access funds in the account in a manner prescribed by the department. The funds may be accessed only for the payment of qualified health care expenses and until the funds have been exhausted.

(4) Administrative expenses must be paid by the plan in a manner prescribed by the department.

**History:** En. Sec. 4, Ch. 272, L. 2001.

**2-18-1305. Rulemaking authority.** The department shall adopt rules to implement the provisions of this part. The rules must be designed to allow the plan to conform to federal law.

**History:** En. Sec. 5, Ch. 272, L. 2001.

**2-18-1306 through 2-18-1308 reserved.**

**2-18-1309. Administration of plan — content of plan document.** (1) The department shall provide for the administration of the plan in the manner required to satisfy applicable tax qualification requirements of the Internal Revenue Code. If a statutory provision of this part conflicts with a qualification requirement of the Internal Revenue Code and any consequent federal regulations, the provision is either ineffective or must be interpreted to conform with the federal qualification requirements.

(2) For purposes of qualification pursuant to section 501(c)(9) of the Internal Revenue Code, 26 U.S.C. 501(c)(9), and any other applicable internal revenue service laws and regulations, the plan document is composed of this part and the rules adopted by the department to implement this part.

**History:** En. Sec. 6, Ch. 272, L. 2001.

**2-18-1310. Plan membership election — contract for employer participation.**

(1) At the request of at least 25% of its employees, an employer may facilitate an election by all the employer's employees or by a specified group of the employer's employees to determine whether those employees will form an association for the purpose of participating in the plan. An election among employees on whether to form an association may also be initiated by the employer.

(2) If a majority of the employees voting on the question vote to become plan members, then, in a manner prescribed by the department:

(a) all of the employees that were eligible to vote on the question and any employees subsequently hired into the positions covered under the terms and conditions of the election must be formed as a common association for the purpose of plan membership and the employees must become plan members; and

(b) the employer shall enter into a contract with the department to participate in the plan and must become a contracting employer.

(3) A common association shall operate in a manner prescribed by the department unless the association is disbanded in a manner prescribed by the department.

(4) A contracting employer shall provide to the department, or the appropriate administering entity, the information necessary for the plan's operation. The department, in partnership with a contracting employer, shall provide to plan members the information necessary to actively participate in the plan.

**History:** En. Sec. 7, Ch. 272, L. 2001.



**2-18-1311. Contributions of unused sick leave — other contributions not prohibited.** (1) In a manner prescribed by the department, a contracting employer shall provide for a plan member to annually designate how many hours, if any, of the member's sick leave will be automatically converted to an employer contribution to the member's account each pay period as provided for in this section.

(2) (a) Except as provided in subsection (2)(b), a member may annually convert only the sick leave hours in excess of 240 hours and no more than the maximum prescribed by the contracting employer.

(b) When the member's employment is terminated, the member's unused sick leave balance may be converted, in whole or in part, to an employer contribution to the member's account pursuant to this section. For those amounts of sick leave not converted to employer contributions, the balance is allocated as required under 2-18-618(6).

(3) The amount of the employer contribution to a member's account for hours converted under this section must be equal to one-fourth of the pay attributed to the accumulated sick leave. The attributable pay must be computed on the basis of the employee's salary or wage at the time that the sick leave is converted. A member may not later receive as sick leave credit or as a lump-sum payment amounts contributed to the member's account pursuant to this section.

(4) This section does not prohibit an employer from entering into an agreement with a member for employer contributions to a member account in addition to the contributions provided for under this section.

**History:** En. Sec. 8, Ch. 272, L. 2001; amd. Sec. 3, Ch. 503, L. 2007.

**2-18-1312. Tax exemption.** Employer contributions into an account, the accumulation of interest or other earnings in an account, and payments from an account for qualified health care expenses are tax-exempt, as provided in 15-30-2110 and under applicable federal laws and regulations to the extent that the plan is qualified under applicable sections of the Internal Revenue Code.

**History:** En. Sec. 9, Ch. 272, L. 2001.

**2-18-1313. Beneficiaries — death benefits.** (1) A member may designate as a beneficiary an individual, charitable organization, or trust. The designation must be in a manner prescribed by the department.

(2) Upon proof of a member's death, if the deceased member's account retains funds, the member's designated beneficiary is entitled to use the account for qualified health care expenses or, to the extent allowable under applicable Internal Revenue Code sections, to receive a taxable lump-sum payment of the deceased member's account balance. The department shall prescribe by rule the disposition of a deceased member's account if the member failed to designate a beneficiary or has no surviving designated beneficiary.

**History:** En. Sec. 10, Ch. 272, L. 2001.

## TITLE 5

### LEGISLATIVE BRANCH

#### CHAPTER 5

#### LEGISLATIVE PROCEDURES

##### Part 2

##### Organization — Interim Committees

**5-5-201. Power to administer oaths.** The members of any committee may administer oaths to witnesses in any matter under examination.

**History:** En. Secs. 4 and 5, p. 170, L. 1891; re-en. Sec. 200, Pol. C. 1895; re-en. Sec. 67, Rev. C. 1907; re-en. Sec. 65, R.C.M. 1921; Cal. Pol. C. Sec. 252; re-en. Sec. 65, R.C.M. 1935; R.C.M. 1947, 43-301(part).

**5-5-202. Interim committees.** (1) During an interim when the legislature is not in session, the committees listed in subsection (2) are the interim committees of the legislature. They are empowered to sit as committees and may act in their respective areas of responsibility. The functions of the legislative council, legislative audit committee, legislative finance committee, environmental quality council, state-tribal relations committee, and local government committee are provided for in the statutes governing those committees.

(2) The following are the interim committees of the legislature:

- (a) economic affairs committee;
- (b) education committee;
- (c) children, families, health, and human services committee;
- (d) law and justice committee;
- (e) energy and telecommunications committee;
- (f) revenue and transportation committee;
- (g) state administration and veterans' affairs committee; and
- (h) water policy committee.

(3) An interim committee, the local government committee, or the environmental quality council may refer an issue to another committee that the referring committee determines to be more appropriate for the consideration of the issue. Upon the acceptance of the referred issue, the accepting committee shall consider the issue as if the issue were originally within its jurisdiction. If the committee that is referred an issue declines to accept the issue, the original committee retains jurisdiction.

(4) If there is a dispute between committees as to which committee has proper jurisdiction over a subject, the legislative council shall determine the most appropriate committee and assign the subject to that committee. If there is an entity that is attached to an agency for administrative purposes under the jurisdiction of an interim committee and another interim committee has a justification to seek jurisdiction and petitions the legislative council, the legislative council may assign that entity to the interim committee seeking jurisdiction unless otherwise provided by law.

**History:** En. Sec. 10, Ch. 431, L. 1973; R.C.M. 1947, 43-718; amd. Sec. 1, Ch. 138, L. 1979; amd. Sec. 1, Ch. 353, L. 1981; amd. Sec. 19, Ch. 19, L. 1999; amd. Sec. 5, Ch. 210, L. 2001; amd. Sec. 1, Ch. 565, L. 2003; amd. Sec. 2, Ch. 285, L. 2009; amd. Sec. 1, Ch. 92, L. 2011; amd. Sec. 1, Ch. 122, L. 2015; amd. Sec. 2, Ch. 167, L. 2017.

**Compiler's Comments**

*2017 Amendment:* Chapter 167 in (1) in last sentence after "state-tribal relations committee" inserted "and local government committee"; in (2)(b) substituted "education committee" for "education and local government committee"; in (3) near beginning inserted "the local government committee"; and made minor changes in style. Amendment effective April 7, 2017.

**5-5-211. Appointment and composition of interim committees.** (1) Senate interim committee members must be appointed by the committee on committees.

(2) House interim committee members must be appointed by the speaker of the house.

(3) Appointments to interim committees must be made by the time of adjournment of the legislative session.

(4) A legislator may not serve on more than two interim committees unless no other legislator is available or is willing to serve.

(5) (a) Subject to 5-5-234 and subsections (5)(b) and (5)(c) of this section, the composition of each interim committee must be as follows:

(i) four members of the house, two from the majority party and two from the minority party; and

(ii) four members of the senate, two from the majority party and two from the minority party.

(b) If the committee workload requires, the legislative council may request the appointing authority to appoint one or two additional interim committee members from the majority party and the minority party.

(c) For fiscal years 2018 and 2019, the legislative council may request the appointment to the local government committee of no fewer than four members and up to eight members, with membership from the house and senate and majority and minority parties in equal numbers.

(6) The membership of the interim committees must be provided for by legislative rules. The rules must identify the committees from which members are selected, and the appointing authority shall attempt to select not less than 50% of the members from the standing committees

that consider issues within the jurisdiction of the interim committee and at least one member from the joint subcommittee that considers the related agency budgets. In making the appointments, the appointing authority shall take into account term limits of members so that committee members will be available to follow through on committee activities and recommendations in the next legislative session.

(7) An interim committee or the environmental quality council may create subcommittees. Nonlegislative members may serve on a subcommittee. Unless the person is a full-time salaried officer or employee of the state or a political subdivision of the state, a nonlegislative member appointed to a subcommittee is entitled to salary and expenses to the same extent as a legislative member. If the appointee is a full-time salaried officer or employee of the state or of a political subdivision of the state, the appointee is entitled to reimbursement for travel expenses as provided for in 2-18-501 through 2-18-503.

**History:** En. 43-716 by Sec. 8, Ch. 431, L. 1973; amd. Sec. 1, Ch. 44, L. 1974; amd Sec. 15, Ch. 309, L. 1977; R.C.M. 1947, 43-716(1); amd. Sec. 1, Ch. 596, L. 1979; amd. Sec. 2, Ch. 353, L. 1981; amd. Sec. 1, Ch. 513, L. 1995; amd. Sec. 20, Ch. 19, L. 1999; amd. Sec. 6, Ch. 210, L. 2001; amd. Sec. 2, Ch. 527, L. 2005; amd. Sec. 10, Ch. 4, Sp. L. May 2007; amd. Sec. 2, Ch. 92, L. 2011; amd. Sec. 3, Ch. 167, L. 2017.

**Compiler's Comments**

*2017 Amendment:* Chapter 167 in (5)(a) inserted reference to subsection (5)(c); inserted (5)(c) relating to membership in the local government committee for fiscal years 2018 and 2019; and made minor changes in style. Amendment effective April 7, 2017.

**5-5-212. Implied resignation of member — vacancies.** If an interim committee member misses more than two committee meetings or hearings without just cause when the legislature is not in session, the member is considered to have resigned and the vacancy must be filled in the same manner as the original appointment. Any other vacancy must be filled in the same manner.

**History:** En. 43-716 by Sec. 8, Ch. 431, L. 1973; amd. Sec. 1, Ch. 44, L. 1974; amd Sec. 15, Ch. 309, L. 1977; R.C.M. 1947, 43-716(6); amd. Sec. 21, Ch. 19, L. 1999.

**5-5-213. Officers of interim committees.** Each interim committee shall elect its presiding officer and vice presiding officer from among its members. The officers may not be members of the same political party.

**History:** En. 43-716 by Sec. 8, Ch. 431, L. 1973; amd. Sec. 1, Ch. 44, L. 1974; amd Sec. 15, Ch. 309, L. 1977; R.C.M. 1947, 43-716(2); amd. Sec. 22, Ch. 19, L. 1999.

**5-5-214. Interim activity.** The interim committees shall perform their functions when the legislature is not in session. The personnel, data, and facilities of the legislative services division and other appropriate legislative entities must be made available to the interim committees.

**History:** En. 43-716 by Sec. 8, Ch. 431, L. 1973; amd. Sec. 1, Ch. 44, L. 1974; amd Sec. 15, Ch. 309, L. 1977; R.C.M. 1947, 43-716(3); amd. Sec. 20, Ch. 42, L. 1997; amd. Sec. 23, Ch. 19, L. 1999.

**5-5-215. Duties of interim committees.** (1) Each interim committee shall:

- (a) review administrative rules within its jurisdiction;
- (b) subject to 5-5-217(3), conduct interim studies as assigned;
- (c) monitor the operation of assigned executive branch agencies with specific attention to the following:

- (i) identification of issues likely to require future legislative attention;
  - (ii) opportunities to improve existing law through the analysis of problems experienced with the application of the law by an agency; and
  - (iii) experiences of the state's citizens with the operation of an agency that may be amenable to improvement through legislative action;

- (d) review, if requested by any member of the interim committee, the statutorily established advisory councils and required reports of assigned agencies to make recommendations to the next legislature on retention or elimination of any advisory council or required reports pursuant to 5-11-210;

- (e) review proposed legislation of assigned agencies or entities as provided in the joint legislative rules; and

- (f) accumulate, compile, analyze, and furnish information bearing upon its assignment and relevant to existing or prospective legislation as it determines, on its own initiative, to be pertinent to the adequate completion of its work.

(2) Each interim committee shall prepare bills and resolutions that, in its opinion, the welfare of the state may require for presentation to the next regular session of the legislature.

(3) The legislative services division shall keep accurate records of the activities and proceedings of each interim committee.

**History:** En. 43-716 by Sec. 8, Ch. 431, L. 1973; amd. Sec. 1, Ch. 44, L. 1974; amd Sec. 15, Ch. 309, L. 1977; R.C.M. 1947, 43-716(4); amd. Sec. 15, Ch. 545, L. 1995; amd. Sec. 24, Ch. 19, L. 1999; amd. Sec. 7, Ch. 210, L. 2001; amd. Sec. 1, Ch. 126, L. 2011; amd. Sec. 1, Ch. 123, L. 2017.

**Compiler's Comments**

*2017 Amendment:* Chapter 123 in (1)(d) near beginning inserted "if requested by any member of the interim committee"; and made minor changes in style. Amendment effective March 30, 2017.

**5-5-216. Recommendations of committees.** An interim committee or a statutory committee making a study designated by the legislative council may make recommendations for legislation. These recommendations and a report, if one is written, must be submitted to the legislature as provided in 5-11-210.

**History:** En. 43-716 by Sec. 8, Ch. 431, L. 1973; amd. Sec. 1, Ch. 44, L. 1974; amd Sec. 15, Ch. 309, L. 1977; R.C.M. 1947, 43-716(5); amd. Sec. 2, Ch. 596, L. 1979; amd. Sec. 15, Ch. 112, L. 1991; amd. Sec. 8, Ch. 210, L. 2001.

**5-5-217. Selection and assignment of interim studies.** (1) Immediately following adjournment sine die, the legislative services division shall prepare a list of study requests adopted. A copy of the list must be distributed to each legislator with a request that the legislator rank the study requests in the order of importance that the legislator ascribes to them. The lists, with the priorities assigned, must be returned to the legislative services division.

(2) The legislative council shall review the priority lists returned by legislators, review estimated costs and staff assistance associated with the requested studies, and designate those studies to be assigned. In designating studies, the legislative council may combine requests as one study when the subject matter of those requests is closely related. The legislative council shall designate the interim committees and statutory committees to be assigned the studies and shall assign related studies to the same committee.

(3) The legislative services division shall inform the interim committees and statutory committees of those studies that have been selected and to which interim committee or statutory committee each study has been assigned. An interim committee or a statutory committee may recommend to the legislative council that an interim study assigned to that committee should be reassigned to another interim committee or statutory committee or should not be conducted. The legislative council may adopt, reject, or modify the interim committee recommendation.

**History:** En. Sec. 4, Ch. 596, L. 1979; amd. Sec. 3, Ch. 353, L. 1981; amd. Sec. 21, Ch. 42, L. 1997; amd. Sec. 9, Ch. 210, L. 2001.

**5-5-224. Education interim committee.** (1) The education interim committee has administrative rule review, draft legislation review, program evaluation, and monitoring functions for the following executive branch agencies and the entities attached to agencies for administrative purposes:

- (a) state board of education;
- (b) board of public education;
- (c) board of regents of higher education; and
- (d) office of public instruction.

(2) The committee shall:

- (a) provide information to the board of regents in the following areas:

- (i) annual budget allocations;
- (ii) annual goal statement development;
- (iii) long-range planning;
- (iv) outcome assessment programs; and

(v) any other area that the committee considers to have significant educational or fiscal policy impact;

(b) periodically review the success or failure of the university system in meeting its annual goals and long-range plans;

(c) periodically review the results of outcome assessment programs;

(d) develop mechanisms to ensure strict accountability of the revenue and expenditures of the university system;

(e) study and report to the legislature on the advisability of adjustments to the mechanisms used to determine funding for the university system, including criteria for determining appropriate levels of funding;

(f) act as a liaison between both the legislative and executive branches and the board of regents; and

(g) encourage cooperation between the legislative and executive branches and the board of regents.

**History:** En. Sec. 26, Ch. 19, L. 1999; amd. Sec. 11, Ch. 210, L. 2001; amd. Sec. 4, Ch. 167, L. 2017.

**Compiler's Comments**

*2017 Amendment:* Chapter 167 in (1) deleted first sentence that read: "The education and local government interim committee shall act as a liaison with local governments"; near beginning after "education" deleted "and local government"; deleted former (2)(h) through (2)(p) that read: "(h) promote and strengthen local government through recognition of the principle that strong communities, with effective, democratic governmental institutions, are one of the best assurances of a strong Montana;

(i) bring together representatives of state and local government for consideration of common problems;

(j) provide a forum for discussing state oversight of local functions, realistic local autonomy, and intergovernmental cooperation;

(k) identify and promote the most desirable allocation of state and local government functions, responsibilities, and revenue;

(l) promote concise, consistent, and uniform regulation for local government;

(m) coordinate and simplify laws, rules, and administrative practices in order to achieve more orderly and less competitive fiscal and administrative relationships between and among state and local governments;

(n) review state mandates to local governments that are subject to 1-2-112 and 1-2-114 through 1-2-116;

(o) make recommendations to the legislature, executive branch agencies, and local governing bodies concerning: (i) changes in statutes, rules, ordinances, and resolutions that will provide concise, consistent, and uniform guidance and regulations for local government;

(ii) changes in tax laws that will achieve more orderly and less competitive fiscal relationships between levels of government;

(iii) methods of coordinating and simplifying competitive practices to achieve more orderly administrative relationships among levels of government; and

(iv) training programs and technical assistance for local government officers and employees that will promote effectiveness and efficiency in local government; and

(p) conduct interim studies as assigned"; and made minor changes in style. Amendment effective April 7, 2017.

**5-5-234. Appointments.** (1) (a) Whenever a legislative appointing authority is required or authorized to appoint more than one legislative member of the majority party to a committee, subcommittee, or other statutorily recognized or authorized entity, the appointing authority may appoint a member of a party other than the majority party.

(b) Whenever a legislative appointing authority is required or authorized to appoint more than one legislative member of the minority party to a committee, subcommittee, other statutorily recognized or authorized entity, the appointing authority may, if requested by the minority leader, appoint a member of a party other than the minority party or majority party instead of a member of the minority party.

(2) (a) Whenever an elected state official, as defined in 5-7-102, is required or authorized to appoint more than one legislative member of the majority party to a statutorily recognized or authorized entity, the elected state official may, if requested by the senate president for a senate appointee or if requested by the speaker of the house for a house appointee, appoint a member of a party other than the majority party instead of a member of the majority party.

(b) Whenever an elected state official, as defined in 5-7-102, is required or authorized to appoint more than one legislative member of the minority party to a statutorily recognized or authorized entity, the elected state official may, if requested by the senate minority leader for a senate appointee or if requested by the house minority leader for a house appointee, appoint a member of a party other than the minority party or majority party instead of a member of the minority party.

(3) If a vacancy occurs in the membership of a committee, subcommittee, or statutorily recognized or authorized entity because of the resignation or disqualification of a member appointed under the provisions of subsection (1) or (2), the appointing authority authorized or required to make an appointment to fill the vacancy is subject to the provisions of subsections (1) and (2).

(4) If an individual appointed under subsection (1) or (2) is not a member of either the majority party or minority party and resigns from or is otherwise disqualified from serving, the appointing authority shall fill the vacancy under the provisions of subsection (1) or (2) as if the appointment were an initial appointment, and the appointing authority is not required to fill the



vacancy with an individual who is a member of the same party of which the individual whose resignation or disqualification caused the vacancy.

**History:** En. Sec. 2, Ch. 4, Sp. L. May 2007.

## CHAPTER 20 EDUCATIONAL COMMITTEES

### Part 3 School Funding Interim Commission

**5-20-301. School funding interim commission.** (1) There is a school funding interim commission that must be formed during the 2015-2016 interim and each successive fifth interim pursuant to 20-9-309. The commission shall:

(a) conduct a study to reassess the educational needs and costs related to the basic system of free quality public elementary and secondary schools; and

(b) if necessary, recommend to the following legislature changes to the state's funding formula.

(2) In conducting the study, the commission may:

(a) review the work of previous studies and commissions;

(b) consider recommendations and topics provided by other interim or standing legislative committees, the board of public education, the office of public instruction, the governor's office, private organizations, professional educators, school trustees, and members of the public;

(c) review how the state's education funding policy has evolved as a result of litigation;

(d) seek input from representatives from the board of public education, the office of public instruction, the governor's office, private organizations, professional educators, school trustees, and members of the public;

(e) consider the state's existing and projected financial resources as well as the needs and concerns of Montana taxpayers;

(f) authorize research and studies to be conducted by reputable and reliable experts in the public or private sectors; and

(g) request research and analysis from the legislative fiscal division, the office of public instruction, the department of revenue, and any other state agency or entity that maintains information or data relevant to the study.

(3) The members of the commission are:

(a) six members of the house of representatives, three from the majority party and three from the minority party, appointed by the speaker of the house in consultation with the house majority leader and the house minority leader;

(b) six members of the senate, three from the majority party and three from the minority party, appointed by the president of the senate in consultation with the senate majority leader and the senate minority leader; and

(c) four members of the public to be appointed as follows:

(i) two public members appointed by the speaker of the house with the consent of the house minority leader; and

(ii) two public members appointed by the president of the senate with the consent of the senate minority leader.

(4) The commission shall select its presiding officer at the first meeting of the commission.

(5) The commission is attached for administrative purposes to the legislative services division, and the legislative services division shall provide sufficient and appropriate support to the commission in order that it may carry out its statutory duties, within the limitations of legislative appropriations.

(6) The commission is staffed by the legislative services division. The legislative fiscal analyst shall assign staff to assist the commission.

(7) The commission shall issue a report on the commission's findings and recommendations, including any draft legislation for amending the state school funding formula, by no later than September 15 preceding the next regular legislative session.

(8) Unless the person is a full-time salaried officer or employee of the state or a political subdivision of the state, a nonlegislative member appointed to the commission is entitled to salary and expenses to the same extent as a legislative member. If the appointee is a full-time salaried officer or employee of the state or of a political subdivision of the state, the appointee is entitled to reimbursement for travel expenses as provided for in 2-18-501 through 2-18-503.

**History:** En. Sec. 1, Ch. 359, L. 2015.

## TITLE 7

### LOCAL GOVERNMENT

#### CHAPTER 1 GENERAL PROVISIONS

##### Part 21 Counties

**7-1-2121. Publication and content of notice — proof of publication.** (1) Unless otherwise specifically provided by law and except as provided in 13-1-108, whenever a local government unit other than a municipality is required to give notice by publication, this section applies.

(2) Publication must be in a newspaper meeting the qualifications of subsections (3) and (4), except that in a county where a newspaper does not meet these qualifications, publication must be made in a qualified newspaper in an adjacent county. If there is no qualified newspaper in an adjacent county, publication must be made by posting the notice in three public places in the county, designated by resolution of the governing body.

(3) (a) The newspaper must:

(i) be of general circulation;

(ii) be published at least once a week;

(iii) be published in the county where the hearing or other action will take place; and

(iv) have, prior to July 1 of each year, submitted to the clerk and recorder a sworn statement that includes:

(A) circulation for the prior 12 months;

(B) a statement of net distribution;

(C) itemization of the circulation that is paid and that is free; and

(D) the method of distribution.

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

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

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

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

(7) The published notice must contain:

(a) the date, time, and place of the hearing or other action;

(b) a brief statement of the action to be taken;

(c) the address and telephone number of the person who may be contacted for further information on the action to be taken; and

(d) any other information required by the specific section requiring notice by publication.

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

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

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

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

**7-1-2122. Mail notice.** (1) Unless otherwise specifically provided, whenever a local government unit other than a municipality is required to give notice of a hearing or other official act by mail, the requirement may be met by:

(a) deposit of the notice, properly addressed, in the United States mail with postage paid at the first-class rate;

(b) sending the notice by certified mail rather than first class; or

(c) mailing the notice at the bulk rate instead of first class if notice is to be given by mail to all electors or residents of the affected local government unit.

(2) The notice shall contain:

(a) the date, time, and place of the hearing or other action;

(b) a brief statement of the action to be taken;

(c) the address and telephone number of the person who may be contacted for further information on the action to be taken; and

(d) any other information required by the specific section requiring mail notice.

(3) When notice by mail is required, the requirement applies only to persons whose addresses are known.

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

## CHAPTER 4 OFFICERS AND EMPLOYEES

### Part 1 General Provisions

**7-4-101. Filing of oath of office.** Every oath of office, certified by the officer before whom the same was taken, must be filed within the time required by law, except when otherwise specially provided, as follows:

(1) in the office of the secretary of state for all officers whose authority is not limited to any particular county;

(2) in the office of the clerk of the respective county for all elected or appointed officers for any county, all officers whose duties are local or whose residence in any particular county is prescribed by law, and the clerks of the district courts.

**History:** En. Sec. 1014, Pol. C. 1895; re-en. Sec. 366, Rev. C. 1907; re-en. Sec. 434, R.C.M. 1921; Cal. Pol. C. Sec. 909; re-en. Sec. 434, R.C.M. 1935; amd. Sec. 1, Ch. 77, L. 1949; R.C.M. 1947, 59-417(part).

**7-4-102. Office hours.** (1) Unless otherwise provided by law, each officer shall keep the officer's office open for the transaction of business during the office hours determined by the governing body by resolution after a public hearing and only if consented to by any affected elected county officer each day except Saturdays and legal holidays.

(2) County and city treasurers may, in the interest of the safekeeping of funds, securities, and records under their control, close their offices during the period from noon to 1 p.m. every day.

(3) The governing body of a third-class city or town may establish days and times when municipal offices are open to conduct business.

**History:** En. Sec. 1134, Pol. C. 1895; re-en. Sec. 436, Rev. C. 1907; re-en. Sec. 453, R.C.M. 1921; Cal. Pol. C. Sec. 1030; amd. Sec. 1, Ch. 5, L. 1931; re-en. Sec. 453, R.C.M. 1935; amd. Sec. 1, Ch. 22, L. 1951; amd. Sec. 1, Ch. 253, L. 1957; amd. Sec. 1, Ch. 2, L. 1961; amd. Sec. 1, Ch. 33, L. 1961; R.C.M. 1947, 59-510(2)(part); amd. Sec. 1, Ch. 2, Sp. L. June 1989; amd. Sec. 2, Ch. 216, L. 1995.

## Part 22

### County Officers in General

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

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

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

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

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

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

**7-4-2203. County officers.** (1) There may be elected or appointed the following county officers, who shall possess the qualifications for suffrage prescribed by the Montana constitution and other qualifications as may be prescribed by law:

- (a) one county attorney;
  - (b) one clerk of the district court;
  - (c) one county clerk;
  - (d) one sheriff;
  - (e) one treasurer;
  - (f) one auditor if authorized by 7-6-2401;
  - (g) one county superintendent of schools;
  - (h) one county surveyor;
  - (i) one assessor;
  - (j) one coroner;
  - (k) one public administrator; and
  - (l) at least one justice of the peace.
- (2) The commissioners may appoint at their discretion constables. More than one constable may be appointed for each justice's court.

(3) All elective township officers may be elected at each general election as now provided by law.

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

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

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

**7-4-2205. Term of office — oath.** (1) Each person elected to an office named in 7-4-2203 holds the office for the term of 4 years and until a successor is elected and qualified.

(2) A person appointed to any of the different offices serves at the pleasure of the commissioners.

(3) Each officer who is mentioned in this part and who is elected to office shall:

(a) take the oath of office on or before the last business day of December following the officer's election; and

(b) take office at 12:01 a.m. on January 1 following the officer's election.

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

**7-4-2206. Vacancies — appointment of interim officer.** (1) For the purposes of this part, "vacancy" has the same meaning as prescribed in 2-16-501.

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

(b) The commissioners may appoint a person to serve as an interim officer for the time period between occurrence of the vacancy and the date on which the vacancy is filled pursuant to this section. A person appointed as an interim officer must have the qualifications required under this chapter for the office to which the person has been appointed. Upon appointment, the interim officer is authorized to perform the duties assigned by law to that office.

(3) Whenever a vacancy occurs prior to August 1 before the general election held during the second year of the term, an individual must be elected to complete the term at that general election. The election procedure to be used to elect the successor is as follows:

(a) Whenever the vacancy occurs prior to March 1 before the primary election during the second year of the term, the same procedure must be used as is used to elect a person to that office for a full 4-year term.

(b) Whenever the vacancy occurs on or after March 1 before the primary election, any political party desiring to enter a candidate in a partisan election in the general election shall select a candidate as provided in 13-38-204. A political party shall notify the county election administrator of the party nominee. A person desiring to be a candidate as an independent shall follow the procedures provided in 13-10-501 and 13-10-502. The petition for an independent candidate must be filed with the county election administrator prior to August 1 before the general election. A candidate for a nonpartisan office shall file as provided in Title 13, chapter 14.

(4) Whenever a vacancy occurs after July 31 before the general election held during the second year of the term, the person appointed by the commissioners under subsection (2) shall serve until the end of the term.

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

**Compiler's Comments**

*2017 Amendment:* Chapter 372 in (4) after "a vacancy occurs" deleted "on or". Amendment effective July 1, 2017.

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

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

**7-4-2208. Absence of county officers from state.** (1) Subject to subsection (2) and except as provided in 10-1-1008, if a county officer is absent from the state for a period of more than 30 consecutive days without the consent of the board of county commissioners, the officer forfeits the office.



(2) If the county officer who is seeking consent to be absent from the state for more than 30 consecutive days is a member of the board of county commissioners, the officer may participate in the vote on the question of providing consent for the absence.

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

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

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

**7-4-2210. Restriction on practice of law by certain officers.** (1) Sheriffs, clerks, constables, and their deputies are prohibited from practicing law or acting as attorneys or counselors at law or having as a partner a lawyer or one who acts as a lawyer.

(2) A county clerk, clerk of any court, or sheriff may not act as an agent or solicitor in the prosecution of any claim or application for lands, pensions, patent rights, or other proceedings before any department of the state or general government or courts of the United States during the person's continuance in office.

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

**7-4-2211. County offices.** (1) All county officers, except justices of the peace as set forth in 3-10-101, must keep their offices at the county seat.

(2) (a) The sheriff, the county clerk, the clerk of the district court, the treasurer, the county attorney, the county auditor in counties in which that officer is maintained, and the county assessor shall keep their offices open for the transaction of business during the office hours determined by the governing body by resolution after a public hearing and only if consented to by any affected elected county officer, every day in the year except legal holidays and Saturdays.

(b) This subsection (2) does not apply to counties operating under the county manager plan.

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

**7-4-2212. Official bonds of county officers.** (1) The bonds of county officers are fixed by Title 2, chapter 9, part 7.

(2) Except in criminal prosecutions, whenever any special penalty, forfeiture, or liability is imposed on any officer for nonperformance or malperformance of official duty, the liability therefor attaches to the official bond of such officer and to the principal and sureties thereon.

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

**7-4-2213. Inspection of official bonds.** (1) At a regular meeting of the board of county commissioners in March and September of each year, the board of county commissioners shall carefully examine all official bonds of all county and township officials then in force and effect and investigate the qualifications and financial condition and liability of all sureties on the bonds and their sufficiency.

(2) If it appears to the satisfaction of the board or a majority of the members of the board that any surety upon any bond has, since the approval and acceptance of the bond, died or withdrawn, left the state, disposed of all of the surety's property in this state, or become mentally ill, insolvent, financially embarrassed, or not good and responsible for the amount of the liability on the bond, the board shall immediately cause the clerk of the board to notify in writing the judge of the district court of that district of its action and conclusion and all facts in connection with and the reasons for the action.

(3) The judge shall take notice of and investigate the matter and take steps, by order to show cause or other order, citation, step, or action, as may be necessary to make the bond good and sufficient according to the requirements of law and ample security for the amount of the bond.

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

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

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

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

**7-4-2222. Substitution of reproduction for original document.** (1) Any document, plat, paper, written instrument, or book reproduced as provided in 7-4-2221 can be disposed of or destroyed only upon order of the district or probate court having jurisdiction, and the reproductions may be substituted as public records.

(2) The copy of any record destroyed or disposed of as authorized in this section or a certified copy thereof is admissible as evidence in any court or proceeding and has the same force and effect as though the original record had been produced and proved.

(3) It is the duty of the custodian of the records to prepare enlarged typed or photographic copies of the records whenever their production is required by law.

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

**7-4-2223. Duplicate records — safe storage of one copy.** (1) Whenever any record or document is copied or reproduced as provided in 7-4-2221, it must be made in duplicate.

(2) The custodian of the record or document shall place the master copy, the contents of the copy being first identified and indexed, in a fireproof vault or fireproof storage place. The custodian shall retain the other copy in the office with suitable equipment for reproducing the record or document for persons entitled to the record or document.

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

## Part 24 Deputy Officers in General

**7-4-2401. Deputy officers.** (1) Each county and township officer, except a justice of the peace and the county assessor, may appoint as many deputies or assistants as may be necessary for the faithful and prompt discharge of the duties of the office. All compensation or salary of any deputy or assistant must be as provided in this code.

(2) The appointment of deputies, clerks, and subordinate officers of counties, districts, and townships must be made in writing and filed in the office of the county clerk and recorder.

**History:** (1)En. Sec. 4318, Pol. C. 1895; re-en. Sec. 2963, Rev. C. 1907; re-en. Sec. 4731, R.C.M. 1921; Cal. Pol. C. Sec. 4112; re-en. Sec. 4731, R.C.M. 1935; amd. Sec. 2, Ch. 309, L. 1973; Sec. 16-2409, R.C.M. 1947; (2) En. Sec. 4319, Pol. C. 1895; re-en. Sec. 2964, Rev. C. 1907; re-en. Sec. 4732, R.C.M. 1921; Cal. Pol. C. Sec. 4113; re-en. Sec. 4732, R.C.M. 1935; Sec. 16-2410, R.C.M. 1947; R.C.M. 1947, 16-2409, 16-2410; amd. Sec. 7, Ch. 27, Sp. L. November 1993.

**7-4-2402. Authorization to exceed limitation on number of deputy officers.** The board of county commissioners in each county is hereby authorized to fix and determine the number of county deputy officers and to allow the several county officers to appoint a greater number of deputies than the maximum number allowed by law when, in the judgment of the

board, such greater number of deputies is needed for the faithful and prompt discharge of the duties of any county office.

**History:** Ap. p. Sec. 1, Ch. 178, L. 1907; re-en. Sec. 3123, Rev. C. 1907; re-en. Sec. 4878, R.C.M. 1921; re-en. Sec. 4878, R.C.M. 1935; Sec. 16-3704, R.C.M. 1947; Ap. p. Sec. 2, Ch. 222, L. 1919; amd. Sec. 1, Ch. 204, L. 1921; re-en. Sec. 4874, R.C.M. 1921; amd. Sec. 1, Ch. 82, L. 1923; re-en. Sec. 4874, R.C.M. 1935; amd. Sec. 1, Ch. 87, L. 1943; amd. Sec. 1, Ch. 151, L. 1945; amd. Sec. 1, Ch. 47, L. 1947; amd. Sec. 1, Ch. 136, L. 1951; amd. Sec. 1, Ch. 365, L. 1971; Sec. 25-604, R.C.M. 1947; R.C.M. 1947, 16-3704(part), 25-604(part).

**7-4-2403. Official mention of principal officer includes deputies.** Whenever the official name of any principal officer is used in any law conferring power or imposing duties or liabilities, it includes the officer's deputies.

**History:** En. Sec. 4320, Pol. C. 1895; re-en. Sec. 2965, Rev. C. 1907; re-en. Sec. 4733, R.C.M. 1921; Cal. Pol. C. Sec. 4114; re-en. Sec. 4733, R.C.M. 1935; R.C.M. 1947, 16-2411; amd. Sec. 412, Ch. 61, L. 2007.

**7-4-2404. Limitation on county officer acting as deputy officer.** No county officer under salary must be appointed or act as deputy of another officer of the same county except in cases where the officer so appointed agrees to act and serve as such deputy without additional compensation.

**History:** En. Sec. 962, Pol. C. 1895; re-en. Sec. 344, Rev. C. 1907; re-en. Sec. 412, R.C.M. 1921; Cal. Pol. C. Sec. 843; amd. Sec. 1, Ch. 21, L. 1925; re-en. Sec. 412, R.C.M. 1935; R.C.M. 1947, 59-303.

**7-4-2405. Appointment of deputies in certain counties.** (1) A deputy county officer or deputy designated by a county officer may not be appointed in a county having a taxable valuation of less than \$5 million and a population of less than 2,000 unless the appointment, term of service, and compensation is authorized by the board of county commissioners.

(2) The board may not approve any compensation in payment for services of a person appointed by or acting under an elected or appointed officer of the county if the person's appointment has not been authorized by the board as provided in this section.

**History:** (1)En. Sec. 1, Ch. 168, L. 1941; Sec. 16-3707, R.C.M. 1947; (2)En. Sec. 2, Ch. 168, L. 1941; Sec. 16-3708, R.C.M. 1947; R.C.M. 1947, 16-3707, 16-3708; amd. Sec. 10, Ch. 128, L. 2011.

## Part 30 County Offices

**7-4-3005. Office of county superintendent of schools.** The duties and functions of the office of county superintendent of schools are provided for in Title 20.

**History:** En. by Code Commissioner, 1979.

## CHAPTER 5 GENERAL OPERATION AND CONDUCT OF BUSINESS

### Part 21 Conduct of County Government

**7-5-2146. Membership in associations of county school superintendents — payment of expenses.** (1) The county superintendents of schools of the counties of Montana may obtain county membership in and cooperate with associations and organizations of county school superintendents of the state and of other states for the benefit of good government and the protection of county interests.

(2) County school superintendents of the counties of the state are entitled to expenses as provided for state officials in 2-18-501 through 2-18-503 for attendance at any general meeting of the Montana association of county school superintendents held within the state, and the proportionate expenses and charges against each county as a member of such an association must be paid by the county.

**History:** En. Sec. 1, Ch. 46, L. 1989.

## CHAPTER 6 FINANCIAL ADMINISTRATION AND TAXATION

### Part 2 Deposit and Investment of Public Money

**7-6-201. Deposit of public funds in financial institutions.** (1) Except as provided in 7-6-202, 7-6-206, or 7-6-2701, it is the duty of all county and city treasurers and town clerks to deposit all public money in their possession and under their control only in solvent banks, building and loan associations, savings and loan associations, or credit unions, subject to national supervision or state examination as the local governing body may designate.

(2) The local governing body may deposit public money not necessary for immediate use by the county, city, or town in a savings or time deposit with any bank, building and loan association, savings and loan association, or credit union authorized in subsection (1) or in a repurchase agreement as authorized in 7-6-213.

(3) The treasurer or town clerk shall take from the bank, building and loan association, savings and loan association, or credit union security that the local governing body may prescribe, approve, and consider fully sufficient and necessary to ensure the safety and prompt payment of all deposits, together with the interest on any time or savings deposits.

(4) All deposits must be subject to withdrawal by the treasurer or town clerk in amounts that may be necessary from time to time. A deposit of funds may not be made or permitted to remain in any bank, building and loan association, savings and loan association, or credit union until the security for the deposit has been first approved by the local governing body and delivered to the treasurer or town clerk.

**History:** En. Sec. 4367, Pol. C. 1895; amd. Sec. 1, Ch. 5, L. 1903; amd. Sec. 3003, Rev. C. 1907; amd. Sec. 1, Ch. 88, L. 1913; re-en. Sec. 4767, R.C.M. 1921; Cal. Pol. C. Sec. 4161; amd. Sec. 1, Ch. 89, L. 1923; amd. Sec. 1, Ch. 137, L. 1925; amd. Sec. 1, Ch. 134, L. 1927; amd. Sec. 1, Ch. 49, L. 1929; amd. Sec. 1, Ch. 23, Ex. L. 1933; re-en. Sec. 4767, R.C.M. 1935; amd. Sec. 1, Ch. 50, L. 1957; amd. Sec. 1, Ch. 66, L. 1961; amd. Sec. 1, Ch. 40, L. 1963; amd. Sec. 1, Ch. 32, L. 1965; amd. Sec. 1, Ch. 258, L. 1969; amd. Sec. 1, Ch. 499, L. 1973; amd. Sec. 1, Ch. 43, L. 1974; amd. Sec. 106, Ch. 348, L. 1974; amd. Sec. 1, Ch. 160, L. 1975; amd. Sec. 28, Ch. 213, L. 1975; amd. Sec. 2, Ch. 304, L. 1975; amd. Sec. 1, Ch. 539, L. 1975; R.C.M. 1947, 16-2618(part); amd. Sec. 2, Ch. 329, L. 1981; amd. Sec. 1, Ch. 421, L. 1985; amd. Sec. 1, Ch. 90, L. 1989; amd. Sec. 14, Ch. 291, L. 2009.

**7-6-202. Investment of public money in direct obligations of United States.** (1) A local governing body may invest public money not necessary for immediate use by the county, city, or town in the following eligible securities:

(a) United States government treasury bills, notes, and bonds and in United States treasury obligations, such as state and local government series (SLGS), separate trading of registered interest and principal of securities (STRIPS), or similar United States treasury obligations;

(b) United States treasury receipts in a form evidencing the holder's ownership of future interest or principal payments on specific United States treasury obligations that, in the absence of payment default by the United States, are held in a special custody account by an independent trust company in a certificate or book-entry form with the federal reserve bank of New York; or

(c) obligations of the following agencies of the United States, subject to the limitations in subsection (2):

- (i) federal home loan bank;
- (ii) federal national mortgage association;
- (iii) federal home mortgage corporation; and
- (iv) federal farm credit bank.

(2) An investment in an agency of the United States is authorized under this section if the investment is a general obligation of the agency and has a fixed or zero-coupon rate and does not have prepayments that are based on underlying assets or collateral, including but not limited to residential or commercial mortgages, farm loans, multifamily housing loans, or student loans.

(3) The local governing body may invest in a United States government security money market fund if:

(a) the fund is sold and managed by a management-type investment company or investment trust registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 through 80a-64), as may be amended;



- (b) the fund consists only of eligible securities as described in this section;
  - (c) the use of repurchase agreements is limited to agreements that are fully collateralized by the eligible securities, as described in this section, and the investment company or investment trust takes delivery of the collateral for any repurchase agreement, either directly or through an authorized custodian;
  - (d) the fund is listed in a national financial publication under the category of “money market mutual funds”, showing the fund’s average maturity, yield, and asset size; and
  - (e) the fund’s average maturity does not exceed 397 days.
- (4) Except as provided in subsections (5) and (6), an investment authorized in this part may not have a maturity date exceeding 5 years, except when the investment is used in an escrow account to refund an outstanding bond issue in advance.
- (5) An investment of the assets of a local government group self-insurance program established pursuant to 2-9-211 or 39-71-2103 in an investment authorized in this part may not have a maturity date exceeding 10 years, and the average maturity of all those authorized investments of a local government group self-insurance program may not exceed 6 years.
- (6) An investment in zero-coupon United States government treasury bills, notes, and bonds purchased as a sinking fund investment for a balloon payment on qualified construction bonds described in 17-5-116(1) may have a maturity date exceeding 5 years if:
- (a) the maturity date of the United States government treasury bills, notes, and bonds is on or before the date of the balloon payment; and
  - (b) the school district trustees provide written consent.
- (7) This section may not be construed to prevent the investment of public funds under the state unified investment program established in Title 17, chapter 6, part 2.

**History:** En. Sec. 4367, Pol. C. 1895; amd. Sec. 1, Ch. 5, L. 1903; amd. Sec. 3003, Rev. C. 1907; amd. Sec. 1, Ch. 88, L. 1913; re-en. Sec. 4767, R.C.M. 1921; Cal. Pol. C. Sec. 4161; amd. Sec. 1, Ch. 89, L. 1923; amd. Sec. 1, Ch. 137, L. 1925; amd. Sec. 1, Ch. 134, L. 1927; amd. Sec. 1, Ch. 49, L. 1929; amd. Sec. 1, Ch. 23, Ex. L. 1933; re-en. Sec. 4767, R.C.M. 1935; amd. Sec. 1, Ch. 50, L. 1957; amd. Sec. 1, Ch. 66, L. 1961; amd. Sec. 1, Ch. 40, L. 1963; amd. Sec. 1, Ch. 32, L. 1965; amd. Sec. 1, Ch. 258, L. 1969; amd. Sec. 1, Ch. 499, L. 1973; amd. Sec. 1, Ch. 43, L. 1974; amd. Sec. 106, Ch. 348, L. 1974; amd. Sec. 1, Ch. 160, L. 1975; amd. Sec. 28, Ch. 213, L. 1975; amd. Sec. 2, Ch. 304; L. 1975; amd. Sec. 1, Ch. 539, L. 1975; R.C.M. 1947, 16-2618(part); amd. Sec. 1, Ch. 620, L. 1985; amd. Sec. 1, Ch. 201, L. 1989; amd. Sec. 1, Ch. 271, L. 1993; amd. Sec. 1, Ch. 406, L. 1995; amd. Sec. 1, Ch. 131, L. 1997; amd. Sec. 1, Ch. 306, L. 2011.

**7-6-203. Interest rates on deposits of public money.** (1) The bank, building and loan association, savings and loan association, or credit union in which the money is deposited shall pay on the money no less than the rate of interest as is paid on money from private sources on the same terms.

(2) Refusal of any bank, building and loan association, savings and loan association, or credit union to pay said interest rate shall constitute a waiver of that institution’s right to participate in the deposit of public funds as set forth in this part.

**History:** En. Sec. 4367, Pol. C. 1895; amd. Sec. 1, Ch. 5, L. 1903; amd. Sec. 3003, Rev. C. 1907; amd. Sec. 1, Ch. 88, L. 1913; re-en. Sec. 4767, R.C.M. 1921; Cal. Pol. C. Sec. 4161; amd. Sec. 1, Ch. 89, L. 1923; amd. Sec. 1, Ch. 137, L. 1925; amd. Sec. 1, Ch. 134, L. 1927; amd. Sec. 1, Ch. 49, L. 1929; amd. Sec. 1, Ch. 23, Ex. L. 1933; re-en. Sec. 4767, R.C.M. 1935; amd. Sec. 1, Ch. 50, L. 1957; amd. Sec. 1, Ch. 66, L. 1961; amd. Sec. 1, Ch. 40, L. 1963; amd. Sec. 1, Ch. 32, L. 1965; amd. Sec. 1, Ch. 258, L. 1969; amd. Sec. 1, Ch. 499, L. 1973; amd. Sec. 1, Ch. 43, L. 1974; amd. Sec. 106, Ch. 348, L. 1974; amd. Sec. 1, Ch. 160, L. 1975; amd. Sec. 28, Ch. 213, L. 1975; amd. Sec. 2, Ch. 304; L. 1975; amd. Sec. 1, Ch. 539, L. 1975; R.C.M. 1947, 16-2618(part); amd. Sec. 2, Ch. 421, L. 1985.

**7-6-204. Crediting of interest — exceptions.** (1) Interest paid and collected on deposits or investments must be credited to the general fund of the county, city, or town to whose credit the funds are deposited unless otherwise provided:

- (a) by law;
- (b) by terms of a gift, grant, or donation; or
- (c) by subsections (2) and (3).

(2) Subject to subsection (1), interest paid and collected on the deposits or investments of the funds of a volunteer fire district or department organized in an unincorporated area under Title 7, chapter 33, part 21 or 23, or of a fire service area or county fire department must be credited to the account of that fire district, service area, or department.



(3) Subject to subsection (1), interest paid and collected on the deposits or investments of any fund separately created and accounted for by a county, city, or town may be credited to the separately created fund proportionately to each fund's participation in the deposit or investment.

**History:** (1)En. Sec. 4367, Pol. C. 1895; amd. Sec. 1, Ch. 5, L. 1903; amd. Sec. 3003, Rev. C. 1907; amd. Sec. 1, Ch. 88, L. 1913; re-en. Sec. 4767, R.C.M. 1921; Cal. Pol. C. Sec. 4161; amd. Sec. 1, Ch. 89, L. 1923; amd. Sec. 1, Ch. 137, L. 1925; amd. Sec. 1, Ch. 134, L. 1927; amd. Sec. 1, Ch. 49, L. 1929; amd. Sec. 1, Ch. 23, Ex. L. 1933; re-en. Sec. 4767, R.C.M. 1935; amd. Sec. 1, Ch. 50, L. 1957; amd. Sec. 1, Ch. 66, L. 1961; amd. Sec. 1, Ch. 40, L. 1963; amd. Sec. 1, Ch. 32, L. 1965; amd. Sec. 1, Ch. 258, L. 1969; amd. Sec. 1, Ch. 499, L. 1973; amd. Sec. 1, Ch. 43, L. 1974; amd. Sec. 106, Ch. 348, L. 1974; amd. Sec. 1, Ch. 160, L. 1975; amd. Sec. 28, Ch. 213, L. 1975; amd. Sec. 2, Ch. 304; L. 1975; amd. Sec. 1, Ch. 539, L. 1975; R.C.M. 1947, 16-2618(part); (2)En. Sec. 1, Ch. 486, L. 1979; amd. Sec. 28, Ch. 575, L. 1981; amd. Sec. 1, Ch. 130, L. 1993; amd. Sec. 44, Ch. 278, L. 2001; amd. Sec. 1, Ch. 214, L. 2003; amd. Sec. 4, Ch. 449, L. 2007.

**7-6-205. Demand deposits.** Demand deposits may be placed only in banks.

**History:** En. Sec. 4367, Pol. C. 1895; amd. Sec. 1, Ch. 5, L. 1903; amd. Sec. 3003, Rev. C. 1907; amd. Sec. 1, Ch. 88, L. 1913; re-en. Sec. 4767, R.C.M. 1921; Cal. Pol. C. Sec. 4161; amd. Sec. 1, Ch. 89, L. 1923; amd. Sec. 1, Ch. 137, L. 1925; amd. Sec. 1, Ch. 134, L. 1927; amd. Sec. 1, Ch. 49, L. 1929; amd. Sec. 1, Ch. 23, Ex. L. 1933; re-en. Sec. 4767, R.C.M. 1935; amd. Sec. 1, Ch. 50, L. 1957; amd. Sec. 1, Ch. 66, L. 1961; amd. Sec. 1, Ch. 40, L. 1963; amd. Sec. 1, Ch. 32, L. 1965; amd. Sec. 1, Ch. 258, L. 1969; amd. Sec. 1, Ch. 499, L. 1973; amd. Sec. 1, Ch. 43, L. 1974; amd. Sec. 106, Ch. 348, L. 1974; amd. Sec. 1, Ch. 160, L. 1975; amd. Sec. 28, Ch. 213, L. 1975; amd. Sec. 2, Ch. 304; L. 1975; amd. Sec. 1, Ch. 539, L. 1975; R.C.M. 1947, 16-2618(4)(a); amd. Sec. 1, Ch. 229, L. 1997.

**7-6-206. Time deposits — repurchase agreement.** (1) Public money not necessary for immediate use by a county, city, or town that is not invested as authorized in 7-6-202 may be placed in time or savings deposits with a bank, savings and loan association, or credit union in the state or placed in repurchase agreements as authorized in 7-6-213. Money placed in repurchase agreements is subject to subsection (2).

(2) The local governing body may solicit bids for time or savings deposits from a bank, savings and loan association, or credit union in the state. The local governing body may deposit public money in the institutions unless a local financial institution agrees to pay the same rate of interest bid by a financial institution not located in the county, city, or town. The governing body may solicit bids by notice sent by mail to the investment institutions that have requested that their names be listed for bid notice with the department of administration.

(3) In addition to other investments authorized under 7-6-202 and this section, public money not necessary for immediate use by a county, city, or town may be invested in accordance with the following conditions:

(a) the money is initially invested through a federally insured financial institution in the state selected by the governing body;

(b) the selected in-state financial institution arranges for the deposit of the funds in an account of the county, city, or town in one or more federally insured financial institutions, regardless of location;

(c) the full amount of principal and accrued interest on each deposit is covered by federal deposit insurance; and

(d) the selected in-state financial institution acts as the custodian for the county, city, or town with respect to the deposit issued for its account.

**History:** En. Sec. 4367, Pol. C. 1895; amd. Sec. 1, Ch. 5, L. 1903; amd. Sec. 3003, Rev. C. 1907; amd. Sec. 1, Ch. 88, L. 1913; re-en. Sec. 4767, R.C.M. 1921; Cal. Pol. C. Sec. 4161; amd. Sec. 1, Ch. 89, L. 1923; amd. Sec. 1, Ch. 137, L. 1925; amd. Sec. 1, Ch. 134, L. 1927; amd. Sec. 1, Ch. 49, L. 1929; amd. Sec. 1, Ch. 23, Ex. L. 1933; re-en. Sec. 4767, R.C.M. 1935; amd. Sec. 1, Ch. 50, L. 1957; amd. Sec. 1, Ch. 66, L. 1961; amd. Sec. 1, Ch. 40, L. 1963; amd. Sec. 1, Ch. 32, L. 1965; amd. Sec. 1, Ch. 258, L. 1969; amd. Sec. 1, Ch. 499, L. 1973; amd. Sec. 1, Ch. 43, L. 1974; amd. Sec. 106, Ch. 348, L. 1974; amd. Sec. 1, Ch. 160, L. 1975; amd. Sec. 28, Ch. 213, L. 1975; amd. Sec. 2, Ch. 304; L. 1975; amd. Sec. 1, Ch. 539, L. 1975; R.C.M. 1947, 16-2618(4)(b), (4)(c); amd. Sec. 8, Ch. 634, L. 1979; amd. Sec. 3, Ch. 329, L. 1981; amd. Sec. 3, Ch. 421, L. 1985; amd. Sec. 2, Ch. 90, L. 1989; amd. Sec. 2, Ch. 271, L. 1993; amd. Sec. 2, Ch. 406, L. 1995; amd. Sec. 1, Ch. 240, L. 2005; amd. Sec. 1, Ch. 52, L. 2013.

**7-6-207. Deposit security.** (1) The local governing body may require security only for that portion of the deposits that is not guaranteed or insured according to law and, as to the unguaranteed or uninsured portion, to the extent of:

(a) 50% of the deposits if the institution in which the deposit is made has a net worth to total assets ratio of 6% or more; or

(b) 100% if the institution in which the deposit is made has a net worth to total assets ratio of less than 6%. The security must consist of those enumerated in 17-6-103 or cashier's checks issued to the depository institution by any federal reserve bank.

(2) When negotiable securities are furnished, the securities may be placed in trust. The trustee's receipt may be accepted in lieu of the actual securities when the receipt is in favor of the treasurer or town clerk and the treasurer's or clerk's successors. All warrants or other negotiable securities must be properly assigned or endorsed in blank. The appropriate governing body shall, upon the acceptance and approval of any of the bonds or securities, make a complete minute entry of the acceptance and approval upon the record of its proceedings, and the bonds and securities must be reappraised at least quarterly.

**History:** En. Sec. 4367, Pol. C. 1895; amd. Sec. 1, Ch. 5, L. 1903; amd. Sec. 3003, Rev. C. 1907; amd. Sec. 1, Ch. 88, L. 1913; re-en. Sec. 4767, R.C.M. 1921; Cal. Pol. C. Sec. 4161; amd. Sec. 1, Ch. 89, L. 1923; amd. Sec. 1, Ch. 137, L. 1925; amd. Sec. 1, Ch. 134, L. 1927; amd. Sec. 1, Ch. 49, L. 1929; amd. Sec. 1, Ch. 23, Ex. L. 1933; re-en. Sec. 4767, R.C.M. 1935; amd. Sec. 1, Ch. 50, L. 1957; amd. Sec. 1, Ch. 66, L. 1961; amd. Sec. 1, Ch. 40, L. 1963; amd. Sec. 1, Ch. 32, L. 1965; amd. Sec. 1, Ch. 258, L. 1969; amd. Sec. 1, Ch. 499, L. 1973; amd. Sec. 1, Ch. 43, L. 1974; amd. Sec. 106, Ch. 348, L. 1974; amd. Sec. 1, Ch. 160, L. 1975; amd. Sec. 28, Ch. 213, L. 1975; amd. Sec. 2, Ch. 304; L. 1975; amd. Sec. 1, Ch. 539, L. 1975; R.C.M. 1947, 16-2618(2), (3); amd. Sec. 1, Ch. 158, L. 1979; amd. Sec. 2, Ch. 252, L. 1979; amd. Sec. 7, Ch. 274, L. 1981; amd. Sec. 1, Ch. 217, L. 1983; amd. Sec. 1, Ch. 287, L. 1983; amd. Sec. 2, Ch. 620, L. 1985; amd. Sec. 472, Ch. 61, L. 2007.

**7-6-208. Substitution of deposit security.** (1) Any bank, building and loan association, savings and loan association, or credit union pledging securities as provided in 7-6-207, at any time it deems advisable or desirable, may substitute like securities for all or any part of the securities pledged. The collateral so substituted shall be approved by the governing body of the county, city, or town at its next official meeting.

(2) Such securities so substituted shall at the time of substitution be at least equal in principal amount to the securities for which substitution is made. In the event that the securities so substituted are held in trust, the trustee shall, on the same day the substitution is made, forward a receipt by registered or certified mail to the county, city, or town and to the depository bank, building and loan association, savings and loan association, or credit union. The receipt shall specifically describe and identify both the securities so substituted and those released and returned to the depository bank, building and loan association, savings and loan association, or credit union.

**History:** En. Sec. 4367, Pol. C. 1895; amd. Sec. 1, Ch. 5, L. 1903; amd. Sec. 3003, Rev. C. 1907; amd. Sec. 1, Ch. 88, L. 1913; re-en. Sec. 4767, R.C.M. 1921; Cal. Pol. C. Sec. 4161; amd. Sec. 1, Ch. 89, L. 1923; amd. Sec. 1, Ch. 137, L. 1925; amd. Sec. 1, Ch. 134, L. 1927; amd. Sec. 1, Ch. 49, L. 1929; amd. Sec. 1, Ch. 23, Ex. L. 1933; re-en. Sec. 4767, R.C.M. 1935; amd. Sec. 1, Ch. 50, L. 1957; amd. Sec. 1, Ch. 66, L. 1961; amd. Sec. 1, Ch. 40, L. 1963; amd. Sec. 1, Ch. 32, L. 1965; amd. Sec. 1, Ch. 258, L. 1969; amd. Sec. 1, Ch. 499, L. 1973; amd. Sec. 1, Ch. 43, L. 1974; amd. Sec. 106, Ch. 348, L. 1974; amd. Sec. 1, Ch. 160, L. 1975; amd. Sec. 28, Ch. 213, L. 1975; amd. Sec. 2, Ch. 304; L. 1975; amd. Sec. 1, Ch. 539, L. 1975; R.C.M. 1947, 16-2618(7); amd. Sec. 4, Ch. 421, L. 1985.

**7-6-209. Repealed.** Sec. 2, Ch. 217, L. 1983.

**History:** En. Sec. 1, Ch. 44, L. 1931; re-en. Sec. 4767.3, R.C.M. 1935; amd. Sec. 70, Ch. 348, L. 1974; amd. Sec. 29, Ch. 213, L. 1975; R.C.M. 1947, 16-2621; amd. Sec. 7, Ch. 274, L. 1981.

**7-6-210. Repealed.** Sec. 13, Ch. 179, L. 1995.

**History:** En. Sec. 4367, Pol. C. 1895; amd. Sec. 1, Ch. 5, L. 1903; amd. Sec. 3003, Rev. C. 1907; amd. Sec. 1, Ch. 88, L. 1913; re-en. Sec. 4767, R.C.M. 1921; Cal. Pol. C. Sec. 4161; amd. Sec. 1, Ch. 89, L. 1923; amd. Sec. 1, Ch. 137, L. 1925; amd. Sec. 1, Ch. 134, L. 1927; amd. Sec. 1, Ch. 49, L. 1929; amd. Sec. 1, Ch. 23, Ex. L. 1933; re-en. Sec. 4767, R.C.M. 1935; amd. Sec. 1, Ch. 50, L. 1957; amd. Sec. 1, Ch. 66, L. 1961; amd. Sec. 1, Ch. 40, L. 1963; amd. Sec. 1, Ch. 32, L. 1965; amd. Sec. 1, Ch. 258, L. 1969; amd. Sec. 1, Ch. 499, L. 1973; amd. Sec. 1, Ch. 43, L. 1974; amd. Sec. 106, Ch. 348, L. 1974; amd. Sec. 1, Ch. 160, L. 1975; amd. Sec. 28, Ch. 213, L. 1975; amd. Sec. 2, Ch. 304; L. 1975; amd. Sec. 1, Ch. 539, L. 1975; R.C.M. 1947, 16-2618(part); amd. Sec. 7, Ch. 274, L. 1981; amd. Sec. 1, Ch. 287, L. 1983.

**7-6-211. Report by financial institution.** Any bank, building and loan association, savings and loan association, or credit union receiving such deposits shall, through its president and cashier or secretary, make a statement of account quarter-annually, under oath, showing:

(1) all such money that has been deposited with such bank, building and loan association, savings and loan association, or credit union during the quarter;

(2) the amount of daily balance in dollars;

(3) the amount of interest credited or paid therefor by such bank, building and loan association, savings and loan association, or credit union; and

(4) that neither such bank, building and loan association, savings and loan association, or credit union nor any officer thereof nor any person for it has paid or given any consideration or emolument whatsoever to the treasurer or town clerk or to any other person, other than the

interest provided for herein, for or on account of the making of such deposits with any such bank, building and loan association, savings and loan association, or credit union.

**History:** En. Sec. 4367, Pol. C. 1895; amd. Sec. 1, Ch. 5, L. 1903; amd. Sec. 3003, Rev. C. 1907; amd. Sec. 1, Ch. 88, L. 1913; re-en. Sec. 4767, R.C.M. 1921; Cal. Pol. C. Sec. 4161; amd. Sec. 1, Ch. 89, L. 1923; amd. Sec. 1, Ch. 137, L. 1925; amd. Sec. 1, Ch. 134, L. 1927; amd. Sec. 1, Ch. 49, L. 1929; amd. Sec. 1, Ch. 23, Ex. L. 1933; re-en. Sec. 4767, R.C.M. 1935; amd. Sec. 1, Ch. 50, L. 1957; amd. Sec. 1, Ch. 66, L. 1961; amd. Sec. 1, Ch. 40, L. 1963; amd. Sec. 1, Ch. 32, L. 1965; amd. Sec. 1, Ch. 258, L. 1969; amd. Sec. 1, Ch. 499, L. 1973; amd. Sec. 1, Ch. 43, L. 1974; amd. Sec. 106, Ch. 348, L. 1974; amd. Sec. 1, Ch. 160, L. 1975; amd. Sec. 28, Ch. 213, L. 1975; amd. Sec. 2, Ch. 304; L. 1975; amd. Sec. 1, Ch. 539, L. 1975; R.C.M. 1947, 16-2618(part); amd. Sec. 5, Ch. 421, L. 1985.

**7-6-212. Limitation on liability of treasurer or town clerk.** When money has been deposited in accordance with the provisions of this part, the treasurer or town clerk is not liable for loss on account of any deposit that may occur through damage by the elements or for any other cause or reason occasioned through means other than the treasurer's or clerk's own neglect, fraud, or dishonorable conduct.

**History:** En. Sec. 4367, Pol. C. 1895; amd. Sec. 1, Ch. 5, L. 1903; amd. Sec. 3003, Rev. C. 1907; amd. Sec. 1, Ch. 88, L. 1913; re-en. Sec. 4767, R.C.M. 1921; Cal. Pol. C. Sec. 4161; amd. Sec. 1, Ch. 89, L. 1923; amd. Sec. 1, Ch. 137, L. 1925; amd. Sec. 1, Ch. 134, L. 1927; amd. Sec. 1, Ch. 49, L. 1929; amd. Sec. 1, Ch. 23, Ex. L. 1933; re-en. Sec. 4767, R.C.M. 1935; amd. Sec. 1, Ch. 50, L. 1957; amd. Sec. 1, Ch. 66, L. 1961; amd. Sec. 1, Ch. 40, L. 1963; amd. Sec. 1, Ch. 32, L. 1965; amd. Sec. 1, Ch. 258, L. 1969; amd. Sec. 1, Ch. 499, L. 1973; amd. Sec. 1, Ch. 43, L. 1974; amd. Sec. 106, Ch. 348, L. 1974; amd. Sec. 1, Ch. 160, L. 1975; amd. Sec. 28, Ch. 213, L. 1975; amd. Sec. 2, Ch. 304; L. 1975; amd. Sec. 1, Ch. 539, L. 1975; R.C.M. 1947, 16-2618(part); amd. Sec. 473, Ch. 61, L. 2007.

**7-6-213. Repurchase agreements — bidding.** (1) After qualifying as provided in subsection (5), a financial institution may contract with a local governing body to establish one or more repurchase agreements, including daily repurchase agreements.

(2) A repurchase agreement is a contract that specifies the minimum and maximum of public money that the local governing body will invest under the contract in securities that the financial institution will sell to the local governing body and that the financial institution will repurchase on mutually agreeable terms.

(3) A repurchase agreement is not a demand account.

(4) The local governing body may maintain in the same financial institution contracting for the repurchase agreement a demand account into which each business day shall be deposited a sum equal to the day's disbursements, and that deposit will be the proceeds of the redemption by the financial institution of securities previously purchased by the local governing body under the provisions of the repurchase agreement, so that the balance of the demand account at the close of each day's business will be zero.

(5) The local governing body shall call for bids as provided in 7-6-206 to contract for a repurchase agreement from all financial institutions chartered to do business in the state of Montana which are authorized to accept demand deposits and to buy and sell securities. The call for bids shall specify the minimum acceptable rate of interest, effective date of the repurchase agreement and the period of duration and range of funds to be invested.

**History:** En. Sec. 1, Ch. 329, L. 1981; amd. Sec. 3, Ch. 620, L. 1985.

## Part 5

### Local Government Levy for Juvenile Detention Programs

**7-6-501. Definitions.** As used in 7-6-502 and this section, unless the context requires otherwise, the following definitions apply:

(1) "Detention" means the holding or temporary placement of a youth in a facility other than the youth's own home for the purpose of ensuring the continued custody of the youth at any time after the youth is taken into custody and before final disposition of the youth's case.

(2) "Juvenile detention program" means services to provide for the lawful detention or shelter care of youth. The term includes:

(a) youth evaluations ordered by the court under 41-5-1503, 41-5-1512, or 41-5-1513;

(b) programs for the transportation of youth to appropriate detention facilities or shelter care facilities; and

(c) an educational program for youth in need of that service.

(3) "Local government" has the same meaning as provided in 7-12-1103.

(4) “Shelter care” has the same meaning as provided in 41-5-103.

(5) “Youth” means an individual who is less than 18 years of age who is alleged to be a delinquent youth or youth in need of intervention as those terms are defined in 41-5-103.

**History:** En. Sec. 1, Ch. 745, L. 1991; amd. Sec. 1, Ch. 286, L. 1997; amd. Sec. 1, Ch. 550, L. 1997; amd. Sec. 2, Ch. 536, L. 1999.

**7-6-502. Levy for juvenile detention programs.** (1) Subject to 15-10-420, a local government may impose a levy on the taxable value of all property within its jurisdiction in an amount determined by the governing body for the purpose of financing the establishment and operation of juvenile detention programs.

(2) Local governments may use the funds derived from a levy authorized in subsection (1) to contract with other units of local government to purchase services from available juvenile detention programs consistent with the purposes of the levy as stated in subsection (1).

**History:** En. Sec. 2, Ch. 745, L. 1991; amd. Sec. 16, Ch. 574, L. 2001.

## **Part 11**

### **Tax and Revenue Anticipation Notes**

**7-6-1101. Definitions.** As used in this part, unless the context clearly requires otherwise, the following definitions apply:

(1) “Governing body” means the legislative authority of a local government, by whatever name designated.

(2) “Local government” means any city, town, county, consolidated city-county, or school district.

(3) “Ordinance” means an ordinance or resolution of the local government.

(4) “Short-term obligations” are tax anticipation notes or revenue anticipation notes that mature at a time not to exceed 13 months from the date issued.

**History:** En. Sec. 1, Ch. 481, L. 1985.

**7-6-1102. Short-term obligations authorized.** A local government may issue and sell short-term obligations as provided in this part in anticipation of taxes or revenues budgeted to be received and appropriated for expenditure during the fiscal year in which the obligations are issued. The proceeds of the obligations may be expended solely for the purposes for which the taxes or revenues were appropriated and for costs and expenses incident to the issuance and sale thereof. Pending expenditure, the proceeds may be invested as provided by law. The principal and interest on short-term obligations must be repaid from the money derived from the taxes and revenues in anticipation of which they were issued, income from investment of the proceeds of the obligations, and any money otherwise legally available for this purpose.

**History:** En. Sec. 2, Ch. 481, L. 1985.

**7-6-1103. Issuance and sale of short-term obligations — procedure.** (1) The issuance of short-term obligations must be authorized by an ordinance of the governing body that fixes the maximum amount of the obligations to be issued or, if applicable, the maximum amount that may be outstanding at any time, the maximum term and interest rate or rates to be borne by the obligations, the manner of sale, the maximum price, the form including bearer or registered as provided in Title 17, chapter 5, part 11, the terms, the conditions, and the covenants of the obligations. Short-term obligations issued under this section must bear fixed or variable rate or rates of interest that the governing body considers to be in the best interests of the local government. Variable rates of interest may be fixed in relationship to the standard or index that the governing body designates.

(2) The governing body may sell the short-term obligations at par or at a discount:

(a) at private negotiated sale to the board of investments as provided in Title 17, chapter 5, part 16; or

(b) at public sale to any other person. Any public sale must be noticed as provided in 7-7-4434.

**History:** En. Sec. 3, Ch. 481, L. 1985; amd. Sec. 4, Ch. 581, L. 1987; amd. Sec. 1, Ch. 423, L. 1995.

**7-6-1104 reserved.**



**7-6-1105. Refunding and renewal of short-term obligations.** Short-term obligations may, from time to time, be renewed or refunded by the issuance of short-term obligations. Short-term obligations may not be renewed or refunded to a date later than 6 months from the end of the fiscal year in which the original short-term obligation was issued.

History: En. Sec. 4, Ch. 481, L. 1985.

**7-6-1106 through 7-6-1110 reserved.**

**7-6-1111. Short-term obligations — security.** Short-term obligations are general obligations of the local government and must be secured by the taxes and revenues in anticipation of which the short-term obligations were issued and in such other manner as set forth in the ordinance authorizing their issuance.

History: En. Sec. 5, Ch. 481, L. 1985.

**7-6-1112. Funds for payment of principal and interest.** For the purpose of providing funds for the payment of principal of and interest on short-term obligations, the governing body may authorize the creation of a special fund or funds and provide for the payment from authorized sources to such funds of amounts sufficient to meet principal and interest requirements.

History: En. Sec. 6, Ch. 481, L. 1985.

**7-6-1113 and 7-6-1114 reserved.**

**7-6-1115. Local government debt limitations not to apply to short-term obligations.** The debt limitations for local governments in Title 7, chapter 7, and Title 20, chapter 9, do not apply to short-term obligations issued in accordance with this part.

History: En. Sec. 7, Ch. 481, L. 1985.

**7-6-1116. Authority cumulative.** The authority granted by this part is in addition and supplemental to any other authority granted and does not limit any other authority previously granted to any local government.

History: En. Sec. 8, Ch. 481, L. 1985.

## Part 26 County Warrants

**7-6-2601. Details related to county warrants — payments to state — definition.** (1) Warrants issued pursuant to 7-6-2202(1) must be signed by the county clerk and the presiding officer of the board of county commissioners, except warrants drawn on the redemption fund.

(2) All warrants issued by the county clerk during each year, commencing with the first Monday in January, must be numbered consecutively. The number, date, and amount of each warrant, the name of the person to whom it is payable, and the purpose for which it is drawn must be stated on the warrant. Warrants must, at the time they are issued, be registered by the county clerk.

(3) Warrants drawn by order of the board on the county treasury for the current expenses during each year must specify the liability for which they are drawn and when the liability accrued.

(4) All payments to the state treasurer or a state agency must be made by electronic funds transfer if requested by the state treasurer or the state agency and if the county has the technology to conduct electronic funds transfers.

(5) For the purposes of this part, “warrant” includes a check and an electronic funds transfer.

History: (1)En. Sec. 4424, Pol. C. 1895; re-en. Sec. 3045, Rev. C. 1907; re-en. Sec. 4811, R.C.M. 1921; Cal. Pol. C. Sec. 4204; amd. Sec. 1, Ch. 79, L. 1923; re-en. Sec. 4811, R.C.M. 1935; Sec. 16-2917, R.C.M. 1947; (2) En. Sec. 4425, Pol. C. 1895; re-en. Sec. 3046, Rev. C. 1907; re-en. Sec. 4812, R.C.M. 1921; Cal. Pol. C. Sec. 4219; re-en. Sec. 4812, R.C.M. 1935; Sec. 16-2918, R.C.M. 1947; (3)En. Sec. 4290, Pol. C. 1895; re-en. Sec. 2949, Rev. C. 1907; re-en. Sec. 4612, R.C.M. 1921; Cal. Pol. C. Sec. 4076; re-en. Sec. 4612, R.C.M. 1935; R.C.M. 1947, 16-1810(part), 16-2917(part), 16-2918; amd. Sec. 23, Ch. 252, L. 1979; amd. Sec. 51, Ch. 278, L. 2001; amd. Sec. 1, Ch. 432, L. 2005.

**7-6-2602. Payment of warrants.** The county treasurer may not pay any order or warrant except to the payee of the warrant or to the payee’s agent, assignee, or legal representative, whose authority must be in writing and delivered to the county treasurer. The written authority must be returned with the order or warrant, when paid, to the board of county commissioners.



**History:** Ap. p. Sec. 4352, Pol. C. 1895; re-en. Sec. 2988, Rev. C. 1907; re-en. Sec. 4752, R.C.M. 1921; Cal. Pol. C. Sec. 4147; re-en. Sec. 4752, R.C.M. 1935; Sec. 16-2603, R.C.M. 1947; Ap. p. Sec. 4290, Pol. C. 1895; re-en. Sec. 2949, Rev. C. 1907; re-en. Sec. 4612, R.C.M. 1921; Cal. Pol. C. Sec. 4076; re-en. Sec. 4612, R.C.M. 1935; Sec. 16-1810, R.C.M. 1947; (2)En. Sec. 98, p. 453, Cod. Stat. 1871; re-en. Sec. 444, 5th Div. Rev. Stat. 1879; re-en. Sec. 897, 5th Div. Comp. Stat. 1887; re-en. Sec. 4357, Pol. C. 1895; re-en. Sec. 2993, Rev. C. 1907; re-en. Sec. 4757, R.C.M. 1921; re-en. Sec. 4757, R.C.M. 1935; Sec. 16-2608, R.C.M. 1947; R.C.M. 1947, 16-1810(part), 16-2603, 16-2608(part); amd. Sec. 52, Ch. 278, L. 2001.

**7-6-2603. Registration of warrants.** (1) If the fund is insufficient to pay a warrant, it must be registered and paid in the order of its registration.

(2) The county treasurer may not register any county order or warrant in the name of any person other than the payee except at the request of the payee or the payee's agent, assignee, or legal representative, whose authority must be produced to the treasurer in writing.

**History:** (1)En. Sec. 4290, Pol. C. 1895; re-en. Sec. 2949, Rev. C. 1907; re-en. Sec. 4612, R.C.M. 1921; Cal. Pol. C. Sec. 4076; re-en. Sec. 4612, R.C.M. 1935; Sec. 16-1810, R.C.M. 1947; (2)En. Sec. 98, p. 453, Cod. Stat. 1871; re-en. Sec. 444, 5th Div. Rev. Stat. 1879; re-en. Sec. 897, 5th Div. Comp. Stat. 1887; re-en. Sec. 4357, Pol. C. 1895; re-en. Sec. 2993, Rev. C. 1907; re-en. Sec. 4757, R.C.M. 1921; re-en. Sec. 4757, R.C.M. 1935; Sec. 16-2608, R.C.M. 1947; R.C.M. 1947, 16-1810(part), 16-2608(part); amd. Sec. 488, Ch. 61, L. 2007.

**7-6-2604. Interest on unpaid warrants.** (1) When any high school warrant or any school district warrant is presented to the treasurer for payment and the warrant is not paid for lack of funds, the treasurer shall endorse on the warrant "Not paid for lack of funds", include the date of presentation, and sign the warrant. When the treasurer pays a warrant on which any interest is due, the treasurer shall note on the warrant the amount of interest paid and enter on the treasurer's account the amount of interest, distinct from the principal.

(2) After the date of presentation and endorsement by the treasurer, the warrant must bear interest at a rate fixed by the board of trustees in accordance with law.

(3) All county warrants, after having been presented to the county treasurer for payment and endorsed "Not paid for lack of funds in the treasury", after the date of presentation and endorsement, must draw interest at the rate fixed by the board of county commissioners in accordance with law.

**History:** Ap. p. Sec. 4353, Pol. C. 1895; amd. Sec. 2, p. 99, L. 1899; re-en. Sec. 2989, Rev. C. 1907; re-en. Sec. 4753, R.C.M. 1921; Cal. Pol. C. Sec. 4148; re-en. Sec. 4753, R.C.M. 1935; amd. Sec. 2, Ch. 15, L. 1941; amd. Sec. 1, Ch. 53, L. 1945; amd. Sec. 25, Ch. 234, L. 1971; Sec. 16-2604, R.C.M. 1947; Ap. p. Sec. 4359, Pol. C. 1895; re-en. Sec. 2995, Rev. C. 1907; re-en. Sec. 4759, R.C.M. 1921; Cal. Pol. C. Sec. 4153; re-en. Sec. 4759, R.C.M. 1935; Sec. 16-2610, R.C.M. 1947; Ap. p. Sec. 1, Ch. 86, L. 1923; re-en. Sec. 4622.1, R.C.M. 1935; amd. Sec. 1, Ch. 37, L. 1939; amd. Sec. 1, Ch. 11, L. 1963; amd. Sec. 68, Ch. 348, L. 1974; Sec. 16-2002, R.C.M. 1947; R.C.M. 1947, 16-2002, 16-2604, 16-2610; amd. Sec. 33, Ch. 575, L. 1981; amd. Sec. 489, Ch. 61, L. 2007.

**7-6-2605. Call for payment of warrants drawing interest.** (1) When there is sufficient money to pay the warrants drawing interest, the treasurer shall give notice as provided in 7-1-2121 that the warrants are able to be paid.

(2) In advertising warrants under the provisions of this section in any newspaper, the treasurer may not publish the warrants in detail but shall give notice only that county warrants presented for payment prior to a date stated in the notice are payable. When only a part of the warrants presented for payment on the same day are payable, the treasurer shall designate the payable warrants in the advertisement.

(3) The warrants cease to draw interest from the first publication or posting of the notice.

(4) (a) If the warrants are not re-presented for payment within 60 days from the time the notice is given, the fund set aside for the payment of the warrants must be applied by the treasurer to the payment of unpaid warrants in order of registry.

(b) The board of county commissioners may, on application and presentation of warrants, properly endorsed, which have been advertised, pass an order directing the treasurer to pay the warrants out of any money in the treasury that is not otherwise appropriated.

**History:** (1), (3)En. Sec. 4354, Pol. C. 1895; re-en. Sec. 2990 Rev. C. 1907; re-en. Sec. 4754, R.C.M. 1921; Cal. Pol. C. Sec. 4149; re-en. Sec. 4754, R.C.M. 1935; Sec. 16-2605, R.C.M. 1947; (2)En. Sec. 4355, Pol. C. 1895; re-en. Sec. 2991, Rev. C. 1907; re-en. Sec. 4755, R.C.M. 1921; Cal. Pol. C. Sec. 4150; re-en. Sec. 4755, R.C.M. 1935; Sec. 16-2606, R.C.M. 1947; (4)En. Sec. 4358, Pol. C. 1895; re-en. Sec. 2994, Rev. C. 1907; re-en. Sec. 4758, R.C.M. 1921; Cal. Pol. C. Sec. 4152; re-en. Sec. 4758, R.C.M. 1935; Sec. 16-2609, R.C.M. 1947; R.C.M. 1947, 16-2605, 16-2606, 16-2609; amd. Sec. 9, Ch. 349, L. 1985; amd. Sec. 490, Ch. 61, L. 2007.

**7-6-2606. Order of redemption of warrants.** (1) Warrants drawn on the treasury and properly attested are entitled to preference as to payment out of money in the treasury properly

applicable to the warrants according to the priority of time in which they were presented. The time of presenting the warrants must be noted by the treasurer.

(2) Upon the receipt of money into the treasury, not otherwise appropriated, the treasurer shall set apart the the money or as much of the money as is necessary for the payment of the warrants.

**History:** En. Sec. 94, p. 452, Cod. Stat. 1871; amd. Sec. 1, p. 68, L. 1874; re-en. Sec. 440, 5th Div. Rev. Stat. 1879; re-en. Sec. 893, 5th Div. Comp. Stat. 1887; amd. Sec. 4356, Pol. C. 1895; re-en. Sec. 2992, Rev. C. 1907; re-en. Sec. 4756, R.C.M. 1921; Cal. Pol. C. Sec. 4151; re-en. Sec. 4756, R.C.M. 1935; R.C.M. 1947, 16-2607; amd. Sec. 491, Ch. 61, L. 2007.

**7-6-2607. Processing of warrants.** (1) The board shall cause to be canceled all county warrants that have remained uncalled for 1 year or more in the county clerk's office. The uncalled warrants must be canceled in the same manner as other county warrants. At the same time, the county treasurer shall deliver to the board all warrants or vouchers that are in the county treasurer's possession for money disbursed by the county treasurer and the clerk shall issue a receipt for the warrants or vouchers.

(2) The board shall cause to be entered on the record of warrants, opposite to the entry of each warrant issued, the date when the warrant was canceled and shall make a list of the canceled warrants, specifying the number, date, amount, and the person to whom the warrant was payable. The board shall cause the list to be entered on the minutes of the board.

**History:** En. Sec. 28, p. 504, Bannack Stat.; amd. Sec. 28, p. 438, Cod. Stat. 1871; re-en. Sec. 362, 5th Div. Rev. Stat. 1879; re-en. Sec. 767, 5th Div. Comp. Stat. 1887; amd. Sec. 4291, Pol. C. 1895; re-en. Sec. 2950, Rev. C. 1907; re-en. Sec. 4613, R.C.M. 1921; re-en. Sec. 4613, R.C.M. 1935; R.C.M. 1947, 16-1811; amd. Sec. 24, Ch. 252, L. 1979; amd. Sec. 53, Ch. 278, L. 2001.

## Part 27 Investment of County Money

**7-6-2701. Investment of certain money in county, municipal, hospital, and school warrants.** (1) If a county has under its control any money for which there is no immediate demand, in any special fund subject to deposit, which in the judgment of the board of county commissioners it would be advantageous to invest in county, municipal, hospital district, or school district registered warrants, the county commissioners are authorized in their discretion to direct the county treasurer to purchase the warrants of entities located in the same county.

(2) For the purchases, the county commissioners shall:

- (a) designate the fund or funds to be invested;
- (b) fix the amount that may be purchased;
- (c) establish the rate of interest the county must receive for the investment; and
- (d) designate the warrants that are to be purchased by the funds.

(3) The officer drawing a warrant to be purchased for investment by a county shall attach to or stamp, write, or print upon the warrant a notice to the effect that the county will exercise its preference right to purchase the warrant.

(4) (a) A school district, hospital district, or county warrant presented to the county treasurer for purchase by the county must be registered as any other school district, hospital district, or county warrant.

(b) A municipal warrant presented to the municipal clerk or treasurer for purchase by the county must be registered, and the holder of the warrant must be informed that the warrant may be presented to the county treasurer for purchase by the county.

(5) The county treasurer shall, when a warrant designated for purchase under the provisions of subsection (2) is presented to the treasurer, purchase the warrant out of the proper fund as designated by the board. When the designated amounts have been invested, the county treasurer shall notify the county clerk and recorder or the applicable officer authorized to draw the warrants.

(6) Interest earned from the investments, including interest on the sale of bonds accrued in the period between the date of issue and the time of purchase, must be credited to the sinking fund of the county, notwithstanding the provisions of 7-6-204(1).

(7) A provision of this section may not be construed to prevent the investment of county or county high school money under the state unified investment program established in Title 17, chapter 6, part 2.

**History:** En. Sec. 1, Ch. 144, L. 1927; re-en. Sec. 4639.1, R.C.M. 1935; amd. Sec. 1, Ch. 151, L. 1951; amd. Sec. 1, Ch. 223, L. 1961; amd. Sec. 1, Ch. 13, L. 1963; amd. Sec. 1, Ch. 268, L. 1969; amd. Sec. 1, Ch. 421, L. 1973; amd. Sec. 1, Ch. 304, L. 1975; R.C.M. 1947, 16-2050(part); amd. Sec. 1, Ch. 92, L. 1985; amd. Sec. 1, Ch. 349, L. 1991; amd. Sec. 1, Ch. 219, L. 1997.

## Part 28 Management of School Money

**7-6-2801. Management of school funds.** The county treasurer shall:

(1) keep all school money in a separate fund and keep a separate account of its disbursement to the several school districts that are entitled to receive it, according to the apportionment of the county superintendent of schools;

(2) notify the county superintendent of the amount of the county school fund in the county treasury subject to apportionment, whenever required, and inform the superintendent of the amount of school money belonging to any other fund subject to apportionment, or as otherwise provided by law; and

(3) pay all warrants drawn on county or district school money, in accordance with the provisions of law, whenever the warrants are countersigned by the district clerk and properly endorsed by the holders.

**History:** En. Sec. 4350, Pol. C. 1895; re-en. Sec. 2986, Rev. C. 1907; re-en. Sec. 4750, R.C.M. 1921; Cal. Pol. C. Sec. 4144; re-en. Sec. 4750, R.C.M. 1935; amd. Sec. 3, Ch. 452, L. 1975; R.C.M. 1947, 16-2601(6) thru (9); amd. Sec. 25, Ch. 252, L. 1979; amd. Sec. 492, Ch. 61, L. 2007; amd. Sec. 11, Ch. 262, L. 2015.

**7-6-2802. Repealed.** Sec. 22, Ch. 219, L. 1997.

**History:** En. Sec. 1, Ch. 144, L. 1927; re-en. Sec. 4639.1, R.C.M. 1935; amd. Sec. 1, Ch. 151, L. 1951; amd. Sec. 1, Ch. 223, L. 1961; amd. Sec. 1, Ch. 13, L. 1963; amd. Sec. 1, Ch. 268, L. 1969; amd. Sec. 1, Ch. 421, L. 1973; amd. Sec. 1, Ch. 304, L. 1975; R.C.M. 1947, 16-2050(2), (3).

## CHAPTER 7 DEBT MANAGEMENT

### Part 1 General Provisions Related to Local Governments

**7-7-101. Repealed.** Sec. 14, Ch. 94, L. 2007.

**History:** En. Sec. 1, Ch. 139, L. 1939; R.C.M. 1947, 82-410(part); amd. Sec. 1, Ch. 248, L. 1979.

**7-7-102. Repealed.** Sec. 14, Ch. 94, L. 2007.

**History:** En. Sec. 4, Ch. 139, L. 1939; R.C.M. 1947, 82-413(part); amd. Sec. 2, Ch. 248, L. 1979.

**7-7-103. Repealed.** Sec. 14, Ch. 94, L. 2007.

**History:** En. Sec. 2, Ch. 139, L. 1939; R.C.M. 1947, 82-411(part); amd. Sec. 3, Ch. 248, L. 1979; amd. Sec. 5, Ch. 511, L. 1989; amd. Sec. 5, Ch. 559, L. 1993.

**7-7-104. Limitation on action to test bond validity.** A local government general obligation bond of any issue may not be held invalid because of any defect or failure to comply with a statutory provision relating to the authorization, issuance, or sale of the bonds unless an action to contest the validity of the bonds is brought within 30 days after the date of the adoption of the resolution calling for the sale of bonds of the local government.

**History:** En. Sec. 3, Ch. 139, L. 1939; R.C.M. 1947, 82-412; amd. Sec. 4, Ch. 248, L. 1979; amd. Sec. 1, Ch. 451, L. 2005; amd. Sec. 1, Ch. 94, L. 2007.

**7-7-105. Challenges to local government bond elections.** (1) No action may be brought for the purpose of restraining the issuance and sale of bonds or other obligations by any county, city, town, or political subdivision of the state or for the purpose of restraining the levy and collection of taxes for the payment of such bonds or other obligations after the expiration of 60 days from the date of the election on such bonds or obligations or, if no election was held thereon, after the expiration of 60 days from the date of the order, resolution, or ordinance authorizing the issuance thereof, on account of any defect, irregularity, or informality in giving notice of or in holding the election. No defense based upon any such defect, irregularity, or informality may be interposed in any action unless brought within this period. This subsection applies but is not

limited to any action and defense in which the issue is raised whether a voted debt or liability has carried by the required majority vote of the electors qualified and offering to vote thereon.

(2) (a) Any elector qualified to vote in a bond election of a county, a city, or any political subdivision of either may contest a bond election for any of the following causes:

(i) that the precinct board, in conducting the election or in canvassing the returns, made errors sufficient to change the result of the election;

(ii) that any official charged with a duty under the election laws failed to perform that duty;

(iii) that in conducting the election, any official charged with a duty under the election laws violated any of the provisions of Title 13 relating to bond elections;

(iv) that electors qualified to vote in the election under the provisions of the constitutions of Montana and the United States were not given opportunity to vote in the election;

(v) that electors not qualified to vote in the election under the provisions of the constitutions of Montana and the United States were permitted to vote in the election.

(b) Within 60 days after the election, the contestant shall file a verified petition with the clerk of the court in the judicial district where the election was held.

(3) The word "action", as used in this section, is to be construed, whenever it is necessary to do so, as including a special proceeding of a civil nature.

**History:** (1)En. Sec. 1, Ch. 114, L. 1919; re-en. Sec. 9040, R.C.M. 1921; re-en. Sec. 9040, R.C.M. 1935; amd. Sec. 15, Ch. 158, L. 1971; Sec. 93-2612, R.C.M. 1947; (2)En. Sec. 212, Ch. 368, L. 1969; amd. Sec. 6, Ch. 158, L. 1971; Sec. 23-4201, R.C.M. 1947; (3)En. Sec. 559, C. Civ. Proc. 1895; re-en. Sec. 6476, Rev. C. 1907; re-en. Sec. 9066, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 363; re-en. Sec. 9066, R.C.M. 1935; Sec. 93-2720, R.C.M. 1947; R.C.M. 1947, 23-4201, 93-2612(part), 93-2720; amd. Sec. 1, Ch. 212, L. 1979.

**7-7-106. Hearing and determination on challenge.** (1) Within 5 days after the petition is filed, the district judge shall designate the time and place of hearing.

(2) The clerk shall immediately issue a citation for the defendant to appear at the time and place specified in the order and shall serve the citation immediately upon the defendant either:

(a) personally; or

(b) if the party cannot be found, by leaving a copy at the house where the defendant last resided.

(3) The court shall meet at the time and place designated to determine the contested election and has all the powers necessary to the determination of the election.

(4) The court is governed by the rules of law and evidence governing the determination of questions of law and fact so far as the rules may be applicable.

(5) The court shall continue in special session to hear and determine all issues in the contested election. After hearing the proofs and allegations of the parties and within 10 days after submission, the court shall file its findings of fact and conclusions of law and shall immediately pronounce judgment, either confirming or annulling and setting aside the election. The judgment must be entered immediately after the pronouncement.

**History:** En. Sec. 213, Ch. 368, L. 1969; R.C.M. 1947, 23-4202; amd. Sec. 499, Ch. 61, L. 2007.

**7-7-107. Limitation on amount of bonds for city-county consolidated units.**

(1) Except as provided in 7-7-108, a city-county consolidated local government may not issue bonds for any purpose in an amount that, with all outstanding indebtedness, exceeds 2.5% of the total assessed value of taxable property, determined as provided in 15-8-111, within the consolidated government, as ascertained by the last assessment for state and county taxes.

(2) The issuing of bonds for the purpose of funding or refunding outstanding warrants or bonds is not the incurring of a new or additional indebtedness but is merely the changing of the evidence of outstanding indebtedness.

**History:** En. 16-2010.1 by Sec. 1, Ch. 175, L. 1975; amd. Sec. 39, Ch. 566, L. 1977; R.C.M. 1947, 16-2010.1(part); amd. Sec. 43, Ch. 614, L. 1981; amd. Sec. 3, Ch. 285, L. 1999; amd. Sec. 22, Ch. 426, L. 1999; amd. Sec. 17, Ch. 556, L. 1999; amd. Sec. 5, Ch. 29, L. 2001.

**7-7-108. Authorization for additional indebtedness for water or sewer systems.**

(1) For the purpose of constructing a sewer system or procuring a water supply or constructing or acquiring a water system for a city-county consolidated government that owns and controls the water supply and water system and devotes the revenue from the supply and system to the payment of the debt, a city-county consolidated government may incur an additional indebtedness by borrowing money or issuing bonds.



(2) The additional indebtedness that may be incurred by borrowing money or issuing bonds for the construction of a sewer system or for the procurement of a water supply or for both purposes may not in the aggregate exceed 10% over and above the debt limitation referred to in 7-7-107.

**History:** En. 16-2010.1 by Sec. 1, Ch. 175, L. 1975; amd. Sec. 39, Ch. 566, L. 1977; R.C.M. 1947, 16-2010.1(part); amd. Sec. 44, Ch. 614, L. 1981; amd. Sec. 4, Ch. 285, L. 1999; amd. Sec. 6, Ch. 29, L. 2001.

**7-7-109. Definitions — sale of notes in anticipation of federal or state revenue or issuance of bonds.** (1) As used in this section, the following definitions apply:

(a) “Bonds” means bonds, notes, warrants, debentures, certificates of indebtedness, and all instruments or obligations evidencing or representing indebtedness, or evidencing or representing the borrowing of money, or evidencing or representing a charge, lien, or encumbrance on specific revenue, special assessments, income, or property of a political subdivision, including all instruments or obligations payable from a special fund.

(b) “Governing body” means the board, council, commission, or other body charged with the general control of the issuance of bonds of a political subdivision.

(c) (i) “Political subdivision” means a county, city, town, school district, irrigation district, rural special improvement district, special improvement district, county water or sewer district, or any other political subdivision of the state.

(ii) The term does not include the state or any board, agency, or commission of the state.

(2) (a) When all conditions exist precedent to the offering for sale of bonds of a political subdivision in any amount and for any purpose authorized by law or the political subdivision has applied for and received a commitment for a grant or loan of state or federal funds, its governing body may by resolution issue and sell, in anticipation of the receipt of the grant, loan, or bonds in an amount not exceeding the total amount of bonds authorized or the total amount of the loan or grant that is committed, notes maturing within not more than 3 years from the date on which the notes are issued.

(b) The outstanding term of the notes issued under this section may not reduce the term of the bonds otherwise permitted by law. Before the notes are issued, the political subdivision must receive a written commitment for the purchase of the bonds or for the grant or loan in an amount that in the aggregate is not less than the principal amount of the notes and shall by resolution agree to fulfill any conditions of the commitment.

(3) The proceeds of the grant, loan, or bonds, when received, must be credited to the debt service fund for the notes as may be needed for their payment, with interest, when due.

(4) (a) To the extent that proceeds described in subsection (3) are not sufficient to pay the notes and interest on those notes when due, the notes must be paid from any other funds that are legally available and appropriated by the governing body for that purpose.

(b) If the notes are issued in anticipation of the issuance of bonds, any amount of the notes that cannot be paid at maturity from the proceeds described in subsection (3) or (4)(a) must be paid from the proceeds of bonds to be issued and sold before the maturity date.

(c) If sufficient funds are not available for payment in full of the notes at maturity, the holders of the notes have the right to require the issuance of bonds in exchange for the notes, with the bonds maturing, bearing interest at a rate, and secured over a term as provided in the resolution authorizing the issuance of the notes.

(d) If notes are validly issued under then-applicable law in anticipation of the issuance of bonds, the political subdivision may issue bonds in a principal amount equal to the outstanding principal amount of the notes, regardless of any limitation in the then-applicable law concerning the principal amount of the bonds.

(e) If the notes are issued in anticipation of the receipt of a grant or other revenue source and cannot be paid at maturity from the proceeds described in subsection (3) or (4)(a), the political subdivision may, to the extent otherwise authorized by law, issue bonds to provide for payment of those notes.

**History:** En. Secs. 1, 2, Ch. 181, L. 1979; amd. Sec. 1, Ch. 512, L. 1985; amd. Sec. 2, Ch. 423, L. 1995; amd. Sec. 2, Ch. 451, L. 2005.

**7-7-110. Authorization of bonds.** (1) Upon approval by the Montana transportation commission, a city, county, or consolidated city-county government may issue revenue bonds to



finance the construction and construction engineering phases of projects on the urban highway system within its jurisdiction to:

- (a) fund the share that the bond issuer might otherwise expend for proportionate matching of federal funds allocated for the construction of highways, roads, streets, or bridges;
- (b) make a deposit to a reserve fund securing the bonds; and
- (c) pay costs of issuance and sale of the bonds.

(2) The bonds may be authorized by a resolution adopted by the governing body of the bond issuer without need for authorization by the electors of the bond issuer. The resolution must establish the terms, covenants, and conditions of the bonds. The resolution may authorize that the bonds be issued under and secured by a trust indenture between the issuer and a trustee, which may be a trust company or bank having the power of a trustee inside or outside the state. The bonds may be sold at public or private sale, on terms and at prices that the governing body determines to be advantageous. The bonds do not constitute and may not be included as an indebtedness or liability of the issuer for purposes of any statutory debt limitation, do not constitute general obligations, and may not be secured by the taxing power of the issuer.

(3) The bonds are payable from and secured by the grants or other funds payable to and received by the department of transportation and apportioned by the department of transportation to the issuer of the bonds for urban highway system improvements or for improvements conducted as provided in 15-70-101(2). In the resolution or the trust indenture providing for the issuance of the bonds, the governing body of the issuer shall irrevocably pledge and appropriate to the debt service fund from which the bonds are payable the funds apportioned or to be apportioned to the issuer by the department of transportation in an amount sufficient to pay the principal of and the interest on the bonds as due.

(4) Bonds may be issued under this section only if:

(a) the bonds are issued in principal amounts and on terms that provide that the amount of principal and interest due in any fiscal year on the bonds and on any other revenue bonds of the issuer outstanding and issued under this section does not exceed the amount of the revenue pledged to the payment of the bonds and to be received in that fiscal year as estimated by the governing body of the issuer in the resolution authorizing the issuance of the bonds; and

(b) the final maturity of the bonds is not more than 20 years after the date of issuance of the bonds.

(5) Proceeds from the sale of the bonds must be used to fund urban highway system projects approved by the transportation commission through an agreement with the issuer in accordance with 60-2-127(4), and the proceeds to be used for the construction must be deposited with the department of transportation. The proceeds must be expended by the department of transportation in accordance with other applicable provisions of law.

(6) A city, county, or consolidated city-county government issuing bonds pursuant to this section shall certify to the director of the department of transportation and the director of the department of administration promptly upon the issuance of the bonds the principal amount and terms of the bonds and the amount of money required each fiscal year for the payment of principal and interest on the bonds.

(7) The powers conferred on a city, county, or consolidated city-county government by this section are in addition to and are supplemental to the powers conferred by any other general, special, or local laws. To the extent that the provisions of this section are inconsistent with the provisions of any other general, special, or local law, the provisions of this section are controlling.

**History:** En. Sec. 1, Ch. 336, L. 2005.

**7-7-111 through 7-7-120 reserved.**

**7-7-121. Misconduct in relation to bond funds.** (1) (a) Except as provided in subsection (1)(b), when any officer or officers or board or body of officers of any county, city, or other municipal or public corporation of the state are or shall be required by law to provide by a levy of taxes or by certifying the amount of money required or otherwise a sinking fund or fund required to pay at maturity any bonds hereafter issued or created, such officer or officers and the members of such board or body of officers shall be jointly and severally liable to the county, city, or other municipal or public corporation which they represent if they shall fail to perform any such duties

required by law, as specified in this section, in an amount equal to the sum which would have been added to such fund had they performed such duty.

(b) When any such board shall fail or neglect to perform any such duty, no minority member of said board who shall have moved said board or voted in favor of a performance of such duty shall be held liable.

(2) Any person or persons who shall take, use, or appropriate or permit to be taken, used, or appropriated any portion of any such fund as herein specified for any purpose other than that permitted by law shall be jointly and severally liable to the county, city, or other municipal or public corporation to which said fund shall belong for the portion of such fund so unlawfully taken, used, or appropriated.

**History:** (1)En. Sec. 1, Ch. 5, L. 1923; re-en. Sec. 463.1, R.C.M. 1935; Sec. 59-534, R.C.M. 1947; (2)En. Sec. 2, Ch. 5, L. 1923; re-en. Sec. 463.2, R.C.M. 1935; Sec. 59-535, R.C.M. 1947; R.C.M. 1947, 59-534(part), 59-535(part).

**7-7-122. Prosecution for misconduct.** It shall be the duty of the county attorney in each county to commence and prosecute all actions to enforce any liability created in 7-7-121. Such actions shall be tried as civil actions at law.

**History:** En. Sec. 3, Ch. 5, L. 1923; re-en. Sec. 463.3, R.C.M. 1935; R.C.M. 1947, 59-536.

**7-7-123. Investment of sinking funds of local governments.** (1) (a) Except as provided in 7-7-124 and whenever outstanding bonds cannot be purchased pursuant to 7-7-2270 or 7-7-4270, the board of county commissioners of a county and the council or commission of a city or town shall invest so much of the bond sinking funds of the county, city, or town as are not needed for the payment of bonds or interest coupons in general obligation bonds or securities of the United States; state bonds or securities; time or savings deposits; county, city, or school district bonds; county or city warrants; or other bonds or securities that are supported by general taxation, except irrigation district bonds and special improvement district or maintenance district bonds or warrants.

(b) All those bonds, securities, or time or savings deposits must be due and payable at least 60 days before the obligations for the payment of which the sinking fund was established are due and payable.

(2) The bonds, securities, and any time or savings deposits in which any sinking funds are invested must be kept in the custody of the county or city treasurer or town clerk and held for the benefit of the county, city, or town. The treasurer shall properly protect the bonds, securities, and any time or savings deposits by insurance, the use of safety deposit boxes, or other means, the expense of which is a proper charge against the county, city, or town.

(3) All money derived from interest on sinking fund investments as authorized by this section must be credited by the treasurer of the county or city or the town clerk to the sinking fund for which the investment was made.

**History:** En. Sec. 1, Ch. 86, L. 1923; re-en. Sec. 4622.1, R.C.M. 1935; amd. Sec. 1, Ch. 37, L. 1939; amd. Sec. 1, Ch. 11, L. 1963; amd. Sec. 68, Ch. 348, L. 1974; R.C.M. 1947, 16-2001(part); amd. Sec. 1, Ch. 256, L. 1979; amd. Sec. 7, Ch. 274, L. 1981; amd. Sec. 1, Ch. 287, L. 1983; amd. Sec. 8, Ch. 179, L. 1995.

**7-7-124. Limitation on investment of sinking funds.** If any of the bonds for which the sinking fund was established are not yet due but are then redeemable under optional provisions, the money in the sinking fund is not subject to investment but shall be used and applied in payment and redemption of the bonds.

**History:** En. Sec. 1, Ch. 86, L. 1923; re-en. Sec. 4622.1, R.C.M. 1935; amd. Sec. 1, Ch. 37, L. 1939; amd. Sec. 1, Ch. 11, L. 1963; amd. Sec. 68, Ch. 348, L. 1974; R.C.M. 1947, 16-2001(part); amd. Sec. 2, Ch. 256, L. 1979.

**7-7-125 through 7-7-130 reserved.**

**7-7-131. Bankruptcy — definitions.** As used in 7-7-132 through 7-7-134 and this section, the following definitions apply:

(1) “Legislative body” means:

(a) the governing body of a city or town;

(b) the governing body of a local entity that is a district if, by law, the district must have a governing body; or

(c) the governing body of the city, town, or county that created a local entity that is a district if law does not require the district to have a separate governing body. Unless otherwise agreed to by the governing bodies of the county and of the city or town, a joint board composed of an

equal number of members from each governing body shall act as the district governing body of a district that was jointly created by the county and the city or town.

(2) “Local entity” means a district created under Title 7, chapter 12, a city, or a town, but the term does not include a county.

**History:** En. Sec. 1, Ch. 296, L. 1995.

**7-7-132. Procedure to declare bankruptcy.** (1) A local entity may submit itself and a proposed plan of adjustment to the jurisdiction of the bankruptcy court having jurisdiction of the matter. If the local entity submits a proposed plan of adjustment, it is governed, subject to the provisions of Montana law applicable to the local entity, by the proceedings, orders, and decrees of the court as provided by the federal municipal bankruptcy laws.

(2) The local entity shall compose and enter into, submit itself to, and perform the plan of adjustment as required by the federal laws and the orders and decrees of the bankruptcy court:

(a) upon the adoption by its legislative body of an ordinance or resolution:

(i) declaring that it is insolvent or unable to meet its debts as they mature;

(ii) declaring that it desires to effect a plan for the adjustment of its debts under the provisions of the federal municipal bankruptcy laws; and

(iii) providing that the local entity shall proceed to the adjustment of its indebtedness under the provisions of the federal laws; and

(b) upon the acceptance or considered acceptance of the proposed plan of adjustment of the petitioning local entity as provided in the federal laws.

**History:** En. Sec. 1, Ch. 114, L. 1939; R.C.M. 1947, 11-1303; amd. Sec. 3, Ch. 212, L. 1979; amd. Sec. 2, Ch. 296, L. 1995; Sec. 7-7-4111, MCA 1993; redes. 7-7-132 by Code Commissioner, 1995.

**7-7-133. Power to comply with court decrees related to bankruptcy.** A local entity shall comply with all orders and decrees contemplated by the federal municipal bankruptcy laws and may issue its bonds and other securities for the carrying out and consummation of the adjustment of its debts as provided and contemplated by the federal law and as required by the orders and decrees of the bankruptcy court. The orders and decrees of the bankruptcy court must be based on the Montana law applicable to the local entity.

**History:** En. Sec. 2, Ch. 114, L. 1939; R.C.M. 1947, 11-1304(part); amd. Sec. 4, Ch. 212, L. 1979; amd. Sec. 3, Ch. 296, L. 1995; Sec. 7-7-4112, MCA 1993; redes. 7-7-133 by Code Commissioner, 1995.

**7-7-134. Role of state and state agencies in relation to bankruptcy.** The state or any department or agency of the state holding any of the securities of a local entity has the power to consent to any plan of adjustment of the indebtedness of the local entity by the board or official that has custody of and control over the securities.

**History:** En. Sec. 2, Ch. 114, L. 1939; R.C.M. 1947, 11-1304(part); amd. Sec. 4, Ch. 296, L. 1995; Sec. 7-7-4113, MCA 1993; redes. 7-7-134 by Code Commissioner, 1995.

**7-7-135 through 7-7-139 reserved.**

**7-7-140. Recovery zone economic development bonds and recovery zone facility bonds.** (1) Subject to the conditions and provisions contained in the American Recovery and Reinvestment Act of 2009, Public Law 111-5, and the availability of allocation as determined in 17-5-116, cities and counties are authorized to designate economic recovery zones and issue recovery zone economic development bonds and recovery zone facility bonds to finance the costs of recovery zone projects and facilities eligible under the American Recovery and Reinvestment Act of 2009, Public Law 111-5.

(2) The bonds must be authorized by the governing body of the city or county in accordance with the applicable provisions of Montana law, unless otherwise provided in 17-5-117. The governing body is authorized to enter into agreements and make covenants that may be necessary to provide for the sale and security of the bonds, subject to the following limitations:

(a) if the bonds that are issued under this section pledge the city’s or county’s credit or taxing power, they must be authorized in accordance with the provisions of Title 7, chapter 7, part 22 or 42, as appropriate;

(b) if the bonds are payable from and secured solely by the revenue from a governmentally owned and operated facility or undertaking, they must be authorized in accordance with the provisions of Title 7, chapter 7, part 44;

(c) if the bonds are payable from special assessments levied against benefited property, the project must be eligible for special assessment financing and must be authorized in accordance with the provisions of Title 7, chapter 12, part 21 or parts 41 and 42, as appropriate;

(d) if the bonds are payable from tax increment revenue, the project to be financed must be eligible for tax increment financing and the project must be approved and the bonds must be authorized in accordance with the provisions of Title 7, chapter 15, parts 42 and 43;

(e) if the bonds are industrial development revenue bonds of the issuer, the bonds must be authorized in accordance with the provisions of Title 90, chapter 5, part 1.

**History:** En. Sec. 45, Ch. 489, L. 2009.

**7-7-141. Qualified energy conservation bonds.** (1) Subject to the conditions and provisions contained in section 54D of the Internal Revenue Code, 26 U.S.C. 54D, as amended by the American Recovery and Reinvestment Act of 2009, Public Law 111-5, and the availability of an allocation, cities and counties are authorized to issue qualified energy conservation bonds to finance projects for qualified energy conservation purposes and are authorized to undertake the qualified energy conservation purposes and programs within the meaning of the section 54D of the Internal Revenue Code, 26 U.S.C. 54D, as amended by the American Recovery and Reinvestment Act of 2009, Public Law 111-5.

(2) The bonds must be authorized by the governing body of the city or county in accordance with the provisions of applicable Montana law, except as otherwise provided in 17-5-117. The governing body is authorized to enter into agreements and make covenants that may be necessary to provide for the sale and security of the bonds, subject to the following limitations:

(a) if the bonds that are to be issued under this section pledge the city's or county's credit or taxing power, they must be authorized in accordance with the provisions of Title 7, chapter 7, part 22 or 42, as appropriate;

(b) if the bonds to be issued under this section are payable from and secured solely by the revenue derived or generated from a qualified energy conservation program or project, they must be authorized in accordance with the provisions of Title 7, chapter 7, part 44;

(c) if the bonds are payable from special assessments levied against benefited property, the project must be eligible for special assessment financing and must be authorized in accordance with the provisions of Title 7, chapter 12, part 21 or parts 41 and 42, as appropriate;

(d) if the bonds are payable from tax increment revenue, the project to be financed must be eligible for tax increment financing and the project must be approved and the bonds must be authorized in accordance with the provisions of Title 7, chapter 15, parts 42 and 43;

(e) if the bonds are industrial development revenue bonds of the issuer, the bonds must be authorized in accordance with the provisions of Title 90, chapter 5, part 1.

**History:** En. Sec. 46, Ch. 489, L. 2009.

## CHAPTER 8 ACQUISITION, TRANSFER, AND MANAGEMENT OF PROPERTY AND BUILDINGS

### Part 1 General Provisions Related to Local Government

**7-8-101. Authorization to transfer property between certain governmental entities.** (1) A county, upon first passing a resolution of intent to do so and upon giving notice of intent by publication as provided in 7-1-2121, may sell or trade to any city, town, or political subdivision, as the interests of its inhabitants require, any property, however held or acquired, that is not necessary for the conduct of the county business without an ordinance, public notice, public auction, bids, or appraisal. Proceeds, if any, must be distributed according to law. The transactions must be made by resolution of the county commissioners involved and entered in the minutes of the regular or special meetings.

(2) A city or town, upon first passing a resolution of intent to do so and upon giving notice of the intent by publication as provided in 7-1-4127, may sell or trade to any county or political subdivision, as the interests of its inhabitants require, any property, however held or acquired, that is not necessary for the conduct of the city or town business without an ordinance, public



notice, public auction, bids, or appraisal. Proceeds, if any, must be distributed according to law. The transactions must be made by resolution of the councils or commissions involved and entered in the minutes of the regular or special meetings.

(3) (a) A county may trade with or purchase from any city, town, or political subdivision any property without an appraisal of the property traded or purchased.

(b) A city or town may trade with or purchase from any county or political subdivision any property without an appraisal of the property traded or purchased.

**History:** (1)En. Sec. 1, Ch. 302, L. 1969; Sec. 16-1009.1, R.C.M. 1947; (2)En. Sec. 1, Ch. 301, L. 1969; Sec. 11-964.1, R.C.M. 1947; (3)(a)En. Sec. 2, Ch. 302, L. 1969; Sec. 16-1007.1, R.C.M. 1947; (3)(b)En. Sec. 2, Ch. 301, L. 1969; Sec. 11-964.2, R.C.M. 1947; R.C.M. 1947, 11-964.1, 11-964.2, 16-1007.1, 16-1009.1; amd. Sec. 10, Ch. 349, L. 1985; amd. Sec. 17, Ch. 354, L. 2001.

**7-8-102. Authorization to deed county land to other governmental entities.** (1) The county commissioners of any county in Montana are hereby authorized to convey to the state of Montana or to any city or town in Montana or to the United States of America any tract of county-owned land, not exceeding 1,280 acres, to be used for the establishment and maintenance of a park, recreational grounds, or cemetery and to be maintained by the state, city, town, or federal government as a public park, recreational grounds, or cemetery.

(2) Said land shall be deeded to the state, city, town, or federal government without charge but upon the condition that the same shall be devoted and maintained by the state, city, town, or federal government for the purpose specified in subsection (1). In the event that the land shall cease to be used for such purpose for a period of 5 years in succession, the title thereto shall revert to the county making such grant.

**History:** En. Sec. 1, Ch. 139, L. 1935; re-en. Sec. 4487.1, R.C.M. 1935; amd. Sec. 1, Ch. 48, L. 1961; amd. Sec. 1, Ch. 7, L. 1977; R.C.M. 1947, 16-1131(part).

**7-8-103. Authorization for governmental and public entities to take property by gift or devise.** (1) (a) All counties, all public hospitals and cemeteries, and other public institutions are hereby granted the power and authority to accept, receive, take, hold, and possess any gift, donation, grant, devise, or bequest of real or personal property and the right to own, hold, work, and improve the same.

(b) The provisions of subsection (2) and 7-8-104 are hereby made expressly applicable to gifts, donations, grants, devises, and bequests of real or personal property to officers and boards of the public corporations and institutions mentioned in subsection (1)(a).

(2) (a) Any city or town organized under the laws of Montana is hereby empowered and given the right:

(i) to accept, receive, take, hold, own, and possess any gift, donation, grant, devise, or bequest; any property (real, personal, or mixed); any improved or unimproved park or playground; any water, water right, water reservoir, or watershed; any timberland or reserve; or any fish or game reserve in any part of the state;

(ii) to own, hold, work, and improve the same.

(b) Said gifts, donations, grants, devises, or bequests made to any officer or board of any such city or town shall be considered a gift, donation, grant, devise, or bequest made for the use and benefit of any such city or town and shall be administered and used by and for such city or town for the particular purpose for which the same was given, donated, granted, devised, or bequeathed. In the event no particular purpose is mentioned in such gift, donation, grant, devise, or bequest, then the same shall be used for the general support, maintenance, or improvement of any such city or town.

**History:** Ap. p. Sec. 1, Ch. 47, L. 1927; re-en. Sec. 5668.17, R.C.M. 1935; Sec. 11-1006, R.C.M. 1947; Ap. p. Sec. 2, Ch. 47, L. 1927; re-en. Sec. 5668.18, R.C.M. 1935; Sec. 11-1007, R.C.M. 1947; Ap. p. Sec. 1, Ch. 10, L. 1917; re-en. Sec. 5043, R.C.M. 1921; re-en. Sec. 5043, R.C.M. 1935; Sec. 11-1004, R.C.M. 1947; Ap. p. Sec. 2, Ch. 10, L. 1917; re-en. Sec. 5044, R.C.M. 1921; re-en. Sec. 5044, R.C.M. 1935; Sec. 11-1005, R.C.M. 1947; R.C.M. 1947, 11-1004, 11-1005(part), 11-1006(part), 11-1007.

**7-8-104. Who may make gift or devise to governmental entities.** (1) Any company, partnership, corporation, or other nonindividual entity may make to a city or town organized under the laws of Montana a donation, gift, or grant of any property (real, personal, or mixed); any improved or unimproved park or playground; any water, water right, water reservoir, or watershed; any timberland or reserve; or any fish or game reserve in any part of Montana, to be held for the use and benefit of the city or town.



(2) Any person over the age of 18 years and of sound mind and discretion may make to a city or town organized under the laws of Montana a gift, grant, donation, or testamentary disposition of property (real, personal, or mixed); any improved or unimproved park or playground; any water, water right, water reservoir, or watershed; any timberland or reserve; or any fish or game reserve in any part of the state.

**History:** En. Sec. 2, Ch. 10, L. 1917; re-en. Sec. 5044, R.C.M. 1921; re-en. Sec. 5044, R.C.M. 1935; R.C.M. 1947, 11-1005(part); amd. Sec. 11, Ch. 311, L. 1979.

**7-8-105. Authorization to dispose of certain property in possession of local law enforcement.** (1) The legislative body of a local government may, by ordinance or resolution, provide for the care, restitution, sale, donation, return, or destruction of unclaimed tangible personal property that may come into the possession of a peace officer or a law enforcement entity of the local government for which state law does not otherwise provide a procedure for disposition.

(2) At a minimum, the ordinance or resolution must provide:

(a) that unclaimed property valued at \$20 or more must be held by the local government for a period of at least 3 months;

(b) a process by which the local government shall attempt to notify the legal owner of unclaimed property held in its possession;

(c) a process by which the local government may allow a finder of unclaimed personal property to take possession of that property if it remains unclaimed;

(d) that unclaimed property will be destroyed as allowed or required by local, state, or federal law, returned to the finder, donated, or otherwise sold at public auction to the highest bidder;

(e) that, at least 10 days prior to the time fixed for the destruction, return, donation, or sale at public auction of unclaimed property, notice of the planned disposal must be given by publication one time in a newspaper of general circulation; and

(f) that, upon proof of legal ownership, the local government shall restore the unclaimed property to its legal owner.

(3) After property has been destroyed, returned, donated, or sold at public auction, the property or the value of the property is not redeemable by the owner or another person entitled to possession.

**History:** En. Sec. 1, Ch. 295, L. 2017.

**Compiler's Comments**

*Effective Date:* Section 5, Ch. 295, L. 2017, provided: "[This act] is effective on passage and approval." Approved May 4, 2017.

## Part 22 Acquisition, Transfer, and Management of County Property

**7-8-2216. Sale of county property to school district.** (1) The board of county commissioners shall have the power to sell directly to the school district, without the necessity of a public auction, any personal property, however acquired, that belongs to the county and that is not necessary to the conduct of the county's business or the preservation of its property, for its appraised value, which must represent a fair market value of the property.

(2) If the property to be sold to the school district is reasonably of a value in excess of \$2,500, notice of the sale must be given by publication as provided in 7-1-2121.

**History:** En. Subd. 10, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.9, R.C.M. 1935; amd. Sec. 1, Ch. 30, L. 1953; amd. Sec. 1, Ch. 110, L. 1957; amd. Sec. 1, Ch. 120, L. 1967; amd. Sec. 1, Ch. 284, L. 1975; R.C.M. 1947, 16-1009(2); amd. Sec. 4, Ch. 346, L. 1983; amd. Sec. 12, Ch. 349, L. 1985; amd. Sec. 5, Ch. 255, L. 2017.

**Compiler's Comments**

*2017 Amendment:* Chapter 255 in (1) before "personal property" deleted "real or"; and made minor changes in style. Amendment effective October 1, 2017.

## CHAPTER 11 GENERAL PROVISIONS RELATED TO SERVICES

### Part 1 Interlocal Agreements

**7-11-101. Short title.** This part shall be known and cited as the “Interlocal Cooperation Act”.

**History:** En. Sec. 2, Ch. 82, L. 1967; R.C.M. 1947, 16-4902.

**7-11-102. Purpose.** It is the purpose of this part to permit local governmental units to make the most efficient use of their powers by enabling them to cooperate with other local governmental units on a basis of mutual advantage and thereby to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population, and other factors influencing the needs and development of local communities.

**History:** En. Sec. 1, Ch. 82, L. 1967; R.C.M. 1947, 16-4901.

**7-11-103. Definition.** For the purposes of this part, the term “public agency” shall mean any political subdivision, including municipalities, counties, school districts, and any agency or department of the state of Montana.

**History:** En. Sec. 3, Ch. 82, L. 1967; R.C.M. 1947, 16-4903.

**7-11-104. Authorization to create interlocal agreements — issuance of bonds for joint construction — hiring of teacher, specialist, or superintendent.** One or more public agencies may contract with any one or more other public agencies to perform any administrative service, activity, or undertaking or to participate in the provision or maintenance of any public infrastructure facility, project, or service, including the issuance of bonds for the joint construction of a facility under 20-9-404, the hiring of a teacher or specialist under 20-4-201 or a superintendent under 20-4-401, or the hiring of or contracting with any other professional person licensed under Title 37, that any of the public agencies entering into the contract is authorized by law to perform. The contract must be authorized and approved by the governing body of each party to the contract. The contract must outline fully the purposes, powers, rights, obligations, and responsibilities of the contracting parties.

**History:** En. Sec. 4, Ch. 82, L. 1967; R.C.M. 1947, 16-4904(part); amd. Sec. 1, Ch. 397, L. 1997; amd. Sec. 2, Ch. 86, L. 1999; amd. Sec. 1, Ch. 318, L. 2001.

**7-11-105. Detailed contents of interlocal agreements.** The contract authorized by 7-11-104 must specify the following:

- (1) its duration;
- (2) the precise organization, composition, and nature of any separate legal entity created by the contract;
- (3) the purpose or purposes of the interlocal contract;
- (4) the manner of financing the joint or cooperative undertaking and establishing and maintaining a budget for the undertaking;
- (5) the permissible method or methods to be employed in accomplishing the partial or complete termination of the agreement and, if applicable, for disposing of property upon a partial or complete termination;
- (6) provision for an administrator or a joint board responsible for administering the joint or cooperative undertaking, including representation of the contracting parties on the joint board;
- (7) if applicable, the manner of acquiring, holding, and disposing of real and personal property used in the joint or cooperative undertaking;
- (8) the contracting party responsible for reports and payment of retirement system contributions pursuant to 19-2-506;
- (9) if applicable, the manner of sharing the employment of a teacher or specialist under 20-4-201, a superintendent under 20-4-401, or a professional person licensed under Title 37; and
- (10) any other necessary and proper matters.

**History:** En. Sec. 4, Ch. 82, L. 1967; R.C.M. 1947, 16-4904(1) thru (8); amd. Sec. 3, Ch. 99, L. 2001; amd. Sec. 2, Ch. 318, L. 2001.

**7-11-106. Repealed.** Sec. 2, Ch. 83, L. 1991.

**History:** En. Sec. 4, Ch. 82, L. 1967; R.C.M. 1947, 16-4904(9).

**7-11-107. Filing of interlocal agreement.** The interlocal contract made pursuant to this part must be filed with:

- (1) the county clerk and recorder of the county or counties where the political agencies are situated; and
- (2) the secretary of state.

**History:** En. Sec. 4, Ch. 82, L. 1967; R.C.M. 1947, 16-4904(10); amd. Sec. 1, Ch. 83, L. 1991.

**7-11-108. Authorization to appropriate funds for purpose of interlocal agreement.** Any public agency entering into an interlocal contract pursuant to this part may appropriate funds for and may sell, lease, or otherwise give or supply to the administrative board created for the purpose of performance of said contract and may provide such personnel or services therefor as may be within its legal power to furnish.

**History:** En. Sec. 4, Ch. 82, L. 1967; R.C.M. 1947, 16-4904(11).

## **Part 11**

### **Multijurisdictional Service Districts**

**7-11-1101. Repealed.** Sec. 39, Ch. 286, L. 2009.

**History:** En. Sec. 1, Ch. 425, L. 1985.

**7-11-1102. Services that may be provided.** (1) A multijurisdictional service district may provide only those services that are authorized to be provided by local governments.

(2) The services that a multijurisdictional service district may provide are:

- (a) recreation programs other than park and recreation programs in a county park district established under Title 7, chapter 11, part 10;
- (b) road, street, and highway maintenance;
- (c) libraries;
- (d) jails;
- (e) dog control programs;
- (f) ambulance service;
- (g) dispatch service;
- (h) protection of human health and the environment, including scenic concerns and recreational activities for areas requiring or involving environmental reclamation;
- (i) health services and health department functions; and
- (j) maintenance or provision of any public infrastructure facility, project, or service.

**History:** En. Sec. 2, Ch. 425, L. 1985; amd. Sec. 8, Ch. 425, L. 1985; amd. Sec. 1, Ch. 193, L. 1991; amd. Sec. 1, Ch. 116, L. 1993; amd. Sec. 1, Ch. 114, L. 1997; amd. Sec. 8, Ch. 459, L. 1997; amd. Sec. 3, Ch. 86, L. 1999; amd. Sec. 26, Ch. 286, L. 2009.

**7-11-1103 and 7-11-1104 reserved.**

**7-11-1105. Repealed.** Sec. 39, Ch. 286, L. 2009.

**History:** En. Sec. 5, Ch. 425, L. 1985.

**7-11-1106. Repealed.** Sec. 39, Ch. 286, L. 2009.

**History:** En. Sec. 6, Ch. 425, L. 1985; amd. Sec. 30, Ch. 584, L. 1999.

**7-11-1107. Repealed.** Sec. 39, Ch. 286, L. 2009.

**History:** En. Sec. 7, Ch. 425, L. 1985.

**7-11-1108 through 7-11-1110 reserved.**

**7-11-1111. Repealed.** Sec. 39, Ch. 286, L. 2009.

**History:** En. Sec. 3, Ch. 425, L. 1985.

**7-11-1112. Financing.** (1) Subject to 15-10-420, local governments organizing a multijurisdictional service district are authorized to levy property taxes in an amount not to exceed that authorized for the district in accordance with 7-11-1007 and to appropriate funds derived from other than general tax revenue for the operation of the district. Subject to 15-10-420,

property taxes levied for a library established under this part as a multijurisdictional service must be added to taxes levied under 22-1-304.

(2) A property tax levied for the purpose of financing the district may, for all agricultural property having an area greater than 10 acres, be levied only on the principal residential dwelling, if any, on the property.

**History:** En. Sec. 4, Ch. 425, L. 1985; amd. Sec. 31, Ch. 584, L. 1999; amd. Sec. 27, Ch. 286, L. 2009.

## CHAPTER 16 CULTURE, SOCIAL SERVICES, AND RECREATION

### Part 41 General Provisions Affecting Municipal Government

**7-16-4107. Use of park funds for public recreation.** (1) Any city or town, including any board of park commissioners, may expend funds from the band fund and the park fund of the city or town for the purpose of operating a program of public recreation and playgrounds and for this purpose may acquire, equip, and maintain land, buildings, and other recreation facilities.

(2) Any school district may cooperate in such program.

**History:** En. Sec. 1, Ch. 71, L. 1939; R.C.M. 1947, 62-211; amd. Sec. 29, Ch. 253, L. 1979.

**7-16-4108. Operation of public recreation programs.** (1) Any city, town, or school district or any board thereof, including any board of park commissioners, may operate such a program independently or may cooperate in its operation and conduct with any other body authorized hereby to conduct such a program in any manner upon which they may mutually agree, or it or they may delegate the operation of the program to a board of recreation created by any city, town, or school district or any board thereof, including any board of park commissioners, operating or proposing to operate a program independently or with any cooperating bodies in such manner as they may agree, and all money appropriated for the purposes of such program may be expended by such board.

(2) Any corporation, board, or body designated in this section, given authority to operate and conduct a recreation program or given charge of such program, is authorized to employ directors and instructors of said recreational work and to conduct its activities on:

(a) property under its custody and management;

(b) other public property under the custody of any other public corporation, body, or board, with the consent of such corporation, body, or board; and

(c) private property, with the consent of its owners.

**History:** (1)En. Sec. 2, Ch. 71, L. 1939; Sec. 62-212, R.C.M. 1947; (2)En. Sec. 3, Ch. 71, L. 1939; Sec. 62-213, R.C.M. 1947; R.C.M. 1947, 62-212, 62-213(part).

## TITLE 10 MILITARY AFFAIRS AND DISASTER AND EMERGENCY SERVICES

### CHAPTER 1 MILITIA

#### Part 10 Montana Military Service Employment Rights

**10-1-1001. Short title.** This part may be cited as the “Montana Military Service Employment Rights Act”.

**History:** En. Sec. 1, Ch. 381, L. 2005.

**10-1-1002. Purpose — legislative intent.** The purpose of this part is to recognize the importance of the service performed by Montana national guard members and the national guard members of other states who are employed in Montana and to protect the employment rights of national guard members who may be called to state military duty. The legislature also supports the efforts and sacrifices of the employers of Montana national guard members and the national guard members of other states who are employed in Montana and intends that this part will provide a means for national guard members and employers to work cooperatively to resolve any workplace issues.

**History:** En. Sec. 2, Ch. 381, L. 2005; amd. Sec. 2, Ch. 235, L. 2015; amd. Sec. 1, Ch. 363, L. 2015.

**10-1-1003. Definitions.** Unless the context requires otherwise, as used in this part, the following definitions apply:

- (1) “Department” means the department of labor and industry established in 2-15-1701.
- (2) “Elected official” means an official duly elected or appointed to any state or local judicial, legislative, or executive elective office of the state, a district, or a political subdivision of the state, including a school district or any other local district.
- (3) (a) “Employer” means any public or private person or entity providing employment in Montana.
- (b) The term does not include the United States.
- (4) “Federally funded military duty” means duty, including training, performed pursuant to orders issued under Title 10 or Title 32 of the United States Code and the time period, if any, required pursuant to a licensed physician’s certification to recover from an illness or injury incurred while performing the duty.
- (5) “Member” means a member of the state’s organized militia provided for in 10-1-103 or a member of the national guard of another state.
- (6) “Military service” includes both federally funded military duty and state military duty.
- (7) (a) “State military duty” means duty performed by a member pursuant to Article VI, section 13, of the Montana constitution, the authority of the governor of any other state, or 10-1-505 and the time period, if any, required pursuant to a licensed physician’s certification to recover from an illness or injury incurred while performing the state military duty.
- (b) The term does not include federally funded military duty.

**History:** En. Sec. 3, Ch. 381, L. 2005; amd. Sec. 6, Ch. 363, L. 2015.

**10-1-1004. Rights under federal law.** A person ordered to federally funded military duty is entitled to all of the employment and reemployment rights and benefits provided pursuant to the federal Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. 4301, et seq., and other applicable federal law.

**History:** En. Sec. 4, Ch. 381, L. 2005.

**10-1-1005. Prohibition against employment discrimination.** An employer may not deny employment, reemployment, reinstatement, retention, promotion, or any benefit of employment or obstruct, injure, discriminate against, or threaten negative consequences against a person with regard to employment because of the person’s membership, application for membership, or potential application for membership in the national guard of Montana or any other state or because the person may exercise or has exercised a right or may claim or has claimed a benefit under this part.

**History:** En. Sec. 5, Ch. 381, L. 2005; amd. Sec. 3, Ch. 363, L. 2015.

**10-1-1006. Entitlement to leave of absence.** (1) A member ordered to state military duty is entitled to a leave of absence from the person’s employment during the period of that state military duty.

(2) A leave of absence for state military duty may not be deducted from any sick leave, vacation leave, military leave, or other leave accrued by the member unless the member desires the deduction.

**History:** En. Sec. 6, Ch. 381, L. 2005; amd. Sec. 4, Ch. 235, L. 2015.

**10-1-1007. Right to return to employment without loss of benefits — exceptions — definition.** (1) Subject to the provisions of this section, after a leave of absence for state military duty, a member is entitled to return to employment with the same seniority, status, pay, health



insurance, pension, and other benefits as the member would have accrued if the member had not been absent for the state military duty.

(2) (a) If a member was a probationary employee when ordered to state military duty, the employer may require the member to resume the member's probationary period from the date when the member's leave of absence for state military duty began.

(b) An employer may decide whether or not to authorize the member to accrue sick leave, vacation leave, military leave, or other leave benefits during the member's leave of absence for state military duty. However, the member may not be provided with lesser leave accrual benefits than are provided to all other employees of the employer in a similar but nonmilitary leave status.

(c) (i) An employer's health plan must provide that:

(A) a member may elect to not remain covered under the employer's health plan while the member is on state military duty but that when the member returns, the member may resume coverage under the plan without the plan considering the employee to have incurred a break in service; and

(B) a member may elect to remain on the employer's health plan while the member is on state military duty without being required to pay more than the regular employee share of the premium, except as provided in subsection (2)(c)(ii).

(ii) If a member's state military duty qualifies the member for coverage under the state of Montana's health insurance plan as an employee of the department of military affairs, the employer's health plan may require the member to pay up to 102% of the full premium for continued coverage.

(iii) A health insurance plan covering an employee who is a member serving on state military duty is not required to cover any illness or injury caused or aggravated by state military duty.

(iv) If the member is a state employee prior to being ordered to state military duty, the member does not become qualified as an employee of the department of military affairs for the purposes of health plan coverage until the member's state military duty qualifies the member to be considered an employee of the department of military affairs pursuant to 2-18-701.

(d) An employer's pension plan must provide that when a member returns to employment from state military duty:

(i) the member's period of state military duty may constitute service with the employer or employers maintaining the plan for the purposes of determining the nonforfeitability of the member's accrued benefits and for the purposes of determining the accrual of benefits under the plan; and

(ii) if the member elects to receive credit and makes the contributions required to accrue the pension benefits that the member would have accrued if the member had not been absent for the state military duty, then the employer shall pay the amount of the employer contribution that would have been made for the member if the member had not been absent.

(e) An employer is not obligated to allow the member to return to employment after the member's absence for state military duty if:

(i) the member is no longer qualified to perform the duties of the position, subject to the provisions of 49-2-303 prohibiting employment discrimination because of a physical or mental disability;

(ii) the member's position was temporary and the temporary employment period has expired;

(iii) the member's request to return to employment was not done in a timely manner;

(iv) the employer's circumstances have changed so significantly that the member's continued employment with the employer cannot reasonably be expected;

(v) the member's return to employment would cause the employer an undue hardship;

(vi) the member did not inform the employer at the time of hire that the member was a member of the state's organized militia or the national guard of another state; or

(vii) the member enlisted in the state's organized militia or another state's national guard during the course of employment with the employer and did not inform the employer of the enlistment.

(3) (a) For the purposes of this section and except as provided in subsection (3)(b), "timely manner" means:

(i) for state military duty of up to 30 days, the member returned to employment the next regular work shift following safe travel time plus 8 hours;

(ii) for state military duty of 30 days to 180 days, the member returned to employment within 14 days of termination of state military duty; and

(iii) for state military duty of more than 180 days, the member returned to employment within 90 days of termination of the state military duty.

(b) If there are extenuating circumstances that preclude the member from returning to employment within the time period provided in subsection (3)(a) through no fault of the member, then for the purposes of this section “timely manner” means within the time period specified by the adjutant general provided for in 2-15-1202.

**History:** En. Sec. 7, Ch. 381, L. 2005; amd. Sec. 5, Ch. 235, L. 2015; amd. Sec. 4, Ch. 363, L. 2015.

**10-1-1008. Leave of absence for elected officials — restoration to office.** (1) If an elected official is ordered to military service, the official is entitled to a leave of absence for the duration of the military service.

(2) An elected official’s leave of absence pursuant to this section does not create a vacancy in office or require the official to forfeit the office.

(3) If an acting official is appointed pursuant to 10-1-1010, the leave of absence must be without pay.

(4) An elected official ordered to military service is entitled to the employment rights and benefits that would be provided to any other employee under the official’s employer if the employee were on a leave of absence subject to the provisions of this part.

(5) Upon returning from a leave of absence for military service, if an acting official was appointed pursuant to 10-1-1010, the returning elected official is entitled to be restored to office for the official’s unexpired term immediately upon the official’s request after being released from the military service.

**History:** En. Sec. 8, Ch. 381, L. 2005.

**10-1-1009. Paid military leave for public employees.** (1) An employee of the state or of any political subdivision, as defined in 2-9-101, who is a member of the national guard of Montana or any other state or who is a member of the organized or unorganized reserve corps or military forces of the United States and who has been an employee for a period of at least 6 months must be given leave of absence with pay accruing at a rate of 120 hours in a calendar year, or academic year if applicable, for performing military service.

(2) Military leave may not be charged against the employee’s annual vacation time.

(3) Unused military leave must be carried over to the next calendar year, or academic year if applicable, but may not exceed a total of 240 hours in any calendar or academic year.

**History:** En. 77-2104 by Sec. 61, Ch. 94, L. 1974; R.C.M. 1947, 77-2104; amd. Sec. 1, Ch. 80, L. 1991; amd. Sec. 22, Ch. 381, L. 2005; Sec. 10-1-604, MCA 2003; redes. 10-1-1009 by Sec. 28, Ch. 381, L. 2005; amd. Sec. 1, Ch. 261, L. 2009; amd. Sec. 5, Ch. 363, L. 2015.

**10-1-1010. Appointment of acting officials.** (1) When an elected official is ordered to military service, an acting official must be appointed as provided in this section if:

(a) the elected official is precluded pursuant to federal law from performing the official duties of the office; or

(b) the elected official requests the appointment of an acting official.

(2) If an acting official is appointed, the acting official shall take any oath of office required to assume the office, shall exercise all the rights, powers, and duties vested in the office, and must be provided with all the employment rights and benefits associated with the position until the elected official is restored to office pursuant to 10-1-1008(5) or the elected official’s term expires, whichever occurs first.

(3) (a) The governor shall appoint the acting official for any office elected by the state at large and for the office of district judge, public service commissioner, or any other elected regional or district office of the state.

(b) An acting official for a legislative district must be appointed using the procedures in 5-2-402.

(c) The board of county commissioners shall appoint the acting official for any elected office of a county.

(d) The city or town council shall appoint the acting official for any elected office of a city or town.

(4) For any elected office not covered under subsection (3), the governing body shall determine the method by which an acting official may be appointed pursuant to this section.

(5) An appointment of an acting official pursuant to this section must be made for a period not to exceed the unexpired term for the office and subject to the right of the elected official to be restored to the office upon returning from the military service, as provided in 10-1-1008(5).

**History:** En. Sec. 9, Ch. 381, L. 2005.

**10-1-1011 through 10-1-1014 reserved.**

**10-1-1015. Procedure for filing complaint.** (1) A person entitled to rights or benefits under this part and who claims that an employer has failed or is about to fail to comply with the provisions of this part may file a complaint with the department as provided in this section.

(2) A complaint under this section must be:

(a) filed within 15 days after the member discovered the actions or practice alleged to constitute an employer's failure or imminent failure to comply with the provisions of this part; and

(b) submitted in writing to the department in a manner prescribed by the department.

(3) The department shall, upon request, provide technical assistance to a person wishing to file a complaint pursuant to this section.

**History:** En. Sec. 10, Ch. 381, L. 2005.

**10-1-1016. Assistance, investigation, and enforcement of complaints.** (1) The department shall provide assistance to any person with respect to the employment rights and benefits to which the person is entitled pursuant to this part. The department may request the assistance of federal or state agencies engaged in similar or related activities and utilize the assistance of volunteers.

(2) The department shall investigate each complaint submitted pursuant to 10-1-1015. The department shall initiate the investigation within 30 days of receiving the complaint. Within 60 days of receiving the complaint, the department shall make a finding about whether a violation of rights or benefits provided in this part has occurred or is about to occur and shall notify the complainant and the employer in writing of the finding.

(3) If the department's investigation finds that a violation of this part has occurred or is about to occur, the department shall attempt to resolve the matter by making a reasonable effort, including conference, conciliation, and persuasion, to provide redress to the complainant and ensure that the employer named in the complaint complies with the provisions of this part.

(4) If the department fails to resolve the matter within 90 days of receiving the complaint, the department shall notify the complainant of the complainant's right to request that the department refer the complaint to the state attorney general under the provisions of 10-1-1018.

**History:** En. Sec. 11, Ch. 381, L. 2005.

**10-1-1017. Enforcement and investigative powers of department.** To carry out its enforcement and investigative duties under this part, the department has the power to:

(1) enter and inspect the places, question the employees, and investigate the facts, conditions, or matters that the department considers appropriate to determine whether an employer has violated or is about to violate the provisions of this part or that will aid the department in the enforcement of the provisions of this part; and

(2) administer oaths, examine witnesses, issue subpoenas, compel the attendance of witnesses, inspect papers, books, accounts, records, payrolls, documents, and testimony, and take depositions and affidavits relevant to the department's duties under this part.

**History:** En. Sec. 12, Ch. 381, L. 2005.

**10-1-1018. Referral of complaint to state attorney general.** (1) A complaint that could not be successfully resolved pursuant to 10-1-1016 must be referred by the department to the state attorney general if the complainant requests the referral pursuant to 10-1-1016(4).

(2) (a) Except as provided in subsection (2)(b), if the state attorney general is satisfied that the complaint has merit, the state attorney general may file a lawsuit on behalf of and act as an attorney for the complainant in seeking relief for the complainant.

(b) (i) Except as provided in subsection (2)(b)(ii), if the complaint is against a state agency, as defined in 2-15-102, notwithstanding an arrangement for the provision of legal services to the agency by the department of justice, the agency shall provide or obtain counsel for the agency.

(ii) If the complaint is against the department of justice, the department of administration, notwithstanding an arrangement for the provision of legal services to the department of administration by the department of justice, shall provide or obtain counsel for the department of justice.

(3) If the state attorney general sues pursuant to this section, fees or court costs may not be assessed against the complainant.

**History:** En. Sec. 13, Ch. 381, L. 2005.

**10-1-1019. Independent lawsuit not precluded — exhaustion of administrative remedies.** Nothing in this part may be construed as infringing on a person's right to file an independent lawsuit to seek relief as a private party from an alleged violation of this part. However, if a person files a complaint with the department as provided in 10-1-1015, the person must have exhausted the administrative remedies available under 10-1-1016 before having standing to initiate an independent lawsuit.

**History:** En. Sec. 14, Ch. 381, L. 2005.

**10-1-1020. Jurisdiction — venue — standing — respondent — time limit — expedited hearing.** In any lawsuit initiated pursuant to this part:

(1) the lawsuit must be brought in the district court in the county in which the claimant's employer maintains a place of business;

(2) the lawsuit may be initiated only by a person claiming a right or benefit under this part or by the state attorney general as provided in 10-1-1018;

(3) only an employer may be a necessary party respondent;

(4) the lawsuit must be commenced within 3 years of when the claimant can reasonably be expected to have discovered the facts constituting a violation of the claimant's rights or benefits pursuant to this part; and

(5) the court shall order a speedy hearing and shall advance the case on the court's calendar.

**History:** En. Sec. 15, Ch. 381, L. 2005.

**10-1-1021. Court remedies.** (1) In a lawsuit initiated pursuant to this part, the court may provide one or more of the following remedies:

(a) require the employer to comply with the provisions of this part;

(b) require the employer to compensate the complainant for losses suffered by the complainant because of the employer's violation; or

(c) if the court finds that the employer's violation was done willfully, as defined in 1-1-204, require the employer to pay compensation under subsection (1)(b) as liquidated damages.

(2) If the complainant is the prevailing party, the court may award reasonable attorney fees to the complainant.

(3) The court may use its full equity powers, including temporary or permanent injunctions, temporary restraining orders, and contempt orders, to vindicate fully the rights or benefits of a person under this part.

**History:** En. Sec. 16, Ch. 381, L. 2005.

**10-1-1022. Special revenue account for payment to claimants.** (1) There is an account in the state special revenue fund to the credit of the department of justice for the payment of compensation awarded by a court pursuant to 10-1-1021.

(2) In a lawsuit by the state attorney general under 10-1-1018, if paid compensation or liquidated damages are awarded, the money awarded must be deposited in the state special revenue account and be paid from the account directly to the complainant on order of the state attorney general.

(3) If payment cannot be made to a complainant within 3 years, the payment must be forwarded to the Montana department of revenue and classified as unclaimed property subject to the provisions of Title 70, chapter 9, part 8.

**History:** En. Sec. 17, Ch. 381, L. 2005.

**10-1-1023 through 10-1-1026 reserved.**

**10-1-1027. Rulemaking authority.** The department and the department of justice may adopt rules to implement the provisions of this part.

**History:** En. Sec. 18, Ch. 381, L. 2005.

## **Part 14**

### **National Guard Youth Challenge Program**

**10-1-1401. Montana national guard youth challenge program authorized.** A youth challenge program provided for pursuant to 32 U.S.C. 509 may be established in the department.

**History:** En. Sec. 2, Ch. 347, L. 2007.

**10-1-1402. Legislative intent.** It is the intent of the legislature that:

(1) the youth challenge program assist youth between 16 and 18 years of age to achieve a quality education and develop the skills and abilities necessary to become productive citizens;

(2) the youth challenge program focus on the physical, emotional, and educational needs of youth within a voluntary, highly structured environment;

(3) eligible participants be drug-free, not be on parole or probation for other than juvenile-status offenses, not have been indicted for or charged with an offense other than a juvenile-status offense, and not have been convicted of a felony or capital offense;

(4) recruiting for the youth challenge program treat all eligible youth equitably and seek representation from different genders, ethnic groups, and geographic locations;

(5) the youth challenge program conduct structured training consisting of a residential phase and a postresidential phase with curriculum that focuses on academic excellence, including the successful completion of the tests for a high school equivalency diploma, and on physical fitness, job skills, service to the community, health and hygiene, responsible citizenship, leadership, how to follow directions, and life-coping skills; and

(6) the youth challenge program be conducted in cooperation with other community programs for at-risk youth.

**History:** En. Sec. 3, Ch. 347, L. 2007; amd. Sec. 6, Ch. 55, L. 2015.

**10-1-1403. Administration and staff.** Subject to 32 U.S.C. 509 and its implementing regulations and applicable agreements, the youth challenge program may be staffed by an administrator and the professional, technical, secretarial, and clerical employees necessary for the performance of the youth challenge program's functions.

**History:** En. Sec. 4, Ch. 347, L. 2007.

# **TITLE 13**

## **ELECTIONS**

### **CHAPTER 1**

#### **GENERAL PROVISIONS**

#### **Part 1**

##### **General Provisions**

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

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

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

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

(4) "Application for voter registration" means a voter registration form prescribed by the secretary of state that is completed and signed by an elector, is submitted to the election



administrator, and contains voter registration information subject to verification as provided by law.

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

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

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

(7) “Ballot issue committee” means a political committee specifically organized to support or oppose a ballot issue.

(8) “Candidate” means:

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

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

(i) solicitation is made;

(ii) contribution is received and retained; or

(iii) expenditure is made; or

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

(9) (a) “Contribution” means:

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

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

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

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

(b) “Contribution” does not mean services provided without compensation by individuals volunteering a portion or all of their time on behalf of a candidate or political committee or meals and lodging provided by individuals in their private residences for a candidate or other individual.

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

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

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

(13) (a) “Election administrator” means, except as provided in subsection (13)(b), the county clerk and recorder or the individual designated by a county governing body to be responsible for all election administration duties, except that with regard to school elections not administered by the county, the term means the school district clerk.

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

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

- (i) a paid advertisement broadcast over radio, television, cable, or satellite;
- (ii) paid placement of content on the internet or other electronic communication network;
- (iii) a paid advertisement published in a newspaper or periodical or on a billboard;
- (iv) a mailing; or
- (v) printed materials.

(b) The term does not mean:

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

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

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

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

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

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

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

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

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

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

(b) The term does not mean:

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

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

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

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

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

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

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

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

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

(b) “Expenditure” does not mean:

(i) services, food, or lodging provided in a manner that they are not contributions under subsection (9);

(ii) payments by a candidate for personal travel expenses, food, clothing, lodging, or personal necessities for the candidate and the candidate’s family;

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

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

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

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

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

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

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

(b) For the purpose of this subsection (23), the primary purpose is determined by the commissioner by rule and includes criteria such as the allocation of budget, staff, or members’ activity or the statement of purpose or goal of the person or individuals that form the committee.

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

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

(26) “Individual” means a human being.

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

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

(29) “Person” means an individual, corporation, association, firm, partnership, cooperative, committee, including a political committee, club, union, or other organization or group of individuals or a candidate as defined in subsection (8).

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

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

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

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

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

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

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

(d) A political committee is not formed when a combination of two or more individuals or a person other than an individual makes an election communication, an electioneering communication, or an independent expenditure of \$250 or less.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

or defeat of the political party, or the passage or defeat of the ballot issue or other question submitted to the voters in an election.

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

(52) “Voted ballot” means a ballot that is:

- (a) deposited in the ballot box at a polling place;
- (b) received at the election administrator’s office; or
- (c) returned to a place of deposit.

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

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

#### Compiler’s Comments

*2017 Amendment — Composite Section:* Chapter 63 in definition of expenditure in (b)(ii) after “payments by a candidate” deleted “for a filing fee or”. Amendment effective October 1, 2017.

Chapter 242 in definition of election administrator in (a) near beginning inserted exception clause and inserted (b) regarding use of the term to include an individual designated by a county governing body to be responsible for all election administration duties even if a school election is administered by a school district clerk; and made minor changes in style. Amendment effective May 3, 2017.

Chapter 368 inserted definition of election judge; deleted definition that read: ““Transfer form” means a form prescribed by the secretary of state that may be filled out by an elector to transfer the elector’s registration when the elector’s residence address has changed within the county”; and made minor changes in style. Amendment effective January 1, 2018.

*Transition — Special Purpose District Officers — Terms of Office — Retroactive Applicability:* Section 18, Ch. 242, L. 2017, provided: “An officer of a special purpose district, as defined in 13-1-101, who was elected or appointed to a term of office that would otherwise have expired prior to the school election immediately following the expiration of the officer’s term shall serve until the election or appointment of a successor under the laws effective on and after November 4, 2015, that provide for the special purpose district election to be held on the same day as the regular school election in May. This section applies retroactively, within the meaning of 1-2-109, to the terms of office for special purpose district officers elected before November 4, 2015.”

**13-1-102. Elections by secret ballot.** All elections shall be by secret ballot.

**History:** En. Sec. 2, Ch. 368, L. 1969; amd. Sec. 1, Ch. 8, L. 1973; R.C.M. 1947, 23-2602.

**13-1-103. Determination of winner.** The individual receiving the highest number of valid votes for any office at an election is elected or nominated to that office.

**History:** En. Sec. 3, Ch. 368, L. 1969; R.C.M. 1947, 23-2603; amd. Sec. 2, Ch. 571, L. 1979; amd. Sec. 6, Ch. 414, L. 2003.

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

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

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

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

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

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

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

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

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



**13-1-105. Repealed.** Sec. 407, Ch. 571, L. 1979.

**History:** En. Sec. 56, Ch. 368, L. 1969; R.C.M. 1947, 23-3301.

**13-1-106. Time of opening and closing of polls for all elections — exceptions.**

(1) Except as provided in subsections (2) and (3), polling places must be open from 7 a.m. to 8 p.m.

(2) A polling place having fewer than 400 registered electors must be open from at least noon to 8 p.m. or until all registered electors in any precinct have voted, at which time that precinct in the polling place must be closed immediately.

(3) If an election is held on the same day as a school election and is conducted in the same polling place, the polling place must be opened and closed at the times set for the school election, as provided in 20-20-106.

**History:** En. Sec. 5, Ch. 368, L. 1969; amd. Sec. 4, Ch. 365, L. 1977; R.C.M. 1947, 23-2605; amd. Sec. 5, Ch. 571, L. 1979; amd. Sec. 1, Ch. 676, L. 1983; amd. Sec. 1, Ch. 57, L. 1985; amd. Sec. 1, Ch. 360, L. 2007; amd. Sec. 2, Ch. 242, L. 2011; amd. Sec. 167, Ch. 49, L. 2015.

**13-1-107. Times for holding primary elections — cost of municipal election.**

(1) On the first Tuesday after the first Monday in June preceding a general election held in an even-numbered year, a primary election must be held throughout the state.

(2) On the Tuesday following the second Monday in September preceding a general election held in an odd-numbered year, a primary election, if required, must be held throughout the state.

(3) The cost of a municipal election must be paid by the municipality.

**History:** En. Sec. 3, Ch. 571, L. 1979; amd. Sec. 3, Ch. 216, L. 1987; amd. Sec. 168, Ch. 49, L. 2015.

**13-1-108. Notice of political subdivision elections.** (1) Except as otherwise provided in this section, an election administrator conducting a political subdivision election shall give notice of the election at least three times no earlier than 40 days and no later than 10 days before the election. The notice must be published in a newspaper of general circulation in the jurisdiction where the election will be held or by broadcasting the notice on radio or television as provided in 2-3-105 through 2-3-107. The notice must be given using the method the election administrator believes is best suited to reach the largest number of potential electors. The provisions of this subsection are fulfilled upon the third publication or broadcast of the notice.

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

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

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

**13-1-109. Election records open to public.** Unless specifically provided otherwise, all records pertaining to elector registration and elections are public records. They shall be open for inspection during regular office hours.

**History:** En. Sec. 15, Ch. 571, L. 1979.

**13-1-110 reserved.**

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

- (a) registered as required by law;
- (b) 18 years of age or older;
- (c) a resident of the state of Montana and of the county in which the person offers to vote for at least 30 days, except as provided in 13-2-514; and
- (d) a citizen of the United States.

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

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

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

**13-1-112. Rules for determining residence.** For registration, voting, or seeking election to the legislature, the residence of an individual must be determined by the following rules as far as they are applicable:

(1) The residence of an individual is where the individual's habitation is fixed and to which, whenever the individual is absent, the individual has the intention of returning.

(2) An individual may not gain or lose a residence while kept involuntarily at any public institution, not necessarily at public expense; as a result of being confined in any prison; or solely as a result of residing on a military reservation.

(3) (a) An individual in the armed forces of the United States may not become a resident solely as a result of being stationed at a military facility in the state.

(b) An individual may not acquire a residence solely as a result of being employed or stationed at a training or other transient camp maintained by the United States within the state.

(c) A member of a reserve component of the United States armed forces who is stationed outside of the state but who has no intent of changing residency retains resident status.

(4) An individual does not lose residence if the individual goes into another state or other district of this state for temporary purposes with the intention of returning, unless the individual exercises the election franchise in the other state or district.

(5) An individual may not gain a residence in a county if the individual comes in for temporary purposes without the intention of making that county the individual's home.

(6) If an individual moves to another state with the intention of making it the individual's residence, the individual loses residence in this state.

(7) The place where an individual's family resides is presumed to be that individual's place of residence. However, an individual who takes up or continues a residence at a place other than where the individual's family resides with the intention of remaining is a resident of the place where the individual resides.

(8) A change of residence may be made only by the act of removal joined with intent to remain in another place.

**History:** En. Sec. 41, Ch. 368, L. 1969; amd. Sec. 1, Ch. 394, L. 1971; amd. Sec. 1, Ch. 164, L. 1975; amd. Sec. 1, Ch. 177, L. 1975; R.C.M. 1947, 23-3022(part); amd. Sec. 7, Ch. 571, L. 1979; amd. Sec. 1, Ch. 74, L. 1993; amd. Sec. 15, Ch. 51, L. 1999; amd. Sec. 3, Ch. 271, L. 2003.

**13-1-113. Only one residence.** There may be only one residence for the purposes of this title.

**History:** En. Sec. 41, Ch. 368, L. 1969; amd. Sec. 1, Ch. 394, L. 1971; amd. Sec. 1, Ch. 164, L. 1975; amd. Sec. 1, Ch. 177, L. 1975; R.C.M. 1947, 23-3022(part); amd. Sec. 8, Ch. 571, L. 1979; amd. Sec. 3, Ch. 297, L. 2009.

**13-1-114. Computation of elector's age and term of residence.** An elector's age and the term of an elector's residence must be computed by including the day of election.

**History:** En. Sec. 41, Ch. 368, L. 1969; amd. Sec. 1, Ch. 394, L. 1971; amd. Sec. 1, Ch. 164, L. 1975; amd. Sec. 1, Ch. 177, L. 1975; R.C.M. 1947, 23-3022(10); amd. Sec. 9, Ch. 571, L. 1979; amd. Sec. 30, Ch. 56, L. 2009.

**13-1-115. Privilege from arrest.** Electors may not be arrested during their attendance at elections and in going to and from voting places in polling place elections and to and from places of deposit in mail ballot elections, except in cases of treason, felony, or breach of the peace.

**History:** En. Sec. 10, Ch. 368, L. 1969; R.C.M. 1947, 23-2705; amd. Sec. 4, Ch. 297, L. 2009.

**13-1-116. Fingerprint, mark, or agent for disabled electors — rulemaking.** (1) Except as otherwise specified by law, the provisions of this section apply.

(2) Whenever a signature is required by an elector under a provision of this title and the elector is unable because of a disability to provide a signature, the elector may provide a fingerprint, subject to subsection (6), or an identifying mark or may request that an agent, election administrator, or election judge sign for the elector as provided in this section.

(3) If an elector is unable to provide a fingerprint or an identifying mark and the elector has not established an agent pursuant to subsection (4), the election administrator or an election judge may sign for the elector after reviewing and verifying the elector's identification.

(4) (a) An elector who is unable to provide a signature may apply to the election administrator to have another person designated as an agent for purposes of providing a

signature or identifying mark required pursuant to this title and for providing any other assistance to the elector throughout the registration and voting process. The use of an agent is a reasonable accommodation under the provisions of 49-2-101(19)(b).

(b) An application for designation of an agent by an elector under this section must be made on a form prescribed by the secretary of state. The secretary of state shall by rule establish the criteria that must be met and the process that must be followed in order for a person to become a designated agent for a disabled elector pursuant to this subsection (4).

(5) If an election administrator or election judge signs or marks a document for an elector pursuant to this section, the election administrator or election judge shall initial the signature or mark.

(6) A disabled elector may not be required to provide a fingerprint.

**History:** En. Sec. 1, Ch. 367, L. 2005; amd. Sec. 1, Ch. 236, L. 2015; amd. Sec. 2, Ch. 368, L. 2017.

**Compiler's Comments**

*2017 Amendment:* Chapter 368 in (5) in two places before "election administrator" deleted "agent"; and made minor changes in style. Amendment effective January 1, 2018.

**13-1-117 through 13-1-120 reserved.**

**13-1-121. Question of holding constitutional convention — form and content.**

(1) Unless otherwise submitted earlier, the secretary of state shall cause the question of holding an unlimited constitutional convention to be submitted to the people at the general election in 1990. The same question must be submitted at the general election in each 20th year following its last submission, unless otherwise submitted earlier.

(2) The ballot submitting the question to the people must contain the following:

"Article XIV, sections 3 and 4, of the Montana constitution require the question of holding an unlimited constitutional convention to be submitted to the people at the general election in each 20th year following its last submission. If a majority of those voting on the question answer in the affirmative, the legislature shall provide for the calling of a constitutional convention at its next session.

- ☐ FOR calling a constitutional convention
- ☐ AGAINST calling a constitutional convention"

**History:** En. Sec. 1, Ch. 36, L. 1973; R.C.M. 1947, 23-4801; amd. Sec. 3, Ch. 368, L. 2017.

**Compiler's Comments**

*2017 Amendment:* Chapter 368 inserted (2) regarding mandatory language required in ballot question for or against holding an unlimited constitutional convention; and made minor changes in style. Amendment effective January 1, 2018.

**13-1-122. Repealed.** Sec. 33, Ch. 368, L. 2017. (*Repealer effective January 1, 2018.*)

**History:** En. Sec. 2, Ch. 36, L. 1973; R.C.M. 1947, 23-4802; amd. Sec. 10, Ch. 571, L. 1979.

## Part 2 Role of Secretary of State

**13-1-201. Chief election officer.** The secretary of state is the chief election officer of this state, and it is the secretary of state's responsibility to obtain and maintain uniformity in the application, operation, and interpretation of the election laws other than those in Title 13, chapter 35, 36, or 37.

**History:** En. Sec. 11, Ch. 571, L. 1979; amd. Sec. 31, Ch. 56, L. 2009.

**13-1-202. Forms and rules prescribed by secretary of state — consultation.** (1) In carrying out the responsibilities under 13-1-201, the secretary of state shall prepare and deliver to the election administrators:

- (a) written directives and instructions relating to and based on the election laws;
- (b) sample copies of prescribed and suggested forms; and
- (c) advisory opinions on the effect of election laws other than those laws in chapter 35, 36, or 37 of this title.

(2) The secretary of state may prescribe the design of any election form required by law. The secretary of state shall seek the advice of election administrators and printers in designing the required forms.

(3) Each election administrator shall comply with the directives and instructions and shall provide election forms prepared as prescribed.

(4) Each election administrator shall provide data to the secretary of state that the secretary of state determines is necessary to:

(a) evaluate voting system performance against the benchmark standard adopted pursuant to 13-17-103;

(b) evaluate the security, accuracy, and accessibility of elections; and

(c) assist the secretary of state in making recommendations to improve voter confidence in the integrity of the election process.

(5) The secretary of state shall regularly consult with and seek the advice of local election administrators in implementing the provisions of this section.

**History:** En. Sec. 12, Ch. 571, L. 1979; amd. Sec. 7, Ch. 414, L. 2003; amd. Sec. 8, Ch. 44, L. 2007; amd. Sec. 4, Ch. 273, L. 2007.

**13-1-203. Secretary of state to advise, assist, and train.** (1) The secretary of state shall advise and assist election administrators, including administrators of school elections under Title 20, chapter 20, with regard to:

(a) the application, operation, and interpretation of Title 13, except for chapter 35, 36, or 37;

(b) the implementation and operation of the National Voter Registration Act of 1993, Public Law 103-31; and

(c) the procedures adopted pursuant to 13-17-211.

(2) The secretary of state shall prepare and distribute training materials for election judges to be trained pursuant to 13-4-203. Sufficient copies of the materials to supply all election judges in the county and to provide a small extra supply must be sent to each election administrator.

(3) (a) The secretary of state shall hold at least one training session every 2 years to instruct election administrators and their staffs on how to conduct and administer primary and general elections. The training must also include instruction on the use of the statewide voter registration system. The training may be held in various locations around the state. The training must also be offered online and through teleconferencing.

(b) Costs of the biennial training, including the materials, must be paid by the secretary of state.

(4) In addition to completing the biennial training under subsection (3), each election administrator shall complete 6 hours of election-related continuing education each year that is approved by the secretary of state. Costs for the continuing education must be paid by the counties.

(5) The secretary of state shall:

(a) certify for election administration purposes each election administrator who attends the biennial training and completes the required continuing education; and

(b) provide a certificate of completion to election staff who attend the biennial election training described in subsection (3).

(6) An election administrator may require that election staff complete the continuing education described in subsection (4) and provide a certificate of completion to staff who complete it.

**History:** En. Sec. 13, Ch. 571, L. 1979; amd. Sec. 32, Ch. 370, L. 1987; amd. Sec. 1, Ch. 4, Sp. L. November 1993; amd. Sec. 3, Ch. 246, L. 1997; amd. Sec. 8, Ch. 414, L. 2003; amd. Sec. 1, Ch. 209, L. 2015.

**13-1-204. Election records to be kept by secretary of state.** (1) The secretary of state shall maintain current and accurate records including:

(a) a list of all precincts in each county;

(b) a map showing the boundaries of all precincts in each county;

(c) a count of the number of registered voters in each precinct for the latest general election;

(d) a list of legislative districts, judicial districts, and any multicounty election districts, showing the precinct numbers of each county contained in each district and the number of registered voters in each district for the most recent general election;

(e) a count of votes cast at the most recent general election by precinct and by legislative, judicial, and multicounty districts; and

(f) records required to be submitted from local election administrators and other agencies and coordinated by the secretary of state pursuant to the National Voter Registration Act of 1993, Public Law 103-31.

(2) Each election administrator shall provide the information and map for the record required in subsection (1) in the form and at the time prescribed by the secretary of state.

(3) The records required in subsection (1) and all records in the secretary of state's office pertaining to elections must be open for public inspection during normal office hours.

**History:** En. Sec. 18, Ch. 571, L. 1979; amd. Sec. 1, Ch. 70, L. 1983; amd. Sec. 4, Ch. 246, L. 1997.

**13-1-205 through 13-1-208 reserved.**

**13-1-209. Special account for federal Help America Vote Act.** (1) There is a federal special revenue account in the state treasury to the credit of the office of the secretary of state.

(2) Money provided to the state for the purposes of implementing provisions of Public Law 107-252, the Help America Vote Act of 2002, must be deposited in the account.

(3) Money in the account may be used only for the purposes specified by the federal law under which the money was provided.

**History:** En. Sec. 1, Ch. 218, L. 2003.

**13-1-210. Standard application form for voter registration and absentee ballot requests.** (1) The secretary of state shall establish by rule a standard application form, to be used by each election administrator, that allows an individual to apply for voter registration and to request to be added to the absentee ballot list in order to receive ballots for subsequent elections.

(2) Pursuant to 13-13-212(3), the absentee ballot application portion of the standard form must include substantially the following language and option:

- ☐ Optional: I request an absentee ballot to be mailed to me for as long as I reside at the address listed for each subsequent election in which I am eligible to vote.

I understand that in order to continue to receive an absentee ballot, I must complete, sign, and return a confirmation form that will be mailed to me in January of every even-numbered year.

**History:** En. Sec. 1, Ch. 182, L. 2011; amd. Sec. 1, Ch. 255, L. 2013; amd. Sec. 3, Ch. 336, L. 2013.

### **Part 3**

#### **Local Election Administration**

**13-1-301. Election administrator.** (1) The county clerk and recorder of each county is the election administrator unless the governing body of the county designates another official or appoints an election administrator.

(2) The election administrator is responsible for the administration of all procedures relating to registration of electors and conduct of elections, shall keep all county records relating to elector registration and elections, and is the primary point of contact for the county with respect to the statewide voter registration list and implementation of other provisions of applicable federal law governing elections.

(3) The election administrator may appoint a deputy election administrator for each political subdivision required to hold elections.

**History:** En. Sec. 14, Ch. 571, L. 1979; amd. Sec. 6, Ch. 27, L. 1981; amd. Sec. 3, Ch. 475, L. 2003; amd. Sec. 170, Ch. 49, L. 2015.

**13-1-302. Election costs.** (1) Unless specifically provided otherwise, all costs of the regularly scheduled primary and general elections shall be paid by the counties and other political subdivisions for which the elections are held. Each political subdivision shall bear its proportionate share of the costs as determined by the county governing body.

(2) A political subdivision holding an annual election with a regularly scheduled school election shall bear its proportionate share of the costs as determined by the county election administrator and the school district election administrator.

(3) The political subdivision for which a special election is held shall bear all costs of the election, or its proportionate share as determined by the county governing body if held in conjunction with any other election.

(4) Costs of elections may not include the services of the election administrator or capital expenditures.

(5) The county governing body shall set a schedule of fees for services provided to school districts by the election administrator.



(6) Election costs shall be paid from county funds, and any shares paid by other political subdivisions shall be credited to the fund from which the costs were paid.

(7) The proportionate costs referred to in subsection (1) of this section shall be only those additional costs incurred as a result of the political subdivision holding its election in conjunction with the primary or general election.

**History:** En. Sec. 16, Ch. 571, L. 1979; amd. Sec. 7, Ch. 27, L. 1981; amd. Sec. 1, Ch. 558, L. 1983; amd. Sec. 2, Ch. 644, L. 1987.

**13-1-303. Disposition of ballots and other election materials.** (1) (a) Except for a federal election and as provided in 13-15-301(2), the voted ballots, detached stubs, unvoted ballots, and unused ballots from an election must be kept in the unopened packages received from the election judges for a period of 12 months. The packages may be opened only when an order for opening is given by the proper official either for a recount procedure or to process provisional ballots.

(b) The voted ballots, detached stubs, unvoted ballots, and unused ballots from a federal election must be retained in the unopened packages received from the election judges for a period of 22 months. The packages may be opened only as provided in subsection (1)(a) or for a postelection random-sample audit of vote-counting machines.

(c) An election administrator may dispose of the ballots as provided in subsection (2) if after the time periods provided for in this subsection (1), there is no:

- (i) contest begun;
- (ii) recount pending; or
- (iii) appeal of a decision relating to a contest, a recount, or a postelection random-sample audit.

(2) Each election administrator shall prepare a plan for retention and destruction of election records in the county according to the retention schedules established by the local government records committee provided for in 2-6-1201.

**History:** En. Sec. 17, Ch. 571, L. 1979; amd. Sec. 1, Ch. 97, L. 1997; amd. Sec. 2, Ch. 586, L. 2005; amd. Sec. 11, Ch. 89, L. 2009; amd. Sec. 4, Ch. 242, L. 2011; amd. Sec. 38, Ch. 348, L. 2015.

**13-1-304. Duties of officials when election not held.** If a scheduled election is not necessary or is canceled for any reason specified in law, the governing body or official making the determination shall immediately notify the election administrator in writing. If the election is not necessary because of the number of candidates filed, the election administrator shall make the determination and notify the proper governing body.

**History:** En. Sec. 25, Ch. 571, L. 1979; amd. Sec. 5, Ch. 242, L. 2011.

**13-1-305. School district and political subdivision election cooperation.** Any political subdivision holding a polling place election on the same day as a regular school election shall cooperate with a school district having similar district boundaries to hold the election at the same polling place. The election administrator appointed under the provisions of 13-1-301 shall cooperate with the school district election administrator to share costs, as provided in 13-1-302.

**History:** En. Sec. 8, Ch. 27, L. 1981; amd. Sec. 29, Ch. 196, L. 1985; amd. Sec. 171, Ch. 49, L. 2015; Sec. 13-1-401, MCA 2013; redes. 13-1-305 by Code Commissioner, 2015.

## Part 4 Local Government Elections

**13-1-401. Renumbered 13-1-305.** Code Commissioner, 2015.

**13-1-402. Purpose — definition.** (1) The purpose of this part is to consolidate, simplify, and standardize, to the extent feasible, dates and deadlines for local government elections and to provide more consistency for election administrators and voters.

(2) For the purposes of this part, “local government” means a county, a consolidated government, or an incorporated city or town that is conducting an election that may be held on the same day as a primary election but is not a primary election, such as an election on a question or an election for officers that does not involve a primary.

**History:** En. Sec. 6, Ch. 49, L. 2015; amd. Sec. 8, Ch. 372, L. 2017.

**Compiler's Comments**

*2017 Amendment:* Chapter 372 in (2) substituted “a county, a consolidated government, or an incorporated city or town” for “a local government entity, other than a special purpose district or a school district”; and made minor changes in style. Amendment effective July 1, 2017.

**13-1-403. Election deadlines for candidate filing, write-in candidacy, and withdrawal — election cancellation — election by acclamation.** (1) Consistent with the candidate filing deadline in 13-10-201(7) for primary elections and except as provided in subsection (2) for a write-in candidate, the candidate filing deadline for election to a local government office is no sooner than 145 days and no later than 85 days before the election.

(2) A declaration of intent to be a write-in candidate must be filed with the election administrator by 5 p.m. on the 65th day before the date of the election.

(3) Consistent with the withdrawal deadline in 13-10-325 for primary elections, a candidate may not withdraw after the candidate filing deadline provided in subsection (1).

(4) Except as provided in subsection (5)(b) and unless otherwise specifically provided by law, if the number of candidates filing for election is equal to or less than the number of positions to be filled, the election administrator shall notify the governing body of the local government in writing that the election is not necessary and the governing body may by resolution cancel the election.

(5) (a) If an election has been canceled and there is only one candidate for a position, the governing body of the local government shall declare the candidate elected to the position by acclamation.

(b) If an election has been canceled and there are no regular or declared write-in candidates for a position, the governing body of the local government shall fill the position by appointment. The term of an appointed member must be the same as if the member were elected.

**History:** En. Sec. 7, Ch. 49, L. 2015; amd. Sec. 7, Ch. 242, L. 2017; amd. Sec. 9, Ch. 372, L. 2017.

**Compiler's Comments**

*2017 Amendments — Composite Section:* Chapter 242 in (2) at beginning deleted “Consistent with the deadline for write-in candidates under 13-10-211 for primary elections” and at end substituted “65th day before the date of the election” for “10th day before the date on which the ballot must be available for absentee or mail ballot voting under 13-1-404, as applicable”; and made minor changes in style. Amendment effective May 3, 2017.

Chapter 372 in (4), (5)(a), and (5)(b) after “governing body” inserted “of the local government”. Amendment effective July 1, 2017.

**13-1-404. Deadline for absentee ballots and mail ballots.** (1) Pursuant to 13-13-205, ballots for a local government election must be:

(a) available for absentee voting in person at least 30 days before election day; and

(b) mailed to absentee voters at least 25 days prior to election day.

(2) Pursuant to 13-19-207, ballots for a local government election conducted by mail must be mailed no sooner than the 20th day and no later than the 15th day before election day.

**History:** En. Sec. 8, Ch. 49, L. 2015; amd. Sec. 8, Ch. 242, L. 2017.

**Compiler's Comments**

*2017 Amendment:* Chapter 242 in (1)(a) inserted “in person at least 30 days before election day”; in (1)(b) substituted “mailed to absentee voters at least 25 days prior to election day” for “at least 25 days prior to a polling place election”; in (2) inserted “for a local government election conducted by mail” and at end deleted “for an election conducted by mail”; and made minor changes in style. Amendment effective May 3, 2017.

**13-1-405. Date of local government elections — call for election.** (1) A local government election must be held on the same day as the primary election day established in 13-1-107 or the general election day established in 13-1-104, except that an election concerning funding may be called as a special election.

(2) A local government election may not be held sooner than 85 days after the date of the order or resolution calling for the election.

(3) Pursuant to 13-19-201, the governing body authorized by law to call an election shall specify in the order or resolution calling for the election whether the governing body is requesting that the election be conducted by mail.

**History:** En. Sec. 9, Ch. 49, L. 2015.

**13-1-406. Conduct of elections.** (1) Notice of a local government election must be provided as required in 13-1-108.

(2) Subject to 13-19-104, a local government election may be conducted by mail.

(3) Unless otherwise specified by law, conduct of the election, voter registration, and how votes must be cast, counted, and canvassed must be done in accordance with the applicable provisions of this title.

**History:** En. Sec. 10, Ch. 49, L. 2015.

## Part 5 Special District Elections

### Part Compiler's Comments

*Transition — Special Purpose District Officers — Terms of Office — Retroactive Applicability:* Section 18, Ch. 242, L. 2017, provided: “An officer of a special purpose district, as defined in 13-1-101, who was elected or appointed to a term of office that would otherwise have expired prior to the school election immediately following the expiration of the officer’s term shall serve until the election or appointment of a successor under the laws effective on and after November 4, 2015, that provide for the special purpose district election to be held on the same day as the regular school election in May. This section applies retroactively, within the meaning of 1-2-109, to the terms of office for special purpose district officers elected before November 4, 2015.”

**13-1-501. Purpose — definition.** (1) The purpose of this part is to consolidate, simplify, and standardize, to the extent feasible, dates and deadlines for special purpose district elections and to provide more consistency for election administrators and voters.

(2) Nothing in this part may be interpreted to require the secretary of state to oversee special purpose district elections.

(3) For the purposes of this part, “local government” has the meaning provided in 13-1-402.

**History:** En. Sec. 1, Ch. 49, L. 2015; amd. Sec. 10, Ch. 372, L. 2017.

### Compiler's Comments

*2017 Amendment:* Chapter 372 inserted (3) defining local government. Amendment effective July 1, 2017.

**13-1-502. Deadlines for candidate filing, write-in candidacy, and withdrawal — election cancellation — election by acclamation.** (1) Consistent with the candidate filing deadline in 13-10-201(7) for primary elections and except as provided in subsection (3) for a write-in candidate, the candidate filing deadline for election to a special purpose district office is no sooner than 145 days and no later than 85 days before the election.

(2) Consistent with the withdrawal deadline in 13-10-325 for primary elections, a candidate may not withdraw after the candidate filing deadline provided in subsection (1).

(3) A declaration of intent to be a write-in candidate must be filed with the election administrator by 5 p.m. on the 65th day before the date of the election.

(4) (a) Except as provided in subsection (4)(b), if by the write-in candidate deadline in subsection (3) the number of candidates is equal to or less than the number of positions to be filled at the election, the election administrator shall cancel the election and, pursuant to 13-1-304, immediately notify the governing body of the local government in writing of the cancellation. However, the governing body of the local government may by resolution require that the election be held.

(b) For an election of conservation district supervisors held in conjunction with a federal primary or federal general election, if by the candidate filing deadline under subsection (1) the number of candidates is equal to or less than the number of positions to be filled at the election, the election administrator shall cancel the election and immediately notify the governing body of the conservation district in writing of the cancellation. However, the governing body of the conservation district may, by no later than 10 days after the candidate filing deadline, pass a resolution to require that the election be held.

(5) (a) If an election has been canceled and there is only one candidate for a position, the governing body of the local government or, if appropriate, of the conservation district shall declare the candidate elected to the position by acclamation.

(b) Except as otherwise provided by law:

(i) if an election has been canceled and there are no regular or declared write-in candidates for a position, the governing body of the local government or, if appropriate, of the conservation district shall fill the position by appointment;

(ii) an appointed member shall serve the same term as if the member were elected.

**History:** En. Sec. 2, Ch. 49, L. 2015; amd. Sec. 9, Ch. 242, L. 2017; amd. Sec. 11, Ch. 372, L. 2017.

### Compiler's Comments

*2017 Amendments — Composite Section:* Chapter 242 in (3) at beginning deleted “Consistent with the deadline for write-in candidates under 13-10-211 for primary elections” and at end substituted “65th day before the date of

the election” for “10th day before the date on which the ballot must be available for absentee or mail ballot voting under 13-1-503, as applicable”; in (4)(a) at beginning inserted exception clause; inserted (4)(b) concerning election of conservation district supervisors held in conjunction with federal primary or federal general election; and made minor changes in style. Amendment effective May 3, 2017.

Chapter 372 in (4)(a) at beginning inserted exception clause and near end inserted “of the local government” in two places; inserted (4)(b) concerning election of conservation district supervisors held in conjunction with federal primary or federal general election (identical to Ch. 242 except for addition of “of the conservation district” after “governing body” in two places); in (5)(a) and (5)(b)(i) after “governing body” inserted “of the local government or, if appropriate, of the conservation district”; and made minor changes in style. Amendment effective July 1, 2017.

*Transition — Special Purpose District Officers — Terms of Office — Retroactive Applicability:* Section 18, Ch. 242, L. 2017, provided: “An officer of a special purpose district, as defined in 13-1-101, who was elected or appointed to a term of office that would otherwise have expired prior to the school election immediately following the expiration of the officer’s term shall serve until the election or appointment of a successor under the laws effective on and after November 4, 2015, that provide for the special purpose district election to be held on the same day as the regular school election in May. This section applies retroactively, within the meaning of 1-2-109, to the terms of office for special purpose district officers elected before November 4, 2015.”

**13-1-503. Deadlines for absentee and mail ballots.** (1) Pursuant to 13-13-205, ballots for a special purpose district election must be available for absentee voting at least 20 days before election day if the election is not conducted by mail.

(2) Pursuant to 13-19-207, ballots must be mailed no sooner than the 20th day and no later than the 15th day before election day if the election is conducted by mail.

**History:** En. Sec. 3, Ch. 49, L. 2015.

**13-1-504. Dates for special purpose district elections — call for election.** (1) Except as provided in subsection (2), the following elections for a special purpose district must be held on the same day as the regular school election day established in 20-20-105(1), which is the first Tuesday after the first Monday in May:

(a) an election to create, alter the boundaries of, continue, or dissolve a special purpose district; and

(b) an election to fill a special purpose district office.

(2) (a) A special purpose district election that includes a question affecting district funding, such as fee assessments, bonds, or the sale or lease of property, may be held on the day specified in subsection (1) or scheduled as a special election.

(b) A conservation district election must be held on a primary or general election day.

(3) If specifically authorized by law, a special purpose district election may be held at the district’s annual meeting.

(4) A special purpose district election may not be held earlier than 85 days after the date of the order or resolution calling for the election.

(5) Pursuant to 13-19-201, the governing body authorized by law to call an election shall specify in the order or resolution calling for the election whether the governing body is requesting that the election be conducted by mail.

**History:** En. Sec. 4, Ch. 49, L. 2015.

#### **Compiler’s Comments**

*Transition — Special Purpose District Officers — Terms of Office — Retroactive Applicability:* Section 18, Ch. 242, L. 2017, provided: “An officer of a special purpose district, as defined in 13-1-101, who was elected or appointed to a term of office that would otherwise have expired prior to the school election immediately following the expiration of the officer’s term shall serve until the election or appointment of a successor under the laws effective on and after November 4, 2015, that provide for the special purpose district election to be held on the same day as the regular school election in May. This section applies retroactively, within the meaning of 1-2-109, to the terms of office for special purpose district officers elected before November 4, 2015.”

**13-1-505. Conduct of elections.** (1) A special purpose district election must be conducted by a county election administrator.

(2) If a special purpose district lies in more than one county, the county election administrator in the county with the largest percentage of qualified electors in the district shall conduct the election.

(3) Notice of the election must be provided as required in 13-1-108.

(4) Subject to 13-19-104, a special purpose district election may be conducted by mail.

(5) Unless otherwise specified by law, conduct of the election, voter registration, and how votes must be cast, counted, and canvassed for a special purpose election must be conducted in accordance with the applicable provisions of this title.

**History:** En. Sec. 5, Ch. 49, L. 2015.

**13-1-506. Provision for vote by corporate or company property owner.** If a corporation or company is a property owner entitled to vote under the specific laws governing a special district, the chief executive officer, president, vice president, authorized agent, or secretary of the corporation or company may exercise the right on behalf of the corporation or company.

**History:** En. Sec. 2, Ch. 121, L. 2015.

## CHAPTER 2 REGISTRATION OF ELECTORS

**13-2-107. Statewide voter registration system — information-sharing agreements.**

(1) The secretary of state shall establish, in a uniform and nondiscriminatory manner, a single official, centralized, and interactive computerized statewide voter registration system that meets the requirements of 42 U.S.C. 15483.

(2) (a) The statewide voter registration system must be used as the official list of registered electors for the conduct of all elections subject to this title.

(b) The system must contain the name and registration information of each registered elector.

(c) Each election administrator must be provided with immediate electronic access to the system.

(d) The secretary of state shall provide the technical support required to assist election administrators to enter, maintain, and access information in the statewide voter registration system.

(3) As provided in 42 U.S.C. 15483:

(a) the secretary of state and the attorney general shall enter into an agreement to match information in the statewide voter registration list with information in the motor vehicle licensing database to the extent required to verify voter registration information; and

(b) the attorney general shall enter into an agreement with the United States commissioner of social security for the purpose of verifying voter registration information.

**History:** En. Sec. 4, Ch. 475, L. 2003; amd. Sec. 4, Ch. 336, L. 2013.

**13-2-108. Rulemaking for statewide voter registration list.** (1) The secretary of state shall adopt rules to implement the provisions of 42 U.S.C. 15483 and this chapter.

(2) The rules must include but are not limited to:

(a) a list of maintenance procedures, including new data entry, updates, registration transfers, and other procedures for keeping information current and accurate;

(b) proper maintenance and use of active and inactive lists;

(c) proper maintenance and use of lists for legally registered electors and provisionally registered electors;

(d) technical security of the statewide voter registration system;

(e) information security with respect to keeping from general public distribution driver's license numbers, whole or partial social security numbers, and address information protected from general disclosure pursuant to 13-2-115; and

(f) quality control measures for the system and system users.

(3) The rules adopted by the secretary of state must reflect that an elector who was properly registered prior to January 1, 2003, is considered a legally registered elector.

**History:** En. Sec. 5, Ch. 475, L. 2003; amd. Sec. 2, Ch. 286, L. 2005; amd. Sec. 6, Ch. 242, L. 2011; amd. Sec. 5, Ch. 336, L. 2013.

**13-2-109. Rulemaking on sufficiency and verification of voter registration information.** (1) The secretary of state shall adopt rules:

(a) to implement the provisions of 13-2-110 and this section concerning how election administrators determine whether the information provided by an elector on an application for voter registration is:

(i) sufficient to be accepted and processed; or

(ii) insufficient to be accepted and processed;

(b) establishing procedures for verifying the accuracy of voter registration information;



(c) establishing standards for determining whether an elector may be legally registered or provisionally registered and the effect of that registration on identification requirements; and  
(d) establishing procedures for notifying electors about the status of their applications and registration.

(2) The rules may not conflict with 42 U.S.C. 15301, et seq., or 13-2-208.

**History:** En. Sec. 6, Ch. 475, L. 2003.

**13-2-110. Application for voter registration — sufficiency and verification of information — identifiers assigned for voting purposes.** (1) An individual may apply for voter registration in person or by mail, postage paid, by completing and signing the standard application form for voter registration provided for in 13-1-210 and providing the application to the election administrator in the county in which the elector resides.

(2) Each application for voter registration must be accepted and processed as provided in rules adopted under 13-2-109.

(3) Except as provided in subsection (4):

(a) an applicant for voter registration shall provide the applicant's Montana driver's license number; or

(b) if the applicant does not have a Montana driver's license, the applicant shall provide the last four digits of the applicant's social security number.

(4) (a) If an applicant does not have a Montana driver's license or social security number, the applicant shall provide as an alternative form of identification:

(i) a current and valid photo identification, including but not limited to a school district or postsecondary education photo identification or a tribal photo identification, with the individual's name; or

(ii) a current utility bill, bank statement, paycheck, government check, or other government document that shows the individual's name and current address.

(b) The alternative form of identification must be:

(i) an original version presented to the election administrator if the applicant is applying in person; or

(ii) a copy of any of the required documents, which must be enclosed with the application, if the applicant is applying by mail.

(5) (a) If information provided on an application for voter registration is sufficient to be accepted and processed and is verified pursuant to rules adopted under 13-2-109, the election administrator shall register the elector as a legally registered elector.

(b) If information provided on an application for voter registration was sufficient to be accepted but the applicant failed to provide the information required in subsection (3) or (4) or if the information provided was incorrect or insufficient to verify the individual's identity or eligibility to vote, the election administrator shall register the applicant as a provisionally registered elector.

(6) Each applicant for voter registration must be notified of the elector's registration status pursuant to rules adopted under 13-2-109.

(7) The secretary of state shall assign to each elector whose application was accepted a unique identification number for voting purposes and shall establish a statewide uniform method to allow the secretary of state and local election officials to distinguish legally registered electors from provisionally registered electors.

(8) The provisions of this section may not be interpreted to conflict with voter registration accomplished under 13-2-221, 13-21-221, and 61-5-107 and as provided for in federal law.

**History:** En. Sec. 7, Ch. 475, L. 2003; amd. Sec. 3, Ch. 286, L. 2005; amd. Sec. 5, Ch. 297, L. 2009; amd. Sec. 2, Ch. 182, L. 2011; amd. Sec. 7, Ch. 242, L. 2011; amd. Sec. 1, Ch. 139, L. 2013.

**13-2-112. Register of electors to be kept.** Each election administrator shall keep an official register of electors in the statewide voter registration system. The original signed registration form for each elector must be scanned, and the scanned copy must be retained in the statewide voter registration system. The original paper copy must be kept according to the state records retention schedule for such records. The information recorded in the official register of electors and the design of the registration forms must be prescribed by the secretary of state in the statewide voter registration system.

**History:** En. Sec. 23, Ch. 368, L. 1969; R.C.M. 1947, 23-3004; amd. Sec. 20, Ch. 571, L. 1979; amd. Sec. 32, Ch. 56, L. 2009; amd. Sec. 8, Ch. 242, L. 2011; amd. Sec. 6, Ch. 336, L. 2013.

**13-2-115. Certification of statewide voter registration list — local lists to be prepared.** (1) No later than 5 working days after the deadline prescribed in 13-2-301(3), election administrators shall enter all voter registration applications that were submitted within the deadline for regular registration into the statewide voter registration system.

(2) The secretary of state shall certify the official statewide voter registration list by utilizing the information in the statewide voter registration system.

(3) Each election administrator shall have printed from the certified statewide voter registration system lists of all registered electors in each precinct in the county. Except as provided in subsections (6) and (7), names of electors must be listed alphabetically, with their residence address or with a mailing address if located where street numbers are not used.

(4) A copy of the list of registered electors in a precinct must be displayed at the precinct's polling place. Extra copies of the lists must be retained by the election administrator and furnished to an elector upon request.

(5) Lists of registered electors need not be printed if the election will not be held.

(6) If a law enforcement officer or reserve officer, as defined in 7-32-201, requests in writing that, for security reasons, the officer's and the officer's spouse's residential address, if the same as the officer's, not be disclosed, the secretary of state or an election administrator may not include the address on any generally available list of registered electors but may list only the electors' names.

(7) (a) Upon the request of an individual, the secretary of state or an election administrator may not include the individual's residential address on any generally available list of registered electors but may list only the elector's name if the individual:

(i) proves to the election administrator, as provided in subsection (7)(b), that the individual, or a minor in the custody of the individual, has been the victim of partner or family member assault, stalking, custodial interference, or other offense involving bodily harm or threat of bodily harm to the individual or minor; or

(ii) proves to the election administrator, as provided in subsection (7)(c), that a temporary restraining order or injunction has been issued by a judge or magistrate to restrain another person's access to the individual or minor.

(b) Proof of the victimization is conclusive upon exhibition to the election administrator of a criminal judgment, information and judgment, or affidavit of a county attorney clearly indicating the conviction and the identity of the victim.

(c) Proof of the issuance of a temporary restraining order or injunction is conclusive upon exhibition to the election administrator of the temporary restraining order or injunction.

**History:** Ap. p. Sec. 31, Ch. 368, L. 1969; amd. Sec. 5, Ch. 158, L. 1971; amd. Sec. 12, Ch. 100, L. 1973; Sec. 23-3012, R.C.M. 1947; Ap. p. Sec. 42, Ch. 368, L. 1969; amd. Sec. 2, Ch. 243, L. 1971; amd. Sec. 1, Ch. 201, L. 1973; Sec. 23-3023, R.C.M. 1947; R.C.M. 1947, 23-3012(part), 23-3023; amd. Sec. 22, Ch. 571, L. 1979; amd. Sec. 1, Ch. 161, L. 1995; amd. Sec. 1, Ch. 233, L. 1997; amd. Sec. 3, Ch. 309, L. 1997; amd. Sec. 9, Ch. 396, L. 2001; amd. Sec. 8, Ch. 475, L. 2003; amd. Sec. 4, Ch. 286, L. 2005; amd. Sec. 9, Ch. 242, L. 2011; amd. Sec. 7, Ch. 336, L. 2013.

**13-2-116. Precinct register.** (1) Except for mail ballot elections conducted under Title 13, chapter 19, the election administrator shall prepare from the certified statewide voter registration list a precinct register for each precinct in the county for use by the election judges. The register may be prepared no sooner than the Friday before each election and must contain an alphabetical list of the names, with addresses, of the legally registered electors and provisionally registered electors, a space for the signature of the elector, and other information as prescribed by the secretary of state.

(2) If some of the electors in a precinct are not eligible to receive all ballots at an election because of a combination of the elections of more than one political subdivision, the election administrator shall distinguish the names of those eligible for each ballot by whatever method will be clear and efficient.

(3) When several precincts have been combined at one polling place for an election, the election administrator may combine the electors from all precincts into one register or may provide separate registers for each precinct.

(4) Precinct registers need not be printed if the election will not be held.

**History:** (1) thru (3) En. Sec. 43, Ch. 368, L. 1969; R.C.M. 1947, 23-3024; amd. Sec. 23, Ch. 571, L. 1979; (4) En. Sec. 25, Ch. 571, L. 1979; amd. Sec. 9, Ch. 475, L. 2003; amd. Sec. 6, Ch. 297, L. 2009.

**13-2-117. County governing body to provide election administrator with sufficient help.** The county governing body must provide the election administrator with sufficient help for the duties imposed by this title. The cost of stationery, printing, publishing, and posting is a proper charge against the county.

**History:** En. Sec. 45, Ch. 368, L. 1969; amd. Sec. 13, Ch. 365, L. 1977; R.C.M. 1947, 23-3026; amd. Sec. 24, Ch. 571, L. 1979.

**13-2-118 through 13-2-120 reserved.**

**13-2-121. Repealed.** Sec. 407, Ch. 571, L. 1979.

**History:** En. Sec. 46, Ch. 368, L. 1969; amd. Sec. 3, Ch. 243, L. 1971; R.C.M. 1947, 23-3027.

**13-2-122. Charges for registers, elector lists, and mailing labels made available to public.** (1) Except as provided in subsection (2), upon request, the secretary of state shall furnish to any individual, for noncommercial use, available extracts and reports from the statewide voter registration system. Upon request, a local election administrator shall furnish to an individual, for noncommercial use, a copy of the official precinct registers, a current list of legally registered electors, mailing labels for registered electors, or other available extracts and reports. Upon delivery, the secretary of state or the local election administrator may collect a charge not to exceed the actual cost of the register, list, mailing labels, or available extracts and reports.

(2) For an elector whose address information is protected from general distribution under 13-2-115(6) or (7), the secretary of state or a local election administrator may not include the elector's residential address on any register, list, mailing labels, or available extracts and reports but may list only the elector's name.

**History:** En. Sec. 47, Ch. 368, L. 1969; R.C.M. 1947, 23-3028; amd. Sec. 1, Ch. 66, L. 1983; amd. Sec. 2, Ch. 161, L. 1995; amd. Sec. 2, Ch. 233, L. 1997; amd. Sec. 16, Ch. 51, L. 1999; amd. Sec. 10, Ch. 475, L. 2003; amd. Sec. 10, Ch. 242, L. 2011; amd. Sec. 8, Ch. 336, L. 2013.

**13-2-123. Repealed.** Sec. 76, Ch. 242, L. 2011.

**History:** En. Sec. 1, Ch. 309, L. 1997; amd. Sec. 5, Ch. 309, L. 1997; amd. Sec. 11, Ch. 475, L. 2003.

**13-2-124. Registration provisions for United States electors supersede.** A provision of this chapter may not be interpreted to conflict with Title 13, chapter 21.

**History:** En. Sec. 8, Ch. 557, L. 2003.

## **Part 2 Registration Procedures**

**13-2-201. Hours of registration.** The election administrator's office shall be open for registration of electors from 8 a.m. until 5 p.m. on all regular working days. The office may be kept open for the registration of electors at other times at the discretion of the election administrator.

**History:** En. Sec. 24, Ch. 368, L. 1969; amd. Sec. 1, Ch. 3, L. 1974; R.C.M. 1947, 23-3005(1); amd. Sec. 26, Ch. 571, L. 1979.

**13-2-205. Procedure when prospective elector not qualified at time of registration.** An individual who is not eligible to register because of residence or age requirements but who will be eligible on or before election day may apply for voter registration pursuant to 13-2-110 and be registered subject to verification procedures established pursuant to 13-2-109.

**History:** En. Sec. 27, Ch. 368, L. 1969; R.C.M. 1947, 23-3008(1); amd. Sec. 29, Ch. 571, L. 1979; amd. Sec. 12, Ch. 475, L. 2003.

**13-2-206. Citizenship requirements.** A person may not be permitted to register until the person attains United States citizenship.

**History:** En. Sec. 27, Ch. 368, L. 1969; R.C.M. 1947, 23-3008(2); amd. Sec. 33, Ch. 56, L. 2009.

**13-2-207. Confirmation of registration.** (1) The election administrator shall give or mail to each elector a notice, confirming registration and giving the location of the elector's polling place. A notice sent to an elector to whom the notice is not personally given must be sent by

nonforwardable, first-class mail, which must conform to postal regulations to ensure address corrections are received.

(2) If the notice confirming registration is returned as undeliverable, the election administrator shall investigate the reason for the return of any mailed notices and mail a confirmation notice to the elector. The notice must conform to postal regulations to ensure return, not forwarding, of undelivered notices.

**History:** En. Sec. 30, Ch. 571, L. 1979; amd. Sec. 3, Ch. 298, L. 1987; amd. Sec. 6, Ch. 246, L. 1997; amd. Sec. 9, Ch. 336, L. 2013.

**13-2-208. Elector to furnish residential address — prohibiting registration for failure to provide address.** (1) An elector shall provide the election administrator with the elector's current street address, rural address, or, if neither of those addresses is available, other specific geographic location information from which the location of the elector's residence may be easily determined by the election administrator.

(2) The election administrator may not register an elector who fails to provide the information required by subsection (1).

**History:** En. Sec. 1, Ch. 63, L. 2001.

**13-2-220. Maintenance of active and inactive voter registration lists for elections — rules by secretary of state.** (1) The rules adopted by the secretary of state under 13-2-108 must include the following procedures, at least one of which an election administrator shall follow in every odd-numbered year:

(a) compare the entire list of registered electors against the national change of address files and provide appropriate confirmation notice to those individuals whose addresses have apparently changed;

(b) mail a nonforwardable, first-class, "return if undeliverable—address correction requested" notice to all registered electors of each jurisdiction to confirm their addresses and provide the appropriate confirmation notice to those individuals who return the notices;

(c) mail a targeted mailing to electors who failed to vote in the preceding federal general election, applicants who failed to provide required information on registration forms, and provisionally registered electors by:

(i) sending the list of nonvoters a nonforwardable notice, followed by the appropriate forwardable confirmation notice to those electors who appear to have moved from their addresses of record;

(ii) comparing the list of nonvoters against the national change of address files, followed by the appropriate confirmation notices to those electors who appear to have moved from their addresses of record;

(iii) sending forwardable confirmation notices; or

(iv) making a door-to-door canvass.

(2) An individual who submits an application for an absentee ballot for a federal general election or who completes and returns the address confirmation notice specified in 13-13-212(4) during the calendar year in which a federal general election is held is not subject to the procedure in subsection (1)(c) unless the individual's ballot for a federal general election is returned as undeliverable and the election administrator is not able to contact the elector through the most expedient means available to resolve the issue.

(3) Any notices returned as undeliverable to the election administrator or any notices to which the elector fails to respond after the election administrator uses the procedures provided in subsection (1) must be followed within 30 days by an appropriate confirmation notice that is a forwardable, first-class, postage-paid, self-addressed, return notice. If the elector fails to respond within 30 days of the final confirmation notice, after the 30th day, the election administrator shall move the elector to the inactive list.

(4) A procedure used by an election administrator pursuant to this section must be completed at least 90 days before a primary or general election for federal office.

(5) An elector's registration may be reactivated pursuant to 13-2-222 or may be canceled pursuant to 13-2-402.

**History:** En. Sec. 12, Ch. 246, L. 1997; amd. Sec. 13, Ch. 475, L. 2003; amd. Sec. 7, Ch. 297, L. 2009; amd. Sec. 11, Ch. 242, L. 2011; amd. Sec. 10, Ch. 336, L. 2013; amd. Sec. 1, Ch. 252, L. 2017; amd. Sec. 4, Ch. 368, L. 2017.

**Compiler's Comments**

*2017 Amendments — Composite Section:* Chapter 252 in (2) near middle substituted “13-13-212(4)” for “13-13-212(3)”. Amendment effective October 1, 2017.

Chapter 368 in (1)(c) substituted “registration forms” for “registration cards”; in (3) near middle of second sentence inserted “after the 30th day”; and made minor changes in style. Amendment effective January 1, 2018.

**13-2-221. Agency-based registration.** (1) Qualified individuals must be given the opportunity to register to vote when applying for or receiving services or assistance:

(a) at an agency that provides public assistance;

(b) at or through an agency that provides state-funded programs primarily engaged in providing services to persons with disabilities; or

(c) at another agency designated by the secretary of state with the consent of the agency.

(2) Agency-based registration sites must:

(a) distribute application for voter registration forms with each application for services or assistance; and

(b) assist an applicant in completing an application for voter registration form unless the applicant refuses assistance.

(3) The completed application for voter registration form must be transmitted by the agency to the election administrator of the county of the elector's residence within the time period specified by 42 U.S.C. 1973gg, et seq.

(4) As used in this section, “agency” means a state agency as defined in 2-4-102(2)(a) or an office of a city, county, consolidated city-county government, or town.

**History:** En. Sec. 13, Ch. 246, L. 1997; amd. Sec. 17, Ch. 51, L. 1999; amd. Sec. 34, Ch. 56, L. 2009.

**13-2-222. Reactivation of elector.** (1) The name of an elector must be moved by an election administrator from the inactive list to the active list of a county if an elector meets the requirements for registration provided in this chapter and:

(a) appears at a polling place in order to vote, submits an application to vote by absentee ballot in a polling place election or mail ballot election, or votes in a mail ballot election conducted under Title 13, chapter 19;

(b) notifies the county election administrator in writing of the elector's current residence, which must be in that county; or

(c) completes a reactivation form provided by the county election administrator that provides current address information in that county.

(2) After an elector has complied with subsection (1)(a), (1)(b), or (1)(c), the county election administrator shall place the elector's name on the active voting list for that county.

(3) An elector reactivated pursuant to subsection (1)(a) is a legally registered elector for purposes of the election in which the elector voted.

**History:** En. Sec. 14, Ch. 246, L. 1997; amd. Sec. 2, Ch. 208, L. 1999; amd. Sec. 1, Ch. 446, L. 2005; amd. Sec. 8, Ch. 297, L. 2009; amd. Sec. 12, Ch. 242, L. 2011.

## Part 3 Close of Registration

**13-2-301. Close of regular registration — notice — changes.** (1) The election administrator shall:

(a) close regular registrations for 30 days before any election; and

(b) publish a notice specifying the day regular registrations will close and the availability of the late registration option provided for in 13-2-304 in a newspaper of general circulation in the county at least three times in the 4 weeks preceding the close of registration or broadcast a notice on radio or television as provided in 2-3-105 through 2-3-107, using the method the election administrator believes is best suited to reach the largest number of potential electors. The provisions of this subsection (1)(b) are fulfilled upon the third publication or broadcast of the notice.

(2) Information to be included in the notice must be prescribed by the secretary of state.

(3) An application for voter registration properly executed and postmarked on or before the day regular registration is closed must be accepted as a regular registration for 3 days after regular registration is closed under subsection (1)(a).



(4) An elector who misses the deadlines provided for in this section may register to vote or change the elector's voter information and vote in the election, except as otherwise provided in 13-2-304.

**History:** En. Sec. 35, Ch. 368, L. 1969; amd. Sec. 1, Ch. 385, L. 1971; R.C.M. 1947, 23-3016; amd. Sec. 34, Ch. 571, L. 1979; amd. Sec. 3, Ch. 446, L. 1985; amd. Sec. 2, Ch. 302, L. 1991; amd. Sec. 12, Ch. 7, L. 2001; amd. Sec. 5, Ch. 286, L. 2005; amd. Sec. 3, Ch. 586, L. 2005; amd. Sec. 9, Ch. 297, L. 2009; amd. Sec. 11, Ch. 336, L. 2013; amd. Sec. 172, Ch. 49, L. 2015; amd. Sec. 10, Ch. 242, L. 2017.

**Compiler's Comments**

*2017 Amendment:* Chapter 242 in (1)(b) at beginning deleted "except as provided in subsection (5)"; deleted former (5) that read: "(5) The method of a notice about the close of regular registration for a school election must be as specified in 20-20-204"; and made minor changes in style. Amendment effective May 3, 2017.

**13-2-304. Late registration — late changes.** (1) Except as provided in subsection (2), the following provisions apply:

(a) An elector may register or change the elector's voter registration information after the close of regular registration as provided in 13-2-301 and vote in the election if the election administrator in the county where the elector resides receives and verifies the elector's voter registration information prior to the close of the polls on election day.

(b) Late registration is closed from noon to 5 p.m. on the day before the election.

(c) Except as provided in 13-2-514(2)(a) and subsection (1)(d) of this section, an elector who registers or changes the elector's voter information pursuant to this section may vote in the election only if the elector obtains the ballot from and returns it to the location designated by the county election administrator.

(d) With respect to an elector who registers late pursuant to this section for a school election conducted by a school clerk, the elector may vote in the election only if the elector obtains from the county election administrator a document, in a form prescribed by the secretary of state, verifying the elector's late registration. The elector shall provide the verification document to the school clerk, who shall issue the ballot to the elector and enter the verification document as part of the official register.

(2) If an elector has already been issued a ballot for the election, the elector may change the elector's voter registration information only if the original voted ballot has not been received at the county election office, or received by the school district if the district is administering the election, and if the original ballot that was issued is marked by the issuing county as void in the statewide voter registration system, or by the school district if the district is administering the election, prior to the change.

**History:** En. Sec. 1, Ch. 286, L. 2005; amd. Sec. 5, Ch. 273, L. 2007; amd. Sec. 10, Ch. 297, L. 2009; amd. Sec. 13, Ch. 242, L. 2011; amd. Sec. 12, Ch. 336, L. 2013; amd. Sec. 173, Ch. 49, L. 2015.

## Part 4 Cancellation of Registration

**13-2-402. Reasons for cancellation.** The election administrator shall cancel the registration of an elector if:

- (1) the elector submits a written request for cancellation;
- (2) a certificate of the death of the elector is filed or if the elector is reported to the election administrator as deceased by the department of public health and human services in the department's reports submitted to the county under 50-15-409 or through a newspaper obituary;
- (3) the elector is of unsound mind as established by a court;
- (4) the incarceration of the elector in a penal institution for a felony conviction is legally established;
- (5) a certified copy of a court order directing the cancellation is filed with the election administrator;
- (6) a notice is received from the secretary of state or from another county or state that the elector has registered in another county or state;
- (7) the elector:
  - (a) fails to respond to certain confirmation mailings;
  - (b) is placed on the inactive list; and
  - (c) then fails to vote in two consecutive federal general elections; or
- (8) the elector fails to meet any voter qualification that is listed in 13-1-111.

**History:** En. Sec. 33, Ch. 368, L. 1969; amd. Sec. 1, Ch. 299, L. 1971; amd. Sec. 10, Ch. 365, L. 1977; R.C.M. 1947, 23-3014(1); amd. Sec. 37, Ch. 571, L. 1979; amd. Sec. 48, Ch. 575, L. 1981; amd. Sec. 38, Ch. 418, L. 1995; amd. Sec. 42, Ch. 546, L. 1995; amd. Sec. 7, Ch. 246, L. 1997; amd. Sec. 3, Ch. 208, L. 1999; amd. Sec. 1, Ch. 96, L. 2001; amd. Sec. 14, Ch. 475, L. 2003; amd. Sec. 4, Ch. 586, L. 2005; amd. Sec. 11, Ch. 297, L. 2009.

## Part 5

### Transfer of Registration

**13-2-511. Change of residence or name.** An elector shall notify the election administrator in a written communication signed by the elector of a change in residence within the county or a change in name.

**History:** En. Sec. 28, Ch. 368, L. 1969; R.C.M. 1947, 23-3009; amd. Sec. 40, Ch. 571, L. 1979; Sec. 13-2-501, MCA 1979; redes. 13-2-511 by Code Commissioner, 1979; amd. Sec. 14, Ch. 242, L. 2011.

**13-2-512. Right to vote when precinct or name changed — change of status.** (1) An elector who has changed residence to a different precinct within the same county and has failed to notify the election administrator of the change by a new registration form may vote at the polling place or by absentee or mail ballot in the precinct where the elector is registered at the first election at which the elector offers to vote after the change or at a central location designated by the election administrator unless the elector's registration has been canceled as provided in 13-2-402.

(2) An elector who still resides in the same precinct where registered, whose name has changed, and who has failed to notify the election administrator of the change by a new registration form may vote under the elector's former name at the first election at which the elector offers to vote after the change unless the elector's registration has been canceled as provided in 13-2-402.

(3) The elector shall state the elector's correct residence address and name when offering to vote and shall complete a new registration form to make the necessary correction before being allowed to vote in a polling place election or by absentee or mail ballot.

**History:** En. Sec. 41, Ch. 571, L. 1979; amd. Sec. 9, Ch. 246, L. 1997; amd. Sec. 2, Ch. 446, L. 2005; amd. Sec. 15, Ch. 242, L. 2011; amd. Sec. 5, Ch. 368, L. 2017.

#### Compiler's Comments

*2017 Amendment:* Chapter 368 in (1) near middle before "new registration form" deleted "transfer or"; and in (3) near middle after "shall complete a" deleted "transfer form or". Amendment effective January 1, 2018.

**13-2-513. Procedure for correcting or updating registration.** Subject to the rules adopted under 13-2-108, the election administrator shall make the necessary corrections or updates in the registration records when the election administrator receives a corrected or updated registration form.

**History:** En. Sec. 29, Ch. 368, L. 1969; R.C.M. 1947, 23-3010; amd. Sec. 42, Ch. 571, L. 1979; Sec. 13-2-502, MCA 1979; redes. 13-2-513 by Code Commissioner, 1979; amd. Sec. 15, Ch. 475, L. 2003; amd. Sec. 6, Ch. 368, L. 2017.

#### Compiler's Comments

*2017 Amendment:* Chapter 368 after "shall make the necessary corrections" inserted "or updates" and substituted "receives a corrected or updated registration" for "receives a transfer form or corrected registration". Amendment effective January 1, 2018.

**13-2-514. Change of residence to another county.** (1) Except as provided in subsection (2)(a), an elector who changes residence to a different county within this state shall register in the new county of residence in order to vote in any election.

(2) An elector who changes residence to a different county 30 days or less before an election may:

(a) vote in person or by absentee ballot in the precinct and county where previously registered; or

(b) update the elector's registration information and vote in the elector's new county of residence, subject to the regular registration provisions of 13-2-301 or the late registration provisions of 13-2-304.

(3) The registration information of an elector whose information is changed pursuant to this section must be updated in the statewide voter registration list pursuant to rules adopted under 13-2-108.

**History:** En. Sec. 43, Ch. 571, L. 1979; amd. Sec. 16, Ch. 475, L. 2003; amd. Sec. 6, Ch. 286, L. 2005; amd. Sec. 5, Ch. 586, L. 2005.

## CHAPTER 3 PRECINCTS AND POLLING PLACES

### Part 1 Designation of Precincts and Polling Places

**13-3-101. Establishment of election precincts.** (1) The territorial unit for elections is the election precinct. All election precincts shall be designated by numbers, names, or both.

(2) The governing body of each county shall establish a convenient number of election precincts, equalizing the number of electors in each precinct as nearly as possible.

**History:** En. Sec. 18, Ch. 368, L. 1969; amd. Sec. 1, Ch. 171, L. 1973; R.C.M. 1947, 23-3101(1), (2), (3)(b); amd. Sec. 47, Ch. 571, L. 1979.

**13-3-102. Change of precinct boundaries.** (1) The county governing body may change the boundaries of precincts, but not within 100 days before any primary or between a general election and the primary for that election. When the changes are required to make precinct boundaries conform to legislative district boundaries following the adoption of a districting and apportionment plan under Article V, section 14, of the Montana constitution or other district boundaries changed by the districting and apportionment plan, the changing of precinct boundaries must be accomplished within 45 days of the filing of the final plan.

(2) All changes must be certified to the election administrator 3 days or less after the change is made.

(3) The officials responsible for preparing a districting and apportionment plan shall consider the problems of conforming present precinct boundaries to the new districts as well as existing boundaries of wards, school districts, and other districts. The election administrator of counties involved in the plan must be consulted before adoption of the final plan.

**History:** En. Sec. 18, Ch. 368, L. 1969; amd. Sec. 1, Ch. 171, L. 1973; R.C.M. 1947, 23-3101(3)(a), (4); amd. Sec. 48, Ch. 571, L. 1979; amd. Sec. 35, Ch. 56, L. 2009.

**13-3-103. Certification of boundary changes.** (1) Not more than 10 days after an order of the governing body has established or changed the boundaries of an election precinct, the governing body shall ensure that a written legal description and a map showing the borders of all precincts and districts in which elections are held within the county are prepared and delivered to the election administrator.

(2) Not more than 10 days after school district or other election district boundaries have been changed, the governing body making the change shall certify any changes or alterations in the boundaries to the election administrator and deliver a written legal description and a map showing boundaries of the wards, school districts, or other election districts. The map must be sufficiently detailed to clearly identify the wards or districts and the territory included in each.

**History:** (1)En. Sec. 18, Ch. 368, L. 1969; amd. Sec. 1, Ch. 171, L. 1973; Sec. 23-3101, R.C.M. 1947; (2)En. Sec. 19, Ch. 368, L. 1969; Sec. 23-3102, R.C.M. 1947; R.C.M. 1947, 23-3101(3)(c), 23-3102; amd. Sec. 49, Ch. 571, L. 1979; amd. Sec. 36, Ch. 56, L. 2009.

**13-3-104. Precincts, wards, and election districts.** (1) A ward or election district may be divided into two or more precincts, and a precinct may be divided into two or more polling places.

(2) Precincts may include two or more adjoining wards or election districts, together with contiguous territory lying outside the municipality or district, if provision can be made for clearly identifying the electors eligible to vote in each ward or district.

**History:** En. Sec. 18, Ch. 368, L. 1969; amd. Sec. 1, Ch. 171, L. 1973; R.C.M. 1947, 23-3101(5), (6); amd. Sec. 50, Ch. 571, L. 1979.

**13-3-105. Designation of polling place.** (1) The county governing body shall designate the polling place for each precinct no later than 30 days before a primary election. The same polling place must be used for both the primary and general election if at all possible. Changes may be made by the governing body in designated polling places up to 10 days before an election if a designated polling place is not available. Polling places may be located outside the boundaries of a precinct.

(2) Not more than 10 days or less than 2 days before an election, the election administrator shall publish in a newspaper of general circulation in the county a statement of the locations of

the precinct polling places. The election administrator shall include in the published notice the accessibility designation for each polling place according to the classification in 13-3-207. Notice may also be given as provided in 2-3-105 through 2-3-107.

(3) An election administrator may make changes in the location of a polling place if an emergency occurs 10 days or less before an election. Notice must be posted at both the old and new polling places, and other notice may be given by whatever means available.

(4) Any building may be used as a polling place. The building must be furnished at no charge as long as no structural changes are required in order to use the building as a polling place.

(5) The exterior of the voting systems, or of the booths in which they are placed, and every part of the polling place must be in plain view of the election judges.

**History:** En. Sec. 20, Ch. 368, L. 1969; amd. Sec. 1, Ch. 169, L. 1974; R.C.M. 1947, 23-3103; amd. Sec. 51, Ch. 571, L. 1979; amd. Sec. 1, Ch. 562, L. 1981; amd. Sec. 12, Ch. 200, L. 1987; amd. Sec. 9, Ch. 414, L. 2003; amd. Sec. 16, Ch. 242, L. 2011.

## Part 2 Accessibility of Polling Places

**13-3-201. Purpose.** The purpose of this part is to promote the fundamental right to vote by improving access to polling places for individuals with disabilities and elderly individuals. The provisions of this part acknowledge that, in certain cases, it may not be possible to locate a polling place that meets the standards for accessibility, either because an accessible polling place does not exist or, if it does, its location in the precinct would require undue travel for a majority of the electors. In those cases when an accessible polling place is not available, this part provides voters with disabilities and elderly voters an alternative means for casting a ballot on election day.

**History:** En. Sec. 1, Ch. 200, L. 1987; amd. Sec. 6, Ch. 472, L. 1997; amd. Sec. 37, Ch. 56, L. 2009.

**13-3-202. Definitions.** As used in this part, unless the context indicates otherwise, the following definitions apply:

(1) “Accessible” means accessible to individuals with disabilities and elderly individuals for purposes of voting as determined in accordance with standards established by the secretary of state under 13-3-205.

(2) “Disability” means a temporary or permanent physical impairment such as:

(a) impaired vision;

(b) impaired hearing; or

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

(3) “Elderly” means 65 years of age or older.

(4) “Election” means a general, special, or primary election held in an even-numbered year.

(5) “Inaccessible” means not accessible under standards adopted pursuant to 13-3-205.

(6) “Rural polling place” means a location that is expected to serve less than 200 registered electors.

**History:** En. Sec. 2, Ch. 200, L. 1987; amd. Sec. 7, Ch. 472, L. 1997; amd. Sec. 1, Ch. 228, L. 2007; amd. Sec. 174, Ch. 49, L. 2015.

**13-3-203. Repealed.** Sec. 7, Ch. 228, L. 2007.

**History:** En. Sec. 3, Ch. 200, L. 1987; amd. Sec. 8, Ch. 472, L. 1997.

**13-3-204. Repealed.** Sec. 7, Ch. 228, L. 2007.

**History:** En. Sec. 4, Ch. 200, L. 1987.

**13-3-205. Adoption of standards for polling place accessibility — rulemaking authority.** (1) The secretary of state, with advice from election administrators and individuals with disabilities and elderly individuals, shall establish standards for accessibility of polling places.

(2) Standards for polling places approved pursuant to subsection (1) on or after October 1, 2005, must comply with the accessibility standards in the Americans With Disabilities Act of 1990, 42 U.S.C. 12101, et seq.

(3) The secretary of state:

(a) may adopt rules to implement the provisions of this part; and

(b) shall adopt rules to implement the exemption provisions of 13-3-212.

**History:** En. Sec. 5, Ch. 200, L. 1987; amd. Sec. 9, Ch. 472, L. 1997; amd. Sec. 2, Ch. 367, L. 2005; amd. Sec. 2, Ch. 228, L. 2007; amd. Sec. 12, Ch. 297, L. 2009.

**13-3-206. Survey of polling places to determine accessibility — procedures.** (1) The election administrator in each county shall conduct an onsite survey of each polling place used in an election to determine whether it meets the standards for accessibility established under 13-3-205.

(2) Each election administrator shall conduct the survey in a manner that represents the path of travel that an elector would reasonably be expected to take in order to reach the polling place on election day.

(3) A polling place that has been surveyed pursuant to this section need not be surveyed again unless:

(a) the conditions of accessibility change; or

(b) the initial survey results are inaccurate.

**History:** En. Sec. 6, Ch. 200, L. 1987; amd. Sec. 3, Ch. 228, L. 2007; amd. Sec. 13, Ch. 297, L. 2009.

**13-3-207. Polling place classifications.** As a result of the survey provided in 13-3-206, each polling place must be classified as:

(1) accessible; or

(2) inaccessible.

**History:** En. Sec. 7, Ch. 200, L. 1987; amd. Sec. 10, Ch. 472, L. 1997; amd. Sec. 4, Ch. 228, L. 2007.

**13-3-208 through 13-3-210 reserved.**

**13-3-211. Emergency exemption.** (1) The secretary of state shall exempt a polling place from the requirements of this part if an emergency occurs within 10 days prior to an election. An emergency is considered to exist if a polling place becomes unavailable by reason of loss of lease, fire, snow, or natural disaster.

(2) If an emergency occurs, the election administrator in the county shall designate a new polling place in accordance with the procedure provided in 13-3-105. The new polling place is considered temporary and is exempt from the survey procedures established under 13-3-206. However, the polling place may not be used in a subsequent election unless it is surveyed as required in 13-3-206.

**History:** En. Sec. 8, Ch. 200, L. 1987; amd. Sec. 38, Ch. 56, L. 2009.

**13-3-212. Exemption if no accessible polling place is reasonably available.** (1) If an election administrator desires to designate as a polling place a location that is inaccessible, the election administrator shall make a request in writing to the secretary of state asking that an inaccessible polling place be exempt from the standards for accessibility.

(2) The secretary of state may grant an exemption pursuant to rules adopted under 13-3-205 if all potential polling places have been surveyed and it is determined that:

(a) an accessible polling place is not available and the county cannot safely or reasonably make a polling place temporarily accessible in the area involved; or

(b) the location is a rural polling place and designation of an accessible facility as a polling place will require excessive travel or impose other hardships for the majority of qualified electors in the precinct.

**History:** En. Sec. 9, Ch. 200, L. 1987; amd. Sec. 5, Ch. 228, L. 2007.

**13-3-213. Alternative means for casting ballot.** (1) The election administrator shall provide individuals with disabilities and elderly individuals an alternative means for casting a ballot on election day if they are assigned to an inaccessible polling place. These alternative means for casting a ballot include:

(a) delivery of a ballot to the elector as provided in 13-13-118;

(b) voting by absentee ballot in person at a designated voting station at the county election administrator's office; and

(c) prearranged assignment to an accessible polling place within the county.



(2) An elector with a disability or an elderly elector assigned to an inaccessible polling place who desires to vote at an accessible polling place:

(a) shall request assignment to an accessible polling place by notifying the election administrator in writing at least 7 days preceding the election;

(b) must be assigned to the nearest accessible polling place for the purpose of voting in the election;

(c) shall sign the elector's name on a special addendum to the official precinct register as required in subsection (4); and

(d) must receive the same ballot to which the elector is otherwise entitled.

(3) For the purpose of subsection (2), the ballot cast at an alternative polling place must be processed and counted in the same manner as an absentee ballot.

(4) The name of an elector who has been assigned to vote in a precinct other than the precinct in which the person is registered, as provided in subsection (2), must be printed on a special addendum to the precinct register in a form prescribed by the secretary of state.

**History:** En. Sec. 10, Ch. 200, L. 1987; amd. Sec. 11, Ch. 472, L. 1997; amd. Sec. 6, Ch. 228, L. 2007; amd. Sec. 11, Ch. 242, L. 2017; amd. Sec. 7, Ch. 368, L. 2017.

**Compiler's Comments**

*2017 Amendments — Composite Section:* Chapter 242 in (1)(b) substituted "in person at a designated voting station at the county election administrator's office" for "as provided in 13-13-222". Amendment effective May 3, 2017.

Chapter 368 in (2)(c) at end substituted "subsection (4)" for "13-2-601"; and inserted (4) requiring a special addendum to precinct register for elector assigned to vote in precinct other than registered precinct. Amendment effective January 1, 2018.

## CHAPTER 4 ELECTION JUDGES

### Part 1 Appointment

**13-4-101. Appointment of election judges.** At least 30 days before the primary election in even-numbered years, the county governing body shall appoint three or more election judges for each precinct, one of whom must be designated chief judge.

**History:** En. Sec. 49, Ch. 368, L. 1969; amd. Sec. 1, Ch. 258, L. 1971; R.C.M. 1947, 23-3201(part); amd. Sec. 52, Ch. 571, L. 1979; amd. Sec. 1, Ch. 120, L. 1983; amd. Sec. 10, Ch. 414, L. 2003.

**13-4-102. Manner of choosing election judges.** (1) Subject to 13-4-107, election judges must be chosen from lists of qualified registered electors in the county, submitted at least 45 days before the primary election in even-numbered years by the county central committees of the political parties eligible to nominate candidates in the primary.

(2) The list of each party may contain more names than the number of election judges to be appointed. The names of those not appointed as election judges must be given to the election administrator for use in making appointments to fill vacancies.

(3) Each board of election judges must include judges representing all parties that have submitted lists as provided in subsection (1). No more than the number of election judges needed to obtain a simple majority may be appointed from the list of one political party in each county. If any of the political parties entitled to do so fail to submit a list meeting the requirements of this section, the governing body shall, to the extent possible, appoint judges so that all parties eligible to participate in the primary are represented on each board.

(4) The election administrator shall make appointments to fill vacancies from the list provided for in subsection (2). If the list is insufficient or if one or more of the eligible political parties fails to submit a list meeting the requirements of this section, the election administrator may select enough people meeting the qualifications of 13-4-107 to fill election judge vacancies in all precincts.

(5) An elector chosen to potentially serve as an election judge must be notified of selection at least 30 days before the primary election in even-numbered years. Each elector who agrees to serve as an election judge shall attend a training class conducted under 13-4-203 and shall continue to serve as provided in 13-4-103.

**History:** En. Sec. 50, Ch. 368, L. 1969; amd. Sec. 2, Ch. 258, L. 1971; amd. Sec. 1, Ch. 125, L. 1973; R.C.M. 1947, 23-3202; amd. Sec. 54, Ch. 571, L. 1979; amd. Sec. 1, Ch. 232, L. 1993; amd. Sec. 11, Ch. 414, L. 2003; amd. Sec. 14, Ch. 297, L. 2009; amd. Sec. 17, Ch. 242, L. 2011; amd. Sec. 1, Ch. 365, L. 2017.

**Compiler's Comments**

*2017 Amendment:* Chapter 365 in (1) after “registered electors” deleted “for each precinct”; and in (3) substituted “county” for “precinct”. Amendment effective October 1, 2017.

**13-4-103. Judges to serve until others appointed.** The election judges continue to be judges of all elections held in their county until other judges are appointed.

**History:** En. Sec. 51, Ch. 368, L. 1969; amd. Sec. 3, Ch. 258, L. 1971; R.C.M. 1947, 23-3203; amd. Sec. 55, Ch. 571, L. 1979; amd. Sec. 2, Ch. 365, L. 2017.

**Compiler's Comments**

*2017 Amendment:* Chapter 365 substituted “county” for “precincts”. Amendment effective October 1, 2017.

**13-4-104. Election administrator to notify judges.** The election administrator must notify the judges of their appointment and of the time set for instruction sessions.

**History:** En. Sec. 52, Ch. 368, L. 1969; amd. Sec. 4, Ch. 258, L. 1971; R.C.M. 1947, 23-3204(1); amd. Sec. 56, Ch. 571, L. 1979.

**13-4-105. Oath of judges.** Before beginning service on each election day, the election judges must take and subscribe the official oath prescribed by the constitution. The election judges may administer the oath to each other.

**History:** En. Sec. 53, Ch. 368, L. 1969; R.C.M. 1947, 23-3205(1); amd. Sec. 57, Ch. 571, L. 1979; amd. Sec. 2, Ch. 232, L. 1993.

**13-4-106. Compensation of judges.** (1) Except as provided in subsection (2), election judges must be paid at least the state or federal minimum wage, whichever is greater, for the number of hours worked during an election plus the number of hours spent at the instruction session. Mileage may be paid to election judges for attending instruction sessions. Election judges are exempt from unemployment insurance coverage for services performed pursuant to this chapter if the remuneration received by the election judge is less than \$1,000 in the calendar year.

(2) The chief election judge may be paid at a rate higher than the other election judges and may be reimbursed for the actual expenses of transporting election materials.

(3) The election administrator shall certify the amount due each election judge to the county governing body as soon after an election as all records necessary for the certification are received.

**History:** En. Sec. 55, Ch. 368, L. 1969; R.C.M. 1947, 23-3207; amd. Sec. 58, Ch. 571, L. 1979; amd. Sec. 7, Ch. 591, L. 1991; amd. Sec. 1, Ch. 195, L. 1995; amd. Sec. 1, Ch. 44, L. 2001; amd. Sec. 1, Ch. 47, L. 2003; amd. Sec. 15, Ch. 297, L. 2009.

**13-4-107. Qualifications of election judges.** (1) Election judges must be registered electors of the county in which they serve.

(2) No election judge may be a candidate or a spouse, ascendant, descendant, brother, or sister of a candidate or a candidate's spouse or the spouse of any of these in an election precinct where the candidate's name appears on the ballot. However, this does not apply to candidates for precinct offices.

(3) If a polling place for a precinct is located in the same venue as one or more other precincts, a candidate whose name appears on any ballot being voted on within the venue, an ascendant, descendant, brother, sister, or spouse of the candidate, or a spouse of an ascendant, descendant, brother, or sister of the candidate may not serve as an election judge within the venue.

**History:** En. Sec. 53, Ch. 571, L. 1979; amd. Sec. 3, Ch. 365, L. 2017.

**Compiler's Comments**

*2017 Amendment:* Chapter 365 in (1) after “county” deleted “and of the precinct” and at end deleted “except as provided in 13-4-102(4)”; inserted (3) precluding a person from serving as an election judge if a family member's name appears on any ballot being voted on within the venue. Amendment effective October 1, 2017.

## Part 2 Functions

**13-4-201. Duties of chief election judge.** The chief election judge shall be responsible for the conduct of the proceedings in the polling place, shall assign duties to other members of the board of election judges, and, if assigned to work through the close of the polls, shall be

responsible for the return of or for arranging the return of all ballots and election supplies to the election administrator.

**History:** En. Sec. 52, Ch. 368, L. 1969; amd. Sec. 4, Ch. 258, L. 1971; R.C.M. 1947, 23-3204(2), (3); amd. Sec. 59, Ch. 571, L. 1979; amd. Sec. 3, Ch. 232, L. 1993.

**13-4-202. Administration of oaths.** Any election judge may administer and certify oaths required from electors or election judges during an election.

**History:** En. Sec. 53, Ch. 368, L. 1969; R.C.M. 1947, 23-3205(2); amd. Sec. 60, Ch. 571, L. 1979; amd. Sec. 16, Ch. 297, L. 2009.

**13-4-203. Instruction of judges — training materials.** (1) Before each election, all election judges must be instructed by the election administrator on current procedures as prescribed by the secretary of state. In precincts where voting systems are used, instructions must cover both how to operate the voting system and how to manually process any paper ballots.

(2) An election administrator may require a chief election judge to attend the training session before each election, as well as a special session that the election administrator may hold for chief election judges only, even if the chief election judge possesses a current certificate of completion pursuant to 13-1-203(5)(b).

(3) Any individual willing to be appointed as an election judge may attend an instruction session by registering with the election administrator. However, the individual may not be paid for attendance unless the individual is appointed as an election judge.

(4) Each election judge completing a training session under this section must be given a certificate of completion. An individual may not serve as an election judge without a current certificate. However, this requirement does not apply to individuals filling vacancies in emergencies.

(5) A certificate of completion is current if the certificate is obtained before the primary election in an even-numbered year.

(6) Notice of the place and time of instruction must be given by the election administrator to the presiding officers of the political parties in the county.

**History:** En. Sec. 54, Ch. 368, L. 1969; amd. Sec. 5, Ch. 258, L. 1971; R.C.M. 1947, 23-3206; amd. Sec. 61, Ch. 571, L. 1979; amd. Sec. 12, Ch. 414, L. 2003; amd. Sec. 17, Ch. 297, L. 2009; amd. Sec. 2, Ch. 209, L. 2015; amd. Sec. 8, Ch. 368, L. 2017.

**Compiler's Comments**

*2017 Amendment:* Chapter 368 in (1) at end of first sentence inserted "on current procedures as prescribed by the secretary of state". Amendment effective January 1, 2018.

**13-4-207. Judges to remain at polls — emergency provisions — part-time service.** (1) Election judges may not leave the premises on which the polling place is located during the hours they are assigned to work unless permission to leave is given by the chief election judge for that precinct. Permission may be granted only for illness or a family emergency.

(2) A chief election judge must obtain the permission of the election administrator to leave the polling place premises because of illness or an emergency. If the chief judge is excused, the election administrator shall appoint one of the other judges to act as chief election judge.

(3) The time of departure and reason for leaving shall be entered near the oath form subscribed by the election judge or on a form provided by the election administrator. The chief election judge shall sign the entry.

(4) The election administrator may appoint a judge to replace an excused judge or one who fails to appear.

(5) The election administrator may assign a judge or chief election judge to work less than a full polling day, but at least three judges, including a chief election judge, must be on duty during the time that the polls are open.

**History:** En. Sec. 62, Ch. 571, L. 1979; amd. Sec. 4, Ch. 232, L. 1993; amd. Sec. 18, Ch. 242, L. 2011.

## CHAPTER 10 PRIMARY ELECTIONS AND NOMINATIONS

### Part 2 Preprimary Procedures

**13-10-211. Declaration of intent for write-in candidates.** (1) Except as provided in subsection (7), a person seeking to become a write-in candidate for an office in any election shall file a declaration of intent. Except for a candidate under 13-38-201(4), a candidate may not file for more than one public office. The declaration of intent must be filed with the secretary of state or election administrator, depending on where a declaration of nomination for the desired office is required to be filed under 13-10-201, or with the school district clerk for a school district office. When a county election administrator is conducting the election for a school district, the school district clerk or school district office that receives the declaration of intent shall notify the county election administrator of the filing. Except as provided in 13-1-403, 13-1-503, 20-3-305(3)(b), and subsection (2) of this section, the declaration must be filed no later than 5 p.m. on the 10th day before the earliest date established under 13-13-205 on which a ballot must be available and must contain:

- (a) the candidate's name, including:
  - (i) the candidate's first and last names;
  - (ii) the candidate's initials, if any, used instead of a first name, or first and middle name, and the candidate's last name;
  - (iii) the candidate's nickname, if any, used instead of a first name, and the candidate's last name; and
  - (iv) a derivative or diminutive name, if any, used instead of a first name, and the candidate's last name;
- (b) the candidate's mailing address;
- (c) a statement declaring the candidate's intention to be a write-in candidate;
- (d) the title of the office sought;
- (e) the date of the election;
- (f) the date of the declaration; and
- (g) the candidate's signature.

(2) A declaration of intent may be filed after the deadline provided for in subsection (1) but no later than 5 p.m. on the day before the election if, after the deadline prescribed in subsection (1), a candidate for the office that the write-in candidate is seeking dies or is charged with a felony offense and if the election has not been canceled as provided by law.

(3) The secretary of state shall notify each election administrator of the names of write-in candidates who have filed a declaration of intent with the secretary of state. Each election administrator shall notify the election judges in the county or district of the names of write-in candidates who have filed a declaration of intent.

(4) A properly completed and signed declaration of intent may be provided to the election administrator or secretary of state:

- (a) by facsimile transmission;
- (b) in person;
- (c) by mail; or
- (d) by electronic mail.

(5) A declaration is not valid until the filing fee required pursuant to 13-10-202 is received by the secretary of state or the election administrator.

(6) A write-in candidate who files a declaration of intent for a general election may not file with a partisan, nonpartisan, or independent designation.

- (7) Except as provided in 13-38-201(4)(b), the requirements in subsection (1) do not apply if:
- (a) an election is held;
  - (b) a person's name is written in on the ballot;
  - (c) the person is qualified for and seeks election to the office for which the person's name was written in; and

(d) no other candidate has filed a declaration or petition for nomination or a declaration of intent.

**History:** En. Sec. 1, Ch. 391, L. 1989; amd. Sec. 1, Ch. 143, L. 1995; amd. Sec. 2, Ch. 40, L. 1999; amd. Sec. 1, Ch. 129, L. 1999; amd. Sec. 1, Ch. 15, L. 2001; amd. Sec. 16, Ch. 414, L. 2003; amd. Sec. 19, Ch. 475, L. 2003; amd. Sec. 9, Ch. 586, L. 2005; amd. Sec. 1, Ch. 191, L. 2007; amd. Sec. 8, Ch. 273, L. 2007; amd. Sec. 1, Ch. 338, L. 2007; amd. Sec. 18, Ch. 297, L. 2009; amd. Sec. 22, Ch. 242, L. 2011; amd. Sec. 16, Ch. 336, L. 2013; amd. Sec. 178, Ch. 49, L. 2015; amd. Sec. 2, Ch. 420, L. 2015; amd. Sec. 12, Ch. 242, L. 2017.

**Compiler's Comments**

*2017 Amendment:* Chapter 242 in (1) in fifth sentence inserted "13-1-403, 13-1-503", after "10th day before the" inserted "earliest", and after "must be available" deleted "for absentee voting for the election"; and made minor changes in style. Amendment effective May 3, 2017.

## CHAPTER 12 ELECTION SUPPLIES AND BALLOTS

### Part 1 Election Supplies

**13-12-101. Copies of election laws to be furnished.** The secretary of state shall furnish to each election administrator copies of this title sufficient to provide each election precinct in the administrator's county with two copies and to provide a small extra supply for the administrator.

**History:** (1)En. Sec. 16, Ch. 368, L. 1969; Sec. 23-2904, R.C.M. 1947; (2)En. 23-4794 by Sec. 19, Ch. 480, L. 1975; amd. Sec. 66, Ch. 365, L. 1977; Sec. 23-4794, R.C.M. 1947; R.C.M. 1947, 23-2904, 23-4794; amd. Sec. 90, Ch. 571, L. 1979; amd. Sec. 1, Ch. 121, L. 1983; amd. Sec. 1, Ch. 113, L. 1993.

**13-12-102. Items to be furnished by election administrators.** The election administrators shall deliver to each polling place or to the chief election judge for a polling place all supplies necessary to conduct the election at that polling place. If the blank ballots for the polling place are delivered before noon of the day before the election, the election administrator shall retain sufficient ballots to supply electors requesting absentee ballots. The election administrator shall write in the pollbook for that polling place, after the numbers of the ballots retained, "reserved for absentee ballots".

**History:** App. Sec. 84, Ch. 368, L. 1969; Sec. 23-3501, R.C.M. 1947; App. Sec. 4280, Pol. C. 1895; re-en. Sec. 2939, Rev. C. 1907; re-en. Sec. 4515, R.C.M. 1921; Cal. Pol. C. Sec. 4064; re-en. Sec. 4515, R.C.M. 1935; Sec. 16-1156, R.C.M. 1947; R.C.M. 1947, 16-1156, 23-3501; amd. Sec. 91, Ch. 571, L. 1979.

### Part 2 Ballots

**13-12-201. Certification of candidate names and ballot issues for general election ballot.** (1) Seventy-five days before a general election, the secretary of state shall certify to the election administrators the name and party or other designation of each candidate who filed with the secretary of state and whose name is entitled to appear on the ballot, subject to 13-37-126, and the ballot issues as shown in the official records of the secretary of state's office.

(2) On certification from the secretary of state's office pursuant to subsection (1), the election administrator shall certify the name and party or other designation of each candidate whose name is entitled to appear on the ballot, subject to 13-37-126, and the ballot issues as shown in the official records of the election administrator's office, and shall have the official ballots prepared.

(3) If a candidate for the legislature is no longer eligible under Article V, section 4, of the Montana constitution to seek the office for which the candidate has filed because the candidate has changed residence, the secretary of state shall notify the candidate that the candidate is required to withdraw as provided in 13-10-325.

**History:** En. Sec. 100, Ch. 368, L. 1969; R.C.M. 1947, 23-3517(3); amd. Sec. 92, Ch. 571, L. 1979; amd. Sec. 31, Ch. 250, L. 1985; amd. Sec. 4, Ch. 74, L. 1993; amd. Sec. 21, Ch. 414, L. 2003; amd. Sec. 8, Ch. 292, L. 2009; amd. Sec. 183, Ch. 49, L. 2015.

**13-12-202. Ballot form and uniformity.** (1) The secretary of state shall adopt statewide uniform rules that prescribe the ballot form for each type of ballot used in this state. The rules must conform to the provisions of this title unless the voting system used clearly requires otherwise. At a minimum, the rules must address:



- (a) the manner in which each type of ballot may be corrected under 13-12-204;
  - (b) what provisions must be made on the ballot for write-in candidates;
  - (c) the size and content of stubs on paper ballots, except as provided in 13-19-106(1);
  - (d) how unvoted ballots must be handled;
  - (e) how the number of individuals voting and the number of ballots cast must be recorded;
- and
- (f) the order and arrangement of voting system ballots.
- (2) The names of all candidates to appear on the ballots must be in the same font size and style.

(3) Notwithstanding 13-19-106(1), when the stubs are detached, it must be impossible to distinguish any one of the ballots from another ballot for the same office or issue.

(4) The ballots must contain the name of each candidate whose nomination is certified under law for an office and no other names, except that the names of candidates for president and vice president of the United States must appear on the ballot as provided in 13-25-101(5).

**History:** En. Sec. 91, Ch. 368, L. 1969; R.C.M. 1947, 23-3508(4); amd. Sec. 93, Ch. 571, L. 1979; amd. Sec. 22, Ch. 414, L. 2003; amd. Sec. 26, Ch. 242, L. 2011.

**13-12-203. Appearance of candidate's name and party designation on ballot.**

(1) Subject to 13-12-202 and except as provided in 13-10-209 for nonpartisan offices and 13-10-303 for certain other candidates, in partisan elections, candidates' names must appear under the title of the office sought, with the name of the party in not more than three words appearing opposite or below the name.

(2) Subject to 13-12-202, in nonpartisan general elections, the candidates' names must appear under the title of the office sought, with no description or designation appearing with the name unless partisan and nonpartisan offices appear on the same ballot. In such a case, the names of nonpartisan candidates must appear with the word "Nonpartisan".

(3) Except as otherwise provided by this section, information about the candidate other than the candidate's name may not appear on the ballot, including a title, accomplishment, award, or degree.

**History:** En. Sec. 92, Ch. 368, L. 1969; amd. Sec. 2, Ch. 254, L. 1971; R.C.M. 1947, 23-3509; amd. Sec. 94, Ch. 571, L. 1979; amd. Sec. 23, Ch. 414, L. 2003; amd. Sec. 27, Ch. 242, L. 2011; amd. Sec. 1, Ch. 214, L. 2015.

**13-12-204. Method of correction of ballot.** If an appointment has been made to replace a candidate, as provided in 13-10-326, 13-10-327, or 13-10-328, or if a candidate for lieutenant governor has been advanced to the candidacy for governor, as provided in 13-10-328, after the ballots have been prepared but before the election, the election administrator may:

- (1) correct the ballot in a manner consistent with rules adopted under 13-12-202;
- (2) have the entire ballot redone; or
- (3) have a separate ballot prepared only for the office for which the new candidate is a candidate.

**History:** En. Sec. 93, Ch. 368, L. 1969; R.C.M. 1947, 23-3510; amd. Sec. 95, Ch. 571, L. 1979; amd. Sec. 3, Ch. 85, L. 1997; amd. Sec. 24, Ch. 414, L. 2003.

**13-12-205. Arrangement of names — rotation on ballot.** (1) The candidates' names must be arranged alphabetically on the ballot according to surnames under the title of the respective offices and rotated as provided in this section.

(2) (a) If two or more individuals are candidates for nomination or election to the same office, the election administrator shall divide the ballot forms into sets equal in number to the greatest number of candidates for any office. The candidates for nomination to an office by each political party must be considered separately in determining the number of sets necessary for a primary election.

(b) The election administrator shall begin with a form arranged alphabetically and rotate the names of the candidates so that each candidate's name will be at the top of the list for each office on substantially an equal number of ballots. If it is not numerically possible to place each candidate's name at the top of the list, the names must be rotated in groups so that each candidate's name is as near the top of the list as possible on substantially an equal number of ballots.

(c) If the county contains more than one legislative district, the election administrator may rotate each candidate's name so that it will be at or near the top of the list for each office on substantially an equal number of ballots in each house district.

(d) For purposes of rotation, the offices of president and vice president and of governor and lieutenant governor must be considered as a group.

(e) No more than one of the sets may be used in preparing the ballot for use in any one precinct, and all ballots furnished for use in any precinct must be identical.

**History:** En. Sec. 94, Ch. 368, L. 1969; R.C.M. 1947, 23-3511; amd. Sec. 96, Ch. 571, L. 1979; amd. Sec. 1, Ch. 576, L. 1985; amd. Sec. 25, Ch. 414, L. 2003; amd. Sec. 14, Ch. 273, L. 2007.

**13-12-207. Order of placement.** (1) The order on the ballot for state and federal offices must be as follows:

(a) If the election is in a year in which a president of the United States is to be elected, in spaces separated from the balance of the party tickets by a line must be the names and spaces for voting for candidates for president and vice president. The names of candidates for president and vice president for each political party must be grouped together.

- (b) United States senator;
- (c) United States representative;
- (d) governor and lieutenant governor;
- (e) secretary of state;
- (f) attorney general;
- (g) state auditor;
- (h) state superintendent of public instruction;
- (i) public service commissioners;
- (j) clerk of the supreme court;
- (k) chief justice of the supreme court;
- (l) justices of the supreme court;
- (m) district court judges;
- (n) state senators;
- (o) members of the Montana house of representatives.

(2) The following order of placement must be observed for county offices:

- (a) clerk of the district court;
- (b) county commissioner;
- (c) county clerk and recorder;
- (d) sheriff;
- (e) coroner;
- (f) county attorney;
- (g) county superintendent of schools;
- (h) county auditor;
- (i) public administrator;
- (j) county assessor;
- (k) county treasurer;
- (l) surveyor;
- (m) justice of the peace.

(3) The secretary of state shall designate the order for placement on the ballot of any offices not on the above lists, except that the election administrator shall designate the order of placement for municipal, charter, or consolidated local government offices and district offices when the district is part of only one county.

(4) Constitutional amendments must be placed before statewide referendum and initiative measures. Ballot issues for a county, municipality, school district, or other political subdivision must follow statewide measures in the order designated by the election administrator.

(5) If any offices are not to be elected they may not be listed, but the order of the offices to be filled must be maintained.

(6) If there is a short-term and a long-term election for the same office, the long-term office must precede the short-term.

**History:** Ap. p. Sec. 96, Ch. 368, L. 1969; amd. Sec. 5, Ch. 28, L. 1973; amd. Sec. 22, Ch. 315, L. 1974; amd. Sec. 29, Ch. 365, L. 1977; amd. Sec. 3, Ch. 468, L. 1977; Sec. 23-3513, R.C.M. 1947; Ap. p. Sec. 100, Ch. 368, L.

1969; Sec. 23-3517, R.C.M. 1947; R.C.M. 1947, 23-3513, 23-3517(1), (2); amd. Sec. 97, Ch. 571, L. 1979; amd. Sec. 13, Ch. 7, L. 2001; amd. Sec. 15, Ch. 273, L. 2007; amd. Sec. 28, Ch. 242, L. 2011.

**13-12-210. Number of ballots to be provided for each precinct.** (1) The election administrator shall provide each election precinct with sufficient ballots for the electors registered, plus an extra supply to cover spoiled ballots.

(2) The election administrator shall keep a record in the administrator's office showing the exact number of ballots that are delivered to the election judges of each precinct.

**History:** En. Sec. 99, Ch. 368, L. 1969; R.C.M. 1947, 23-3516; amd. Sec. 100, Ch. 571, L. 1979; amd. Sec. 45, Ch. 56, L. 2009.

**13-12-212. Election administrator to provide official ballots — other ballots prohibited.** Each election administrator shall provide the official ballots for every election conducted by the election administrator. A ballot other than an official ballot may not be cast or counted in any election.

**History:** En. Sec. 89, Ch. 368, L. 1969; amd. Sec. 27, Ch. 365, L. 1977; R.C.M. 1947, 23-3506; amd. Sec. 101, Ch. 571, L. 1979; amd. Sec. 26, Ch. 414, L. 2003.

**13-12-214. Sample ballots.** The election administrator may have sample ballots printed in a number sufficient to answer requests from the political parties, schools, and electors. Sample ballots must be duplicates of the official ballots but must be clearly distinguishable from official ballots and may not have perforated stubs or be numbered.

**History:** En. Sec. 102, Ch. 571, L. 1979.

## CHAPTER 13 ELECTION PROCEDURE

### Part 1 Procedure at Polling Place

**13-13-101. Duties — proclamation prior to opening and closing polls.** (1) The election judges shall meet at their assigned polling places at the time set by the election administrator. The judges shall take and subscribe the official oath prescribed by the constitution. They may administer the oath to each other. The judges shall check all supplies and complete preparations for voting before the time set for opening the polls, under the direction of the chief election judge.

(2) Before the polls are opened or closed, that fact must be proclaimed at the place of election.

**History:** En. Sec. 102, Ch. 368, L. 1969; R.C.M. 1947, 23-3602; amd. Sec. 103, Ch. 571, L. 1979.

**13-13-111. Provision and use of voting stations.** (1) The election administrator shall provide a sufficient number of voting stations to allow voting to proceed with as little delay as possible.

(2) Voting stations must be arranged in a manner that will not permit any other individual to see how the elector votes or has voted.

(3) No more than one individual may occupy a voting station at one time, except when assistance is furnished to an elector as provided by law.

(4) An individual may not occupy a voting station longer than is reasonably necessary to prepare the elector's ballot, after which the election judges may effect the removal of the elector from the station.

**History:** En. Sec. 104, Ch. 571, L. 1979; amd. Sec. 27, Ch. 414, L. 2003; amd. Sec. 29, Ch. 242, L. 2011.

**13-13-112. Display of instructions for electors.** (1) Except as provided in subsection (3), instructions for electors on how to prepare their ballots or use a voting system must be posted in each voting station provided for the preparation of ballots.

(2) The instructions must be in easily read type, 18 point or larger, and explain:

(a) how to obtain ballots for voting;

(b) how to prepare ballots, including how to:

(i) cast a valid vote, including a valid vote for a write-in candidate;

(ii) correct a mistake; and

- (iii) ensure the proper disposition of the ballot after the elector is finished voting;
- (c) how to obtain a new ballot in place of one spoiled by accident; and
- (d) how to vote provisionally pursuant to 13-13-601.

(3) The information required in subsection (2) must also be posted at each polling place along with the election date, the hours the polls are open, and instructions for mail-in registrants and first-time voters.

(4) If the instructions for use of a voting system are printed on the system or are part of a ballot package given to each elector, separate instructions need not be posted in the voting station.

(5) Sample ballots, clearly marked “sample” across the face, must be posted at each voting station and in conspicuous places around the polling place.

**History:** En. Sec. 105, Ch. 571, L. 1979; amd. Sec. 13, Ch. 200, L. 1987; amd. Sec. 28, Ch. 414, L. 2003; amd. Sec. 20, Ch. 475, L. 2003; amd. Sec. 30, Ch. 242, L. 2011; amd. Sec. 22, Ch. 336, L. 2013.

**13-13-113. Warning notice to be posted.** (1) Warning notices must be posted in conspicuous places in the polling place. Each notice must be headed “WARNING” in large letters and must state:

“The sections of law printed below list specific conduct or actions which may cause an elector to be subject to criminal prosecution. This is not intended to be a complete printing of all laws pertaining to election violations.”

(2) Below this statement must be printed the text for sections 13-35-201, 13-35-202, 13-35-206, 13-35-211, 13-35-214, 13-35-217, and 13-35-218.

(3) The notice may also contain any other information prescribed by the secretary of state.

**History:** En. Sec. 106, Ch. 571, L. 1979; amd. Sec. 31, Ch. 242, L. 2011.

**13-13-114. Voter identification and marking precinct register book before elector votes — provisional voting.** (1) (a) Before an elector is permitted to receive a ballot or vote, the elector shall present to an election judge a current photo identification showing the elector’s name. If the elector does not present photo identification, including but not limited to a valid driver’s license, a school district or postsecondary education photo identification, or a tribal photo identification, the elector shall present a current utility bill, bank statement, paycheck, notice of confirmation of voter registration issued pursuant to 13-2-207, government check, or other government document that shows the elector’s name and current address.

(b) An elector who provides the information listed in subsection (1)(a) may sign the precinct register and must be provided with a regular ballot to vote.

(c) If the information provided in subsection (1)(a) differs from information in the precinct register but an election judge determines that the information provided is sufficient to verify the voter’s identity and eligibility to vote pursuant to 13-2-512, the elector may sign the precinct register, complete a new registration form to correct the elector’s voter registration information, and vote.

(d) An election judge shall write “registration form” beside the name of any elector submitting a form.

(2) If the information presented under subsection (1) is insufficient to verify the elector’s identity and eligibility to vote or if the elector’s name does not appear in the precinct register or appears in the register as provisionally registered and this provisional registration status cannot be resolved at the polling place, the elector may sign the precinct register and cast a provisional ballot as provided in 13-13-601.

(3) If the elector fails or refuses to sign the elector’s name or if the elector is disabled and a fingerprint, an identifying mark, or a signature by a person authorized to sign for the elector pursuant to 13-1-116 is not provided, the elector may cast a provisional ballot as provided in 13-13-601.

**History:** En. Sec. 107, Ch. 571, L. 1979; amd. Sec. 10, Ch. 591, L. 1991; amd. Sec. 21, Ch. 475, L. 2003; amd. Sec. 3, Ch. 367, L. 2005; amd. Sec. 32, Ch. 242, L. 2011; amd. Sec. 11, Ch. 368, L. 2017.

**Compiler’s Comments**

*2017 Amendment:* Chapter 368 in (1)(c) near end before “new registration form” deleted “transfer form or”; and in (1)(d) after “An election judge shall write” deleted ““transfer form” or”. Amendment effective January 1, 2018.

**13-13-115. Recording number of voters and ballots.** The election administrator in each precinct shall use a precinct register, pollbook, or some other method to record the number

of individuals voting and the number of ballots cast that conforms to the method prescribed by the secretary of state in accordance with rules adopted pursuant to 13-12-202.

**History:** En. Sec. 108, Ch. 571, L. 1979; amd. Sec. 11, Ch. 591, L. 1991; amd. Sec. 29, Ch. 414, L. 2003.

**13-13-116. Paper ballots to be marked — one ballot to elector.** (1) Before delivering a paper ballot to an elector, the election judges shall ensure that the ballot is individually stamped with the words “official ballot” without part of the mark appearing on the stub, if any.

(2) Each elector must receive from the election judges one of each type of ballot for which the elector is eligible.

**History:** En. Sec. 109, Ch. 571, L. 1979; amd. Sec. 6, Ch. 298, L. 1987; amd. Sec. 8, Ch. 390, L. 1993; amd. Sec. 30, Ch. 414, L. 2003; amd. Sec. 33, Ch. 242, L. 2011.

**13-13-117. Method of voting.** (1) (a) After marking the precinct register pursuant to 13-13-115 and receiving a ballot, an elector shall immediately retire to a voting station and prepare the elector’s ballot in the manner prescribed in the instructions provided pursuant to 13-13-112.

(b) An elector who spoils the elector’s ballot must be provided with another ballot in place of the spoiled ballot.

(2) (a) After the elector has completed voting, the elector shall ensure the proper disposition of the elector’s ballot in accordance with instructions provided pursuant to 13-13-112.

(b) An election judge or voting system shall place the ballot in the ballot box immediately without allowing anyone to examine the ballot. Nothing other than a ballot may be put in a ballot box.

**History:** En. Sec. 110, Ch. 571, L. 1979; amd. Sec. 7, Ch. 298, L. 1987; amd. Sec. 2, Ch. 391, L. 1989; amd. Sec. 1, Ch. 134, L. 2001; amd. Sec. 31, Ch. 414, L. 2003; amd. Sec. 16, Ch. 273, L. 2007.

**13-13-118. Taking ballot to disabled elector.** (1) The chief election judge may appoint two election judges who represent different political parties to take a ballot to an elector able to come to the premises where a polling place is located but unable to enter the polling place because of a disability. If election judges who represent different political parties are not available, the chief election judge shall appoint two election judges to assist the elector. The elector may request assistance in marking the ballot as provided in 13-13-119.

(2) The judges shall have the elector sign an oath form stating that the elector is entitled to vote and shall write in the precinct register by the elector’s name “voted on the premises by oath” and sign their names.

(3) When the ballot or ballots are marked and folded, the judges shall immediately take them into the polling place and give them to the judge at the ballot box. Any challenge to the elector’s right to vote must be resolved as provided in Title 13, chapter 13, part 3.

**History:** En. Sec. 111, Ch. 571, L. 1979; amd. Sec. 46, Ch. 56, L. 2009; amd. Sec. 34, Ch. 242, L. 2011; amd. Sec. 23, Ch. 336, L. 2013.

**13-13-119. Aid to disabled elector.** (1) When a disabled elector enters a polling place, an election judge shall ask the elector if the elector wants assistance.

(2) An election judge or an individual chosen by the disabled elector as specified in subsection (5) may aid an elector who, because of physical disability or inability to read or write, needs assistance in marking the elector’s ballot.

(3) The election judges shall require a declaration of disability by the elector. The declaration must be made under oath, which must be administered by an election judge.

(4) The elector may be assisted by two judges who represent different parties. If election judges who represent different political parties are not available, the chief election judge shall appoint two election judges to assist the elector. The judges shall certify on the precinct register opposite the disabled elector’s name that the ballot was marked with their assistance. The judges may not reveal information regarding the ballot.

(5) Instead of assistance as provided in subsection (4), the elector may request the assistance of any individual the elector designates to the judges to aid the elector in the marking of the elector’s ballot. An individual designated to assist the elector shall sign the individual’s name on the precinct register beside the name of the elector assisted. The individual chosen may not be the elector’s employer, an agent of the elector’s employer, or an officer or agent of the elector’s union.



(6) No elector other than the elector who requires assistance may divulge to anyone within the polling place the name of any candidate for whom the elector intends to vote or may ask or receive the assistance of any individual within the polling place in the preparation of the elector's ballot.

**History:** En. Sec. 112, Ch. 571, L. 1979; amd. Sec. 8, Ch. 298, L. 1987; amd. Sec. 4, Ch. 367, L. 2005; amd. Sec. 35, Ch. 242, L. 2011.

**13-13-120. Poll watchers — announcement of elector's name.** (1) The election judges shall permit one poll watcher from each political party to be stationed close to the poll lists in a location that does not interfere with the election procedures. At the time when each elector signs the elector's name, one of the election judges shall pronounce the name loud enough to be heard by the poll watchers. A poll watcher who does not understand the pronunciation has the right to request that the judge repeat the name. Poll watchers must also be permitted to observe all of the vote counting procedures of the judges after the closing of the polls and all entries of the results of the elections.

(2) A candidate may not serve as a poll watcher at a polling place where electors are voting on ballots with the candidate's name on them.

**History:** En. Sec. 113, Ch. 571, L. 1979; amd. Sec. 47, Ch. 56, L. 2009; amd. Sec. 1, Ch. 240, L. 2015.

**13-13-121. Additional poll watchers.** A candidate, a group of candidates, or any group having an interest in the election may request the election administrator to allow additional poll watchers at any precinct. The election administrator shall grant such requests if the number of poll watchers at the polling place will not interfere with the election procedures.

**History:** En. Sec. 114, Ch. 571, L. 1979.

**13-13-122. Preventing obstructions.** An election officer, sheriff, constable, or other peace officer may clear the passageway, prevent any obstruction, or arrest any individual obstructing the passageway to a polling place.

**History:** En. Sec. 115, Ch. 571, L. 1979.

## Part 2

### Procedure for Electors Absent From the Polling Place

**13-13-201. Voting by absentee ballot — procedures.** (1) A legally registered elector or provisionally registered elector is entitled to vote by absentee ballot as provided for in this part.

(2) The elector may vote absentee by:

- (a) marking the ballot in the manner specified;
- (b) placing the marked ballot in the secrecy envelope, free of any identifying marks;
- (c) placing the secrecy envelope containing one ballot for each election being held in the signature envelope;

(d) executing the affirmation printed on the signature envelope; and

(e) returning the signature envelope with all appropriate enclosures by regular mail, postage paid, or by delivering it to:

- (i) the election office;
- (ii) a polling place within the elector's county;
- (iii) pursuant to 13-13-229, the absentee election board or an authorized election official; or
- (iv) in a mail ballot election held pursuant to Title 13, chapter 19, a designated place of deposit within the elector's county.

(3) Except as provided in 13-21-206 and 13-21-226, in order for the ballot to be counted, each elector shall return it in a manner that ensures the ballot is received prior to 8 p.m. on election day.

(4) A provisionally registered elector may also enclose in the outer signature envelope a copy of the elector's photo identification showing the elector's name. The photo identification may be but is not limited to a valid driver's license, a school district or postsecondary education photo identification, or a tribal photo identification. If the provisionally registered elector does not enclose a photo identification, the elector may enclose a copy of a current utility bill, bank statement, paycheck, notice of confirmation of voter registration issued pursuant to 13-2-207,

government check, or other government document that shows the elector's name and current address.

**History:** En. Sec. 119, Ch. 368, L. 1969; R.C.M. 1947, 23-3701; amd. Sec. 116, Ch. 571, L. 1979; amd. Sec. 1, Ch. 239, L. 1985; amd. Sec. 1, Ch. 242, L. 1997; amd. Sec. 1, Ch. 151, L. 1999; amd. Sec. 32, Ch. 414, L. 2003; amd. Sec. 25, Ch. 475, L. 2003; amd. Sec. 7, Ch. 286, L. 2005; amd. Sec. 17, Ch. 273, L. 2007; amd. Sec. 1, Ch. 101, L. 2011; amd. Sec. 36, Ch. 242, L. 2011; amd. Sec. 2, Ch. 139, L. 2013; amd. Sec. 24, Ch. 336, L. 2013.

**13-13-202. Repealed.** Sec. 407, Ch. 571, L. 1979.

**History:** En. Sec. 132, Ch. 368, L. 1969; R.C.M. 1947, 23-3714.

**13-13-203. Repealed.** Sec. 32, Ch. 273, L. 2007.

**History:** En. Sec. 134, Ch. 368, L. 1969; R.C.M. 1947, 23-3716(1), (2); amd. Sec. 117, Ch. 571, L. 1979; amd. Sec. 2, Ch. 239, L. 1985; amd. Sec. 33, Ch. 414, L. 2003.

**13-13-204. Authority to vote in person — printing error or ballot destroyed — replacement ballot — effect of absentee elector's death.** (1) (a) If an elector has received but not voted an absentee ballot and the absentee ballot contains printing errors or omissions, the elector may receive a replacement or corrected ballot.

(b) The death of a candidate after the printing of the ballot constitutes a printing error or omission on the ballot.

(2) An elector may:

(a) request a replacement ballot from the election administrator pursuant to subsection (1) or if the original ballot is destroyed, spoiled, lost, or not received by the elector; or

(b) appear at the appropriate polling place on election day and vote in person after being issued a provisional ballot.

(3) A request for a replacement ballot submitted to the election administrator must be made on a form prescribed by the secretary of state and must be made in person, by regular or electronic mail, or by facsimile no later than 8 p.m. on election day.

(4) Upon receiving a request for a replacement ballot pursuant to subsection (3), the election administrator shall mark the original issued ballot as void in the statewide voter registration system and issue a replacement regular ballot to the elector.

(5) A replacement ballot may also be issued pursuant to 13-13-245.

(6) If an elector votes by absentee ballot and the ballot has been mailed to or received by the election administrator but the elector dies between the time of balloting and election day, the deceased elector's ballot must be counted.

**History:** En. Sec. 127, Ch. 571, L. 1979; amd. Sec. 2, Ch. 120, L. 1983; amd. Sec. 9, Ch. 298, L. 1987; amd. Sec. 4, Ch. 85, L. 1997; amd. Sec. 26, Ch. 475, L. 2003; amd. Sec. 1, Ch. 359, L. 2005; amd. Sec. 1, Ch. 217, L. 2009; amd. Sec. 19, Ch. 297, L. 2009; amd. Sec. 2, Ch. 101, L. 2011; amd. Sec. 25, Ch. 336, L. 2013.

**13-13-205. When ballots to be available for absentee voting.** (1) Except as provided in subsection (2), the election administrator shall ensure that ballots for a polling place election are available as follows:

(a) for an election conducted on a primary or general election day:

(i) 30 days prior to election day for absentee voting in person;

(ii) 25 days prior to the election for mailing ballots to absentee voters; and

(b) 20 days prior to election day for a special purpose district or school district election, except that ballots for a conservation district election held on a primary or general election day must be available as provided in subsection (1)(a).

(2) A federal election ballot requested by an absent uniformed services or overseas elector pursuant to Title 13, chapter 21, must be sent to the elector as soon as the ballot is printed but not later than 45 days in advance of the election.

**History:** En. Sec. 2, Ch. 586, L. 1983; amd. Sec. 32, Ch. 250, L. 1985; amd. Sec. 10, Ch. 298, L. 1987; amd. Sec. 34, Ch. 414, L. 2003; amd. Sec. 27, Ch. 475, L. 2003; amd. Sec. 8, Ch. 286, L. 2005; amd. Sec. 18, Ch. 273, L. 2007; amd. Sec. 20, Ch. 297, L. 2009; amd. Sec. 1, Ch. 190, L. 2011; amd. Sec. 184, Ch. 49, L. 2015; amd. Sec. 13, Ch. 242, L. 2017.

#### **Compiler's Comments**

*2017 Amendment:* Chapter 242 in (1) substituted "ballots for a polling place election are available as follows" for "ballots for an election not conducted by mail are available for absentee voting at least"; inserted (1)(a) regarding election conducted on a primary or general election day; in (1)(a)(i) substituted "30 days" for "25 days" and substituted "for absentee voting in person" for "for an election not covered under subsection (1)(b)"; inserted (1)(a)(ii) regarding mailing ballots to absentee voters 25 days prior to election; in (1)(b) at end after "school district election" inserted exception clause; and made minor changes in style. Amendment effective May 3, 2017.

**13-13-206 through 13-13-210 reserved.**

**13-13-211. Time period for application.** (1) Except as provided in 13-13-222, 13-21-223, and subsection (2) of this section, an application for an absentee ballot must be made before noon on the day before the election.

(2) A qualified elector who is prevented from voting at the polls as a result of illness or health emergency occurring between 5 p.m. of the Friday preceding the election and before the close of polls on election day may request to vote by absentee ballot as provided in 13-13-212(2).

(3) An absentee ballot cast pursuant to subsection (2) must be received prior to 8 p.m. on election day pursuant to 13-13-201.

**History:** En. Sec. 121, Ch. 368, L. 1969; amd. Sec. 1, Ch. 145, L. 1975; R.C.M. 1947, 23-3703; amd. Sec. 118, Ch. 571, L. 1979; amd. Sec. 3, Ch. 239, L. 1985; amd. Sec. 4, Ch. 396, L. 1985; amd. Sec. 14, Ch. 200, L. 1987; amd. Sec. 12, Ch. 472, L. 1997; amd. Sec. 2, Ch. 151, L. 1999; amd. Secs. 35, 93(2)(a), Ch. 414, L. 2003; amd. Sec. 13, Ch. 130, L. 2005; amd. Sec. 37, Ch. 242, L. 2011; amd. Sec. 3, Ch. 139, L. 2013; amd. Sec. 26, Ch. 336, L. 2013.

**13-13-212. Application for absentee ballot — special provisions — absentee ballot list for subsequent elections.** (1) (a) Except as provided in subsection (1)(b), an elector may apply for an absentee ballot by using a standard application form provided by rule by the secretary of state pursuant to 13-1-210 or by making a written request, which must include the applicant's birth date and must be signed by the applicant. The request must be submitted to the election administrator of the applicant's county of residence within the time period specified in 13-13-211.

(b) A person who holds a power of attorney from a uniformed-service voter may apply for an absentee ballot for that election on behalf of the uniformed-service voter. The applicant shall provide a copy of the power of attorney authorizing the request for an absentee ballot along with the application.

(2) (a) If an elector requests an absentee ballot because of a sudden illness or health emergency, the application for an absentee ballot may be made by written request signed by the elector at the time that the ballot is delivered in person by the absentee election board or by an authorized election official as provided in 13-13-225.

(b) The elector may request by telephone, facsimile transmission, or other means to have a ballot and application personally delivered by the absentee election board or by an authorized election official at the elector's place of confinement, hospitalization, or residence within the county.

(c) A request under subsection (2)(a) must be received by the election administrator within the time period specified in 13-13-211(2).

(3) An elector may at any time request to be mailed an absentee ballot for each subsequent election in which the elector is eligible to vote as long as the elector remains qualified to vote and resides at the address provided in the initial application. The request may be made when the individual applies for voter registration using the standard application form provided for in 13-1-210.

(4) (a) An elector who has requested to be on the absentee ballot list and who has not filed a change of address with the U.S. postal service must continue to receive an absentee ballot for each subsequent election.

(b) (i) The election administrator shall biennially mail a forwardable address confirmation form to each elector who is listed in the national change of address system of the U.S. postal service as having changed the elector's address.

(ii) The address confirmation form must request the elector's driver's license number or the last four digits of the elector's social security number. The address confirmation form must include an e-mail address for the election administrator that can be used by the elector to confirm that the elector wishes to continue to receive an absentee ballot and to provide the requested information. The address confirmation form must be mailed in January of every even-numbered year. The address confirmation form is for elections to be held between February 1 following the mailing through January of the next even-numbered year.

(iii) An election administrator may provide a website on which the elector can provide the required information to confirm that the elector wishes to remain on the absentee ballot list.

(iv) If the elector is providing confirmation using the address confirmation form, the elector shall sign the form, indicate the address to which the absentee ballot should be sent, provide the

elector's driver's license number or the last four digits of the elector's social security number, and return the form to the election administrator.

- (v) The elector may provide the required information to the election administrator using:
  - (A) the e-mail address provided on the form; or
  - (B) a website established by the election administrator.

(vi) The elector does not need to provide a signature when using either option provided in subsection (4)(b)(v) to confirm that the elector wishes to remain on the absentee ballot list.

(vii) If the form is not completed and returned or if the elector does not respond using the options provided in subsection (4)(b)(v), the election administrator shall remove the elector from the absentee ballot list.

(c) An elector may request to be removed from the absentee ballot list for subsequent elections by notifying the election administrator in writing.

(d) An elector who has been or who requests to be removed from the absentee ballot list may subsequently request to be mailed an absentee ballot for each subsequent election.

(5) In a mail ballot election, ballots must be sent under mail ballot procedures rather than under the absentee ballot procedures set forth in this section.

**History:** En. Sec. 122, Ch. 368, L. 1969; amd. Sec. 1, Ch. 287, L. 1975; R.C.M. 1947, 23-3704; amd. Sec. 119, Ch. 571, L. 1979; amd. Sec. 4, Ch. 239, L. 1985; amd. Sec. 12, Ch. 591, L. 1991; amd. Sec. 6, Ch. 85, L. 1997; amd. Sec. 2, Ch. 164, L. 1999; amd. Sec. 36, Ch. 414, L. 2003; amd. Secs. 14, 25, Ch. 557, L. 2003; amd. Sec. 1, Ch. 284, L. 2005; amd. Sec. 9, Ch. 286, L. 2005; amd. Sec. 11, Ch. 586, L. 2005; amd. Sec. 1, Ch. 221, L. 2007; amd. Sec. 1, Ch. 358, L. 2007; amd. Sec. 1, Ch. 219, L. 2009; amd. Sec. 21, Ch. 297, L. 2009; amd. Sec. 3, Ch. 101, L. 2011; amd. Sec. 1, Ch. 111, L. 2011; amd. Sec. 3, Ch. 182, L. 2011; amd. Sec. 38, Ch. 242, L. 2011; amd. Sec. 2, Ch. 255, L. 2013; amd. Sec. 27, Ch. 336, L. 2013; amd. Sec. 7, Ch. 55, L. 2015; amd. Sec. 1, Ch. 246, L. 2015; amd. Sec. 2, Ch. 252, L. 2017.

#### Compiler's Comments

*2017 Amendment:* Chapter 252 inserted (4)(a) requiring that an elector receive an absentee ballot if the elector has requested to be on the absentee ballot list and has not filed a change of address; in (4)(b)(i) substituted "is listed in the national change of address system of the U.S. postal service as having changed the elector's address" for "has requested an absentee ballot for subsequent elections"; in (4)(b)(iii), (4)(b)(vi), (4)(b)(vii), (4)(c), and (4)(d) before "absentee ballot list" deleted "biennial"; in (4)(b)(iv) at beginning substituted "If the elector is providing confirmation using the address confirmation form" for "Except as provided in subsections (3)(b)(iv) and (3)(b)(v)"; in (5) at end substituted "this section" for "subsection (3)"; and made minor changes in style. Amendment effective October 1, 2017.

**13-13-213. Transmission of application to election administrator — delivery of ballot.** (1) All absentee ballot application forms must be addressed to the appropriate county election office.

(2) Except as provided in subsection (4), the elector may mail the signed application directly to the election administrator or deliver the application in person to the election administrator. An agent designated pursuant to 13-1-116 or a third party may collect the elector's application and forward it to the election administrator.

(3) (a) The election administrator shall compare the signature on the application with the applicant's signature on the registration form or the agent's signature on the agent designation form. If convinced that the individual making the application is the same as the one whose name appears on the registration form or the agent designation form, the election administrator shall deliver the ballot to the elector in person or as otherwise provided in 13-13-214, subject to 13-13-205.

(b) If no signature is provided or the election administrator is not convinced that the individual signing the application is the same person whose name appears on the registration form or agent designation form, the election administrator shall notify the elector as provided in 13-13-245.

(4) In lieu of the requirement provided in subsection (2), an elector who requests an absentee ballot pursuant to 13-13-212(2) may return the application to the absentee election board or an authorized election official. Upon receipt of the application, the absentee election board or authorized election official shall examine the signatures on the application and a copy of the voting registration form or agent designation form to be provided by the election administrator. If the absentee election board or an authorized election official believes that the applicant is the same person as the one whose name appears on the registration form or agent designation form, the absentee election board or authorized election official shall provide a ballot to the elector when the ballot is available pursuant to 13-13-205.

**History:** En. Sec. 123, Ch. 368, L. 1969; R.C.M. 1947, 23-3705; amd. Sec. 120, Ch. 571, L. 1979; amd. Sec. 5, Ch. 239, L. 1985; amd. Sec. 1, Ch. 203, L. 1995; amd. Sec. 1, Ch. 367, L. 2003; amd. Sec. 15, Ch. 557, L. 2003; amd. Sec. 10, Ch. 286, L. 2005; amd. Sec. 5, Ch. 367, L. 2005; amd. Sec. 19, Ch. 273, L. 2007; amd. Sec. 22, Ch. 297, L. 2009; amd. Sec. 4, Ch. 101, L. 2011; amd. Sec. 28, Ch. 336, L. 2013; amd. Sec. 12, Ch. 368, L. 2017.

**Compiler's Comments**

*2017 Amendment:* Chapter 368 throughout section substituted “registration form” for “registration card”. Amendment effective January 1, 2018.

**13-13-214. Mailing absentee ballot to elector — delivery to person other than elector.** (1) (a) Except as provided in 13-13-213 and in subsection (1)(c) of this section, the election administrator shall mail, postage prepaid, to each legally registered elector and provisionally registered elector from whom the election administrator has received a valid absentee ballot application under 13-13-211 and 13-13-212 whatever official ballots are necessary in a manner that conforms to postal regulations to require the return rather than forwarding of ballots.

(b) The election administrator shall mail the ballots in a manner that conforms to the deadlines established for ballot availability in 13-13-205.

(c) The election administrator may deliver a ballot in person to an individual other than the elector if:

(i) the elector has designated the individual, either by a signed letter or by making the designation on the application form in a manner prescribed by the secretary of state or pursuant to 13-1-116;

(ii) the individual taking delivery of the ballot on behalf of the elector verifies, by signature, receipt of the ballot;

(iii) the election administrator believes that the individual receiving the ballot is the designated person; and

(iv) the designated person has not previously picked up ballots for four other electors.

(2) The election administrator shall enclose with the ballots:

(a) a secrecy envelope, free of any marks that would identify the voter; and

(b) a signature envelope for the return of the ballots. The signature envelope must be self-addressed by the election administrator and an affirmation in the form prescribed by the secretary of state must be printed on the back of the signature envelope.

(3) The election administrator shall ensure that the ballots provided to an absentee elector are marked as provided in 13-13-116 and shall remove the stubs from the ballots, keeping the stubs in numerical order with the application for absentee ballots, if applicable, or in a precinct envelope or container for that purpose.

(4) If the ballots sent to the elector are for a primary election, the election administrator shall enclose an extra envelope marked “For Unvoted Party Ballot(s)”. This envelope may not be numbered or marked in any way so that it can be identified as being used by any one elector.

(5) Instructions for voting must be enclosed with the ballots. Instructions for primary elections must include use of the envelope for unvoted ballots. The instructions must include information concerning the type or types of writing instruments that may be used to mark the absentee ballot. The instructions must include information regarding use of the secrecy envelope and use of the signature envelope. The election administrator shall include a voter information pamphlet with the instructions if:

(a) a statewide ballot issue appears on the ballot mailed to the elector; and

(b) the elector requests a voter information pamphlet.

**History:** En. Sec. 124, Ch. 368, L. 1969; amd. Sec. 1, Ch. 246, L. 1971; amd. Sec. 2, Ch. 287, L. 1975; R.C.M. 1947, 23-3706; amd. Sec. 121, Ch. 571, L. 1979; amd. Sec. 1, Ch. 110, L. 1983; amd. Sec. 1, Ch. 119, L. 1995; amd. Sec. 2, Ch. 203, L. 1995; amd. Sec. 2, Ch. 242, L. 1997; amd. Secs. 37, 93(2)(b), Ch. 414, L. 2003; amd. Sec. 30, Ch. 475, L. 2003; amd. Sec. 2, Ch. 284, L. 2005; amd. Sec. 6, Ch. 367, L. 2005; amd. Sec. 20, Ch. 273, L. 2007; amd. Sec. 23, Ch. 297, L. 2009; amd. Sec. 39, Ch. 242, L. 2011; amd. Sec. 29, Ch. 336, L. 2013.

**13-13-215 through 13-13-220 reserved.**

**13-13-221. Repealed.** Sec. 91, Ch. 414, L. 2003.

**History:** En. Sec. 125, Ch. 368, L. 1969; amd. Sec. 3, Ch. 287, L. 1975; R.C.M. 1947, 23-3707; amd. Sec. 122, Ch. 571, L. 1979; amd. Sec. 6, Ch. 239, L. 1985; amd. Sec. 3, Ch. 242, L. 1997.

**13-13-222. Marking ballot in person before election day.** (1) As soon as the official ballots are available for in-person absentee voting under 13-13-205(1)(a)(i), the election administrator shall permit an elector to apply for, receive, and mark an absentee ballot before



election day by appearing in person at the office of the election administrator and marking the ballot in a voting station area designated by the election administrator.

(2) The provisions of this chapter apply to voting under this section.

(3) For the purposes of this section, an official ballot is voted when the ballot is received at the election administrator's office.

**History:** En. Sec. 130, Ch. 368, L. 1969; amd. Sec. 4, Ch. 287, L. 1975; R.C.M. 1947, 23-3712; amd. Sec. 123, Ch. 571, L. 1979; amd. Sec. 1, Ch. 586, L. 1983; amd. Sec. 7, Ch. 239, L. 1985; amd. Sec. 3, Ch. 151, L. 1999; amd. Sec. 38, Ch. 414, L. 2003; amd. Sec. 24, Ch. 297, L. 2009; amd. Sec. 5, Ch. 101, L. 2011; amd. Sec. 40, Ch. 242, L. 2011; amd. Sec. 14, Ch. 242, L. 2017.

**Compiler's Comments**

*2017 Amendment:* Chapter 242 in (1) substituted "available for in-person absentee voting under 13-13-205(1)(a)(i)" for "available pursuant to 13-13-205". Amendment effective May 3, 2017.

**13-13-223 and 13-13-224 reserved.**

**13-13-225. Absentee election boards — members — appointment.** (1) The election administrator may designate and appoint absentee election boards as needed or authorize one or more election officials to serve in various places to deliver ballots to electors who are entitled to vote by absentee ballot as provided in 13-13-229.

(2) In a partisan election, each absentee election board or the authorized election officials who are appointed must consist of two members, one from each of the two political parties receiving the highest number of votes in the state during the last preceding general election, if possible. Board members and authorized election officials shall reside in the county in which they serve.

(3) A member of an absentee election board or an authorized election official may not be a candidate or a spouse, ascendant, descendant, brother, or sister of a candidate or of a candidate's spouse or the spouse of any one of these if the candidate's name appears on a ballot in the county.

**History:** En. Sec. 10, Ch. 239, L. 1985; amd. Sec. 4, Ch. 242, L. 1997; amd. Sec. 4, Ch. 151, L. 1999; amd. Sec. 48, Ch. 56, L. 2009; amd. Sec. 41, Ch. 242, L. 2011; amd. Sec. 30, Ch. 336, L. 2013.

**13-13-226. Manner of selection.** The election administrator may make appointments to an absentee election board from lists of qualified electors in the county prepared in substantially the same manner as provided in 13-4-102. The election administrator may refuse for cause to appoint or may for cause remove a member of an absentee election board.

**History:** En. Sec. 11, Ch. 239, L. 1985; amd. Sec. 31, Ch. 336, L. 2013; amd. Sec. 4, Ch. 365, L. 2017.

**Compiler's Comments**

*2017 Amendment:* Chapter 365 after "qualified electors" inserted "in the county" and deleted former second sentence that read: "If the list is insufficient to make all the appointments required, the election administrator may appoint any qualified registered elector from the county." Amendment effective October 1, 2017.

**13-13-227. Oath of board members.** Before assuming any of the responsibilities under this part, each member of an absentee election board shall take and subscribe the official oath in the same manner as prescribed for an election judge in 13-4-105.

**History:** En. Sec. 12, Ch. 239, L. 1985; amd. Sec. 49, Ch. 56, L. 2009; amd. Sec. 32, Ch. 336, L. 2013.

**13-13-228. Compensation.** (1) Each member of an absentee election board is entitled to compensation for the number of hours worked.

(2) Each member of an absentee election board is entitled to full reimbursement for actual travel expenses incurred while delivering ballots on election day.

(3) The election administrator shall pay each member the same compensation and certify amounts due in the same manner as for an election judge as provided for in 13-4-106(1).

**History:** En. Sec. 13, Ch. 239, L. 1985; amd. Sec. 33, Ch. 336, L. 2013.

**13-13-229. Voting performed before absentee election board or authorized election official.** (1) Pursuant to 13-13-212(2), the elector may request that an absentee election board or an authorized election official personally deliver a ballot to the elector.

(2) The manner and procedure of voting by use of an absentee ballot under this section must be the same as provided in 13-13-201, except that the elector shall hand the marked ballot in the sealed signature envelope to the absentee election board or authorized election official, and the board or official shall deliver the sealed signature envelope to the election administrator or to the election judges of the precinct in which the elector is registered.

(3) An absentee ballot cast by a qualified elector pursuant to this section may not be rejected by the election administrator if the ballot was in the possession of the board or an authorized election official before the time designated for the closing of the polls.

(4) An elector who needs assistance in marking the elector's ballot because of physical incapacity or inability to read or write may receive assistance from the absentee election board or authorized election official appointed to personally deliver the ballot. Any assistance given an elector pursuant to this section must be provided in substantially the same manner as required in 13-13-119.

**History:** En. Sec. 14, Ch. 239, L. 1985; amd. Sec. 5, Ch. 242, L. 1997; amd. Sec. 5, Ch. 151, L. 1999; amd. Sec. 39, Ch. 414, L. 2003; amd. Sec. 17, Ch. 557, L. 2003; amd. Sec. 34, Ch. 336, L. 2013.

**13-13-230. Repealed.** Sec. 33, Ch. 368, L. 2017. (*Repealer effective January 1, 2018.*)

**History:** En. Sec. 15, Ch. 239, L. 1985; amd. Sec. 79, Ch. 584, L. 1999; amd. Sec. 91, Ch. 574, L. 2001; amd. Sec. 35, Ch. 336, L. 2013.

**13-13-231. Repealed.** Sec. 76, Ch. 242, L. 2011.

**History:** En. Sec. 126, Ch. 368, L. 1969; amd. Sec. 36, Ch. 365, L. 1977; R.C.M. 1947, 23-3708; amd. Sec. 124, Ch. 571, L. 1979; amd. Sec. 6, Ch. 242, L. 1997.

**13-13-232. Delivery of ballots and secrecy envelopes to election judges — ballots to be rejected.** (1) If an absentee ballot is received prior to delivery of the official ballots to the election judges, the election administrator shall process it according to 13-13-241 and then deliver the unopened secrecy envelope to the judges at the same time that the ballots are delivered.

(2) If an absentee ballot is received after the official ballots are delivered to the election judges but prior to the close of the polls, the election administrator shall process it according to 13-13-241 and shall then immediately deliver the unopened secrecy envelope to the judges.

(3) If the election administrator receives an absentee ballot for which an application or request was not made or received as required by this part, the election administrator shall endorse upon the elector's envelope the date and exact time of receipt and the words "to be rejected". Absentee ballots endorsed in this manner must be handled in the same manner as provided in 13-15-108(1).

**History:** En. Sec. 127, Ch. 368, L. 1969; amd. Sec. 4, Ch. 254, L. 1971; R.C.M. 1947, 23-3709(1) thru (3); amd. Sec. 125, Ch. 571, L. 1979; amd. Sec. 8, Ch. 239, L. 1985; amd. Sec. 7, Ch. 242, L. 1997; amd. Sec. 6, Ch. 151, L. 1999; amd. Sec. 31, Ch. 475, L. 2003; amd. Sec. 11, Ch. 286, L. 2005.

**13-13-233. Issuing and recording absentee ballots — certificate to election judges.**

(1) Absentee ballots must be official numbered paper ballots beginning with ballot number 1 and following consecutively according to the number of applications for absentee ballots.

(2) The election administrator shall keep a record of all absentee ballots issued.

(3) When the election administrator delivers the voted absentee ballots pursuant to 13-13-232(1), the election administrator shall also provide a certificate stating:

(a) the ballot numbers of the absentee ballots mailed or transmitted pursuant to 13-13-214, 13-21-106(3)(a), and 13-21-224, delivered pursuant to 13-13-229, or marked in person pursuant to 13-13-222;

(b) the number of ballots to be reserved for late absentee voting pursuant to 13-13-211(2); and

(c) the names of the electors within the precinct to whom the ballots were provided.

(4) The chief election judge shall post in a conspicuous location at the polling place a list of the names of electors appearing on the certificate required under subsection (3).

**History:** En. Sec. 128, Ch. 368, L. 1969; R.C.M. 1947, 23-3710; amd. Sec. 126, Ch. 571, L. 1979; amd. Sec. 3, Ch. 120, L. 1983; amd. Sec. 42, Ch. 414, L. 2003; amd. Sec. 12, Ch. 286, L. 2005; amd. Sec. 4, Ch. 139, L. 2013.

**13-13-234. Duty of election judges — pollbook.** (1) The election judges, at the opening of the polls, shall:

(a) note on the pollbook opposite the appropriate ballot numbers the fact that the ballots were issued as absentee ballots; and

(b) reserve the numbers for electors who may vote late under 13-13-211(2).

(2) The election judges shall insert only the name of the elector entitled to each particular number according to the certificate provided by the election administrator pursuant to 13-13-233(3) and the number of the elector's ballot.

**History:** En. Sec. 129, Ch. 368, L. 1969; amd. Sec. 37, Ch. 365, L. 1977; R.C.M. 1947, 23-3711; amd. Sec. 128, Ch. 571, L. 1979; amd. Sec. 9, Ch. 239, L. 1985; amd. Sec. 43, Ch. 414, L. 2003.

**13-13-241. Examination of absentee ballot signature envelopes — deposit of absentee and unvoted ballots — rulemaking.** (1) (a) Upon receipt of each absentee ballot signature envelope, an election administrator shall compare the signature of the elector or elector's agent on the absentee ballot request or on the elector's voter registration form with the signature on the signature envelope.

(b) If the elector is legally registered and the signature on the signature envelope matches the signature on the absentee ballot application or on the elector's voter registration form, the election administrator or an election judge shall handle the ballot as a regular ballot.

(c) (i) If the elector is provisionally registered and the signature on the signature envelope matches the signature on the absentee ballot application or on the elector's voter registration form, the election administrator or an election judge shall open the outer signature envelope and determine whether the elector's voter identification and eligibility information, if enclosed pursuant to 13-13-201, is sufficient pursuant to rules adopted under 13-2-109 to legally register the elector.

(ii) If the voter identification and eligibility information is sufficient to legally register the elector, the ballot must be handled as a regular ballot.

(iii) If voter identification or eligibility information was not enclosed or the information enclosed is insufficient to legally register the elector, the ballot must be handled as a provisional ballot under 13-15-107.

(2) If a voted absentee ballot has not been placed in a secrecy envelope, the election administrator shall place the ballot in a secrecy envelope without examining the ballot.

(3) In a primary election, unvoted party ballots must be separated from the secrecy envelopes and handled without being removed from their enclosure envelopes. If an unvoted party ballot is not received, the election administrator shall process the voted party ballot as if the unvoted party ballot had been received.

(4) If an elector's ballot is to be handled as a provisional ballot, the election administrator shall notify the absentee elector as provided in 13-13-245.

(5) If the signature on the absentee ballot signature envelope does not match the signature on the absentee ballot request form or on the elector's voter registration form or if there is no signature on the absentee ballot signature envelope, the election administrator shall notify the elector as provided in 13-13-245.

(6) If at any point there is a question concerning the validity of a particular ballot, the question must be resolved as provided in 13-13-245.

(7) After receiving an absentee ballot secrecy envelope and if the validity of the ballot is confirmed pursuant to 13-13-245, then no sooner than 1 business day before election day, the election official may, in the presence of a poll watcher, open the secrecy envelope and place the ballot in the proper, secured ballot box until tabulation occurs on election day.

(8) The election administrator shall safely and securely keep the absentee ballots in the election administrator's office until delivered by the election administrator to the election judges.

(9) The secretary of state shall develop administrative rules to establish the process and procedures to be used during the early preparation of ballots to ensure the security of the ballots and the secrecy of the votes during the early preparation period. The rules must include but are not limited to:

- (a) the allowable distance from the observers to the judges and ballots;
- (b) the security in the observation area;
- (c) secrecy of votes during the preparation of the ballots; and
- (d) security of the secured ballot boxes in storage until tabulation procedures begin on election day.

**History:** En. Sec. 131, Ch. 368, L. 1969; amd. Sec. 5, Ch. 287, L. 1975; amd. Sec. 38, Ch. 365, L. 1977; R.C.M. 1947, 23-3713(1) thru (6); amd. Sec. 129, Ch. 571, L. 1979; Sec. 13-13-235, MCA 1979; redcs. 13-13-241 by Code Commissioner, 1979; amd. Sec. 11, Ch. 298, L. 1987; amd. Sec. 8, Ch. 242, L. 1997; amd. Sec. 32, Ch. 475, L. 2003; amd. Sec. 13, Ch. 286, L. 2005; amd. Sec. 21, Ch. 273, L. 2007; amd. Sec. 25, Ch. 297, L. 2009; amd. Sec. 42, Ch. 242, L. 2011; amd. Sec. 2, Ch. 331, L. 2011; amd. Sec. 36, Ch. 336, L. 2013; amd. Sec. 13, Ch. 368, L. 2017.

**Compiler's Comments**

*2017 Amendment:* Chapter 368 in (1)(a), (1)(b), (1)(c)(i), and (5) substituted "registration form" for "registration card". Amendment effective January 1, 2018.

**13-13-244. Opening of signature envelopes after deposit.** If a signature envelope containing an absentee ballot has been deposited unopened in the ballot box and the envelope has not been marked rejected, the signature envelope must be processed as provided in 13-13-241.

**History:** En. Sec. 133, Ch. 368, L. 1969; amd. Sec. 39, Ch. 365, L. 1977; R.C.M. 1947, 23-3715; Sec. 13-16-239, MCA 1979; redes. 13-13-244 by Code Commissioner; amd. Secs. 45, 93(3)(d), Ch. 414, L. 2003; amd. Sec. 37, Ch. 336, L. 2013.

**13-13-245. Notice to elector — opportunity to resolve questions.** (1) As soon as possible after receipt of an elector's absentee ballot application or signature envelope, the election administrator shall give notice to the elector by the most expedient method available if the election administrator determines that:

- (a) the elector's ballot is to be handled as a provisional ballot;
- (b) the validity of the ballot is in question; or
- (c) the election administrator has not received or is unable to verify the elector's or agent's signature under 13-13-213 or 13-13-241.

(2) The election administrator shall inform the elector that, prior to 8 p.m. on election day, the elector may:

- (a) by mail, facsimile, electronic means, or in person, resolve the issue that resulted in the ballot being handled as a provisional ballot, confirm the validity of the ballot, or verify the elector's or agent's signature or provide a signature, after proof of identification, by affirming that the signature is in fact the elector's, by completing a new registration form containing the elector's current signature, or by providing a new agent designation form; or

- (b) if necessary, request and receive a replacement ballot pursuant to 13-13-204.

(3) The ballot of an elector who fails to provide information pursuant to subsection (2) must be handled as a provisional ballot pursuant to 13-15-107.

(4) (a) If a ballot is returned as undeliverable, the election administrator shall investigate the reason for the return.

- (b) An elector must be provided with:

- (i) the elector's undeliverable ballot upon notification by the elector of the elector's correct mailing address; or

- (ii) a replacement ballot if a request has been made pursuant to 13-13-204.

**History:** En. Sec. 7, Ch. 101, L. 2011; amd. Sec. 38, Ch. 336, L. 2013; amd. Sec. 14, Ch. 368, L. 2017.

**Compiler's Comments**

*2017 Amendment:* Chapter 368 in (2)(a) near end substituted "registration form" for "registration card". Amendment effective January 1, 2018.

**13-13-246. Electronic ballots for disabled persons — procedures — definition — rulemaking.** (1) (a) Upon a written or an in-person request from a legally registered or provisionally registered elector with a disability, an election administrator shall provide the elector with an electronic ballot.

- (b) The request may be made by electronic mail.

(2) (a) After receiving a request and verifying that the elector is legally registered or provisionally registered, the election administrator shall provide to the elector an electronic ballot, instructions for completing the ballot, a secrecy envelope, and a transmittal cover sheet that includes an elector affirmation. If the elector is provisionally registered, the election administrator shall include instructions about what information the elector shall include with the voted ballot pursuant to 13-13-201(4).

(b) The election administrator shall maintain an official log of all ballots provided pursuant to this section.

(c) After voting the ballot, the elector shall print the ballot, place it in the secrecy envelope, sign the affirmation, including by fingerprint, mark, or agent pursuant to 13-1-116, or provide a driver's license number or the last four digits of the elector's social security number. If the elector is provisionally registered, the elector shall also return sufficient voter identification and eligibility information to allow the election administrator to determine pursuant to rules adopted under 13-2-109 that the elector is legally registered. The elector shall return the voted ballot and affirmation in a manner that ensures both are received by 8 p.m. on election day.

(d) An elector may return the voted ballot and affirmation in the regular mail provided they are received at the office of the election administrator by 8 p.m. on election day. A valid ballot must be counted if it is received at the office of the election administrator by 8 p.m. on election day.

(3) After receiving a ballot and secrecy envelope and if the validity of the ballot is confirmed pursuant to 13-13-241, the election administrator shall log the receipt of the ballot and process it as required in Title 13, chapter 13. If the ballot is rejected, the election administrator shall notify the elector pursuant to 13-13-245.

(4) (a) When performing the procedures prescribed in 13-13-241(7) to open secrecy envelopes, an election official shall place in a secure absentee ballot envelope any ballot returned pursuant to this section that requires transcription. No sooner than the time provided in 13-13-241(7), the election administrator shall transcribe the returned ballots using the procedure prescribed below and in accordance with any rules established by the secretary of state to ensure the security of the ballots and the secrecy of the votes.

(b) No fewer than three election officials shall participate in the transcription process to transfer the elector's vote from the received ballot to the standard ballot used in the precinct.

(c) A number must be written on the secrecy envelope that contains the original voted electronic ballot, and the same number must be placed on the transcribed ballot and in the official log.

(d) The election officials who transcribed the original voted electronic ballot shall sign the log next to the number.

(e) No one participating in the ballot transmission process may reveal any information about the ballot.

(5) The secretary of state shall adopt rules to implement and administer this section, including rules to ensure the security of the ballots and the secrecy of the votes.

(6) For the purposes of this section, "disability" has the meaning provided in 13-3-202.

**History:** En. Sec. 1, Ch. 247, L. 2015.

**13-13-270. Absentee voting provisions for United States electors supersede.** A provision of this chapter may not be interpreted to conflict with Title 13, chapter 21.

**History:** En. Sec. 9, Ch. 557, L. 2003.

### **Part 3 Challenges**

**13-13-301. Challenges.** (1) An elector's right to vote may be challenged at any time by any registered elector by the challenger filling out and signing an affidavit stating the grounds of the challenge and providing any evidence supporting the challenge to the election administrator or, on election day, to an election judge.

(2) A challenge may be made on the grounds that the elector:

(a) is of unsound mind, as determined by a court;

(b) has voted before in that election;

(c) has been convicted of a felony and is serving a sentence in a penal institution;

(d) is not registered as required by law;

(e) is not 18 years of age or older;

(f) has not been, for at least 30 days, a resident of the county in which the elector is offering to vote, except as provided in 13-2-514;

(g) is a provisionally registered elector whose status has not been changed to a legally registered voter; or

(h) does not meet another requirement provided in the constitution or by law.

(3) When a challenge has been made under this section, unless the election administrator determines without the need for further information that the challenge is insufficient:

(a) prior to the close of registration under 13-2-301, the election administrator shall question the challenger and the challenged elector and may question other persons to determine whether the challenge is sufficient or insufficient to cancel the elector's registration under 13-2-402; or



(b) after the close of registration or on election day, the election administrator or, on election day, the election judge shall allow the challenged elector to cast a provisional paper ballot, which must be handled as provided in 13-15-107.

(4) (a) In response to a challenge, the challenged elector may fill out and sign an affidavit to refute the challenge and swear that the elector is eligible to vote.

(b) If the challenge was not made in the presence of the elector being challenged, the election administrator or election judge shall notify the challenged elector of who made the challenge and the grounds of the challenge and explain what information the elector may provide to respond to the challenge. The notification must be made:

- (i) within 5 days of the filing of the challenge if the election is more than 5 days away; or
- (ii) on or before election day if the election is less than 5 days away.

(c) The election administrator or, on election day, the election judge shall also provide to the challenged elector a copy of the challenger's affidavit and any supporting evidence provided.

(5) The secretary of state shall adopt rules to implement the provisions of this section and shall provide standardized affidavit forms for challengers and challenged electors.

**History:** (1)En. Sec. 34, Ch. 368, L. 1969; amd. Sec. 11, Ch. 365, L. 1977; Sec. 23-3015, R.C.M. 1947; (2)En. Sec. 111, Ch. 368, L. 1969; amd. Sec. 33, Ch. 365, L. 1977; Sec. 23-3611, R.C.M. 1947; R.C.M. 1947, 23-3015(3), 23-3611; amd. Sec. 132, Ch. 571, L. 1979; amd. Sec. 33, Ch. 475, L. 2003; amd. Sec. 12, Ch. 586, L. 2005; amd. Sec. 26, Ch. 297, L. 2009; amd. Sec. 43, Ch. 242, L. 2011; amd. Sec. 39, Ch. 336, L. 2013.

## Part 6

### Provisional Voting — Rulemaking

**13-13-601. Provisional voting in person.** (1) Before being given a ballot, an elector casting a provisional ballot:

(a) must be given information, in a form prescribed by the secretary of state, explaining how to vote provisionally, what information must be provided by the elector to verify the elector's eligibility, and how to determine whether the elector's provisional ballot is or is not counted and, if not, the reasons why;

(b) shall sign an affirmation in a form prescribed by the secretary of state swearing that, to the best of the elector's knowledge, the elector is eligible to vote in the election and precinct and is aware of the penalty for false swearing; and

(c) shall cast and return the provisional ballot to an election judge, who shall place the ballot into an envelope prescribed by the secretary of state for provisional ballots.

(2) A provisional ballot must be handled as provided in 13-15-107.

(3) An elector making a false affirmation under this section is subject to the penalty for false swearing provided in 45-7-202.

**History:** En. Sec. 22, Ch. 475, L. 2003.

**13-13-602. Fail-safe and provisional voting by mail.** (1) To ensure the election administrator has information sufficient to determine the elector's eligibility to vote, an elector voting by mail may enclose in the outer signature envelope, together with the voted ballot in the secrecy envelope, a copy of a current and valid photo identification with the elector's name or a copy of a current utility bill, bank statement, paycheck, notice of confirmation of voter registration issued pursuant to 13-2-207, government check, or other government document that shows the elector's name and current address or other information necessary to determine the elector's eligibility to vote.

(2) The elector's ballot must be handled as a provisional ballot under 13-15-107 if:

(a) a provisionally registered elector voting by mail does not enclose with the ballot the information described in subsection (1);

(b) the information provided under subsection (1) is invalid or insufficient to verify the elector's eligibility; or

(c) the elector's name does not appear on the precinct register.

**History:** En. Sec. 23, Ch. 475, L. 2003; amd. Sec. 50, Ch. 56, L. 2009; amd. Sec. 44, Ch. 242, L. 2011; amd. Sec. 40, Ch. 336, L. 2013.

**13-13-603. Rulemaking on provisional voting, absentee ballots, and challenged ballots.** (1) The secretary of state shall adopt rules to:

(a) implement the provisions of 13-13-114 and this part concerning verification of voter identification and eligibility;

(b) establish standards for determining the sufficiency of information provided on absentee ballot signature envelopes pursuant to 13-13-241;

(c) implement the provisions of 13-15-107 on the handling and counting of provisional and challenged ballots, including the establishment of procedures for verifying voter registration and eligibility information with respect to the ballots.

(2) The rules may not conflict with rules established under 13-2-109.

**History:** En. Sec. 24, Ch. 475, L. 2003; amd. Sec. 41, Ch. 336, L. 2013.

## CHAPTER 14 NONPARTISAN ELECTIONS

### Part 1 General Provisions

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

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

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

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

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

(4) Declarations must be filed:

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

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

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

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

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

(3) A candidate may not file for more than one public office.

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

**13-14-114. Register of candidates.** On receipt of a declaration or petition, the secretary of state or election administrator shall, if a register is kept, make an entry in the register of candidates for nomination, on a page different from entries made for candidates of political parties.

**History:** En. Sec. 142, Ch. 571, L. 1979; amd. Sec. 2, Ch. 99, L. 1987.

**13-14-115. Preparation and distribution of nonpartisan primary ballots — determination on conducting primary.** (1) The election administrators shall arrange, prepare, and distribute primary ballots for nonpartisan offices, designated “nonpartisan primary ballots”. The ballots must be arranged and prepared as provided in 13-10-209 and be without political designation.

(2) (a) Except as provided in subsection (2)(b), the election administrator of a political subdivision may determine that a local nonpartisan portion of a primary election need not be held if:

(i) the number of candidates for an office exceeds three times the number to be elected to that office in no more than one-half of the offices on the ballot; and

(ii) the number of candidates in excess of three times the number to be elected is not more than one for any office on the ballot.

(b) The election administrator may determine that a primary election for a nonpartisan county office need not be held if fewer than three candidates have filed for that office.

(c) If the election administrator determines that a primary election must be held pursuant to subsection (2)(a) or (2)(b), the election administrator shall conduct the primary election only for the nonpartisan offices that have a sufficient number of candidates that have filed to be elected to that office.

(d) If the election administrator determines that a primary election need not be held pursuant to subsection (2)(a), (2)(b), or (2)(c) for a nonpartisan office, the administrator shall give notice to the governing body that a primary election will not be held for that office.

(3) The governing body may require that a primary election be held for a nonpartisan office if it passes a resolution not more than 10 days after the close of filing by candidates for election stating that a primary election must be held for that office.

**History:** (1), (2)En. Sec. 143, Ch. 571, L. 1979; (3)En. Sec. 1, Ch. 359, L. 1979; amd. Sec. 1, Ch. 123, L. 1985; amd. Sec. 13, Ch. 591, L. 1991; amd. Sec. 1, Ch. 135, L. 1995; amd. Sec. 46, Ch. 414, L. 2003; amd. Sec. 45, Ch. 242, L. 2011; amd. Sec. 1, Ch. 212, L. 2013; amd. Sec. 187, Ch. 49, L. 2015; amd. Sec. 1, Ch. 168, L. 2017.

#### **Compiler's Comments**

*2017 Amendment:* Chapter 168 in (2)(a) at beginning inserted exception clause; inserted (2)(b) concerning the determination of whether to hold a primary election for a nonpartisan county office"; in (2)(c) near beginning after "determines that a" deleted "municipal", near middle substituted "held pursuant to subsection (2)(a) or (2)(b)" for "held pursuant to subsection (2)(a) of this section for a local nonpartisan office", at end substituted "shall conduct the primary election only for the nonpartisan offices that have a sufficient number of candidates that have filed to be elected to that office" for "shall conduct the election only for the local nonpartisan offices that have candidates filed in excess of two times the number to be elected to that office"; in (2)(d) near middle substituted "subsection (2)(a), (2)(b), or (2)(c) for a nonpartisan office" for "subsection (2)(a) or (2)(b) for a local nonpartisan office"; in (3) near beginning before "nonpartisan office" deleted "local"; and made minor changes in style. Amendment effective October 1, 2017.

**13-14-116. Counting and canvassing of nonpartisan ballots.** Nonpartisan ballots must be counted and canvassed as provided for in chapter 15.

**History:** En. Sec. 144, Ch. 571, L. 1979; amd. Sec. 3, Ch. 391, L. 1989; amd. Sec. 47, Ch. 414, L. 2003.

**13-14-117. Placing names on ballots for general election.** (1) Except as provided in subsection (2), the two candidates for nomination to an office who receive the highest number of votes cast at the primary are the nominees for the office and qualify to have their names placed on the general election ballot.

(2) If, pursuant to 13-14-115(2), a local or county nonpartisan primary election for an office is not held, then all candidates who filed for the office are nominees for the office and qualify to have their names placed on the general election ballot.

**History:** En. Sec. 145, Ch. 571, L. 1979; amd. Sec. 2, Ch. 135, L. 1995; amd. Sec. 48, Ch. 414, L. 2003; amd. Sec. 46, Ch. 242, L. 2011; amd. Sec. 2, Ch. 168, L. 2017.

#### **Compiler's Comments**

*2017 Amendment:* Chapter 168 in (1) in first sentence substituted "the two candidates for nomination to an office" for "candidates for nomination equal to twice the number to be elected at the general election" and inserted "and qualify to have their names placed on the general election ballot" and deleted former second sentence that read: "If the number of candidates is not more than twice the number to be elected, then all candidates are nominees for the office"; in (2) near beginning substituted "a local or county nonpartisan primary election for an office" for "a local nonpartisan portion of a primary election" and at end inserted "and qualify to have their names placed on the general election ballot"; and made minor changes in style. Amendment effective October 1, 2017.

**13-14-118. Vacancies among nominees after nomination and before general election.** (1) If after the primary election and before the 85th day before the general election a candidate is not able to run for the office for any reason, the vacancy must be filled by the candidate next in rank in number of votes received in the primary election.

(2) If a vacancy for a nonpartisan nomination cannot be filled as provided in subsection (1) and the vacancy occurs no later than 85 days before the general election, a 10-day period for

accepting declarations for nomination or statements of candidacy and nominating petitions for the office must be declared by:

- (a) the governor for national, state, judicial district, legislative, or any multicounty district office;
- (b) the governing body of the appropriate political subdivision for all other offices.
- (3) The names of the candidates who filed as provided in subsection (2) must be certified and must appear on the general election ballot in the same manner as candidates nominated in the primary.
- (4) If the vacancy occurs later than 85 days before the general election and a qualified individual is not elected to the office at the general election, the office is vacant and must be filled as provided by law.

**History:** En. Sec. 146, Ch. 571, L. 1979; amd. Sec. 33, Ch. 250, L. 1985; amd. Sec. 49, Ch. 414, L. 2003; amd. Sec. 47, Ch. 242, L. 2011.

## CHAPTER 15 CANVASSING, RETURNS, AND CERTIFICATES

### Part 1 General Provisions

**13-15-101. Votes to be publicly counted — return forms.** (1) Any official vote count must be public and continue without adjournment until completed and the result is publicly declared.

(2) Immediately after all the ballots are counted by precinct, the election judges shall copy the total votes cast for each candidate and for and against each proposition on the return forms furnished by the election administrator.

(3) The election judges shall immediately display one of the return forms at the place of counting and return a copy to the election administrator. Both forms must be signed by all the election judges completing the count.

**History:** En. Secs. 88, 171, Ch. 368, L. 1969; R.C.M. 1947, 23-3505, 23-4001; amd. Sec. 151, L. 1979; amd. Sec. 1, Ch. 100, L. 1987; amd. Sec. 13, Ch. 298, L. 1987; amd. Sec. 51, Ch. 414, L. 2003; amd. Sec. 49, Ch. 242, L. 2011.

**13-15-102. Defect in form of returns to be disregarded.** No declaration of an election result, commission, or certificate shall be withheld because of a defect or informality in the returns of any election if it can be determined with reasonable certainty the office intended and the person elected.

**History:** En. Sec. 189, Ch. 368, L. 1969; R.C.M. 1947, 23-4019.

**13-15-103. Renumbered 13-15-207.** Code Commissioner, 2003.

**13-15-104. Absentee ballot counting board.** (1) The election administrator shall:

- (a) give special instructions to any absentee ballot counting board appointed under 13-15-112 on the proper procedures for counting the absentee ballots; and
- (b) provide the forms and supplies necessary for the board to perform its duties.
- (2) The absentee ballot counting board shall:
  - (a) be sequestered in a room separate from where ballots are being cast;
  - (b) at any time prior to the closing of the polls but not before the polls open, start the count of the absentee votes cast; and
  - (c) follow the procedures outlined in 13-13-241 and 13-15-207 for the counting of the votes cast.

(3) An election judge or other individual having access to any results of early counting may not disclose the information while the polls are open and must remain sequestered until the closing of the polls.

(4) The absentee ballot counting board shall take the oath and sign the affirmation specified in 13-15-207(4).

**History:** En. Sec. 5, Ch. 120, L. 1983; amd. Sec. 14, Ch. 298, L. 1987; amd. Sec. 53, Ch. 414, L. 2003.

**13-15-105. Notices relating to absentee ballot counting board.** (1) Not more than 10 days or less than 2 days before an election, the election administrator shall broadcast on radio or television, as provided in 2-3-105 through 2-3-107, or publish in a newspaper of general circulation in the county a notice indicating the method that will be used for counting absentee ballots and the place and time that the absentee ballots will be counted on election day.

(2) If the count will begin while the polls are open, the notice required under subsection (1) must inform the public that any person observing the procedures of the count must be sequestered with the board until the polls are closed and is required to take the oath provided in 13-15-207(4).

**History:** En. Sec. 6, Ch. 120, L. 1983; amd. Sec. 54, Ch. 414, L. 2003; amd. Sec. 16, Ch. 2, L. 2009; amd. Sec. 15, Ch. 368, L. 2017.

**Compiler's Comments**

*2017 Amendment:* Chapter 368 in (1) substituted current text requiring election administrator to broadcast on radio or television, or publish in a newspaper a notice indicating method, place, and time for counting absentee ballots for former text that read: "Whenever an absentee ballot counting board is appointed under 13-15-112, the election administrator shall:

(a) publish in the contracted newspaper of the county as provided in 18-7-411 a notice indicating the method that will be used for counting absentee ballots; and

(b) post in a conspicuous location at the office of the election administrator, by 5 p.m. of the day before an election, a notice that indicates the place and time that the counting board for absentee ballots will meet on election day"; and in (2) near middle substituted "procedures of the count" for "procedures of the counting board". Amendment effective January 1, 2018.

**13-15-106. Counting of absentee ballot for deceased candidate.** (1) Except as provided in subsection (2) or (3), an absentee ballot voted for a candidate who dies after printing of the ballot but before the election must be counted for the deceased candidate.

(2) A vote for a deceased candidate for governor must be counted as a vote for the lieutenant governor candidate as governor and as a vote for the candidate chosen pursuant to 13-10-328 for lieutenant governor.

(3) A vote for a deceased candidate for lieutenant governor must be counted as a vote for the candidate chosen pursuant to 13-10-328 for lieutenant governor.

**History:** En. Sec. 5, Ch. 85, L. 1997; amd. Sec. 2, Ch. 217, L. 2009.

**13-15-107. Handling and counting provisional and challenged ballots.** (1) To verify eligibility to vote, a provisionally registered individual who casts a provisional ballot has until 5 p.m. on the day after the election to provide valid identification or eligibility information either in person, by facsimile, by electronic means, or by mail postmarked no later than the day after the election.

(2) (a) If a legally registered individual casts a provisional ballot because the individual failed to provide sufficient identification as required pursuant to 13-13-114(1)(a), the election administrator shall compare the signature of the individual or the individual's agent designated pursuant to 13-1-116 on the affirmation required under 13-13-601 to the signature on the individual's voter registration form or the agent's designation form.

(b) If the signatures match, the election administrator shall handle the ballot as provided in subsection (5).

(c) If the signatures do not match and the individual or the individual's agent fails to provide valid identification information by the deadline, the ballot must be rejected and handled as provided in 13-15-108.

(3) A provisional ballot must be counted if the election administrator verifies the individual's identity or eligibility pursuant to rules adopted under 13-13-603. However, if the election administrator cannot verify the individual's identity or eligibility under the rules, the individual's provisional ballot must be rejected and handled as provided in 13-15-108. If the ballot is provisional because of a challenge and the challenge was made on the grounds that the individual is of unsound mind or serving a felony sentence in a penal institution, the individual's provisional ballot must be counted unless the challenger provides documentation by 5 p.m. on the day after the election that a court has established that the individual is of unsound mind or that the individual has been convicted and sentenced and is still serving a felony sentence in a penal institution.

(4) The election administrator shall provide an individual who cast a provisional ballot but whose ballot was or was not counted with the reasons why the ballot was or was not counted.



(5) A provisional ballot must be removed from its provisional envelope, grouped with other ballots in a manner that allows for the secrecy of the ballot to the greatest extent possible, and counted as any other provisional ballot if the individual's voter information is:

- (a) verified before 5 p.m. on the day after the election; or
- (b) postmarked by 5 p.m. on the day after election day and received and verified by 3 p.m. on the sixth day after the election.

(6) Provisional ballots that are not resolved by the end of election day may not be counted until after 3 p.m. on the sixth day after the election.

**History:** En. Sec. 36, Ch. 475, L. 2003; amd. Sec. 15, Ch. 286, L. 2005; amd. Sec. 15, Ch. 586, L. 2005; amd. Sec. 22, Ch. 273, L. 2007; amd. Sec. 17, Ch. 2, L. 2009; amd. Sec. 27, Ch. 297, L. 2009; amd. Sec. 50, Ch. 242, L. 2011; amd. Sec. 44, Ch. 336, L. 2013; amd. Sec. 16, Ch. 368, L. 2017.

**Compiler's Comments**

*2017 Amendment:* Chapter 368 in (2)(a) near end substituted "voter registration form" for "voter registration card". Amendment effective January 1, 2018.

**13-15-108. Rejected ballots — handling provided by rule.** (1) All rejected absentee ballots, the absentee ballot applications, and all absentee ballot signature envelopes must be handled and marked as provided under rules adopted by the secretary of state.

(2) After being handled and marked as provided in this section, all rejected ballots must be placed in a package or container in which the voted ballots are to be placed and the package or container must be sealed, dated, and marked as provided under rules adopted by the secretary of state. After a package or container is sealed pursuant to this subsection (2), a package or container may not be opened without a court order.

**History:** En. Sec. 131, Ch. 368, L. 1969; amd. Sec. 5, Ch. 287, L. 1975; amd. Sec. 38, Ch. 365, L. 1977; R.C.M. 1947, 23-3713(7) thru (9); amd. Sec. 131, Ch. 571, L. 1979; Sec. 13-13-236, MCA 1979; redes. 13-13-243 by Code Commissioner, 1979; amd. Sec. 4, Ch. 120, L. 1983; amd. Sec. 14, Ch. 286, L. 2005; amd. Sec. 2, Ch. 359, L. 2005; Sec. 13-13-243, MCA 2003; redes. 13-15-108 by Sec. 20, Ch. 286, L. 2005; amd. Sec. 51, Ch. 242, L. 2011; amd. Sec. 45, Ch. 336, L. 2013.

**13-15-109 and 13-15-110 reserved.**

**13-15-111. Write-in elections — general election.** (1) An individual elected by having the individual's name written in at the general election and receiving the largest number of votes counted as provided in 13-15-206(5) shall:

(a) file with the secretary of state or election administrator, not later than 10 days after the official canvass, a written declaration indicating the individual's acceptance of the position for which elected;

(b) comply with the provisions of 13-37-225; and

(c) pay the required filing fee or, if indigent, comply with 13-10-203.

(2) If an individual fails to comply with the requirements in subsection (1), the individual may not assume the position for which elected.

**History:** En. Sec. 4, Ch. 298, L. 1987; amd. Sec. 14, Ch. 591, L. 1991; amd. Sec. 37, Ch. 475, L. 2003; amd. Sec. 16, Ch. 586, L. 2005.

**13-15-112. Appointment of counting boards.** To count votes in any election under this title, when election judges are appointed under 13-4-101, each county's governing body shall designate one or more groups of three of the election judges to act as counting boards. The governing body may also designate one or more groups of three of the election judges to act as absentee ballot counting boards under 13-15-104.

**History:** En. Sec. 1, Ch. 414, L. 2003; amd. Sec. 52, Ch. 242, L. 2011.

## Part 2 Vote Count Procedures

**13-15-201. Preparation for count — absentee ballot count procedures.** (1) Subject to 13-10-311, to prepare for a count of ballots, the counting board or, if appointed, the absentee counting board shall take ballots out of the box to determine whether each ballot is single.

(2) The board shall count all ballots to ensure that the total number of ballots corresponds with the total number of names in the pollbook.

(3) If the board cannot reconcile the total number of ballots with the pollbook, the board shall submit to the election administrator a written report stating how many ballots were

missing or in excess and any reason of which they are aware for the discrepancy. Each judge on the board shall sign the report.

(4) A ballot that is not marked as official is void and may not be counted unless all judges on the board agree that the marking is missing because of an error by election officials, in which case the ballot must be marked “unmarked by error” on the back and must be initialed by all judges.

(5) If two or more ballots are folded or stuck together to look like a single ballot, they must be laid aside until the count is complete. The counting board shall compare the count with the pollbooks, and if a majority believes that the ballots folded together were marked by one elector, the ballots must be rejected and handled as provided in 13-15-108, otherwise they must be counted.

(6) Only valid absentee ballots may be counted in an election conducted under this chapter.

(7) For the purpose of this chapter, a marked absentee ballot is valid only if:

(a) the elector’s signature on the affirmation on the signature envelope is verified pursuant to 13-13-241; and

(b) it is received before 8 p.m. on election day, except as provided in 13-21-206 and 13-21-226.

(8) (a) A ballot is invalid if:

(i) problems with the ballot have not been resolved pursuant to 13-13-245;

(ii) any identifying marks are placed on the ballot by the elector, which must result in the immediate rejection of the ballot without notice to the elector; or

(iii) except as provided in subsection (8)(b), more than one ballot is enclosed in a single signature or secrecy envelope.

(b) The provisions of subsection (8)(a)(iii) do not apply if:

(i) there are multiple elections being held at the same time and the envelope contains only one ballot for each election; or

(ii) the signature envelope contains ballots from the same household, each ballot is in its own secrecy envelope, and the signature envelope contains a valid signature for each elector who has returned a ballot.

**History:** En. Sec. 172, Ch. 368, L. 1969; R.C.M. 1947, 23-4002; amd. Sec. 152, Ch. 571, L. 1979; amd. Sec. 9, Ch. 242, L. 1997; amd. Sec. 55, Ch. 414, L. 2003; amd. Sec. 16, Ch. 286, L. 2005; amd. Sec. 23, Ch. 273, L. 2007; amd. Sec. 54, Ch. 56, L. 2009; amd. Sec. 8, Ch. 101, L. 2011; amd. Sec. 5, Ch. 139, L. 2013; amd. Sec. 46, Ch. 336, L. 2013.

**13-15-202. Repealed.** Sec. 91, Ch. 414, L. 2003.

**History:** En. Secs. 134, 173, Ch. 368, L. 1969; R.C.M. 1947, 23-3716(3), 23-4003; amd. Sec. 153, Ch. 571, L. 1979; amd. Sec. 4, Ch. 391, L. 1989; amd. Sec. 3, Ch. 143, L. 1995; amd. Sec. 2, Ch. 129, L. 1999; amd. Sec. 3, Ch. 15, L. 2001.

**13-15-203. Repealed.** Sec. 19, Ch. 286, L. 2005.

**History:** En. Sec. 174, Ch. 368, L. 1969; R.C.M. 1947, 23-4004.

**13-15-204. Signing and certifying pollbook.** Immediately after the votes are counted and the ballots sealed, the pollbook must be signed and certified to by the election judges in a form prescribed by the secretary of state.

**History:** En. Sec. 175, Ch. 368, L. 1969; R.C.M. 1947, 23-4005; amd. Sec. 154, Ch. 571, L. 1979; amd. Sec. 55, Ch. 56, L. 2009.

**13-15-205. Items to be delivered to election administrator by election judges — disposition of other items.** (1) Before they adjourn, the election judges shall enclose in a strong envelope or package, securely fastened:

(a) the precinct register;

(b) the list of individuals challenged;

(c) the pollbook;

(d) both of the tally sheets.

(2) The election judges shall enclose in a separate container, securely sealed, all unused ballots with the numbered stubs attached.

(3) The election judges shall enclose in a separate container, securely sealed, all ballots voted, including those not counted or allowed, and detached stubs from all counted or rejected absentee ballots. This envelope must be endorsed on the outside “ballots voted”. At the primary

election the unvoted party ballots must be enclosed in a separate container, securely sealed, and marked on the outside “unvoted ballots”.

(4) Each election judge shall sign the judge’s name across all seals.

(5) The return form provided for in 13-15-101 must be returned with the items provided for in this section but may not be sealed in any of the containers.

(6) The containers required by this section must be delivered to the election administrator by the chief election judge or another judge appointed by the chief judge in the manner ordered by the election administrator.

(7) The election administrator shall instruct the chief election judge in writing on the proper disposition of all other election materials and supplies.

**History:** En. Sec. 176, Ch. 368, L. 1969; R.C.M. 1947, 23-4006; amd. Sec. 155, Ch. 571, L. 1979; amd. Sec. 56, Ch. 56, L. 2009; amd. Sec. 53, Ch. 242, L. 2011; amd. Sec. 17, Ch. 368, L. 2017.

**Compiler’s Comments**

*2017 Amendment:* Chapter 368 in (4) after “Each election judge shall” substituted “sign” for “write”. Amendment effective January 1, 2018.

**13-15-206. Counting votes — uniformity — rulemaking — definitions.** (1) When conducting vote counts as provided by law, a counting board, absentee ballot counting board, or recount board shall count and determine the validity of each vote in a uniform manner as provided in this section.

(2) A manual count or recount of votes must be conducted as follows:

(a) One election judge on the board shall read the ballot while the two other judges on the board shall each record on an official tally sheet the number of valid votes cast for each individual or ballot issue. Write-in votes must be counted in accordance with subsection (5) and rules adopted pursuant to subsection (7). If a vote has not been cast according to instructions, the vote must be considered questionable and the entire ballot must be set aside and votes on the ballot must be handled as provided in subsection (4).

(b) (i) After the vote count is complete, the tally sheets of the two judges recording the votes must be compared.

(ii) If the two tallies match, the judges shall record in the official results records:

- (A) the names of all individuals who received votes;
- (B) the offices for which individuals received votes;
- (C) the total votes received by each individual as shown by the tally sheets; and
- (D) the total votes received for or against each ballot issue, if any.

(iii) If the tallies do not match, the count must be conducted again as provided in this subsection (2) until the two tallies match.

(3) (a) When a voting system is counting votes:

- (i) if a vote is recognized and counted by the system, it is a valid vote;
- (ii) if a vote is not recognized and counted by the system, it is not a valid vote; and
- (iii) write-in votes must be counted in accordance with rules adopted pursuant to subsection (7).

(b) If the voting system cannot process the ballot because of the ballot’s condition or if the voting system registers an unmarked ballot or an overvote, which must be considered a questionable vote, the entire ballot must be set aside and the votes on the ballot must be counted as provided in subsection (4).

(c) If an election administrator or counting board has reason to believe that a voting system is not functioning correctly, the election administrator shall follow the procedures prescribed in 13-15-209.

(d) After all valid votes have been counted and totaled, the judges shall record in the official results records the information specified in subsection (2)(b)(ii).

(4) (a) (i) Before being counted, each questionable vote on a ballot set aside under subsection (2)(a) or (3)(b) must be reviewed by the counting board. The counting board shall evaluate each questionable vote according to rules adopted by the secretary of state.

(ii) If a majority of the counting board members agree that under the rules the voter’s intent can be clearly determined, the vote is valid and must be counted according to the voter’s intent.

(iii) If a majority of the counting board members do not agree that the voter’s intent can be clearly determined under the rules, the vote is not valid and may not be counted.

(b) If a ballot was set aside under subsection (3)(b) because it could not be processed by the voting system due to the ballot's condition, the counting board shall transfer all valid votes to a new ballot that can be processed by the voting system.

(5) A write-in vote may be counted only if:

(a) (i) the write-in vote identifies an individual by a designation filed pursuant to 13-10-211(1)(a); or

(ii) pursuant to 13-10-211(7), a declaration of nomination was not filed and the write-in vote identifies an individual who is qualified for the office; and

(b) the oval, box, or other designated voting area on the ballot is marked.

(6) A vote is not valid and may not be counted if the elector's choice cannot be determined as provided in this section.

(7) The secretary of state shall adopt rules defining a valid vote and a valid write-in vote for each type of ballot and for each type of voting system used in the state. The rules must provide a sufficient guarantee that all votes are treated equally among jurisdictions using similar ballot types and voting systems.

(8) Local election administrators shall adopt policies to govern local processes that are consistent with the provisions of this title and that provide for:

(a) the security of the counting process against fraud;

(b) the place and time and public notice of each count or recount;

(c) public observance of each count or recount, including observance by representatives authorized under 13-16-411;

(d) the recording of objections to determinations on the validity of an individual vote or to the entire counting process; and

(e) the keeping of a public record of count or recount proceedings.

(9) For purposes of this section, "overvote" means an elector's vote that has been interpreted by the voting system as an elector casting more votes than allowable for a particular office or ballot issue.

**History:** En. Sec. 2, Ch. 414, L. 2003; amd. Sec. 17, Ch. 586, L. 2005; amd. Sec. 24, Ch. 273, L. 2007; amd. Sec. 1, Ch. 212, L. 2009; amd. Sec. 54, Ch. 242, L. 2011; amd. Sec. 47, Ch. 336, L. 2013; amd. Sec. 188, Ch. 49, L. 2015.

**13-15-207. Counting board procedures.** (1) After ballots have been prepared pursuant to 13-15-201, the election administrator may arrange for the vote count to begin prior to the close of the polls, or immediately upon the closure of the polls, in the manner prescribed in this section.

(2) (a) When a count is conducted after the polls have closed, the counting board shall meet at a place designated by the election administrator.

(b) The board must be sequestered until the count is complete.

(c) The board shall continue counting until the votes cast for all candidates and issues are counted.

(d) Votes must be counted as prescribed in 13-15-206.

(3) When votes are counted prior to the close of the polls:

(a) the election administrator shall make provisions for the delivery of voted ballots to the counting center at any time prior to the closing of the polls;

(b) the board must be sequestered in a room separate from the room where ballots are being cast;

(c) anyone observing the count must be sequestered with the board until the polls close;

(d) the ballots may be processed and counted as they are received;

(e) an election judge or other individual having access to early count results may not disclose that information to the public while the polls are open; and

(f) votes must be counted as prescribed in 13-15-206.

(4) (a) When votes are being counted prior to the close of the polls, in addition to the official oath taken and subscribed to by the election judges, the members of the counting board shall complete and sign the following affirmation: "I, \_\_\_\_\_, will not discuss the results of the early counting of votes while the polls are open."

(b) The chief election judge shall witness and sign the affirmation in subsection (4)(a).

**History:** En. Sec. 150, Ch. 571, L. 1979; amd. Sec. 52, Ch. 414, L. 2003; Sec. 13-15-103, MCA 2001; redes. 13-15-207 by Code Commissioner, 2003.

**13-15-208. Determining total vote cast for all candidates for an office.** When an elector may vote for two or more candidates for the same office, the total vote cast for all candidates for the office is the total vote cast for all candidates divided by the number of candidates officially declared nominated or elected as shown by the official returns.

**History:** En. Sec. 202, Ch. 368, L. 1969; R.C.M. 1947, 23-4113; Sec. 13-16-202, MCA 2001; redes. 13-15-208 by Code Commissioner, 2003.

**13-15-209. Handling voting system error during count.** (1) During a count in which votes are being counted by a voting system, if the election administrator or counting board has reason to believe that the voting system is not operating correctly, the count must be halted and the system must be tested in accordance with rules adopted by the secretary of state pursuant to 13-17-211.

(2) If the test does not show any errors, the count must proceed using the voting system.

(3) If the test shows errors and the errors cannot be corrected or if a majority of the counting board agrees that the system may not be functioning correctly, votes must be counted manually in accordance with 13-15-206(2).

**History:** En. Sec. 1, Ch. 586, L. 2005; amd. Sec. 25, Ch. 273, L. 2007.

### **Part 3 Registrar's Duties**

**13-15-301. Disposition of items by election administrator.** (1) The election administrator shall file the envelopes or packages containing the precinct registers, pollbooks, tally sheets, certificates of registration, and oaths of election officers. Except as provided in subsection (2), the election administrator shall keep them unopened until the county board of canvassers meets to canvass the returns. The board shall open the envelopes or packages.

(2) The election administrator may open a package containing a precinct register to resolve questions concerning provisional ballots.

(3) Immediately after the returns are canvassed, the election administrator shall file the pollbooks, election records, and papers delivered to the board of canvassers with the unopened packages of ballots and ballot stubs.

**History:** En. Sec. 177, Ch. 368, L. 1969; amd. Sec. 1, Ch. 100, L. 1974; R.C.M. 1947, 23-4007; amd. Sec. 156, Ch. 571, L. 1979; amd. Sec. 26, Ch. 273, L. 2007.

**13-15-302. Repealed.** Sec. 407, Ch. 571, L. 1979.

**History:** En. Sec. 178, Ch. 368, L. 1969; R.C.M. 1947, 23-4008.

### **Part 4 County Canvass**

**13-15-401. Governing body as board of county canvassers.** (1) The governing body of a county or consolidated local government is ex officio a board of county canvassers and shall meet as the board of county canvassers at the usual meeting place of the governing body within 14 days after each election, at a time determined by the board, to canvass the returns.

(2) If one or more of the members of the governing body cannot attend the meeting, the member's place must be filled by one or more county officers chosen by the remaining members of the governing body so that the board of county canvassers' membership equals the membership of the governing body.

(3) The governing body of any political subdivision in the county that participated in the election may join with the governing body of the county or consolidated local government in canvassing the votes cast at the election.

(4) The election administrator is secretary of the board of county canvassers and shall keep minutes of the meeting of the board and file them in the official records of the administrator's office.

**History:** En. Sec. 179, Ch. 368, L. 1969; R.C.M. 1947, 23-4009; amd. Sec. 157, Ch. 571, L. 1979; amd. Sec. 1, Ch. 118, L. 1995; amd. Sec. 14, Ch. 7, L. 2001; amd. Sec. 38, Ch. 475, L. 2003; amd. Sec. 12, Ch. 89, L. 2009; amd. Sec. 48, Ch. 336, L. 2013.



**13-15-402. Canvass of votes by board — procedures if all returns not received by time of canvass.** (1) If all returns are in at the time of the meeting, the board of county canvassers shall immediately canvass the returns.

(2) If all returns are not received, the board shall postpone the canvass from day to day until all returns are received.

(3) If it appears to the board that the polls were not open in a precinct, the board shall certify this to the election administrator. The election administrator shall enter the certification in the minutes and in the record required by 13-15-404.

**History:** En. Sec. 180, Ch. 368, L. 1969; R.C.M. 1947, 23-4010; amd. Sec. 158, Ch. 571, L. 1979; amd. Sec. 39, Ch. 475, L. 2003; amd. Sec. 55, Ch. 242, L. 2011.

**13-15-403. Canvass to be public — nonessentials to be disregarded — petition for recount.** (1) The canvass must be public. It must proceed by opening the returns, auditing the tally books or other records of votes cast, determining the vote for each individual and for and against each ballot issue from each precinct, compiling totals, and declaring or certifying the results.

(2) The board shall record all write-in votes shown in the returns from each precinct.

(3) The returns may not be rejected because of failure to show who administered the oath to the election judges, failure to complete all the certificates in a pollbook, or failure of any other act making up the returns that is not essential to determine for whom the votes were cast.

(4) If during a canvass the board finds an error in a precinct or precincts affecting the accuracy of vote totals, the board immediately may petition for a recount of the votes cast in the precinct or precincts, as provided in 13-16-201, or for an inspection of ballots, as provided in 13-16-420.

**History:** En. Sec. 181, Ch. 368, L. 1969; amd. Sec. 44, Ch. 365, L. 1977; R.C.M. 1947, 23-4011; amd. Sec. 159, Ch. 571, L. 1979; amd. Sec. 1, Ch. 19, L. 1987; amd. Sec. 15, Ch. 591, L. 1991; amd. Sec. 57, Ch. 56, L. 2009.

**13-15-404. Information to be entered on record.** (1) The secretary of the board shall prepare and file in the official records of the secretary's office a report of the canvass that lists:

(a) the total number of electors voting in each precinct, district, or portion of a district in the county and the total in the county;

(b) the name of each individual receiving votes and the office for which the votes were received;

(c) the number and title of each ballot issue;

(d) the votes by precinct, district, or portion of a district within the county for each individual and for and against each ballot issue;

(e) the total votes in the county for each individual and for and against each ballot issue; and

(f) for municipal elections, the total number of electors voting in each municipality and the votes by municipality for each individual and for and against each ballot issue.

(2) Write-in votes for an individual must be entered in the report but must be identified as write-in votes.

**History:** En. Sec. 182, Ch. 368, L. 1969; R.C.M. 1947, 23-4012; amd. Sec. 160, Ch. 571, L. 1979; amd. Sec. 2, Ch. 70, L. 1983; amd. Sec. 58, Ch. 56, L. 2009; amd. Sec. 56, Ch. 242, L. 2011.

**13-15-405. Declaration or certification of results.** (1) The board shall declare nominated or elected the individuals having the highest number of votes cast for each county and precinct office, except as provided in 13-10-204.

(2) The board shall proclaim the adoption or rejection of a county ballot issue.

(3) The board shall certify the results of the canvass of votes cast for individuals for political subdivision offices and for and against political subdivision ballot issues to the governing body of each political subdivision participating in the election.

(4) If there is a tie vote for a county office, an office of a political subdivision wholly within the county, a precinct office, or a ballot issue voted on only in that county or portion of that county, the board shall certify the vote to the election administrator.

(5) The board shall certify the results of the canvass of votes cast for justice of the peace, city judge, and municipal court judge to the supreme court in order to ensure compliance with 3-1-1502 or 3-1-1503.

**History:** En. Secs. 183, 192, Ch. 368, L. 1969; amd. Secs. 45, 48, Ch. 365, L. 1977; R.C.M. 1947, 23-4013(1), 23-4103(5); amd. Sec. 161, Ch. 571, L. 1979; amd. Sec. 6, Ch. 317, L. 1991.

**13-15-406. Certificates to be issued by the election administrator.** The election administrator shall, except as provided in 13-37-127, deliver a certificate of nomination or election to each individual declared elected by the board.

**History:** En. Sec. 184, Ch. 368, L. 1969; amd. Sec. 46, Ch. 365, L. 1977; R.C.M. 1947, 23-4014; amd. Sec. 162, Ch. 571, L. 1979.

## Part 5 State Canvass

**13-15-501. Certification of canvass to state canvassers.** (1) The board of county canvassers shall certify the vote for each individual for whom votes were cast for the offices of president and vice president of the United States, congressional offices, state or district offices voted for in more than one county, members of the legislature, judges of the district court, and for and against ballot issues voted on in more than one county to the board of state canvassers. The certification shall contain all the information required in 13-15-404 for such candidates and issues.

(2) The secretary of the board shall send the certification to the secretary of state by certified mail in an envelope marked "election returns".

**History:** En. Sec. 185, Ch. 368, L. 1969; amd. Sec. 47, Ch. 365, L. 1977; R.C.M. 1947, 23-4015; amd. Sec. 163, Ch. 571, L. 1979.

**13-15-502. Composition and meeting of board of state canvassers.** Within 27 days after the election, or sooner if the returns are all received, the state auditor, superintendent of public instruction, and attorney general shall meet as a board of state canvassers in the office of the secretary of state and determine the vote. The secretary of state shall serve as secretary of the board, keep minutes of the meeting of the board, and file them in the official records of the secretary of state's office.

**History:** En. Sec. 186, Ch. 368, L. 1969; amd. Sec. 21, Ch. 365, L. 1977; R.C.M. 1947, 23-4016; amd. Sec. 164, Ch. 571, L. 1979; amd. Sec. 59, Ch. 56, L. 2009; amd. Sec. 13, Ch. 89, L. 2009.

**13-15-503. Repealed.** Sec. 33, Ch. 368, L. 2017. (*Repealer effective January 1, 2018.*)

**History:** En. Sec. 187, Ch. 368, L. 1969; R.C.M. 1947, 23-4017; amd. Sec. 165, Ch. 571, L. 1979.

**13-15-504. Governor to issue commissions.** Upon receipt of the statements required by 13-15-507 and 13-37-127, the governor shall issue commissions to the individuals elected. If the governor has been elected to an additional term, the secretary of state shall issue the commission.

**History:** En. Sec. 188, Ch. 368, L. 1969; R.C.M. 1947, 23-4018; amd. Sec. 169, Ch. 571, L. 1979; amd. Sec. 60, Ch. 56, L. 2009.

**13-15-505. Canvass to be public — procedure.** (1) The canvass must be public. It must proceed by opening the returns from each county, auditing the records from each county for errors, determining the vote for each individual and for and against each ballot issue in each county, compiling totals, and declaring and certifying the results.

(2) The board shall record all write-in votes shown in the returns received from each county.

**History:** En. Sec. 166, Ch. 571, L. 1979; amd. Sec. 61, Ch. 56, L. 2009.

**13-15-506. Report of the canvass.** (1) The secretary of the board shall prepare and file in the official records of the secretary of state's office a report of the canvass that lists:

(a) the total number of electors voting in each county and in each legislative house district and the total in the state;

(b) the name of each individual receiving votes and the office for which the votes were received;

(c) the number and title of each ballot issue; and

(d) the votes by county and legislative house district and the total votes for each individual and for and against each ballot issue.

(2) Write-in votes for an individual must be entered in the report but must be identified as write-in votes.

**History:** En. Sec. 167, Ch. 571, L. 1979; amd. Sec. 62, Ch. 56, L. 2009; amd. Sec. 57, Ch. 242, L. 2011.

**13-15-507. Declaration, proclamation, and certification of results.** The board shall declare nominated or elected the individual having the highest number of votes cast for each office, except as provided in 13-10-204. The board shall proclaim the adoption or rejection of ballot issues. Certified copies of the report required in 13-15-506, the declaration of nominated or elected individuals, the proclamation of adoption or rejection of ballot issues, and the effective date of adopted ballot issues shall be delivered to the governor.

**History:** En. Sec. 168, Ch. 571, L. 1979.

## **CHAPTER 16 RECOUNTS AND TIE VOTES**

### **Part 1 County Recount Board**

**13-16-101. County governing body as county recount board.** (1) The county recount board must consist of three members.

(2) Three members of the governing body must be appointed by the presiding officer if there are more than three members of the governing body.

(3) If three members of the governing body cannot attend when the board meets, any vacant position must be filled by one or more county officers chosen by the remaining members of the governing body.

(4) If a member of the recount board is a candidate for an office or nomination for which votes are to be recounted, the member must be disqualified.

(5) The election administrator is secretary of the recount board, and the board may hire any additional clerks as needed.

(6) The board may appoint county employees or hire clerks to assist as needed.

(7) If the recount is for a school election, the school recount board as provided in 20-20-420 shall perform recount board duties.

**History:** En. Sec. 203, Ch. 368, L. 1969; R.C.M. 1947, 23-4114; amd. Sec. 170, Ch. 571, L. 1979; amd. Sec. 63, Ch. 56, L. 2009; amd. Sec. 3, Ch. 347, L. 2013.

### **Part 2 Recounts in Close Elections**

**13-16-201. Conditions under which recount to be conducted.** (1) A recount must be conducted if:

(a) a candidate for a precinct office or for a county, municipal, or district office voted for in only one county, other than a legislator or a judge of the district court, is defeated by a margin not exceeding 1/4 of 1% of the total votes cast or by a margin not exceeding 10 votes, whichever is greater, and the defeated candidate, within 5 days after the official canvass, files with the election administrator a verified petition stating that the candidate believes that a recount will change the result and that a recount of the votes for the office or nomination should be conducted;

(b) a candidate for a congressional office, a state or district office voted on in more than one county, the legislature, or judge of the district court is defeated by a margin not exceeding 1/4 of 1% of the total votes cast for all candidates for the same position and the defeated candidate, within 5 days after the official canvass, files a petition with the secretary of state as set forth in subsection (1)(a). The secretary of state shall immediately notify each election administrator whose county includes any precincts that voted for the office, and a recount must be conducted in those precincts.

(c) a question submitted to the vote of the people of a county, municipality, or district within a county is decided by a margin not exceeding 1/4 of 1% of the total votes cast for and against the question and a petition as set forth in subsection (1)(a) is filed with the election administrator. This petition must be signed by not less than 10 electors of the jurisdiction and must be filed within 5 days after the official canvass.

(d) a question submitted to the vote of the people of the state is decided by a margin not exceeding 1/4 of 1% of the total votes cast for and against the question and a petition as set forth in subsection (1)(a) is filed with the secretary of state. This petition must be signed by not less

than 100 electors of the state, representing at least five counties of the state, and must be filed within 5 days after the official canvass.

(e) a question submitted to the vote of the people of a multicounty district is decided by a margin not exceeding  $\frac{1}{4}$  of 1% of the total votes cast for and against the question and a petition as set forth in subsection (1)(a) is filed with the secretary of state. This petition must be signed by not less than 25 electors of the district, representing at least two counties, and must be filed within 5 days after the official canvass.

(f) a canvassing board petitions for a recount as provided in 13-15-403.

(2) If the election is a school election, the petition is filed with the school election filing officer.

(3) When a recount is required under subsection (1)(b), (1)(d), or (1)(e), the secretary of state shall immediately notify each election administrator of the filing of the petition, and a recount must be conducted in all precincts in each affected county.

**History:** En. Sec. 192, Ch. 368, L. 1969; amd. Sec. 48, Ch. 365, L. 1977; R.C.M. 1947, 23-4103(1) thru (4); amd. Sec. 171, Ch. 571, L. 1979; amd. Sec. 2, Ch. 19, L. 1987; amd. Sec. 56, Ch. 414, L. 2003; amd. Sec. 64, Ch. 56, L. 2009; amd. Sec. 58, Ch. 242, L. 2011; amd. Sec. 49, Ch. 336, L. 2013; amd. Sec. 4, Ch. 347, L. 2013.

#### **13-16-202. Renumbered 13-15-208.** Code Commissioner, 2003.

**13-16-203. Recount for tie votes.** (1) When a tie has been certified to the election administrator, as provided in 13-15-405(4), or the secretary of state, the administrator or the secretary of state shall proceed as if a petition for a recount has been filed. If a tie exists after the recount, the tie must be resolved as provided by law.

(2) In the event of a tie in a school election, the board of trustees shall proceed as if a petition for a recount has been filed pursuant to 13-16-204(1)(b). If a tie exists after the recount, the tie must be resolved pursuant to 20-20-418 or as otherwise provided by law.

**History:** En. Secs. 183, 192, Ch. 368, L. 1969; amd. Secs. 45, 48, Ch. 365, L. 1977; R.C.M. 1947, 23-4013(2), 23-4103(6); amd. Sec. 172, Ch. 571, L. 1979; amd. Sec. 49, Ch. 575, L. 1981; amd. Sec. 65, Ch. 56, L. 2009; amd. Sec. 5, Ch. 347, L. 2013.

**13-16-204. Meeting of recount board when recount requested.** (1) (a) Immediately upon receiving a petition for a recount or a notice from the secretary of state that a petition has been filed as provided in 13-16-201, the election administrator shall notify the members of the county recount board.

(b) Upon receipt of a petition for a school election recount as provided in 13-16-201(2), the school election filing officer shall notify the members of the school recount board.

(2) The board shall convene at the usual meeting place of the governing body without undue delay but not later than 5 days after receiving notice from the election administrator or school election filing officer.

**History:** En. Sec. 204, Ch. 368, L. 1969; R.C.M. 1947, 23-4115; amd. Sec. 173, Ch. 571, L. 1979; amd. Sec. 3, Ch. 19, L. 1987; amd. Sec. 66, Ch. 56, L. 2009; amd. Sec. 6, Ch. 347, L. 2013.

**13-16-205. Expenses of recount.** (1) Except as provided in subsection (2), the expense of the recount provided for in 13-16-201 is a county charge. Recount expenses of the secretary of state and board of state canvassers are a state charge.

(2) If the recount is for a school election, the expense of the recount is a school district charge as provided in 20-20-107(1).

**History:** En. Sec. 211, Ch. 368, L. 1969; R.C.M. 1947, 23-4122; amd. Sec. 50, Ch. 575, L. 1981; amd. Sec. 7, Ch. 347, L. 2013.

#### **13-16-206 through 13-16-210 reserved.**

**13-16-211. Recounts allowed if bond posted to cover all costs.** (1) If a candidate for a public office is defeated by a margin exceeding  $\frac{1}{4}$  of 1% but not exceeding  $\frac{1}{2}$  of 1% of the total votes cast for all candidates for the same position, the candidate may, within 5 days after the official canvass, file with the officer with whom the candidate's declaration or petition for nomination was filed a petition stating that the candidate believes a recount will change the result of the election.

(2) The unsuccessful candidate shall post a bond with the election administrator of the county in which the candidate resides. The bond must be in an amount set by the election

administrator sufficient to cover all costs of the recount incurred by each county in which a recount is sought, which may include the following:

- (a) compensation for the county recount board, the election administrator, and any additional personnel needed to participate in the recount; and
- (b) necessary supplies and travel related to the recount.
- (3) Upon the filing of a petition and posting of a bond under this section, the county recount board, as designated in 13-16-101, in each county affected shall meet and recount the ballots specified in the petition.

**History:** En. Sec. 1, Ch. 395, L. 1979; amd. Sec. 67, Ch. 56, L. 2009; amd. Sec. 50, Ch. 336, L. 2013.

### Part 3 Recounts Under Court Order

**13-16-301. Application and court order for recount.** (1) (a) Within 5 days after the canvass of election returns, an unsuccessful candidate for any public office at an election may apply to the district court of the county where the election was held for an order directing the appropriate county or school recount board to make a recount of the votes cast in any or all of the precincts or the school district polling places. If the election was held in more than one county, the application must be made to the district court of the county where the candidate resides.

(b) Within 5 days after the canvass of election returns, an elector who was eligible to vote on the issue and who believes that there are grounds for a recount of the votes cast for and against a ballot issue may apply to the district court of the county where the elector resides for an order directing the appropriate county or school recount board to make a recount of the votes cast in any or all of the precincts or the school district polling places.

(2) The application must specify the grounds for a recount, and it must be verified by the applicant that the matters contained in it are true to the best of the applicant's knowledge, information, and belief.

(3) Within 5 days after filing of the application, the judge shall hear the application and determine its sufficiency.

(4) If the judge finds there is probable cause to believe that the votes cast for the applicant or the ballot issue were not correctly counted, the judge shall order the appropriate county or school recount board to assemble within 5 days after the order is issued at a time and place fixed by the order. The board shall meet and recount the ballots as specified in the order.

**History:** En. Sec. 190, Ch. 368, L. 1969; R.C.M. 1947, 23-4101; amd. Sec. 174, Ch. 571, L. 1979; amd. Sec. 68, Ch. 56, L. 2009; amd. Sec. 8, Ch. 347, L. 2013.

**13-16-302. Service of copy of application — hearing.** The candidate found to be elected as a result of the original or first canvass must be served with a copy of the application for recount. The candidate must be given an opportunity to be heard and must be permitted to be present and to be represented at any recount.

**History:** En. Sec. 199, Ch. 368, L. 1969; R.C.M. 1947, 23-4110; amd. Sec. 69, Ch. 56, L. 2009.

**13-16-303. Presumption of incorrectness from failure to comply with provisions for counting votes.** If it appears from a verified application that the election judges failed to comply with the provisions of 13-15-206, that is sufficient cause for believing that the election judges did not correctly ascertain the number of votes cast for the applicant or ballot issue.

**History:** En. Sec. 193, Ch. 368, L. 1969; R.C.M. 1947, 23-4104; amd. Sec. 175, Ch. 571, L. 1979; amd. Sec. 57, Ch. 414, L. 2003.

**13-16-304. Ordering in another judge — jurisdiction.** (1) If the judge of the district court in which the application is filed is for any reason disqualified from acting, the judge or a supreme court justice shall order another district judge to hear and determine the application.

(2) The district court shall not lose jurisdiction of the case by failure to hear and determine the application within the prescribed time but shall retain jurisdiction until the cause is finally determined and the final count is made by the county recount board.

**History:** En. Sec. 194, Ch. 368, L. 1969; R.C.M. 1947, 23-4105; amd. Sec. 176, Ch. 571, L. 1979.

**13-16-305. Limitation of recount to certain counties or precincts.** (1) If the application asks for a recount in more than one county or precinct but there are not sufficient



grounds for a recount in all counties or precincts, the court shall order a recount in only the counties or precincts for which sufficient grounds are stated and shown.

(2) The county recount board shall recount votes only in those counties or precincts and for those offices or ballot issues specified in the court order.

**History:** En. Secs. 191, 195, Ch. 368, L. 1969; R.C.M. 1947, 23-4102, 23-4106; amd. Sec. 177, Ch. 571, L. 1979.

**13-16-306. Procedure when more than one application for recount.** If more than one candidate makes application for a recount, the court may consider the applications together. The court may make separate or joint orders on the applications and apportion the expenses between the applicants.

**History:** En. Sec. 197, Ch. 368, L. 1969; R.C.M. 1947, 23-4108.

**13-16-307. Expenses of court-ordered recount.** (1) The court shall in its order determine the probable expense of making the recount, and the applicant or applicants asking for the recount shall deposit with the board the amount determined, in cash.

(2) If the recount shows that an applicant has been elected to office, the deposit of the applicant must be returned to the applicant.

(3) If the recount shows that an applicant has not been elected and the expense of the recount is greater than the estimated cost, the applicant shall pay the excess; however, if the expense is less than the cost, the difference must be refunded to the applicant.

(4) If the recount reverses the results of a ballot issue election, the deposit of the applicant must be returned to the applicant.

(5) If the recount does not reverse the results of a ballot issue election and the expense of the recount is greater than the estimated cost, the applicant shall pay the excess; however, if the expense is less than the cost, the difference must be refunded to the applicant.

**History:** En. Sec. 196, Ch. 368, L. 1969; R.C.M. 1947, 23-4107; amd. Sec. 178, Ch. 571, L. 1979; amd. Sec. 70, Ch. 56, L. 2009.

## Part 4 Recount Procedure

**13-16-411. Individuals entitled to appear at recount.** (1) Representatives of the news media may be present at the recount. The recount must be public, but the audience may be limited to prevent interference with the procedures.

(2) Each candidate involved in a recount may appear, personally or by representative, and must have full opportunity to witness the entire recount process.

(3) If the recount is on a ballot issue, one qualified elector favoring each side of the question may be present.

**History:** En. Sec. 205, Ch. 368, L. 1969; R.C.M. 1947, 23-4116(1), (2), (4); amd. Sec. 179, Ch. 571, L. 1979; Sec. 13-16-401, MCA 1979; redes. 13-16-411 by Code Commissioner, 1979; amd. Sec. 58, Ch. 414, L. 2003.

**13-16-412. Procedure for recounting paper ballots.** To conduct a recount of paper ballots:

(1) the election administrator shall provide to the recount board, unopened, each sealed package or envelope received from the election judges of the precinct or precincts in which a recount is ordered, containing all the paper ballots voted in the precinct or precincts;

(2) a member of the recount board shall open each sealed package or envelope and remove the ballots, and the board shall count the votes on each ballot manually in the manner provided in 13-15-206(2), except that if the office to be recounted is on a partisan primary election ballot, votes are recounted only on the party ballots that are subject to the recount; and

(3) the recount must be tallied on previously prepared tally sheets. The tally sheets must show the names of the respective candidates, the office or offices for which a recount is made, and the number of each election precinct.

**History:** En. Sec. 198, Ch. 368, L. 1969; R.C.M. 1947, 23-4109; amd. Sec. 180, Ch. 571, L. 1979; Sec. 13-16-402, MCA 1979; redes. 13-16-412 by Code Commissioner, 1979; amd. Sec. 59, Ch. 414, L. 2003; amd. Sec. 18, Ch. 586, L. 2005; amd. Sec. 59, Ch. 242, L. 2011.

**13-16-414. Repealed.** Sec. 32, Ch. 273, L. 2007.

**History:** En. Sec. 182, Ch. 571, L. 1979; amd. Sec. 51, Ch. 575, L. 1981; amd. Sec. 60, Ch. 414, L. 2003; amd. Sec. 19, Ch. 586, L. 2005.

**13-16-415. Recount totals.** After a recount is completed, tally sheets must be compared and the correctness of all reports of votes cast must be ascertained. The totals for each candidate or on each issue must be compiled and checked for accuracy.

**History:** En. Sec. 183, Ch. 571, L. 1979; amd. Sec. 71, Ch. 56, L. 2009.

**13-16-416. Report of recount.** (1) If the recount shows the votes for any candidate or on any ballot issue are more or less than the number shown upon the official returns, the secretary of the recount board shall prepare a corrected report that states the number of votes ascertained by the recount.

(2) The recount board shall direct the secretary to enter the result of the election as determined by the recount in the board records.

**History:** En. Sec. 184, Ch. 571, L. 1979; amd. Sec. 72, Ch. 56, L. 2009.

**13-16-417. Sealing ballots.** (1) When a recount of paper ballots is finished, each ballot must again be sealed in the same package or envelope in the presence of the election administrator and the appropriate county or school recount board and must be delivered to the election administrator for custody.

(2) All other materials used in the recount that are required to be sealed must be resealed in the same manner and delivered to the election administrator for custody.

**History:** En. Sec. 200, Ch. 368, L. 1969; R.C.M. 1947, 23-4111; amd. Sec. 185, Ch. 571, L. 1979; Sec. 13-16-403, MCA 1979; redes. 13-16-417 by Code Commissioner, 1979; amd. Sec. 61, Ch. 414, L. 2003; amd. Sec. 73, Ch. 56, L. 2009; amd. Sec. 51, Ch. 336, L. 2013; amd. Sec. 9, Ch. 347, L. 2013.

**13-16-418. Certification after recount.** (1) (a) Immediately after the recount, the county recount board shall certify the result.

(b) At least two members of the board shall sign the certificate, and it must be attested to under seal by the election administrator.

(c) The certificate must set forth in substance the proceedings of the board and the appearance of any candidates or representatives. The certificate must adequately designate:

- (i) each precinct recounted;
- (ii) the vote of each precinct according to the official canvass previously made;
- (iii) the nomination, position, or question involved; and
- (iv) the correct vote of each precinct as determined by the recount.

(d) When the certificate relates to a recount for a congressional office, a state or district office voted on in more than one county, a legislative office, or an office of judge of the district court or a ballot issue voted on in more than one county, the certificate must be made in duplicate. One copy must be transmitted immediately to the secretary of state by certified mail.

(e) (i) If the recount relates to a county, municipal, or district office voted for in only one county, other than that of a legislator or a judge of the district court, or a precinct office or a ballot issue voted on in only one county, the county recount board shall immediately recanvass the returns as corrected by the certificate showing the result of the recount and make a corrected abstract of the votes.

(ii) If the corrected abstract shows no change in the result, no further action is needed.

(iii) If there is a change in the result, a new certificate of election or nomination must be issued to each candidate found to be elected or nominated and the first certificate is void. The individual receiving the second certificate must be elected or nominated to the office.

(2) (a) In the event of a school election recount, immediately after the recount, the school recount board shall certify the result. At least two members of the recount board shall sign the certificate, and it must be attested to under seal by the school election administrator.

(b) The certificate must adequately designate:

- (i) the vote of the district according to the official canvass previously made;
- (ii) the position or question involved; and
- (iii) the correct vote of the district as determined by the recount.

(c) The school recount board shall immediately recanvass the returns as corrected by the certificate showing the result of the recount and make a corrected abstract of the votes. If the corrected abstract shows no change in the result, no further action is needed. If there is a change in the result, a new certificate of election must be issued to each candidate found to be elected and the first certificate is void. The individual receiving the second certificate must be elected to the office.

**History:** Ap. p. Sec. 206, Ch. 368, L. 1969; amd. Sec. 49, Ch. 365, L. 1977; Sec. 23-4117, R.C.M. 1947; Ap. p. Sec. 201, Ch. 368, L. 1969; Sec. 23-4112, R.C.M. 1947; R.C.M. 1947, 23-4112, 43-4117; amd. Sec. 186, Ch. 571, L. 1979; Sec. 13-16-404, MCA 1979; redes. 13-16-418 by Code Commissioner, 1979; amd. Sec. 74, Ch. 56, L. 2009; amd. Sec. 10, Ch. 347, L. 2013.

**13-16-419. Recount by board of state canvassers.** (1) When the secretary of state receives certificates from all county recount boards, the secretary of state shall file them, shall fix a time and place, as soon as possible, for reconvening the board of state canvassers, and shall notify the members.

(2) The board of state canvassers shall recanvass the official returns on the office, nomination, position, or question as corrected by the certificates and make a new and corrected abstract of the votes cast.

(3) (a) If the corrected abstract shows no change in the results, further action may not be taken.

(b) If there is a change in the results, the first certificate is void and a new certificate of election or nomination must be issued in the same manner as the certificate of election or nomination was previously issued to each candidate elected or nominated.

**History:** En. Sec. 207, Ch. 368, L. 1969; R.C.M. 1947, 23-4118; Sec. 13-16-405, MCA 1979; redes. 13-16-419 by Code Commissioner, 1979; amd. Sec. 52, Ch. 575, L. 1981; amd. Sec. 75, Ch. 56, L. 2009; amd. Sec. 60, Ch. 242, L. 2011.

**13-16-420. Misplaced or missing ballots.** If during a recount the appropriate county or school recount board discovers that ballots are misplaced or missing, it may petition the election administrator to inspect all sealed paper ballots within the county precincts or school district polling places to find the misplaced or missing ballots. Upon receiving the petition, the election administrator shall inspect the sealed ballots to find the misplaced or missing ballots. Upon completion of the recount, the misplaced or missing ballots must be placed with the proper precinct or school district polling place ballots and sealed with them.

**History:** En. Sec. 16, Ch. 591, L. 1991; amd. Sec. 62, Ch. 414, L. 2003; amd. Sec. 11, Ch. 347, L. 2013.

## Part 5 Tie Votes

**13-16-501. Tie vote after recount.** (1) If the recount shows a tie vote for any office and it cannot be determined who has been nominated by the primary election, the election officer with whom the candidates' nominating declarations or petitions were filed shall determine by lot which candidate shall be nominated. Written notice of the time and place of the drawing shall be given to each candidate involved.

(2) If the recount after a general election shows a tie vote and it cannot be determined who has been elected, the office or position shall be filled as provided by 13-16-502 through 13-16-506.

**History:** En. Sec. 208, Ch. 368, L. 1969; R.C.M. 1947, 23-4119; amd. Sec. 187, Ch. 571, L. 1979.

**13-16-502. Tie vote in election for United States congress.** If there is a tie vote for United States representative or senator, the secretary of state shall send a certified statement to the governor showing the votes cast and the governor shall order a special election.

**History:** En. Sec. 209, Ch. 368, L. 1969; R.C.M. 1947, 23-4120(1); amd. Sec. 188, Ch. 571, L. 1979.

**13-16-503. Tie vote in election for supreme court justice, district court judge, or state legislator.** If there is a tie vote for justice of the supreme court, judge of a district court, or member of the legislature, the secretary of state shall send a certified statement to the governor showing the votes cast for each individual and the governor shall appoint one of those candidates to the office.

**History:** En. Sec. 209, Ch. 368, L. 1969; R.C.M. 1947, 23-4120(2); amd. Sec. 189, Ch. 571, L. 1979.

**13-16-504. Tie vote in election for state executive officers.** If there is a tie vote for governor and lieutenant governor, secretary of state, attorney general, state auditor, clerk of the supreme court, superintendent of public instruction, or any other state executive officer, the secretary of state shall transmit a certified copy of the statement to the legislature showing the votes cast for the two or more candidates having an equal and the highest number of votes. The legislature, at its next regular session, shall elect one of these candidates to fill the office by joint ballot of the two houses.

**History:** En. Sec. 210, Ch. 368, L. 1969; amd. Sec. 50, Ch. 365, L. 1977; amd. Sec. 3, Ch. 468, L. 1977; R.C.M. 1947, 23-4121(1), (4); amd. Sec. 190, Ch. 571, L. 1979.

**13-16-505. Tie vote in election for county commissioner.** If there is a tie vote for commissioner, the senior district judge shall appoint one of the candidates who tied to fill the office as in other cases of vacancy.

**History:** En. Sec. 210, Ch. 368, L. 1969; amd. Sec. 50, Ch. 365, L. 1977; amd. Sec. 3, Ch. 468, L. 1977; R.C.M. 1947, 23-4121(3); amd. Sec. 191, Ch. 571, L. 1979.

**13-16-506. Tie vote in election for other county officers.** If there is a tie vote for clerk of the district court, county attorney, or any county officer except county commissioner, the commissioners shall appoint one of the candidates who tied to fill the office as in other cases of vacancy.

**History:** En. Sec. 210, Ch. 368, L. 1969; amd. Sec. 50, Ch. 365, L. 1977; amd. Sec. 3, Ch. 468, L. 1977; R.C.M. 1947, 23-4121(2); amd. Sec. 192, Ch. 571, L. 1979.

**13-16-507. Tie vote in election for officers of nonspecified political subdivision.** If there is a tie vote for an officer of any political subdivision not specifically provided for in this part, the governing body of that jurisdiction shall appoint one of the candidates who tied to fill the office as in other cases of vacancy.

**History:** En. Sec. 193, Ch. 571, L. 1979.

## CHAPTER 17 VOTING SYSTEMS

### Part 1 General Provisions

**13-17-101. Secretary of state to approve voting systems.** (1) A voting system may not be used for any election in this state unless the system is approved by the secretary of state as provided in this section.

(2) The secretary of state shall:

(a) examine a voting system proposed for use to determine if it complies with the requirements of 13-17-103;

(b) within 30 days after examining the voting system, file a report of the examination in the secretary of state's office;

(c) include in the report the reasons for the voting system's approval or disapproval and the secretary of state's opinion about the economic and procedural impact that the voting system's use or nonuse may have on the various counties of this state; and

(d) within 5 days after filing the report, transmit to each election administrator, including school election administrators for elections under Title 20, chapter 20, a copy of the report.

(3) Voting systems may not be used in an election unless approved by the secretary of state 60 days or more prior to the election at which they will be used.

**History:** En. Sec. 142, Ch. 368, L. 1969; amd. Sec. 40, Ch. 365, L. 1977; R.C.M. 1947, 23-3801(1), (2); amd. Sec. 194, Ch. 571, L. 1979; amd. Sec. 63, Ch. 414, L. 2003; amd. Sec. 24, Ch. 128, L. 2011.

**13-17-102. Use of qualified technicians and advisers.** (1) To the extent that funds are available, the secretary of state may compensate qualified technicians and advisers to assist in carrying out the secretary of state's duties required by 13-17-101.

(2) An entity submitting a voting system for examination shall pay to the secretary of state certain costs connected with the examination based on an agreement reached between the two parties.

**History:** En. Sec. 142, Ch. 368, L. 1969; amd. Sec. 40, Ch. 365, L. 1977; R.C.M. 1947, 23-3801(3), (4); amd. Sec. 195, Ch. 571, L. 1979; amd. Sec. 64, Ch. 414, L. 2003.

**13-17-103. Required specifications for voting systems.** (1) A voting system may not be approved under 13-17-101 unless the voting system:

(a) allows an elector to vote in secrecy;

(b) prevents an elector from voting for any candidate or on any ballot issue more than once;

(c) prevents an elector from voting on any office or ballot issue for which the elector is not entitled to vote;

- (d) allows an elector to vote only for the candidates of the party selected by the elector in the primary election;
- (e) allows an elector to vote a split ticket in a general election if the elector desires;
- (f) allows each valid vote cast to be registered and recorded within the performance standards adopted pursuant to subsection (2);
- (g) is protected from tampering for a fraudulent purpose;
- (h) prevents an individual from seeing or knowing the number of votes registered for any candidate or on any ballot issue during the progress of voting;
- (i) allows write-in voting;
- (j) will, if purchased by a jurisdiction within the state, be provided with a guarantee that the training and technical assistance will be provided to election officials under the contract for purchase of the voting system;
- (k) uses a paper ballot that allows votes to be manually counted; and
- (l) allows auditors to access and monitor any software program while it is running on the system to determine whether the software is running properly.

(2) To implement the provisions of subsection (1)(f), the secretary of state shall adopt rules setting a benchmark performance standard that must be met in tests by each voting system prior to approval under 13-17-101. The standard must be based on commonly accepted industry standards for readily available technologies.

**History:** En. Sec. 143, Ch. 368, L. 1969; R.C.M. 1947, 23-3802(1), (3); amd. Sec. 196, Ch. 571, L. 1979; amd. Sec. 33, Ch. 370, L. 1987; amd. Sec. 65, Ch. 414, L. 2003; amd. Sec. 1, Ch. 275, L. 2005; amd. Sec. 17, Ch. 286, L. 2005; amd. Sec. 27, Ch. 273, L. 2007; amd. Sec. 28, Ch. 297, L. 2009.

**13-17-104. Providing voting systems — payment.** (1) The county governing body may, as practicable, provide for the use of any voting system approved pursuant to 13-17-101.

(2) Funds for voting systems may be provided by the same methods available for other capital equipment purchases by the county.

(3) The governing body of a county may put the question of purchasing voting systems or the question of which type of voting system to purchase to the registered electors of the county by the same method that any other question is referred to the electors.

(4) A county governing body may, in the manner provided in rules adopted under 13-17-107, submit a voting system for consideration under 13-17-101.

**History:** En. Sec. 144, Ch. 368, L. 1969; R.C.M. 1947, 23-3803; amd. Sec. 197, Ch. 571, L. 1979; amd. Sec. 66, Ch. 414, L. 2003.

**13-17-105. Experimental use of voting systems.** The governing body of a county may, without adoption or purchase of the voting system, provide for the experimental use in one or more precincts at an election of a voting system that has been approved by the secretary of state under 13-17-101. The voting system's use at the election is valid for all purposes as if the system had been formally adopted or purchased by the county.

**History:** En. Sec. 158, Ch. 368, L. 1969; R.C.M. 1947, 23-3817; amd. Sec. 198, Ch. 571, L. 1979; amd. Sec. 67, Ch. 414, L. 2003.

**13-17-106. General application of election laws.** All laws applicable to elections when voting is not done using a voting system and all penalties prescribed for violations of those laws apply to elections and precincts when voting systems are used if those laws are not in conflict with the provisions of this chapter.

**History:** En. Sec. 163, Ch. 368, L. 1969; amd. Sec. 44, Ch. 334, L. 1977; amd. Sec. 42, Ch. 365, L. 1977; R.C.M. 1947, 23-3822; amd. Sec. 199, Ch. 571, L. 1979; amd. Sec. 68, Ch. 414, L. 2003.

**13-17-107. Secretary of state to prescribe rules.** (1) The secretary of state may prescribe rules for the submission of voting systems for examination and additional requirements for approval of voting systems.

(2) The secretary of state shall prescribe rules for the complete procedures necessary to use each type of voting system now approved for use in this state and for each type of system approved for use under the provisions of this chapter.

**History:** En. Sec. 200, Ch. 571, L. 1979; amd. Sec. 69, Ch. 414, L. 2003.

**13-17-108. Punchcard voting systems prohibited.** A punchcard voting system may not be used in an election after December 31, 2003.

**History:** En. Sec. 1, Ch. 320, L. 2003.



## Part 2

### Preparation for Use of Systems

**13-17-201. Election administrator to instruct election judges.** (1) Before each election in which a voting system is used, the election administrator shall instruct all election judges in the use of the system as provided in 13-4-203.

(2) A chief election judge may not serve in a precinct where a voting system is used unless the judge has received the required instruction, is fully qualified to perform duties in connection with the system, and has received a certificate to that effect from the election administrator.

**History:** En. Sec. 148, Ch. 368, L. 1969; amd. Sec. 41, Ch. 365, L. 1977; R.C.M. 1947, 23-3807; amd. Sec. 201, Ch. 571, L. 1979; amd. Sec. 70, Ch. 414, L. 2003.

**13-17-202. Repealed.** Sec. 407, Ch. 571, L. 1979.

**History:** En. Sec. 151, Ch. 368, L. 1969; R.C.M. 1947, 23-3810.

**13-17-203. Publication of information concerning voting systems.** (1) Not more than 10 or less than 2 days before an election at which a voting system will be used by voters, the election administrator shall broadcast on radio or television, as provided in 2-3-105 through 2-3-107, or publish in a newspaper of general circulation in the county:

(a) a diagram showing the voting system to be used by voters and a sample of the ballot layout (in newspaper only);

(b) a statement of the locations where voting systems to be used by voters are on public exhibition; and

(c) instructions on how to vote.

(2) The election administrator shall select the method of notification that the election administrator believes is best suited to reach the largest number of potential electors.

**History:** En. Sec. 149, Ch. 368, L. 1969; R.C.M. 1947, 23-3808; amd. Sec. 202, Ch. 571, L. 1979; amd. Sec. 71, Ch. 414, L. 2003; amd. Sec. 29, Ch. 297, L. 2009; amd. Sec. 61, Ch. 242, L. 2011; amd. Sec. 52, Ch. 336, L. 2013.

**13-17-204. Voting systems to be exhibited.** A voting system must be on exhibition in the office of the election administrator of any county where the voting system is used and may be exhibited at other locations. The election administrator shall demonstrate the voting system to any inquiring elector.

**History:** En. Sec. 150, Ch. 368, L. 1969; R.C.M. 1947, 23-3809; amd. Sec. 203, Ch. 571, L. 1979; amd. Sec. 72, Ch. 414, L. 2003.

**13-17-205. Repealed.** Sec. 407, Ch. 571, L. 1979.

**History:** En. Sec. 145, Ch. 368, L. 1969; amd. Sec. 1, Ch. 116, L. 1977; R.C.M. 1947, 23-3804(1), (7).

**13-17-206. Repealed.** Sec. 32, Ch. 273, L. 2007.

**History:** En. Sec. 145, Ch. 368, L. 1969; amd. Sec. 1, Ch. 116, L. 1977; R.C.M. 1947, 23-3804; amd. Sec. 204, Ch. 571, L. 1979; amd. Sec. 73, Ch. 414, L. 2003.

**13-17-207. Repealed.** Sec. 407, Ch. 571, L. 1979.

**History:** En. Sec. 152, Ch. 368, L. 1969; R.C.M. 1947, 23-3811.

**13-17-208 through 13-17-210 reserved.**

**13-17-211. Uniform procedures for using voting systems.** (1) For each voting system approved under 13-17-101, the secretary of state shall adopt rules specifying the procedures to be uniformly applied in elections conducted with the voting system.

(2) The rules must, at a minimum, specify procedures that address the following:

(a) performance testing and certification under 13-17-212;

(b) how electors ensure the proper disposition of a ballot pursuant to 13-13-117(2);

(c) the procedures to be followed if the comparison under 13-15-206(2)(b) reveals discrepancies;

(d) how to operate and test the system during counts; and

(e) the security measures necessary to secure the voting system before, during, and after an election.

**History:** En. Sec. 3, Ch. 414, L. 2003; amd. Sec. 20, Ch. 586, L. 2005; amd. Sec. 28, Ch. 273, L. 2007; amd. Sec. 53, Ch. 336, L. 2013.

**13-17-212. Performance testing and certification of voting systems prior to election.** (1) No more than 30 days prior to an election in which a voting system is used, the election administrator shall publicly test and certify that the system is performing properly.

(2) The secretary of state shall ensure that at least 10% of each type of voting system in the state has been randomly tested and certified at least once every calendar year.

(3) The provisions of this section must be implemented according to rules adopted by the secretary of state pursuant to 13-17-211.

**History:** En. Sec. 4, Ch. 414, L. 2003; amd. Sec. 18, Ch. 286, L. 2005; amd. Sec. 29, Ch. 273, L. 2007; amd. Sec. 30, Ch. 297, L. 2009.

### Part 3 Voting Procedure

**13-17-305. Repealed.** Sec. 32, Ch. 273, L. 2007.

**History:** En. Sec. 159, Ch. 368, L. 1969; R.C.M. 1947, 23-3818(2); amd. Sec. 206, Ch. 571, L. 1979; amd. Sec. 1, Ch. 588, L. 1985; amd. Sec. 74, Ch. 414, L. 2003.

**13-17-306. Use of separate paper ballots for voting on certain candidates or issues.** Subject to 13-12-202, whenever a voting system does not allow adequate space for all candidates for all offices or for all ballot issues, separate paper ballots may be used for some or all offices or ballot issues if written authorization is given to the election administrator by the secretary of state.

**History:** En. Sec. 160, Ch. 368, L. 1969; R.C.M. 1947, 23-3819; amd. Sec. 207, Ch. 571, L. 1979; amd. Sec. 75, Ch. 414, L. 2003.

### Part 5 Postelection Audit

**13-17-501. Short title.** This part may be cited as the “Postelection Audit Act”.

**History:** En. Sec. 1, Ch. 89, L. 2009.

**13-17-502. Definitions.** As used in this part, the following definitions apply:

(1) “Computer software expert” means a person who has obtained a bachelor of science degree in computer science with expertise in software engineering and who is not affiliated with an election software vendor.

(2) “County audit committee” means the committee that conducts a random-sample audit in a county.

(3) “Vote-counting machine” means an individual piece of equipment used to automatically tabulate votes.

**History:** En. Sec. 2, Ch. 89, L. 2009.

**13-17-503. Random-sample audit of vote-counting machines required — rulemaking authority.** (1) After unofficial results are available to the public in a federal election, but before the official canvass by the county board of canvassers, the county audit committee shall conduct a random-sample audit of vote-counting machines.

(2) The random-sample audit may not include a ballot that a vote-counting machine was unable to process and that was not resolved pursuant to 13-15-206 because the ballot:

- (a) appeared to have at least one overvote;
- (b) appeared to be blank;
- (c) was in a condition that prevented its processing by a vote-counting machine; or
- (d) contained a mark, error, or omission that prevented its processing by a vote-counting machine.

(3) Except as provided in subsections (4) and (5), the random-sample audit must include:

(a) at least 5% of the precincts in each county or a minimum of one precinct in each county, whichever is greater; and

(b) an election for:

- (i) one statewide office race, if any;
- (ii) one federal office race;
- (iii) one legislative office race; and

(iv) one statewide ballot issue if a statewide ballot issue was on the ballot.

(4) The audit may not include:

- (a) a retention election for a judicial candidate; or
- (b) a race in which a candidate was unopposed.

(5) A county is exempt from the postelection random-sample audit requirements if:

- (a) the county does not use a vote-counting machine; or
- (b) the county's unofficial final vote totals for a ballot issue or for any race, except precinct committee representative, show a tie vote or a vote within the margins allowed by Title 13, chapter 16, part 2, for a recount without a court order. A county meeting the requirements of this subsection (5)(b) shall notify the secretary of state as soon as practicable.

(6) The secretary of state shall adopt rules to implement the provisions of this part, including but not limited to rules for:

- (a) the process to be used for selecting precincts, races, and ballot issues for the random-sample audit; and

- (b) the manner in which the random-sample audit of vote-counting machines will be conducted pursuant to the procedures established in this part.

**History:** En. Sec. 3, Ch. 89, L. 2009; amd. Sec. 62, Ch. 242, L. 2011.

**13-17-504. County audit committee — membership — oath required.** (1) Prior to each federal election, the county governing body shall appoint at least three individuals to serve on the county audit committee from a list of county employees and county residents who have offered to serve on the committee.

(2) The county audit committee may not include:

- (a) a person who served as an election judge in the election;

- (b) a person employed by the vendor who supplied the vote-counting machines subject to the audit; or

- (c) a person who has performed maintenance on the vote-counting machines subject to the audit.

(3) Before beginning service, the audit committee members shall take and subscribe the official oath prescribed by the Montana constitution. The audit committee members may administer the oath to each other.

(4) The county election administrator shall serve as the secretary to the county audit committee.

**History:** En. Sec. 4, Ch. 89, L. 2009.

**13-17-505. Selection process for random-sample audit.** (1) No sooner than 7 days after the election and no later than 9 days after the election, the state board of canvassers, pursuant to 13-17-503 and as established by rule, shall randomly select:

- (a) the races and ballot issue to be audited;

- (b) the precincts to be audited in each county; and

- (c) three additional precincts in each county that would be audited if a discrepancy in vote tallies occurs and results in the need to audit additional precincts pursuant to 13-17-507.

(2) The selection process must be open to the public.

(3) After selecting the precincts, races, and ballot issue for the random-sample audit, the state board of canvassers shall direct the secretary of state to:

- (a) notify each county election administrator of the selections; and

- (b) make a list of the selections available electronically.

**History:** En. Sec. 5, Ch. 89, L. 2009.

**13-17-506. Conduct of random-sample audit.** (1) The random-sample audit must be completed at least 1 day before the official canvass by the county board of canvassers.

(2) The county audit committee shall manually count the votes for the random-sample audit as follows:

- (a) One member shall read the ballot while the remaining members shall each record on an official tally sheet the number of valid votes cast for each of the selected offices and the ballot issue.

- (b) (i) After the vote is complete, the tally sheets of the members recording the votes must be compared.

(ii) If the tallies match, the county audit committee shall compare the manual count for the selected offices and the ballot issue to the vote-counting machine count for the selected offices and the ballot issue.

(iii) If the tallies do not match, the count must be conducted again as provided in this subsection (2) until the tallies match.

(c) (i) If the manual count and the vote-counting machine totals match, the county audit committee shall certify the results to the county election administrator and the secretary of state.

(ii) If the manual count and the vote-counting machine totals do not match, the county audit committee shall follow the procedures established in 13-17-507.

(3) The audit process must be public.

**History:** En. Sec. 6, Ch. 89, L. 2009.

**13-17-507. Discrepancies — substitution of results — examination of machines.**

(1) If a discrepancy exists between the vote-counting machine totals and the manual count totals, the random-sample audit results must serve as the definitive record for purposes of the canvass.

(2) If the random-sample audit results in a discrepancy of more than 0.5% of total ballots cast or five ballots, whichever is greater, and if the discrepancy is determined to be due to the vote-counting machine and not to administrative or user error:

(a) the vote-counting machine involved in the discrepancy in that county may not be used in another election until it has been examined and tested by a computer software expert in consultation with a voting system vendor and approved by the secretary of state; and

(b) at least three additional precincts within the county must be audited for the office or ballot issue in question. If the county has fewer than three additional precincts, all remaining precincts must be audited.

(3) If the audit of the additional precincts results in a discrepancy for those precincts of more than 0.5% of total ballots cast or five ballots, whichever is greater, and if the discrepancy is determined to be due to the vote-counting machine and not to administrative or user error, the vote-counting machine involved in the discrepancy in that county may not be used in another election until it has been examined and tested by a computer software expert in consultation with a voting system vendor and approved by the secretary of state.

(4) The results of the random-sample audit must be public.

**History:** En. Sec. 7, Ch. 89, L. 2009.

**13-17-508. Reimbursement of county costs.** (1) Except as provided in subsection (2), the secretary of state shall reimburse each county for any costs incurred in implementing the provisions of this part.

(2) A vendor who supplies a vote-counting machine that was purchased after October 1, 2009, and that fails an audit due to software or machine defects or vendor employee error shall pay the costs incurred for the audit of vote-counting machines in the affected county. The provisions of this subsection must be reflected in the contract for the purchase of vote-counting machines.

**History:** En. Sec. 8, Ch. 89, L. 2009.

**13-17-509. Vote-counting machine maintenance — examination.** (1) Upgrades, patches, fixes, or alterations may not be applied to any vote-counting machine during the 30 days following a federal election.

(2) If a vote-counting machine fails an audit pursuant to 13-17-507, the vote-counting machine is subject to examination by a computer software expert in consultation with a voting system vendor.

**History:** En. Sec. 9, Ch. 89, L. 2009.

## CHAPTER 19 MAIL BALLOT ELECTIONS

### Part 1 General Provisions

**13-19-101. Statement of purpose.** The purpose of this chapter is to provide the option of and procedures for conducting certain specified elections as mail ballot elections. The provisions of this chapter recognize that sound public policy concerning the conduct of elections often requires the balancing of various elements of the public interest that are sometimes in conflict. Among these factors are the public's interest in fair and accurate elections, the election of those who will govern or represent, and cost-effective administration of all functions of government, including the conduct of elections. The provisions of this chapter further recognize that when these and other factors are balanced, the conduct of elections by mail ballot is potentially the most desirable of the available options in certain circumstances.

**History:** En. Sec. 1, Ch. 196, L. 1985; amd. Sec. 76, Ch. 56, L. 2009.

**13-19-102. Definitions.** As used in this chapter, the following definitions apply:

(1) "Ballot" means the ballot or set of ballots that is to be returned by a specified election day.

(2) "Election day" is the date established by law on which a particular election would be held if that election were being conducted by means other than a mail ballot election.

(3) "Political subdivision" means a political subdivision of the state, including a school district.

(4) "Secrecy envelope" means an envelope used to contain the elector's ballot and that is designed to conceal the elector's ballot and to prevent that elector's ballot from being distinguished from the ballots of other electors.

**History:** En. Sec. 2, Ch. 196, L. 1985; amd. Sec. 1, Ch. 10, L. 1987; amd. Sec. 1, Ch. 146, L. 1997; amd. Sec. 31, Ch. 297, L. 2009; amd. Sec. 9, Ch. 101, L. 2011; amd. Sec. 63, Ch. 242, L. 2011; amd. Sec. 54, Ch. 336, L. 2013.

**13-19-103. General election laws to apply.** All laws applicable to elections when voting is not done by mail ballot and all penalties prescribed for violation of those laws apply to elections conducted by mail ballot to the extent they do not specifically conflict with the provisions of this chapter or are not otherwise provided for by this chapter.

**History:** En. Sec. 5, Ch. 196, L. 1985.

**13-19-104. Mail ballot elections not mandatory — when authorized — when prohibited — when county election administrator conducts.** (1) Conducting elections by mail ballot is only one option available to local officials, and this chapter does not mandate that the procedure be used.

(2) Except as provided in subsection (3), any election may be conducted by mail ballot.

(3) The following elections may not be conducted by mail ballot:

(a) a regularly scheduled federal, state, or county election;

(b) a special federal or state election, unless authorized by the legislature; or

(c) a regularly scheduled or special election when another election in the political subdivision is taking place at the polls on the same day.

(4) (a) Except as provided in subsection (4)(b), if more than one mail ballot election is being conducted in the political subdivision on the same day, the county election administrator shall conduct the elections.

(b) The requirement that a county election administrator shall conduct more than one mail ballot election on the same day does not apply to a mail ballot school bond election conducted by the trustees of any two or more school districts that have unified pursuant to 20-6-312 or that have created a joint board of trustees pursuant to 20-3-361.

**History:** En. Sec. 4, Ch. 196, L. 1985; amd. Sec. 2, Ch. 10, L. 1987; amd. Sec. 2, Ch. 146, L. 1997; amd. Sec. 1, Ch. 264, L. 2005.

**13-19-105. Role of secretary of state.** In addition to other powers and duties conveyed by law, the secretary of state, with advice from election administrators, shall:

(1) prescribe the form of materials to be used in the conduct of mail ballot elections;



(2) review written plans for the conduct of mail ballot elections as provided in 13-19-205; and

(3) adopt rules consistent with this chapter to:

(a) establish and maintain uniformity in the conduct of mail ballot elections; and

(b) establish procedures for the conduct of mail ballot elections that, when implemented by the election administrator:

(i) prevent fraud;

(ii) ensure the accurate handling and canvassing of mail ballots; and

(iii) ensure that the secrecy of voted ballots is maintained.

**History:** En. Sec. 6, Ch. 196, L. 1985; amd. Sec. 32, Ch. 297, L. 2009.

**13-19-106. General requirements for mail ballot election.** A mail ballot election must be conducted substantially as follows:

(1) Subject to 13-12-202, official mail ballots must be prepared and all other initial procedures followed as provided by law, except that mail ballots must be paper ballots and are not required to have stubs.

(2) An official ballot must be mailed to every qualified elector of the political subdivision conducting the election.

(3) Each signature envelope must contain a form that is the same as the form for absentee ballot signature envelopes and that is prescribed by the secretary of state for the elector to verify the accuracy of the elector's address or notify the election administrator of the elector's correct mailing address and to return the corrected address with the voted ballot in the manner provided by 13-19-306.

(4) The elector shall mark the ballot and place it in a secrecy envelope.

(5) (a) The elector shall then place the secrecy envelope containing the elector's ballot in a signature envelope and mail it or deliver it in person to a place of deposit designated by the election administrator.

(b) Except as provided in 13-21-206 and 13-21-226, the voted ballot must be received before 8 p.m. on election day.

(6) Election officials shall first qualify the voted ballot by examining the signature envelope to determine whether it is submitted by a qualified elector who has not previously voted in the election.

(7) If the voted ballot qualifies and is otherwise valid, officials shall then open the signature envelope and remove the secrecy envelope, which must be deposited unopened in an official ballot box.

(8) Except as provided in 13-19-312, after the close of voting on election day, voted ballots must be counted and canvassed as provided in Title 13, chapter 15.

**History:** En. Sec. 3, Ch. 196, L. 1985; amd. Sec. 17, Ch. 591, L. 1991; amd. Sec. 1, Ch. 338, L. 1997; amd. Sec. 1, Ch. 546, L. 2001; amd. Sec. 76, Ch. 414, L. 2003; amd. Sec. 1, Ch. 443, L. 2003; amd. Sec. 33, Ch. 297, L. 2009; amd. Sec. 10, Ch. 101, L. 2011; amd. Sec. 64, Ch. 242, L. 2011; amd. Sec. 6, Ch. 139, L. 2013; amd. Sec. 55, Ch. 336, L. 2013.

## Part 2 Preelection Procedure

**13-19-201. How election initiated.** A proposal to conduct an election under this chapter may be initiated by either the election administrator or the appropriate governing body as provided in 13-19-202 through 13-19-204.

**History:** En. Sec. 7, Ch. 196, L. 1985.

**13-19-202. Initiation by governing body.** (1) A political subdivision may, by resolution of the governing body addressed to the election administrator, request that a particular election be conducted under the provisions of this chapter.

(2) No later than 70 days before election day, the governing body shall transmit its request to the election administrator, who shall determine whether it is economically and administratively feasible to conduct the requested election by mail ballot.

(3) Except as provided in 13-19-204, the decision to conduct an election under the provisions of this chapter is within the sole discretion of the election administrator.

(4) Within 5 days after receiving a request, the election administrator shall respond in writing, stating that the request is either granted or denied for reasons specified. If granted, the election administrator shall prepare a plan as provided in 13-19-205.

**History:** En. Sec. 8, Ch. 196, L. 1985.

**13-19-203. Initiation by election administrator.** (1) Even if a request has not been received from the governing body concerned, the election administrator may conduct any election authorized by 13-19-104 under this chapter if the election administrator determines that a mail ballot election is the most economically and administratively feasible way of conducting the election in question.

(2) If the election administrator decides to conduct an election pursuant to subsection (1), the election administrator shall prepare a written plan as provided in 13-19-205 and forward a copy to the governing body concerned, together with a written statement informing the governing body of the decision to conduct the election by mail ballot, the reasons for the decision, and the right of the governing body to object under 13-19-204.

**History:** En. Sec. 9, Ch. 196, L. 1985; amd. Sec. 77, Ch. 56, L. 2009.

**13-19-204. Objection of political subdivision.** (1) A political subdivision may, by resolution of the governing body, object to the conduct of one of its elections under this chapter. The resolution must include a statement of the reasons for the objection.

(2) If the resolution is filed with the election administrator no later than 55 days prior to election day, the election may not be conducted by mail under this chapter.

**History:** En. Sec. 10, Ch. 196, L. 1985; amd. Sec. 34, Ch. 297, L. 2009.

**13-19-205. Written plan for conduct of election — amendments — approval procedures.** (1) The election administrator shall prepare a written plan for the conduct of each election to be conducted by mail and shall submit the plan to the secretary of state in a manner that ensures that it is received at least 60 days prior to the date set for the election. There must be a separate plan for each type of election held even if held on the same day.

(2) The written plan must include:

(a) a timetable for the election; and

(b) sample written instructions that will be sent to the electors. The instructions must include but are not limited to:

(i) information on the estimated amount of postage required to return the ballot;

(ii) (A) the location of the places of deposit and the days and times when ballots may be returned to the places of deposit, if the information is available; or

(B) if the information on location and hours of places of deposit is not available, a section that will allow the information to be added before the instructions are mailed to electors; and

(iii) any applicable instructions specified under 13-13-214(5).

(3) The plan may be amended by the election administrator at any time prior to the 35th day before election day by notifying the secretary of state in writing of any changes.

(4) Within 5 days of receiving the plan and as soon as possible after receiving any amendments, the secretary of state shall approve, disapprove, or recommend changes to the plan or amendments.

(5) When the written plan and any amendments have been approved, the election administrator shall proceed to conduct the election according to the approved plan unless the election is canceled for any reason provided by law.

**History:** En. Sec. 11, Ch. 196, L. 1985; amd. Sec. 35, Ch. 297, L. 2009; amd. Sec. 11, Ch. 101, L. 2011; amd. Sec. 189, Ch. 49, L. 2015.

**13-19-206. Distributing materials to electors — procedure.** For each election conducted under this chapter, the election administrator shall:

(1) mail a single packet to every qualified elector of the political subdivision conducting the election;

(2) ensure that each packet contains only one each of the following:

(a) an official ballot for each type of election being held on the specified election day;

(b) a secrecy envelope;

(c) a signature envelope; and

(d) complete written instructions, as approved by the secretary of state pursuant to 13-19-205, for mail ballot voting procedures;

(3) ensure that each packet is:

(a) addressed to a single individual elector at the most current address available from the official registration records; and

(b) deposited in the United States mail with sufficient postage for it to be delivered to the elector's address; and

(4) mail the packet in a manner that conforms to postal regulations to require the return, not forwarding, of undelivered packets.

**History:** En. Sec. 13, Ch. 196, L. 1985; amd. Sec. 18, Ch. 591, L. 1991; amd. Sec. 2, Ch. 338, L. 1997; amd. Sec. 36, Ch. 297, L. 2009; amd. Sec. 12, Ch. 101, L. 2011; amd. Sec. 65, Ch. 242, L. 2011.

**13-19-207. When materials to be mailed.** (1) Except as provided in 13-13-205(2) and subsection (2) of this section, for any election conducted by mail, ballots must be mailed no sooner than the 20th day and no later than the 15th day before election day.

(2) (a) All ballots mailed to electors on the active list and the provisionally registered list must be mailed the same day.

(b) At any time before noon on the day before election day, a ballot may be mailed or, on request, provided in person at the election administrator's office to:

(i) an elector on the inactive list after the elector reactivates the elector's registration as provided in 13-2-222; or

(ii) an individual who registers under the late registration option provided for in 13-2-304.

(c) An elector on the inactive list shall vote at the election administrator's office on election day if the elector reactivates the elector's registration after noon on the day before election day.

(d) An elector who registers pursuant to 13-2-304 on election day or on the day before election day must receive the ballot and vote it at the election administrator's office.

**History:** En. Sec. 14, Ch. 196, L. 1985; amd. Sec. 37, Ch. 297, L. 2009; amd. Sec. 13, Ch. 101, L. 2011; amd. Sec. 190, Ch. 49, L. 2015.

### Part 3 Election Procedure

**13-19-301. Voting mail ballots.** (1) Upon receipt of a mailed ballot, the elector may vote by:

(a) marking the ballot in the manner specified;

(b) placing the marked ballot in the secrecy envelope, free of any identifying marks;

(c) placing the secrecy envelope containing one ballot for each election being held in the signature envelope;

(d) executing the affirmation printed on the signature envelope; and

(e) returning the signature envelope with all appropriate enclosures, as provided in 13-19-306.

(2) For the purpose of this chapter, an official ballot is voted when the marked ballot is received at a place of deposit.

(3) A legally registered or provisionally registered elector with a disability may receive and vote a ballot using procedures established in 13-13-246.

**History:** En. Sec. 16, Ch. 196, L. 1985; amd. Sec. 78, Ch. 56, L. 2009; amd. Sec. 38, Ch. 297, L. 2009; amd. Sec. 14, Ch. 101, L. 2011; amd. Sec. 66, Ch. 242, L. 2011; amd. Sec. 2, Ch. 247, L. 2015.

**13-19-302. Proportional voting.** The election administrator shall provide a method for proportional voting in the administrator's written plan for an election conducted under this chapter that requires votes to be cast in proportion to ownership or any factor other than one vote per person.

**History:** En. Sec. 12, Ch. 196, L. 1985; amd. Sec. 79, Ch. 56, L. 2009.

**13-19-303. Voting by elector when absent from place of residence during conduct of election.** (1) A qualified elector who will be absent from the county during the time the election is being conducted may:

(a) vote in person in the election administrator's office as soon as ballots are available and until noon the day before the ballots are scheduled to be mailed; or

(b) make a written request, signed by the applicant and addressed to the election administrator, that the ballot be mailed to an address other than the address that appears on the registration form. Written requests must be accepted until noon the day before the ballots are scheduled to be mailed.

(2) (a) Ballots mailed to electors on the active list and provisionally registered list pursuant to this section must be mailed the same day that all other ballots are mailed, except that a ballot requested pursuant to Title 13, chapter 21, may be sent to the elector as soon as the ballot is available.

(b) A ballot may be provided pursuant to this section until noon on the day before election day if, after the ballots are mailed to active and provisionally registered electors:

(i) an inactive elector reactivates the elector's registration as provided in 13-2-222; or

(ii) an individual registers under the late registration option provided for in 13-2-304 and receives a ballot in person.

**History:** En. Sec. 15, Ch. 196, L. 1985; amd. Sec. 39, Ch. 297, L. 2009; amd. Sec. 15, Ch. 101, L. 2011; amd. Sec. 18, Ch. 368, L. 2017.

**Compiler's Comments**

*2017 Amendment:* Chapter 368 in (1)(b) at end of first sentence substituted "registration form" for "registration card". Amendment effective January 1, 2018.

**13-19-304. Voting by nonregistered electors.** (1) For any election being conducted under this chapter by a political subdivision that allows individuals to vote who are not registered electors, the individual may vote by appearing in person at the election administrator's office or by providing materials by mail, facsimile, or electronic means and demonstrating that the individual possesses the qualifications required for voting.

(2) An individual complying with subsection (1) before official ballots are available may provide a form to the election administrator containing the signature of the individual or the individual's agent designated pursuant to 13-1-116 and the address to which the ballot is to be mailed. The signature provided must be used for verification when the mail ballot is returned.

(3) An individual complying with subsection (1) after official ballots are available and before 8 p.m. on election day must be permitted to vote at that time.

**History:** En. Sec. 23, Ch. 196, L. 1985; amd. Sec. 80, Ch. 56, L. 2009; amd. Sec. 40, Ch. 297, L. 2009; amd. Sec. 56, Ch. 336, L. 2013; amd. Sec. 19, Ch. 368, L. 2017.

**Compiler's Comments**

*2017 Amendment:* Chapter 368 in (2) near middle of first sentence substituted "provide a form" for "provide a card". Amendment effective January 1, 2018.

**13-19-305. Replacement ballots.** Replacement ballots may be issued as specified in 13-13-204.

**History:** En. Sec. 17, Ch. 196, L. 1985; amd. Sec. 81, Ch. 56, L. 2009; amd. Sec. 41, Ch. 297, L. 2009; amd. Sec. 16, Ch. 101, L. 2011.

**13-19-306. Returning marked ballots — when — where.** (1) After complying with 13-19-301, an elector or the elector's agent or designee may return the elector's ballot on or before election day by either:

(a) depositing the signature envelope in the United States mail, with sufficient postage affixed; or

(b) returning it to any place of deposit designated by the election administrator pursuant to 13-19-307.

(2) Except as provided in 13-21-206 and 13-21-226, in order for the ballot to be counted, each elector shall return it in a manner that ensures it is received prior to 8 p.m. on election day.

**History:** En. Sec. 18, Ch. 196, L. 1985; amd. Sec. 19, Ch. 591, L. 1991; amd. Sec. 82, Ch. 56, L. 2009; amd. Sec. 42, Ch. 297, L. 2009; amd. Sec. 17, Ch. 101, L. 2011; amd. Sec. 67, Ch. 242, L. 2011; amd. Sec. 7, Ch. 139, L. 2013.

**13-19-307. Places of deposit.** (1) (a) The election administrator shall designate the election administrator's office and may designate one or more places in the political subdivision in which the election is being conducted as places of deposit where ballots may be returned in person by the elector or the elector's agent or designee.

(b) If the election administrator's office is not accessible pursuant to 13-3-205, the election administrator shall designate at least one accessible place of deposit.

(2) Prior to election day, ballots may be returned to any designated place of deposit during the days and times set by the election administrator and within the regular business hours of the location.

(3) On election day, each location designated as a place of deposit must be open as provided in 13-1-106, and ballots may be returned during those hours.

(4) The election administrator may designate certain locations as election day places of deposit, and any designated location functions as a place of deposit only on election day.

(5) Each place of deposit must be staffed by at least two election officials who, except for election judges serving in elections under Title 20, chapter 20, are selected in the same manner as provided for the selection of election judges in 13-4-102.

(6) The election administrator shall provide each designated place of deposit with an official ballot transport box secured as provided by law.

**History:** En. Sec. 19, Ch. 196, L. 1985; amd. Sec. 83, Ch. 56, L. 2009; amd. Sec. 43, Ch. 297, L. 2009; amd. Sec. 68, Ch. 242, L. 2011.

**13-19-308. Disposition of ballots returned in person.** If a ballot is returned in person by the elector or the elector's agent or designee to a place of deposit other than the election administrator's office, the election officials on location shall:

(1) keep a log of the names of all electors for whom the officials receive ballots;

(2) deposit the unopened signature envelope in the sealed ballot transport box provided for that purpose; and

(3) securely retain all voted ballots until they are transported to the election administrator's office. The transport boxes must then be opened and the ballots handled in the same manner provided for ballots returned under 13-19-309.

**History:** En. Sec. 20, Ch. 196, L. 1985; amd. Sec. 20, Ch. 591, L. 1991; amd. Sec. 84, Ch. 56, L. 2009; amd. Sec. 44, Ch. 297, L. 2009; amd. Sec. 18, Ch. 101, L. 2011; amd. Sec. 69, Ch. 242, L. 2011.

**13-19-309. Disposition of ballots returned to election administrator's office.** Ballots returned to the election administrator's office must be handled as provided for absentee ballots in 13-13-241.

**History:** En. Sec. 21, Ch. 196, L. 1985; amd. Sec. 77, Ch. 414, L. 2003; amd. Sec. 19, Ch. 101, L. 2011; amd. Sec. 70, Ch. 242, L. 2011.

**13-19-310. Repealed.** Sec. 22, Ch. 101, L. 2011.

**History:** En. Sec. 22, Ch. 196, L. 1985; amd. Sec. 85, Ch. 56, L. 2009; amd. Sec. 45, Ch. 297, L. 2009.

**13-19-311. Repealed.** Sec. 22, Ch. 101, L. 2011.

**History:** En. Sec. 24, Ch. 196, L. 1985; amd. Sec. 21, Ch. 591, L. 1991; amd. Sec. 3, Ch. 338, L. 1997; amd. Sec. 46, Ch. 297, L. 2009.

**13-19-312. Preparation for count and counting procedure.** (1) The preparation for counting ballots must be as provided in 13-15-201.

(2) Except as provided in subsection (3), after the close of voting on election day, the counting board appointed pursuant to 13-15-112 shall:

(a) open the official ballot boxes;

(b) open each secrecy envelope, removing the voted ballot; and

(c) proceed to count the votes as provided in Title 13, chapter 15.

(3) On election day, the election administrator may begin the procedures described in subsection (2) before the polls close if the election administrator complies with the procedures described in 13-15-207(3).

**History:** En. Sec. 27, Ch. 196, L. 1985; amd. Sec. 22, Ch. 591, L. 1991; amd. Sec. 78, Ch. 414, L. 2003; amd. Sec. 47, Ch. 297, L. 2009; amd. Sec. 20, Ch. 101, L. 2011.

**13-19-313. Notice to elector — opportunity to resolve questions.** Notice to the elector and the opportunity to resolve questions must be as provided in 13-13-245, except as follows:

(1) If a mail ballot is returned as undeliverable, the election administrator shall attempt to contact the elector by the most expedient means available to determine the reason for the return and mail a confirmation notice if the elector cannot be contacted otherwise. The notice must be sent by forwardable, first-class mail with a postage-paid, return-addressed notice.



(2) If the confirmation notice is returned to the election administrator, the election administrator shall place the elector on the inactive list provided for in 13-2-220 until the elector becomes a qualified elector.

**History:** En. Sec. 25, Ch. 196, L. 1985; amd. Sec. 10, Ch. 246, L. 1997; amd. Sec. 40, Ch. 475, L. 2003; amd. Sec. 48, Ch. 297, L. 2009; amd. Sec. 21, Ch. 101, L. 2011; amd. Sec. 73, Ch. 242, L. 2011.

**13-19-314. Resolving ballots in question.** Any questions concerning the validity of a ballot or signature must be resolved in the following manner:

(1) If the election administrator is unable to determine without doubt whether a voted ballot is valid or invalid, the election administrator shall give notice to the elector as provided in 13-19-313.

(2) If, subsequent to following the procedure in 13-19-313, the election administrator is still unable to determine without doubt whether the voted ballot is valid or invalid, the ballot must be handled as a provisional ballot pursuant to 13-15-107.

**History:** En. Sec. 26, Ch. 196, L. 1985; amd. Sec. 79, Ch. 414, L. 2003; amd. Sec. 49, Ch. 297, L. 2009.

## CHAPTER 21 MONTANA ABSENT UNIFORMED SERVICES AND OVERSEAS VOTER ACT

### Part 1 General Provisions

**13-21-101. Short title.** This chapter may be cited as the “Montana Absent Uniformed Services and Overseas Voter Act”.

**History:** En. Sec. 1, Ch. 557, L. 2003; amd. Sec. 8, Ch. 139, L. 2013.

**13-21-102. Definitions.** As used in this chapter, the following definitions apply:

(1) “Covered voter” means:

(a) a uniformed-service voter or an overseas voter who is registered to vote in Montana;

(b) a uniformed-service voter whose voting residence is in Montana and who otherwise satisfies Montana’s voter eligibility requirements;

(c) an overseas voter who, before leaving the United States, was last eligible to vote in Montana and, except for a state residency requirement, otherwise satisfies Montana’s voter eligibility requirements;

(d) an overseas voter who, before leaving the United States, would have been last eligible to vote in Montana had the voter then been of voting age and, except for a state residency requirement, otherwise satisfies Montana’s voter eligibility requirements.

(2) “Dependent” means an individual recognized as a dependent by a uniformed service.

(3) “Federal postcard application” means the application prescribed under section 101(b)(2) of the Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. 1973ff(b)(2).

(4) “Federal write-in absentee ballot” means the ballot described in section 103 of the Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. 1973ff-2.

(5) “Military-overseas ballot” means:

(a) a federal write-in absentee ballot;

(b) an absentee ballot specifically prepared or distributed for use by a covered voter in accordance with this chapter; or

(c) a ballot cast by a covered voter in accordance with this chapter.

(6) “Overseas voter” means a United States citizen who resides outside the United States who would otherwise be qualified to vote in the last place in which the person was domiciled before leaving the United States.

(7) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(8) “Uniformed service” means:

(a) active and reserve components of the army, navy, air force, marine corps, or coast guard of the United States;

(b) the merchant marine, the commissioned corps of the public health service, or the commissioned corps of the national oceanic and atmospheric administration of the United States; or

(c) the national guard and state militia.

(9) “Uniformed-service voter” means an individual who is qualified to vote and is:

(a) a member of the active or reserve components of the army, navy, air force, marine corps, or coast guard of the United States who is on active duty;

(b) a member of the merchant marine, the commissioned corps of the public health service, or the commissioned corps of the national oceanic and atmospheric administration of the United States;

(c) a member of the national guard or state militia in activated status; or

(d) a spouse or dependent of a member referred to in this subsection (9).

(10) “United States”, used in the territorial sense, means the several states, the District of Columbia, Puerto Rico, the United States Virgin Islands, and any territory or insular possession subject to the jurisdiction of the United States.

(11) “Voter registration application” means the form approved by the secretary of state that an elector may use to register to vote in Montana.

**History:** En. Sec. 2, Ch. 557, L. 2003; amd. Sec. 9, Ch. 139, L. 2013.

**13-21-103. Repealed.** Sec. 23, Ch. 139, L. 2013.

**History:** En. Sec. 3, Ch. 557, L. 2003; amd. Sec. 1, Ch. 157, L. 2007.

**13-21-104. Adoption of rules on electronic registration and voting — acceptance of funds.** (1) The secretary of state shall adopt reasonable rules under the rulemaking provisions of the Montana Administrative Procedure Act to implement this chapter. The rules are binding upon election administrators.

(2) The rules must provide that:

(a) there are uniform statewide standards concerning electronic registration and voting;

(b) regular absentee ballots for a primary, general, or special election are available in a format that allows the ballot to be electronically transmitted to a covered voter as soon as the ballots are available pursuant to 13-13-205;

(c) a covered voter may, subject to 13-2-304, register and vote up to the time that the polls close on election day;

(d) a covered voter is allowed to cast a provisional ballot if there is a question about the elector’s registration information or eligibility to vote; and

(e) a ballot cast by a covered voter and transmitted electronically will remain secret, as required by Article IV, section 1, of the Montana constitution. This subsection (2)(e) does not prohibit the adoption of rules establishing administrative procedures on how electronically transmitted votes must be transcribed to an official ballot. However, the rules must be designed to protect the accuracy, integrity, and secrecy of the process.

(3) The secretary of state may apply for and receive a grant of funds from any agency or office of the United States government or from any other public or private source and may use the money for the purpose of implementing this chapter.

**History:** En. Sec. 2(2), (3), Ch. 111, L. 1991; amd. Sec. 49, Ch. 42, L. 1997; amd. Sec. 3, Ch. 80, L. 1999; amd. Sec. 22, Ch. 557, L. 2003; Sec. 13-13-278, MCA 2001; redes. 13-21-104 by Sec. 24, Ch. 557, L. 2003; amd. Sec. 1, Ch. 278, L. 2009; amd. Sec. 10, Ch. 139, L. 2013; amd. Sec. 20, Ch. 368, L. 2017.

**Compiler’s Comments**

*2017 Amendment:* Chapter 368 in (2)(b) substituted “transmitted to a covered voter” for “transmitted to a United States elector”. Amendment effective January 1, 2018.

**13-21-105. Elections covered.** (1) The voting procedures in this chapter apply to:

(a) a general, special, presidential preference, or primary election for federal office;

(b) a general, special, recall, or primary election for statewide or state legislative office or state ballot measure.

(2) Nothing in this section prohibits the application of the voting procedures in this chapter to any other elections.

**History:** En. Sec. 12, Ch. 139, L. 2013.

**13-21-106. Role of secretary of state.** (1) The secretary of state is the state official responsible for implementing the provisions of this chapter and the state's responsibilities under the Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. 1973ff, et seq.

(2) The secretary of state shall make available to covered voters information regarding voter registration procedures for covered voters and procedures for casting military-overseas ballots. The secretary of state may delegate the responsibility under this subsection only to the state office designated in compliance with section 102(b)(1) of the Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. 1973ff-1(b)(1).

(3) (a) The secretary of state shall establish an electronic transmission system that must be available at least 45 days before a covered election or any other approved method through which a covered voter may apply for and receive voter registration materials, military-overseas ballots, and other information under this chapter.

(b) If required identification is included, materials submitted through the electronic transmission system are not required to be signed.

**History:** En. Sec. 13, Ch. 139, L. 2013.

## Part 2 Absentee Voting

**13-21-201. Repealed.** Sec. 23, Ch. 139, L. 2013.

**History:** (1)En. Sec. 25, Ch. 368, L. 1969; amd. Sec. 1, Ch. 396, L. 1975; amd. Sec. 40, Ch. 334, L. 1977; Sec. 23-3006, R.C.M. 1947; (2)En. Sec. 137, Ch. 368, L. 1969; Sec. 23-3719, R.C.M. 1947; R.C.M. 1947, 23-3006(7), 23-3719(2); amd. Sec. 31, Ch. 571, L. 1979; amd. Sec. 2, Ch. 396, L. 1985; amd. Sec. 1, Ch. 302, L. 1991; amd. Sec. 1, Ch. 164, L. 1999; amd. Sec. 10, Ch. 557, L. 2003; Sec. 13-2-212, MCA 2001; redes. 13-21-201 by Sec. 24, Ch. 557, L. 2003; amd. Sec. 2, Ch. 157, L. 2007; amd. Sec. 2, Ch. 278, L. 2009; amd. Sec. 2, Ch. 190, L. 2011.

**13-21-202. Repealed.** Sec. 23, Ch. 139, L. 2013.

**History:** En. Sec. 139, Ch. 368, L. 1969; amd. Sec. 1, Ch. 250, L. 1971; R.C.M. 1947, 23-3721; amd. Sec. 33, Ch. 571, L. 1979; amd. Sec. 3, Ch. 396, L. 1985; amd. Sec. 11, Ch. 557, L. 2003; Sec. 13-2-214, MCA 2001; redes. 13-21-202 by Sec. 24, Ch. 557, L. 2003; amd. Sec. 3, Ch. 157, L. 2007.

**13-21-203. Repealed.** Sec. 23, Ch. 139, L. 2013.

**History:** En. 23-3724 by Sec. 1, Ch. 247, L. 1971; R.C.M. 1947, 23-3724; amd. Sec. 12, Ch. 557, L. 2003; Sec. 13-2-215, MCA 2001; redes. 13-21-203 by Sec. 24, Ch. 557, L. 2003; amd. Sec. 50, Ch. 297, L. 2009.

**13-21-204. Repealed.** Sec. 7, Ch. 157, L. 2007.

**History:** En. Sec. 1, Ch. 43, L. 1987; amd. Sec. 3, Ch. 302, L. 1991; amd. Sec. 3, Ch. 164, L. 1999; amd. Sec. 18, Ch. 557, L. 2003; Sec. 13-13-271, MCA 2001; redes. 13-21-204 by Sec. 24, Ch. 557, L. 2003.

**13-21-205. Repealed.** Sec. 23, Ch. 139, L. 2013.

**History:** En. Sec. 1, Ch. 43, L. 1987; amd. Sec. 19, Ch. 557, L. 2003; Sec. 13-13-272, MCA 2001; redes. 13-21-205 by Sec. 24, Ch. 557, L. 2003; amd. Sec. 4, Ch. 157, L. 2007.

**13-21-206. Counting of federal write-in absentee ballots.** (1) A federal write-in absentee ballot received by an election administrator may be counted only if:

(a) the elector's voter registration and identification information is sufficient to determine that the elector is eligible to vote in the election;

(b) the election administrator has not received a regular absentee ballot from the elector by 8 p.m. on election day; and

(c) the ballot is sent by 8 p.m. on election day and is received by 3 p.m. on the Monday following the election.

(2) Federal write-in absentee ballots received before the close of the polls on election day may not be counted until the polls have closed.

**History:** En. Sec. 1, Ch. 43, L. 1987; amd. Sec. 4, Ch. 164, L. 1999; amd. Sec. 20, Ch. 557, L. 2003; Sec. 13-13-273, MCA 2001; redes. 13-21-206 by Sec. 24, Ch. 557, L. 2003; amd. Sec. 21, Ch. 586, L. 2005; amd. Sec. 5, Ch. 157, L. 2007; amd. Sec. 21, Ch. 368, L. 2017.

### Compiler's Comments

*2017 Amendment:* Chapter 368 deleted former (1)(b) that read: "(b) the ballot is not received before regular absentee ballots have been printed pursuant to 13-13-205"; and made minor changes in style. Amendment effective January 1, 2018.

**13-21-207. Repealed.** Sec. 23, Ch. 139, L. 2013.

**History:** En. Sec. 2(1), Ch. 111, L. 1991; amd. Sec. 2, Ch. 80, L. 1999; amd. Sec. 21, Ch. 557, L. 2003; Sec. 13-13-277, MCA 2001; redes. 13-21-207 by Sec. 24, Ch. 557, L. 2003; amd. Sec. 3, Ch. 278, L. 2009.

**13-21-208 and 13-21-209 reserved.****13-21-210. Repealed.** Sec. 23, Ch. 139, L. 2013.

**History:** En. Sec. 4, Ch. 557, L. 2003; amd. Sec. 6, Ch. 157, L. 2007; amd. Sec. 2, Ch. 221, L. 2007; amd. Sec. 4, Ch. 278, L. 2009; amd. Sec. 51, Ch. 297, L. 2009; amd. Sec. 2, Ch. 111, L. 2011; amd. Sec. 4, Ch. 182, L. 2011; amd. Sec. 3, Ch. 190, L. 2011; amd. Sec. 3, Ch. 255, L. 2013.

**13-21-211. Repealed.** Sec. 76, Ch. 242, L. 2011.

**History:** En. Sec. 5, Ch. 557, L. 2003.

**13-21-212. Mailing ballots to covered voter.** Ballots mailed to a covered voter must be handled as prescribed in 13-13-214, except that both the envelope in which a ballot is mailed to the covered voter and the signature envelope for the ballot must have printed across the face the information and graphics and be of the color prescribed by the secretary of state consistent with the regulations established by the federal election commission, the U.S. postal service, or other federal agency.

**History:** En. Sec. 6, Ch. 557, L. 2003; amd. Sec. 58, Ch. 336, L. 2013; amd. Sec. 8, Ch. 55, L. 2015.

**13-21-213. Report on absentee ballots.** (1) Within 60 days after the date of each regularly scheduled federal general election, each county election administrator shall report to the secretary of state:

(a) the number of absentee ballots transmitted by the election administrator to covered voters for the election;

(b) the number of absentee ballots cast and returned to the election administrator for the election from covered voters; and

(c) the method of transmission and the method of submission of each absentee ballot in subsections (1)(a) and (1)(b).

(2) The secretary of state may prescribe a standardized format for the report.

(3) Within 90 days after the date of each regularly scheduled federal general election, the secretary of state shall report to the federal election assistance commission, established pursuant to the Help America Vote Act of 2002, Public Law 107-252, or its successor a statewide report containing the information provided under subsection (1) and any other information required by the federal election assistance commission. The report must be made in the format prescribed by the federal election assistance commission.

**History:** En. Sec. 7, Ch. 557, L. 2003; amd. Sec. 11, Ch. 139, L. 2013.

**13-21-214 through 13-21-219 reserved.**

**13-21-220. Covered voter's registration address.** In registering to vote, a covered voter who is eligible to vote in Montana shall use and must be assigned to the voting precinct of the address of the last place of residence of the voter in Montana. If that address is no longer a recognized residential address, the voter must be assigned an address for voting purposes.

**History:** En. Sec. 14, Ch. 139, L. 2013.

**13-21-221. Methods of registering to vote.** (1) To apply to register to vote, in addition to any other approved method, a covered voter may use a federal postcard application or the application's electronic equivalent.

(2) A covered voter may use the declaration accompanying a federal write-in absentee ballot to apply to register to vote simultaneously with the submission of the federal write-in absentee ballot.

(3) The secretary of state shall ensure that the electronic transmission system described in 13-21-106(3) is capable of accepting both a federal postcard application and any other approved electronic registration application sent to the appropriate election official. The voter may use the electronic transmission system when available or any other approved method to register to vote.

**History:** En. Sec. 15, Ch. 139, L. 2013.

**13-21-222. Methods of applying for military-overseas ballot.** (1) A covered voter who is registered to vote in this state may apply for a military-overseas ballot:

(a) using either the regular absentee ballot application in use in the voter's jurisdiction under 13-13-212 or the federal postcard application or the application's electronic equivalent;

(b) by making a written request, which must include the voter's birth date and signature; or

(c) by making an electronic request that includes the voter's birth date and affirmation of the voter's eligibility to vote under the Montana Absent Uniformed Services and Overseas Voter Act.

(2) A person who holds a power of attorney from a uniformed-service voter may apply for an absentee ballot for that election on behalf of the uniformed-service voter. The applicant shall provide a copy of the power of attorney authorizing the request for an absentee ballot along with the application.

(3) A covered voter who is not registered to vote in Montana may use a federal postcard application or the application's electronic equivalent to apply simultaneously to register to vote under 13-21-221 and for a military-overseas ballot.

(4) The secretary of state shall ensure that the electronic transmission system described in 13-21-106(3) is capable of accepting the submission of a federal postcard application. The voter may use the electronic transmission system or any other approved method to apply for a military-overseas ballot.

(5) A covered voter may use the declaration accompanying a federal write-in absentee ballot as an application for a military-overseas ballot simultaneously with the submission of the federal write-in absentee ballot if the declaration is received by the appropriate election official within the time period required by this chapter.

(6) An application from a covered voter who applies for a ballot under this section is considered a request for an absentee ballot for all elections held through December 31 of the year following the calendar year of application or for a shorter period if requested by the covered voter.

(7) To receive the benefits of this chapter, a covered voter shall inform the appropriate election official that the voter is a covered voter. Methods of informing the appropriate election official that a voter is a covered voter include:

(a) the use of a federal postcard application or federal write-in absentee ballot;

(b) the use of an overseas address on an approved voter registration application or ballot application; and

(c) the inclusion on an approved voter registration application or ballot application or other information sufficient to identify the voter as a covered voter.

(8) This section does not preclude a covered voter from voting under Title 13, chapter 13, part 2.

**History:** En. Sec. 16, Ch. 139, L. 2013.

**13-21-223. Timeliness of application for military-overseas ballot.** Except as provided in 13-21-226, an application for a military-overseas ballot is timely if received by 8 p.m. on election day.

**History:** En. Sec. 17, Ch. 139, L. 2013.

**13-21-224. Transmission of unvoted ballots.** (1) For an election described in 13-21-105, not later than 45 days before the election or, if the 45th day before the election falls on a weekend or holiday, not later than the business day preceding the 45th day, the election official in each jurisdiction charged with distributing a ballot and balloting materials shall transmit a ballot and balloting materials to all covered voters who by that date submit a valid military-overseas ballot application.

(2) A covered voter who requests that a ballot and balloting materials be sent to the voter by electronic transmission may choose facsimile transmission or electronic mail or online delivery. The election official in each jurisdiction charged with distributing a ballot and balloting materials shall transmit the ballot and balloting materials to the voter using the means of transmission chosen by the voter.

**History:** En. Sec. 18, Ch. 139, L. 2013.

**13-21-225. Use of federal write-in absentee ballot.** A covered voter may use a federal write-in absentee ballot to vote for all offices and ballot measures in an election described in 13-21-105.

**History:** En. Sec. 19, Ch. 139, L. 2013.



**13-21-226. Receipt of voted ballot.** (1) A valid military-overseas ballot must be counted if it is received by 8 p.m. on election day or by 5 p.m. on the day after election day if transmitted electronically by 8 p.m. on election day.

(2) Voted ballots transmitted electronically by 8 p.m. on election day and received by 5 p.m. on the day after election day must be counted at the same time as provisional ballots are counted.

**History:** En. Sec. 20, Ch. 139, L. 2013.

**13-21-227. Confirmation of receipt of application and voted ballot.** The secretary of state, in coordination with local election officials, shall implement an electronic free-access system by which a covered voter may determine by telephone, electronic mail, or internet whether:

(1) the voter's federal postcard application or other registration or military-overseas ballot application has been received and accepted; and

(2) the voter's military-overseas ballot has been received and the current status of the ballot.

**History:** En. Sec. 21, Ch. 139, L. 2013.

**13-21-228. Use of voter's e-mail address.** (1) A local election official shall request an e-mail address from each covered voter who registers to vote after January 1, 2014.

(2) An e-mail address provided by a covered voter may not be made available to the public or any individual or organization other than a state or local election official and is confidential information as defined in 2-6-1002.

(3) The address may be used only for official communication with the voter about the voting process, including transmitting military-overseas ballots and election materials if the voter has requested electronic transmission and verifying the voter's mailing address and physical location.

**History:** En. Sec. 22, Ch. 139, L. 2013; amd. Sec. 39, Ch. 348, L. 2015.

## CHAPTER 22 YOUTH VOTING ACT

### Part 1 General Provisions

**13-22-101. Short title.** This chapter may be cited as the "Youth Voting Act".

**History:** En. Sec. 1, Ch. 348, L. 1991.

**13-22-102. Purpose and intent.** The intent of the legislature is to establish a nonpartisan youth voting program that will:

(1) provide the youth of Montana with practical experience in the democratic process;

(2) increase the likelihood that Montana's youth will participate in the process as adult voters and encourage the participation of more parents in elections;

(3) not benefit any elected official, candidate for elective office, political party, campaign for or against any ballot issue, or any proposed ballot issue attempting to qualify for placement on a ballot; and

(4) be entirely funded through private donations.

**History:** En. Sec. 2, Ch. 348, L. 1991; amd. Sec. 4, Ch. 481, L. 2007.

**13-22-103. Youth voting program established — program coordination — school participation.** (1) There is a youth voting program for minors to provide young Montanans direct experience in the voting process.

(2) The secretary of state, in consultation with the superintendent of public instruction, shall solicit county election administrators and schools throughout the state to participate in the youth voting program. The secretary of state and the superintendent of public instruction shall confer with the participating county election administrators and county superintendents of schools and, from among interested schools, shall facilitate the participation of as many schools in the program as available funds and other circumstances allow. A designated school may, at any time, decline to participate by notifying the secretary of state in writing.

**History:** En. Sec. 3, Ch. 348, L. 1991.

**13-22-104. Program development.** (1) The secretary of state and the superintendent of public instruction shall compile a program and establish a process whereby:

(a) students are instructed on the electoral process, the importance of voting, and how to mark and cast a ballot;

(b) students are educated about current issues in a manner appropriate for each grade level involved;

(c) students cast facsimile or mock ballots at a location designated as a youth voting location or while accompanying an eligible voter to a polling place during regular elections; and

(d) ballots cast by students at elections are counted and the results are made available to all participating schools.

(2) The program must be presented to participating schools in a nonpartisan, nonbiased, and informative manner.

**History:** En. Sec. 4, Ch. 348, L. 1991; amd. Sec. 1, Ch. 142, L. 1997.

**13-22-105. Responsibilities of participating schools.** Participating schools shall, in a timely manner, provide to students and their parents or guardians instruction and guidance on how to participate in the program, youth voter registration procedures and deadlines, a list of candidates and issues, and polling and balloting procedures.

**History:** En. Sec. 5, Ch. 348, L. 1991.

**13-22-106. Polling place procedures.** (1) The secretary of state and the superintendent of public instruction shall work with participating schools or county election officials, as necessary, to provide that:

(a) facsimile or mock ballots are distributed to locations designated as youth voting locations;

(b) participating students accompanied by an eligible voter are allowed to cast ballots in the youth election at regular polling places; and

(c) student ballots are counted and the results are announced to the participating schools.

(2) The provisions of this section must be carried out in a manner that will not interfere with the normal voting process or established polling place procedures.

**History:** En. Sec. 6, Ch. 348, L. 1991; amd. Sec. 2, Ch. 142, L. 1997.

**13-22-107. Funding.** (1) Except for compensation for time spent by employees of the secretary of state and the superintendent of public instruction, public money may not be used to support or fund the youth voting program established in this chapter.

(2) A nonprofit corporation may be formed subject to the provisions of Title 35, chapter 2, to solicit donations from private sources. Money solicited under this subsection must be used only for the youth voting program.

**History:** En. Sec. 7, Ch. 348, L. 1991; amd. Sec. 41, Ch. 475, L. 2003.

**13-22-108. Reports.** (1) Each biennium, the secretary of state shall provide, upon request, a report to the legislature outlining the program's effectiveness in achieving its objectives.

(2) Participating schools and agencies shall provide to the secretary of state information regarding the youth voting program for the secretary of state's report to the legislature.

**History:** En. Sec. 8, Ch. 348, L. 1991.

## CHAPTER 36 CONTESTS

### Part 1 General Provisions

**13-36-101. Grounds for contest of nomination or election to public office.** An elector may contest the right of any person to any nomination or election to public office for which the elector has the right to vote if the elector believes that:

(1) a deliberate, serious, and material violation of any provision of the law relating to nominations or elections has occurred;

(2) the person was not, at the time of the election, eligible to be a candidate for the office;

(3) votes were cast illegally or were counted or canvassed in an erroneous or fraudulent manner.

**History:** En. Sec. 45, Init. Act, Nov. 1912; re-en. Sec. 10810, R.C.M. 1921; re-en. Sec. 10810, R.C.M. 1935; Sec. 94-1464, R.C.M. 1947; redes. 23-4763 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 59, Ch. 365, L. 1977; R.C.M. 1947, 23-4763; amd. Sec. 224, Ch. 571, L. 1979; amd. Sec. 102, Ch. 56, L. 2009.

**13-36-102. Time for commencing contest.** (1) Five days or less after a candidate has been certified as nominated, a person wishing to contest the nomination to any public office shall give notice in writing to the candidate whose nomination the person intends to contest, briefly stating the cause for the contest. The contestant shall make application to the district court in the county where the contest is to be had. The judge shall then set the time for the hearing. The contestant shall serve notice 3 days before the hearing is scheduled. The notice must state the time and place of the hearing.

(2) Any action to contest the right of a candidate to be declared elected to an office or to annul and set aside the election or to remove from or deprive any person of an office of which the person is the incumbent for any offense mentioned in this title must, unless a different time is stated, be commenced within 1 year after the day of election at which the offense was committed.

**History:** (1)En. Sec. 71, Ch. 368, L. 1969; amd. Sec. 23, Ch. 365, L. 1977; Sec. 23-3316, R.C.M. 1947; (2) En. Sec. 40, Init. Act, Nov. 1912; re-en. Sec. 10805, R.C.M. 1921; re-en. Sec. 10805, R.C.M. 1935; Sec. 94-1459, R.C.M. 1947; redes. 23-4759 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 57, Ch. 365, L. 1977; Sec. 23-4759, R.C.M. 1947; R.C.M. 1947, 23-3316(1) thru (3), 23-4759; amd. Sec. 225, Ch. 571, L. 1979; amd. Sec. 58, Ch. 575, L. 1981; amd. Sec. 103, Ch. 56, L. 2009.

**13-36-103. Court having jurisdiction of proceedings.** An application for filing a statement, payment of a claim, or correction of an error or false recital in a filed statement or an action or proceeding to annul and set aside the election of any person declared elected to an office or to remove or deprive any person of the person's office for an offense mentioned in this title or any petition to excuse any person or candidate in accordance with the power of the court to excuse, as provided in 13-36-209, must be made or filed in the district court of the county in which the certificate, declaration, or acceptance of the person's nomination as a candidate for the office to which the person is declared nominated or elected is filed or in which the incumbent resides.

**History:** En. Sec. 41, Init. Act, Nov. 1912; re-en. Sec. 10806, R.C.M. 1921; re-en. Sec. 10806, R.C.M. 1935; Sec. 94-1460, R.C.M. 1947; amd. and redes. 23-4760 by Sec. 25, Ch. 513, L. 1973; amd. Sec. 58, Ch. 365, L. 1977; R.C.M. 1947, 23-4760; amd. Sec. 226, Ch. 571, L. 1979; amd. Sec. 104, Ch. 56, L. 2009.

**13-36-104. Nomination contests.** In the case of nomination contests, the judge of the district court shall hear and determine the case and make all necessary orders for the trial of the case and carrying the judgment into effect. The order of the judge must express the will of a majority of the legal voters of the political party, as indicated by their votes, disregarding technicalities or errors in spelling. Each party is entitled to subpoenas. The registrar shall issue a certificate to the person declared nominated by the court. The certificate is conclusive evidence of the right of the person to hold the nomination.

**History:** En. Sec. 71, Ch. 368, L. 1969; amd. Sec. 23, Ch. 365, L. 1977; R.C.M. 1947, 23-3316(4) thru (6); amd. Sec. 105, Ch. 56, L. 2009.

## Part 2 Procedure

**13-36-201. Contents of contest petition.** Any petition contesting the right of any person to a nomination or election must set forth the name of every person whose election is contested and the grounds of the contest. The petition may not be amended unless the amendment is authorized by a court.

**History:** En. Sec. 48, Init. Act, Nov. 1912; re-en. Sec. 10813, R.C.M. 1921; re-en. Sec. 10813, R.C.M. 1935; Sec. 94-1467, R.C.M. 1947; redes. 23-4766 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 23-4766(part); amd. Sec. 106, Ch. 56, L. 2009.

**13-36-202. Reception of illegal votes — allegations and evidence.** When the reception of illegal votes is alleged as a cause of contest, it is sufficient to state generally that in one or more specified voting precincts illegal votes were given to the candidate whose nomination or election is contested that, if taken from the candidate, will reduce the number of the candidate's legal votes below the number of legal votes given to some other candidate for the same office. Testimony may not be received of any illegal votes unless the party contesting the election delivers to the opposite party, at least 3 days before trial, a written list of the number of illegal votes and by whom given that the party intends to prove at trial. This provision may not

prevent the contestant from offering evidence of illegal votes not included in the statement if the contestant did not know and by reasonable diligence was unable to learn of the additional illegal votes and by whom they were given before delivering the written list.

**History:** En. Sec. 47, Init. Act, Nov. 1912; re-en. Sec. 10812, R.C.M. 1921; re-en. Sec. 10812, R.C.M. 1935; Sec. 94-1466, R.C.M. 1947; redes. 23-4765 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 23-4765; amd. Sec. 227, Ch. 571, L. 1979; amd. Sec. 107, Ch. 56, L. 2009.

**13-36-203. Form of complaint.** (1) A petition or complaint filed under the provisions of this chapter is sufficient if it is in substantially the following form:

In the District Court of the

.... Judicial District,

for the County of ...., State of Montana.

A B (or A B and C D), Contestants,

vs.

E F, Contestee.

The petition of the contestant (or contestants) named above alleges:

That an election was held (in the state, district, county, or city of ....), on the .... day of ...., 20..., for the (nomination of a candidate for) (or election of a) (state the office).

That .... and .... were candidates at the election and the board of canvassers has returned .... as being nominated (or elected) at the election.

That contestant A B voted (or had a right to vote, as the case may be) at the election (or claims to have had a right to be returned as the nominee or officer elected or nominated at the election or was a candidate at the election, as the case may be) and that contestant C D (here state in a similar manner the right of each contestant).

The contestant (or contestants) further allege (here state the facts and grounds on which the contestants rely).

The contestants ask that it be determined by the court that.... was not nominated (or elected) and that the election was void or that A B or C D, as the case may be, was nominated (or elected) and ask for other relief that the court may find appropriate.

(2) The complaint must be verified by the affidavit of one of the petitioners in the manner required by law for the verification of complaints in civil cases.

**History:** En. Sec. 53, Init. Act, Nov. 1912; re-en. Sec. 10818, R.C.M. 1921; re-en. Sec. 10818, R.C.M. 1935; Sec. 94-1472, R.C.M. 1947; redes. 23-4771 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 23-4771; amd. Sec. 23, Ch. 51, L. 1999.

**13-36-204. Bond required.** Before any proceeding on the petition, the petitioner shall give bond to the state in a sum that the court may order, not exceeding \$2,000, with not less than two sureties, who shall justify in the manner required of sureties on bail bonds, conditioned to pay all costs, disbursements, and attorney fees that may be awarded against the petitioner if the petitioner does not prevail.

**History:** En. Sec. 48, Init. Act, Nov. 1912; re-en. Sec. 10813, R.C.M. 1921; re-en. Sec. 10813, R.C.M. 1935; Sec. 94-1467, R.C.M. 1947; redes. 23-4766 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 23-4766(part); amd. Sec. 108, Ch. 56, L. 2009.

**13-36-205. Recovery of costs.** In any contest, the prevailing party may recover the party's costs, disbursements, and reasonable attorney fees. Costs, disbursements, and attorney fees in all cases must be in the discretion of the court. If judgment is rendered against the petitioner, it must also be rendered against the sureties on the bond.

**History:** En. Sec. 48, Init. Act, Nov. 1912; re-en. Sec. 10813, R.C.M. 1921; re-en. Sec. 10813, R.C.M. 1935; Sec. 94-1467, R.C.M. 1947; redes. 23-4766 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 23-4766(part); amd. Sec. 228, Ch. 571, L. 1979; amd. Sec. 109, Ch. 56, L. 2009.

**13-36-206. Notice of filing — prompt hearing.** On the filing of a petition under this part, the clerk shall immediately notify the judge of the court and issue a citation to the person whose nomination or office is contested, citing the person to appear and answer not less than 3 or more than 7 days after the date of filing the petition. The court shall hear the cause, and the contest must take precedence over all other business on the court docket and must be tried and disposed of with all convenient dispatch. The court is always considered to be in session for the trial of contest cases.

**History:** En. Sec. 48, Init. Act, Nov. 1912; re-en. Sec. 10813, R.C.M. 1921; re-en. Sec. 10813, R.C.M. 1935; Sec. 94-1467, R.C.M. 1947; redes. 23-4766 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 23-4766(part); amd. Sec. 110, Ch. 56, L. 2009.

**13-36-207. Hearing of contest.** The petitioner (contestant) and the contestee may appear and produce evidence at the hearing, but no person other than the petitioner and contestee may be made a party to the proceedings on the petition and no person other than the parties and their attorneys may be heard except by order of the court. If more than one petition is pending or the election of more than one person is contested, the court may in its discretion order the cases to be heard together and may apportion the costs, disbursements, and attorney fees between the parties and shall finally determine all questions of law and fact, except that the judge may impanel a jury to decide on questions of fact. In the case of nominations or elections other than for federal congressional offices, the court shall immediately certify its decision to the governing body or official issuing certificates of nomination or election and the governing body or official shall issue certificates of nomination or election to the person or persons entitled to the certificates by the court's decision. If judgment of ouster against a defendant is rendered, the nomination or office must be declared vacant by the judgment, except as provided in 13-36-212, and must be filled by a new election or by appointment as may be provided by law regarding vacancies in the nomination or office.

**History:** En. Sec. 49, Init. Act, Nov. 1912; re-en. Sec. 10814, R.C.M. 1921; re-en. Sec. 10814, R.C.M. 1935; Sec. 94-1468, R.C.M. 1947; redes. 23-4767 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 60, Ch. 365, L. 1977; R.C.M. 1947, 23-4767; amd. Sec. 229, Ch. 571, L. 1979; amd. Sec. 111, Ch. 56, L. 2009.

**13-36-208. Advancement of cases — dismissal — privileges of witnesses.** Proceedings under this title must be advanced on the docket upon request of either party for speedy trial, but the court may postpone or continue the trial if necessary, and in case of a continuance or postponement, the court may impose costs in its discretion as a condition of the continuance or postponement. A petition may not be dismissed without the consent of the county attorney unless the petition is dismissed by the court. A person may not be excused from testifying or producing papers or documents on the ground that the person's testimony or the production of papers or documents will tend to incriminate the person. However, an admission, evidence, or paper made or advanced or produced by the person or any evidence that is the direct result of the evidence or information that the person may have given may not be offered or used against the person in any civil or criminal prosecution except in a prosecution for perjury committed in the testimony.

**History:** En. Sec. 52, Init. Act, Nov. 1912; re-en. Sec. 10817, R.C.M. 1921; re-en. Sec. 10817, R.C.M. 1935; Sec. 94-1471, R.C.M. 1947; redes. 23-4770 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 61, Ch. 365, L. 1977; R.C.M. 1947, 23-4770; amd. Sec. 112, Ch. 56, L. 2009.

**13-36-209. Forfeiture of nomination or office for violation of law — when inappropriate.** Upon the trial of any action or proceeding under the provisions of this title to contest the right of any person to be declared nominated or elected to any office or to annul or set aside a nomination or election or to remove a person from office, the nomination or election of the candidate is not by reason of the offense or omission complained of void and the candidate may not be removed from or deprived of office if under the circumstances it seems to the court to be unjust that the candidate forfeit a nomination or office or be deprived of any office of which the candidate is the incumbent. The decision of the court must be based upon the following:

(1) it appears from the evidence that the offense complained of was not committed by the candidate or with the candidate's knowledge or consent or was committed without the candidate's sanction or connivance and that all reasonable means for preventing the commission of the offense at the election were taken by and on behalf of the candidate;

(2) the offense or offenses complained of were trivial, unimportant, and limited in character and in all other respects the candidate's participation in the election was free from offenses or illegal acts; or

(3) any act or omission of the candidate arose from inadvertence or from accidental miscalculation or from some other reasonable cause of a like nature and in any case did not arise from any lack of good faith.

**History:** En. Sec. 38, Init. Act, Nov. 1912; re-en. Sec. 10803, R.C.M. 1921; re-en. Sec. 10803, R.C.M. 1935; Sec. 94-1457, R.C.M. 1947; redes. 23-4757 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 55, Ch. 365, L. 1977; R.C.M. 1947, 23-4757; amd. Sec. 113, Ch. 56, L. 2009.



**13-36-210. Punishment.** If, upon the trial of any action or proceeding under the provisions of this title to contest the right of any person to be declared to be nominated to an office or elected to an office or to annul and set aside the election or to remove any person from office, it appears that the person was guilty of any corrupt practice, illegal act, or undue influence in or about the nomination or election, the person must be punished by being deprived of the nomination or office and the vacancy must be filled in the manner provided by law. The only exceptions to this judgment are those provided in 13-36-209. The judgment does not prevent the candidate or officer from being proceeded against by indictment or criminal information for any act or acts.

**History:** En. Sec. 39, Init. Act, Nov. 1912; re-en. Sec. 10804, R.C.M. 1921; re-en. Sec. 10804, R.C.M. 1935; Sec. 94-1458, R.C.M. 1947; red. 23-4758 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 56, Ch. 365, L. 1977; R.C.M. 1947, 23-4758; amd. Sec. 114, Ch. 56, L. 2009.

**13-36-211. When nomination or election not to be vacated.** The ground of contest specified in 13-36-101(3) may not be construed to authorize a nomination or election to be set aside on account of illegal votes unless it appears:

(1) that the candidate or nominee whose right is contested had knowledge of or connived in the illegal votes; or

(2) that the number of illegal votes given to the person whose right to the nomination or office is contested, if taken from the person, would reduce the number of legal votes for the person below the number of votes given to some other person for the same nomination or office, after deducting the illegal votes that may be shown to have been given to the other person.

**History:** En. Sec. 46, Init. Act, Nov. 1912; re-en. Sec. 10811, R.C.M. 1921; re-en. Sec. 10811, R.C.M. 1935; Sec. 94-1465, R.C.M. 1947; red. 23-4764 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 23-4764; amd. Sec. 115, Ch. 56, L. 2009.

**13-36-212. Declaration of result of election after rejection of illegal votes.** If, in any case of a contest on the ground of illegal votes, it appears that a person other than the one returned has the highest number of legal votes after the illegal votes have been eliminated, the court must declare such person nominated or elected, as the case may be.

**History:** En. Sec. 44, Init. Act, Nov. 1912; re-en. Sec. 10809, R.C.M. 1921; re-en. Sec. 10809, R.C.M. 1935; Sec. 94-1463, R.C.M. 1947; red. 23-4762 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 23-4762.

## TITLE 15

### TAXATION

#### CHAPTER 1

#### TAX ADMINISTRATION

##### Part 1

##### General Provisions

**15-1-101. Definitions.** (1) Except as otherwise specifically provided, when terms mentioned in this section are used in connection with taxation, they are defined in the following manner:

(a) The term “agricultural” refers to:

(i) the production of food, feed, and fiber commodities, livestock and poultry, bees, biological control insects, fruits and vegetables, and sod, ornamental, nursery, and horticultural crops that are raised, grown, or produced for commercial purposes; and

(ii) the raising of domestic animals and wildlife in domestication or a captive environment.

(b) The term “assessed value” means the value of property as defined in 15-8-111.

(c) The term “average wholesale value” means the value to a dealer prior to reconditioning and the profit margin shown in national appraisal guides and manuals or the valuation schedules of the department.

(d) (i) The term “commercial”, when used to describe property, means property used or owned by a business, a trade, or a corporation as defined in 35-2-114 or used for the production

of income, including industrial property defined in subsection (1)(j), and excluding property described in subsection (1)(d)(ii).

(ii) The following types of property are not commercial:

(A) agricultural lands;

(B) timberlands and forest lands;

(C) single-family residences and ancillary improvements and improvements necessary to the function of a bona fide farm, ranch, or stock operation;

(D) mobile homes and manufactured homes used exclusively as a residence except when held by a distributor or dealer as stock in trade; and

(E) all property described in 15-6-135.

(e) The term “comparable property” means property that:

(i) has similar use, function, and utility;

(ii) is influenced by the same set of economic trends and physical, governmental, and social factors; and

(iii) has the potential of a similar highest and best use.

(f) The term “credit” means solvent debts, secured or unsecured, owing to a person.

(g) (i) “Department”, except as provided in subsection (1)(g)(ii), means the department of revenue provided for in 2-15-1301.

(ii) In chapters 70 and 71, department means the department of transportation provided for in 2-15-2501.

(h) The terms “gas” and “natural gas” are synonymous and mean gas as defined in 82-1-111(2). The terms include all natural gases and all other fluid hydrocarbons, including methane gas or any other natural gas found in any coal formation.

(i) The term “improvements” includes all buildings, structures, fences, and improvements situated upon, erected upon, or affixed to land. When the department determines that the permanency of location of a mobile home, manufactured home, or housetrailer has been established, the mobile home, manufactured home, or housetrailer is presumed to be an improvement to real property. A mobile home, manufactured home, or housetrailer may be determined to be permanently located only when it is attached to a foundation that cannot feasibly be relocated and only when the wheels are removed.

(j) “Industrial property” for purposes of this section includes all land used for industrial purposes, improvements, and buildings used to house the industrial process and all storage facilities. Under this section, industrial property does not include personal property classified and taxed under 15-6-135 or 15-6-138.

(k) The term “leasehold improvements” means improvements to mobile homes and mobile homes located on land owned by another person. This property is assessed under the appropriate classification, and the taxes are due and payable in two payments as provided in 15-24-202. Delinquent taxes on leasehold improvements are a lien only on the leasehold improvements.

(l) The term “livestock” means cattle, sheep, swine, goats, horses, mules, asses, llamas, alpacas, bison, ostriches, rheas, emus, and domestic ungulates.

(m) (i) The term “manufactured home” means a residential dwelling built in a factory in accordance with the United States department of housing and urban development code and the federal Manufactured Home Construction and Safety Standards.

(ii) A manufactured home does not include a mobile home, as defined in subsection (1)(o), or a mobile home or housetrailer constructed before the federal Manufactured Home Construction and Safety Standards went into effect on June 15, 1976.

(n) The term “market value” means the value of property as provided in 15-8-111.

(o) The term “mobile home” means forms of housing known as “trailers”, “housetrailer”, or “trailer coaches” exceeding 8 feet in width or 45 feet in length, designed to be moved from one place to another by an independent power connected to them, or any trailer, housetrailer, or trailer coach up to 8 feet in width or 45 feet in length used as a principal residence.

(p) The term “personal property” includes everything that is the subject of ownership but that is not included within the meaning of the terms “real estate” and “improvements” and “intangible personal property” as that term is defined in 15-6-218.

(q) The term “poultry” includes all chickens, turkeys, geese, ducks, and other birds raised in domestication to produce food or feathers.

(r) The term “property” includes money, credits, bonds, stocks, franchises, and all other matters and things, real, personal, and mixed, capable of private ownership. This definition may not be construed to authorize the taxation of the stocks of a company or corporation when the property of the company or corporation represented by the stocks is within the state and has been taxed.

(s) The term “real estate” includes:

- (i) the possession of, claim to, ownership of, or right to the possession of land;
- (ii) all mines, minerals, and quarries in and under the land subject to the provisions of 15-23-501 and Title 15, chapter 23, part 8;
- (iii) all timber belonging to individuals or corporations growing or being on the lands of the United States; and
- (iv) all rights and privileges appertaining to mines, minerals, quarries, and timber.

(t) “Recreational” means hunting, fishing, swimming, boating, waterskiing, camping, biking, hiking, and winter sports, including but not limited to skiing, skating, and snowmobiling.

(u) “Research and development firm” means an entity incorporated under the laws of this state or a foreign corporation authorized to do business in this state whose principal purpose is to engage in theoretical analysis, exploration, and experimentation and the extension of investigative findings and theories of a scientific and technical nature into practical application for experimental and demonstration purposes, including the experimental production and testing of models, devices, equipment, materials, and processes.

(v) The term “stock in trade” means any mobile home, manufactured home, or housetrailer that is listed by the dealer as inventory and that is offered for sale, is unoccupied, and is not located on a permanent foundation. Inventory does not have to be located at the business location of a dealer or a distributor.

(w) The term “taxable value” means the market value multiplied by the classification tax rate as provided for in Title 15, chapter 6, part 1.

(x) The term “taxes” in relation to property under 15-6-133, 15-6-134, or 15-6-143 is the amount owed by a taxpayer that is the market value multiplied by the tax rate multiplied by the applicable mills, exclusive of local fees and assessments.

(2) The phrase “municipal corporation” or “municipality” or “taxing unit” includes a county, city, incorporated town, township, school district, irrigation district, or drainage district or a person, persons, or organized body authorized by law to establish tax levies for the purpose of raising public revenue.

(3) The term “state board” or “board” when used without other qualification means the state tax appeal board.

**History:** (1)En. Sec. 4, p. 74, L. 1891; re-en. Sec. 3680, Pol. C. 1895; re-en. Sec. 2501, Rev. C. 1907; re-en. Sec. 1996, R.C.M. 1921; Cal. Pol. C. Sec. 3617; re-en. Sec. 1996, R.C.M. 1935; amd. Sec. 1, Ch. 99, L. 1939; amd. Sec. 1, Ch. 296, L. 1967; amd. Sec. 1, Ch. 450, L. 1975; amd. Sec. 1, Ch. 498, L. 1977; amd. Sec. 48, Ch. 566, L. 1977; Sec. 84-101, R.C.M. 1947; (2), (3)En. Sec. 4, Ch. 3, L. 1923; re-en. Sec. 2122.4, R.C.M. 1935; amd. Sec. 48, Ch. 405, L. 1973; amd. Sec. 3, Ch. 52, L. 1977; Sec. 84-704, R.C.M. 1947; R.C.M. 1947, 84-101, 84-704; amd. Sec. 1, Ch. 39, L. 1979; amd. Sec. 14, Ch. 693, L. 1979; amd. Sec. 1, Ch. 578, L. 1981; amd. Sec. 2, Ch. 488, L. 1983; amd. Sec. 1, Ch. 632, L. 1983; amd. Sec. 1, Ch. 20, L. 1985; amd. Sec. 1, Ch. 570, L. 1985; amd. Sec. 1, Ch. 743, L. 1985; amd. Sec. 35, Ch. 370, L. 1987; amd. Sec. 1, Ch. 613, L. 1987; amd. Sec. 2, Ch. 659, L. 1987; amd. Sec. 1, Ch. 10, Sp. L. June 1989; amd. Sec. 169, Ch. 411, L. 1991; amd. Sec. 6, Ch. 680, L. 1991; amd. Sec. 1, Ch. 705, L. 1991; amd. Sec. 8, Ch. 783, L. 1991; amd. Sec. 4, Ch. 379, L. 1993; amd. Sec. 1, Ch. 417, L. 1993; amd. Sec. 32, Ch. 27, Sp. L. November 1993; amd. Sec. 1, Ch. 206, L. 1995; amd. Sec. 1, Ch. 561, L. 1995; amd. Sec. 1, Ch. 49, L. 1997; amd. Sec. 6, Ch. 200, L. 1997; amd. Sec. 10, Ch. 285, L. 1999; amd. Sec. 2, Ch. 583, L. 1999; amd. Sec. 1, Ch. 577, L. 2003; amd. Sec. 3, Ch. 542, L. 2005; amd. Sec. 9, Ch. 596, L. 2005; amd. Sec. 4, Ch. 361, L. 2015.

**15-1-111. Repealed.** Secs. 66(2), 68(2), Ch. 422, L. 1997.

**History:** En. Sec. 9, Ch. 10, Sp. L. June 1989; amd. Sec. 2, Ch. 773, L. 1991; amd. Sec. 1, Ch. 499, L. 1993; amd. Sec. 33, Ch. 27, Sp. L. November 1993; amd. Sec. 9, Ch. 570, L. 1995; amd. Sec. 1, Ch. 13, Sp. L. August 2002.

**15-1-112. Repealed.** Sec. 1, Ch. 116, L. 2011.

**History:** En. Sec. 2, Ch. 570, L. 1995; amd. Sec. 25, Ch. 51, L. 1999; amd. Sec. 1, Ch. 245, L. 1999; amd. Sec. 6, Ch. 571, L. 2001; amd. Sec. 2, Ch. 13, Sp. L. August 2002.

**15-1-123. Reimbursement for class eight rate reduction and exemption — distribution — appropriations.** (1) For the tax rate reductions in 15-6-138(3), the increased exemption amount in 15-6-138(4), the effective tax rate reductions on property under 15-6-145

because of the rate reductions required by the amendments of 15-6-138 in section 2, Chapter 411, Laws of 2011, and section 2, Chapter 396, Laws of 2013, and the effective tax rate reductions on property under 15-6-145 because of the increased exemption amount required by the amendment of 15-6-138 in section 2, Chapter 396, Laws of 2013, the department shall reimburse each local government, as defined in 15-1-121(5), each school district, the county retirement fund under 20-9-501, the countywide school transportation reimbursement under 20-10-146, each tax increment financing district, and the 6-mill university levy for the purposes of 15-10-108 the difference between property tax collections under 15-6-138 as amended by section 2, Chapter 411, Laws of 2011, and section 2, Chapter 396, Laws of 2013, and under 15-6-145 and the property tax revenue that would have been collected under 15-6-138 and 15-6-145 if 15-6-138 had not been amended by section 2, Chapter 411, Laws of 2011, and section 2, Chapter 396, Laws of 2013. The difference is the annual reimbursable amount for each local government, each school district, each tax increment financing district, and the 6-mill levy for the support of the Montana university system under 15-10-108.

(2) The department shall distribute the reimbursements calculated in subsection (1) to local governments with the entitlement share payments under 15-1-121(7). For fiscal year 2018 and thereafter, the growth rate applied to the reimbursement is one-half of the average rate of inflation for the prior 3 years.

(3) The office of public instruction shall distribute the reimbursements calculated in subsection (1) to school districts with the block grants pursuant to 20-9-630. School district reimbursements for subsequent fiscal years are made pursuant to 20-9-630.

(4) The amount determined under subsection (1) for each tax increment financing district must be added to the reimbursement amount for the tax increment financing district as provided in 15-1-121(8)(b) if the tax increment financing district is still in existence. If a tax increment financing district that is entitled to a reimbursement under this section is not listed under 15-1-121(8)(b), the reimbursement must be made to that tax increment financing district at the same time as other districts.

(5) (a) The amount determined under subsection (1) for the 6-mill university levy must be added to current collections and reimbursements for the support of the Montana university system as provided in 15-10-108.

(b) The department of administration shall transfer the amount determined under this subsection (5) from the general fund to the state special revenue fund for the support of the Montana university system as provided in 15-10-108.

(6) The office of public instruction shall distribute the reimbursements calculated in subsection (1) to the countywide retirement fund under 20-9-501. One-half of the amount must be distributed in November and the remainder in May.

(7) The office of public instruction shall distribute the reimbursements calculated in subsection (1) to the county transportation fund reimbursement under 20-10-146. The reimbursement must be made at the same time as countywide school transportation block grants are distributed under 20-9-632.

**History:** En. Sec. 3, Ch. 411, L. 2011; amd. Sec. 1, Ch. 396, L. 2013; amd. Sec. 2, Ch. 332, L. 2017.

#### **Compiler's Comments**

*2017 Amendment:* Chapter 332 in (1) in first sentence near middle after “the department shall” substituted “reimburse” for “for the fiscal years ending June 30, 2014, and June 30, 2015, estimate for”; in (2) in first sentence substituted “For fiscal year 2018 and thereafter, the growth rate applied to the reimbursement is one-half of the average rate of inflation for the prior 3 years” for “for the fiscal year ending June 30, 2015. Local government reimbursements for subsequent years are made pursuant to the entitlement share recomputation as provided in 15-1-121(6)”; deleted former (2)(b) that read: “(b) For the fiscal year ending June 30, 2014, the department shall determine from the amount calculated under subsection (1) the amount that is attributable to personal property taxes that are not a lien on real property for each local government. By June 15, 2014, the department shall distribute the amount determined under this subsection (2)(b) for local governments as provided in 15-1-121(6)(a)”; in (3) in first sentence after “20-9-630” deleted “for the fiscal year ending June 30, 2015”; deleted former (3)(b) that read: “(b) For the fiscal year ending June 30, 2014, the department shall determine from the amount calculated under subsection (1) the amount that is attributable to personal property taxes that are not a lien on real property for each school district. By November 30, 2014, the office of public instruction shall distribute the amount determined under this subsection (3)(b) in the same manner as the block grant is distributed by fund under 20-9-630”; in (4) in first sentence at beginning deleted “For the fiscal year ending June 30, 2015”; deleted former (4)(b) that read: “(b) For the fiscal year ending June 30, 2014, the department shall determine from the amount calculated under subsection (1) the amount that is attributable to personal property taxes that are not a lien on real property for each tax increment financing district. By June 15, 2014, the department shall distribute the amount determined under this subsection (4)(b) to each tax increment financing district as provided in 15-1-121(8) and to any other tax increment financing district that is entitled to a reimbursement under this section”; in (5)(a) at beginning deleted



“For the fiscal year ending June 30, 2015”; in (5)(b) at beginning deleted “Beginning in fiscal year 2013”; deleted former (5)(b) that read: “(b) For the fiscal year ending June 30, 2014, the department shall determine from the amount calculated under subsection (1) the amount that is attributable to personal property taxes that are not a lien on real property for the 6-mill university levy. By June 15, 2014, the department of administration shall transfer the amount determined under this subsection (5)(b) from the general fund to the state special revenue fund for the support of the Montana university system as provided in 15-10-108”; in (6) in first sentence at end deleted “for the fiscal year ending June 30, 2015”; deleted former (6)(b) that read: “(b) For the fiscal year ending June 30, 2014, the department shall determine from the amount calculated under subsection (1) the amount that is attributable to personal property taxes that are not a lien on real property in the county. By November 30, 2014, the office of public instruction shall distribute the amount determined under this subsection (6)(b) to the countywide retirement fund”; in (7) in first sentence after “transportation” inserted “fund” and at end deleted “for the fiscal year ending June 30, 2015”; deleted former (7)(b) that read: “(b) For the fiscal year ending June 30, 2014, the department shall determine from the amount calculated under subsection (1) the amount that is attributable to personal property taxes that are not a lien on real property in the county. By November 30, 2014, the office of public instruction shall distribute the amount determined under this subsection (7)(b) to the county transportation reimbursement”; and made minor changes in style. Amendment effective May 4, 2017.

## **Part 4**

### **Protest Payments, Actions to Recover, and Alternative Remedies**

**15-1-402. Payment of property taxes or fees under protest.** (1) (a) The person upon whom a property tax or fee is being imposed under this title may, before the property tax or fee becomes delinquent, pay under written protest that portion of the property tax or fee protested.

(b) The protested payment must:

(i) be made to the officer designated and authorized to collect it;

(ii) specify the grounds of protest; and

(iii) not exceed the difference between the payment for the immediately preceding tax year and the amount owing in the tax year protested unless a different amount results from the specified grounds of protest, which may include but are not limited to changes in assessment due to reappraisal under 15-7-111.

(c) If the protested property tax or fee is on property that is subject to central assessment pursuant to 15-23-101, the person shall report to the department the grounds of the protest and the amount of the protested payment for each county in which a protested payment was made.

(2) A person appealing a property tax or fee pursuant to Title 15, chapter 2 or 15, including a person appealing a property tax or fee on property that is annually assessed by the department or subject to central assessment pursuant to 15-23-101(1) or (2), shall pay the tax or fee under protest when due in order to receive a refund. If the tax or fee is not paid under protest when due, the appeal or mediation may continue but a tax or fee may not be refunded as a result of the appeal or mediation.

(3) If a protested property tax or fee is payable in installments, a subsequent installment portion considered unlawful by the state tax appeal board need not be paid and an action or suit need not be commenced to recover the subsequent installment. The determination of the action or suit commenced to recover the first installment portion paid under protest determines the right of the party paying the subsequent installment to have it or any part of it refunded to the party or the right of the taxing authority to collect a subsequent installment not paid by the taxpayer plus interest from the date the subsequent installment was due.

(4) (a) Except as provided in subsection (4)(b), all property taxes and fees paid under protest to a county or municipality must be deposited by the treasurer of the county or municipality to the credit of a special fund to be designated as a protest fund and must be retained in the protest fund until the final determination of any action or suit to recover the taxes and fees unless they are released at the request of the county, municipality, or other local taxing jurisdiction pursuant to subsection (5). This section does not prohibit the investment of the money of this fund in the state unified investment program or in any manner provided in Title 7, chapter 6. The provision creating the special protest fund does not apply to any payments made under protest directly to the state.

(b) (i) Property taxes that are levied by the state against property that is centrally assessed pursuant to 15-23-101 and any protested taxes on industrial property that is annually assessed by the department in a school district that has elected to waive its right to protested taxes in a specific year pursuant to 15-1-409 must be remitted by the county treasurer to the department for deposit as provided in subsections (4)(b)(ii) through (4)(b)(iv).



(ii) The department shall deposit 50% of that portion of the funds levied for the university system pursuant to 15-10-108 in the state special revenue fund to the credit of the university system, and the other 50% of the funds levied pursuant to 15-10-108 must be deposited in a centrally assessed property tax state special revenue fund.

(iii) Fifty percent of the funds remaining after the deposit of university system funds must be deposited in the state general fund, and the other 50% must be deposited in a centrally assessed property tax state special revenue fund.

(iv) Fifty percent of the funds from a school district that has waived its right to protested taxes must be deposited in the state general fund, and the other 50% must be deposited in a school district property tax protest state special revenue fund.

(5) (a) Except as provided in subsections (5)(b) and (5)(c), the governing body of a taxing jurisdiction affected by the payment of taxes under protest in the second and subsequent years that a tax protest remains unresolved may demand that the treasurer of the county or municipality pay the requesting taxing jurisdiction all or a portion of the protest payments to which it is entitled, except the amount paid by the taxpayer in the first year of the protest. The decision in a previous year of a taxing jurisdiction to leave protested taxes in the protest fund does not preclude it from demanding in a subsequent year any or all of the payments to which it is entitled, except the first-year protest amount.

(b) The governing body of a taxing jurisdiction affected by the payment of taxes under protest on property that is centrally assessed pursuant to 15-23-101 or on industrial property that is assessed annually by the department in the first and subsequent years that a tax protest remains unresolved may demand that the treasurer of the county or municipality pay the requesting taxing jurisdiction all or a portion of the protest payments to which it is entitled. The decision in a previous year of a taxing jurisdiction to leave protested taxes of centrally assessed property in the protest fund does not preclude it from demanding in a subsequent year any or all of the payments to which it is entitled.

(c) The provisions of subsection (5)(b) do not apply to a school district that has elected to waive its right to its portion of protested taxes on centrally assessed property and on industrial property that is assessed annually by the department for that specific year as provided in 15-1-409.

(6) (a) If action before the county tax appeal board, state tax appeal board, or district court is not commenced within the time specified or if the action is commenced and finally determined in favor of the department of revenue, county, municipality, or treasurer of the county or the municipality, the amount of the protested portions of the property tax or fee must be taken from the protest fund or the centrally assessed property tax state special revenue fund and deposited to the credit of the fund or funds to which the property tax belongs, less a pro rata deduction for the costs of administration of the protest fund and related expenses charged to the local government units.

(b) (i) If the action is finally determined adversely to the governmental entity levying the tax, then the treasurer of the municipality, county, or state entity levying the tax shall, upon receipt of a certified copy of the final judgment in the action and upon expiration of the time set forth for appeal of the final judgment, refund to the person in whose favor the judgment is rendered the amount of the protested portions of the property tax or fee that the person holding the judgment is entitled to recover, together with interest from the date of payment under protest. The department shall refund from the school district property tax protest state special revenue fund the protested portions of property taxes and interest to a taxpayer in a school district in which the school district has elected to waive its right to its portion of protested taxes for that specific year as provided in 15-1-409. If the amount available for the refund in the school district property tax protest state special revenue fund is insufficient to refund the property tax payments, the department shall pay the remainder of the refund from the state general fund.

(ii) The taxing jurisdiction shall pay interest at the rate of interest earned by the pooled investment fund provided for in 17-6-203 for the applicable period.

(c) If the amount retained in the protest fund is insufficient to pay all sums due the taxpayer, the treasurer shall apply the available amount first to tax repayment, then to interest owed, and lastly to costs.

(d) (i) If the protest action is decided adversely to a taxing jurisdiction and the amount retained in the protest fund is insufficient to refund the tax payments and costs to which the taxpayer is entitled and for which local government units are responsible, the treasurer shall bill and the taxing jurisdiction shall refund to the treasurer that portion of the taxpayer refund, including tax payments and costs, for which the taxing jurisdiction is proratably responsible. The treasurer is not responsible for the amount required to be refunded by the state treasurer as provided in subsection (6)(b).

(ii) For an adverse protest action against the state for centrally assessed property, the department shall refund from the centrally assessed property tax state special revenue fund the amount of protested taxes and from the state general fund the amount of interest as required in subsection (6)(b). The amount refunded for an adverse protested action from the centrally assessed property tax state special revenue fund may not exceed the amount of protested taxes or fees required to be deposited for that action pursuant to subsections (4)(b)(ii) and (4)(b)(iii) or, for taxes or fees protested prior to April 28, 2005, an equivalent amount of the money transferred to the fund pursuant to section 3, Chapter 536, Laws of 2005. If the amount available for the adverse protested action in the centrally assessed property tax state special revenue fund is insufficient to refund the tax payments to which the taxpayer is entitled and for which the state is responsible, the department shall pay the remainder of the refund proportionally from the state general fund and from money deposited in the state special revenue fund levied pursuant to 15-10-108.

(e) In satisfying the requirements of subsection (6)(d), the taxing jurisdiction, including the state, is allowed not more than 1 year from the beginning of the fiscal year following a final resolution of the protest. The taxpayer is entitled to interest on the unpaid balance at the rate referred to in subsection (6)(b) from the date of payment under protest until the date of final resolution of the protest and at the combined rate of the federal reserve discount rate quoted from the federal reserve bank in New York, New York, on the date of final resolution, plus 4 percentage points, from the date of final resolution of the protest until refund is made.

(7) A taxing jurisdiction, except the state, may satisfy the requirements of this section by use of funds from one or more of the following sources:

- (a) imposition of a property tax to be collected by a special tax protest refund levy;
- (b) the general fund or any other funds legally available to the governing body; and
- (c) proceeds from the sale of bonds issued by a county, city, or school district for the purpose of deriving revenue for the repayment of tax protests lost by the taxing jurisdiction. The governing body of a county, city, or school district is authorized to issue the bonds pursuant to procedures established by law. The bonds may be issued without being submitted to an election. Property taxes may be levied to amortize the bonds.

(8) If the department revises an assessment that results in a refund of taxes of \$5 or less, a refund is not owed.

**History:** En. 4024, Pol. C. 1895; amd. Sec. 1, Ch. 108, L. 1905; re-en. Sec. 2742, Rev. C. 1907; amd. Sec. 1, Ch. 135, L. 1909; re-en. Sec. 2269, R.C.M. 1921; amd. Sec. 1, Ch. 142, L. 1925; re-en. Sec. 2269, R.C.M. 1935; amd. Sec. 1, Ch. 204, L. 1955; amd. Sec. 151, Ch. 516, L. 1973; amd. Sec. 1, Ch. 348, L. 1977; amd. Sec. 1, Ch. 394, L. 1977; R.C.M. 1947, 84-4502; amd. Sec. 1, Ch. 281, L. 1979; amd. Sec. 1, Ch. 680, L. 1979; amd. Sec. 6, Ch. 463, L. 1981; amd. Sec. 4, Ch. 501, L. 1981; amd. Sec. 1, Ch. 26, Sp. L. June 1986; amd. Sec. 1, Ch. 213, L. 1989; amd. Sec. 1, Ch. 594, L. 1993; amd. Sec. 1, Ch. 448, L. 1999; amd. Sec. 80, Ch. 584, L. 1999; amd. Sec. 92, Ch. 574, L. 2001; amd. Sec. 1, Ch. 511, L. 2003; amd. Sec. 1, Ch. 536, L. 2005; amd. Sec. 2, Ch. 57, L. 2009; amd. Sec. 2, Ch. 344, L. 2009; amd. Sec. 1, Ch. 261, L. 2011; amd. Sec. 4, Ch. 419, L. 2013.

**15-1-409. Exclusion of certain property subject to property tax protest — guaranteed tax base — tax refund.** (1) A school district that has centrally assessed property subject to pending property tax protests shall, prior to February 1 of each year, elect whether to waive the school district's right to receive its portion of protested taxes under 15-1-402(5)(b) for the previous year.

(2) If the school district elects to waive its right to its portion of the protested taxes under subsection (1), the district's guaranteed tax base aid calculated under 20-9-366 must be determined based on the total taxable value of property in the school district less the taxable value of the centrally assessed property for which a school district waived its right to receive its portion of protested taxes. Upon settlement or other resolution of the protest, the department is responsible for refunding protested taxes or paying any other costs due the protesting taxpayer.

and retaining any portion of protested taxes that would have been distributed to the school district for each year the school district has elected to waive receiving its portion of the protested taxes.

(3) For the purpose of this section, “centrally assessed property” means property that is centrally assessed pursuant to 15-23-101 and industrial property that is assessed annually by the department.

**History:** En. Sec. 1, Ch. 344, L. 2009; amd. Sec. 2, Ch. 261, L. 2011.

## **Part 5**

### **Disposition of Tax Proceeds**

**15-1-504. Settlement of county treasurer with department.** (1) Except as provided in subsections (2) and (3), the county treasurer, between the 1st and 20th days of each month, shall remit to the department all money belonging to the state that was collected by the county treasurer during the preceding month. The remittance must be accompanied by a detailed report upon a form that the department prescribes. The department may assess counties an interest charge of 10% a year on all money not remitted within 5 days from the time required by this section.

(2) By June 20 of each year, the county treasurer shall remit to the department an estimate of all money belonging to the state that was collected by the county treasurer by June 15, in addition to the amount collected during the preceding month. By July 15, the county treasurer shall remit all money belonging to the state that was collected by the county treasurer during the remainder of June.

(3) Beginning July 1, 2006, the county treasurer shall remit to the department of justice by the 20th of each month all state money that was collected by the county treasurer due to motor vehicle, vessel, and snowmobile transactions during the preceding month. The remittance must be accompanied by a detailed report upon a form prescribed by the department of justice. The department may assess counties an interest charge, at the rate of 10% a year, on all money that is not remitted by the prescribed time.

**History:** En. Sec. 3990, Pol. C. 1895; re-en. Sec. 2715, Rev. C. 1907; re-en. Sec. 2255, R.C.M. 1921; Cal. Pol. C. Sec. 3865; amd. Sec. 1, Ch. 47, L. 1925; re-en. Sec. 2255, R.C.M. 1935; R.C.M. 1947, 84-4401; amd. Sec. 1, Ch. 72, L. 1991; amd. Sec. 1, Ch. 4, Sp. L. July 1992; amd. Sec. 1, Ch. 102, L. 1993; amd. Sec. 6, Ch. 257, L. 2001; amd. Sec. 5, Ch. 542, L. 2005.

## **CHAPTER 7**

### **APPRAISAL**

## **Part 1**

### **General Methods**

**15-7-111. Periodic reappraisal of certain taxable property.** (1) The department shall administer and supervise a program for the reappraisal of all taxable property within class three under 15-6-133, class four under 15-6-134, and class ten under 15-6-143 as provided in this section. All other property must be revalued annually. Beginning January 1, 2015, all property within class three and class four must be revalued every 2 years, and all property within class ten must be revalued every 6 years.

(2) The department shall value newly constructed, remodeled, or reclassified property in a manner consistent with the valuation within the same class and the values established pursuant to subsection (1) and shall phase in the value of class ten property. The department shall adopt rules for determining the assessed valuation of new, remodeled, or reclassified property within the same class and the phased-in value of class ten property.

(3) The reappraisal of class three and class four property is complete on December 31 of every second year of the reappraisal cycle, and the reappraisal of class ten property is complete on December 31 of the sixth year of the reappraisal cycle. The amount of the change in valuation from the base year for class ten property must be phased in each year at the rate of 16.66% of the change in valuation.

(4) During the second year of each reappraisal cycle, the department shall provide the revenue and transportation interim committee with a report of tax rates for the upcoming reappraisal cycle that will result in taxable value neutrality for each property class.

(5) The department shall administer and supervise a program for the reappraisal of all taxable property within classes three and four. The department shall adopt a reappraisal plan by rule. The reappraisal plan adopted must provide that all class three and class four property in each county is revalued by January 1 of the second year of the reappraisal cycle, effective for January 1 of the following year, and each succeeding 2 years, and must provide that all class ten property in each county is revalued by January 1, 2015, effective for January 1, 2015, and each succeeding 6 years. The resulting valuation changes for class ten property must be phased in for each year until the next reappraisal. If a percentage of change for each year is not established, then the percentage of phase in for class ten property each year is 16.66%.

(6) (a) In completing the appraisal or adjustments under subsection (5), the department shall, as provided in the reappraisal plan, conduct individual property inspections, building permit reviews, sales data verification reviews, and electronic data reviews. The department may adopt new technologies for recognizing changes to property.

(b) The department shall conduct a field inspection of a sufficient number of taxable properties to meet the requirements of subsection (5).

**History:** En. 84-429.14 by Sec. 1, Ch. 294, L. 1975; R.C.M. 1947, 84-429.14; amd. Sec. 1, Ch. 596, L. 1987; amd. Sec. 4, Ch. 613, L. 1987; amd. Sec. 2, Ch. 636, L. 1989; amd. Secs. 2, 8, Ch. 680, L. 1991; amd. Sec. 4, Ch. 13, Sp. L. July 1992; amd. Sec. 4, Ch. 463, L. 1997; amd. Sec. 87, Ch. 584, L. 1999; amd. Sec. 4, Ch. 11, Sp. L. May 2000; amd. Sec. 5, Ch. 606, L. 2003; amd. Sec. 1, Ch. 554, L. 2005; amd. Sec. 23, Ch. 2, L. 2009; amd. Sec. 7, Ch. 483, L. 2009; amd. Sec. 16, Ch. 361, L. 2015.

**15-7-112. Equalization of valuations.** The method of appraisal and assessment provided for in 15-7-111 must be used in each county of the state so that comparable properties with similar full market values and subject to taxation in Montana have substantially equal taxable values in the tax year and, for class ten property, substantially equal taxable values at the end of each cyclical revaluation cycle.

**History:** En. 84-429.15 by Sec. 2, Ch. 294, L. 1975; R.C.M. 1947, 84-429.15; amd. Sec. 17, Ch. 361, L. 2015.

**15-7-113. Program exclusive.** No program for the revaluation of property shall be implemented for taxation in any county other than as prescribed in 15-7-111 through 15-7-114.

**History:** En. 84-429.16 by Sec. 3, Ch. 294, L. 1975; R.C.M. 1947, 84-429.16.

**15-7-114. Law supplemental.** Sections 15-7-111 through 15-7-114 are intended to be supplementary to and are not intended to repeal 15-7-103.

**History:** En. 84-429.17 by Sec. 4, Ch. 294, L. 1975; R.C.M. 1947, 84-429.17.

## CHAPTER 10 PROPERTY TAX LEVIES

### Part 2 Statement of Levies

**15-10-201. Tax levies to be made in mills and tenths and hundredths of mills.** Every board of county commissioners, city or town council or commission, and every other board or commission authorized by law to make or fix tax levies for any purpose shall make and fix every such levy in mills and tenths and hundredths of mills.

**History:** En. Sec. 1, Ch. 123, L. 1935; re-en. Sec. 2148.1, R.C.M. 1935; R.C.M. 1947, 84-3802.

**15-10-202. Certification of taxable values.** (1) Subject to subsection (2), by the first Monday in August, the department shall certify to each taxing authority the total taxable value within the jurisdiction of the taxing authority. The department shall also send to each taxing authority a written statement of its best estimate of the total taxable value of newly taxable property, as described in 15-10-420(3). Upon the request of a taxing authority, the department shall provide an estimate of the total taxable value within the jurisdiction of the taxing authority by the second Monday in July.

(2) For tax years beginning after December 31, 2000, if the ownership of centrally assessed property has been transferred in whole or in part to a different owner and the transferred

property has a market value of \$1 million or more as determined by the department, the department shall determine separately the taxable value of newly taxable property and the taxable value associated with reappraisal of centrally assessed property that is transferred to a different owner. The department shall certify to each taxing authority, at the time specified in subsection (1), the taxable value of newly taxable property and the total taxable value of centrally assessed property, exclusive of newly taxable property, that has been transferred to a different owner.

**History:** En. 84-7202 by Sec. 2, Ch. 286, L. 1974; R.C.M. 1947, 84-7202; amd. Sec. 4, Ch. 726, L. 1985; amd. Sec. 5, Ch. 26, Sp. L. June 1986; amd. Sec. 2, Ch. 9, L. 1989; amd. Sec. 71, Ch. 27, Sp. L. November 1993; amd. Sec. 2, Ch. 26, L. 2001; amd. Sec. 2, Ch. 419, L. 2001; amd. Sec. 4, Ch. 34, L. 2003.

**15-10-203. Repealed.** Sec. 23, Ch. 262, L. 2015.

**History:** En. 84-7203 by Sec. 3, Ch. 286, L. 1974; R.C.M. 1947, 84-7203; amd. Sec. 6, Ch. 581, L. 1979; amd. Sec. 39, Ch. 370, L. 1987; amd. Sec. 1, Ch. 817, L. 1991; amd. Sec. 72, Ch. 27, Sp. L. November 1993; amd. Sec. 67, Ch. 430, L. 1995; amd. Sec. 68, Ch. 354, L. 2001.

**15-10-206. Notification of decisions of tax appeal boards.** The department shall notify each taxing authority of any change in the property tax record that results from actions by the state or county tax appeal boards.

**History:** En. 84-7206 by Sec. 6, Ch. 286, L. 1974; R.C.M. 1947, 84-7206; amd. Sec. 3, Ch. 9, L. 1989; amd. Sec. 74, Ch. 27, Sp. L. November 1993; amd. Sec. 3, Ch. 26, L. 2001; amd. Sec. 3, Ch. 419, L. 2001.

### **Part 3 Entry of Taxes**

**15-10-321. Limitation on levy and computation of tax — new taxing jurisdictions.** The department of revenue may not be required to levy or compute a tax for any new taxing jurisdiction created or for any change in an existing jurisdiction unless formally notified of its creation or change by January 1 of the year in which the taxes are to be levied.

**History:** En. 84-3811 by Sec. 1, Ch. 349, L. 1977; R.C.M. 1947, 84-3811; amd. Sec. 1, Ch. 76, L. 1981.

### **Part 4 Limitation on Property Taxes**

**15-10-401. Declaration of policy.** (1) The state of Montana's reliance on the taxation of property to support education and local government has placed an unreasonable burden on the owners of all classes of property described in Title 15, chapter 6, part 1.

(2) Except as provided in 15-10-420, the people of the state of Montana declare that it is the policy of the state of Montana that no further property tax increases be imposed on property. In order to reduce volatility in property taxation and in order to reduce taxpayer uncertainty, it is the policy of the legislature to develop alternatives to market value for purposes of taxation.

**History:** En. Sec. 1, I.M. No. 105, approved Nov. 4, 1986; amd. Sec. 5, Ch. 463, L. 1997; amd. Sec. 92, Ch. 584, L. 1999.

**15-10-402. Property tax limited to 1996 levels.** Except as provided in 15-10-420, the amount of taxes levied on property described in Title 15, chapter 6, part 1, may not, for any taxing jurisdiction, exceed the amount levied for tax year 1996.

**History:** En. Sec. 2, I.M. No. 105, approved Nov. 4, 1986; amd. Sec. 6, Ch. 10, Sp. L. June 1989; amd. Sec. 2, Ch. 11, Sp. L. June 1989; amd. Sec. 3, Ch. 745, L. 1991; amd. Sec. 11, Ch. 773, L. 1991; amd. Sec. 7, Ch. 267, L. 1993; amd. Sec. 6, Ch. 463, L. 1997; amd. Sec. 93, Ch. 584, L. 1999.

**15-10-420. Procedure for calculating levy.** (1) (a) Subject to the provisions of this section, a governmental entity that is authorized to impose mills may impose a mill levy sufficient to generate the amount of property taxes actually assessed in the prior year plus one-half of the average rate of inflation for the prior 3 years. The maximum number of mills that a governmental entity may impose is established by calculating the number of mills required to generate the amount of property tax actually assessed in the governmental unit in the prior year based on the current year taxable value, less the current year's newly taxable value, plus one-half of the average rate of inflation for the prior 3 years.

(b) A governmental entity that does not impose the maximum number of mills authorized under subsection (1)(a) may carry forward the authority to impose the number of mills equal to the difference between the actual number of mills imposed and the maximum number of mills



authorized to be imposed. The mill authority carried forward may be imposed in a subsequent tax year.

(c) For the purposes of subsection (1)(a), the department shall calculate one-half of the average rate of inflation for the prior 3 years by using the consumer price index, U.S. city average, all urban consumers, using the 1982-84 base of 100, as published by the bureau of labor statistics of the United States department of labor.

(2) A governmental entity may apply the levy calculated pursuant to subsection (1)(a) plus any additional levies authorized by the voters, as provided in 15-10-425, to all property in the governmental unit, including newly taxable property.

(3) (a) For purposes of this section, newly taxable property includes:

- (i) annexation of real property and improvements into a taxing unit;
- (ii) construction, expansion, or remodeling of improvements;
- (iii) transfer of property into a taxing unit;
- (iv) subdivision of real property; and
- (v) transfer of property from tax-exempt to taxable status.

(b) Newly taxable property does not include an increase in value that arises because of an increase in the incremental value within a tax increment financing district.

(4) (a) For the purposes of subsection (1), the taxable value of newly taxable property includes the release of taxable value from the incremental taxable value of a tax increment financing district because of:

- (i) a change in the boundary of a tax increment financing district;
- (ii) an increase in the base value of the tax increment financing district pursuant to 7-15-4287;

or

- (iii) the termination of a tax increment financing district.

(b) If a tax increment financing district terminates prior to the certification of taxable values as required in 15-10-202, the increment value is reported as newly taxable property in the year in which the tax increment financing district terminates. If a tax increment financing district terminates after the certification of taxable values as required in 15-10-202, the increment value is reported as newly taxable property in the following tax year.

(c) For the purpose of subsection (3)(a)(ii), the value of newly taxable class four property that was constructed, expanded, or remodeled property since the completion of the last reappraisal cycle is the current year market value of that property less the previous year market value of that property.

(d) For the purpose of subsection (3)(a)(iv), the subdivision of real property includes the first sale of real property that results in the property being taxable as class four property under 15-6-134 or as nonqualified agricultural land as described in 15-6-133(1)(c).

(5) Subject to subsection (8), subsection (1)(a) does not apply to:

- (a) school district levies established in Title 20; or
- (b) a mill levy imposed for a newly created regional resource authority.

(6) For purposes of subsection (1)(a), taxes imposed do not include net or gross proceeds taxes received under 15-6-131 and 15-6-132.

(7) In determining the maximum number of mills in subsection (1)(a), the governmental entity:

- (a) may increase the number of mills to account for a decrease in reimbursements; and
- (b) may not increase the number of mills to account for a loss of tax base because of legislative action that is reimbursed under the provisions of 15-1-121(7).

(8) The department shall calculate, on a statewide basis, the number of mills to be imposed for purposes of 15-10-108, 20-9-331, 20-9-333, 20-9-360, and 20-25-439. However, the number of mills calculated by the department may not exceed the mill levy limits established in those sections. The mill calculation must be established in tenths of mills. If the mill levy calculation does not result in an even tenth of a mill, then the calculation must be rounded up to the nearest tenth of a mill.

(9) (a) The provisions of subsection (1) do not prevent or restrict:

- (i) a judgment levy under 2-9-316, 7-6-4015, or 7-7-2202;
- (ii) a levy to repay taxes paid under protest as provided in 15-1-402;
- (iii) an emergency levy authorized under 10-3-405, 20-9-168, or 20-15-326;

- (iv) a levy for the support of a study commission under 7-3-184;
  - (v) a levy for the support of a newly established regional resource authority;
  - (vi) the portion that is the amount in excess of the base contribution of a governmental entity's property tax levy for contributions for group benefits excluded under 2-9-212 or 2-18-703;
  - (vii) a levy for reimbursing a county for costs incurred in transferring property records to an adjoining county under 7-2-2807 upon relocation of a county boundary; or
  - (viii) a levy used to fund the sheriffs' retirement system under 19-7-404(2)(b).
- (b) A levy authorized under subsection (9)(a) may not be included in the amount of property taxes actually assessed in a subsequent year.
- (10) A governmental entity may levy mills for the support of airports as authorized in 67-10-402, 67-11-301, or 67-11-302 even though the governmental entity has not imposed a levy for the airport or the airport authority in either of the previous 2 years and the airport or airport authority has not been appropriated operating funds by a county or municipality during that time.

(11) The department may adopt rules to implement this section. The rules may include a method for calculating the percentage of change in valuation for purposes of determining the elimination of property, new improvements, or newly taxable value in a governmental unit.

**History:** En. Sec. 1, Ch. 584, L. 1999; amd. Secs. 6, 16(1), Ch. 11, Sp. L. May 2000; amd. Sec. 1, Ch. 191, L. 2001; amd. Sec. 1, Ch. 220, L. 2001; amd. Sec. 3, Ch. 361, L. 2001; amd. Sec. 3, Ch. 511, L. 2001; amd. Sec. 7, Ch. 571, L. 2001; amd. Sec. 94, Ch. 574, L. 2001; amd. Sec. 1, Ch. 115, L. 2003; amd. Sec. 1, Ch. 476, L. 2003; amd. Sec. 3, Ch. 376, L. 2005; amd. Sec. 3, Ch. 545, L. 2005; amd. Sec. 20, Ch. 521, L. 2007; amd. Sec. 26, Ch. 2, L. 2009; amd. Sec. 3, Ch. 57, L. 2009; amd. Sec. 27, Ch. 351, L. 2009; amd. Sec. 3, Ch. 412, L. 2009; amd. Sec. 9, Ch. 483, L. 2009; amd. Sec. 18, Ch. 347, L. 2011; amd. Sec. 2, Ch. 393, L. 2011; amd. Sec. 5, Ch. 411, L. 2011; amd. Sec. 22, Ch. 361, L. 2015; amd. Sec. 1, Ch. 328, L. 2017.

**Compiler's Comments**

*2017 Amendment:* Chapter 328 inserted (9)(a)(viii) regarding levy used to fund sheriffs' retirement system; and made minor changes in style. Amendment effective July 1, 2017.

**15-10-425. Mill levy election.** (1) A county, consolidated government, incorporated city, incorporated town, school district, or other taxing entity may impose a new mill levy, increase a mill levy that is required to be submitted to the electors, or exceed the mill levy limit provided for in 15-10-420 by conducting an election as provided in this section.

(2) An election pursuant to this section must be held in accordance with Title 13, chapter 1, part 4 or 5, or Title 20 for school elections, whichever is appropriate to the taxing entity. The governing body shall pass a resolution, shall amend its self-governing charter, or must receive a petition indicating an intent to impose a new levy, increase a mill levy, or exceed the current statutory mill levy provided for in 15-10-420 on the approval of a majority of the qualified electors voting in the election. The resolution, charter amendment, or petition must include:

- (a) the specific purpose for which the additional money will be used;
- (b) either:
  - (i) the specific amount of money to be raised and the approximate number of mills to be imposed; or
  - (ii) the specific number of mills to be imposed and the approximate amount of money to be raised; and
- (c) whether the levy is permanent or the durational limit on the levy.

(3) Notice of the election must be prepared by the governing body and given as provided in 13-1-108. The form of the ballot must reflect the content of the resolution or charter amendment and must include a statement of the impact of the election on a home valued at \$100,000 and a home valued at \$200,000 in the district in terms of actual dollars in additional property taxes that would be imposed on residences with those values if the mill levy were to pass. The ballot may also include a statement of the impact of the election on homes of any other value in the district, if appropriate.

(4) If the majority voting on the question are in favor of the additional levy, the governing body is authorized to impose the levy in either the amount or the number of mills specified in the resolution or charter amendment.

(5) A governing body, as defined in 7-6-4002, may reduce an approved levy in any fiscal year without losing the authority to impose in a subsequent fiscal year up to the maximum amount or number of mills approved in the election. However, nothing in this subsection authorizes

a governing body to impose more than the approved levy in any fiscal year or to extend the duration of the approved levy.

**History:** En. Sec. 1, Ch. 495, L. 2001; en. Sec. 2, Ch. 574, L. 2001; amd. Sec. 1, Ch. 170, L. 2007; amd. Sec. 194, Ch. 49, L. 2015.

## CHAPTER 16 COLLECTION OF PROPERTY TAXES

### Part 2 Special Payment Provisions

**15-16-201. Tax prepayment — new industrial facilities.** (1) A person intending to construct or locate a major new industrial facility, as defined in subsection (2) of this section, shall upon request of the board of county commissioners of the county in which the facility is to be located, prepay, when permission is granted to construct or locate by the appropriate governmental agency, an amount equal to three times the estimated property tax due the year the facility is completed. The person who is to prepay under this section shall not be obligated to prepay the entire amount at one time but, upon request of the board of county commissioners of the county, shall prepay only that amount shown to be needed from time to time. To assure this payment or payments, the person who is to prepay shall guarantee to the board of county commissioners and also have a bank or banks guarantee that these amounts will be paid as needed for expenditures created by the impact. When the facility is completed and assessed by the department of revenue, it shall be subject during the first 3 years and thereafter to taxation as all other property similarly situated, except that one-fifth of the amount prepaid shall be allowed as a credit against property taxes in each of the first 5 years after the start of productive operation of the facility.

(2) A major new industrial facility is a manufacturing or mining facility other than a large-scale mineral development as defined in 90-6-302 which will employ on an average annual basis at least 100 people in construction or operation of the facility and which will create a substantial adverse impact on existing state, county, or municipal services.

**History:** En. 84-41-105 by Sec. 1, Ch. 449, L. 1975; R.C.M. 1947, 84-41-105; amd. Sec. 12, Ch. 617, L. 1981; amd. Sec. 3, Ch. 227, L. 1991.

### Part 6 Refunds

**15-16-602. Concurrent remedies.** Sections 15-16-603 through 15-16-605 may not be considered or construed to be in conflict with the provisions of chapter 1, part 4. Sections 15-16-603 through 15-16-605 and the provisions of part 4 provide and afford concurrent remedies.

**History:** En. Sec. 2, Ch. 201, L. 1939; R.C.M. 1947, 84-4177; amd. Sec. 4, Ch. 539, L. 1993.

**15-16-603. Refund of taxes — limitations on refunds.** (1) Subject to the provisions in subsections (2) and (3), a board of county commissioners shall order a refund:

(a) on a tax, penalty, interest, or cost paid more than once or erroneously or illegally collected if an appeal pursuant to 15-1-402 was not available;

(b) on a tax paid for which a refund is allowed under 15-16-612 or 15-16-613;

(c) on a tax, penalty, or interest collected as a result of an error in the description or location of real property or improvements or for duplicate taxes paid as determined by the department of revenue;

(d) on net or gross proceeds tax, centrally assessed property tax, penalty, or interest when the department of revenue notifies the board of county commissioners of an assessment revision completed pursuant to 15-8-601;

(e) upon entry of a decision either by the district court or by the state tax appeal board under 15-2-306 that has not been appealed to a higher court; or

(f) on a decision that a refund is payable as a result of a taxpayer prevailing in a motor vehicle tax or fee proceeding under 15-15-201.

(2) The taxpayer shall prove that a refund is due under subsection (1)(a) or (1)(b).

(3) (a) A refund may not be granted under subsection (1)(a) or (1)(b) unless the taxpayer or a representative of the taxpayer files a written claim with the board of county commissioners within 10 years after the date when the second half of the taxes would have become delinquent if the taxes had not been paid.

(b) The refund required under subsection (1)(c) must be made for 5 tax years or for the duration of the error, whichever period is shorter.

(c) A refund may not be made under subsection (1)(c) unless the taxpayer allowed the department of revenue access to the taxpayer's property for the purposes of appraising the property.

**History:** En. Sec. 1, Ch. 539, L. 1993; amd. Sec. 1, Ch. 440, L. 1995; amd. Sec. 5, Ch. 85, L. 1999; amd. Sec. 1, Ch. 46, L. 2013.

**15-16-604. Judicial review of tax refund denials.** (1) A taxpayer aggrieved by a final decision of the board of county commissioners under 15-16-603 is entitled to a judicial review of the decision under this section.

(2) Proceedings for review of a decision of the board of county commissioners must be instituted by filing a petition for judicial review in the district court of the county within 30 days of receipt of the board's decision. A copy of the petition must be served on the board of county commissioners within 10 days of the filing of the petition.

(3) Review of a decision of the board of county commissioners must be conducted by the district court under the standards of review set out in 2-4-704. Additional evidence may be received by the district court under the standards set out in 2-4-703.

**History:** En. Sec. 2, Ch. 539, L. 1993.

## CHAPTER 23 CENTRALLY ASSESSED PROPERTY

### Part 1 General Provisions

**15-23-101. Properties centrally assessed.** The department shall centrally assess each year:

(1) the railroad transportation property of railroads and railroad car companies operating in more than one county in the state or more than one state;

(2) property owned by a corporation or other person operating a single and continuous property operated in more than one county or more than one state including but not limited to:

(a) telegraph, telephone, microwave, and electric power or transmission lines;

(b) rate-regulated natural gas transmission or oil transmission pipelines regulated by the public service commission or the federal energy regulatory commission;

(c) common carrier pipelines as defined in 69-13-101 or a pipeline carrier as defined in 49 U.S.C. 15102(2);

(d) natural gas distribution utilities;

(e) the gas gathering facilities specified in 15-6-138(5);

(f) the dedicated communications infrastructure specified in 15-6-162(5);

(g) canals, ditches, flumes, or like properties; and

(h) if congress passes legislation that allows the state to tax property owned by an agency created by congress to transmit or distribute electrical energy, property constructed, owned, or operated by a public agency created by congress to transmit or distribute electrical energy produced at privately owned generating facilities, not including rural electric cooperatives;

(3) all property of scheduled airlines;

(4) the net proceeds of mines, except bentonite mines;

(5) the gross proceeds of coal mines; and

(6) property described in subsections (1) and (2) that is subject to the provisions of Title 15, chapter 24, part 12.

**History:** En. 84-7801 by Sec. 1, Ch. 98, L. 1977; R.C.M. 1947, 84-7801; amd. Sec. 4, Ch. 686, L. 1979; amd. Sec. 3, Ch. 478, L. 1981; amd. Sec. 4, Ch. 683, L. 1983; amd. Sec. 2, Ch. 10, Sp. L. July 1992; amd. Sec. 61, Ch. 42, L. 1997; amd. Sec. 2, Ch. 531, L. 1999; amd. Sec. 8, Ch. 583, L. 1999; amd. Sec. 18, Ch. 7, L. 2001; amd. Sec.

14, Ch. 559, L. 2005; amd. Sec. 3, Ch. 487, L. 2009; amd. Sec. 6, Ch. 411, L. 2011; amd. Sec. 4, Ch. 396, L. 2013; amd. Sec. 3, Ch. 438, L. 2017.

**Compiler's Comments**

*2017 Amendment:* Chapter 438 inserted (2)(f) concerning dedicated communications infrastructure; and made minor changes in style. Amendment effective May 22, 2017.

*Applicability:* Section 7, Ch. 438, L. 2017, provided: "[This act] applies to tax years beginning after December 31, 2017."

**15-23-105. Apportionment among counties.** The department shall apportion the value of property assessed under 15-23-101, 15-23-205, or 15-23-403, other than railroad car company property, among the counties in which such property is located. Apportionment shall be on a mileage basis or on the basis of the original installed cost of the centrally assessed property located in the respective counties. If the property is of such a character that its value cannot reasonably be apportioned on the basis of mileage or on the basis of the original installed cost of the centrally assessed property located in the respective counties, the department may adopt such other method or basis of apportionment as may be just or proper.

**History:** En. 84-7805 by Sec. 5, Ch. 98, L. 1977; R.C.M. 1947, 84-7805; amd. Sec. 5, Ch. 686, L. 1979; amd. Sec. 5, Ch. 10, Sp. L. July 1992.

**15-23-106. Report to the counties.** (1) On or before July 1, the department shall prepare for each county a statement listing:

(a) the assessed value of railroad property, as determined under 15-23-205, apportioned to the county, including the length or other description of the property;

(b) the assessed value of utility property, as determined under 15-23-303, apportioned to the county, including the length or other description of the property;

(c) the assessed value of property of airline companies, as determined under 15-23-403, apportioned to the county; 90% of the value of the property of airline companies apportioned to any county by reason of a state airport being located in the county must be stated separately from the remaining assessed value of the property of airline companies apportioned to the county;

(d) the assessed value of the net proceeds and royalties from mines in the county, as determined under 15-23-503, 15-23-505, and 15-23-515 through 15-23-518; and

(e) the assessed value of the gross proceeds from coal mines, as described in 15-23-701.

(2) The department shall enter the reported assessed values in the property tax record for the county.

**History:** En. 84-7806 by Sec. 6, Ch. 98, L. 1977; R.C.M. 1947, 84-7806; amd. Sec. 1, Ch. 238, L. 1981; amd. Sec. 6, Ch. 20, L. 1985; amd. Sec. 6, Ch. 531, L. 1989; amd. Sec. 6, Ch. 695, L. 1991; amd. Sec. 6, Ch. 506, L. 1993; amd. Sec. 95, Ch. 27, Sp. L. November 1993; amd. Sec. 6, Ch. 397, L. 1995; amd. Sec. 32, Ch. 451, L. 1995.

## Part 7 Coal Gross Proceeds

**15-23-703. Taxation of gross proceeds — taxable value for nontax purposes.** (1) (a) The department shall compute from the reported value of coal gross proceeds a tax roll that must be transmitted to the county treasurer on or before September 15 of each year. The department may not levy or assess any mills against coal gross proceeds but shall, subject to subsection (1)(b) and except as provided in subsection (1)(c), levy a tax of 5% against the value of coal as provided in 15-23-701(4). The county treasurer shall give full notice to each coal producer of the taxes due and shall collect the taxes.

(b) If the county grants a tax abatement for production from a new or expanding underground mine as provided in 15-23-715, the department shall levy a tax at a rate that would, after providing for payment to the state of the amount attributable to all applicable state mill levies as if the tax rate were 5%, reduce the tax received by county taxing jurisdictions and any school district on the new or expanded production by the percentage amount of the tax abated by the county under 15-23-715.

(c) (i) For tax years beginning after December 31, 2011, the initial tax on coal mined from a new underground coal mine is 2.5% against the value of coal as provided in 15-23-701(4) for the first 10 years of coal production. After 10 years, coal production from the mine is taxed as provided in subsection (1)(a).

(ii) For tax years beginning on or after January 1, 2011, and ending December 31, 2020, the initial tax rate under subsection (1)(c)(i) applies to coal mined from an existing underground



coal mine producing coal from the mine as of December 31, 2010. For tax years beginning after December 31, 2020, coal production is taxed as provided in subsection (1)(a).

(2) For all nontax purposes, the taxable value of the gross proceeds of coal is 45% of the contract sales price as defined in 15-35-102.

(3) (a) Except as provided in subsections (4) and (7) and subject to subsection (3)(b), coal gross proceeds taxes must be allocated to the state, county, and school districts in the same relative proportions as the taxes were distributed in fiscal year 1990.

(b) The county treasurer shall multiply the coal gross proceeds taxes collected in the county under this part by the relative proportions determined for the state, county, and school districts under subsection (3)(a). Those amounts must be distributed as follows:

(i) the state share must be distributed in the relative proportions required by levies for state purposes in the same manner as property taxes were distributed in fiscal year 1990;

(ii) except as provided in subsection (5), the county share must be distributed in the relative proportions required by levies for county purposes, other than an elementary school or high school, in the same manner as property taxes were distributed in the previous fiscal year;

(iii) except as provided in subsection (6), the school districts' share must be distributed in the relative proportions required by levies for school district purposes in the same manner as property taxes were distributed in the previous fiscal year.

(4) If there is a distribution of coal gross proceeds from a new or expanding underground mine with a tax abatement as provided under 15-23-715, the county treasurer shall distribute:

(a) the state's share of the coal gross proceeds determined under subsection (1)(b) in the relative proportion required by the appropriate levies for state purposes; and

(b) the county's share and any school district's share of the coal gross proceeds determined under subsection (1)(b) as provided in this section.

(5) The board of county commissioners of a county may direct the county treasurer to reallocate the distribution of coal gross proceeds taxes that would have gone to a taxing unit, as provided in subsection (3)(b)(i), to another taxing unit or taxing units, other than an elementary school or high school, within the county under the following conditions:

(a) The county treasurer shall first allocate the coal gross proceeds taxes to the taxing units within the county in the same proportion that all other property tax proceeds were distributed in the county in the previous fiscal year.

(b) If the allocation in subsection (5)(a) exceeds the total budget of a taxing unit, the commissioners may direct the county treasurer to reallocate the excess to any taxing unit within the county.

(6) The board of trustees of an elementary or high school district may reallocate the coal gross proceeds taxes distributed to the district by the county treasurer under the following conditions:

(a) The district shall first allocate the coal gross proceeds taxes to the budgeted funds of the district in the same proportion that all other property tax proceeds were distributed in the district in the previous fiscal year.

(b) If the allocation under subsection (6)(a) exceeds the total budget for a fund, the trustees may reallocate the excess to any budgeted fund of the school district.

(7) Except as provided in subsections (8) and (9), the county treasurer shall credit all taxes collected under this part from coal mines that began production after December 31, 1988, in the relative proportions required by the levies for state, county, and school district purposes in the same manner as property taxes were distributed in the previous fiscal year.

(8) The board of county commissioners of a county may direct the county treasurer to reallocate the distribution of coal gross proceeds under subsection (7) in the same manner as provided in subsection (5).

(9) The board of trustees of an elementary or high school district may reallocate the coal gross proceeds taxes distributed to the district by the county treasurer under subsection (7) in the same manner as provided in subsection (6).

**History:** En. 84-1322 by Sec. 11, Ch. 525, L. 1975; R.C.M. 1947, 84-1322; amd. Sec. 77, Ch. 11, Sp. L. June 1989; amd. Sec. 1, Ch. 610, L. 1991; amd. Sec. 2, Ch. 641, L. 1991; amd. Sec. 3, Ch. 711, L. 1991; amd. Sec. 5, Ch. 790, L. 1991; amd. Sec. 101, Ch. 27, Sp. L. November 1993; amd. Sec. 3, Ch. 318, L. 1995; amd. Sec. 1, Ch. 22, L. 1997; amd. Sec. 62, Ch. 42, L. 1997; amd. Sec. 27, Ch. 29, L. 2001; amd. Sec. 22, Ch. 114, L. 2003; amd. Sec. 2, Ch. 433, L. 2009; amd. Sec. 4, Ch. 476, L. 2009; amd. Sec. 25, Ch. 128, L. 2011; amd. Sec. 1, Ch. 406, L. 2011.

## CHAPTER 24 SPECIAL PROPERTY TAX APPLICATIONS

### Part 14 New or Expanding Industry — Ammunition Components

**15-24-1401. Definitions.** The following definitions apply to 15-24-1402 unless the context requires otherwise:

(1) “Expansion” means that the industry has added after July 1, 1987, at least \$50,000 worth of qualifying improvements or modernized processes to its property within the same jurisdiction either in the first tax year in which the benefits provided for in 15-24-1402 are to be received or in the preceding tax year.

(2) “Industry” includes but is not limited to a firm that:

(a) engages in the mechanical or chemical transformation of materials or substances into products in the manner defined as manufacturing in the North American Industry Classification System Manual prepared by the United States office of management and budget;

(b) engages in the extraction or harvesting of minerals, ore, or forestry products;

(c) engages in the processing of Montana raw materials such as minerals, ore, agricultural products, and forestry products;

(d) engages in the transportation, warehousing, or distribution of commercial products or materials if 50% or more of the industry’s gross sales or receipts are earned from outside the state;

(e) earns 50% or more of its annual gross income from out-of-state sales;

(f) engages in the production of electrical energy in an amount of 1 megawatt or more by means of an alternative renewable energy source as defined in 15-6-225; or

(g) operates a qualified data center or dedicated communications infrastructure classified under 15-6-162.

(3) “New” means that the firm is new to the jurisdiction approving the resolution provided for in 15-24-1402(2) and has invested after July 1, 1987, at least \$125,000 worth of qualifying improvements or modernized processes in the jurisdiction either in the first tax year in which the benefits provided for in 15-24-1402 are to be received or in the preceding tax year. New industry does not include property treated as new industrial property under 15-6-135.

(4) “Qualifying” means meeting all the terms, conditions, and requirements for a reduction in taxable value under 15-24-1402 and this section.

**History:** En. Sec. 2, Ch. 564, L. 1981; amd. Sec. 1, Ch. 574, L. 1987; amd. Sec. 2, Ch. 694, L. 1991; amd. Sec. 29, Ch. 51, L. 1999; amd. Sec. 7, Ch. 591, L. 2001; amd. Sec. 2, Ch. 405, L. 2003; amd. Sec. 4, Ch. 438, L. 2017.

**Compiler’s Comments**

*2017 Amendment:* Chapter 438 in definition of industry inserted (g) concerning operation of qualified data center or dedicated communications infrastructure; and made minor changes in style. Amendment effective May 22, 2017.

*Applicability:* Section 7, Ch. 438, L. 2017, provided: “[This act] applies to tax years beginning after December 31, 2017.”

**15-24-1402. New or expanding industry — assessment — notification.** (1) In the first 5 years after a construction permit is issued, qualifying improvements or modernized processes that represent new industry or expansion of an existing industry, as designated in the approving resolution, must be taxed at 25% or 50% of their taxable value. Subject to 15-10-420, each year thereafter, the percentage must be increased by equal percentages until the full taxable value is attained in the 10th year. In subsequent years, the property must be taxed at 100% of its taxable value.

(2) (a) In order for a taxpayer to receive the tax benefits described in subsection (1), the taxpayer must have applied by March 1 of the year during which the benefit is first applicable. The governing body of the affected county or the incorporated city or town must have approved by separate resolution for each project, following due notice as provided in 7-1-2121 if a county or 7-1-4127 if an incorporated city or town and a public hearing, the use of the schedule provided for in subsection (1) for its respective jurisdiction. The governing body may not grant approval for the project until all of the applicant’s taxes have been paid in full. Taxes paid under protest do not preclude approval.

(b) The governing body shall:

(i) publish due notice within 60 days of receiving a taxpayer's complete application for the tax treatment provided for in this section; and

(ii) conduct a public hearing regarding an application for the tax treatment provided for in this section and deny or approve it within 120 days of receiving the application as provided in subsection (2)(b)(i).

(c) If the governing body fails to hold a hearing or deny or approve the application within 120 days of receiving the application, the applicant may seek from the district court in the jurisdiction in which the county, city, or town is located a writ of mandamus to compel the governing body to make a determination.

(d) Subject to 15-10-420, the governing body may end the tax benefits by majority vote at any time, but the tax benefits may not be denied an industrial facility that previously qualified for the benefits.

(e) The resolution provided for in subsection (2)(a) must include a definition of the improvements or modernized processes that qualify for the tax treatment that is to be allowed in the taxing jurisdiction. The resolution may provide that real property other than land, personal property, improvements, or any combination thereof is eligible for the tax benefits described in subsection (1).

(f) Property taxes abated from the reduction in taxable value allowed by this section are subject to recapture by the local governing body if the ownership or use of the property does not meet the requirements of 15-24-1401, this section, or the resolution required by subsections (2)(a) and (2)(e) of this section. The recapture is equal to the amount of taxes avoided, plus interest and penalties for nonpayment of property taxes provided in 15-16-102, during any period in which an abatement under the provisions of this section was in effect. The amount recaptured, including penalty and interest, must be distributed by the treasurer to funds and accounts subject to the abatement in the same ratio as the property tax was abated. A recapture of taxes abated by this section is not allowed with regard to property ceasing to qualify for the abatement by reason of an involuntary conversion. The recapture of abated taxes may be canceled, in whole or in part, if the local governing body determines that the taxpayer's failure to meet the requirements is a result of circumstances beyond the control of the taxpayer.

(3) The taxpayer shall apply to the department for the tax treatment allowed under subsection (1). The application by the taxpayer must first be approved by the governing body of the appropriate local taxing jurisdiction, and the governing body shall indicate in its approval that the property of the applicant qualifies for the tax treatment provided for in this section. Upon receipt of the form with the approval of the governing body of the affected taxing jurisdiction, the department shall make the assessment change pursuant to this section.

(4) The tax benefit described in subsection (1) applies only to the number of mills levied and assessed for local high school district and elementary school district purposes and to the number of mills levied and assessed by the governing body approving the benefit over which the governing body has sole discretion. The benefit described in subsection (1) may not apply to levies or assessments required under Title 15, chapter 10, 20-9-331, 20-9-333, or 20-9-360 or otherwise required under state law.

(5) Prior to approving the resolution under this section, the governing body shall notify by certified mail all taxing jurisdictions affected by the tax benefit.

**History:** En. Sec. 3, Ch. 564, L. 1981; amd. Sec. 2, Ch. 574, L. 1987; amd. Sec. 3, Ch. 694, L. 1991; amd. Sec. 48, Ch. 767, L. 1991; amd. Sec. 116, Ch. 27, Sp. L. November 1993; amd. Sec. 97, Ch. 584, L. 1999; amd. Sec. 1, Ch. 597, L. 2005; amd. Sec. 1, Ch. 57, L. 2013; amd. Sec. 1, Ch. 379, L. 2017.

**Compiler's Comments**

*2017 Amendment:* Chapter 379 in (1) near middle substituted "25% or 50%" for "50%". Amendment effective October 1, 2017.

*Applicability:* Section 2, Ch. 379, L. 2017, provided: "[This act] applies to new or expanding industry tax abatements granted on or after [the effective date of this act]. Effective October 1, 2017."

## **Part 15**

### **Remodeling of Buildings or Structures**

**15-24-1501. Remodeling, reconstruction, or expansion of buildings or structures — assessment provisions — levy limitations.** (1) Subject to 15-10-420 and the authority contained in subsection (5) of this section, remodeling, reconstruction, or expansion of existing

buildings or structures, which increases their taxable value by at least 2½% as determined by the department, may receive tax benefits during the construction period and for the following 5 years in accordance with subsections (2), (4), and (5) and the following schedule. The percentages must be applied as provided in subsections (4) and (5) and are limited to the increase in taxable value caused by remodeling, reconstruction, or expansion:

Construction period	0%
First year following construction	20%
Second year following construction	40%
Third year following construction	60%
Fourth year following construction	80%
Fifth year following construction	100%
Following years	100%

(2) In order for a taxpayer to receive the tax benefits described in subsection (1), the taxpayer must have applied by March 1 of the year during which the benefit is first applicable. The governing body of the affected county or, if the construction will occur within an incorporated city or town, the governing body of the incorporated city or town shall, following due notice as provided in 7-1-2121 if a county or 7-1-4127 if an incorporated city or town and a public hearing, approve by resolution for each remodeling, reconstruction, or expansion project the use of the schedule provided for in subsection (1) or a schedule adopted pursuant to subsection (5).

(3) (a) The governing body shall:

(i) publish due notice within 60 days of receiving a taxpayer's complete application for the tax treatment provided for in this section; and

(ii) conduct a public hearing regarding an application for the tax treatment provided for in this section and deny or approve it within 120 days of receiving the application as provided in subsection (3)(a)(i).

(b) If the governing body fails to hold a hearing or deny or approve the application within 120 days of receiving the application, the applicant may seek from the district court in the jurisdiction in which the county, city, or town is located a writ of mandamus to compel the governing body to make a determination.

(4) The tax benefit described in subsection (1) applies only to the number of mills levied and assessed for high school district and elementary school district purposes and to the number of mills levied and assessed by the local governing body approving the benefit. The benefit described in subsection (1) may not apply to statewide levies.

(5) A local government may, in the resolution required by subsection (2), modify the percentages contained in subsection (1) that apply to the first year following construction through the fourth year following construction. A local government may not modify the percentages contained in subsection (1) that apply to the fifth year following construction or years following the fifth year. A local government may not modify the time limits contained in subsection (1). The modifications to the percentages in subsection (1) adopted by a local government apply uniformly to each remodeling, reconstruction, or expansion project approved by the governing body.

(6) Property taxes abated from the reduction in property taxes allowed by this section are subject to recapture by the local governing body if the ownership or use of the property does not meet the requirements of this section or the resolution required by subsection (2). The recapture is equal to the amount of taxes avoided, plus interest and penalties for nonpayment of property taxes provided in 15-16-102, during any period in which an abatement under the provisions of this section was in effect. The amount recaptured, including penalty and interest, must be distributed by the treasurer to funds and accounts subject to the abatement in the same ratio as the property tax was abated. A recapture of taxes abated by this section is not allowed with regard to property ceasing to qualify for the abatement by reason of an involuntary conversion. The recapture of abated taxes may be canceled, in whole or in part, if the local governing body determines that the taxpayer's failure to meet the requirements is a result of circumstances beyond the control of the taxpayer.



**History:** En. Sec. 2, Ch. 599, L. 1981; amd. Sec. 1, Ch. 439, L. 1985; amd. Sec. 1, Ch. 695, L. 1989; amd. Sec. 117, Ch. 27, Sp. L. November 1993; amd. Sec. 98, Ch. 584, L. 1999; amd. Sec. 2, Ch. 597, L. 2005; amd. Sec. 2, Ch. 57, L. 2013.

## **Part 18**

### **Business Incubators**

**15-24-1802. Business incubator tax exemption — procedure.** (1) A business incubator owned or leased and operated by a local economic development organization is eligible for an exemption from property taxes as provided in this section.

(2) In order for a taxpayer to qualify for the tax exemption described in this section, the taxpayer must have applied by March 1 of the year during which the benefit is first applicable. The governing body of the county, consolidated government, incorporated city or town, or school district in which the property is located shall approve the tax exemption by resolution, after due notice, as provided in 7-1-2121 if a county, consolidated government, or school district or 7-1-4127 if an incorporated city or town, and hearing. The governing body may approve or disapprove the tax exemption provided for in subsection (1). If a tax exemption is approved, the governing body shall do so by a separate resolution for each business incubator in its respective jurisdiction. The governing body may not grant approval for the business incubator until all of the applicant's taxes have been paid in full or, if the property is leased to a business incubator, until all of the owner's property taxes on that property have been paid in full. Taxes paid under protest do not preclude approval. Prior to holding the hearing, the governing body shall determine that the local economic development organization:

(a) is a private, nonprofit corporation as provided in Title 35, chapter 2, and is exempt from taxation under section 501(c)(3) or 501(c)(6) of the Internal Revenue Code;

(b) is engaged in economic development and business assistance work in the area; and

(c) owns or leases and operates or will operate the business incubator.

(3) (a) The governing body shall:

(i) publish due notice within 60 days of receiving a taxpayer's complete application for the tax treatment provided for in this section; and

(ii) conduct a public hearing regarding an application for the tax treatment provided for in this section and deny or approve it within 120 days of receiving the application as provided in subsection (3)(a)(i).

(b) If the governing body fails to hold a hearing or deny or approve the application within 120 days of receiving the application, the applicant may seek from the district court in the jurisdiction in which the county, consolidated government, city, town, or school district is located a writ of mandamus to compel the governing body to make a determination.

(4) Upon receipt of approval of the governing body of the affected taxing jurisdiction, the department shall make the assessment change for the tax exemption provided for in this section.

(5) The tax exemption described in subsection (1) applies only to the number of mills levied and assessed by the governing body approving the exemption over which the governing body has sole discretion. If the governing body of a county, consolidated government, or incorporated city or town approves the exemption, the exemption applies to levies and assessments required under Title 15, chapter 10, 20-9-331, or 20-9-333 or otherwise required under state law.

(6) Property taxes abated from the reduction in property taxes allowed by this section are subject to recapture by the local governing body if the ownership or use of the property does not meet the requirements of 15-24-1801, this section, or the resolution required by subsection (2) of this section. The recapture is equal to the amount of taxes avoided, plus interest and penalties for nonpayment of property taxes provided in 15-16-102, during any period in which an abatement under the provisions of this section was in effect. The amount recaptured, including penalty and interest, must be distributed by the treasurer to funds and accounts subject to the abatement in the same ratio as the property tax was abated. A recapture of taxes abated by this section is not allowed with regard to property ceasing to qualify for the abatement by reason of an involuntary conversion. The recapture of abated taxes may be canceled, in whole or in part, if the local governing body determines that the taxpayer's failure to meet the requirements is a result of circumstances beyond the control of the taxpayer.



**History:** En. Sec. 2, Ch. 666, L. 1989; amd. Sec. 1, Ch. 669, L. 1991; amd. Sec. 118, Ch. 27, Sp. L. November 1993; amd. Sec. 4, Ch. 597, L. 2005; amd. Sec. 6, Ch. 57, L. 2013.

## **Part 19**

### **Industrial Parks**

**15-24-1902. Industrial park tax exemption — procedure — termination.** (1) An industrial park owned and operated by a local economic development organization or a port authority is eligible for an exemption from property taxes as provided in this section.

(2) In order for a taxpayer to qualify for the tax exemption described in this section, the taxpayer must have applied by March 1 of the year during which the benefit is first applicable. The governing body of the county, consolidated government, incorporated city or town, or school district in which the property is located shall approve the tax exemption by resolution, after due notice, as provided in 7-1-2121 if a county, consolidated government, or school district or 7-1-4127 if an incorporated city or town, and hearing. The governing body may approve or disapprove the tax exemption provided for in subsection (1). If a tax exemption is approved, the governing body shall do so by a separate resolution for each industrial park in its respective jurisdiction. The governing body may not grant approval for the industrial park until all of the applicant's taxes have been paid in full. Taxes paid under protest do not preclude approval. Prior to holding the hearing, the governing body shall determine that:

(a) the local economic development organization:

(i) is a private, nonprofit corporation as provided in Title 35, chapter 2, and is exempt from taxation under section 501(c)(3) or 501(c)(6) of the Internal Revenue Code;

(ii) is engaged in economic development and business assistance work in the area; and

(iii) owns and operates or will own and operate the industrial development park; or

(b) the port authority legally exists under the provisions of 7-14-1101 or 7-14-1102.

(3) (a) The governing body shall:

(i) publish due notice within 60 days of receiving a taxpayer's complete application for the tax treatment provided for in this section; and

(ii) conduct a public hearing regarding an application for the tax treatment provided for in this section and deny or approve it within 120 days of receiving the application as provided in subsection (3)(a)(i).

(b) If the governing body fails to hold a hearing or deny or approve the application within 120 days of receiving the application, the applicant may seek from the district court in the jurisdiction in which the county, consolidated government, city, town, or school district is located a writ of mandamus to compel the governing body to make a determination.

(4) Upon receipt of approval of the governing body of the affected taxing jurisdiction, the department shall make the assessment change for the tax exemption provided for in this section.

(5) The tax exemption described in subsection (1) applies only to the number of mills levied and assessed by the governing body approving the exemption over which the governing body has sole discretion. If the governing body of a county, consolidated government, or incorporated city or town approves the exemption, the exemption applies to levies or assessments required under Title 15, chapter 10, 20-9-331, or 20-9-333 or otherwise required under state law.

(6) If a local economic development organization sells, leases, or otherwise disposes of the exempt property to a purchaser or lessee that is not a local economic development organization or a unit of federal, state, or local government, the tax exemption provided in this section terminates. The termination of the exemption applies January 1 of the taxable year immediately following the sale, lease, or other disposition of the property. Upon termination of the exemption, the property must be assessed as provided in 15-16-203.

(7) Property taxes abated from the reduction in property taxes allowed by this section are subject to recapture by the local governing body if the ownership or use of the property does not meet the requirements of 15-24-1901, this section, or the resolution required by subsection (2) of this section. The recapture is equal to the amount of taxes avoided, plus interest and penalties for nonpayment of property taxes provided in 15-16-102, during any period in which an abatement under the provisions of this section was in effect. The amount recaptured, including penalty and interest, must be distributed by the treasurer to funds and accounts subject to the abatement in the same ratio as the property tax was abated. A recapture of taxes abated by this

section is not allowed with regard to property ceasing to qualify for the abatement by reason of an involuntary conversion. The recapture of abated taxes may be canceled, in whole or in part, if the local governing body determines that the taxpayer's failure to meet the requirements is a result of circumstances beyond the control of the taxpayer.

**History:** En. Sec. 2, Ch. 679, L. 1989; amd. Sec. 1, Ch. 702, L. 1991; amd. Sec. 119, Ch. 27, Sp. L. November 1993; amd. Sec. 5, Ch. 597, L. 2005; amd. Sec. 7, Ch. 57, L. 2013.

## Part 20

### Local Economic Development Organizations

**15-24-2002. Building and land tax exemption — procedure — termination.** (1) A building and land owned by a local economic development organization that the local economic development organization intends to sell or lease to a profit-oriented, employment-stimulating business are eligible for an exemption from property taxes as provided in this section.

(2) In order for a taxpayer to qualify for the tax exemption described in this section, the taxpayer must have applied by March 1 of the year during which the benefit is first applicable. The governing body of the affected county, consolidated government, incorporated city or town, or school district in which the building and land are located shall approve the tax exemption by resolution, after due notice, as provided in 7-1-2121 if a county, consolidated government, or school district or 7-1-4127 if an incorporated city or town, and hearing. The governing body may approve or disapprove the tax exemption provided for in subsection (1). The governing body shall approve a tax exemption by a separate resolution. The governing body may not grant approval for the building and land until all of the applicant's taxes have been paid in full. Taxes paid under protest do not preclude approval. Prior to holding the hearing, the governing body shall determine that the local economic development organization:

(a) is a private, nonprofit corporation, as provided in Title 35, chapter 2, and is exempt from taxation under section 501(c)(3) or 501(c)(6) of the Internal Revenue Code;

(b) is engaged in economic development and business assistance work in the area; and

(c) owns or will own the building and land.

(3) (a) The governing body shall:

(i) publish due notice within 60 days of receiving a taxpayer's complete application for the tax treatment provided for in this section; and

(ii) conduct a public hearing regarding an application for the tax treatment provided for in this section and deny or approve it within 120 days of receiving the application as provided in subsection (3)(a)(i).

(b) If the governing body fails to hold a hearing or deny or approve the application within 120 days of receiving the application, the applicant may seek from the district court in the jurisdiction in which the county, consolidated government, city, town, or school district is located a writ of mandamus to compel the governing body to make a determination.

(4) Upon receipt of approval of the governing body of the affected taxing jurisdiction, the department shall make the assessment change for the tax exemption provided for in this section.

(5) The tax exemption described in subsection (1) applies only to the number of mills levied and assessed by the governing body approving the exemption over which the governing body has sole discretion. If the governing body of a county, consolidated government, or incorporated city or town approves the exemption, the exemption applies to levies or assessments required under Title 15, chapter 10, 20-9-331, or 20-9-333 and other levies required under state law.

(6) When a local economic development organization sells, leases, or otherwise disposes of the exempt property to a purchaser or lessee that is not a local economic development organization or a unit of federal, state, or local government, the tax exemption provided in this section terminates. The termination of the exemption applies January 1 of the taxable year immediately following the sale, lease, or other disposition of the property. Upon termination of the exemption, the property must be assessed as provided in 15-16-203.

(7) Property taxes abated from the reduction in property taxes allowed by this section are subject to recapture by the local governing body if the ownership or use of the property does not meet the requirements of this section or the resolution required by subsection (2). The recapture is equal to the amount of taxes avoided, plus interest and penalties for nonpayment of property taxes provided in 15-16-102, during any period in which an abatement under the provisions

of this section was in effect. The amount recaptured, including penalty and interest, must be distributed by the treasurer to funds and accounts subject to the abatement in the same ratio as the property tax was abated. A recapture of taxes abated by this section is not allowed with regard to property ceasing to qualify for the abatement by reason of an involuntary conversion. The recapture of abated taxes may be canceled, in whole or in part, if the local governing body determines that the taxpayer's failure to meet the requirements is a result of circumstances beyond the control of the taxpayer.

**History:** En. Sec. 2, Ch. 693, L. 1991; amd. Sec. 4, Ch. 693, L. 1991; amd. Sec. 120, Ch. 27, Sp. L. November 1993; amd. Sec. 6, Ch. 597, L. 2005; amd. Sec. 8, Ch. 57, L. 2013.

## Part 21 Abatement of Commercial or Industrial Property Taxes (Repealed)

**15-24-2101. Repealed.** Sec. 31, Ch. 361, L. 2015.

**History:** En. Sec. 1, Ch. 421, L. 2009.

**15-24-2102. Repealed.** Sec. 31, Ch. 361, L. 2015.

**History:** En. Sec. 2, Ch. 421, L. 2009.

**15-24-2103. Repealed.** Sec. 31, Ch. 361, L. 2015.

**History:** En. Sec. 3, Ch. 421, L. 2009.

## Part 24 Value-Added Manufacturing (Repealed)

**15-24-2403. Repealed.** Sec. 1, Ch. 37, L. 2013.

**History:** En. Sec. 3, Ch. 786, L. 1991; amd. Sec. 33, Ch. 2, L. 2009; amd. Sec. 159, Ch. 56, L. 2009.

## CHAPTER 30 INDIVIDUAL INCOME TAX

### Part 23 Specific Tax Credits and Tax Checkoffs

**15-30-2334. (Temporary) Credit for providing supplemental funding to public schools — innovative educational program.** There is a credit against tax liability under this chapter for a donation made to the educational improvement account as provided in 15-30-3110. *(Terminates December 31, 2023—sec. 33, Ch. 457, L. 2015.)*

**History:** En. Sec. 18, Ch. 457, L. 2015.

**15-30-2335. (Temporary) Qualified education individual income tax credit for contributions to student scholarship organization.** There is a credit against tax liability under this chapter for a charitable donation made to a student scholarship organization as provided in 15-30-3111. *(Terminates December 31, 2023—sec. 33, Ch. 457, L. 2015.)*

**History:** En. Sec. 19, Ch. 457, L. 2015.

### Part 31 Tax Credit for Qualified Education Contributions

**15-30-3101. (Temporary) Purpose.** Pursuant to 5-4-104, the legislature finds that the purpose of student scholarship organizations is to provide parental and student choice in education with private contributions through tax replacement programs. The tax credit for taxpayer donations under this part must be administered in compliance with Article V, section 11(5), and Article X, section 6, of the Montana constitution. *(Terminates December 31, 2023—sec. 33, Ch. 457, L. 2015.)*

**History:** En. Sec. 7, Ch. 457, L. 2015.

**15-30-3102. (Temporary) Definitions.** As used in this part, the following definitions apply:

- (1) “Department” means the department of revenue provided for in 2-15-1301.
- (2) “Eligible student” means a student who is a Montana resident and who is 5 years of age or older on or before September 10 of the year of attendance and has not yet reached 19 years of age.
- (3) “Geographic region” has the meaning provided in 20-9-903.
- (4) “Large district” has the meaning provided in 20-9-903.
- (5) “Partnership” has the meaning provided in 15-30-2101.
- (6) “Pass-through entity” has the meaning provided in 15-30-2101.
- (7) “Qualified education provider” means an education provider that:
  - (a) is not a public school;
  - (b) (i) is accredited, has applied for accreditation, or is provisionally accredited by a state, regional, or national accreditation organization; or
  - (ii) is a nonaccredited provider or tutor and has informed the child’s parents or legal guardian in writing at the time of enrollment that the provider is not accredited and is not seeking accreditation;
  - (c) is not a home school as referred to in 20-5-102(2)(e);
  - (d) administers a nationally recognized standardized assessment test or criterion-referenced test and:
    - (i) makes the results available to the child’s parents or legal guardian; and
    - (ii) administers the test for all 8th grade and 11th grade students and provides the overall scores on a publicly accessible private website or provides the composite results of the test to the office of public instruction for posting on its website;
  - (e) satisfies the health and safety requirements prescribed by law for private schools in this state; and
  - (f) qualifies for an exemption from compulsory enrollment under 20-5-102(2)(e) and 20-5-109.
- (8) “Small business corporation” has the meaning provided in 15-30-3301.
- (9) “Student scholarship organization” means a charitable organization in this state that:
  - (a) is exempt from federal income taxation under section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. 501(c)(3);
  - (b) allocates not less than 90% of its annual revenue for scholarships to allow students to enroll with any qualified education provider; and
  - (c) provides educational scholarships to eligible students without limiting student access to only one education provider.
- (10) “Taxpayer” has the meaning provided in 15-30-2101. (*Terminates December 31, 2023—sec. 33, Ch. 457, L. 2015.*)

**History:** En. Sec. 8, Ch. 457, L. 2015.

**15-30-3103. (Temporary) Requirements for student scholarship organizations.** (1) A student scholarship organization:

- (a) shall obligate at least 90% of its annual revenue for scholarships. For the purpose of this calculation:
  - (i) the cost of the annual fiscal review provided for in 15-30-3105(1)(b) may be paid out of the total contributions before calculation of the 90% minimum obligation amount; and
  - (ii) all contributions subject to the 90% minimum obligation amount that are received in 1 calendar year must be paid out in scholarships within the 3 calendar years following the contribution.
- (b) may not restrict or reserve scholarships for use at a particular education provider or any particular type of education provider and shall allow an eligible student to enroll with any qualified education provider of the parents’ or legal guardian’s choice;
- (c) shall provide scholarships to eligible students to attend instruction offered by a qualified education provider;
- (d) may not provide a scholarship to an eligible student for an academic year that exceeds 50% of the per-pupil average of total public school expenditures calculated in 20-9-570;
- (e) shall ensure that the organization’s average scholarship for an academic year does not exceed 30% of the per-pupil average of total public school expenditures calculated in 20-9-570;

- (f) shall maintain separate accounts for scholarship funds and operating funds;
- (g) may transfer funds to another student scholarship organization;
- (h) shall maintain an application process under which scholarship applications are accepted, reviewed, approved, and denied; and
- (i) shall comply with payment and reporting requirements in accordance with 15-30-3104 and 15-30-3105.

(2) An organization that fails to satisfy the conditions of this section is subject to termination as provided in 15-30-3113. (*Terminates December 31, 2023—sec. 33, Ch. 457, L. 2015.*)

**History:** En. Sec. 9, Ch. 457, L. 2015.

**15-30-3104. (Temporary) Tuition payment limitation.** (1) A student scholarship organization shall deliver the scholarship funds directly to the qualified education provider selected by the parents or legal guardian of the child to whom the scholarship was awarded. The qualified education provider shall immediately notify the parents or legal guardian that the payment was received.

(2) A parent or legal guardian of an eligible student may not accept one or more scholarship awards from a student scholarship organization for an eligible student if the total amount of the awards exceeds 50% of the per-pupil average of total public school expenditures calculated in 20-9-570. This limitation applies to each eligible student of a parent or legal guardian. (*Terminates December 31, 2023—sec. 33, Ch. 457, L. 2015.*)

**History:** En. Sec. 10, Ch. 457, L. 2015.

**15-30-3105. (Temporary) Reporting requirements for student scholarship organizations.** (1) Each student scholarship organization shall:

- (a) submit a notice to the department of its intent to operate as a student scholarship organization prior to accepting donations;
- (b) complete an annual fiscal review of its accounts by an independent certified public accountant within 120 days after the close of the calendar year that discloses for each of the 3 most recently completed calendar years:
  - (i) the total number and dollar value of individual and corporate contributions;
  - (ii) the total number and dollar value of scholarships obligated to eligible students;
  - (iii) the total number and dollar value of scholarships awarded to eligible students; and
  - (iv) the cost of the annual fiscal review;
- (c) submit the annual fiscal review report to the department within 150 days of the close of the calendar year.

(2) The department shall provide written notice to a student scholarship organization that fails to submit the annual fiscal review report, and the organization has 30 days from receipt of the notice to submit the report.

(3) An organization that fails to satisfy the conditions of this section is subject to termination as provided in 15-30-3113. (*Terminates December 31, 2023—sec. 33, Ch. 457, L. 2015.*)

**History:** En. Sec. 11, Ch. 457, L. 2015.

**15-30-3106. (Temporary) Student scholarship organizations — listing on website.**

- (1) The department shall maintain on its website a hyperlink to a current list of all:
  - (a) student scholarship organizations that have provided notice pursuant to 15-30-3105(1)(a); and
  - (b) qualified education providers that accepted scholarship funds from a student scholarship organization.

(2) The list must include:

- (a) a statistical compilation of the information received from the student scholarship organizations; and
- (b) a hyperlink to the qualified education provider's overall testing scores contained on a publicly accessible private website or to the office of public instruction's website pursuant to 15-30-3102(7)(d)(ii). (*Terminates December 31, 2023—sec. 33, Ch. 457, L. 2015.*)

**History:** En. Sec. 12, Ch. 457, L. 2015.

**15-30-3107 through 15-30-3109 reserved.**



**15-30-3110. (Temporary) Credit for providing supplemental funding to public schools — innovative educational program.** (1) Subject to subsection (5), a taxpayer or corporation is allowed a credit against the tax imposed by chapter 30 or 31 for donations made to the educational improvement account provided for in 20-9-905 for the purpose of providing supplemental funding to public schools for innovative educational programs and technology deficiencies. The taxpayer may direct the donation to a geographic region or a large district as provided in 20-9-904(2)(b). The amount of the credit allowed is equal to the amount of the donation, not to exceed \$150.

(2) (a) If the credit allowed under this section is claimed by a small business corporation, a pass-through entity, or a partnership, the credit must be attributed to shareholders, owners, or partners using the same proportion as used to report the entity's income or loss.

(b) A donation by an estate or trust qualifies for the credit. Any credit not used by the estate or trust may be attributed to each beneficiary of the estate or trust in the same proportion used to report the beneficiary's income from the estate or trust for Montana income tax purposes.

(3) The credit allowed under this section may not exceed the taxpayer's income tax liability.

(4) There is no carryback or carryforward of the credit permitted under this section, and the credit must be applied in the year the donation is made, as determined by the taxpayer's accounting method.

(5) (a) (i) The aggregate amount of tax credits allowed under this section is \$3 million beginning in tax year 2016.

(ii) Beginning in 2017, by August 1 of each year, the department shall determine if \$3 million or the aggregate limit provided for in subsection (5)(a)(iii) in donations was preapproved by the department. If this condition is satisfied, the aggregate amount of tax credits allowed must be increased by 10% for the succeeding tax years.

(iii) If the aggregate limit is increased in any tax year, the department shall use the new limit as the base aggregate limit for succeeding tax years until a new aggregated limit is established under the provisions of subsection (5)(a)(ii).

(b) The department shall approve the amount of donations for taxpayers on a first-come, first-served basis and post a notice on its website advising taxpayers when the aggregate limit is in effect. If a taxpayer makes a donation after total donations claimed exceeds the aggregate limit, the taxpayer's return will be processed without regard to the credit.

(6) A credit is not allowed under this section with respect to any amount deducted by the taxpayer for state tax purposes as a charitable contribution to a charitable organization qualified under section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. 501(c)(3). This section does not prevent a taxpayer from:

(a) claiming a credit under this section instead of a deduction; or

(b) claiming an exclusion, deduction, or credit for a charitable contribution that exceeds the amount for which the credit is allowed under this section.

(7) After consultation with the superintendent of public instruction, the department may develop an internet-based registration system that provides taxpayers with the opportunity to obtain preapproval for a tax credit before making a donation. (*Terminates December 31, 2023—sec. 33, Ch. 457, L. 2015.*)

**History:** En. Sec. 13, Ch. 457, L. 2015.

**15-30-3111. (Temporary) Qualified education tax credit for contributions to student scholarship organizations.** (1) Subject to subsection (5), a taxpayer or corporation is allowed a credit against the tax imposed by chapter 30 or 31 for donations made to a student scholarship organization. The donor may not direct or designate contributions to a parent, legal guardian, or specific qualified education provider. The amount of the credit allowed is equal to the amount of the donation, not to exceed \$150.

(2) (a) If the credit allowed under this section is claimed by a small business corporation, a pass-through entity, or a partnership, the credit must be attributed to shareholders, owners, or partners using the same proportion as used to report the entity's income or loss.

(b) A contribution by an estate or trust qualifies for the credit. Any credit not used by the estate or trust may be attributed to each beneficiary of the estate or trust in the same proportion used to report the beneficiary's income from the estate or trust for Montana income tax purposes.

(3) The credit allowed under this section may not exceed the taxpayer's income tax liability.

(4) There is no carryback or carryforward of the credit permitted under this section, and the credit must be applied in the year the donation is made, as determined by the taxpayer's accounting method.

(5) (a) (i) The aggregate amount of tax credits allowed under this section is \$3 million beginning in tax year 2016.

(ii) Beginning in 2017, by August 1 of each year, the department shall determine if \$3 million or the aggregate limit provided for in subsection (5)(a)(iii) in tax credits was preapproved by the department. If this condition is satisfied, the aggregate amount of tax credits allowed must be increased by 10% for the succeeding tax years.

(iii) If the aggregate limit is increased in any tax year, the department shall use the new limit as the base aggregate limit for succeeding tax years until a new aggregated limit is established under the provisions of subsection (5)(a)(ii).

(b) The department shall approve the amount of tax credits for taxpayers on a first-come, first-served basis and post a notice on its website advising taxpayers when the aggregate limit is in effect. If a taxpayer makes a donation after total donations claimed exceeds the aggregate limit, the taxpayer's return will be processed without regard to the credit.

(6) A credit is not allowed under this section with respect to any amount deducted by the taxpayer for state tax purposes as a charitable contribution to a charitable organization qualified under section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. 501(c)(3). This section does not prevent a taxpayer from:

(a) claiming a credit under this section instead of a deduction; or

(b) claiming an exclusion, deduction, or credit for a charitable contribution that exceeds the amount for which the credit is allowed under this section.

(7) The department may develop an internet-based registration system that provides donors with the opportunity to obtain preapproval for a tax credit before making a contribution. (*Terminates December 31, 2023—sec. 33, Ch. 457, L. 2015.*)

**History:** En. Sec. 14, Ch. 457, L. 2015.

**15-30-3112. (Temporary) Report to revenue and transportation interim committee — student scholarship organizations.** Each biennium, the department shall provide to the revenue and transportation interim committee a list of student scholarship organizations receiving contributions from businesses and individuals that are granted tax credits under 15-30-3111. The listing must detail the tax credits claimed under the individual income tax in chapter 30 and the corporate income tax in chapter 31. (*Terminates December 31, 2023—sec. 33, Ch. 457, L. 2015.*)

**History:** En. Sec. 15, Ch. 457, L. 2015.

**15-30-3113. (Temporary) Review determination — termination — confidentiality.**

(1) Subject to subsection (7), the department is authorized to examine any books, papers, records, or memoranda relevant to determining whether a student scholarship organization is in compliance with 15-30-3102, 15-30-3103, and 15-30-3105.

(2) If a student scholarship organization is not in compliance, the department shall provide to the organization written notice of the specific failures and the organization has 30 days from the date of the notice to correct deficiencies. If the organization fails to correct all deficiencies, the department shall provide a final written notice of the failure to the organization. The organization may appeal the department's determination of failure to comply according to the uniform dispute review procedure in 15-1-211 within 30 days of the date of the notice.

(3) (a) If a student scholarship organization does not seek review under 15-1-211 or if the dispute is not resolved, the department shall issue a final department decision.

(b) The final department decision for a student scholarship organization must provide that the student scholarship organization:

(i) will be removed from the list of eligible student scholarship organizations provided in 15-30-3106 and notified of the removal; and

(ii) shall within 15 calendar days of receipt of notice from the department of removal from the eligible list cease all operations as a student scholarship organization and transfer all scholarship account funds to a properly operating student scholarship organization.

(4) A student scholarship organization that receives a final department decision may seek review of the decision from the state tax appeal board pursuant to 15-2-302.

(5) Either party aggrieved as a result of the decision of the state tax appeal board may seek judicial review pursuant to 15-2-303.

(6) If a student scholarship organization files an appeal pursuant to this section, the organization may continue to operate until the decision of the court is final.

(7) The identity of donors who make donations to the educational improvement account provided for in 20-9-905 or donations to a student scholarship organization is confidential tax information that is subject to the provisions of 15-30-2618. *(Terminates December 31, 2023—sec. 33, Ch. 457, L. 2015.)*

**History:** En. Sec. 16, Ch. 457, L. 2015.

**15-30-3114. (Temporary) Rulemaking.** The department may adopt rules, prepare forms, and maintain records that are necessary to implement and administer this part. *(Terminates December 31, 2023—sec. 33, Ch. 457, L. 2015.)*

**History:** En. Sec. 17, Ch. 457, L. 2015.

## CHAPTER 31 CORPORATE INCOME TAX OR ALTERNATIVE CORPORATE INCOME TAX

### Part 1 Corporate Income Tax Rate and Return

**15-31-158. (Temporary) Credit for providing supplemental funding to public schools — corporate tax credit — innovative educational program.** There is a credit against tax liability under this chapter for a donation made to the educational improvement account as provided in 15-30-3110. *(Terminates December 31, 2023—sec. 33, Ch. 457, L. 2015.)*

**History:** En. Sec. 20, Ch. 457, L. 2015.

**15-31-159. (Temporary) Qualified education corporate credit for contributions to student scholarship organization.** There is a credit against tax liability under this chapter for a charitable donation made to a student scholarship organization as provided in 15-30-3111. *(Terminates December 31, 2023—sec. 33, Ch. 457, L. 2015.)*

**History:** En. Sec. 21, Ch. 457, L. 2015.

### Part 5 Administration and Collection

**15-31-511. Confidentiality of tax records.** (1) Except as provided in this section, in accordance with a proper judicial order, or as otherwise provided by law, it is unlawful to divulge or make known in any manner:

(a) the amount of income or any particulars set forth or disclosed in any return or report required under this chapter or any other information relating to taxation secured in the administration of this chapter; or

(b) any federal return or information in or disclosed on a federal return or report required by law or rule of the department under this chapter.

(2) (a) An officer or employee charged with custody of returns and reports required by this chapter may not be ordered to produce any of them or evidence of anything contained in them in any administrative proceeding or action or proceeding in any court, except:

(i) in an action or proceeding in which the department is a party under the provisions of this chapter; or

(ii) in any other tax proceeding or on behalf of a party to an action or proceeding under the provisions of this chapter when the returns or reports or facts shown in them are directly pertinent to the action or proceeding.

(b) If the production of a return, report, or information contained in them is ordered, the court shall limit production of and the admission of returns, reports, or facts shown in them to the matters directly pertinent to the action or proceeding.

(3) This section does not prohibit:

(a) the delivery of a certified copy of any return or report filed in connection with a return to the taxpayer who filed the return or report or to the taxpayer's authorized representative;

(b) the publication of statistics prepared in a manner that prevents the identification of particular returns, reports, or items from returns or reports;

(c) the inspection of returns and reports by the attorney general or other legal representative of the state in the course of an administrative proceeding or litigation under this chapter;

(d) access to information under subsection (4);

(e) the director of revenue from permitting a representative of the commissioner of internal revenue of the United States or a representative of a proper officer of any state imposing a tax on the income of a taxpayer to inspect the returns or reports of a corporation. The department may also furnish those persons abstracts of income, returns, and reports; information concerning any item in a return or report; and any item disclosed by an investigation of the income or return of a corporation. The director of revenue may not furnish that information to a person representing the United States or another state unless the United States or the other state grants substantially similar privileges to an officer of this state charged with the administration of this chapter.

(4) On written request to the director or a designee of the director, the department shall:

(a) allow the inspection of returns and reports by the legislative auditor, but the information furnished to the legislative auditor is subject to the same restrictions on disclosure outside that office as provided in subsection (1);

(b) provide corporate income tax and alternative corporate income tax information, including any information that may be required under Title 15, chapter 30, part 33, to the legislative fiscal analyst, as provided in 5-12-303 or 15-1-106, and the office of budget and program planning, as provided in 15-1-106 or 17-7-111. The information furnished to the legislative fiscal analyst and the office of budget and program planning is subject to the same restrictions on disclosure outside those offices as provided in subsection (1).

(c) provide to the department of commerce tax information about a taxpayer whose debt is assigned to the department of revenue for offset or collection pursuant to the terms of Title 17, chapter 4, part 1. The information provided to the department of commerce must be used for the purposes of preventing and detecting fraud or abuse and determining eligibility for grants or loans.

(d) furnish to the superintendent of public instruction information required under 20-9-905;

(e) exchange with the department of labor and industry taxpayer and apprentice information necessary to implement 15-30-2357, 15-31-173, and 39-6-109.

(5) A person convicted of violating this section shall be fined not to exceed \$500. If a public officer or public employee is convicted of violating this section, the person is dismissed from office or employment and may not hold any public office or public employment in the state for a period of 1 year after dismissal or, in the case of a former officer or employee, for 1 year after conviction. *(Subsection (4)(d) terminates December 31, 2023—sec. 33, Ch. 457, L. 2015.)*

**History:** En. Sec. 1, Ch. 135, L. 1993; amd. Sec. 15, Ch. 595, L. 2005; amd. Sec. 4, Ch. 70, L. 2007; amd. Sec. 25, Ch. 268, L. 2013; amd. Sec. 2, Ch. 76, L. 2015; amd. Sec. 25, Ch. 457, L. 2015; amd. Sec. 4, Ch. 151, L. 2017; amd. Sec. 5, Ch. 380, L. 2017.

#### **Compiler's Comments**

*2017 Amendments — Composite Section:* Chapter 151 deleted former (3)(f) that read: "(f) the disclosure of information to the commissioner of insurance's office that is necessary for the administration of the small business health insurance tax credit provided for in Title 33, chapter 22, part 20." Amendment effective October 1, 2017.

Chapter 380 inserted (4)(e) concerning exchange of taxpayer and apprentice information with department of labor; and made minor changes in style. Amendment effective January 1, 2018.

*Applicability:* Section 8, Ch. 380, L. 2017, provided: "[This act] applies to tax years beginning after December 31, 2017."

## CHAPTER 35 COAL SEVERANCE TAX

### Part 1 General Provisions

**15-35-108. (Temporary) Disposal of severance taxes.** Severance taxes collected under this chapter must, in accordance with the provisions of 17-2-124, be allocated as follows:

(1) Fifty percent of total coal severance tax collections is allocated to the trust fund created by Article IX, section 5, of the Montana constitution. The trust fund money must be deposited in the fund established under 17-6-203(6) and invested by the board of investments as provided by law.

(2) The amount of 12% of coal severance tax collections is allocated to the long-range building program account established in 17-7-205.

(3) The amount of 0.85% in fiscal year 2018 and 0.88% in fiscal year 2019 must be allocated for provision of basic library services for the residents of all counties through library federations and for payment of the costs of participating in regional and national networking and must be deposited in the basic library services account established in 22-1-202.

(4) The amount of 3.89% in fiscal year 2018 and 3.83% in fiscal year 2019 must be allocated to the department of natural resources and conservation for conservation districts and deposited in the conservation district account established in 76-15-106.

(5) The amount of 0.72% in fiscal year 2018 and 0.75% in fiscal year 2019 must be allocated to the Montana Growth Through Agriculture Act and deposited in the growth through agriculture account established in 90-9-104.

(6) The amount of 1.27% must be allocated to a permanent fund account for the purpose of parks acquisition or management. Income from this permanent fund account, excluding unrealized gains and losses, must be appropriated for the acquisition, development, operation, and maintenance of any sites and areas described in 23-1-102.

(7) The amount of 0.95% must be allocated to the debt service fund type to the credit of the renewable resource loan debt service fund.

(8) The amount of 0.63% must be allocated to a trust fund for the purpose of protection of works of art in the capitol and for other cultural and aesthetic projects. Income from this trust fund account, excluding unrealized gains and losses, must be appropriated for protection of works of art in the state capitol and for other cultural and aesthetic projects.

(9) The amount of 5.8% through June 30, 2019, and beginning July 1, 2019, the amount of 2.9% must be credited to the coal natural resource account established in 90-6-1001(2).

(10) After the allocations are made under subsections (2) through (9), \$250,000 for the fiscal year must be credited to the coal and uranium mine permitting and reclamation program account established in 82-4-244.

(11) (a) Subject to subsection (11)(b), all other revenue from severance taxes collected under the provisions of this chapter must be credited to the general fund of the state.

(b) The interest income of the coal severance tax permanent fund that is deposited in the general fund, less the annual transfer of \$1.275 million to the research and commercialization state special revenue account pursuant to 15-1-122(2), is statutorily appropriated, as provided in 17-7-502, on July 1 each year as follows:

(i) \$65,000 to the cooperative development center;

(ii) \$625,000 for the growth through agriculture program provided for in Title 90, chapter 9;

(iii) to the department of commerce:

(A) \$125,000 for a small business development center;

(B) \$50,000 for a small business innovative research program;

(C) \$425,000 for certified regional development corporations;

(D) \$200,000 for the Montana manufacturing extension center at Montana state university-Bozeman; and

(E) \$300,000 for export trade enhancement. (*Terminates June 30, 2019—secs. 2, 3, Ch. 459, L. 2009.*)



**15-35-108.** (*Effective July 1, 2019*) **Disposal of severance taxes.** Severance taxes collected under this chapter must, in accordance with the provisions of 17-2-124, be allocated as follows:

(1) Fifty percent of total coal severance tax collections is allocated to the trust fund created by Article IX, section 5, of the Montana constitution. The trust fund money must be deposited in the fund established under 17-6-203(6) and invested by the board of investments as provided by law.

(2) The amount of 12% of coal severance tax collections is allocated to the long-range building program account established in 17-7-205.

(3) The amount of 0.90% in fiscal year 2020 and 0.93% in fiscal year 2021 and in each fiscal year thereafter must be allocated for provision of basic library services for the residents of all counties through library federations and for payment of the costs of participating in regional and national networking and must be deposited in the basic library services account established in 22-1-202.

(4) The amount of 3.77% in fiscal year 2020 and 3.71% in fiscal year 2021 and in each fiscal year thereafter must be allocated to the department of natural resources and conservation for conservation districts and deposited in the conservation district account established in 76-15-106.

(5) The amount of 0.79% in fiscal year 2020 and 0.82% in fiscal year 2021 and in each fiscal year thereafter must be allocated to the Montana Growth Through Agriculture Act and deposited in the growth through agriculture account established in 90-9-104.

(6) The amount of 1.27% must be allocated to a permanent fund account for the purpose of parks acquisition or management. Income from this permanent fund account, excluding unrealized gains and losses, must be appropriated for the acquisition, development, operation, and maintenance of any sites and areas described in 23-1-102.

(7) The amount of 0.95% must be allocated to the debt service fund type to the credit of the renewable resource loan debt service fund.

(8) The amount of 0.63% must be allocated to a trust fund for the purpose of protection of works of art in the capitol and for other cultural and aesthetic projects. Income from this trust fund account, excluding unrealized gains and losses, must be appropriated for protection of works of art in the state capitol and for other cultural and aesthetic projects.

(9) The amount of 2.9% must be credited to the coal natural resource account established in 90-6-1001(2).

(10) After the allocations are made under subsections (2) through (9), \$250,000 for the fiscal year must be credited to the coal and uranium mine permitting and reclamation program account established in 82-4-244.

(11) All other revenue from severance taxes collected under the provisions of this chapter must be credited to the general fund of the state.

**History:** En. 84-1309.1 by Sec. 2, Ch. 432, L. 1973; amd. Sec. 1, Ch. 250, L. 1974; amd. Sec. 4, Ch. 501, L. 1975; amd. Sec. 3, Ch. 502, L. 1975; amd. and redes. 84-1319 by Sec. 8, Ch. 525, L. 1975; amd. Sec. 2, Ch. 156, L. 1977; amd. Sec. 1, Ch. 540, L. 1977; amd. Sec. 2, Ch. 549, L. 1977; R.C.M. 1947, 84-1319; amd. Sec. 1, Ch. 653, L. 1979; amd. Sec. 1, Ch. 694, L. 1979; amd. Sec. 1, Ch. 479, L. 1981; amd. Sec. 43, Ch. 505, L. 1981; amd. Sec. 3, Ch. 281, L. 1983; amd. Sec. 5, Ch. 541, L. 1983; amd. Sec. 1, Ch. 246, L. 1985; amd. Sec. 1, Ch. 715, L. 1985; amd. Sec. 1, Ch. 3, Sp. L. June 1986; amd. Sec. 1, Ch. 19, Sp. L. June 1986; amd. Sec. 1, Ch. 662, L. 1987; amd. Sec. 17, Ch. 83, L. 1989; amd. Sec. 1, Ch. 626, L. 1989; amd. Sec. 4, Ch. 11, Sp. L. June 1989; amd. Sec. 13, Ch. 16, L. 1991; amd. Sec. 3, Ch. 191, L. 1991; amd. Sec. 1, Ch. 615, L. 1991; amd. Sec. 1, Ch. 8, Sp. L. January 1992; amd. Sec. 1, Ch. 16, Sp. L. January 1992; amd. Sec. 5, Ch. 455, L. 1993; amd. Sec. 1, Ch. 536, L. 1993; amd. Sec. 12, Ch. 18, L. 1995; amd. Sec. 1, Ch. 442, L. 1995; amd. Sec. 1, Ch. 456, L. 1995; amd. Sec. 7, Ch. 509, L. 1995; amd. Sec. 9, Ch. 422, L. 1997; amd. Sec. 10, Ch. 469, L. 1997; amd. Sec. 8, Ch. 389, L. 1999; amd. Secs. 1, 2, Ch. 10, Sp. L. May 2000; amd. Secs. 3, 38, Ch. 34, L. 2001; amd. Sec. 1, Ch. 61, L. 2001; amd. Sec. 41, Ch. 483, L. 2001; amd. Sec. 2, Ch. 9, Sp. L. August 2002; amd. Sec. 1, Ch. 12, Sp. L. August 2002; amd. Sec. 7, Ch. 13, Sp. L. August 2002; amd. Sec. 1, Ch. 32, L. 2003; amd. Sec. 2, Ch. 351, L. 2003; amd. Secs. 1, 4, Ch. 481, L. 2003; amd. Sec. 1, Ch. 589, L. 2005; amd. Secs. 2, 8(1), Ch. 603, L. 2005; amd. Sec. 1, Ch. 280, L. 2007; amd. Sec. 2, Ch. 475, L. 2007; amd. Sec. 1, Ch. 33, L. 2009; amd. Sec. 1, Ch. 425, L. 2009; amd. Sec. 1, Ch. 459, L. 2009; amd. Sec. 7, Ch. 486, L. 2009; amd. Sec. 7, Ch. 19, L. 2011; amd. Sec. 4, Ch. 312, L. 2011; amd. Sec. 1, Ch. 390, L. 2013; amd. Sec. 6, Ch. 347, L. 2015; amd. Sec. 1, Ch. 414, L. 2015; amd. Sec. 8, Ch. 351, L. 2017; amd. Sec. 1, Ch. 378, L. 2017.

#### **Compiler's Comments**

*2017 Amendments — Composite Section:* (Temporary version) Chapter 351 deleted former (9)(b)(iv) that read: “(iv) except as provided in subsection (9)(c), up to \$21 million to the public employees’ retirement system defined benefit plan trust fund”.

(Version effective July 1, 2019) Chapter 351 in (11) at beginning deleted “Subject to subsection (9)(b);” and deleted former (9)(b) that read: “(b) Except as provided in subsection (9)(c), up to \$24 million of the interest income

from the coal severance tax permanent fund that is deposited in the general fund is statutorily appropriated, as provided in 17-7-502, on July 1 each year to the public employees' retirement system defined benefit plan trust fund".

(Both versions) Chapter 351 in (3), (4), and (5) substituted current text for former (3) that read: "(3) The amount of 5.46% must be credited to an account in the state special revenue fund to be allocated by the legislature for provision of basic library services for the residents of all counties through library federations and for payment of the costs of participating in regional and national networking, conservation districts, and the Montana Growth Through Agriculture Act. Expenditures of the allocation may be made only from this account. Money may not be transferred from this account to another account other than the general fund. Any unreserved fund balance at the end of each fiscal year must be deposited in the general fund"; deleted former (9)(c) that read: "(c) If the legislative finance committee determines that the public employees' retirement board has failed to provide a sufficient report pursuant to 19-3-117, it shall recommend that \$5 million be subtracted from the amount allocated in subsection (9)(b) subject to legislative approval"; in (11)(a) after "of the state" deleted "and is statutorily appropriated, as provided in 17-7-502, on July 1 each year to the trust fund for the public employees' retirement system defined benefit plan established pursuant to 19-3-103"; and made minor changes in style. Amendment effective July 1, 2017.

(Temporary version) Chapter 378 in (7) substituted "June 30, 2019" for "June 30, 2017" and substituted "July 1, 2019" for "July 1, 2017". Amendment effective July 1, 2017.

## CHAPTER 36 OIL AND GAS PRODUCTION TAX

### Part 3 Oil and Gas Production Tax Act

**15-36-331. Distribution of taxes.** (1) (a) For each calendar quarter, the department shall determine the amount of tax, late payment interest, and penalties collected under this part.

(b) For the purposes of distribution of oil and natural gas production taxes to county and school district taxing units under 15-36-332 and to the state, the department shall determine the amount of oil and natural gas production taxes paid on production in the taxing unit.

(2) (a) The amount of oil and natural gas production taxes collected for the privilege and license tax pursuant to 82-11-131 must be deposited, in accordance with the provisions of 17-2-124, in the state special revenue fund for the purpose of paying expenses of the board, as provided in 82-11-135.

(b) The amount of the tax allocated in 15-36-304(7)(b) for the oil and gas natural resource distribution account established in 90-6-1001(1) must be deposited in the account.

(3) (a) For each tax year, the amount of oil and natural gas production taxes determined under subsection (1)(b) is allocated to each county according to the following schedule:

Big Horn	45.05%
Blaine	58.39%
Carbon	48.27%
Chouteau	58.14%
Custer	69.53%
Daniels	50.81%
Dawson	47.79%
Fallon	41.78%
Fergus	69.18%
Garfield	45.96%
Glacier	58.83%
Golden Valley	58.37%
Hill	64.51%
Liberty	57.94%
McCone	49.92%
Musselshell	48.64%
Petroleum	48.04%
Phillips	54.02%
Pondera	54.26%
Powder River	60.9%
Prairie	40.38%
Richland	47.47%

Roosevelt	45.71%
Rosebud	39.33%
Sheridan	47.99%
Stillwater	53.51%
Sweet Grass	61.24%
Teton	46.1%
Toole	57.61%
Valley	51.43%
Wibaux	49.16%
Yellowstone	46.74%
All other counties	50.15%

(b) The oil and natural gas production taxes allocated to each county must be deposited in the state special revenue fund and transferred to each county for distribution, as provided in 15-36-332.

(4) The department shall, in accordance with the provisions of 17-2-124, distribute the state portion of oil and natural gas production taxes remaining after the distributions pursuant to subsections (2) and (3) as follows:

(a) for each fiscal year through the fiscal year ending June 30, 2011, to be distributed as follows:

(i) 1.23% to the coal bed methane protection account established in 76-15-904;

(ii) 1.45% to the natural resources projects state special revenue account established in 15-38-302;

(iii) 1.45% to the natural resources operations state special revenue account established in 15-38-301;

(iv) 2.99% to the orphan share account established in 75-10-743;

(v) 2.65% to the state special revenue fund to be appropriated to the Montana university system for the purposes of the state tax levy as provided in 15-10-108; and

(vi) all remaining proceeds to the state general fund;

(b) for fiscal years beginning after June 30, 2011, to be distributed as follows:

(i) 2.16% to the natural resources projects state special revenue account established in 15-38-302;

(ii) 2.02% to the natural resources operations state special revenue account established in 15-38-301;

(iii) 2.95% to the orphan share account established in 75-10-743;

(iv) 2.65% to the state special revenue fund to be appropriated to the Montana university system for the purposes of the state tax levy as provided in 15-10-108; and

(v) all remaining proceeds to the state general fund.

(5) A payment required pursuant to this section may be withheld if, for more than 90 days, a local government fails to:

(a) file a financial report required by 15-1-504;

(b) remit any amounts collected on behalf of the state as required by 15-1-504; or

(c) remit any other amounts owed to the state or another taxing jurisdiction.

**History:** En. Sec. 1, Ch. 522, L. 2003; amd. Sec. 18, Ch. 522, L. 2003; amd. Sec. 2, Ch. 5, L. 2005; amd. Sec. 3, Ch. 527, L. 2005; amd. Sec. 4, Ch. 603, L. 2005; amd. Sec. 1, Ch. 432, L. 2007; amd. Sec. 3, Ch. 475, L. 2007; amd. Sec. 3, Ch. 33, L. 2009; amd. Sec. 5, Ch. 57, L. 2009; amd. Sec. 5, Ch. 173, L. 2017.

#### **Compiler's Comments**

*2017 Amendment:* Chapter 173 inserted (5) providing that a payment may be withheld by the state if the local government fails to perform certain actions. Amendment effective July 1, 2017.

**15-36-332. (Temporary) Distribution of taxes to taxing units — appropriation.** (1) (a) Subject to 20-9-310 and subsection (9) of this section, by the dates referred to in subsection (6) of this section, the department shall distribute oil and natural gas production taxes allocated under 15-36-331(3) to each eligible county.

(b) Except as provided by subsection (9), by the dates referred to in subsection (6), the department shall distribute the amount deposited in the oil and gas natural resource distribution account under 15-36-331(2)(b) as provided in subsection (7) of this section.

(2) (a) Each county treasurer shall distribute the amount of oil and natural gas production taxes designated under subsection (1)(a), including the amounts referred to in subsection (2)(b), to the countywide elementary and high school retirement funds, countywide transportation funds, and eligible school districts according to the following schedule:

	Elementary Retirement	High School Retirement	Countywide Transportation	School Districts
Big Horn	14.81%	10.36%	2.99%	26.99%
Blaine	5.86%	2.31%	2.71%	24.73%
Carbon	3.6%	6.62%	1.31%	49.18%
Chouteau	8.1%	4.32%	3.11%	23.79%
Custer	6.9%	3.4%	1.19%	31.25%
Daniels	0	7.77%	3.92%	48.48%
Dawson	5.53%	2.5%	1.11%	35.6%
Fallon	0	7.63%	1.24%	42.58%
Fergus	7.88%	4.84%	2.08%	53.25%
Garfield	4.04%	3.13%	5.29%	26.19%
Glacier	11.2%	4.87%	3.01%	46.11%
Golden Valley	0	11.52%	2.77%	54.65%
Hill	6.7%	4.07%	1.59%	49.87%
Liberty	4.9%	4.56%	1.15%	35.22%
McCone	4.18%	3.19%	2.58%	43.21%
Musselshell	5.98%	4.07%	3.53%	32.17%
Petroleum	0	11.92%	4.59%	55.48%
Phillips	0.43%	6.6%	1.08%	41.29%
Pondera	6.96%	5.06%	1.94%	45.17%
Powder River	3.96%	2.97%	4.57%	22.25%
Prairie	0	8.88%	1.63%	36.9%
Richland	4.1%	3.92%	2.26%	43.77%
Roosevelt	9.93%	7.37%	2.74%	40.94%
Rosebud	3.87%	2.24%	1.05%	72.97%
Sheridan	0	3.39%	2.22%	47.63%
Stillwater	6.87%	4.86%	1.63%	41.16%
Sweet Grass	6.12%	6.5%	2.4%	37.22%
Teton	6.88%	8.19%	3.8%	29.43%
Toole	2.78%	4.78%	1.3%	43.56%
Valley	2.26%	12.61%	4.63%	41.11%
Wibaux	0	4.1%	0.77%	31.46%
Yellowstone	7.98%	4.56%	1.07%	52.77%
All other counties	3.81%	7.84%	1.81%	41.04%

(b) (i) The county treasurer shall distribute 9.8% of the Custer County share to the countywide community college district in Custer County.

(ii) The county treasurer shall distribute 14.5% of the Dawson County share to the countywide community college district in Dawson County.

(3) The remaining oil and natural gas production taxes for each county must be used for the exclusive use and benefit of the county, including districts within the county established by the county.

(4) (a) The county treasurer shall distribute oil and natural gas production taxes to school districts in each county referred to in subsection (2) as provided in subsections (4)(b) through (4)(d) and subject to the provisions of 20-9-310.

(b) The amount distributed to each K-12 district within the county is equal to oil and natural gas production taxes in the county multiplied by the ratio that oil and natural gas production taxes attributable to oil and natural gas production in the K-12 school district bear to total oil and natural gas production taxes attributable to total oil and natural gas production in the

county and multiply that amount by the school district percentage figure for the county referred to in subsection (2)(a).

(c) For the amount to be distributed to each elementary school district and to each high school district under subsection (4)(d), the department shall first determine the amount of oil and natural gas production taxes in the high school district that is attributable to oil and natural gas production in each elementary school district that is located in whole or in part within the exterior boundaries of a high school district and multiply that amount by the school district percentage figure for the county referred to in subsection (2)(a).

(d) (i) The amount distributed to each elementary school district that is located in whole or in part within the exterior boundaries of a high school district is equal to the amount determined in subsection (4)(c) multiplied by the ratio that the total mills of the elementary school district bear to the sum of the total mills of the elementary school district and the total mills of the high school district.

(ii) The amount distributed to the high school district is equal to the amount determined in subsection (4)(c) multiplied by the ratio that the total mills of the high school district bear to the sum of the total mills of each elementary school district referred to in subsection (4)(c) and the total mills of the high school district.

(5) Oil and natural gas production taxes calculated for each school district under subsections (4)(b) through (4)(d) must be distributed to each school district as provided in 20-9-310.

(6) Subject to 20-9-310 and subsection (9) of this section, the department shall remit the amounts to be distributed in this section to the county treasurer by the following dates:

(a) On or before August 1 of each year, the department shall remit to the county treasurer oil and natural gas production tax payments received for the calendar quarter ending March 31 of the current year.

(b) On or before November 1 of each year, the department shall remit to the county treasurer oil and natural gas production tax payments received for the calendar quarter ending June 30 of the current year.

(c) On or before February 1 of each year, the department shall remit to the county treasurer oil and natural gas production tax payments received for the calendar quarter ending September 30 of the previous year.

(d) On or before May 1 of each year, the department shall remit to the county treasurer oil and natural gas production tax payments received for the calendar quarter ending December 31 of the previous year.

(7) The department shall distribute the funds received under 15-36-331(2)(b) to counties based on county oil and gas production. Of the distribution to a county, one-third must be distributed to the county government and two-thirds must be distributed to incorporated cities and towns within the county. If there is more than one incorporated city or town within the county, the city and town allocation must be distributed to the cities and towns based on their relative populations.

(8) The distributions to taxing units and to counties and incorporated cities and towns under this section are statutorily appropriated, as provided in 17-7-502, from the state special revenue fund.

(9) A payment required pursuant to this section may be withheld if, for more than 90 days, a local government fails to:

(a) file a financial report required by 15-1-504;

(b) remit any amounts collected on behalf of the state as required by 15-1-504; or

(c) remit any other amounts owed to the state or another taxing jurisdiction. (*Terminates June 30, 2020—sec. 38, Ch. 400, L. 2013.*)

**15-36-332. (Effective July 1, 2020) Distribution of taxes to taxing units — appropriation.** (1) (a) Except as provided by subsection (9), by the dates referred to in subsection (6), the department shall distribute oil and natural gas production taxes allocated under 15-36-331(3) to each eligible county.

(b) Except as provided by subsection (9), by the dates referred to in subsection (6), the department shall distribute the amount deposited in the oil and gas natural resource distribution account under 15-36-331(2)(b) as provided in subsection (7) of this section.



(2) (a) Each county treasurer shall distribute the amount of oil and natural gas production taxes designated under subsection (1)(a), including the amounts referred to in subsection (2)(b), to the countywide elementary and high school retirement funds, countywide transportation funds, and eligible school districts according to the following schedule:

	Elementary Retirement	High School Retirement	Countywide Transportation	School Districts
Big Horn	14.81%	10.36%	2.99%	26.99%
Blaine	5.86%	2.31%	2.71%	24.73%
Carbon	3.6%	6.62%	1.31%	49.18%
Chouteau	8.1%	4.32%	3.11%	23.79%
Custer	6.9%	3.4%	1.19%	31.25%
Daniels	0	7.77%	3.92%	48.48%
Dawson	5.53%	2.5%	1.11%	35.6%
Fallon	0	7.63%	1.24%	42.58%
Fergus	7.88%	4.84%	2.08%	53.25%
Garfield	4.04%	3.13%	5.29%	26.19%
Glacier	11.2%	4.87%	3.01%	46.11%
Golden Valley	0	11.52%	2.77%	54.65%
Hill	6.7%	4.07%	1.59%	49.87%
Liberty	4.9%	4.56%	1.15%	35.22%
McCone	4.18%	3.19%	2.58%	43.21%
Musselshell	5.98%	4.07%	3.53%	32.17%
Petroleum	0	11.92%	4.59%	55.48%
Phillips	0.43%	6.6%	1.08%	41.29%
Pondera	6.96%	5.06%	1.94%	45.17%
Powder River	3.96%	2.97%	4.57%	22.25%
Prairie	0	8.88%	1.63%	36.9%
Richland	4.1%	3.92%	2.26%	43.77%
Roosevelt	9.93%	7.37%	2.74%	40.94%
Rosebud	3.87%	2.24%	1.05%	72.97%
Sheridan	0	3.39%	2.22%	47.63%
Stillwater	6.87%	4.86%	1.63%	41.16%
Sweet Grass	6.12%	6.5%	2.4%	37.22%
Teton	6.88%	8.19%	3.8%	29.43%
Toole	2.78%	4.78%	1.3%	43.56%
Valley	2.26%	12.61%	4.63%	41.11%
Wibaux	0	4.1%	0.77%	31.46%
Yellowstone	7.98%	4.56%	1.07%	52.77%
All other counties	3.81%	7.84%	1.81%	41.04%

(b) (i) The county treasurer shall distribute 9.8% of the Custer County share to the countywide community college district in Custer County.

(ii) The county treasurer shall distribute 14.5% of the Dawson County share to the countywide community college district in Dawson County.

(3) The remaining oil and natural gas production taxes for each county must be used for the exclusive use and benefit of the county, including districts within the county established by the county.

(4) (a) The county treasurer shall distribute oil and natural gas production taxes to school districts in each county referred to in subsection (2) as provided in subsections (4)(b) through (4)(d).

(b) The amount distributed to each K-12 district within the county is equal to oil and natural gas production taxes in the county multiplied by the ratio that oil and natural gas production taxes attributable to oil and natural gas production in the K-12 school district bear to total oil and natural gas production taxes attributable to total oil and natural gas production in the

county and multiply that amount by the school district percentage figure for the county referred to in subsection (2)(a).

(c) For the amount to be distributed to each elementary school district and to each high school district under subsection (4)(d), the department shall first determine the amount of oil and natural gas taxes in the high school district that is attributable to oil and natural gas production in each elementary school district that is located in whole or in part within the exterior boundaries of a high school district and multiply that amount by the school district percentage figure for the county referred to in subsection (2)(a).

(d) (i) The amount distributed to each elementary school district that is located in whole or in part within the exterior boundaries of a high school district is equal to the amount determined in subsection (4)(c) multiplied by the ratio that the total mills of the elementary school district bear to the sum of the total mills of the elementary school district and the total mills of the high school district.

(ii) The amount distributed to the high school district is equal to the amount determined in subsection (4)(c) multiplied by the ratio that the total mills of the high school district bear to the sum of the total mills of each elementary school district referred to in subsection (4)(c) and the total mills of the high school district.

(5) (a) Oil and natural gas production taxes calculated for each school district under subsections (4)(b) through (4)(d) must be distributed to each school district in the relative proportion of the mill levy for each fund.

(b) If a distribution under subsection (5)(a) exceeds the total budget for a school district fund, the board of trustees of an elementary or high school district may reallocate the excess to any budgeted fund of the school district.

(6) Except as provided by subsection (9), the department shall remit the amounts to be distributed in this section to the county treasurer by the following dates:

(a) On or before August 1 of each year, the department shall remit to the county treasurer oil and natural gas production tax payments received for the calendar quarter ending March 31 of the current year.

(b) On or before November 1 of each year, the department shall remit to the county treasurer oil and natural gas production tax payments received for the calendar quarter ending June 30 of the current year.

(c) On or before February 1 of each year, the department shall remit to the county treasurer oil and natural gas production tax payments received for the calendar quarter ending September 30 of the previous year.

(d) On or before May 1 of each year, the department shall remit to the county treasurer oil and natural gas production tax payments received for the calendar quarter ending December 31 of the previous year.

(7) The department shall distribute the funds received under 15-36-331(2)(b) to counties based on county oil and gas production. Of the distribution to a county, one-third must be distributed to the county government and two-thirds must be distributed to incorporated cities and towns within the county. If there is more than one incorporated city or town within the county, the city and town allocation must be distributed to the cities and towns based on their relative populations.

(8) The distributions to taxing units and to counties and incorporated cities and towns under this section are statutorily appropriated, as provided in 17-7-502, from the state special revenue fund.

(9) A payment required pursuant to this section may be withheld if, for more than 90 days, a local government fails to:

- (a) file a financial report required by 15-1-504;
- (b) remit any amounts collected on behalf of the state as required by 15-1-504; or
- (c) remit any other amounts owed to the state or another taxing jurisdiction.

**History:** En. Sec. 2, Ch. 522, L. 2003; amd. Sec. 5, Ch. 603, L. 2005; amd. Sec. 4, Ch. 33, L. 2009; amd. Sec. 27, Ch. 128, L. 2011; amd. Sec. 1, Ch. 418, L. 2011; amd. Sec. 6, Ch. 173, L. 2017.

**Compiler's Comments**

*2017 Amendment:* (Temporary version) Chapter 173 in (1)(a) and (6) inserted "and subsection (9) of this section"; in (1)(b) at beginning inserted exception clause; and inserted (9) providing that a payment may be withheld by

the state if the local government fails to perform certain actions; and made minor changes in style. Amendment effective July 1, 2017.

(Version effective July 1, 2020) Chapter 173 in (1)(a), (1)(b), and (6) inserted exception clause; inserted (9) providing that a payment may be withheld by the state if the local government fails to perform certain actions; and made minor changes in style.

## CHAPTER 37 MINING LICENSE TAXES

### Part 1 Metalliferous Mines

**15-37-117. (Temporary) Disposition of metalliferous mines license taxes.** (1) Metalliferous mines license taxes collected under the provisions of this part must, in accordance with the provisions of 17-2-124, be allocated as follows:

- (a) to the credit of the general fund of the state, 47% of total collections each year;
- (b) to the state special revenue fund to the credit of the hard-rock mining impact trust account established in 90-6-304(2), 2.5% of total collections each year;
- (c) to the hard-rock mining reclamation debt service fund established in 82-4-312, 8.5% of total collections each year;
- (d) to the natural resources operations state special revenue account established in 15-38-301, 7% of total collections each year; and
- (e) within 60 days of the date the tax is payable pursuant to 15-37-105, to the county or counties identified as experiencing fiscal and economic impacts, resulting in increased employment or local government costs, under an impact plan for a large-scale mineral development prepared and approved pursuant to 90-6-307, in direct proportion to the fiscal and economic impacts determined in the plan or, if an impact plan has not been prepared, to the county in which the mine is located, 35% of total collections each year, to be allocated by the county commissioners as follows:

- (i) not less than 37.5% to the county hard-rock mine trust account established in 7-6-2225; and

- (ii) all money not allocated to the account pursuant to subsection (1)(e)(i) to be further allocated as follows:

- (A) 33 ⅓% is allocated to the county for general planning functions or economic development activities as described in 7-6-2225(3)(c) through (3)(e);

- (B) 33 ⅓% is allocated to the elementary school districts within the county that have been affected by the development or operation of the metal mine; and

- (C) 33 ⅓% is allocated to the high school districts within the county that have been affected by the development or operation of the metal mine.

- (2) When an impact plan for a large-scale mineral development approved pursuant to 90-6-307 identifies a jurisdictional revenue disparity, the county shall distribute the proceeds allocated under subsection (1)(e) in a manner similar to that provided for property tax sharing under Title 90, chapter 6, part 4.

- (3) The department shall return to the county in which metals are produced the tax collections allocated under subsection (1)(e). The allocation to the county described by subsection (1)(e) is a statutory appropriation pursuant to 17-7-502.

- (4) A payment required pursuant to this section may be withheld if, for more than 90 days, a local government fails to:

- (a) file a financial report required by 15-1-504;
  - (b) remit any amounts collected on behalf of the state as required by 15-1-504; or
  - (c) remit any other amounts owed to the state or another taxing jurisdiction. (*Terminates June 30, 2027—sec. 5, Ch. 387, L. 2015.*)

**15-37-117. (Effective July 1, 2027) Disposition of metalliferous mines license taxes.** (1) Metalliferous mines license taxes collected under the provisions of this part must, in accordance with the provisions of 17-2-124, be allocated as follows:

- (a) to the credit of the general fund of the state, 57% of total collections each year;

(b) to the state special revenue fund to the credit of a hard-rock mining impact trust account, 2.5% of total collections each year;

(c) to the hard-rock mining reclamation debt service fund established in 82-4-312, 8.5% of total collections each year;

(d) to the natural resources operations state special revenue account established in 15-38-301, 7% of total collections each year; and

(e) within 60 days of the date the tax is payable pursuant to 15-37-105, to the county or counties identified as experiencing fiscal and economic impacts, resulting in increased employment or local government costs, under an impact plan for a large-scale mineral development prepared and approved pursuant to 90-6-307, in direct proportion to the fiscal and economic impacts determined in the plan or, if an impact plan has not been prepared, to the county in which the mine is located, 25% of total collections each year, to be allocated by the county commissioners as follows:

(i) not less than 37.5% to the county hard-rock mine trust account established in 7-6-2225; and

(ii) all money not allocated to the account pursuant to subsection (1)(e)(i) to be further allocated as follows:

(A) 33⅓% is allocated to the county for general planning functions or economic development activities as described in 7-6-2225(3)(c) through (3)(e);

(B) 33⅓% is allocated to the elementary school districts within the county that have been affected by the development or operation of the metal mine; and

(C) 33⅓% is allocated to the high school districts within the county that have been affected by the development or operation of the metal mine.

(2) When an impact plan for a large-scale mineral development approved pursuant to 90-6-307 identifies a jurisdictional revenue disparity, the county shall distribute the proceeds allocated under subsection (1)(e) in a manner similar to that provided for property tax sharing under Title 90, chapter 6, part 4.

(3) The department shall return to the county in which metals are produced the tax collections allocated under subsection (1)(e). The allocation to the county described by subsection (1)(e) is a statutory appropriation pursuant to 17-7-502.

(4) A payment required pursuant to this section may be withheld if, for more than 90 days, a local government fails to:

(a) file a financial report required by 15-1-504;

(b) remit any amounts collected on behalf of the state as required by 15-1-504; or

(c) remit any other amounts owed to the state or another taxing jurisdiction.

**History:** En. Sec. 1, Ch. 619, L. 1983; amd. Sec. 48, Ch. 281, L. 1983; amd. Sec. 8, Ch. 672, L. 1989; amd. Sec. 2, Ch. 760, L. 1991; amd. Sec. 7, Ch. 15, Sp. L. July 1992; amd. Sec. 8, Ch. 455, L. 1993; amd. Sec. 14, Ch. 18, L. 1995; amd. Sec. 1, Ch. 31, L. 1995; amd. Secs. 1, 8, Ch. 577, L. 1995; amd. Sec. 21, Ch. 584, L. 1995; amd. Sec. 1, Ch. 415, L. 1997; amd. Sec. 3, Ch. 144, L. 1999; amd. Sec. 1, Ch. 464, L. 1999; amd. Sec. 5, Ch. 460, L. 2001; amd. Sec. 3, Ch. 12, Sp. L. August 2002; amd. Sec. 7, Ch. 19, Sp. L. August 2002; amd. Sec. 3, Ch. 598, L. 2005; amd. Sec. 2, Ch. 432, L. 2007; amd. Sec. 4, Ch. 475, L. 2007; amd. Sec. 1, Ch. 387, L. 2015; amd. Sec. 7, Ch. 173, L. 2017.

**Compiler's Comments**

*2017 Amendment:* Chapter 173 inserted (4) providing that a payment may be withheld by the state if the local government fails to perform certain actions. Amendment effective July 1, 2017.

## CHAPTER 70 GASOLINE AND VEHICLE FUELS TAXES

### Part 3 Special Fuels Use Tax (Renumbered, Repealed, and Terminated)

**15-70-356. Renumbered 15-70-425.** Sec. 41, Ch. 220, L. 2015.

# TITLE 17

## STATE FINANCE

### CHAPTER 3

#### FEDERAL REVENUES AND ENDOWMENTS

#### Part 2

##### Distribution of Federal Return on State Resources

**17-3-201. Repealed.** Sec. 6, Ch. 20, Sp. L. June 1986.

**History:** En. Sec. 1, Ch. 246, L. 1973; amd. Sec. 1, Ch. 357, L. 1977; R.C.M. 1947, 79-211; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 4, Ch. 541, L. 1983.

**17-3-202 through 17-3-210 reserved.**

**17-3-211. Forest reserve money and other federal funds.** (1) The state treasurer, for the purpose of carrying out the provisions of 16 U.S.C. 500, Public Law 106-393, Public Law 110-343, and all acts subsequent to them, shall divide and distribute all forest reserve, Public Law 106-393, and Public Law 110-343 funds received by the state to and among the several counties entitled to the funds and pay the amounts to the several county treasurers of the counties within 5 business days after receiving full payment, as directed by the department.

(2) If the forest reserve money, the Public Law 106-393 money, and Public Law 110-343 money are not distributed within 5 business days of receipt by the state, all interest earnings must be credited to the appropriate counties.

**History:** En. Sec. 1, Ch. 26, L. 1915; re-en. Sec. 175, R.C.M. 1921; re-en. Sec. 175, R.C.M. 1935; R.C.M. 1947, 79-203; amd. Sec. 1, Ch. 712, L. 1985; amd. Sec. 1, Ch. 334, L. 2001; amd. Sec. 1, Ch. 74, L. 2007; amd. Sec. 1, Ch. 105, L. 2009; amd. Sec. 1, Ch. 283, L. 2017.

#### Compiler's Comments

*2017 Amendment:* Chapter 283 in (1) in middle after “by the state” deleted “plus interest earned” and after “within” substituted “5 business days” for “30 days”; in (2) after “Public Law 110-343 money” substituted “are not distributed within 5 business days of receipt by the state, all interest earnings must be credited to the appropriate counties” for “must be invested and all investment earnings credited to the forest reserve account or the Public Law 106-393 and Public Law 110-343 account, as appropriate”; and made minor changes in style. Amendment effective May 4, 2017.

**17-3-212. Apportionment of forest reserve funds and other federal funds among counties.** (1) The forest reserve funds, all Public Law 106-393 funds, all Public Law 110-343 funds, funds received pursuant to a similar subsequent act, and earned interest are statutorily appropriated, as provided in 17-7-502, from the federal special revenue fund to the department. The department shall apportion all forest reserve funds, all Public Law 106-393 funds, all Public Law 110-343 funds, and earned interest, as provided in 17-3-211, for allocation among the counties in which the forest reserve is situated based upon federal law and this section.

(2) The state treasurer shall pay the apportioned amounts plus interest, as provided in 17-3-211, to the respective counties.

**History:** En. Sec. 2, Ch. 26, L. 1915; re-en. Sec. 176, R.C.M. 1921; re-en. Sec. 176, R.C.M. 1935; R.C.M. 1947, 79-204; amd. Sec. 16, Ch. 703, L. 1985; amd. Sec. 2, Ch. 712, L. 1985; amd. Sec. 11, Ch. 389, L. 1999; amd. Sec. 2, Ch. 334, L. 2001; amd. Sec. 2, Ch. 74, L. 2007; amd. Sec. 2, Ch. 105, L. 2009; amd. Sec. 2, Ch. 283, L. 2017.

#### Compiler's Comments

*2017 Amendment:* Chapter 283 in (1) in first sentence after “Public Law 110-343 funds” inserted “funds received pursuant to a similar subsequent act” and in second sentence after “earned interest” inserted “as provided in 17-3-211”; and made minor changes in style. Amendment effective May 4, 2017.

**17-3-213. Allocation of forest reserve funds and other federal funds — options provided in federal law.** (1) The board of county commissioners in each county shall decide among payment options provided in subsections (2) through (6), as provided in Public Law 106-393, Public Law 110-343, and any similar subsequent act to determine how the forest reserve funds, Public Law 106-393, funds, Public Law 110-343 funds, and funds received pursuant to a similar subsequent act apportioned to each county must be distributed by the county treasurer pursuant to this section.



(2) If a board of county commissioners chooses to receive a payment that is 25% of the revenue derived from national forest system lands, as provided in 16 U.S.C. 500 or any similar subsequent act, all funds received must be distributed as provided in subsection (5).

(3) (a) Except as provided in subsection (4), if a county elects to receive the county's full payment under Public Law 106-393 or any similar subsequent act, a minimum of 80% up to a maximum of 85% of the county's full payment must be designated by the county for distribution as provided in subsection (5).

(b) The balance not distributed pursuant to subsection (3)(a) may be allocated by the county in accordance with Public Law 106-393 or any similar subsequent act.

(4) If a county's full payment under Public Law 106-393 or any similar subsequent act is less than \$100,000, the county may elect to distribute up to 100% of the payment as provided in subsection (5).

(5) The total amount designated by a county in accordance with subsection (3)(a) or (4) must be distributed as follows:

- (a) to the general road fund, 66⅔% of the amount designated;
- (b) to the following countywide school levies, 33⅓% of the amount designated:
  - (i) county equalization for elementary schools provided for in 20-9-331;
  - (ii) county equalization for high schools provided for in 20-9-333;
  - (iii) the county transportation fund provided for in 20-10-146; and
  - (iv) the elementary and high school district retirement fund obligations provided for in 20-9-501.

(6) The apportionment of money to the funds provided for under subsection (5)(b) must be made by the county superintendent based on the proportion that the mill levy of each fund bears to the total number of mills for all the funds. Whenever the total amount of money available for apportionment under subsection (5)(b) is greater than the total requirements of a levy, the excess money and any interest income must be retained in a separate reserve fund, to be reapportioned in the ensuing school fiscal year to the levies designated in subsection (5)(b).

(7) In counties in which special road districts have been created according to law, the board of county commissioners shall distribute a proportionate share of the 66⅔% distributed under subsection (5)(a) for the general road fund to the special road districts within the county based upon the percentage that the total area of the road district bears to the total area of the entire county.

(8) Except as provided in subsection (9), if a county elects to receive the county's full payment under Public Law 110-343 or any similar subsequent act, not less than 80% but not more than 85% of the funds must be expended in the same manner as provided in subsection (5). A county may reserve not more than 7% of the county's full payment for projects in accordance with Title III of section 601 of Public Law 110-343. The balance of the funds may be:

- (a) reserved for projects in accordance with Title II of section 601 of Public Law 110-343 or any similar subsequent act; or
- (b) returned to the United States.

(9) (a) If a county's full payment is more than \$100,000 but less than or equal to \$350,000, the county may use all of the funds as provided in Title II or Title III of section 601 of Public Law 110-343 or any similar subsequent act, or return the funds to the United States.

(b) If a county's full payment is less than or equal to \$100,000, the county may elect to distribute up to 100% of the payment as provided in subsection (5).

**History:** En. Sec. 3, Ch. 26, L. 1915; re-en. Sec. 177, R.C.M. 1921; amd. Sec. 1, Ch. 66, L. 1931; re-en. Sec. 177, R.C.M. 1935; R.C.M. 1947, 79-205; amd. Sec. 1, Ch. 413, L. 1983; amd. Sec. 5, Ch. 11, Sp. L. June 1989; amd. Sec. 1, Ch. 711, L. 1991; amd. Sec. 3, Ch. 334, L. 2001; amd. Sec. 3, Ch. 105, L. 2009; amd. Sec. 3, Ch. 283, L. 2017.

**Compiler's Comments**

*2017 Amendment:* Chapter 283 in (1) after the first "Public Law 110-343" inserted "and any similar subsequent act" and after "Public Law 110-343 funds" inserted "and funds received pursuant to a similar subsequent act"; in (2) after "16 U.S.C. 500" inserted "or any similar subsequent act"; in (3)(a), (3)(b), and (4) after "Public Law 106-393" inserted "or any similar subsequent act"; in (8) in first sentence, (8)(a), and (9)(a) after "Public Law 110-343" inserted "or any similar subsequent act"; and made minor changes in style. Amendment effective May 4, 2017.

**17-3-214. Repealed.** Sec. 253, Ch. 574, L. 2001.

**History:** En. Sec. 4, Ch. 26, L. 1915; re-en. Sec. 178, R.C.M. 1921; re-en. Sec. 178, R.C.M. 1935; R.C.M. 1947, 79-206.

**17-3-215 through 17-3-220 reserved.**

**17-3-221. State treasurer to be custodian of money received under Taylor Grazing Act.** The state treasurer is the custodian of all money that the treasurer of the United States transfers to the state of Montana under the terms of section 10 of the Taylor Grazing Act, 43 U.S.C. 315i, to be expended as the legislature may prescribe. The money must be deposited in the federal special revenue fund.

**History:** En. Sec. 1, Ch. 146, L. 1935; re-en. Sec. 191.1, R.C.M. 1935; R.C.M. 1947, 79-701; amd. Sec. 94, Ch. 42, L. 1997; amd. Sec. 10, Ch. 532, L. 1997.

**17-3-222. Apportionment of money to counties.** (1) The state treasurer shall apportion the money received under 17-3-221 to the appropriate counties and then allocate the money due each county as follows:

(a) 50% to the county treasurer for deposit in the county general fund; and

(b) 50% to the state general fund to be used for the elementary BASE funding programs of the school districts in the county.

(2) The payments from the state to the county treasurers provided for in subsection (1) are statutorily appropriated as provided in 17-7-502.

**History:** En. Sec. 2, Ch. 146, L. 1935; re-en. Sec. 191.2, R.C.M. 1935; amd. Sec. 1, Ch. 55, L. 1937; amd. Sec. 1, Ch. 102, L. 1939; amd. Sec. 1, Ch. 96, L. 1949; R.C.M. 1947, 79-702; amd. Sec. 2, Ch. 22, L. 1997; amd. Sec. 11, Ch. 532, L. 1997; amd. Sec. 45, Ch. 51, L. 1999; amd. Sec. 4, Ch. 41, L. 2003; amd. Sec. 1, Ch. 53, L. 2005.

**17-3-223 through 17-3-230 reserved.**

**17-3-231. Flood Control Act — distribution of revenues to counties.** All moneys received or hereafter to be received by the state from the secretary of the treasury of the United States, under and by virtue of the Flood Control Act of 1954, under 33 U.S.C. 701c-3, shall be distributed by the state to the county treasurers of the counties of the state wherein the flood control land is situated.

**History:** En. Sec. 1, Ch. 156, L. 1959; R.C.M. 1947, 79-2101.

**17-3-232. Deposit and expenditure of funds by counties.** All moneys received or to be received by the county treasurers of the counties of the state wherein such flood control land is situated shall be deposited in the funds designated as the county common school tax fund and the general public road fund and shall be expended as follows: of all moneys received or to be received, 50% shall be expended for the benefit of the county common schools in the county concerned and 50% shall be expended for the benefit of the general public roads in the county concerned.

**History:** En. Sec. 2, Ch. 156, L. 1959; R.C.M. 1947, 79-2102.

**17-3-233 through 17-3-239 reserved.**

**17-3-240. Federal mineral leasing funds.** (1) Except as provided in subsection (2), money paid to the state pursuant to 30 U.S.C. 191 must be deposited in the state general fund.

(2) In fiscal year 2005 and each succeeding fiscal year, 25% of all money received pursuant to subsection (1) must be deposited in the mineral impact account established in 17-3-241 and is dedicated to local governments.

(3) On August 15 following the close of the fiscal year, the state treasurer shall distribute the revenue dedicated in subsection (2). The distribution to the eligible counties must be based on the proportion that the total amount of revenue generated by mineral extraction in an eligible county bears to the total amount of money received by the state.

**History:** En. Sec. 1, Ch. 594, L. 2001; amd. Sec. 1, Ch. 5, Sp. L. August 2002; amd. Sec. 1, Ch. 568, L. 2005.

**17-3-241. Mineral impact account.** There is a mineral impact account. Money must be deposited in the impact account as provided in 17-3-240. The money in the impact account must be distributed to counties from which the minerals were produced that resulted in the deposit of the mineral royalty revenue in the impact account. Beginning July 1, 2003, the impact account is statutorily appropriated, as provided in 17-7-502.

**History:** En. Sec. 2, Ch. 594, L. 2001.

# TITLE 18

## PUBLIC CONTRACTS

### CHAPTER 1

#### PUBLIC CONTRACTS GENERALLY

##### Part 1

##### Preferences and General Matters

**18-1-101. Definitions.** (1) Unless the context requires otherwise, in this title, “department” means the department of administration provided for in Title 2, chapter 15, part 10.

(2) Unless the context requires otherwise, in this part, the following definitions apply:

(a) “Goods” means supplies, equipment, materials, commodities, and specially manufactured products.

(b) “Nonresident bidder” means a bidder whose residence is not in this state as determined under 18-1-103.

(c) (i) “Public agency” means a department, commission, council, board, bureau, committee, institution, agency, government corporation, or other entity, instrumentality, or official of the legislative, executive, or judicial branch of this state and its political subdivisions, including the board of regents and the Montana university system.

(ii) Public agency does not include a political subdivision for purposes of 18-1-102(1)(b).

(d) “Resident bidder” means a bidder whose residence is in this state as determined under 18-1-103.

(e) “Written” means that whenever written or in-writing determinations or documents are required, the public agency responsible for the procurement may specify an appropriate visual medium, such as by computer transmission or by facsimile machine transmission, in the specifications, contract, or rules of the public agency.

**History:** En. 82-1901.1 by Sec. 57, Ch. 326, L. 1974; R.C.M. 1947, 82-1901.1; amd. Sec. 1, Ch. 512, L. 1987; amd. Sec. 1, Ch. 443, L. 1997; amd. Sec. 8, Ch. 181, L. 2001.

**18-1-102. State contracts to lowest bidder — reciprocity.** (1) In order to provide for an orderly administration of the business of the state of Montana in awarding public contracts for the purchase of goods and for construction, repair, and public works of all kinds, a public agency shall, except as provided in Title 18, chapter 2, part 5, award:

(a) a public contract for construction, repair, or public works to the lowest responsible bidder without regard to residency. However, a resident bidder must be allowed a preference on a contract against the bid of a nonresident bidder from any state or country that enforces a preference for resident bidders. The preference given to resident bidders of this state must be equal to the preference given in the other state or country.

(b) a public contract for the purchase of goods to the lowest responsible bidder without regard to residency. However, a resident must be allowed a preference on a contract against the bid of a nonresident if the state or country of the nonresident enforces a preference for residents. The preference must be equal to the preference given in the other state or country.

(2) The preferences in this section apply:

(a) whether the law requires advertisement for bids or does not require advertisement for bids; and

(b) to contracts involving funds obtained from the federal government unless expressly prohibited by the laws of the United States or regulations adopted pursuant to federal laws.

**History:** En. Sec. 1, Ch. 183, L. 1961; amd. Sec. 1, Ch. 197, L. 1969; R.C.M. 1947, 82-1924; amd. Sec. 1, Ch. 468, L. 1985; amd. Sec. 2, Ch. 512, L. 1987; amd. Sec. 1, Ch. 32, L. 1991; amd. Sec. 1, Ch. 306, L. 1999; amd. Sec. 9, Ch. 181, L. 2001; amd. Sec. 6, Ch. 574, L. 2005.

**18-1-103. Resident defined.** (1) For the purpose of 18-1-102 and this section, the word “resident” includes actual residence of an individual within this state for a period of more than 1 year immediately prior to bidding.

(2) In a partnership enterprise, limited liability company, or association, the majority of all partners or members must have been actual residents of the state of Montana for more than 1 year immediately prior to bidding.

(3) Domestic corporations organized under the laws of the state of Montana are prima facie eligible to bid as residents, but this qualification may be set aside and a successful bid disallowed when it is shown to the satisfaction of the board, commission, officer, or individual charged with the responsibility for the execution of the contract that the corporation is a wholly owned subsidiary of a foreign corporation or that the corporation was formed for the purpose of circumventing the provisions relating to residence.

**History:** En. Sec. 2, Ch. 183, L. 1961; amd. Sec. 2, Ch. 197, L. 1969; amd. Sec. 1, Ch. 74, L. 1974; R.C.M. 1947, 82-1925; amd. Sec. 1, Ch. 284, L. 1987; amd. Sec. 58, Ch. 370, L. 1987; amd. Sec. 3, Ch. 512, L. 1987; amd. Sec. 100, Ch. 42, L. 1997; amd. Sec. 10, Ch. 181, L. 2001.

**18-1-104. Repealed.** Sec. 2, Ch. 92, L. 1979.

**History:** En. Sec. 1, Ch. 217, L. 1967; amd. Sec. 61, Ch. 391, L. 1973; R.C.M. 1947, 82-1925.1(part).

**18-1-105. Repealed.** Sec. 2, Ch. 92, L. 1979.

**History:** En. Sec. 1, Ch. 217, L. 1967; amd. Sec. 61, Ch. 391, L. 1973; R.C.M. 1947, 82-1925.1(part).

**18-1-106. Department of labor and industry to determine residency of selected contractors — applications for redetermination — determination as prima facie evidence.** (1) The department of labor and industry shall determine whether or not certain contractors are residents of the state of Montana within the meaning of 18-1-102 and 18-1-103. Any public agency charged by law with the responsibility for the execution of any contract subject to the provisions of 18-1-102 may request that a determination of resident or nonresident status be made by the department of labor and industry. All requests must specify the name and address of the licensed public contractor for whom a determination of resident or nonresident status is required.

(2) If a determination is made that a public contractor is not a resident but the public contractor later qualifies as a resident, the contractor may apply to the department of labor and industry for a redetermination of residency. If, upon redetermination, the public contractor is found to qualify as a resident, the contractor must be furnished a letter by the department of labor and industry attesting to resident status.

(3) The determination of the department of labor and industry that a public contractor is or is not a resident within the meaning of 18-1-102 and 18-1-103 is prima facie evidence of that fact.

**History:** En. Sec. 1, Ch. 92, L. 1979; amd. Sec. 1, Ch. 2, L. 1985; amd. Sec. 9, Ch. 558, L. 1995; amd. Sec. 46, Ch. 483, L. 2001.

**18-1-107 through 18-1-109 reserved.**

**18-1-110. Hiring preference for residents of Indian reservations for state construction projects within reservation — rules.** (1) For any contract awarded by a state agency for a state construction project within the exterior boundaries of an Indian reservation, except a project partially funded with federal-aid money from the United States department of transportation or when residency preference laws are specifically prohibited by federal law, there must be inserted in the bid specification and the contract a provision, in language approved by the commissioner of labor and industry, implementing the requirements of this subsection. The bid specification and the contract must provide that a preference in hiring for positions of employment be given to Indian residents of the reservation who have substantially equal qualifications for any position. For the purposes of this section, the definitions in 2-18-111 apply.

(2) The commissioner of labor and industry shall enforce this section, investigate complaints of its violation, and may adopt rules to implement this section.

**History:** En. Sec. 2, Ch. 506, L. 1991.

**18-1-111. Impartiality to be shown in letting contracts.** The department may not show any partiality or favoritism not provided for by law in making awards or contracts.

**History:** En. Sec. 10, Ch. 66, L. 1923; re-en. Sec. 293.10, R.C.M. 1935; amd. Sec. 75, Ch. 326, L. 1974; R.C.M. 1947, 82-1920; amd. Sec. 2, Ch. 284, L. 1987; amd. Sec. 11, Ch. 181, L. 2001.

**18-1-112. Repealed.** Sec. 26, Ch. 181, L. 2001.

**History:** En. Sec. 3, Ch. 183, L. 1961; amd. Sec. 3, Ch. 197, L. 1969; amd. Sec. 6, Ch. 97, L. 1977; R.C.M. 1947, 82-1926; amd. Sec. 4, Ch. 512, L. 1987.

**18-1-113. Bidder to submit affidavit — penalty.** (1) A bidder on a public contract for goods who is claiming a preference under this part shall either have on file with or submit to the public agency with its bid an affidavit specifying in detail, as determined by rule by the department, the basis on which the bidder claims the preference.

(2) If the public agency determines that the bidder has submitted a false affidavit under subsection (1), the bidder is disqualified as a bidder for future public contracts for goods with any public agency for a period of 5 years from the date of the determination.

**History:** En. Sec. 6, Ch. 512, L. 1987.

**18-1-114. Rules.** The department shall adopt rules necessary to administer the preferences provided in this part. The department's rules apply to all public agencies.

**History:** En. Sec. 7, Ch. 512, L. 1987.

**18-1-115 through 18-1-117 reserved.**

**18-1-118. Access to records of contracting entities.** Money may not be spent by a state agency under a contract with a nonstate entity unless the contract contains a provision that allows the legislative auditor sufficient access to the records of the nonstate entity to determine whether the parties have complied with the terms of the contract. The access to records is necessary to carry out the functions provided for in Title 5, chapter 13. A state agency may terminate a contract, without incurring liability, for the refusal of a nonstate entity to allow access to records as required by this section.

**History:** En. Sec. 12, Ch. 787, L. 1991; amd. Sec. 60, Ch. 545, L. 1995; amd. Sec. 2, Ch. 377, L. 1997.

## **Part 2**

### **Bid Security**

**18-1-201. Requirement for bidder's security.** (1) A "public authority" or "obligee" includes:

(a) the state of Montana or any department (including the department of administration, unless otherwise authorized by express provision of law), institution, board, commission, agency, authority or subordinate jurisdiction thereof;

(b) any county or other political subdivision of this state;

(c) any municipal corporation or authorized subdivision thereof; or

(d) school districts, irrigation districts, or other public authority organized under the laws of the state of Montana.

(2) Except as provided in 18-4-312, in all cases where a public authority or obligee is authorized by law to solicit bids, tenders, or proposals for public works, improvements, or undertakings of any kind or for the purchase of commodities, goods, or property or for the procurement of technical or special services on a bid basis (exclusive of services on the basis of salaries or wages) or for the sale and purchase of bonds, debentures, notes, or any other forms of indebtedness of any such public authority, the respective executive, administrative, or other officers of and acting for such public authority shall require, as a condition precedent to considering any such bids, as evidence of good faith on the part of the bidder, and as indemnity for the benefit of such public authority against the failure or refusal of any bidder to enter into any written contract that may be awarded upon and following acceptance of bid or as a condition precedent to consummating any sale and purchase of any forms of indebtedness, that any bid shall contain a written covenant of indemnity conditioned as herein prescribed and that the bid shall be accompanied by bid security of the nature herein specified for the performance of such covenant.

**History:** En. Sec. 1, Ch. 174, L. 1951; amd. Sec. 101, Ch. 326, L. 1974; R.C.M. 1947, 6-501(part); amd. Sec. 1, Ch. 424, L. 1985.

**18-1-202. Advertisement for bid to specify required security.** (1) The advertisement, request, or solicitation for bids or offers must distinctly specify that all bidders, offerors, tenderers, or contractors shall:

(a) whenever bids are solicited other than for purchase of any forms of indebtedness, expressly covenant in any bid that if the bidder is awarded the contract, the bidder will, within the time required as stated in the advertisement or solicitation, enter into a formal contract and give a good and sufficient bond to secure the performance of the terms and conditions of



the contract. If a bond is not provided, the bidder shall pay the public authority the difference in money between the amount of the bid of the bidder and the amount for which the public authority legally contracts with another party to perform the work or supply the property, commodities, or services, as the case may be, if the latter amount is in excess of the former.

(b) whenever the bids are solicited for the purchase and sale of any forms of indebtedness of the public authority, expressly covenant that the security accompanying the bid in the amount specified by the public authority must be kept and retained by the public authority as liquidated damages for failure to consummate the purchase of the forms of indebtedness that may be awarded on acceptance of bid and in compliance with the terms of the bid.

(2) The public authority shall distinctly specify in the solicitation or advertisement for bids the penal or other sum fixed by statute to be paid by a bidder failing or refusing as aforesaid whenever the amount of the bid security is fixed by statute. Otherwise, the public authority shall specify the amount, which may not be less than 2% of the principal amount of the indebtedness for a bid for the purchase of indebtedness and 10% of the bid price for any other bid, that it considers reasonably necessary to protect and indemnify the public authority against the failure or refusal of the bidder to enter into the contract or consummate the purchase of indebtedness, as the case may be.

(3) The advertisement, request, or other solicitation for bids or offers must distinctly specify that a bid bond or other form of security specified in 18-1-203 constitutes compliance with the requirement for bid security.

**History:** En. Sec. 1, Ch. 174, L. 1951; amd. Sec. 101, Ch. 326, L. 1974; R.C.M. 1947, 6-501(part); amd. Sec. 1, Ch. 85, L. 1979; amd. Sec. 1, Ch. 51, L. 1995.

**18-1-203. Form of security.** (1) (a) In all cases under 18-1-202(1), the bidder, offeror, or tenderer shall accompany any bid with either:

(i) lawful money of the United States;

(ii) a cashier's check, certified check, bank money order, or bank draft, in any case drawn and issued by a federally chartered or state-chartered bank insured by the federal deposit insurance corporation; or

(iii) a bid bond, guaranty bond, or surety bond executed by a surety corporation authorized to do business in the state of Montana. If a financial guaranty bond or surety bond is provided to secure the purchase of indebtedness, the long-term indebtedness of the company executing the financial guaranty bond or surety bond must carry an investment grade rating of one or more nationally recognized independent rating agencies.

(b) The public authority soliciting or advertising for bids may not require that a bid bond, guaranty bond, or surety bond provided for in subsection (1)(a)(iii) be furnished by a particular surety company or by a particular insurance producer for a surety company.

(2) The money or, in lieu of money, the bank instruments or bid bonds, financial guaranty bonds, or surety bonds must be payable directly to the public authority soliciting or advertising for bids.

**History:** En. Sec. 1, Ch. 174, L. 1951; amd. Sec. 101, Ch. 326, L. 1974; R.C.M. 1947, 6-501(part); amd. Sec. 11, Ch. 184, L. 1983; amd. Sec. 2, Ch. 51, L. 1995; amd. Sec. 1, Ch. 203, L. 2003.

**18-1-204. Forfeiture — bidder's liability — waiver.** (1) Except as provided in subsection (3), if in any instance one or more bids be accepted or a sale of any form of indebtedness is ordered or a contract is awarded, any bidder whose bid is accepted and who shall thereafter refuse to enter into and execute the proposed contract or carry out and consummate the purchase of any form of indebtedness, as stated in the covenant in the bid and herein, shall absolutely forfeit such moneys or bank instruments to the public authority concerned and become immediately liable on the bid bond but not in excess of the penal sum therein stated.

(2) In no event shall the bidder's liability, the liability of the maker of the security instrument, or the liability on the bid bond exceed the amount specified by the public authority in the solicitation or advertisement for bids, whether the amount shall be posted in money, be stated as the amount payable in the security instrument, or as the maximum amount payable in the bid bond.

(3) With respect to bids accepted under Title 18, chapter 2, the department may waive the requirement to forfeit bid security.

**History:** En. Sec. 1, Ch. 174, L. 1951; amd. Sec. 101, Ch. 326, L. 1974; R.C.M. 1947, 6-501(part); amd. Sec. 1, Ch. 83, L. 1987.

**18-1-205. Return of bid security.** The moneys or bank instruments or bid bonds, as the case may be, shall be returned to those bidders whose bids are not accepted.

**History:** En. Sec. 1, Ch. 174, L. 1951; amd. Sec. 101, Ch. 326, L. 1974; R.C.M. 1947, 6-501(part).

**18-1-206. Effect of compliance.** Nothing contained in this part shall exclude or be construed to excuse compliance with any other requirements for bonds or other or further security after acceptance of bids or following award of contract or excuse compliance with any requirements for performance bonds at any time, as such requirements may be prescribed or authorized by the laws of the state of Montana.

**History:** En. Sec. 1, Ch. 174, L. 1951; amd. Sec. 101, Ch. 326, L. 1974; R.C.M. 1947, 6-501(part).

### **Part 3**

### **Prepayment of Public Contractors**

**18-1-301. Contractor withdrawals — deposit of obligations.** (1) The contractor under any contract made or awarded by the state of Montana or any department, agency, or political subdivision of the state of Montana, by any county, municipality, or political subdivision of a county or municipality, or by a school district, including any contract for the construction, improvement, maintenance, or repair of any road or highway or the appurtenances to a road or highway, may, from time to time, withdraw the whole or any portion of the sums otherwise due to the contractor under the contract that are retained by the state of Montana or any department, agency, or political subdivision of the state of Montana, by any county, municipality, or political subdivision of a county or municipality, or by a school district pursuant to the terms of the contract, provided the contractor shall deposit with the contracting agency:

(a) United States treasury bonds, United States treasury notes, United States treasury certificates of indebtedness, or United States treasury bills;

(b) bonds or notes of the state of Montana;

(c) bonds of any political subdivision of the state of Montana of a market value not exceeding par at the time of deposit; or

(d) certificates of deposit drawn and issued by a national banking association located in the state of Montana or by any banking corporation incorporated under the laws of the state of Montana.

(2) Deposited obligations must be at least equal in value to the amount so withdrawn from payments retained under the contract.

(3) Except as provided in subsection (4), all interest accrued in the accounts of deposits required under this section must be paid to the contractor.

(4) The contractor shall extend to the contractor's subcontractors the opportunity to participate in making the deposits required in subsection (1). Interest accrued in deposit accounts in which subcontractors participate must be distributed on a pro rata basis by the contractor to the participating subcontractors. A subcontractor participating in making the deposits required in subsection (1) may not have additional retainage withheld by the contractor.

**History:** En. Sec. 1, Ch. 194, L. 1969; amd. Sec. 1, Ch. 101, L. 1971; R.C.M. 1947, 82-4101; amd. Sec. 1, Ch. 113, L. 1985; amd. Sec. 1, Ch. 222, L. 1999.

**18-1-302. Servicing of deposited obligations.** After notice to the owner and surety, the contracting agency shall have the power to enter into a contract or agreement with any national bank, state bank, trust company, or safe deposit company located in the state of Montana, designated by the contractor, to provide for the custodial care and servicing of any obligations deposited with it pursuant to this part. Such services shall include the safekeeping of said obligations and the rendering of all services required to effectuate the purposes of this part.

**History:** En. Sec. 2, Ch. 194, L. 1969; R.C.M. 1947, 82-4102; amd. Sec. 2, Ch. 113, L. 1985.

**18-1-303. Interest or income on deposits to contractor.** (1) The contracting agency or any national bank, state bank, trust company, or safe deposit company located in the state of Montana, designated by the contractor to serve as custodian for the obligations pursuant to 18-1-302, shall collect all interest or income when due on the obligations so deposited and shall pay the same, when and as collected, to the contractor who deposited the obligation.

(2) If deposited in the form of coupon bonds, the contracting agency or the designated custodian, pursuant to 18-1-302, shall deliver each such coupon as it matures to the contractor.

**History:** En. Sec. 3, Ch. 194, L. 1969; R.C.M. 1947, 82-4103; amd. Sec. 3, Ch. 113, L. 1985.

**18-1-304. Priority of deductions from retained payments and proceeds of deposited obligation.** Any amount deducted by the state of Montana or by any department, agency, or political subdivision thereof pursuant to the terms of a contract from the retained payments otherwise due to the contractor thereunder shall be deducted first from that portion of the retained payments for which no obligation has been substituted, then from the proceeds of any deposited obligation. In the latter case, the contractor shall be entitled to receive the interest, coupons, or income only from those obligations which remain on deposit after such amount has been deducted.

**History:** En. Sec. 4, Ch. 194, L. 1969; R.C.M. 1947, 82-4104.

## **Part 4**

### **Contract Actions Against the State**

**18-1-401. Jurisdiction.** The district courts of the state of Montana shall have exclusive original jurisdiction to hear, determine, and render judgment on any claim or dispute arising out of any express contract entered into with the state of Montana or any agency, board, or officer thereof.

**History:** En. Sec. 1, Ch. 138, L. 1955; R.C.M. 1947, 83-601.

**18-1-402. Administrative procedures — exhaustion — time limitations.** Whenever any contracting agency of the state of Montana provides a procedure for the settlement of any question or dispute arising between the contractor and the agency, the contractor, before proceeding to bring an action in court under the provisions of this part, shall resort to the procedure within the time specified in the contract or, if a time is not specified, within 90 days after the question or dispute has arisen, provided:

(1) in a case in which a settlement procedure is provided by the contracting agency, all actions authorized under this section must be commenced within 1 year after a final decision has been rendered pursuant to the settlement procedure; and

(2) in a case in which a settlement procedure is not provided by the contracting agency, the action must be commenced by the contractor within 1 year after the cause of action has arisen.

**History:** En. Sec. 2, Ch. 138, L. 1955; R.C.M. 1947, 83-602; amd. Sec. 222, Ch. 56, L. 2009.

**18-1-403. Stipulations restricting enforcement void.** Every stipulation or condition in a contract by which any party is restricted from enforcing the party's rights under the provisions of this part is void.

**History:** En. Sec. 3, Ch. 138, L. 1955; R.C.M. 1947, 83-603; amd. Sec. 223, Ch. 56, L. 2009.

**18-1-404. Liability of state — interest — costs.** (1) (a) The state of Montana is liable in respect to any contract entered into in the same manner and to the same extent as a private individual under like circumstances, except the state of Montana is not liable for punitive damages.

(b) The state of Montana is liable for interest from the date on which the payment on the contract became due. This liability is retroactive, within the meaning of 1-2-109, and applies to any contract in effect or an action pending on a contract on or after May 1, 1997. If the contract is subject to a good faith dispute brought before a government agency or before a court, the interest rate is 10% simple interest each year, whether due before or after a decision by the government agency or court. If the contract does not specify when interest is payable before a decision, interest must be paid at the time provided in 17-8-242(2). If the contract is not subject to a good faith dispute brought before a government agency or before a court, the interest rate is governed by 17-8-242.

(2) Costs may be allowed as provided in 25-10-711. In all other cases, costs must be allowed in all courts to the successful claimant to the same extent as if the state of Montana were a private litigant. The costs must include attorney fees. The liability for attorney fees is retroactive, within the meaning of 1-2-109, and applies to any contract in effect or an action pending on a contract on or after May 1, 1997.

(3) This section does not apply to a contract governed by Title 19.

**History:** En. Sec. 4, Ch. 138, L. 1955; R.C.M. 1947, 83-604; amd. Sec. 3, Ch. 402, L. 1979; amd. Sec. 1, Ch. 508, L. 1997; amd. Sec. 1, Ch. 413, L. 1999; amd. Sec. 12, Ch. 181, L. 2001.

**18-1-405 through 18-1-410 reserved.**

**18-1-411. Practice and procedure.** In actions under the provisions of this part, the forms of process, writs, pleadings, and motions and the practice and procedure, together with the right of appeal to the supreme court of the state of Montana, shall be the same as if the state of Montana were a private person, and provisions for counterclaim and setoff shall be the same as if the state of Montana were a private person.

**History:** En. Sec. 5, Ch. 138, L. 1955; R.C.M. 1947, 83-605.

**18-1-412. Service of process upon attorney general.** In addition to any other requirement for service of process contained in Rule 4(l), M.R.Civ.P., the attorney general of the state of Montana is hereby designated as the person upon whom all process shall be served in actions under the provisions of this part.

**History:** En. Sec. 6, Ch. 138, L. 1955; amd. Sec. 15, Ch. 343, L. 1977; R.C.M. 1947, 83-606(part); amd. Sec. 1, Ch. 58, L. 1979.

**18-1-413. Litigation — compromise.** The attorney general has full charge of litigation under this part on behalf of the state of Montana. The attorney general is authorized to arbitrate, compromise, or settle any claim cognizable under this part after the institution of any suit under this part, with the approval of the court in which the suit is pending. The provisions of 2-4-603(1) apply to any arbitration, compromise, or settlement made pursuant to this section.

**History:** En. Sec. 6, Ch. 138, L. 1955; amd. Sec. 15, Ch. 343, L. 1977; R.C.M. 1947, 83-606(part); amd. Sec. 3, Ch. 451, L. 1999.

**18-1-414. Judgments — payment.** A final judgment shall be the obligation of the state of Montana and shall be paid out of funds appropriated by the legislature next succeeding the date of judgment.

**History:** En. Sec. 7, Ch. 138, L. 1955; R.C.M. 1947, 83-607.

## CHAPTER 2 CONSTRUCTION CONTRACTS

### Part 1 General Provisions

**18-2-101. Definitions of building, costs, and construction.** In part 1 of this chapter, with the exception of 18-2-104, 18-2-107, 18-2-113, 18-2-114, 18-2-122, and 18-2-123, the following definitions apply:

(1) (a) “Building” includes a building, facility, or structure:

- (i) constructed or purchased wholly or in part with state money;
- (ii) at a state institution;
- (iii) owned or to be owned by a state agency, including the department of transportation; or
- (iv) constructed for the use or benefit of the state with federal or private money as provided in 18-2-102(2)(d).

(b) “Building” does not include a building, facility, or structure:

- (i) owned or to be owned by a county, city, town, school district, or special improvement district;

- (ii) used as a component part of an environmental remediation or abandoned mine land reclamation project, a highway, or a water conservation project, unless the building will require a continuing state general fund financial obligation after the environmental remediation or abandoned mine land reclamation project is completed; or

- (iii) leased or to be leased by a state agency.

(2) (a) “Construction” includes the construction, alteration, repair, maintenance, and remodeling of a building and the equipping and furnishing of a building during construction, alteration, repair, maintenance, and remodeling.

(b) “Construction” does not include work performed under an energy performance contract entered into pursuant to Title 90, chapter 4, part 11.

(3) “Costs” means those expenses defined in 17-5-801.

**History:** En. Sec. 14, Ch. 271, L. 1963; amd. Sec. 1, Ch. 24, L. 1973; amd. Sec. 81, Ch. 326, L. 1974; R.C.M. 1947, 82-3314; amd. Sec. 4, Ch. 388, L. 1979; amd. Sec. 1, Ch. 67, L. 1981; amd. Sec. 1, Ch. 491, L. 1983; amd. Sec. 1, Ch. 7, L. 1985; amd. Sec. 5, Ch. 372, L. 1985; amd. Sec. 3, Ch. 512, L. 1991; amd. Sec. 1, Ch. 241, L. 1995; amd. Sec. 1, Ch. 392, L. 1997; amd. Sec. 2, Ch. 470, L. 1999; amd. Sec. 6, Ch. 374, L. 2005; amd. Sec. 2, Ch. 439, L. 2009.

**18-2-102. Authority to construct buildings.** (1) Except as provided in 22-3-1003 and subsection (2) of this section, a building costing more than \$150,000 may not be constructed without the consent of the legislature. Legislative approval of repair and maintenance costs as part of an agency's operating budget constitutes the legislature's consent. When a building costing more than \$150,000 is to be financed in a manner that does not require legislative appropriation of money, the consent may be in the form of a joint resolution.

(2) (a) The governor may authorize the emergency repair or alteration of a building and is authorized to transfer funds and authority as necessary to accomplish the project. Transfers may not be made from the funds for an uncompleted capital project unless the project is under the supervision of the same agency.

(b) The regents of the Montana university system may authorize the construction of revenue-producing facilities referred to in 20-25-302 if they are to be financed wholly from the revenue from the facility.

(c) The regents of the Montana university system, with the consent of the governor, may authorize the construction of a building that is financed wholly with federal or private money if the construction of the building will not result in any new programs.

(d) The regents of the Montana university system may authorize the construction of facilities as provided in 20-25-309.

(e) The department of military affairs, with the consent of the governor, may authorize the construction of a building that is financed wholly with federal or private money on federal land for the use or benefit of the state.

**History:** En. Sec. 16, Ch. 271, L. 1963; amd. Sec. 2, Ch. 13, L. 1967; amd. Sec. 83, Ch. 326, L. 1974; R.C.M. 1947, 82-3316; amd. Sec. 2, Ch. 7, L. 1985; amd. Sec. 1, Ch. 518, L. 1993; amd. Sec. 2, Ch. 241, L. 1995; amd. Sec. 1, Ch. 249, L. 1997; amd. Sec. 1, Ch. 403, L. 2007; amd. Sec. 2, Ch. 419, L. 2007.

**18-2-103. Supervision of construction of buildings.** (1) For the construction of a building costing more than \$150,000, the department shall:

(a) review and accept all plans, specifications, and cost estimates prepared by architects or consulting engineers;

(b) approve all bond issues or other financial arrangements and supervise and approve the expenditure of all money;

(c) solicit, accept, and reject bids and, except as provided in Title 18, chapter 2, part 5, award all contracts to the lowest qualified bidder considering conformity with specifications and terms and reasonableness of the bid amount;

(d) review and approve all change orders; and

(e) accept the building when completed according to accepted plans and specifications.

(2) The department may delegate on a project-by-project basis any powers and duties under subsection (1) to other state agencies, including units of the Montana university system, upon terms and conditions specified by the department.

(3) Before a contract under subsection (1) is awarded, two formal bids must have been received, if reasonably available.

(4) The department need not require the provisions of Montana law relating to advertising, bidding, or supervision when proposed construction costs are \$75,000 or less. However, with respect to a project having a proposed cost of \$75,000 or less but more than \$25,000, the agency awarding the contract shall procure at least three informal bids from contractors registered in Montana, if reasonably available.

(5) For the construction of buildings owned or to be owned by a school district, the department shall, upon request, provide inspection to ensure compliance with the plans and specifications for the construction of the buildings. "Construction" includes construction, repair, alteration, equipping, and furnishing during construction, repair, or alteration. These services must be provided at a cost to be contracted for between the department and the school district, with the receipts to be deposited in the department's construction regulation account in a state special revenue fund.



(6) It is the intent of the legislature that student housing and other facilities constructed under the authority of the regents of the university system are subject to the provisions of subsections (1) through (3).

(7) The department of military affairs may act as the contracting agency for buildings constructed under the authority of 18-2-102(2)(d). However, the department of administration may agree to act as the contracting agency on behalf of the department of military affairs. Montana law applies to any controversy involving a contract.

**History:** En. Sec. 17, Ch. 271, L. 1963; amd. Sec. 2, Ch. 264, L. 1969; amd. Sec. 2, Ch. 24, L. 1973; amd. Sec. 98, Ch. 326, L. 1974; amd. Sec. 2, Ch. 487, L. 1977; R.C.M. 1947, 82-3317; amd. Sec. 1, Ch. 16, L. 1979; amd. Sec. 15, Ch. 281, L. 1983; amd. Sec. 2, Ch. 491, L. 1983; amd. Sec. 3, Ch. 7, L. 1985; amd. Sec. 1, Ch. 137, L. 1985; amd. Sec. 1, Ch. 466, L. 1985; amd. Sec. 1, Ch. 467, L. 1985; amd. Sec. 1, Ch. 648, L. 1985; amd. Sec. 1, Ch. 350, L. 1989; amd. Sec. 2, Ch. 518, L. 1993; amd. Sec. 2, Ch. 249, L. 1997; amd. Sec. 1, Ch. 303, L. 1999; amd. Sec. 7, Ch. 574, L. 2005.

**18-2-104. Scheduling of state building program.** The department of administration shall, by careful advance planning, ordering of construction priorities, consultation with architects, and timing of bid lettings, direct the building program of the state in such a manner as to reduce to a minimum the effects of weather on construction and to stabilize as far as possible the work opportunities of the construction labor force.

**History:** En. Sec. 1, Ch. 116, L. 1967; amd. Sec. 98, Ch. 326, L. 1974; R.C.M. 1947, 78-910.

**18-2-105. General powers and duties of department of administration.** In carrying out powers relating to the construction of buildings, the department of administration may:

- (1) inspect buildings not under construction;
- (2) contract with the federal government for advance planning funds;
- (3) transfer funds and authority to agencies and accept funds and authority from agencies;
- (4) subject to 2-17-135, purchase, lease, and acquire by exchange or otherwise, land and buildings in Lewis and Clark County and equipment and furnishings for the buildings;
- (5) issue and sell bonds and other securities;
- (6) maintain an inventory of all buildings;
- (7) appoint a project representative to supervise architects' and consulting engineers' inspection of construction of buildings to ensure that all construction is in accordance with the contracts, plans, and specifications. The cost of supervision may be charged against money available for construction.

(8) negotiate deductive changes, not to exceed 7% of the total cost of a project, with the lowest responsible bidder when the lowest responsible bid causes the project cost to exceed the appropriation or with the lowest responsible bidders, if multiple contracts will be awarded on the project, when the total of the lowest responsible bids causes the project cost to exceed the appropriation. A bidder is not required to negotiate a bid but is required to honor the bid for the time specified in the bidding documents. The department may terminate negotiations at any time.

**History:** En. Sec. 18, Ch. 271, L. 1963; amd. Sec. 1, Ch. 203, L. 1965; amd. Sec. 84, Ch. 326, L. 1974; R.C.M. 1947, 82-3318; amd. Sec. 1, Ch. 291, L. 1985; amd. Sec. 3, Ch. 518, L. 1993; amd. Sec. 3, Ch. 249, L. 1997; amd. Sec. 12, Ch. 217, L. 2007.

**18-2-106. Pecuniary interest prohibited.** (1) The director of administration and the state architect may not have a direct or indirect pecuniary interest in any contract, transaction, or project involving the construction of a building.

(2) An employee of the department who is directly responsible for construction procurement may not have a direct pecuniary interest in a contract for the construction of a building unless the contract is awarded through a competitive procurement procedure.

**History:** En. Sec. 21, Ch. 271, L. 1963; amd. Sec. 85, Ch. 326, L. 1974; R.C.M. 1947, 82-3321; amd. Sec. 2, Ch. 303, L. 1999.

**18-2-107. Deposit of capitol building grant revenue.** (1) The state treasurer shall deposit in a capital projects fund all revenue from the capitol building land grant after any deductions made under 77-1-109.

(2) The funds must be held and dedicated for the purpose of constructing capitol buildings or additions to buildings in accordance with the provisions of section 12 of The Enabling Act.

**History:** (1)En. Sec. 1, Ch. 120, L. 1943; amd. Sec. 49, Ch. 147, L. 1963; Sec. 78-501, R.C.M. 1947; (2)En. Sec. 3, Ch. 120, L. 1943; amd. Sec. 50, Ch. 147, L. 1963; Sec. 78-503, R.C.M. 1947; R.C.M. 1947, 78-501, 78-503;

amd. Sec. 2, Ch. 277, L. 1983; amd. Sec. 6, Ch. 533, L. 1993; amd. Sec. 4, Ch. 122, L. 1999; amd. Sec. 3, Ch. 355, L. 2003; amd. Sec. 3, Ch. 465, L. 2009.

**18-2-108. Compliance with state laws and regulations.** All buildings built or leased or purchased under this title must comply with all laws, safety codes, and rules of the state of Montana.

History: En. 82-3315.8 by Sec. 8, Ch. 242, L. 1974; R.C.M. 1947, 82-3315.8.

**18-2-109 and 18-2-110 reserved.**

**18-2-111. Policy regarding practice of architecture — preparation of working drawings by department limited.** (1) It is the policy of the state not to engage in the practice of architecture. However, this policy may not be construed as prohibiting the department of administration from:

(a) engaging in preplanning functions necessary to prepare a building program for presentation to the legislature;

(b) supervising construction as provided in 18-2-105(7); or

(c) preparing working drawings for minor projects.

(2) The department of administration may not prepare working drawings for the construction of a building, with the exception of repair or maintenance projects, when the total cost of the construction will exceed \$75,000.

History: En. Sec. 20, Ch. 271, L. 1963; amd. Sec. 1, Ch. 371, L. 1977; R.C.M. 1947, 82-3320; amd. Sec. 3, Ch. 491, L. 1983; amd. Sec. 4, Ch. 518, L. 1993; amd. Sec. 1, Ch. 470, L. 1995.

**18-2-112. Appointment of architects and consulting engineers.** The department of administration shall appoint any architect or consulting engineer retained for work on any building to be constructed, remodeled, or renovated by the state of Montana, its boards, institutions, and agencies from a list of three architects or consulting engineers proposed by the state board, institution, or agency where the work is to be done. The department need not appoint an architect or consulting engineer for repair or maintenance projects.

History: En. Sec. 19, Ch. 271, L. 1963; amd. Sec. 1, Ch. 231, L. 1965; amd. Sec. 1, Ch. 83, L. 1973; amd. Sec. 98, Ch. 326, L. 1974; R.C.M. 1947, 82-3319; amd. Sec. 4, Ch. 491, L. 1983; amd. Sec. 2, Ch. 22, L. 1993; amd. Sec. 5, Ch. 518, L. 1993.

**18-2-113. Architects on public buildings to be certified.** A contract for the employment of or the rendering of professional services by any person relating to the planning or construction of public buildings or other public works or improvements may not be entered into by this state or its agencies or a county, city, or school district in this state unless the person is the holder in good standing of a license granted under Title 37, chapter 65, by the board of architects and landscape architects.

History: En. Sec. 1, Ch. 190, L. 1953; amd. Sec. 32, Ch. 350, L. 1974; amd. Sec. 6, Ch. 544, L. 1977; R.C.M. 1947, 66-113; amd. Sec. 7, Ch. 11, L. 2007.

**18-2-114. Seal and signature of architect on plans.** All architectural plans and specifications for public buildings of the state of Montana or any agency thereof or of any county, city, or school district of the state shall bear the seal and signature of the architect responsible therefor.

History: En. Sec. 2, Ch. 190, L. 1953; amd. Sec. 1, Ch. 68, L. 1957; amd. Sec. 1, Ch. 167, L. 1961; amd. Sec. 1, Ch. 220, L. 1965; amd. Sec. 1, Ch. 131, L. 1967; amd. Sec. 7, Ch. 544, L. 1977; R.C.M. 1947, 66-114(part).

**18-2-115. Repealed.** Sec. 12, Ch. 388, L. 1979.

History: En. Sec. 2, Ch. 190, L. 1953; amd. Sec. 1, Ch. 68, L. 1957; amd. Sec. 1, Ch. 167, L. 1961; amd. Sec. 1, Ch. 220, L. 1965; amd. Sec. 1, Ch. 131, L. 1967; amd. Sec. 7, Ch. 544, L. 1977; R.C.M. 1947, 66-114(part).

**18-2-116 through 18-2-120 reserved.**

**18-2-121. Engineer or land surveyor to supervise project.** This state and its political subdivisions such as counties, cities, towns, townships, boroughs, or other political entities or legally constituted boards, commissions, or authorities or officials or employees thereof shall not engage in the practice of engineering or land surveying involving either public or private property without the project being under the direct charge and supervision of a professional engineer for engineering projects or land surveyor for all land surveying projects, as provided for the practice of the respective professions by Title 37.

History: En. 66-2363 by Sec. 11, Ch. 366, L. 1975; R.C.M. 1947, 66-2363(part).

**18-2-122. Plans to bear seal.** This state and its political subdivisions such as counties, cities, towns, townships, boroughs, or other political entities or legally constituted boards, commissions, or authorities or officials or employees thereof may not accept plans and specifications for public buildings, water systems and storage facilities, sewerage systems, wastewater disposal projects, swimming pools, recreational facilities, and similar type projects which may have a direct bearing on the public health and safety for approval unless they bear the seal of the professional engineer for engineering projects or the professional land surveyor for land surveying projects or licensed architect for architectural projects, as provided for the practice of the respective professions by Title 37.

**History:** En. 66-2363 by Sec. 11, Ch. 366, L. 1975; R.C.M. 1947, 66-2363(part); amd. Sec. 24, Ch. 83, L. 1989.

**18-2-123. Payment of contractors and subcontractors.** Notwithstanding any other provision of this title, payment of a construction contractor or subcontractor, as those terms are defined in 28-2-2101, for services performed by a construction contractor or subcontractor is governed by the provisions of Title 28, chapter 2, part 21.

**History:** En. Sec. 1, Ch. 470, L. 1999.

**18-2-124. Construction contract indemnification provisions.** (1) Except as provided in subsections (2) and (3), a construction contract provision that requires one party to the contract to indemnify, hold harmless, insure, or defend the other party to the contract or the other party's officers, employees, or agents for liability, damages, losses, or costs that are caused by the negligence, recklessness, or intentional misconduct of the other party or the other party's officers, employees, or agents is void as against the public policy of this state.

(2) A construction contract may contain a provision:

(a) requiring one party to the contract to indemnify, hold harmless, or insure the other party to the contract or the other party's officers, employees, or agents for liability, damages, losses, or costs, including but not limited to reasonable attorney fees, only to the extent that the liability, damages, losses, or costs are caused by the negligence, recklessness, or intentional misconduct of a third party or of the indemnifying party or the indemnifying party's officers, employees, or agents; or

(b) requiring a party to the contract to purchase a project-specific insurance policy, including but not limited to an owner's and contractor's protective insurance, a project management protective liability insurance, or a builder's risk insurance.

(3) This section does not apply to indemnity of a surety by a principal on a construction contract bond or to an insurer's obligation to its insureds.

(4) As used in this section, "construction contract" means an agreement for architectural services, alterations, construction, demolition, design services, development, engineering services, excavation, maintenance, repair, or other improvement to real property, including an agreement to supply labor, materials, or equipment for an improvement to real property.

**History:** En. Sec. 1, Ch. 259, L. 2007.

## **Part 2**

### **Performance, Labor, and Materials Bonds**

**18-2-201. Security requirements.** (1) (a) Except as otherwise provided in 85-1-219 and subsections (3) through (5) of this section, whenever any board, council, commission, trustees, or body acting for the state or any county, municipality, or public body contracts with a person or corporation to do work for the state, county, or municipality or other public body, city, town, or district, the board, council, commission, trustees, or body shall require the person or corporation with whom the contract is made to make, execute, and deliver to the board, council, commission, trustees, or body a good and sufficient bond with a surety company, licensed in this state, as surety, conditioned that the person or corporation shall:

(i) faithfully perform all of the provisions of the contract;

(ii) pay all laborers, mechanics, subcontractors, and material suppliers; and

(iii) pay all persons who supply the person, corporation, or subcontractors with provisions, provender, material, or supplies for performing the work.

(b) The state or other governmental entity listed in subsection (1)(a) may not require that any bond required by subsection (1)(a) be furnished by a particular surety company or by a particular insurance producer for a surety company.

(2) The state or other governmental entity listed in subsection (1)(a) may, in lieu of a surety bond, permit the deposit with the contracting governmental entity or agency of the following securities in an amount at least equal to the contract sum to guarantee the faithful performance of the contract and the payment of all laborers, suppliers, material suppliers, mechanics, and subcontractors:

(a) lawful money of the United States; or

(b) a cashier's check, certified check, bank money order, certificate of deposit, money market certificate, bank draft, or irrevocable letter of credit, drawn or issued by:

(i) any federally or state-chartered bank or savings and loan association that is insured by or for which insurance is administered by the federal deposit insurance corporation; or

(ii) a credit union insured by the national credit union share insurance fund.

(3) Any board, council, commission, trustee, or body acting for any county, municipality, or public body other than the state may, subject to the provisions of subsection (1)(b), in lieu of a bond from a licensed surety company, accept good and sufficient bond with two or more sureties acceptable to the governmental entity.

(4) Except as provided in subsection (5), the state or other governmental entity may waive the requirements contained in subsections (1) through (3) for building or construction projects, as defined in 18-2-101, that cost less than \$50,000.

(5) A school district may waive the requirements contained in subsections (1) through (3) for building or construction projects, as defined in 18-2-101, that cost less than \$7,500.

**History:** En. Sec. 1, Ch. 20, L. 1931; re-en. Sec. 5668.41, R.C.M. 1935; R.C.M. 1947, 6-401(part); amd. Sec. 1, Ch. 602, L. 1981; amd. Sec. 1, Ch. 147, L. 1985; amd. Sec. 2, Ch. 498, L. 1985; amd. Sec. 1, Ch. 250, L. 1987; amd. Sec. 59, Ch. 370, L. 1987; amd. Sec. 1, Ch. 236, L. 1993; amd. Sec. 1, Ch. 130, L. 1995; amd. Sec. 4, Ch. 249, L. 1997; amd. Sec. 1, Ch. 112, L. 1999; amd. Sec. 3, Ch. 303, L. 1999; amd. Sec. 2, Ch. 203, L. 2003; amd. Sec. 1, Ch. 186, L. 2005.

**18-2-202. Failure to require security — waiver.** If any board, council, commission, trustee, or body acting for the state or any board of county commissioners or any mayor and common council of any incorporated city or town or tribunal transacting the business of any such municipal corporation waives or fails to take the security required or authorized by 18-2-201, the state or the county, incorporated city or town, or other municipal corporation is liable to the persons mentioned in 18-2-201 to the full extent and for the full amount of all of the contracted debts by any subcontractor as well as the contractor.

**History:** En. Sec. 3, Ch. 20, L. 1931; re-en. Sec. 5668.43, R.C.M. 1935; R.C.M. 1947, 6-403; amd. Sec. 2, Ch. 602, L. 1981; amd. Sec. 2, Ch. 250, L. 1987; amd. Sec. 2, Ch. 130, L. 1995.

**18-2-203. Amount and terms of security.** The security mentioned in 18-2-201 must be in an amount equal to the full contract price agreed to be paid for the work or improvement and must be to the state of Montana, except in cases of cities and towns, in which case the municipality may by general ordinance fix and determine the amount of the security and the name of the secured party, provided that the amount may not be for less than 25% of the contract price of the improvement, and the security may designate that the amount is payable to the city or town and not to the state of Montana.

**History:** En. Sec. 4, Ch. 20, L. 1931; re-en. Sec. 5668.44, R.C.M. 1935; amd. Sec. 1, Ch. 96, L. 1941; amd. Sec. 1, Ch. 175, L. 1957; R.C.M. 1947, 6-404(part); amd. Sec. 3, Ch. 130, L. 1995.

**18-2-204. Right of action on security — notice.** (1) All persons mentioned in 18-2-201 have a right of action in their own name or names on any security furnished under the terms of this part for work done by the laborers or mechanics and for food, materials, supplies, provisions, or goods supplied and furnished in the work or the making of the improvements. The persons do not have any right of action on the security unless within 90 days after the completion of the contract with an acceptance of the work by the affirmative action of the board, council, commission, trustees, officer, or body acting for the state, county, or municipality or other public body, city, town, or district, the laborer, mechanic or subcontractor, or material supplier or person claiming to have supplied food, materials, provisions, or goods for the performance of the work or the making of the improvement presents to and files with the board, council, commission,



trustees, or body acting for the state, county, or municipality or other public body, city, town, or district a notice in writing in substance as follows:

“TO (here insert the name of the state, county, or municipality or other public body, city, town, or district):

NOTICE IS HEREBY GIVEN that the undersigned (here insert the name of the laborer, mechanic or subcontractor, or material supplier or person claiming to have furnished labor, materials, or provisions for the contract or work) has a claim in the sum of .... dollars (here insert the amount) against the security taken from .... (here insert the name of the principal and name of the person providing the security) for the work of .... (here insert a brief mention or description of the work concerning which the security was taken). (Here to be signed) ....”

(2) The notice must be signed by the person or corporation making the claim or giving the notice. After being presented and filed, the notice is a public record open to inspection by any person.

**History:** En. Sec. 4, Ch. 20, L. 1931; re-en. Sec. 5668.44, R.C.M. 1935; amd. Sec. 1, Ch. 96, L. 1941; amd. Sec. 1, Ch. 175, L. 1957; R.C.M. 1947, 6-404(part); amd. Sec. 4, Ch. 130, L. 1995; amd. Sec. 224, Ch. 56, L. 2009.

**18-2-205. Effect of dealing with subcontractor.** A corporation or person performing services or furnishing provender, provisions, supplies, or material to a subcontractor has the same right under the provisions of the security as if the work, services, provender, provisions, supplies, or material was furnished to the original contractor.

**History:** En. Sec. 1, Ch. 20, L. 1931; re-en. Sec. 5668.41, R.C.M. 1935; R.C.M. 1947, 6-401(part); amd. Sec. 5, Ch. 130, L. 1995.

**18-2-206. Notice to contractor concerning subcontractor.** (1) A person, firm, or corporation furnishing provender, provisions, materials, or supplies to be used in the construction, performance, carrying on, prosecution, or doing of any work for the state or any county, city, town, district, municipality, or other public body shall, not later than 30 days after the date of the first delivery to a subcontractor or agent of a person, firm, or corporation having a subcontract for the construction, performance, carrying on, prosecution, or doing of the work, give a notice of a right of action on the security.

(2) (a) The notice must be delivered personally or sent by certified mail to the contractor.

(b) The notice must be in writing and state:

(i) that it is a notice of a right of action on the security;

(ii) that the person, firm, or corporation giving the notice has commenced to deliver provender, provisions, materials, or supplies;

(iii) the name of the subcontractor or agent who placed the order or to whom the provender, provisions, materials, or supplies were delivered; and

(iv) that the contractor and the contractor's security will be held for the unpaid price if the supplier is not paid.

(3) To have a right of action against the contractor and the security under this part, a person, firm, or corporation shall give the written notice required by this section in substantially the form described in subsection (2). Any other type of actual or constructive notice is not sufficient.

(4) A suit or action may not be maintained in any court against the contractor or the security to recover for the provender, provisions, materials, or supplies or any part thereof unless the provisions of this part have been complied with.

**History:** En. Sec. 2, Ch. 20, L. 1931; re-en. Sec. 5668.42, R.C.M. 1935; amd. Sec. 1, Ch. 115, L. 1967; R.C.M. 1947, 6-402; amd. Sec. 1, Ch. 637, L. 1987; amd. Sec. 6, Ch. 130, L. 1995.

**18-2-207. Costs — attorney fees.** In a suit or action brought against the surety, payor, or other person liable on the security by a person or corporation to recover for any of the items specified in this part, the prevailing party is entitled to recover, in addition to all other costs, attorney fees in a sum that the court finds reasonable. However, attorney fees may not be allowed in a suit or action brought or instituted before the expiration of 30 days following the date of filing of the notice required in 18-2-206.

**History:** En. Sec. 4, Ch. 20, L. 1931; re-en. Sec. 5668.44, R.C.M. 1935; amd. Sec. 1, Ch. 96, L. 1941; amd. Sec. 1, Ch. 175, L. 1957; R.C.M. 1947, 6-404(part); amd. Sec. 7, Ch. 130, L. 1995.

**18-2-208. Exceptions.** (1) The provisions of this part do not apply to money loaned or advanced to a contractor, subcontractor, or other person in the performance of the work.



(2) A city or town may impose any other or further conditions and obligations in the security that is considered necessary for its proper protection in the fulfillment of the terms of the contract and not in conflict with this part.

(3) The notice required by 18-2-204 to be given within 90 days after completion of the contract and acceptance of the work may not be construed to prevent or delay the payment of money due the contractor under the terms and conditions specified in the contract.

**History:** (1)En. Sec. 1, Ch. 20, L. 1931; re-en. Sec. 5668.41, R.C.M. 1935; Sec. 6-401, R.C.M. 1947; (2), (3)En. Sec. 4, Ch. 20, L. 1931; re-en. Sec. 5668.44, R.C.M. 1935; amd. Sec. 1, Ch. 96, L. 1941; amd. Sec. 1, Ch. 175, L. 1957; Sec. 6-404, R.C.M. 1947; R.C.M. 1947, 6-401(part), 6-404(part); amd. Sec. 8, Ch. 130, L. 1995.

### **Part 3** **Contract Requirements and Restrictions**

**18-2-301. Bids required — advertising.** (1) It is unlawful for any offices, departments, institutions, or any agent of the state of Montana acting for or in behalf of the state to do, to cause to be done, or to let any contract for the construction of buildings or the alteration and improvement of buildings and adjacent grounds on behalf of and for the benefit of the state when the amount involved is \$75,000 or more without first advertising in at least one issue each week for 3 consecutive weeks in two newspapers published in the state, one of which must be published at the seat of government and the other in the county where the work is to be performed, calling for sealed bids to perform the work and stating the time and place bids will be considered.

(2) All work may be done, caused to be done, or contracted for only after competitive bidding.

(3) If responsible bids are not received after two attempts, the department or agency may contract for the work in a manner determined to be cost-effective for the state.

(4) This section does not apply to work done by inmates at an institution in the department of corrections.

(5) (a) The provisions of Montana law governing advertising and competitive bidding do not apply when the department of fish, wildlife, and parks is preserving or restoring the historic buildings and resources that it owns at Bannack if:

(i) the options listed in subsection (5)(b) are determined to be more cost-effective for the state; and

(ii) the implementation of the options listed in subsection (5)(b) is necessary to save historic buildings and resources from degradation and loss.

(b) For the preservation or restoration of historic buildings and resources at Bannack when the conditions listed in subsection (5)(a) are met, the department of fish, wildlife, and parks may accomplish the preservation or restoration through:

(i) a memorandum of understanding with a local, state, or federal entity or nonprofit organization when the entity or organization demonstrates the competence, knowledge, and qualifications to preserve or restore historic resources;

(ii) the use of qualified and trained department of fish, wildlife, and parks employees and volunteers;

(iii) a training program in historic preservation and restoration conducted by a qualified local, state, or federal entity or a qualified nonprofit organization; or

(iv) any combination of the options described in subsection (5)(b).

**History:** (1) thru (3)En. Sec. 1, Ch. 149, L. 1927; re-en. Sec. 259.1, R.C.M. 1935; amd. Sec. 1, Ch. 142, L. 1961; amd. Sec. 1, Ch. 97, L. 1977; Sec. 82-1131, R.C.M. 1947; (4)En. Sec. 2, Ch. 142, L. 1961; amd. Sec. 92, Ch. 199, L. 1965; amd. Sec. 54, Ch. 326, L. 1974; Sec. 82-1131.1, R.C.M. 1947; R.C.M. 1947, 82-1131, 82-1131.1; amd. Sec. 2, Ch. 16, L. 1979; amd. Sec. 1, Ch. 262, L. 1991; amd. Sec. 6, Ch. 518, L. 1993; amd. Sec. 61, Ch. 546, L. 1995; amd. Sec. 1, Ch. 57, L. 1997; amd. Sec. 5, Ch. 249, L. 1997.

**18-2-302. Bid security — waiver — authority to submit.** (1) (a) Except as provided in subsection (2), each bid must be accompanied by bid security in the amount of 10% of the bid. The security may consist of cash, a cashier's check, a certified check, a bank money order, a certificate of deposit, a money market certificate, or a bank draft. The security must be:

(i) drawn and issued by a federally chartered or state-chartered bank or savings and loan association that is insured by or for which insurance is administered by the federal deposit insurance corporation;

(ii) drawn and issued by a credit union insured by the national credit union share insurance fund; or

(iii) a bid bond or bonds executed by a surety company authorized to do business in the state of Montana.

(b) The state or other governmental entity may not require that a bid bond or bond provided for in subsection (1)(a)(iii) be furnished by a particular surety company or by a particular insurance producer for a surety company.

(2) The state or other governmental entity may waive the requirements for bid security on building or construction projects, as defined in 18-2-101, that cost less than \$25,000.

(3) The bid security must be signed by an individual authorized to submit the security by the corporation or other business entity on whose behalf the security is submitted. If the request for bid or other specifications provided by the state or other governmental entity specify the form or content of the bid security, the security submitted must comply with the requirements of that specification.

**History:** En. Sec. 3, Ch. 149, L. 1927; re-en. Sec. 259.3, R.C.M. 1935; amd. Sec. 2, Ch. 193, L. 1977; amd. Sec. 1, Ch. 487, L. 1977; R.C.M. 1947, 82-1133; amd. Sec. 3, Ch. 250, L. 1987; amd. Sec. 9, Ch. 130, L. 1995; amd. Sec. 6, Ch. 249, L. 1997; amd. Sec. 1, Ch. 282, L. 1999; amd. Sec. 3, Ch. 203, L. 2003.

**18-2-303. Construction bids — minimum requirements — effect of failure to comply.** (1) Each bid communicated to a state agency for the construction of a building must contain or be accompanied by the following items that may not be waived by the state agency:

(a) bid security, as required by 18-2-302;

(b) the unit price for each item required to be bid by unit price; and

(c) the signature, including an electronic signature allowed under 60-2-113, of an individual authorized to submit the bid and authorized by that submission to agree to perform the contract if the bid is accepted. If the request for bid or other specifications provided by the state agency specify the individual required to submit the bid, the bid must comply with that requirement.

(2) The unit price must be expressly stated in the bid and may not have to be calculated by the state agency by dividing the total of the unit prices by the number of units specified or required.

(3) A bid that does not include the items required by subsection (1) as part of or along with the bid may not be accepted by the state agency.

(4) The following definitions apply to this section:

(a) “Building” has the meaning provided in 18-2-101.

(b) “Construction” has the meaning provided in 18-2-101.

(c) “State agency” means a department, board, commission, authority, or office of a branch of state government, including the board of regents and the Montana university system.

(d) “Unit price” means the price of lumber, concrete, earth, pipe, or other construction item, activity, or material for which the price is required by the request for bids to be bid on the basis of that item, a linear foot, square foot, square yard, cubic yard, activity an hour or other measurement of time, or other standard unit of measurement for that material, item, or activity.

**History:** En. Sec. 2, Ch. 282, L. 1999; amd. Sec. 1, Ch. 48, L. 2009.

**18-2-304 and 18-2-305 reserved.**

**18-2-306. Time of final acceptance and final payment on construction contracts — interest.** (1) A government entity that enters into a contract for the construction of a building shall, unless otherwise provided by law or the contract and within 10 days after a request by the construction contractor for final acceptance, decide whether or not to make final acceptance. Within 30 days after final acceptance by the government entity, the government entity shall make the final payment of the contract price specified in the contract to the other party to the contract.

(2) Except as provided by law or the contract, a government entity that fails to complete the payment of the contract price at the time required by subsection (1) shall pay to the other party to the contract interest at the rate specified in 17-8-242 or 18-1-404, as applicable. Collection of interest pursuant to this section does not preclude any other legal remedy.

(3) The following definitions apply to this section:

(a) “Building” has the meaning provided in 18-2-101.

(b) “Construction” has the meaning provided in 18-2-101.

(c) “Final acceptance” means the government entity’s acceptance of the construction of a building by the contractor upon certification by the architect, project engineer, or other representative of the government entity of final completion of the building.

(d) “Final completion” means that the building has been completed in accordance with the terms and conditions of the contract documents.

(e) “Government entity” means a department, agency, commission, board, authority, institution, or office of the state, including the board of regents and the Montana university system, a municipality, county, consolidated municipal-county government, school district, or other special district.

**History:** En. Sec. 1, Ch. 439, L. 1999; amd. Sec. 13, Ch. 181, L. 2001.

**18-2-307 through 18-2-310 reserved.**

**18-2-311. Repealed.** Sec. 3, Ch. 87, L. 1985.

**History:** En. Sec. 1, Ch. 141, L. 1967; R.C.M. 1947, 82-1927.

**18-2-312. Excusable delays.** A public contractor shall not be considered to be working beyond contract time if the delay is caused by an accident or casualty produced by physical cause which is not preventable by human foresight, i.e., any of the misadventures termed an “act of God”.

**History:** En. Sec. 2, Ch. 141, L. 1967; R.C.M. 1947, 82-1928.

**18-2-313. Contract provisions necessary for federal funds.** In all contracts let for state, county, municipal, and school construction, repair, or maintenance work under any of the laws of this state when the funds for the projects are supplied in whole or in part from funds of the United States government, it is lawful to insert in each of the contracts any provisions that are or will be necessary to have such contract conform to any federal statutes or regulation under which such funds are supplied.

**History:** En. Sec. 1, Ch. 43, Ex. L. 1933; re-en. Sec. 269.1, R.C.M. 1935; amd. Sec. 2, Ch. 97, L. 1977; R.C.M. 1947, 82-1147.

**18-2-314. Cost-plus system invalid.** Any contracts made by, on behalf of, or for the state of Montana which shall directly or indirectly recognize the cost-plus system or principle shall be void and of no effect and this section shall stand as a notice of the invalidity of any such contract.

**History:** En. Sec. 5, Ch. 149, L. 1927; re-en. Sec. 259.5, R.C.M. 1935; R.C.M. 1947, 82-1135.

**18-2-315. State purchasing not affected.** Nothing contained in 18-2-301, 18-2-302, or 18-2-314 alters, modifies, or changes the laws providing for or relating to department of administration functions relating to state purchasing.

**History:** En. Sec. 6, Ch. 149, L. 1927; re-en. Sec. 259.6, R.C.M. 1935; amd. Sec. 55, Ch. 326, L. 1974; R.C.M. 1947, 82-1136.

**18-2-316. Limit on retainage for public contracts.** (1) The maximum retainage applied to construction contracts administered by the state of Montana or any department, agency, or political subdivision of the state of Montana, by any county, municipality, or political subdivision of a county or municipality, or by a school district may not exceed 5% if the contractor is performing by the terms of the contract.

(2) The retainage percentage withheld by a government entity, as provided for in subsection (1), from a contractor is the maximum retainage percentage that a contractor may withhold from a subcontractor.

(3) For the purposes for this section, “retainage” means the ratio, in percent, of funds retained to the total amount to be paid to the contractor by the government entity.

**History:** En. Sec. 2, Ch. 222, L. 1999.

**18-2-317. State agency performance contracts — exempt.** Energy performance contracts entered into by state agencies pursuant to Title 90, chapter 4, part 11, are exempt from this part.

**History:** En. Sec. 1, Ch. 439, L. 2009.

## Part 4

### Special Conditions — Standard Prevailing Rate of Wages

**18-2-401. Definitions.** Unless the context requires otherwise, in this part, the following definitions apply:

(1) (a) “Bona fide Montana resident” means an individual who, at the time of employment and immediately prior to the time of employment, has lived in this state in a manner and for a time that is sufficient to clearly justify the conclusion that the individual’s past habitation in this state has been coupled with an intention to make this state the individual’s home.

(b) Individuals who come to Montana solely in pursuit of a contract or an agreement to perform labor may not be considered to be bona fide Montana residents within the meaning and for the purpose of this part.

(2) “Commissioner” means the commissioner of labor and industry provided for in 2-15-1701.

(3) (a) “Construction services” means work performed by an individual in building construction, heavy construction, highway construction, and remodeling work.

(b) The term does not include:

(i) engineering, superintendence, management, office, or clerical work on a public works contract; or

(ii) consulting contracts, contracts with commercial suppliers for goods and supplies, or contracts with professionals licensed under state law.

(4) “Contractor” means any individual, general contractor, subcontractor, firm, association, partnership, corporation, limited liability partnership, or limited liability company engaged in construction services.

(5) “Department” means the department of labor and industry provided for in 2-15-1701.

(6) “District” means a prevailing wage rate district established as provided in 18-2-411.

(7) “Employer” means any individual, firm, association, partnership, corporation, limited liability partnership, or limited liability company engaged in nonconstruction services.

(8) “Fringe benefits” means health, welfare, and pension contributions that meet the requirements of the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1001, et seq., and other bona fide programs approved by the U.S. department of labor.

(9) “Nonconstruction services” means work performed by an individual, not including management, office, or clerical work, for:

(a) the maintenance of publicly owned buildings and facilities, including public highways, roads, streets, and alleys;

(b) custodial or security services for publicly owned buildings and facilities;

(c) grounds maintenance for publicly owned property;

(d) the operation of public drinking water supply, waste collection, and waste disposal systems;

(e) law enforcement, including janitors and prison guards;

(f) fire protection;

(g) public or school transportation driving;

(h) nursing, nurse’s aid services, and medical laboratory technician services;

(i) material and mail handling;

(j) food service and cooking;

(k) motor vehicle and construction equipment repair and servicing; and

(l) appliance and office machine repair and servicing.

(10) “Project location” means the construction site where a public works project involving construction services is being built, installed, or otherwise improved or reclaimed, as specified on the project plans and specifications.

(11) (a) “Public works contract” means a contract for construction services let by the state, county, municipality, school district, or political subdivision or for nonconstruction services let by the state, county, municipality, or political subdivision in which the total cost of the contract is in excess of \$25,000. The nonconstruction services classification does not apply to any school district that at any time prior to April 27, 1999, contracted with a private contractor for the provision of nonconstruction services on behalf of the district.

(b) The term does not include contracts entered into by the department of public health and human services for the provision of human services.

(12) “Special circumstances” means all work performed at a facility that is built or developed for a specific Montana public works project and that is located in a prevailing wage district that contains the project location or that is located in a contiguous prevailing wage district.

(13) “Standard prevailing rate of wages” or “standard prevailing wage” means the rates established as provided in:

- (a) 18-2-413 for building construction services;
- (b) 18-2-414 for heavy construction services and for highway construction services; and
- (c) 18-2-415 for nonconstruction services.

(14) “Work of a similar character” means work on private commercial projects as well as work on public projects.

**History:** (1), (4)En. Sec. 2, Ch. 102, L. 1931; re-en. Sec. 3043.2, R.C.M. 1935; Sec. 41-702, R.C.M. 1947; (2), (3)En. Sec. 1, Ch. 139, L. 1981; (5)En. Sec. 1, Ch. 102, L. 1931; re-en. Sec. 3043.1, R.C.M. 1935; amd. Sec. 1, Ch. 32, L. 1955; amd. Sec. 1, Ch. 43, L. 1961; amd. Sec. 1, Ch. 265, L. 1969; amd. Sec. 1, Ch. 375, L. 1973; amd. Sec. 1, Ch. 531, L. 1975; Sec. 41-701, R.C.M. 1947; R.C.M. 1947, 41-701(part), 41-702; amd. Sec. 1, Ch. 139, L. 1981; amd. Sec. 2, Ch. 561, L. 1987; amd. Sec. 2, Ch. 609, L. 1993; amd. Sec. 1, Ch. 522, L. 1997; amd. Sec. 1, Ch. 30, L. 1999; amd. Sec. 1, Ch. 289, L. 1999; amd. Sec. 1, Ch. 496, L. 1999; amd. Sec. 1, Ch. 517, L. 2001; amd. Sec. 1, Ch. 293, L. 2003; amd. Sec. 39, Ch. 2, L. 2009; amd. Sec. 11, Ch. 277, L. 2009.

**18-2-402. Standard prevailing rate of wages.** (1) The commissioner may determine the standard prevailing rate of wages, including fringe benefits, applicable to public works contracts under this part. The commissioner shall keep and maintain copies of collective bargaining agreements and other information on which the rates are based.

(2) The provisions of this part do not apply in those instances in which the standard prevailing rate of wages is determined by federal law.

(3) Whenever this part is applicable, the standard prevailing rate of wages, including fringe benefits, is the greater of the highest applicable rate of wages in the area for the particular work in question as negotiated under existing and current collective bargaining agreements or the rate determined by the applicable survey under this part.

**History:** En. Sec. 1, Ch. 102, L. 1931; re-en. Sec. 3043.1, R.C.M. 1935; amd. Sec. 1, Ch. 32, L. 1955; amd. Sec. 1, Ch. 43, L. 1961; amd. Sec. 1, Ch. 265, L. 1969; amd. Sec. 1, Ch. 375, L. 1973; amd. Sec. 1, Ch. 531, L. 1975; R.C.M. 1947, 41-701(1), (4), (5); amd. Sec. 3, Ch. 561, L. 1987; amd. Sec. 12, Ch. 277, L. 2009; amd. Sec. 1, Ch. 373, L. 2013.

**18-2-403. Preference of Montana labor in public works — wages — tax-exempt project — federal exception.** (1) In every public works contract, there must be inserted in the bid specification and the public works contract a provision requiring the contractor to give preference to the employment of bona fide Montana residents in the performance of the work.

(2) All public works contracts for construction services under subsection (1), except those for heavy and highway construction, that are conducted at the project location or under special circumstances must contain a provision requiring the contractor to pay:

(a) the travel allowance that is in effect and applicable to the district in which the work is being performed; and

(b) the standard prevailing rate of wages, including fringe benefits, that is in effect and applicable to the district in which the work is being performed.

(3) In every public works contract for heavy and highway construction, there must be inserted a provision to require the contractor to pay the standard prevailing wage rates established statewide for heavy and highway construction services conducted at the project location or under special circumstances.

(4) Except as provided in subsection (5), all public works contracts for nonconstruction services under subsection (1) must contain a provision requiring the contractor to pay:

(a) the travel allowance that is in effect and applicable to the district in which the work is being performed; and

(b) the standard prevailing rate of wages, including fringe benefits, that is in effect and applicable to the district in which the work is being performed.

(5) An employer who, as a nonprofit organization providing individuals with vocational rehabilitation, performs a public works contract for nonconstruction services and who employs an individual whose earning capacity is impaired by a mental, emotional, or physical disability



may pay the individual wages that are less than the standard prevailing wage if the employer complies with the provisions of section 214(c) of the Fair Labor Standards Act of 1938, 29 U.S.C. 214 and 29 CFR, part 525, and the wages paid are equal to or above the minimum wage required in 39-3-409.

(6) Transportation of goods, supplies, materials, and manufactured or fabricated items to or from the project location is not subject to payment of the standard prevailing rate of wages.

(7) A contract, other than a public works contract, let for a project costing more than \$25,000 and financed from the proceeds of bonds issued under Title 17, chapter 5, part 15, or Title 90, chapter 5 or 7, must contain a provision requiring the contractor to pay the standard prevailing wage rate in effect and applicable to the district in which the work is being performed unless the contractor performing the work has entered into a collective bargaining agreement covering the work to be performed.

(8) A public works contract may not be let to any person, firm, association, or corporation refusing to execute an agreement with the provisions described in subsections (1) through (7) in it, provided that in public works contracts involving the expenditure of federal-aid funds, this part may not be enforced in a manner as to conflict with or be contrary to the federal statutes prescribing a labor preference to honorably discharged veterans of the armed forces and prohibiting as unlawful any other preference or discrimination among citizens of the United States.

(9) Failure to include the provisions required by 18-2-422 in a public works contract relieves the contractor from the contractor's obligation to pay the standard prevailing wage rate and places the obligation on the public contracting agency.

**History:** En. Sec. 1, Ch. 102, L. 1931; re-en. Sec. 3043.1, R.C.M. 1935; amd. Sec. 1, Ch. 32, L. 1955; amd. Sec. 1, Ch. 43, L. 1961; amd. Sec. 1, Ch. 265, L. 1969; amd. Sec. 1, Ch. 375, L. 1973; amd. Sec. 1, Ch. 531, L. 1975; R.C.M. 1947, 41-701(part); amd. Sec. 2, Ch. 58, L. 1979; amd. Sec. 2, Ch. 139, L. 1981; amd. Sec. 4, Ch. 561, L. 1987; (4)En. Sec. 1, Ch. 420, L. 1991; amd. Sec. 3, Ch. 464, L. 1993; amd. Sec. 3, Ch. 609, L. 1993; amd. Sec. 2, Ch. 522, L. 1997; amd. Sec. 2, Ch. 289, L. 1999; amd. Sec. 1, Ch. 467, L. 2003; amd. Sec. 13, Ch. 277, L. 2009.

**18-2-404. Approval of public works contract — bond.** (1) All public works contracts under this part must be approved in writing by the legal adviser of the contracting county, municipal corporation, school district, assessment district, or special improvement district body or officer prior to execution by the contracting public officer or officers.

(2) In all public works contracts entered into under the provisions of this part, at least \$1,000 of the contract price must be withheld at all times until the termination of the public works contract.

**History:** (1)En. Sec. 1, Ch. 102, L. 1931; re-en. Sec. 3043.1, R.C.M. 1935; amd. Sec. 1, Ch. 32, L. 1955; amd. Sec. 1, Ch. 43, L. 1961; amd. Sec. 1, Ch. 265, L. 1969; amd. Sec. 1, Ch. 375, L. 1973; amd. Sec. 1, Ch. 531, L. 1975; Sec. 41-701, R.C.M. 1947; (2)En. Sec. 3, Ch. 102, L. 1931; re-en. Sec. 3043.3, R.C.M. 1935; amd. Sec. 2, Ch. 43, L. 1961; Sec. 41-703, R.C.M. 1947; R.C.M. 1947, 41-701(part), 41-703(part); amd. Sec. 3, Ch. 522, L. 1997.

**18-2-405. Repealed.** Sec. 8, Ch. 609, L. 1993.

**History:** En. Sec. 1, Ch. 102, L. 1931; re-en. Sec. 3043.1, R.C.M. 1935; amd. Sec. 1, Ch. 32, L. 1955; amd. Sec. 1, Ch. 43, L. 1961; amd. Sec. 1, Ch. 265, L. 1969; amd. Sec. 1, Ch. 375, L. 1973; amd. Sec. 1, Ch. 531, L. 1975; R.C.M. 1947, 41-701(part).

**18-2-406. Posting wage scale and fringe benefits.** The contractor performing work or providing construction services under public works contracts, as provided in this part, shall post in a prominent and accessible site on the project or staging area, not later than the first day of work and continuing for the entire duration of the project, a legible statement of all wages and fringe benefits to be paid to the employees.

**History:** En. Sec. 1, Ch. 102, L. 1931; re-en. Sec. 3043.1, R.C.M. 1935; amd. Sec. 1, Ch. 32, L. 1955; amd. Sec. 1, Ch. 43, L. 1961; amd. Sec. 1, Ch. 265, L. 1969; amd. Sec. 1, Ch. 375, L. 1973; amd. Sec. 1, Ch. 531, L. 1975; R.C.M. 1947, 41-701(2); amd. Sec. 2, Ch. 517, L. 2001.

**18-2-407. Forfeiture for failure to pay standard prevailing rate of wages.** (1) Except as provided in 18-2-403, a contractor, subcontractor, or employer who pays workers or employees at less than the standard prevailing rate of wages as established under the public works contract shall forfeit to the department a penalty at a rate of up to 20% of the delinquent wages plus fringe benefits, attorney fees, audit fees, and court costs. Money collected by the department under this section must be deposited in the general fund. A contractor, subcontractor, or employer shall

also forfeit to the employee the amount of wages owed plus \$25 a day for each day that the employee was underpaid.

(2) Whenever it appears to the contracting agency or to the commissioner that there is insufficient money due to the contractor or the employer under the terms of the contract to cover penalties, the commissioner may, within 90 days after the filing of notice of completion of the project and its acceptance by the contracting agency, maintain an action in district court to recover all penalties and forfeitures due. This part does not prevent the individual worker who has been underpaid or the commissioner on behalf of all the underpaid workers from maintaining an action for recovery of the wages due under the contract as provided in Title 39, chapter 3, part 2.

**History:** En. Sec. 1, Ch. 102, L. 1931; re-en. Sec. 3043.1, R.C.M. 1935; amd. Sec. 1, Ch. 32, L. 1955; amd. Sec. 1, Ch. 43, L. 1961; amd. Sec. 1, Ch. 265, L. 1969; amd. Sec. 1, Ch. 375, L. 1973; amd. Sec. 1, Ch. 531, L. 1975; R.C.M. 1947, 41-701(3); amd. Sec. 5, Ch. 554, L. 1989; amd. Sec. 4, Ch. 609, L. 1993; amd. Sec. 4, Ch. 90, L. 1995; amd. Sec. 13, Ch. 389, L. 1999; amd. Sec. 2, Ch. 467, L. 2003; amd. Sec. 14, Ch. 277, L. 2009.

**18-2-408. Renumbered 18-2-432.** Code Commissioner, 1985.

**18-2-409. Montana residents to be employed on state construction contracts.**

(1) On any state construction project funded by state or federal funds, except a project partially funded with federal aid money from the United States department of transportation or when residency preference laws are specifically prohibited by federal law and to which the state is a signatory to the construction contract, each contractor shall ensure that at least 50% of the contractor's workers performing labor on the project are bona fide Montana residents, as defined in 18-2-401.

(2) For any contract awarded for a state construction project, except a project partially funded with federal aid money from the United States department of transportation or when residency preference laws are specifically prohibited by federal law, there must be inserted in the bid specification and the contract a provision, in language approved by the commissioner of labor and industry, implementing the requirements of subsection (1). The bid specification and the contract must provide that at least 50% of the workers on the project will be bona fide Montana residents. If due to a lack of qualified personnel each contractor cannot guarantee that at least 50% of the contractor's workers on the project will be Montana residents, the contract must provide that the percentage that the commissioner of labor and industry believes possible will be Montana residents.

(3) The commissioner of labor and industry shall enforce this section and investigate complaints of its violation and may adopt rules to implement this section.

**History:** En. Sec. 1, Ch. 549, L. 1985; amd. Sec. 1, Ch. 564, L. 2003.

**18-2-410 reserved.**

**18-2-411. Creation of prevailing wage rate districts.** (1) Without taking into consideration heavy construction services and highway construction services wage rates, the commissioner shall divide the state into not more than five prevailing wage rate districts for building construction services and nonconstruction services.

(2) In initially determining the districts, the commissioner shall:

- (a) follow the rulemaking procedures in the Montana Administrative Procedure Act; and
- (b) publish the reasons supporting the creation of each district.

(3) A district boundary may not be changed except for good cause and in accordance with the rulemaking procedures in the Montana Administrative Procedure Act.

(4) The presence of collective bargaining agreements in a particular area may not be the sole basis for the creation of boundaries of a district, nor may the absence of collective bargaining agreements in a particular area be the sole basis for changing the boundaries of a district.

(5) For each prevailing wage rate district established under this section, the commissioner shall determine the standard prevailing rate of wages to be paid employees, as provided in this part. The standard prevailing rate of wages for construction services, as determined by the commissioner in this subsection, must be used for calculating an apprentice's wage, as provided in 39-6-108.

**History:** En. Sec. 1, Ch. 561, L. 1987; amd. Sec. 5, Ch. 609, L. 1993; amd. Sec. 2, Ch. 538, L. 2005; amd. Sec. 15, Ch. 277, L. 2009; amd. Sec. 2, Ch. 373, L. 2013.

**18-2-412. Method for payment of standard prevailing wage.** (1) To fulfill the obligation to pay the standard prevailing rate of wages under 18-2-403, a contractor or subcontractor may:

(a) pay the amount of fringe benefits and the basic hourly rate of pay that is part of the standard prevailing rate of wages directly to the worker or employee in cash;

(b) make an irrevocable contribution to a trustee or a third person pursuant to a fringe benefit fund, plan, or program that meets the requirements of the Employee Retirement Income Security Act of 1974 or that is a bona fide program approved by the U.S. department of labor; or

(c) make payments using any combination of methods set forth in subsections (1)(a) and (1)(b) so that the aggregate of payments and contributions is not less than the standard prevailing rate of wages, including fringe benefits and travel allowances, applicable to the district for the particular type of work being performed.

(2) The fringe benefit fund, plan, or program described in subsection (1)(b) must provide benefits to workers or employees for health care, pensions on retirement or death, life insurance, disability and sickness insurance, or bona fide programs that meet the requirements of the Employee Retirement Income Security Act of 1974 or that are approved by the U.S. department of labor.

(3) A private contractor or subcontractor shall file a copy of the fringe benefit fund, plan, or program described in subsection (2) with the department.

**History:** En. Sec. 1, Ch. 609, L. 1993; amd. Sec. 16, Ch. 277, L. 2009.

**18-2-413. Standard prevailing rate of wages for building construction services.**

(1) The department shall conduct an annual survey to calculate the standard prevailing rate of wages for building construction services using the process described in this section.

(2) The standard prevailing wage rates adopted under subsection (1) must be set for the districts established pursuant to 18-2-411.

(3) The department shall survey:

(a) electrical contractors who are licensed under Title 37, chapter 68, who perform commercial work;

(b) plumbers who are licensed under Title 37, chapter 69, whose work is performed according to commercial building codes; and

(c) construction contractors registered under Title 39, chapter 9, whose work is performed according to commercial building codes.

(4) The surveys required under subsection (3) must include those wages, including fringe benefits plus zone pay, per diem, and travel allowances if applicable, that are paid in the applicable district by other contractors for work of a similar character performed in that district by each craft, classification, or type of worker needed to complete a contract under this part.

(5) (a) The contractor survey must include information pertaining to the number of skilled workers employed in the contractor's peak month of employment and the wages and fringe benefits paid for each craft, classification, or type of work.

(b) (i) In setting the prevailing wages from the survey for each craft, classification, or type of work, the department shall use a weighted average wage for each craft, classification, or type of work, except in those cases in which the survey shows that at least 50% of the skilled workers are receiving the same wage.

(ii) If the survey shows that at least 50% of the skilled workers are receiving the same wage, then the higher of the collective bargaining agreement rate or the surveyed rate is the prevailing wage for that craft, classification, or type of work.

(c) (i) In setting the prevailing fringe benefits from the survey for each craft, classification, or type of work, the department shall use a weighted average fringe benefit for each craft, classification, or type of work, except in those cases in which the survey shows that at least 50% of the skilled workers are receiving fringe benefits pursuant to a collective bargaining agreement or pursuant to an employer's fringe benefit fund, plan, or program that meets the requirements of the Employment Retirement Income Security Act of 1974 or that is approved by the U.S. department of labor.

(ii) If the survey shows that at least 50% of the skilled workers are receiving fringe benefits pursuant to a collective bargaining agreement or pursuant to an employer's fringe benefit fund, plan, or program that meets the requirements of the Employment Retirement Income Security

Act of 1974 or that is approved by the U.S. department of labor, the higher of fringe benefits received under collective bargaining agreements and employers' fringe benefit funds, plans, or programs is the prevailing fringe benefit for that craft, classification, or type of work.

(6) The work performed must be work of a similar character to the work performed in the applicable district unless the survey in the applicable district does not generate sufficient data. If the survey produces insufficient data, the rate may be established by the use of other information or methods that the commissioner determines fairly establish the standard prevailing rate of wages.

(7) (a) The commissioner shall establish by rule the methodology for determining the standard prevailing rate of wages. The rules must include an alternate methodology to determine the standard prevailing rate of wages whenever insufficient data is generated by the survey of contractors in the applicable district. The rules must identify the amount of data that constitutes insufficient data.

(b) The commissioner shall use an alternate methodology provided by rule to determine the standard prevailing rate of wages whenever insufficient data exists.

(c) The alternative method of determining the prevailing rate of wages must provide for review and the incorporation of data from work of a similar character, which must be based on a survey that is conducted as closely as possible to the original district.

(8) Whenever work of a similar character is not being performed in the district, the standard prevailing rate of wages, including fringe benefits and the rate of travel allowance, must be those rates established by collective bargaining agreements in effect in the applicable district for each craft, classification, or type of skilled worker needed to complete the contract.

**History:** En. Sec. 1, Ch. 277, L. 2009; amd. Sec. 3, Ch. 373, L. 2013.

**18-2-414. Standard prevailing rate of wages for heavy construction services and for highway construction services — definition.** (1) The department shall establish the standard prevailing rate of wages for heavy construction services and for highway construction services annually.

(2) In establishing the standard prevailing rate of wages for heavy construction services and for highway construction services, the department may:

(a) conduct a survey of construction contractors registered under Title 39, chapter 9, who perform heavy construction services or highway construction services, electrical contractors licensed under Title 37, chapter 68, who perform commercial work, or plumbers licensed under Title 37, chapter 69, whose work is performed according to commercial building codes;

(b) adopt by reference through rulemaking the rates established by the U.S. department of labor under the federal Davis-Bacon Act, 29 CFR 1, et seq., for projects in Montana; or

(c) use, as provided by rule, a combination of surveyed rates, as provided in subsection (2)(a), and rates adopted by reference, as provided in subsection (2)(b).

(3) For the purposes of this section, the term "standard prevailing rate of wages for heavy construction services and for highway construction services" means wage rates, including fringe benefits plus zone pay, per diem, and travel allowances, if applicable, that are determined and established statewide for heavy construction projects and highway construction projects. The department may define by rule the terms heavy construction projects and highway construction projects. The definitions of heavy construction projects and highway construction projects must include but are not limited to projects the same as or similar to the construction, alteration, or repair of roads, streets, highways, alleys, runways, airport runways and ramps, dams, powerhouses, canals, channels, pipelines, parking areas, utility rights-of-way, staging yards located on or off the right-of-way, or new or reopened pits that produce aggregate, asphalt, concrete, or backfill when the pit does not normally sell to the general public.

**History:** En. Sec. 2, Ch. 277, L. 2009; amd. Sec. 4, Ch. 373, L. 2013.

**18-2-415. Standard prevailing rate of wages for nonconstruction services — survey.** (1) The department shall conduct an annual survey to calculate the standard prevailing rate of wages for nonconstruction services using the process described in this section.

(2) The standard prevailing wage rates adopted under subsection (1) must be set for the districts established under 18-2-411.



(3) (a) The department shall survey those employers that the department determines provide nonconstruction services in Montana in fulfillment of public works contracts.

(b) The department may survey employers that request to be included in the survey related to the nonconstruction services standard prevailing rate of wages or employers whose names and addresses are supplied by a political subdivision of the state as employers who have submitted bona fide bids or responses to requests for proposals for public works contracts for nonconstruction services.

(4) If the department does not survey an employer who is required to be surveyed under subsection (3)(a) or eligible to be surveyed under subsection (3)(b), the resulting survey and the ratesetting process remain valid.

(5) The survey must include:

(a) those wages, including fringe benefits and travel allowances if applicable, that are paid in the applicable district by other employers for work of a similar character performed in that district by each craft, classification, or type of worker needed to complete a contract under this part; and

(b) information pertaining to the number of workers employed in the employer's peak month of employment.

(6) In setting the standard prevailing rate of wages for nonconstruction services from the survey for each craft, classification, or type of work, the department shall use the weighted average wage for each craft, classification, or type of work, except in cases in which the survey shows that at least 50% of the workers are receiving the same wage. If the survey shows that at least 50% of the workers are receiving the same wage, that wage is the standard prevailing rate of wages for that craft, classification, or type of work.

(7) The work performed must be work of a similar character to the work performed in the applicable district unless the survey in the applicable district does not generate sufficient data. If the survey produces insufficient data, the standard prevailing rate of wages may be established by the use of other information or an alternate methodology as provided in subsection (8).

(8) (a) The commissioner shall establish by rule the methodology for determining the standard prevailing rate of wages. The rules must include an alternate methodology to determine the standard prevailing rate of wages whenever insufficient data is generated by the survey of contractors in the applicable district. The rules must identify the amount of data that constitutes insufficient data.

(b) The commissioner shall use an alternate methodology provided by rule to determine the standard prevailing rate of wages whenever insufficient data exists.

(c) The alternative method of determining the prevailing rate of wages must provide for review and the incorporation of data from work of a similar character, which must be based on a survey that is conducted as closely as possible to the original district.

(9) Whenever work of a similar character is not being performed in the district, the standard prevailing rate of wages, including fringe benefits, must be those rates established by collective bargaining agreements in effect in the applicable district for each craft, classification, or type of skilled worker needed to complete the contract.

**History:** En. Sec. 3, Ch. 277, L. 2009.

**18-2-416. Wages paid to registered apprentices.** (1) Only an apprentice whose indenture agreement is registered with the department under Title 39, chapter 6, or recognized by the department as being registered with an appropriate registration agency of another state or the federal government may be paid as provided in subsection (2) when working on a public works contract. An apprentice whose indenture agreement is not registered with or recognized by the department must be paid the full amount of the standard prevailing rate of wages, including any applicable travel allowances.

(2) A recognized, registered apprentice must be paid the percentage of the standard prevailing rate of wages provided for in the apprenticeship standards applicable to that apprentice. The percentage amount applies to wage rates only and not to fringe benefits. The full amount of any applicable fringe benefits must be paid to the apprentice while the apprentice is working on the public works contract.

**History:** En. Sec. 4, Ch. 277, L. 2009.



**18-2-417. Wage rate adjustments for multiyear contracts.** (1) Any public works contract that by the terms of the original contract calls for more than 30 months to fully perform must include a provision to adjust, as provided in subsection (2), the standard prevailing rate of wages to be paid to the workers performing the contract.

(2) The standard prevailing rate of wages paid to workers under a contract subject to this section must be adjusted 12 months after the date of the award of the public works contract. The amount of the adjustment must be a 3% increase. The adjustment must be made and applied every 12 months for the term of the contract.

(3) Any increase in the standard rate of prevailing wages for workers under this section is the sole responsibility of the contractor and any subcontractors and not the contracting agency.

**History:** En. Sec. 5, Ch. 277, L. 2009.

**18-2-418. Wage rates based on project classification.** (1) The contracting agency shall determine, based on the preponderance of labor hours to be worked, whether the public works construction services project is classified as a highway construction project, a heavy construction project, or a building construction project.

(2) Once the project has been classified, employees in each trade classification who are working on that project must be paid at the rate for that project classification.

**History:** En. Sec. 5, Ch. 373, L. 2013.

**18-2-419. Zone pay and per diem.** If there is not sufficient data reported to establish zone pay or per diem for a trade classification, the department may establish a zone pay or a per diem amount that reasonably approximates an applicable average zone pay or per diem rate that is payable for the trade classification.

**History:** En. Sec. 6, Ch. 373, L. 2013.

**18-2-420 reserved.**

**18-2-421. Notice.** When a public works project is accepted by the public contracting agency, a notice of acceptance and the completion date of the project must be sent to the department. However, in the case of public works contracts that amount to \$50,000 or less in cost, the notice of acceptance and the completion date of the project is not required unless the department requests that information. The 90-day limitation for filing an action in district court, as provided in 18-2-407, does not begin until the public contracting agency notifies the department of its acceptance of the public works project.

**History:** En. Sec. 3, Ch. 139, L. 1981; amd. Sec. 4, Ch. 522, L. 1997.

**18-2-422. Bid specification and public works contract to contain standard prevailing wage rate and payroll record notification.** All public works contracts and the bid specifications for those contracts must contain:

(1) a provision stating for each job classification the standard prevailing wage rate, including fringe benefits, that the contractors and employers shall pay during construction of the project;

(2) a provision requiring each contractor and employer to maintain payroll records in a manner readily capable of being certified for submission under 18-2-423, for not less than 3 years after the contractor's or employer's completion of work on the project; and

(3) a provision requiring each contractor to post a statement of all wages and fringe benefits in compliance with 18-2-423.

**History:** En. Sec. 4, Ch. 139, L. 1981; amd. Sec. 5, Ch. 522, L. 1997; amd. Sec. 3, Ch. 517, L. 2001.

**18-2-423. Submission of payroll records.** If a complaint is filed with the department alleging noncompliance with 18-2-422, the department may require the project to submit to it certified copies of the payroll records for workers employed on that project. A contractor or a subcontractor shall pay employees receiving an hourly wage on a weekly basis. If a wage violation complaint is filed with the department, the contractor or subcontractor shall provide the employee's payroll records to the department within 5 days of receiving the payroll request from the department.

**History:** En. Sec. 5, Ch. 139, L. 1981; amd. Sec. 6, Ch. 609, L. 1993.

**18-2-424. Enforcement.** If a contractor or a subcontractor refuses to submit payroll records requested by the department pursuant to 18-2-423, the commissioner or the commissioner's authorized representative may issue subpoenas compelling the production of those records.

**History:** En. Sec. 6, Ch. 139, L. 1981; amd. Sec. 225, Ch. 56, L. 2009.

**18-2-425. Prohibition — project labor agreement.** (1) Except as otherwise provided in this chapter, the state or any political subdivision that contracts for the construction, maintenance, repair, or improvement of public works may not require that a contractor, subcontractor, or material supplier or carrier engaged in the construction, maintenance, repair, or improvement of public works execute or otherwise become a party to any project labor agreement, collective bargaining agreement, prehire agreement, or other agreement with employees, their representatives, or any labor organization as a condition of bidding, negotiating, being awarded, or performing work on a public works contract.

(2) For the purposes of this section, “public works” means:

(a) a building, road, street, sewer, storm drain, water system, irrigation system, reclamation project, or other facility owned or to be contracted for by the state or a political subdivision and that is paid for in whole or in part with tax revenue paid by residents of the state; or

(b) any other construction service or nonconstruction service as defined in 18-2-401.

**History:** En. Sec. 1, Ch. 540, L. 1999.

**18-2-426 through 18-2-430 reserved.**

**18-2-431. Rulemaking authority.** The commissioner may adopt rules necessary to implement this part.

**History:** En. Sec. 1, Ch. 234, L. 1985.

**18-2-432. Penalty for violation.** (1) (a) If a person, firm, or corporation fails to comply with the provisions of this part, the state, county, municipality, school district, or officer of a political subdivision that executed the public works contract shall retain \$1,000 of the contract price as liquidated damages for the violation of the terms of the public works contract, and the money must be credited to the proper funds of the state, county, municipality, school district, or political subdivision.

(b) If a person, firm, or corporation fails to comply with the provisions of this part due to gross negligence, as determined by the commissioner, the commissioner may retain up to an additional \$10,000 above the amount provided for in subsection (1)(a) as a penalty for the violation of the terms of the public works contract. The money retained pursuant to this subsection (1)(b) must be credited to the proper funds of the state, county, municipality, school district, or other political subdivision.

(2) Whenever a contractor or subcontractor is found by the commissioner to have aggravatedly or willfully violated the labor standards provisions of this chapter, the contractor or subcontractor or any firm, corporation, partnership, or association in which the contractor or subcontractor has a substantial interest is ineligible, for a period not to exceed 3 years after the date of the final judgment, to receive any public works contracts or subcontracts that are subject to the provisions of this chapter.

(3) Whenever an action has been instituted in a district court in this state against any person, firm, or corporation for the violation of this part, the court in which the action is pending is authorized to issue an injunction to restrain the person, firm, or corporation from proceeding with a public works contract with the state, county, municipality, school district, or political subdivision, pending the final determination of the instituted action.

**History:** En. Sec. 3, Ch. 102, L. 1931; re-en. Sec. 3043.3, R.C.M. 1935; amd. Sec. 2, Ch. 43, L. 1961; R.C.M. 1947, 41-703(part); Sec. 18-2-408, MCA 1983; red. 18-2-432 by Code Commissioner, 1985; amd. Sec. 7, Ch. 609, L. 1993; amd. Sec. 6, Ch. 522, L. 1997; amd. Sec. 1, Ch. 78, L. 1999.

## **Part 5**

### **Alternative Project Delivery Contracts**

**18-2-501. (Temporary) Definitions.** As used in this part, unless the context clearly requires otherwise, the following definitions apply:

(1) (a) “Alternative project delivery contract” means a construction management contract, a general contractor construction management contract, or a design-build contract.

(b) The term does not include a design-build contract awarded by the transportation commission under 60-2-111(3).

(2) “Construction management contract” means a contract in which the contractor acts as the public owner’s construction manager and provides leadership and administration for the project, from planning and design, in cooperation with the designers and the project owners, to project startup and construction completion.

(3) “Contractor” has the meaning provided in 18-4-123.

(4) “Design-build contract” means a contract in which the designer-builder assumes the responsibility and the risk for architectural or engineering design and construction delivery under a single contract with the owner.

(5) “General contractor construction management contract” means a contract in which the general contractor, in addition to providing the preconstruction, budgeting, and scheduling services, procures necessary construction services, equipment, supplies, and materials through competitive bidding contracts with subcontractors and suppliers to construct the project.

(6) “Governing body” means:

(a) the legislative authority of:

(i) a municipality, county, or consolidated city-county established pursuant to Title 7, chapter 1, 2, or 3;

(ii) a school district established pursuant to Title 20; or

(iii) an airport authority established pursuant to Title 67, chapter 11;

(b) the board of directors of a county water or sewer district established pursuant to Title 7, chapter 13, parts 22 and 23; or

(c) the trustees of a fire district established pursuant to Title 7, chapter 33, or the county commissioners or trustees of a fire service area established pursuant to 7-33-2401.

(7) “Project” means any construction or any improvement of the land, a building, or another improvement that is suitable for use as a state or local governmental facility.

(8) “Publish” means publication of notice as provided for in 7-1-2121, 7-1-4127, 18-2-301, and 20-9-204.

(9) “State agency” has the meaning provided in 2-2-102. (*Terminates December 31, 2024—sec. 6, Ch. 54, L. 2017.*)

**18-2-501.** (*Effective January 1, 2025*) **Definitions.** As used in this part, unless the context clearly requires otherwise, the following definitions apply:

(1) “Alternative project delivery contract” means a construction management contract, a general contractor construction management contract, or a design-build contract.

(2) “Construction management contract” means a contract in which the contractor acts as the public owner’s construction manager and provides leadership and administration for the project, from planning and design, in cooperation with the designers and the project owners, to project startup and construction completion.

(3) “Contractor” has the meaning provided in 18-4-123.

(4) “Design-build contract” means a contract in which the designer-builder assumes the responsibility and the risk for architectural or engineering design and construction delivery under a single contract with the owner.

(5) “General contractor construction management contract” means a contract in which the general contractor, in addition to providing the preconstruction, budgeting, and scheduling services, procures necessary construction services, equipment, supplies, and materials through competitive bidding contracts with subcontractors and suppliers to construct the project.

(6) “Governing body” means:

(a) the legislative authority of:

(i) a municipality, county, or consolidated city-county established pursuant to Title 7, chapter 1, 2, or 3;

(ii) a school district established pursuant to Title 20; or

(iii) an airport authority established pursuant to Title 67, chapter 11;

(b) the board of directors of a county water or sewer district established pursuant to Title 7, chapter 13, parts 22 and 23; or

(c) the trustees of a fire district established pursuant to Title 7, chapter 33, or the county commissioners or trustees of a fire service area established pursuant to 7-33-2401.

(7) “Project” means any construction or any improvement of the land, a building, or another improvement that is suitable for use as a state or local governmental facility.

(8) “Publish” means publication of notice as provided for in 7-1-2121, 7-1-4127, 18-2-301, and 20-9-204.

(9) “State agency” has the meaning provided in 2-2-102, except that the department of transportation, provided for in 2-15-2501, is not considered a state agency.

**History:** En. Sec. 1, Ch. 574, L. 2005; amd. Sec. 1, Ch. 29, L. 2009; amd. Sec. 2, Ch. 54, L. 2017; amd. Sec. 1, Ch. 147, L. 2017.

**Compiler’s Comments**

*2017 Amendments — Composite Section:* Chapter 54 in definition of alternative project delivery contract inserted (b) concerning design-build contracts awarded by the transportation commission; in definition of state agency at end deleted “except that the department of transportation, provided for in 2-15-2501, is not considered a state agency”; and made minor changes in style. Amendment effective October 1, 2017, and terminates December 31, 2024.

Chapter 147 in definition of governing body inserted (c) concerning the trustees of a fire district or the county commissioners or trustees of a fire service area; and made minor changes in style. Amendment effective April 3, 2017.

**18-2-502. Alternative project delivery contract — authority — criteria.** (1) Subject to the provisions of this part, a state agency or a governing body may use an alternative project delivery contract. A state agency or governing body that uses an alternative project delivery contract shall:

(a) demonstrate that the state agency or the governing body has or will have knowledgeable staff or consultants who have the capacity to manage an alternative project delivery contract;

(b) clearly describe the manner in which:

(i) the alternative project delivery contract award process will be conducted; and

(ii) subcontractors and suppliers will be selected.

(2) Prior to awarding an alternative project delivery contract, the state agency or the governing body shall determine that the proposal meets at least two of the sets of criteria described in subsections (2)(a) through (2)(c) and the provisions of subsection (3). To make the determination, the state agency or the governing body shall make a detailed written finding that:

(a) the project has significant schedule ramifications and using the alternative project delivery contract is necessary to meet critical deadlines by shortening the duration of construction. Factors that the state agency or the governing body may consider in making its findings include, but are not limited to:

(i) operational and financial data that show significant savings or increased opportunities for generating revenue as a result of early project completion;

(ii) demonstrable public benefits that result from less time for construction; or

(iii) less or a shorter duration of disruption to the public facility.

(b) by using an alternative project delivery contract, the design process will contribute to significant cost savings. Significant cost savings that may justify an alternative project delivery contract may derive from but are not limited to value engineering, building systems analysis, life cycle analysis, and construction planning.

(c) the project presents significant technical complexities that necessitate the use of an alternative delivery project contract.

(3) The state agency or the governing body shall make a detailed written finding that using an alternative project delivery contract will not:

(a) encourage favoritism or bias in awarding the contract; or

(b) substantially diminish competition for the contract.

**History:** En. Sec. 2, Ch. 574, L. 2005.

**18-2-503. Alternative project delivery contract — award criteria.** (1) (a) Whenever a state agency or a governing body determines, pursuant to 18-2-502, that an alternative project delivery contract is justifiable, the state agency or the governing body shall publish a request for qualifications.

(b) After evaluating the responses to the request for qualifications, a request for proposals must be sent to each respondent that meets the qualification criteria specified in the request for qualifications. The request for proposals must clearly describe the project, the state agency’s or the governing body’s needs with respect to the project, the requirements for submitting a proposal, criteria that will be used to evaluate proposals, and any other factors, including any weighting, that will be used to award the alternative project delivery contract.

(2) The state agency's or the governing body's decision to award an alternative project delivery contract must be based, at a minimum, on:

(a) the applicant's:

(i) history and experience with projects similar to the project under consideration;

(ii) financial health;

(iii) staff or workforce that is proposed to be committed to the project;

(iv) approach to the project; and

(v) project costs; and

(b) any additional criteria or factors that reflect the project's characteristics, complexities, or goals.

(3) Under any contract awarded pursuant to this part, architectural services must be performed by an architect, as defined in 37-65-102, and engineering services must be performed by a professional engineer, as defined in 37-67-101.

(4) At the conclusion of the selection process, the state agency or the governing body shall state and document in writing the reasons for selecting the contractor that was awarded the contract. The documentation must be provided to all applicants and to anyone else, upon request.

(5) A state agency or the governing body may compensate unsuccessful applicants for costs incurred in developing and submitting a proposal, provided that all unsuccessful applicants are treated equitably.

**History:** En. Sec. 3, Ch. 574, L. 2005.

## CHAPTER 4 MONTANA PROCUREMENT ACT

### Part 1 General Provisions

**18-4-121. Short title.** This chapter may be cited as the "Montana Procurement Act".

**History:** En. Sec. 1, Ch. 519, L. 1983.

**18-4-122. Purpose.** The underlying purposes and policies of this chapter are to:

(1) simplify, clarify, and modernize the law governing procurement by the state of Montana;

(2) permit the continued development of procurement policies and practices;

(3) make as consistent as possible the procurement laws among the various jurisdictions;

(4) provide for increased public confidence in the procedures followed in public procurement;

(5) ensure the fair and equitable treatment of all persons who deal with the procurement system of the state;

(6) provide increased economy in state procurement activities and maximize to the fullest extent practicable the purchasing value of public funds of the state;

(7) foster effective, broad-based competition within the free enterprise system;

(8) provide safeguards for the maintenance of a procurement system of quality and integrity; and

(9) provide the exclusive remedies for unlawful bid solicitations or contract awards.

**History:** En. Sec. 2, Ch. 519, L. 1983; amd. Sec. 2, Ch. 443, L. 1997.

**18-4-123. Definitions.** In this chapter, unless the context clearly requires otherwise or a different meaning is prescribed for a particular section, the following definitions apply:

(1) "Business" means a corporation, partnership, individual, sole proprietorship, joint-stock company, joint venture, or other private legal entity.

(2) "Change order" means a written order, signed by an authorized department representative, directing the contractor to make changes that the changes clause of the contract authorizes the department to order without the consent of the contractor.

(3) "Contract" means all types of state agreements, regardless of what they may be called, for the procurement or disposal of supplies or services.

(4) "Contract modification" means a written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of a contract accomplished by mutual action of the parties to the contract.



(5) “Contractor” means a person having a contract with a governmental body.

(6) “Data” means recorded information, regardless of form or characteristic.

(7) “Department” means the department of administration.

(8) “Designee” means an authorized representative of a person holding a superior position.

(9) “Director” means the director of the department of administration.

(10) “Employee” means an individual drawing a salary from a governmental body, whether elected or not, and any noncompensated individual performing personal services for a governmental body.

(11) “Governmental body” means a department, commission, council, board, bureau, committee, institution, legislative body, agency, government corporation, or other entity, instrumentality, or official of the executive, legislative, or judicial branch of this state, including the board of regents and the Montana university system.

(12) (a) “Grant” means the furnishing by the federal government of assistance, whether financial or otherwise, to a person or agency to support a program authorized by law.

(b) Grant does not include an award whose primary purpose is to procure an end product, whether in the form of supplies or services. A contract resulting from an award is not a grant but a procurement contract.

(13) “Person” means any business, individual, union, committee, club, other organization, or group of individuals.

(14) (a) “Printing” means the reproduction of an image from a printing surface generally made by a contact impression that causes a transfer of ink or the reproduction of an impression by a photographic process and includes graphic arts, typesetting, binding, and other operations necessary to produce a finished printed product.

(b) Printing does not include rebinding or repair by a library or an office, department, board, or commission of books, journals, pamphlets, magazines, and literary articles held as a part of its library collection.

(15) (a) “Procurement” means acquisition with or without cost, buying, purchasing, renting, leasing, or otherwise acquiring any supplies or services. The term includes all functions that pertain to the obtaining of any supply or service, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.

(b) Procurement does not include the acquiring of supplies or services by gift.

(16) “Procurement officer” means any person authorized to enter into and administer contracts and make written determinations with respect to contracts. The term includes an authorized representative acting within the limits of the representative’s authority.

(17) “Purchasing agency” means any governmental body, other than the department, that is authorized by this chapter or its implementing rules or by way of delegation from the director to enter into contracts.

(18) (a) “Services” means the furnishing of labor, time, or effort by a contractor.

(b) Services does not include employment agreements or collective bargaining agreements, the provision of human services administered by the department of public health and human services, or services related to construction contracts.

(19) “Supplies” means all property except as otherwise provided by law, including but not limited to equipment, materials, printing, and commodities, and excluding land or any interest in land.

(20) “Using agency” means any governmental body of the state that uses any supplies or services procured under this chapter.

(21) “Vendor” means a person who offers or may offer supplies or services to a public agency.

**History:** En. Sec. 3, Ch. 519, L. 1983; amd. Sec. 3, Ch. 443, L. 1997; amd. Sec. 14, Ch. 181, L. 2001.

**18-4-124. Local government adoption of procurement provisions — alternative project delivery contracts.** (1) A political subdivision or school district may adopt any or all parts of this chapter and the accompanying rules promulgated by the department.

(2) A governing body, as defined in 18-2-501, may adopt the provisions of Title 18, chapter 2, part 5, and use an alternative project delivery contract.

**History:** En. Sec. 45, Ch. 519, L. 1983; amd. Sec. 8, Ch. 574, L. 2005.

**18-4-125. Collection of data concerning public procurement.** All using agencies shall cooperate with the department in the preparation of statistical data concerning the procurement, usage, and disposition of all supplies and services, and the department may employ trained personnel as necessary to carry out this function. All using agencies shall furnish such reports as the department may require concerning usage, needs, and stocks on hand, and the department may prescribe forms to be used by the using agencies in requisitioning, ordering, and reporting of supplies and services.

**History:** En. Sec. 11, Ch. 519, L. 1983.

**18-4-126. Public access to procurement information — records — retention.**

(1) Procurement information is a public record and must be available to the public as provided in 2-6-1003, 18-4-303, and 18-4-304.

(2) All procurement records must be retained, managed, and disposed of in accordance with the provisions of Title 2, chapter 6, parts 10 and 11.

(3) Written determinations required by this chapter must be retained in the appropriate official contract file of the department or the purchasing agency administering the procurement in accordance with Title 2, chapter 6, parts 10 and 11.

**History:** En. Secs. 5, 26, Ch. 519, L. 1983; amd. Sec. 4, Ch. 443, L. 1997; amd. Sec. 1, Ch. 289, L. 2005; amd. Sec. 44, Ch. 348, L. 2015.

**18-4-132. Application.** (1) This chapter applies to:

(a) the expenditure of public funds irrespective of their source, including federal assistance money, by this state acting through a governmental body under any contract, except a contract exempted from this chapter by this section or by another statute;

(b) a procurement of supplies or services that is at no cost to the state and from which income may be derived by the vendor and to a procurement of supplies or services from which income or a more advantageous business position may be derived by the state; and

(c) the disposal of state supplies.

(2) This chapter or rules adopted pursuant to this chapter do not prevent any governmental body or political subdivision from complying with the terms and conditions of any grant, gift, bequest, or cooperative agreement.

(3) This chapter does not apply to:

(a) either grants or contracts between the state and its political subdivisions or other governments, except as provided in part 4;

(b) construction contracts;

(c) expenditures of or the authorized sale or disposal of equipment purchased with money raised by student activity fees designated for use by the student associations of the university system;

(d) contracts entered into by the Montana state lottery that have an aggregate value of less than \$250,000;

(e) contracts entered into by the state compensation insurance fund to procure insurance-related services;

(f) employment of:

(i) a registered professional engineer, surveyor, real estate appraiser, or registered architect;

(ii) a physician, dentist, pharmacist, or other medical, dental, or health care provider;

(iii) an expert witness hired for use in litigation, a hearings officer hired in rulemaking and contested case proceedings under the Montana Administrative Procedure Act, or an attorney as specified by executive order of the governor;

(iv) consulting actuaries;

(v) a private consultant employed by the student associations of the university system with money raised from student activity fees designated for use by those student associations;

(vi) a private consultant employed by the Montana state lottery;

(vii) a private investigator licensed by any jurisdiction;

(viii) a claims adjuster; or

(ix) a court reporter appointed as an independent contractor under 3-5-601;

(g) electrical energy purchase contracts by the university of Montana or Montana state university, as defined in 20-25-201. Any savings accrued by the university of Montana or

Montana state university in the purchase or acquisition of energy must be retained by the board of regents of higher education for university allocation and expenditure.

- (h) the purchase or commission of art for a museum or public display;
- (i) contracting under 47-1-121 of the Montana Public Defender Act; or
- (j) contracting under Title 90, chapter 4, part 11.

(4) (a) Food products produced in Montana may be procured by either standard procurement procedures or by direct purchase. Montana-produced food products may be procured by direct purchase when:

- (i) the quality of available Montana-produced food products is substantially equivalent to the quality of similar food products produced outside the state;
- (ii) a vendor is able to supply Montana-produced food products in sufficient quantity; and
- (iii) a bid for Montana-produced food products either does not exceed or reasonably exceeds the lowest bid or price quoted for similar food products produced outside the state. A bid reasonably exceeds the lowest bid or price quoted when, in the discretion of the person charged by law with the duty to purchase food products for a governmental body, the higher bid is reasonable and capable of being paid out of that governmental body's existing budget without any further supplemental or additional appropriation.

(b) The department shall adopt any rules necessary to administer the optional procurement exception established in this subsection (4).

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

(a) "Food" means articles normally used by humans as food or drink, including articles used for components of articles normally used by humans as food or drink.

(b) "Produced" means planted, cultivated, grown, harvested, raised, collected, processed, or manufactured.

**History:** En. Sec. 44, Ch. 519, L. 1983; amd. Sec. 1, Ch. 548, L. 1989; amd. Sec. 2, Ch. 359, L. 1995; amd. Sec. 5, Ch. 443, L. 1997; amd. Sec. 1, Ch. 407, L. 1999; amd. Sec. 1, Ch. 580, L. 1999; amd. Sec. 30, Ch. 7, L. 2001; amd. Sec. 15, Ch. 181, L. 2001; amd. Sec. 1, Ch. 153, L. 2003; amd. Sec. 2, Ch. 289, L. 2005; amd. Sec. 22, Ch. 449, L. 2005; amd. Sec. 1, Ch. 146, L. 2007; amd. Sec. 3, Ch. 439, L. 2009.

**18-4-133. Purchases exempt from general requirements.** (1) When immediate delivery of articles or performance of service is required by the public exigencies, the articles or service required may be procured by open purchase or contract at the place and in the manner in which the articles are usually bought and sold or the services engaged between individuals but under the direction of the department.

(2) (a) The department may exempt the department of corrections and the department of public health and human services from the provisions of this chapter for the purchase of suitable clothing by the department of corrections and the department of public health and human services for residents of its institutions and community-based programs.

(b) As used in this section, "suitable clothing" means styled, seasonable clothing, which will allow the resident to make a normal appearance in the community.

(3) When none of the bids or proposals received in response to a valid solicitation are from a responsible bidder or offeror or responsive bidder or offeror, as defined in 18-4-301, the procurement officer may:

(a) cancel and reissue the solicitation. If the procurement officer reissues the solicitation, the procurement officer shall attempt to increase the number of potential vendors and may modify any specification in the original solicitation.

(b) directly negotiate with a vendor if the procurement officer determines that a second or subsequent solicitation would also be unsuccessful.

(4) The department shall adopt rules describing the conditions under which a procurement officer may negotiate directly with a vendor. The rules must reflect the purposes described in 18-4-122.

(5) When a state department, agency, or official administers a grant of public funds and contracts with a landowner to carry out a recreational or environmental remediation, reclamation, or conservation project that benefits the state, the department may exempt the landowner from the provisions of chapter 1 and this chapter if the landowner conducts the work or conducts a form of competitive procurement allowed by the terms of the contract.

**History:** En. Sec. 9, Ch. 66, L. 1923; re-en. Sec. 293.9, R.C.M. 1935; amd. Sec. 8, Ch. 80, L. 1961; amd. Sec. 74, Ch. 326, L. 1974; amd. Sec. 1, Ch. 230, L. 1977; R.C.M. 1947, 82-1919; amd. Sec. 1, Ch. 418, L. 1979; amd. Sec.

1, Ch. 74, L. 1981; amd. Sec. 47, Ch. 519, L. 1983; MCA 1981, 18-4-104; redes. 18-4-133 by Code Commissioner, 1983; amd. Sec. 1, Ch. 262, L. 1991; amd. Sec. 62, Ch. 546, L. 1995; amd. Sec. 6, Ch. 443, L. 1997; amd. Sec. 16, Ch. 181, L. 2001.

**18-4-134 through 18-4-140 reserved.**

**18-4-141. Contract transfers and collusion prohibited — violations and penalty.**

(1) A contract or order or any interest in a contract or order may not be transferred, assigned, or subcontracted by the party to whom the contract or order is given to any other party without the express written approval of the state, and the state may declare void any unapproved transfer, assignment, or subcontract.

(2) Collusion or secret agreements between vendors for the purpose of securing any advantage to the vendors as against the state in the awarding of contracts are prohibited. The state may declare the contract void if the department finds sufficient evidence after a contract has been let that the contract was obtained by a vendor or vendors by reason of collusive or secret agreement among the vendors to the disadvantage of the state.

(3) All rights of action for a breach of a contract by the contracting parties are reserved to the state.

(4) A person who violates the provisions of 2-2-201 or this section, or both, is guilty of a misdemeanor and shall be fined an amount of not less than \$500 or more than \$5,000, and the state of Montana may at its option declare any contract in violation of the provisions of 2-2-201 or this section, or both, void ab initio.

**History:** En. Sec. 12, Ch. 66, L. 1923; re-en. Sec. 293.12, R.C.M. 1935; amd. Sec. 2, Ch. 43, L. 1973; amd. Sec. 77, Ch. 326, L. 1974; amd. Sec. 5, Ch. 97, L. 1977; R.C.M. 1947, 82-1922; amd. Sec. 1, Ch. 52, L. 1983; MCA 1981, 18-4-105; redes. 18-4-141 by Code Commissioner, 1983; amd. Sec. 7, Ch. 443, L. 1997; amd. Sec. 17, Ch. 181, L. 2001.

## **Part 2 Duties of Department**

**18-4-221. General procurement authority and duties of department — rules.**

(1) Except as otherwise provided in this chapter, the department shall adopt rules, consistent with this chapter, governing the procurement and disposal of any and all supplies and services to be procured by the state. The department shall consider and decide matters of policy within the provisions of this chapter. The department may audit and monitor the implementation of its rules and the requirements of this chapter.

(2) Except as otherwise specifically provided by law, the department shall, in accordance with its rules:

(a) procure or supervise the procurement of all supplies and services needed by the state; and

(b) sell, trade, or otherwise dispose of surplus supplies belonging to the state.

(3) Nothing contained herein shall preclude the state from doing its own printing on its own printing facilities.

**History:** En. Sec. 6, Ch. 519, L. 1983.

**18-4-222. Delegation of authority by department.** Subject to the rules of the department, the director may delegate procurement authority to designees or to any state department, agency, or official.

**History:** En. Sec. 7, Ch. 519, L. 1983.

**18-4-223. State procurement rules — delegation — existing rights.** (1) Rules shall be adopted by the department in accordance with the applicable provisions of Title 2, chapter 4.

(2) The department may not delegate its power to adopt rules.

(3) No rule may change a commitment, right, or obligation of the state or of a contractor under a contract in existence on the effective date of such rule.

**History:** En. Sec. 8, Ch. 519, L. 1983.

**18-4-224. Contract clauses — rules.** (1) The department may, in its discretion, permit or require the inclusion of clauses providing for adjustments in prices, time of performance, or other appropriate contract provisions relating to the following subjects:

(a) the unilateral right of the state to order in writing:

- (i) changes in the work within the scope of the contract; and
- (ii) temporary work stoppage or delay of performance; and
- (b) variations occurring between estimated quantities of work in a contract and actual quantities.

(2) Adjustments in price pursuant to clauses established under subsection (1) must be computed in one or more of the following ways:

- (a) by agreement on a fixed price adjustment before commencement of the pertinent performance or as soon after commencement of performance as practicable;

- (b) by unit prices specified in the contract or subsequently agreed upon;

- (c) by the costs attributable to the events or situations under clauses established under subsection (1) with adjustment of profit or fee, all as specified in the contract or subsequently agreed upon; or

- (d) in any other manner as the contracting parties may mutually agree.

(3) The department may, in its discretion, permit or require the inclusion in state contracts of clauses providing for appropriate remedies and relating to the following subjects:

- (a) liquidated damages, as appropriate;

- (b) specified excuses for delay or nonperformance;

- (c) termination of the contract for default; and

- (d) termination of the contract, in whole or in part, for the convenience of the state.

(4) The director or the head of a purchasing agency may vary the clauses established by the department under subsections (1) and (3) for inclusion in any particular state contract. Any variations must be supported by a written determination that states the circumstances justifying the variation. Notice of any material variation must be stated in the invitation for bids or request for proposals.

(5) Regardless of a provision in a contract, the department may accept a lower price or better value offered by a contractor.

**History:** En. Sec. 32, Ch. 519, L. 1983; amd. Sec. 8, Ch. 443, L. 1997.

**18-4-226. Surplus supply — rules.** (1) As used in this section, the following definitions apply:

- (a) “Supplies” means supplies owned by the state.

- (b) “Surplus supplies” means any supplies having a remaining useful life but that are no longer required by the agency in possession of them. This includes obsolete supplies, scrap materials, and supplies that have completed their useful life cycle.

(2) The department shall adopt rules governing:

- (a) the management of supplies during their entire life cycle;

- (b) the sale, lease, or disposal of surplus supplies by public auction, competitive sealed bidding, donation to a school district as provided in 18-6-101, or other appropriate method designated by rule;

- (c) transfer of surplus supplies.

(3) An employee of the owning or disposing agency directly involved with the disposal may not purchase supplies sold by the employee’s agency.

(4) Proceeds from the sale, lease, or disposal of surplus supplies must be allocated as provided by 18-6-101, less a reasonable handling fee.

**History:** En. Secs. 34 thru 36, Ch. 519, L. 1983; amd. Sec. 3, Ch. 234, L. 1991; amd. Sec. 2, Ch. 441, L. 1999.

**18-4-227. Procurement and term contract rebate account — funding — use.**

(1) There is an account in the state special revenue fund established by 17-2-102 known as the procurement and term contract rebate account.

(2) All rebates credited to the department from using state procurement cards and term contracts must be deposited in the account.

(3) The money in the account may be used only to:

- (a) administer the state’s procurement card programs;

- (b) administer term contracts established by the department; and

- (c) reimburse applicable funds to the federal government.

(4) The unreserved, unexpended balance of the funds collected under this section must be deposited in the general fund by the close of the fiscal year.

**History:** En. Sec. 1, Ch. 492, L. 2007; amd. Sec. 1, Ch. 233, L. 2015.



**18-4-228 through 18-4-230 reserved.**

**18-4-231. Definition of specification.** As used in 18-4-231 through 18-4-234, “specification” means any description of the physical or functional characteristics or of the nature of a supply or service. It may include a description of any requirement for inspecting, testing, or preparing a supply or service for delivery.

**History:** En. Sec. 28, Ch. 519, L. 1983.

**18-4-232. Specifications — rules.** (1) The department shall adopt rules governing the preparation, maintenance, and content of specifications for supplies and services required by the state.

(2) The department shall prepare, issue, revise, maintain, and monitor the use of specifications for supplies and services required by the state.

**History:** En. Sec. 29, Ch. 519, L. 1983.

**18-4-233. Using agencies’ advice.** The director may obtain expert advice and assistance from personnel of using agencies in the development of specifications and may delegate in writing to a using agency the authority to prepare and utilize its own specifications.

**History:** En. Sec. 30, Ch. 519, L. 1983.

**18-4-234. Competition.** All specifications shall promote overall economy for the purposes intended and encourage competition in satisfying the state’s needs and may not be unduly restrictive.

**History:** En. Sec. 31, Ch. 519, L. 1983.

**18-4-235 through 18-4-240 reserved.**

**18-4-241. Authority to remove or suspend vendor.** (1) The department may remove a vendor for cause from consideration for award of contracts by the state.

(2) The department may temporarily suspend a vendor from consideration for award of contracts if there is probable cause to believe that the vendor has engaged in activities that may lead to removal. If an indictment has been issued for an offense that would be a cause for removal under subsection (3), the suspension must, at the request of the attorney general, remain in effect at a minimum until after the trial of the suspended vendor. The authority to remove or suspend must be exercised in accordance with rules adopted by the department.

(3) The causes for removal or suspension include the following:

(a) violation of contract provisions, as set forth in subsections (3)(a)(i) and (3)(a)(ii), of a character that is regarded by the department to be so serious as to justify removal action:

(i) deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or

(ii) a recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts, provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor may not be considered to be a basis for removal;

(b) failure to respond to a number of solicitations over a period of time as determined by the department in accordance with rules or failure to provide the department with a correct address;

(c) any other cause that the department determines to be so serious and compelling as to affect responsibility as a state contractor, including removal by another governmental entity; and

(d) failure to comply with the provisions of Title 39, chapter 51, or Title 39, chapter 71.

(4) The department shall issue a written decision to remove or suspend a vendor, stating the reasons for the action taken, for reasons other than those reasons provided in subsection (3)(b). A copy of the decision must be mailed or otherwise furnished immediately to the vendor involved.

**History:** En. Sec. 9, Ch. 519, L. 1983; amd. Sec. 26, Ch. 234, L. 1987; amd. Sec. 9, Ch. 443, L. 1997.

**18-4-242. Exclusive remedies for unlawful solicitation or award.** (1) This section establishes the exclusive remedies for a solicitation or award of a contract determined to be in violation of the law.

(2) Except for small purchases or limited solicitations made pursuant to 18-4-305, a bidder, offeror, or contractor aggrieved in connection with the solicitation or award of a contract may

protest to the department. The protest must be submitted to the department in writing no later than 14 days after execution of the contract.

(3) If the protest is not resolved by mutual agreement, the department shall issue in writing a decision on the protest within 30 days after receipt of the protest. The decision must:

(a) state the reason for the action taken by the department with regard to the contract; and

(b) inform the aggrieved party of the party's right to request, within 14 days after the date of the department's written decision, a contested case hearing pursuant to the Montana Administrative Procedure Act.

(4) In a protest or contested case proceeding, the department may, in an appropriate case, order a remedy provided in subsection (5) or (6).

(5) If before an award it is determined that a solicitation or proposed award of a contract is in violation of law, the solicitation or proposed award may be:

(a) canceled; or

(b) revised to comply with the law.

(6) (a) If after an award it is determined that a solicitation or award of a contract is in violation of law and the person awarded the contract has not acted fraudulently or in bad faith, the contract may be:

(i) ratified and affirmed, provided it is determined that doing so is in the best interests of the state; or

(ii) terminated, and the person awarded the contract must be compensated for the actual expenses reasonably incurred under the contract, plus a reasonable profit, before the termination.

(b) If after an award it is determined that a solicitation or award of a contract is in violation of law and the person awarded the contract has acted fraudulently or in bad faith, the contract may be:

(i) declared void; or

(ii) ratified and affirmed if that action is in the best interests of the state, without prejudice to the state's rights to appropriate damages.

(7) The exclusive method of judicial review of a solicitation or award by the department pursuant to this chapter is by a petition for judicial review pursuant to 2-4-702. In a proceeding pursuant to that section, the court may, in an appropriate case, order a remedy provided by subsection (5) or (6) of this section. Except as provided in subsections (6)(a)(ii) and (6)(b)(ii), there is no right under any legal theory to recover a form of damages or expenses for a solicitation or award of a contract in violation of law. Any other claim, cause of action, or request for relief for solicitations or awards allegedly made in violation of law may not be heard or granted by a district court other than as provided in this section.

(8) The state is not required to delay, halt, or modify the procurement process pending the result of a protest, contested case proceeding, or judicial review.

(9) The department may adopt rules governing the protest of solicitations or awards.

**History:** En. Sec. 10, Ch. 519, L. 1983; amd. Sec. 10, Ch. 443, L. 1997; amd. Sec. 48, Ch. 51, L. 1999.

### **Part 3 Procurement Procedure**

**18-4-301. Definitions.** As used in this part, the following definitions apply:

(1) "Alternative procurement method" means a method of procuring supplies or services in a manner not specifically described in this chapter, but instead authorized by the department under 18-4-302.

(2) "American-made" means either a product made exclusively within the United States or a value-added product consisting of a product that contains 50% or more of materials from the United States.

(3) "Cost-reimbursement contract" means a contract under which a contractor is reimbursed for costs that are allowable and allocable in accordance with the contract terms and the provisions of this chapter and a fee, if any.

(4) (a) "Displacement" means the layoff, demotion, or involuntary transfer of a state employee.

(b) Displacement does not include changes in shift or days off or reassignment to other positions within the same class and at the same general location.

(5) “Established catalog price” means the price included in a catalog, price list, schedule, or other form that:

- (a) is regularly maintained by a manufacturer or contractor;
- (b) is either published or otherwise available for inspection by customers; and
- (c) states prices at which sales are currently or were last made to a significant number of any category of buyers or buyers constituting the general buying public for the supplies or services involved.

(6) “Invitation for bids” means all documents, whether attached or incorporated by reference, used for soliciting bids.

(7) “Purchase description” means the words used in a solicitation to describe the supplies or services to be purchased and includes specifications attached to or made a part of the solicitation.

(8) “Request for proposals” means all documents, whether attached or incorporated by reference, used for soliciting proposals.

(9) “Responsible” means the capability in all respects to perform fully the contract requirements and the integrity and reliability that will ensure good faith performance.

(10) “Responsive” means conforms in all material respects to the invitation for bids or request for proposals.

(11) “Term contract” means a contract in which supplies or services are purchased at a predetermined unit price for a specific period of time.

**History:** En. Sec. 12, Ch. 519, L. 1983; amd. Sec. 1, Ch. 303, L. 1987; amd. Sec. 1, Ch. 761, L. 1991; amd. Secs. 18, 19, Ch. 181, L. 2001; amd. Sec. 3, Ch. 289, L. 2005; amd. Sec. 1, Ch. 226, L. 2007; amd. Sec. 1, Ch. 145, L. 2015.

**18-4-302. Methods of source selection—authorization for alternative procurement methods.** (1) Unless otherwise authorized by law, all state contracts for supplies and services must be awarded by a source selection method provided for in this title. Supplies or services offered for sale, lease, or rental by public utilities are exempt from this requirement if the prices of the supplies or services are regulated by the public service commission or other governmental authority.

(2) When the department or another agency opens bids or proposals, if a supplier’s current publicly advertised or established catalog price is received at or before the time that the bids or proposals are opened and is less than the bid of the lowest responsible and responsive bidder or offeror or improves upon the conditions for the best proposal received using the same factors and weights included in the proposal, the department or agency may reject all bids and purchase the supply from that supplier without meeting the requirements of 18-4-303 through 18-4-306.

(3) An office supply procured by the department may be purchased by an agency, without meeting the requirements of 18-4-303 through 18-4-306, from a supplier whose publicly advertised price, established catalog price, or discount price offered to the agency is less than the price offered by the department if the office supply conforms in all material respects to the terms, conditions, and quality offered by the department. A state office supply term contract must include a provision by which the contracting parties acknowledge and agree to the provisions of this subsection.

(4) (a) Under rules adopted by the department, an agency may request from the department authorization for an alternative procurement method.

- (b) A request for authorization must specify:
  - (i) the problem to be solved;
  - (ii) the proposed alternative procurement method;
  - (iii) the reasons why the alternative procurement method may be more appropriate than a method authorized by law; and
  - (iv) how competition and fairness will be achieved by the alternative procurement method.
- (c) Within 30 days after receiving the request, the department shall:
  - (i) evaluate the request;
  - (ii) approve or deny the request; and
  - (iii) issue a written statement providing the reasons for its decision.
- (d) Whenever the department approves a request submitted under this section, the department:
  - (i) may authorize the alternative procurement method on a trial basis; and

(ii) if the alternative procurement method is employed, shall make a written determination as to the success of the method.

(e) If the department determines that the alternative procurement method is successful and should be an alternative that is generally available, it shall promulgate rules that establish the use of the alternative procurement method as an additional source selection method. The rules promulgated by the department under this subsection must reflect the purposes described in 18-4-122.

**History:** En. Sec. 13, Ch. 519, L. 1983; amd. Sec. 2, Ch. 303, L. 1987; amd. Sec. 1, Ch. 329, L. 1989; amd. Sec. 1, Ch. 11, Sp. L. November 1993; amd. Sec. 11, Ch. 443, L. 1997; amd. Sec. 20, Ch. 181, L. 2001; amd. Sec. 2, Ch. 145, L. 2015.

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

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

(3) Bids must be opened publicly at the time and place designated in the invitation for bids. Each bidder and any member of the public has the right to be present, either in person or by agent, when the bids are opened and has the right to examine and inspect all bids after they are opened and reviewed by the procurement officer for release, subject to the same limitations specified in 18-4-304(4) for competitive sealed proposals.

(4) The amount of each bid and other relevant information as may be specified by rule, together with the name of each bidder, must be recorded. The record must be open to public inspection.

(5) After the time of award, all bids and bid documents must be open to public inspection in accordance with the provisions of 18-4-126.

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

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

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

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

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

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

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

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

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

(4) After the proposals have been opened at the time and place designated in the request for proposals and reviewed by the procurement officer for release, proposal documents may be inspected by the public, subject to the limitations of:

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

(b) matters involving individual safety as determined by the department; and

(c) other constitutional protections.

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

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

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

**18-4-305. Small purchases and limited solicitations.** Any procurement not exceeding the amount established by rule may be made in accordance with small purchase or limited solicitation procedures established by the department. Procurement requirements may not be artificially divided so as to constitute a small purchase or limited solicitation under this section.

**History:** En. Sec. 16, Ch. 519, L. 1983; amd. Sec. 14, Ch. 443, L. 1997.

**18-4-306. Sole source procurement — records.** (1) A contract may be awarded for a supply or service item without competition when, under rules adopted by the department, the director, the head of a purchasing agency, or a designee of either officer above the level of the procurement officer determines in writing that:

(a) there is only one source for the supply or service item;

(b) only one source is acceptable or suitable for the supply or service item; or

(c) the supply or service item must be compatible with current supplies or services.

(2) The department may require the submission of cost or pricing data in connection with an award under this section.

(3) The department shall maintain or shall require the head of a purchasing agency to maintain a record listing all contracts made under this section for a minimum of 4 years. The record must contain:

(a) each contractor's name;

(b) the amount and type of each contract; and

(c) a listing of the supplies or services procured under each contract.

(4) The record must be available for public inspection.

**History:** En. Secs. 17, 27, Ch. 519, L. 1983; amd. Sec. 21, Ch. 181, L. 2001.

**18-4-307. Cancellation of invitations for bids or requests for proposals.** An invitation for bids, a request for proposals, or other solicitation may be canceled or any or all bids or proposals may be rejected in whole or in part, as may be specified in the solicitation, when it is in the best interests of the state. The reasons therefor must be made part of the contract file.

**History:** En. Sec. 18, Ch. 519, L. 1983.

**18-4-308. Nonresponsibility of bidders and offerors.** A written determination of nonresponsibility of a bidder or offeror must be made in accordance with rules adopted by the department. The unreasonable failure of a bidder or offeror to promptly supply information in connection with an inquiry with respect to responsibility may be grounds for a determination of nonresponsibility with respect to that bidder or offeror.

**History:** En. Sec. 19, Ch. 519, L. 1983; amd. Sec. 6, Ch. 289, L. 2005.



**18-4-309. Prequalification of suppliers.** Prospective suppliers may be prequalified in accordance with department rules for particular types of supplies and services.

**History:** En. Sec. 20, Ch. 519, L. 1983; amd. Sec. 15, Ch. 443, L. 1997.

**18-4-310. Types of contracts.** Any type of contract that will promote the best interests of the state may be used.

**History:** En. Sec. 21, Ch. 519, L. 1983; amd. Sec. 16, Ch. 443, L. 1997.

**18-4-311. Repealed.** Sec. 1, Ch. 87, L. 2017.

**History:** En. Sec. 22, Ch. 519, L. 1983.

**18-4-312. Bid and contract performance security.** (1) For state contracts for the procurement of services or of supplies, the department may in its discretion require:

(a) bid security;

(b) contract performance security to guarantee the faithful performance of the contract and the payment of all laborers, suppliers, mechanics, and subcontractors; or

(c) both bid and contract performance security.

(2) (a) If security is required under subsection (1), the following types of security may be required to be deposited with the state:

(i) a sufficient bond with a licensed surety company as surety;

(ii) an irrevocable letter of credit in accordance with the provisions of Title 30, chapter 5, part 1;

(iii) money of the United States;

(iv) a cashier's check, certified check, bank money order, certificate of deposit, money market certificate, or bank draft that is drawn or issued by a federally chartered or state-chartered bank or savings and loan association that is insured by or for which insurance is administered by the federal deposit insurance corporation or that is drawn and issued by a credit union insured by the national credit union share insurance fund.

(b) The department may not require that a bond required pursuant to subsection (2)(a)(i) be furnished by a particular surety company or by a particular insurance producer for a surety company.

(3) The amount and type of the security must be determined by the department to be sufficient to cover the risk involved to the state. The security must be payable to the state of Montana. Contract performance security must remain in effect for the entire contract period, except as provided pursuant to an agency liquor store franchise agreement under 16-2-101. In determining the amount and type of contract performance security required for each contract, the department shall consider the nature of the performance and the need for future protection to the state. In determining the need for and amount of bid security, the department shall consider the risks involved to the state if a successful bidder or offeror fails to enter into a formal contract. The considerations must include but are not limited to the type of supply or service being procured, the dollar amount of the proposed contract, and delivery time requirements. The department may adopt rules to assist it in making these determinations and in protecting the state in dealing with irrevocable letters of credit. Bid and contract security requirements must be included in the invitations for bids or requests for proposals.

(4) If a bidder or offeror to whom a contract is awarded fails or refuses to enter into the contract or provide contract performance security, as required by the invitation for bid or request for proposal, after notification of award, the department may, in its discretion, require the bidder or offeror to forfeit the bid security to the state and become immediately liable on the bid security, but not in excess of the sum stated in the security. The liability of the bidder or offeror, the maker of the security or bid bond, or the liability on the bid bond or other security may not exceed the amount specified in the invitation for bid or request for proposal.

(5) Negotiable instruments provided as bid security must be refunded to those bidders or offerors whose bids or proposals are not accepted.

(6) The provisions of Title 18, chapter 1, part 2, and Title 18, chapter 2, parts 2 and 3, do not apply to procurements under this chapter.

**History:** En. Sec. 23, Ch. 519, L. 1983; amd. Sec. 2, Ch. 424, L. 1985; amd. Sec. 11, Ch. 130, L. 1995; amd. Sec. 17, Ch. 443, L. 1997; amd. Sec. 4, Ch. 203, L. 2003; amd. Sec. 7, Ch. 289, L. 2005.

**18-4-313. Contracts — terms, extensions, and time limits.** (1) Except as provided in subsection (2) or unless otherwise provided by law, a contract, lease, or rental agreement for supplies or services may not be made for a period of more than 7 years. A contract, lease, or rental agreement may be extended or renewed if the terms of the extension or renewal, if any, are included in the solicitation, if funds are available for the first fiscal period at the time of the agreement, and if the total contract period, including any extension or renewal, does not exceed 7 years. Payment and performance obligations for succeeding fiscal periods are subject to the availability and appropriation of funds for the fiscal periods.

(2) The contract term limit specified in subsection (1) does not apply to:

(a) a contract for hardware, software, or other information technology resources, which may be made for a period not to exceed 10 years;

(b) a department of revenue liquor store contract governed by the term specified in 16-2-101;

(c) a department of corrections contract governed by the term specified in 53-1-203, 53-30-505, or 53-30-608;

(d) the department of administration state employee group benefit plans contracts governed by the term specified in 2-18-811, including group benefit plan contracts made in partnership with the Montana university system group benefit plan; and

(e) a contract for concessions or visitor services for a state park, state recreational area, state monument, or state historic site established under Title 23, chapter 1, part 1, that, with the consent of the state parks and recreation board, may be made for a period of not more than 20 years if a capital improvement is made, subject to subsection (5).

(3) Prior to the issuance, extension, or renewal of a contract, it must be determined that:

(a) estimated requirements cover the period of the contract and are reasonably firm and continuing; and

(b) the contract will serve the best interests of the state by encouraging effective competition or otherwise promoting economies in state procurement.

(4) If funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract must be canceled.

(5) A contract under subsection (2)(e) must require the concessionaire to provide a business plan offering a reasonable estimation that the cost of any capital improvement by the concessionaire will be repaid within the life of the contract or that where a proprietary interest is held, the concessionaire's interest in any capital improvement may be sold at appraised value to a subsequent concessionaire when the contract concludes.

**History:** En. Sec. 24, Ch. 519, L. 1983; amd. Sec. 1, Ch. 121, L. 1985; amd. Sec. 3, Ch. 228, L. 1993; amd. Sec. 12, Ch. 130, L. 1995; amd. Sec. 63, Ch. 546, L. 1995; amd. Sec. 22, Ch. 181, L. 2001; amd. Secs. 40, 46, Ch. 313, L. 2001; amd. Sec. 8, Ch. 289, L. 2005; amd. Sec. 2, Ch. 127, L. 2007; amd. Sec. 1, Ch. 322, L. 2015.

**18-4-314. Reporting of anticompetitive practices.** If for any reason collusion or other anticompetitive practices are suspected among any bidders or offerors, a notice of the relevant facts shall be transmitted to the attorney general by the department.

**History:** En. Sec. 25, Ch. 519, L. 1983.

## **Part 4 Cooperative Purchasing**

**18-4-401. Definitions.** As used in this part, the following definitions apply:

(1) "Cooperative purchasing" means procurement conducted by or on behalf of more than one public procurement unit.

(2) "Local public procurement unit" means a county, city, town, or other subdivision of the state or a public agency of any such subdivision; public authority; educational, health, or other institution; to the extent provided by law, any other entity that expends public funds for the procurement of supplies and services; and any nonprofit corporation operating a charitable hospital.

(3) "Public procurement unit" means a local or state public procurement unit of this or any other state, including an agency of the United States, or a tribal procurement unit.

(4) "State public procurement unit" means a state department, agency, or official that expends public funds for the procurement of supplies and services.

(5) “Tribal procurement unit” means a tribal government, tribal entity, or official of a tribal government located in Montana that expends tribal funds or funds administered by a tribe for the procurement of supplies and services to the extent provided by tribal or federal law.

**History:** En. Sec. 37, Ch. 519, L. 1983; amd. Sec. 1, Ch. 200, L. 1999.

**18-4-402. Cooperative purchasing authorized.** The department may participate in, sponsor, conduct, or administer a cooperative purchasing agreement for the procurement of any supplies or services with one or more public procurement units in accordance with an agreement entered into between the participants independent of the requirements of part 3. Cooperative purchasing may include purchasing through federal supply schedules of the United States general services administration, joint or multiparty contracts between public procurement units, open-ended state public procurement unit contracts that are made available to local public procurement units, and competitive contracts established by for-profit, not-for-profit, or nonprofit cooperative entities.

**History:** En. Sec. 38, Ch. 519, L. 1983; amd. Sec. 18, Ch. 443, L. 1997; amd. Sec. 1, Ch. 185, L. 2011.

**18-4-403. Sale, acquisition, or use of supplies by a public procurement unit.** The department may sell to, acquire from, or use any supplies belonging to another public procurement unit independent of the requirements of part 3.

**History:** En. Sec. 39, Ch. 519, L. 1983.

**18-4-404. Cooperative use of supplies or services.** The department may enter into an agreement, independent of the requirements of part 3, with any other public procurement unit for the cooperative use of supplies or services under the terms agreed upon between the parties.

**History:** En. Sec. 40, Ch. 519, L. 1983.

**18-4-405. Joint use of facilities.** The department may enter into agreements for the common use or lease of warehousing facilities, capital equipment, and other facilities with another public procurement unit under the terms agreed upon between the parties.

**History:** En. Sec. 41, Ch. 519, L. 1983.

**18-4-406. Information and services — fees.** (1) Upon request, the department may make available to public procurement units certain services, including but not limited to the following:

- (a) standard forms;
- (b) printed manuals;
- (c) product specifications and standards;
- (d) quality assurance testing services and methods;
- (e) qualified products lists;
- (f) source information;
- (g) common use commodities listings;
- (h) supplier prequalification information;
- (i) supplier performance ratings;
- (j) debarred and suspended bidders lists;
- (k) forms for invitations for bids, requests for proposals, instructions to bidders, general contract provisions, and other contract forms;
- (l) contracts or published summaries thereof, including price and time of delivery information; and
- (m) cooperative purchasing.

(2) The state, through the department, may provide technical services, including but not limited to the following:

- (a) development of product specifications;
- (b) development of quality assurance test methods, including receiving, inspection, and acceptance procedures;
- (c) use of product testing and inspection facilities; and
- (d) use of personnel training programs.

(3) The department may enter into contractual arrangements and publish a schedule of fees for the services provided under subsections (1) and (2). Such fees may be used by the department to offset costs incurred in providing such services.

**History:** En. Sec. 42, Ch. 519, L. 1983.

**18-4-407. Review of procurement requirements.** To the extent possible, the department may collect information concerning the type, cost, quality, and quantity of commonly used supplies or services being procured or used by state public procurement units. The department may make available all such information to any public procurement unit upon request.

**History:** En. Sec. 43, Ch. 519, L. 1983.

## CHAPTER 5 SPECIAL PURCHASING CONDITIONS

### Part 2 Surplus Property Procurement

**18-5-201. Administration of the state agency for federal surplus property.** There is a Montana state agency for federal surplus property that is administered by a department designated by the governor. The director of the department may prescribe the duties of personnel needed to carry out the duties under this part.

**History:** En. Sec. 1, Ch. 136, L. 1953; amd. Sec. 1, Ch. 478, L. 1977; R.C.M. 1947, 82-3101; amd. Sec. 2, Ch. 485, L. 1989.

**18-5-202. Authority and duties of the state agency for surplus property.** (1) The state agency for surplus property is hereby authorized and empowered to:

(a) acquire from the United States of America under and in conformance with the provisions of the Federal Property and Administrative Services Act of 1949, as amended, hereinafter referred to as the “act”, such property, including equipment, materials, books, or other supplies under the control of any department or agency of the United States of America as may be usable and necessary for purposes authorized by the act;

(b) warehouse such property; and

(c) distribute such property within the state to eligible participants.

(2) The state agency for surplus property is hereby authorized to receive applications from eligible participants for the acquisition of federal surplus real property, investigate the same, obtain expression of views respecting such applications from the appropriate authorities of the state, make recommendations regarding the need of such applicant for the property, the merits of its proposed program of utilization, the suitability of the property for such purposes, and otherwise assist in the processing of such applications for acquisition of real and related personal property of the United States under section 203(k) of the act as amended.

(3) For the purpose of executing its authority under this part, the state agency for surplus property is authorized and empowered to adopt, amend, or rescind such rules and prescribe such requirements as may be deemed necessary and take such other action as is deemed necessary and suitable in the administration of this part to assure maximum utilization by and benefit to participants within the state from property distributed under this part.

(4) The state agency for surplus property is authorized and empowered to make such certifications, take such action, make such expenditures, and enter into such contracts, agreements, and undertakings for and in the name of the state (including cooperative agreements with any federal agencies providing for utilization by and exchange between them of the property, facilities, personnel, and services of each by the other), require such reports and make such investigation as may be required by law or regulation of the United States of America in connection with the disposal of real property and the receipt, warehousing, and distribution of personal property received by the state agency for surplus property from the United States of America.

(5) The state agency for surplus property is authorized and empowered to act as clearinghouse of information for eligible participants to locate both real and personal property available for acquisition from the United States of America, to ascertain the terms and conditions under which such property may be obtained, to receive requests from eligible participants and to transmit to them all available information in reference to such property, and to aid and assist eligible participants in every way possible in the consummation of acquisitions or transactions hereunder.

(6) The state agency for surplus property, in the administration of this part, shall cooperate to the fullest extent consistent with the provisions of the act, with the departments or agencies of the United States of America and shall file a state plan of operation, operate in accordance therewith, and take such action as may be necessary to meet the minimum standards prescribed in accordance with the act; make such reports in such form and containing such information as the United States of America or any of its departments or agencies may from time to time require; and comply with the laws of the United States of America and the rules and regulations of any of the departments or agencies of the United States of America governing the allocation, transfer, use, or accounting for property donable or donated to the state.

**History:** En. Sec. 2, Ch. 136, L. 1953; amd. Sec. 1, Ch. 166, L. 1957; amd. Sec. 2, Ch. 478, L. 1977; R.C.M. 1947, 82-3102.

**18-5-203. Agency for surplus property — authorization for financing.** The state agency for surplus property must be self-sustaining and shall pay for its operation and maintenance directly from receipts from surplus property that must be deposited in the treasury in an enterprise fund.

**History:** En. Sec. 4, Ch. 136, L. 1953; amd. Sec. 66, Ch. 147, L. 1963; amd. Sec. 1, Ch. 389, L. 1977; amd. Sec. 3, Ch. 478, L. 1977; R.C.M. 1947, 82-3104; amd. Sec. 3, Ch. 277, L. 1983; amd. Sec. 1, Ch. 42, L. 2001.

**18-5-204. Department director — delegating powers.** The director of the department may delegate to any employees of the state agency for surplus property the power and authority that the director considers reasonable and proper for the effective administration of this part.

**History:** En. as addition to Ch. 31, Title 82, 1947 Code by Sec. 2, Ch. 166, L. 1957; amd. Sec. 49, Ch. 177, L. 1965; amd. Sec. 4, Ch. 478, L. 1977; R.C.M. 1947, 82-3105; amd. Sec. 226, Ch. 56, L. 2009.

**18-5-205. Officers or employees authorized to secure transfer of federal surplus property.** (1) Notwithstanding any provision of law to the contrary, the governing board or, if there is none, the executive head of a state department or agency or of a city, county, school district, or other political subdivision may by order or resolution confer upon an officer or employee continuing authority to:

(a) secure the transfer to it of surplus property under this part through the department designated in 18-5-201 under the provisions of section 203(j) of the Federal Property and Administrative Services Act of 1949, as amended; and

(b) obligate the state or political subdivision and its funds to the extent necessary to comply with the terms and conditions of the transfers.

(2) The authority conferred upon an officer or employee by an order or resolution remains in effect until the order or resolution is revoked and written notice of the revocation has been received by the department.

**History:** En. as addition to Ch. 31, Title 82, 1947 Code by Sec. 3, Ch. 166, L. 1957; amd. Sec. 5, Ch. 478, L. 1977; R.C.M. 1947, 82-3106; amd. Sec. 3, Ch. 485, L. 1989.

## CHAPTER 6

### SALES

#### Part 1

#### Sale of State Property

**18-6-101. Power to sell state property — proceeds credited to general fund.**

(1) The department has exclusive power, subject to the approval of the governor, to sell or otherwise dispose of or to authorize the sale or other disposition of all materials and supplies, service equipment, or other personal property of any kind owned by the state but not needed or used by any state institution or by any department of state government. Upon request, the department shall authorize a state department or entity to donate property to a school district for classroom use pursuant to procedures implemented by the office of public instruction to ensure adequate notice of the availability of surplus state property and equal access and fair distribution of the property to school districts.

(2) Unless otherwise provided by law, the department shall credit the general fund with all money received.



(3) Whenever the personal property was accounted for in an enterprise or internal service fund or designated subfund account, the proceeds of the sale must be credited to the appropriate enterprise or internal service fund or designated subfund account.

**History:** En. Sec. 4, Ch. 66, L. 1923; re-en. Sec. 293.4, R.C.M. 1935; amd. Sec. 74, Ch. 199, L. 1965; amd. Sec. 1, Ch. 11, L. 1971; amd. Sec. 68, Ch. 326, L. 1974; R.C.M. 1947, 82-1914(part); amd. Sec. 4, Ch. 58, L. 1979; amd. Sec. 1, Ch. 346, L. 1981; amd. Sec. 3, Ch. 277, L. 1983; amd. Sec. 2, Ch. 234, L. 1991; amd. Sec. 3, Ch. 441, L. 1999.

## CHAPTER 7 PRINTING AND LEGAL NOTICES

### Part 1 State Printing

**18-7-101. Power to contract for printing — exception.** (1) Except as provided in 1-11-301, the department has exclusive power, subject to the approval of the governor, to contract for all printing for any purpose used by the state in any state office (elective or appointive), agency, or institution.

(2) The department shall supervise and attend to all public printing of the state as provided in this chapter and shall prevent duplication and unnecessary printing.

(3) Unless otherwise provided by law, the department, in letting contracts as provided in this chapter, for the printing, binding, and publishing of all laws, journals, and reports of the state agencies and institutions may determine the quantity, quality, style, and grade of all such printing, binding, and publishing.

(4) The provisions of this chapter do not apply to the state compensation insurance fund for purposes of external marketing or educational materials.

**History:** En. Sec. 6, Ch. 66, L. 1923; re-en. Sec. 293.6, R.C.M. 1935; amd. Sec. 7, Ch. 80, L. 1961; amd. Sec. 9, Ch. 261, L. 1967; amd. Sec. 43, Ch. 93, L. 1969; amd. Sec. 71, Ch. 326, L. 1974; R.C.M. 1947, 82-1916; amd. Sec. 5, Ch. 58, L. 1979; amd. Sec. 1, Ch. 265, L. 1979; amd. Sec. 1, Ch. 209, L. 1989; amd. Sec. 6, Ch. 314, L. 2001.

**18-7-102. Repealed.** Sec. 53, Ch. 519, L. 1983.

**History:** En. Sec. 1, Ch. 153, L. 1935; re-en. Sec. 283.1, R.C.M. 1935; R.C.M. 1947, 82-1157; amd. Sec. 6, Ch. 58, L. 1979; amd. Sec. 2, Ch. 265, L. 1979.

**18-7-103. Repealed.** Sec. 53, Ch. 519, L. 1983.

**History:** En. Sec. 1, p. 58, L. 1897; re-en. Sec. 254, Rev. C. 1907; re-en. Sec. 260, R.C.M. 1921; re-en. Sec. 260, R.C.M. 1935; amd. Sec. 1, Ch. 242, L. 1963; R.C.M. 1947, 82-1137(part); amd. Sec. 3, Ch. 265, L. 1979.

**18-7-104. Union label.** All printing for which the state of Montana is chargeable shall bear the label of the branch of the international typographical union, the allied printing trades council, or the amalgamated lithographers of America of the locality in which it is printed, except under the following conditions. Printing firms not having the use of the labels and who are desirous of presenting bids for printing as enumerated above shall be required to establish consideration as a responsible bidder as follows:

(1) As a condition to consideration as a responsible bidder, printing concerns must file with the secretary of state a sworn statement to the effect that employees in the employ of the concern which is to produce such printing are receiving the prevailing wage rate and are working under conditions prevalent in the locality in which the work is produced.

(2) Whenever a collective bargaining agreement is in effect between an employer and employees who are represented by a responsible organization which is in no way influenced or controlled by the management, such agreement and its provisions shall be construed as conditions prevalent in said locality and shall be the minimum requirement for being adjudged a responsible bidder under this section, 18-7-107, or chapter 4 of this title.

(3) Printing firms having the use of the union labels as set forth above shall be deemed as having complied with the provisions of this section, 18-7-107, or chapter 4 of this title, but nothing in these provisions shall be construed as exempting such bidders from any provisions of this section, 18-7-107, or chapter 4 of this title, and such bidders shall also be required to conform to all provisions thereof.

**History:** En. Sec. 1, p. 58, L. 1897; re-en. Sec. 254, Rev. C. 1907; re-en. Sec. 260, R.C.M. 1921; re-en. Sec. 260, R.C.M. 1935; amd. Sec. 1, Ch. 242, L. 1963; R.C.M. 1947, 82-1137(part); amd. Sec. 48, Ch. 519, L. 1983.

**18-7-105. Penalty.** Any officer of the state who shall accept any printed matter for which the state is chargeable in whole or in part or who is found to have had printed matter produced, under conditions other than as set forth in chapter 4 of this title, 18-7-104, or 18-7-107 shall be subject to a fine of \$50 for each and every offense.

**History:** En. Sec. 1, p. 58, L. 1897; re-en. Sec. 255, Rev. C. 1907; re-en. Sec. 261, R.C.M. 1921; re-en. Sec. 261, R.C.M. 1935; amd. Sec. 2, Ch. 242, L. 1963; R.C.M. 1947, 82-1138; amd. Sec. 49, Ch. 519, L. 1983.

**18-7-106. Approval of purchase orders.** The department may not approve a claim for printing submitted by a state officer, agency, or institution unless:

(1) a purchase order has been prepared and approved by the department prior to ordering the printing; or

(2) written approval has been given by the department to order the printing without preparation of a purchase order.

**History:** En. Sec. 10, Ch. 197, L. 1921; re-en. Sec. 293, R.C.M. 1921; re-en. Sec. 293, R.C.M. 1935; amd. Sec. 1, Ch. 15, L. 1969; Sec. 82-1910, R.C.M. 1947; amd. and redes. 82-1916.1 by Sec. 65, Ch. 326, L. 1974; R.C.M. 1947, 82-1916.1.

**18-7-107. State printing, binding, and stationery work.** All printing, binding, and stationery work for the state of Montana is subject to the preference in 18-1-102(1)(b). Federal exemptions as specified in 18-1-102(2)(b) apply.

**History:** En. Sec. 46, Ch. 519, L. 1983; amd. Sec. 1, Ch. 95, L. 1987; amd. Sec. 1, Ch. 53, L. 1991; amd. Sec. 24, Ch. 181, L. 2001.

**18-7-108 through 18-7-110 reserved.**

**18-7-111. Repealed.** Sec. 53, Ch. 519, L. 1983.

**History:** En. Sec. 1, Ch. 178, L. 1921; re-en. Sec. 281, R.C.M. 1921; re-en. Sec. 281, R.C.M. 1935; R.C.M. 1947, 82-1154.

**18-7-112. Repealed.** Sec. 53, Ch. 519, L. 1983.

**History:** En. Sec. 2, Ch. 178, L. 1921; re-en. Sec. 282, R.C.M. 1921; re-en. Sec. 282, R.C.M. 1935; R.C.M. 1947, 82-1155.

**18-7-113. Repealed.** Sec. 53, Ch. 519, L. 1983.

**History:** En. Sec. 3, Ch. 178, L. 1921; re-en. Sec. 283, R.C.M. 1921; re-en. Sec. 283, R.C.M. 1935; R.C.M. 1947, 82-1156.

## Part 2 Publication of Legal Notices

**18-7-201. Requirements for choice of newspaper — price.** (1) In all cases and instances where any publication is required by law or is duly authorized to be made, executed, or accomplished by, for, or on behalf of the state of Montana or any of the institutions of said state or any of the departments, boards, bureaus, or commissions thereof or any of the officers, agents, or employees of the state when acting within the scope of their lawful authority and for the benefit of the state of Montana, the same shall be published in a newspaper printed and published in the state of Montana and of general bona fide and paid circulation with second-class mailing privilege and having been printed and published continuously in the state of Montana for at least 12 months immediately preceding such publication.

(2) The price for such publication and by whomsoever accomplished shall not exceed the minimum going rate charged any other advertiser for the same publication set in the same sized type and published for the same number of insertions.

**History:** En. Sec. 1, Ch. 157, L. 1921; re-en. Sec. 276, R.C.M. 1921; re-en. Sec. 276, R.C.M. 1935; amd. Sec. 1, Ch. 137, L. 1951; amd. Sec. 1, Ch. 307, L. 1969; amd. Sec. 1, Ch. 385, L. 1973; R.C.M. 1947, 82-1149.

**18-7-202. Lower rates permissible.** The prices, rates, and standards herein fixed and prescribed are in each instance and for every case covered by this part the maximum prices, rates, and standards. Their prescription and establishment herein shall in no case be taken as prohibiting a lesser or lower rate or price than herein fixed. Every department, institution, officer, or agent of the state shall, whenever possible, obtain a lower rate or price than is fixed herein, the equivalent of the minimum rate mentioned in 18-7-204.

**History:** En. Sec. 3, Ch. 157, L. 1921; re-en. Sec. 278, R.C.M. 1921; re-en. Sec. 278, R.C.M. 1935; R.C.M. 1947, 82-1151.

**18-7-203. Folio measurement.** (1) The following is the basis of measurement for the computation of folios in the various sizes of type, when set in a column 13 ems pica wide, and constitutes a folio within the meaning of this part:

- (a) 12 lines of 6-point type;
  - (b) 14 lines of 7-point type;
  - (c) 16 lines of 8-point type;
  - (d) 18 lines of 9-point type; or
  - (e) 20 lines of 10-point type.
- (2) A carefully verified actual count shall be made of the folio.

**History:** En. Sec. 2, Ch. 157, L. 1921; re-en. Sec. 277, R.C.M. 1921; re-en. Sec. 277, R.C.M. 1935; amd. Sec. 3, Ch. 97, L. 1977; R.C.M. 1947, 82-1150.

**18-7-204. Affidavit of printer — allowance of claims.** No claim against the state for legal advertising or any of the publications covered by this part shall be allowed unless there is attached to said claim the certification of the publisher or printer (in the case of corporations or quasi-corporations by the business or advertising manager thereof) properly executed, setting forth that the price or rate charged the state of Montana for the publication for which claim is made is not in excess of the minimum rate charged any other advertiser for publication or advertisement set in the same sized type and published for the same number of insertions. It is hereby declared to be unlawful to make any claim against or to charge or attempt to charge the state of Montana for any publication in excess of the minimum going rate charged any other advertiser for the same publication set in the same sized type and published for the same number of insertions.

**History:** En. Sec. 4, Ch. 157, L. 1921; re-en. Sec. 279, R.C.M. 1921; re-en. Sec. 279, R.C.M. 1935; amd. Sec. 9, Ch. 97, L. 1961; R.C.M. 1947, 82-1152.

**18-7-205. Penalty for false affidavit or overcharge.** Any person or any corporation or any firm or any quasi-corporation who shall violate any provision of this part or swear falsely hereunder or charge or attempt to charge the state of Montana in excess of the prices and rates herein fixed or in any manner circumvent or attempt to circumvent this part or aid or abet any other person, firm, corporation, or quasi-corporation in offense against this part shall be guilty of a misdemeanor and shall on conviction for the first offense be fined not more than \$100 or be imprisoned in the county jail for not more than 3 months or both such fine and imprisonment, in the discretion of the court, and shall on conviction for each subsequent offense be fined not more than \$300 or be imprisoned in the county jail for not more than 6 months or both such fine and imprisonment in the discretion of the court.

**History:** En. Sec. 5, Ch. 157, L. 1921; re-en. Sec. 280, R.C.M. 1921; re-en. Sec. 280, R.C.M. 1935; R.C.M. 1947, 82-1153.

### **Part 3** **Control of State Printing**

**18-7-301. Short title.** This part may be cited as the “State Printing Control Act”.

**History:** En. Sec. 1, Ch. 646, L. 1979.

**18-7-302. Definitions.** As used in this part, the following definitions apply:

(1) “Agency” means each state office, department, board, commission, council, committee, unit of the university system, or other entity or instrumentality of the executive branch, office of the legislative branch, or office of the judicial branch of state government.

(2) “Department” means the department of administration provided for in Title 2, chapter 15, part 10.

(3) “Public document” means any publication of an agency that is meant for dissemination to the public, but does not include educational materials published by a unit of the university system or the superintendent of public instruction, reports of the legislative auditor, travel promotion materials, standard forms, bid specifications, opinions of the attorney general, opinions of the supreme court, session laws, the Administrative Rules of Montana, the Montana Code Annotated, or regular periodical publications sold to the general public solely through subscription and newsstand sale.

**History:** En. Sec. 2, Ch. 646, L. 1979; amd. Sec. 1, Ch. 148, L. 2011.

**18-7-303. Repealed.** Sec. 3, Ch. 148, L. 2011.

**History:** En. Sec. 3, Ch. 646, L. 1979; amd. Sec. 24, Ch. 112, L. 1991; amd. Sec. 24, Ch. 349, L. 1993.

**18-7-304. Department to prepare standards.** The department may prepare recommended standards for state printing of public documents.

**History:** En. Sec. 4, Ch. 646, L. 1979.

**18-7-305. Repealed.** Sec. 3, Ch. 148, L. 2011.

**History:** En. Sec. 5, Ch. 646, L. 1979.

**18-7-306. Public disclosure of costs.** Each agency shall include a public disclosure of costs on all public documents. The public disclosure must contain the following statement, with required information inserted, to be printed on the exterior cover of the publication: "... copies of this public document were published at an estimated cost of \$... per copy, for a total cost of \$..., which includes \$... for printing and \$... for distribution." This statement must be printed in the same size type as the text of the document and must be set in a box composed of a 1-point rule. If the cost of publication cannot be reasonably estimated at the time of publication, the publications must contain the following statement on the exterior cover in lieu of the statement concerning estimated cost: "This document printed at state expense. Information on the cost of publication may be obtained by contacting the department of administration."

**History:** En. Sec. 6, Ch. 646, L. 1979; amd. Sec. 2, Ch. 148, L. 2011.

**18-7-307. Estimation of costs.** The following factors shall be utilized in estimating cost data:

- (1) printing, including all expenditures for production, whether on bid or in-house; and
- (2) circulation, including all expenditures for postage and for salaries of agency or department personnel involved in distribution of the public document.

**History:** En. Sec. 7, Ch. 646, L. 1979.

## Part 4 County Printing

**18-7-401. Purpose of part.** The purpose of this part is to provide:

- (1) for the board of county printing to set maximum prices that may be charged for county legal advertising; and
- (2) for the purchase of county printed forms and materials.

**History:** En. Sec. 2, Ch. 280, L. 1967; amd. Sec. 57, Ch. 348, L. 1974; R.C.M. 1947, 16-1226; amd. Sec. 1, Ch. 507, L. 1995; Sec. 7-5-2401, MCA 2007; redes. 18-7-401 by Sec. 2, Ch. 148, L. 2009.

**18-7-402. Definition.** Unless the context requires otherwise, in this part "board" means the board of county printing provided for in 2-15-1026.

**History:** En. 16-1226.1 by Sec. 58, Ch. 348, L. 1974; R.C.M. 1947, 16-1226.1; amd. Sec. 4, Ch. 274, L. 1981; Sec. 7-5-2402, MCA 2007; redes. 18-7-402 by Sec. 2, Ch. 148, L. 2009.

**18-7-403. Meetings of board of county printing.** The board shall meet when ordered by the governor or requested by a majority of the board members.

**History:** En. Sec. 5, Ch. 280, L. 1967; amd. Sec. 60, Ch. 348, L. 1974; R.C.M. 1947, 16-1229(1); amd. Sec. 2, Ch. 507, L. 1995; Sec. 7-5-2403, MCA 2007; redes. 18-7-403 by Sec. 2, Ch. 148, L. 2009.

**18-7-404. Establishment of maximum prices.** (1) The board shall adopt, by rule, and publish a schedule of maximum prices to be charged for county legal advertising.

(2) The board shall conduct hearings when required to determine maximum rates for county legal advertising. Notice of the hearing must be mailed to the Montana association of counties and the Montana newspaper association.

(3) The board shall deliver, free of charge, to each board of county commissioners in this state a copy of every schedule of maximum prices adopted by the board within 30 days of its publication, together with a notice of the date fixed by the board when the prices will be effective.

(4) The county commissioners shall require each establishment that prints county legal advertising to verify that:

- (a) the legal advertisement was published on the dates ordered by the county and in the style set by the board; and
- (b) the price was not in excess of the maximum price set by the board.

(5) The board may not establish maximum prices for printed county forms.

**History:** En. Sec. 5, Ch. 280, L. 1967; amd. Sec. 60, Ch. 348, L. 1974; R.C.M. 1947, 16-1229(2), (4), (5); amd. Sec. 3, Ch. 507, L. 1995; amd. Sec. 1, Ch. 148, L. 2009; Sec. 7-5-2404, MCA 2007; redes. 18-7-404 by Sec. 2, Ch. 148, L. 2009.

**18-7-405. Adoption of printing standards.** The board shall adopt necessary standards for typeface, type size, type style, and type leading for county legal advertising.

**History:** En. Sec. 5, Ch. 280, L. 1967; amd. Sec. 60, Ch. 348, L. 1974; R.C.M. 1947, 16-1229(3); amd. Sec. 4, Ch. 507, L. 1995; Sec. 7-5-2405, MCA 2007; redes. 18-7-405 by Sec. 2, Ch. 148, L. 2009.

**18-7-406 through 18-7-410 reserved.**

**18-7-411. County advertising — contract.** (1) The county commissioners shall contract for all advertising required by law. The advertising required by law must be awarded to a newspaper that:

- (a) is published in the county;
- (b) has general circulation;
- (c) has been published continuously at least once a week in the county for the 12 months preceding the awarding of the contract; and
- (d) prior to July 1 of each year, has submitted to the clerk and recorder a sworn statement that includes:

- (i) circulation for the prior 12 months;
- (ii) a statement of net distribution;
- (iii) itemization of the circulation that is paid and that is free; and
- (iv) the method of distribution.

(2) A newsletter or other document produced or published by the local government unit is not considered a newspaper that has general circulation as provided in subsection (1).

(3) The term of a contract for county legal advertising may not exceed a period of 2 years.

**History:** En. Sec. 6, Ch. 280, L. 1967; amd. Sec. 1, Ch. 418, L. 1973; amd. Sec. 61, Ch. 348, L. 1974; R.C.M. 1947, 16-1230; amd. Sec. 3, Ch. 364, L. 1979; amd. Sec. 1, Ch. 70, L. 1981; amd. Sec. 1, Ch. 393, L. 1981; amd. Sec. 1, Ch. 152, L. 1985; amd. Sec. 1, Ch. 305, L. 1989; amd. Sec. 5, Ch. 507, L. 1995; amd. Sec. 2, Ch. 439, L. 2007; Sec. 7-5-2411, MCA 2007; redes. 18-7-411 by Sec. 2, Ch. 148, L. 2009; amd. Sec. 13, Ch. 372, L. 2017.

#### **Compiler's Comments**

*2017 Amendment:* Chapter 372 in (1) at end of first sentence deleted “and all printed forms required by the county”; substituted current text in (3) concerning terms of contracts for former (3) and (4) that read: “(3) Contracts for printed forms and materials may be awarded on an annual basis or may be awarded for a specific printing job.

(4) (a) The county clerk and recorder shall maintain a list of willing bidders for county printing and shall notify the printing establishments on the list of any call for bids.

(b) A printing establishment must be added to the county clerk and recorder's list when the clerk and recorder receives a written request from the printing establishment.

(c) The county clerk and recorder may delete the name of any printing establishment from the list if it has not submitted a bid during the previous 365 days.” Amendment effective July 1, 2017.

**18-7-412. County printing contract.** (1) The contract must be let to the printing establishment that in the judgment of the county commissioners is the most suitable for performing the work. The county commissioners shall require a contractor to perform the county printing contract subject to the requirements of Title 18, chapter 1, part 2.

(2) Contracts for printed forms and materials may be awarded on an annual basis or may be awarded for a specific printing job. The term of a contract for county printing may not exceed a period of 2 years.

(3) (a) The county clerk and recorder shall maintain a list of willing bidders for county printing and shall notify the printing establishments on the list of any call for bids.

(b) A printing establishment must be added to the county clerk and recorder's list when the clerk and recorder receives a written request from the printing establishment.

(c) The county clerk and recorder may delete the name of any printing establishment from the list if it has not submitted a bid during the previous 365 days.

(4) This part may not be construed to compel the acceptance of unsatisfactory work.

**History:** En. Sec. 7, Ch. 280, L. 1967; amd. Sec. 2, Ch. 418, L. 1973; R.C.M. 1947, 16-1231(part); amd. Sec. 2, Ch. 152, L. 1985; amd. Sec. 6, Ch. 507, L. 1995; Sec. 7-5-2412, MCA 2007; redes. 18-7-412 by Sec. 2, Ch. 148, L. 2009; amd. Sec. 14, Ch. 372, L. 2017.

#### **Compiler's Comments**

*2017 Amendment:* Chapter 372 substituted current (2), (3), and (4) concerning printed contracts for printed forms and materials, list of willing bidders, and acceptance of unsatisfactory work for former (2) and (3) that read: “(2) This part may not be construed to compel the acceptance of unsatisfactory work.



(3) The term of a contract for county printing or county legal advertising may not exceed a period of 2 years.” Amendment effective July 1, 2017.

**18-7-413. Competitive bids required.** The board of county commissioners shall call for competitive bids:

- (1) from persons or firms qualified to bid on county printing under the terms of this part; or
- (2) for county legal advertising if there is more than one legally qualified newspaper in the county.

**History:** En. Sec. 8, Ch. 280, L. 1967; amd. Sec. 3, Ch. 418, L. 1973; R.C.M. 1947, 16-1232; amd. Sec. 7, Ch. 507, L. 1995; Sec. 7-5-2413, MCA 2007; redes. 18-7-413 by Sec. 2, Ch. 148, L. 2009; amd. Sec. 15, Ch. 372, L. 2017.

**Compiler’s Comments**

*2017 Amendment:* Chapter 372 in (1) after “county printing” inserted “under the terms of this part”; in (2) at end deleted “under the terms of this part”; and made minor changes in style. Amendment effective July 1, 2017.

**18-7-414. Exemption for county fairs.** None of the provisions of this part applies to any printing or advertising that may be required in connection with the holding of county fairs and expositions.

**History:** En. Sec. 9, Ch. 280, L. 1967; amd. Sec. 62, Ch. 348, L. 1974; R.C.M. 1947, 16-1233; Sec. 7-5-2414, MCA 2007; redes. 18-7-414 by Sec. 2, Ch. 148, L. 2009.

## CHAPTER 8 PROCUREMENT OF SERVICES

### Part 2 Architectural, Engineering, and Land Surveying Services

**18-8-201. Statement of policy.** The legislature hereby establishes a state policy that governmental agencies publicly announce requirements for architectural, engineering, and land surveying services and negotiate contracts for such professional services on the basis of demonstrated competence and qualifications for the type of professional services required and at fair and reasonable prices.

**History:** En. Sec. 1, Ch. 51, L. 1987.

**18-8-202. Definitions.** Unless the context clearly indicates otherwise, in this part, the following definitions apply:

- (1) “Agency” means a state agency, local agency, or special district.
- (2) “Architectural, engineering, and land surveying” means services rendered by a person, other than as an employee of an agency, contracting to perform activities within the scope of the general definition of professional practice and licensed for the respective practice as an architect pursuant to Title 37, chapter 65, or an engineer or land surveyor pursuant to Title 37, chapter 67.
- (3) “Licensed professional” or “licensed architect, professional engineer, professional land surveyor” means a person providing professional services who is not an employee of the agency for which the services are provided.
- (4) “Local agency” means a city, town, county, special district, municipal corporation, agency, port district or authority, airport authority, political subdivision of any type, or any other entity or authority of local government, in corporate form or otherwise.
- (5) “Person” means an individual, organization, group, association, partnership, firm, joint venture, or corporation.
- (6) “Special district” means a unit of local government, other than a city, town, or county, authorized by law to perform a single function or a limited number of functions, including but not limited to water districts, irrigation districts, fire districts, fire service areas, school districts, community college districts, hospital districts, sewer districts, and transportation districts.
- (7) “State agency” means a department, agency, commission, bureau, office, or other entity or authority of state government.

**History:** En. Sec. 2, Ch. 51, L. 1987; amd. Sec. 49, Ch. 51, L. 1999; amd. Sec. 5, Ch. 449, L. 2007.

**18-8-203. Public notice of agency requirements.** Each agency shall publish in advance its requirement for professional services. The announcement must state concisely the general

scope and nature of the project or work for which the services are required and the address of a representative of the agency who can provide further details. An agency may comply with this section by:

- (1) publishing an announcement on each occasion when professional services provided by a licensed professional are required by the agency; or
- (2) announcing generally to the public its projected requirement for any category or type of professional services.

**History:** En. Sec. 3, Ch. 51, L. 1987.

**18-8-204. Procedures for selection.** (1) In the procurement of architectural, engineering, and land surveying services, the agency may encourage firms engaged in the lawful practice of their profession to submit annually or biennially a statement of qualifications and performance data. The agency shall evaluate current statements of qualifications and performance data on file with the agency, together with those that may be submitted by other firms regarding the proposed project, and conduct discussions with one or more firms regarding anticipated concepts and the relative utility of alternative methods of approach for furnishing the required services.

(2) (a) The agency shall then select, based on criteria established under agency procedures and guidelines and the law, the firm considered most qualified to provide the services required for the proposed project.

(b) The agency procedures and guidelines must be available to the public and include at a minimum the following criteria as they relate to each firm:

- (i) the qualifications of professional personnel to be assigned to the project;
- (ii) capability to meet time and project budget requirements;
- (iii) location;
- (iv) present and projected workloads;
- (v) related experience on similar projects; and
- (vi) recent and current work for the agency.

(c) The agency shall follow the minimum criteria of this part if no other agency procedures are specifically adopted.

(3) After conducting an evaluation of firms pursuant to subsections (1) and (2)(b), a local agency may enter into a contract with one or more of those firms to provide architectural, engineering, or land surveying services on an as-needed basis for one or more projects and for a term to be mutually agreed to by the parties. Nothing in this subsection prevents a local agency from following the procurement procedures in this part for professional services for a particular project, unless a contract made pursuant to this subsection provides otherwise.

(4) The provisions of this section do not apply to procurement of architectural, engineering, and land surveying services for projects that the department of transportation has determined are part of the design-build contracting program authorized in 60-2-137.

**History:** En. Sec. 4, Ch. 51, L. 1987; amd. Sec. 5, Ch. 192, L. 2003; amd. Sec. 1, Ch. 56, L. 2007; amd. Sec. 1, Ch. 188, L. 2007; amd. Sec. 1, Ch. 308, L. 2017.

**Compiler's Comments**

*2017 Amendment:* Chapter 308 inserted (3) providing for architectural, engineering, or land surveying services on as-needed basis for one or more projects; and made minor changes in style. Amendment effective May 4, 2017.

**18-8-205. Negotiation of contract for services.** (1) The agency shall negotiate a contract with the most qualified firm for architectural, engineering, and land surveying services at a price that the agency determines to be fair and reasonable. In making its determination, the agency shall take into account the estimated value of the services to be rendered, as well as the scope, complexity, and professional nature of the services.

(2) If the agency is unable to negotiate a satisfactory contract with the firm selected at a price the agency determines to be fair and reasonable, negotiations with that firm must be formally terminated and the agency shall select other firms in accordance with 18-8-204 and continue as directed in this section until an agreement is reached or the process is terminated.

(3) The provisions of this section do not apply to the negotiation of contracts for projects that the department of transportation has determined are part of the design-build contracting program authorized in 60-2-137.

**History:** En. Sec. 5, Ch. 51, L. 1987; amd. Sec. 6, Ch. 192, L. 2003; amd. Sec. 2, Ch. 56, L. 2007.

**18-8-206 through 18-8-209 reserved.**

**18-8-210. Energy performance contracts exempt.** This part does not apply to solicitation and award of an investment grade energy audit or energy performance contract pursuant to Title 90, chapter 4, part 11, or to the construction or installation of conservation measures pursuant to the energy performance contract.

**History:** En. Sec. 12, Ch. 162, L. 2005.

**18-8-211. Coordination with other statutes.** (1) This part need not be complied with by an agency when the contracting authority makes a finding in accordance with this or any other applicable law that an emergency requires the immediate execution of the work involved. This part does not relieve the contracting authority from complying with applicable law limiting emergency expenditures.

(2) The limitation on the preparation of working drawings contained in 18-2-111 applies to this part.

(3) The procedure for appointment of architects and consulting engineers pursuant to 18-2-112 applies to this part, except that the agency shall select its proposed list of three architects or consulting engineers in accordance with this part prior to submission to the department of administration.

**History:** En. Sec. 6, Ch. 51, L. 1987; amd. Sec. 19, Ch. 443, L. 1997.

**18-8-212. Exception.** (1) All agencies securing architectural, engineering, and land surveying services for projects for which the fees are estimated not to exceed \$50,000 may contract for those professional services by direct negotiation.

(2) Except as provided in 18-8-204(3), an agency may not separate service contracts or split or break projects for the purpose of circumventing the provisions of this part.

**History:** En. Sec. 7, Ch. 51, L. 1987; amd. Sec. 3, Ch. 22, L. 1993; amd. Sec. 7, Ch. 518, L. 1993; amd. Sec. 1, Ch. 162, L. 2003; amd. Sec. 2, Ch. 308, L. 2017.

**Compiler's Comments**

*2017 Amendment:* Chapter 308 in (1) substituted "\$50,000" for "\$20,000"; in (2) at beginning inserted exception clause; and made minor changes in style. Amendment effective May 4, 2017.

## CHAPTER 11 STATE-TRIBAL COOPERATIVE AGREEMENTS

### Part 1 General Provisions

**18-11-101. Short title — purpose.** (1) This chapter shall be known and may be cited as the "State-Tribal Cooperative Agreements Act".

(2) It is the intent of the legislature that this part be used to promote cooperation between the state or a public agency and a sovereign tribal government in mutually beneficial activities and services.

(3) It is the goal of the legislature to prevent the possibility of dual taxation by governments while promoting state, local, and tribal economic development.

**History:** En. Sec. 1, Ch. 309, L. 1981; (2), (3) En. Sec. 1, Ch. 625, L. 1993.

**18-11-102. Definitions.** As used in this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Public agency" means any political subdivision, including municipalities, counties, school districts, and any agency or department of the state of Montana.

(2) "Tribal government" means the officially recognized government of any Indian tribe, nation, or other organized group or community located in Montana exercising self-government powers and recognized as eligible for services provided by the United States to Indians because of their status as Indians.

**History:** En. Sec. 2, Ch. 309, L. 1981.

**18-11-103. Authorization to enter agreement — general contents.** (1) Any one or more public agencies may enter into an agreement with any one or more tribal governments to:

(a) perform any administrative service, activity, or undertaking that a public agency or a tribal government entering into the contract is authorized by law to perform; and

(b) assess and collect or refund any tax or license or permit fee lawfully imposed by the state or a public agency and a tribal government and to share or refund the revenue from the assessment and collection.

(2) The agreement must be authorized and approved by the governing body of each party to the agreement. If a state agency is a party to an agreement, the governor or the governor's designee is the governing body.

(3) The agreement must set forth fully the powers, rights, obligations, and responsibilities of the parties to the agreement.

(4) (a) Prior to entering into an agreement on taxation with a tribal government, a public agency shall provide public notice and hold a public meeting on the reservation whose government is a party to the proposed agreement for the purpose of receiving comments from and providing written and other information to interested persons with respect to the proposed agreement.

(b) At least 14 days but not more than 30 days prior to the date scheduled for the public meeting, a notice of the proposed agreement and public meeting must be published in a newspaper of general circulation in the county or counties in which the reservation is located.

(c) At the time the notice of the meeting is published, a synopsis of the proposed agreement must be made available to interested persons.

**History:** En. Sec. 3, Ch. 309, L. 1981; amd. Sec. 2, Ch. 625, L. 1993.

**18-11-104. Detailed contents of agreement.** (1) The agreement authorized by 18-11-103 must specify the following:

(a) its duration;

(b) the precise organization, composition, and nature of any separate legal entity created by the agreement;

(c) the purpose of the agreement;

(d) the manner of financing the agreement and establishing and maintaining a budget for the agreement;

(e) the method to be employed in accomplishing the partial or complete termination of the agreement and for disposing of property upon partial or complete termination;

(f) provision for administering the agreement, which may include creation of a joint board responsible for administration;

(g) the manner of acquiring, holding, and disposing of real and personal property used in the agreement; and

(h) other necessary and proper matters.

(2) If an agreement involves law enforcement, it must also include:

(a) the minimum training standards and qualifications of law enforcement personnel;

(b) the respective liability of each public agency and tribal government for the actions of law enforcement officers when acting under the provisions of an agreement;

(c) the minimum insurance required of both the public agency and the tribal government; and

(d) the exact chain of command to be followed by law enforcement officers acting under the provisions of an agreement.

(3) If an agreement involves the assessment and collection or refund of a similar tax or license or permit fee by the state or a public agency and a tribal government, it must also include:

(a) the procedure for determining the amount of revenue to be shared by the state or a public agency and the tribal government;

(b) the administrative procedures for collection of the shared revenue;

(c) the minimum insurance or bonding, if any, required by the state or a public agency or the tribal government;

(d) a statement specifying the administrative expenses, if any, to be deducted pursuant to 18-11-112 by the collector of the tax or license or permit fee;

(e) a statement that the state or a public agency or the tribal government collecting the tax or license or permit fee is subject to an audit report by a mutually agreed upon auditor of the revenue collected and administrative expenses;

(f) a statement that the state or a public agency and the tribal government will cooperate to collect only one tax and will share or refund the revenue as specified in the agreement;

(g) a statement that a taxpayer may not be required to pay both the state tax and the tribal tax but shall pay only one tax to one government in an amount established in the agreement; and

(h) a statement that the parties to the agreement are not forfeiting any legal rights to apply their respective taxes by entering into an agreement, except as specifically set forth in the agreement.

**History:** En. Sec. 4, Ch. 309, L. 1981; amd. Sec. 3, Ch. 625, L. 1993.

**18-11-105. Submission of agreement to attorney general.** (1) As a condition precedent to an agreement made under this chapter becoming effective, it must have the approval of the attorney general of Montana.

(2) The attorney general shall approve an agreement submitted under this chapter unless the attorney general finds that the agreement is not in proper form, does not meet the requirements set forth in this chapter, or otherwise does not conform to the laws of Montana. If the attorney general disapproves an agreement, the attorney general shall provide a detailed, written statement to the governing bodies of the public agency and tribal government concerned, specifying the reasons for disapproval.

(3) If the attorney general does not disapprove the agreement within 30 days after its submission, it must be considered approved.

**History:** En. Sec. 5, Ch. 309, L. 1981; amd. Sec. 228, Ch. 56, L. 2009.

**18-11-106. Repealed.** Sec. 2, Ch. 38, L. 1985.

**History:** En. Sec. 6, Ch. 309, L. 1981.

**18-11-107. Filing of agreement.** (1) Within 60 days after approval by the attorney general and signature of the parties, an agreement made pursuant to this chapter must be filed with:

(a) the regional office of the bureau of Indian affairs of the United States department of the interior having trust responsibility for the tribe that is party to the agreement or its successor agency;

(b) each county clerk and recorder of each county where the principal office of one of the parties to the agreement is located, except as provided in (2) of this section;

(c) the secretary of state; and

(d) the affected tribal government.

(2) If a party to the agreement is a state agency, the agreement need not be filed with the county clerk and recorder for Lewis and Clark County.

**History:** En. Sec. 7, Ch. 309, L. 1981; amd. Sec. 1, Ch. 38, L. 1985; amd. Sec. 1, Ch. 54, L. 2001.

**18-11-108. Revocation of agreement.** An agreement made pursuant to this chapter is subject to revocation by any party upon 6 months' notice to the other unless a different notice period of time is provided for within the agreement. No agreement may provide for a notice period for revocation in excess of 5 years.

**History:** En. Sec. 8, Ch. 309, L. 1981.

**18-11-109. Authorization to appropriate funds for purpose of agreement.** Any public agency entering into an agreement pursuant to this chapter may appropriate funds for and may sell, lease, or otherwise give or supply material to any entity created for the purpose of performance of the agreement and may provide such personnel or services therefor as is within its legal power to furnish.

**History:** En. Sec. 9, Ch. 309, L. 1981.

**18-11-110. Specific limitations on agreements.** Nothing in this chapter may be construed to authorize an agreement that:

(1) is not permitted by federal law. However, the parties are encouraged to deal with substantive matters and enforcement matters that can be mutually agreed upon, but no such agreement may be considered to affect the underlying jurisdictional authority of any party unless expressly authorized by congress.

(2) authorizes a public agency or tribal government, either separately or pursuant to agreement, to expand or diminish the jurisdiction presently exercised by the government of the United States to make criminal laws for or enforce criminal laws in Indian country; or



(3) authorizes a public agency or tribal government to enter into an agreement except as authorized by their own organizational documents or enabling laws.

**History:** En. Sec. 10, Ch. 309, L. 1981; amd. Sec. 1, Ch. 81, L. 1985.

**18-11-111. Repealed.** Sec. 2, Ch. 54, L. 2001.

**History:** En. Sec. 11, Ch. 309, L. 1981.

**18-11-112. Revenue account — administrative account — distribution of revenue.**

(1) The revenue collected by the state, a public agency, or a tribal government under a state-tribal cooperative agreement and the administrative expenses, if any, deducted under subsection (2) from the total revenue collected must be deposited in separate special revenue accounts.

(2) Administrative expenses deducted by the state, a public agency, or a tribal government for collection of revenue may not exceed the actual cost of collecting the revenue on a reservation or 5%, whichever is less. Money from an administrative account may be expended only for the purpose of administering the tax or fee imposed under the state-tribal cooperative agreement or for paying the costs incurred in terminating the agreement.

(3) Except for administrative expenses, if any, deducted under subsection (2), revenue collected by a public agency under a state-tribal agreement must be deposited in separate special revenue accounts and must be disbursed as provided for in the agreement. If a public agency that is a party to an agreement is a local government, the agreement must provide for the disposition of revenue.

(4) Money deposited in a state administrative expenses account and in a state special revenue account is statutorily appropriated, as provided in 17-7-502, to the department or public agency that is a party to a state-tribal cooperative agreement under 18-11-103, for the purpose of paying administrative expenses or paying to a tribe its portion of the tax or fee.

(5) If a tax or license or permit fee is collected or refunded pursuant to a state-tribal cooperative agreement, each party must receive its share as provided in the agreement, notwithstanding any contrary state statutory, public agency ordinance, or tribal ordinance distribution formula. For distribution of the remainder, the state statutory, public agency, or tribal distribution formula must apply as if the amount remaining after each party to the agreement receives its share were the total revenue collected from the tax or license or permit fee.

**History:** En. Sec. 4, Ch. 625, L. 1993.

**18-11-113 through 18-11-120 reserved.**

**18-11-121. Authorization to become contracting employer in public employees' retirement system.** A separate legal entity created and authorized under this part that manages or operates an irrigation project may contract with the public employees' retirement board as provided in Title 19, chapter 3, part 2, to become a contracting employer in the public employees' retirement system.

**History:** En. Sec. 1, Ch. 404, L. 2011.

## TITLE 19

### PUBLIC RETIREMENT SYSTEMS

#### CHAPTER 1

#### SOCIAL SECURITY

##### Part 1

##### General Provisions

**19-1-101. Declaration of policy.** In order to extend to employees of the state and its political subdivisions, including employees of the state and its political subdivisions who are members of the public employees' retirement system of the state of Montana, and to the dependents and survivors of such employees the basic protection accorded to others by the old

age and survivors' insurance system embodied in the Social Security Act, it is hereby declared to be the policy of the legislature, subject to the limitations of this chapter, that such steps be taken as to provide such protection to employees of the state and its political subdivisions on as broad a basis as is permitted under the Social Security Act. It is also the policy of the legislature that the protection afforded employees in positions covered by the public employees' retirement system of the state of Montana on the date an agreement under this chapter is made applicable to service performed in such positions or receiving periodic benefits under such retirement system at such time will not be impaired as a result of making the agreement so applicable or as a result of legislative enactment in anticipation thereof.

**History:** En. Sec. 1, Ch. 44, L. 1953; amd. Sec. 1, Ch. 270, L. 1955; R.C.M. 1947, 59-1101.

**19-1-102. Definitions.** For the purposes of this chapter, the following definitions apply:

(1) "Administrator" means the employee of the department who is designated as the state social security administrator and is delegated the authority to carry out the requirements of this chapter.

(2) "Commissioner of social security" means the commissioner of the United States social security administration or an individual to whom the commissioner of social security has delegated any function under the Social Security Act with respect to coverage under that act of employees of states and their political subdivisions, except:

(a) with respect to an action taken prior to April 11, 1953, the term means the federal security administrator or an individual to whom the administrator delegated any function; and

(b) with respect to an action taken on or after April 11, 1953, through March 30, 1995, the term means the secretary of the United States department of health and human services or an individual to whom the secretary delegated any function.

(3) "Department" means the department of administration provided for in 2-15-1001.

(4) "Employee" means an elective or appointive officer or employee of the state or a political subdivision of the state.

(5) "Employee tax" means the tax imposed by section 3101 of the Internal Revenue Code, 26 U.S.C. 3101, as amended.

(6) (a) "Employment" means any service performed for the employer by an employee of the state or any political subdivision of the state, except:

(i) service that in the absence of an agreement entered into under this chapter would constitute employment as defined in the Social Security Act; or

(ii) service that under the Social Security Act may not be included in an agreement between the state and the commissioner of social security entered into under this chapter.

(b) Service performed by civilian employees of national guard units is specifically included within the term "employment".

(c) Service that under the Social Security Act may be included in an agreement only upon certification by the governor in accordance with section 218(d)(3) of that act is included in the term "employment" if and when the governor issues, with respect to the service, a certificate to the commissioner of social security pursuant to 19-1-304.

(7) "Federal Insurance Contributions Act" means subchapters A and B of chapter 21 of the Internal Revenue Code.

(8) "Political subdivision" means an instrumentality of the state, of one or more of its political subdivisions, or of the state and one or more of its political subdivisions, including leagues or associations, but only if the instrumentality is a legally constituted entity that is legally separate and distinct from the state or subdivision and only if its employees are not by virtue of their relation to the entity employees of the state or subdivision. The term includes special districts or authorities created by the legislature or local governments, including but not limited to school districts and housing authorities.

(9) "Social Security Act" means the act of congress approved August 14, 1935, chapter 531, 49 Stat. 620, officially cited as the "Social Security Act", including regulations and requirements issued pursuant to the act, as the act has been and may be amended.

(10) "Wages" means all remuneration for employment, including the cash value of all remuneration paid in any medium other than cash, except that the term does not include that part of remuneration that, even if it were for employment within the meaning of the Federal Insurance Contributions Act, would not constitute wages within the meaning of that act.

**History:** En. Sec. 2, Ch. 44, L. 1953; amd. Sec. 2, Ch. 270, L. 1955; amd. Sec. 1, Ch. 64, L. 1977; amd. Sec. 4, Ch. 132, L. 1977; R.C.M. 1947, 59-1102; amd. Sec. 32, Ch. 10, L. 1993; amd. Sec. 1, Ch. 58, L. 1999; amd. Sec. 47, Ch. 114, L. 2003; amd. Sec. 1, Ch. 138, L. 2015; amd. Sec. 1, Ch. 250, L. 2015.

**19-1-103. Exclusions.** This chapter does not apply to the provisions of any retirement plan for firefighters.

**History:** En. Sec. 8, Ch. 44, L. 1953; amd. and redes. as Sec. 10, Ch. 44, L. 1953 by Sec. 10, Ch. 270, L. 1955; amd. Sec. 3, Ch. 97, L. 1959; amd. Sec. 1, Ch. 122, L. 1974; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 59-1108; amd. Sec. 2, Ch. 250, L. 2015.

**19-1-104. Retirement systems to be considered separate.** (1) Pursuant to section 218(d)(6) of the Social Security Act, 42 U.S.C. 418(d)(6), the public employees' retirement system of the state of Montana is, for the purposes of this chapter, considered a separate retirement system with respect to the state and a separate retirement system with respect to each political subdivision having positions covered by the system.

(2) Pursuant to section 218(c) of the Social Security Act, 42 U.S.C. 418(c), the Montana judges' retirement system, the sheriffs' retirement system, the Montana state game wardens' and peace officers' retirement system, the highway patrol officers' retirement system of the state of Montana, the public employees' retirement system of the state of Montana, and each municipal police retirement fund and each city participating in the municipal police officers' retirement system are, for the purposes of this chapter, considered separate retirement systems with respect to the state and separate retirement systems with respect to each political subdivision having positions covered by those systems.

**History:** En. as Sec. 3, Ch. 44, L. 1953 by Sec. 3, Ch. 270, L. 1955; amd. Sec. 2, Ch. 122, L. 1974; amd. Sec. 2, Ch. 64, L. 1977; R.C.M. 1947, 59-1102.1(1); amd. Sec. 2, Ch. 114, L. 1979; amd. Sec. 1, Ch. 264, L. 1981; amd. Sec. 1, Ch. 217, L. 1989; amd. Sec. 101, Ch. 42, L. 1997; amd. Sec. 12, Ch. 223, L. 1997; amd. Sec. 3, Ch. 250, L. 2015.

## Part 2 Administration

**19-1-201. Department may adopt rules.** The department may adopt rules necessary to implement the provisions of this chapter.

**History:** En. Sec. 7, Ch. 44, L. 1953; amd. and redes. as Sec. 9, Ch. 44, L. 1953 by Sec. 9, Ch. 270, L. 1955; R.C.M. 1947, 59-1107; amd. Sec. 4, Ch. 250, L. 2015.

**19-1-202. Costs of administration.** All costs for the administration of this chapter must be charged to the department.

**History:** En. Sec. 6, Ch. 44, L. 1953; amd. and redes. as Sec. 8, Ch. 44, L. 1953 by Sec. 8, Ch. 270, L. 1955; amd. Sec. 5, Ch. 248, L. 1965; amd. Sec. 2, Ch. 109, L. 1967; amd. Sec. 5, Ch. 64, L. 1977; R.C.M. 1947, 59-1106; amd. Sec. 1, Ch. 282, L. 1983; amd. Sec. 3, Ch. 412, L. 1995; amd. Sec. 2, Ch. 58, L. 1999; amd. Sec. 5, Ch. 250, L. 2015.

## Part 3 Referendum and Certification

**19-1-301. Authorization of referendum by governor.** With respect to members of the public employees', highway patrol officers', judges', and game wardens' and peace officers' retirement systems, the governor is empowered to authorize a referendum, and with respect to the employees of any political subdivision, the governor shall authorize a referendum upon the request of the governing body of the subdivision.

**History:** En. as Sec. 3, Ch. 44, L. 1953 by Sec. 3, Ch. 270, L. 1955; amd. Sec. 2, Ch. 122, L. 1974; amd. Sec. 98, Ch. 326, L. 1974; amd. Sec. 2, Ch. 64, L. 1977; R.C.M. 1947, 59-1102.1(2); amd. Sec. 2, Ch. 264, L. 1981; amd. Sec. 1, Ch. 217, L. 1989; amd. Sec. 12, Ch. 223, L. 1997; amd. Sec. 229, Ch. 56, L. 2009.

**19-1-302. Conduct of referendum.** The governor shall designate the department director, who shall direct the administrator to conduct and supervise a referendum. The referendum must be conducted in accordance with the requirements of section 218(d)(3) of the Social Security Act, 42 U.S.C. 418(d)(3), on the question of whether service in positions covered by a retirement system established by the state or by a political subdivision thereof should be excluded from or included under this chapter.

**History:** En. as Sec. 3, Ch. 44, L. 1953 by Sec. 3, Ch. 270, L. 1955; amd. Sec. 2, Ch. 122, L. 1974; amd. Sec. 98, Ch. 326, L. 1974; amd. Sec. 2, Ch. 64, L. 1977; R.C.M. 1947, 59-1102.1(3); amd. Sec. 6, Ch. 250, L. 2015.

**19-1-303. Notice of referendum.** The notice of referendum required by section 218(d)(3)(C) of the Social Security Act, 42 U.S.C. 418(d)(3)(C), to be given to employees must contain or be accompanied by a statement, in the form and detail that the department director, acting through the administrator, considers necessary and sufficient, informing the employees of the rights that will accrue to them and their dependents and survivors and the liabilities to which they will be subject if their services are included under an agreement under this chapter.

**History:** En. as Sec. 3, Ch. 44, L. 1953 by Sec. 3, Ch. 270, L. 1955; amd. Sec. 2, Ch. 122, L. 1974; amd. Sec. 98, Ch. 326, L. 1974; amd. Sec. 2, Ch. 64, L. 1977; R.C.M. 1947, 59-1102.1(4); amd. Sec. 7, Ch. 250, L. 2015.

**19-1-304. Certification of referendum by governor.** When the department receives satisfactory evidence that the conditions specified in section 218(d)(3) of the Social Security Act, 42 U.S.C. 418(d)(3), have been met, the governor shall certify the results of the referendum to the commissioner of social security.

**History:** En. as Sec. 3, Ch. 44, L. 1953 by Sec. 3, Ch. 270, L. 1955; amd. Sec. 2, Ch. 122, L. 1974; amd. Sec. 98, Ch. 326, L. 1974; amd. Sec. 2, Ch. 64, L. 1977; R.C.M. 1947, 59-1102.1(5); amd. Sec. 33, Ch. 10, L. 1993; amd. Sec. 2, Ch. 138, L. 2015; amd. Sec. 8, Ch. 250, L. 2015.

## Part 4 Federal-State Agreement

**19-1-401. Authority for federal-state agreement.** The department director, with the approval of the governor, may enter into an agreement on behalf of the state with the commissioner of social security, consistent with the terms and provisions of this chapter, for the purpose of extending the benefits of the federal old age and survivors' insurance system to employees of the state or any political subdivision of the state with respect to services specified in the agreement that constitute "employment", as defined in 19-1-102.

**History:** En. Sec. 3, Ch. 44, L. 1953; amd. and redes. as Sec. 4, Ch. 44, L. 1953 by Sec. 4, Ch. 270, L. 1955; amd. Sec. 1, Ch. 97, L. 1959; R.C.M. 1947, 59-1103(part); amd. Sec. 34, Ch. 10, L. 1993; amd. Sec. 3, Ch. 138, L. 2015; amd. Sec. 9, Ch. 250, L. 2015.

**19-1-402. Contents of federal-state agreement.** The agreement authorized by 19-1-401 may contain provisions relating to coverage, benefits, effective date, and modification of the agreement, administration, and other appropriate provisions as the department director and the commissioner of social security agree upon. Except as otherwise required or permitted by the Social Security Act regarding the services to be covered, the agreement must provide that:

(1) benefits will be provided for employees whose services are covered by the agreement and for their dependents and survivors on the same basis as though the services constituted employment within the meaning of Title II of the Social Security Act;

(2) the agreement must be effective with respect to services in employment covered by the agreement performed after a date specified in the agreement, but may not be effective with respect to services performed prior to the first day of the calendar year in which the agreement is entered into or in which the modification of the agreement making it applicable to services is entered into, except that the effective date may be made retroactive to the extent permitted by section 218(e) of the Social Security Act, 42 U.S.C. 418(e);

(3) all services that constitute employment and are performed by employees of the state must be covered by the agreement; and

(4) all services that constitute employment, are performed by employees of a political subdivision of the state, and are covered by a plan that is in conformity with the terms of the agreement and that has been approved by the department under Title 19, chapter 1, part 5, must be covered by the agreement.

**History:** En. Sec. 3, Ch. 44, L. 1953; amd. and redes. as Sec. 4, Ch. 44, L. 1953 by Sec. 4, Ch. 270, L. 1955; amd. Sec. 1, Ch. 97, L. 1959; R.C.M. 1947, 59-1103(part); amd. Sec. 35, Ch. 10, L. 1993; amd. Sec. 102, Ch. 42, L. 1997; amd. Sec. 1, Ch. 161, L. 2009; amd. Sec. 4, Ch. 138, L. 2015; amd. Sec. 10, Ch. 250, L. 2015.

## Part 5 Plans for Employees of Political Subdivisions

**19-1-501. Submission of plan and agreement.** Each political subdivision of the state shall submit for approval by the department a plan and agreement between the state and the

political subdivision for extending the benefits of Title II of the Social Security Act, in conformity with applicable provisions of the act, to employees of the political subdivision.

**History:** En. Sec. 4, Ch. 44, L. 1953; amd. and red. as Sec. 6, Ch. 44, L. 1953 by Sec. 6, Ch. 270, L. 1955; amd. Sec. 2, Ch. 97, L. 1959; amd. Sec. 199, Ch. 147, L. 1963; amd. Sec. 3, Ch. 64, L. 1977; R.C.M. 1947, 59-1104(part); amd. Sec. 11, Ch. 250, L. 2015.

**19-1-502. Approval of plan and agreement by department.** (1) A plan and agreement and any amendment of the plan and agreement must be approved by the department if the administrator finds that the plan and agreement, or an amendment to the plan and agreement, are in conformity with the department's requirements.

(2) The department may not finally refuse to approve a plan and agreement submitted by a political subdivision under 19-1-501 and may not terminate an approved plan and agreement without reasonable notice and opportunity for hearing to the affected political subdivision.

**History:** En. Sec. 4, Ch. 44, L. 1953; amd. and red. as Sec. 6, Ch. 44, L. 1953 by Sec. 6, Ch. 270, L. 1955; amd. Sec. 2, Ch. 97, L. 1959; amd. Sec. 199, Ch. 147, L. 1963; amd. Sec. 3, Ch. 64, L. 1977; R.C.M. 1947, 59-1104(part); amd. Sec. 12, Ch. 250, L. 2015.

**19-1-503. Required provisions of plan and agreement.** A plan and agreement may not be approved by the department unless:

(1) they are in conformity with the requirements of the Social Security Act and with the agreement entered into under 19-1-401 and 19-1-402;

(2) they provide that all services that constitute employment and that are performed by employees of the political subdivisions will be covered by the plan and agreement, except that the plan and agreement may exclude services performed by individuals to whom section 218(c)(3)(B) of the Social Security Act, 42 U.S.C. 418(c)(3)(B), is applicable.

**History:** En. Sec. 4, Ch. 44, L. 1953; amd. and red. as Sec. 6, Ch. 44, L. 1953 by Sec. 6, Ch. 270, L. 1955; amd. Sec. 2, Ch. 97, L. 1959; amd. Sec. 199, Ch. 147, L. 1963; amd. Sec. 3, Ch. 64, L. 1977; R.C.M. 1947, 59-1104(2); amd. Sec. 36, Ch. 10, L. 1993; amd. Sec. 103, Ch. 42, L. 1997; amd. Sec. 2, Ch. 161, L. 2009; amd. Sec. 13, Ch. 250, L. 2015.

## **Part 6 Contribution Account (Repealed)**

**19-1-601. Repealed.** Sec. 5, Ch. 161, L. 2009.

**History:** En. Sec. 5, Ch. 44, L. 1953; amd. and red. as Sec. 7, Ch. 44, L. 1953 by Sec. 7, Ch. 270, L. 1955; amd. Sec. 200, Ch. 147, L. 1963; amd. Sec. 1, Ch. 109, L. 1967; amd. Sec. 1, Ch. 124, L. 1969; amd. Sec. 4, Ch. 64, L. 1977; R.C.M. 1947, 59-1105(1).

**19-1-602. Repealed.** Sec. 5, Ch. 161, L. 2009.

**History:** En. Sec. 5, Ch. 44, L. 1953; amd. and red. as Sec. 7, Ch. 44, L. 1953 by Sec. 7, Ch. 270, L. 1955; amd. Sec. 200, Ch. 147, L. 1963; amd. Sec. 1, Ch. 109, L. 1967; amd. Sec. 1, Ch. 124, L. 1969; amd. Sec. 4, Ch. 64, L. 1977; R.C.M. 1947, 59-1105(3); amd. Sec. 3, Ch. 264, L. 1981; amd. Sec. 1, Ch. 4, Sp. L. June 1986; amd. Sec. 4, Ch. 412, L. 1995; amd. Sec. 3, Ch. 58, L. 1999.

**19-1-603. Repealed.** Sec. 5, Ch. 161, L. 2009.

**History:** En. Sec. 5, Ch. 44, L. 1953; amd. and red. as Sec. 7, Ch. 44, L. 1953 by Sec. 7, Ch. 270, L. 1955; amd. Sec. 200, Ch. 147, L. 1963; amd. Sec. 1, Ch. 109, L. 1967; amd. Sec. 1, Ch. 124, L. 1969; amd. Sec. 4, Ch. 64, L. 1977; R.C.M. 1947, 59-1105(4).

**19-1-604. Repealed.** Sec. 5, Ch. 161, L. 2009.

**History:** En. Sec. 5, Ch. 44, L. 1953; amd. and red. as Sec. 7, Ch. 44, L. 1953 by Sec. 7, Ch. 270, L. 1955; amd. Sec. 200, Ch. 147, L. 1963; amd. Sec. 1, Ch. 109, L. 1967; amd. Sec. 1, Ch. 124, L. 1969; amd. Sec. 4, Ch. 64, L. 1977; R.C.M. 1947, 59-1105(5).

## **Part 7 Contributions**

**19-1-701. Repealed.** Sec. 5, Ch. 161, L. 2009.

**History:** En. Sec. 5, Ch. 44, L. 1953; amd. and red. as Sec. 7, Ch. 44, L. 1953 by Sec. 7, Ch. 270, L. 1955; amd. Sec. 200, Ch. 147, L. 1963; amd. Sec. 1, Ch. 109, L. 1967; amd. Sec. 1, Ch. 124, L. 1969; amd. Sec. 4, Ch. 64, L. 1977; R.C.M. 1947, 59-1105(2).

**19-1-702. Contributions by state employees.** (1) Every employee of the state whose services are covered by an agreement entered into under 19-1-401 and 19-1-402 must be required



to pay, for the period of coverage, contributions with respect to wages equal to the amount of employee tax that would be imposed by the Federal Insurance Contributions Act if the services constituted employment within the meaning of that act. The liability arises in consideration of the employee's retention in the service of the state or entry into service.

(2) The contribution imposed by this section must be collected by deducting the amount of the contribution from wages paid, but failure to make the deduction does not relieve the employee from liability for the contribution.

(3) If more or less than the correct amount of the contribution imposed by this section is paid or deducted with respect to any remuneration, proper adjustments or a refund if adjustment is impracticable must be made, without interest, in the manner and at times that the department prescribes.

**History:** En. as Sec. 5, Ch. 44, L. 1953 by Sec. 5, Ch. 270, L. 1955; amd. Sec. 198, Ch. 147, L. 1963; R.C.M. 1947, 59-1103.1; amd. Sec. 230, Ch. 56, L. 2009; amd. Sec. 14, Ch. 250, L. 2015.

**19-1-703. Repealed.** Sec. 5, Ch. 161, L. 2009.

**History:** En. Sec. 5, Ch. 44, L. 1953; amd. and reded. as Sec. 7, Ch. 44, L. 1953 by Sec. 7, Ch. 270, L. 1955; amd. Sec. 200, Ch. 147, L. 1963; amd. Sec. 1, Ch. 109, L. 1967; amd. Sec. 1, Ch. 124, L. 1969; amd. Sec. 4, Ch. 64, L. 1977; R.C.M. 1947, 59-1105(6).

**19-1-704. Contribution by political subdivision.** Each political subdivision with a plan and agreement approved under part 5 of this chapter shall pay, at the time or times prescribed by the department, contributions with respect to wages, as defined in 19-1-102, in the amounts and at the rates specified in the applicable agreement entered into by the department director on behalf of the state under 19-1-401 and 19-1-402.

**History:** En. Sec. 4, Ch. 44, L. 1953; amd. and reded. as Sec. 6, Ch. 44, L. 1953 by Sec. 6, Ch. 270, L. 1955; amd. Sec. 2, Ch. 97, L. 1959; amd. Sec. 199, Ch. 147, L. 1963; amd. Sec. 3, Ch. 64, L. 1977; R.C.M. 1947, 59-1104(4)(a); amd. Sec. 15, Ch. 250, L. 2015.

**19-1-705. Deduction of employee contribution by political subdivision.** (1) Each political subdivision required to make payment under 19-1-704 shall, in consideration of the employee's retention in or entry into employment impose upon each of its employees, as to services that are covered by an approved plan, a contribution with respect to wages, not exceeding the amount of the employee tax that would be imposed by the Federal Insurance Contributions Act if the services constituted employment within the meaning of that act and shall deduct the amount of the contributions from wages paid.

(2) Contributions collected partially discharge the liability of the political subdivision or instrumentality under 19-1-704. Failure to deduct the contribution does not relieve the employee or employer of liability for the contributions.

**History:** En. Sec. 4, Ch. 44, L. 1953; amd. and reded. as Sec. 6, Ch. 44, L. 1953 by Sec. 6, Ch. 270, L. 1955; amd. Sec. 2, Ch. 97, L. 1959; amd. Sec. 199, Ch. 147, L. 1963; amd. Sec. 3, Ch. 64, L. 1977; R.C.M. 1947, 59-1104(4)(b); amd. Sec. 231, Ch. 56, L. 2009.

**19-1-706. Repealed.** Sec. 5, Ch. 161, L. 2009.

**History:** En. Sec. 4, Ch. 44, L. 1953; amd. and reded. as Sec. 6, Ch. 44, L. 1953 by Sec. 6, Ch. 270, L. 1955; amd. Sec. 2, Ch. 97, L. 1959; amd. Sec. 199, Ch. 147, L. 1963; amd. Sec. 3, Ch. 64, L. 1977; R.C.M. 1947, 59-1104(5); amd. Sec. 4, Ch. 264, L. 1981.

## Part 8 Participation of Teachers

**19-1-801. Repealed.** Sec. 5, Ch. 161, L. 2009.

**History:** En. Sec. 5, Ch. 271, L. 1955; R.C.M. 1947, 59-1113.

**19-1-802. No effect on rights under other laws.** Nothing in this part may be construed to prejudice or otherwise affect any rights, benefits, or privileges heretofore accrued under any other law of this state. It is the intent of this legislation to permit supplementation of present retirement benefits under existing law with social security benefits. It is also the intent to permit teachers and staff in any district or institution of higher education so electing to become members of more than one retirement system, to receive credit under more than one system for the same service, and to receive benefits from more than one system. No benefits received under either system may be deducted from any other or separate system.

**History:** En. Sec. 4, Ch. 271, L. 1955; amd. Sec. 9, Ch. 64, L. 1977; R.C.M. 1947, 59-1112.

**19-1-803 through 19-1-810 reserved.**

**19-1-811. Referendum by school district.** On approval by the board of trustees, a school district of the state may conduct and supervise a referendum or may request that the department conduct and supervise a referendum. The referendum must be conducted pursuant to section 218 of the federal Social Security Act, 42 U.S.C. 418, among the members of the staff and teachers of the school or schools under the jurisdiction of the board of trustees. If the majority of votes cast in the referendum indicate that the staff and teachers approve social security coverage, then the board of trustees shall certify to the department that the conditions for social security coverage, required by section 218 of the Social Security Act, have been complied with.

**History:** En. Sec. 1, Ch. 271, L. 1955; amd. Sec. 20, Ch. 391, L. 1973; amd. Sec. 6, Ch. 64, L. 1977; R.C.M. 1947, 59-1109; amd. Sec. 16, Ch. 250, L. 2015.

**19-1-812. Eligibility of staff and teachers.** Upon the certification provided for in 19-1-811, the staff and teachers of the district are eligible for coverage under the provisions of the federal Social Security Act.

**History:** En. Sec. 2, Ch. 271, L. 1955; amd. Sec. 1, Ch. 253, L. 1965; amd. Sec. 21, Ch. 391, L. 1973; amd. Sec. 7, Ch. 64, L. 1977; R.C.M. 1947, 59-1110(1).

**19-1-813. Collection of contributions.** The fiscal officer of the school district shall collect the contributions required under section 218 of the Social Security Act, 42 U.S.C. 418, from the staff and teachers by payroll deduction and from the school district as the employer.

**History:** En. Sec. 2, Ch. 271, L. 1955; amd. Sec. 1, Ch. 253, L. 1965; amd. Sec. 21, Ch. 391, L. 1973; amd. Sec. 7, Ch. 64, L. 1977; R.C.M. 1947, 59-1110(2); amd. Sec. 3, Ch. 161, L. 2009.

**19-1-814. Repealed.** Sec. 5, Ch. 161, L. 2009.

**History:** En. Sec. 2, Ch. 271, L. 1955; amd. Sec. 1, Ch. 253, L. 1965; amd. Sec. 21, Ch. 391, L. 1973; amd. Sec. 7, Ch. 64, L. 1977; R.C.M. 1947, 59-1110(3).

**19-1-815. Merger of reporting entities.** If the approval of referenda at different times results in the establishment of two separate social security reporting entities for a high school district and an elementary school district and the high school building is located in the elementary school district, the department shall, upon request of the boards of trustees in both districts, merge the two reporting entities to form a single reporting entity if the elementary school district and high school district:

(1) have boards of trustees of which a majority of each board is composed of the same persons;

(2) are administered by the same executive officer; and

(3) have payroll calculations made in the same payroll application.

**History:** En. Sec. 1, Ch. 350, L. 1983; amd. Sec. 17, Ch. 250, L. 2015.

**19-1-816 through 19-1-820 reserved.**

**19-1-821. Retirement system to be considered separate for each institution.** For the purposes of this part, the teachers' retirement system of the state of Montana is considered a separate retirement system with respect to each state institution of higher education in Montana, and each institution and the teachers therein shall be treated separately and independently from the other institutions and teachers.

**History:** En. Sec. 3, Ch. 271, L. 1955; amd. Sec. 8, Ch. 64, L. 1977; R.C.M. 1947, 59-1111(1).

**19-1-822. Referendum — institution of higher education.** On request of the president of an institution, the governor shall direct the department to give notice of and supervise a referendum in the retirement system for that institution in compliance with the requirements prescribed by section 218 of the Social Security Act, 42 U.S.C. 418.

**History:** En. Sec. 3, Ch. 271, L. 1955; amd. Sec. 8, Ch. 64, L. 1977; R.C.M. 1947, 59-1111(2); amd. Sec. 18, Ch. 250, L. 2015.

**19-1-823. Certification by governor.** On the department's notification that a majority of votes in the referendum were cast in favor of participation in social security, the governor, through the department, shall certify to the commissioner of social security that the conditions set forth in section 218 of the Social Security Act, 42 U.S.C. 418, have been complied with in respect to the retirement system voting in the referendum.

**History:** En. Sec. 3, Ch. 271, L. 1955; amd. Sec. 8, Ch. 64, L. 1977; R.C.M. 1947, 59-1111(3); amd. Sec. 37, Ch. 10, L. 1993; amd. Sec. 5, Ch. 138, L. 2015; amd. Sec. 19, Ch. 250, L. 2015.

**19-1-824. Federal-state agreement.** On certification, the governor shall direct the department director to enter into a modification to the existing agreement with the appropriate officers of the federal government, pursuant to section 218 of the Social Security Act, 42 U.S.C. 418, to secure coverage for the retirement system with respect to which certification has been made. An agreement may be made retroactive to the extent permissible under the Social Security Act.

**History:** En. Sec. 3, Ch. 271, L. 1955; amd. Sec. 8, Ch. 64, L. 1977; R.C.M. 1947, 59-1111(4); amd. Sec. 20, Ch. 250, L. 2015.

**19-1-825. Collection of contributions.** The fiscal officer for an institution for whose retirement system an agreement has been made shall collect the contributions required by section 218 of the Social Security Act, 42 U.S.C. 418, from the teachers in the retirement system of that institution, by payroll deductions.

**History:** En. Sec. 3, Ch. 271, L. 1955; amd. Sec. 8, Ch. 64, L. 1977; R.C.M. 1947, 59-1111(5), (6); amd. Sec. 4, Ch. 161, L. 2009.

**19-1-826. Changes in federal law.** In the event that any relevant provisions of federal law are amended or superseded, then the provisions of this part that relate to the law must be applied to the amended law or the superseding law.

**History:** En. Sec. 3, Ch. 271, L. 1955; amd. Sec. 8, Ch. 64, L. 1977; R.C.M. 1947, 59-1111(7); amd. Sec. 21, Ch. 250, L. 2015.

## CHAPTER 2 PUBLIC EMPLOYEES' RETIREMENT

### Part 3 General Provisions

**19-2-301. Short title.** This chapter may be cited as "The Public Employees' Retirement Act".

**History:** En. Sec. 1, Ch. 265, L. 1993.

**19-2-302. Applicability.** Except as otherwise provided in this title, this chapter applies to the provisions and administration of the retirement systems and plans within the systems under chapters 3, 5 through 9, and 13 of this title.

**History:** En. Sec. 2, Ch. 265, L. 1993; amd. Sec. 4, Ch. 471, L. 1999.

**19-2-303. Definitions.** Unless the context requires otherwise, for each of the retirement systems subject to this chapter, the following definitions apply:

(1) "Accumulated contributions" means the sum of all the regular and any additional contributions made by a member in a defined benefit plan, together with the regular interest on the contributions.

(2) "Active member" means a member who is a paid employee of an employer, is making the required contributions, and is properly reported to the board for the most current reporting period.

(3) "Actuarial cost" means the amount determined by the board in a uniform and nondiscriminatory manner to represent the present value of the benefits to be derived from the additional service to be credited based on the most recent actuarial valuation for the system and the age, years until retirement, and current salary of the member.

(4) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of the mortality table and interest rate assumptions adopted by the board.

(5) "Actuarial liabilities" means the excess of the present value of all benefits payable under a defined benefit retirement plan over the present value of future normal costs in that retirement plan.

(6) "Actuary" means the actuary retained by the board in accordance with 19-2-405.

(7) "Additional contributions" means contributions made by a member of a defined benefit plan to purchase various types of optional service credit as allowed by the applicable retirement plan.

(8) "Annuity" means:

(a) in the case of a defined benefit plan, equal and fixed payments for life that are the actuarial equivalent of a lump-sum payment under a retirement plan and as such are not benefits paid by a retirement plan and are not subject to periodic or one-time increases; or

(b) in the case of the defined contribution plan, a payment of a fixed sum of money at regular intervals.

(9) "Banked holiday time" means the hours reported for work performed on a holiday that the employee may use for equivalent time off or that may be paid to the employee as specified by the employer's policy.

(10) "Benefit" means:

(a) the service retirement benefit, early retirement benefit, or disability retirement or survivorship benefit payment provided by a defined benefit retirement plan; or

(b) a payment or distribution under the defined contribution retirement plan, including a disability payment under 19-3-2141, for the exclusive benefit of a plan member or the member's beneficiary or an annuity purchased under 19-3-2124.

(11) "Board" means the public employees' retirement board provided for in 2-15-1009.

(12) "Contingent annuitant" means:

(a) under option 2 or 3 provided for in 19-3-1501, one natural person designated to receive a continuing monthly benefit after the death of a retired member; or

(b) under option 4 provided for in 19-3-1501, a natural person, charitable organization, estate, or trust that may receive a continuing monthly benefit after the death of a retired member.

(13) "Covered employment" means employment in a covered position.

(14) "Covered position" means a position in which the employee must be a member of the retirement system except as otherwise provided by law.

(15) "Defined benefit retirement plan" or "defined benefit plan" means a plan within the retirement systems provided for pursuant to 19-2-302 that is not the defined contribution retirement plan.

(16) "Defined contribution retirement plan" or "defined contribution plan" means the plan within the public employees' retirement system established in 19-3-103 that is provided for in chapter 3, part 21, of this title and that is not a defined benefit plan.

(17) "Department" means the department of administration.

(18) "Designated beneficiary" means the person, charitable organization, estate, or trust for the benefit of a natural person designated by a member or payment recipient to receive any survivorship benefits, lump-sum payments, or benefit from a retirement account upon the death of the member or payment recipient, including annuities derived from the benefits or payments.

(19) "Direct rollover" means a payment by the retirement plan to the eligible retirement plan specified by the distributee or a payment from an eligible retirement plan to the retirement plan specified by the distributee.

(20) "Disability" or "disabled" means a total inability of the member to perform the member's duties by reason of physical or mental incapacity. The disability must be incurred while the member is an active member and must be one of permanent duration or of extended and uncertain duration, as determined by the board on the basis of competent medical opinion.

(21) "Distributee" means:

(a) a member;

(b) a member's surviving spouse;

(c) a member's spouse or former spouse who is the alternate payee under a family law order as defined in 19-2-907; or

(d) effective January 1, 2007, a member's nonspouse beneficiary who is a designated beneficiary as defined by section 401(a)(9)(E) of the Internal Revenue Code, 26 U.S.C. 401(a)(9)(E).

(22) "Early retirement benefit" means the retirement benefit payable to a member following early retirement and is the actuarial equivalent of the accrued portion of the member's service retirement benefit.

(23) “Eligible retirement plan” means any of the following that accepts the distributee’s eligible rollover distribution:

(a) an individual retirement account described in section 408(a) of the Internal Revenue Code, 26 U.S.C. 408(a);

(b) an individual retirement annuity described in section 408(b) of the Internal Revenue Code, 26 U.S.C. 408(b);

(c) an annuity plan described in section 403(a) of the Internal Revenue Code, 26 U.S.C. 403(a);

(d) a qualified trust described in section 401(a) of the Internal Revenue Code, 26 U.S.C. 401(a);

(e) effective January 1, 2002, an annuity contract described in section 403(b) of the Internal Revenue Code, 26 U.S.C. 403(b);

(f) effective January 1, 2002, a plan eligible under section 457(b) of the Internal Revenue Code, 26 U.S.C. 457(b), that is maintained by a state, a political subdivision of a state, or any agency or instrumentality of a state or a political subdivision of a state that agrees to separately account for amounts transferred into that plan from a plan under this title; or

(g) effective January 1, 2008, a Roth IRA described in section 408A of the Internal Revenue Code, 26 U.S.C. 408A.

(24) “Eligible rollover distribution”:

(a) means any distribution of all or any portion of the balance from a retirement plan to the credit of the distributee, as provided in 19-2-1011;

(b) effective January 1, 2002, includes a distribution to a surviving spouse or to a spouse or former spouse who is an alternate payee under a domestic relations order, as defined in section 414(p) of the Internal Revenue Code, 26 U.S.C. 414(p).

(25) “Employee” means a person who is employed by an employer in any capacity and whose salary is being paid by the employer or a person for whom an interlocal governmental entity is responsible for paying retirement contributions pursuant to 7-11-105.

(26) “Employer” means a governmental agency participating in a retirement system enumerated in 19-2-302 on behalf of its eligible employees. The term includes an interlocal governmental entity identified as responsible for paying retirement contributions pursuant to 7-11-105.

(27) “Essential elements of the position” means fundamental job duties. An element may be considered essential because of but not limited to the following factors:

(a) the position exists to perform the element;

(b) there are a limited number of employees to perform the element; or

(c) the element is highly specialized.

(28) “Excess earnings” means the difference, if any, between reported compensation and the limits provided in 19-2-1005(2) used to calculate a member’s highest average compensation or final average compensation.

(29) “Fiscal year” means a plan year, which is any year commencing with July 1 and ending the following June 30.

(30) “Inactive member” means a member who terminates service and does not retire or take a refund of the member’s accumulated contributions.

(31) “Internal Revenue Code” has the meaning provided in 15-30-2101.

(32) “Member” means either:

(a) a person with accumulated contributions and service credited with a defined benefit retirement plan or receiving a retirement benefit on account of the person’s previous service credited in a retirement system; or

(b) a person with a retirement account in the defined contribution plan.

(33) “Membership service” means the periods of service that are used to determine eligibility for retirement or other benefits.

(34) (a) “Normal cost” or “future normal cost” means an amount calculated under an actuarial cost method required to fund accruing benefits for members of a defined benefit retirement plan during any year in the future.

(b) Normal cost does not include any portion of the supplemental costs of a retirement plan.



(35) "Normal retirement age" means the age at which a member is eligible to immediately receive a retirement benefit based on the member's age or both age and length of service, as specified under the member's retirement system, without disability and without an actuarial or similar reduction in the benefit.

(36) "Pension" means benefit payments for life derived from contributions to a retirement plan made from state- or employer-controlled funds.

(37) "Pension trust fund" means a fund established to hold the contributions, income, and assets of a retirement system or plan in public trust.

(38) "Plan choice rate" means the amount of the employer contribution as a percentage of payroll covered by the defined contribution plan members that is allocated to the public employees' retirement system's defined benefit plan pursuant to 19-3-2117 to actuarially fund the unfunded liabilities and the normal cost rate changes in a defined benefit plan resulting from member selection of the defined contribution plan.

(39) "Regular contributions" means contributions required from members under a retirement plan.

(40) "Regular interest" means interest at rates set from time to time by the board.

(41) "Retirement" or "retired" means the status of a member who has:

(a) terminated from service; and

(b) received and accepted a retirement benefit from a retirement plan.

(42) "Retirement account" means an individual account within the defined contribution retirement plan for the deposit of employer and member contributions and other assets for the exclusive benefit of a member of the defined contribution plan or the member's beneficiary.

(43) "Retirement benefit" means:

(a) in the case of a defined benefit plan, the periodic benefit payable as a result of service retirement, early retirement, or disability retirement under a defined benefit plan of a retirement system. With respect to a defined benefit plan, the term does not mean an annuity.

(b) in the case of the defined contribution plan, a benefit as defined in subsection (10)(b).

(44) "Retirement plan" or "plan" means either a defined benefit plan or a defined contribution plan under one of the public employee retirement systems enumerated in 19-2-302.

(45) "Retirement system" or "system" means one of the public employee retirement systems enumerated in 19-2-302.

(46) "Service" means employment of an employee in a position covered by a retirement system.

(47) "Service credit" means the periods of time for which the required contributions have been made to a retirement plan and that are used to calculate retirement benefits or survivorship benefits under a defined benefit retirement plan.

(48) "Service retirement benefit" means the retirement benefit that the member may receive at normal retirement age.

(49) "Statutory beneficiary" means the surviving spouse or dependent child or children of a member of the highway patrol officers', municipal police officers', or firefighters' unified retirement system who are statutorily designated to receive benefits upon the death of the member.

(50) "Supplemental cost" means an element of the total actuarial cost of a defined benefit retirement plan arising from benefits payable for service performed prior to the inception of the retirement plan or prior to the date of contribution rate increases, changes in actuarial assumptions, actuarial losses, or failure to fund or otherwise recognize normal cost accruals or interest on supplemental costs. These costs are included in the unfunded actuarial liabilities of the retirement plan.

(51) "Survivorship benefit" means payments for life to the statutory or designated beneficiary of a deceased member who died while in service under a defined benefit retirement plan.

(52) "Termination of employment", "termination from employment", "terminated employment", "terminated from employment", "terminate employment", or "terminates employment" means that:

(a) there has been a complete severance of a covered employment relationship by the positive act of either the employee, the employer, or both; and

(b) the member is no longer receiving compensation for covered employment, other than any outstanding lump-sum payment for compensatory leave, sick leave, or annual leave.

(53) “Termination of service”, “termination from service”, “terminated from service”, “terminated service”, “terminating service”, or “terminates service” means that:

(a) there has been a complete severance of a covered employment relationship by the positive act of either the employee, the employer, or both for at least 30 days;

(b) no written or verbal agreement exists between employee and employer that the employee will return to covered employment in the future;

(c) the member is no longer receiving compensation for covered employment; and

(d) the member has been paid all compensation for compensatory leave, sick leave, or annual leave to which the member was entitled. For the purposes of this subsection (53), compensation does not mean compensation as a result of a legal action, court order, or settlement to which the board was not a party.

(54) “Unfunded actuarial liabilities” or “unfunded liabilities” means the excess of a defined benefit retirement plan’s actuarial liabilities at any given point in time over the value of its cash and investments on that same date.

(55) “Vested account” means an individual account within a defined contribution plan that is for the exclusive benefit of a member or the member’s beneficiary. A vested account includes all contributions and the income on all contributions in each of the following accounts:

(a) the member’s contribution account;

(b) the vested portion of the employer’s contribution account; and

(c) the member’s account for other contributions.

(56) “Vested member” or “vested” means:

(a) with respect to a defined benefit plan, except as provided in subsection (56)(b), a member or the status of a member who has at least 5 years of membership service;

(b) with respect to a member of the highway patrol officers’ retirement system established in Title 19, chapter 6, who was hired on or after July 1, 2013, a member or the status of a member who has at least 10 years of membership service; or

(c) with respect to the defined contribution plan, a member or the status of a member who meets the minimum membership service requirement of 19-3-2116.

(57) “Written application” or “written election” means a written instrument, prescribed by the board or required by law, properly signed and filed with the board, that contains all required information, including documentation that the board considers necessary.

(58) “Written instrument” includes an electronic record containing an electronic signature, as defined in 30-18-102.

**History:** En. 68-1503 by Sec. 4, Ch. 323, L. 1973; amd. Sec. 1, Ch. 190, L. 1974; amd. Sec. 4, Ch. 132, L. 1977; amd. Sec. 8, Ch. 332, L. 1977; R.C.M. 1947, 68-1503; amd. Sec. 3, Ch. 114, L. 1979; amd. Sec. 1, Ch. 496, L. 1981; amd. Sec. 2, Ch. 282, L. 1983; amd. Sec. 1, Ch. 45, L. 1987; amd. Sec. 2, Ch. 71, L. 1989; amd. Sec. 3, Ch. 265, L. 1993; Sec. 19-3-104, MCA 1991; redes. 19-2-303 by Sec. 238, Ch. 265, L. 1993; amd. Sec. 5, Ch. 412, L. 1995; amd. Sec. 5, Ch. 370, L. 1997; amd. Secs. 4, 46(1), Ch. 58, L. 1999; amd. Sec. 5, Ch. 471, L. 1999; amd. Secs. 4, 99(1)(b), Ch. 562, L. 1999; amd. Sec. 4, Ch. 99, L. 2001; amd. Sec. 1, Ch. 149, L. 2001; amd. Sec. 3, Ch. 423, L. 2001; amd. Sec. 1, Ch. 490, L. 2001; amd. Sec. 48, Ch. 114, L. 2003; amd. Sec. 3, Ch. 429, L. 2003; amd. Sec. 1, Ch. 329, L. 2005; amd. Sec. 1, Ch. 283, L. 2009; amd. Sec. 2, Ch. 284, L. 2009; amd. Sec. 4, Ch. 99, L. 2011; amd. Sec. 1, Ch. 178, L. 2013; amd. Sec. 1, Ch. 240, L. 2013; amd. Sec. 2, Ch. 272, L. 2013; amd. Sec. 1, Ch. 386, L. 2013; amd. Sec. 1, Ch. 170, L. 2015.

## Part 4 Administration

**19-2-401. Location of board — jurisdiction and venue for judicial review — quorum — officers and employees.** (1) The board shall maintain its office in the city of Helena. Jurisdiction and venue for judicial review of final administrative decisions of the board are in the first judicial district, Lewis and Clark County, unless otherwise stipulated by the parties.

(2) A quorum of the board is four members.

(3) The board shall elect one of its members presiding officer. The board may appoint a committee of one or more of its members to perform routine acts, such as retirement of members and fixing of retirement benefits, approval of death claims, and correction of records necessary in

the administration of the systems in accordance with the provisions of chapters 2, 3, 5 through 9, 13, 17, and 50 of this title and in accordance with the rules of the board. The attorney general is the legal counsel for the board.

**History:** En. 68-1801 by Sec. 18, Ch. 323, L. 1973; R.C.M. 1947, 68-1801; amd. Sec. 4, Ch. 265, L. 1993; Sec. 19-3-301, MCA 1991; redes. 19-2-401 by Sec. 238, Ch. 265, L. 1993; amd. Sec. 6, Ch. 412, L. 1995; amd. Sec. 6, Ch. 471, L. 1999; amd. Sec. 2, Ch. 490, L. 2001.

**19-2-402. Compensation of board members.** Members shall be entitled to compensation as provided in 2-15-124.

**History:** En. 68-1802 by Sec. 19, Ch. 323, L. 1973; amd. Sec. 15, Ch. 453, L. 1977; R.C.M. 1947, 68-1802(part); amd. Sec. 2, Ch. 672, L. 1983; amd. Sec. 5, Ch. 650, L. 1985; Sec. 19-3-302, MCA 1991; redes. 19-2-402 by Sec. 238, Ch. 265, L. 1993.

**19-2-403. Powers and duties of board.** (1) The board shall administer the provisions of the chapters enumerated in 19-2-302.

(2) The board may establish rules that it considers proper for the administration and operation of the retirement systems and enforcement of the chapters under which each retirement system is established.

(3) The board shall establish uniform rules that are necessary to determine service credit for fractional years of service.

(4) The board shall determine who are employees within the meaning of each retirement system. The board is the sole authority for determining the conditions under which persons may become members of and receive benefits under the retirement systems. A person whose job duties require proportional membership in more than one retirement system is subject to the provisions of those systems.

(5) If fraud or error results in an employee or member being reported to the incorrect retirement system, the board shall correct the error and adjust contributions as necessary.

(6) The board shall determine and may modify retirement benefits under the retirement systems. Benefits may be paid only if the board decides, in its discretion, that the applicant is, under the provisions of the appropriate retirement system, entitled to the benefits.

(7) In matters of board discretion under the systems, the board shall treat all persons in similar circumstances in a uniform and nondiscriminatory manner.

(8) The board shall maintain records and accounts it determines necessary for the administration of the retirement systems.

(9) The board shall enter into memoranda of understanding with the teachers' retirement system to exchange retirement system-related confidential information regarding members, former members, or retirees. A memorandum must state that:

(a) the information may be used only for reasons related to verifying appropriate pension plan participation; and

(b) the requesting retirement system agrees to protect the confidentiality of the information and will disclose the requested information only as necessary to conduct official business.

(10) Upon the basis of the findings of the actuary pursuant to 19-2-405, the board shall adopt actuarial rates and rates of regular interest it determines appropriate for the administration of the retirement systems.

(11) The board shall review the sufficiency of benefits paid by the retirement system or plan and recommend to the legislature those changes in benefits in a defined benefit plan or in contributions under the defined contribution plan that may be necessary for members and their beneficiaries to maintain a stable standard of living.

(12) The board may implement third-party mailings under the provisions of 2-6-1017. If third-party mailings are implemented, the board shall adopt rules governing means of implementation, including the specification of eligible third parties, appropriate materials, and applicable fees and procedures. Fees generated by third-party mailings must be deposited in the appropriate retirement system fund for the benefit of participants of retirement systems or plans administered by the board.

(13) In discharging duties, the board, a member of the board, or an authorized representative of the board may conduct hearings, administer oaths and affirmations, take depositions, certify to official acts and records, and issue subpoenas to compel the attendance of witnesses and the

production of books, papers, correspondence, memoranda, and other records. Subpoenas must be issued and enforced pursuant to 2-4-104 of the Montana Administrative Procedure Act.

(14) The board may by rule or otherwise delegate to the board's executive director or any other staff member any of the powers or duties conferred by law upon the board except as otherwise provided by law and except for the adoption of rules and the issuance of final orders after hearings held pursuant to subsection (13) or the contested case procedure of the Montana Administrative Procedure Act.

(15) The board shall perform other duties and may exercise the powers concerning the defined contribution plan for plan members as provided in chapter 3, part 21, of this title.

**History:** En. 68-1803 by Sec. 20, Ch. 323, L. 1973; amd. Sec. 4, Ch. 132, L. 1977; amd. Sec. 9, Ch. 332, L. 1977; R.C.M. 1947, 68-1803(1); amd. Sec. 5, Ch. 265, L. 1993; amd. Sec. 1, Ch. 481, L. 1993; Sec. 19-3-304, MCA 1991; redes. 19-2-403 by Sec. 238, Ch. 265, L. 1993; (10)En. Sec. 2, Ch. 412, L. 1995; amd. Sec. 7, Ch. 471, L. 1999; amd. Sec. 5, Ch. 562, L. 1999; amd. Sec. 5, Ch. 99, L. 2001; amd. Sec. 4, Ch. 429, L. 2003; amd. Sec. 5, Ch. 99, L. 2011; amd. Sec. 2, Ch. 178, L. 2013; amd. Sec. 45, Ch. 348, L. 2015.

**19-2-404. Appointment and compensation of administrative staff.** The board shall hire and fix the compensation of an executive director and other necessary employees to assist the board in administering the retirement systems. The compensation of the executive director and employees must be established in accordance with Title 2, chapter 18.

**History:** En. Sec. 6, Ch. 265, L. 1993; amd. Sec. 17, Ch. 532, L. 1997; amd. Sec. 6, Ch. 562, L. 1999.

**19-2-405. Employment of actuary — annual investigation and valuation.** (1) The board shall retain a competent actuary who is an enrolled member of the American academy of actuaries and who is familiar with public systems of pensions. The actuary is the technical adviser of the board on matters regarding the operation of the retirement systems.

(2) The board shall require the actuary to make and report on an annual actuarial investigation into the suitability of the actuarial tables used by the retirement systems and an actuarial valuation of the assets and liabilities of each defined benefit plan that is a part of the retirement systems.

(3) The normal cost contribution rate, which is funded by required employee contributions and a portion of the required employer contributions to each defined benefit retirement plan, must be calculated as the level percentage of members' salaries that will actuarially fund benefits payable under a retirement plan as those benefits accrue in the future.

(4) (a) The unfunded liability contribution rate, which is entirely funded by a portion of the required employer contributions to the retirement plan, must be calculated as the level percentage of current and future defined benefit plan members' salaries that will amortize the unfunded actuarial liabilities of the retirement plan over a reasonable period of time, not to exceed 30 years, as determined by the board.

(b) In determining the amortization period under subsection (4)(a) for the public employees' retirement system's defined benefit plan, the actuary shall take into account the plan choice rate contributions to be made to the defined benefit plan pursuant to 19-3-2117 and 19-21-214.

(5) The board shall require the actuary to conduct and report on a periodic actuarial investigation into the actuarial experience of the retirement systems and plans.

(6) The board may require the actuary to conduct any valuation necessary to administer the retirement systems and the plans subject to this chapter.

(7) The board shall provide copies of the reports required pursuant to subsections (2) and (5) to the state administration and veterans' affairs interim committee and to the legislature pursuant to 5-11-210.

(8) The board shall require the actuary to prepare for each employer participating in a retirement system the disclosures or the information required to be included in the disclosures as required by law and by the governmental accounting standards board or its generally recognized successor.

**History:** En. 68-1804 by Sec. 21, Ch. 323, L. 1973; R.C.M. 1947, 68-1804; amd. Sec. 7, Ch. 265, L. 1993; Sec. 19-3-305, MCA 1991; redes. 19-2-405 by Sec. 238, Ch. 265, L. 1993; amd. Sec. 8, Ch. 471, L. 1999; amd. Sec. 49, Ch. 114, L. 2003; amd. Sec. 5, Ch. 285, L. 2007; amd. Sec. 5, Ch. 155, L. 2013; amd. Sec. 2, Ch. 240, L. 2013; amd. Sec. 2, Ch. 248, L. 2015.

**19-2-406. Disability retirement — application — determination — benefit conversion — rules.** (1) (a) An active or inactive member may apply for disability retirement in a manner prescribed by the board. However, an application may also be filed on the member's



behalf by the head of the office or department in which the member is or was last employed, by any other individual, or by the board.

(b) The application must be filed within 4 months after the member's termination from employment unless the member is disabled continuously from the date of termination from employment to the date of the application.

(2) The board shall determine whether a member has become disabled. In the discharge of its duty regarding determinations, the board, any member of the board, or any authorized representative of the board may order medical examinations, conduct hearings, administer oaths and affirmations, take depositions, certify to official acts and records, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records considered necessary as evidence in connection with a claim for disability retirement. Subpoenas must be issued and enforced pursuant to 2-4-104 of the Montana Administrative Procedure Act.

(3) The board shall adopt rules requiring employers to identify and explain the essential elements of a member's position, any accommodations that were or can be made in compliance with the Americans With Disabilities Act of 1990 (42 U.S.C. 12101, et seq.), and the effectiveness of the accommodations.

(4) The board shall retain medical personnel to advise it in assessing the nature and extent of disabling conditions while reviewing claims for disability retirement.

(5) The disability retirement benefit paid to a member of the defined benefit plan must be converted to a service retirement benefit, without recalculation of the monthly benefit amount, when the member has attained normal retirement age. The board shall notify the member in writing as to the change in status.

**History:** En. Sec. 1, Ch. 597, L. 1981; amd. Sec. 8, Ch. 265, L. 1993; Sec. 19-5-611, MCA 1991; redes. 19-2-406 by Sec. 238, Ch. 265, L. 1993; amd. Sec. 7, Ch. 412, L. 1995; amd. Sec. 9, Ch. 471, L. 1999; amd. Sec. 7, Ch. 562, L. 1999; amd. Sec. 6, Ch. 99, L. 2001; amd. Sec. 4, Ch. 423, L. 2001; amd. Sec. 3, Ch. 178, L. 2013.

**19-2-407. Reports.** (1) As soon as practical after the close of each fiscal year, the board shall file with the governor and with the legislature pursuant to 5-11-210 a report of its work for that fiscal year. The report must include but is not limited to:

(a) a statement as to the accumulated cash and securities in the pension trust funds as certified by the state treasurer and the board of investments;

(b) a summary of the most recent information available from the actuary concerning the actuarial valuation of the assets and liabilities of each system or plan; and

(c) an analysis of how market performance is affecting actuarial funding of each of the retirement systems or plans.

(2) The report required under subsection (1) must also provide information concerning the defined contribution plan, including a description of the plan, the number of members in the plan, plan contribution rates, the total amount of money invested by members, investment performance, administrative costs and fees, and other information required under applicable governmental accounting standards and as determined by the board.

**History:** En. 68-1803 by Sec. 20, Ch. 323, L. 1973; amd. Sec. 4, Ch. 132, L. 1977; amd. Sec. 9, Ch. 332, L. 1977; R.C.M. 1947, 68-1803(2); amd. Sec. 9, Ch. 265, L. 1993; Sec. 19-3-306, MCA 1991; redes. 19-2-407 by Sec. 238, Ch. 265, L. 1993; amd. Sec. 10, Ch. 471, L. 1999; amd. Sec. 8, Ch. 562, L. 1999; amd. Sec. 6, Ch. 285, L. 2007; amd. Sec. 2, Ch. 170, L. 2015.

**19-2-408. Administrative expenses.** (1) The legislature finds that proper administration of the pension trust funds benefits both employers and members and continues to benefit members after retirement.

(2) (a) The administrative expenses of the retirement systems administered by the board must be paid from the investment earnings on the pension trust fund of the public employees' retirement system's defined benefit plan, except as otherwise provided in this section. The board shall compute the administrative expenses attributable to each retirement system or plan administered by the board and transfer that amount from each retirement system's or plan's pension trust fund to the pension trust fund of the public employees' retirement system's defined benefit plan in a manner that ensures that the public employees' retirement system's defined benefit plan trust fund is fully compensated for expenditures made on behalf of other systems or plans so that there is no actuarial impact on the fund.



(b) The total administrative expenses of the board, including the administration of the Volunteer Firefighters' Compensation Act, may not exceed 1.5% of the total defined benefit plan retirement benefits paid.

(3) For purposes of calculating the percentage specified in subsection (2)(b), administrative expenses do not include:

- (a) expenditures to purchase intangible assets for plan administration;
- (b) expenses of the defined contribution plan;
- (c) expenditures of funds allocated under 19-3-112(1)(b) to the education fund established in 19-3-112(1)(a); or
- (d) expenses for an actuarial valuation under 19-2-405(2) performed during the first year of a biennium.

(4) The administrative expenses of the defined contribution plan must be paid, as provided in 19-3-2105, from assets of the defined contribution plan.

**History:** En. 68-1904 by Sec. 25, Ch. 323, L. 1973; amd. Sec. 3, Ch. 190, L. 1974; amd. Sec. 6, Ch. 99, L. 1977; amd. Sec. 4, Ch. 132, L. 1977; R.C.M. 1947, 68-1904; amd. Sec. 2, Ch. 254, L. 1981; amd. Sec. 5, Ch. 496, L. 1981; amd. Sec. 1, Ch. 328, L. 1985; amd. Sec. 3, Ch. 4, Sp. L. June 1986; amd. Sec. 10, Ch. 265, L. 1993; Sec. 19-3-805, MCA 1991; redes. 19-2-408 by Sec. 238, Ch. 265, L. 1993; amd. Sec. 18, Ch. 532, L. 1997; amd. Sec. 1, Ch. 286, L. 1999; amd. Sec. 11, Ch. 471, L. 1999; amd. Sec. 9, Ch. 562, L. 1999; amd. Sec. 50, Ch. 114, L. 2003; amd. Sec. 7, Ch. 285, L. 2007; amd. Sec. 4, Ch. 64, L. 2011.

**19-2-409. Plans to be funded on actuarially sound basis — definition.** As required by Article VIII, section 15, of the Montana constitution, each system must be funded on an actuarially sound basis. For purposes of this section, “actuarially sound basis” means that contributions to each retirement plan must be sufficient to pay the full actuarial cost of the plan. For a defined benefit plan, the full actuarial cost includes both the normal cost of providing benefits as they accrue in the future and the cost of amortizing unfunded liabilities over a scheduled period of no more than 30 years. For the defined contribution plan, the full actuarial cost is the contribution defined by law that is payable to an account on behalf of the member.

**History:** En. Sec. 5, Ch. 287, L. 1997; amd. Sec. 12, Ch. 471, L. 1999.

**19-2-410. Presentation to board of investments.** The board shall annually at a public meeting present to the board of investments established in 2-15-1808 a financial and actuarial report of the retirement systems administered by the board and brief the board of investments on any benefit changes being considered by the board that may affect trust fund obligations.

**History:** En. Sec. 2, Ch. 285, L. 2007.

## Part 5 Management and Investment of Pension Trust Funds

**19-2-501. Pension trust funds established.** A pension trust fund is established and maintained for each retirement plan within a system subject to this chapter as enumerated in 19-2-302.

**History:** En. Sec. 11, Ch. 265, L. 1993; amd. Sec. 13, Ch. 471, L. 1999.

**19-2-502. Payments from pension trust funds.** (1) The board shall administer the assets of the pension trust funds as provided in Article VIII, section 15, of the Montana constitution, subject to the specific provisions of chapters 2, 3, 5 through 9, and 13 of this title.

(2) Benefits and refunds to eligible recipients are payable pursuant to a contract as contained in statute. The contract is entered into on the first day of a member's covered employment and may be enhanced by the legislature. Unless specifically provided for by statute, the contract does not contain revisions to statutes after the time of retirement or termination of membership.

**History:** En. Sec. 12, Ch. 265, L. 1993; amd. Sec. 19, Ch. 532, L. 1997; amd. Sec. 2, Ch. 329, L. 2005.

**19-2-503. Management of pension trust funds.** The pension trust funds must be managed as follows:

(1) The board is the trustee of all money collected for the retirement systems and has exclusive control of the administration of the pension trust funds except as otherwise provided by law.

(2) The department shall deposit in the state treasury all amounts received by the board as provided in this chapter.

(3) Except as provided in chapter 3, part 21, of this title, the state treasurer is custodian of the pension trust funds, subject to the exclusive control of the board for administration and the board of investments for the investment of the funds.

**History:** En. 68-1901 by Sec. 22, Ch. 323, L. 1973; amd. Sec. 5, Ch. 99, L. 1977; amd. Sec. 3, Ch. 286, L. 1977; amd. Sec. 10, Ch. 332, L. 1977; R.C.M. 1947, 68-1901(1), (3), (4); amd. Sec. 13, Ch. 265, L. 1993; Sec. 19-3-601, MCA 1991; redes. 19-2-503 by Sec. 238, Ch. 265, L. 1993; amd. Sec. 14, Ch. 471, L. 1999; amd. Sec. 10, Ch. 562, L. 1999.

**19-2-504. Investment of pension trust funds.** (1) Except as provided in chapter 3, part 21, of this title, the pension trust funds of the retirement systems must be invested by the state board of investments as part of the unified investment program described in Title 17, chapter 6, part 2.

(2) All income earned on any assets constituting a part of the pension trust funds must be paid into the appropriate pension trust funds as received.

(3) The pension trust funds and the defined contribution retirement plan's long-term disability plan trust fund provided for in 19-3-2141 may be commingled for investment purposes, to the extent permitted by Montana law and as permitted under I.R.S. Revenue Ruling 81-100, 1981-1 Cumulative Bulletin 326, I.R.S. Revenue Ruling 2004-67, 2004-2 Cumulative Bulletin 28, I.R.S. Revenue Ruling 2011-1, 2011-2 Internal Revenue Bulletin 251, and I.R.S. Revenue Ruling 2014-24, 2014-37 Internal Revenue Bulletin 529 if:

(a) the trust funds are operated or maintained exclusively for the commingling and collective investment of money; and

(b) the trust funds in the group trust consist exclusively of trust assets held under retirement systems or plans qualified under one or more of the following:

(i) section 401(a) of the Internal Revenue Code, 26 U.S.C. 401(a);

(ii) individual retirement accounts that are exempt under section 408(e) of the Internal Revenue Code, 26 U.S.C. 408(e);

(iii) eligible governmental plans that meet the requirements of section 457(b) of the Internal Revenue Code, 26 U.S.C. 457(b); and

(iv) governmental plans under section 401(a)(24) of the Internal Revenue Code, 26 U.S.C. 401(a)(24).

(4) For purposes of subsection (3), a trust includes a custodial account that is treated as a trust under section 401(f) or 457(g)(3) of the Internal Revenue Code, 26 U.S.C. 401(f) or 457(g)(3).

(5) The board shall adopt any collective or common group trust to which assets of the retirement systems or plans are transferred for investment pursuant to subsection (3) as part of the respective retirement systems or plans by executing appropriate participation agreements, adoption agreements, or trust agreements with the group trust's trustee.

(6) The separate accounts maintained by the group trust for retirement systems or plans pursuant to subsection (7) may not be used for or diverted to any purpose other than for the exclusive benefit of the members and beneficiaries of those retirement systems or plans.

(7) For purposes of valuation, separate accounts must be maintained for each system or plan, and the value of the separate account maintained by the group trust for the system or plan must be the fair market value of the portion of the group trust held for the system or plan, determined in accordance with generally recognized valuation procedures.

**History:** En. 68-1901 by Sec. 22, Ch. 323, L. 1973; amd. Sec. 5, Ch. 99, L. 1977; amd. Sec. 3, Ch. 286, L. 1977; amd. Sec. 10, Ch. 332, L. 1977; R.C.M. 1947, 68-1901(2), (5); amd. Sec. 1, Ch. 221, L. 1991; amd. Sec. 14, Ch. 265, L. 1993; Sec. 19-3-602, MCA 1991; redes. 19-2-504 by Sec. 238, Ch. 265, L. 1993; amd. Sec. 15, Ch. 471, L. 1999; amd. Sec. 1, Ch. 140, L. 2015.

**19-2-505. Restrictions on use of funds.** (1) Except as provided in this section, a member or an employee of the board or the board of investments may not:

(a) have any interest, direct or indirect, in the making of any investment or in the gains or profits accruing from the pension trust funds;

(b) directly or indirectly, for the member or employee or as an agent or partner of others, borrow from the pension trust funds or deposits;

(c) in any manner use the pension trust funds except to make current and necessary payments that are authorized by the board;

(d) become an endorser or surety as to or in any manner an obligor for investments for the pension trust funds; or

(e) engage in a transaction prohibited by section 503(b) of the Internal Revenue Code.

(2) The assets of the retirement systems, including the assets of retirement accounts, may not be used for or diverted to any purpose other than for the exclusive benefit of the members and their beneficiaries and for paying the reasonable administrative expenses of the retirement systems administered by the board.

(3) The assets of the retirement systems remain in trust until a warrant has been negotiated or an electronic funds transfer has been deposited in accordance with law.

(4) Retirement benefits not claimed within 5 years after the member's death are forfeited and revert to the retirement system trust fund.

(5) The accumulated contributions of a vested or nonvested member that are not claimed within 5 years after the member's death are forfeited and revert to the retirement system trust fund.

(6) This section does not prevent the administration of an investment alternative within the defined contribution plan to the same extent that all other investment alternatives within the defined contribution plan are managed.

**History:** En. 68-1901 by Sec. 22, Ch. 323, L. 1973; amd. Sec. 5, Ch. 99, L. 1977; amd. Sec. 3, Ch. 286, L. 1977; amd. Sec. 10, Ch. 332, L. 1977; R.C.M. 1947, 68-1901(6), (7); amd. Sec. 2, Ch. 4, Sp. L. June 1986; amd. Sec. 15, Ch. 265, L. 1993; Sec. 19-3-603, MCA 1991; redes. 19-2-505 by Sec. 238, Ch. 265, L. 1993; amd. Sec. 5, Ch. 58, L. 1999; amd. Sec. 16, Ch. 471, L. 1999; amd. Sec. 11, Ch. 562, L. 1999; amd. Sec. 7, Ch. 99, L. 2001; amd. Sec. 4, Ch. 178, L. 2013.

**19-2-506. Payment of contributions by employers — accompanying reports — penalty — liability.** (1) The board shall prescribe by rule the procedure for payment of retirement contributions for the retirement systems administered by the board. Each employer shall pick up the employee contributions and remit the employer and employee contributions required by the member's retirement system. Payments must be considered delinquent until both the required contributions and the valid payroll report are received by the board.

(2) The board may collect payments delinquent under subsection (1) with an interest penalty at the rate of 9% a year or \$10 a day, whichever is greater. The board may, in its discretion, waive the penalty. The collection may be made by either:

(a) an action in a court of competent jurisdiction against the employer; or

(b) deductions, at the request of the board, from any other money payable to the employer by any agency or fund of the state.

(3) (a) The board shall prescribe by rule the procedure for submitting employer reports. The reports must include data about member and nonmember employees who work for the employer.

(b) The rules must specify the employee categories to be reported, the data required, the method of reporting, the reporting period, and the frequency of reports needed to meet the demands of the relevant retirement system or plan.

(c) The board may establish by rule the penalty fees for noncompliance in reporting any of the required information and the procedure for collection of the fees.

(4) Each employer shall furnish additional information concerning members that the board may request in connection with claims by members for benefits or service under a retirement system.

(5) The board is not responsible or liable for any incorrect reporting or erroneous payment of contributions by an employer.

(6) The board, from time to time, may send materials to an employer for redistribution to employees. To facilitate distribution, each employer shall provide the board with a point of contact responsible for distributing the materials.

**History:** En. 68-2505 by Sec. 53, Ch. 323, L. 1973; amd. Sec. 11, Ch. 99, L. 1977; R.C.M. 1947, 68-2505(1); amd. Sec. 1, Ch. 348, L. 1979; amd. Sec. 1, Ch. 138, L. 1991; amd. Sec. 16, Ch. 265, L. 1993; Sec. 19-3-802, MCA 1991; redes. 19-2-506 by Sec. 238, Ch. 265, L. 1993; amd. Sec. 12, Ch. 562, L. 1999; amd. Sec. 8, Ch. 99, L. 2001; amd. Sec. 5, Ch. 429, L. 2003; amd. Sec. 2, Ch. 283, L. 2009; amd. Sec. 6, Ch. 99, L. 2011.

**19-2-507. Transfer between funds.** Any pension trust fund out of which payments are made under the provisions of this title may be reimbursed to the extent of the payments by

transfer of a sufficient sum for the reimbursement from another pension trust fund or funds under the control of the board.

**History:** En. 68-2506 by Sec. 54, Ch. 323, L. 1973; amd. Sec. 12, Ch. 99, L. 1977; R.C.M. 1947, 68-2506; amd. Sec. 3, Ch. 496, L. 1981; amd. Sec. 17, Ch. 265, L. 1993; Sec. 19-3-605, MCA 1991; redes. 19-2-507 by Sec. 238, Ch. 265, L. 1993; amd. Sec. 13, Ch. 562, L. 1999.

**19-2-508 through 19-2-510 reserved.**

**19-2-511. Limitation of liability.** (1) The board shall exercise its fiduciary authority in the same manner that would be used by a prudent person acting in the same capacity who is familiar with the circumstances and in an enterprise of a similar character with similar aims.

(2) Plan fiduciaries are not liable for any loss to a participant's or beneficiary's account under a defined contribution plan or the university system retirement program established pursuant to 19-21-101 that results from the participant's or beneficiary's exercise of control.

(3) Plan fiduciaries are not responsible for the acts or omissions of any employer or reporting agency or of any vendor providing services to the defined contribution plan or the university system retirement program. Nothing in this subsection limits the liability of any vendor for services required by contract.

(4) Plan fiduciaries are not liable for their reliance on the express provisions of the defined contribution plan or the university system retirement program.

(5) Plan fiduciaries are not liable for investment losses incurred in the defined contribution plan or the university system retirement program as a result of incorrect reporting by an employer or other reporting agency.

**History:** En. Sec. 3, Ch. 490, L. 2001; amd. Sec. 1, Ch. 38, L. 2003; amd. Sec. 1, Ch. 282, L. 2013.

## **Part 6**

### **Termination of Membership and Refunds**

**19-2-601. Termination of membership.** If a member's accumulated contributions under a retirement system are refunded, the person ceases to be a member of that system, all the person's service is canceled, and the person relinquishes claim to any benefits payable to members of the retirement system.

**History:** En. 68-1603 by Sec. 7, Ch. 323, L. 1973; R.C.M. 1947, 68-1603; amd. Sec. 18, Ch. 265, L. 1993; Sec. 19-3-406, MCA 1991; redes. 19-2-601 by Sec. 238, Ch. 265, L. 1993.

**19-2-602. Refund of member's contributions on termination of service.** (1) Except as provided in this section, any member who has terminated service, other than by death or retirement, must be paid the member's accumulated contributions upon the filing of a written application by the member and board approval. Prior to termination of service, a member may not receive a refund of any portion of the member's accumulated contributions.

(2) A nonvested member who has terminated service with accumulated contributions of less than \$200 must be paid the accumulated contributions in a lump sum as soon as administratively feasible without a written application being filed by the member.

(3) A nonvested member who has terminated service with accumulated contributions of \$200 to \$1,000 must be paid the accumulated contributions in a lump sum as soon as administratively feasible unless a written application is filed within 90 days of terminating service pursuant to subsection (4).

(4) Upon the filing of a written application by an alternate payee eligible to receive a single distribution of \$200 or more under 19-2-907 or 19-2-909 or by a member who is terminating service and is eligible to receive a refund of \$200 or more of accumulated contributions, the board shall make a direct rollover distribution of any eligible rollover distribution allowed under section 401(a)(31) of the Internal Revenue Code, 26 U.S.C. 401(a)(31). The direct rollover distribution must be paid directly to an eligible retirement plan allowed under applicable federal law. As of January 1, 2008, an eligible retirement plan includes a Roth IRA, provided for under 26 U.S.C. 408A. The applicant is responsible for designating an eligible retirement plan on forms provided by the board. The portion of the account that is not an eligible rollover distribution must be paid directly to the recipient.

**History:** En. 68-1905 by Sec. 26, Ch. 323, L. 1973; amd. Sec. 6, Ch. 128, L. 1975; R.C.M. 1947, 68-1905; amd. Sec. 1, Ch. 107, L. 1979; amd. Sec. 4, Ch. 496, L. 1981; amd. Sec. 19, Ch. 265, L. 1993; Sec. 19-3-703, MCA 1991; redes. 19-2-602 by Sec. 238, Ch. 265, L. 1993; amd. Sec. 6, Ch. 58, L. 1999; amd. Secs. 14, 99(2), Ch. 562, L. 1999;



amd. Sec. 9, Ch. 99, L. 2001; amd. Sec. 3, Ch. 329, L. 2005; amd. Sec. 1, Ch. 128, L. 2007; amd. Sec. 3, Ch. 284, L. 2009; amd. Sec. 1, Ch. 195, L. 2017.

**Compiler's Comments**

*2017 Amendment:* Chapter 195 in (3) near end inserted "within 90 days of terminating service". Amendment effective July 1, 2017.

**19-2-603. Reinstatement after withdrawal of contributions.** Except as otherwise provided in chapter 3, part 21, of this title and this section, a person who again becomes an active member of a defined benefit plan subsequent to the refund of the person's accumulated contributions after a termination of previous membership is considered a new member without previous membership service or service credit. The person, while either an active or inactive vested member, may reinstate that membership service or service credit by redepositing the sum of the accumulated contributions that were refunded to the person at the last termination of the person's membership plus the interest that would have been credited to the person's accumulated contributions had the refund not taken place. If the person makes this redeposit, the membership service and service credit previously canceled must be reinstated.

**History:** En. 68-1906 by Sec. 27, Ch. 323, L. 1973; amd. Sec. 7, Ch. 128, L. 1975; R.C.M. 1947, 68-1906; amd. Sec. 20, Ch. 265, L. 1993; Sec. 19-3-704, MCA 1991; redes. 19-2-603 by Sec. 238, Ch. 265, L. 1993; amd. Sec. 17, Ch. 471, L. 1999; amd. Sec. 6, Ch. 429, L. 2003; amd. Sec. 7, Ch. 99, L. 2011; amd. Sec. 2, Ch. 195, L. 2017.

**Compiler's Comments**

*2017 Amendment:* Chapter 195 in first sentence after "who again becomes" substituted "an active member" for "a member"; in second sentence near beginning inserted "while either an active or inactive vested member"; and made minor changes in style. Amendment effective July 1, 2017.

## Part 7

### Service Credit and Additional Contributions

**19-2-701. Service credit.** (1) Service credit for all covered employment with each employer will be credited to a retirement system on a cumulative basis for all purposes, including but not limited to calculation of benefits and application of any maximum hour restrictions, limitations, or requirements. A member may not be credited with more than full-time service credit as a result of this cumulation of service credit. Subject to the provisions of chapters 3, 5 through 9, and 13, a member must receive 1 month of service credit for each full month of service under rules adopted by the board.

(2) Service credits must be used in calculating a retirement or survivorship benefit.

(3) A retired member is not eligible to earn service credit.

**History:** En. Sec. 21, Ch. 265, L. 1993; amd. Sec. 6, Ch. 370, L. 1997; amd. Sec. 15, Ch. 562, L. 1999.

**19-2-702. Membership service.** A member who is not retired must receive membership service for all periods of service, regardless of hours worked or compensation received during that service. The membership service must be used to determine:

(1) whether a member is vested;

(2) when the member is eligible for service retirement, early retirement, or disability retirement; or

(3) the eligibility of beneficiaries for survivorship benefits.

**History:** En. Sec. 22, Ch. 265, L. 1993; amd. Sec. 7, Ch. 370, L. 1997; amd. Sec. 7, Ch. 429, L. 2003.

**19-2-703. No duplication of benefits for same service.** (1) A member may not receive service credit or membership service in more than one retirement system, plan, or program under Title 19 for the same service.

(2) A member may not receive service credit or membership service in more than one retirement system, plan, or program in Title 19 for the same period of military service.

**History:** En. 68-2501 by Sec. 49, Ch. 323, L. 1973; amd. Sec. 16, Ch. 332, L. 1977; R.C.M. 1947, 68-2501(2); amd. Sec. 23, Ch. 265, L. 1993; Sec. 19-3-508, MCA 1991; redes. 19-2-703 by Sec. 238, Ch. 265, L. 1993; amd. Sec. 16, Ch. 562, L. 1999; amd. Sec. 10, Ch. 99, L. 2001; amd. Sec. 4, Ch. 329, L. 2005.

**19-2-704. Purchasing service credits allowed — payroll deduction.** (1) Subject to the rules promulgated by the board, an eligible member may elect to make additional contributions to purchase service credits as provided by the statutes governing the retirement system.

(2) Subject to any statutory provision establishing stricter limitations, only active or vested inactive members are eligible to purchase or transfer service credit, membership service, or contributions or to redeposit amounts withdrawn under 19-2-602.



(3) An eligible member who wishes to redeposit amounts withdrawn under 19-2-602 or who is eligible to purchase service credit as provided by the statutes governing the retirement system to which the member belongs may elect to make a lump-sum payment by personal check or rollover of funds from another eligible plan, to make installment payments, or to make a combination of a lump-sum payment and installment payments.

(4) Installment payments must be made by personal check paid directly to the board unless the member elects to make payments by irrevocable payroll deduction. The minimum installment period for payments is 3 months, and the maximum installment period is 5 years.

(5) To elect installment payments by irrevocable payroll deduction, the member shall file with the board and the member's employer an irrevocable, written application and authorization for payroll deductions. The application and authorization:

- (a) must be signed by the member and the member's employer;
- (b) must specify the dollar amount of each deduction and the number of deductions to be made, subject to any maximum amounts or duration established by state or federal law;
- (c) may not give the member the option of receiving the deduction amounts directly instead of having them paid by the employer to the board; and
- (d) must specify that the additional contributions being picked up, although designated as employee contributions, are being paid by the employer directly to the board in lieu of contributions paid directly by the employee.

(6) If the board notifies the employer that a proper written application and authorization has been filed with the board, the employer shall initiate the payroll deduction as follows:

(a) An employer shall pick up the member's elective additional contributions made pursuant to a payroll deduction authorization. The contributions picked up by the employer must be paid from the same source as is used to pay compensation to the member and must be included as part of the member's earned compensation before the deduction is made.

(b) Employee contributions, even though designated as employee contributions for state law purposes, are paid by the member's employer in lieu of contributions paid directly by the member to the board.

(c) The member may not choose to receive the contributed amounts directly instead of having them paid by the employer to the board.

(d) The effective date of the employer pickup and payment pursuant to this section is the date on which the employee's additional contribution is first deducted from the employee's compensation. However, the effective date may not be prior to the date that the member properly completes the written application and authorization for payroll deductions and files it with the board. The pickup may not apply to any additional contributions made before the effective date or to any contributions related to compensation earned for services rendered before the effective date.

(e) Installment payments initiated by contract prior to July 1, 1999, may be paid by payroll deduction only if the member files a written application and authorization for payroll deductions pursuant to this section. If the member does not file a written application and authorization for payroll deductions pursuant to this section, the installment contract payments agreed to by the member must be paid by the member directly to the board.

(f) A member may file more than one irrevocable payroll deduction agreement and authorization as long as a subsequent deduction authorization does not amend a previous irrevocable authorization. A member may not prepay an amount under an irrevocable payroll deduction agreement without terminating employment, except when a member becomes a member of another retirement system by an authorized election and the service purchase is in accordance with 19-2-715.

(7) If a member terminates employment or dies before completing all payments required by a payroll deduction authorization filed pursuant to this section, the deduction authorization expires and the board shall prorate the service credit based on the amount paid unless further payment is made as provided in this subsection. In the case of a termination from employment, the member may make a lump-sum payment for up to the balance of the service credit remaining to be purchased, subject to the limitations of section 415 of the Internal Revenue Code. In the case of death of the member, the payment may be made from the member's estate subject to the limitations of section 415 of the Internal Revenue Code.

**History:** En. 68-1903 by Sec. 24, Ch. 323, L. 1973; amd. Sec. 4, Ch. 132, L. 1977; R.C.M. 1947, 68-1903; amd. Sec. 24, Ch. 265, L. 1993; Sec. 19-3-702, MCA 1991; redes. 19-2-704 by Sec. 238, Ch. 265, L. 1993; amd. Sec. 8, Ch. 412, L. 1995; amd. Sec. 8, Ch. 370, L. 1997; amd. Sec. 7, Ch. 58, L. 1999; amd. Sec. 11, Ch. 99, L. 2001; amd. Sec. 8, Ch. 429, L. 2003; amd. Sec. 5, Ch. 329, L. 2005; amd. Sec. 3, Ch. 283, L. 2009; amd. Sec. 3, Ch. 195, L. 2017.

**Compiler's Comments**

*2017 Amendment:* Chapter 195 in (2) at end inserted "or to redeposit amounts withdrawn under 19-2-602"; and in (3) at beginning substituted "An eligible member" for "A member". Amendment effective July 1, 2017.

**19-2-705. Repealed.** Sec. 44, Ch. 58, L. 1999.

**History:** En. 68-1605 by Sec. 9, Ch. 323, L. 1973; amd. Sec. 3, Ch. 99, L. 1977; amd. Sec. 4, Ch. 132, L. 1977; R.C.M. 1947, 68-1605; amd. Sec. 25, Ch. 265, L. 1993; Sec. 19-3-502, MCA 1991; redes. 19-2-705 by Sec. 238, Ch. 265, L. 1993.

**19-2-706. Additional service credit for active member involuntarily terminated from employment.** (1) The provisions of subsection (3) apply to an employee of the state or university system if:

(a) the employee is an active member of the public employees' defined benefit plan or the game wardens' and peace officers', sheriffs', firefighters' unified, or highway patrol officers' retirement system;

(b) the employee has involuntarily terminated from employment because of elimination of the employee's position as a result of privatization, reorganization of an agency, closure of or a reduction in force at an agency, or other actions by the legislature or, in the case of a member who is a legislator, the legislator is terminated from office in either one of the houses of the legislature because of term limits;

(c) the employee is eligible for service retirement or early retirement under the applicable provisions of the retirement system to which the member belongs; and

(d) the employee waives the rights and benefits for which the employee would otherwise be eligible under the State Employee Protection Act.

(2) The cost of each year of service credit purchased under this section is the total actuarial cost of purchasing the service credit based on the most recent actuarial valuation of the retirement system.

(3) The employer of an eligible member under subsection (1) shall pay a portion of the total cost of purchasing up to 3 years of additional service credit that the member was qualified to purchase under 19-3-513, 19-6-804, 19-7-804, 19-8-904, or 19-13-405. The employer-paid portion must be calculated using the formula  $A \times B \times C$  when:

(a) A is equal to a maximum of 3 additional years of service credit that the member is eligible to purchase;

(b) B is equal to the sum of the employer and employee contribution rates in the member's retirement system; and

(c) C is equal to the member's gross compensation paid during the immediate preceding 12 months of membership service. The employer may not be charged more than the total actuarial cost of the service credit purchased.

(4) The member shall pay the difference, if any, between the full actuarial cost of the service credit to be purchased and the contribution required from the employer under subsection (3). The member may elect to purchase less than the full amount of service for which the member is eligible under this section, but the election may not reduce the amount of the employer's contribution as calculated under subsection (3).

(5) The board may allow an employer to pay the contributions required under subsection (3) in installments for up to 10 years and may charge interest at a rate set by the board pursuant to 19-2-403.

(6) (a) A member who has received additional service credit under this section and who returns to employment for the same jurisdiction for 960 or more hours in a calendar year in any retirement system forfeits the additional service credit. The employer's contribution to purchase that member's additional service credit, minus the proportional amount of retirement benefits related to the additional service purchased under this section and already paid, must be credited to the employer.

(b) As used in subsection (6)(a), the term "same jurisdiction" means all agencies of the state, including the university system.

**History:** En. Sec. 5, Ch. 524, L. 1995; amd. Sec. 12, Ch. 223, L. 1997; amd. Sec. 3, Ch. 361, L. 1997; amd. Sec. 8, Ch. 58, L. 1999; amd. Sec. 1, Ch. 118, L. 1999; amd. Sec. 72, Ch. 471, L. 1999; amd. Sec. 1, Ch. 66, L. 2001; amd. Sec. 9, Ch. 429, L. 2003; amd. Sec. 6, Ch. 329, L. 2005; amd. Sec. 8, Ch. 99, L. 2011; amd. Sec. 5, Ch. 178, L. 2013.

**19-2-707. Qualified military service.** Notwithstanding any other provision of state law governing a retirement system, contributions, benefits, and service credit for qualified military service are governed by section 414(u) of the Internal Revenue Code and the federal Uniformed Services Employment and Reemployment Rights Act of 1994. Contributions, benefits, and service credit for state military duty are governed by the Montana Military Service Employment Rights Act provided in Title 10, chapter 1, part 10.

**History:** En. Sec. 9, Ch. 58, L. 1999; amd. Sec. 24, Ch. 381, L. 2005; amd. Sec. 7, Ch. 235, L. 2015.

**19-2-708. Rollover of contributions.** (1) A member who elects to and is eligible to purchase service credit from another retirement system or plan into a retirement system provided for in 19-2-302 may, prior to retirement, file a written application with the board to roll over, in accordance with the requirements of this part, to the retirement system to which the member belongs all or a portion of the member's account with the other eligible retirement system or plan. The total amount of the rollover to the retirement system may not exceed the amount of service credit that the member is allowed to purchase as a member of that system. The rollover must be completed prior to the member's retirement.

(2) The board shall accept a direct rollover of eligible distributions from another eligible retirement plan as provided in subsection (1) only to the extent permitted by section 401(a)(31) of the Internal Revenue Code.

**History:** En. Sec. 10, Ch. 58, L. 1999; amd. Sec. 12, Ch. 99, L. 2001; amd. Sec. 10, Ch. 429, L. 2003.

**19-2-709. Transfer of service and contributions from other Montana public employee retirement systems.** (1) A member eligible to transfer service credit, pursuant to 19-2-715 and 19-3-511, into the system to which the member belongs shall complete the transfer prior to the member's retirement.

(2) The accumulated contributions to be transferred by the member may include both taxed contributions and tax-deferred contributions and interest. However, if less than all of the member's accumulated contributions on deposit in a pension trust fund are being transferred, the transfer of taxed and tax-deferred amounts must be made on a proportionate basis, with the remainder refunded to the member. The transferring agency shall at the time of the transfer identify the taxed and tax-deferred amounts being transferred to the board.

**History:** En. Sec. 11, Ch. 58, L. 1999; amd. Sec. 11, Ch. 429, L. 2003.

**19-2-710. Nonapplication of part to defined contribution plan.** Except as otherwise provided in 19-2-715 and chapter 3, part 21, of this title, none of the provisions of this part apply under the defined contribution plan.

**History:** En. Sec. 40, Ch. 471, L. 1999; amd. Sec. 4, Ch. 283, L. 2009.

**19-2-711 through 19-2-714 reserved.**

**19-2-715. Purchase of Montana public service.** (1) (a) An active member may, at any time before retirement, file a written application with the board to purchase as service credit in the member's retirement system all or any portion of the member's previous service credit in the public employees', judges', highway patrol officers', sheriffs', game wardens' and peace officers', firefighters' unified, or municipal police officers' retirement system if the member has:

(i) received or is eligible to receive a refund of accumulated contributions; and

(ii) become a member of one of the other retirement systems covered under chapter 3, 5, 6, 7, 8, 9, or 13 of this title.

(b) To purchase this service credit, the member shall pay the actuarial cost of the service credit in the member's current retirement system, based on the system's most recent actuarial valuation and the annual compensation of the member, minus the employer contribution provided in subsection (1)(c).

(c) Upon receiving the member's payment under subsection (1)(b), the board shall transfer from the member's former retirement system to the member's current retirement system an amount equal to the employer contributions made on compensation during the member's former service, but no more than an amount equal to the normal cost contribution rate minus the

employee contribution rate in the member's current retirement system according to the system's most recent actuarial valuation.

(d) If the member was formerly in the public employees' retirement system's defined contribution plan, the member shall pay the actuarial cost of the service credit in the member's current retirement system based on the system's most recent actuarial valuation and the annual compensation of the member. The member is eligible to transfer the vested portion of the member's defined contribution account to pay the balance due. Any nonvested portion of the defined contribution account is forfeited pursuant to 19-3-2117.

(2) (a) An active member may, at any time before retirement, file a written application with the board to purchase all or a portion of previous employment for the state or a political subdivision of the state. The member shall provide salary and employment documentation certified by the member's former public employer. To purchase service credit under this section, the member shall pay the actuarial cost of the service credit in the member's current retirement system, as determined by the board, based on the system's most recent actuarial valuation. For the purpose of this subsection (2)(a), a political subdivision of the state includes a school district.

(b) The board is the sole authority under subsection (2)(a) in determining what constitutes public service, subject to 19-2-403.

**History:** En. Sec. 1, Ch. 429, L. 2003; amd. Sec. 2, Ch. 128, L. 2007; amd. Sec. 5, Ch. 283, L. 2009; amd. Sec. 9, Ch. 99, L. 2011.

**19-2-716. Compromise or settlement of claims by public employees regarding retirement service credits.** A retiree from a public employer who is a party to a compromise or settlement regarding retirement service credits or benefits may waive the right of individual privacy and allow a governmental entity to release any or all records or details of the compromise or settlement, such as personnel records, that pertain to the employee personally and that would otherwise be protected by the right of individual privacy subject to the merits of public disclosure.

**History:** En. Sec. 3, Ch. 306, L. 2017.

#### **Compiler's Comments**

*Effective Date:* Section 5, Ch. 306, L. 2017, provided: "[This act] is effective on passage and approval." Approved May 4, 2017.

*Retroactive Applicability — Applicability:* Section 6, Ch. 306, L. 2017, provided: "(1) For compromise or settlements entered into on or after July 1, 2010, until [the effective date of this act] [May 4, 2017], [this act] applies retroactively, within the meaning of 1-2-109, unless the compromise or settlement contract provides that the records or details of the compromise or settlement, such as personnel records, that pertain to the employee personally may not be released.

(2) [This act] applies without limitation to compromise or settlements entered into on or after [the effective date of this act] [May 4, 2017]."

## **Part 8 Beneficiaries**

**19-2-801. Designation of beneficiary.** (1) In the absence of any statutory beneficiaries, designated beneficiaries are the natural persons, charitable organizations, estate of the payment recipient, or trusts for the benefit of natural living persons that the member or payment recipient designates on the membership form provided by the board.

(2) Unless otherwise provided by this title or by a valid temporary restraining order issued pursuant to 40-4-121, a member or payment recipient may revoke the designation and name different designated beneficiaries by filing with the board a new membership form provided by the board.

(3) If a person returns to covered employment in the same retirement system pursuant to 19-2-603, the person shall complete a new membership form and file it as provided in subsection (2). However, until the new membership form is filed, the board shall reference the membership form executed by the person prior to initial termination of membership for the same purposes as prior to termination. Beneficiaries designated on that membership form continue to be beneficiaries until the new membership form is filed.

(4) (a) Except as provided in subsections (4)(b) and (4)(c), the beneficiary designation on the most recent membership form filed with the board is effective for all purposes until the member retires.

(b) A member may elect to either override or retain the member's existing beneficiary designation when completing a membership form for temporary or secondary employment with another employer within the same Title 19 retirement system.

(c) When a member retires, the designated beneficiaries or contingent annuitants named on the retirement application become effective.

(5) If a statutory or designated beneficiary predeceases the member or payment recipient, the predeceased beneficiary's share must be paid to the remaining statutory or designated beneficiaries in amounts proportional to each remaining statutory or designated beneficiary's original share.

(6) A statutory or designated beneficiary who renounces an interest in the payment rights of a member or payment recipient will be considered, with respect to that interest, as having predeceased the member or payment recipient.

(7) A contingent annuitant of a retired member who elected option 2, 3, or 4 pursuant to 19-3-1501, 19-5-701, 19-7-1001, or 19-8-801 may not renounce the contingent annuitant's interest in the payment rights of the member.

**History:** En. 68-2401 by Sec. 47, Ch. 323, L. 1973; R.C.M. 1947, 68-2401(part); amd. Sec. 10, Ch. 496, L. 1981; amd. Sec. 1, Ch. 154, L. 1985; amd. Sec. 26, Ch. 265, L. 1993; Sec. 19-3-1301, MCA 1991; redes. 19-2-801 by Sec. 238, Ch. 265, L. 1993; amd. Sec. 9, Ch. 370, L. 1997; amd. Sec. 17, Ch. 562, L. 1999; amd. Sec. 13, Ch. 99, L. 2001; amd. Sec. 12, Ch. 429, L. 2003; amd. Sec. 6, Ch. 283, L. 2009; amd. Sec. 10, Ch. 99, L. 2011; amd. Sec. 6, Ch. 178, L. 2013; amd. Sec. 3, Ch. 248, L. 2015.

**19-2-802. Effect of no designation of beneficiary or no surviving statutory or designated beneficiary.** (1) If a member or payment recipient fails to name a designated beneficiary or if a statutory or designated beneficiary does not survive the member or payment recipient, the estate of the member or payment recipient is entitled to any accrued lump-sum payment or accrued retirement benefit not received prior to the member's or payment recipient's death. If the estate, as either a designated beneficiary or as a beneficiary by default as provided in this subsection, would not be probated but for the amount due to the estate from the retirement system, all of the amount due to the estate must be paid directly, without probate, to the surviving next of kin of the deceased or the guardians of the survivor's estate, share and share alike.

(2) Payment must be made in the same order in which the following groups are listed:

- (a) husband or wife;
- (b) children;
- (c) father and mother;
- (d) grandchildren;
- (e) brothers and sisters; or
- (f) nieces and nephews.

(3) A payment may not be made to a person included in any of the groups listed in subsection (2) if at the date of payment there is a living person in any of the groups preceding the group of which the person is a member, as listed. Payment must be made upon receipt from the person of an affidavit, upon a form supplied by the board, that there are no living individuals in the groups preceding the group of which the person is a member and that the estate of the deceased will not be probated.

(4) The payment must be in full and complete discharge and acquittance of the board and system on account of the member's or payment recipient's death.

**History:** En. 68-2401 by Sec. 47, Ch. 323, L. 1973; R.C.M. 1947, 68-2401(part); amd. Sec. 2, Ch. 154, L. 1985; amd. Sec. 27, Ch. 265, L. 1993; Sec. 19-3-1302, MCA 1991; redes. 19-2-802 by Sec. 238, Ch. 265, L. 1993; amd. Sec. 10, Ch. 370, L. 1997; amd. Sec. 18, Ch. 562, L. 1999; amd. Sec. 13, Ch. 429, L. 2003; amd. Sec. 11, Ch. 99, L. 2011.

**19-2-803. Payment to custodian of minor beneficiary.** (1) Except as provided in subsection (2), if any benefit from a system is payable to a minor, the benefit must be paid to one of the following:

- (a) a surviving parent, if any;
- (b) a parent awarded custody of the minor in a divorce proceeding;
- (c) a custodian designated under Title 72, chapter 26;
- (d) a guardian appointed pursuant to Title 72, chapter 5, part 2; or
- (e) a conservator appointed pursuant to Title 72, chapter 5, part 4.



(2) If any benefit payable from the highway patrol officers' retirement system under chapter 6 of this title, the municipal police officers' retirement system under chapter 9 of this title, or the firefighters' unified retirement system under chapter 13 of this title is payable to a statutory beneficiary who is a dependent child, as defined under the provisions of that system, of a system member and the system member has established a trust for the dependent child, then the benefit must be paid to the trustee of that trust.

(3) The payment must be in full and complete discharge and acquittance of the board and system on account of the benefit. The person receiving benefit payments pursuant to this section shall account to the minor for the money when the minor reaches the age of majority.

**History:** En. 68-2402 by Sec. 48, Ch. 323, L. 1973; R.C.M. 1947, 68-2402; amd. Sec. 11, Ch. 496, L. 1981; amd. Sec. 28, Ch. 265, L. 1993; Sec. 19-3-1304, MCA 1991; redes. 19-2-803 by Sec. 238, Ch. 265, L. 1993; amd. Sec. 1, Ch. 369, L. 2005.

**19-2-804. Limitations on payment of benefits to person causing member's death or disability.** If a person is convicted of knowingly, purposely, or intentionally causing a member's death or disability, that person may not receive benefits or payments from a retirement system and the benefits must be payable as otherwise provided in statute.

**History:** En. Sec. 1, Ch. 153, L. 1985; amd. Sec. 29, Ch. 265, L. 1993; Sec. 19-3-1305, MCA 1991; redes. 19-2-804 by Sec. 238, Ch. 265, L. 1993.

## Part 9 Management of Benefit Payments

**19-2-901. Estimate of benefit when information incomplete.** If it is impracticable for the board to determine from the records the length of service, the compensation, or the age of a member or if a member refuses or fails to give the board a statement of the member's state service, compensation, or age, the board may estimate, for the purposes of this title, the length of service, compensation, or age.

**History:** En. 68-2503 by Sec. 51, Ch. 323, L. 1973; amd. Sec. 4, Ch. 132, L. 1977; R.C.M. 1947, 68-2503; amd. Sec. 30, Ch. 265, L. 1993; Sec. 19-3-1401, MCA 1991; redes. 19-2-901 by Sec. 238, Ch. 265, L. 1993.

**19-2-902. Payment of benefits.** (1) A retirement benefit or survivorship benefit granted under a retirement system subject to this chapter, other than a benefit under the defined contribution plan, must be payable in monthly installments, except as provided in this part.

(2) (a) If a member or beneficiary who is a natural person elects, the board shall pay the member's accumulated contributions to the member or beneficiary in a single lump sum.

(b) The lump sum must be paid at the time the initial monthly benefit would otherwise be payable.

(c) An election to receive a single lump sum must be made at least 30 days prior to the first payment date.

(3) A beneficiary that is a charitable organization, the estate of the payment recipient, or a trust is eligible only for a single lump sum.

(4) If a benefit recipient dies before the last day of the month, a pro rata amount otherwise payable to the payment recipient must be paid to the designated beneficiary, statutory beneficiary, or contingent annuitant or to the benefit recipient's estate, as appropriate.

**History:** En. 68-2501 by Sec. 49, Ch. 323, L. 1973; amd. Sec. 16, Ch. 332, L. 1977; R.C.M. 1947, 68-2501(1); amd. Sec. 31, Ch. 265, L. 1993; Sec. 19-3-1402, MCA 1991; redes. 19-2-902 by Sec. 238, Ch. 265, L. 1993; amd. Sec. 12, Ch. 58, L. 1999; amd. Sec. 18, Ch. 471, L. 1999; amd. Sec. 4, Ch. 284, L. 2009; amd. Sec. 4, Ch. 195, L. 2017.

### Compiler's Comments

**2017 Amendment:** Chapter 195 in (2)(a) before "elects" inserted "who is a natural person" and after "shall pay the" substituted "member's accumulated contributions" for "present value of the benefit"; inserted (3) concerning payment of single lump sum to certain beneficiaries; and made minor changes in style. Amendment effective July 1, 2017.

**19-2-903. Correction of errors and suspension of payments.** (1) If the amount of a contribution payment is incorrect, the board may reject the payment or accept the payment and approve any of the following methods to collect the correct amount:

- (a) adjustment of subsequent payments from a member or an employer;
- (b) installment payments or a lump-sum payment from an employer; or
- (c) a lump-sum payment or a rollover from a member.

(2) If a purchase of service credit made pursuant to 19-2-704 is determined to be incorrect, the board may approve correcting the error by any of the following methods:

(a) adjusting the subsequent lump-sum or installment payments from the member or the member's employer;

(b) accepting a lump-sum payment or rollover from the member for the amount underpaid; or

(c) granting the member service credit proportional to the amount actually paid.

(3) If fraud or error results in a member, survivor, or beneficiary receiving more or less than entitled to, then upon the discovery of the error, the board shall correct the error.

(4) If the board suspects that a payment is not being delivered to its intended recipient, the board shall suspend the payment. The suspension will continue until the board makes direct contact with the intended recipient and is able to confirm the intended recipient's correct address or direct deposit information. Upon confirmation, payments will resume and any payments suspended must be made to the intended recipient as soon as administratively possible.

(5) (a) Except as provided in subsection (6), if a benefit or payment is overpaid or paid to a person not entitled to receive the benefit or payment, the board may recover the full amount of the improper distribution, plus interest set at the assumed rate of return on the system's investments. The interest must be compounded annually and be applied monthly and must accrue from the date the recipient of the improper distribution received a final determination notice of the improper distribution until the total amount owed to the retirement system pursuant to this subsection (5) is paid in full.

(b) To recover an amount owed pursuant to this subsection (5), the board may adjust future benefit payments or arrange for another method of payment. For collection of amounts due, the board may pursue all remedies available by law to it, including but not limited to initiating a lawsuit, requesting an electronic funds transfer or automated clearinghouse reversal transaction from the recipient's banking institution, or assigning or referring the debt to an attorney or collection agency.

(c) The board is entitled to recover its reasonable costs for pursuing collection, including but not limited to attorney fees or charges assessed by a collection agency. These costs may be added to the principal amount due under this subsection (5) and accrue interest as provided in subsection (5)(a).

(d) The recipient of an improperly paid benefit or payment is liable for repayment of the total amount owed pursuant to this subsection (5).

(e) The board may, for good cause, waive some or all of the interest charges or collection costs that may be assessed under this subsection (5).

(6) (a) If overpaid benefits or unpaid contributions resulted solely from an error made by the retirement system:

(i) the retirement system may recover the amount owed only with respect to the timeframe beginning 24 months prior to the date on which the retirement system issues an initial notice of the amount owed and ending when the amount owed is paid in full; and

(ii) interest may not be charged if the amount owed is paid within 30 days after issuance of the final staff determination.

(b) If the amount owed is not paid in full within 30 days after issuance of the final staff determination, the amount owed accrues interest at the retirement system's actuarially assumed annual rate of return, compounded monthly, beginning on the 31st day after issuance of the final staff determination. Interest continues to accrue until the amount owed to the retirement system is fully paid.

**History:** En. 68-2509 by Sec. 57, Ch. 323, L. 1973; amd. Sec. 4, Ch. 132, L. 1977; R.C.M. 1947, 68-2509; amd. Sec. 32, Ch. 265, L. 1993; Sec. 19-3-1403, MCA 1991; redes. 19-2-903 by Sec. 238, Ch. 265, L. 1993; amd. Sec. 14, Ch. 99, L. 2001; amd. Sec. 7, Ch. 329, L. 2005; amd. Sec. 4, Ch. 248, L. 2015; amd. Sec. 5, Ch. 195, L. 2017.

**Compiler's Comments**

*2017 Amendment:* Chapter 195 inserted (4) concerning suspension of payment based on board's suspicion that payment is not being delivered to its intended recipient; in (5)(b) near end inserted "requesting an electronic funds transfer or automated clearinghouse reversal transaction from the recipient's banking institution"; and made minor changes in style. Amendment effective July 1, 2017.

**19-2-904. Withholding of group insurance premium from retirement benefit.** (1) A retiree who is a participant in an employee group insurance plan that permits participation in

the group plan following retirement may elect to have the monthly premium for group insurance withheld by the retirement system and paid directly by the system to the sponsoring employer. In order to qualify for this withholding, a retiree must be a participant in a group insurance plan available to the employees of the former employer. Withholding may not be made for any retiree covered by an individual insurance policy.

(2) Following the death of a retiree who elected withholding of premiums under subsection (1), the retiree's contingent annuitant may elect to have the contingent annuitant's monthly premium for group insurance withheld by the retirement system and paid directly by the system to the sponsoring employer. In order to qualify for this withholding, the contingent annuitant must be covered by the same group insurance plan that covered the retiree in accordance with subsection (1).

**History:** En. 68-2502.1 by Sec. 7, Ch. 214, L. 1977; R.C.M. 1947, 68-2502.1; Sec. 19-3-1404, MCA 1991; redes. 19-2-904 by Sec. 238, Ch. 265, L. 1993; amd. Sec. 232, Ch. 56, L. 2009; amd. Sec. 5, Ch. 248, L. 2015; amd. Sec. 6, Ch. 195, L. 2017.

**Compiler's Comments**

*2017 Amendment:* Chapter 195 in (1) in first sentence and in (2) near middle substituted "sponsoring employer" for "insurance carrier". Amendment effective July 1, 2017.

**19-2-905. Payments under workers' compensation.** All payments provided for in this chapter, except as otherwise provided, are in addition to any other benefits provided for under the Workers' Compensation Act of the state of Montana.

**History:** En. 68-2625 by Sec. 25, Ch. 178, L. 1974; R.C.M. 1947, 68-2625; amd. Sec. 33, Ch. 265, L. 1993; Sec. 19-7-103, MCA 1991; redes. 19-2-905 by Sec. 238, Ch. 265, L. 1993.

**19-2-906. Limitations on disability or survivorship benefits.** If the board determines that the disability or death of a member of a defined benefit plan is proximately caused by the gross negligence, willful misconduct, or violation of the law by the member, the board may revoke, suspend, or refuse to grant benefits except an annuity that is the actuarial equivalent of the member's accumulated contributions with regular interest to the day the benefit commences.

**History:** En. 11-1887 by Sec. 28, Ch. 456, L. 1977; R.C.M. 1947, 11-1887; amd. Sec. 34, Ch. 265, L. 1993; Sec. 19-9-1004, MCA 1991; redes. 19-2-906 by Sec. 238, Ch. 265, L. 1993; amd. Sec. 19, Ch. 471, L. 1999.

**19-2-907. Alternate payees — family law orders — rulemaking.** (1) A participant in a retirement system may have the participant's rights modified or recognized by a family law order.

(2) For purposes of this section:

(a) "family law order" means a judgment, decree, or order of a court of competent jurisdiction under Title 40 concerning child support, parental support, spousal maintenance, or marital property rights that includes a transfer of all or a portion of a participant's payment rights in a retirement system to an alternate payee in compliance with this section and with section 414(p) of the Internal Revenue Code, 26 U.S.C. 414(p); and

(b) "participant" means an identified person who is a member or an actual or potential beneficiary, survivor, or contingent annuitant of a retirement system or plan designated pursuant to Title 19, chapter 3, 5, 6, 7, 8, 9, 13, or 17.

(3) A family law order must identify a participant and an alternate payee by full name, current address, date of birth, and social security number. An alternate payee's rights and interests granted in compliance with this section are not subject to assignment, execution, garnishment, attachment, or other process. An alternate payee's rights or interests may be modified only by a family law order amending the family law order that established the right or interest.

(4) Except as provided in subsection (6)(a), a family law order may not require:

(a) a type or form of benefit, option, or payment not available to the affected participant under the appropriate retirement system or plan; or

(b) an amount or duration of payment greater than that available to a participant under the appropriate retirement system or plan.

(5) With respect to a defined benefit plan, a family law order may provide for payment to an alternate payee only as follows:

(a) Retirement benefit payments or refunds may be apportioned by directing payment of either a percentage of the amount payable or a fixed amount of no more than the amount

payable to the participant. Payments to an alternate payee may be limited to a specific amount each month if the number of payments is specified.

(b) The maximum amount of disability or survivorship benefits that may be paid to alternate payees is the monthly benefit amount that would have been payable on the date of termination of service if the member had retired without disability or death. The maximum amount paid may be zero, depending on the member's age and service credit at the time of disability or death. Conversion of a disability retirement to a service retirement pursuant to 19-2-406(5), 19-3-1015(2), 19-6-612(2), or 19-8-712(2) does not increase the maximum monthly amount that may be paid to an alternate payee.

(c) Retirement benefit adjustments for which a participant is eligible after retirement may be paid as a percentage only if existing benefit payments are paid as a percentage. The adjustments must be paid as a percentage in the same ratio as existing benefit payments unless the family law order specifies that the alternate payee is not entitled to benefit adjustments.

(d) The participant may be required to choose a specified form of benefit payment or designate a beneficiary or contingent annuitant if the retirement system or plan allows for that option.

(6) With respect to a defined contribution plan, a family law order may provide for payment to an alternate payee only as follows:

(a) The vested account of the participant may be apportioned by directing payment of either a percentage or a fixed amount. The total amount paid may not exceed the amount in the participant's vested account. The alternate payee may receive the payment only as a direct payment, rollover, or transfer. The alternate payee's portion must be totally disbursed to the alternate payee as soon as administratively feasible upon the board's approval of the family law order.

(b) If the participant is receiving periodic payments or an annuity provided under the plan, those payments may be apportioned as a percentage of the amount payable to the participant. Payments to the alternate payee may be limited to a specific amount each month if the number of payments is specified. Payments may not total more than the amount payable to the payee.

(7) The duration of monthly payments paid from a defined benefit or defined contribution plan participant to an alternate payee may not exceed the lifetime of the appropriate participant. The duration of the monthly payments may be further limited only to a specified maximum time, the life of the alternate payee, or the life of another specified participant. The alternate payee's rights and interests survive the alternate payee's death and may be transferred by inheritance.

(8) The board may assess a participant or an alternate payee for all costs of reviewing and administering a family law order, including reasonable attorney fees. The board may adopt rules to implement this section.

(9) Each family law order establishing a final obligation concerning payments by the retirement system must contain a statement that the order is subject to review and approval by the board.

(10) The board shall adopt rules to provide for the administration of family law orders.

**History:** En. Sec. 1, Ch. 259, L. 1993; amd. Sec. 1, Ch. 111, L. 1995; amd. Sec. 11, Ch. 370, L. 1997; amd. Sec. 20, Ch. 471, L. 1999; amd. Sec. 15, Ch. 99, L. 2001; amd. Sec. 4, Ch. 490, L. 2001; amd. Sec. 14, Ch. 429, L. 2003; amd. Sec. 8, Ch. 329, L. 2005; amd. Sec. 3, Ch. 128, L. 2007; amd. Sec. 5, Ch. 284, L. 2009; amd. Sec. 7, Ch. 178, L. 2013; amd. Sec. 7, Ch. 195, L. 2017.

#### **Compiler's Comments**

*2017 Amendment:* Chapter 195 in (5)(c) in last sentence at end inserted "unless the family law order specifies that the alternate payee is not entitled to benefit adjustments". Amendment effective July 1, 2017.

**19-2-908. Time of commencement of benefit — rulemaking.** (1) (a) The board shall grant a benefit to any active or inactive member who is vested, or the member's statutory or designated beneficiary, who has fulfilled all eligibility requirements, terminated service, and filed the appropriate written application with the board. However, the board may, on its own accord and without a written application, begin benefit payments to a member or beneficiary in order to comply with section 401(a)(9) of the Internal Revenue Code.

(b) A member may apply for retirement benefits before termination from employment, but commencement of the benefits must be as provided in this section.



(2) (a) Except as provided in subsection (2)(b), the service retirement benefit may commence on the first day of the month following the eligible member's last day of employment or, if requested by the member in writing, on the first day of a later month.

(b) If an elected official's term of office expires before the 15th day of the month, the official may elect that service retirement benefits from a defined benefit plan commence on the first day of the month following the official's last full month in office. An official electing this option shall file a written application with the board. An official electing this option may not earn membership service, service credit, or compensation for purposes of calculating highest average compensation or final average compensation, as defined under the provisions of the appropriate retirement system, in the partial month ending the official's term, and compensation earned in that partial month is not subject to employer or employee contributions.

(3) (a) Subject to the provisions of subsection (3)(b), the disability retirement benefit payable to a member must commence on the day following the member's termination from employment.

(b) If a disabled member continues with a purchase of service or chooses to purchase service following termination of employment, the member's disability benefit may not commence until the service purchase is completed.

(4) If a member begins receiving retirement benefits payments later than when the member is initially eligible, the guaranteed annual benefit adjustment payable pursuant to 19-3-1605, 19-5-901, 19-6-710, 19-6-711, 19-7-711, 19-8-1105, 19-9-1009, 19-9-1010, 19-9-1013, 19-13-1010, and 19-13-1011 does not commence until January 1 of the year after the year in which the member begins to receive the member's retirement benefit payment. The guaranteed annual benefit adjustment may not be paid retroactively.

(5) A designated beneficiary eligible to receive a death payment may instead elect a survivorship benefit if the designated beneficiary is a natural person and notifies the board of the designated beneficiary's election in writing within 90 days after the designated beneficiary receives notice that the designated beneficiary is eligible to receive a death payment. Monthly survivorship benefits from a defined benefit plan must commence on the day following the death of the member.

(6) Estimated and finalized benefit payments must be issued as provided in rules adopted by the board.

(7) With respect to the defined contribution plan, the board shall adopt rules regarding the commencement of benefits that are consistent with applicable provisions of the Internal Revenue Code and its implementing regulations.

**History:** En. Sec. 3, Ch. 370, L. 1997; amd. Sec. 13, Ch. 58, L. 1999; amd. Sec. 21, Ch. 471, L. 1999; amd. Sec. 16, Ch. 99, L. 2001; amd. Sec. 15, Ch. 429, L. 2003; amd. Sec. 9, Ch. 329, L. 2005; amd. Sec. 4, Ch. 128, L. 2007; amd. Sec. 7, Ch. 283, L. 2009; amd. Sec. 12, Ch. 99, L. 2011; amd. Sec. 6, Ch. 248, L. 2015.

### **19-2-909. Execution or withholding for support obligation — rulemaking.**

(1) Benefits in the retirement systems or plans provided for in chapters 3, 5 through 9, 13, and 17 are subject to execution and income withholding for the payment of a participant's support obligation.

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

(a) "Execution" means a warrant for distraint issued or a writ of execution obtained by the department of public health and human services when providing support enforcement services under Title IV-D of the Social Security Act.

(b) "Income withholding" means an income-withholding order issued under the provisions of Title 40, chapter 5, part 3 or 4, or an income-withholding order issued in another state as provided in 40-5-1046 through 40-5-1051.

(c) "Participant" means an identified person who is a member or an actual or potential beneficiary, survivor, or contingent annuitant of a retirement system or plan designated pursuant to Title 19, chapter 3, 5, 6, 7, 8, 9, 13, or 17.

(d) "Support obligation" has the meaning provided in 40-5-403 for a support order.

(3) The execution or income-withholding order may not require:

(a) a type or form of benefit, option, or payment not available to the affected participant under the appropriate retirement system or plan; or

(b) an amount or duration of payment greater than that available to a participant under the appropriate retirement system or plan.



(4) An execution or income-withholding order applied to a defined benefit retirement plan may provide for payment only as follows:

(a) Retirement benefit payments or refunds may be apportioned by directing payment of a percentage of the amount payable or payment of a fixed amount of no more than the amount payable to the participant.

(b) The maximum amount of disability or survivorship benefits that may be paid under this section is the monthly benefit amount that would have been payable on the date of termination of service if the member had retired without disability or death. The maximum amount paid may be zero, depending on the member's age and service credit at the time of disability or death.

(c) Retirement benefit adjustments for which a participant is eligible after retirement may be apportioned only if existing benefit payments are apportioned. The adjustments must be apportioned in the same ratio as existing benefit payments.

(5) With respect to a defined contribution plan, an execution or income-withholding order may provide for payment to an alternate payee only as follows:

(a) The vested account of the participant may be apportioned by directing payment of either a percentage or a fixed amount. The total amount paid may not exceed the amount in the participant's vested account. The alternate payee may receive the payment only as a direct payment, rollover, or transfer. A new account may be established for an alternate payee, but money in the account must be totally disbursed to the alternate payee as soon as feasible upon the participant's termination of service or death.

(b) If the participant is receiving periodic payments or an annuity provided under the plan, those payments may be apportioned as a percentage of the amount payable to the participant. Payments to the alternate payee may be limited to a specific amount each month if the number of payments is specified. Payments may not total more than the amount payable to the payee.

(6) The duration of monthly or other periodic payments paid from a defined benefit or defined contribution plan participant to an alternate payee may not exceed the lifetime of the appropriate participant. The duration of the monthly payments may be further limited only to a specified maximum time, the life of the alternate payee, or the life of another specified participant. The alternate payee's rights and interests survive the alternate payee's death and may be transferred by inheritance.

(7) The board shall adopt rules to provide for the administration of execution or income-withholding orders.

**History:** En. Sec. 14, Ch. 552, L. 1997; amd. Sec. 22, Ch. 471, L. 1999; amd. Sec. 17, Ch. 99, L. 2001; amd. Sec. 5, Ch. 490, L. 2001; amd. Sec. 16, Ch. 429, L. 2003; amd. Sec. 10, Ch. 329, L. 2005; amd. Sec. 5, Ch. 128, L. 2007.

## **Part 10**

### **Special Provisions**

**19-2-1001. Maximum contribution and benefit limitations.** (1) (a) Employee contributions paid to and retirement benefits paid from a retirement system or plan may not exceed the annual limits on contributions and benefits, respectively, allowed by section 415 of the Internal Revenue Code, 26 U.S.C. 415.

(b) For purposes of determining whether the annual limitations in subsection (1)(a) are met:

(i) all defined benefit plans of the employer, whether or not terminated, must be treated as a single defined benefit plan;

(ii) all defined contribution plans of the employer, whether terminated or not, must be treated as a single defined contribution plan;

(iii) retirement systems and plans established under Title 19 must be prioritized for disqualification purposes above any plans not established under Title 19; and

(iv) retirement systems and plans established under Title 19 that must be aggregated for purposes of the limits in section 415 of the Internal Revenue Code, 26 U.S.C. 415, must be prioritized for qualification purposes based on the system or plan providing the member with the highest benefit.

(2) A member may not receive an annual benefit that exceeds the dollar amount specified in section 415(b)(1)(A) of the Internal Revenue Code, 26 U.S.C. 415(b)(1)(A), subject to the applicable adjustments in section 415(d) of the Internal Revenue Code, 26 U.S.C. 415(d).

(3) Notwithstanding any other provision of law to the contrary, the board may modify a request by a member to make a contribution to a retirement system or plan if the amount of the contribution would exceed the limits provided in section 415 of the Internal Revenue Code, by using the following methods:

(a) If the law requires a lump-sum payment for the purchase of service credit, the board may establish a periodic payment plan for the member to avoid a contribution in excess of the limits under section 415(c) or 415(n) of the Internal Revenue Code, 26 U.S.C. 415(c) or 415(n).

(b) If payment pursuant to subsection (3)(a) will not avoid a contribution in excess of the limits imposed by section 415(c) of the Internal Revenue Code, 26 U.S.C. 415(c), the board shall either reduce the member's contribution to an amount within the limits of that section or refuse the member's contribution.

(4) (a) Effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, if a member makes one or more contributions to purchase permissive service credit under a retirement system or plan to which this section applies, then the requirements of this section will be treated as met only if:

(i) except as provided in subsection (4)(b), the requirements of section 415(b) of the Internal Revenue Code, 26 U.S.C. 415(b), are met, determined by treating the accrued benefit derived from all the contributions as an annual benefit for purposes of section 415(b) of the Internal Revenue Code, 26 U.S.C. 415(b); or

(ii) except as provided in subsection (4)(c), the requirements of section 415(c) of the Internal Revenue Code, 26 U.S.C. 415(c), are met, determined by treating all the contributions as annual additions for purposes of section 415(c) of the Internal Revenue Code, 26 U.S.C. 415(c).

(b) For purposes of applying subsection (4)(a)(i), the retirement system or plan may not fail to meet the reduced limit under section 415(b)(2)(C) of the Internal Revenue Code, 26 U.S.C. 415(b)(2)(C), solely by reason of subsection (4)(a).

(c) For purposes of applying subsection (4)(a)(ii), the retirement system or plan may not fail to meet the percentage limitation under section 415(c)(1)(B) of the Internal Revenue Code, 26 U.S.C. 415(c)(1)(B) solely by reason of this subsection (4).

(5) For purposes of subsection (4), the term "permissive service credit" means service credit:

(a) specifically recognized by a plan subject to this chapter for purposes of calculating a plan member's benefit under the member's plan;

(b) that the plan member has not received under the plan;

(c) that the plan member may receive only by making a voluntary additional contribution, in an amount determined under the plan, that does not exceed the amount necessary to fund the benefit attributable to the service credit; and

(d) effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, service credit for periods for which there is no performance of service, which, notwithstanding subsection (5)(b), may include service credit purchased in order to provide an increased benefit under the plan.

(6) A retirement system or plan fails to meet the requirements of subsection (4) if:

(a) more than 5 years of nonqualified service credit are taken into account; or

(b) any nonqualified service credit is taken into account before the plan member has at least 5 years of participation under the plan.

(7) For purposes of subsection (6), effective for permissive service credit contributions made in limitation years beginning after December 31, 1997, the term "nonqualified service credit" means permissive service credit other than that allowed with respect to:

(a) service, including parental, medical, sabbatical, and similar leave, as an employee of the government of the United States, any state or political subdivision of a state, or any agency or instrumentality of a state or of a political subdivision of a state, other than military service or service for credit that was obtained as a result of a repayment of a refund as described in section 415(k)(3) of the Internal Revenue Code, 26 U.S.C. 415(k)(3);

(b) service, including parental, medical, sabbatical, and similar leave, as an employee, other than an employee described in subsection (7)(a), of an education organization described in

section 170(b)(1)(A)(ii) of the Internal Revenue Code, 26 U.S.C. 170(b)(1)(A)(ii), that is a public, private, or sectarian school that provides elementary or secondary education through grade 12 or a comparable level of education, as determined under the applicable law of the jurisdiction in which the service was performed;

(c) service as an employee of an association of employees who are described in subsection (7)(a); or

(d) military service, other than qualified military service under section 414(u) of the Internal Revenue Code, 26 U.S.C. 414(u), recognized by the system or plan.

(8) In the case of service described in subsection (7)(a), (7)(b), or (7)(c), service must be nonqualified service if recognition of the service would cause a plan member to receive a retirement benefit for the same service under more than one plan.

(9) In the case of a trustee-to-trustee transfer after December 31, 2001, to which section 403(b)(13)(A) or 457(e)(17)(A) of the Internal Revenue Code, 26 U.S.C. 403(b)(13)(A) or 457(e)(17)(A), applies, without regard to whether the transfer is made between plans maintained by the same employer:

(a) the limitations in subsection (7) do not apply in determining whether the transfer is for the purchase of permissive service credit; and

(b) the distribution rules applicable to the plan under federal law apply to those amounts and any benefits attributable to those amounts.

(10) (a) For purposes of this subsection (10), an eligible plan member is an individual who became a member of the plan before January 1, 1998.

(b) For an eligible plan member, the limitation in section 415(c)(1) of the Internal Revenue Code, 26 U.S.C. 415(c)(1), may not be applied to reduce the amount of permissive service credit that may be purchased to an amount less than the amount that was allowed to be purchased under the terms of the applicable law in effect on August 5, 1997.

(11) The limitation year for purposes of section 415 of the Internal Revenue Code, 26 U.S.C. 415, is the calendar year beginning each January 1 and ending December 31.

(12) (a) "Salary", for the purposes of determining compliance with section 415 of the Internal Revenue Code, 26 U.S.C. 415, and for no other purposes, means compensation as defined in 26 CFR 1.415(c)-1 through 1.415(c)-2(d)(4). However:

(i) employee contributions picked up under section 414(h)(2) of the Internal Revenue Code, 26 U.S.C. 414(h)(2), are excluded from salary; and

(ii) the amount of an elective deferral, as defined in section 402(g) of the Internal Revenue Code, 26 U.S.C. 402(g), or any other contribution that is contributed or deferred by the employer at the election of the member and that is not includable in the gross income of the member because of section 125, 403(b), or 457 of the Internal Revenue Code, 26 U.S.C. 125, 403(b), or 457, is included in the definition.

(b) For limitation years beginning after December 31, 2000, the term includes any elective amounts that are not includable in the gross income of the member by reason of section 132(f)(4) of the Internal Revenue Code, 26 U.S.C. 132(f)(4).

(c) For limitation years beginning no later than January 1, 2008, the term includes compensation paid by the later of 2.5 months after a member's severance from employment or the end of the limitation year that includes the date of the member's severance from employment if:

(i) the payment is regular compensation for services during the member's regular working hours or compensation for services outside the member's regular working hours such as overtime or shift differential, commissions, bonuses, or other similar payments and, absent a severance from employment, the payments would have been paid to the member while the member continued in employment with the employer; or

(ii) the payment is for unused accrued bona fide sick, vacation, or other leave that the member would have been able to use if employment had continued.

(d) For limitation years beginning on or after January 1, 2009, the term, as calculated, may not exceed the annual limit under section 401(a)(17) of the Internal Revenue Code, 26 U.S.C. 401(a)(17).

(e) Beginning January 1, 2009, to the extent required by section 414(u)(12) of the Internal Revenue Code, 26 U.S.C. 414(u)(12), a member receiving from an employer differential wage

payments as defined under section 3401(h)(2) of the Internal Revenue Code, 26 U.S.C. 3401(h)(2), must be treated as employed by that employer. The differential wage payments must be treated as compensation for purposes of applying the limits on annual additions under section 415(c) of the Internal Revenue Code, 26 U.S.C. 415(c). This provision must be applied to all similarly situated employees in a reasonably equivalent manner.

(13) For the purposes of applying the limits on a defined benefit plan member's annual benefit under section 415(b) of the Internal Revenue Code, 26 U.S.C. 415(b), the following apply:

(a) Prior to January 1, 2009, any automatic adjustment under the retirement system or a plan subject to this chapter must be taken into consideration when determining a member's applicable limit to the extent required by a reasonable interpretation of 26 CFR 1.415-3(c).

(b) On or after January 1, 2009, with respect to a member who does not receive a portion of the member's annual benefit in a lump sum:

(i) a member's applicable limit must be applied to the member's annual benefit in the first limitation year without regard to any automatic cost-of-living increases;

(ii) to the extent the member's annual benefit equals or exceeds the applicable limit, the member is no longer eligible for cost-of-living increases until the benefit plus the accumulated increases are less than the limit; and

(iii) in any subsequent limitation year, the member's annual benefit, including any automatic cost-of-living increase applicable, is subject to the applicable benefit limit, including any adjustment to the dollar limit in section 415(b)(1)(A) of the Internal Revenue Code, 26 U.S.C. 415(b)(1)(A), under section 415(d) of the Internal Revenue Code, 26 U.S.C. 415(d) and the implementing regulations.

(c) On or after January 1, 2009, with respect to a member who receives a portion of the member's annual benefit in a lump sum, a member's applicable limit must be applied, taking into consideration automatic cost-of-living increases as required by section 415(b) of the Internal Revenue Code, 26 U.S.C. 415(b), and applicable U.S. treasury regulations.

(d) (i) A member's annual benefit payable under the member's plan in any limitation year may not be greater than the limit applicable at the annuity starting date, as increased in subsequent years pursuant to section 415(d) of the Internal Revenue Code, 26 U.S.C. 415(d), and the implementing regulations.

(ii) If the form of benefit without regard to the automatic benefit increase feature is not a straight life or a qualified joint and survivor annuity, then this subsection (13)(d) is applied by either reducing the limit in section 415(b) of the Internal Revenue Code, 26 U.S.C. 415(b), applicable at the annuity starting date or adjusting the form of benefit to an actuarially equivalent straight life annuity benefit determined using the following assumptions that take into account the death benefits under the form of benefit:

(A) for a benefit paid in a form to which section 417(e)(3) of the Internal Revenue Code, 26 U.S.C. 417(e)(3), does not apply, the actuarially equivalent straight life annuity benefit that is the greater of:

(I) the annual amount of any straight life annuity payable to the member under the member's plan commencing at the same annuity starting date as the form of benefit payable to the member; or

(II) the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the form of benefit payable to the member, computed using a 5% interest assumption, or the applicable statutory interest assumption, and pursuant to I.R.S. Revenue Ruling 2001-62, 2001-2 Cumulative Bulletin 632, for years prior to January 1, 2009, using the applicable mortality tables described in 26 CFR 1.417(e)-1(d)(2) and pursuant to I.R.S. Notice 2008-85, 2008-2 Cumulative Bulletin 905, for years after December 31, 2008, using the applicable mortality tables described in section 417(e)(3)(B) of the Internal Revenue Code, 26 U.S.C. 417(e)(3)(B); or

(B) for a benefit paid in a form to which section 417(e)(3) of the Internal Revenue Code, 26 U.S.C. 417(e)(3), applies, the actuarially equivalent straight life annuity benefit that is the greatest of:

(I) the annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed



using the interest rate and mortality table or tabular factor specified in the plan for actuarial experience;

(II) the annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using a 5.5% interest assumption, or the applicable statutory interest assumption, and pursuant to I.R.S. Revenue Ruling 2001-62, 2001-2 Cumulative Bulletin 632, for years prior to January 1, 2009, using the applicable mortality tables described in 26 CFR 1.417(e)-1(d)(2) and pursuant to I.R.S. Notice 2008-85, 2008-2 Cumulative Bulletin 905, for years after December 31, 2008, using the applicable mortality tables described in section 417(e)(3)(B) of the Internal Revenue Code, 26 U.S.C. 417(e)(3)(B); or

(III) the annual amount of the straight life annuity commencing at the annuity starting date that has the same actuarial present value as the particular form of benefit payable, computed using as the applicable interest rate for the distribution under 26 CFR 1.417(e)-1(d)(3) prior to January 1, 2009, the rate in effect for the month prior to retirement or, on or after January 1, 2009, the rate in effect for the first day of the plan year with a 1-year stabilization period and pursuant to I.R.S. Revenue Ruling 2001-62, 2001-2 Cumulative Bulletin 632, for years prior to January 1, 2009, using the applicable mortality tables described in 26 CFR 1.417(e)-1(d)(2) and pursuant to I.R.S. Notice 2008-85, 2008-2 Cumulative Bulletin 905, for years after December 31, 2008, using the applicable mortality tables described in section 417(e)(3)(B) of the Internal Revenue Code, 26 U.S.C. 417(e)(3)(B), divided by 1.05.

(iii) With respect to subsections (13)(d)(ii)(A) and (13)(d)(ii)(B), the board's actuary may reduce the limitation found in section 415(b) of the Internal Revenue Code, 26 U.S.C. 415(b), for testing purposes using the assumptions specified in subsections (13)(d)(ii)(A) and (13)(d)(ii)(B).

**History:** En. Sec. 1, Ch. 14, L. 1987; amd. Sec. 35, Ch. 265, L. 1993; Sec. 19-3-107, MCA 1991; redes. 19-2-1001 by Sec. 238, Ch. 265, L. 1993; amd. Sec. 14, Ch. 58, L. 1999; amd. Sec. 31, Ch. 7, L. 2001; amd. Sec. 6, Ch. 490, L. 2001; amd. Sec. 6, Ch. 284, L. 2009; amd. Sec. 3, Ch. 240, L. 2013; amd. Sec. 2, Ch. 140, L. 2015.

**19-2-1002. Termination of plan.** (1) Upon termination of a retirement system or plan, termination of employment of a substantial number of members that would constitute a partial termination of the retirement system or plan, or complete discontinuance of contributions to that retirement system or plan, the retirement benefit accrued to each member directly affected by the occurrence becomes fully vested and nonforfeitable to the extent funded.

(2) A plan member is 100% vested in the member's accumulated contributions at all times.

(3) At any time prior to satisfaction of all liabilities to members and their beneficiaries under the retirement system or plan, any part of a member's accumulated contributions may not be used for or diverted to purposes other than the exclusive benefit of members and their beneficiaries.

**History:** En. 68-1901 by Sec. 22, Ch. 323, L. 1973; amd. Sec. 5, Ch. 99, L. 1977; amd. Sec. 3, Ch. 286, L. 1977; amd. Sec. 10, Ch. 332, L. 1977; R.C.M. 1947, 68-1901(8); amd. Sec. 36, Ch. 265, L. 1993; Sec. 19-3-606, MCA 1991; redes. 19-2-1002 by Sec. 238, Ch. 265, L. 1993; amd. Sec. 24, Ch. 471, L. 1999; amd. Sec. 7, Ch. 490, L. 2001; amd. Sec. 7, Ch. 284, L. 2009.

**19-2-1003. Transfer of dormant, nonvested member-accumulated contributions.** The board may, in its discretion, transfer the accumulated contributions of a nonvested member of a defined benefit system or plan to the pension trust fund of the system or plan in which the member is participating if the member has not participated in the system or plan as an employee for a period of 10 years. Rights of the member may not be jeopardized by the transfer, and the accumulated contributions must be transferred to the member's name upon subsequent return to service or subsequent application for refund.

**History:** En. 68-1907 by Sec. 28, Ch. 323, L. 1973; R.C.M. 1947, 68-1907; amd. Sec. 37, Ch. 265, L. 1993; Sec. 19-3-604, MCA 1991; redes. 19-2-1003 by Sec. 238, Ch. 265, L. 1993; amd. Sec. 25, Ch. 471, L. 1999; amd. Sec. 8, Ch. 490, L. 2001.

**19-2-1004. Exemption from taxes and legal process.** (1) Except as provided in 19-2-907, 19-2-909, and subsection (2) of this section, the right of a person to any benefit or payment from a retirement system or plan and the money in the system or plan's pension trust fund is not:

(a) subject to execution, garnishment, attachment, or any other process;

(b) subject to state, county, or municipal taxes except for:

(i) a benefit or annuity received in excess of the amount determined pursuant to 15-30-2110(2)(c); or



(ii) a refund of a member's regular contributions picked up by an employer after June 30, 1985, as provided in 19-3-315, 19-5-402, 19-6-402, 19-7-403, 19-8-502, 19-9-710, or 19-13-601; or  
(c) assignable except as specifically provided in this chapter.

(2) The right of a person to any benefit or payment from a retirement system or plan and the money in the system's or plan's pension trust fund associated with that benefit or payment is subject, once the person is entitled to distribution of the benefit or payment, to:

(a) a United States tax lien or levy for past-due taxes; and

(b) execution, garnishment, attachment, levy, or other process related to the collection of criminal fines and orders of restitution imposed under federal law as provided for in 18 U.S.C. 3613.

**History:** En. 68-2502 by Sec. 50, Ch. 323, L. 1973; R.C.M. 1947, 68-2502; amd. Sec. 3, Ch. 464, L. 1985; amd. Sec. 6, Ch. 823, L. 1991; amd. Sec. 2, Ch. 259, L. 1993; amd. Sec. 38, Ch. 265, L. 1993; Sec. 19-3-105, MCA 1991; redes. 19-2-1004 by Sec. 238, Ch. 265, L. 1993; amd. Sec. 16, Ch. 552, L. 1997; amd. Sec. 9, Ch. 490, L. 2001; amd. Sec. 2, Ch. 382, L. 2009; amd. Sec. 8, Ch. 195, L. 2017.

**Compiler's Comments**

*2017 Amendment:* Chapter 195 in (1) in exception clause inserted reference to subsection (2); inserted (2) providing that right to benefit or payment is subject to lien or levy for past-due taxes and certain processes related to collection of federal criminal fines and restitution orders; and made minor changes in style. Amendment effective July 1, 2017.

**19-2-1005. Compensation limit.** (1) A retirement system or plan subject to this chapter may not take into account compensation of a member in excess of the amount permitted in section 401(a)(17) of the Internal Revenue Code, 26 U.S.C. 401(a)(17), as adjusted for cost-of-living increases in accordance with section 401(a)(17)(B) of the Internal Revenue Code, 26 U.S.C. 401(a)(17)(B).

(2) (a) Except as provided in subsection (2)(b), for a member hired on or after July 1, 2013, a retirement system or plan subject to this chapter may not include the following amounts of excess earnings in the calculation of a member's highest average compensation or final average compensation:

(i) for the first year included in the calculation, any compensation that is greater than 110% of the compensation paid to the member in the previous year; and

(ii) for each subsequent year included in the calculation, any compensation that is greater than 110% of the compensation included in the calculation for the previous year.

(b) In determining a member's retirement benefit, total excess earnings, if any, must be divided by the member's total months of service credit and added to each month's compensation included in the member's highest average compensation or final average compensation as limited under subsection (2)(a).

**History:** En. Sec. 39, Ch. 265, L. 1993; amd. Sec. 26, Ch. 471, L. 1999; amd. Sec. 10, Ch. 490, L. 2001; amd. Sec. 8, Ch. 284, L. 2009; amd. Sec. 2, Ch. 386, L. 2013.

**19-2-1006. Use of forfeitures.** A retirement system or plan subject to this chapter may not apply forfeitures of benefits resulting from the member's termination of employment, the death of the member, or any other reason to increase the benefits of any member in a manner not permitted in Internal Revenue Code section 401(a)(8). However, forfeitures may be used to reduce the cost of administering a retirement system or plan subject to this chapter.

**History:** En. Sec. 40, Ch. 265, L. 1993; amd. Secs. 15, 46(3), Ch. 58, L. 1999; amd. Sec. 27, Ch. 471, L. 1999; amd. Sec. 11, Ch. 490, L. 2001.

**19-2-1007. Required distributions.** The benefits payable by a retirement system or plan subject to this chapter are subject to the requirements of section 401(a)(9) of the Internal Revenue Code as follows:

(1) Benefits must begin by the later of April 1 of the calendar year following the calendar year in which the member reaches 70½ years of age or April 1 of the calendar year following the calendar year in which the member terminates employment. If a member fails to apply for retirement benefits by April 1 of the year following the calendar year in which the member attains age 70½ or April 1st of the year following the calendar year in which the member terminates employment, whichever is later, the board shall begin distribution of the benefit as required by the retirement system or plan to which the member belongs or, subject to subsection (2), as an option 4 benefit in chapters 3, 5, 7, and 8 of this title.

(2) The member's entire interest in a retirement system or plan must be distributed over the life of the member or the lives of the member and a designated beneficiary or over a period not extending beyond the life expectancy of the member or the life expectancy of the member and a designated beneficiary. Death benefits must be distributed in accordance with section 401(a)(9) of the Internal Revenue Code and the regulations implementing that section.

(3) The life expectancy of a member or the member's beneficiary may not be recalculated after payment of the benefits has begun.

(4) When a member dies after distribution of benefits has begun, the remaining portion of the member's interest must be distributed beginning within 3 months of notification to the board of the death of the member and, if necessary, the identification of the beneficiary pursuant to 19-2-802 and must be distributed at least as rapidly as under the method of distribution prior to the member's death.

(5) When a member dies before distribution of benefits has begun, the entire interest of the member must be distributed within 5 years of the member's death. The 5-year payment rule does not apply to any portion of the member's interest that is payable to a designated beneficiary over the life or life expectancy of the beneficiary and that begins within 1 year after the date of the member's death. The 5-year payment rule does not apply to any portion of the member's interest that is payable to a surviving spouse, that is payable over the life or life expectancy of the spouse, and that begins no later than the date the member would have reached 70½ years of age. Distributions to a member's beneficiary must begin as soon as administratively feasible, but must begin no later than December 31 of the calendar year immediately following the calendar year in which the member died. If the beneficiary has not elected the form of payment by that date, payment to the beneficiary must be made in the form of a lifetime monthly benefit payment if the beneficiary is eligible for a monthly benefit or in a lump sum if that is the only benefit payable to the beneficiary.

(6) The benefits payable must meet the minimum distribution incidental benefit requirements of section 401(a)(9)(G) of the Internal Revenue Code.

**History:** En. Sec. 41, Ch. 265, L. 1993; amd. Sec. 16, Ch. 58, L. 1999; amd. Sec. 28, Ch. 471, L. 1999; amd. Sec. 12, Ch. 490, L. 2001.

**19-2-1008. Budget Act superseded.** This chapter shall be valid and effective despite any provisions in the state Budget Act to the contrary.

**History:** En. 68-2508 by Sec. 56, Ch. 323, L. 1973; R.C.M. 1947, 68-2508; Sec. 19-3-106, MCA 1991; redes. 19-2-1008 by Sec. 238, Ch. 265, L. 1993.

**19-2-1009. Penalty for fraud.** A person who knowingly makes a false statement or who knowingly falsifies or permits to be falsified any record of a retirement system in an attempt to defraud the system is guilty of a misdemeanor punishable by a fine not exceeding \$1,000 or imprisonment not exceeding 1 year, or both.

**History:** En. Sec. 23, Ch. 289, L. 1967; R.C.M. 1947, 93-1129(part); amd. Sec. 42, Ch. 265, L. 1993; Sec. 19-5-104, MCA 1991; redes. 19-2-1009 by Sec. 238, Ch. 265, L. 1993.

**19-2-1010. Retaining qualified plan status — content of plan document — board rulemaking authority.** (1) The board shall administer the plan in the manner required to satisfy the applicable qualification requirements for a qualified governmental plan, as provided in the Internal Revenue Code. If a statutory provision affecting a retirement plan administered by the board conflicts with a qualification requirement in section 401 of the Internal Revenue Code or the retirement plan's status as a governmental plan under section 414(d) of the Internal Revenue Code and with consequent federal regulations, the provision is either ineffective or must be interpreted to conform with the federal qualification requirements and allow the plan to retain its qualified status.

(2) For the purposes of section 401(a) of the Internal Revenue Code, the plan document for each retirement system is composed of the applicable provisions of the Montana constitution, this chapter, the applicable chapter in Title 19 governing the system, and applicable rules, policies, and plan documents adopted by the board.

(3) The board may adopt rules to implement this section.

**History:** En. Sec. 1, Ch. 370, L. 1997; amd. Sec. 17, Ch. 58, L. 1999; amd. Sec. 17, Ch. 429, L. 2003.

**19-2-1011. Limitations on eligible rollover distributions.** (1) An eligible rollover distribution may not include:

(a) any distribution that is one of a series of substantially equal periodic payments made at least annually for:

(i) the life or the life expectancy of the distributee;

(ii) the joint lives or joint life expectancies of the distributee and the distributee's designated beneficiary; or

(iii) a specified period of 10 years or more;

(b) any distribution to the extent the distribution is required under section 401(a)(9) of the Internal Revenue Code, 26 U.S.C. 401(a)(9);

(c) the portion of any distribution that is not includable in gross income; or

(d) any other distribution that is reasonably expected to total less than \$200 during the year.

(2) (a) Effective January 1, 2002, a portion of a distribution may not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions that are not includable in gross income. However, that portion may be transferred only to:

(i) an individual retirement account or annuity described in section 408(a) or (b) of the Internal Revenue Code, 26 U.S.C. 408(a) or (b);

(ii) a qualified defined contribution plan described in section 401(a) of the Internal Revenue Code, 26 U.S.C. 401(a);

(iii) a qualified plan described in section 403(a) of the Internal Revenue Code, 26 U.S.C. 403(a);

(iv) on or after January 1, 2007, a qualified defined benefit plan described in section 401(a) of the Internal Revenue Code, 26 U.S.C. 401(a); or

(v) an annuity contract described in section 403(b) of the Internal Revenue Code, 26 U.S.C. 403(b).

(b) The plans described in subsections (2)(a)(ii), (2)(a)(iv), and (2)(a)(v) must separately account for amounts that are transferred and earnings on those amounts, including separately accounting for the portion of the distribution that is includable in gross income and the portion of the distribution that is not includable.

**History:** En. Sec. 9, Ch. 284, L. 2009; amd. Sec. 4, Ch. 240, L. 2013.

**19-2-1012 reserved.**

**19-2-1013. Compliance with federal restrictions on interest rate crediting.**

Interest credited on any refund of accumulated member contributions under a defined benefit plan subject to Title 19, chapter 2, must comply with any applicable provisions of the federal Age Discrimination in Employment Act, Public Law 90-202, and any applicable U.S. treasury regulations establishing market rates of return for purposes of complying with that federal act.

**History:** En. Sec. 10, Ch. 284, L. 2009.

**19-2-1014. Compliance with federal laws regarding service in uniformed services.**

(1) With respect to a member's death occurring on or after January 1, 2007, while the member is performing qualified service in the uniformed services as defined in 38 U.S.C. 4303 and to the extent required by section 401(a)(37) of the Internal Revenue Code, 26 U.S.C. 401(a)(37), the designated beneficiaries are entitled to benefits that the system would have provided if the member's death had occurred while in covered employment. In any event, a deceased member's period of qualified service in the uniformed services must be counted for vesting purposes.

(2) With respect to a member's disability occurring on or after January 1, 2009, while the member is performing qualified service in the uniformed services as defined in 38 U.S.C. 4303 and to the extent permitted by section 414(u)(9) of the Internal Revenue Code, 26 U.S.C. 414(u)(9), the member is entitled to any benefits that the system would have provided had the member become disabled while in covered employment.

**History:** En. Sec. 24, Ch. 284, L. 2009; amd. Sec. 5, Ch. 240, L. 2013; amd. Sec. 3, Ch. 140, L. 2015.

**19-2-1015. Probate and nonprobate transfer statutes superseded.** If a provision of this chapter conflicts with a provision of Title 72, chapter 2, part 8, the provision of this chapter supersedes the conflicting provision of Title 72, chapter 2, part 8.

**History:** En. Sec. 19, Ch. 562, L. 1999.

## CHAPTER 3 PUBLIC EMPLOYEES' RETIREMENT SYSTEM

### Part 1 General Provisions

**19-3-101. Short title.** This chapter may be cited as “The Public Employees’ Retirement System Act”.

**History:** En. Sec. 1, Ch. 323, L. 1973; R.C.M. 1947, 68-1504.

**19-3-102. Repealed.** Sec. 236, Ch. 265, L. 1993.

**History:** En. 68-1501 by Sec. 2, Ch. 323, L. 1973; R.C.M. 1947, 68-1501.

**19-3-103. Retirement system created — system to consist of two plans.** (1) A defined benefit retirement plan is created and established to become effective July 1, 1945.

(2) A defined contribution plan is established as provided in part 21 of this chapter.

(3) The public employees’ retirement system consists of the defined benefit plan and the defined contribution plan. Each plan within the system is governed by the applicable provisions of chapter 2 and this chapter.

**History:** En. 68-1502 by Sec. 3, Ch. 323, L. 1973; R.C.M. 1947, 68-1502; amd. Sec. 43, Ch. 265, L. 1993; amd. Sec. 29, Ch. 471, L. 1999.

**19-3-104. Renumbered 19-2-303.** Sec. 238, Ch. 265, L. 1993.

**19-3-105. Renumbered 19-2-1004.** Sec. 238, Ch. 265, L. 1993.

**19-3-106. Renumbered 19-2-1008.** Sec. 238, Ch. 265, L. 1993.

**19-3-107. Renumbered 19-2-1001.** Sec. 238, Ch. 265, L. 1993.

**19-3-108. Definitions.** Unless the context requires otherwise, as used in this chapter, the following definitions apply:

(1) (a) “Compensation” means remuneration paid out of funds controlled by an employer in payment for the member’s services or for time during which the member is excused from work because of a holiday or because the member has taken compensatory leave, sick leave, annual leave, banked holiday time, or a leave of absence before any pretax deductions allowed by state or federal law are made.

(b) Compensation does not include:

(i) the contributions made pursuant to 19-3-403(4)(a) for members of a bargaining unit;

(ii) in-kind goods provided by the employer, such as uniforms, housing, transportation, or meals;

(iii) in-kind services, such as the retraining allowance paid pursuant to 2-18-622, or employment-related services;

(iv) contributions to group insurance, such as that provided under 2-18-701 through 2-18-704;

(v) lump-sum payments for compensatory leave, sick leave, banked holiday time, or annual leave paid without termination of employment; or

(vi) bonuses provided after July 1, 2013, that are one-time, temporary payments in addition to and not considered part of base pay.

(2) “Contracting employer” means any political subdivision or governmental entity that has contracted to come into the system under this chapter.

(3) “Defined benefit plan” means the plan within the public employees’ retirement system established in 19-3-103 that is not the defined contribution plan.

(4) “Employer” means the state of Montana, its university system or any of the colleges, schools, components, or units of the university system for the purposes of this chapter, or any contracting employer.

(5) “Employer contributions” means payments to a pension trust fund pursuant to 19-3-316 from appropriations of the state of Montana and from contracting employers.

(6) (a) “Highest average compensation” means:

(i) for a member hired prior to July 1, 2011, the highest average monthly compensation during any 36 consecutive months of membership service;

(ii) for a member hired on or after July 1, 2011, the highest average monthly compensation during any 60 consecutive months of membership service; or

(iii) in the event a member has not served the minimum specified period of service, the total compensation earned divided by the months of membership service.

(b) Lump-sum payments for compensatory leave, sick leave, banked holiday time, and annual leave paid to the member upon termination of employment may be used in the calculation of a retirement benefit only to the extent that they are used to replace, on a month-for-month basis, the regular compensation for a month or months included in the calculation of the highest average compensation. A lump-sum payment may not be added to a single month's compensation.

(c) Excess earnings limits must be applied to the calculation of the highest average compensation pursuant to 19-2-1005(2).

(7) "System" or "retirement system" means the public employees' retirement system established in 19-3-103.

**History:** En. Sec. 44, Ch. 265, L. 1993; amd. Sec. 12, Ch. 640, L. 1993; amd. Sec. 18, Ch. 58, L. 1999; amd. Sec. 30, Ch. 471, L. 1999; amd. Sec. 18, Ch. 99, L. 2001; amd. Sec. 2, Ch. 149, L. 2001; amd. Sec. 18, Ch. 429, L. 2003; amd. Sec. 10, Ch. 602, L. 2003; amd. Sec. 11, Ch. 329, L. 2005; amd. Sec. 13, Ch. 99, L. 2011; amd. Sec. 1, Ch. 369, L. 2011; amd. Sec. 3, Ch. 386, L. 2013; amd. Sec. 9, Ch. 195, L. 2017.

**Compiler's Comments**

*2017 Amendment:* Chapter 195 in definition of highest average compensation in (b) after "Lump-sum payments for" deleted "severance pay, including payment for"; and made minor changes in style. Amendment effective July 1, 2017.

**19-3-109 and 19-3-110 reserved.**

**19-3-111. Exemption for certain university temporary employees — "temporary employee" defined.** (1) This chapter does not apply to a temporary employee of the university system.

(2) As used in this section, "temporary employee" means an employee of the university system who is hired into a position that is not permanent and who has negotiated an alternative benefits package through a labor organization certified to represent employees of the university system pursuant to Title 39, chapter 31. The employer contribution to the alternative benefits package may not exceed the cost of the benefits that the employee would otherwise be entitled to through employment.

**History:** En. Sec. 2, Ch. 121, L. 1995.

**19-3-112. Education fund established — allocation of employer contributions — educational program requirements.** (1) (a) The board shall establish an education fund to be used to educate and inform system members in a manner consistent with the provisions of this section.

(b) For the ongoing educational services and communication services established pursuant to this section, from the employer contributions made pursuant to 19-3-316, 0.04% of the compensation paid to all of the employer's employees who are members of the system must be allocated to the education fund established in subsection (1)(a). The board shall from time to time review the sufficiency of this amount and recommend to the legislature the adjustments that it considers appropriate.

(2) (a) The educational services must provide system members with impartial and balanced information about plan choices, benefits, and features. The services must be provided in a variety of formats. Plan comparisons must, to the greatest extent possible, be based upon historical rates of return on investments or benefits available in each retirement plan.

(b) If educational services are conducted by a contractor, the board shall monitor the performance of the contract to ensure that the services are conducted in accordance with the contract, applicable law, and the rules of the board. A contractor hired to provide the educational program provided for in subsection (3) may not be the same entity contracted to provide other services for the defined contribution plan or the university system retirement program.

(3) The board shall offer an ongoing transfer educational program to provide new system members with information necessary to make informed plan choice decisions. The program must include but is not limited to information on:

(a) determining the amount of money available to transfer to the defined contribution plan;



(b) the features of and differences between the defined benefit plan and the defined contribution plan, both generally and specifically, as those differences may affect the member;

(c) the expected benefit available if the member were to retire under each of the retirement plans, based on appropriate alternative sets of assumptions;

(d) the rate of return from investments in the defined contribution plan that must be achieved to equal or exceed the expected monthly benefit payable to the member under the defined benefit plan, assuming the same time period in each plan;

(e) the historical rates of return for the investment alternatives available in the defined contribution plan;

(f) determining retirement income needs and comparing determined retirement income needs to each plan's possible or expected benefit;

(g) use of supplemental retirement savings programs to enhance retirement income;

(h) the plan choices available to employees of the university system pursuant to 19-3-2112 and the comparative benefits of each available plan; and

(i) payout options available in each of the retirement plans.

(4) Ongoing educational services and communication services must be provided after members have made their initial retirement plan choice. These services must continually provide members with information about their chosen plan, alternatives within their chosen plan, and decisions necessary for retirement preparation. The services must include but not be limited to information concerning:

(a) rights and conditions of membership;

(b) benefit features within the plan, options, and the effects of certain decisions;

(c) planning for retirement, including coordination of contributions and benefits with supplemental retirement savings programs;

(d) significant plan changes; and

(e) contribution rates and plan funding status.

(5) The board shall also establish a communication program to provide plan information to participating employers and the employer's personnel and payroll officers and to explain their respective responsibilities in conjunction with the retirement plans.

(6) This section does not prohibit a contracted plan vendor or vendors from providing system members with information and tools necessary to understand the available investment alternatives and to appropriately manage their selected retirement plan.

**History:** En. Sec. 41, Ch. 471, L. 1999; amd. Sec. 12, Ch. 329, L. 2005; amd. Sec. 2, Ch. 282, L. 2013.

**19-3-113 through 19-3-116 reserved.**

**19-3-117. Board report required.** As soon as possible after the completion of each annual actuarial valuation for the public employees' retirement system, the board shall have its actuary present a detailed actuarial report to the legislative finance committee provided for in 5-12-201 and the state administration and veterans' affairs interim committee provided for in 5-5-228. The actuarial report must provide a trend analysis of the system's progress toward 100% funding.

**History:** En. Sec. 7, Ch. 390, L. 2013.

## Part 2

### Extension of Coverage by Local Government Employers

**19-3-201. Contracts with political subdivisions.** (1) Any municipal corporation, county, or public agency in the state may become a contracting employer through a contract entered into between the board and the legislative body of the contracting employer. The contract must provide that all employees eligible under this chapter must become members. Contracts executed prior to July 1, 2009, that limit membership to a specific group or groups of employees remain valid. The contract may include any provisions that are consistent with chapter 2 and this chapter and necessary in the administration of the retirement system as it affects the contracting employer and its employees.

(2) The approval of the contract is subject to the following provisions, in addition to the other provisions of chapter 2 and this chapter:

(a) The legislative body of the contracting employer shall adopt a resolution of intention to approve the contract and containing a summary of the major provisions of the retirement

system. The contract may not be approved unless the employees proposed to be included in the retirement system adopt the proposal by a majority affirmative vote in a secret ballot. The ballot at the election must include the summary of the retirement system as set forth in the resolution. The election must be conducted as prescribed by the legislative body of the contracting employer. Approval of the contract must be by the affirmative vote of two-thirds of the members of the legislative body within 40 days after the adoption of the resolution.

(b) The contract must specify that the provisions of the retirement system apply to all employees on the effective date of the contract and to all employees hired after the effective date of the contract. An employee's membership in either the defined benefit plan or the defined contribution plan is determined on an individual basis as provided in this chapter.

(c) The contract may be amended in the manner prescribed in this section for the original approval of contracts. The contract must be approved by the board. The board may disapprove of a contract if, in the board's sole discretion, the contract adversely affects the interests of the retirement system. Any amendments to the retirement system made pursuant to Montana laws immediately apply to and become a part of the contract.

(3) The termination of the contract is subject to the following provisions, in addition to the other provisions of this chapter:

(a) The legislative body of a contracting employer shall adopt a resolution giving notice to its employees that it intends to terminate retirement system coverage.

(b) All employees covered under the retirement system must be given notice of the termination resolution and be permitted to vote for or against the resolution by secret ballot.

(c) If a majority of covered employees votes for termination, the legislative body, within 20 days after the approval of the resolution by the employees, may adopt by a two-thirds majority a resolution terminating coverage under the system effective the last day of that month and forward the resolution and a certified copy of the election results to the board.

(d) Upon receipt of the termination resolution, the board may request an actuarial valuation of the liabilities of the terminating agency to the retirement system, and the board may withhold approval of the termination of contract until satisfactory arrangements are made to provide funding for:

(i) the cost of the actuarial valuation to determine the terminating agency's liabilities to the retirement system; and

(ii) any excess accrued liabilities not previously funded by the terminating agency.

**History:** En. 68-1701 by Sec. 14, Ch. 323, L. 1973; R.C.M. 1947, 68-1701; amd. Sec. 2, Ch. 496, L. 1981; amd. Sec. 45, Ch. 265, L. 1993; amd. Sec. 31, Ch. 471, L. 1999; amd. Sec. 22, Ch. 562, L. 1999; amd. Sec. 13, Ch. 329, L. 2005; amd. Sec. 8, Ch. 283, L. 2009; amd. Sec. 10, Ch. 195, L. 2017.

#### **Compiler's Comments**

*2017 Amendment:* Chapter 195 inserted (3)(d)(i) concerning cost of actuarial valuation; and made minor changes in style. Amendment effective July 1, 2017.

**19-3-202. Request by individual employee for employer to participate.** Any employee who has, for a continuous period of at least 2 years, been an employee of a municipal corporation, county, or other public agency of this state that is not a contracting employer may advise the legislative body of the employer, in writing, that the employee wishes to participate in the retirement system. Within 30 days after receipt of the written request, the legislative body shall adopt the resolution of intention and take action as provided for in 19-3-201.

**History:** En. 68-1702 by Sec. 15, Ch. 323, L. 1973; R.C.M. 1947, 68-1702; amd. Sec. 233, Ch. 56, L. 2009.

**19-3-203. Conversion of local or state retirement plan.** (1) If the legislative body of any city, county, or public agency having an existing retirement, pension, or annuity fund or system, referred to as the local system, desires to make the members of the local system members of the public employees' retirement system, it may enter into a contract for that purpose with the board in the manner provided in 19-3-201. However, the employees voting, as provided in 19-3-201(2)(a), must be limited to active members of the local system, and approval requires an affirmative vote of two-thirds of the employees.

(2) Subject to the applicable provisions of this chapter, active members of the local system shall become members of either the defined benefit plan or the defined contribution plan of the retirement system and are no longer members of the local system. The pensions being paid to pensioners or annuitants of the local system on the effective date of the contract must be continued

and paid at their existing rates by the public employees' retirement system. The liability for the pensions must be computed by the actuary and charged to the contracting employer. All cash and securities held by the local system must be transferred to the retirement system as of the effective date of the contract and credited to the employer. The value of the securities must be determined by the board.

(3) The trustees or other administrative head of the local system as of the effective date of the contract shall certify the proportion, if any, of the funds of the system that represents the accumulated contributions of the active members and the relative shares of the members as of that date. The shares must be charged to the employer and credited as accumulated contributions of the members in the public employees' retirement system and administered as if the contributions had been made during membership in the retirement system. Any excess of employer credits over charges under this section must be offset, with regular interest, against future required employer contributions. Any excess of employer charges over credits under this section must be payable by the contracting employer, with regular interest, on a monthly basis as specified in the contract.

**History:** En. 68-1703 by Sec. 16, Ch. 323, L. 1973; amd. Sec. 4, Ch. 132, L. 1977; R.C.M. 1947, 68-1703; amd. Sec. 46, Ch. 265, L. 1993; amd. Sec. 32, Ch. 471, L. 1999.

**19-3-204. Tax levy to meet employer's obligations.** (1) If the required contributions to the retirement system exceed the funds available to a contracting employer from general revenue sources, the contracting employer may budget, levy, and collect annually a special tax upon the assessable property of the contracting employer in the number of cents per \$100 of assessable property as is sufficient to raise the amount estimated by the legislative body to be required to provide sufficient revenue to meet the obligation of the contracting employer to the retirement system. The rate of taxation may be in addition to the annual rate of taxation allowed by law to be levied by the contracting employer.

(2) A person who is a member or designated beneficiary of the retirement system because of the participation of the contracting employer may maintain the appropriate action or proceeding to require the contracting employer to budget, levy, and collect the special tax authorized in subsection (1).

**History:** En. 68-1704 by Sec. 17, Ch. 323, L. 1973; R.C.M. 1947, 68-1704; amd. Sec. 4, Ch. 114, L. 1979; amd. Sec. 47, Ch. 265, L. 1993.

### **Part 3** **Contributions and Refunds**

**19-3-301. Renumbered 19-2-401.** Sec. 238, Ch. 265, L. 1993.

**19-3-302. Renumbered 19-2-402.** Sec. 238, Ch. 265, L. 1993.

**19-3-303. Repealed.** Sec. 4, Ch. 254, L. 1981.

**History:** En. 68-1802 by Sec. 19, Ch. 323, L. 1973; amd. Sec. 15, Ch. 453, L. 1977; R.C.M. 1947, 68-1802(part).

**19-3-304. Renumbered 19-2-403.** Sec. 238, Ch. 265, L. 1993.

**19-3-305. Renumbered 19-2-405.** Sec. 238, Ch. 265, L. 1993.

**19-3-306. Renumbered 19-2-407.** Sec. 238, Ch. 265, L. 1993.

**19-3-307. Repealed.** Sec. 236, Ch. 265, L. 1993.

**History:** En. 68-2512 by Sec. 60, Ch. 323, L. 1973; amd. Sec. 4, Ch. 132, L. 1977; R.C.M. 1947, 68-2512.

**19-3-308. Terminated.** Sec. 7, Ch. 328, L. 1987.

**History:** En. Sec. 3, Ch. 328, L. 1987.

**19-3-309 through 19-3-314 reserved.**

**19-3-315. Member's contribution to be deducted.** (1) (a) Except as provided in subsection (2), each member's contribution is 7.9% of the member's compensation.

(b) The board shall annually review the required contributions and recommend future adjustments to the legislature as needed to maintain the amortization schedule set by the board for the payment of the system's unfunded liability.

(2) Each member's contribution must be reduced to 6.9% on January 1 following the system's annual actuarial valuation if the valuation determines that reducing the employee

contribution pursuant to this subsection and reducing the employer contribution pursuant to 19-3-316(4) would not cause the system's amortization period to exceed 25 years.

(3) Payment of salaries or wages less the contribution is full and complete discharge and acquittance of all claims and demands for the service rendered by members during the period covered by the payment, except their claims to the benefits to which they may be entitled under the provisions of this chapter.

(4) Each employer, pursuant to section 414(h)(2) of the federal Internal Revenue Code, 26 U.S.C. 414(h)(2), shall pick up and pay the contributions that would be payable by the member under subsection (1) or (2) for service rendered after June 30, 1985.

(5) (a) The member's contributions picked up by the employer must be designated for all purposes of the retirement system as the member's contributions, except for the determination of a tax upon a distribution from the retirement system.

(b) In the case of a member of the defined benefit plan, these contributions must become part of the member's accumulated contributions but must be accounted for separately from those previously accumulated.

(c) In the case of a member of the defined contribution plan, these contributions must be allocated as provided in 19-3-2117.

(6) The member's contributions picked up by the employer must be payable from the same source as is used to pay compensation to the member and must be included in the member's wages, as defined in 19-1-102, and compensation. The employer shall deduct from the member's compensation an amount equal to the amount of the member's contributions picked up by the employer and remit the total of the contributions to the board.

**History:** En. 68-1902 by Sec. 23, Ch. 323, L. 1973; amd. Sec. 5, Ch. 128, L. 1975; R.C.M. 1947, 68-1902; amd. Sec. 4, Ch. 464, L. 1985; amd. Sec. 1, Ch. 558, L. 1989; amd. Sec. 52, Ch. 265, L. 1993; Sec. 19-3-701, MCA 1991; redes. 19-3-315 by Code Commissioner, 1993; amd. Sec. 8, Ch. 287, L. 1997; amd. Sec. 33, Ch. 471, L. 1999; amd. Sec. 11, Ch. 284, L. 2009; amd. Sec. 2, Ch. 369, L. 2011; amd. Sec. 3, Ch. 390, L. 2013.

**19-3-316. Employer contribution rates.** (1) Each employer shall contribute to the system. Except as provided in subsection (2), the employer shall pay as employer contributions 6.9% of the compensation paid to all of the employer's employees plus any additional contribution under subsection (3), except for those employees properly excluded from membership. Of employer contributions made under this subsection for both defined benefit plan and defined contribution plan members, a portion must be allocated for educational programs as provided in 19-3-112. Employer contributions for members under the defined contribution plan must be allocated as provided in 19-3-2117.

(2) Local government and school district employer contributions must be the total employer contribution rate provided in subsection (1) minus the state contribution rates under 19-3-319.

(3) (a) Subject to subsection (4), each employer shall contribute to the system an additional employer contribution equal to the percentage specified in subsection (3)(b) of the compensation paid to all of the employer's employees, except for those employees properly excluded from membership.

(b) The percentage of compensation to be contributed under subsection (3)(a) is 1.27% for fiscal year 2014 and increases by 0.1% each fiscal year through fiscal year 2024. For fiscal years beginning after June 30, 2024, the percentage of compensation to be contributed under subsection (3)(a) is 2.27%.

(4) (a) The board shall annually review the additional employer contribution provided for under subsection (3) and recommend adjustments to the legislature as needed to maintain the amortization schedule set by the board for payment of the system's unfunded liabilities.

(b) The employer contribution required under subsection (3) terminates on January 1 following the board's receipt of the system's actuarial valuation if the actuarial valuation determines that terminating the additional employer contribution pursuant to this subsection (4)(b) and reducing the employee contribution pursuant to 19-3-315(2) would not cause the amortization period to exceed 25 years.

**History:** En. 68-2504 by Sec. 52, Ch. 323, L. 1973; amd. Sec. 12, Ch. 128, L. 1975; R.C.M. 1947, 68-2504(part); amd. Sec. 1, Ch. 254, L. 1981; amd. Sec. 3, Ch. 549, L. 1981; amd. Sec. 2, Ch. 663, L. 1983; amd. Sec. 2, Ch. 558, L. 1989; amd. Sec. 53, Ch. 265, L. 1993; Sec. 19-3-801, MCA 1991; redes. 19-3-316 by Code Commissioner, 1993; amd. Sec. 9, Ch. 287, L. 1997; amd. Sec. 50, Ch. 51, L. 1999; amd. Sec. 34, Ch. 471, L. 1999; amd. Sec. 14, Ch. 329, L. 2005; amd. Sec. 1, Ch. 371, L. 2007; amd. Sec. 9, Ch. 283, L. 2009; amd. Sec. 4, Ch. 390, L. 2013.



**19-3-317. State employer to include costs in budget.** Every state employer shall include in its budget and request for legislative appropriations an amount necessary to defray the state's part of the costs of this chapter for its employees to the end that the legislature may make definite appropriation for the cost incurred by each employer the employees of which are within the retirement system created by this chapter.

**History:** En. 68-2505 by Sec. 53, Ch. 323, L. 1973; amd. Sec. 11, Ch. 99, L. 1977; R.C.M. 1947, 68-2505(2); Sec. 19-3-803, MCA 1991; redes. 19-3-317 by Code Commissioner, 1993.

**19-3-318. Credit of contributions made after member becomes inactive.** Contributions made on the basis of compensation earned by members after they are considered to be inactive members, as provided in 19-3-403(4), must be credited to the employer.

**History:** En. Sec. 68-1602 by Sec. 6, Ch. 323, L. 1973; amd. Sec. 1, Ch. 374, L. 1974; amd. Sec. 1, Ch. 16, L. 1975; amd. Sec. 1, Ch. 128, L. 1975; amd. Sec. 1, Ch. 99, L. 1977; amd. Sec. 4, Ch. 132, L. 1977; R.C.M. 1947, 68-1602(8)(c); amd. Sec. 54, Ch. 265, L. 1993; Sec. 19-3-405, MCA 1991; redes. 19-3-318 by Code Commissioner, 1993; amd. Sec. 19, Ch. 58, L. 1999; amd. Sec. 15, Ch. 329, L. 2005.

**19-3-319. State contributions for local government and school district employers.**

(1) The state shall contribute monthly from the general fund to the pension trust fund a sum equal to 0.1% of the compensation paid to all employees of local government entities and school districts on and after July 1, 1997, except those employees properly excluded from membership.

(2) (a) Subject to subsection (2)(b), in addition to the contribution required under subsection (1), the state shall contribute monthly from the general fund to the pension trust fund a sum equal to 0.27% of the compensation paid to all employees of school districts except for those employees properly excluded from membership.

(b) The additional contribution under subsection (2)(a) terminates when the additional contribution under 19-3-316(3) terminates.

(3) The board shall certify amounts due under this section on a monthly basis, and the state treasurer shall transfer those amounts to the pension trust fund within 1 week. The payments in this section are statutorily appropriated as provided in 17-7-502.

**History:** En. Sec. 4, Ch. 287, L. 1997; amd. Sec. 39(1)(a), Ch. 532, L. 1997; amd. Sec. 23, Ch. 562, L. 1999; amd. Sec. 16, Ch. 329, L. 2005; amd. Sec. 2, Ch. 371, L. 2007; amd. Sec. 14, Ch. 99, L. 2011.

**19-3-320. Supplemental state contribution — appropriation.** (1) (a) For the fiscal year beginning July 1, 2017, the state shall contribute \$31.386 million and for the fiscal year beginning July 1, 2018, the state shall contribute \$31.958 million from the general fund to the public employees' retirement system pension trust as a supplemental contribution to the public employees' retirement system.

(b) Starting in the fiscal year beginning July 1, 2019, the state shall contribute from the general fund to the public employees' retirement system pension trust 101% of the contribution from the previous years as a supplemental contribution to the public employees' retirement system.

(c) The 69th legislature shall review the performance of subsection (1)(b) and make recommendations for adjustments as needed.

(2) This contribution is statutorily appropriated, as provided in 17-7-502, from the general fund to the pension trust fund.

**History:** En. Sec. 3, Ch. 351, L. 2017.

#### **Compiler's Comments**

*Effective Date:* Section 20(1), Ch. 351, L. 2017, provided: "(1) Except as provided in subsection (2), [this act] is effective July 1, 2017."

## **Part 4**

### **Eligibility, Membership, and Vesting**

**19-3-401. Membership — inactive vested members — inactive nonvested members.**

(1) Except as otherwise provided in this chapter, all employees become members of the defined benefit plan on the first day of service. Each employer shall file with the board information affecting the employer's employees' status as members as the board may require. An employee may become a member of the defined contribution plan only as provided in Title 19, chapter 3, part 21.



(2) (a) An inactive member of the defined benefit plan with at least 5 years of membership service is an inactive vested member and retains the right to purchase service credit and to receive a service retirement benefit subject to the provisions of this chapter.

(b) If an inactive vested member of the defined benefit plan chooses to take a lump-sum payment rather than a retirement benefit, the lump-sum payment consists of only the member's accumulated contributions and not the employer's contributions.

(3) (a) An inactive member of the defined benefit plan with less than 5 years of membership service is an inactive nonvested member and is not eligible for any benefits from the retirement plan.

(b) An inactive nonvested member of the defined benefit plan is eligible only for a refund of the member's accumulated contributions.

(4) Except as otherwise provided in this chapter, a member of either the defined benefit plan or the defined contribution plan is an active member of the system and is not eligible for a refund of contributions or for benefit payments if the member either:

(a) returns to service within 30 days of termination of employment; or

(b) terminates one employment but remains employed in another position covered by the system.

(5) Time during which an employee of a school district, the Montana school for the deaf and blind, or a public institution of higher education is absent from service during official vacation is counted as membership service in determining eligibility for retirement benefits.

**History:** En. 68-1601 by Sec. 5, Ch. 323, L. 1973; amd. Sec. 4, Ch. 132, L. 1977; R.C.M. 1947, 68-1601; amd. Sec. 1, Ch. 162, L. 1991; amd. Sec. 49, Ch. 265, L. 1993; amd. Sec. 12, Ch. 370, L. 1997; amd. Sec. 35, Ch. 471, L. 1999; amd. Secs. 24, 99(1)(d), Ch. 562, L. 1999; amd. Sec. 19, Ch. 429, L. 2003; amd. Sec. 17, Ch. 329, L. 2005; amd. Sec. 6, Ch. 128, L. 2007; amd. Sec. 15, Ch. 99, L. 2011.

**19-3-402. Federally subsidized employees eligible.** A person whose compensation is paid either fully or in part from federal funds but who is not subject to the federal retirement system is considered an employee and is entitled to all benefits and is required to make all employee contributions under the retirement system based upon the full salary received by such employee, including that portion of salary paid from federal funds.

**History:** En. 68-2510 by Sec. 58, Ch. 323, L. 1973; amd. Sec. 1, Ch. 445, L. 1977; R.C.M. 1947, 68-2510; amd. Sec. 1, Ch. 458, L. 1983.

**19-3-403. Exclusions from membership.** The following persons may not become members of the retirement system and, except as provided in subsection (7), may not later purchase previous service under 19-3-505:

(1) inmates or residents of state institutions or correctional institutions;

(2) persons in state institutions principally for the purpose of training but who receive compensation;

(3) independent contractors;

(4) persons who are members of any other retirement or pension system supported wholly or in part by funds of the United States government, any state government, or political subdivision of the state and who are receiving credit in the other system for employment. It is the purpose of this subsection to prevent a person from receiving credit for the same employment in two retirement systems supported wholly or in part by public funds, except when the service qualifies and is applied for and the service credit is purchased pursuant to 19-3-503. A member of the retirement system who, because of employment by the state, is required to become a member of any other system described in this subsection is considered, with regard to that employment, an inactive member of the retirement system, except that the member is not eligible for retirement or a refund of the member's accumulated contributions. Exclusion under this subsection is subject to the following exceptions:

(a) The employees of an employer who has entered into a collective bargaining agreement involving a multiemployer pension plan qualified by the internal revenue service and that requires contributions by the employer for the members of the bargaining unit remain eligible, if otherwise qualified, for membership in the retirement system.

(b) For the purpose of this subsection (4), persons receiving pensions, retirement benefits, or other payments from any source on account of employment other than as an employee are not considered, because of receipt, members of any other retirement or pension system.

(5) substitute teachers or part-time teacher's aides who may elect to join the teachers' retirement system in accordance with 19-20-302(4);

(6) court commissioners, elected officials, or appointive members of any board or commission who serve the state or any contracting employer intermittently and who are paid on a per diem basis;

(7) full-time students employed at and attending the same public elementary school, high school, community college, or unit of the state university system, except that a person excluded from membership as a student of a public community college or a unit of the state university system who later becomes an active member by otherwise becoming an employee may affirmatively exercise the option of purchasing the service credit excluded by this subsection by applying to the board in writing after becoming an active member and become eligible to receive service credit for the excluded service under the provisions of 19-3-505;

(8) county school superintendents who are required by 19-20-302(1)(g) and (2) to be members of the teachers' retirement system provided for in Title 19, chapter 20.

**History:** En. Sec. 68-1602 by Sec. 6, Ch. 323, L. 1973; amd. Sec. 1, Ch. 374, L. 1974; amd. Sec. 1, Ch. 16, L. 1975; amd. Sec. 1, Ch. 128, L. 1975; amd. Sec. 1, Ch. 99, L. 1977; amd. Sec. 4, Ch. 132, L. 1977; R.C.M. 1947, 68-1602(1) thru (8)(a), (9) thru (12); amd. Sec. 1, Ch. 149, L. 1979; amd. Sec. 1, Ch. 60, L. 1981; amd. Sec. 1, Ch. 142, L. 1981; amd. Sec. 1, Ch. 147, L. 1983; amd. Sec. 1, Ch. 303, L. 1985; amd. Sec. 1, Ch. 275, L. 1991; amd. Sec. 51, Ch. 265, L. 1993; amd. Sec. 9, Ch. 308, L. 1995; amd. Sec. 9, Ch. 412, L. 1995; amd. Sec. 25, Ch. 562, L. 1999; amd. Sec. 19, Ch. 99, L. 2001; amd. Sec. 20, Ch. 429, L. 2003; amd. Sec. 18, Ch. 329, L. 2005; amd. Sec. 10, Ch. 283, L. 2009; amd. Sec. 16, Ch. 99, L. 2011; amd. Sec. 11, Ch. 195, L. 2017.

**Compiler's Comments**

*2017 Amendment:* Chapter 195 inserted (8) concerning county school superintendents; and made minor changes in style. Amendment effective July 1, 2017.

**19-3-404. Renumbered 19-3-1211.** Code Commissioner, 1993.

**19-3-405. Renumbered 19-3-318.** Code Commissioner, 1993.

**19-3-406. Renumbered 19-2-601.** Sec. 238, Ch. 265, L. 1993.

**19-3-407 through 19-3-410 reserved.**

**19-3-411. Eligible employees.** Subject to 19-3-402, 19-3-403, 19-3-412, and 19-3-413, eligible employees under the system who are not covered by a separate retirement system under this title include the following:

(1) any employee of the state of Montana, its university system or any of the colleges, schools, components, or units of the university system; and

(2) any employee of a contracting employer eligible to participate under the contract between the board and the contracting employer under 19-3-201.

**History:** En. Sec. 48, Ch. 265, L. 1993; amd. Sec. 7, Ch. 248, L. 2015.

**19-3-412. Optional membership — employees not in elected office.** (1) Except as provided in subsection (2), the following employees in covered positions that are not elected offices shall elect either to become active members of the retirement system or to decline this optional membership by filing an irrevocable, written application with the board in the manner prescribed in subsection (3):

(a) employees serving in employment that does not cumulatively exceed a total of 960 hours of covered employment with all employers under this chapter in any fiscal year;

(b) employees directly appointed by the governor;

(c) employees working 10 months or less for the legislative branch to perform work related to the legislative session;

(d) the chief administrative officer of any city or county; and

(e) employees of county hospitals or rest homes.

(2) (a) An employee who is an active or inactive member at the time of employment is not eligible to make an election under subsection (1). Upon employment in the position, an employee who was an active member remains an active member for all covered employment and an employee who was an inactive member shall become an active member.

(b) A person who was a retired member before employment in a position for which membership is optional under subsection (1) is not eligible to make an election under subsection (1) and is subject to the provisions of Title 19, chapter 3, part 11.

(3) (a) The board shall prescribe the form of the written application required pursuant to subsection (1) and provide written application forms to each employer.

(b) Each employee in a position covered under subsection (1) shall obtain the written application form from the employer and complete and return it to the board.

(c) The written application must be filed with the board within 90 days after the commencement of the employee's employment.

(d) The employer shall retain a copy of the employee's written application.

(4) If the employee fails to file with the board the written application required under subsection (1) within the time allowed in subsection (3), the failure must be considered an election to decline membership.

(5) Except as provided in subsection (6), an employee who declines optional membership may not receive membership service or service credit for the employment for which membership was declined.

(6) An employee who declined optional membership but later becomes a member may purchase service credit for the period of time beginning with the date of employment in which membership was declined to the commencement of membership. Purchase of service credit pursuant to this subsection must comply with 19-3-505.

(7) An employee who has made an election under this section may not make a new or different election under this section in any circumstance unless the employee has been terminated from employment in all optional membership positions for at least 30 days.

(8) An employee accepting a position that requires membership shall become a member even if the employee previously declined membership under this section.

**History:** En. Sec. 50, Ch. 265, L. 1993; amd. Sec. 1, Ch. 208, L. 1997; amd. Sec. 13, Ch. 370, L. 1997; amd. Sec. 51, Ch. 51, L. 1999; amd. Sec. 20, Ch. 58, L. 1999; amd. Sec. 26, Ch. 562, L. 1999; amd. Sec. 20, Ch. 99, L. 2001; amd. Sec. 1, Ch. 285, L. 2001; amd. Sec. 1, Ch. 357, L. 2001; amd. Sec. 1, Ch. 402, L. 2003; amd. Sec. 21, Ch. 429, L. 2003; amd. Sec. 19, Ch. 329, L. 2005; amd. Sec. 1, Ch. 41, L. 2007; amd. Sec. 7, Ch. 128, L. 2007; amd. Sec. 2, Ch. 334, L. 2007; amd. Sec. 12, Ch. 284, L. 2009; amd. Sec. 17, Ch. 99, L. 2011; amd. Sec. 8, Ch. 178, L. 2013; amd. Sec. 8, Ch. 248, L. 2015.

**19-3-413. Optional membership — elected officials.** (1) (a) Except as provided in 5-2-304, 19-20-302(1)(g) and (2), and subsection (2) of this section, a person who is elected or appointed to an elected office and paid a salary or wage by an employer shall elect either to become an active member of the retirement system or to decline this optional membership by filing an irrevocable, written application with the board in the manner prescribed in subsection (3).

(b) If the elected official is a retired member, the elected official may make an election under this section to become an active member or to decline membership and remain a retired member with no limitation on the number of hours worked or wages earned in the elected office.

(2) An elected official who works more than 960 hours in a fiscal year in that elected office and who was an active or inactive member before becoming an elected official is not eligible to make an election under subsection (1). An active member remains an active member for all covered employment, and an inactive member shall become an active member.

(3) (a) The board shall prescribe the form of the written application required pursuant to this section and provide the form to each employer.

(b) An election form must be completed and returned to the board within 90 days after the elected official assumes office. Failure to file the written application form within 90 days is considered an election to decline membership.

(c) The employer shall retain a copy of the elected official's written application.

(4) Except as provided in subsection (5), an elected official who declines optional membership may not receive membership service or service credit for any employment in the position for which membership was declined.

(5) An elected official who declined optional membership under this section but who later becomes a member may purchase service credit for the period of time the person was employed in the optional position and declined membership. Purchase of service credit pursuant to this subsection must comply with 19-3-505.

(6) An elected official who has made an election under this section and who is reelected or reappointed to the same office is not eligible to make a new election.

(7) For purposes of this section, "elected official" means all persons covered by subsection (1)(a).

**History:** En. Sec. 9, Ch. 248, L. 2015; amd. Sec. 12, Ch. 195, L. 2017.

**Compiler's Comments**

*2017 Amendment:* Chapter 195 in (1)(a) in exception clause inserted reference to 19-20-302(1)(g) and (2); and made minor changes in style. Amendment effective July 1, 2017.

## **Part 5**

### **Service Credit**

**19-3-501. Absence not included in service.** Except as otherwise provided in this part, time during which a member is absent from service may not be included in the calculation of service credit.

**History:** En. 68-1604 by Sec. 8, Ch. 323, L. 1973; amd. Sec. 2, Ch. 99, L. 1977; R.C.M. 1947, 68-1604; amd. Sec. 55, Ch. 265, L. 1993.

**19-3-502. Renumbered 19-2-705.** Sec. 238, Ch. 265, L. 1993.

**19-3-503. Application to purchase military service.** (1) (a) Except as provided in subsection (1)(b) and subject to 19-3-514, a member with at least 5 years of membership service may, at any time prior to retirement, file a written application with the board to purchase service credit and membership service for up to 5 years of the member's active service in the armed forces of the United States, including the first special service force or the American merchant marine in oceangoing service during the period of armed conflict, December 7, 1941, to August 15, 1945.

(b) A member is not eligible to purchase active military service credit and membership service under subsection (1)(a) if the member:

(i) has retired from active duty in the armed forces of the United States, including the first special service force or the American merchant marine in oceangoing service during the period of armed conflict, December 7, 1941, to August 15, 1945, with a military service retirement benefit based on that military service;

(ii) is eligible, pursuant to 19-2-707, to receive credit in the system for that service; or

(iii) is eligible to receive credit for that service in any other retirement system or plan.

(2) (a) Except as provided in subsection (2)(b) and subject to 19-3-514, a member with at least 5 years of membership service may, at any time prior to retirement, file a written application with the board to purchase service credit and membership service for up to 5 years of the member's reserve military service in the armed forces of the United States.

(b) A member is not eligible to purchase reserve military service credit and membership service under subsection (2)(a) if the member is eligible, pursuant to 19-2-707, to receive credit in the system for that service.

(3) To purchase service credit and membership service under this section, the member shall pay the actuarial cost of the member's active or reserve military service credit based on the system's most recent actuarial valuation.

**History:** En. 68-1605.1 by Sec. 10, Ch. 323, L. 1973; amd. Sec. 2, Ch. 128, L. 1975; R.C.M. 1947, 68-1605.1; amd. Sec. 5, Ch. 609, L. 1989; amd. Sec. 56, Ch. 265, L. 1993; amd. Sec. 10, Ch. 287, L. 1997; amd. Sec. 21, Ch. 58, L. 1999; amd. Sec. 1, Ch. 494, L. 1999; amd. Sec. 21, Ch. 99, L. 2001; amd. Sec. 1, Ch. 26, L. 2003; amd. Sec. 1, Ch. 289, L. 2003; amd. Secs. 22, 122(1), Ch. 429, L. 2003.

**19-3-504. Absence due to illness or injury.** (1) Time, not to exceed 5 years, during which a member is absent from service because of injury or illness is considered membership service if, within 1 year after the end of the absence, the injury or illness is determined to have arisen out of and in the course of the member's employment. However, the member may not earn service credit for this period unless the member files with the board a written notice of the member's intent to purchase the time of absence and complies with subsection (2), in which case the absence is considered as time spent in service for both service credit and membership service.

(2) (a) A member absent because of an employment-related illness or injury entitling the member to workers' compensation payments may, upon the member's return to service or upon termination of employment if the member cannot return to service due to the illness or injury, contribute to the retirement system an amount equal to the contributions that would have been made by the member to the system during the absence. The amount of contributions owed will



be based on the member's compensation at the commencement of the member's absence, plus regular interest accruing 1 year from the date after the member returns to service or terminates employment to the date the member contributes for the period of absence.

(b) Whenever a member elects to contribute under subsection (2)(a), the employer shall contribute employer contributions for the period of absence based on the salary as calculated in subsection (2)(a) and may pay interest on the employer's contribution calculated in the same manner as interest on the employee's contribution under subsection (2)(a). An employer electing to make an interest payment shall do so for all employees similarly situated. If the employer elects not to pay the interest costs, this amount must be paid by the employee.

(3) A member loses the right to contribute for:

(a) the entire absence under this section if all of the member's accumulated contributions are refunded pursuant to 19-2-602; or

(b) the period of time during which retirement benefits are received if the member retires during the absence.

**History:** En. 68-1606 by Sec. 11, Ch. 323, L. 1973; amd. Sec. 1, Ch. 300, L. 1977; R.C.M. 1947, 68-1606; amd. Sec. 1, Ch. 311, L. 1983; amd. Sec. 1, Ch. 103, L. 1987; amd. Sec. 57, Ch. 265, L. 1993; amd. Sec. 14, Ch. 370, L. 1997; amd. Sec. 22, Ch. 58, L. 1999; amd. Sec. 23, Ch. 429, L. 2003; amd. Sec. 11, Ch. 283, L. 2009.

**19-3-505. Purchase of previous employment with employer.** (1) Subject to the provisions of this section, a member who has employment for which optional membership was declined or employment with an employer prior to the employer's contract coverage may file a written application with the board to purchase all or a portion of the employment for service credit and membership service. The application must include salary information certified by the member's employer or former employer.

(2) (a) A purchase under this section is subject to the board's approval.

(b) If the board approves the request, the member shall pay all contributions that the member would have contributed during the period of employment as if the employment had been covered by the retirement system and shall pay the regular interest that would have accumulated on the amount to the time of payment.

(c) The employer shall establish a policy as to the payment of retroactive employer contributions or retroactive employer contributions and regular interest and apply this policy indiscriminately for all employees and former employees. All employee appeals of discrimination are subject to the determination of the board. All successful appeals obligate the employer to pay the employer and employee contributions with accrued interest for that employee filing the appeal with the board. Each appeal must be heard on its individual merits and may not bind the employer to pay all retroactive payments for all former and present employees.

(d) If the employer establishes a policy under subsection (2)(c) of nonpayment, the member shall pay the amount not paid by the employer in order to receive service credit and membership service for the period of employment.

**History:** En. 68-1607 by Sec. 12, Ch. 323, L. 1973; amd. Sec. 2, Ch. 190, L. 1974; amd. Sec. 3, Ch. 128, L. 1975; amd. Sec. 1, Ch. 89, L. 1977; amd. Sec. 4, Ch. 132, L. 1977; R.C.M. 1947, 68-1607; amd. Sec. 2, Ch. 103, L. 1987; amd. Sec. 58, Ch. 265, L. 1993; amd. Sec. 23, Ch. 58, L. 1999; amd. Sec. 27, Ch. 562, L. 1999; amd. Sec. 22, Ch. 99, L. 2001; amd. Sec. 24, Ch. 429, L. 2003; amd. Sec. 20, Ch. 329, L. 2005.

**19-3-506. Repealed.** Sec. 236, Ch. 265, L. 1993.

**History:** En. 68-1608 by Sec. 13, Ch. 323, L. 1973; amd. Sec. 4, Ch. 128, L. 1975; amd. Sec. 2, Ch. 89, L. 1977; amd. Sec. 4, Ch. 99, L. 1977; amd. Sec. 4, Ch. 132, L. 1977; R.C.M. 1947, 68-1608.

**19-3-507. Repealed.** Sec. 4, Ch. 290, L. 1983.

**History:** En. 68-2511 by Sec. 59, Ch. 323, L. 1973; amd. Sec. 13, Ch. 99, L. 1977; R.C.M. 1947, 68-2511.

**19-3-508. Renumbered 19-2-703.** Sec. 238, Ch. 265, L. 1993.

**19-3-509. Repealed.** Sec. 120, Ch. 429, L. 2003.

**History:** En. Sec. 1, Ch. 145, L. 1981; amd. Sec. 3, Ch. 290, L. 1983; amd. Sec. 1, Ch. 331, L. 1983; amd. Sec. 1, Ch. 217, L. 1989; amd. Sec. 59, Ch. 265, L. 1993; amd. Sec. 10, Ch. 412, L. 1995; amd. Sec. 52, Ch. 51, L. 1999; amd. Sec. 28, Ch. 562, L. 1999; amd. Sec. 23, Ch. 99, L. 2001.

**19-3-510. Employment in United States government.** (1) A member who is assigned to an agency of the United States government under the Intergovernmental Personnel Act of 1970, 42 U.S.C. 4701, et seq., may purchase the federal employment as service credit in the retirement system under subsection (2) if:



(a) the member has accrued 5 years or more of membership service in the retirement system; and

(b) the member returns to full-time service with the former state or local government employer for at least 1 year after completing employment in the United States government.

(2) A member of the retirement system who is assigned to an agency of the United States government has the option to:

(a) continue the member's payments into the pension trust fund; or

(b) purchase service credit for the period of federal employment under this section within 2 years after return to service under the retirement system.

(3) Salary earned while on assignment to an agency of the United States government must be considered compensation for the purposes of the retirement system and may be included in the determination of highest average compensation if the highest average compensation does not exceed 100% of the member's highest annual compensation earned as a state or local government employee.

**History:** En. Sec. 1, Ch. 261, L. 1981; amd. Sec. 60, Ch. 265, L. 1993; amd. Sec. 24, Ch. 99, L. 2001; amd. Sec. 25, Ch. 429, L. 2003; amd. Sec. 8, Ch. 128, L. 2007.

**19-3-511. Transfer and purchase of service credits and contributions from teachers' retirement system.** (1) Except as provided in subsection (3)(b), an active member may, at any time before retirement, file a written application with the board to purchase in the public employees' retirement system the member's service in the teachers' retirement system to the extent that the member has either received or is eligible to receive a refund for the service.

(2) The cost of purchasing service credit under this section is the sum of subsections (2)(a) and (2)(b) as follows:

(a) The teachers' retirement system shall transfer an amount equal to 72% of the amount payable by the member.

(b) The member shall pay either directly or by transferring contributions on account with the teachers' retirement system an amount equal to the member's accumulated contributions at the time that active membership was terminated with the teachers' retirement system, plus accrued interest. Interest must be calculated from the date of termination until payment is received by the public employees' retirement system, based on the interest tables in use by the teachers' retirement system.

(3) (a) The amount of service credit granted in subsection (1) must be on a month-by-month basis.

(b) Service credit transferred from the teachers' retirement system is subject to the provisions and limitations of 19-3-514, except as provided in subsection (3)(c).

(c) Active service transferred from the teachers' retirement system or refunded service from the teachers' retirement system that is eligible to be purchased under this section is not subject to service credit limitations.

(4) Subject to the provisions of 19-2-403, the board is the sole authority in determining the amount of service credit that a member may purchase under this section and the amount paid to the retirement system under subsection (2).

(5) If an active member who has service credit in the teachers' retirement system dies before the member purchases this service credit in the public employees' retirement system and if the service credit from both systems, when combined, entitles the member's designated beneficiary to a survivorship benefit, the payment of the survivorship benefit is the liability of the public employees' retirement system. Before payment of the survivorship benefit, the teachers' retirement board shall transfer to the public employees' retirement system the contributions necessary to purchase this service credit in the public employees' retirement system, as provided in subsection (2).

(6) If the board determines that a member was erroneously classified and reported to the teachers' retirement system, the member's accumulated contributions and service credit, together with the employer contributions plus interest, must be transferred to the public employees' retirement system. Employee and employer contributions due as calculated under 19-3-315 and 19-3-316 are the liability of the employee and the employing entity, respectively, where the error occurred. For the period of time that the employer contributions are held by the teachers' retirement system, interest paid on employer contributions transferred under this

subsection must be calculated at the short-term investment pool rate earned by the board of investments in the fiscal year preceding the transfer request.

**History:** En. Sec. 1, Ch. 290, L. 1983; amd. Sec. 1, Ch. 690, L. 1989; amd. Sec. 1, Ch. 64, L. 1991; amd. Sec. 61, Ch. 265, L. 1993; amd. Sec. 11, Ch. 412, L. 1995; amd. Sec. 15, Ch. 370, L. 1997; amd. Sec. 25, Ch. 99, L. 2001; amd. Sec. 26, Ch. 429, L. 2003.

**19-3-512. Purchase of service credit from other public retirement systems.**

(1) Subject to 19-3-514, a member with at least 5 years of membership service in the public employees' retirement system may purchase service credit for:

(a) public service employment covered under a public retirement system other than a system provided for in Title 19 for which the member received a refund of the member's membership contribution; and

(b) public service employment that occurred before the public employer adopted a public retirement system.

(2) A member may not purchase more than 5 years of service credit under this section. To purchase this service credit, a member shall:

(a) at any time before retirement, file a written application with the board; and

(b) pay the actuarial cost of the service credit in the public employees' retirement system, as determined by the board, based on the system's most recent actuarial valuation.

(3) Service credit purchased under this section may not be used in calculating a member's retirement benefit unless the member's last 5 years of service credit were earned under the public employees' retirement system. If, upon the member's retirement, the member's purchased service credit cannot be used in calculating the member's retirement benefit, the member must receive a refund of the amount paid to purchase the service credit, plus regular interest on that amount.

**History:** En. Sec. 1, Ch. 11, L. 1987; amd. Sec. 1, Ch. 196, L. 1989; amd. Sec. 62, Ch. 265, L. 1993; amd. Sec. 11, Ch. 287, L. 1997; amd. Sec. 24, Ch. 58, L. 1999; amd. Sec. 29, Ch. 562, L. 1999; amd. Sec. 26, Ch. 99, L. 2001; amd. Sec. 27, Ch. 429, L. 2003; amd. Sec. 9, Ch. 178, L. 2013.

**19-3-513. Application to purchase additional service.**

(1) Subject to 19-3-514, a member with at least 5 years of membership service may, at any time before retirement, file a written application with the board to purchase 1 year of additional service credit for each 5 years of membership service.

(2) To purchase this service credit under this section, a member shall pay the actuarial cost of the service credit, based on the system's most recent actuarial valuation.

(3) Service credit purchased under this section is not membership service and may not be used to qualify a member for service retirement or to bring a member to 25 years of membership service for the purposes of 19-3-902 or 19-3-904.

(4) Purchases of one-for-five service will be used to adjust the early retirement reduction required in 19-3-906, if applicable.

**History:** En. Sec. 1, Ch. 73, L. 1989; amd. Sec. 17, Ch. 16, L. 1991; amd. Sec. 63, Ch. 265, L. 1993; amd. Sec. 12, Ch. 287, L. 1997; amd. Sec. 25, Ch. 58, L. 1999; amd. Sec. 2, Ch. 494, L. 1999; amd. Sec. 27, Ch. 99, L. 2001; amd. Sec. 28, Ch. 429, L. 2003; amd. Sec. 12, Ch. 283, L. 2009; amd. Sec. 18, Ch. 99, L. 2011; amd. Sec. 3, Ch. 369, L. 2011.

**19-3-514. Service purchase limit — exception.**

(1) Except as provided in subsection (2), a member may not purchase more than a combined total of 5 years under 19-3-503, 19-3-511(3)(b), 19-3-512, 19-3-513, and 19-3-515.

(2) A member who has purchased service credit under 19-3-503 or 19-3-512 on or before January 1, 1990, and who elects to purchase service credit under 19-3-513 must receive credit for the full months of service credit purchased on or before January 1, 1990.

**History:** En. Secs. 28, 29, Ch. 99, L. 2001; amd. Sec. 2, Ch. 292, L. 2003; amd. Sec. 29, Ch. 429, L. 2003.

**19-3-515. Purchase of federal volunteer service.**

(1) Subject to 19-3-514, a member with at least 5 years of membership service may, at any time prior to retirement, file a written application with the board to purchase membership service and service credit for up to 5 years of the member's service as a volunteer in a United States service program, such as the peace corps, or successful completion of a term of service in a national service position as described in the National and Community Service Act of 1990, 42 U.S.C. 12501, et seq.

(2) Purchase of membership service and service credit under this section is subject to the board's verification of the member's volunteer service.

(3) To purchase this membership service and service credit, the member shall pay the actuarial cost of the service credit, based on the system's most recent actuarial valuation.

**History:** En. Sec. 1, Ch. 292, L. 2003.

**19-3-516 through 19-3-519 reserved.**

**19-3-520. Repealed.** Sec. 44, Ch. 58, L. 1999.

**History:** En. Sec. 1, Ch. 71, L. 1989; amd. Sec. 64, Ch. 265, L. 1993; Sec. 19-3-907, MCA 1991; redes. 19-3-520 by Code Commissioner, 1993.

**19-3-521. Service credit for legislative members.** A member of the legislature of Montana must receive membership service and service credit for that portion of each year for which the member pays regular contributions.

**History:** En. Sec. 65, Ch. 265, L. 1993; amd. Sec. 30, Ch. 562, L. 1999; amd. Sec. 30, Ch. 429, L. 2003.

**19-3-522. Nonapplication of part to defined contribution plan.** Except as otherwise provided in chapter 3, part 21, of this title, none of the provisions of this part apply under the defined contribution plan.

**History:** En. Sec. 40, Ch. 471, L. 1999.

## **Part 9**

### **Service Retirement Benefits**

**19-3-901. Eligibility for service retirement.** (1) A member hired prior to July 1, 2011, who has:

- (a) attained age 60 and has 5 years of membership service is eligible for service retirement;
- (b) attained at least age 65 before or while employed in a position covered by the public employees' retirement system is eligible for service retirement regardless of the member's years of membership service; or
- (c) 30 years or more of membership service is eligible for service retirement regardless of the member's age.

(2) A member hired on or after July 1, 2011, who has:

- (a) attained age 65 and has 5 years of membership service is eligible for service retirement; or
- (b) attained age 70 before or while employed in a position covered by the public employees' retirement system is eligible for service retirement regardless of the member's years of membership service.

(3) For purposes of compliance with section 411 of the Internal Revenue Code, 26 U.S.C. 411:

- (a) in each of the circumstances described in subsections (1)(a), (1)(b), and (2), the member is treated as having attained normal retirement age; and
- (b) in each of the circumstances described in subsections (1) and (2), the member has a nonforfeitable right to the service retirement benefit accrued and payable under the provisions of this chapter, subject to the member's right to a refund of the member's accumulated contributions under Title 19, chapter 2, part 6.

**History:** En. 68-2001 by Sec. 29, Ch. 323, L. 1973; amd. Sec. 8, Ch. 128, L. 1975; R.C.M. 1947, 68-2001(1); amd. Sec. 2, Ch. 162, L. 1991; amd. Sec. 66, Ch. 265, L. 1993; amd. Sec. 30, Ch. 99, L. 2001; amd. Sec. 19, Ch. 99, L. 2011; amd. Sec. 4, Ch. 369, L. 2011; amd. Sec. 6, Ch. 240, L. 2013.

**19-3-902. Eligibility for early retirement.** (1) A member hired prior to July 1, 2011, who:

- (a) is not eligible for service retirement but has attained age 50 and has 5 years of membership service is eligible for early retirement; or
  - (b) has completed 25 years or more of membership service is eligible for early retirement.
- (2) A member hired on or after July 1, 2011, who is not eligible for service retirement but has attained age 55 and has 5 years of membership service is eligible for early retirement.

**History:** En. 68-2001 by Sec. 29, Ch. 323, L. 1973; amd. Sec. 8, Ch. 128, L. 1975; R.C.M. 1947, 68-2001(2); amd. Sec. 6, Ch. 496, L. 1981; amd. Sec. 67, Ch. 265, L. 1993; amd. Sec. 5, Ch. 369, L. 2011.

**19-3-903. Repealed.** Sec. 39, Ch. 370, L. 1997.

**History:** En. 68-2002 by Sec. 30, Ch. 323, L. 1973; amd. Sec. 11, Ch. 332, L. 1977; R.C.M. 1947, 68-2002; amd. Sec. 1, Ch. 53, L. 1983; amd. Sec. 2, Ch. 196, L. 1989; amd. Sec. 68, Ch. 265, L. 1993.

**19-3-904. Amount of service retirement benefit.** (1) The monthly amount of service retirement benefit payable following retirement to a member hired before July 1, 2011, with:

(a) less than 25 years of membership service is the greater of one fifty-sixth of the member's highest average compensation multiplied by the number of years of the member's total service credit or the benefit calculated under subsection (3); or

(b) 25 or more years of membership service is the greater of 2% of the member's highest average compensation multiplied by the number of years of the member's total service credit or the benefit calculated under subsection (3).

(2) The monthly amount of service retirement benefit payable following retirement to a member hired on or after July 1, 2011, with:

(a) less than 10 years of membership service is the greater of 1.5% of the member's highest average compensation multiplied by the number of years of the member's total service credit or the benefit calculated under subsection (3);

(b) 10 or more years but less than 30 years of membership service is the greater of one fifty-sixth of the member's highest average compensation multiplied by the number of years of the member's total service credit or the benefit calculated under subsection (3); or

(c) 30 or more years of membership service is the greater of 2% of the member's highest average compensation multiplied by the number of years of the member's total service credit or the benefit calculated under subsection (3).

(3) A member is entitled to receive the greater of:

(a) the benefit provided pursuant to subsection (1) or (2); or

(b) a monthly benefit that is the actuarial equivalent of the sum of:

(i) double the member's regular contributions and regular interest; and

(ii) any amounts paid by the member to purchase service credit and membership service as provided by law.

**History:** En. 68-2003 by Sec. 31, Ch. 323, L. 1973; amd. Sec. 9, Ch. 128, L. 1975; amd. Sec. 2, Ch. 241, L. 1977; amd. Sec. 12, Ch. 332, L. 1977; R.C.M. 1947, 68-2003; amd. Sec. 2, Ch. 73, L. 1989; amd. Sec. 3, Ch. 558, L. 1989; amd. Sec. 69, Ch. 265, L. 1993; amd. Sec. 31, Ch. 562, L. 1999; amd. Sec. 31, Ch. 99, L. 2001; amd. Sec. 1, Ch. 217, L. 2001; amd. Sec. 31, Ch. 429, L. 2003; amd. Sec. 6, Ch. 369, L. 2011; amd. Sec. 10, Ch. 248, L. 2015.

**19-3-905. Adjustment of benefit for certain members.** The minimum retirement benefit payable to a vested member who has attained age 70 in service is an annuity of \$40 per month.

**History:** En. 68-2004 by Sec. 32, Ch. 323, L. 1973; amd. Sec. 10, Ch. 128, L. 1975; amd. Sec. 13, Ch. 332, L. 1977; R.C.M. 1947, 68-2004; amd. Sec. 3, Ch. 196, L. 1989; amd. Sec. 70, Ch. 265, L. 1993.

**19-3-906. Early retirement benefit.** (1) (a) Until October 1, 2011, for a member hired prior to July 1, 2011, the amount of the early retirement benefit payable following early retirement is the actuarial equivalent of the accrued portion of the service retirement benefit that would have been payable to the member commencing at age 60 or upon completion of 30 years of membership service pursuant to 19-3-904(1).

(b) The early retirement benefit must be determined as prescribed in 19-3-904(1), with the exception that the benefit must be reduced as follows:

(i) by 0.5% multiplied by the number of months up to a maximum of 60 months by which the retirement date precedes the date on which the member would have retired had the member attained age 60 or had the member completed 30 years of membership service; and

(ii) by 0.3% multiplied by the number of months in excess of the 60 months in subsection (1)(b)(i) but not to exceed 60 additional months by which the retirement date precedes the date on which the member would have retired had the member attained age 60 or had the member completed 30 years of membership service.

(2) Beginning October 1, 2011, for a member hired prior to July 1, 2011, the amount of retirement benefit payable following early retirement is the actuarial equivalent of the accrued portion of the service retirement benefit that would have been payable to the member commencing at age 60 or upon completion of 30 years of membership service pursuant to 19-3-904(1), with

the exception that the benefit must be reduced using actuarially equivalent factors based on the most recent valuation of the system.

(3) For a member hired on or after July 1, 2011, the amount of the early retirement benefit payable following early retirement is the actuarial equivalent of the accrued portion of the service retirement benefit that would have been payable to the member commencing at age 65 pursuant to 19-3-904(2), with the exception that the benefit must be reduced using actuarially equivalent factors based on the most recent valuation of the system.

(4) The actuarial reduction provided for in this section must be adjusted for any one-for-five service purchased under 19-3-513.

**History:** En. 68-2005 by Sec. 33, Ch. 323, L. 1973; R.C.M. 1947, 68-2005; amd. Sec. 7, Ch. 496, L. 1981; amd. Sec. 60, Ch. 370, L. 1987; amd. Sec. 3, Ch. 73, L. 1989; amd. Sec. 71, Ch. 265, L. 1993; amd. Sec. 32, Ch. 429, L. 2003; amd. Sec. 13, Ch. 283, L. 2009; amd. Sec. 20, Ch. 99, L. 2011; amd. Sec. 7, Ch. 369, L. 2011.

**19-3-907. Renumbered 19-3-520.** Code Commissioner, 1993.

**19-3-908. Retirement incentive program — window of eligibility.** (1) Except as provided in subsection (4), a person who is an active member on February 1, 1993, and who voluntarily terminates service or who is involuntarily terminated from service because of a reduction in force on or after June 25, 1993, but before January 1, 1994, and who is eligible for a normal service retirement under 19-3-901 or early retirement under 19-3-902 is entitled to the retirement incentive provided in subsection (2).

(2) (a) The employer of an eligible member under subsection (1) shall pay the total cost of purchasing up to 3 years of additional service credit that the member is qualified to purchase under 19-3-513.

(b) The department of revenue shall pay the cost of purchasing up to 3 years of additional service credit for qualifying county assessors and deputy assessors eligible under subsection (1) whose employing county has not elected for participation in the incentive program as provided in subsection (4).

(c) A member is entitled to a refund for that portion of previously purchased additional service that would otherwise cause the member to be unqualified to receive all or part of the additional service credit provided in this section.

(3) An active member who is involuntarily terminated from service because of a reduction in force on or after March 1, 1993, but before June 25, 1993, and who, if the member had not been terminated from service, would have been eligible under subsection (1) for the retirement incentive is entitled to the retirement incentive under subsection (2) if the member was, at the time of termination from service, eligible for service retirement under 19-3-901 or early retirement under 19-3-902 and retires on or after June 25, 1993.

(4) Subject to subsection (2)(b), a contracting employer's participation in the incentive program described in this section is optional. A contracting employer may elect to provide the incentive by filing with the board a written notice of election on or before June 1, 1993, and complying with rules adopted pursuant to subsection (6).

(5) County assessors and deputy assessors are eligible for the incentive program even if the employing county has not elected to participate in the incentive program.

(6) The board may allow an employer to pay the contributions required under subsection (2)(a) in installments for up to 10 years and may charge interest at a rate set by the board pursuant to 19-2-403. The board shall adopt rules to implement the provisions of this section.

(7) A member who has received additional service under this section and who returns to employment for the same jurisdiction for 960 or more hours in a calendar year in a position covered by the public employees' retirement system or for 600 or more hours in a calendar year in a position covered under any other retirement system shall forfeit the additional service. The employer's contributions to purchase that member's additional service credit, minus the proportional amount of retirement benefits related to the additional service purchased under this section and already paid, must be refunded to the employer. For purposes of this subsection, all agencies of the state, including the university system, are considered the same jurisdiction and other public employers contracting with the retirement system are each considered separate jurisdictions.

**History:** En. Sec. 1, Ch. 567, L. 1993; amd. Sec. 127, Ch. 27, Sp. L. November 1993; amd. Sec. 2, Ch. 66, L. 2001; amd. Sec. 33, Ch. 429, L. 2003; amd. Sec. 21, Ch. 329, L. 2005; amd. Sec. 10, Ch. 178, L. 2013.



**19-3-909. Nonapplication of part to defined contribution plan.** Except as otherwise provided in chapter 3, part 21, of this title, none of the provisions of this part apply under the defined contribution plan.

**History:** En. Sec. 40, Ch. 471, L. 1999.

## **Part 10**

### **Disability Retirement Benefits**

**19-3-1001. Repealed.** Sec. 236, Ch. 265, L. 1993.

**History:** En. 68-2101 by Sec. 34, Ch. 323, L. 1973; amd. Sec. 11, Ch. 128, L. 1975; amd. Sec. 3, Ch. 241, L. 1977; R.C.M. 1947, 68-2101(2).

**19-3-1002. Eligibility for disability retirement.** (1) Except as provided in subsections (2) and (3), a member entering service prior to February 24, 1991, who is not eligible for service retirement or early retirement but who has at least 5 years of membership service and has become disabled while an active member is eligible for disability retirement, as provided in 19-3-1008.

(2) An active member who was hired prior to July 1, 2011, and is 60 years of age or older or was hired on or after July 1, 2011, and is 65 years of age or older and who has completed 5 years of membership service and has had a duty-related accident forcing the member to terminate employment but who has not received or is ineligible to receive workers' compensation benefits under Title 39, chapter 71, for the duty-related accident may conditionally waive the member's eligibility for a service retirement in order to be eligible for disability retirement. The waiver is effective only upon approval by the board of the member's written application for disability retirement. The board shall determine whether a member has become disabled. The board may request any information on file with the state compensation insurance fund concerning any duty-related accident. If information is not available, the board may request and the state fund shall then provide an investigative report on the disabling accident.

(3) (a) A member in service on February 24, 1991, has a one-time election to be covered for disability purposes under the provisions of 19-3-1008(2). This election is irrevocable and must be made in writing by the member no later than December 31, 1991. Coverage under the provisions of 19-3-1008(2) commences on the date the completed written election is received by the board or its designated representative. To be eligible for disability benefits under the provisions of this part, a member must have completed 5 years of membership service and must have become disabled while an active member.

(b) An individual who became a member after February 24, 1991, and before July 1, 2011, who has completed 5 years of membership service and has become disabled while an active member is covered for disability purposes under the provisions of 19-3-1008(2) or (3).

(4) A member hired on or after July 1, 2011, who has completed 5 years of membership service and has become disabled while an active member is covered for disability purposes under the provisions of 19-3-1008(4).

**History:** En. 68-2101 by Sec. 34, Ch. 323, L. 1973; amd. Sec. 11, Ch. 128, L. 1975; amd. Sec. 3, Ch. 241, L. 1977; R.C.M. 1947, 68-2101(1); amd. Sec. 2, Ch. 311, L. 1983; amd. Sec. 56, Ch. 613, L. 1989; amd. Sec. 1, Ch. 49, L. 1991; amd. Sec. 72, Ch. 265, L. 1993; amd. Sec. 14, Ch. 630, L. 1993; amd. Sec. 32, Ch. 99, L. 2001; amd. Sec. 2, Ch. 217, L. 2001; amd. Sec. 34, Ch. 429, L. 2003; amd. Sec. 22, Ch. 329, L. 2005; amd. Sec. 8, Ch. 369, L. 2011.

**19-3-1003. Repealed.** Sec. 236, Ch. 265, L. 1993.

**History:** En. 68-2101 by Sec. 34, Ch. 323, L. 1973; amd. Sec. 11, Ch. 128, L. 1975; amd. Sec. 3, Ch. 241, L. 1977; R.C.M. 1947, 68-2101(3).

**19-3-1004. Repealed.** Sec. 236, Ch. 265, L. 1993.

**History:** En. 68-2101 by Sec. 34, Ch. 323, L. 1973; amd. Sec. 11, Ch. 128, L. 1975; amd. Sec. 3, Ch. 241, L. 1977; R.C.M. 1947, 68-2101(4).

**19-3-1005. Repealed.** Sec. 35, Ch. 178, L. 2013.

**History:** En. 68-2102 by Sec. 35, Ch. 323, L. 1973; R.C.M. 1947, 68-2102(part); amd. Sec. 73, Ch. 265, L. 1993; amd. Sec. 32, Ch. 562, L. 1999; amd. Sec. 33, Ch. 99, L. 2001; amd. Sec. 23, Ch. 329, L. 2005.

**19-3-1006. Repealed.** Sec. 39, Ch. 370, L. 1997.

**History:** En. 68-2102 by Sec. 35, Ch. 323, L. 1973; R.C.M. 1947, 68-2102(part); amd. Sec. 74, Ch. 265, L. 1993.

**19-3-1007. Benefit for duty-related disability.** (1) The retirement benefit payable to a member eligible for disability retirement for duty-related reasons and granted prior to July 1, 1977, is 50% of the member's highest average compensation.

(2) A retired member receiving a disability retirement benefit on July 1, 1977, who has previously been granted a duty-related disability under provisions in effect on June 30, 1977, is subject to the provisions of this section after July 1, 1977.

**History:** En. 68-2103 by Sec. 36, Ch. 323, L. 1973; amd. Sec. 7, Ch. 99, L. 1977; amd. Sec. 4, Ch. 241, L. 1977; R.C.M. 1947, 68-2103; amd. Sec. 55, Ch. 613, L. 1989; amd. Sec. 75, Ch. 265, L. 1993; amd. Sec. 34, Ch. 99, L. 2001.

**19-3-1008. Benefit for disability.** (1) The monthly amount of the disability retirement benefit payable to a member under the provisions of 19-3-1002(1) is the greater of subsection (1)(a) or (1)(b) as follows:

(a) 90% of one fifty-sixth of the member's highest average compensation multiplied by the member's years of service credit, including any additional service credit purchased under 19-3-513; or

(b) a retirement benefit equal to 25% of the member's highest average compensation.

(2) Except as provided in subsection (3), the monthly amount of retirement benefit payable to a member eligible for disability retirement under the provisions of 19-3-1002(3) is a retirement benefit equal to one fifty-sixth of the member's highest average compensation multiplied by the member's years of service credit, including any additional service credit purchased under 19-3-513.

(3) The monthly amount of retirement benefit payable to a member eligible for disability retirement under the provisions of 19-3-1002(3) who has at least 25 years of membership service is a retirement benefit equal to 2% of the member's highest average compensation multiplied by the member's years of service credit, including any additional service credit purchased under 19-3-513.

(4) The monthly amount of retirement benefit payable to a member eligible for disability retirement under the provisions of 19-3-1002(4) who has:

(a) more than 5 but less than 10 years of membership service is a retirement benefit equal to 1.5% of the member's highest average compensation multiplied by the member's years of service credit, including any additional service credit purchased under 19-3-513;

(b) 10 or more but less than 30 years of membership service is a retirement benefit equal to one fifty-sixth of the member's highest average compensation multiplied by the member's years of service credit, including any additional service credit purchased under 19-3-513; or

(c) 30 or more years of membership service is a retirement benefit equal to 2% of the member's highest average compensation multiplied by the member's years of service credit, including any additional service credit purchased under 19-3-513.

(5) Subject to the provisions of part 11 of this chapter, a retired member receiving a disability retirement benefit on February 24, 1991, who has previously been granted a disability retirement benefit under the provisions of this section will continue to receive the monthly disability retirement benefit as calculated prior to February 24, 1991, subject to any postretirement or cost-of-living increases granted by the legislature.

**History:** En. 68-2104 by Sec. 37, Ch. 323, L. 1973; amd. Sec. 5, Ch. 241, L. 1977; amd. Sec. 14, Ch. 332, L. 1977; R.C.M. 1947, 68-2104; amd. Sec. 4, Ch. 73, L. 1989; amd. Sec. 4, Ch. 558, L. 1989; amd. Sec. 2, Ch. 49, L. 1991; amd. Sec. 76, Ch. 265, L. 1993; amd. Sec. 35, Ch. 99, L. 2001; amd. Sec. 3, Ch. 217, L. 2001; amd. Sec. 35, Ch. 429, L. 2003; amd. Sec. 9, Ch. 369, L. 2011.

**19-3-1009 through 19-3-1014 reserved.**

**19-3-1015. Medical examination of disability retiree — cancellation and reinstatement.** (1) The board may, in its discretion, require a disabled member to undergo a medical examination. The examination must be made by a board-approved physician or surgeon at a place mutually agreed on by the board, the disabled member, and the physician or surgeon and at the board's expense. Upon the basis of the examination, the board shall determine whether the disabled member is unable, by reason of physical or mental incapacity, to perform the essential elements of either the position held by the member when the member retired or the position proposed to be assigned to the member. If the board determines that the member is not incapacitated or if the member refuses to submit to a medical examination, the member's disability retirement benefit must be canceled.

(2) If the board determines that a disabled member should no longer be subject to medical review, the board may grant service retirement status to the member without recalculating the monthly benefit. The board shall notify the member in writing as to the change in status. If the disabled member disagrees with the board's determination, the member may file a written application with the board requesting that the board reconsider its action. The written application for reconsideration must be filed within 60 days after receipt of the notice of the status change.

(3) (a) Except as provided in subsections (3)(b) and (3)(c), a member whose disability retirement benefit is canceled because the board has determined that the member is no longer incapacitated must be reinstated to the position held by the member immediately before the member's retirement or to a position in a comparable pay and benefit category with duties within the member's capacity if the member was an employee of the state or of the university. If the member was an employee of a contracting employer, the board shall notify the proper official of the contracting employer that the disability retirement benefit has been canceled and that the former employee is eligible for reinstatement to duty. The fact that the former employee was retired for disability may not prejudice any right to reinstatement to duty that the former employee may have or claim to have.

(b) A member who is employed by an employer forfeits any right to reinstatement provided by this section.

(c) This section does not affect any requirement that the former employee meet or be able to meet professional certification and licensing standards unrelated to the disability and necessary for reinstatement to duty.

(4) If a member whose disability retirement benefit is canceled is not reemployed in a position subject to the retirement system, the member is considered, for the purposes of 19-2-602, to have terminated service coincident with the commencement of the member's retirement benefit.

**History:** En. 68-2201 by Sec. 38, Ch. 323, L. 1973; amd. Sec. 8, Ch. 99, L. 1977; R.C.M. 1947, 68-2201; amd. Sec. 1, Ch. 138, L. 1989; amd. Sec. 77, Ch. 265, L. 1993; Sec. 19-3-1102, MCA 1991; redes. 19-3-1015 by Code Commissioner, 1993; amd. Sec. 12, Ch. 412, L. 1995; amd. Sec. 17, Ch. 370, L. 1997; amd. Sec. 33, Ch. 562, L. 1999; amd. Sec. 36, Ch. 99, L. 2001; amd. Sec. 36, Ch. 429, L. 2003; amd. Sec. 24, Ch. 329, L. 2005; amd. Sec. 14, Ch. 283, L. 2009.

**19-3-1016. Nonapplication of part to defined contribution plan.** Except as otherwise provided in chapter 3, part 21, of this title, none of the provisions of this part apply under the defined contribution plan.

**History:** En. Sec. 40, Ch. 471, L. 1999.

## **Part 11**

### **Reemployment of Retired Members**

**19-3-1101. Renumbered 19-3-1501.** Code Commissioner, 1993.

**19-3-1102. Renumbered 19-3-1015.** Code Commissioner, 1993.

**19-3-1103. Disability benefit reduced by earnings.** (1) (a) If the recipient of a disability retirement benefit is self-employed or employed in a position not covered by the retirement system, the recipient shall submit to the board an annual earnings statement, and any other documentation requested by the board, covering each month during which the recipient was self-employed or employed in the position.

(b) The amount of the recipient's retirement benefit for each month of employment must be reduced to an amount that, when added to the compensation earned by the recipient in that occupation, does not exceed the amount of the recipient's monthly compensation at the time of the recipient's retirement.

(c) The board shall annually adjust the recipient's monthly compensation as it was at the time of retirement by an inflationary factor if the recipient has been receiving a disability retirement benefit for more than 36 consecutive months.

(d) If the disability benefit recipient fails to submit the documentation as required under subsection (1)(a), the board may suspend the benefit payments until it receives the documentation.

(2) Benefit adjustments granted by the legislature may not be included in calculations required under this section.

**History:** En. 68-2202 by Sec. 39, Ch. 323, L. 1973; amd. Sec. 4, Ch. 190, L. 1974; R.C.M. 1947, 68-2202; amd. Sec. 8, Ch. 496, L. 1981; amd. Sec. 1, Ch. 23, L. 1987; amd. Sec. 89, Ch. 265, L. 1993; amd. Sec. 34, Ch. 562, L. 1999; amd. Sec. 37, Ch. 99, L. 2001; amd. Sec. 11, Ch. 178, L. 2013.

**19-3-1104. Cancellation of disability retirement benefit upon reemployment.**

A person receiving a disability retirement benefit who becomes an employee is considered reinstated to service from retirement, and the person's disability retirement benefit must be canceled.

**History:** En. 68-2204 by Sec. 41, Ch. 323, L. 1973; amd. Sec. 6, Ch. 190, L. 1974; R.C.M. 1947, 68-2204(part); amd. Sec. 86, Ch. 265, L. 1993; amd. Sec. 104, Ch. 42, L. 1997; amd. Sec. 18, Ch. 370, L. 1997.

**19-3-1105. Refunds and benefits for reemployed retired members.** (1) A member with an initial retirement date before January 1, 2016, who returns to active service and accrues:

- (a) less than 2 years of service credit before again terminating service:
  - (i) must, upon termination of service and pursuant to 19-2-602, receive a refund, paid in the manner provided in 19-2-602, of the member's regular contributions after the member's return to active service, plus regular interest on those contributions;
  - (ii) may not be awarded service credit for the period of reemployment; and
  - (iii) starting the first month following termination, must receive the same retirement benefit amount paid to the member in the month immediately prior to returning to active service;
- (b) at least 2 years of service credit before again terminating service must receive a recalculated retirement benefit based on provisions enacted after the member's initial retirement, but only with respect to the service credit earned after reemployment.

(2) A member with an initial retirement date on or after January 1, 2016, who returns to active service and accrues:

- (a) less than 5 years of service credit before again terminating service:
  - (i) must, upon termination of service and pursuant to 19-2-602, receive a refund, paid in the manner provided in 19-2-602, of the member's regular contributions after the member's return to active service, plus regular interest on those contributions;
  - (ii) may not be awarded service credit for the period of reemployment; and
  - (iii) starting the first month following termination, must receive the same retirement benefit amount paid to the member in the month immediately prior to returning to active service;
- (b) at least 5 years of service credit before again terminating service must, starting the first month following termination:
  - (i) receive the same retirement benefit amount paid to the member in the month immediately prior to returning to active service; and
  - (ii) receive a second retirement benefit calculated for the period of reemployment under 19-3-904 or 19-3-906, as applicable, and based on the laws in effect as of the member's rehire date.

(3) Members who return to active service following retirement may not accrue postretirement benefit adjustments under Title 19, chapter 3, part 16, during the member's term of reemployment.

(4) Postretirement benefit adjustments will start to accrue on the benefits under:

- (a) subsections (1)(a)(iii) and (2)(a)(iii) in January immediately following the member's second retirement;
- (b) subsections (1)(b) and (2)(b) in January after the member has received the recalculated benefit for at least 12 months.

(5) Upon retirement subsequent to a cancellation of a disability benefit under 19-3-1104, a member must receive a recalculated benefit as provided in 19-3-904 or 19-3-906, as applicable. The recalculated benefit is based on service credit accumulated at the time of the member's previous retirement plus any service credit accumulated subsequent to reemployment.

**History:** En. 68-2204 by Sec. 41, Ch. 323, L. 1973; amd. Sec. 6, Ch. 190, L. 1974; R.C.M. 1947, 68-2204(part); amd. Sec. 87, Ch. 265, L. 1993; amd. Sec. 38, Ch. 99, L. 2001; amd. Sec. 9, Ch. 128, L. 2007; amd. Sec. 11, Ch. 248, L. 2015; amd. Sec. 13, Ch. 195, L. 2017.

**Compiler's Comments**

*2017 Amendment:* Chapter 195 in (1)(a)(i) and (2)(a)(i) near beginning inserted "upon termination of service and pursuant to 19-2-602"; in (1)(b) at end inserted "but only with respect to the service credit earned after reemployment"; in (2)(b)(ii) substituted "19-3-904 or 19-3-906" for "19-3-902 or 19-3-904"; and made minor changes in style. Amendment effective July 1, 2017.



**19-3-1106. Limited reemployment — reduction of service retirement benefit upon exceeding limits — reporting obligations — liability — exceptions.** (1) A retired member under 65 years of age who was hired prior to July 1, 2011, who has been terminated from employment for at least 90 days, and who is receiving a service retirement benefit or early retirement benefit may return to employment covered by the retirement system for a period not to exceed 960 hours in any calendar year without returning to active service and without any effect to the retiree's retirement benefit. The retirement benefit for any retiree exceeding this 960-hour limitation in any calendar year after retirement must be temporarily reduced \$1 for each \$1 earned after working 960 hours in that calendar year.

(2) A retired member who is 65 years of age or older but less than 70½ years of age, who has been terminated from employment for at least 90 days, and who returns to employment covered by the retirement system is either subject to the 960-hour limitation of subsection (1) or may earn in any calendar year an amount that, when added to the retiree's current annual retirement benefit, will not exceed the member's annualized highest average compensation, adjusted for inflation as of January 1 of the current calendar year, whichever limitation provides the higher limit on earned compensation to the retiree. Upon reaching the applicable limitation, the retiree's benefits must be temporarily reduced \$1 for each \$1 of compensation earned in service beyond the applicable limitation during that calendar year.

(3) (a) The employer of a retiree returning to employment covered by the retirement system shall certify to the board the number of hours worked by the retiree and the gross compensation paid to the retiree in that employment during any pay period after retirement. The certification of hours and compensation may be submitted electronically pursuant to rules adopted by the board.

(b) An employer that fails to timely or accurately report the employment of, time worked by, or compensation paid to a retired member as required under subsection (3)(a) is jointly and severally liable with the retired member for repayment to the retirement system of retirement benefits paid to which the member was not entitled, plus interest.

(4) Except as provided in 19-3-412 and 19-3-413, a retiree returning to employment covered by the retirement system may elect to return to active service at any time during this period of employment covered by the retirement system.

(5) The following members who return to employment covered by the retirement system are not subject to the hour or earnings limitations in subsections (1) and (2) but are subject to the reporting requirements in subsection (3):

(a) a retired member who is 70½ years of age or older; or

(b) an elected official in a covered position who, as a retired member, declines optional membership as provided in 19-3-413.

(6) If a retired member is employed by an employer in a position that is reportable to the retirement system and the retired member is concurrently working for the employer in another position that is not reportable to the system, the position that is not reportable is considered to be part of the position that is reportable to the retirement system. All earnings of the retired member that are generated by these positions are reportable to the retirement system.

(7) (a) For the purposes of this section, "employment covered by the retirement system" includes:

(i) work performed by a retiree through a professional employer arrangement, an employee leasing arrangement, or a temporary service contractor as those terms are defined in 39-8-102; and

(ii) services performed by a retiree as an independent contractor for an employer participating in the system.

(b) For purposes of this section, compensation for a retiree covered by subsection (7)(a) is limited to compensation for the work performed by the retiree and does not include any additional payment for overhead costs or costs not directly related to the work performed.

**History:** En. 68-2204 by Sec. 41, Ch. 323, L. 1973; amd. Sec. 6, Ch. 190, L. 1974; R.C.M. 1947, 68-2204(2); amd. Sec. 9, Ch. 496, L. 1981; amd. Sec. 2, Ch. 303, L. 1985; amd. Sec. 2, Ch. 275, L. 1991; amd. Sec. 88, Ch. 265, L. 1993; amd. Sec. 1, Ch. 460, L. 1995; amd. Sec. 35, Ch. 562, L. 1999; amd. Sec. 3, Ch. 66, L. 2001; amd. Sec. 39, Ch. 99, L. 2001; amd. Sec. 2, Ch. 402, L. 2003; amd. Sec. 37, Ch. 429, L. 2003; amd. Sec. 10, Ch. 128, L. 2007; amd. Sec. 15, Ch. 283, L. 2009; amd. Sec. 21, Ch. 99, L. 2011; amd. Sec. 10, Ch. 369, L. 2011; amd. Sec. 12, Ch. 178, L. 2013; amd. Sec. 12, Ch. 248, L. 2015; amd. Sec. 14, Ch. 195, L. 2017.



**Compiler's Comments**

*2017 Amendment:* Chapter 195 in (4) in exception clause inserted reference to 19-3-412 and at end substituted "employment covered by the retirement system" for "covered employment"; inserted (7)(b) limiting which compensation is covered by retirement system; and made minor changes in style. Amendment effective July 1, 2017.

**19-3-1107. Repealed.** Sec. 236, Ch. 265, L. 1993.

**History:** En. Sec. 1, Ch. 631, L. 1985.

**19-3-1108. Repealed.** Sec. 236, Ch. 265, L. 1993.

**History:** En. Sec. 1, Ch. 179, L. 1987.

**19-3-1109. Renumbered 19-3-1601.** Code Commissioner, 1993.

**19-3-1110. Renumbered 19-3-1602.** Code Commissioner, 1993.

**19-3-1111. Renumbered 19-3-1603.** Code Commissioner, 1993.

**19-3-1112. Nonapplication of part to defined contribution plan.** Except as otherwise provided in chapter 3, part 21, of this title, none of the provisions of this part apply under the defined contribution plan.

**History:** En. Sec. 40, Ch. 471, L. 1999.

**19-3-1113. Contributions required for retirees who return to work.** (1) Beginning July 1, 2013, each employer shall contribute the amount specified in 19-3-316 and the state shall contribute the amount specified in 19-3-319 for retired members who return to work in a covered position but who, under the provisions of 19-3-1106(4), have not become active members.

(2) Retired members who return to active service under the provisions of 19-3-1106 are subject to the employee, employer, and state contributions set forth in 19-3-315, 19-3-316, and 19-3-319.

**History:** En. Sec. 1, Ch. 239, L. 2013.

## **Part 12**

### **Survivorship Benefits and Death Payments**

**19-3-1201. Eligibility for death payments.** Upon receipt of a written application filed with the board by a designated beneficiary, the board shall grant a death payment to the designated beneficiary of any member who dies:

- (1) while in service;
- (2) while a recipient of a disability retirement benefit, if the benefit has been in effect less than 6 months;
- (3) while disabled, if the member has been continuously disabled since discontinuance of the member's service but is not receiving a disability retirement benefit; or
- (4) while an inactive member.

**History:** En. 68-2301 by Sec. 42, Ch. 323, L. 1973; R.C.M. 1947, 68-2301; amd. Sec. 4, Ch. 196, L. 1989; amd. Sec. 78, Ch. 265, L. 1993; amd. Sec. 38, Ch. 429, L. 2003; amd. Sec. 22, Ch. 99, L. 2011.

**19-3-1202. Amount of death payment.** (1) The amount of death payment to be made to the designated beneficiary of a deceased member is the sum of subsections (1)(a), (1)(b), and (1)(c) as follows:

- (a) the member's accumulated contributions;
- (b) subject to subsection (2), an amount equal to one-twelfth of the compensation received by the member during the last 12 months of compensation multiplied by the smaller of six or the number of years of the member's service credit; and
- (c) the accumulated regular interest on the amounts in subsections (1)(a) and (1)(b) to the first day of the month in which the payment is made.

(2) (a) A beneficiary of a member who was inactive for less than 6 months at the time of death is eligible to receive the payment described in subsection (1)(b).

(b) A beneficiary of a member who was inactive for 6 or more months at the time of death is not eligible to receive the payment described in subsection (1)(b).

**History:** En. 68-2302 by Sec. 43, Ch. 323, L. 1973; R.C.M. 1947, 68-2302; amd. Sec. 1, Ch. 210, L. 1981; amd. Sec. 57, Ch. 613, L. 1989; amd. Sec. 79, Ch. 265, L. 1993; amd. Sec. 39, Ch. 429, L. 2003; amd. Sec. 11, Ch. 128, L. 2007; amd. Sec. 23, Ch. 99, L. 2011.

**19-3-1203. Election of optional death annuity.** The designated beneficiary of a deceased member may elect, by filing a written application with the board, to have the death payment provided for in 19-3-1202 paid in an actuarially equivalent form, subject to rules that the board may adopt. The annuity payments are not subject to increases that may be granted to other monthly retirement benefits.

**History:** En. 68-2303 by Sec. 44, Ch. 323, L. 1973; R.C.M. 1947, 68-2303; amd. Sec. 80, Ch. 265, L. 1993; amd. Sec. 40, Ch. 99, L. 2001; amd. Sec. 12, Ch. 128, L. 2007; amd. Sec. 24, Ch. 99, L. 2011.

**19-3-1204. Survivorship benefit elected by beneficiary.** (1) A designated beneficiary eligible to receive a death payment may instead elect a survivorship benefit by filing a written application with the board, if all of the following conditions are met:

(a) the deceased member on behalf of whom the death benefit is payable had completed 5 years of membership service;

(b) the designated beneficiary is a natural person; and

(c) the designated beneficiary elects the survivorship benefit within 90 days of receipt of notice from the board that the designated beneficiary is eligible to receive the death payment.

(2) A designated beneficiary of a vested member may, by filing a written application with the board, elect to receive a survivorship benefit in lieu of a death payment.

(3) (a) If the designated beneficiary is a minor, the custodian designated in 19-2-803 may, on the minor's behalf, file a written application with the board.

(b) If an application is not filed on the minor's behalf and no payment has been made, the designated beneficiary may file a written application upon reaching the age of majority. For the purposes of this subsection (3)(b), the survivorship benefit provided for in 19-3-1205 must be calculated as if the member had died on the last day of the month before the month in which the application was filed.

**History:** En. 68-2304 by Sec. 45, Ch. 323, L. 1973; amd. Sec. 7, Ch. 190, L. 1974; amd. Sec. 3, Ch. 89, L. 1977; amd. Sec. 10, Ch. 99, L. 1977; amd. Sec. 7, Ch. 241, L. 1977; R.C.M. 1947, 68-2304; amd. Sec. 2, Ch. 153, L. 1985; amd. Sec. 5, Ch. 196, L. 1989; amd. Sec. 81, Ch. 265, L. 1993; amd. Sec. 36, Ch. 562, L. 1999; amd. Sec. 41, Ch. 99, L. 2001; amd. Sec. 25, Ch. 329, L. 2005; amd. Sec. 13, Ch. 128, L. 2007.

**19-3-1205. Amount of survivorship benefit.** (1) For a member hired prior to July 1, 2011, the survivorship benefit payable to the member's designated beneficiary is the actuarial equivalent of:

(a) the accrued portion of the early retirement benefit pursuant to 19-3-906(1) that would have been payable to the member commencing at age 50 if the member had not attained age 50 or earned 25 years of membership service at the time of death;

(b) if the deceased member had attained age 50 or earned 25 years of membership service at the time of death, the early retirement benefit that would have been payable to the member if the member had retired immediately prior to death; or

(c) if the deceased member had attained age 60 or earned 30 years of membership service at the time of death, the service retirement benefit that would have been payable to the member if the member had retired immediately prior to death.

(2) For a member hired on or after July 1, 2011, the survivorship benefit payable to the member's designated beneficiary is the actuarial equivalent of:

(a) the accrued portion of the early retirement benefit pursuant to 19-3-906(3) that would have been payable to the member commencing at age 55 if the member had not attained age 55 at the time of death;

(b) if the deceased member had attained age 55 at the time of death, the early retirement benefit that would have been payable to the member if the member had retired immediately prior to death; or

(c) if the deceased member had attained age 65 at the time of death, the service retirement benefit that would have been payable to the member if the member had retired immediately prior to death.

**History:** En. 68-2305 by Sec. 46, Ch. 323, L. 1973; amd. Sec. 8, Ch. 190, L. 1974; R.C.M. 1947, 68-2305; amd. Sec. 82, Ch. 265, L. 1993; amd. Sec. 13, Ch. 412, L. 1995; amd. Sec. 105, Ch. 42, L. 1997; amd. Sec. 40, Ch. 429, L. 2003; amd. Sec. 11, Ch. 369, L. 2011.

**19-3-1206 through 19-3-1209 reserved.**

**19-3-1210. Death payments to designated beneficiaries of retired members.** (1) When a retired member receiving an option 1 retirement benefit under 19-3-1501 dies, the member's designated beneficiary or, if there is no surviving designated beneficiary, the member's estate must be paid the amount, if any, of the member's accumulated contributions calculated as of the day of the member's retirement minus the total of any retirement benefits already paid from the member's account.

(2) If a retired member receiving an option 2 or 3 retirement benefit under 19-3-1501 dies with no surviving contingent annuitant, the member's designated beneficiary or, if there is no surviving designated beneficiary, the member's estate must be paid the amount, if any, of the member's accumulated contributions calculated as of the day of the member's retirement minus the total of any retirement benefits already paid from the member's account.

(3) This section does not apply if the member was receiving a disability benefit. The member's accumulated contributions may not be reduced by the disability benefits already paid unless the disability benefit was converted to a service retirement benefit pursuant to 19-2-406(5).

**History:** En. Sec. 83, Ch. 265, L. 1993; amd. Sec. 37, Ch. 562, L. 1999; amd. Sec. 41, Ch. 429, L. 2003; amd. Sec. 16, Ch. 283, L. 2009; amd. Sec. 13, Ch. 178, L. 2013; amd. Sec. 13, Ch. 248, L. 2015.

**19-3-1211. Refund when former member dies after transferring to another system.** The accumulated contributions of a member who dies after becoming a member of any other system described in 19-3-403(4) and before receiving the member's accumulated contributions must be paid to the designated beneficiary.

**History:** En. Sec. 68-1602 by Sec. 6, Ch. 323, L. 1973; amd. Sec. 1, Ch. 374, L. 1974; amd. Sec. 1, Ch. 16, L. 1975; amd. Sec. 1, Ch. 128, L. 1975; amd. Sec. 1, Ch. 99, L. 1977; amd. Sec. 4, Ch. 132, L. 1977; R.C.M. 1947, 68-1602(8)(b); amd. Sec. 84, Ch. 265, L. 1993; Sec. 19-3-404, MCA 1991; redes. 19-3-1211 by Code Commissioner, 1993.

**19-3-1212. Nonapplication of part to defined contribution plan.** Except as otherwise provided in chapter 3, part 21, of this title, none of the provisions of this part apply under the defined contribution plan.

**History:** En. Sec. 40, Ch. 471, L. 1999.

## Part 15 Optional Forms of Benefit Payments

**19-3-1501. Optional forms of benefits — designation of contingent annuitant.** (1) The retirement benefit of a member or the survivorship benefit of a designated beneficiary who so elects must be converted, in lieu of all other benefits under this chapter, into an optional retirement benefit that is the actuarial equivalent of the original benefit. If the member does not elect an optional retirement benefit pursuant to subsection (2), the member's retirement benefit is known as an option 1 benefit.

(2) An optional retirement benefit under this subsection (2) is initially payable during the member's or designated beneficiary's lifetime, with a subsequent benefit, depending on the option selected, to a contingent annuitant as follows:

(a) option 2—a continuation of the optional retirement benefit after the death of the initial payee and payable during the lifetime of the named contingent annuitant. This option may be the chosen benefit only if the adjusted age difference between the member or designated beneficiary and the contingent annuitant, other than the member's or designated beneficiary's spouse, is 10 years or less. The adjusted age difference is either:

(i) the excess of the age of the member or designated beneficiary over the age of the nonspouse contingent annuitant based on their ages on their birthdays in a calendar year; or

(ii) if the member or designated beneficiary is under 70 years of age, the age difference determined in subsection (2)(a)(i) reduced by the number of years that the member or designated beneficiary is under 70 years of age on the member's or beneficiary's birthday in the calendar year that contains the benefit starting date.

(b) option 3—a continuation of one-half of the optional retirement benefit after the death of the initial payee and payable during the lifetime of the named contingent annuitant;

(c) option 4—a continuation of the optional retirement benefit to one or more contingent annuitants in the event of the initial payee's death before the end of a period certain, determined as follows:

(i) the period certain commences at the time that the initial payee first begins receiving the retirement benefit and is available as either:

(A) a 10-year period certain if the member retired at 75 years of age or younger; or

(B) a 20-year period certain if the member retired at 65 years of age or younger;

(ii) if there is more than one surviving contingent annuitant, each contingent annuitant must receive a proportion of the initial payee's benefit on a share-and-share-alike basis;

(iii) if all surviving contingent annuitants die prior to the end of the period certain and the last remaining contingent annuitant has failed to name a designated beneficiary, the remaining payments must be converted to an equivalent lump-sum amount and paid to the estate of the last surviving contingent annuitant.

(3) The member or the designated beneficiary who elects an optional retirement benefit under subsection (2) shall file a written application with the board prior to the first payment of the benefit. A contingent annuitant must be identified on the application.

(4) If the member or designated beneficiary or the named contingent annuitant dies before the first payment has been made under option 2 or 3, the election of the option is automatically canceled.

(5) If the member dies after terminating service and within 30 days after the date that the member's written application electing or changing an election of an optional retirement benefit under subsection (2) is received by the board, then the election is void.

(6) After the member or designated beneficiary has received and accepted an initial retirement benefit payment, the member may not change the selected option except as provided in subsection (7).

(7) A retired member receiving an optional retirement benefit pursuant to subsection (2)(a) or (2)(b) may file a written application with the board to have the member's optional retirement benefit revert to the regular retirement benefit available at the time of the member's retirement if:

(a) the original contingent annuitant has died, in which case the optional benefit must revert effective on the first day of the month following the contingent annuitant's death; or

(b) the member's marriage to the original contingent annuitant has been dissolved and the original contingent annuitant has not been granted the right to receive the optional retirement benefit as part of a family law order, as defined in 19-2-907. The benefit must then revert effective on the first day of the month following receipt of the written application and verification that the family law order does not grant the optional benefit to the original contingent annuitant.

(8) A member who applies to revert under subsection (7) shall, at the time of the application, choose one of the following alternatives:

(a) revert to the member's original option 1 retirement benefit, increased by the amount of any adjustments received by the member since the effective date of the member's retirement;

(b) retain the same option 2 or option 3 originally selected but name a new contingent annuitant; or

(c) select a different option under subsection (2) and name a new contingent annuitant.

(9) If the member selects an alternative under subsection (8)(b) or (8)(c), the member's retirement benefit must be calculated based on the member's and the new contingent annuitant's ages at the time of this election.

(10) A written application pursuant to subsection (7) must be filed with the board within 18 months of the death of or dissolution of marriage to the contingent annuitant.

**History:** En. 68-2203 by Sec. 40, Ch. 323, L. 1973; amd. Sec. 5, Ch. 190, L. 1974; amd. Sec. 9, Ch. 99, L. 1977; amd. Sec. 6, Ch. 241, L. 1977; amd. Sec. 15, Ch. 332, L. 1977; R.C.M. 1947, 68-2203; amd. Sec. 1, Ch. 527, L. 1985; amd. Sec. 85, Ch. 265, L. 1993; Sec. 19-3-1101, MCA 1991; redes. 19-3-1501 by Code Commissioner, 1993; amd. Sec. 1, Ch. 217, L. 1999; amd. Sec. 38, Ch. 562, L. 1999; amd. Sec. 42, Ch. 99, L. 2001; amd. Sec. 42, Ch. 429, L. 2003; amd. Sec. 26, Ch. 329, L. 2005; amd. Sec. 13, Ch. 284, L. 2009; amd. Sec. 25, Ch. 99, L. 2011; amd. Sec. 14, Ch. 178, L. 2013; amd. Sec. 14, Ch. 248, L. 2015.

**19-3-1502. Nonapplication of part to defined contribution plan.** Except as otherwise provided in chapter 3, part 21, of this title, none of the provisions of this part apply under the defined contribution plan.

**History:** En. Sec. 40, Ch. 471, L. 1999.

## Part 16

### Postretirement Benefits and Benefit Increases

**19-3-1601. Repealed.** Sec. 38, Ch. 287, L. 1997.

History: En. Sec. 1, Ch. 115, L. 1989; amd. Sec. 90, Ch. 265, L. 1993; Sec. 19-3-1109, MCA 1991; redes. 19-3-1601 by Code Commissioner, 1993.

**19-3-1602. Repealed.** Sec. 38, Ch. 287, L. 1997.

History: En. Sec. 2, Ch. 115, L. 1989; amd. Sec. 91, Ch. 265, L. 1993; Sec. 19-3-1110, MCA 1991; redes. 19-3-1602 by Code Commissioner, 1993.

**19-3-1603. Repealed.** Sec. 38, Ch. 287, L. 1997.

History: En. Sec. 3, Ch. 115, L. 1989; amd. Sec. 92, Ch. 265, L. 1993; Sec. 19-3-1111, MCA 1991; redes. 19-3-1603 by Code Commissioner, 1993.

**19-3-1604. Repealed.** Sec. 120, Ch. 429, L. 2003.

History: En. Sec. 1, Ch. 367, L. 1993.

**19-3-1605. Guaranteed annual benefit adjustment.** (1) Subject to subsection (2), on January 1 of each year, the permanent monthly benefit payable during the preceding January to each recipient who is eligible under subsection (3) must be increased by the applicable percentage provided in subsection (4).

(2) (a) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the adjustments amount to less than an annualized increase of the applicable percentage provided in subsection (4), then the recipient's benefit must be adjusted by an amount that will provide a total annualized increase of the applicable percentage in the benefit paid since the preceding January.

(b) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the increases amount to more than an annualized increase of the applicable percentage provided in subsection (4), then the benefit increase provided under this section must be 0%.

(c) If a benefit recipient is a contingent annuitant receiving an optional benefit upon the death of the original payee that occurred since the preceding January, the new recipient's monthly benefit must be increased to the applicable percentage provided in subsection (4)(b) more than the amount that the contingent annuitant would have received had the contingent annuitant received a benefit during the preceding January.

(3) Except as provided in subsection (2)(b), a benefit recipient is eligible for and must receive the minimum annual benefit adjustment provided for in this section if the benefit's commencement date is at least 12 months prior to January 1 of the year in which the adjustment is to be made.

(4) (a) Subject to subsection (5), the applicable percentage rate is 1.5% for benefit recipients hired or assuming office:

(i) before July 1, 2007;

(ii) on or after July 1, 2007, and prior to July 1, 2013, if the benefit recipient is an existing member of a benefit plan for which the applicable percentage before July 1, 2013, was either 3% or 1.5%; or

(iii) on or after July 1, 2013.

(b) The applicable percentage rate for a contingent annuitant described in subsection (2)(c) is the same as the applicable percentage rate applicable to the original payee under subsection (4)(a).

(5) (a) Except as provided in subsection (5)(b), if the most recent actuarial valuation of the retirement system shows that retirement system liabilities are less than 90% funded, the applicable percentage rate in subsection (4) must be reduced by 0.1% for each 2% below that 90% funding level.

(b) If the amortization period is 40 years or greater, the applicable percentage rate is 0% and the retirement allowance may not be increased.

(6) The board shall adopt rules to administer the provisions of this section.

History: En. Sec. 1, Ch. 287, L. 1997; amd. Sec. 39, Ch. 562, L. 1999; amd. Sec. 1, Ch. 62, L. 2001; amd. Sec. 3, Ch. 149, L. 2001; amd. Sec. 1, Ch. 309, L. 2001; amd. Sec. 3, Ch. 371, L. 2007; amd. Sec. 5, Ch. 390, L. 2013.



**19-3-1606. Repealed.** Sec. 39, Ch. 99, L. 2011.

**History:** En. Sec. 4, Ch. 149, L. 2001.

**19-3-1607. Nonapplication of part to defined contribution plan.** Unless otherwise explicitly provided in this part, none of the provisions of this part apply under the defined contribution plan.

**History:** En. Sec. 13, Ch. 490, L. 2001.

## **Part 21**

### **Defined Contribution Plan**

**19-3-2101. Definitions.** Unless the context requires otherwise, as used in this part, the following definitions apply:

- (1) “Member” means a person with a retirement account in the defined contribution plan.
- (2) “Plan” or “defined contribution plan” means the defined contribution retirement plan.
- (3) “University system retirement program” means the retirement plan established by the board of regents under Title 19, chapter 21.

**History:** En. Sec. 42, Ch. 471, L. 1999; amd. Sec. 14, Ch. 490, L. 2001; amd. Sec. 3, Ch. 282, L. 2013.

**19-3-2102. Defined contribution plan established — assets to be held in trust — contracted services.** (1) The board shall establish within the public employees’ retirement system a defined contribution plan in accordance with the provisions of this part. The plan must be established as a pension plan for the exclusive benefit of members and their beneficiaries and as a “qualified governmental plan” pursuant to section 401(a) of the Internal Revenue Code and its implementing regulations. Retirement accounts must be established for each member of the defined contribution plan. Assets of the plan, including assets of the long-term disability plan pursuant to 19-3-2141, must be held in trust. The plan is established in addition to any retirement, pension, deferred compensation, or other benefit plan administered by the state or a political subdivision.

(2) The board may contract for plan administration and use a competitive bidding process when contracting for consulting, educational, investment, recordkeeping, or other services for the plan.

**History:** En. Sec. 43, Ch. 471, L. 1999; amd. Sec. 15, Ch. 490, L. 2001; amd. Sec. 4, Ch. 140, L. 2015.

**19-3-2103. Legislative intent.** It is the intent of the legislature that, in implementing and administering the defined contribution plan:

- (1) changes to current administrative processes and the impact of those changes on employers be minimized to the extent possible;
- (2) the administrative structure for the plan be configured in an economical and efficient manner;
- (3) administration and services for the plan be contracted out to the extent possible, but that the board provide for the diligent oversight of the contracts;
- (4) reasonable member services be provided for and that fees be commensurate with the services;
- (5) lines of communication and responsibilities be clearly established so that employers or their personnel and payroll officers do not advise members about plan choices or investment alternatives; and
- (6) employers be encouraged to provide paid time for members to attend educational programs sponsored by the board pursuant to 19-3-112.

**History:** En. Sec. 44, Ch. 471, L. 1999; amd. Sec. 43, Ch. 429, L. 2003.

**19-3-2104. Board powers and duties — rulemaking.** (1) The board has the powers and shall perform the duties regarding the defined contribution plan as provided in 19-2-403, as applicable. The board may also exercise the powers and shall perform the duties provided in this chapter.

(2) The board shall, in accordance with the Montana Administrative Procedure Act, adopt rules necessary for the implementation of this part and other applicable sections in chapters 2 and 3 of this title.

**History:** En. Sec. 45, Ch. 471, L. 1999; amd. Sec. 27, Ch. 329, L. 2005.

**19-3-2105. Administrative expenses and fees.** (1) The board may establish a fund within the defined contribution plan for paying the plan's administrative expenses.

(2) The board may:

(a) assess fees to pay the reasonable administrative costs of the plan; and

(b) negotiate with a vendor or vendors for vendor reimbursement of board administrative expenses for the plan.

(3) All fees assessed must be fully disclosed to plan members and treated as public information.

(4) Costs for the board to provide for contract oversight are included as part of the administrative expenses of the plan.

**History:** En. Sec. 46, Ch. 471, L. 1999.

**19-3-2106. Limited contract right.** The statutory provisions governing the defined contribution plan and the university system retirement program are subject to amendment by the legislature. Employees choosing the defined contribution plan or the university system retirement program pursuant to this part do not have a contract right to the specific terms and conditions specified in statute on the date the employee's choice becomes effective.

**History:** En. Sec. 16, Ch. 490, L. 2001; amd. Sec. 4, Ch. 282, L. 2013.

**19-3-2107 through 19-3-2110 reserved.**

**19-3-2111. Plan membership — written election required — failure to elect — effect of election.** (1) Except as otherwise provided in this part:

(a) a member who was an inactive member of the defined benefit plan on the effective date of the defined contribution plan and who is rehired into covered employment after the plan effective date may, within the 12-month period provided for in subsection (2)(a), elect to transfer to and become a member of the plan regardless of whether the member remains active, becomes inactive, or terminates employment and plan membership within the 12-month period;

(b) a member who is initially hired into covered employment on or after the effective date of the defined contribution plan may, within the 12-month period provided for in subsection (2)(a), elect to become a member of the plan regardless of whether the member remains active, becomes inactive, or terminates employment and plan membership within the 12-month period.

(2) (a) Elections made pursuant to this section must be made on a form prescribed by the board and must be made within 12 months from the month that the employer properly reports the new or rehired member to the board.

(b) A member failing to make an election prescribed by this section remains a member of the defined benefit plan.

(c) An election under this section, including the default election pursuant to subsection (2)(b), is a one-time irrevocable election. Subject to 19-3-2113, this subsection (2)(c) does not prohibit a new election after a member has terminated membership in either plan and returned to covered employment.

(3) A member in either the defined benefit plan or the defined contribution plan who becomes inactive after an election under this section and who returns to active membership remains in the plan previously elected.

(4) A system member may not simultaneously be a member of the defined benefit plan and the defined contribution plan and must be a member of either the defined benefit plan or the defined contribution plan. A period of service may not be credited in more than one retirement plan within the system.

(5) The provisions of this part do not prohibit the board from adopting rules to allow an employee to elect the defined contribution plan from the first day of covered employment.

(6) A member of the defined benefit plan who is subject to a family law order pursuant to 19-2-907 or an execution or income-withholding order pursuant to 19-2-909 may not transfer to the defined contribution plan unless the order is modified to apply under the defined contribution plan.

(7) (a) A member of the defined benefit plan who is purchasing service credit through installment payments, either made directly to the board or pursuant to a payroll deduction agreement, may not transfer membership to the defined contribution plan unless the member first completes or terminates the contract for purchase of service credit.

(b) A member who files an election to transfer membership may make a lump-sum payment for up to the balance of the service credit remaining to be purchased prior to transferring, subject to the limitations of section 415 of the Internal Revenue Code. The lump-sum payment, unless made by a rollover pursuant to 19-2-708, must be made with after-tax dollars.

(c) If a member who files an election to transfer membership fails to complete or terminate the contract for purchase of service credit by the end of the member's 12-month election window, the board shall terminate the service purchase contract and credit the member with the prorated amount of service credit purchased under the contract.

**History:** En. Sec. 47, Ch. 471, L. 1999; amd. Sec. 17, Ch. 490, L. 2001; amd. Sec. 44, Ch. 429, L. 2003; amd. Sec. 28, Ch. 329, L. 2005; amd. Sec. 14, Ch. 128, L. 2007; amd. Sec. 17, Ch. 283, L. 2009.

**19-3-2112. Plan choices for members employed by university system — amount available to transfer — effect on rights.** (1) If a member who is employed by the Montana university system is eligible to make an election under this part to transfer to the defined contribution plan, the employee may, instead of electing the defined contribution plan, elect to transfer membership to the university system retirement program provided for under Title 19, chapter 21.

(2) Except as otherwise provided in this part, an election to transfer membership to the university system retirement program must be made in accordance with the following provisions:

(a) (i) A member employed by the university system who is an active member of the defined benefit plan on the effective date of the defined contribution plan may, within the 12-month period provided for in subsection (2)(b), elect to transfer to and become a member of the university system retirement program regardless of whether the member remains active, becomes inactive, or terminates employment and plan membership within the 12-month period.

(ii) A member who was an inactive member of the defined benefit plan on the effective date of the defined contribution plan and who is hired or rehired into covered employment with the university system after that date may, within the 12-month period provided for in subsection (2)(b), elect to transfer to and become a member of the university system retirement program regardless of whether the member remains active, becomes inactive, or terminates employment and plan membership within the 12-month period.

(iii) A member who is initially hired into covered employment with the university system on or after the effective date of the defined contribution plan may, within the 12-month period provided for in subsection (2)(b), elect to become a member of the university system retirement program regardless of whether the member remains active, becomes inactive, or terminates employment and plan membership within the 12-month period.

(b) Elections made pursuant to this section must be made on a form prescribed by the board and must be made within 12 months from the month that the employer properly reports the new or rehired member to the board.

(c) A member failing to make an election prescribed by this section remains a member of the defined benefit plan.

(d) An election under this section, including the default election pursuant to subsection (2)(c), is a one-time irrevocable election. Subject to 19-3-2113, this subsection (2)(d) does not prohibit a new election after an employee has terminated membership in the university system retirement program and returned to employment in a position covered under the system.

(e) A member in either the defined benefit plan or the university system retirement program who becomes inactive after an election under this section and who returns to active membership remains in the plan previously elected.

(f) Except as provided in subsection (2)(g), a university employee in a position covered under the system may not simultaneously be a member of more than one retirement plan under Title 19, chapters 3 and 21, but must be a member of the defined benefit plan, the defined contribution plan, or the university system retirement program as provided by applicable provisions of this title. The same period of service may not be credited in more than one retirement system or plan.

(g) A university system employee who is or has been a member of the university system retirement program and returns to or accepts covered employment other than with the university system may make an election pursuant to 19-3-2111. That election is valid only for covered employment other than with the university system.

(h) The provisions of this part do not prohibit the board from adopting rules to allow an eligible employee to elect the university system retirement program from the first day of covered employment.

(i) A member of the defined benefit plan who is subject to a family law order pursuant to 19-2-907 or an execution or income-withholding order pursuant to 19-2-909 may not transfer to the university system retirement program unless the order is modified to apply under the university system retirement program.

(j) (i) A member of the defined benefit plan who is purchasing service credit through installment payments, either made directly to the board or pursuant to a payroll deduction agreement, may not transfer membership to the university system retirement program unless the member completes or terminates the contract for purchase of service credit.

(ii) A member who files an election to transfer membership may make a lump-sum payment for up to the balance of the service credit remaining to be purchased prior to transferring, subject to the limitations of section 415 of the Internal Revenue Code. The lump-sum payment, unless made by a rollover pursuant to 19-2-708, must be made with after-tax dollars.

(iii) If a member who files an election to transfer fails to complete or terminate the contract for purchase of service credit by the end of the member's 12-month election window, the board shall terminate the service purchase contract and credit the member with the prorated amount of service credit purchased under the contract.

(3) For an employee electing to transfer membership to the university system retirement program, the board shall transfer to the university system retirement program the amount that the employee would have been able to transfer to the defined contribution plan under 19-3-2114.

(4) An election to become a member of the university system retirement program pursuant to this section is a waiver of all rights and benefits under the public employees' retirement system.

**History:** En. Sec. 48, Ch. 471, L. 1999; amd. Sec. 18, Ch. 490, L. 2001; amd. Sec. 45, Ch. 429, L. 2003; amd. Sec. 29, Ch. 329, L. 2005; amd. Sec. 15, Ch. 128, L. 2007; amd. Sec. 5, Ch. 282, L. 2013.

**19-3-2113. Reinstatement of plan membership — purchase of prior service credit in defined benefit plan.** (1) (a) A member who terminates membership in the defined benefit plan, the defined contribution plan, or the university system retirement program after making an election pursuant to 19-3-2111 or 19-3-2112 and who returns to covered employment in less than 24 months is a member of the plan that the member last selected and is not eligible for a new plan choice election.

(b) A member who terminated membership in the defined benefit plan, the defined contribution plan, or the university system retirement program after making an election pursuant to 19-3-2111 or 19-3-2112 and who returns to covered employment after 24 months or more is eligible to make a plan choice election as though initially hired as provided for in 19-3-2111(1)(b).

(2) (a) An employee who returns to covered employment after terminating membership in the defined benefit plan, who is eligible to make a plan choice, and who elects to join the defined benefit plan pursuant to 19-3-2111 or 19-3-2112 may reinstate prior membership service and service credit as provided in 19-2-603.

(b) An employee who returns to covered employment after terminating membership in the defined contribution plan or the university system retirement program, who is eligible to make a plan choice, and who elects to join the defined benefit plan pursuant to 19-3-2111 or 19-3-2112 may purchase prior membership service and service credit by paying to the board the full actuarial cost of the service credit as of the latest actuarial valuation of the defined benefit plan. The member may not purchase membership service and service credit under this section in excess of the member's length of service in the defined contribution plan or the university system retirement program.

**History:** En. Sec. 49, Ch. 471, L. 1999; amd. Sec. 19, Ch. 490, L. 2001; amd. Sec. 46, Ch. 429, L. 2003; amd. Sec. 16, Ch. 128, L. 2007; amd. Sec. 6, Ch. 282, L. 2013.

**19-3-2114. Amount available to transfer.** (1) (a) For an employee who was an active member of the system on the day before the effective date of the defined contribution plan and who elects to transfer to the plan:

(i) for amounts contributed prior to July 1, 2002, the board shall transfer from the defined benefit plan to the member's retirement account the employee's contributions and the percentage of the employer's contributions specified in subsection (1)(b), plus 8% compounded annual interest on the total of the transferred employee and employer contributions from the month that the contributions were received; and

(ii) for amounts contributed on or after July 1, 2002, the board shall transfer from the defined benefit plan to the member's retirement account an amount equal to the amount that would have been allocated to the member's account pursuant to 19-3-2117, plus 8% compounded annual interest from the month that the contributions were received.

(b) Based on the contribution amount historically available to pay unfunded liabilities in the defined benefit plan and the transferring member's years of membership service, the percentage of the employer contributions that may be transferred are as follows:

Years of membership service	Percentage of employer contributions available to transfer
Less than 5 years	65.53%
5 to 9 years	58.59%
10 to 14 years	55.26%
15 to 19 years	55.42%
20 or more years	57.53%

(2) For an employee hired on or after the effective date of the defined contribution plan who elects to become a member of the plan, the board shall transfer from the defined benefit plan to the member's retirement account an amount equal to the amount that would have been allocated to the member's account pursuant to 19-3-2117 had the employee become a plan member on the employee's hire date, plus:

(a) 8% compounded annual interest from the initial month that the contributions were received through the last month that the contributions were received prior to July 1, 2011; and

(b) 7.75% compounded annual interest from July 1, 2011, forward.

(3) For an employee who was an inactive member of the defined benefit plan on the date that the defined contribution plan became effective and who after that date became an active member and elected to transfer to the defined contribution plan:

(a) for amounts contributed prior to July 1, 2002, the board shall transfer from the defined benefit plan to the member's retirement account the employee's contributions and the percentage of the employer's contributions specified in subsection (1)(b), plus 8% compounded annual interest on the total of the transferred employee and employer contributions from the month that the contributions were received; and

(b) for amounts contributed on or after July 1, 2002, the board shall transfer from the defined benefit plan to the member's retirement account an amount equal to the amount that would have been allocated to the member's account pursuant to 19-3-2117, plus:

(i) 8% compounded annual interest from the initial month that the contributions were received through the last month that the contributions were received prior to July 1, 2011; and

(ii) 7.75% compounded annual interest from July 1, 2011, forward.

**History:** En. Sec. 50, Ch. 471, L. 1999; amd. Sec. 20, Ch. 490, L. 2001; amd. Sec. 47, Ch. 429, L. 2003; amd. Sec. 30, Ch. 329, L. 2005; amd. Sec. 26, Ch. 99, L. 2011.

**19-3-2115. Transfers or rollovers into plan — service transfers — membership credit for purposes of vesting.** (1) (a) Except as provided in subsection (2), the board shall accept the rollover of contributions and the income on those contributions from another eligible retirement plan to the member's vested account as allowed under applicable federal law.

(b) To transfer service credit from another retirement system in this title, an employee must be a member of the defined benefit plan. The member must receive membership service and service credit for the service the member transfers. The transferring member may, within 12 months after joining the defined benefit plan, elect to become a member of the defined contribution plan. The transferred service credit may be used for purposes of vesting in the defined contribution plan pursuant to 19-3-2116.

(2) The board shall accept a direct rollover of eligible distributions from another eligible retirement plan only to the extent permitted by the Internal Revenue Code.



**History:** En. Sec. 51, Ch. 471, L. 1999; amd. Sec. 21, Ch. 490, L. 2001; amd. Sec. 48, Ch. 429, L. 2003.

**19-3-2116. Vesting — mandatory termination of membership — forfeitures.** (1) A member's contribution account includes the member's contributions and the income on those contributions and is vested from the date that the employee becomes a member of the plan.

(2) A member's employer contribution account includes the employer's contributions and the income on those contributions and is vested only when the member has a total of 5 years of membership service under the system.

(3) A member's account for other contributions includes the member's rollovers of contributions made pursuant to 19-3-2115 and income on those contributions and is vested from the date that the contribution is credited to the account.

(4) A member who terminates service after becoming a vested member may terminate plan membership as provided in 19-3-2123.

(5) A member who terminates service before becoming a vested member shall terminate plan membership as provided in 19-3-2123 and subject to 19-3-2126.

(6) If the member's employer contribution account is not vested upon termination of plan membership, as provided in 19-3-2123, the employer contributions and income are forfeited and must be allocated as provided in 19-3-2117.

**History:** En. Sec. 52, Ch. 471, L. 1999; amd. Sec. 22, Ch. 490, L. 2001; amd. Sec. 49, Ch. 429, L. 2003; amd. Sec. 31, Ch. 329, L. 2005.

**19-3-2117. Allocation of contributions and forfeitures.** (1) The member contributions made under 19-3-315 and additional contributions paid by the member for the purchase of service must be allocated to the plan member's retirement account.

(2) Subject to subsections (3) and (4), of the employer contributions under 19-3-316 received:

(a) an amount equal to:

(i) 4.19% of compensation must be allocated to the member's retirement account;

(ii) 2.37% of compensation must be allocated to the defined benefit plan as the plan choice rate;

(iii) 0.04% of compensation must be allocated to the education fund as provided in 19-3-112(1)(b); and

(iv) 0.3% of compensation must be allocated to the long-term disability plan trust fund established pursuant to 19-3-2141;

(b) on July 1, 2009, continuing until the additional employer contributions terminate pursuant to 19-3-316(4)(b), the percentage specified in subsection (3) of this section of compensation must be allocated to the defined benefit plan to eliminate the plan choice rate unfunded actuarial liability;

(c) on July 1, 2013, and continuing until June 30, 2015, an amount equal to 1% of compensation must be allocated to the defined benefit plan unfunded liabilities; and

(d) on July 1, 2015, and continuing until the plan choice rate unfunded actuarial liability in the defined benefit plan is fully paid, an amount equal to 1% of compensation must be allocated to the defined benefit plan as part of the plan choice rate. Effective the first full pay period in the month following the board's verification that the plan choice rate unfunded actuarial liability is paid off, the amount equal to 1% of compensation must be allocated to the member's retirement account until the additional employer contributions terminate pursuant to 19-3-316(4)(b).

(3) The percentage of compensation to be contributed under subsection (2)(b) is 0.27% for fiscal year 2014 and increases by 0.1% each fiscal year through fiscal year 2024. For fiscal years beginning after June 30, 2024, the percentage of compensation to be contributed under subsection (2)(b) is 1.27%.

(4) Effective the first full pay period in the month following the board's verification that the plan choice rate unfunded actuarial liability is paid off, the 2.37% of compensation in subsection (2)(a)(ii) and the percentage of compensation in subsection (3), if any, must be allocated to the member's retirement account.

(5) Forfeitures of employer contributions and investment income on the employer contributions may not be used to increase a member's retirement account. The board shall allocate the forfeitures under 19-3-2116 to meet the plan's administrative expenses, including startup expenses.

**History:** En. Sec. 53, Ch. 471, L. 1999; amd. Secs. 5, 14(2)(a), Ch. 423, L. 2001; amd. Sec. 23, Ch. 490, L. 2001; amd. Sec. 51, Ch. 114, L. 2003; amd. Sec. 50, Ch. 429, L. 2003; amd. Sec. 32, Ch. 329, L. 2005; amd. Sec. 4, Ch. 371, L. 2007; amd. Sec. 27, Ch. 99, L. 2011; amd. Sec. 12, Ch. 369, L. 2011; amd. Sec. 6, Ch. 390, L. 2013; amd. Sec. 3, Ch. 170, L. 2015.

**19-3-2118 through 19-3-2120 reserved.**

**19-3-2121. Repealed.** Sec. 5, Ch. 170, L. 2015.

**History:** En. Sec. 54, Ch. 471, L. 1999; amd. Sec. 6, Ch. 423, L. 2001; amd. Sec. 24, Ch. 490, L. 2001; amd. Sec. 33, Ch. 329, L. 2005; amd. Sec. 41, Ch. 2, L. 2009.

**19-3-2122. Investment alternatives — notice of changes — default fund.** (1) The board shall provide for at least eight investment alternatives within the defined contribution plan. In providing for the plan's investment alternatives, only a vendor or vendors offering suitable and well-managed investments, licensed to conduct business in Montana, and regulated by the United States securities and exchange commission may be used, unless exempt from the commission's regulation.

(2) The investment alternatives must include at least three that offer plan members the following:

(a) the ability to materially affect the potential return on amounts in the member's retirement account and the degree of risk to which those amounts are subject;

(b) a range of investment alternatives that:

(i) provides sound and diversified funds;

(ii) offers, under each alternative, a materially different risk and return characteristic than found in the other alternatives;

(iii) allows the member or beneficiary to choose among them to achieve a portfolio with an aggregate risk and return characteristic to achieve a point within the risk and return range normally appropriate for the member or beneficiary based on age, income, and individual retirement goals; and

(iv) tends to minimize through diversification the overall risk of large losses.

(3) The investment alternatives may include the investment alternatives offered to members of the state deferred compensation plan pursuant to chapter 50 of this title.

(4) The board shall from time to time review the suitability and management of investment alternatives and may change the alternatives to be offered. The board shall notify affected members of potential changes before any changes become effective.

(5) Assets within each member's retirement account must be invested as directed by the member.

(6) The board shall provide for a balanced fund to be established as a default investment fund. In the case of a member failing to direct how the member's retirement account is to be invested, the member's entire account must be invested in the default fund.

(7) This section does not prohibit the board from contracting with the board of investments established in 2-15-1808 to provide one or more investment alternatives within the plan.

**History:** En. Sec. 55, Ch. 471, L. 1999; amd. Sec. 25, Ch. 490, L. 2001.

**19-3-2123. Payout of vested account balances when terminating plan membership.** Except as provided in 19-3-2142, any time after termination of service, a member or the member's beneficiary may terminate plan membership by filing a written application with the board and removing the member's vested account balance from the plan through any combination of the following payout options, each of which is subject to applicable regulations of the internal revenue service:

(1) a direct rollover to an eligible retirement plan, which includes an individual retirement account or annuity and, effective January 1, 2008, a Roth IRA provided for in section 408A of the Internal Revenue Code, 26 U.S.C. 408A, pursuant to section 401(a)(31) of the Internal Revenue Code, 26 U.S.C. 401(a)(31);

(2) a regular rollover to an eligible retirement plan pursuant to section 402(c) of the Internal Revenue Code, 26 U.S.C. 402(c); or

(3) a lump-sum distribution of the member's vested account balance.

**History:** En. Sec. 56, Ch. 471, L. 1999; amd. Sec. 7, Ch. 423, L. 2001; amd. Sec. 26, Ch. 490, L. 2001; amd. Sec. 14, Ch. 284, L. 2009.

**19-3-2124. Distribution options for plan members — rulemaking — minimum distribution requirements — restrictions.** (1) Subject to 19-3-2116, 19-3-2126, and 19-3-2142, a member may, after termination of service, leave the member's vested account balance in the plan, and the member is eligible for a distribution as provided in this section.

(2) After termination of service and upon filing a written application with the board, a member may, if provided for by the board, select a distribution option offered pursuant to a contract negotiated by the board with a plan vendor or vendors.

(3) A member who is less than 70½ years of age who returns to service may not continue to receive a distribution under this section while actively employed in a covered position.

(4) The board shall adopt rules to administer this section and to provide that distributions comply with the minimum distribution requirements established in the Internal Revenue Code and applicable under 19-2-1007.

**History:** En. Sec. 57, Ch. 471, L. 1999; amd. Sec. 8, Ch. 423, L. 2001; amd. Sec. 27, Ch. 490, L. 2001.

**19-3-2125. Death benefits.** A plan member's beneficiary must be determined as provided in chapter 2, part 8, of this title. Upon filing a written application with the board after the death of a plan member, the member's beneficiary is entitled to the member's vested account balance subject to this part.

**History:** En. Sec. 58, Ch. 471, L. 1999; amd. Sec. 28, Ch. 490, L. 2001.

**19-3-2126. Refunds — minimum account balance — adjustment by rule.** (1) Before termination of service, a member may not receive a refund of any portion of the member's vested account balance.

(2) Except as provided in 19-3-2142, a member who terminates service and whose vested account balance is less than \$200 must be paid the vested account balance in a lump sum. If the member's employer contribution account is not vested, the employer contributions and income are forfeited and must be allocated as provided in 19-3-2117. The payment must be made as soon as administratively feasible without a written application from the member.

(3) Except as provided in 19-3-2142, unless a written application is made pursuant to subsection (4)(a), a member who terminates service and whose vested account balance is between \$200 and \$1,000 must be paid the vested account balance in a lump sum. The payment must be made as soon as administratively feasible. If the member's employer contribution account is not vested, the employer contributions and income are forfeited and must be allocated as provided in 19-3-2117.

(4) (a) Except as provided in 19-3-2142, upon the written application of a member terminating service whose vested account balance is \$200 or more, the board shall make a direct rollover distribution pursuant to section 401(a)(31) of the Internal Revenue Code, 26 U.S.C. 401(a)(31), of the eligible rollover distribution portion of that balance. To receive the direct rollover distribution, the member is responsible for correctly designating, on forms provided by the board, an eligible retirement plan that allows the rollover under applicable federal law.

(b) The direct rollover distribution must be paid directly to an eligible retirement plan allowed under applicable federal law that, effective January 1, 2008, includes a Roth IRA provided for in section 408A of the Internal Revenue Code, 26 U.S.C. 408A.

(5) A member who terminates service with an account balance greater than \$1,000, whether vested or not, may remain in the plan.

(6) The board may by rule adjust the minimum account balance provided in this section as necessary to maintain reasonable administrative costs and to account for inflation and in accordance with the requirements of section 401(a)(31)(B) of the Internal Revenue Code, 26 U.S.C. 401(a)(31)(B), and applicable regulations.

**History:** En. Sec. 59, Ch. 471, L. 1999; amd. Secs. 9, 14(2)(b), Ch. 423, L. 2001; amd. Sec. 29, Ch. 490, L. 2001; amd. Sec. 51, Ch. 429, L. 2003; amd. Sec. 34, Ch. 329, L. 2005; amd. Sec. 15, Ch. 284, L. 2009.

**19-3-2127 through 19-3-2130 reserved.**

**19-3-2131. Terminated.** Sec. 81(2), Ch. 471, L. 1999.

**History:** En. Sec. 60, Ch. 471, L. 1999.

**19-3-2132. Terminated.** Sec. 81(1), Ch. 471, L. 1999.

**History:** En. Sec. 61, Ch. 471, L. 1999.

**19-3-2133. Employee investment advisory council.** (1) The board shall create an employee investment advisory council. The advisory council shall meet at least four times a year to:

(a) advise the board concerning the operation of the defined contribution plan, including the selection of the initial investment alternatives to be provided pursuant to 19-3-2122;

(b) advise the board about negotiating, contracting, or modifying services for the state deferred compensation plan provided for in chapter 50; and

(c) review existing deferred compensation plans and to advise the board on the administration of the program.

(2) The advisory council is not subject to 2-15-122, except for payment of travel expenses.

**History:** En. Sec. 62, Ch. 471, L. 1999; amd. Sec. 30, Ch. 490, L. 2001; amd. Sec. 52, Ch. 429, L. 2003; amd. Sec. 18, Ch. 283, L. 2009; amd. Sec. 15, Ch. 178, L. 2013.

**19-3-2134. Terminated.** Sec. 81(1), Ch. 471, L. 1999.

**History:** En. Sec. 63, Ch. 471, L. 1999.

**19-3-2135 through 19-3-2140 reserved.**

**19-3-2141. Long-term disability plan — benefit amount — eligibility — administration and rulemaking.** (1) For members hired prior to July 1, 2011:

(a) except as provided in subsection (1)(b), a disabled member eligible under the provisions of this section is entitled to a disability benefit equal to one fifty-sixth of the member's highest average compensation, as defined in 19-3-108, multiplied by the member's years of service credit, including any service credit purchased under 19-3-513;

(b) an eligible member with at least 25 years of membership service is entitled to a disability benefit equal to 2% of the member's highest average compensation, as defined in 19-3-108, multiplied by the member's years of service credit, including any service credit purchased under 19-3-513.

(2) For members hired on or after July 1, 2011, the monthly disability benefit payable to a disabled member eligible under the provisions of this section who has:

(a) more than 5 but less than 10 years of membership service is equal to 1.5% of the member's highest average compensation multiplied by the member's years of service credit, including any additional service credit purchased under 19-3-513;

(b) 10 or more but less than 30 years of membership service is equal to one fifty-sixth of the member's highest average compensation multiplied by the member's years of service credit, including any additional service credit purchased under 19-3-513; or

(c) 30 or more years of membership service is equal to 2% of the member's highest average compensation multiplied by the member's years of service credit, including any additional service credit purchased under 19-3-513.

(3) Payment of the disability benefit provided in this section is subject to the following:

(a) the member must be vested in the plan as provided in 19-3-2116;

(b) for members hired prior to July 1, 2011:

(i) if the member's disability occurred when the member was 60 years of age or less, the benefit may be paid only until the member reaches 65 years of age; and

(ii) if the member's disability occurred after the member reached 60 years of age, the benefit may be paid for no more than 5 years;

(c) for members hired on or after July 1, 2011:

(i) if the member's disability occurred when the member was less than 65 years of age, the benefit may be paid only until the member reaches 70 years of age; and

(ii) if the member's disability occurred after the member reached 65 years of age, the benefit may be paid for no more than 5 years; and

(d) the member shall satisfy the other applicable requirements of this section and the board's rules adopted to implement this section.

(4) Application for a disability benefit must be made in accordance with 19-2-406.

(5) The board shall make determinations on disability claims and conduct medical reviews in a manner consistent with the provisions of 19-2-406 and 19-3-1015. A member may seek review of a board determination as provided in rules adopted by the board.

(6) If a member receiving a disability benefit under this section dies, the disability benefit payments cease and the member's beneficiary is entitled to death benefits only as provided for in 19-3-2125. Any disability benefits paid in error after the member's death may be recovered by the board pursuant to 19-2-903.

(7) The board shall establish a long-term disability plan trust fund from which disability benefit costs pursuant to this section must be paid. The trust fund must be entirely separate and distinct from the defined benefit plan trust fund.

(8) The board shall perform the duties, exercise the powers, and adopt reasonable rules to implement the provisions of this section.

**History:** En. Sec. 1, Ch. 423, L. 2001; amd. Sec. 14(1), Ch. 423, L. 2001; amd. Sec. 53, Ch. 429, L. 2003; amd. Sec. 13, Ch. 369, L. 2011; amd. Sec. 16, Ch. 178, L. 2013; amd. Sec. 15, Ch. 248, L. 2015; amd. Sec. 15, Ch. 195, L. 2017.

**Compiler's Comments**

*2017 Amendment:* Chapter 195 in (3)(c)(i) after "until the member reaches" substituted "70" for "65". Amendment effective July 1, 2017.

**19-3-2142. Disability benefit recipients to remain members — access to account prohibited.** A plan member who is receiving a disability benefit pursuant to 19-3-2141 remains a member of the retirement plan irrespective of employment status and may not receive a distribution from the member's retirement account.

**History:** En. Sec. 2, Ch. 423, L. 2001.

**19-3-2143. Implementation.** (1) To implement the provisions of 19-3-2141, the board shall establish a self-insured long-term disability plan through which the disability benefits must be paid.

(2) If the disability plan cannot be implemented as described in subsection (1), the board shall implement the provisions of 19-3-2141 by contracting for long-term disability insurance that provides for the benefits described in 19-3-2141.

**History:** En. Sec. 10, Ch. 423, L. 2001.

## CHAPTER 20 TEACHERS' RETIREMENT

### Part 1 General Provisions

**19-20-101. Definitions.** As used in this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Accumulated contributions" means the sum of all the amounts deducted from the compensation of a member or paid by a member and credited to the member's individual account in the annuity savings account, together with interest. Regular interest must be computed and allowed to provide a benefit at the time of retirement.

(2) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of the mortality table and interest rate assumption set by the retirement board.

(3) "Average final compensation" means a member's highest average earned compensation, determined pursuant to 19-20-805, on which all required contributions have been made.

(4) "Beneficiary" means one or more persons formally designated by a member, retiree, or alternate payee to receive a retirement allowance or payment upon the death of the member, retiree, or alternate payee except for a joint annuitant.

(5) "Benefit recipient" means a retired member, a joint annuitant, or a beneficiary who is receiving a retirement allowance.

(6) "Creditable service" is that service defined by 19-20-401.

(7) "Date of termination" or "termination date" means the last date on which a member performed service in a position reportable to the retirement system.

(8) (a) "Earned compensation" means, except as limited by subsections (8)(b) and (8)(c) or by 19-20-715, remuneration paid for the service of a member out of funds controlled by an employer before any pretax deductions allowed under the Internal Revenue Code are deducted.

(b) Earned compensation does not include:



- (i) direct employer premium payments on behalf of members for medical, pharmaceutical, disability, life, vision, dental, or any other insurance;
  - (ii) any direct employer payment or reimbursement for:
    - (A) professional membership dues;
    - (B) maintenance;
    - (C) housing;
    - (D) day care;
    - (E) automobile, travel, lodging, or entertaining expenses; or
    - (F) any similar form of maintenance, allowance, or expenses;
  - (iii) the imputed value of health, life, or disability insurance or any other fringe benefits;
  - (iv) any noncash benefit provided by an employer to or on behalf of a member;
  - (v) termination pay unless included pursuant to 19-20-716;
  - (vi) compensation paid to a member from a plan for the deferral of compensation under section 457(f) of the Internal Revenue Code, 26 U.S.C. 457(f);
  - (vii) payment for sick, annual, or other types of leave paid to a member prior to termination from employment or accrued in excess of that normally allowed;
  - (viii) incentive or bonus payments paid to a member that are not part of a series of annual payments;
  - (ix) a professional stipend paid pursuant to 20-4-134; or
  - (x) any similar payment or reimbursement made to or on behalf of a member by an employer.
- (c) Adding a direct employer-paid or noncash benefit to an employee's contract or subtracting the same or a similar amount as a pretax deduction is considered a fringe benefit and not earned compensation.
- (9) "Employer" means:
- (a) the state of Montana;
  - (b) a public school district, as provided in 20-6-101 and 20-6-701;
  - (c) the office of public instruction;
  - (d) the board of public education;
  - (e) an education cooperative;
  - (f) the Montana school for the deaf and blind, as described in 20-8-101;
  - (g) the Montana youth challenge program, as defined in 10-1-101;
  - (h) a state youth correctional facility, as defined in 41-5-103;
  - (i) the Montana university system;
  - (j) a community college; or
  - (k) any other agency, political subdivision, or instrumentality of the state that employs a person who is designated a member of the retirement system pursuant to 19-20-302.
- (10) "Extra duty service" means service in an educational services capacity that is not compensated as part of the normally assigned duties and functions of a school district teacher, administrator, or other employee but is regularly assigned to one or more school district teachers, administrators, or other employees as part of the regular operation of the school district's curricular and extracurricular programs.
- (11) "Full-time service" means service that is:
- (a) at least 180 days in a fiscal year;
  - (b) at least 140 hours a month during at least 9 months in a fiscal year; or
  - (c) at least 1,080 hours in a fiscal year under an alternative school calendar adopted by a school board and reported to the office of public instruction as required by 20-1-302. The standard for full-time service for a school district operating under an alternative school calendar must be applied uniformly to all employees of the school district required to be reported to the retirement system.
- (12) "Internal Revenue Code" has the meaning provided in 15-30-2101.
- (13) "Joint annuitant" means the one person that a retired member who has elected an optional allowance under 19-20-702 has designated to receive a retirement allowance upon the death of the retired member.
- (14) "Member" means a person who has an individual account in the annuity savings account. Unless otherwise specified, "member" refers to a tier one member or a tier two member.

An active member is a person included under the provisions of 19-20-302. An inactive member is a person included under the provisions of 19-20-303.

(15) "Normal form" or "normal form benefit" means a monthly retirement benefit payable during the lifetime of the retired member.

(16) "Normal retirement age" means an age no earlier than 60 years of age.

(17) "Part-time service" means service that is not full-time service. Part-time service must be credited in the proportion that the actual time worked compares to full-time service.

(18) "Position reportable to the retirement system" means a position in which an individual performs duties that would entitle the person to active membership in the retirement system under the provisions of 19-20-302.

(19) "Regular interest" means interest at a rate set by the retirement board in accordance with 19-20-501(2).

(20) "Retired", "retired member", or "retiree" means a person who is considered in retired member status under the provisions of 19-20-810.

(21) "Retirement allowance" or "retirement benefit" means a monthly payment due to a retired member who has qualified for service or disability retirement or due to a joint annuitant or beneficiary.

(22) "Retirement board" or "board" means the retirement system's governing board provided for in 2-15-1010.

(23) "Retirement system", "system", or "plan" means the teachers' retirement system of the state of Montana provided for in 19-20-102.

(24) "Service" means the performance of duties that would entitle the person to active membership in the retirement system under the provisions of 19-20-302.

(25) "Termination" or "terminate" means that the employment relationship between the member and the member's employer has been terminated as required in 19-20-810.

(26) (a) "Termination pay" means any form of bona fide vacation leave, sick leave, severance pay, amounts provided under a window or early retirement incentive plan, or other payments contingent on the employee terminating employment.

(b) Termination pay does not include:

(i) amounts that are not wages under section 3121 of the Internal Revenue Code, determined without regard to the wage base limitation; and

(ii) amounts that are payable to a member from a plan for the deferral of compensation under section 457(f) of the Internal Revenue Code, 26 U.S.C. 457(f).

(27) "Tier one member" means a person who became a member before July 1, 2013, and who has not withdrawn the member's account balance.

(28) "Tier two member" means a person who became a member on or after July 1, 2013, or who, after withdrawing the member's account balance, became a member again after July 1, 2013.

(29) "Vested" means that a member has been credited with at least 5 full years of membership service upon which contributions have been made and has a right to a future retirement benefit.

(30) "Written application" or "written election" means a written instrument, required by statute or the rules of the board, properly signed and filed with the board, that contains all the required information, including documentation that the board considers necessary.

**History:** En. 75-6201 by Sec. 96, Ch. 5, L. 1971; amd. Sec. 21, Ch. 326, L. 1974; amd. Sec. 1, Ch. 26, L. 1975; amd. Sec. 1, Ch. 127, L. 1977; amd. Sec. 1, Ch. 331, L. 1977; R.C.M. 1947, 75-6201(part); amd. Sec. 1, Ch. 446, L. 1981; amd. Sec. 1, Ch. 453, L. 1983; amd. Sec. 1, Ch. 224, L. 1985; amd. Sec. 6, Ch. 464, L. 1985; amd. Sec. 2, Ch. 45, L. 1987; amd. Sec. 1, Ch. 56, L. 1989; amd. Sec. 1, Ch. 331, L. 1989; amd. Sec. 2, Ch. 13, L. 1991; Sec. 19-4-101, MCA 1991; redes. 19-20-101 by Code Commissioner, 1993; amd. Sec. 2, Ch. 111, L. 1995; amd. Sec. 5, Ch. 442, L. 1997; amd. Sec. 2, Ch. 111, L. 1999; amd. Sec. 2, Ch. 45, L. 2001; amd. Sec. 57, Ch. 114, L. 2003; amd. Sec. 1, Ch. 174, L. 2003; amd. Sec. 1, Ch. 90, L. 2007; amd. Sec. 3, Ch. 305, L. 2007; amd. Sec. 1, Ch. 282, L. 2009; amd. Sec. 1, Ch. 59, L. 2011; amd. Sec. 1, Ch. 366, L. 2013; amd. Sec. 1, Ch. 389, L. 2013; amd. Sec. 1, Ch. 39, L. 2017; amd. Sec. 1, Ch. 150, L. 2017.

#### **Compiler's Comments**

*2017 Amendments — Composite Section:* Chapter 39 inserted definition of extra duty service; in definition of beneficiary inserted references to alternate payee; and made minor changes in style. Amendment effective July 1, 2017.

Chapter 150 in definition of earned compensation inserted (b)(ix) regarding professional stipends; and made minor changes in style. Amendment effective July 1, 2017.

*Applicability:* Section 4, Ch. 150, L. 2017, provided: "[This act] applies to teachers who obtain certification or recertification from the national board for professional teaching standards on or after July 1, 2017."

**19-20-102. Retirement system — policy.** (1) The state teachers' retirement system created under the provisions of Chapter 87, Laws of 1937, is the state teachers' retirement system of the state of Montana, and the provisions of this chapter do not affect or impair the validity of any action taken by its governing board or the rights of any person arising under the provisions of Chapter 87, Laws of 1937, or any subsequent amendment to this chapter. The state teachers' retirement system is known as "The Teachers' Retirement System of the State of Montana" and in that name shall transact all business of the retirement system, hold its assets in trust, and have the powers and privileges of a corporation that may be necessary to administer the provisions of this chapter.

(2) It is the policy of the state to:

(a) provide equitable retirement benefits to members of the teachers' retirement system based on each member's normal service and salary;

(b) limit the effect on the retirement system of isolated salary increases received by a member, including but not limited to end-of-career promotions or one-time salary enhancements during the member's last years of employment; and

(c) limit the compensation that a retired member may earn after retirement while working in a position that would normally be covered under the teachers' retirement system to the amount determined under 19-20-731.

(3) It is the policy of the state to ensure that public employees are reported to the correct public retirement system. The retirement system shall enter into memoranda of understanding with the public employees' retirement board to exchange retirement system-related confidential information regarding members, former members, or retirees. A memorandum must state that:

(a) the information may be used only for reasons related to verifying appropriate pension plan participation; and

(b) the requesting retirement system agrees to protect the confidentiality of the information and will disclose the requested information only as necessary to conduct official business.

**History:** En. 75-6202 by Sec. 97, Ch. 5, L. 1971; amd. Sec. 22, Ch. 326, L. 1974; R.C.M. 1947, 75-6202; Sec. 19-4-102, MCA 1991; redes. 19-20-102 by Code Commissioner, 1993; amd. Sec. 4, Ch. 305, L. 2007; amd. Sec. 2, Ch. 59, L. 2011.

**19-20-103. Implied consent of employee.** A person who accepts employment for which membership is required is considered to have consented to membership and to the withholding of contributions from the person's compensation.

**History:** En. 75-6214 by Sec. 109, Ch. 5, L. 1971; amd. Sec. 10, Ch. 127, L. 1977; amd. Sec. 8, Ch. 331, L. 1977; R.C.M. 1947, 75-6214(part); Sec. 19-4-103, MCA 1991; redes. 19-20-103 by Code Commissioner, 1993; amd. Sec. 257, Ch. 56, L. 2009.

**19-20-104. Guarantee by state.** Regular interest charges payable, the creation and maintenance of reserves in the pension accumulation account, and the maintenance of accumulated contributions in the annuity savings account, as provided for in this chapter, and the payment of all retirement allowances, refunds, and other benefits granted under the retirement system are obligations of the state of Montana.

**History:** En. 75-6216 by Sec. 111, Ch. 5, L. 1971; amd. Sec. 11, Ch. 127, L. 1977; amd. Sec. 9, Ch. 331, L. 1977; R.C.M. 1947, 75-6216; Sec. 19-4-104, MCA 1991; redes. 19-20-104 by Code Commissioner, 1993; amd. Sec. 6, Ch. 442, L. 1997; amd. Sec. 2, Ch. 90, L. 2007.

**19-20-105. Penalty for fraud.** A person who knowingly makes a false statement or who falsifies or permits to be falsified any record of the retirement system in an attempt to defraud the system is guilty of a misdemeanor and is punishable as provided by law.

**History:** En. 75-6217 by Sec. 112, Ch. 5, L. 1971; amd. Sec. 12, Ch. 127, L. 1977; R.C.M. 1947, 75-6217(1); Sec. 19-4-105, MCA 1991; redes. 19-20-105 by Code Commissioner, 1993.

**19-20-106. Retaining qualified plan status — board rulemaking authority.** (1) The board shall administer the plan in the manner required to satisfy the applicable qualification requirements for a qualified governmental plan, as specified in the Internal Revenue Code. If a provision in this chapter conflicts with a qualification requirement in section 401 of the Internal Revenue Code applicable to public retirement systems or with the plan's status as a qualified governmental plan under section 414(d) of the Internal Revenue Code and consequent federal administrative regulations, the provision is either ineffective or must be interpreted to conform

to the federal qualification requirements and allow the plan to retain tax-deferred status. The board may adopt rules to implement this section.

(2) For the purpose of section 401(a) of the Internal Revenue Code, the plan document for the retirement plan is composed of the applicable provisions of the Montana constitution, this chapter, and applicable rules adopted by the board.

**History:** En. Sec. 3, Ch. 442, L. 1997; amd. Sec. 3, Ch. 111, L. 1999.

## Part 2 Administration of System

**19-20-201. Administration by retirement board — jurisdiction and venue for judicial review.** (1) The retirement board shall administer and operate the retirement system within the limitations prescribed by this chapter, and it is the duty of the retirement board to:

(a) establish rules necessary for the proper administration and operation of the retirement system;

(b) approve or disapprove all expenditures necessary for the proper operation of the retirement system;

(c) keep a record of all its proceedings, which must be open to public inspection;

(d) submit a report to the office of budget and program planning detailing the fiscal transactions for the 2 fiscal years immediately preceding the report due date, the amount of the accumulated cash and securities of the retirement system, and the last fiscal year balance sheet showing the assets and liabilities of the retirement system;

(e) keep in convenient form the data that is necessary for actuarial valuation of the various funds of the retirement system and for checking the experience of the retirement system;

(f) prepare an annual valuation of the assets and liabilities of the retirement system that includes an analysis of how market performance is affecting the actuarial funding of the retirement system;

(g) require the board's actuary to conduct and report on a periodic actuarial investigation into the actuarial experience of the retirement system;

(h) prescribe a form for membership application that will provide adequate and necessary information for the proper operation of the retirement system;

(i) annually determine the rate of regular interest as prescribed in 19-20-501;

(j) establish and maintain the funds of the retirement system in accordance with the provisions of part 6 of this chapter; and

(k) perform other duties and functions as are required to properly administer and operate the retirement system.

(2) In discharging its duties, the board, or an authorized representative of the board, may conduct hearings, administer oaths and affirmations, take depositions, certify to official acts and records, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records. Subpoenas must be issued and enforced pursuant to 2-4-104.

(3) The board may send retirement-related material to employers and the campuses of the Montana university system for delivery to employees. To facilitate distribution, employers and those campuses shall each provide the board with a point of contact who is responsible for distribution of the material provided by the board.

(4) The board shall make available to the state administration and veterans' affairs interim committee and to the legislature pursuant to 5-11-210 copies of the annual actuarial valuation and reports required pursuant to subsections (1)(d), (1)(f), and (1)(g).

(5) Jurisdiction and venue for judicial review of the board's final administrative decisions is the first judicial district, Lewis and Clark County, unless otherwise stipulated by the parties.

**History:** En. 75-6205 by Sec. 100, Ch. 5, L. 1971; amd. Sec. 2, Ch. 127, L. 1977; amd. Sec. 2, Ch. 331, L. 1977; R.C.M. 1947, 75-6205(1), (5) thru (7), (9), (11), (13), (16) thru (18); amd. Sec. 25, Ch. 112, L. 1991; amd. Sec. 25, Ch. 349, L. 1993; Sec. 19-4-201, MCA 1991; redes. 19-20-201 by Code Commissioner, 1993; amd. Sec. 3, Ch. 45, L. 2001; amd. Sec. 2, Ch. 174, L. 2003; amd. Sec. 8, Ch. 285, L. 2007; amd. Sec. 6, Ch. 155, L. 2013; amd. Sec. 2, Ch. 366, L. 2013.

**19-20-202. Per diem and expenses of board members.** The members of the retirement board shall serve without direct or indirect compensation except that each appointed member

shall receive \$50 per day and travel expenses, as provided for in 2-18-501 through 2-18-503, for each day in attendance at the meetings of the board or in the execution of duties as a member of the retirement board. All per diem and expenses paid under the provisions of this section must be paid from the expense account of the retirement system.

**History:** En. 75-6204 by Sec. 99, Ch. 5, L. 1971; amd. Sec. 1, Ch. 507, L. 1973; amd. Sec. 51, Ch. 439, L. 1975; R.C.M. 1947, 75-6204; amd. Sec. 3, Ch. 672, L. 1983; Sec. 19-4-202, MCA 1991; redes. 19-20-202 by Code Commissioner, 1993; amd. Sec. 3, Ch. 90, L. 2007.

**19-20-203. Officers and employees of retirement board.** (1) It is the duty of the retirement board to:

- (a) elect a presiding officer from its membership;
- (b) employ an executive director and other technical or administrative employees who are necessary for the transaction of the business of the retirement system and establish their compensation pursuant to Title 2, chapter 18; and
- (c) designate an actuary who meets the qualifications established by the retirement board to assist the retirement board with the technical actuarial aspects of the operation of the retirement system, which includes establishing mortality and service tables and making an actuarial investigation at least once every 5 years into the mortality, service, and compensation experience of the members and beneficiaries of the retirement system.

(2) A quorum of the board is three members.

**History:** En. 75-6205 by Sec. 100, Ch. 5, L. 1971; amd. Sec. 2, Ch. 127, L. 1977; amd. Sec. 2, Ch. 331, L. 1977; R.C.M. 1947, 75-6205(2) thru (4), (8), (10); amd. Sec. 1, Ch. 24, L. 1987; amd. Sec. 1, Ch. 490, L. 1987; Sec. 19-4-203, MCA 1991; redes. 19-20-203 by Code Commissioner, 1993; amd. Sec. 3, Ch. 111, L. 1995; amd. Sec. 33, Ch. 532, L. 1997; amd. Sec. 3, Ch. 59, L. 2011.

**19-20-204. Repealed.** Sec. 8, Ch. 39, L. 2017.

**History:** En. 75-6205 by Sec. 100, Ch. 5, L. 1971; amd. Sec. 2, Ch. 127, L. 1977; amd. Sec. 2, Ch. 331, L. 1977; R.C.M. 1947, 75-6205(14); Sec. 19-4-204, MCA 1991; redes. 19-20-204 by Code Commissioner, 1993.

**19-20-205. Board to determine membership.** It is the duty of the retirement board to determine the eligibility of a person to become a member of the retirement system in accordance with the provisions of 19-20-302.

**History:** En. 75-6205 by Sec. 100, Ch. 5, L. 1971; amd. Sec. 2, Ch. 127, L. 1977; amd. Sec. 2, Ch. 331, L. 1977; R.C.M. 1947, 75-6205(12); Sec. 19-4-205, MCA 1991; redes. 19-20-205 by Code Commissioner, 1993.

**19-20-206. Board to grant benefits.** It is the duty of the retirement board to grant retirement, disability, and other benefits under the provisions of this chapter. However, benefits will be granted only if the board decides, in its discretion as limited by law, that an applicant for benefits is entitled to those benefits. All applicants who are in similar circumstances must be treated alike.

**History:** En. 75-6205 by Sec. 100, Ch. 5, L. 1971; amd. Sec. 2, Ch. 127, L. 1977; amd. Sec. 2, Ch. 331, L. 1977; R.C.M. 1947, 75-6205(15); Sec. 19-4-206, MCA 1991; redes. 19-20-206 by Code Commissioner, 1993; amd. Sec. 4, Ch. 45, L. 2001.

**19-20-207. Repealed.** Sec. 11, Ch. 111, L. 1995.

**History:** En. 75-6219 by Sec. 7, Ch. 507, L. 1973; R.C.M. 1947, 75-6219; Sec. 19-4-207, MCA 1991; redes. 19-20-207 by Code Commissioner, 1993.

**19-20-208. Duties and liability of employer.** (1) Each employer shall:

- (a) pick up the contributions of each employed member at the rate prescribed pursuant to 19-20-602 and 19-20-608 and transmit the contributions each month to the executive director of the retirement board;
- (b) transmit to the executive director of the retirement board the employer's contributions prescribed by 19-20-605 and 19-20-609, at the time that the employee contributions are transmitted;
- (c) keep records and, as required by the retirement board, furnish information to the board that is required in the discharge of the board's duties;
- (d) upon the employment of a person who is required to become a member of the retirement system, inform the person of the rights and obligations relating to the retirement system;
- (e) each month, report the name, social security number, time worked, and gross earnings of each retired member of the system who has been employed in a position that is reportable to the retirement system pursuant to 19-20-731;



(f) whenever applicable, inform an employee of the right to elect to participate in the university system retirement program under Title 19, chapter 21;

(g) at the request of the retirement board, certify the names of all persons who are eligible for membership or who are members of the retirement system;

(h) notify the retirement board of the employment of a person eligible for membership and forward the person's membership application to the board; and

(i) if the employer has converted to earned compensation amounts excluded from earned compensation, for each retiring member, certify to the board the amounts reported to the system in each of the 5 years preceding the member's retirement.

(2) An employer that fails to timely or accurately report the employment of, time worked by, or compensation paid to a retired member as required under subsection (1)(e) is jointly and severally liable with the retired member for repayment to the retirement system of retirement benefits paid to which the member was not entitled, plus interest.

**History:** En. 75-6214 by Sec. 109, Ch. 5, L. 1971; amd. Sec. 10, Ch. 127, L. 1977; amd. Sec. 8, Ch. 331, L. 1977; R.C.M. 1947, 75-6214(part); amd. Sec. 5, Ch. 464, L. 1985; amd. Sec. 11, Ch. 494, L. 1987; Sec. 19-4-208, MCA 1991; redes. 19-20-208 by Code Commissioner, 1993; amd. Sec. 7, Ch. 442, L. 1997; amd. Sec. 3, Ch. 174, L. 2003; amd. Sec. 1, Ch. 320, L. 2005; amd. Sec. 4, Ch. 59, L. 2011; amd. Sec. 1, Ch. 151, L. 2011; amd. Sec. 7, Ch. 282, L. 2013; amd. Sec. 2, Ch. 389, L. 2013.

**19-20-209 through 19-20-211 reserved.**

**19-20-212. General internal revenue service qualification rules.** (1) The board shall distribute the corpus and income of the system to the members and their beneficiaries in accordance with the system's law. The corpus and income may not, at any time before the satisfaction of all liabilities with respect to members and their beneficiaries, be used for, or diverted to, purposes other than the exclusive benefit of the members and their beneficiaries.

(2) Forfeitures arising from severance of employment, from death, or for any other reason may not be applied to increase the benefits that any member would otherwise receive under the state's law. However, forfeitures may be used to reduce the costs of administration.

(3) Distributions from the system may be made only upon retirement, separation from service, disability, or death.

(4) Notwithstanding any provision of law to the contrary, contributions, benefits, and service credit with respect to qualified military service must be provided in accordance with section 414(u) of the Internal Revenue Code and the federal Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. 4301, et seq.

(5) (a) If at any time that the board finds that benefits payable or contributions required under this chapter would exceed the limits established under section 415 of the Internal Revenue Code, the board may establish a qualified governmental excess benefit arrangement and adopt rules for the necessary and appropriate procedures for the administration of the benefit arrangement in accordance with the Internal Revenue Code and this section.

(b) An excess benefit arrangement established pursuant to this section is subject to the following requirements:

(i) The amount of any annual benefit that would exceed the limitations imposed by section 415 of the Internal Revenue Code must be paid from the benefit arrangement.

(ii) The amount of a contribution that would exceed the limitation imposed by section 415 of the Internal Revenue Code must be credited to the benefit arrangement.

(iii) The benefit arrangement must be a separate part of the system.

(iv) The benefit arrangement must be maintained solely for the purpose of providing to members in the system that part of the member's annual benefit or contribution otherwise payable under the terms of this chapter that exceeds the limitations on benefits or contributions imposed by section 415 of the Internal Revenue Code.

(v) Members may not elect, directly or indirectly, to defer compensation to the benefit arrangement.

(6) The limitation year for purposes of section 415 of the Internal Revenue Code is the school year beginning September 1 and ending August 31.

(7) The plan year is the fiscal year beginning July 1 and ending June 30.

**History:** En. Sec. 4, Ch. 111, L. 1999; amd. Sec. 4, Ch. 174, L. 2003; amd. Sec. 2, Ch. 320, L. 2005.

**19-20-213 and 19-20-214 reserved.**

**19-20-215. Presentation to board of investments.** The retirement board shall annually at a public meeting present to the board of investments established in 2-15-1808 a financial and actuarial report of the retirement system and brief the board of investments on any benefit changes being considered by the retirement board that may affect trust fund obligations.

**History:** En. Sec. 3, Ch. 285, L. 2007.

**19-20-216. Board to make special report.** As soon as possible after the completion of each annual actuarial valuation for the teachers' retirement system, the board shall have its actuary present a detailed actuarial report to the legislative finance committee provided for in 5-12-201 and the state administration and veterans' affairs interim committee provided for in 5-5-228. The actuarial report must provide a trend analysis of the system's actual and projected progress toward 100% funding.

**History:** En. Sec. 20, Ch. 389, L. 2013.

### Part 3 Membership

**19-20-301. Membership application.** Whenever a person becomes a member of the retirement system as required by 19-20-302, the person shall complete an application form prescribed by the retirement board.

**History:** En. 75-6212 by Sec. 107, Ch. 5, L. 1971; amd. Sec. 5, Ch. 507, L. 1973; amd. Sec. 8, Ch. 127, L. 1977; amd. Sec. 7, Ch. 331, L. 1977; R.C.M. 1947, 75-6212(1); Sec. 19-4-301, MCA 1991; redes. 19-20-301 by Code Commissioner, 1993; amd. Sec. 258, Ch. 56, L. 2009.

**19-20-302. Active membership.** (1) Unless otherwise provided by this chapter, the following persons employed by an employer must be active members of the retirement system:

- (a) a person who is a teacher, principal, or district superintendent as defined in 20-1-101;
- (b) a person who is an administrative officer or a member of the instructional or scientific staff of a unit of the Montana university system and who has not elected or is not required to participate in the university system retirement program under Title 19, chapter 21;
- (c) a person employed as a speech-language pathologist, school nurse, professionally qualified person as defined in 20-7-901, paraprofessional who provides instructional support, dean of students, or school psychologist;
- (d) a person employed in a teaching or an educational services capacity by the office of a county superintendent, an education cooperative, a public institution of the state of Montana, the Montana state school for the deaf and blind, or a school district;
- (e) a person who is an administrative officer or a member of the instructional staff of the board of public education;
- (f) the superintendent of public instruction or a person employed as a teacher or in an educational services capacity by the office of public instruction;
- (g) except as provided in subsection (2), a person elected to the office of county superintendent of schools;
- (h) a person who is an administrative officer or a member of the instructional or scientific staff of a community college; and
- (i) a person employed in a nonclerical position and who is reported on an employer's annual data collection report submitted to the office of public instruction.

(2) A retired member elected to the office of county superintendent of schools or appointed to complete the term of an elected county superintendent of schools after July 1, 1995, is not eligible for optional membership in the public employees' retirement system under the provisions of 19-3-412 or 19-3-413 and shall, within 30 days of taking office, file an irrevocable written election to become or to not become an active member of the teachers' retirement system. The retirement system membership of an elected county superintendent of schools as of June 30, 1995, must remain unchanged for as long as the person continues to serve in the capacity of county superintendent of schools.

(3) In order to be eligible for active membership, a person described in subsection (1) or (2) must:

- (a) be employed in the capacity prescribed for the person's eligibility for at least 30 days in any fiscal year; and

- (b) have the compensation for the person's creditable service totally paid by an employer.
- (4) (a) A substitute teacher or a part-time teacher's aide:
  - (i) shall file an irrevocable written election determining whether to become an active member of the retirement system on the first day of employment; or
  - (ii) is required to become an active member of the retirement system after completing 210 hours of employment in any fiscal year if the substitute teacher or part-time teacher's aide has not elected membership under subsection (4)(a)(i).
- (b) Once a part-time teacher's aide becomes a member, the aide is required to remain an active member as long as the aide is employed in that capacity. Once a substitute teacher becomes a member, the substitute teacher is required to remain a member as long as the teacher is available for employment in that capacity.
- (c) The employer shall give written notification to a substitute teacher or part-time teacher's aide on the first day of employment of the option to elect membership under subsection (4)(a)(i).
- (d) If a substitute teacher or part-time teacher's aide declines to elect membership during the election period, the teacher or part-time teacher's aide shall file a written statement with the employer waiving membership and the employer shall retain the statement.
- (5) A school district clerk or business official may not become a member of the teachers' retirement system. A school district clerk or business official who is a member of the system on July 1, 2001, is required to remain an active member of the system while employed in that capacity, and any postretirement earnings from employment as a school district clerk or school business official are subject to the limit on earnings provided in 19-20-731.
- (6) At any time that a person's eligibility to become a member of the retirement system is in doubt, the retirement board shall determine the person's eligibility for membership. All persons in similar circumstances must be treated alike.
- (7) As used in this section, "part-time teacher's aide" means an individual who works less than 7 hours a day assisting a certified teacher in a classroom.
- (8) (a) An active member of the system concurrently employed in a position identified in subsection (1)(b) may not elect to participate in the university system retirement program under Title 19, chapter 21.
- (b) An employee of the Montana university system who is a participant in the university system retirement program under Title 19, chapter 21, and who is concurrently employed in a position identified in subsections (1)(a) or (1)(c) through (1)(i) is ineligible to be an active member of this system.
- (9) (a) A position is not reportable to the retirement system if the position is a bona fide volunteer position.
- (b) A position is a bona fide volunteer position if all of the following criteria are met:
  - (i) The individual in the position receives no salary, stipend, remuneration of any kind, reimbursement of expenses, or in-kind benefits or services for service in the position. Employer payments of premiums for required insurance coverage directly related to the volunteer service, such as workers' compensation coverage or personal or professional liability coverage, do not constitute remuneration.
  - (ii) The position was not a paid position with the employer within the 12 months prior to being designated as a volunteer position by the employer.
  - (iii) The position does not become a paid position for at least 12 months following the employer's designation of the position as a volunteer position.
  - (iv) The employer does not have any other individual working as a paid employee in the same position while the position is designated as a volunteer position.
  - (v) The individual in the position does not perform work in the volunteer position in excess of:
    - (A) 4 hours in a day, 12 hours in a week, and 312 hours in a fiscal year if the service is performed during regular business days of the employer; or
    - (B) 312 hours in a fiscal year if the service is performed primarily at times other than during regular business days of the employer.
- (c) The retirement system may require the employer to provide information and documentation to verify that a position designated as a volunteer position meets all requirements set forth in this subsection (9).

**History:** En. 75-6209 by Sec. 104, Ch. 5, L. 1971; amd. Sec. 6, Ch. 127, L. 1977; amd. Sec. 6, Ch. 331, L. 1977; R.C.M. 1947, 75-6209; amd. Sec. 1, Ch. 221, L. 1981; amd. Sec. 1, Ch. 210, L. 1983; amd. Sec. 1, Ch. 22, L. 1987; amd. Sec. 1, Ch. 296, L. 1987; amd. Sec. 12, Ch. 494, L. 1987; amd. Sec. 6, Ch. 658, L. 1987; amd. Sec. 2, Ch. 56, L. 1989; amd. Sec. 1, Ch. 178, L. 1993; Sec. 19-4-302, MCA 1991; redes. 19-20-302 by Code Commissioner, 1993; amd. Sec. 4, Ch. 111, L. 1995; amd. Sec. 10, Ch. 308, L. 1995; amd. Sec. 108, Ch. 42, L. 1997; amd. Sec. 5, Ch. 111, L. 1999; amd. Sec. 5, Ch. 45, L. 2001; amd. Sec. 3, Ch. 402, L. 2003; amd. Sec. 3, Ch. 320, L. 2005; amd. Sec. 4, Ch. 90, L. 2007; amd. Sec. 2, Ch. 282, L. 2009; amd. Sec. 8, Ch. 282, L. 2013; amd. Sec. 29, Ch. 248, L. 2015; amd. Sec. 1, Ch. 165, L. 2017.

**Compiler's Comments**

*2017 Amendment:* Chapter 165 inserted (9) relating to bona fide volunteer positions. Amendment effective July 1, 2017.

**19-20-303. Inactive membership.** Any person's active membership in the retirement system terminates, but the person is an inactive member, when the person:

(1) ceases to be employed in a capacity that allows membership and the person has 5 or more years of creditable service in the retirement system;

(2) ceases to be employed in a capacity that allows membership and the person has less than 5 years of creditable service in the retirement system, but the loss of capacity to be a member was caused by a personal illness determined by the retirement board to be a disability or was caused by service in the armed forces of the United States, which includes the army, navy, marine corps, air force, and coast guard, or by service in the American red cross or merchant marine during time of war; or

(3) has 5 or more years of creditable service and becomes a member of any other retirement or pension system supported wholly or in part by the money of another government agency, except the federal social security retirement system, and the membership in the other retirement system would allow credit for the same employment service in two retirement systems. However, a person may not be excluded from active membership solely because the person is receiving or is eligible to receive retirement benefits from another retirement system.

**History:** En. 75-6210 by Sec. 105, Ch. 5, L. 1971; R.C.M. 1947, 75-6210; Sec. 19-4-303, MCA 1991; redes. 19-20-303 by Code Commissioner, 1993; amd. Sec. 259, Ch. 56, L. 2009.

**19-20-304. Membership termination.** The active or inactive membership in the retirement system of any person terminates when the person:

(1) retires on a retirement allowance of the retirement system;

(2) dies;

(3) withdraws the person's accumulated contributions to the retirement system under the provisions of 19-20-603; or

(4) ceases to be employed in a capacity that allows membership, has less than 5 years of creditable service in the retirement system, and cannot qualify under the provisions of 19-20-303(2).

**History:** En. 75-6211 by Sec. 106, Ch. 5, L. 1971; amd. Sec. 7, Ch. 127, L. 1977; R.C.M. 1947, 75-6211; Sec. 19-4-304, MCA 1991; redes. 19-20-304 by Code Commissioner, 1993; amd. Sec. 260, Ch. 56, L. 2009.

**19-20-305. Alternate payees — family law orders.** (1) A participant in a retirement system may have the participant's rights modified or recognized by a family law order.

(2) For purposes of this section:

(a) "actuarially equivalent amount" means the portion of the participant's benefit transferred to an alternate payee and actuarially adjusted to provide a benefit payable for the alternate payee's lifetime;

(b) "alternate payee" means the former spouse of the member or retiree who is entitled to an actuarially equivalent amount or a fixed amount of the member's or retiree's retirement benefit;

(c) "family law order" means a certified copy of an order of a court with competent jurisdiction, on a form prescribed and provided by the retirement system, concerning spousal maintenance or marital property rights that includes a transfer of all or a portion of a participant's right to payments from the retirement system to an alternate payee in compliance with this section; and

(d) "participant" means a member or retiree of the retirement system.

(3) A family law order must identify an alternate payee by full name, current address, date of birth, current phone number, and social security number. An alternate payee's rights and interests granted in compliance with this section are not subject to assignment, execution, garnishment, attachment, or other process. An alternate payee's rights or interests may be

modified only by a family law order amending the family law order that established the right or interest or by a full renunciation of the alternate payee's rights by the alternate payee.

(4) A family law order may not require:

(a) a type or form of benefit, option, or payment that is not available to the affected participant under the retirement system or that would require administration in a manner different from the administrative processes used by the retirement system for administration of retirement benefits in general; or

(b) an amount of payment greater than that available to a participant.

(5) (a) The service, disability, or survivor retirement benefit payments or withdrawals of member contributions may be apportioned to an alternate payee by directing payment of:

(i) an actuarially equivalent amount payable for the life of the alternate payee; or

(ii) a fixed amount, to be deducted from the participant's benefit, of no more than the amount payable to the participant. A fixed amount must be payable for a determinate period of time not greater than the life of the participant or the life of the benefit recipient under a retirement allowance elected pursuant to 19-20-702.

(b) (i) When a family law order directs payment of an actuarially equivalent amount payable to the alternate payee, either the amount of the participant's retirement benefit to be transferred to the alternate payee must be expressed as a percentage share of the retirement benefit payable to the participant or the percentage share must be readily determinable based on the factors provided in the family law order. The participant's benefit must be reduced by the amount determined under this subsection (5)(b)(i).

(ii) The amount payable to the alternate payee, calculated under subsection (5)(b)(i), must be actuarially adjusted to provide a benefit payable for the alternate payee's lifetime.

(iii) A copy of the alternate payee's birth certificate must be submitted with the family law order.

(6) If a participant elects to withdraw the accumulated contributions and forfeit all rights to service, disability, or survivor benefits, the alternate payee is entitled to a lump-sum payment up to the total fixed amount or equal to the percentage share of the participant's benefit transferred to the alternate payee as directed in the family law order.

(7) Retirement benefit adjustments for which a participant is eligible after retirement must be apportioned between the participant and the alternate payee receiving an actuarially equivalent amount in the same manner as determined under subsection (5)(b)(i).

(8) Payments of monthly benefits to the alternate payee must commence on the latest of the following dates:

(a) the date the participant begins receiving benefits; or

(b) the first day of the month following receipt of a certified family law order and approval of the family law order by the retirement system.

(9) The board may assess a participant or an alternate payee for all costs of reviewing and administering a family law order, including reasonable attorney fees. The board may adopt rules to implement this section.

(10) Each family law order establishing a final obligation concerning payments by the retirement system must contain a statement that the order is subject to review and approval by the board.

(11) If the participant retired on a disability retirement benefit and the benefit is subsequently canceled pursuant to 19-20-903 or 19-20-905, the alternate payee's payments also terminate. When the participant again qualifies for retirement benefits, the amount payable to the alternate payee must be recalculated pursuant to this section.

(12) (a) In every circumstance, an actuarially equivalent amount payable to an alternate payee must terminate upon the death of the alternate payee. The amount may not be devised, bequeathed, or otherwise transferred by the alternate payee.

(b) A family law order may expressly provide that a fixed amount payable to an alternate payee may be transferred upon the death of the alternate payee to a beneficiary designated by the alternate payee. If a family law order does not expressly authorize an alternate payee to designate a beneficiary or if there is no beneficiary designation on file with the retirement system at the time of the alternate payee's death, the fixed amount payable to the alternate payee reverts to the participant or to the joint annuitant or beneficiary of the participant. A fixed



amount payable to an alternate payee may not be devised, bequeathed, or otherwise transferred by the alternate payee in any other manner.

(13) The retirement system shall give effect to a family law order in a manner that conforms with all other applicable law pertaining to the administration of the retirement system. A family law order may not be construed to provide rights or benefits to any person beyond those rights or benefits expressly provided by law.

**History:** En. Sec. 9, Ch. 111, L. 1995; amd. Sec. 8, Ch. 442, L. 1997; amd. Sec. 5, Ch. 90, L. 2007; amd. Sec. 3, Ch. 282, L. 2009; amd. Sec. 5, Ch. 59, L. 2011; amd. Sec. 2, Ch. 39, L. 2017.

**Compiler's Comments**

*2017 Amendment:* Chapter 39 in (2)(c) after “copy of” deleted “a judgment, decree, or” and after “jurisdiction” inserted “on a form prescribed and provided by the retirement system”; in (3) in first sentence after “birth” inserted “current phone number” and in last sentence after “interest” inserted “or by a full renunciation of the alternate payee’s rights by the alternate payee”; inserted (5)(b)(iii) requiring submission of a copy of the alternate payee’s birth certificate; and made minor changes in style. Amendment effective July 1, 2017.

**19-20-306. Execution or withholding for support obligation.** (1) Benefits in the retirement system are subject to execution and income withholding for the payment of a participant’s support obligation.

(2) For purposes of this section:

(a) “Execution” means a warrant for distraint issued or a writ of execution obtained by the department of public health and human services when providing support enforcement services under Title IV-D of the Social Security Act.

(b) “Income withholding” means an income-withholding order issued under the provisions of Title 40, chapter 5, part 3 or 4, or an income-withholding order issued in another state as provided in 40-5-1046 through 40-5-1051.

(c) “Participant” means a member or an actual or potential beneficiary, survivor, or contingent annuitant of a retirement system designated pursuant to this chapter.

(d) “Support obligation” has the meaning provided in 40-5-403 for support order.

(3) The execution or income-withholding order may not require:

(a) a type or form of benefit, option, or payment not available to the affected participant under the retirement system; or

(b) an amount or duration of payment greater than that available to a participant under the retirement system.

(4) The execution or income-withholding order may only provide for payment as follows:

(a) Service retirement benefit payments or withdrawals of member contributions may be apportioned by directing payment of a percentage of the amount payable or payment of a fixed amount of no more than the amount payable to the participant.

(b) The maximum amount of disability or survivorship benefits that may be apportioned and paid under this section is the monthly benefit amount that would have been payable on the date of termination of service if the member had retired without disability or death.

(c) Retirement benefit adjustments for which a participant is eligible after retirement may be apportioned only if existing benefit payments are apportioned. The adjustments must be apportioned in the same ratio as existing benefit payments.

(d) Payments must be limited to the life of the appropriate participant. The duration of payments under this section may be further limited only to a specified maximum time or the life of a specified participant. Payments may also be limited to a specific amount per month if the number of payments is specified.

**History:** En. Sec. 15, Ch. 552, L. 1997.

## **Part 4 Creditable Service**

**19-20-401. Creditable service.** (1) The creditable service of a member begins on the date of the member’s employment in a capacity prescribed for eligibility in 19-20-302.

(2) Subject to 19-20-405, the creditable service of a member includes the following:

(a) each period of active membership service in a position reportable to the retirement system as described in 19-20-302 and credited as provided in this section;

(b) any creditable service awarded by the retirement board under 19-20-402 for out-of-state employment;

(c) any creditable service awarded by the retirement board under 19-20-403 for employment while on leave;

(d) any creditable service awarded by the retirement board under 19-20-404 for service in the military, the red cross, or the merchant marine;

(e) any creditable service awarded by the retirement board under 19-20-408 for employment in private schools;

(f) any creditable service awarded by the retirement board under 19-20-409 for service transferred after October 1, 1989, from the public employees' retirement system;

(g) any creditable service awarded by the retirement board under 19-20-410 for extension service employment;

(h) any creditable service awarded by the retirement board under 19-20-411 for absence because of employment-related injury; and

(i) any creditable service awarded by the retirement board under 19-20-426 for service provided under the university system retirement program.

(3) The retirement board's determination of creditable service under this section is final and conclusive for the purposes of the retirement system unless, at any time, the board discovers an error or fraud in the establishment of creditable service, in which case the board shall redetermine the creditable service.

(4) Creditable service may be awarded only for a period of membership service or purchased service for which all required contributions and interest, if applicable, have been paid.

(5) All accrued creditable service must be forfeited upon withdrawal from the retirement system and may not be reinstated unless the member redeposits the withdrawn contributions as set forth in 19-20-427.

(6) Creditable service must be awarded on the basis of a fiscal year beginning July 1 and ending June 30 regardless of the member's term of employment service or benefit accrual as established in an employment agreement, in an employer policy, or in another manner and regardless of the term of the employer's school year or fiscal year.

(7) Creditable service must be credited based on the full-time or part-time service of the member, as follows:

(a) Service provided over 7 or more hours in a day is a full-time day.

(b) Full-time service is service that is at least 180 days in a fiscal year, at least 140 hours a month during 9 months in a fiscal year, or full-time under an alternative school calendar adopted by a school board that is less than 180 days but meets minimum accreditation requirements of 1,080 hours.

(c) Part-time service is service that is less than full-time. Part-time creditable service must be calculated based on the total number of hours, days, or months reported to the retirement system in each fiscal year, divided by the number of hours, days, or months of equivalent full-time service.

(8) Creditable service and earned compensation credit must be awarded for extra duty service subject to the following:

(a) A member who is credited with full-time creditable service without consideration of the extra duty service may not be awarded additional creditable service for the extra duty service, and the extra duty compensation must be reported and credited as earned compensation to the member.

(b) A member who is credited with less than full-time creditable service without consideration of the extra duty service must be awarded additional creditable service and compensation credit for the extra duty service, and time worked must be reported and creditable service and compensation credit awarded as provided in subsection (8)(d).

(c) A member who is not employed in a position reportable to the retirement system other than to perform extra duty service must be awarded additional creditable service and compensation credit for the extra duty service, and time worked must be reported and creditable service and compensation credit awarded as provided in subsection (8)(d).

(d) (i) If the member is employed by the employer to perform service other than the extra duty service, whether or not in a position reportable to the retirement system, and is compensated for that service on an hourly or daily basis, the employer must report the actual number of hours or days worked in extra duty service with compensation at the hourly or daily rate of pay that

the employee earns for service other than extra duty service. The compensation reported for extra duty service must include any increase in the rate of pay or total compensation required to be paid for overtime. Creditable service must be awarded on the basis of the actual time worked in extra duty service.

(ii) If the member is not employed by the employer to perform service other than the extra duty service and the extra duty service is compensated at an hourly or daily rate of pay, the employer must report the actual hours or days worked, the hourly or daily rate of pay, and the total compensation paid for the extra duty service. Creditable service must be awarded based on the actual time worked in extra duty service.

(iii) If the member is not employed by the employer to perform service other than the extra duty service and the extra duty service is compensated on a single fee or stipend basis:

(A) the employer must report the total fee or stipend paid for the extra duty service and must provide the retirement system with the employer's base rate of pay for an entry-level teacher for the fiscal year in which the extra duty service is provided; and

(B) creditable service must be awarded for the extra duty service based on the following calculations:

(I) the base rate of pay must be divided by 187 to determine a daily rate of pay;

(II) the total fee or stipend must be divided by the daily rate of pay to determine the number of days eligible for creditable service; and

(III) the number of days eligible for creditable service must be divided by 180 to determine the portion of a year to be credited as creditable service for the extra duty service.

(9) Creditable service may not be awarded in excess of full-time service for any period of time regardless of the amount of time actually worked in the time period. No more than 1 day of creditable service may be awarded for any calendar day, no more than 1 month of creditable service may be awarded for any calendar month, and no more than 1 year of creditable service may be awarded for any fiscal year. Service may not be carried over or otherwise reported for the accrual of creditable service in any month other than the month in which the service was actually performed.

(10) For a member completing only part-time service during the fiscal year of membership service on which a service purchase cost will be calculated, the member's compensation must be annualized to calculate the service purchase cost.

(11) A member may not purchase creditable service under this part after retirement benefit payments to the member have started, even if the member returns to active member status.

**History:** En. 75-6212 by Sec. 107, Ch. 5, L. 1971; amd. Sec. 5, Ch. 507, L. 1973; amd. Sec. 8, Ch. 127, L. 1977; amd. Sec. 7, Ch. 331, L. 1977; R.C.M. 1947, 75-6212(2) thru (4); amd. Sec. 2, Ch. 551, L. 1981; amd. Sec. 2, Ch. 38, L. 1987; amd. Sec. 2, Ch. 79, L. 1987; amd. Sec. 3, Ch. 56, L. 1989; amd. Sec. 2, Ch. 690, L. 1989; Sec. 19-4-401, MCA 1991; redes. 19-20-401 by Code Commissioner, 1993; amd. Sec. 4, Ch. 320, L. 2005; amd. Sec. 4, Ch. 282, L. 2009; amd. Sec. 12, Ch. 210, L. 2015; amd. Sec. 3, Ch. 39, L. 2017.

#### **Compiler's Comments**

**2017 Amendment:** Chapter 39 in (1) after "19-20-302" deleted "and accumulates to the member's credit on the basis of the retirement board's policy governing creditable service"; in (2)(a) substituted "each period of active membership service in a position reportable to the retirement system as described in 19-20-302 and credited as provided in this section" for "each year of service for which contributions to the retirement system were deducted from the member's compensation under the provisions of Chapter 87, Laws of 1937, Chapter 215, Laws of 1939, this chapter, and their subsequent amendments, except that credit may not be awarded for those years of service for which the contributions have been withdrawn and not replaced"; inserted (4) concerning when creditable service may be awarded; inserted (5) concerning forfeiture and reinstatement of accrued creditable service; inserted (6) requiring that creditable service be awarded based on the fiscal year beginning July 1; inserted (7) concerning the method by which creditable service must be credited; inserted (8) concerning awarding creditable service and earned compensation credit for extra duty service; inserted (9) prohibiting the award of creditable service in excess of full-time service; in (10) after "during the" substituted "fiscal year of membership service on which a service purchase cost will be calculated, the member's compensation must be annualized to calculate the service purchase cost" for "qualifying period, the first full year's teaching salary used to calculate the cost to purchase creditable service is the salary that the member would have earned if the member's first year part-time salary had been full-time"; and made minor changes in style. Amendment effective July 1, 2017.

**19-20-402. Creditable service for employment in out-of-state public and federal schools.** (1) (a) Subject to 19-20-405, a vested member who has completed 1 full year of active membership in the retirement system subsequent to the member's out-of-state service and contributes to the retirement system as provided in subsection (2) may receive creditable service in the retirement system for out-of-state service that would have been acceptable under the provisions of this chapter if the service had been performed in the state of Montana.

(b) If the member contributed to a public retirement plan, other than social security, while performing the out-of-state service, the member shall roll the member's contributions over into the retirement system or must receive a refund of the member's contributions for the service before purchasing service under this section.

(c) For the purpose of this section, out-of-state service means service performed:

- (i) within the United States in a federal or other public school or institution; and
- (ii) outside the United States in a federal or other public or private school or institution.

(2) (a) To purchase the service described in subsection (1)(c)(i), a member who became a member before July 1, 1989, shall contribute for each year of service to be purchased an amount equal to the combined employer and employee contribution for the member's first full year's salary earned in a position reportable to the retirement system after the member's out-of-state service, plus interest. The contribution rate must be the rate in effect at the time the member is eligible for the service.

(b) To purchase the service described in subsection (1)(c)(ii), a member who became a member before July 1, 1989, shall contribute for each year of service to be purchased an amount equal to the combined employer and employee contribution for the member's first full year's teaching salary earned in Montana after the member's out-of-state service or after the salary was reported to the system for the fiscal year beginning July 1, 1989, whichever date is later, plus interest. The contribution rate must be the rate in effect at the time the member is eligible to purchase the service or the rate in effect on July 1, 1989, whichever date is later.

(c) For each year of service to be credited under this section, a member who became a member on or after July 1, 1989, shall contribute the actuarial cost of the service based on the most recent valuation of the system.

(3) The interest on contributions required under subsection (2)(a) must be paid:

(a) if a written application to purchase service was signed prior to July 1, 2012, at the rate that the contributions would have earned had the contributions been in the member's account from the date the member was eligible to purchase the service; or

(b) if a written application to purchase service is signed on or after July 1, 2012, at the actuarially assumed interest rate in effect on the date the written application is signed.

(4) The contributions and interest required under subsection (2) may be made in a lump-sum payment or in installments as agreed between the member and the retirement board.

(5) The provisions of 19-20-405 apply to creditable service purchased under this section.

**History:** En. 75-6213 by Sec. 108, Ch. 5, L. 1971; amd. Sec. 3, Ch. 57, L. 1971; amd. Sec. 6, Ch. 507, L. 1973; amd. Sec. 4, Ch. 26, L. 1975; amd. Sec. 9, Ch. 127, L. 1977; R.C.M. 1947, 75-6213(1); amd. Sec. 1, Ch. 295, L. 1979; amd. Sec. 2, Ch. 113, L. 1989; amd. Secs. 1, 5, Ch. 357, L. 1989; Sec. 19-4-402, MCA 1991; redes. 19-20-402 by Code Commissioner, 1993; amd. Sec. 1, Ch. 136, L. 1995; amd. Sec. 6, Ch. 45, L. 2001; amd. Sec. 5, Ch. 174, L. 2003; amd. Sec. 2, Ch. 151, L. 2011; amd. Sec. 13, Ch. 210, L. 2015.

**19-20-403. Creditable service for employment while on leave.** (1) (a) Subject to 19-20-405, a member who is eligible under subsection (1)(b) and who contributes to the retirement system as provided in subsection (2) may receive up to 2 years of creditable service for employment while on leave following a break in service.

(b) To be eligible to purchase the service, a member:

- (i) must be vested in the retirement system;
- (ii) must have been an active member prior to the leave; and
- (iii) must have earned at least 1 full year of creditable service in active membership in the retirement system subsequent to the member's leave.

(2) (a) For each period of service to be credited, a member who became a member before July 1, 1989, shall contribute an amount equal to the combined employer and employee contributions for the member's first full year's salary earned in a position reportable to the retirement system after the member's return from leave, plus interest.

(b) For each period of service to be credited under this section, a member who became a member on or after July 1, 1989, shall contribute the actuarial cost of the service based on the most recent actuarial valuation of the system.

(c) The interest on contributions required under subsection (2)(a) must be paid:

(i) if a written application to purchase service was signed prior to July 1, 2012, at the rate that the contributions would have earned had the contributions been in the member's account from the date the member was eligible to purchase the service; or



(ii) if a written application to purchase service is signed on or after July 1, 2012, at the actuarially assumed interest rate in effect on the date the written application is signed.

(d) The contributions and interest may be made in a lump-sum payment or in installments as agreed between the member and the retirement board.

(3) Subject to 19-20-405, a member who is eligible under subsection (5) and who contributes to the retirement system as provided in subsection (6) may receive up to 2 years of creditable service for unpaid inservice leave.

(4) (a) To be eligible for purchase as inservice leave, the leave must be:

(i) a period of temporary absence from work in a position reportable to the retirement system, whether full leave or intermittent leave and whether the leave is provided solely at the discretion of the employer or is required to be provided pursuant to generally applicable state or federal law; and

(ii) unpaid. Inservice leave is unpaid to the extent that the employer is not compensating the member for the period of absence from work. If the inservice leave is intermittent leave or is partially paid full leave, the leave is unpaid to the extent that any compensation received for the day, week, or month that includes the leave is less than the amount of compensation the member would have earned but for the leave.

(b) Inservice leave does not include:

(i) a period of leave or other absence from work that is included as part of the member's regular term of employment, such as personal days, vacation leave, sick leave, summer break, or other nonwork days;

(ii) a period of time for which creditable service may be purchased or credited under any other section of this part;

(iii) a period designated as a leave of absence pursuant to an oral or written settlement agreement or other agreement between the member and the employer to resolve an employment dispute and resulting in:

(A) termination of the member's employment; or

(B) other circumstances in which the member and employer do not actually intend for the member to return to regular employment in the preleave position; or

(iv) a leave of absence after which the member does not actually return to regular employment in the preleave position.

(5) A member is eligible to purchase inservice leave if the member:

(a) was regularly employed by the preleave employer with a regular work schedule in a position reportable to the retirement system;

(b) remained either employed or in a job-attached status with the preleave employer with a definite date specified to return to work with the preleave employer; and

(c) returned to regular work with the preleave employer at the end of the inservice leave.

(6) (a) An eligible member may purchase inservice leave at any time after returning to regular work with the preleave employer in a position reportable to the retirement system, subject to the following:

(i) A service purchase agreement for the inservice leave must be established for all leave that may be purchased for a fiscal year following the end of that fiscal year.

(ii) The service must be purchased and will be credited beginning with the earliest date of the leave.

(iii) The amount of leave that may be purchased may not exceed the amount of time that the member would have worked but for the leave as specified in a written employment contract. If the member was not employed under a written employment contract, the amount of leave purchased may not result in the member receiving total creditable service in the fiscal year in which the service is being purchased that exceeds the amount of creditable service the member accrued in the last fiscal year preceding the inservice leave during which the member accrued membership service that did not include purchased service.

(b) To purchase inservice leave, the member shall contribute the actuarial cost of the service based on the most recent actuarial valuation of the system subject to the following:

(i) Upon completing the purchase, the member must receive earned compensation credit equal to the sum of any earned compensation reported by the employer plus the amount of compensation attributable to the purchased leave.



(ii) Failure to return for any reason to regular work in the preleave position on the specified return date or at the end of the inservice leave must be considered a break in service subject to the leave purchase requirements of subsections (1) and (2).

**History:** En. 75-6213 by Sec. 108, Ch. 5, L. 1971; amd. Sec. 3, Ch. 57, L. 1971; amd. Sec. 6, Ch. 507, L. 1973; amd. Sec. 4, Ch. 26, L. 1975; amd. Sec. 9, Ch. 127, L. 1977; R.C.M. 1947, 75-6213(2); amd. Sec. 3, Ch. 113, L. 1989; amd. Secs. 2, 5, Ch. 357, L. 1989; Sec. 19-4-403, MCA 1991; redes. 19-20-403 by Code Commissioner, 1993; amd. Sec. 2, Ch. 136, L. 1995; amd. Sec. 7, Ch. 45, L. 2001; amd. Sec. 3, Ch. 151, L. 2011; amd. Sec. 14, Ch. 210, L. 2015; amd. Sec. 4, Ch. 39, L. 2017.

**Compiler's Comments**

*2017 Amendment:* Chapter 39 in (1)(a) after "leave" inserted "following a break in service"; in (1)(b) after "service" deleted "under this section"; in (1)(b)(ii) substituted "an active member" for "a member"; in (1)(b)(iii) substituted "earned at least 1 full year of creditable service in active membership" for "completed 1 year of active membership"; in (2)(a) after "For each" substituted "period" for "year" and after "contribute" deleted "for each year of service to be purchased"; in (2)(b) after "For each" substituted "period" for "year"; inserted (3) concerning receipt of up to 2 years of creditable service for unpaid inservice leave; inserted (4) concerning eligibility for purchase as inservice leave; inserted (5) concerning a member's eligibility to purchase inservice leave; inserted (6) concerning how inservice leave may be purchased; and made minor changes in style. Amendment effective July 1, 2017.

**19-20-404. Creditable service for active service in military, red cross, or merchant marine.** (1) Subject to 19-20-405, a vested member may receive up to 4 years of creditable service without cost for active service in the armed forces of the United States, which includes the army, navy, marine corps, air force, and coast guard, during the Korean war between June 1, 1950, and January 31, 1955, and the Vietnam conflict between December 22, 1961, and May 7, 1975, dates inclusive. To receive credit for this service, a member shall submit to the board a written application and proper certification of the member's military service.

(2) (a) If a vested member is ineligible for service credit under subsection (1), the member may apply under the provisions of this subsection (2)(a) for creditable service in the retirement system for active service in the armed forces of the United States, which includes the army, navy, marine corps, air force, and coast guard, or in the American red cross or the merchant marine. The member must be awarded creditable service for the number of years, not exceeding 2, that the retirement board determines to be creditable service if the member contributes to the retirement system an amount equal to the combined employer and employee contributions for the member's first full year's salary earned in a position reportable to the retirement system following the active service in the armed forces of the United States, the American red cross, or the merchant marine for each year of creditable service plus interest paid as follows:

(i) if a written application to purchase service is signed prior to July 1, 2012, at the rate the contribution would have earned had the contribution been in the member's account upon completion of 5 years of membership service in Montana; or

(ii) if a written application to purchase service is signed on or after July 1, 2012, at the actuarially assumed interest rate in effect on the date the written application is signed.

(b) The contribution rate is that rate in effect at the time the member is eligible for the service.

(3) The contribution required under subsection (2) may be made in a lump-sum payment or in installments as agreed between the member and the retirement board.

**History:** En. 75-6213 by Sec. 108, Ch. 5, L. 1971; amd. Sec. 3, Ch. 57, L. 1971; amd. Sec. 6, Ch. 507, L. 1973; amd. Sec. 4, Ch. 26, L. 1975; amd. Sec. 9, Ch. 127, L. 1977; R.C.M. 1947, 75-6213(3); amd. Sec. 1, Ch. 193, L. 1981; amd. Sec. 4, Ch. 113, L. 1989; amd. Sec. 1, Ch. 204, L. 1989; amd. Sec. 1, Ch. 185, L. 1993; Sec. 19-4-404, MCA 1991; redes. 19-20-404 by Code Commissioner, 1993; amd. Sec. 6, Ch. 111, L. 1999; amd. Sec. 34, Ch. 7, L. 2001; amd. Sec. 8, Ch. 45, L. 2001; amd. Sec. 4, Ch. 151, L. 2011; amd. Sec. 15, Ch. 210, L. 2015.

**19-20-405. Limit on creditable service that may be awarded.** The aggregate years of service that may be credited under 19-20-402 through 19-20-404, 19-20-408, 19-20-410(1), and 19-20-426 may not exceed 5 years.

**History:** En. 75-6213 by Sec. 108, Ch. 5, L. 1971; amd. Sec. 3, Ch. 57, L. 1971; amd. Sec. 6, Ch. 507, L. 1973; amd. Sec. 4, Ch. 26, L. 1975; amd. Sec. 9, Ch. 127, L. 1977; R.C.M. 1947, 75-6213(4); amd. Sec. 3, Ch. 79, L. 1987; Sec. 19-4-405, MCA 1991; redes. 19-20-405 by Code Commissioner, 1993; amd. Sec. 3, Ch. 136, L. 1995; amd. Sec. 1, Ch. 408, L. 1997; amd. Sec. 7, Ch. 111, L. 1999; amd. Sec. 6, Ch. 59, L. 2011; amd. Sec. 16, Ch. 210, L. 2015.

**19-20-406. Repealed.** Sec. 20, Ch. 282, L. 2009.

**History:** En. 75-6213 by Sec. 108, Ch. 5, L. 1971; amd. Sec. 3, Ch. 57, L. 1971; amd. Sec. 6, Ch. 507, L. 1973; amd. Sec. 4, Ch. 26, L. 1975; amd. Sec. 9, Ch. 127, L. 1977; R.C.M. 1947, 75-6213(5); Sec. 19-4-406, MCA 1991; redes. 19-20-406 by Code Commissioner, 1993.

**19-20-407. No duplication of credit for same period of service.** A member may not receive duplicate credit for the same period of service. A retiree returning to active service may not be granted creditable service for the same period of time that the retiree was receiving a retirement benefit.

**History:** En. 75-6208 by Sec. 103, Ch. 5, L. 1971; amd. Sec. 2, Ch. 57, L. 1971; amd. Sec. 2, Ch. 422, L. 1971; amd. Sec. 4, Ch. 507, L. 1973; amd. Sec. 3, Ch. 26, L. 1975; amd. Sec. 5, Ch. 127, L. 1977; amd. Sec. 5, Ch. 331, L. 1977; amd. Sec. 1, Ch. 443, L. 1977; R.C.M. 1947, 75-6208(9); Sec. 19-4-407, MCA 1991; redes. 19-20-407 by Code Commissioner, 1993; amd. Sec. 2, Ch. 408, L. 1997; amd. Sec. 5, Ch. 320, L. 2005.

**19-20-408. Creditable service for employment in private schools.** (1) (a) Subject to 19-20-405, a vested member who has completed 1 full year of active membership in the retirement system subsequent to the member's private school employment and contributes to the retirement system as provided in subsection (2) may receive up to 5 years of creditable service in the retirement system for employment within the United States in a private elementary, secondary, or postsecondary educational institution.

(b) Employment to be credited must be of an instructional nature, as an administrative officer, or as a member of the scientific staff. If the employment is for teaching kindergarten through grade 12, the service must have been performed as a certified teacher.

(c) Members may not receive credit for service as a student employed by a private elementary, secondary, or postsecondary educational institution.

(2) (a) For each year of service to be credited, a member who became a member before July 1, 1989, shall contribute to the retirement system an amount equal to the combined employer and employee contribution for the member's first full year's salary earned in a position reportable to the retirement system after becoming a member of the retirement system or after returning to the retirement system, whichever is later, plus interest. The contribution rate must be that rate in effect at the time the member is eligible to purchase the service.

(b) For each year of service to be credited under this section, a member who became a member on or after July 1, 1989, shall contribute the actuarial cost of the service based on the most recent valuation of the system.

(3) The interest on contributions required under subsection (2)(a) must be paid:

(a) if a written application to purchase service was signed prior to July 1, 2012, at the rate that the contributions would have earned had the contributions been in the member's account from the date the member was eligible to purchase the service; or

(b) if a written application to purchase service is signed on or after July 1, 2012, at the actuarially assumed interest rate in effect on the date the written application is signed.

(4) The contributions and interest may be made in lump-sum payment or in installments as agreed between the person and the retirement board.

**History:** En. Sec. 1, Ch. 551, L. 1981; amd. Sec. 5, Ch. 113, L. 1989; Sec. 19-4-408, MCA 1991; redes. 19-20-408 by Code Commissioner, 1993; amd. Sec. 4, Ch. 136, L. 1995; amd. Sec. 9, Ch. 45, L. 2001; amd. Sec. 5, Ch. 151, L. 2011; amd. Sec. 12, Ch. 55, L. 2015; amd. Sec. 17, Ch. 210, L. 2015.

**19-20-409. Transfer of service credits and contributions from public employees' retirement system.** (1) An active member may at any time before retirement file a written application with the retirement board to purchase all of the member's previous service credit in the public employees' retirement system. The amount that must be paid to the retirement system to purchase this service under this section is the sum of subsections (2) and (3).

(2) The public employees' retirement system shall transfer to the teachers' retirement system an amount equal to 72% of the amount paid by the member.

(3) The member shall pay either directly or by transferring contributions on account with the public employees' retirement system an amount equal to the member's accumulated contributions at the time that active membership was terminated, plus accrued interest. Interest must be calculated from the date of termination until a transfer is received by the retirement system, based on the interest tables in use by the public employees' retirement system.

(4) A member who purchases service from the public employees' retirement system in the teachers' retirement system must have completed 5 years of membership service in the teachers' retirement system to be eligible to receive creditable service pursuant to 19-20-402, 19-20-403, 19-20-404, 19-20-410, or 19-20-426.

(5) The retirement board shall determine the service credits that may be transferred.

(6) If an active member who also has service credit in the public employees' retirement system before becoming a member of the teachers' retirement system dies before purchasing this service in the teachers' retirement system and if the member's service credits from both systems, when combined, entitle the member's beneficiary to a death benefit, the payment of the death benefit is the liability of the teachers' retirement system. Before payment of the death benefit, the public employees' retirement board must transfer to the teachers' retirement system the contributions necessary to purchase this service in the teachers' retirement system as provided in subsections (2) and (3).

(7) (a) If the teachers' retirement board determines that an individual's membership was erroneously classified and reported to the public employees' retirement system, the public employees' retirement board shall transfer to the teachers' retirement system the member's accumulated contributions and service, together with employer contributions plus interest.

(b) For the period of time that the employer contributions are held by the public employees' retirement system, interest paid on employer contributions transferred under this subsection (7) must be calculated at the short-term investment pool rate earned by the board of investments in the fiscal year preceding the transfer request.

(c) Any employee and employer contributions due as calculated in 19-20-602, 19-20-605, 19-20-608, and 19-20-609, plus interest, are the liability of the employee and the employing entity where the error occurred.

(8) A member who participated in the public employees' retirement system defined contribution plan provided for in Title 19, chapter 3, part 21, may purchase creditable service for the time spent as a participant in the defined contribution plan if:

(a) the member is vested in the teachers' retirement system and has completed at least 1 full year of active membership in the teachers' retirement system following the member's public employees' retirement system service;

(b) for each full year or portion of a year to be purchased pursuant to this subsection (8), the member contributes the actuarial cost of the service based on the most recent valuation of the system; and

(c) the member has withdrawn the member's money in the member's public employees' retirement system defined contribution plan account or has rolled over the amount required to purchase service in accordance with this subsection (8).

(9) Creditable service purchased under subsection (8) must be determined according to the laws and rules governing service credit in the public employees' retirement system.

**History:** En. Sec. 2, Ch. 290, L. 1983; amd. Sec. 3, Ch. 690, L. 1989; amd. Sec. 2, Ch. 64, L. 1991; Sec. 19-4-409, MCA 1991; redes. 19-20-409 by Code Commissioner, 1993; amd. Sec. 26, Ch. 412, L. 1995; amd. Sec. 9, Ch. 442, L. 1997; amd. Sec. 10, Ch. 45, L. 2001; amd. Sec. 5, Ch. 282, L. 2009; amd. Sec. 3, Ch. 366, L. 2013; amd. Sec. 3, Ch. 389, L. 2013; amd. Sec. 18, Ch. 210, L. 2015.

**19-20-410. Creditable service for extension service employment.** (1) (a) Subject to 19-20-405, at any time before retirement, a vested member may file a written application with the retirement board to purchase up to 5 years of employment service with the Montana cooperative extension service if:

(i) the member became a member of the retirement system before July 1, 1989;

(ii) the service involved instructional service at a unit of the Montana university system; and

(iii) the member received a refund of membership contributions under the civil service retirement system or the federal employees' retirement system for the service to be purchased.

(b) For each year of service to be purchased under subsection (1)(a), the member shall contribute to the retirement system an amount equal to the combined employer and employee contribution rate in effect at the time that the member is eligible to purchase the service multiplied by the member's first full year's salary earned in a position reportable to the retirement system subsequent to the member's extension service employment, plus interest paid as follows:

(i) if a written application to purchase service was signed prior to July 1, 2012, at the rate that the contribution would have earned had the contribution been in the member's account upon the member becoming vested; or

(ii) if a written application to purchase service is signed on or after July 1, 2012, at the actuarially assumed interest rate in effect on the date the written application is signed.

(2) In addition to service purchased under subsection (1) and subject to 19-20-407, a member who has purchased 5 years or more of creditable service in the retirement system may purchase additional years of cooperative extension service by contributing to the system the full actuarial cost of the service.

(3) Contributions to purchase service under this section may be made in a lump-sum payment or in installments as agreed upon by the member and the retirement board.

**History:** En. Sec. 1, Ch. 79, L. 1987; amd. Sec. 6, Ch. 113, L. 1989; Sec. 19-4-410, MCA 1991; redes. 19-20-410 by Code Commissioner, 1993; amd. Sec. 3, Ch. 408, L. 1997; amd. Sec. 11, Ch. 45, L. 2001; amd. Sec. 6, Ch. 151, L. 2011; amd. Sec. 13, Ch. 55, L. 2015; amd. Sec. 19, Ch. 210, L. 2015.

**19-20-411. Absence because of employment-related injury.** (1) Subject to the limitation in subsection (6), a member who is absent because of an injury entitling the member to workers' compensation payments may purchase as creditable service the time during which the member is absent. To purchase this service, a member shall contribute to the retirement system as provided in subsection (2) upon the member's return to contributing membership service.

(2) (a) A member who became a member before July 1, 1989, shall contribute an amount equal to:

(i) the contributions that the member would have made had the member not been absent, based on the member's compensation at the commencement of the absence;

(ii) the interest that begins to accrue 1 year from the date that the member returns to covered employment; and

(iii) the interest not paid by the employer under subsection (3).

(b) A member who became a member on or after July 1, 1989, shall pay the actuarial cost of the service based on the most recent valuation of the system.

(3) When a member elects to contribute under subsection (2)(a), the employer shall contribute an amount equal to the contributions that would have been made by the employer had the member not been absent, based on the member's compensation at the commencement of the absence. The employer may contribute an amount equal to the interest accruing on the employer's contributions calculated in the same manner as interest on the employee's contributions under subsection (2)(a). If the employer elects not to pay the interest, this amount must be paid by the employee.

(4) A member shall file with the retirement board a written notice of the member's intent to pay the contributions under subsection (2).

(5) Payment of the employee's contributions may be made in one sum at the time of filing the notice or in installments before termination of covered employment as agreed between the board and the member.

(6) A member absent as provided in subsection (1) loses the right to contribute under this section if the member's accumulated normal contributions are refunded under 19-20-603.

(7) The maximum amount of membership service allowable under this section is 2 years.

**History:** En. Sec. 1, Ch. 38, L. 1987; amd. Sec. 7, Ch. 113, L. 1989; Sec. 19-4-411, MCA 1991; redes. 19-20-411 by Code Commissioner, 1993; amd. Sec. 5, Ch. 136, L. 1995; amd. Sec. 12, Ch. 45, L. 2001.

**19-20-412. Repealed.** Sec. 26, Ch. 111, L. 1999.

**History:** En. Sec. 1, Ch. 113, L. 1989; amd. Sec. 1, Ch. 8, L. 1991; Sec. 19-4-412, MCA 1991; redes. 19-20-412 by Code Commissioner, 1993; amd. Sec. 6, Ch. 136, L. 1995; amd. Sec. 10, Ch. 442, L. 1997.

**19-20-413. Repealed.** Sec. 26, Ch. 111, L. 1999.

**History:** En. Sec. 1, Ch. 13, L. 1991; Sec. 19-4-413, MCA 1991; redes. 19-20-413 by Code Commissioner, 1993.

**19-20-414. Payment methods for purchase of service credit.** (1) An active or vested member who is eligible to purchase service under this chapter may at any time before retirement apply to purchase the service credit by making payment as provided in this section.

(2) Subject to subsection (3), service credit may be purchased by one or a combination of the following methods:

(a) a lump-sum payment;

(b) installment payments;

(c) direct rollover of eligible distributions from a retirement plan in section 402(c)(8)(B)(iii) or 402(c)(8)(B)(iv) of the Internal Revenue Code;



(d) rollover of a distribution from an individual retirement account or annuity described in section 408(a) or 408(b) of the Internal Revenue Code that is eligible to be rolled over and would otherwise be included in gross income;

(e) a direct trustee-to-trustee transfer from a governmental 457(b) deferred compensation plan or a 403(b) tax-sheltered annuity for permissive service credit, as defined in section 415(n) of the Internal Revenue Code.

(3) (a) The total amount transferred or rolled over to the retirement system pursuant to subsection (2) may not exceed the amount due to purchase the service.

(b) If, in the case of a transfer, the transferred account includes both tax-deferred and taxed amounts, the transferring agency shall identify the member's tax-deferred and taxed amounts at the time the transfer is made.

(4) To the extent permitted by section 401(a)(31) of the Internal Revenue Code and as limited by this section, the board shall accept a direct rollover of eligible distributions from another eligible retirement plan.

(5) If the member dies before having completed the payment required to purchase the service that the member had applied to purchase, the member's surviving spouse may, subject to the rules and regulations of the Internal Revenue Code, apply to complete the member's service purchase as provided in this section. The surviving spouse must apply to complete the payments and pay the balance due to the system prior to the distribution of benefits.

**History:** En. Sec. 10, Ch. 111, L. 1995; amd. Sec. 8, Ch. 111, L. 1999; amd. Sec. 13, Ch. 45, L. 2001; amd. Sec. 6, Ch. 174, L. 2003; amd. Sec. 6, Ch. 90, L. 2007.

**19-20-415. Procedure for purchase of service credit and pick up.** (1) A member who wishes to redeposit, pursuant to 19-20-427, amounts previously withdrawn or who is eligible to purchase service credit pursuant to this part shall make the following series of elections to accomplish the redeposit or purchase:

(a) The member may elect a lump-sum payment, a series of installment payments, or a combination of lump-sum payments and installment payments.

(b) If a series of installment payments is elected by the member, the member may elect to pay the installments directly to the board or to have the installments paid by payroll deduction or the member may select a combination of both.

(c) With respect to installments payable by payroll deduction, if the member's employer has adopted the resolution described in subsection (2), the member shall complete the irrevocable written application to purchase service provided for in subsection (4). If the member's employer has not adopted the resolution, the member may elect only a revocable written application to purchase service.

(2) An employer may adopt a resolution to pick up and pay the member's elective contributions made pursuant to a binding, irrevocable written application. The contributions picked up by the employer must be payable from the same source as is used to pay compensation to the member. The resolution must contain the following statements:

(a) that the member contributions, even though designated as member contributions for state law purposes, are being paid by the employer in lieu of the contributions by the member; and

(b) that the member may not choose to receive the contributed amounts directly instead of having them paid by the employer to the system.

(3) (a) With respect to any member's elective contributions, the effective date of the employer pickup is the later of:

(i) the adoption of the employer's resolution; or

(ii) the date that the irrevocable written application is signed by both the member and the member's employer.

(b) The pickup does not apply to a contribution made before the effective date of the employer's resolution. A written application to purchase additional service that is in effect on the effective date of the employer's resolution is void, and the provisions of subsection (1) apply.

(4) The irrevocable written application to purchase service must be signed by the member and the member's employer and filed with the board. Subject to any maximum amounts or duration established by state or federal law, the irrevocable written application must specify:

(a) the amount of the deduction;



(b) the number of installments;  
(c) the number of years and type of service that the member is purchasing; and  
(d) that the contributions being picked up, although designated as member contributions, are being paid by the employer directly to the board in lieu of contributions by the member.

(5) The minimum duration of the installments required by subsection (4)(b) is 3 months, and the maximum duration is 5 years. The maximum number of years that may be purchased may not exceed the total number of years that the member is eligible to purchase.

(6) The irrevocable written application does not give the member the option of receiving the deduction amounts directly instead of having them paid by the employer to the system. A member may not prepay any amounts under a binding, irrevocable written application.

(7) If a member terminates or dies prior to completion of the installment payments, the binding, irrevocable written application expires and the board shall prorate the service credit purchased based upon the amount paid as of the date of termination or death. In the case of a termination, the member may make a lump-sum contribution for the balance of the service subject to the limitations of section 415 of the Internal Revenue Code. In the case of the member's death, the payment to purchase service may be made from the member's estate subject to the limitations of section 415 of the Internal Revenue Code.

**History:** En. Sec. 9, Ch. 111, L. 1999; amd. Sec. 14, Ch. 45, L. 2001; amd. Sec. 6, Ch. 320, L. 2005.

**19-20-416. Credit for legislative service required.** (1) A legislator who did not elect to continue to participate in the system, as provided under 5-2-304, and who subsequently participates as a member must be awarded creditable service for legislative service if the legislator contributes an amount equal to the member contributions that would have been made if the legislator had elected membership plus interest paid as follows:

(a) if a written application to purchase service was signed prior to July 1, 2012, at the rate that the contributions would have earned if they had been on deposit with the retirement system; or

(b) if a written application to purchase service is signed on or after July 1, 2012, at the actuarially assumed interest rate in effect on the date the written application is signed.

(2) The employer contribution must be made by the legislative branch in the amount that would have been contributed if the legislator had elected membership plus interest at the rate that the contributions would have earned if they had been on deposit with the retirement system.

**History:** En. Sec. 10, Ch. 111, L. 1999; amd. Sec. 7, Ch. 151, L. 2011.

**19-20-417. Credit for substitute teaching service, teacher's aide service, or other service not reported.** (1) A substitute teacher or part-time teacher's aide who did not elect membership under 19-20-302 and who subsequently becomes a member must be awarded creditable service for the service not reported if the member contributes the employee and employer contributions that would have been made if the member had been a member from the date of hire, plus interest.

(2) A person who was employed in a capacity that would have been eligible for membership except for the fact that the person was employed for less than 30 days and who subsequently becomes an active member may purchase this service if the person contributes the employee and employer contributions that would have been made if the person had been a member from the date of hire, plus interest.

(3) If an employer fails to report a person who was eligible for membership under 19-20-302, the employee and employer shall make the contributions required by this chapter, plus interest.

(4) The contributions and interest may be made in a lump-sum payment or in installments as agreed to between the person and the board.

**History:** En. Sec. 11, Ch. 111, L. 1999; amd. Sec. 15, Ch. 45, L. 2001.

**19-20-418 through 19-20-425 reserved.**

**19-20-426. Creditable service for employment under university system retirement program.** (1) (a) Subject to 19-20-405, a vested member who has completed 1 full year of active membership in the retirement system subsequent to the member's participation in the university system retirement program pursuant to 19-21-201 and contributes to the retirement system as provided in subsection (2) may receive up to 5 years of creditable service in the retirement system for service covered under the university system retirement program.

(b) Employment to be credited must be of an instructional nature, as an administrative officer, or as a member of the scientific staff with an individual contract under the authority of the board of regents.

(c) A member may not receive credit for service as a student employed by the institution.

(2) For each year of service to be credited under this section, the member shall contribute the actuarial cost of the service based on the most recent valuation of the system.

(3) The contributions and interest may be made in a lump-sum payment or in installments as agreed between the person and the retirement board.

**History:** En. Sec. 7, Ch. 320, L. 2005; amd. Sec. 9, Ch. 282, L. 2013; amd. Sec. 20, Ch. 210, L. 2015.

**19-20-427. Redeposit of contributions previously withdrawn.** (1) Except as provided in subsection (3), in addition to the contributions required under 19-20-602 and 19-20-608, subject to the approval of the retirement board, and to the extent permitted by section 415(k)(3) of the Internal Revenue Code, a member may redeposit in the annuity savings account, by a single payment or by an increased rate of contribution, an amount equal to the accumulated contributions that the member has previously withdrawn, plus interest paid as follows:

(a) if a written application to purchase service is signed prior to July 1, 2012, at the rate the contributions would have earned had the contributions not been withdrawn; or

(b) if a written application to purchase service is signed on or after July 1, 2012, at the actuarially assumed interest rate in effect on the date the written application is signed.

(2) The redeposit must be made in accordance with 19-20-415.

(3) A member may not redeposit contributions previously withdrawn under this chapter after retirement benefit payments to the member have started, even if the member returns to active member status.

**History:** En. Sec. 9, Ch. 320, L. 2005; amd. Sec. 7, Ch. 90, L. 2007; amd. Sec. 8, Ch. 151, L. 2011; amd. Sec. 4, Ch. 389, L. 2013; amd. Sec. 21, Ch. 210, L. 2015.

## Part 5 Management of Funds

**19-20-501. Financial administration of money.** The members of the retirement board are the trustees of all money collected for the retirement system, and as trustees, they shall provide for the financial administration of the money as provided in Article VIII, section 15, of the Montana constitution in the following manner:

(1) The money must be invested and reinvested by the state board of investments.

(2) The retirement board shall annually establish the rate of regular interest.

(3) In accordance with the provisions of 19-20-605(8), the amount to be credited to each reserve must be allocated from the interest and other earnings on the money of the retirement system actually realized during the preceding fiscal year, less the amount allocated to administrative expenses. The administrative expenses of the retirement system, less amortization of intangible assets, may not exceed 1.5% of retirement benefits paid.

(4) The state treasurer is the custodian of the collected retirement system money and of the securities in which the money is invested.

(5) For purposes of Article VIII, section 12, of the Montana constitution, all the reserves established by part 6 of this chapter must be accounts in the pension trust fund type of the treasury fund structure of the state.

(6) Benefits and refunds to eligible recipients are payable pursuant to a contract as contained in statute. Unless specifically provided for by statute, the contract does not contain revisions to statutes after the time of retirement or termination.

**History:** En. 75-6206 by Sec. 101, Ch. 5, L. 1971; amd. Sec. 2, Ch. 507, L. 1973; amd. Sec. 98, Ch. 326, L. 1974; amd. Sec. 3, Ch. 127, L. 1977; amd. Sec. 3, Ch. 331, L. 1977; R.C.M. 1947, 75-6206(1) thru (4), (7); amd. Sec. 3, Ch. 282, L. 1983; amd. Sec. 2, Ch. 8, L. 1991; Sec. 19-4-501, MCA 1991; redes. 19-20-501 by Code Commissioner, 1993; amd. Sec. 34, Ch. 532, L. 1997; amd. Sec. 16, Ch. 45, L. 2001; amd. Sec. 8, Ch. 90, L. 2007; amd. Sec. 5, Ch. 305, L. 2007; amd. Sec. 2, Ch. 298, L. 2009.

**19-20-502. Restrictions on use of money.** (1) A member of the retirement board or an employee of the board may not:

(a) have an interest, directly or indirectly, in the gains or profits of any investment of money of the retirement system, except as provided in this section;

(b) directly or indirectly, for the member or employee or as an agent, in any manner use the money or deposits of the retirement system except to make current and necessary expenditures authorized by the retirement board; or

(c) become an endorser or surety or in any manner an obligor for money loaned by or borrowed from the retirement system.

(2) The assets of the retirement system may not be used for or diverted to any purpose other than for the exclusive benefit of the members and their beneficiaries and for paying the reasonable expenses of administering the retirement system.

(3) The board may not engage in a transaction prohibited by section 503(b) of the Internal Revenue Code.

(4) The assets of the retirement system must remain in trust until a warrant for the assets has been paid or an electronic funds transfer of system assets has been made in accordance with law.

**History:** En. 75-6206 by Sec. 101, Ch. 5, L. 1971; amd. Sec. 2, Ch. 507, L. 1973; amd. Sec. 98, Ch. 326, L. 1974; amd. Sec. 3, Ch. 127, L. 1977; amd. Sec. 3, Ch. 331, L. 1977; R.C.M. 1947, 75-6206(5), (8); Sec. 19-4-502, MCA 1991; redes. 19-20-502 by Code Commissioner, 1993; amd. Sec. 12, Ch. 111, L. 1999; amd. Sec. 17, Ch. 45, L. 2001.

**19-20-503. Transfer of dormant or unclaimed accounts.** (1) The retirement board may, in its discretion, transfer the amount in the annuity savings account of an inactive member to the pension accumulation account if the annuity savings account has been dormant for a period of 7 years. A right of the member may not be jeopardized by the transfer, and the amount, including the interest the amount would have earned had the amount remained in the annuity savings account, must be transferred back to the member's annuity savings account upon the member's request.

(2) Retirement benefits must be claimed within 5 years of the date of the member's death. If the named beneficiary for the account or the heirs at law fail to claim and accept the benefits, the member's account balance reverts to the pension trust fund.

**History:** En. 75-6206 by Sec. 101, Ch. 5, L. 1971; amd. Sec. 2, Ch. 507, L. 1973; amd. Sec. 98, Ch. 326, L. 1974; amd. Sec. 3, Ch. 127, L. 1977; amd. Sec. 3, Ch. 331, L. 1977; R.C.M. 1947, 75-6206(6); Sec. 19-4-503, MCA 1991; redes. 19-20-503 by Code Commissioner, 1993; amd. Sec. 11, Ch. 442, L. 1997; amd. Sec. 9, Ch. 90, L. 2007.

**19-20-504. Vesting of retirement allowances upon termination of system.** Upon termination of the retirement system, termination of employment of a substantial number of members which would constitute a partial termination of the retirement system, or complete discontinuance of contributions to the retirement system, the retirement allowance accrued to each member directly affected by such occurrence becomes fully vested and nonforfeitable to the extent funded.

**History:** En. 75-6206 by Sec. 101, Ch. 5, L. 1971; amd. Sec. 2, Ch. 507, L. 1973; amd. Sec. 98, Ch. 326, L. 1974; amd. Sec. 3, Ch. 127, L. 1977; amd. Sec. 3, Ch. 331, L. 1977; R.C.M. 1947, 75-6206(9); Sec. 19-4-504, MCA 1991; redes. 19-20-504 by Code Commissioner, 1993.

**19-20-505 through 19-20-509 reserved.**

**19-20-510. Probate and nonprobate transfer statutes superseded.** If a provision of this chapter conflicts with a provision of Title 72, chapter 2, part 8, the provision of this chapter supersedes the conflicting provision of Title 72, chapter 2, part 8.

**History:** En. Sec. 19, Ch. 562, L. 1999.

## **Part 6**

### **Funds — Contributions**

**19-20-601. Method of financing.** The retirement board shall establish and maintain the funds described in this part, in which all of the assets of the retirement system shall be credited according to the purpose for which the assets are held.

**History:** En. 75-6207 by Sec. 102, Ch. 5, L. 1971; amd. Sec. 1, Ch. 57, L. 1971; amd. Sec. 1, Ch. 422, L. 1971; amd. Sec. 3, Ch. 507, L. 1973; amd. Sec. 2, Ch. 26, L. 1975; amd. Sec. 4, Ch. 127, L. 1977; amd. Sec. 4, Ch. 331, L. 1977; amd. Sec. 3, Ch. 443, L. 1977; R.C.M. 1947, 75-6207(1); Sec. 19-4-601, MCA 1991; redes. 19-20-601 by Code Commissioner, 1993.

**19-20-602. Annuity savings account — member's contribution.** (1) The annuity savings account is an account in which the contributions for the members to provide for their retirement allowance or benefits must be accumulated in individual accounts for each member.

(2) (a) The normal contribution rate of each tier one member is 7.15% of the member's earned compensation.

(b) The normal contribution rate of each tier two member is 8.15% of the member's earned compensation.

(3) Contributions under 19-20-608 and this section to the annuity savings account must be made in the following manner:

(a) Each employer, pursuant to section 414(h)(2) of the Internal Revenue Code:

(i) shall pick up and pay the contributions that would be payable by the member under this subsection (3) for service rendered after June 30, 1985;

(ii) shall pick up and pay the contributions that would be paid in the manner provided in 19-20-716; and

(iii) may pick up and pay the contributions that would be payable by the member pursuant to 19-20-415.

(b) The member's contributions picked up by the employer must be designated for all purposes of the retirement system as the member's contributions, except for the determination of a tax upon a distribution from the retirement system. These contributions must become part of the member's accumulated contributions but must be accounted for separately from those previously accumulated.

(c) The member's contributions picked up by the employer must be payable from the same source as is used to pay compensation to the member and must be included in the member's earned compensation as defined in 19-20-101. The employer shall deduct from the member's compensation an amount equal to the amount of the member's contributions picked up by the employer and remit the total of the contributions to the retirement board.

(d) The deductions must be made notwithstanding that the minimum compensation provided by law for a member may be reduced by the deductions. Each member is considered to consent to the deductions prescribed by this section, and payment of salary or compensation less the deductions is a complete discharge of all claims for the services rendered by the member during the period covered by the payment, except as to the benefits provided by the retirement system.

(4) The accumulated contributions of a member withdrawn by the member or paid to the member's estate or to the member's designated beneficiary in event of the member's death must be paid from the annuity savings account. Upon the retirement of a member, the member's accumulated contributions must be transferred from the annuity savings account to the pension accumulation account.

**History:** En. 75-6207 by Sec. 102, Ch. 5, L. 1971; amd. Sec. 1, Ch. 57, L. 1971; amd. Sec. 1, Ch. 422, L. 1971; amd. Sec. 3, Ch. 507, L. 1973; amd. Sec. 2, Ch. 26, L. 1975; amd. Sec. 4, Ch. 127, L. 1977; amd. Sec. 4, Ch. 331, L. 1977; amd. Sec. 3, Ch. 443, L. 1977; R.C.M. 1947, 75-6207(2); amd. Sec. 1, Ch. 198, L. 1983; amd. Sec. 1, Ch. 527, L. 1983; amd. Sec. 7, Ch. 464, L. 1985; Sec. 19-4-602, MCA 1991; redes. 19-20-602 by Code Commissioner, 1993; amd. Sec. 5, Ch. 111, L. 1995; amd. Sec. 12, Ch. 442, L. 1997; amd. Sec. 13, Ch. 111, L. 1999; amd. Sec. 4, Ch. 360, L. 1999; amd. Sec. 8, Ch. 320, L. 2005; amd. Sec. 10, Ch. 90, L. 2007; amd. Sec. 5, Ch. 389, L. 2013.

**19-20-603. Withdrawal of accumulated contributions — options.** An inactive member electing to do so or a person whose membership terminates without a prospect or anticipation that the member will return to work for an employer within 60 days of termination may withdraw the member's accumulated contributions from the annuity savings account in the retirement system in accordance with the following provisions:

(1) An inactive member under the provisions of 19-20-303(1) or (3) may elect, without right of revocation, to withdraw the member's accumulated contributions. If the member does not withdraw the accumulated contributions, the member remains an inactive member of the retirement system with the right to qualify for its benefits.

(2) Upon recovery from a disabling illness or separation from the armed forces, a person qualifying as an inactive member under the provisions of 19-20-303(2) may withdraw the member's accumulated contributions unless the member returns to active membership.

(3) Upon written application to the board, a terminating member may have the payment of all or any portion of the member's accumulated contributions rolled over or transferred



into another eligible retirement plan or a Roth IRA, provided for under 26 U.S.C. 408A, designated by the member. The portion not rolled over or transferred must be paid directly to the terminating member. The board shall provide forms for filing the written application. The terminating member is responsible for correctly designating an account or plan eligible to receive the tax-deferred amount in order to continue the tax-deferred status of the amount. To the extent required by section 401(a)(31) of the Internal Revenue Code, the board shall allow members and qualified beneficiaries to elect a direct rollover of eligible distributions to another eligible retirement plan.

(4) If a nonvested member terminates with accumulated contributions of less than \$200, the board shall pay the accumulated contributions in a lump sum as soon as administratively feasible without a written application from the member unless there is a return to service. Upon the payment of accumulated contributions, the member is considered to have withdrawn from the system.

**History:** En. 75-6208 by Sec. 103, Ch. 5, L. 1971; amd. Sec. 2, Ch. 57, L. 1971; amd. Sec. 2, Ch. 422, L. 1971; amd. Sec. 4, Ch. 507, L. 1973; amd. Sec. 3, Ch. 26, L. 1975; amd. Sec. 5, Ch. 127, L. 1977; amd. Sec. 5, Ch. 331, L. 1977; amd. Sec. 1, Ch. 443, L. 1977; R.C.M. 1947, 75-6208(6); amd. Sec. 1, Ch. 226, L. 1993; Sec. 19-4-603, MCA 1991; redes. 19-20-603 by Code Commissioner, 1993; amd. Sec. 13, Ch. 442, L. 1997; amd. Sec. 14, Ch. 111, L. 1999; amd. Sec. 18, Ch. 45, L. 2001; amd. Sec. 11, Ch. 90, L. 2007; amd. Sec. 6, Ch. 282, L. 2009.

**19-20-604. (Temporary) State contributions — termination.** The state shall contribute monthly from the general fund to the pension trust fund a sum equal to 0.11% of the compensation of members participating in the system on or after July 1, 1999. The contributions are statutorily appropriated, as provided in 17-7-502, to the pension trust fund. The state contribution provided for in this section terminates when the amortization period for the system's unfunded liability is 10 years or less according to the system's latest actuarial valuation. The board shall certify amounts due under this section on a monthly basis. The state treasurer shall transfer the certified amounts to the pension trust fund within 1 week. (*Terminates on occurrence of contingency—sec. 10, Ch. 360, L. 1999.*)

**History:** En. Sec. 2, Ch. 360, L. 1999.

**Compiler's Comments**

*Contingent Termination:* Section 10, Ch. 360, L. 1999, provided: "[Sections 2 and 3] [enacting 19-20-604 and amending 17-7-502] terminate when the amortization period for the system's unfunded liability is 10 years or less according to the system's latest actuarial valuation. The teachers' retirement board shall notify the governor and the code commissioner on occurrence of this contingency."

**19-20-605. Pension accumulation account — employer's contribution.** (1) The pension accumulation account is the account in which the reserves for payment of retirement allowances and benefits must be accumulated and from which retirement allowances and benefits must be paid to retirees or their beneficiaries. Employer contributions to the pension accumulation account must be made as provided in 19-20-609 and this section.

(2) Except as provided in subsection (3), for each member employed during the whole or part of the preceding payroll period, the employer shall pay into the pension accumulation account an amount equal to 9.85% of total earned compensation, plus the supplemental contribution required under 19-20-609.

(3) For each member employed by a school district, an education cooperative, a county, or a community college during the whole or part of the preceding payroll period, the employer shall pay into the pension accumulation account an amount equal to 7.47% of total earned compensation, plus the supplemental contribution required under 19-20-609.

(4) Beginning July 1, 2013, for each retired member who returns to covered employment under the provisions of 19-20-731 during all or part of the preceding payroll period, the employer shall pay into the pension accumulation account an amount equal to 9.85% of the total earned compensation paid to the retired member, plus the supplemental contribution required under 19-20-609.

(5) If the employer is a district or community college district, the trustees shall budget and pay for the employer's contribution under the provisions of 20-9-501.

(6) If the employer is the superintendent of public instruction, a public institution of the state of Montana, a unit of the Montana university system, or the Montana state school for the deaf and blind, the legislature shall appropriate to the employer an adequate amount to allow the payment of the employer's contribution.



(7) If the employer is a county, the county commissioners shall budget and pay for the employer's contribution in the manner provided by law for the adoption of a county budget and for payments under the budget.

(8) All interest and other earnings realized on the money of the retirement system must be credited to the pension accumulation account, and the amount required to allow regular interest on the annuity savings account must be transferred to that account from the pension accumulation account.

(9) The board may transfer from the pension accumulation account to the expense account an amount necessary to cover expenses of administration.

**History:** En. 75-6207 by Sec. 102, Ch. 5, L. 1971; amd. Sec. 1, Ch. 57, L. 1971; amd. Sec. 1, Ch. 422, L. 1971; amd. Sec. 3, Ch. 507, L. 1973; amd. Sec. 2, Ch. 26, L. 1975; amd. Sec. 4, Ch. 127, L. 1977; amd. Sec. 4, Ch. 331, L. 1977; amd. Sec. 3, Ch. 443, L. 1977; R.C.M. 1947, 75-6207(4); amd. Sec. 2, Ch. 193, L. 1981; amd. Sec. 1, Ch. 251, L. 1981; amd. Sec. 9, Ch. 549, L. 1981; amd. Sec. 2, Ch. 527, L. 1983; amd. Sec. 3, Ch. 658, L. 1985; amd. Sec. 2, Ch. 204, L. 1989; amd. Sec. 2, Ch. 530, L. 1993; Sec. 19-4-605, MCA 1991; redes. 19-20-605 by Code Commissioner, 1993; amd. Sec. 14, Ch. 442, L. 1997; amd. Sec. 35, Ch. 532, L. 1997; amd. Sec. 12, Ch. 90, L. 2007; amd. Sec. 6, Ch. 305, L. 2007; amd. Sec. 7, Ch. 282, L. 2009; amd. Sec. 3, Ch. 298, L. 2009; amd. Sec. 7, Ch. 389, L. 2013.

**19-20-606. Repealed.** Sec. 40, Ch. 532, L. 1997.

**History:** En. 75-6207 by Sec. 102, Ch. 5, L. 1971; amd. Sec. 1, Ch. 57, L. 1971; amd. Sec. 1, Ch. 422, L. 1971; amd. Sec. 3, Ch. 507, L. 1973; amd. Sec. 2, Ch. 26, L. 1975; amd. Sec. 4, Ch. 127, L. 1977; amd. Sec. 4, Ch. 331, L. 1977; amd. Sec. 3, Ch. 443, L. 1977; R.C.M. 1947, 75-6207(5); amd. Sec. 2, Ch. 328, L. 1985; Sec. 19-4-606, MCA 1991; redes. 19-20-606 by Code Commissioner, 1993.

**19-20-607. Supplemental state contribution — appropriation.** (1) (a) Each month, the state shall contribute, as a supplemental contribution to the teachers' retirement system, from the general fund to the pension trust fund an amount equal to 2.38% of the total earned compensation of school district and community college active members participating in the system.

(b) (i) Except as provided in subsection (1)(b)(ii), beginning July 1, 2013, and on each July 1 thereafter, the state shall contribute from the general fund to the pension trust fund \$25 million as a supplemental contribution to the teachers' retirement system.

(ii) If the legislative finance committee determines that the board has failed to provide a sufficient report pursuant to 19-20-216, it shall recommend that \$5 million be subtracted from the amount allocated in subsection (1)(b)(i) subject to legislative approval.

(2) The contributions are statutorily appropriated, as provided in 17-7-502, to the pension trust fund. The board shall determine and shall certify to the state treasurer amounts due under this section on a monthly basis. The state treasurer shall transfer the certified amounts to the pension trust fund within 1 week following receipt of the certification from the board.

**History:** En. Sec. 1, Ch. 305, L. 2007; amd. Sec. 9, Ch. 389, L. 2013.

**19-20-608. Member supplemental contribution — actuarially determined adjustments — effective dates.** (1) (a) Subject to subsections (1)(b) and (1)(c), a tier one member shall contribute to the retirement system a supplemental amount equal to 1% of the member's earned compensation.

(b) The board may decrease the tier one member supplemental contribution if:

(i) the average funded ratio of the system based on the last three actuarial valuations is equal to or greater than 90%; and

(ii) the period necessary to amortize all liabilities of the system based on the most recent annual actuarial valuation is less than 15 years.

(c) Following one or more decreases in the supplemental contribution rate pursuant to subsection (1)(b), the board may increase the supplemental contribution to a rate not to exceed 1% if:

(i) the average funded ratio of the system based on the last three annual actuarial valuations is equal to or less than 80%; and

(ii) the period necessary to amortize all liabilities of the system based on the most recent annual actuarial valuation is greater than 20 years.

(2) (a) Subject to subsection (2)(b), on or after January 1, 2023, the board may require a tier two member to contribute to the retirement system a supplemental amount if:

(i) the average funded ratio of the system based on the last three annual actuarial valuations is equal to or less than 80%;

(ii) the period necessary to amortize all liabilities of the system based on the latest annual actuarial valuation is greater than 20 years; and

(iii) a state or employer contribution rate increase or a flat dollar contribution to the retirement system trust fund has been enacted that is equivalent to or greater than the supplemental contribution rate imposed by the board pursuant to this subsection (2)(a).

(b) A tier two member supplemental contribution increase under this subsection (2) may not:

(i) exceed 0.5% of earned compensation; and

(ii) result in an aggregate tier two member contribution rate of more than 9.15% when added to the normal contribution rate required under 19-20-602.

(c) Following imposition of a supplemental contribution rate increase under this subsection (2), the board may decrease the supplemental contribution rate if:

(i) the average funded ratio of the system based on the previous three annual actuarial valuations is equal to or greater than 90%; and

(ii) the period necessary to amortize all liabilities of the system based on the latest annual actuarial valuation is less than 15 years.

(3) After the board has actuarially determined the need to impose, increase, or decrease a supplemental contribution rate under this section, the imposition, increase, or decrease is effective on the first day of July following the board's determination.

**History:** En. Sec. 6, Ch. 389, L. 2013.

**19-20-609. Employer's supplemental contribution — actuarially determined adjustments.** (1) (a) Subject to subsections (1)(b) through (1)(d), each employer shall contribute to the retirement system a supplemental amount equal to the percentage specified in subsection (1)(b) of total earned compensation of each member employed during the whole or part of the preceding payroll period.

(b) The percentage of compensation to be contributed under subsection (1)(a) is 1% for fiscal year 2014 and increases by 0.1% each fiscal year through fiscal year 2024. For fiscal years beginning after June 30, 2024, the percentage of compensation to be contributed under subsection (1)(a) is 2%.

(c) The board may decrease the employer's supplemental contribution if:

(i) the average funded ratio of the system based on the last three actuarial valuations is equal to or greater than 90%;

(ii) the period necessary to amortize all liabilities of the system based on the most recent annual actuarial valuation is less than 15 years; and

(iii) the guaranteed annual benefit adjustment has been increased to the maximum allowed under 19-20-719.

(d) Following one or more decreases in the supplemental contribution rate pursuant to subsection (1)(c), the board may increase the supplemental contribution to a rate not to exceed 1% if:

(i) the average funded ratio of the system based on the last three annual actuarial valuations is equal to or less than 80%; and

(ii) the period necessary to amortize all liabilities of the system based on the most recent annual actuarial valuation is greater than 20 years.

(2) After the board has actuarially determined the need to impose, increase, or decrease a supplemental contribution rate under this section, the imposition, increase, or decrease is effective on the first day of July following the board's determination.

**History:** En. Sec. 8, Ch. 389, L. 2013.

**19-20-610 through 19-20-620 reserved.**

**19-20-621. Montana university system retirement program supplemental contributions.** (1) Each employer within the university system with employees participating in the university system retirement program under Title 19, chapter 21, shall contribute to the teachers' retirement system a supplemental employer contribution sufficient to amortize,

by July 1, 2033, the past service liability of the teachers' retirement system for the university system members.

(2) The university system retirement program supplemental employer contribution as a percentage of the total compensation of all employees participating in the program is:

(a) 4.04% beginning July 1, 2001, through June 30, 2007; and

(b) 4.72% beginning July 1, 2007.

(3) The board shall periodically review the supplemental employer contribution rate and recommend adjustments to the legislature as needed to maintain the amortization of the university system's past service liability by July 1, 2033.

**History:** En. Sec. 1, Ch. 419, L. 1997; amd. Sec. 7, Ch. 305, L. 2007; amd. Sec. 10, Ch. 282, L. 2013.

**19-20-622. Renumbered 19-20-720.** Sec. 83, Ch. 7, L. 2001.

## **Part 7 Benefits in General**

**19-20-701. Benefits.** (1) The retirement, disability, and other benefits of the retirement system must be granted on the basis of the provisions of this chapter. A member's written application for benefits must include a statement certifying that there has been a bona fide separation from service, including whether there are any intentions to be reemployed with the same employer that would be prohibited under the Internal Revenue Code.

(2) If a member applies for a retirement benefit but dies before receiving the first monthly benefit allowance, benefits must be paid to the joint annuitant or beneficiary designated on the member's written application for a retirement allowance in the manner provided in 19-20-1001. If the member's written application did not include a designation of a joint annuitant or beneficiary, benefits must be paid to the beneficiary of record in the manner provided in 19-20-1001.

**History:** En. 75-6208 by Sec. 103, Ch. 5, L. 1971; amd. Sec. 2, Ch. 57, L. 1971; amd. Sec. 2, Ch. 422, L. 1971; amd. Sec. 4, Ch. 507, L. 1973; amd. Sec. 3, Ch. 26, L. 1975; amd. Sec. 5, Ch. 127, L. 1977; amd. Sec. 5, Ch. 331, L. 1977; amd. Sec. 1, Ch. 443, L. 1977; R.C.M. 1947, 75-6208(1); Sec. 19-4-701, MCA 1991; redes. 19-20-701 by Code Commissioner, 1993; amd. Sec. 8, Ch. 282, L. 2009; amd. Sec. 7, Ch. 59, L. 2011.

**19-20-702. Optional allowances — certain period and life allowances.** (1) Until the first payment on account of any benefit becomes normally due, any member may elect to receive one of the allowances described in subsection (2) or (3) in lieu of the normal form retirement allowance, which is provided for in 19-20-902 and part 8 of this chapter.

(2) An optional allowance is the actuarial equivalent of the member's service retirement or disability retirement allowance at the time of the member's retirement effective date and provides an allowance payable to the member throughout the member's lifetime and, upon the member's death, an allowance payable to the joint annuitant that the member nominated by written application, duly acknowledged and filed with the retirement board at the time of the member's retirement, in accordance with one of the following options:

(a) **Option A**—The optional allowance will be paid to the member throughout the member's lifetime and, upon the member's death, continue throughout the lifetime of the member's joint annuitant.

(b) **Option B**—The optional allowance will be paid to the member throughout the member's lifetime, and upon the member's death, one-half of the optional allowance will continue throughout the lifetime of the member's joint annuitant.

(c) **Option C**—The optional allowance will be paid to the member throughout the member's lifetime, and upon the member's death, two-thirds of the optional allowance will continue throughout the lifetime of the member's joint annuitant.

(d) Upon election of an optional allowance and designation of a joint annuitant, any prior or subsequent designation of a beneficiary by the retired member is void.

(3) (a) In lieu of any other option available in this section, a member may elect to receive one of the following allowances that must be paid over the certain period of time or for the member's lifetime, whichever is greater:

(i) 10 years if the member is 75 years of age or younger at the time of retirement; or

(ii) 20 years if the member is 65 years of age or younger at the time of retirement.

(b) At the time of retirement, the member shall file with the board a written nomination of beneficiaries to receive payments if the member dies before the end of the certain period elected.

Unless limited by a family law order, the nominated beneficiary may be changed by the member at any time by filing with the board a written notice nominating different beneficiaries.

(4) (a) Upon written application to the retirement board, a retired member whose effective date of retirement is before October 1, 1993, and who is receiving an optional retirement allowance may select a different actuarially equivalent optional allowance and designate a different joint annuitant if:

(i) the original joint annuitant has died. The benefit must convert to the normal form retirement allowance effective the first of the month following the death of the joint annuitant.

(ii) the member has been divorced from the original joint annuitant and the original joint annuitant has not been granted the right to receive any ongoing or future distribution of any portion of the retiree's benefits as part of the divorce settlement. The benefit must convert to the normal form retirement allowance effective the first of the month following receipt of a written application and verification that the original joint annuitant has not been granted the right to receive the optional retirement allowance as part of the divorce settlement.

(b) Upon receipt of the written application, the board shall actuarially adjust the member's monthly retirement or disability allowance to reflect the change.

(5) A retired member receiving an optional retirement allowance pursuant to subsection (2)(a), (2)(b), or (2)(c) that is effective after October 1, 1993, may file a written application to select a different actuarially equivalent optional allowance and designate a different joint annuitant or to revert the optional retirement allowance to the normal form retirement allowance available at the time of retirement if:

(a) the original joint annuitant has died. The benefit must revert to the normal form retirement allowance effective the first of the month following the death of the original joint annuitant.

(b) the member has been divorced from the original joint annuitant and the original joint annuitant has not been granted the right to receive any ongoing or future distribution of any portion of the retiree's benefits as part of the divorce settlement. The benefit must revert to the normal form retirement allowance effective the first of the month following receipt of a written application and verification that the original joint annuitant has not been granted the right to receive the optional retirement allowance as part of the divorce settlement.

(6) The normal form retirement allowance available must be increased by the value of any postretirement adjustments received by the member since the effective date of retirement.

(7) The retired member shall file the written application required by subsection (4) or (5) with the board within 18 months of the death or divorce of the joint annuitant.

**History:** En. 75-6208 by Sec. 103, Ch. 5, L. 1971; amd. Sec. 2, Ch. 57, L. 1971; amd. Sec. 2, Ch. 422, L. 1971; amd. Sec. 4, Ch. 507, L. 1973; amd. Sec. 3, Ch. 26, L. 1975; amd. Sec. 5, Ch. 127, L. 1977; amd. Sec. 5, Ch. 331, L. 1977; amd. Sec. 1, Ch. 443, L. 1977; R.C.M. 1947, 75-6208(8); amd. Sec. 1, Ch. 493, L. 1985; amd. Sec. 1, Ch. 9, L. 1993; Sec. 19-4-702, MCA 1991; redes. 19-20-702 by Code Commissioner, 1993; amd. Sec. 15, Ch. 442, L. 1997; amd. Sec. 15, Ch. 111, L. 1999; amd. Sec. 9, Ch. 282, L. 2009; amd. Sec. 8, Ch. 59, L. 2011; amd. Sec. 22, Ch. 210, L. 2015.

**19-20-703. Payments to be monthly.** (1) All retirement allowances must be paid in equal monthly installments.

(2) Except as provided in subsection (5), the retirement allowance may commence:

(a) no earlier than the first day of the month following the member's termination date or on the first day of the month following the date when the member first becomes eligible, whichever date is later; or

(b) if requested by the inactive member in writing:

(i) on the first day of a later month; or

(ii) on the first day of the month following the member's 60th birthday.

(3) Distribution of an inactive member's benefit must begin by the later of the April 1 following the calendar year in which a member attains age 70 1/2 or April 1 of the year following the calendar year in which the member terminates. If a member fails to apply for retirement benefits by the later of either of those dates, the board shall begin distribution of the monthly benefit as provided in 19-20-702(3)(a)(i).

(4) The life expectancy of a member or the member's joint annuitant may not be recalculated after benefits commence.

(5) If a member terminates within 30 days of the last day of the school year, the member is considered to have terminated at the end of the member's contract, and the retirement allowance may not commence earlier than the first day of the month following the last scheduled pupil-instruction day or pupil-instruction-related day as described in 20-1-304, whichever is later.

**History:** En. 75-6201 by Sec. 96, Ch. 5, L. 1971; amd. Sec. 21, Ch. 326, L. 1974; amd. Sec. 1, Ch. 26, L. 1975; amd. Sec. 1, Ch. 127, L. 1977; amd. Sec. 1, Ch. 331, L. 1977; R.C.M. 1947, 75-6201(part); Sec. 19-4-703, MCA 1991; redes. 19-20-703 by Code Commissioner, 1993; amd. Sec. 16, Ch. 442, L. 1997; amd. Sec. 16, Ch. 111, L. 1999; amd. Sec. 10, Ch. 282, L. 2009; amd. Sec. 4, Ch. 298, L. 2009; amd. Sec. 9, Ch. 59, L. 2011.

**19-20-704. Repealed.** Sec. 26, Ch. 111, L. 1999.

**History:** En. 75-6201 by Sec. 96, Ch. 5, L. 1971; amd. Sec. 21, Ch. 326, L. 1974; amd. Sec. 1, Ch. 26, L. 1975; amd. Sec. 1, Ch. 127, L. 1977; amd. Sec. 1, Ch. 331, L. 1977; R.C.M. 1947, 75-6201(part); Sec. 19-4-704, MCA 1991; redes. 19-20-704 by Code Commissioner, 1993.

**19-20-705. Repealed.** Sec. 30, Ch. 210, L. 2015.

**History:** En. 75-6217 by Sec. 112, Ch. 5, L. 1971; amd. Sec. 12, Ch. 127, L. 1977; R.C.M. 1947, 75-6217(2); Sec. 19-4-705, MCA 1991; redes. 19-20-705 by Code Commissioner, 1993; amd. Sec. 19, Ch. 45, L. 2001; amd. Sec. 7, Ch. 174, L. 2003; amd. Sec. 13, Ch. 90, L. 2007; amd. Sec. 10, Ch. 59, L. 2011.

**19-20-706. Exemption from taxation and legal process.** Except as provided in 19-20-305 and 19-20-306, the retirement allowances or any other benefits accrued or accruing to any person under the provisions of the retirement system and the accumulated contributions and cash and securities in the various funds of the retirement system are:

- (1) exempted from any state, county, or municipal tax of the state of Montana except for:
  - (a) a retirement allowance received in excess of the amount determined pursuant to 15-30-2110(2)(c); or
  - (b) a withdrawal paid under 19-20-603 of a member's contributions picked up by an employer after June 30, 1985, as provided in 19-20-602;
- (2) not subject to execution, garnishment, attachment by trustee process or otherwise, in law or equity, or any other process; and
- (3) unassignable except as specifically provided in this chapter.

**History:** En. 75-6215 by Sec. 110, Ch. 5, L. 1971; R.C.M. 1947, 75-6215; amd. Sec. 8, Ch. 464, L. 1985; amd. Sec. 25, Ch. 83, L. 1989; amd. Sec. 7, Ch. 823, L. 1991; amd. Sec. 3, Ch. 259, L. 1993; Sec. 19-4-706, MCA 1991; redes. 19-20-706 by Code Commissioner, 1993; amd. Sec. 6, Ch. 111, L. 1995; amd. Sec. 17, Ch. 442, L. 1997; amd. Sec. 19, Ch. 552, L. 1997; amd. Sec. 6, Ch. 382, L. 2009.

**19-20-707. Repealed.** Sec. 26, Ch. 111, L. 1999.

**History:** (1)En. 75-6208 by Sec. 103, Ch. 5, L. 1971; amd. Sec. 2, Ch. 57, L. 1971; amd. Sec. 2, Ch. 422, L. 1971; amd. Sec. 4, Ch. 507, L. 1973; amd. Sec. 3, Ch. 26, L. 1975; amd. Sec. 5, Ch. 127, L. 1977; amd. Sec. 5, Ch. 331, L. 1977; amd. Sec. 1, Ch. 443, L. 1977; Sec. 75-6208, R.C.M. 1947; (2)En. 75-6207.1 by Sec. 2, Ch. 443, L. 1977; Sec. 75-6207.1, R.C.M. 1947; R.C.M. 1947, 75-6207.1, 75-6208(3)(c); amd. Sec. 9, Ch. 464, L. 1985; Sec. 19-4-707, MCA 1991; redes. 19-20-707 by Code Commissioner, 1993.

**19-20-708. Repealed.** Sec. 26, Ch. 111, L. 1999.

**History:** En. Sec. 1, Ch. 658, L. 1985; Sec. 19-4-708, MCA 1991; redes. 19-20-708 by Code Commissioner, 1993.

**19-20-709. Repealed.** Sec. 26, Ch. 111, L. 1999.

**History:** En. Sec. 2, Ch. 658, L. 1985; Sec. 19-4-709, MCA 1991; redes. 19-20-709 by Code Commissioner, 1993.

**19-20-710. Maximum benefit limitation.** A monthly benefit paid under the retirement system provided for in this chapter may not exceed the annual limits on benefits as specified in section 415 of the Internal Revenue Code as adjusted for cost-of-living increases for calendar years 1988 and succeeding years. However, benefits in excess of those limits may be paid from a qualified governmental excess benefit arrangement subject to 19-20-212.

**History:** En. Sec. 1, Ch. 14, L. 1987; Sec. 19-4-710, MCA 1991; redes. 19-20-710 by Code Commissioner, 1993; amd. Sec. 17, Ch. 111, L. 1999; amd. Sec. 8, Ch. 174, L. 2003.

**19-20-711. Repealed.** Sec. 6, Ch. 360, L. 1999.

**History:** En. Sec. 1, Ch. 115, L. 1989; Sec. 19-4-711, MCA 1991; redes. 19-20-711 by Code Commissioner, 1993; amd. Sec. 18, Ch. 442, L. 1997.



**19-20-712. Repealed.** Sec. 6, Ch. 360, L. 1999.

History: En. Sec. 2, Ch. 115, L. 1989; Sec. 19-4-712, MCA 1991; redes. 19-20-712 by Code Commissioner, 1993; amd. Sec. 19, Ch. 442, L. 1997.

**19-20-713. Repealed.** Sec. 6, Ch. 360, L. 1999.

History: En. Sec. 3, Ch. 115, L. 1989; Sec. 19-4-713, MCA 1991; redes. 19-20-713 by Code Commissioner, 1993; amd. Sec. 20, Ch. 442, L. 1997.

**19-20-714. Repealed.** Sec. 6, Ch. 360, L. 1999.

History: En. Sec. 1, Ch. 530, L. 1993.

**19-20-715. Earned compensation — limitations.** (1) Compensation in excess of the limitations set forth in section 401(a)(17) of the Internal Revenue Code as adjusted for cost-of-living increases must be disregarded for individuals who are not eligible employees. The limitation on compensation for eligible employees may not be less than the amount that was allowed to be taken into account under this chapter on July 1, 1993. For purposes of this section, an eligible employee is an individual who was a member in the retirement system prior to July 1, 1996. Any changes in the maximum limits under section 401(a)(17) of the Internal Revenue Code must be applied prospectively.

(2) (a) The earned compensation reported in each year that is used to make up the average final compensation may not be greater than 110% of the previous year's reported earned compensation, not including increases that result from movement on the employer's adopted salary matrix.

(b) Earned compensation in excess of the amount specified in subsection (2)(a) is considered termination pay and must be included in the calculation of average final compensation as provided in 19-20-716(1)(b).

History: En. Sec. 8, Ch. 111, L. 1995; amd. Sec. 21, Ch. 442, L. 1997; amd. Sec. 9, Ch. 174, L. 2003; amd. Sec. 11, Ch. 59, L. 2011; amd. Sec. 9, Ch. 151, L. 2011; amd. Sec. 23, Ch. 210, L. 2015.

**19-20-716. Termination pay.** (1) If a member terminates and receives termination pay at the time of retirement, the member shall select, subject to subsections (4) and (5), one of the following options:

(a) Option 1—The member may use the total termination pay in the calculation of the member's average final compensation. The member and the employer shall pay contributions to the retirement system as determined by the board to adequately compensate the system for the additional retirement benefit. The contributions must be made at the time of termination.

(b) Option 2—The member may use a yearly amount of the total termination pay added to each of the consecutive years' salary used in the calculation of the member's average final compensation under 19-20-805. To determine the amount of termination pay used in the calculation of average final compensation, termination pay must be divided by the total number of years of creditable service to determine a yearly amount. The member and the employer shall pay contributions on the termination pay according to the rates provided for in 19-20-602, 19-20-605(1), 19-20-608, and 19-20-609. For the purposes of this subsection (1)(b), the employer shall also pay as a contribution an amount equal to the termination pay multiplied by the rate established in 19-20-607 that would have been payable by the state as a supplemental contribution. The contributions must be made at the time of termination.

(c) Option 3—The member may exclude the termination pay from the average final compensation. A contribution is not required of either the member or the employer.

(2) If a member signs a binding, irrevocable written election for either an option 1 or option 2 benefit at least 90 days prior to the member's termination date, the employee contributions required by this section must be picked up by the employer. The binding, irrevocable written election required by this subsection (2) must be signed by both the member and the employer and must contain statements with regard to the contributions required to be made by the member under subsections (1)(a) and (1)(b) that:

(a) the contributions being picked up, although designated as member contributions, are being paid by the employer directly to the system in lieu of contributions by the member and that the picked up contributions are paid from the same source as compensation is paid;

(b) the member may not choose to directly receive the amounts deducted from the member's termination pay instead of having them paid by the employer to the system;

(c) the member may not prepay any portion of the contributions; and  
(d) the effective date of the pickup is the date that the irrevocable written election is signed by both the member and employer. The effective date must be at least 90 days prior to the member's date of termination. The pickup does not apply to a contribution made before the effective date of the pickup.

(3) Pursuant to subsection (2), contributions required under subsection (1)(a) or (1)(b) must be:

(a) deducted from the portion of termination pay that:  
(i) constitutes wages for the purposes of section 3121 of the Internal Revenue Code, determined without regard to the wage base limitation; and  
(ii) can be included in the member's gross income for federal tax purposes; and  
(b) picked up by the employer, except as provided in subsections (4) and (5).  
(4) A member's contributions greater than the total amount of the member's termination pay may not be picked up by the employer and are subject to the limitations of section 415 of the Internal Revenue Code.

(5) If a member and the member's employer fail to sign the written election within the time period required in subsection (1), the member may contribute for the purposes specified in subsections (1)(a) and (1)(b) on all or any part of the termination pay received. A contribution made pursuant to this subsection may not be picked up by the employer and is subject to the limitations of section 415 of the Internal Revenue Code.

**History:** En. Sec. 2, Ch. 442, L. 1997; amd. Sec. 18, Ch. 111, L. 1999; amd. Sec. 20, Ch. 45, L. 2001; amd. Sec. 10, Ch. 320, L. 2005; amd. Sec. 14, Ch. 90, L. 2007; amd. Sec. 8, Ch. 305, L. 2007; amd. Sec. 4, Ch. 366, L. 2013; amd. Sec. 10, Ch. 389, L. 2013; amd. Sec. 24, Ch. 210, L. 2015.

**19-20-717. Effect of no designation or no surviving beneficiary or joint annuitant.**

(1) If a beneficiary is not designated or if no designated beneficiary or joint annuitant survives the member or retired member, the estate of the member or retired member is the beneficiary and is entitled to any lump-sum payment or retirement benefit accrued but not received prior to the death of the member or retired member. If the estate would not be probated but for the amount due from the retirement system, all of the amount due must be paid directly, without probate, to the surviving next of kin of the deceased or to the personal representative or executor of the survivor's estate.

(2) Payment must be made in the same order in which the following groups are listed:

- (a) husband or wife;
- (b) children;
- (c) father and mother;
- (d) grandchildren;
- (e) brothers and sisters; or
- (f) nieces and nephews.

(3) A payment may not be made to a person included in any of the groups listed in subsection (2) if at the date of payment there is a living person in any of the groups preceding the group of which the person is a member, as listed. Payment must be made upon receipt from the person of an affidavit, upon a form supplied by the system, that there are no living individuals in the groups preceding the group of which the person is a member and that the estate of the deceased will not be probated.

(4) The payment must be in full and complete discharge and acquittance of the board and system on account of the member's or payment recipient's death.

**History:** En. Sec. 4, Ch. 442, L. 1997; amd. Sec. 15, Ch. 90, L. 2007; amd. Sec. 12, Ch. 59, L. 2011.

**19-20-718. Maximum contribution limitation.** (1) Notwithstanding any other provision of law to the contrary, the board may modify a request by a participant to make a contribution to the system required under part 4 or 6 of this chapter that would exceed the limits in section 415(c) or 415(n) of the Internal Revenue Code by using the following methods:

(a) The board may establish a periodic payment plan in order to avoid a contribution in excess of the limits of section 415(c) or 415(n) of the Internal Revenue Code.

(b) If the board's option in subsection (1)(a) will not avoid a contribution in excess of the limits in section 415(c) of the Internal Revenue Code, the board may direct the excess contribution to the qualified governmental excess benefit arrangement pursuant to section

415(m) of the Internal Revenue Code if a qualified governmental excess benefit arrangement has been established pursuant to 19-20-212.

(2) If the board's options in subsections (1)(a) and (1)(b) will not avoid a contribution in excess of the limits of section 415(c) of the Internal Revenue Code, the board shall reduce or refuse the contribution.

(3) The board shall use the provisions of section 415(n) of the Internal Revenue Code, as the provisions apply to a government plan, to facilitate member's service purchases. An eligible participant in a retirement plan, as defined by section 1526 of the Taxpayer Relief Act of 1997, 26 U.S.C. 415, may purchase service credit without regard to the limitations of section 415(c)(1) of the Internal Revenue Code under the Montana statutes in effect on August 5, 1997.

(4) (a) For the purpose of calculating the maximum contribution under section 415 of the Internal Revenue Code, the definitions of "compensation", "wages", and "salary" include the amount of any elective deferral, as defined in section 402(g) of the Internal Revenue Code, or any contribution that is contributed or deferred by the employer at the election of the member and that is not includable in the gross income of the member by reason of section 125, 132(f), 403(b), or 457 of the Internal Revenue Code. Any changes in the maximum limits under section 415 of the Internal Revenue Code must be applied prospectively.

(b) For limitation years beginning after December 31, 2000, compensation must also include any elective amounts that are not able to be included in the gross income of the member by reason of section 132(f)(4) of the Internal Revenue Code.

(c) For limitation years beginning on and after September 1, 2009, compensation for the limitation year must also include compensation paid by the later of 2.5 months after a member's severance from employment or the end of the limitation year that includes the date of the member's severance from employment if:

(i) the payment is regular compensation for services during the member's regular working hours or compensation for services outside the member's regular working hours, such as overtime or shift differential, commissions, bonuses, or other similar payments, and absent a severance from employment, the payments would have been paid to the member while the member continued in employment with the employer; or

(ii) the payment is for unused accrued sick, vacation, or other leave that the member would have been able to use if employment had continued.

(d) For limitation years beginning on or after September 1, 2009, a member's compensation for purposes of this section may not exceed the annual limit under section 401(a)(17) of the Internal Revenue Code.

(e) Beginning January 1, 2009, to the extent required by section 414(u)(12) of the Internal Revenue Code, 26 U.S.C. 414(u)(12), a member receiving from an employer differential wage payments as defined under section 3401(h)(2) of the Internal Revenue Code, 26 U.S.C. 3401(h)(2), must be treated as employed by that employer. The differential wage payments must be treated as compensation for purposes of applying the limits on annual additions under section 415(c) of the Internal Revenue Code, 26 U.S.C. 415(c). This provision must be applied to all similarly situated employees in an equivalent manner.

**History:** En. Sec. 19, Ch. 111, L. 1999; amd. Sec. 10, Ch. 174, L. 2003; amd. Sec. 11, Ch. 320, L. 2005; amd. Sec. 11, Ch. 282, L. 2009; amd. Sec. 25, Ch. 210, L. 2015.

**19-20-719. Guaranteed annual benefit adjustment — rulemaking.** (1) On January 1 of each year, the retirement allowance payable to each tier one member or benefit recipient of a tier one member who is eligible under subsection (3) must be increased by the amount provided in either subsection (1)(a) or (1)(b) as follows:

(a) if the most recent actuarial valuation of the retirement system shows that retirement system liabilities are less than 90% funded, 0.5%; or

(b) if the most recent actuarial valuation of the retirement system shows that retirement system liabilities are at least 90% funded and the provision of the increase is not projected to cause the system's liabilities to be less than 85% funded, an amount greater than 0.5% but no more than 1.5%, as set by the retirement board.

(2) On January 1 of each year, the retirement allowance payable to each tier two member or benefit recipient of a tier two member who is eligible under subsection (3) must, if the most recent actuarial valuation of the retirement system shows that retirement system liabilities

are at least 90% funded and the provision of the increase is not projected to cause the system's liabilities to be less than 85% funded, be increased by an amount equal to or greater than 0.5% but no more than 1.5%, as set by the retirement board.

(3) A benefit recipient is eligible for and must receive the annual benefit adjustment provided for in this section if at least 36 monthly retirement benefit payments have been made prior to January 1 of the year in which the adjustment is to be made.

**History:** En. Sec. 1, Ch. 360, L. 1999; amd. Sec. 20, Ch. 149, L. 2001; amd. Sec. 11, Ch. 174, L. 2003; amd. Sec. 9, Ch. 285, L. 2007; amd. Sec. 9, Ch. 305, L. 2007; amd. Sec. 11, Ch. 389, L. 2013.

**19-20-720. Repealed.** Sec. 21, Ch. 59, L. 2011.

**History:** En. Sec. 5, Ch. 360, L. 1999; amd. Sec. 19, Ch. 149, L. 2001; Sec. 19-20-622, MCA 1999; redes. 19-20-720 by Sec. 83, Ch. 7, L. 2001.

**19-20-721. Designation of beneficiary.** (1) Except as otherwise provided in this chapter, each member shall file with the board a written election designating a beneficiary who may be eligible to receive the benefit provided pursuant to this chapter. The board shall provide a form that may be used for this purpose. A member may revoke the written election and designate a different beneficiary by filing a new form for this purpose with the board.

(2) A beneficiary who renounces an interest in the right to a payment of a benefit will be considered, for the purposes of further payment by the board of a renounced interest, to have predeceased the member or beneficiary.

**History:** En. Sec. 21, Ch. 45, L. 2001; amd. Sec. 13, Ch. 59, L. 2011.

**19-20-722 through 19-20-730 reserved.**

**19-20-731. Postretirement employment limitations — cancellation and recalculation of benefits — reporting obligation of retired member.** (1) (a) Except as provided in 19-20-732 or as otherwise provided in this section, a retired member may be employed in a position that is reportable to the retirement system and may earn, without an adjustment of retirement benefits, an amount not to exceed the greater of:

(i) one-third of the sum of the member's average final compensation; or

(ii) one-third of the median of the average final compensation for members retired during the preceding fiscal year as determined by the retirement board.

(b) The maximum compensation that a retired member may earn under subsection (1)(a) without an adjustment of retirement benefits includes all amounts paid to or on behalf of the retired member and the value of all benefits provided to or on behalf of the retired member by the employer, including any amounts deferred for payment to a later year, excluding:

(i) health insurance premiums directly paid by the employer on the retired member's behalf for health care coverage provided by the employer;

(ii) the value of housing provided by the employer to the retired member;

(iii) the amount of employment-related travel expenses reimbursed to the retired member by the employer;

(iv) de minimis fringe benefits, as defined in 26 U.S.C. 132(e), paid by the employer to or on behalf of the retired member; and

(v) payroll taxes paid by the employer on behalf of the retired member.

(c) A member applying for a retirement allowance or resumption or recalculation of a retirement allowance based on a termination date of January 1, 2014, or later is required to complete the break-in-service period set forth in 19-20-734 before the retired member may be employed in a position reportable to the retirement system.

(2) On July 1 of each year following the member's retirement effective date, the maximum that a retired member may earn under subsection (1)(a)(i) is increased by an amount equal to the consumer price index increase for urban wage earners compiled by the bureau of labor statistics of the United States department of labor or its successor agency in the preceding calendar year.

(3) Except as provided in 19-20-732, the retirement benefit of a retired member:

(a) employed and earning more than allowed by subsections (1) and (2) must be temporarily reduced by \$1 for each dollar earned over the maximum allowed. Monthly benefits must be reduced beginning as soon as practical after the excess earnings have been reported to the retirement system by the employer. The retirement benefit must be suspended if the retired member's earnings over the maximum allowed exceed the gross monthly benefit amount.



(b) employed in one or more part-time positions under one or more contracts providing for an aggregate payment of a total amount that is more than the maximum allowed must be suspended effective on the date on which the retired member returns to employment.

(4) For purposes of this section, the term “employed in a position that is reportable to the retirement system” includes any work performed or service provided by a retired member to or on behalf of an employer, including but not limited to work performed or service provided through a professional employer arrangement, an employee leasing arrangement, as a temporary service contractor, or as an independent contractor.

(5) For purposes of this section, the employment status and maximum compensation of a retired member who is employed in more than one position or under more than one contract, whether with one employer or more than one employer, is the aggregate full-time equivalency and compensation derived from all positions reportable to the retirement system in which the retired member is employed.

(6) Within 30 days of the date of the execution of an agreement for the employment of a retired member or of the first date on which the retired member provides services if no agreement is entered into, the retired member shall provide written notice of the postretirement employment to the retirement system.

(7) For purposes of this section, if a retired member is employed by an employer in a position that is reportable to the retirement system and the retired member is concurrently working for the employer in another position that is not reportable to the system, the position that is not reportable is considered to be part of the position that is reportable to the retirement system. All earnings of the retired member that are generated by these positions are reportable to the retirement system.

(8) The retirement allowance of any retired member who is employed in a position and who elects to participate in the university system retirement program under Title 19, chapter 21, must be suspended until the member is no longer employed in the position and is no longer participating in the university system retirement program.

**History:** En. Sec. 14, Ch. 320, L. 2005; amd. Sec. 16, Ch. 90, L. 2007; amd. Sec. 10, Ch. 305, L. 2007; amd. Sec. 9, Ch. 298, L. 2009; amd. Sec. 14, Ch. 59, L. 2011; amd. Sec. 10, Ch. 151, L. 2011; amd. Sec. 1, Ch. 238, L. 2013; amd. Sec. 11, Ch. 282, L. 2013.

**19-20-732. Reemployment of certain retired teachers, specialists and administrators — procedure — definitions.** (1) Subject to the provisions of this section:

(a) a teacher, specialist, or administrator who has been receiving a retirement allowance for no less than 2 months, except a disability retirement allowance pursuant to part 9 of this chapter, may be employed on a full-time basis by an employer for a maximum of 3 years during the lifetime of the retired member without the loss or interruption of any payments or retirement benefits if:

- (i) the retired member completed 30 or more years of creditable service prior to retirement;
- (ii) the retired member holds a valid certificate pursuant to the provisions of 20-4-106; and

(iii) each year, prior to employing a retired member, the employer certifies to the office of public instruction and to the retirement board that after having advertised the position for that year the employer has been unable to fill the position because the employer either has received no qualified applications or has not received an acceptance of an offer of employment made to a nonretired teacher, specialist, or administrator;

(b) the employer certification required by this section must include the retired member’s name and social security number and a copy of the proposed contract of employment for the retired member;

(c) upon receipt of the employer’s certification and of the proposed contract of employment, the retirement board shall verify whether the retired member meets the requirements of subsection (1)(a)(i) and shall notify the employer and the retired member of its findings;

(d) a retired member reemployed under this section is ineligible for active membership under 19-20-302 and is ineligible to receive service credit under any retirement system identified in Title 19; and

(e) the retirement board shall report to the appropriate committee each legislative session regarding the implementation of and results arising from this section.



(2) An employer employing a retired member pursuant to this section shall contribute monthly to the retirement system an amount equal to the sum of the contribution rates required by 19-20-602, 19-20-604, 19-20-605, 19-20-607, 19-20-608, and 19-20-609.

(3) A retired member reemployed pursuant to this section is exempt from the earnings and employment limits provided in 19-20-731.

(4) If reemployed in a position covered by a collective bargaining agreement pursuant to Title 39, chapter 31, the retired member is subject to all the terms and conditions of the agreement and is entitled to all the benefits and protections of the agreement.

(5) The board may adopt rules to implement this section.

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

(a) "Employer" means a school district as defined in 20-6-101 and 20-6-701.

(b) "Year" means all or any part of a school year.

**History:** En. Sec. 1, Ch. 129, L. 2009; amd. Sec. 12, Ch. 389, L. 2013.

**19-20-733. Resumption of employment by retired member — suspension of benefits.** Except as provided in 19-20-732, and subject to 19-20-734, the following provisions apply:

(1) If a retired member returns to employment in a position covered by the retirement system and becomes an active contributing member, benefits must be suspended until the member terminates all employment and applies to have benefits reinstated.

(2) Upon termination and retirement of a previously retired member who was reinstated to active membership pursuant to 19-20-731 before July 1, 2009:

(a) if the member earned less than 1 year of creditable service, the original benefit and retirement option that the member was receiving at the time of suspension of benefits must be reinstated beginning either the first of the month following termination or on July 1 following the date on which the retired member was reemployed, whichever is later; or

(b) if the member earned 1 year or more of creditable service, retirement benefits must be recalculated under 19-20-804 if the member would qualify for a service retirement benefit under 19-20-801 or under 19-20-802 if the member is eligible for early retirement. The recalculated benefit must include the service credit accumulated at the time of the member's previous retirement, plus any service credit accumulated subsequent to reemployment. The recalculated benefit amount must be increased by the amount of any benefit enhancement received pursuant to 19-20-719 that the retired member was receiving when the member's benefits were suspended.

(3) (a) Except as provided in subsection (3)(c), upon the subsequent retirement of a formerly retired member who was reinstated to active membership pursuant to 19-20-731 on or after July 1, 2009, and earned:

(i) at least 3 years of membership service following suspension of benefits, the member is entitled to resume receiving the suspended benefit in accordance with the retirement benefit option and joint annuitant previously selected, plus an additional benefit based upon the new creditable service and compensation earned. The second benefit must be calculated as provided under 19-20-804 if the member is eligible for a service retirement benefit or under 19-20-802 if the member is eligible for early retirement. The second benefit must be paid under the same retirement benefit option and with the same joint annuitant originally elected.

(ii) less than 3 years of membership service following suspension of benefits, the member is entitled to resume receiving the suspended benefit in accordance with the retirement benefit option previously selected, plus a refund of the employee contributions contributed after the member was reinstated to active service, plus interest.

(b) If a member dies during the period of reemployment following an initial retirement, the member must be considered as retiring on the day preceding the date of death and benefits must be determined according to the following:

(i) If the member elected the normal form benefit prior to reemployment, the member's designated beneficiary must receive an amount equal to the member's accumulated contributions on deposit.

(ii) If the member elected a retirement option pursuant to 19-20-702 prior to reemployment, the benefits due are payable in accordance with the terms of the original option elected and subsection (3).

(c) If the joint annuitant nominated prior to the member's reemployment under retirement option A, B, or C dies prior to the member reretiring, the member will be given the option to select either the normal form retirement benefit or a retirement option as provided in 19-20-702.

**History:** En. Secs. 1, 7, Ch. 298, L. 2009; amd. Sec. 15, Ch. 59, L. 2011; amd. Sec. 12, Ch. 366, L. 2013.

**19-20-734. Break-in-service requirements.** (1) Except as provided in 19-20-732 and subsection (2) of this section, a retired member who first applies for retirement benefits or applies for resumed or recalculated retirement benefits pursuant to 19-20-733 based on a date of termination of January 1, 2014, or later may not be employed in a position reportable to the retirement system pursuant to 19-20-731 until the employee has a break in service of 150 calendar days commencing on the first day following the member's date of termination.

(2) A retired member may be employed by an employer during the break-in-service period only if:

(a) the retired member:

(i) is employed as a substitute classroom teacher to carry on the duties of a regular, licensed teacher who is temporarily absent;

(ii) performs the service after attaining retired member status; and

(iii) performs the service for no more than 45 days during the break-in-service period; or

(b) the retired member continues employment in a position in which the retired member was appropriately reported to the public employees' retirement system prior to and at the time of retirement with the teachers' retirement system.

(3) If a retired member is employed in a position reportable to the retirement system in violation of this section:

(a) the retired member must be returned to active member status with the retirement system retroactive to the member's date of retirement or the date of resumption of retirement benefits, whichever is later, and the member's retirement benefits must be terminated;

(b) the member shall repay all retirement benefits received in violation of this section, plus interest at the actuarially assumed rate; and

(c) the member and the employer shall pay to the retirement system contributions on all earned compensation paid to the member for service performed during the break-in-service period, plus interest at the actuarially assumed rate.

(4) For purposes of this section, the term "employed in a position reportable to the retirement system" includes any work performed or service provided by a retired member to or on behalf of an employer, including but not limited to work performed or service provided through a professional employer arrangement, an employee leasing arrangement, as a temporary service contractor, or as an independent contractor.

**History:** En. Sec. 2, Ch. 238, L. 2013.

## Part 8 Superannuation Retirement

**19-20-801. Eligibility for service retirement.** (1) A tier one member is eligible to receive a service retirement allowance calculated under 19-20-804(1) if the member:

(a) has been credited with at least 5 full years of creditable service and has attained the age of 60; or

(b) has been credited with full-time or part-time creditable service in 25 or more years.

(2) Except as provided in subsection (3), a tier two member is eligible to receive a service retirement allowance calculated under 19-20-804(1) if the member:

(a) has been credited with at least 5 full years of creditable service and has attained the age of 60; or

(b) has been credited with full-time or part-time creditable service in 30 or more years and has attained the age of 55.

(3) A tier two member who has been credited with 30 or more years of creditable service and has attained the age of 60 is eligible for a professional retirement option allowance calculated under 19-20-804(2).

(4) To receive a retirement allowance under 19-20-804, the member must have terminated employment in all positions reportable to the retirement system and must file a written application with the retirement board.

(5) A vested member who has attained normal retirement age has a nonforfeitable right to the benefits accrued and payable under the provisions of this chapter, subject to the member's right to withdraw the member's accumulated contributions under 19-20-603.

**History:** En. 75-6208 by Sec. 103, Ch. 5, L. 1971; amd. Sec. 2, Ch. 57, L. 1971; amd. Sec. 2, Ch. 422, L. 1971; amd. Sec. 4, Ch. 507, L. 1973; amd. Sec. 3, Ch. 26, L. 1975; amd. Sec. 5, Ch. 127, L. 1977; amd. Sec. 5, Ch. 331, L. 1977; amd. Sec. 1, Ch. 443, L. 1977; R.C.M. 1947, 75-6208(2)(a); amd. Sec. 3, Ch. 527, L. 1983; Sec. 19-4-801, MCA 1991; redes. 19-20-801 by Code Commissioner, 1993; amd. Sec. 22, Ch. 442, L. 1997; amd. Sec. 20, Ch. 111, L. 1999; amd. Sec. 13, Ch. 366, L. 2013.

**19-20-802. Early retirement.** (1) (a) A vested tier one member who is not eligible for service retirement but has attained the age of 50 is eligible for an early retirement allowance.

(b) A vested tier two member who is not eligible for service retirement but has attained the age of 55 is eligible for an early retirement allowance.

(2) A member retiring early under subsection (1) must have terminated employment in all positions reportable to the retirement system and must file a written application with the retirement board.

(3) The early retirement allowance must be determined as prescribed in 19-20-804, with the exception that the allowance will be reduced using actuarially equivalent factors based on the most recent actuarial valuation of the system.

**History:** En. 75-6208 by Sec. 103, Ch. 5, L. 1971; amd. Sec. 2, Ch. 57, L. 1971; amd. Sec. 2, Ch. 422, L. 1971; amd. Sec. 4, Ch. 507, L. 1973; amd. Sec. 3, Ch. 26, L. 1975; amd. Sec. 5, Ch. 127, L. 1977; amd. Sec. 5, Ch. 331, L. 1977; amd. Sec. 1, Ch. 443, L. 1977; R.C.M. 1947, 75-6208(3)(d); amd. Sec. 1, Ch. 396, L. 1981; amd. Sec. 7, Ch. 549, L. 1981; amd. Sec. 4, Ch. 527, L. 1983; Sec. 19-4-802, MCA 1991; redes. 19-20-802 by Code Commissioner, 1993; amd. Sec. 21, Ch. 111, L. 1999; amd. Sec. 12, Ch. 320, L. 2005; amd. Sec. 11, Ch. 151, L. 2011; amd. Sec. 14, Ch. 389, L. 2013; amd. Sec. 26, Ch. 210, L. 2015.

**19-20-803 reserved.**

**19-20-804. Allowance for service retirement — professional retirement option allowance — creditable service limitation.** (1) Upon termination, a tier one or tier two member who qualifies for benefits pursuant to 19-20-801(1) or (2) must receive a retirement allowance equal to one-sixtieth of the member's average final compensation, as limited by 19-20-715, multiplied by the sum of the number of years of creditable service.

(2) (a) Upon termination, a tier two member who qualifies for benefits pursuant to 19-20-801(3) must receive a professional retirement option allowance equal to 1.85% of the member's final average compensation, as limited by 19-20-715, multiplied by the sum of the member's years of creditable service.

(b) For the purpose of calculating the professional retirement option, creditable service does not include:

(i) service credited before the member became a tier two member even if the member redeposits the member's withdrawn contributions pursuant to 19-20-427; or

(ii) service credit transferred under 19-20-409.

**History:** En. 75-6208 by Sec. 103, Ch. 5, L. 1971; amd. Sec. 2, Ch. 57, L. 1971; amd. Sec. 2, Ch. 422, L. 1971; amd. Sec. 4, Ch. 507, L. 1973; amd. Sec. 3, Ch. 26, L. 1975; amd. Sec. 5, Ch. 127, L. 1977; amd. Sec. 5, Ch. 331, L. 1977; amd. Sec. 1, Ch. 443, L. 1977; R.C.M. 1947, 75-6208(2)(d), (3)(a), (3)(b); amd. Sec. 6, Ch. 549, L. 1981; amd. Sec. 1, Ch. 443, L. 1983; amd. Sec. 8, Ch. 113, L. 1989; Sec. 19-4-804, MCA 1991; redes. 19-20-804 by Code Commissioner, 1993; amd. Sec. 23, Ch. 442, L. 1997; amd. Sec. 22, Ch. 111, L. 1999; amd. Sec. 22, Ch. 45, L. 2001; amd. Sec. 2, Ch. 120, L. 2003; amd. Sec. 4, Ch. 402, L. 2003; amd. Sec. 13, Ch. 320, L. 2005; amd. Sec. 13, Ch. 282, L. 2009; amd. Sec. 15, Ch. 389, L. 2013.

**19-20-805. Calculation of average final compensation.** (1) Except as limited by this section, average final compensation is calculated by averaging the earned compensation paid to:

(a) a tier one member in 3 consecutive fiscal years of full-time service that yields the highest average; or

(b) a tier two member in 5 consecutive fiscal years of full-time service that yields the highest average.

(2) (a) The earned compensation of a tier one member who retires under 19-20-802, 19-20-804, or 19-20-902 and has less than 3 consecutive years of full-time service during the 5 years immediately preceding the member's termination is the compensation that the member

would have earned in the 3 years used to calculate average final compensation had the member's part-time service during the 5 years preceding termination been full-time service.

(b) The earned compensation of a tier two member who retires under 19-20-802, 19-20-804, or 19-20-902 and has less than 5 consecutive years of full-time service during the 7 years immediately preceding the member's termination is the compensation that the member would have earned in the 5 years used to calculate average final compensation had the member's part-time service during the 7 years preceding termination been full-time service.

(3) To determine the compensation that the member would have earned under subsection (2), the compensation reported must be divided by the part-time service credited to the member's account.

(4) (a) Subject to subsection (4)(b), if a member has transferred service from the public employees' retirement system as provided under 19-20-409 and does not have 3 consecutive years of full-time service if a tier one member or 5 consecutive years of full-time service if a tier two member reported to the teachers' retirement system, the member's average final compensation must be calculated as follows:

(i) if the member's part-time service credit in the public employees' retirement system plus the member's part-time service credit in the teachers' retirement system equals 1 year in any of the fiscal years used in determining average final compensation, then the member's annual salary for that fiscal year must be the member's salary as a member of the public employees' retirement system plus the member's salary as a member of the teachers' retirement system; or

(ii) if the member's part-time service credit in the public employees' retirement system plus the member's part-time service credit in the teachers' retirement system equals less than 1 year in any of the fiscal years used to determine average final compensation, then the member's part-time salary as a member of the public employees' retirement system plus the member's part-time salary as a member of the teachers' retirement system must be divided by the sum of the member's part-time teachers' retirement system service credit and the member's part-time public employees' retirement system service credit.

(b) Compensation reported to the public employees' retirement system used to calculate average final compensation must be adjusted to exclude any compensation that would be considered termination pay under this chapter.

**History:** En. Sec. 1, Ch. 442, L. 1997; amd. Sec. 12, Ch. 174, L. 2003; amd. Sec. 17, Ch. 90, L. 2007; amd. Sec. 16, Ch. 59, L. 2011; amd. Sec. 8, Ch. 366, L. 2013; amd. Sec. 16, Ch. 389, L. 2013; amd. Sec. 5, Ch. 39, L. 2017.

#### **Compiler's Comments**

*2017 Amendment:* Chapter 39 deleted former (5) that read: "(5) (a) If the benefits excluded from earned compensation pursuant to 19-20-101(8)(b) have been converted by an employer to earned compensation for all members and have been continuously reported as earned compensation in a like amount for at least 5 fiscal years preceding a member's retirement, the converted benefit amounts must be included in the calculation of average final compensation.

(b) If benefits have been converted to earned compensation as described in subsection (5)(a) but have been reported as earned compensation for less than 5 fiscal years or if the member has been given the option to have benefits converted to earned compensation, any converted benefits reported as earned compensation in the 3 years used to calculate average final compensation may be included in the calculation of average final compensation only as termination pay under 19-20-716(1)(b)." Amendment effective July 1, 2017.

**19-20-806. Terminated.** Sec. 6, Ch. 120, L. 2003.

**History:** En. Sec. 1, Ch. 120, L. 2003; amd. Sec. 15, Ch. 320, L. 2005.

**19-20-807 through 19-20-809 reserved.**

**19-20-810. Termination of employment — retired member status — certification of termination date.** (1) A member shall terminate employment in all positions reportable to the retirement system to be eligible for service retirement under 19-20-801, early retirement under 19-20-802, disability retirement under 19-20-901, or withdrawal of the member's accumulated contributions under 19-20-603.

(2) Except as provided in subsections (3) and (4), a member has terminated employment in a position reportable to the retirement system when the employment relationship with the employer has been fully and completely severed and all, if any, payments due upon termination of employment, including but not limited to payment of accrued sick and annual leave balances, have been paid to the member.

(3) (a) A member who has not attained normal retirement age has not terminated employment in a position reportable to the retirement system if the member and the employer have a prearranged agreement for postretirement service.

(b) For purposes of this subsection (3), a “prearranged agreement for postretirement service” means an oral or written agreement between a member and an employer made before the member attains retired member status for the member to provide service or perform work, in any capacity, on behalf of the employer in the future.

(4) A member has not terminated employment in a position reportable to the retirement system if the member provides any service or performs any work, in any capacity, on behalf of the employer after the certified date of termination but prior to attaining retired member status.

(5) A member must be in retired member status before the member is eligible to be employed as a working retiree pursuant to 19-20-731. Service provided by a member in a position reportable to the retirement system before the member attains retired member status is service provided as an active member, and the member shall terminate from the position to be eligible for retirement benefits.

(6) (a) A member attains retired member status when the member has terminated employment in all positions reportable to the retirement system and has actually received at least one monthly retirement benefit payment.

(b) A retired member who returns to active member status for any reason ceases to be in retired member status until the member again applies for a retirement benefit and actually receives at least one monthly retirement benefit payment.

(7) (a) Unless waived by the board, the member and the employer for each position from which the member is terminating or has terminated shall certify on a form provided by the retirement system the member’s date of termination and whether there is a prearranged agreement for postretirement service.

(b) The certification obligation of the member and the employer is ongoing and must be immediately updated if the information previously provided was in error or has changed.

**History:** En. Sec. 9, Ch. 366, L. 2013.

## **Part 9 Disability Retirement**

**19-20-901. Eligibility for disability retirement — determination by board.** (1) Except as provided in subsection (5), upon the application of a member or of the member’s employer for a disability retirement allowance, any member who has 5 or more years of creditable service and who has become disabled while being an active member may be retired by the retirement board the month immediately following the month in which employment is terminated.

(2) In order for a member to be eligible for disability retirement, the retirement board or its representative shall certify that the member is mentally or physically incapacitated for the further performance of the member’s duties, that the incapacity is likely to be permanent, and that the member should be retired. The board’s representative shall report to the board the representative’s findings and any action taken by the representative, and the action must be presented to the board for approval by the board.

(3) In making a determination under subsection (2), the retirement board or its representative may:

(a) order examinations by a physician, psychologist, or vocational rehabilitation counselor;

(b) conduct hearings, administer oaths and affirmations, take depositions, and certify to official acts; and

(c) issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memorandums, and other records considered necessary as evidence in connection with a claim for disability retirement. The subpoenas issued under this subsection (3)(c) are enforceable as provided in 2-4-104.

(4) The retirement board may secure and pay reasonable compensation for professional services and advice that the board determines necessary to carry out the purposes of this part.

(5) (a) A tier two member is not eligible for disability retirement if the member is or will be eligible for service retirement on or before the member’s date of termination.



(b) A disability retirement application filed by a member who is ineligible for disability retirement under subsection (5)(a) will be processed as an application for a service retirement allowance.

**History:** En. 75-6208 by Sec. 103, Ch. 5, L. 1971; amd. Sec. 2, Ch. 57, L. 1971; amd. Sec. 2, Ch. 422, L. 1971; amd. Sec. 4, Ch. 507, L. 1973; amd. Sec. 3, Ch. 26, L. 1975; amd. Sec. 5, Ch. 127, L. 1977; amd. Sec. 5, Ch. 331, L. 1977; amd. Sec. 1, Ch. 443, L. 1977; R.C.M. 1947, 75-6208(4)(a); amd. Sec. 3, Ch. 8, L. 1991; amd. Sec. 2, Ch. 226, L. 1993; Sec. 19-4-901, MCA 1991; redes. 19-20-901 by Code Commissioner, 1993; amd. Sec. 23, Ch. 111, L. 1999; amd. Sec. 17, Ch. 389, L. 2013.

**19-20-902. Allowance for disability retirement.** (1) Upon retirement for disability, a member must receive a disability retirement allowance equal to the greater of:

(a) one-sixtieth of the member's average final compensation multiplied by the sum of the number of years of creditable service, including service transferred under 19-20-409; or

(b) one-fourth of the member's average final compensation.

(2) The earned compensation in the year of termination that is included in the calculation of average final compensation of a member who is awarded a disability retirement allowance prior to the completion of a full year is the compensation, pay, or salary that the member would have received under the member's contract had the member completed the full year. Any termination pay received by the member is limited to the amount actually paid and is not the amount that the member would have earned had the member completed the full year.

**History:** En. 75-6208 by Sec. 103, Ch. 5, L. 1971; amd. Sec. 2, Ch. 57, L. 1971; amd. Sec. 2, Ch. 422, L. 1971; amd. Sec. 4, Ch. 507, L. 1973; amd. Sec. 3, Ch. 26, L. 1975; amd. Sec. 5, Ch. 127, L. 1977; amd. Sec. 5, Ch. 331, L. 1977; amd. Sec. 1, Ch. 443, L. 1977; R.C.M. 1947, 75-6208(5)(a) thru (5)(c); amd. Sec. 61, Ch. 370, L. 1987; amd. Sec. 9, Ch. 113, L. 1989; amd. Sec. 3, Ch. 226, L. 1993; Sec. 19-4-902, MCA 1991; redes. 19-20-902 by Code Commissioner, 1993; amd. Sec. 24, Ch. 442, L. 1997; amd. Sec. 24, Ch. 111, L. 1999.

**19-20-903. Medical examination of disability retiree.** (1) Once each year during the first 5 years following the retirement of a member on a disability retirement allowance and once in every 3-year period thereafter, the retirement board may require a disability benefit recipient who has not yet attained the age of 60 to undergo a medical examination by a physician or physicians designated by the retirement board. The examination must be made at the place of residence of the benefit recipient or other place mutually agreed upon. Based on the examination, the board shall determine whether the disabled member is unable, by reason of physical or mental incapacity, to perform the essential elements of the position held by the member when the member retired. If the board determines that the member is not incapacitated, the member's retirement benefit must be canceled. If the member disagrees with the board's determination, the member may request the board to reconsider its action. The request for reconsideration must be made in writing within 60 days after the receipt of the notice of the status change.

(2) A member whose disability retirement benefit is canceled because the board has determined that the member is no longer incapacitated must be given preference by the member's former employer for the position held at the time of retirement or for a comparable position that becomes available within 1 year of cancellation of the disability retirement. The member may agree to accept an offer of employment by an employer. Employment in any capacity by an employer terminates any right granted by this section. The fact that the former employee was retired on disability may not prejudice any right to reinstatement to duty that the former employee may have or claim to have. This section does not affect any requirement for the former employee to meet or to be able to meet professional certification and licensing standards unrelated to the previous disability, otherwise necessary for reinstatement to duty.

(3) If a disability benefit recipient who has not yet attained the age of 60 refuses to submit to a medical examination as required in subsection (1), the recipient's allowance may be discontinued until withdrawal of the refusal. If a refusal continues for 1 year, all rights in and to a disability pension may be revoked by the retirement board.

**History:** En. 75-6208 by Sec. 103, Ch. 5, L. 1971; amd. Sec. 2, Ch. 57, L. 1971; amd. Sec. 2, Ch. 422, L. 1971; amd. Sec. 4, Ch. 507, L. 1973; amd. Sec. 3, Ch. 26, L. 1975; amd. Sec. 5, Ch. 127, L. 1977; amd. Sec. 5, Ch. 331, L. 1977; amd. Sec. 1, Ch. 443, L. 1977; R.C.M. 1947, 75-6208(4)(b); amd. Sec. 2, Ch. 24, L. 1987; Sec. 19-4-903, MCA 1991; redes. 19-20-903 by Code Commissioner, 1993; amd. Sec. 25, Ch. 442, L. 1997.

**19-20-904. Adjustment of allowance.** (1) (a) Except as provided by subsection (1)(b), if a retiree receiving a disability retirement allowance is engaged in or is able to engage in a

gainful occupation paying more than the difference between the retiree's retirement allowance and the retiree's average final compensation or the difference between the median average final compensation of those members retired during the preceding fiscal year and the retiree's retirement allowance, whichever is greater, the retirement allowance must be reduced to an amount that, together with the amount earnable by the retiree, is equal to the retiree's average final compensation or the median average final compensation of those members retired during the preceding fiscal year, whichever is greater.

(b) If a disabled retiree is reemployed with the same employer within 30 days from the member's effective date of retirement or if the retired member is guaranteed reemployment with the same employer, the member must be considered to have continued in the status of an active member and not to have separated from service. Any retirement allowance payments received by the member must be repaid to the system, together with interest, at the actuarially assumed rate, and the retirement benefit must be terminated.

(2) If the disabled retiree's earning capacity is changed later, the retirement allowance may be further modified, but the new allowance may not exceed the retirement allowance originally granted or an amount that, when added to the amount earnable by the retiree, equals the retiree's average final compensation.

(3) The board may, in its discretion, require a recipient of a disability retirement allowance to annually submit an earning statement and any documentation necessary to support the earnings of the recipient.

**History:** En. 75-6208 by Sec. 103, Ch. 5, L. 1971; amd. Sec. 2, Ch. 57, L. 1971; amd. Sec. 2, Ch. 422, L. 1971; amd. Sec. 4, Ch. 507, L. 1973; amd. Sec. 3, Ch. 26, L. 1975; amd. Sec. 5, Ch. 127, L. 1977; amd. Sec. 5, Ch. 331, L. 1977; amd. Sec. 1, Ch. 443, L. 1977; R.C.M. 1947, 75-6208(4)(c); amd. Sec. 1, Ch. 197, L. 1983; amd. Sec. 3, Ch. 24, L. 1987; Sec. 19-4-904, MCA 1991; redes. 19-20-904 by Code Commissioner, 1993; amd. Sec. 7, Ch. 111, L. 1995; amd. Sec. 26, Ch. 442, L. 1997; amd. Sec. 27, Ch. 210, L. 2015.

**19-20-905. Cancellation of allowance and restoration of membership.** (1) If a disabled retiree is employed in a position reportable to the retirement system and earns compensation in any fiscal year in excess of the limitation provided in 19-20-904, the retiree's retirement allowance must cease and the retiree must again become an active member of the retirement system effective on the first day of the month following the month in which the earnings limitation was exceeded.

(2) If the member is restored to active membership on or after the attainment of the age of 55 years, the member's retirement allowance upon subsequent retirement may not exceed the retirement allowance that the member would have received had the member remained in service during the period of the member's previous retirement or the sum of the retirement allowance that the member was receiving immediately prior to the member's last restoration to service and the retirement allowance that the member would have received on account of the member's service since the member's last restoration had the member entered service at that time as a new member.

**History:** En. 75-6208 by Sec. 103, Ch. 5, L. 1971; amd. Sec. 2, Ch. 57, L. 1971; amd. Sec. 2, Ch. 422, L. 1971; amd. Sec. 4, Ch. 507, L. 1973; amd. Sec. 3, Ch. 26, L. 1975; amd. Sec. 5, Ch. 127, L. 1977; amd. Sec. 5, Ch. 331, L. 1977; amd. Sec. 1, Ch. 443, L. 1977; R.C.M. 1947, 75-6208(4)(d); Sec. 19-4-905, MCA 1991; redes. 19-20-905 by Code Commissioner, 1993; amd. Sec. 27, Ch. 442, L. 1997; amd. Sec. 13, Ch. 174, L. 2003; amd. Sec. 14, Ch. 282, L. 2009; amd. Sec. 6, Ch. 39, L. 2017.

#### **Compiler's Comments**

*2017 Amendment:* Chapter 39 in (1) after "employed" substituted "in a position reportable to the retirement system and earns compensation in any fiscal year in excess of the limitation provided in 19-20-904" for "full-time in a capacity that would otherwise meet the eligibility requirements of active membership, as provided under 19-20-302", in middle after "cease" substituted "and" for "If the retiree is employed full-time by an employer covered under this chapter", and near end after "system" inserted "effective on the first day of the month following the month in which the earnings limitation was exceeded"; and made minor changes in style. Amendment effective July 1, 2017.

## **Part 10 Death Benefits**

**19-20-1001. Allowances for death of member prior to retirement.** (1) If a member dies before retirement, the member's accumulated contributions must be paid to the member's estate or to the beneficiary that the member nominated by a written application in a manner prescribed by the board and filed with the retirement board prior to the member's death.

(2) (a) In lieu of benefits provided for in subsection (1), if the deceased member qualified by reason of service for a retirement benefit, the designated beneficiary may elect to receive a retirement allowance. The retirement allowance for the beneficiary of the member must be determined as prescribed in 19-20-804, without reference to 19-20-715(2)(a), in the same manner as if the member elected option A provided for in 19-20-702(2)(a).

(b) The effective date of the retirement allowance provided for in subsection (2)(a) is the earlier of:

(i) the first of the month following the date of death; or

(ii) the effective date of the member's retirement, as acknowledged in writing by the retirement system before the member's death.

(c) In the event that a beneficiary receiving payments under subsection (2)(a) dies and payments made to the beneficiary do not equal the amount of the member's accumulated contributions at the time of the member's death, the difference between the total retirement allowance payments made and the amount of the accumulated contributions at the time of the member's death must be paid to the beneficiary's estate.

(3) If the deceased member had 5 or more years of creditable service and was an active member in the retirement system within 1 year before the member's death, a lump-sum death benefit of \$500 is payable to the member's designated beneficiary.

(4) If a deceased member had 5 or more years of creditable service and was an active member in the retirement system within 1 year prior to the member's death, the sum of \$200 a month must be paid to each minor child of the deceased member until the child reaches 18 years of age.

(5) If the member nominated more than one beneficiary to receive payment of a benefit provided by this section upon the member's death, then:

(a) each beneficiary is entitled to share in that benefit; and

(b) if a beneficiary predeceases the member, the benefit must be divided among the surviving beneficiaries.

(6) If a family law order has been issued, an alternate payee's rights under the family law order must be given priority over the rights of a beneficiary.

**History:** En. 75-6208 by Sec. 103, Ch. 5, L. 1971; amd. Sec. 2, Ch. 57, L. 1971; amd. Sec. 2, Ch. 422, L. 1971; amd. Sec. 4, Ch. 507, L. 1973; amd. Sec. 3, Ch. 26, L. 1975; amd. Sec. 5, Ch. 127, L. 1977; amd. Sec. 5, Ch. 331, L. 1977; amd. Sec. 1, Ch. 443, L. 1977; R.C.M. 1947, 75-6208(part); amd. Sec. 8, Ch. 549, L. 1981; amd. Sec. 4, Ch. 56, L. 1989; Sec. 19-4-1001, MCA 1991; redes. 19-20-1001 by Code Commissioner, 1993; amd. Sec. 28, Ch. 442, L. 1997; amd. Sec. 23, Ch. 45, L. 2001; amd. Sec. 16, Ch. 320, L. 2005; amd. Sec. 15, Ch. 282, L. 2009; amd. Sec. 17, Ch. 59, L. 2011; amd. Sec. 18, Ch. 389, L. 2013; amd. Sec. 28, Ch. 210, L. 2015.

**19-20-1002. Payments upon death of retiree.** (1) In the event of the death of a retired member, a death benefit of \$500 is payable to the joint annuitant or designated beneficiary.

(2) Except as provided in subsection (4), if the deaths of a retired member and of the joint annuitant or all designated beneficiaries occur before the total retirement allowance payments made to the retired member and to the joint annuitant or all designated beneficiaries equal the amount of the member's accumulated contributions at the time of the member's retirement, the difference between the total retirement allowance paid and the amount of the accumulated contributions must be paid to the estate of the joint annuitant or to the estate of the longest-surviving beneficiary.

(3) If a deceased member had 5 or more years of creditable service and was retired at the time of death, the sum of \$200 a month must be paid to each minor child of the deceased retiree until the child reaches 18 years of age.

(4) If the retired member elected a 10-year or 20-year period certain and life retirement allowance, the following provisions apply:

(a) If benefits remain payable upon the death of the retired member, the monthly benefit amount will be paid for the remainder of the period certain to the retired member's designated beneficiary or beneficiaries.

(b) If benefits remain payable upon the death of the retired member's last surviving designated beneficiary, a lump-sum distribution of the amount actuarially determined by the retirement system to be the present value of the remainder of the benefits payable for the period certain must be paid to the court-appointed personal representative of the last surviving beneficiary's estate on behalf of the estate. If the last surviving beneficiary's estate is not

probated, the payment must be made to the last surviving beneficiary's next of kin as set forth in 19-20-717.

**History:** En. 75-6208 by Sec. 103, Ch. 5, L. 1971; amd. Sec. 2, Ch. 57, L. 1971; amd. Sec. 2, Ch. 422, L. 1971; amd. Sec. 4, Ch. 507, L. 1973; amd. Sec. 3, Ch. 26, L. 1975; amd. Sec. 5, Ch. 127, L. 1977; amd. Sec. 5, Ch. 331, L. 1977; amd. Sec. 1, Ch. 443, L. 1977; R.C.M. 1947, 75-6208(part); amd. Sec. 5, Ch. 56, L. 1989; Sec. 19-4-1002, MCA 1991; redes. 19-20-1002 by Code Commissioner, 1993; amd. Sec. 29, Ch. 442, L. 1997; amd. Sec. 18, Ch. 59, L. 2011; amd. Sec. 7, Ch. 39, L. 2017.

**Compiler's Comments**

*2017 Amendment:* Chapter 39 in (2) at beginning inserted exception clause; inserted (4) concerning how payments are made if the retired member elected period certain and life retirement allowance; and made minor changes in style. Amendment effective July 1, 2017.

**19-20-1003. Payment of death benefits.** (1) Death benefits paid from the system are subject to the requirements of this section.

(2) Death benefits must be distributed in accordance with section 401(a)(9) of the Internal Revenue Code and the regulations adopted under that section.

(3) The amount of benefits payable to a retired member's beneficiary or joint annuitant may not exceed the maximum determined under the incidental death benefit requirements of the Internal Revenue Code.

(4) If the member dies before retirement benefits commence and a benefit is payable pursuant to 19-20-1001, distributions to the member's beneficiaries must begin as soon as administratively feasible and must begin no later than December 31 of the calendar year immediately following the calendar year in which the member died. If the beneficiary has not elected the form of payment by the date on which the beneficiary is to receive the benefit and the beneficiary is eligible for a monthly benefit, the benefit must be paid as provided in 19-20-702(3)(a)(i) or a lump sum must be paid if that is the only benefit due the beneficiary.

**History:** En. Sec. 25, Ch. 111, L. 1999; amd. Sec. 16, Ch. 282, L. 2009; amd. Sec. 19, Ch. 59, L. 2011.

**19-20-1004. Compliance with federal act.** With respect to a member's death occurring on or after January 1, 2007, while a member is performing qualified military service covered under the Heroes Earnings Assistance and Relief Tax Act of 2008, Public Law 110-245, and to the extent required by section 401(a)(37) of the Internal Revenue Code, 26 U.S.C. 401(a)(37), the designated beneficiaries are entitled to benefits that the system would have provided if the member had resumed employment and then died and that are contingent on the member's death while employed.

**History:** En. Sec. 17, Ch. 282, L. 2009.

## **Part 11**

### **Group Insurance**

**19-20-1101. Withholding of group insurance premium from retirement allowance.**

(1) A retired member who is a participant in an approved employer-sponsored group insurance plan may elect to have the monthly premium for the group insurance withheld from the member's retirement allowance by the retirement system. Premiums withheld must be paid directly to the sponsoring employer.

(2) Upon the death of a retired member, the joint annuitant or beneficiary, if eligible, may elect to continue to have the monthly insurance premium withheld from a monthly retirement benefit.

(3) Each month, using the retirement system's online employer reporting system, the employer shall commence withholding, cease withholding, or process any necessary adjustments to the premium amount on behalf of the benefit recipient, including verification that all authorized insurance deductions are correct.

(4) The employer shall notify the benefit recipient of any changes related to the premiums, including any changes to the premium amount, prior to the effective date of the change.

**History:** En. Sec. 1, Ch. 20, L. 1987; Sec. 19-4-1101, MCA 1991; redes. 19-20-1101 by Code Commissioner, 1993; amd. Sec. 14, Ch. 174, L. 2003; amd. Sec. 18, Ch. 90, L. 2007; amd. Sec. 20, Ch. 59, L. 2011; amd. Sec. 10, Ch. 366, L. 2013; amd. Sec. 29, Ch. 210, L. 2015.

## Part 12

### Unpaid Contributions and Overpayments

**19-20-1201. Definitions.** As used in this part, the following definitions apply:

(1) “Amount owed” means the total amount of overpaid benefits or unpaid contributions plus accrued interest as provided in 19-20-1206 and costs and fees awarded as provided in 19-20-1214.

(2) “Benefit recipient” means a benefit recipient as defined in 19-20-101, an alternate payee, or any other person or entity that is entitled to a future payment or that received an overpayment on behalf of the member.

(3) “Error” means any of the following, whether or not intended, that has resulted in or may result in the retirement system paying more or less on behalf of a member than is authorized to be paid or in the retirement system receiving more or less in contributions than is required to be paid to the retirement system pursuant to plan terms:

- (a) a clerical mistake;
- (b) a failure to fully and correctly perform a required act or provide required information;
- (c) an assertion or other representation of fact or circumstance that is not complete and accurate; or
- (d) an incorrect understanding, construction, or application of plan terms or other applicable law or policy.

(4) “Overpaid benefits” or “overpayment” means the total amount of all monthly retirement benefits or other amounts paid by the retirement system on behalf of a member due to an error.

(5) “Unpaid contributions” means the total amount of all monthly contributions or other contribution amounts not received by the retirement system due to an error.

**History:** En. Sec. 1, Ch. 210, L. 2015.

**19-20-1202. Correction of errors.** The retirement system shall correct errors and, as far as practicable, shall:

(1) in the case of underpaid benefits, adjust future benefit payments so the actuarial equivalent of the benefit to which the member or benefit recipient is correctly entitled will be paid;

(2) in the case of overpaid contributions, refund the excess contributions;

(3) in the case of unpaid contributions, recover the amounts owed for unpaid contributions; and

(4) in the case of overpaid benefits, recover the amounts owed for overpayment.

**History:** En. Sec. 2, Ch. 210, L. 2015.

**19-20-1203. Recovery of unpaid employer contributions.** An amount owed for unpaid employer contributions must be paid to the retirement system by the employer and is not subject to reduction for any reason.

**History:** En. Sec. 3, Ch. 210, L. 2015.

**19-20-1204. Recovery of unpaid employee contributions.** (1) An amount owed for unpaid employee contributions must be paid to the retirement system by the employer if, at the time the contributions were due, the employer was legally required to pick up and remit the contributions to the retirement system on behalf of the member pursuant to 19-20-602(3)(a) and the unpaid contributions resulted from or were furthered by the employer’s error.

(2) An amount owed for unpaid employee contributions not payable by the employer under subsection (1) must be paid to the retirement system by the member or benefit recipient.

**History:** En. Sec. 4, Ch. 210, L. 2015.

**19-20-1205. Recovery of overpayments.** (1) Subject to subsection (2), an amount owed to the retirement system for overpaid benefits must be recovered as follows:

(a) from any retirement benefit or other amount payable by the retirement system to a benefit recipient; or

(b) through repayment by a benefit recipient who received an overpayment or by the estate of the benefit recipient.



(2) If an overpayment resulted from or was furthered by an employer's error, the employer is jointly and severally liable for all amounts owed to the retirement system for the overpayment.

**History:** En. Sec. 5, Ch. 210, L. 2015.

**19-20-1206. Interest on overpayments and unpaid contributions.** (1) Except as provided in subsection (2), overpaid benefits and unpaid contributions accrue interest at the retirement system's actuarially assumed annual rate of return, compounded monthly. Interest accrues beginning on the date that the first erroneous payment was made or that the contributions were first due and continues to accrue until the amount owed to the retirement system is fully paid.

(2) If overpaid benefits or unpaid contributions resulted solely from an error made by the retirement system, the amount owed may not include interest.

**History:** En. Sec. 6, Ch. 210, L. 2015.

**19-20-1207 through 19-20-1210 reserved.**

**19-20-1211. Notices required — initial notice — final staff determination.** (1) (a) Before taking action to correct an error or recover overpaid benefits or unpaid contributions, the retirement system shall provide a written initial notice to any person or entity from whom the overpayment or unpaid contributions may be recovered.

(b) The initial notice must:

(i) specify the grounds for the retirement system's initial determination that an error has occurred;

(ii) specify, to the extent practicable, the amount owed for overpaid benefits or unpaid contributions;

(iii) identify additional documentation or information, if any, required to be provided to the retirement system for a final staff determination; and

(iv) provide an opportunity for the noticed party or parties to submit additional documentation or information they believe is relevant to the retirement system's determination.

(2) (a) Unless additional time is required for good cause, the retirement system shall issue a final staff determination within 180 days after the date the initial notice was issued.

(b) The final staff determination must specify the process required for a party to appeal the final staff determination to the retirement board.

(3) Notice provided pursuant to this section may be provided to multiple persons or entities as a standardized notice directed to multiple recipients.

**History:** En. Sec. 7, Ch. 210, L. 2015.

**19-20-1212. Recovery methods.** (1) The retirement system may use any or all of the following methods to recover amounts owed from a member or benefit recipient:

(a) accept a lump-sum payment;

(b) accept installment payments;

(c) accept a rollover payment from a member;

(d) actuarially adjust monthly benefit payments;

(e) withhold up to 50% of each monthly benefit payment;

(f) withhold up to 100% of a lump-sum distribution; or

(g) withhold up to 100% of the death benefit payable under 19-20-1001(3) or 19-20-1002(1).

(2) For payment of amounts owed by an employer, the retirement system may use any or all of the following methods:

(a) adjust the amount of subsequent contributions due from the employer;

(b) accept installment payments; or

(c) accept a lump-sum payment.

**History:** En. Sec. 9, Ch. 210, L. 2015.

**19-20-1213. Retirement system's discretion — priority right to recover.** (1) Nothing in this part is intended to prohibit retirement system staff from working informally with an employer, a member, or a benefit recipient to mutually resolve an error and recover amounts owed to the retirement system prior to the retirement system taking formal action as provided in this part.

(2) The retirement system has sole discretion to determine the most appropriate method for correcting errors and recovering amounts owed to it.

(3) The retirement system's right to recover amounts owed to it as set forth in this part does not prohibit the retirement system from pursuing any other remedy or penalty available to the retirement system.

(4) The retirement system's right to recover amounts owed to it has priority over the claim of any member, benefit recipient, or other individual or entity claiming an interest in any amount payable by the retirement system to or on behalf of the member.

**History:** En. Sec. 10, Ch. 210, L. 2015.

**19-20-1214. Costs and fees for recovering amounts owed.** (1) Unless an overpayment or unpaid contributions resulted solely from an error of the retirement system, in any contested case or other civil proceeding for correction of an error or recovery of an overpayment or unpaid contributions, the retirement system is entitled to the costs enumerated in 25-10-201 and to reasonable attorney fees if:

(a) the retirement system prevails in its claim or defense; and

(b) the court finds, upon judicial review, that the claim or defense of the other party that brought or defended the action was frivolous or was pursued in bad faith.

(2) If there are multiple parties adverse to the retirement system in a contested case, the parties are jointly and severally liable for the costs and fees awarded to the retirement system.

**History:** En. Sec. 11, Ch. 210, L. 2015.

**19-20-1215. Statute of limitations.** (1) If overpaid benefits or unpaid contributions resulted solely from an error made by the retirement system, the retirement system may recover amounts owed for overpayments or unpaid contributions only for benefits or other amounts actually paid by the retirement system or for contributions that were actually due in the timeframe beginning 24 months prior to the date on which the retirement system issues an initial notice and ending when all amounts owed for overpayments or unpaid contributions are fully paid.

(2) If overpaid benefits or unpaid contributions resulted solely or partially from an error made by an employer, a member, or a benefit recipient, the retirement system may recover all amounts owed for the overpayment or unpaid contributions beginning on the date that the first erroneous payment was made or that contributions were first due. The retirement system may not recover amounts owed under this subsection unless the retirement system issues an initial notice no later than 24 months after the date on which the last payment of a retirement benefit or other amount was made by the retirement system on behalf of the member.

(3) No other statute of limitations or legal or equitable defense to the application of a statute of limitations may be applied to shorten the timeframes in which or for which the retirement system may seek recovery of amounts owed for overpayments or unpaid contributions.

**History:** En. Sec. 8, Ch. 210, L. 2015.

## CHAPTER 50 DEFERRED COMPENSATION

### Part 1 General Provisions

**19-50-101. Definitions.** For the purposes of this chapter, unless a different meaning is plainly implied by the context, the following definitions apply:

(1) "Administrator" or "board" means the public employees' retirement board created in 2-15-1009 or an appropriate officer of a political subdivision.

(2) "Deferred compensation" means the income that an employee may legally defer in a deferred compensation plan established under this chapter pursuant to the rulings of the internal revenue service and that, while invested, is exempt from state and federal income tax on the employee's contribution and on the interest, dividends, and capital gains until ultimately distributed to the employee.

(3) “Eligible deferred compensation plan” means a plan meeting the requirements of section 457 of the Internal Revenue Code, 26 U.S.C. 457.

(4) “Employee” means any person, including independent contractors and elected officials, receiving compensation from the state or a political subdivision for performing services.

(5) “Fund” means the state deferred compensation investment account.

(6) “Participant” means either an employee who is enrolled or a previous employee who remains enrolled in an eligible deferred compensation plan established under this chapter.

(7) “Political subdivision” means any city, town, county, or other political subdivision of the state of Montana, including the Montana university system.

(8) “Roth account” means a separate account within a deferred compensation plan established under this chapter that is composed of after-tax contributions made pursuant to section 402A of the Internal Revenue Code, 26 U.S.C. 402A.

(9) “Roth deferral” means an after-tax contribution by a participant to the participant’s deferred compensation account.

**History:** En. 68-2704 by Sec. 4, Ch. 264, L. 1974; R.C.M. 1947, 68-2704; amd. Sec. 1, Ch. 472, L. 1981; Sec. 19-2-101, MCA 1991; redes. 19-50-101 by Code Commissioner, 1993; amd. Sec. 67, Ch. 471, L. 1999; amd. Sec. 1, Ch. 145, L. 2013; amd. Sec. 5, Ch. 140, L. 2015.

**19-50-102. Deferred compensation programs permitted — rules.** (1) The state or a political subdivision may establish deferred compensation plans that are eligible under section 457 of the Internal Revenue Code, 26 U.S.C. 457, as amended, and in compliance with regulations of the U.S. department of the treasury. Eligible deferred compensation plans for employees may be established in addition to any retirement, pension, or other benefit plan administered by the state or a political subdivision.

(2) An employee may enter into a written agreement with the state or a political subdivision to defer a part of the employee’s compensation to one or more of the investment options provided in subsection (4) for the purpose of investment as provided by this chapter. The total amount deferred may not exceed the employee’s annual salary and may not exceed the amounts permitted under applicable sections of the Internal Revenue Code.

(3) Compensation deferred pursuant to this chapter is included as compensation for the purpose of computing retirement or pension benefits.

(4) The board or an appropriate officer of a political subdivision shall from time to time select the type of investment options and the financial institutions or entities in which state or political subdivision employee deferred compensation plan funds may be invested. The board or an appropriate officer of a political subdivision shall notify affected plan members of potential changes in investment options and financial institutions before the changes are made. The investment options and entities may include:

(a) a state deferred compensation investment fund established pursuant to Title 17 for the purpose of administering a state-invested deferred compensation plan. All contributions made by participants in the state deferred compensation investment fund and all interest or increase in the fund must be credited to the fund. These state-invested funds may be commingled with other state investment funds, but separate accounting must be maintained. The assets of the fund must be maintained for the benefit of participants and may not be diverted except for paying the reasonable expenses for administering the state deferred compensation investment fund.

(b) savings accounts in federally insured financial institutions;

(c) life insurance contracts and fixed annuity and variable annuity contracts from companies that are licensed to do business in the state and subject to regulation by the insurance commissioner;

(d) investment funds managed pursuant to investment services contracts maintained by the board or an appropriate officer of a political subdivision with investment managers registered with the United States securities and exchange commission, unless exempt from the commission’s regulation;

(e) mutual funds provided through contracts maintained by the board or an appropriate officer of a political subdivision with mutual fund companies regulated by the United States securities and exchange commission, unless exempt from the commission’s regulation; or

(f) a combination of the items in subsections (4)(a) through (4)(e).

(5) The deferred compensation plan funds invested pursuant to this section and the income from those funds must be held in a trust, custodial account, or insurance contract for the exclusive benefit of participants and their beneficiaries.

(6) The administrator may allocate any necessary costs against the assets and interest earnings accumulated in funds, accounts, or contracts established under this chapter.

(7) The board or appropriate officer of a political subdivision shall promulgate rules not inconsistent with this chapter for the proper administration of deferred compensation plans established under this chapter.

**History:** En. 68-2701 by Sec. 1, Ch. 264, L. 1974; amd. Sec. 1, Ch. 60, L. 1977; R.C.M. 1947, 68-2701; amd. Sec. 2, Ch. 472, L. 1981; Sec. 19-2-102, MCA 1991; redes. 19-50-102 by Code Commissioner, 1993; amd. Sec. 1, Ch. 37, L. 1997; amd. Sec. 109, Ch. 42, L. 1997; amd. Sec. 68, Ch. 471, L. 1999; amd. Sec. 60, Ch. 114, L. 2003; amd. Sec. 118, Ch. 429, L. 2003.

**19-50-103. No effect on other retirement programs — taxes deferred — Roth deferral exception.** (1) The deferred compensation program established by this chapter is in addition to retirement, pension, or benefit systems, including plans qualifying under section 403(b) of the Internal Revenue Code, 26 U.S.C. 403(b), as amended, established by the state or a political subdivision, and a deferral of income under the deferred compensation program may not affect a reduction of any retirement, pension, or other benefit provided by law.

(2) Except as provided in subsection (3), any sum deferred under the deferred compensation program is not subject to taxation until distribution is actually made to the participant or the participant's beneficiary because of severance from employment, retirement, or unforeseeable emergency.

(3) Effective July 1, 2013, any deferred compensation program established under this chapter may include Roth accounts and accept Roth deferrals pursuant to section 402A of the Internal Revenue Code, 26 U.S.C. 402A. A participant's Roth deferral into a deferred compensation account and any associated earnings, known as the participant's Roth assets, may be withdrawn tax-free if the requirements for a qualified distribution under 402A(d)(2) of the Internal Revenue Code, 26 U.S.C. 402A(d)(2), are met.

(4) For purposes of this chapter, any qualified private pension plans in existence in 1974 qualify.

**History:** En. 68-2706 by Sec. 6, Ch. 264, L. 1974; R.C.M. 1947, 68-2706; amd. Sec. 3, Ch. 472, L. 1981; Sec. 19-2-103, MCA 1991; redes. 19-50-103 by Code Commissioner, 1993; amd. Sec. 61, Ch. 114, L. 2003; amd. Sec. 71, Ch. 329, L. 2005; amd. Sec. 2, Ch. 145, L. 2013.

**19-50-104. Eligibility to catch up — normal retirement age.** (1) Except as provided in subsection (2), for the purposes of determining a participant's eligibility to catch up on making the maximum annual deferrals allowable, normal retirement age must be specified in writing by the participant and must be no earlier than:

(a) the age at which the participant is eligible to retire pursuant to the participant's Title 19 retirement system because of the participant's age or both age and length of service, without disability, and with the right to receive immediate retirement benefits without actuarial or similar reduction because of retirement before a specified age; or

(b) 65 years of age if the participant is not a member of a Title 19 retirement plan or system, is a member of a defined contribution retirement plan, or is an independent contractor.

(2) An eligible plan with participants that include qualified police or firefighters, as defined under 26 U.S.C. 415(b)(2)(H)(ii)(I), may either:

(a) designate a normal retirement age for the qualified police or firefighters that is no less than 50 years of age; or

(b) allow a qualified police or firefighter participant to designate a normal retirement age that is between 50 and 70½ years of age.

(3) Qualified police or firefighters, as defined in 26 U.S.C. 415(b)(2)(H)(ii)(I), include:

(a) police who are members of the municipal police officers' retirement system provided for in Title 19, chapter 9;

(b) police who are members of a local police retirement system provided for in Title 19, chapter 19;

(c) firefighters who are members of the firefighters' unified retirement system provided for in Title 19, chapter 13;

(d) firefighters who are members of a local firefighters' retirement system provided for in Title 19, chapter 18; and

(e) firefighters who are members of the defined benefit retirement plan of the public employees' retirement system provided for in Title 19, chapter 3.

**History:** En. Sec. 129, Ch. 99, L. 2001; amd. Sec. 72, Ch. 329, L. 2005; amd. Sec. 13, Ch. 240, L. 2013; amd. Sec. 6, Ch. 140, L. 2015.

## **Part 2 Administration**

### **19-50-201. Board authorized to make contracts with political subdivisions.**

(1) Effective July 1, 1983, a political subdivision may become a contracting employer and make all or specified groups of its employees eligible to participate in the state-administered deferred compensation program by a contract entered into and between the board and the legislative body of the political subdivision. The contract may include any provisions that are consistent with this chapter and necessary for the administration of the deferred compensation program.

(2) The approval and termination of the contract shall be subject to the following provisions:

(a) The legislative body of the political subdivision shall adopt a resolution to enter into a contract with the board authorizing its employees to participate in the state-administered deferred compensation program. The resolution must contain a summary of the major provisions of the state-administered deferred compensation program.

(b) The contract must specify that the political subdivision agrees that the board is the administrator of the deferred compensation program and agrees to the rules and conditions established by the board for the proper administration of the plan.

(c) The contract may be revoked or amended in the manner prescribed in the original approval of contracts.

**History:** En. 68-2702 by Sec. 2, Ch. 264, L. 1974; amd. Sec. 2, Ch. 60, L. 1977; R.C.M. 1947, 68-2702; amd. Sec. 4, Ch. 472, L. 1981; Sec. 19-2-201, MCA 1991; reded. 19-50-201 by Code Commissioner, 1993; amd. Sec. 69, Ch. 471, L. 1999.

**19-50-202. Administration of program.** The deferred compensation program shall be administered by the board or the appropriate officer designated by a political subdivision. Payroll deductions shall be made, in each instance, by the appropriate payroll officer. The administrator shall protect the interests of program participants and safeguard the assets of the deferred compensation plan and shall contract with private corporations, institutions, or individuals for administrative and marketing services. The administrator may solicit bids for options under 19-50-102. All contracts with marketing representatives must provide that all options in 19-50-102 be presented in an unbiased manner and in a manner so as to conform to applicable rules promulgated by the administrator, be reported on a periodic basis to all employees participating in eligible deferred compensation plans, and not be the subject of unreasonable solicitation of employees to participate in the program. All costs or fees in relation to the marketing of options provided under 19-50-102 shall be paid by the underwriting companies selected by the administrator or by the interest earnings accruing to the assets of the state deferred compensation investment fund.

**History:** En. 68-2703 by Sec. 3, Ch. 264, L. 1974; R.C.M. 1947, 68-2703; amd. Sec. 5, Ch. 472, L. 1981; Sec. 19-2-202, MCA 1991; reded. 19-50-202 by Code Commissioner, 1993; amd. Sec. 70, Ch. 471, L. 1999.

**19-50-203. Payments authorized.** Notwithstanding any other provision of law to the contrary, the board or a political subdivision is hereby authorized to make payments to eligible deferred compensation plans designated by this chapter. Such payments shall not be construed to be a prohibited use of the general assets of the state or a political subdivision.

**History:** En. 68-2705 by Sec. 5, Ch. 264, L. 1974; R.C.M. 1947, 68-2705; amd. Sec. 7, Ch. 472, L. 1981; Sec. 19-2-203, MCA 1991; reded. 19-50-203 by Code Commissioner, 1993; amd. Sec. 71, Ch. 471, L. 1999.

**19-50-204. Public entity not to be liable.** There shall be no financial liability of the state or a political subdivision for any investment losses incurred by any eligible deferred compensation plan established under this chapter.

**History:** En. 68-2707 by Sec. 7, Ch. 264, L. 1974; R.C.M. 1947, 68-2707; amd. Sec. 8, Ch. 472, L. 1981; Sec. 19-2-204, MCA 1991; reded. 19-50-204 by Code Commissioner, 1993.

**19-50-205 reserved.**



**19-50-206. Repealed.** Sec. 73, Ch. 471, L. 1999.

**History:** En. Sec. 6, Ch. 472, L. 1981; Sec. 19-2-206, MCA 1991; redes. 19-50-206 by Code Commissioner, 1993.

# TITLE 20

## EDUCATION

Ch.

1. General Provisions.
2. State Boards and Commissions.
3. Elected Officials.
4. Teachers, Superintendents, and Principals.
5. Pupils.
6. School Districts.
7. School Instruction and Special Programs.
8. Montana School for the Deaf and Blind.
9. Finance.
10. Transportation and Food Services.
15. Community College Districts.
20. School Elections.
25. University System.
26. Student Financial Assistance.
31. Fire Services Training School.
32. Montana Educational Telecommunications Network.

### CHAPTER 1

### GENERAL PROVISIONS

#### Part 1 — Definitions

- 20-1-101. Definitions.
- 20-1-102. Legislative goals for public elementary and secondary schools.

#### Part 2 — Miscellaneous Provisions

- 20-1-201. School officers not to act as agents.
- 20-1-202. Oath of office.
- 20-1-203. Delivering items to successor.
- 20-1-204. County attorney's duties.
- 20-1-205. Conflict of interest.
- 20-1-206. Disturbance of school — penalty.
- 20-1-207. Penalty for violation of school laws.
- 20-1-208. Educational impact statements.
- 20-1-209. Judicial enforcement.
- 20-1-210. Nonfaculty coaches in private high schools.
- 20-1-211. Expenses of officers or employees attending conventions — educational associations.
- 20-1-212. Destruction of records by school officer.
- 20-1-213. Transfer of school records.
- 20-1-214. School crossing guards.
- 20-1-215 through 20-1-219 reserved.
- 20-1-220. Use of tobacco product in public school building or on public school property prohibited.
- 20-1-221 through 20-1-224 reserved.
- 20-1-225. Compliance with Military Selective Service Act for postsecondary financial assistance — rulemaking — definitions.
- 20-1-226 through 20-1-229 reserved.
- 20-1-230. Enactment — Interstate Compact on Educational Opportunity for Military Children — provisions.
- 20-1-231. Report to legislature.

#### Part 3 — School Terms and Holidays — Released Time

- 20-1-301. School fiscal year.
- 20-1-302. School term, day, and week.
- 20-1-303. Conduct of school on Saturday or Sunday prohibited — exceptions.
- 20-1-304. Pupil-instruction-related day.
- 20-1-305. School holidays.
- 20-1-306. Commemorative exercises on certain days.
- 20-1-307. Provisions of school code excepted.
- 20-1-308. Religious instruction released time program.

#### Part 4 — Disaster Drills

- 20-1-401. Disaster drills to be conducted regularly — districts to identify disaster risks and adopt school safety plan.
- 20-1-402. Number of disaster drills required — time of drills to vary.
- 20-1-403. Repealed.
- 20-1-404. Drill to sound on disaster evacuation system — recall signal to be distinct — control of signal.

- 20-1-405. Fire department to be called for actual fire.
- 20-1-406. Repealed.
- 20-1-407. Inspection of exits — cooperation with local authorities having jurisdiction in drills.
- 20-1-408. Repealed.

#### **Part 5 — Indian Education for All**

- 20-1-501. Recognition of American Indian cultural heritage — legislative intent.
- 20-1-502. American Indian studies — definitions.
- 20-1-503. Qualification in Indian studies — trustees and noncertified personnel.

#### **Part 6 — Montana Military Service Higher Education Act**

- 20-1-601. Short title.
- 20-1-602. Purpose.
- 20-1-603. Definitions.
- 20-1-604. Student rights.
- 20-1-605. Financial credit — readmission fees prohibited — refund.
- 20-1-606. Policy to ensure student protections.

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### **Part 1 Definitions**

**20-1-101. Definitions.** As used in this title, unless the context clearly indicates otherwise, the following definitions apply:

(1) “Accreditation standards” means the body of administrative rules governing standards such as:

- (a) school leadership;
- (b) educational opportunity;
- (c) academic requirements;
- (d) program area standards;
- (e) content and performance standards;
- (f) school facilities and records;
- (g) student assessment; and
- (h) general provisions.

(2) “Aggregate hours” means the hours of pupil instruction for which a school course or program is offered or for which a pupil is enrolled.

(3) “Agricultural experiment station” means the agricultural experiment station established at Montana state university-Bozeman.

(4) “At-risk student” means any student who is affected by environmental conditions that negatively impact the student’s educational performance or threaten a student’s likelihood of promotion or graduation.

(5) “Average number belonging” or “ANB” means the average number of regularly enrolled, full-time pupils physically attending or receiving educational services at an offsite instructional setting from the public schools of a district.

(6) “Board of public education” means the board created by Article X, section 9, subsection (3), of the Montana constitution and 2-15-1507.

(7) “Board of regents” means the board of regents of higher education created by Article X, section 9, subsection (2), of the Montana constitution and 2-15-1505.

(8) “Commissioner” means the commissioner of higher education created by Article X, section 9, subsection (2), of the Montana constitution and 2-15-1506.

(9) “County superintendent” means the county government official who is the school officer of the county.

(10) “District superintendent” means a person who holds a valid class 3 Montana teacher certificate with a superintendent’s endorsement that has been issued by the superintendent of public instruction under the provisions of this title and the policies adopted by the board of public education and who has been employed by a district as a district superintendent.

(11) (a) “Educational program” means a set of educational offerings designed to meet the program area standards contained in the accreditation standards.

(b) The term does not include an educational program or programs used in 20-4-121 and 20-25-803.

(12) “K-12 career and vocational/technical education” means organized educational activities that have been approved by the office of public instruction and that:

(a) offer a sequence of courses that provide a pupil with the academic and technical knowledge and skills that the pupil needs to prepare for further education and for careers in the current or emerging employment sectors; and

(b) include competency-based applied learning that contributes to the academic knowledge, higher-order reasoning and problem-solving skills, work attitudes, general employability skills, technical skills, and occupation-specific skills of the pupil.

(13) (a) “Minimum aggregate hours” means the minimum hours of pupil instruction that must be conducted during the school fiscal year in accordance with 20-1-301 and includes passing time between classes.

(b) The term does not include lunch time and periods of unstructured recess.

(14) “Offsite instructional setting” means an instructional setting at a location, separate from a main school site, where a school district provides for the delivery of instruction to a student who is enrolled in the district.

(15) “Principal” means a person who holds a valid class 3 Montana teacher certificate with an applicable principal’s endorsement that has been issued by the superintendent of public instruction under the provisions of this title and the policies adopted by the board of public education and who has been employed by a district as a principal. For the purposes of this title, any reference to a teacher must be construed as including a principal.

(16) “Pupil” means a child who is 6 years of age or older on or before September 10 of the year in which the child is to enroll or has been enrolled by special permission of the board of trustees under 20-5-101(3) but who has not yet reached 19 years of age and who is enrolled in a school established and maintained under the laws of the state at public expense. For purposes of calculating the average number belonging pursuant to 20-9-311, the definition of pupil includes a person who has not yet reached 19 years of age by September 10 of the year and is enrolled under 20-5-101(3) in a school established and maintained under the laws of the state at public expense.

(17) “Pupil instruction” means the conduct of organized instruction of pupils enrolled in public schools while under the supervision of a teacher.

(18) “Qualified and effective teacher or administrator” means an educator who is licensed and endorsed in the areas in which the educator teaches, specializes, or serves in an administrative capacity as established by the board of public education.

(19) “Regents” means the board of regents of higher education.

(20) “Regular school election” or “trustee election” means the election for school board members held on the day established in 20-20-105(1).

(21) “School election” means a regular school election or any election conducted by a district or community college district for authorizing taxation, authorizing the issuance of bonds by an elementary, high school, or K-12 district, or accepting or rejecting any proposition that may be presented to the electorate for decision in accordance with the provisions of this title.

(22) “School food services” means a service of providing food for the pupils of a district on a nonprofit basis and includes any food service financially assisted through funds or commodities provided by the United States government.

(23) “Special school election” means an election held on a day other than the day of the regular school election, primary election, or general election.

(24) “State board of education” means the board composed of the board of public education and the board of regents as specified in Article X, section 9, subsection (1), of the Montana constitution.

(25) “State university” means Montana state university-Bozeman.

(26) “Student with limited English proficiency” means any student:

(a) (i) who was not born in the United States or whose native language is a language other than English;

(ii) who is an American Indian and who comes from an environment in which a language other than English has had a significant impact on the individual’s level of English proficiency; or

(iii) who is migratory, whose native language is a language other than English, and who comes from an environment in which a language other than English is dominant; and

(b) whose difficulties in speaking, reading, writing, or understanding the English language may be sufficient to deny the student:

(i) the ability to meet the state's proficiency assessments;

(ii) the ability to successfully achieve in classrooms where the language of instruction is English; or

(iii) the opportunity to participate fully in society.

(27) "Superintendent of public instruction" means that state government official designated as a member of the executive branch by the Montana constitution.

(28) "System" means the Montana university system.

(29) "Teacher" means a person, except a district superintendent, who holds a valid Montana teacher certificate that has been issued by the superintendent of public instruction under the provisions of this title and the policies adopted by the board of public education and who is employed by a district as a member of its instructional, supervisory, or administrative staff. This definition of a teacher includes a person for whom an emergency authorization of employment has been issued under the provisions of 20-4-111.

(30) "Textbook" means a book or manual used as a principal source of study material for a given class or group of students.

(31) "Textbook dealer" means a party, company, corporation, or other organization selling, offering to sell, or offering for adoption textbooks to districts in the state.

(32) "Trustees" means the governing board of a district.

(33) "University" means the university of Montana-Missoula.

(34) "Vocational-technical education" means vocational-technical education of vocational-technical students that is conducted by a unit of the Montana university system, a community college, or a tribally controlled community college, as designated by the board of regents.

**History:** (1), (14), (17), (19), (24)En. 75-8402 by Sec. 2, Ch. 2, L. 1971; Sec. 75-8402, R.C.M. 1947; (2)En. 75-6902 by Sec. 252, Ch. 5, L. 1971; amd. Sec. 1, Ch. 345, L. 1973; amd. Sec. 1, Ch. 343, L. 1974; amd. Sec. 3, Ch. 352, L. 1974; amd. Sec. 1, Ch. 373, L. 1974; amd. Sec. 1, Ch. 132, L. 1975; Sec. 75-6902, R.C.M. 1947; (3) thru (5), (16)En. Sec. 1, Ch. 344, L. 1973; Sec. 75-5609, R.C.M. 1947; (6)En. 75-5801 by Sec. 19, Ch. 5, L. 1971; amd. Sec. 28, Ch. 100, L. 1973; Sec. 75-5801, R.C.M. 1947; (7), (11), (20)En. 75-6101 by Sec. 82, Ch. 5, L. 1971; Sec. 75-6101, R.C.M. 1947; (8) thru (10), (25)En. Sec. 404, Ch. 5, L. 1971; (amd. Sec. 4, Ch. 434, L. 1975 — [unconstitutional, 167 M 261]; Sec. 4, Ch. 434, L. 1975 repealed by Sec. 1, Ch. 4, L. 1977); Sec. 75-7701, R.C.M. 1947; (12)En. 75-6301 by Sec. 114, Ch. 5, L. 1971; Sec. 75-6301, R.C.M. 1947; (13)En. 75-7401 by Sec. 365, Ch. 5, L. 1971; Sec. 75-7401, R.C.M. 1947; (15)En. 75-8001 by Sec. 442, Ch. 5, L. 1971; Sec. 75-8001, R.C.M. 1947; (18)En. 75-5701 by Sec. 10, Ch. 5, L. 1971; amd. Sec. 27, Ch. 100, L. 1973; Sec. 75-5701, R.C.M. 1947; (21), (22)En. 75-7601 by Sec. 393, Ch. 5, L. 1971; Sec. 75-7601, R.C.M. 1947; (23)En. 75-5901 by Sec. 30, Ch. 5, L. 1971; Sec. 75-5901, R.C.M. 1947; R.C.M. 1947, 75-5609, 75-5701, 75-5801, 75-5901(part), 75-6101, 75-6301, 75-6902(part), 75-7401, 75-7601, 75-7701, 75-8001, 75-8402; amd. Sec. 1, Ch. 334, L. 1979; amd. Sec. 1, Ch. 558, L. 1979; amd. Sec. 8, Ch. 598, L. 1979; amd. Sec. 1, Ch. 388, L. 1987; amd. Sec. 7, Ch. 658, L. 1987; amd. Sec. 11, Ch. 308, L. 1995; amd. Sec. 1, Ch. 133, L. 2001; amd. Sec. 2, Ch. 138, L. 2005; amd. Sec. 3, Ch. 208, L. 2005; amd. Sec. 1, Ch. 215, L. 2005; amd. Sec. 2, Ch. 570, L. 2005; amd. Sec. 198, Ch. 49, L. 2015.

**20-1-102. Legislative goals for public elementary and secondary schools.** It is the goal of the legislature that Montana's public elementary and secondary school system, in cooperation with parents or guardians, create a learning environment for each student that:

(1) develops a sound foundation for literacy and numeracy during the early years that is built upon and reinforced throughout the educational experience;

(2) furthers the ability to reason critically, creatively, and strategically;

(3) fosters the ability to effectively understand and communicate ideas, knowledge, and thoughts;

(4) develops a sense of personal and civic responsibility;

(5) provides an in-depth understanding of the American political, social, and economic systems and the historical context from which they arose;

(6) provides familiarization with political, social, and economic systems found elsewhere in the world;

(7) develops a strong work ethic, postsecondary readiness, and employment skills; and

(8) encourages a healthy lifestyle.

**History:** En. Sec. 1, Ch. 208, L. 2005; amd. Sec. 1, Ch. 222, L. 2013.



## Part 2

### Miscellaneous Provisions

**20-1-201. School officers not to act as agents.** The superintendent of public instruction or members of the superintendent's staff, county superintendent or members of the superintendent's staff, trustee, or district employee may not act as an agent or solicitor in the sale or supply of goods or services to a district. An enumerated person may not assist or receive a reward from an agent or solicitor of goods or services for a district. Any person violating this section is guilty of a misdemeanor and, if convicted by a court of competent jurisdiction, shall be fined not less than \$50 or more than \$200 and shall be liable to removal from the person's position. The penalties provided by this section may not be applicable if the charge and conviction are made under the provisions of 20-7-608.

**History:** En. 75-8303 by Sec. 487, Ch. 5, L. 1971; R.C.M. 1947, 75-8303; amd. Sec. 263, Ch. 56, L. 2009.

#### Cross-References

Code of ethics, Title 2, ch. 2, part 1.  
Proscribed acts related to contracts and claims, Title 2, ch. 2, part 2.  
Textbook regulation, Title 20, ch. 7, part 6.  
Deceptive business practices, 45-6-317, 45-6-318.

**20-1-202. Oath of office.** Any person elected or appointed to any public office authorized by this title shall take the oath of office before qualifying for and assuming the office. If an officer has a written appointment or commission, the officer's oath must be endorsed on the appointment or commission, otherwise the oath may be taken orally, and, in either case, it may, without charge or fee, be sworn to before an officer authorized to administer oaths for the public office.

**History:** En. 75-8304 by Sec. 488, Ch. 5, L. 1971; R.C.M. 1947, 75-8304; amd. Sec. 264, Ch. 56, L. 2009.

#### Cross-References

Oath of office, Art. III, sec. 3, Mont. Const.  
Oath defined, 1-1-201.  
Declaration in lieu of oath, 1-6-104.  
Oath of Board of Regents, 2-15-1508.  
Oath of Superintendent of Public Instruction and Deputy, 20-3-102, 20-3-103.  
Oath of County Superintendent of Schools, 20-3-202.  
County Superintendent's power to administer oath to trustees, 20-3-205.  
Oath of school trustees, 20-3-307, 20-3-309.  
Teachers' oath, 20-4-104.  
Oaths of community college district trustees, 20-15-210, 20-15-222.

**20-1-203. Delivering items to successor.** Whenever any member of the trustees, superintendent, principal, or clerk of the district is replaced by election or otherwise, the person shall immediately deliver all books, papers, and money pertaining to the position to the person's successor. Any person who refuses to do so or who knowingly destroys any material or misappropriates any money entrusted to the person is guilty of a misdemeanor and, if convicted by a court of competent jurisdiction, shall be fined not more than \$100.

**History:** En. 75-5926 by Sec. 55, Ch. 5, L. 1971; R.C.M. 1947, 75-5926; amd. Sec. 265, Ch. 56, L. 2009.

#### Cross-References

Personal immunity and liability of trustees, 20-3-332.  
Criminal mischief — destruction of public property, 45-6-101.

**20-1-204. County attorney's duties.** Upon request of the county superintendent or the trustees of any school district or community college district, the county attorney shall be their legal adviser and shall prosecute and defend all suits to which such persons, in their capacity as public officials, may be a party; however, the trustees of any school district or community college district may, in their discretion, employ any other attorney licensed in Montana to perform any legal services in connection with school or community college board business.

**History:** En. 75-8305 by Sec. 489, Ch. 5, L. 1971; amd. Sec. 2, Ch. 263, L. 1971; amd. Sec. 1, Ch. 22, L. 1974; amd. Sec. 6, Ch. 121, L. 1977; R.C.M. 1947, 75-8305; amd. Sec. 1, Ch. 273, L. 1979.

#### Cross-References

Office of County Attorney, Title 7, ch. 4, part 27.  
County Attorney to assist in school district bond proceedings, 20-9-436.

**20-1-205. Conflict of interest.** In the event there should arise a conflict of interest relating solely to the performance of the official duties of the county attorney and which does not relate

to a conflict of interest involving the private employment of the county attorney, the trustees of any school district shall employ any other attorney licensed in Montana.

**History:** En. Sec. 2, Ch. 22, L. 1974; R.C.M. 1947, 75-8305.1.

**Cross-References**

Limitation on activities of County Attorneys and Deputies, 7-4-2704.  
Conflicts of interests, letting contracts, and calling for bids, 20-9-204.

**20-1-206. Disturbance of school — penalty.** Any person who shall willfully disturb any school or any school meeting shall be deemed guilty of a misdemeanor and, if convicted by a court of competent jurisdiction, shall be fined not less than \$10 or more than \$100.

**History:** En. 75-8306 by Sec. 490, Ch. 5, L. 1971; R.C.M. 1947, 75-8306.

**Cross-References**

Duties of pupils — sanctions, 20-5-201.  
Disorderly conduct — disrupting public meeting, 45-8-101.

**20-1-207. Penalty for violation of school laws.** Unless otherwise specifically provided by law, any person who violates any provision of this title is guilty of a misdemeanor and if convicted by a court of competent jurisdiction shall be punished by a fine of not less than \$20 or more than \$200 or by imprisonment in the county jail for not less than 5 days or more than 30 days or by both such fine and imprisonment.

**History:** En. 75-8307 by Sec. 491, Ch. 5, L. 1971; amd. Sec. 29, Ch. 266, L. 1977; R.C.M. 1947, 75-8307.

**Cross-References**

Fines and penalties proceeds for elementary county equalization, 20-9-332.  
Official misconduct, 45-7-401.

**20-1-208. Educational impact statements.** When a county superintendent of schools finds that a person intends to construct or locate a major industrial facility, as defined in 20-9-407, or intends to open a new strip mine, as defined by 82-4-103, within the county, the superintendent may require such person to file with the county an educational impact statement. An educational impact statement is a report estimating the increased demands on public schools in the county as a consequence of the major industrial facility or strip mine. The statement shall indicate:

- (1) the number of persons to be employed during the construction or preparation and during the operation of the major industrial facility or strip mine and their anticipated residential distribution;
- (2) the number and anticipated distribution of persons employed in providing goods and services to the persons enumerated in the preceding category;
- (3) the number of school-age children anticipated to be living with the persons enumerated in the preceding categories; and
- (4) the time periods covered by each preceding estimate.

**History:** En. 75-8312 by Sec. 1, Ch. 119, L. 1975; amd. Sec. 30, Ch. 266, L. 1977; R.C.M. 1947, 75-8312.

**Cross-References**

Taxation of major new industrial facility in school district, 20-9-407.  
Major facility siting, Title 75, ch. 20.  
Strip and underground mine siting, Title 82, ch. 4, part 1.

**20-1-209. Judicial enforcement.** A district court, upon petition of a county, may enforce 20-1-208 with appropriate orders.

**History:** En. 75-8313 by Sec. 2, Ch. 119, L. 1975; R.C.M. 1947, 75-8313.

**Cross-References**

Uniform Declaratory Judgments Act, Title 27, ch. 8.  
Injunctions, Title 27, ch. 19.

**20-1-210. Nonfaculty coaches in private high schools.** (1) A private or parochial high school is not bound by any rule or policy which prohibits the employment or association of part-time assistant athletic instructors with a high school who are not members of the regular faculty of the school, and no such school may be denied the privilege of participating in interscholastic competition with any school in this state because of the employment or association of such assistant athletic instructors with that school.

(2) Upon the complaint of an interested person, a district court may enjoin any association or combination of high schools from conspiring to violate this section or acting in concert in violation thereof.

**History:** En. 75-8314 by Sec. 1, Ch. 350, L. 1977; R.C.M. 1947, 75-8314.

**Cross-References**

Injunctions, Title 27, ch. 19.

Athletic event officials excluded from workers' compensation coverage, 39-71-401.

**20-1-211. Expenses of officers or employees attending conventions — educational associations.** (1) A school district officer or employee of any school district may not receive payment from any public funds for traveling expenses or other expenses of any sort or kind for attendance at any convention, meeting, or other gathering of public officers except for attendance at a convention, meeting, or other gatherings that the officer or employee may by virtue of the office or employment find it necessary to attend.

(2) The board of trustees of any county or district high school or of any school district may by resolution adopted by a majority of the entire board make their district a member of any state association of school districts or school district trustees or any other strictly educational association and authorize the payment of dues to the association and the necessary traveling expenses of employees or members of the board to attend meetings of the association or other meetings called for the express purpose of considering educational matters.

**History:** En. Sec. 1, Ch. 241, L. 1921; re-en. Sec. 443, R.C.M. 1921; amd. Sec. 1, Ch. 124, L. 1923; amd. Sec. 1, Ch. 48, L. 1927; amd. Sec. 1, Ch. 86, L. 1931; amd. Sec. 1, Ch. 130, L. 1933; re-en. Sec. 443, R.C.M. 1935; amd. Sec. 1, Ch. 119, L. 1943; amd. Sec. 1, Ch. 58, L. 1949; amd. Sec. 1, Ch. 184, L. 1957; amd. Sec. 11, Ch. 80, L. 1961; amd. Sec. 1, Ch. 85, L. 1963; amd. Sec. 1, Ch. 79, L. 1965; amd. Sec. 1, Ch. 66, L. 1967; amd. Sec. 1, Ch. 174, L. 1967; amd. Sec. 1, Ch. 182, L. 1973; R.C.M. 1947, 25-508(part); amd. Sec. 266, Ch. 56, L. 2009.

**Cross-References**

Trustee travel reimbursement and compensation of secretary for joint board, 20-3-311.

Attendance at instructional and professional development meetings, 20-4-304.

**20-1-212. Destruction of records by school officer.** (1) Upon the order of the board of trustees, a school officer may destroy records that have met the retention period, as contained in the local government records retention and disposition schedules, and, with written approval of the local government records destruction subcommittee provided for in 2-6-1202, any records not referenced in the retention and disposition schedule that are no longer needed by the office.

(2) Each student's permanent file, as defined by the board of public education, must be permanently kept in a secure location. Other student records must be maintained and destroyed as provided in subsection (1). Personnel files must be kept for 10 years after termination.

**History:** En. Sec. 2, Ch. 92, L. 1935; re-en. Sec. 455.2, R.C.M. 1935; amd. Sec. 1, Ch. 166, L. 1967; amd. Sec. 79, Ch. 348, L. 1974; amd. Sec. 36, Ch. 213, L. 1975; R.C.M. 1947, 59-514(2); amd. Sec. 7, Ch. 274, L. 1981; amd. Sec. 1, Ch. 287, L. 1983; amd. Sec. 1, Ch. 543, L. 1983; amd. Sec. 15, Ch. 420, L. 1993; amd. Sec. 2, Ch. 323, L. 1997; amd. Sec. 1, Ch. 33, L. 2013.

**Cross-References**

Local government records, Title 2, ch. 6, part 12.

Destruction of certain financial records, 20-9-215.

**20-1-213. Transfer of school records.** (1) Subject to the provisions of the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. 1232g, as amended, and its implementing regulations at 34 CFR, part 99, and to the provisions of the Individuals With Disabilities Education Act, 20 U.S.C. 1411 through 1420, and its implementing regulations at 34 CFR, part 300, local educational agencies and accredited schools shall adopt a policy that a certified copy of the permanent file, as defined by the board of public education, and the file containing special education records of a student will be forwarded by mail or electronically to a local educational agency or accredited school in which the student seeks or intends to enroll within 5 working days after a receipt of a written or electronic request.

(2) If records cannot be forwarded within 5 days, the local educational agency or accredited school shall notify the requestor in writing or electronically providing the reasons why the local educational agency or accredited school is unable to comply within the 5-day timeframe and the local educational agency or accredited school shall provide the date by which the requested records will be transferred.

(3) A local educational agency or accredited school may not refuse to transfer files because a student owes fines or fees.

(4) The files that are forwarded must include education records in the permanent file, special education records, and any disciplinary actions taken against the student that are educationally related.

(5) A local educational agency or accredited school may release student information to the juvenile justice system to assist the system's ability to effectively serve, prior to adjudication, the student whose records are released under provisions of 20 U.S.C. 1232g(B)(1)(E) of the Family Educational Rights and Privacy Act of 1974, as amended. The official to whom the records are disclosed shall certify in writing to the sending official that the information will not, except as provided by law, be disclosed to any other party without prior written consent of the parent of the student.

(6) The superintendent of public instruction is encouraged to contact other states or provinces and may enter into reciprocal records transfer agreements with the superintendent of public instruction or a department of education of any state or province. The superintendent of public instruction shall supply a copy of any reciprocal records transfer agreement that is executed to the county superintendent of each county that may be affected by the agreement.

(7) Upon request, the local educational agency or accredited school shall transfer by mail or electronically a copy of the permanent file to a nonpublic school or facility.

(8) (a) By November 1 and March 1 of each school fiscal year, a local educational agency shall prepare a report to be provided to the director of the Montana youth challenge program subject to subsections (8)(b) and (8)(c) containing the name, last-known address, and dates of attendance of a student who:

- (i) is at least 16 years of age but less than 19 years of age;
- (ii) was enrolled but is no longer enrolled in a school in the district;
- (iii) has not provided school transfer or graduation information to a school in the district; and
- (iv) has not received a high school diploma or a high school equivalency diploma.

(b) After preparing the report in accordance with subsection (8)(a), a local educational agency shall provide written notice to the parent or guardian of the student or to the student if the student is at least 18 years of age or is under 18 years of age and emancipated that the agency intends to provide the report to the director of the Montana youth challenge program. The parent or guardian or the student must be given the opportunity to object to the planned disclosure of the information. If the parent or guardian or the student fails to respond to the notice within 30 days, the local educational agency shall forward the report to the director of the Montana youth challenge program.

(c) The report provided by the local educational agency may not include a student who:

- (i) is receiving medical care or treatment that prohibits school attendance;
- (ii) is enrolled in a foreign exchange program;
- (iii) is enrolled in an early admissions college program;
- (iv) is participating in a job corps program, an adult basic education program, or an accredited apprenticeship program; or
- (v) is excused from school for a reason determined acceptable by the local educational agency.

(d) The official to whom the information in subsection (8)(a) is provided shall certify in writing to the local educational agency that is providing the information that the information will not be disclosed to any other party except as necessary to recruit and retain students.

(9) As used in this section, "local educational agency" means a public school district or a state-funded school.

**History:** En. Sec. 1, Ch. 157, L. 1997; amd. Sec. 1, Ch. 15, L. 2011; amd. Sec. 14, Ch. 55, L. 2015.

**Cross-References**

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

**20-1-214. School crossing guards.** (1) The trustees of a school district or the administration of a private school may organize and supervise school crossing guards for a school under their authority.

(2) The department of justice shall, in cooperation with the superintendent of public instruction and in accordance with the sign manual adopted by the department of transportation, prescribe by rule the identification, training requirements, and operation of school crossing guards.

(3) The purpose of school crossing guards is to influence and encourage pupils of the school to refrain from crossing public highways at points other than regular crossings, to direct pupils

as to where and when to cross highways, and to direct traffic when pupils are crossing highways at regular crossings.

**History:** En. Sec. 49, Ch. 352, L. 2003.

**20-1-215 through 20-1-219 reserved.**

**20-1-220. Use of tobacco product in public school building or on public school property prohibited.** (1) An individual may not use a tobacco product in a public school building or on public school property.

(2) Subsection (1) does not apply to the use of a tobacco product in a classroom or on other school property as part of a lecture, demonstration, or educational forum sanctioned by a school administrator or faculty member concerning the risks associated with use of a tobacco product.

(3) The principal of an elementary or secondary school, or the principal's designee, may enforce this section.

(4) A violation of this section is subject to the penalties provided in 50-40-115.

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

(a) "Public school building" or "public school property":

(i) means public land, fixtures, buildings, or other property owned or occupied by an institution for the teaching of minor children that is established and maintained under the laws of the state of Montana at public expense; and

(ii) includes school playgrounds, school steps, parking lots, administration buildings, athletic facilities, gymnasiums, locker rooms, and school buses.

(b) "Tobacco product" means a substance intended for human consumption that contains tobacco, including cigarettes, cigars, snuff, smoking tobacco, and smokeless tobacco.

**History:** En. Sec. 9, Ch. 569, L. 1993; Sec. 20-5-411, MCA 1995; redes. 20-1-220 by Code Commissioner, 1997; amd. Sec. 1, Ch. 268, L. 2005.

**Cross-References**

Youth Access to Tobacco Products Control Act, Title 16, ch. 11, part 3.

Possession or consumption of tobacco products, alternative nicotine products, or vapor products by persons under 18 years of age prohibited — unlawful attempt to purchase — penalties, 45-5-637.

**20-1-221 through 20-1-224 reserved.**

**20-1-225. Compliance with Military Selective Service Act for postsecondary financial assistance — rulemaking — definitions.** (1) A postsecondary educational institution may not provide student financial assistance to or enroll as a student an individual who is receiving or will receive student financial assistance unless the individual has complied with the registration requirements of the federal Military Selective Service Act, 50 App. U.S.C. 451, et seq. However, this prohibition does not apply to an individual who:

(a) by a preponderance of the evidence shows that the failure to register was not done knowingly or willfully; or

(b) is exempt from registration under the provisions of the Military Selective Service Act.

(2) The board of regents shall adopt rules to implement this section.

(3) The following definitions apply to this section:

(a) "Postsecondary educational institution" means:

(i) the Montana university system; or

(ii) any other postsecondary school:

(A) accepting as a student an individual receiving student financial assistance; or

(B) accepting state funds.

(b) "Student financial assistance":

(i) means a grant, loan, or insurance on a loan, all or a part of which is provided by the state; and

(ii) includes money given or to be given pursuant to:

(A) the reimbursement for services provided to resident nonbeneficiary students provision in 20-25-428;

(B) the work-study program provided for in Title 20, chapter 25, part 7;

(C) the Montana resident student financial assistance program provided for in Title 20, chapter 26, parts 1 and 2; or

(D) the guaranteed student loan program provided for in Title 20, chapter 26, part 11.

**History:** En. Sec. 2, Ch. 320, L. 2001; amd. Sec. 1, Ch. 286, L. 2015.



**20-1-226 through 20-1-229 reserved.**

**20-1-230. Enactment — Interstate Compact on Educational Opportunity for Military Children — provisions.** The Interstate Compact on Educational Opportunity for Military Children is enacted into law and entered into with all other jurisdictions joining in the compact in the form substantially as follows:

## ARTICLE I PURPOSE

(1) It is the purpose of this compact to remove barriers to educational success imposed on children of military families because of frequent moves and deployment of their parents by:

(a) facilitating the timely enrollment of children of military families and ensuring that they are not placed at a disadvantage due to difficulty in the transfer of education records from the previous school districts or variations in entrance or age requirements;

(b) facilitating the student placement process through which children of military families are not disadvantaged by variations in attendance requirements, scheduling, sequencing, grading, course content, or assessment;

(c) facilitating the qualification and eligibility for enrollment, educational programs, and participation in extracurricular academic, athletic, and social activities;

(d) facilitating the on-time graduation of children of military families;

(e) providing for the promulgation and enforcement of administrative rules implementing the provisions of this compact;

(f) providing for the uniform collection and sharing of information between and among member states, schools, and military families under this compact;

(g) promoting coordination between this compact and other compacts affecting military children; and

(h) promoting flexibility and cooperation between the educational system, parents, and the student in order to achieve educational success for the student.

(2) The purpose of the legislation and the Interstate Compact is not to supersede the sovereignty of any member state but instead to facilitate the collective exercise of each state's sovereignty to allow a uniform solution without federal intervention. No provision of the Interstate Compact may be construed as a waiver of any state's sovereignty.

## ARTICLE II DEFINITIONS

As used in this compact, unless the context clearly requires a different construction, the following definitions apply:

(1) "Active duty" means full-time duty status in the active uniformed service of the United States, including members of the national guard and reserve on active duty orders pursuant to 10 U.S.C. 12301(d) and 12304.

(2) "Children of military families" means school-aged children enrolled in kindergarten through 12th grade, in the household of an active duty member.

(3) "Compact commissioner" means the voting representative of each member state appointed pursuant to Article VIII of this compact.

(4) "Deployment" means the period 1 month prior to the service member's departure from the service member's home station on military orders through 6 months after return to the service member's home station.

(5) "Education records" means those official records, files, and data directly related to a student and maintained by the school or local education agency, including but not limited to records encompassing all the material kept in the student's cumulative folder, such as general identifying data, records of attendance and of academic work completed, records of achievement and results of evaluative tests, health data, disciplinary status, test protocols, and individualized education programs.

(6) "Extracurricular activities" means voluntary activities sponsored by the school or local education agency or an organization sanctioned by the local education agency. Extracurricular activities include but are not limited to preparation for and involvement in public performances, contests, athletic competitions, demonstrations, displays, and club activities.

(7) “Interstate Commission on Educational Opportunity for Military Children” or “Interstate Commission” means the commission that is created under Article IX of this compact.

(8) “Local education agency” means a public authority legally constituted by the state as an administrative agency to provide control of and direction for kindergarten through 12th grade public educational institutions.

(9) “Member state” means a state that has enacted this compact.

(10) “Military installation” means a base, camp, post, station, yard, center, homeport facility for any ship, or other facility under the jurisdiction of the department of defense, including any leased facility, that is located within any state.

(11) “Nonmember state” means a state that has not enacted this compact.

(12) “Receiving state” means the state to which a child of a military family is sent, brought, or caused to be sent or brought.

(13) “Rule” means a written statement by the Interstate Commission promulgated pursuant to Article XII of this compact that is of general applicability, that implements, interprets, or prescribes a policy or provision of the compact, or that is an organizational, procedural, or practice requirement of the Interstate Commission and has the force and effect of statutory law in a member state. The term includes the amendment, repeal, or suspension of an existing rule.

(14) “Sending state” means the state from which a child of a military family is sent, brought, or caused to be sent or brought.

(15) “State” means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Northern Marianas Islands, and any other U.S. territory.

(16) “Student” means the child of a military family for whom the local education agency receives public funding and who is formally enrolled in kindergarten through 12th grade.

(17) “Transition” means:

(a) the formal and physical process of transferring from school to school; or

(b) the period of time during which a student moves from one school in the sending state to another school in the receiving state.

(18) “Uniformed service” means the army, navy, air force, marine corps, or coast guard.

(19) “Veteran” means a person who served in the uniformed services and who was discharged or released from service under conditions other than dishonorable.

### ARTICLE III APPLICABILITY

(1) Except as otherwise provided in subsection (3), this compact applies to the children of:

(a) active duty members of the uniformed services as defined in this compact, including members of the national guard and reserve on active duty orders pursuant to 10 U.S.C. 12301(d) and 12304;

(b) members or veterans of the uniformed services who are severely injured and medically discharged or retired for a period of 1 year after medical discharge or retirement; and

(c) members of the uniformed services who die on active duty or as a result of injuries sustained on active duty for a period of 1 year after death.

(2) The provisions of this compact apply only to local education agencies as defined in this compact.

(3) The provisions of this compact do not apply to the children of:

(a) inactive members of the national guard and military reserves;

(b) members of the uniformed services now retired, except as provided in subsection (1);

(c) veterans of the uniformed services, except as provided in subsection (1); and

(d) other U.S. department of defense personnel and other federal agency civilian and contract employees not defined as active duty members of the uniformed services.

### ARTICLE IV EDUCATIONAL RECORDS AND ENROLLMENT

(1) In the event that official education records cannot be released to the parents for the purpose of transfer, the custodian of the records in the sending state shall prepare and furnish to the parent a complete set of unofficial educational records from a local education facility,

as defined by federal law, containing uniform information as determined by the Interstate Commission. Upon receipt of the unofficial education records by a school in the receiving state, the school shall enroll and appropriately place the student based on the information provided in the unofficial records, pending validation by the official records, as quickly as possible.

(2) Simultaneous with the enrollment and conditional placement of the student, the school in the receiving state shall request the student's official education record from the school in the sending state. Upon receipt of this request, the school in the sending state shall process and furnish the official education records to the school in the receiving state within 10 days or within a time that is reasonably determined under the rules promulgated by the Interstate Commission.

(3) Receiving states shall give 30 days from the date of enrollment or a time as is reasonably determined under the rules promulgated by the Interstate Commission for students to obtain any immunizations required by the receiving state. For a series of immunizations, initial vaccinations must be obtained within 30 days or within a time that is reasonably determined under the rules promulgated by the Interstate Commission.

(4) Students must be allowed to continue their enrollment at grade level in the receiving state commensurate with their grade level, including kindergarten, from a local education agency in the sending state at the time of transition regardless of age. A student that has satisfactorily completed the prerequisite grade level in the local education agency in the sending state must be eligible for enrollment in the next highest grade level in the receiving state regardless of age. A student transferring after the start of the school year in the receiving state shall enter the school in the receiving state on the student's validated level from a school in the sending state.

## ARTICLE V PLACEMENT AND ATTENDANCE

(1) When the student transfers before or during the school year, the receiving state school shall initially honor placement of the student in educational courses based on the student's enrollment in the sending state school, educational assessments conducted at the school in the sending state, or both, if the courses are offered and space is available. Course placement includes but is not limited to honors, international baccalaureate, advanced placement, and vocational, technical, and career pathways courses. Continuing the student's academic program from the previous school and promoting placement in academically and career challenging courses should be paramount when considering placement. This does not preclude the school in the receiving state from performing subsequent evaluations to ensure appropriate placement and continued enrollment of the student in the courses.

(2) The receiving state school shall initially honor placement of the student in educational programs based on space availability and current educational assessments conducted at the school in the sending state or participation or placement in like programs in the sending state. Such programs include but are not limited to gifted and talented programs. This does not preclude the school in the receiving state from performing subsequent evaluations to ensure appropriate placement of the student. This section does not require a local education agency to create programs or offer services that were not in place prior to the enrollment of the student unless the programs or services are required by federal or state law.

(3) (a) In compliance with the federal requirements of the Individuals with Disabilities Education Act, 20 U.S.C. 1400, et seq., the receiving state shall initially provide comparable services to a student with disabilities based on the student's current individualized education program.

(b) In compliance with the requirements of section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, and with Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. 12131 through 12165, the receiving state shall make reasonable accommodations and modifications to address the needs of incoming students with disabilities, subject to an existing 504 or Title II plan, to provide the student with equal access to education. This does not preclude the school in the receiving state from performing subsequent evaluations to ensure appropriate placement of the student.

(4) Local education agency administrative officials have flexibility in waiving course or program prerequisites or other preconditions for placement in courses or programs offered under the jurisdiction of the local education agency.

(5) A student whose parent or legal guardian is an active duty member of the uniformed services, as defined by the compact, and has been called to duty for, is on leave from, or has immediately returned from deployment to a combat zone or combat support posting must be granted additional excused absences at the discretion of the local education agency superintendent to visit with the student's parent or legal guardian relative to the leave or deployment of the parent or guardian.

## ARTICLE VI ELIGIBILITY

(1) A special power of attorney, relative to the guardianship of a child of a military family and executed under applicable law, is sufficient for the purposes of enrollment and all other actions requiring parental participation and consent.

(2) A local education agency is prohibited from charging local tuition to a transitioning military child placed in the care of a noncustodial parent or other person standing in loco parentis who lives in a jurisdiction other than that of the custodial parent.

(3) A transitioning military child, placed in the care of a noncustodial parent or other person standing in loco parentis who lives in a jurisdiction other than that of the custodial parent may continue to attend the school in which the child was enrolled while residing with the custodial parent.

(4) State and local education agencies shall facilitate the opportunity for transitioning military children's inclusion in extracurricular activities, regardless of application deadlines, to the extent they are otherwise qualified.

## ARTICLE VII GRADUATION

In order to facilitate the on-time graduation of children of military families, states and local education agencies shall incorporate the following procedures:

(1) Local education agency administrative officials shall waive specific courses required for graduation if similar course work has been satisfactorily completed in another local education agency or shall provide reasonable justification for denial. If a waiver is not granted to a student who would qualify to graduate from the sending state, the local education agency shall provide an alternative means of acquiring required coursework so that graduation may occur on time.

(2) (a) In lieu of testing requirements for graduation in the receiving state, states shall accept:

- (i) exit or end-of-course exams required for graduation from the sending state;
- (ii) national norm-referenced achievement tests; or
- (iii) alternative testing.

(b) In the event that the above alternatives cannot be accommodated by the receiving state for a student transferring to the school during the student's senior year, the provisions of subsection (3) of this article apply.

(3) If a military student transferring at the beginning of or during the student's senior year is ineligible to graduate from the receiving local education agency after all alternatives have been considered, the sending and receiving local education agencies shall ensure the receipt of a diploma from the sending local education agency if the student meets the graduation requirements of the sending local education agency. In the event that one of the states in question is not a member of this compact, the member state shall use best efforts to facilitate the on-time graduation of the student in accordance with subsections (1) and (2) of this article.

## ARTICLE VIII STATE COORDINATION

(1) Each member state shall, through the creation of a state council or use of an existing body or board, provide for the coordination among its agencies of government, local education agencies, and military installations concerning the state's participation in and compliance with this compact and Interstate Commission activities. While each member state may determine

the membership of its own state council, its membership must, at a minimum, include the state superintendent of public instruction, a superintendent of a school district with a high concentration of military children, a representative from a military installation, one representative each from the legislative and executive branches of government, and other offices and stakeholder groups that the state council considers appropriate.

(2) The state council of each member state shall appoint or designate a military family education liaison to assist military families and the state in facilitating the implementation of this compact.

(3) The compact commissioner responsible for the administration and management of the state's participation in the compact must be appointed by the governor or as otherwise determined by each member state.

(4) The compact commissioner and the military family education liaison designated herein are ex-officio members of the state council unless either is already a full voting member of the state council.

#### ARTICLE IX INTERSTATE COMMISSION ON EDUCATIONAL OPPORTUNITY FOR MILITARY CHILDREN

The member states hereby create the Interstate Commission on Educational Opportunity for Military Children. The activities of the Interstate Commission are the formation of public policy and are a discretionary state function.

(1) The Interstate Commission is a body corporate and joint agency of the member states and has all the responsibilities, powers, and duties set forth herein and additional powers that may be conferred upon it by a subsequent concurrent action of the respective legislatures of the member states in accordance with the terms of this compact.

(2) (a) The Interstate Commission consists of one voting representative from each member state who is that state's compact commissioner.

(b) Each member state represented at a meeting of the Interstate Commission is entitled to one vote.

(c) A majority of the total member states constitute a quorum for the transaction of business unless a larger quorum is required by the bylaws of the Interstate Commission.

(d) A representative may not delegate a vote to another member state. In the event that the compact commissioner is unable to attend a meeting of the Interstate Commission, the governor or state council may delegate voting authority to another person from the state for a specified meeting.

(e) The bylaws may provide for meetings of the Interstate Commission to be conducted by telecommunication or electronic communication.

(3) The Interstate Commission consists of ex-officio, nonvoting representatives who are members of interested organizations. The ex-officio members, as defined in the bylaws, may include but may not be limited to members of the representative organizations of military family advocates, local education agency officials, parent and teacher groups, the U.S. department of defense, the education commission of the states, the Interstate Agreement on the Qualification of Educational Personnel, and other interstate compacts affecting the education of children of military members.

(4) The Interstate Commission shall meet at least once each calendar year. The chairperson may call additional meetings and, upon the request of a simple majority of the member states, shall call additional meetings.

(5) The Interstate Commission shall establish an executive committee, whose members must include the officers of the Interstate Commission and any other members of the Interstate Commission as determined by the bylaws. Members of the executive committee shall serve 1-year terms. Members of the executive committee are entitled to one vote each. The executive committee has the power to act on behalf of the Interstate Commission, with the exception of rulemaking, during periods when the Interstate Commission is not in session. The executive committee shall oversee the day-to-day activities of the administration of the compact, including enforcement and compliance with the provisions of the compact and its bylaws and rules and



other duties considered necessary. The U.S. department of defense shall serve as an ex-officio, nonvoting member of the executive committee.

(6) The Interstate Commission shall establish bylaws and rules that provide for conditions and procedures under which the Interstate Commission shall make its information and official records available to the public for inspection or copying. The Interstate Commission may exempt from disclosure information or official records to the extent they would adversely affect personal privacy rights or proprietary interests.

(7) Public notice must be given by the Interstate Commission of all meetings, and all meetings must be open to the public except as set forth in the rules or as otherwise provided in the compact. The Interstate Commission and its committees may close a meeting or portion thereof if it determines by a two-thirds vote that an open meeting would be likely to:

- (a) relate solely to the Interstate Commission's internal personnel;
- (b) disclose matters specifically exempted from disclosure by federal and state statute;
- (c) disclose trade secrets or commercial or financial information that is privileged or confidential;
- (d) involve accusing a person of a crime or formally censuring a person;
- (e) disclose information of a personal nature when disclosure would constitute a clearly unwarranted invasion of personal privacy;
- (f) disclose investigative records compiled for law enforcement purposes; or
- (g) specifically relate to the Interstate Commission's participation in a civil action or other legal proceeding.

(8) For a meeting or portion of a meeting closed pursuant to this provision, the Interstate Commission's legal counsel or designee shall certify that the meeting may be closed and shall reference each relevant exemptible provision. The Interstate Commission shall keep minutes, which shall fully and clearly describe all matters discussed in a meeting, and shall provide a full and accurate summary of actions taken and the reasons therefore, including a description of the views expressed and the record of a roll call vote. All documents considered in connection with an action must be identified in the minutes. All minutes and documents of a closed meeting must remain under seal, subject to release by a majority vote of the Interstate Commission.

(9) The Interstate Commission shall collect standardized data concerning the educational transition of the children of military families under this compact as directed through its rules, which shall specify the data to be collected, the means of collection, and data exchange and reporting requirements. The methods of data collection, exchange, and reporting must, in so far as is reasonably possible, conform to current technology, and the Interstate Commission shall coordinate its information functions with the appropriate custodian of records as identified in the bylaws and rules.

(10) The Interstate Commission shall create a process that permits military officials, education officials, and parents to inform the Interstate Commission if and when there are alleged violations of the compact or its rules or when issues subject to the jurisdiction of the compact or its rules are not addressed by the state or local education agency. This section may not be construed to create a private right of action against the Interstate Commission, any member state, or any local education agency.

## ARTICLE X POWERS AND DUTIES OF THE INTERSTATE COMMISSION

The Interstate Commission may:

- (1) provide for dispute resolution among member states;
- (2) adopt rules that have the force and effect of law and are binding in the compact states to the extent and in the manner provided in this compact and take all necessary actions to effect the goals, purposes, and obligations as enumerated in this compact;
- (3) issue, upon request of a member state, advisory opinions concerning the meaning or interpretation of the interstate compact and its bylaws, rules, and actions;
- (4) monitor compliance with the compact provisions, the rules adopted by the commission, and the bylaws;
- (5) establish and maintain offices, which must be located within one or more of the member states;

- (6) purchase and maintain insurance and bonds;
- (7) borrow, accept, hire, or contract for services of personnel;
- (8) establish and appoint committees, including but not limited to an executive committee as required by subsection (5) of Article IX of this compact, which has the power to act on behalf of the Interstate Commission in carrying out its powers and duties under this compact;
- (9) elect or appoint officers, attorneys, employees, agents, or consultants, fix their compensation, define their duties, and determine their qualifications, and establish the Interstate Commission's personnel policies and programs relating to conflicts of interest, rates of compensation, and qualifications of personnel;
- (10) accept any and all donations and grants of money, equipment, supplies, materials, and services and receive, utilize, and dispose of it;
- (11) lease, purchase, accept contributions or donations of, or otherwise own, hold, improve, or use any property, whether real, personal, or mixed;
- (12) sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, whether real, personal, or mixed;
- (13) establish a budget and make expenditures;
- (14) adopt a seal and bylaws governing the management and operation of the Interstate Commission;
- (15) report annually to the legislatures, governors, judiciary, and state councils of the member states concerning the activities of the Interstate Commission during the preceding year. The reports must also include any recommendations that may have been adopted by the Interstate Commission.
- (16) coordinate education, training, and public awareness regarding the compact and its implementation and operation for officials and parents involved in such activity;
- (17) establish uniform standards for the reporting, collecting, and exchanging of data;
- (18) maintain corporate books and records in accordance with the bylaws;
- (19) perform functions that may be necessary or appropriate to achieve the purposes of this compact;
- (20) provide for the uniform collection and sharing of information between and among member states, schools, and military families under this compact.

#### ARTICLE XI ORGANIZATION AND OPERATION OF THE INTERSTATE COMMISSION

- (1) The Interstate Commission shall, by a majority of the members present and voting, within 12 months after the first Interstate Commission meeting, adopt bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes of the compact, including but not limited to:
  - (a) establishing the fiscal year of the Interstate Commission;
  - (b) establishing an executive committee and other committees as may be necessary;
  - (c) providing for the establishment of committees and for governing any general or specific delegation of authority or function of the Interstate Commission;
  - (d) providing reasonable procedures for calling and conducting meetings of the Interstate Commission and ensuring reasonable notice of each meeting;
  - (e) establishing the titles and responsibilities of the officers and staff of the Interstate Commission;
  - (f) providing a mechanism for concluding the operations of the Interstate Commission and the return of surplus funds that may exist upon the termination of the compact after the payment and reserving of all of its debts and obligations;
  - (g) providing startup rules for initial administration of the compact.
- (2) The Interstate Commission shall, by a majority of the members, elect annually from among its members a chairperson, a vice chairperson, and a treasurer, each of whom has authority and duties as specified in the bylaws. The chairperson or, in the chairperson's absence or disability, the vice chairperson, shall preside at all meetings of the Interstate Commission. The officers shall serve without compensation or remuneration from the Interstate Commission. However, subject to the availability of budgeted funds, the officers must be reimbursed for

ordinary and necessary costs and expenses incurred by them in the performance of their responsibilities as officers of the Interstate Commission.

(3) The executive committee has authority and duties as set forth in the bylaws, including but not limited to:

(a) managing the affairs of the Interstate Commission in a manner consistent with the bylaws and purposes of the Interstate Commission;

(b) overseeing an organizational structure and appropriate procedures for the Interstate Commission to provide for the creation of rules, operating procedures, and administrative and technical support functions; and

(c) planning, implementing, and coordinating communications and activities with other state, federal, and local government organizations in order to advance the goals of the Interstate Commission.

(4) The executive committee may, subject to the approval of the Interstate Commission, appoint or retain an executive director for a period, upon terms and conditions, and for compensation as the Interstate Commission considers appropriate. The executive director shall serve as secretary to the Interstate Commission, but may not be a member of the Interstate Commission. The executive director shall hire and supervise other persons as authorized by the Interstate Commission.

(5) The Interstate Commission's executive director and its employees are immune from suit and liability, either personally or in their official capacity, for a claim for damage to or loss of property or personal injury or other civil liability caused or arising out of or relating to an actual or alleged act, error, or omission that occurred or that the person had a reasonable basis for believing occurred within the scope of Interstate Commission employment, duties, or responsibilities. However, that person is not protected from suit or liability for damage, loss, injury, or liability caused by the person's intentional or willful and wanton misconduct.

(6) The liability of the Interstate Commission's executive director and employees or Interstate Commission representatives, acting within the scope of their employment or duties for acts, errors, or omissions occurring within their state, may not exceed the limits of liability set forth under the constitution and laws of that state for state officials, employees, and agents. The Interstate Commission is considered to be an instrumentality of the states for the purposes of any such action. Nothing in this subsection may be construed to protect a person from suit or liability for damage, loss, injury, or liability caused by the person's intentional or willful and wanton misconduct.

(7) The Interstate Commission shall defend the executive director and its employees and, subject to the approval of the attorney general or other appropriate legal counsel of the member state represented by an Interstate Commission representative, shall defend the Interstate Commission representative in any civil action seeking to impose liability arising out of an actual or alleged act, error, or omission that occurred within the scope of Interstate Commission employment, duties, or responsibilities or that the defendant had a reasonable basis for believing occurred within the scope of Interstate Commission employment, duties, or responsibilities if the actual or alleged act, error, or omission did not result from intentional or willful and wanton misconduct on the part of the person.

(8) To the extent not covered by the state involved, the member state, the Interstate Commission, or the representatives or employees of the Interstate Commission must be held harmless in the amount of a settlement or judgment, including attorney fees and costs, obtained against those persons arising out of an actual or alleged act, error, or omission that occurred within the scope of Interstate Commission employment, duties, or responsibilities or that the persons had a reasonable basis for believing occurred within the scope of Interstate Commission employment, duties, or responsibilities if the actual or alleged act, error, or omission did not result from intentional or willful and wanton misconduct on the part of the persons.

## ARTICLE XII

### RULEMAKING FUNCTIONS OF THE INTERSTATE COMMISSION

(1) The Interstate Commission shall promulgate reasonable rules in order to effectively and efficiently achieve the purposes of this compact. Notwithstanding the foregoing, in the event the Interstate Commission exercises its rulemaking authority in a manner that is beyond the scope

of the purposes of this compact or the powers granted under the compact, then such an action by the Interstate Commission is invalid and has no force or effect.

(2) Rules must be made pursuant to a rulemaking process that substantially conforms to the Model State Administrative Procedure Act revised as of 2012 as may be appropriate to the operations of the Interstate Commission.

(3) Not later than 30 days after a rule is promulgated, any person may file a petition for judicial review of the rule. However, the filing of a petition does not stay or otherwise prevent the rule from becoming effective unless the court finds that the petitioner has a substantial likelihood of success. The court shall give deference to the actions of the Interstate Commission consistent with applicable law and may not find the rule to be unlawful if the rule represents a reasonable exercise of the Interstate Commission's authority.

(4) If a majority of the legislatures of the member states rejects a rule by enactment of a statute or resolution in the same manner used to adopt the compact, then the rule has no further force and effect in any member state.

### ARTICLE XIII OVERSIGHT, ENFORCEMENT, AND DISPUTE RESOLUTION

(1) Each member state shall enforce this compact to effectuate the compact's purposes and intent.

(2) All courts shall take judicial notice of the compact and the rules in any judicial or administrative proceeding in a member state pertaining to the subject matter of this compact that may affect the powers, responsibilities, or actions of the Interstate Commission.

(3) The Interstate Commission is entitled to receive all service of process in any such proceeding and has standing to intervene in the proceeding for all purposes. Failure to provide service of process to the Interstate Commission renders a judgment or order void as to the Interstate Commission, this compact, or promulgated rules.

(4) The purpose of this compact is not to supersede the sovereignty of any member state but instead to facilitate the collective exercise of each state's sovereignty to allow a uniform solution without federal intervention. No provision of the interstate compact may be construed as a waiver of a state's sovereignty.

(5) If the Interstate Commission determines that a member state has defaulted in the performance of its obligations or responsibilities under this compact or the bylaws or promulgated rules, the Interstate Commission shall:

(a) provide written notice to the defaulting state and other member states of the nature of the default, the means of curing the default, and any action taken by the Interstate Commission. The Interstate Commission shall specify the conditions by which the defaulting state is required to cure its default.

(b) provide remedial training and specific technical assistance regarding the default.

(6) If the defaulting state fails to cure the default, the defaulting state must be terminated from the compact upon an affirmative vote of a majority of the member states and all rights, privileges, and benefits conferred by this compact must be terminated from the effective date of termination. A cure of the default does not relieve the offending state of obligations or liabilities incurred during the period of the default, except that in the event of a default by this state, its total financial responsibility is limited to the amount of its most recent annual assessment.

(7) Suspension or termination of membership in the compact may be imposed only after all other means of securing compliance have been exhausted. Notice of intent to suspend or terminate must be given by the Interstate Commission to the governor, the majority and minority leaders of the defaulting state's legislature, and each of the member states.

(8) The state that has been suspended or terminated is responsible for all assessments, obligations, and liabilities incurred through the effective date of suspension or termination up to a maximum amount of \$5,000 multiplied by the number of years that the state has been a member of the compact. In the event that this state is suspended or terminated, its total financial responsibility is limited to the amount of its most recent annual assessment.

(9) The Interstate Commission may not bear any costs relating to any state that has been found to be in default or that has been suspended or terminated from the compact unless otherwise mutually agreed upon in writing between the Interstate Commission and the defaulting state.

(10) The defaulting state may appeal the action of the Interstate Commission by petitioning the U.S. district court for the District of Columbia or the federal district where the Interstate Commission has its principal offices. The prevailing party must be awarded all costs of litigation, including reasonable attorney fees.

(11) The Interstate Commission shall attempt, upon the request of a member state, to resolve disputes that are subject to the compact and that may arise among member states and between member and nonmember states.

(12) The Interstate Commission shall promulgate a rule providing for both mediation and binding dispute resolution for disputes as appropriate.

#### ARTICLE XIV FINANCING OF THE INTERSTATE COMMISSION

(1) The Interstate Commission shall pay or provide for the payment of the reasonable expenses of its establishment, organization, and ongoing activities.

(2) The Interstate Commission may levy on and collect an annual assessment from each member state to cover the cost of the operations and activities of the Interstate Commission and its staff, which must be in a total amount sufficient to cover the Interstate Commission's annual budget as approved each year. The aggregate annual assessment amount must be allocated based upon a formula to be determined by the Interstate Commission, which shall promulgate a rule binding upon all member states to the limits as specified herein.

(3) The annual assessment applicable to this state may not exceed an amount equal to \$2 multiplied by the latest available number of children of military families in this state.

(4) This state may not be held liable for the payment of any special assessment or other assessment other than the annual assessment in the amount established by subsection (3).

(5) The Interstate Commission may not incur obligations of any kind prior to securing the funds adequate to meet those obligations, and the Interstate Commission may not pledge the credit of any of the member states except by and with the authority of the member state.

(6) The Interstate Commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Interstate Commission are subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the Interstate Commission must be audited yearly by a certified or licensed public accountant, and the report of the audit must be included in and become part of the annual report of the Interstate Commission.

(7) All expenditures for the state, including withdrawal or dissolution costs, or both, may not exceed an amount of \$5,000 annually.

#### ARTICLE XV MEMBER STATES, EFFECTIVE DATE, AND AMENDMENT

(1) Any state is eligible to become a member state, except that in the case of this state, withdrawal from the compact may also be accomplished by statutorily allowing for expiration of this section.

(2) Withdrawal from the compact must be by the enactment of a statute repealing the compact, except in the case of this state, withdrawal from the compact may also be accomplished by statutorily allowing for the expiration of this section.

(3) The Interstate Commission may propose amendments to the compact for enactment by the member states. An amendment may not become effective and binding upon the Interstate Commission and the member states unless it is enacted into law by unanimous consent of the member states.

#### ARTICLE XVI WITHDRAWAL AND DISSOLUTION

(1) Once effective, the compact continues in force and remains binding upon each and every member state. However, a member state may withdraw from the compact by specifically repealing the statute that enacted the compact into law, except that in the case of this state, withdrawal from the compact may also be accomplished by statutorily allowing for expiration of this section.



(2) Withdrawal from this compact must be by the enactment of legislation repealing the compact except in the case of this state, withdrawal from the compact may also be accomplished by statutorily allowing for the expiration of this section.

(3) The withdrawing state shall immediately notify the chairperson of the Interstate Commission in writing upon the introduction of legislation repealing this compact in the withdrawing state, except that if this state elects to withdraw from the compact by statutorily allowing for the expiration of this section, this state shall notify the chairperson of the commission when it becomes evident that the expiration will take effect. The Interstate Commission shall notify the other member states of the withdrawing state's intent to withdraw within 60 days of its receipt of the notice.

(4) The withdrawing state is responsible for all assessments, obligations, and liabilities incurred through the effective date of withdrawal up to a maximum amount equal to \$2 multiplied by the latest available number of children of military families in this state.

(5) Reinstatement following withdrawal of a member state may occur upon the withdrawing state reenacting the compact or upon a later date as determined by the Interstate Commission.

(6) (a) This compact dissolves on the date of the withdrawal or default of the member state that reduces the membership in the compact to one member state.

(b) Upon the dissolution of this compact, the compact becomes null and void and is of no further force or effect and the business and affairs of the Interstate Commission must be concluded and surplus funds must be distributed in accordance with the bylaws.

#### ARTICLE XVII SEVERABILITY AND CONSTRUCTION

(1) The provisions of this compact are severable, and if any phrase, clause, sentence, or provision is deemed unenforceable, the remaining provisions of the compact are enforceable.

(2) The provisions of this compact must be liberally construed to effectuate its purposes.

(3) Nothing in this compact may be construed to prohibit the applicability of other interstate compacts to which the states are members.

#### ARTICLE XVIII BINDING EFFECT OF COMPACT AND OTHER LAWS

(1) Nothing in this compact prevents the enforcement of any other law of a member state that is not inconsistent with this compact. All member states' laws conflicting with this compact are superseded to the extent of the conflict.

(2) All lawful actions of the Interstate Commission, including all rules and bylaws promulgated by the Interstate Commission, are binding upon the member states.

(3) All agreements between the Interstate Commission and the member states are binding in accordance with their terms.

(4) In the event that any provision of this compact exceeds the constitutional limits imposed on the legislature of any member state, that provision is ineffective to the extent of the conflict with the constitutional provision in question in that member state.

#### ARTICLE XIX STATE COUNCIL - CREATION

The state council on educational opportunity for military children must be created and consist of:

(1) the following voting members:

(a) the superintendent of public instruction, who shall serve as the chairperson;

(b) the superintendent of a school district that includes a high concentration of military children, appointed by the governor;

(c) a representative of a military installation, appointed by the governor;

(d) a legislator, appointed by the senate president;

(e) a representative of the executive branch of government, appointed by the governor; and

(f) any other individuals recommended by a majority of the members of the state council listed in subsections (1)(a) through (1)(e); and

(2) the following nonvoting members:

(a) the compact commissioner appointed under Article XX; and

- (b) the military family education liaison, appointed under Article XXI.

## ARTICLE XX

### COMPACT COMMISSIONER - APPOINTMENT AND DUTIES

The governor shall appoint a compact commissioner who is responsible for the administration and management of the state's participation in the compact on educational opportunity for military children.

## ARTICLE XXI

### MILITARY FAMILY EDUCATION LIAISON - APPOINTMENT AND DUTIES

The state council shall appoint a military family education liaison to assist military families and the state in facilitating the implementation of the compact on educational opportunity for military children.

## ARTICLE XXII

### PROVISION OF FUNDING - ADJUTANT GENERAL

Each state's equivalent of a department of military affairs under the adjutant general shall pay all expenses incurred by the state to participate in the compact on educational opportunity for military children, including the reimbursement of actual and necessary expenses incurred by members of the state council.

**History:** En. Sec. 1, Ch. 321, L. 2013.

**20-1-231. Report to legislature.** On or before September 15 of even-numbered years, representatives of the Great Falls school district, the Helena school district, and a member of the military, as specified by the adjutant general, shall provide, singly or jointly, a report to the senate president, the speaker of the house, and the education interim committee regarding the state's participation in the compact on educational opportunity for military children established in 20-1-230.

**History:** En. Sec. 2, Ch. 321, L. 2013; amd. Sec. 1, Ch. 277, L. 2015.

#### Compiler's Comments

*2017 Code Commissioner Correction:* Pursuant to sec. 24, Ch. 275, L. 2017, the code commissioner substituted "education interim committee" for "education and local government interim committee" to reflect amendments made by Ch. 167, L. 2017.

## Part 3

### School Terms and Holidays — Released Time

**20-1-301. School fiscal year.** (1) The school fiscal year begins on July 1 and ends on June 30. At least the minimum aggregate hours required in subsection (2) must be conducted during each school fiscal year, except that 1,050 aggregate hours of pupil instruction for graduating seniors may be sufficient. The minimum aggregate hours required in subsection (2) are not required for any pupil demonstrating proficiency pursuant to 20-9-311(4)(d).

(2) The minimum aggregate hours required by grade are:

(a) 360 hours for a half-time kindergarten program or 720 hours for a full-time kindergarten program, as provided in 20-7-117;

(b) 720 hours for grades 1 through 3; and

(c) 1,080 hours for grades 4 through 12.

(3) For any elementary or high school district that fails to provide for at least the minimum aggregate hours, as listed in subsections (1) and (2), to any pupil not demonstrating proficiency pursuant to 20-9-311(4)(d), the superintendent of public instruction shall reduce the direct state aid for the district for that school year by two times an hourly rate, as calculated by the office of public instruction, for the aggregate hours missed by each pupil not demonstrating proficiency pursuant to 20-9-311(4)(d).

**History:** En. 75-7402 by Sec. 366, Ch. 5, L. 1971; amd. Sec. 2, Ch. 373, L. 1974; R.C.M. 1947, 75-7402; amd. Sec. 6, Ch. 288, L. 1979; amd. Sec. 1, Ch. 148, L. 1981; amd. Sec. 1, Ch. 460, L. 1983; amd. Sec. 3, Ch. 22, L. 1997; amd. Sec. 110, Ch. 42, L. 1997; amd. Sec. 1, Ch. 430, L. 1997; amd. Sec. 5, Ch. 237, L. 2001; amd. Sec. 3, Ch. 138, L. 2005; amd. Sec. 9, Ch. 1, Sp. L. May 2007; amd. Sec. 1, Ch. 149, L. 2017.

#### Compiler's Comments

*2017 Amendment:* Chapter 149 in (1) in second sentence substituted "required" for "defined" and inserted last sentence excluding pupils demonstrating proficiency from minimum aggregate hours"; in (3) after "in subsections

(1) and (2)” inserted “to any pupil not demonstrating proficiency pursuant to 20-9-311(4)(d)” and at end inserted “by each pupil not demonstrating proficiency pursuant to 20-9-311(4)(d)”; and made minor changes in style. Amendment effective July 1, 2017.

*Applicability:* Section 3, Ch. 149, L. 2017, provided: “[This act] applies to school fiscal years beginning on or after July 1, 2017.”

#### **Cross-References**

Management of school funds by County Treasurer, 7-6-2801.  
Elementary district abandonment, 20-6-209.  
High school district abandonment, 20-6-307.  
Formula for apportionment of county equalization money, 20-9-335.  
Emergency school closure, Title 20, ch. 9, part 8.

**20-1-302. School term, day, and week.** (1) Subject to 20-1-301, 20-1-308, and any applicable collective bargaining agreement covering the employment of affected employees, the trustees of a school district shall set the number of days in a school term, the length of the school day, and the number of school days in a school week and report them to the superintendent of public instruction.

(2) When proposing to adopt changes to a previously adopted school term, school week, or school day, the trustees shall:

(a) negotiate the changes with the recognized collective bargaining unit representing the employees affected by the changes;

(b) solicit input from the employees affected by the changes but not represented by a collective bargaining agreement; and

(c) solicit input from the people who live within the boundaries of the school district.

**History:** En. 75-7403 by Sec. 367, Ch. 5, L. 1971; amd. Sec. 1, Ch. 417, L. 1973; amd. Sec. 3, Ch. 373, L. 1974; amd. Sec. 1, Ch. 130, L. 1977; R.C.M. 1947, 75-7403; amd. Sec. 2, Ch. 430, L. 1997; amd. Sec. 4, Ch. 138, L. 2005.

#### **Cross-References**

Duty of Board of Public Education to approve school day, 20-2-121(5).  
Calculation of average number belonging, 20-9-311.

#### **20-1-303. Conduct of school on Saturday or Sunday prohibited — exceptions.**

(1) Except as provided in subsections (2) and (3), pupil instruction may not be conducted on Saturday or Sunday.

(2) In emergencies, pupil instruction may be conducted on a Saturday when it is approved by the trustees of the school district in accordance with the policies adopted by the board of public education.

(3) Pupil instruction may be held on a Saturday at the discretion of a school district for the purpose of providing additional pupil instruction, provided that:

(a) Saturday school is not a pupil-instruction day and does not count toward minimum aggregate hours of pupil instruction provided for in 20-1-301; and

(b) student attendance is voluntary.

**History:** En. 75-7404 by Sec. 368, Ch. 5, L. 1971; R.C.M. 1947, 75-7404; amd. Sec. 1, Ch. 21, L. 2003; amd. Sec. 1, Ch. 193, L. 2011.

#### **Cross-References**

Duty of Board of Public Education to adopt policy regarding school on Saturdays, 20-2-121(6).  
Power of Superintendent of Public Instruction to approve school on Saturdays, 20-3-106(17).

**20-1-304. Pupil-instruction-related day.** A pupil-instruction-related day is a day of teacher activities devoted to improving the quality of instruction. The activities may include but are not limited to inservice training, attending state meetings of teacher organizations, and conducting parent conferences. A maximum of 7 pupil-instruction-related days may be conducted during a school year, with a minimum of 3 of the days for instructional and professional development meetings or other appropriate inservice training, if the days are planned in accordance with the policy adopted by the board of public education. The days may not be included as a part of the required minimum aggregate hours of pupil instruction.

**History:** En. 75-7405 by Sec. 369, Ch. 5, L. 1971; R.C.M. 1947, 75-7405; amd. Sec. 1, Ch. 638, L. 1989; amd. Sec. 3, Ch. 430, L. 1997; amd. Sec. 5, Ch. 138, L. 2005.

#### **Cross-References**

Duty of Board of Public Education to adopt policy on pupil-instruction-related days, 20-2-121(6).  
Attendance at instructional and professional development meetings, 20-4-304.  
Instructional assistance by Superintendent of Public Instruction, 20-7-114.  
School closure by declaration of emergency, 20-9-806.

**20-1-305. School holidays.** (1) Pupil instruction and pupil-instruction-related days shall not be conducted on the following holidays:

- (a) New Year's Day (January 1);
- (b) Memorial Day (last Monday in May);
- (c) Independence Day (July 4);
- (d) Labor Day (first Monday in September);
- (e) Thanksgiving Day (fourth Thursday in November);
- (f) Christmas Day (December 25);
- (g) State and national election days when the school building is used as a polling place and the conduct of school would interfere with the election process at the polling place.

(2) When these holidays fall on Saturday or Sunday, the preceding Friday or the succeeding Monday shall not be a school holiday.

**History:** En. 75-7406 by Sec. 370, Ch. 5, L. 1971; amd. Sec. 1, Ch. 159, L. 1974; R.C.M. 1947, 75-7406.

**Cross-References**

Legal holidays, 1-1-216.

Teacher contract not to require teaching on school holidays, 20-4-201.

**20-1-306. Commemorative exercises on certain days.** (1) All districts shall conduct appropriate exercises during the school day on the following commemorative days:

- (a) Lincoln's Birthday (February 12);
- (b) Washington's Birthday (February 22);
- (c) Arbor Day (last Friday in April);
- (d) Flag Day (June 14);
- (e) Citizenship Day (September 17);
- (f) American Indian Heritage Day (fourth Friday in September);
- (g) Columbus Day (October 12);
- (h) Pioneer Day (November 1);
- (i) other days designated by the legislature or governor as legal holidays.

(2) When these commemorative days fall on Saturday or Sunday, exercises may be conducted the preceding Friday.

**History:** En. 75-7407 by Sec. 371, Ch. 5, L. 1971; R.C.M. 1947, 75-7407; amd. Sec. 1, Ch. 202, L. 1997.

**Cross-References**

Legal holidays, 1-1-216.

Observance of right to keep and bear arms, 1-1-224.

Arbor Day as official day of observance, 1-1-225.

Official observance of Montana's hunting heritage, 1-1-226.

**20-1-307. Provisions of school code excepted.** Nothing contained in 1-1-216 defining legal holidays shall be deemed to amend or change the provisions of 20-1-305 and 20-1-306, said sections being hereby expressly declared to define legal holidays for school purposes only.

**History:** En. Sec. 2, Ch. 21, L. 1921; re-en. Sec. 11, R.C.M. 1921; re-en. Sec. 11, R.C.M. 1935; amd. Sec. 1, Ch. 240, L. 1975; R.C.M. 19-108.

**20-1-308. Religious instruction released time program.** (1) The trustees of a school district may provide for a religious instruction released time program under which a pupil may be released from regular school attendance for the purpose of receiving religious instruction upon written request, renewed at least annually, of the pupil's parent or guardian. The trustees shall determine the amount of time for which a pupil may be released for religious instruction.

(2) A religious instruction released time program may not be established or administered in such a way that public school property is utilized for the purpose of religious instruction.

(3) Public money may not be used, directly or indirectly, for the religious instruction.

(4) Any period for which a pupil is released under a religious instruction released time program is part of the school day and week for purposes of 20-1-301, 20-1-302, 20-5-103, 20-9-311, and all other provisions of Title 20, and the release may not adversely affect the pupil's attendance record.

**History:** En. 75-7403.1 by Sec. 2, Ch. 130, L. 1977; R.C.M. 1947, 75-7403.1; amd. Sec. 1, Ch. 84, L. 2001.

**Cross-References**

Equal protection of laws guaranteed, Art. II, sec. 4, Mont. Const.

No appropriation to be made for religious purposes, Art. V, sec. 11(5), Mont. Const.

Aid prohibited to sectarian schools, Art. X, sec. 6, Mont. Const.

Discrimination in education prohibited, Art. X, sec. 7, Mont. Const.  
Sectarian publications prohibited and prayer permitted, 20-7-112.

## **Part 4 Disaster Drills**

**20-1-401. Disaster drills to be conducted regularly — districts to identify disaster risks and adopt school safety plan.** (1) As used in this part, “disaster” means the occurrence or imminent threat of damage, injury, or loss of life or property. Disaster drills must be conducted regularly in accordance with this part.

(2) A board of trustees shall identify the local hazards that exist within the boundaries of its school district and design and incorporate drills in its school safety plan or emergency operations plan to address those hazards.

(3) A board of trustees shall adopt a school safety plan or emergency operations plan that addresses issues of school safety relating to school buildings and facilities, communications systems, and school grounds with the input from the local community and that addresses coordination on issues of school safety, if any, with the county interdisciplinary child information and school safety team provided for in 52-2-211. The trustees shall certify to the office of public instruction that a school safety plan or emergency operations plan has been adopted. The trustees shall review the school safety plan or emergency operations plan periodically and update the plan as determined necessary by the trustees based on changing circumstances pertaining to school safety. Once the trustees have made the certification to the office of public instruction, the trustees may transfer funds pursuant to 20-9-236 to make improvements to school safety and security.

**History:** En. 75-8308.1 by Sec. 1, Ch. 424, L. 1973; R.C.M. 1947, 75-8308.1; amd. Sec. 1, Ch. 423, L. 1997; amd. Sec. 2, Ch. 364, L. 2013; amd. Sec. 1, Ch. 323, L. 2015.

**20-1-402. Number of disaster drills required — time of drills to vary.** There must be at least eight disaster drills a year in a school. Drills must be held at different hours of the day or evening to avoid distinction between drills and actual disasters.

**History:** En. Sec. 2, Ch. 424, L. 1973; R.C.M. 1947, 75-8308.2; amd. Sec. 2, Ch. 423, L. 1997; amd. Sec. 3, Ch. 364, L. 2013.

**20-1-403. Repealed.** Sec. 5, Ch. 423, L. 1997.

**History:** En. Sec. 3, Ch. 424, L. 1973; R.C.M. 1947, 75-8308.3.

**20-1-404. Drill to sound on disaster evacuation system — recall signal to be distinct — control of signal.** (1) If a disaster drill is signaled, the signal must be sounded on the disaster alarm system and not on the signal system used to dismiss classes.

(2) The recall signal must be separate and distinct from any other signal. The recall signal may be given by distinctive colored flags or banners. If the recall signal is electrical, the push buttons or other controls must be kept under lock and the key kept in the possession of the principal or some other designated person in order to prevent a recall at a time when there is a disaster. Regardless of the method of recall, the means of giving the signal must be kept under lock.

**History:** En. Sec. 4, Ch. 424, L. 1973; R.C.M. 1947, 75-8308.4; amd. Sec. 3, Ch. 423, L. 1997.

**20-1-405. Fire department to be called for actual fire.** Whenever any of the school authorities determine that an actual fire exists, they shall immediately call the local fire department using the public fire alarm system or such other facilities as are available.

**History:** En. Sec. 5, Ch. 424, L. 1973; R.C.M. 1947, 75-8308.5.

**20-1-406. Repealed.** Sec. 5, Ch. 423, L. 1997.

**History:** En. Sec. 6, Ch. 424, L. 1973; R.C.M. 1947, 75-8308.6.

**20-1-407. Inspection of exits — cooperation with local authorities having jurisdiction in drills.** It is the duty of the school authorities to inspect all exit facilities periodically in order to make sure that all stairways, doors, and other exits are in proper condition. School authorities shall cooperate with the local authorities having jurisdiction in conducting disaster drills.

**History:** En. Sec. 7, Ch. 424, L. 1973; R.C.M. 1947, 75-8308.7; amd. Sec. 4, Ch. 423, L. 1997.



**20-1-408. Repealed.** Sec. 11, Ch. 374, L. 2003.

**History:** En. 75-8310 by Sec. 494, Ch. 5, L. 1971; amd. Sec. 7, Ch. 234, L. 1977; R.C.M. 1947, 75-8310.

## **Part 5**

### **Indian Education for All**

**20-1-501. Recognition of American Indian cultural heritage — legislative intent.**

(1) It is the constitutionally declared policy of this state to recognize the distinct and unique cultural heritage of American Indians and to be committed in its educational goals to the preservation of their cultural heritage.

(2) It is the intent of the legislature that in accordance with Article X, section 1(2), of the Montana constitution:

(a) every Montanan, whether Indian or non-Indian, be encouraged to learn about the distinct and unique heritage of American Indians in a culturally responsive manner; and

(b) every educational agency and all educational personnel will work cooperatively with Montana tribes or those tribes that are in close proximity, when providing instruction or when implementing an educational goal or adopting a rule related to the education of each Montana citizen, to include information specific to the cultural heritage and contemporary contributions of American Indians, with particular emphasis on Montana Indian tribal groups and governments.

(3) It is also the intent of this part, predicated on the belief that all school personnel should have an understanding and awareness of Indian tribes to help them relate effectively with Indian students and parents, that educational personnel provide means by which school personnel will gain an understanding of and appreciation for the American Indian people.

**History:** En. Sec. 1, Ch. 527, L. 1999.

**20-1-502. American Indian studies — definitions.** As used in this part, the following definitions apply:

(1) “American Indian studies” means instruction pertaining to the history, traditions, customs, values, beliefs, ethics, and contemporary affairs of American Indians, particularly Indian tribal groups in Montana.

(2) “Instruction” means:

(a) a formal course of study or class, developed with the advice and assistance of Indian people, that is offered separately or that is integrated into existing accreditation standards by a unit of the university system or by an accredited tribal community college located in Montana, including a teacher education program within the university system or a tribal community college located in Montana, or by the board of trustees of a school district;

(b) inservice training developed by the superintendent of public instruction in cooperation with educators of Indian descent and made available to school districts;

(c) inservice training provided by a local board of trustees of a school district, which is developed and conducted in cooperation with tribal education departments, tribal community colleges, or other recognized Indian education resource specialists; or

(d) inservice training developed by professional education organizations or associations in cooperation with educators of Indian descent and made available to all certified and classified personnel.

**History:** En. Sec. 2, Ch. 527, L. 1999.

**20-1-503. Qualification in Indian studies — trustees and noncertified personnel.**

(1) The board of trustees for an elementary or secondary public school district may require that all of its certified personnel satisfy the requirements for instruction in American Indian studies. Pursuant to Article X, section 8, of the Montana constitution, this requirement may be a local school district requirement with enforcement and administration solely the responsibility of the local board of trustees.

(2) Members of boards of trustees and all noncertified personnel in public school districts are encouraged to satisfy the requirements for instruction in American Indian studies.

**History:** En. Sec. 3, Ch. 527, L. 1999.

## Part 6

### Montana Military Service Higher Education Act

**20-1-601. Short title.** This part may be cited as the “Montana Military Service Higher Education Act”.

**History:** En. Sec. 1, Ch. 270, L. 2015.

**20-1-602. Purpose.** The purpose of this part is to protect the educational rights of members of the reserve armed forces of the United States and of the Montana national guard who are students at a Montana educational institution and whose education is interrupted by mandatory mobilization to active duty.

**History:** En. Sec. 2, Ch. 270, L. 2015.

**20-1-603. Definitions.** As used in this part, the following definitions apply:

(1) (a) “Active duty” means federally funded duty performed pursuant to orders issued under Title 10 or Title 32 of the United States Code, state active duty performed pursuant to Article VI, section 13, of the Montana constitution, or state duty for special work performed pursuant to 10-1-505.

(b) The term does not include active duty for regularly scheduled weekend or annual training or active duty ordered by request of the service member.

(2) “Educational institution” means an institution of higher education under the jurisdiction of the board of regents.

(3) “Eligible student” means a member of a reserve component of the United States armed forces as defined in 38 U.S.C. 101, or of the Montana national guard as defined in 10-1-101.

(4) “Same academic status” means the same:

(a) certificate or degree program; and

(b) standing or progress within a certificate or degree program.

**History:** En. Sec. 3, Ch. 270, L. 2015.

**20-1-604. Student rights.** (1) An eligible student may not be denied admission or readmission to an educational institution on the basis of the student’s membership in the reserve component of the United States armed forces or in the Montana national guard.

(2) If an eligible student is ordered to active duty while enrolled in one or more courses at an educational institution, the faculty shall, when consistent with accreditation requirements:

(a) assign a final passing grade in the course if, in the faculty’s judgment, enough of the course requirements have been completed;

(b) assign an incomplete in the course and extend the period of time in which the student may complete course requirements; or

(c) allow the student to withdraw from the course and receive financial credit as provided in 20-1-605.

(3) If an eligible student reenrolls in one or more courses at an educational institution within 12 months after returning from the active duty that interrupted the student’s previous enrollment at the institution, the student must, to the extent possible, be readmitted with the same academic status that the student had when ordered to active duty, unless the student requests or agrees to admission with a different academic status.

**History:** En. Sec. 4, Ch. 270, L. 2015.

**20-1-605. Financial credit — readmission fees prohibited — refund.** (1) Except as provided in subsection (2):

(a) if an eligible student reenrolls at an educational institution within 12 months after returning from the active duty that interrupted the student’s previous enrollment at the institution, the student must receive financial credit for the amount of tuition and fees previously paid by or on behalf of the student for any course or courses the student withdrew from pursuant to 20-1-604;

(b) the student must be allowed to apply the amount of the financial credit toward any tuition and fees charged for courses the student enrolls in after being readmitted to the institution;

(c) the student may not be charged any readmission fees;

(d) if a student does not reenroll within the timeframe required under subsection (1)(a) due to an illness or injury, including posttraumatic stress disorder, documented by a licensed

physician and incurred while performing the active duty, the student is entitled to a refund of the amount of the tuition and fees previously paid by or on behalf of the student for any course or courses the student withdrew from pursuant to 20-1-604.

(2) If the provisions of subsection (1) are inconsistent with the requirements of a financial aid provider, the higher education institution must provide the student with the greatest benefit allowable under the requirements of the provider.

**History:** En. Sec. 5, Ch. 270, L. 2015.

**20-1-606. Policy to ensure student protections.** The commissioner of higher education may develop a policy for action by the board of regents that is consistent with the goals and steps in this part to ensure academic protections for students called to active duty.

**History:** En. Sec. 6, Ch. 270, L. 2015.

## CHAPTER 2 STATE BOARDS AND COMMISSIONS

### Part 1 — State Board of Education — Board of Public Education — Board of Regents

- 20-2-101. Combined boards as state board — budget review — officers — meetings — quorum.
- 20-2-102 through 20-2-110 reserved.
- 20-2-111. Officers of boards — quorum.
- 20-2-112. Quarterly meetings of boards — called meetings — notice of meetings.
- 20-2-113. Per diem of board members — expenses.
- 20-2-114. Adoption of rules — seal — record of proceedings.
- 20-2-115. Repealed.
- 20-2-116 through 20-2-120 reserved.
- 20-2-121. Board of public education — powers and duties.
- 20-2-122. Executive secretary to board of public education — staff.
- 20-2-123 through 20-2-130 reserved.
- 20-2-131. Commissioner of higher education — duties — compensation — staff.

### Parts 2 and 3 reserved

### Part 4 — Commission on Federal Higher Education Programs

- 20-2-401. Definition.
- 20-2-402. Purpose.
- 20-2-403. Duties.

### Part 5 — Compact for Education

- 20-2-501. Compact for Education approved.
- 20-2-502. Appointment of commissioners to the education commission of the states.
- 20-2-503. State obligations or rights under compact not altered.
- 20-2-504. Bylaws filed.
- 20-2-505. Limitation on power — adoption of rules.

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## Part 1 State Board of Education — Board of Public Education — Board of Regents

### Part Cross-References

Boards of Education created — duties, Art. X, sec. 9, Mont. Const.; Title 2, ch. 15, part 15.

**20-2-101. Combined boards as state board — budget review — officers — meetings — quorum.** (1) The board of public education and the board of regents meeting together as the state board of education shall be responsible for long-range planning and for coordinating and evaluating policies and programs for the public educational systems of the state. The state board of education shall review and unify the budget requests of educational entities assigned by law to the board of public education, the board of regents, or the state board of education and shall submit a unified budget request with recommendations to the appropriate state agency.

(2) The governor is the president of, the superintendent of public instruction is the secretary to, and the commissioner shall be a nonvoting participant at all meetings of the state board of education.

(3) The state board of education may select a member to chair its meetings in the absence of the governor.

(4) A tie vote at any meeting may be broken by the governor.

(5) A majority of members appointed to the board of public education and the board of regents shall constitute a quorum for transaction of business as the state board of education.

(6) The board of public education and the board of regents shall meet at least twice yearly as the state board of education.

(7) Other meetings of the state board of education may be called by the governor, by both the secretary to the board of public education and the secretary to the board of regents, or by joint action of eight appointed members, four each from the board of public education and the board of regents. All meetings of the state board of education shall be for the purposes set forth in subsection (1) above or for the purpose of considering other matters of common concern to the board of public education and the board of regents, but the state board of education may not exercise the powers and duties assigned by the 1972 Montana constitution and by law to the board of public education and the board of regents.

**History:** En. Sec. 7, Ch. 344, L. 1973; R.C.M. 1947, 75-5615; amd. Sec. 2, Ch. 21, L. 1985.

#### **Cross-References**

Regents' powers and duties, 20-25-301.

**20-2-102 through 20-2-110 reserved.**

**20-2-111. Officers of boards — quorum.** (1) The board of public education and the board of regents may each select a presiding officer from among their appointed members.

(2) The executive secretary shall serve as secretary to the board of public education, and the commissioner of higher education serves as secretary to the board of regents.

(3) A majority of the appointed members of each board constitutes a quorum for the transaction of business.

(4) The executive secretary shall serve as a liaison between the board of public education and the superintendent of public instruction and shall carry out other duties as assigned by the board of public education.

**History:** En. Sec. 4, Ch. 344, L. 1973; amd. Sec. 2, Ch. 268, L. 1977; R.C.M. 1947, 75-5612; amd. Sec. 3, Ch. 21, L. 1985; amd. Sec. 267, Ch. 56, L. 2009.

#### **Cross-References**

Regents' powers and duties, 20-25-301.

**20-2-112. Quarterly meetings of boards — called meetings — notice of meetings.**

(1) The board of public education and the board of regents shall meet at least quarterly.

(2) Other meetings of either board may be called by the governor, by the presiding officer, by the secretary, or by four appointed members.

(3) The secretary to each board shall mail notice to each member at least 7 days in advance of all meetings of the respective board.

**History:** En. Sec. 5, Ch. 344, L. 1973; R.C.M. 1947, 75-5613; amd. Sec. 4, Ch. 21, L. 1985; amd. Sec. 268, Ch. 56, L. 2009.

#### **Cross-References**

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

Open meetings, Title 2, ch. 3, part 2.

**20-2-113. Per diem of board members — expenses.** Appointed members of the board of public education and the board of regents shall be compensated and receive travel expenses as provided for in 2-15-124 for each day in attendance at board meetings or in the performance of any duty or service as a board member.

**History:** En. Sec. 6, Ch. 344, L. 1973; amd. Sec. 50, Ch. 439, L. 1975; R.C.M. 1947, 75-5614; amd. Sec. 6, Ch. 650, L. 1985.

**20-2-114. Adoption of rules — seal — record of proceedings.** The board of public education, the board of regents, and the state board of education each shall:

(1) adopt rules consistent with the constitution or laws of the state of Montana necessary for its own government or the proper execution of the powers and duties conferred upon it by law;

(2) adopt and use an official seal to authenticate its official acts; and

(3) keep a record of its proceedings.

**History:** En. Sec. 8, Ch. 344, L. 1973; R.C.M. 1947, 75-5616.

**Cross-References**

Seals defined, 1-4-201.

Manner of making seal, 1-4-202.

Regents' rulemaking power exempt from Montana Administrative Procedure Act, 2-4-102.

Public records, Title 2, ch. 6.

Preservation of records, Title 22, ch. 3, part 2.

**20-2-115. Repealed.** Sec. 6, Ch. 208, L. 2005.

**History:** En. Sec. 1, Ch. 691, L. 1985; amd. Sec. 1, Ch. 395, L. 1987; amd. Sec. 55, Ch. 633, L. 1993.

**20-2-116 through 20-2-120 reserved.**

**20-2-121. Board of public education — powers and duties.** The board of public education shall:

(1) effect an orderly and uniform system for teacher certification and specialist certification and for the issuance of an emergency authorization of employment by adopting the policies prescribed by 20-4-102 and 20-4-111;

(2) consider the suspension or revocation of teacher or specialist certificates and appeals from the denial of teacher or specialist certification in accordance with the provisions of 20-4-110;

(3) administer and order the distribution of BASE aid in accordance with the provisions of 20-9-344;

(4) adopt and enforce policies to provide uniform standards and regulations for the design, construction, and operation of school buses in accordance with the provisions of 20-10-111;

(5) adopt policies prescribing the conditions when school may be conducted on Saturday and the types of pupil-instruction-related days and approval procedure for those days in accordance with the provisions of 20-1-303 and 20-1-304;

(6) adopt standards of accreditation and establish the accreditation status of every school in accordance with the provisions of 20-7-101 and 20-7-102;

(7) approve or disapprove educational media selected by the superintendent of public instruction for the educational media library in accordance with the provisions of 20-7-201;

(8) adopt policies for the conduct of special education in accordance with the provisions of 20-7-402;

(9) adopt rules for issuance of documents certifying equivalency of completion of secondary education in accordance with 20-7-131;

(10) adopt policies for the conduct of programs for gifted and talented children in accordance with the provisions of 20-7-903 and 20-7-904;

(11) adopt rules for student assessment in the public schools; and

(12) perform any other duty prescribed from time to time by this title or any other act of the legislature.

**History:** En. 75-5607 by Sec. 8, Ch. 5, L. 1971; (amd. Sec. 15, Ch. 434, L. 1975 — [unconstitutional, 167 M 261]; Sec. 15, Ch. 434, L. 1975 repealed by Sec. 1, Ch. 4, L. 1977); amd. Sec. 1, Ch. 266, L. 1977; R.C.M. 1947, 75-5607; amd. Sec. 1, Ch. 511, L. 1979; amd. Sec. 9, Ch. 598, L. 1979; amd. Sec. 1, Ch. 94, L. 1983; amd. Sec. 1, Ch. 312, L. 1983; amd. Sec. 1, Ch. 377, L. 1987; amd. Sec. 40, Ch. 633, L. 1993; amd. Sec. 7, Ch. 138, L. 2005.

**Cross-References**

Duties of Board of Public Education, Art. X, sec. 9, Mont. Const.

**20-2-122. Executive secretary to board of public education — staff.** The board of public education may:

(1) appoint an executive secretary and employ other persons within legislatively authorized appropriations;

(2) prescribe the term, duties, and compensation of its executive secretary;

(3) provide office space for its staff to carry out its duties.

**History:** En. 75-5607.2 by Sec. 1, Ch. 268, L. 1977; R.C.M. 1947, 75-5607.2; amd. Sec. 1, Ch. 405, L. 1983.

**20-2-123 through 20-2-130 reserved.**

**20-2-131. Commissioner of higher education — duties — compensation — staff.**

(1) The board of regents shall prescribe the duties of the commissioner of higher education and shall set the commissioner's compensation.

(2) The board of regents shall provide sufficient staff and office space to the commissioner for carrying out the commissioner's duties.



**History:** En. Sec. 3, Ch. 344, L. 1973; R.C.M. 1947, 75-5611(2), (3); amd. Sec. 269, Ch. 56, L. 2009.

**Cross-References**

Regents to appoint Commissioner of Higher Education, Art. X, sec. 9, Mont. Const.

**Parts 2 and 3 reserved**

**Part 4**

**Commission on Federal Higher Education Programs**

**Part Cross-References**

Commission on Federal Higher Education Programs, 2-15-1515.

**20-2-401. Definition.** Unless the context requires otherwise, in this part “commission” means the commission on federal higher education programs provided for in 2-15-1515.

**History:** En. 75-9002 by Sec. 2, Ch. 220, L. 1974; R.C.M. 1947, 75-9302.

**20-2-402. Purpose.** It is the purpose of this part to promote the education and welfare of the people of this state by creating an agency which meets the requirements of federal law to cooperate with the federal government in the establishment and administration of programs for higher education provided for by the congress of the United States.

**History:** En. 75-9001 by Sec. 1, Ch. 220, L. 1974; R.C.M. 1947, 75-9301.

**20-2-403. Duties.** The commission shall:

(1) administer state plans under Title I of the federal Higher Education Facilities Act of 1963, Public Law 88-204, as amended by Public Law 89-329;

(2) administer state plans under Title VI of the federal Higher Education Act of 1965, Public Law 89-329;

(3) administer state plans under Title I of the federal Higher Education Act of 1965; and

(4) administer other state plans under federal funding and grant programs which may be assigned by the governor or the legislature except those pertaining to the duties of the superintendent of public instruction and the board of public education.

**History:** En. 75-9003 by Sec. 4, Ch. 220, L. 1974; R.C.M. 1947, 75-9303.

**Part 5**

**Compact for Education**

**20-2-501. Compact for Education approved.** The Compact for Education established by the education commission of the states is enacted into law and entered into with all other jurisdictions legally joining in the compact, in the form substantially as follows:

**THE COMPACT FOR EDUCATION**

**ARTICLE I**

**PURPOSE AND POLICY**

(1) It is the purpose of this compact to:

(a) establish and maintain close cooperation and understanding among executive, legislative, professional educational, and lay leadership on a nationwide basis at the state and local levels;

(b) provide a forum for the discussion, development, crystallization, and recommendation of public policy alternatives in the field of education;

(c) provide a clearinghouse of information on matters relating to education problems and how they are being met in different places throughout the nation; and

(d) facilitate the improvement of state and local education systems.

(2) It is the policy of this compact to encourage and promote local and state initiative in the development, maintenance, improvement, and administration of education systems and institutions.

(3) The states that have entered into this compact recognize that each of them has an interest in the quality and quantity of education furnished in each of the other states, as well as in the excellence of its own education systems and institutions.

## ARTICLE II STATE DEFINED

As used in this compact, “state” means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

## ARTICLE III THE COMMISSION

(1) The education commission of the states (commission) is hereby established. The commission consists of seven members representing each state that has entered into the compact. One of the state members must be the governor, two must be members of the legislature selected by its respective houses and serving in a manner as the legislature may determine, one must be the state superintendent of public instruction, and three must be appointed by and serve at the pleasure of the governor. The guiding principle for the composition of the membership on the commission from each party state must be that the members representing the state shall, by virtue of their training, experience, knowledge, or affiliations, reflect broadly the interests of the state government, higher education, the state education system, local education, and public and nonpublic educational leadership. In addition to the members of the commission representing the party states, there may be no more than 10 nonvoting commissioners selected by the steering committee for terms of 1 year. The commissioners shall represent leading national organizations of professional educators or persons concerned with educational administration.

(2) The members of the commission are entitled to one vote each on the commission. Any action of the commission is not binding unless taken at a meeting at which a majority of the total number of votes on the commission are cast in favor of the action. Any action of the commission must be taken only at a meeting at which a majority of the commissioners are present. The commission shall meet at least once a year. In its bylaws, and subject to any directions and limitations as may be contained in the bylaws, the commission may delegate the exercise of any of its powers to the steering committee or the executive director, except for the power to approve budgets or requests for appropriations, the power to make policy recommendations pursuant to Article IV, and adoption of the annual report pursuant to Article III(10).

(3) The commission must have a seal.

(4) The commission shall elect annually, from among its members, a presiding officer, who must be a governor; a vice presiding officer; and a treasurer. The commission shall appoint an executive director. The executive director shall serve at the pleasure of the commission and, together with the treasurer and other personnel as the commission may consider appropriate, must be bonded in an amount determined by the commission. The executive director shall serve as secretary.

(5) The executive director, subject to the approval of the steering committee, shall appoint, remove, or discharge any personnel as may be necessary for the performance of the functions of the commission. The executive director shall fix the duties and compensation of the personnel. The commission in its bylaws shall provide for the personnel policies and programs of the commission.

(6) The commission may borrow, accept, or contract for the services of personnel.

(7) The commission may accept for any of its purposes and functions under this compact any donations and grants of money, equipment, supplies, materials, and services, conditional or otherwise, from any state, the United States, or any other governmental agency, or from any person, firm, association, foundation, or corporation and may receive, utilize, and dispose of any gifts and grants. Any donation or grant accepted by the commission pursuant to this section or services borrowed pursuant to subsection (6) of this article must be reported in the annual report of the commission. The report must include the nature, amount, and conditions, if any, of the donation, grant, or services borrowed and the identity of the donor or lender.

(8) The commission may establish and maintain any facilities as may be necessary for the transacting of its business. The commission may acquire, hold, and convey real and personal property and any interest in property.

(9) The commission shall adopt bylaws for the conduct of its business and may amend and rescind these bylaws. The commission shall publish its bylaws in convenient form and shall file

a copy of its bylaws and any amendments with the appropriate agency or officer in each state that has entered into this compact.

(10) The commission annually shall make and provide to the governor and legislature of each state that has entered into the compact a report covering the activities of the commission for the preceding year. The commission may make any additional reports as it considers desirable.

#### ARTICLE IV POWERS

In addition to any authority conferred on the commission by other provisions of the compact, the commission may:

(1) collect, correlate, analyze, and interpret information and data concerning educational needs and resources;

(2) encourage and foster research in all aspects of education, but with special reference to the desirable scope of instruction, organization, administration, and instructional methods and standards employed or suitable for employment in public education systems;

(3) develop proposals for adequate financing of education as a whole and at each of its many levels;

(4) conduct or participate in research in any instance where it finds that the research is necessary for the advancement of the purposes and policies of this compact, utilizing fully the resources of national associations, regional organizations for higher education, and other agencies and institutions, both public and private;

(5) formulate suggested policies and plans for the improvement of public education as a whole, or for any segment of public education, and make recommendations with respect to public education available to the appropriate governmental units, agencies, and public officers; and

(6) do other things as may be necessary or incidental to the administration of any of its authority or functions pursuant to the compact.

#### ARTICLE V COOPERATION WITH FEDERAL GOVERNMENT

(1) If the laws of the United States specifically provide, or if administrative provision is made within the federal government, the United States may be represented on the commission by not more than 10 representatives. A representative of the United States must be appointed and serve in the manner as may be provided by federal law and may be drawn from any one or more branches of the federal government. A representative of the United States may not have a vote on the commission.

(2) The commission may provide information and make recommendations to any executive or legislative agency or officer of the federal government concerning the common educational policies of the states and may confer with any federal agencies or officers concerning any matter of mutual interest.

#### ARTICLE VI COMMITTEES

(1) To assist in the conduct of its business when the full commission is not meeting, the commission shall elect a steering committee that, subject to the provisions of this compact and consistent with the policies of the commission, is constituted and functions as provided in the bylaws of the commission. One-fourth of the voting membership of the steering committee must consist of governors, one-fourth must consist of legislators, and the remainder must consist of other members of the commission. A federal representative on the commission may serve with the steering committee, but may not vote. The voting members of the steering committee shall serve a term of 2 years. The presiding officer, vice presiding officer, and treasurer of the commission must be members of the steering committee and, notwithstanding anything in this section to the contrary, shall serve during their continuance in these offices. Vacancies on the steering committee do not affect its authority to act, but the commission at its next regular meeting following the occurrence of any vacancy shall fill it for the unexpired term. A person may not serve more than two terms as a member of the steering committee, provided that service for a partial term of 1 year or less may not be counted toward the limitation.

(2) The commission may establish advisory and technical committees composed of state, local, or federal officers and private persons to advise it with respect to any one or more of its functions. An advisory or technical committee may, on request of the states concerned, be established to consider any matter of special concern to two or more of the states that have entered into this compact.

(3) The commission may establish any additional committees as its bylaws may provide.

#### ARTICLE VII FINANCE

(1) The commission shall advise the governor or designated officer of each state that has entered into this compact of its budget and estimated expenditures for any period as may be required by the laws of that state. Each of the commission's budgets of estimated expenditures must contain specific recommendations of the amount to be appropriated by each of the states.

(2) The total amount of appropriation requests under any budget must be apportioned among the states. In making the apportionment, the commission shall devise and employ a formula that takes equitable account of the population and per capita levels of income of the states.

(3) The commission may not pledge the credit of any state. The commission may meet any of its obligations in whole or in part with money available to it pursuant to Article III of this compact, provided that the commission takes specific action setting aside the money before incurring an obligation to be met in whole or in part in that manner. Except when the commission makes use of money available to it pursuant to Article III, the commission may not incur any obligation before receiving an allotment of money from the states that is adequate to meet the obligation.

(4) The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission are subject to the procedures for audit and accounting established by its bylaws. However, all receipts and disbursements of money handled by the commission must be audited yearly by a qualified public accountant. The report of the audit must be included in and become part of the annual report of the commission.

(5) The accounts of the commission must be open at any reasonable time for inspection by officers of the states that have entered into this compact and by any other persons authorized by the commission.

(6) The provisions in this compact may not prohibit compliance with laws relating to audit or inspection of accounts by or on behalf of any government contributing to the support of the commission.

#### ARTICLE VIII ELIGIBLE PARTIES — ENTRY INTO AND WITHDRAWAL

(1) This compact has as eligible parties all states, territories, and possessions of the United States, the District of Columbia, and the Commonwealth of Puerto Rico. With respect to any jurisdiction not having a governor, the term "governor", as used in this compact, means the closest equivalent officer of the jurisdiction.

(2) Any state or other eligible jurisdiction may enter into this compact and it becomes binding when it is adopted by that state or jurisdiction, except that in order to enter into initial effect, adoption by at least 10 eligible jurisdictions is required.

(3) Any state may withdraw from this compact by enacting a statute repealing the compact, but withdrawal may not take effect until 1 year after the governor of the withdrawing state has given notice in writing of the withdrawal to the governors of all other states that have entered into this compact. Withdrawal does not affect any liability already incurred by or chargeable to a state before its withdrawal.

#### ARTICLE IX AMENDMENTS TO THE COMPACT

This compact may be amended by a vote of two-thirds of the members of the commission present and voting when ratified by the legislatures of two-thirds of the states that have entered into this compact.

## ARTICLE X CONSTRUCTION AND SEVERABILITY

This compact must be liberally construed so as to accomplish its purposes. The provisions of this compact are severable, and if any phrase, clause, sentence, or provision of this compact is declared to be unconstitutional, or the application of the compact to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact may not be affected. If this compact is held to be contrary to the constitution of any state participating in the compact, the compact remains in effect as to the state affected as to all severable matters.

**History:** En. Sec. 1, Ch. 273, L. 2001.

**20-2-502. Appointment of commissioners to the education commission of the states.** (1) The seven members of the education commission of the states representing Montana are:

- (a) the governor;
- (b) one senator appointed by the committee on committees;
- (c) one representative appointed by the speaker of the house;
- (d) the superintendent of public instruction; and
- (e) three persons appointed by the governor, including:
  - (i) one educator engaged in the field of higher education; and
  - (ii) two educators engaged in the field of K-12 education.

(2) The term of each commissioner appointed by the legislature is 4 years, and legislators shall serve until the expiration of their appointments, even though their legislative terms may have ended. The commissioners appointed by the governor shall serve at the pleasure of the governor.

**History:** En. Sec. 2, Ch. 273, L. 2001.

**20-2-503. State obligations or rights under compact not altered.** The provisions of this part may not be construed to alter any of the obligations or restrict or impair any rights that this state may have under the compact.

**History:** En. Sec. 3, Ch. 273, L. 2001.

**20-2-504. Bylaws filed.** Pursuant to Article III(9) of 20-2-501, the commission shall file a copy of its bylaws and amendments to the bylaws with the secretary of state.

**History:** En. Sec. 4, Ch. 273, L. 2001.

**20-2-505. Limitation on power — adoption of rules.** (1) The provisions of this part may not be construed to bind or obligate the state of Montana to enact any new legislation or to amend any current laws pertaining to the administration and financing of education in Montana.

(2) The superintendent of public instruction may adopt rules that incorporate by reference the bylaws and any amendments to the bylaws provided for in Article III(9) of 20-2-501.

**History:** En. Sec. 5, Ch. 273, L. 2001.

## CHAPTER 3 ELECTED OFFICIALS

### Part 1 — Superintendent of Public Instruction

- 20-3-101. Election and qualifications.
- 20-3-102. Term, oath, and vacancy.
- 20-3-103. Deputy superintendent — staff.
- 20-3-104. Discretionary staff.
- 20-3-105. Administrative powers and duties.
- 20-3-106. Supervision of schools — powers and duties.
- 20-3-107. Controversy appeal.
- 20-3-108. Division of resources and assessment funds.
- 20-3-109. Honorary high school diploma for certain veterans.

### Part 2 — County Superintendent of Schools

- 20-3-201. Election and qualifications — part-time office allowed.
- 20-3-202. Term, oath, and vacancy.
- 20-3-203. Office costs and staff.
- 20-3-204. Office hours.



- 20-3-205. Powers and duties.
- 20-3-206. Additional positions.
- 20-3-207. Assist trustees with school supervision.
- 20-3-208. Authority to request, accept, and disburse money.
- 20-3-209. Annual report.
- 20-3-210. Controversy appeals and hearings.
- 20-3-211. Disqualification of county superintendent.
- 20-3-212. The county superintendent to appoint another county superintendent.
- 20-3-213. Part-time office — establishment — restrictions.

### **Part 3 — School District Trustees**

- 20-3-301. Election and term of office.
- 20-3-302. Legislative intent to elect less than majority of trustees.
- 20-3-303. Term of vacated trustee position after election.
- 20-3-304. Repealed.
- 20-3-305. Candidate qualification, filing deadline, and withdrawal.
- 20-3-306. Conduct of election.
- 20-3-307. Qualification and oath.
- 20-3-308. Vacancy of trustee position.
- 20-3-309. Filling vacated trustee position — appointee qualification and term of office.
- 20-3-310. Trustee removal.
- 20-3-311. Trustee travel reimbursement and compensation of secretary for joint board.
- 20-3-312. Trustees of district affected by boundary change.
- 20-3-313. Election by acclamation — notice.
- 20-3-314 through 20-3-320 reserved.
- 20-3-321. Organization and officers.
- 20-3-322. Meetings and quorum.
- 20-3-323. District policy and record of acts.
- 20-3-324. Powers and duties.
- 20-3-325. Clerk of district.
- 20-3-326 through 20-3-329 reserved.
- 20-3-330. District self-funded health benefit plan reserve funds — exception for dissolution of plan.
- 20-3-331. Purchase of insurance — self-insurance plan.
- 20-3-332. Personal immunity of trustees.
- 20-3-333. Repealed.
- 20-3-334 and 20-3-335 reserved.
- 20-3-336. Single-member trustee districts — legislative intent — minority defined.
- 20-3-337. Plan for creating single-member trustee districts — petition election.
- 20-3-338. Trustees elected by single-member district.
- 20-3-339 and 20-3-340 reserved.
- 20-3-341. Number of trustee positions in elementary districts — transition.
- 20-3-342. Determination of terms after consolidation of elementary districts.
- 20-3-343. Determination of terms after change of district classification.
- 20-3-344. Repealed.
- 20-3-345 through 20-3-350 reserved.
- 20-3-351. Number of trustee positions in high school districts.
- 20-3-352. Request and determination of number of high school district additional trustee positions — nonvoting trustee.
- 20-3-353. Establishment and purpose of trustee nominating districts.
- 20-3-354. Redetermination of additional trustee positions and subsequent adjustments.
- 20-3-355. Determination of terms after establishment or reestablishment of additional trustee positions.
- 20-3-356. Membership of elected trustees of county high school district and nomination of candidates.
- 20-3-357 through 20-3-360 reserved.
- 20-3-361. Joint board of trustees organization and voting membership.
- 20-3-362. Powers of joint board of trustees.
- 20-3-363. Multidistrict agreements — fund transfers.

### **Chapter Cross-References**

- General election provisions, Title 13, ch. 1.
- Election and campaign practices and criminal provisions, Title 13, ch. 35.
- Control of campaign practices, Title 13, ch. 37.
- School elections, Title 20, ch. 20.

## **Part 1 Superintendent of Public Instruction**

### **Part Cross-References**

- Superintendent as part of Executive Branch, Art. VI, sec. 1, Mont. Const.

**20-3-101. Election and qualifications.** (1) A superintendent of public instruction for the state of Montana must be elected by the qualified electors of the state at the general election preceding the expiration of the term of office of the incumbent.

(2) A person is qualified to assume the office of superintendent of public instruction who:

(a) is 25 years of age or older at the time of election;

(b) has resided within the state for the 2 years preceding the election;

(c) holds at least a bachelor's degree from any unit of the Montana university system or from an institution recognized as equivalent by the board of public education for teacher certification purposes; and

(d) otherwise possesses the qualifications for office that are required by The Constitution of the State of Montana.

**History:** En. 75-5702 by Sec. 11, Ch. 5, L. 1971; amd. Sec. 1, Ch. 17, L. 1973; R.C.M. 1947, 75-5702; amd. Sec. 270, Ch. 56, L. 2009.

**Cross-References**

Election of Superintendent of Public Instruction, Art. VI, sec. 2, Mont. Const.

Qualifications of Superintendent of Public Instruction, Art. VI, sec. 3, Mont. Const.

Rules for determining residence, 1-1-215.

**20-3-102. Term, oath, and vacancy.** (1) The superintendent of public instruction shall hold office at the seat of government for a term of 4 years. The superintendent shall assume office on the first Monday of January following election and shall hold the office until a successor has been elected and qualified. Any person elected as the superintendent of public instruction shall take the oath of a civil officer.

(2) If the office of superintendent of public instruction becomes vacant, it must be filled in the manner prescribed by The Constitution of the State of Montana.

**History:** En. 75-5703 by Sec. 12, Ch. 5, L. 1971; R.C.M. 1947, 75-5703; amd. Sec. 271, Ch. 56, L. 2009.

**Cross-References**

Oath of office, Art. III, sec. 3, Mont. Const.; 20-1-202.

Vacancy in office — how filled, Art. VI, sec. 6, Mont. Const.; 2-16-505.

Oath defined, 1-1-201.

Affirmation in lieu of oath, 1-6-104.

Bonds of state officers and employees, Title 2, ch. 9, part 6.

**20-3-103. Deputy superintendent — staff.** (1) The state superintendent of public instruction shall appoint a deputy who, in the absence of the superintendent or in the case of vacancy in that office, shall perform all the duties of office until the disability is removed or the vacancy is filled. The deputy shall subscribe, take, and file the oath of office provided by law for other state officers before entering upon the performance of the deputy's duties.

(2) The superintendent of public instruction has the power to employ, organize, and administer a staff of personnel to assist in the administration of the duties and services of the office. In organizing the staff, the superintendent of public instruction may employ:

(a) a supervisor of physical education who is a graduate of an accredited institution of higher education with a master's degree in physical education;

(b) a professional staff consisting of individuals prepared in agriculture education, business and marketing education, family and consumer sciences education, and industrial technology education; and

(c) a special education supervisor who is a graduate of an accredited institution of higher education with a master's degree in a field related to special education for persons with disabilities and who has not less than 2 years' experience in special education.

**History:** (1)En. Sec. 1, Ch. 86, L. 1903; re-en. Sec. 143, Rev. C. 1907; re-en. Sec. 122, R.C.M. 1921; re-en. Sec. 122, R.C.M. 1935; amd. Sec. 1, Ch. 181, L. 1947; amd. Sec. 1, Ch. 8, L. 1949; amd. Sec. 48, Ch. 177, L. 1965; amd. Sec. 3, Ch. 468, L. 1977; Sec. 82-601, R.C.M. 1947; (2)En. 75-5704 by Sec. 13, Ch. 5, L. 1971; Sec. 75-5704, R.C.M. 1947; R.C.M. 1947, 75-5704, 82-601(part); amd. Sec. 10, Ch. 598, L. 1979; amd. Sec. 1, Ch. 436, L. 1987; amd. Sec. 8, Ch. 658, L. 1987; amd. Sec. 2, Ch. 249, L. 1991; amd. Sec. 2, Ch. 133, L. 2001.

**Cross-References**

Oath of office, Art. III, sec. 3, Mont. Const.; 20-1-202.

Oath defined, 1-1-201.

Affirmation in lieu of oath, 1-6-104.

Bonds of state officers and employees, Title 2, ch. 9, part 6.

Vocational education, Title 20, ch. 7, part 3.

Special education, Title 20, ch. 7, part 4.

**20-3-104. Discretionary staff.** In addition to the positions of employment listed in 20-3-103, the superintendent of public instruction may employ:

- (1) one or more assistant superintendents, one of whom may be designated as assistant superintendent for K-12 career and vocational/technical education;
- (2) a high school supervisor who is the holder of a class 3 teacher certificate with a district superintendent endorsement;
- (3) an elementary supervisor who is the holder of a valid teacher certificate;
- (4) a competent person to develop economy and efficiency in school transportation and to otherwise supervise the transportation program;
- (5) a music supervisor who is a graduate of an accredited institution of higher education in music education and who has not less than 5 years of teaching experience;
- (6) an educational media supervisor who is a graduate of an accredited institution of higher education and who has experience in the field of educational media; and
- (7) any other supervisors or assistants that may be required to carry out the duties of the office.

**History:** En. 75-5705 by Sec. 14, Ch. 5, L. 1971; R.C.M. 1947, 75-5705; amd. Sec. 11, Ch. 598, L. 1979; amd. Sec. 3, Ch. 133, L. 2001.

**Cross-References**

Vocational education, Title 20, ch. 7, part 3.

Transportation, Title 20, ch. 10.

**20-3-105. Administrative powers and duties.** In administering the affairs of the office, the superintendent of public instruction has the power and it is the superintendent's duty to:

- (1) keep a record of official acts and all documents applicable to the administration of the office, preserve all official reports submitted to the superintendent for the period required by law, and surrender them to the superintendent's successor at the expiration of the term;
- (2) preserve all books, educational media, instructional equipment, and any other articles of educational interest and value that come into the superintendent's possession and surrender them to the superintendent's successor at the expiration of the term;
- (3) cause the printing and distribution of all reports and forms necessary for the proper conduct of business by a district or school in the manner prescribed by the provisions of this title;
- (4) provide and keep an official seal of the superintendent of public instruction by which official acts must be authenticated;
- (5) if considered necessary, cause the printing of a complete and updated volume of the school laws of the state, which must be offered and sold at cost of the printing and shipping to any school official or other person;
- (6) whenever a replacement volume is not printed under the provisions of subsection (5), cause the printing of a cumulative supplement to the most recent volume of school laws immediately after the conclusion of any session of the legislature at which new school laws or amendments to the school laws were adopted. It must be offered and sold at cost of the printing and shipping to any school official or other person.
- (7) counsel with and advise county superintendents on matters involving the welfare of the schools and, when requested, give a county superintendent a written answer to any question concerning school law;
- (8) call an annual meeting of the county superintendents when considered advisable;
- (9) as far as practicable, address public assemblies on subjects pertaining to education in Montana; and
- (10) faithfully work in all practical and possible ways for the welfare of the public schools of the state.

**History:** En. 75-5706 by Sec. 15, Ch. 5, L. 1971; R.C.M. 1947, 75-5706; amd. Sec. 6, Ch. 125, L. 1983; amd. Sec. 1, Ch. 410, L. 1987; amd. Sec. 272, Ch. 56, L. 2009; amd. Sec. 1, Ch. 118, L. 2013.

**Cross-References**

Duties of Superintendent of Public Instruction, Art. VI, sec. 4, Mont. Const.

Seals, Title 1, ch. 4, part 2.

Public records, Title 2, ch. 6.

Distribution of missing school children list, 44-2-503, 44-2-506.

**20-3-106. Supervision of schools — powers and duties.** The superintendent of public instruction has the general supervision of the public schools and districts of the state and shall perform the following duties or acts in implementing and enforcing the provisions of this title:

(1) resolve any controversy resulting from the proration of costs by a joint board of trustees under the provisions of 20-3-362;

(2) issue, renew, or deny teacher certification and emergency authorizations of employment;

(3) negotiate reciprocal tuition agreements with other states in accordance with the provisions of 20-5-314;

(4) approve or disapprove the opening or reopening of a school in accordance with the provisions of 20-6-502, 20-6-503, 20-6-504, or 20-6-505;

(5) approve or disapprove school isolation within the limitations prescribed by 20-9-302;

(6) generally supervise the school budgeting procedures prescribed by law in accordance with the provisions of 20-9-102 and prescribe the school budget format in accordance with the provisions of 20-9-103 and 20-9-506;

(7) establish a system of communication for calculating joint district revenue in accordance with the provisions of 20-9-151;

(8) approve or disapprove the adoption of a district's budget amendment resolution under the conditions prescribed in 20-9-163 and adopt rules for an application for additional direct state aid for a budget amendment in accordance with the approval and disbursement provisions of 20-9-166;

(9) generally supervise the school financial administration provisions as prescribed by 20-9-201(2);

(10) prescribe and furnish the annual report forms to enable the districts to report to the county superintendent in accordance with the provisions of 20-9-213(6) and the annual report forms to enable the county superintendents to report to the superintendent of public instruction in accordance with the provisions of 20-3-209;

(11) approve, disapprove, or adjust an increase of the average number belonging (ANB) in accordance with the provisions of 20-9-313 and 20-9-314;

(12) distribute BASE aid and special education allowable cost payments in support of the BASE funding program in accordance with the provisions of 20-9-331, 20-9-333, 20-9-342, 20-9-346, 20-9-347, and 20-9-366 through 20-9-369;

(13) provide for the uniform and equal provision of transportation by performing the duties prescribed by the provisions of 20-10-112;

(14) request, accept, deposit, and expend federal money in accordance with the provisions of 20-9-603;

(15) authorize the use of federal money for the support of an interlocal cooperative agreement in accordance with the provisions of 20-9-703 and 20-9-704;

(16) prescribe the form and contents of and approve or disapprove interstate contracts in accordance with the provisions of 20-9-705;

(17) recommend standards of accreditation for all schools to the board of public education in accordance with the provisions of 20-7-101;

(18) evaluate compliance with the accreditation standards and recommend accreditation status of every school to the board of public education in accordance with the provisions of 20-7-102;

(19) collect and maintain a file of curriculum guides and assist schools with instructional programs in accordance with the provisions of 20-7-113 and 20-7-114;

(20) establish and maintain a library of visual, aural, and other educational media in accordance with the provisions of 20-7-201;

(21) license textbook dealers and initiate prosecution of textbook dealers violating the law in accordance with the provisions of the textbooks part of this title;

(22) as the governing agent and executive officer of the state of Montana for K-12 career and vocational/technical education, adopt the policies prescribed by and in accordance with the provisions of 20-7-301;

(23) supervise and coordinate the conduct of special education in the state in accordance with the provisions of 20-7-403;

(24) administer the traffic education program in accordance with the provisions of 20-7-502;

(25) administer the school food services program in accordance with the provisions of 20-10-201 through 20-10-203;

(26) review school building plans and specifications in accordance with the provisions of 20-6-622;

(27) provide schools with information and technical assistance for compliance with the student assessment rules provided for in 20-2-121 and collect and summarize the results of the student assessment for the board of public education and the legislature;

(28) upon request and in compliance with confidentiality requirements of state and federal law, disclose to interested parties all school district student assessment data for a test required by the board of public education;

(29) administer the distribution of guaranteed tax base aid in accordance with 20-9-366 through 20-9-369; and

(30) perform any other duty prescribed from time to time by this title, any other act of the legislature, or the policies of the board of public education.

**History:** En. 75-5707 by Sec. 16, Ch. 5, L. 1971; amd. Sec. 2, Ch. 137, L. 1973; (amd. Sec. 16, Ch. 434, L. 1975 — [unconstitutional, 167 M 261]; Sec. 16, Ch. 434, L. 1975 repealed by Sec. 1, Ch. 4, L. 1977); amd. Sec. 3, Ch. 266, L. 1977; amd. Sec. 1, Ch. 277, L. 1977; R.C.M. 1947, 75-5707; amd. Sec. 1, Ch. 384, L. 1979; amd. Sec. 351, Ch. 571, L. 1979; amd. Sec. 12, Ch. 598, L. 1979; amd. Sec. 1, Ch. 299, L. 1985; amd. Sec. 2, Ch. 377, L. 1987; amd. Sec. 3, Ch. 635, L. 1987; amd. Sec. 9, Ch. 658, L. 1987; amd. Sec. 7, Ch. 11, Sp. L. June 1989; amd. Sec. 1, Ch. 767, L. 1991; amd. Sec. 1, Ch. 325, L. 1993; amd. Sec. 4, Ch. 633, L. 1993; amd. Sec. 4, Ch. 219, L. 1997; amd. Sec. 1, Ch. 311, L. 1997; amd. Sec. 2, Ch. 388, L. 1997; amd. Sec. 4, Ch. 430, L. 1997; amd. Sec. 1, Ch. 343, L. 1999; amd. Sec. 4, Ch. 133, L. 2001; amd. Sec. 2, Ch. 21, L. 2003; amd. Sec. 1, Ch. 374, L. 2003; amd. Sec. 1, Ch. 379, L. 2015.

#### **Cross-References**

State Board of Land Commissioners — membership on, Art. X, sec. 4, Mont. Const.

**20-3-107. Controversy appeal.** (1) The superintendent of public instruction shall decide matters of controversy when they are appealed from:

(a) a decision of a county superintendent rendered under the provisions of 20-3-210, except for a decision of a county superintendent or an arbitrator in a teacher termination case; or

(b) a decision of a county transportation committee rendered under the provisions of 20-10-132.

(2) The superintendent of public instruction shall make a decision on the basis of the transcript of the fact-finding hearing conducted by the county superintendent or county transportation committee and documents presented at the hearing. The superintendent of public instruction may require, if considered necessary, affidavits, verified statements, or sworn testimony as to the facts in issue. The decision of the superintendent of public instruction is final, subject to the proper legal remedies in the state courts. The proceedings must be commenced no later than 60 days after the date of the decision of the superintendent of public instruction.

(3) In order to establish a uniform method of hearing and determining matters of controversy arising under this title, the superintendent of public instruction shall prescribe and enforce rules of practice and regulations for the conduct of hearings and the determination of appeals by all school officials of the state.

(4) Whenever in a contested case the superintendent of public instruction is disqualified from rendering a final decision, the superintendent of public instruction shall appoint a hearings examiner as provided in 2-4-611 and the decision of the hearings examiner constitutes the superintendent's final order except as provided in this subsection. The final order is subject to all the provisions of Title 2, chapter 4, relating to final agency decisions or orders, including judicial review under Title 2, chapter 4, part 7.

**History:** En. 75-5709 by Sec. 18, Ch. 5, L. 1971; amd. Sec. 1, Ch. 300, L. 1974; R.C.M. 1947, 75-5709; amd. Sec. 2, Ch. 467, L. 1979; amd. Sec. 1, Ch. 438, L. 1997.

#### **Cross-References**

Oaths, Title 1, ch. 6.

Affidavits, Title 26, ch. 1, part 10.

Perjury, 45-7-201.

False swearing, 45-7-202.

**20-3-108. Division of resources and assessment funds.** Funds derived from the sale of educational materials or services provided by the division of resources and assessment must be deposited in the state general fund.



**History:** En. Sec. 1, Ch. 436, L. 1979; amd. Sec. 3, Ch. 277, L. 1983; amd. Sec. 66, Ch. 370, L. 1987; amd. Sec. 1, Ch. 470, L. 1987; amd. Sec. 29, Ch. 422, L. 1997.

**Cross-References**

Special accounts, Title 17, ch. 2, part 2.

**20-3-109. Honorary high school diploma for certain veterans.** (1) The superintendent of public instruction may award an honorary high school diploma to a current or former Montana resident who:

- (a) did not receive a high school diploma; and
- (b) actively served in the United States armed services during World War II from 1939 through 1947, during the Korean war from 1950 through 1953, or during the Vietnam conflict from 1961 through 1975; and
  - (i) died in active service;
  - (ii) was honorably discharged; or
  - (iii) was released from active duty because of a service-related disability.

(2) (a) The superintendent shall identify acceptable documentation of eligibility and establish procedures for applying for an honorary diploma.

(b) The superintendent may accept an affidavit to support the award if acceptable documentation is not readily available from the military or other sources.

(3) An eligible person shall apply for the diploma on a form provided by the superintendent. If an eligible person is deceased or incapacitated, an immediate family member may apply on the person's behalf.

**History:** En. Sec. 1, Ch. 171, L. 2003.

## Part 2 County Superintendent of Schools

**Part Cross-References**

County officers generally, Title 7, ch. 4.

Duties of County Sheriff, 7-4-3001; Title 7, ch. 32, part 21.

Membership in associations of County School Superintendents — payment of expenses, 7-5-2146.

**20-3-201. Election and qualifications — part-time office allowed.** (1) A county superintendent must be elected in each county of the state unless a county manager form of government has been organized in the county. The county superintendent must be elected at the general election preceding the expiration of the term of office of the incumbent.

(2) Upon verification by the county clerk and recorder, a person is qualified to file for and assume the office of county superintendent who:

- (a) is a qualified elector;
- (b) holds a valid, current class 1 professional certificate, class 2 standard certificate, or class 3 administrative and supervisory certificate issued by the superintendent of public instruction; and
- (c) has at least 3 years of successful teaching experience.

(3) (a) When the office of county superintendent of schools is consolidated with another county office within the county, the officeholder must have the qualifications listed in subsection (2) or shall, with the approval of the governing body, contract for the full performance of the duties required of a county superintendent in 20-3-207 and 20-3-210 with:

- (i) another county superintendent, with the approval of the governing body of that county;
- (ii) a former county superintendent; or
- (iii) a person who:
  - (A) is a qualified elector;
  - (B) holds a valid administrative certificate as provided in 20-4-106(1)(c);
  - (C) takes the oath of office in 20-1-202;
  - (D) is bonded in the manner provided for county officers in Title 2, chapter 9, part 7; and
  - (E) attends instructional training in the duties of a county superintendent as offered by the superintendent of public instruction.

(b) Whenever a governing body contracts with a person for performance of the duties required of a county superintendent under the provisions of subsection (3)(a)(iii), the contract must be for at least the duration of 1 school fiscal year.

(c) The superintendent of public instruction shall prescribe a contract form to be used.

(4) The board of county commissioners may establish the office of county superintendent as a part-time office under the provisions of 20-3-213, and adjust the salary established in 7-4-2503 to make it commensurate with the reduction in hours. A part-time county superintendent shall perform all duties of that office that are required by law.

**History:** En. 75-5802 by Sec. 20, Ch. 5, L. 1971; amd. Sec. 29, Ch. 100, L. 1973; R.C.M. 1947, 75-5802; amd. Sec. 1, Ch. 355, L. 1979; amd. Sec. 1, Ch. 550, L. 1985; amd. Sec. 1, Ch. 76, L. 1991; amd. Sec. 1, Ch. 146, L. 1993.

**Cross-References**

General qualifications for county office, 7-4-2201.

Consolidation of county offices, Title 7, ch. 4, part 23.

Salary, 7-4-2503.

**20-3-202. Term, oath, and vacancy.** (1) The county superintendent shall hold office for a term of 4 years. The county superintendent shall:

(a) take the oath of office on or before the last business day of December following the superintendent's election;

(b) assume office at 12:01 a.m. on January 1 following the superintendent's election; and

(c) hold the office until a successor has been elected and qualified.

(2) Any person elected as the county superintendent shall give an official bond, as required by law.

(3) If the office of county superintendent becomes vacant, the board of county commissioners shall appoint a replacement to fill the vacancy. The replacement shall serve until the next general election, when a person must be elected to serve the remainder of the initial term, if there is any remaining term.

**History:** En. 75-5803 by Sec. 21, Ch. 5, L. 1971; R.C.M. 1947, 75-5803; amd. Sec. 273, Ch. 56, L. 2009; amd. Sec. 199, Ch. 49, L. 2015.

**Cross-References**

Constitutional oath, Art. III, sec. 3, Mont. Const.

Oaths, Title 1, ch. 6; 2-16-211; 20-1-202.

Term of office of county officers, 7-4-2205.

Vacancies in county offices generally, 7-4-2206.

**20-3-203. Office costs and staff.** (1) The board of county commissioners shall supply the county superintendent with suitable office space and office supplies. The county superintendent must be paid from the county general fund all necessary traveling expenses actually incurred in discharging duties, after the expenses have been audited by the board of county commissioners.

(2) Upon the county superintendent's recommendation of a candidate, the board of county commissioners may appoint the candidate to the position of chief deputy county superintendent. The commissioners also may appoint deputies and assistants for the county superintendent. The commissioners shall fix the salaries of the personnel prescribed by this section at 90% or less of the salary of the county superintendent.

**History:** En. 75-5804 by Sec. 22, Ch. 5, L. 1971; R.C.M. 1947, 75-5804; amd. Sec. 274, Ch. 56, L. 2009.

**Cross-References**

Deputy county officers in general, Title 7, ch. 4, part 24.

**20-3-204. Office hours.** (1) Except for a part-time county superintendent provided for under 20-3-201(4), the county superintendent of schools shall, during the office hours determined by the governing body, keep the office of the county superintendent open each day when the county superintendent is not engaged in the supervision of schools, except legal holidays and Saturdays. However, when the county superintendent has a deputy or clerk, the office must be kept open during the hours determined by the governing body by resolution after a public hearing and consented to by the county superintendent, each day except legal holidays and Saturdays.

(2) This section does not apply to counties operating under the county manager plan.

**History:** En. Sec. 4323, Pol. C. 1895; re-en. Sec. 2968, Rev. C. 1907; re-en. Sec. 4736, R.C.M. 1921; Cal. Pol. C. Sec. 4116; re-en. Sec. 4736, R.C.M. 1935; amd. Sec. 1, Ch. 108, L. 1949; amd. Sec. 1, Ch. 199, L. 1957; R.C.M. 1947, 16-2414(part); amd. Sec. 2, Ch. 146, L. 1993; amd. Sec. 7, Ch. 216, L. 1995.

**Cross-References**

Office hours, 7-4-102.

**20-3-205. Powers and duties.** (1) The county superintendent has general supervision of the schools of the county within the limitations prescribed by this title and shall perform the following duties or acts:

(a) determine, establish, and reestablish trustee nominating districts in accordance with the provisions of 20-3-352, 20-3-353, and 20-3-354;

(b) administer and file the oaths of members of the boards of trustees of the districts in the county in accordance with the provisions of 20-3-307;

(c) register the teacher or specialist certificates or emergency authorization of employment of any person employed in the county as a teacher, specialist, principal, or district superintendent in accordance with the provisions of 20-4-202;

(d) file a copy of the audit report for a district in accordance with the provisions of 20-9-203;

(e) classify districts in accordance with the provisions of 20-6-201 and 20-6-301;

(f) keep a transcript of the district boundaries of the county;

(g) fulfill all responsibilities assigned under the provisions of this title regulating the organization, alteration, or abandonment of districts;

(h) act on any unification proposition and, if approved, establish additional trustee nominating districts in accordance with 20-6-312 and 20-6-313;

(i) estimate the average number belonging (ANB) of an opening school in accordance with the provisions of 20-6-502, 20-6-503, 20-6-504, or 20-6-506;

(j) process and, when required, act on school isolation applications in accordance with the provisions of 20-9-302;

(k) complete the budgets, compute the budgeted revenue and tax levies, file final budgets and budget amendments, and fulfill other responsibilities assigned under the provisions of this title;(l) monthly, unless otherwise provided by law, order the county treasurer to apportion state money, county school money, and any other school money subject to apportionment in accordance with the provisions of 20-9-212, 20-9-347, 20-10-145, or 20-10-146;

(m) act on any request to transfer average number belonging (ANB) in accordance with the provisions of 20-9-313(1)(c);

(n) calculate the estimated budgeted general fund sources of revenue in accordance with the general fund revenue provisions of the general fund part of this title;

(o) compute the revenue and compute the district and county levy requirements for each fund included in each district's final budget and report the computations to the board of county commissioners in accordance with the provisions of the general fund, transportation, bonds, and other school funds parts of this title;

(p) file and forward bus driver certifications, transportation contracts, and state transportation reimbursement claims in accordance with the provisions of 20-10-103, 20-10-143, or 20-10-145;

(q) for districts that do not employ a district superintendent or principal, recommend library book and textbook selections in accordance with the provisions of 20-7-204 or 20-7-602;

(r) notify the superintendent of public instruction of a textbook dealer's activities when required under the provisions of 20-7-605 and otherwise comply with the textbook dealer provisions of this title;

(s) act on district requests to allocate federal money for indigent children for school food services in accordance with the provisions of 20-10-205;

(t) perform any other duty prescribed from time to time by this title, any other act of the legislature, the policies of the board of public education, the policies of the board of regents relating to community college districts, or the rules of the superintendent of public instruction;

(u) administer the oath of office to trustees without the receipt of pay for administering the oath;

(v) keep a record of official acts, preserve all reports submitted to the superintendent under the provisions of this title, preserve all books and instructional equipment or supplies, keep all documents applicable to the administration of the office, and surrender all records, books, supplies, and equipment to the next superintendent;

(w) within 90 days after the close of the school fiscal year, publish an annual report in the county newspaper stating the following financial information for the school fiscal year just ended for each district of the county:

- (i) the total of the cash balances of all funds maintained by the district at the beginning of the year;
- (ii) the total receipts that were realized in each fund maintained by the district;
- (iii) the total expenditures that were made from each fund maintained by the district; and
- (iv) the total of the cash balances of all funds maintained by the district at the end of the school fiscal year; and
- (x) hold meetings for the members of the trustees from time to time at which matters for the good of the districts must be discussed.

(2) (a) When a district in one county annexes a district in another county, the county superintendent of the county where the annexing district is located shall perform the duties required by this section.

(b) When two or more districts in more than one county consolidate, the duties required by this section must be performed by the county superintendent designated in the same manner as other county officials in 20-9-202.

**History:** (1) thru (22)En. 75-5805 by Sec. 23, Ch. 5, L. 1971; amd. Sec. 4, Ch. 266, L. 1977; Sec. 75-5805, R.C.M. 1947; (23) thru (26)En. 75-5807 by Sec. 25, Ch. 5, L. 1971; Sec. 75-5807, R.C.M. 1947; R.C.M. 1947, 75-5805, 75-5807; amd. Sec. 1, Ch. 269, L. 1979; amd. Sec. 15, Ch. 392, L. 1979; amd. Sec. 2, Ch. 511, L. 1979; amd. Sec. 5, Ch. 317, L. 1981; amd. Sec. 1, Ch. 35, L. 1989; amd. Sec. 8, Ch. 11, Sp. L. June 1989; amd. Sec. 2, Ch. 767, L. 1991; amd. Sec. 6, Ch. 563, L. 1993; amd. Sec. 48, Ch. 633, L. 1993; amd. Sec. 4, Ch. 22, L. 1997; amd. Sec. 101, Ch. 584, L. 1999; amd. Sec. 2, Ch. 220, L. 2001; amd. Sec. 6, Ch. 237, L. 2001; amd. Sec. 2, Ch. 151, L. 2003; amd. Sec. 1, Ch. 463, L. 2005; amd. Sec. 5, Ch. 510, L. 2005; amd. Sec. 10, Ch. 1, Sp. L. May 2007; amd. Sec. 3, Ch. 152, L. 2011.

**20-3-206. Additional positions.** In the capacity as county superintendent, the county superintendent shall also serve as:

- (1) the presiding officer of the county transportation committee, as prescribed by 20-10-131;
- (2) an attendance officer for a district under the conditions prescribed by 20-5-104; and
- (3) the clerk of a joint board of trustees under the conditions prescribed by 20-3-361.

**History:** En. 75-5806 by Sec. 24, Ch. 5, L. 1971; amd. Sec. 2, Ch. 277, L. 1977; R.C.M. 1947, 75-5806; amd. Sec. 5, Ch. 219, L. 1997; amd. Sec. 275, Ch. 56, L. 2009.

#### **Cross-References**

Consolidation of county offices, Title 7, ch. 4, part 23.

**20-3-207. Assist trustees with school supervision.** The county superintendent shall assist the trustees of any district that does not employ a district superintendent or principal with the supervision of their schools by:

- (1) visiting each school of the district at least once a school year while pupil instruction is being conducted to observe the instructional methods, ability of the teacher, progress and discipline of the pupils, and the general conditions of the school;
- (2) special visits to the schools on request of the trustees;
- (3) advising and directing teachers on instruction, pupil discipline, and other duties of the teacher;
- (4) consulting with the trustees on all school matters that may be found during the observation of the school or may otherwise come to the attention of the county superintendent.

**History:** En. 75-5808 by Sec. 26, Ch. 5, L. 1971; R.C.M. 1947, 75-5808.

**20-3-208. Authority to request, accept, and disburse money.** (1) A county superintendent may, with the advice and consent of the appropriate school boards, request and accept money made available from federal, state, or private sources for purposes of public education.

(2) Subject to applicable federal and state guidelines and, in the case of money received from private sources, subject to any guidelines fixed by the donor, a county superintendent may disburse money received under this section to one or more public elementary or high school districts according to their needs. The county superintendent shall supervise the use of the money with the approval of the appropriate school boards.

(3) The county superintendent may establish a fund, for which the county treasurer shall maintain a separate accounting, for the deposit of money received under this section.

**History:** En. 75-5808.1 by Sec. 1, Ch. 238, L. 1977; R.C.M. 1947, 75-5808.1; amd. Sec. 1, Ch. 182, L. 1979; amd. Sec. 276, Ch. 56, L. 2009.

#### **Cross-References**

Power to accept gifts, 20-6-601.

Fiscal duties of trustees, 20-9-213.

**20-3-209. Annual report.** The county superintendent of each county shall submit an annual report to the superintendent of public instruction on or before September 15. The report must be completed on the forms supplied by the superintendent of public instruction and must include:

- (1) the final budget information for each district of the county, as prescribed by 20-9-134(1);
- (2) the revenue amounts used to establish the levy requirements for the county school fund supporting school district transportation schedules, as prescribed by 20-10-146, and for the county school funds supporting elementary and high school district retirement obligations, as prescribed by 20-9-501;
- (3) the financial activities of each district of the county for the immediately preceding school fiscal year as provided by the trustees' annual report to the county superintendent under the provisions of 20-9-213(6); and
- (4) any other information that may be requested by the superintendent of public instruction that is within the superintendent's authority prescribed by this title.

**History:** En. 75-5809 by Sec. 27, Ch. 5, L. 1971; R.C.M. 1947, 75-5809; amd. Sec. 2, Ch. 35, L. 1989; amd. Sec. 5, Ch. 22, L. 1997; amd. Sec. 2, Ch. 343, L. 1999; amd. Sec. 1, Ch. 276, L. 2003; amd. Sec. 4, Ch. 152, L. 2011.

**Cross-References**

Duty of teachers to report, 20-4-301.

Duty of trustees to report to County Superintendent, 20-9-213(6).

**20-3-210. Controversy appeals and hearings.** (1) Except for disputes arising under the terms of a collective bargaining agreement or as provided under 20-3-211 or 20-4-208, the county superintendent shall hear and decide all matters of controversy arising in the county as a result of decisions of the trustees of a district in the county. Only a county superintendent who possesses the qualifications of 20-3-201(2) may hear controversies related to teacher termination. Except as provided in subsection (2), exhaustion of administrative remedies under this chapter is required prior to filing an action in district court concerning a decision of the trustees. When appeals are made under 20-4-204 relating to the termination of services of a tenure teacher or under 20-4-207 relating to the dismissal of a teacher under contract, the county superintendent may appoint a qualified attorney to act as a legal adviser who shall assist the superintendent in preparing findings of fact and conclusions of law. Subsequently, either the teacher or trustees may appeal to the district court of the county in which the teacher was employed. The proceedings must be commenced not later than 60 days after the date of the decision of the county superintendent. The county superintendent shall hear and decide all controversies arising under:

(a) 20-5-320 and 20-5-321 relating to the approval of out-of-district attendance agreements; or

(b) any other provision of this title for which a procedure for resolving controversies is not expressly prescribed.

(2) Exhaustion of administrative remedies is not a prerequisite to filing an action in district court concerning a decision of the trustees of a district in the following instances:

(a) a state agency has been granted primary jurisdiction over the matter;

(b) the matter is governed by a specific statute; or

(c) the board of trustees has acted without jurisdiction or in excess of its jurisdiction.

(3) The county superintendent shall hear the appeal and take testimony in order to determine the facts related to the controversy and may administer oaths to the witnesses that testify at the hearing. The county superintendent shall prepare a written transcript of the hearing proceedings. The decision on the matter of controversy that is made by the county superintendent must be based upon the facts established at the hearing.

(4) Except for teacher termination cases, the decision of the county superintendent may be appealed to the superintendent of public instruction, and if it is appealed, the county superintendent shall supply a transcript of the hearing and any other documents entered as testimony at the hearing to the superintendent of public instruction. In teacher termination cases, an appeal may be filed with the district court of the county in which the teacher was employed no later than 60 days after the date of the decision of the county superintendent. If an appeal is filed, the county superintendent shall provide a transcript of the hearing and any other documents entered as testimony at the hearing to the district court.



(5) Cost incurred by the office of the county superintendent must be paid from the general fund budget of the county in which the controversy is initiated.

**History:** En. 75-5811 by Sec. 29, Ch. 5, L. 1971; amd. Sec. 1, Ch. 306, L. 1974; R.C.M. 1947, 75-5811; amd. Sec. 3, Ch. 489, L. 1979; amd. Sec. 1, Ch. 252, L. 1991; amd. Sec. 1, Ch. 439, L. 1991; amd. Sec. 7, Ch. 563, L. 1993; amd. Sec. 8, Ch. 438, L. 1997.

**Cross-References**

Oaths, Title 1, ch. 6.

Perjury, 45-7-201.

**20-3-211. Disqualification of county superintendent.** A county superintendent may not hear or decide matters of controversy pursuant to 20-3-210 when:

- (1) the county superintendent is a party to or has an interest in the controversy;
- (2) the county superintendent is related to either party in the controversy by consanguinity or affinity within the sixth degree, computed according to the rules of law;
- (3) either party to the controversy makes and files with the county superintendent of schools an affidavit that the party has reason to believe and does believe that the party cannot have a fair and impartial hearing before the county superintendent by reason of the bias or prejudice of the county superintendent; or
- (4) the controversy involves the education or possible identification of a child with a disability.

**History:** En. Sec. 1, Ch. 489, L. 1979; amd. Sec. 1, Ch. 236, L. 1987; amd. Sec. 10, Ch. 249, L. 1991; amd. Sec. 99(4), Ch. 51, L. 1999; amd. Sec. 277, Ch. 56, L. 2009.

**Cross-References**

Code of ethics, Title 2, ch. 2, part 1.

**20-3-212. The county superintendent to appoint another county superintendent.**

(1) When a county superintendent is disqualified pursuant to 20-3-211, that county superintendent must appoint another county superintendent to hear and decide the matter of controversy arising pursuant to 20-3-210.

(2) The county in which the controversy was initiated shall reimburse the county served by the county superintendent appointed pursuant to subsection (1) for actual costs of travel, room, and board as a result of the appointment. Such county superintendent is entitled to expenses as provided in 20-3-203(1).

**History:** En. Sec. 2, Ch. 489, L. 1979.

**20-3-213. Part-time office — establishment — restrictions.** (1) A board of county commissioners that intends to establish the office of county superintendent of schools as a part-time office shall:

- (a) pass a resolution stating the intent of the board to consider the action;
- (b) set a date for a hearing on the issue and provide proper notice of the hearing;
- (c) conduct a hearing and accept testimony from any registered elector of the county who presents evidence for or against the establishment of the part-time office; and
- (d) within 5 days of the hearing, issue an order regarding the establishment of the part-time office.

(2) A board may not issue an order establishing the office of county superintendent as a part-time office less than 7 days before the date on which declarations for nominations may first be filed for the office.

(3) A board may not establish the office of county superintendent as a part-time office during a term of office for which a county superintendent has been elected as a full-time officeholder.

**History:** En. Sec. 3, Ch. 146, L. 1993.

## **Part 3**

### **School District Trustees**

**Part Cross-References**

School district trustees, Art. X, sec. 8, Mont. Const.

**20-3-301. Election and term of office.** (1) Every trustee position prescribed by this title is subject to election. Except as provided in 20-3-313, a school trustee election must be held annually on the regular school election day established in 20-20-105(1).

(2) The term of office for each position must be 3 years unless it is otherwise specifically prescribed by this title.

(3) The board of trustees must be composed of the number of trustee positions prescribed for a district by 20-3-341 and 20-3-351. When exercising the power and performing the duties of trustees, the members shall act collectively and only at a regular or a properly called special meeting.

(4) The number of trustee positions in a district must vary in accordance with 20-3-341 and 20-3-351 according to the type of district.

**History:** (1)En. 75-5906 by Sec. 35, Ch. 5, L. 1971; amd. Sec. 1, Ch. 122, L. 1975; Sec. 75-5906, R.C.M. 1947; (2)En. 75-5901 by Sec. 30, Ch. 5, L. 1971; Sec. 75-5901, R.C.M. 1947; (3)En. 75-5902 by Sec. 31, Ch. 5, L. 1971; amd. Sec. 1, Ch. 103, L. 1975; Sec. 75-5902, R.C.M. 1947; R.C.M. 1947, 75-5901(part), 75-5902(part), 75-5906; amd. Sec. 200, Ch. 49, L. 2015.

#### **Cross-References**

Campaign finance provisions not to apply to election of school trustees, 13-37-206.

District classification, 20-6-201, 20-6-301.

**20-3-302. Legislative intent to elect less than majority of trustees.** (1) It is the intention of the legislature that the terms of a majority of the trustee positions of any district with elected trustees may not regularly expire and be subject to election on the same regular school election day. In elementary districts, there may not be more than three trustee positions in first-class districts, two trustee positions in second-class districts or third-class districts having five trustee positions, or one trustee position in third-class districts having three trustee positions regularly subject to election at the same time. In high school districts there may not be more than two additional trustee positions in first- or second-class districts or more than one in third-class districts regularly subject to election at the same time. In county high school districts, there may not be more than two trustee positions to be filled by members residing in the elementary district where the county high school building is located or more than one trustee position to be filled by members residing outside of the elementary district where the county high school building is located subject to election at the same time.

(2) In the following circumstances relating to newly created trustee positions, the initial terms may be shortened to comply with the intent of subsection (1):

(a) the consolidation under the provisions of 20-6-423 of two or more elementary districts to form an elementary district, of two or more high school districts to form a high school district, or of two or more K-12 districts to form a K-12 district;

(b) the establishment of additional trustee positions of a high school district under the provisions of 20-3-353 or 20-3-354 or new trustee positions under the provisions of 20-3-352(3);

(c) the change of a district's classification under the provisions of 20-6-201 or 20-6-301;

(d) the establishment of additional elementary trustee positions under the provisions of 20-3-341(3); or

(e) the establishment of additional high school trustee positions under the provisions of 20-6-313.

(3) If the change of a district's classification under 20-6-201 or 20-6-301 decreases the number of trustee positions, the positions must be eliminated in a manner that complies with the intent of subsection (1).

(4) Although the legislature intends that the terms of a majority of trustees of any district may not regularly expire and be subject to election at the same time, it is recognized that filling a vacancy under 20-3-308 may lead to a subsequent school election in which a majority of trustee positions are subject to election at the same time.

**History:** En. 75-5907 by Sec. 36, Ch. 5, L. 1971; amd. Sec. 2, Ch. 103, L. 1975; amd. Sec. 2, Ch. 122, L. 1975; R.C.M. 1947, 75-5907; amd. Sec. 2, Ch. 528, L. 1991; amd. Sec. 1, Ch. 137, L. 1993; amd. Sec. 6, Ch. 219, L. 1997; amd. Sec. 6, Ch. 510, L. 2005.

#### **Cross-References**

District classification, 20-6-201, 20-6-301.

Appointment of trustees when new high school district created, 20-6-313.

**20-3-303. Term of vacated trustee position after election.** Whenever a trustee position is subject to election because a vacancy of such position has occurred since the last regular school election day, the term of the trustee position shall not change and the member elected to fill such position shall serve the remainder of the unexpired term.

**History:** En. 75-5911 by Sec. 40, Ch. 5, L. 1971; R.C.M. 1947, 75-5911.

**20-3-304. Repealed.** Sec. 262, Ch. 49, L. 2015.

**History:** En. 75-5912 by Sec. 41, Ch. 5, L. 1971; amd. Sec. 2, Ch. 109, L. 1974; R.C.M. 1947, 75-5912; amd. Sec. 353, Ch. 571, L. 1979; amd. Sec. 2, Ch. 514, L. 1999.

**20-3-305. Candidate qualification, filing deadline, and withdrawal.** (1) Except as provided in 20-3-338, any person who is qualified to vote in a district under the provisions of 20-20-301 is eligible for the office of trustee.

(2) (a) Except as provided in subsection (2)(b), a declaration of intent to be a candidate must be submitted to the clerk of the district at least 40 days before the regular school election day at which the person is to be a candidate. If there are different terms to be filled, the term for the position for which the candidate is filing must also be indicated.

(b) A person seeking to become a write-in candidate for a trustee position shall file a declaration of intent no later than 5 p.m. on the day before the ballot certification deadline in 20-20-401.

(3) (a) A candidate intending to withdraw from the election shall send a statement of withdrawal to the clerk of the district. The statement must contain all information necessary to identify the candidate and the office for which the candidate filed. The statement of withdrawal must be acknowledged by the clerk of the district.

(b) A candidate may not withdraw after 5 p.m. the day before the ballot certification deadline in 20-20-401.

**History:** En. 75-5913 by Sec. 42, Ch. 5, L. 1971; R.C.M. 1947, 75-5913; amd. Sec. 1, Ch. 372, L. 1987; amd. Sec. 4, Ch. 539, L. 1987; amd. Sec. 3, Ch. 514, L. 1999; amd. Sec. 1, Ch. 271, L. 2011; amd. Sec. 201, Ch. 49, L. 2015.

#### Cross-References

Unlawful for trustee to be employed by or have certain contracts with trustee's school district, 20-9-204.  
Regular school election day and special school elections, 20-20-105.

**20-3-306. Conduct of election.** (1) The trustees of each district shall call a trustee election on the regular school election day of each school fiscal year under the provisions of 20-20-201, except as provided in 20-3-313. The trustees shall call and conduct the trustee election in the manner prescribed in this title for school elections and Title 13. Any elector qualified to vote under the provisions of 20-20-301 may vote at a trustee election.

(2) The trustee election ballots must be substantially in the following form:

#### OFFICIAL BALLOT SCHOOL TRUSTEE ELECTION

INSTRUCTIONS TO VOTERS: Make an X or similar mark in the vacant square before the name of the candidate for whom you wish to vote.

Vote for (indicate number to be elected) for a 3-year term:

☐ (List the names of the candidates for a 3-year term with a vacant square in front of each name.)

Vote for (indicate number to be elected) for a 2-year term:

☐ (List the names of the candidates for a 2-year term with a vacant square in front of each name.)

Vote for (indicate number to be elected) for a 1-year term:

☐ (List the names of the candidates for a 1-year term with a vacant square in front of each name.)

**History:** En. 75-5915 by Sec. 44, Ch. 5, L. 1971; amd. Sec. 2, Ch. 165, L. 1973; amd. Sec. 2, Ch. 259, L. 1973; R.C.M. 1947, 75-5915; amd. Sec. 352, Ch. 571, L. 1979; amd. Sec. 2, Ch. 132, L. 1999; amd. Sec. 202, Ch. 49, L. 2015.

#### Cross-References

Regular school election day and special school elections, 20-20-105.

**20-3-307. Qualification and oath.** (1) A person who receives a certificate of election as a trustee under the provisions of 20-3-313 or 20-20-416 may not assume the trustee position until the person has qualified. The person shall qualify by taking an oath of office administered by the county superintendent, the superintendent's designee, or any official provided for in 1-6-101 or 2-16-116. The oath must be filed with the county superintendent not more than 15 days after

the receipt of the certificate of election. After a person has qualified for a trustee position, the person holds the position until a successor has been elected or appointed and has been qualified.

(2) If the elected person does not qualify in accordance with this requirement, a person must be appointed in the manner provided by 20-3-309 and shall serve until the next regular school election.

**History:** En. 75-5916 by Sec. 45, Ch. 5, L. 1971; amd. Sec. 1, Ch. 91, L. 1973; R.C.M. 1947, 75-5916; amd. Sec. 3, Ch. 132, L. 1999; amd. Sec. 2, Ch. 271, L. 2011; amd. Sec. 203, Ch. 49, L. 2015.

**Cross-References**

Constitutional oath of office, Art. III, sec. 3, Mont. Const.

Oath of office, 20-1-202.

**20-3-308. Vacancy of trustee position.** (1) An elected trustee position is vacant whenever the incumbent:

- (a) dies;
- (b) resigns;
- (c) moves the trustee's residence from the applicable district or from the nominating district in the case of an additional trustee in a high school district;
- (d) is no longer a registered elector of the district under the provisions of 20-20-301;
- (e) is absent from the district for 60 consecutive days;
- (f) fails to attend three consecutive meetings of the trustees without a good excuse;
- (g) has been removed under the provisions of 20-3-310; or
- (h) ceases to have the capacity to hold office under any other provision of law.

(2) A trustee position is also vacant when an elected candidate fails to qualify under the provisions of 20-3-307.

**History:** En. 75-5917 by Sec. 46, Ch. 5, L. 1971; R.C.M. 1947, 75-5917; amd. Sec. 278, Ch. 56, L. 2009.

**Cross-References**

Rules for determining residence, 1-1-215.

Vacancy in community college trustee position, 20-15-223.

**20-3-309. Filling vacated trustee position — appointee qualification and term of office.** (1) Whenever a trustee position becomes vacant in any district, the remaining members of the trustees shall declare the position vacant and they shall appoint, in writing within 60 days, a competent person as a successor. The trustees shall notify the appointee and the county superintendent of the appointment. If the trustees do not make the appointment within the 60-day period, the county superintendent shall appoint, in writing, a competent person as a successor and notify the person of the appointment.

(2) A person who has been appointed to a trustee position shall qualify by completing and filing an oath of office with the county superintendent within 15 days after receiving notice of appointment. Failure to file the oath of office constitutes a continuation of the trustee position vacancy that must be filled under the provisions of this section.

(3) A person assuming a trustee position under the provisions of this section shall serve until the next regular school election and until a successor has qualified.

**History:** En. 75-5918 by Sec. 47, Ch. 5, L. 1971; amd. Sec. 3, Ch. 122, L. 1975; amd. Sec. 5, Ch. 266, L. 1977; R.C.M. 1947, 75-5918; amd. Sec. 2, Ch. 269, L. 1979; amd. Sec. 279, Ch. 56, L. 2009.

**Cross-References**

Filling vacancy in community college trustee position, 20-15-223.

**20-3-310. Trustee removal.** Any trustee may be removed from the trustee position by a court of competent jurisdiction under the law providing for the removal of elected civil officials. When charges are brought against a trustee and good cause is shown, the board of county commissioners may suspend the trustee from the trustee position until the charges can be heard in the court of competent jurisdiction.

**History:** En. 75-5919 by Sec. 48, Ch. 5, L. 1971; R.C.M. 1947, 75-5919; amd. Sec. 280, Ch. 56, L. 2009.

**Cross-References**

Notice of removal, 2-16-503.

Montana Recall Act, Title 2, ch. 16, part 6.

Removal for acceptance of emoluments, 20-7-608.

**20-3-311. Trustee travel reimbursement and compensation of secretary for joint board.** The members of the trustees of any district may not receive compensation for their services as trustees, except that the secretary of the trustees of a high school district operating a

county high school or the secretary of a joint board of trustees may be compensated for services as the secretary. The members of the trustees who reside over 3 miles from the trustees' meeting place must be reimbursed at the rate as provided in 2-18-503 for every mile necessarily traveled between their residence and the meeting place and return in attending the regular and special meetings of the trustees, and all trustees must be similarly reimbursed for meetings called by the county superintendent. The travel reimbursement may be accumulated during the school fiscal year and paid at the end of the fiscal year, at the discretion of each trustee.

**History:** En. 75-5931 by Sec. 60, Ch. 5, L. 1971; amd. Sec. 1, Ch. 62, L. 1974; R.C.M. 1947, 75-5931; amd. Sec. 281, Ch. 56, L. 2009.

**Cross-References**

Rules for determining residence, 1-1-215.

**20-3-312. Trustees of district affected by boundary change.** The trustees of any district to which the territory of another district is attached as a result of annexation, abandonment, territory transfer, or any other method of changing district boundaries, except by the consolidation of districts, continue to be the trustees of the district with the same powers, duties, and responsibilities and subject to the same limitations provided by law as if there had been no boundary change. In the case of district consolidation, the appointed trustees of the resulting district shall assume their trustee positions under the authority of 20-6-423.

**History:** En. 75-6531 by Sec. 190, Ch. 5, L. 1971; R.C.M. 1947, 75-6531; amd. Sec. 7, Ch. 219, L. 1997; amd. Sec. 7, Ch. 510, L. 2005; amd. Sec. 1, Ch. 60, L. 2009.

**Cross-References**

Elementary and high school districts, Title 20, ch. 6, parts 2 and 3.

School district reorganization, Title 20, ch. 6, part 4.

**20-3-313. Election by acclamation — notice.** (1) If the number of candidates filing for vacant positions or filing a declaration of intent to be a write-in candidate under 20-3-305(2)(b) is equal to or less than the number of positions to be elected, the trustees may cancel the election.

(2) If the election is canceled, the trustees shall give notice that a trustee election will not be held. Notice must be given no later than 30 days before the election.

(3) If a trustee election is not held, the trustees shall declare elected by acclamation the candidate who filed for the position or who filed a declaration of intent to be a write-in candidate and shall issue a certificate of election to the candidate.

(4) An election for a trustee in a single-member district as provided in 20-3-338 or in a trustee nominating district as provided in 20-3-353 is considered a separate trustee election for the purposes of declaring election by acclamation as provided in this section.

**History:** En. Sec. 1, Ch. 132, L. 1999; amd. Sec. 4, Ch. 15, L. 2001; amd. Sec. 1, Ch. 132, L. 2009; amd. Sec. 3, Ch. 271, L. 2011; amd. Sec. 204, Ch. 49, L. 2015; amd. Sec. 15, Ch. 242, L. 2017.

**Compiler's Comments**

*2017 Amendment:* Chapter 242 in (1) at end inserted "cancel the election"; in (2) at beginning inserted "If the election is canceled, the trustees shall"; and made minor changes in style. Amendment effective May 3, 2017.

**20-3-314 through 20-3-320 reserved.**

**20-3-321. Organization and officers.** (1) The trustees of each district shall annually organize as a governing board of the district after the regular school election day and after the issuance of the election certificates to the newly elected trustees, but not later than 15 days after the election. In order to organize, the trustees of the district must be given notice of the time and place where the organization meeting will be held, and at the meeting they shall choose one of their number as the presiding officer. In addition, except for the trustees of a high school district operating a county high school, the trustees shall employ and appoint a competent person, who is not a member of the trustees, as the clerk of the district. The trustees of a high school district operating a county high school shall appoint a secretary, who must be a member of the board.

(2) The presiding officer of the trustees of any district shall serve until the next organization meeting and shall preside at all the meetings of the trustees in accordance with the customary rules of order. The presiding officer shall perform the duties prescribed by this title and any other duties that normally pertain to a presiding officer.

(3) The presiding officer of a board of trustees of an elementary district may be any trustee of the board, including an additional trustee as provided for in 20-3-352(2). If an additional trustee is chosen to serve as the presiding officer of the board of trustees of an elementary district



described in 20-3-351(1)(a), the additional trustee may not vote on issues pertaining only to the elementary district.

**History:** En. 75-5927 by Sec. 56, Ch. 5, L. 1971; amd. Sec. 5, Ch. 122, L. 1975; R.C.M. 1947, 75-5927; amd. Sec. 4, Ch. 514, L. 1999; amd. Sec. 1, Ch. 14, L. 2011; amd. Sec. 4, Ch. 271, L. 2011; amd. Sec. 205, Ch. 49, L. 2015.

**Cross-References**

Regular school election day and special school elections, 20-20-105.

Certificate of election, 20-20-416.

**20-3-322. Meetings and quorum.** (1) The trustees of a district shall hold at least the following number of regular meetings:

- (a) an organization meeting, as prescribed by 20-3-321;
- (b) a final budget meeting, as prescribed by 20-9-131; and
- (c) (i) in first-class elementary districts, not less than one regular meeting each month; or
- (ii) in any other district, regular meetings at least quarterly.

(2) (a) The trustees of the district shall adopt a policy setting the day and time for the minimum number of regular school meetings prescribed in subsection (1)(c)(i) or (1)(c)(ii) and, in addition, any other regular meeting days the trustees wish to establish. Except for an unforeseen emergency or as provided in subsection (2)(b), meetings must be conducted in school buildings or, upon the unanimous vote of the trustees, in a publicly accessible building located within the district.

(b) This section does not prohibit the trustees from meeting outside the boundaries of the school district for collaboration or cooperation on educational issues with other school boards, educational agencies, or cooperatives. Adequate notice of the meeting as well as an agenda must be provided to the public in advance. Decisionmaking may occur only at a properly noticed meeting held within the school district's boundaries.

(3) Special meetings of the trustees may be called by the presiding officer or any two members of the trustees by giving each member a 48-hour written notice of the meeting, except that the 48-hour notice is waived in an unforeseen emergency or to consider a violation of the student code of conduct, as defined in accordance with district policy, within a week of graduation.

(4) Business may not be transacted by the trustees of a district unless it is transacted at a regular meeting or a properly called special meeting. A quorum for any meeting is a majority of the trustees' membership. All trustee meetings must be public meetings, as prescribed by 2-3-201, except that the trustees may recess to an executive session under the provisions of 2-3-203.

(5) For the purposes of this section, "unforeseen emergency" means a storm, fire, explosion, community disaster, insurrection, act of God, or other unforeseen destruction or impairment of school district property that affects the health and safety of the trustees, students, or district employees or the educational functions of the district.

**History:** En. 75-5930 by Sec. 59, Ch. 5, L. 1971; R.C.M. 1947, 75-5930; amd. Sec. 2, Ch. 154, L. 1991; amd. Sec. 1, Ch. 50, L. 1993; amd. Sec. 1, Ch. 211, L. 1997; amd. Sec. 1, Ch. 467, L. 1999; amd. Sec. 1, Ch. 86, L. 2003; amd. Sec. 1, Ch. 438, L. 2005; amd. Sec. 1, Ch. 444, L. 2009.

**20-3-323. District policy and record of acts.** (1) The trustees of each district shall prescribe and enforce policies for the government of the district. In order to provide a comprehensive system of governing the district, the trustees shall:

- (a) adopt the policies required by this title; and

(b) adopt policies to implement or administer the requirements of the general law, this title, the policies of the board of public education, and the rules of the superintendent of public instruction.

(2) The trustees shall keep a full and permanent record of all adopted policies and all other acts of the trustees. Minutes of each regular and special board meeting shall include wording of motions, voting records of each trustee present, and all other pertinent information, including a detailed statement of all expenditures of money with the name of any person or business to whom payment is made and showing the service rendered or goods furnished. A written copy of the minutes shall be made available within 5 working days following the approval of the minutes by the board at a cost of no more than 15 cents a page to be paid by those who request such a copy. One free copy of the minutes shall be provided to the local press within 5 working days following the approval of the minutes by the board. The board shall approve the minutes

of each special and regular meeting no later than 1 month following the meeting if it meets on a regular monthly basis. If a board does not regularly meet on a monthly basis, it shall approve the minutes of each special and regular meeting at the next regular or special meeting. The approval of the minutes of a prior meeting shall not occur more than 40 days after the meeting, except that no board shall be required to meet to approve the minutes of a meeting at which no substantive business was conducted.

**History:** En. 75-5932 by Sec. 61, Ch. 5, L. 1971; amd. Sec. 1, Ch. 192, L. 1975; amd. Sec. 6, Ch. 266, L. 1977; R.C.M. 1947, 75-5932; amd. Sec. 1, Ch. 360, L. 1979.

**Cross-References**

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

Public records, Title 2, ch. 6.

**20-3-324. Powers and duties.** As prescribed elsewhere in this title, the trustees of each district shall:

(1) employ or dismiss a teacher, principal, or other assistant upon the recommendation of the district superintendent, the county high school principal, or other principal as the board considers necessary, accepting or rejecting any recommendation as the trustees in their sole discretion determine, in accordance with the provisions of Title 20, chapter 4;

(2) employ and dismiss administrative personnel, clerks, secretaries, teacher's aides, custodians, maintenance personnel, school bus drivers, food service personnel, nurses, and any other personnel considered necessary to carry out the various services of the district;

(3) administer the attendance and tuition provisions and govern the pupils of the district in accordance with the provisions of the pupils chapter of this title;

(4) call, conduct, and certify the elections of the district in accordance with the provisions of the school elections chapter of this title;

(5) participate in the teachers' retirement system of the state of Montana in accordance with the provisions of the teachers' retirement system chapter of Title 19;

(6) participate in district boundary change actions in accordance with the provisions of the school districts chapter of this title;

(7) organize, open, close, or acquire isolation status for the schools of the district in accordance with the provisions of the school organization part of this title;

(8) adopt and administer the annual budget or a budget amendment of the district in accordance with the provisions of the school budget system part of this title;

(9) conduct the fiscal business of the district in accordance with the provisions of the school financial administration part of this title;

(10) establish the ANB, BASE budget levy, over-BASE budget levy, additional levy, operating reserve, and state impact aid amounts for the general fund of the district in accordance with the provisions of the general fund part of this title;

(11) establish, maintain, budget, and finance the transportation program of the district in accordance with the provisions of the transportation parts of this title;

(12) issue, refund, sell, budget, and redeem the bonds of the district in accordance with the provisions of the bonds parts of this title;

(13) when applicable, establish, financially administer, and budget for the tuition fund, retirement fund, building reserve fund, adult education fund, nonoperating fund, school food services fund, miscellaneous programs fund, building fund, lease or rental agreement fund, traffic education fund, impact aid fund, interlocal cooperative fund, and other funds as authorized by the state superintendent of public instruction in accordance with the provisions of the other school funds parts of this title;

(14) when applicable, administer any interlocal cooperative agreement, gifts, legacies, or devises in accordance with the provisions of the miscellaneous financial parts of this title;

(15) hold in trust, acquire, and dispose of the real and personal property of the district in accordance with the provisions of the school sites and facilities part of this title;

(16) operate the schools of the district in accordance with the provisions of the school calendar part of this title;

(17) set the length of the school term, school day, and school week in accordance with 20-1-302;

(18) establish and maintain the instructional services of the schools of the district in accordance with the provisions of the instructional services, textbooks, K-12 career and vocational/technical education, and special education parts of this title;

(19) establish and maintain the school food services of the district in accordance with the provisions of the school food services parts of this title;

(20) make reports from time to time as the county superintendent, superintendent of public instruction, and board of public education may require;

(21) retain, when considered advisable, a physician or registered nurse to inspect the sanitary conditions of the school or the general health conditions of each pupil and, upon request, make available to any parent or guardian any medical reports or health records maintained by the district pertaining to the child;

(22) for each member of the trustees, visit each school of the district not less than once each school fiscal year to examine its management, conditions, and needs, except that trustees from a first-class school district may share the responsibility for visiting each school in the district;

(23) procure and display outside daily in suitable weather on school days at each school of the district an American flag that measures not less than 4 feet by 6 feet;

(24) provide that an American flag manufactured in the United States that measures approximately 3 feet by 5 feet be prominently displayed in each classroom in each school of the district no later than the beginning of the school year starting after July 1, 2014, except in a classroom in which the flag may get soiled. Districts are encouraged to work with civic groups to acquire flags through donation, and this requirement is waived if the flags are not provided by a civic group.

(25) for grades 7 through 12, provide that legible copies of the United States constitution, the United States bill of rights, and the Montana constitution printed in the United States or in electronic form are readily available in every classroom no later than the beginning of the school year starting after July 1, 2014. Districts are encouraged to work with civic groups to acquire the documents through donation, and this requirement is waived if the documents are not provided by a civic group.

(26) adopt and administer a district policy on assessment for placement of any child who enrolls in a school of the district from a nonpublic school that is not accredited, as required in 20-5-110;

(27) upon request and in compliance with confidentiality requirements of state and federal law, disclose to interested parties school district student assessment data for any test required by the board of public education;

(28) consider and may enter into an interlocal agreement with a postsecondary institution, as defined in 20-9-706, that authorizes 11th and 12th grade students to obtain credits through classes available only at a postsecondary institution;

(29) approve or disapprove the conduct of school on a Saturday in accordance with the provisions of 20-1-303;

(30) consider and, if advisable for a high school or K-12 district, establish a student financial institution, as defined in 32-1-115; and

(31) perform any other duty and enforce any other requirements for the government of the schools prescribed by this title, the policies of the board of public education, or the rules of the superintendent of public instruction.

**History:** (1), (3) thru (18), (23)En. Sec. 62, Ch. 5, L. 1971; amd. Sec. 1, Ch. 69, L. 1973; amd. Sec. 1, Ch. 280, L. 1973; Sec. 75-5933, R.C.M. 1947; (2), (19) thru (22)En. Sec. 63, Ch. 5, L. 1971; Sec. 75-5934, R.C.M. 1947; R.C.M. 1947, 75-5933(1) thru (18), 75-5934; amd. Sec. 1, Ch. 682, L. 1979; amd. Sec. 72, Ch. 575, L. 1981; amd. Sec. 2, Ch. 135, L. 1987; amd. Sec. 1, Ch. 145, L. 1987; amd. Sec. 2, Ch. 498, L. 1989; amd. Sec. 9, Ch. 11, Sp. L. June 1989; amd. Sec. 3, Ch. 767, L. 1991; amd. Sec. 1, Ch. 402, L. 1993; amd. Sec. 5, Ch. 633, L. 1993; amd. Sec. 6, Ch. 22, L. 1997; amd. Sec. 2, Ch. 311, L. 1997; amd. Sec. 102, Ch. 584, L. 1999; amd. Sec. 5, Ch. 133, L. 2001; amd. Sec. 2, Ch. 377, L. 2001; amd. Sec. 3, Ch. 21, L. 2003; amd. Sec. 2, Ch. 340, L. 2003; amd. Sec. 8, Ch. 138, L. 2005; amd. Sec. 21, Ch. 44, L. 2007; amd. Sec. 1, Ch. 266, L. 2013.

#### **Cross-References**

Montana Administrative Procedure Act not applicable, 2-4-102.

Cooperative agreements with Indian tribes, Title 18, ch. 11.

Pupils, Title 20, ch. 5.

School districts, Title 20, ch. 6.

Trustees of elementary and high school districts to have same powers and duties, 20-6-101(3).

School instruction and special programs, Title 20, ch. 7.

School finance, Title 20, ch. 9.

Duties of trustees relating to food services, 20-10-204.

School elections, Title 20, ch. 20.

**20-3-325. Clerk of district.** (1) As provided in 20-3-321, the trustees shall employ and appoint a clerk of the district. The clerk of the district shall attend all meetings of the trustees to keep an accurate and permanent record of all the proceedings of each meeting. If the clerk is not present at a meeting, the trustees must have one of their members or a district employee act as clerk for the meeting, and that person shall supply the clerk with a certified copy of the proceedings. The clerk of the district must be the custodian of all documents, records, and reports of the trustees. Unless the trustees provide otherwise, the clerk shall:

(a) keep an accurate and detailed accounting record of all receipts and expenditures of the district in accordance with the financial administration provisions of this title; and

(b) prepare the annual trustees' report required under the provisions of 20-9-213.

(2) The clerk of the district shall provide the county treasurer with a minimum of 30 hours' notice in advance of cash demands to meet payrolls, claims, and electronic transfers that are in excess of \$50,000. If the clerk of the district fails to provide the required 30-hour notice, the district must be assessed a fee equal to any charges demanded by the state investment pool or other permissible investment manager for improperly noticed withdrawal of funds.

**History:** En. 75-5935 by Sec. 64, Ch. 5, L. 1971; amd. Sec. 7, Ch. 266, L. 1977; R.C.M. 1947, 75-5935; amd. Sec. 1, Ch. 196, L. 2005.

#### **Cross-References**

Execution of contracts of employment, 20-4-201, 20-4-401.

Signing of emergency budget, 20-9-165.

Countersigning of warrants, 20-9-221.

Execution of bonds, 20-9-433.

Notification of bond payments, 20-9-442.

Duty to prepare trustee election ballots, 20-20-401.

**20-3-326 through 20-3-329 reserved.**

**20-3-330. District self-funded health benefit plan reserve funds — exception for dissolution of plan.** (1) Except as provided in subsection (2), the trustees of a school district with a self-insured health benefit plan holding reserve funds shall use these funds to pay claims and other liabilities of the district's health benefit plan.

(2) Upon dissolution of a district's self-insured health benefit plan, all remaining reserves must be maintained by the district under the provisions of 20-3-331 and must be used to pay for employee benefit costs as determined by a collective bargaining agreement or an employer policy or as required by applicable state or federal law.

**History:** En. Sec. 1, Ch. 324, L. 2007.

**20-3-331. Purchase of insurance — self-insurance plan.** (1) The trustees of a district may purchase insurance coverage or establish a self-insurance plan for the district, trustees, and employees for liability as provided in 2-9-211 and for group health and life insurance as provided in 2-18-702. The trustees shall include the cost of coverage in the general fund budget of the district and as authorized for the district transportation program in 20-10-143(1)(d).

(2) Whenever the trustees of a district establish a self-insurance plan, the trustees shall establish an internal service fund to account for the activities of the self-insurance plan.

**History:** En. 75-5939 by Sec. 68, Ch. 5, L. 1971; R.C.M. 1947, 75-5939; amd. Sec. 3, Ch. 425, L. 1979; amd. Sec. 73, Ch. 575, L. 1981; amd. Sec. 1, Ch. 15, L. 1985; amd. Sec. 2, Ch. 299, L. 1985; amd. Sec. 10, Ch. 11, Sp. L. June 1989; amd. Sec. 2, Ch. 568, L. 1991.

**20-3-332. Personal immunity of trustees.** (1) When acting in their official capacity at a regular or special meeting of the board or a committee of the board, the trustees of each district are individually immune from suit for damages, as provided in 2-9-305.

(2) The trustees of each district are responsible for the proper administration and use of all money of the district in accordance with the provisions of law and this title. Failure or refusal to do so constitutes grounds for removal from office.

(3) An additional trustee, as provided for in 20-3-352(2), who is chosen as a nonvoting presiding officer of the board of trustees of an elementary district is entitled to all of the immunization, defenses, and indemnifications described in subsection (1) of this section.

**History:** En. 75-5941 by Sec. 70, Ch. 5, L. 1971; amd. Sec. 2, Ch. 91, L. 1973; R.C.M. 1947, 75-5941; amd. Sec. 1, Ch. 479, L. 1983; amd. Sec. 1, Ch. 310, L. 1999; amd. Sec. 1, Ch. 343, L. 2007; amd. Sec. 2, Ch. 14, L. 2011.

**Cross-References**

State or other governmental entity immune from exemplary or punitive damages, 2-9-105.

Delivering items to successor, 20-1-203.

Trustee removal, 20-3-310.

Acceptance of emoluments, 20-7-608.

Costs, Title 25, ch. 10.

Joint and several liability — right of contribution, 27-1-703.

Official misconduct, 45-7-401.

**20-3-333. Repealed.** Sec. 14, Ch. 309, L. 1981.

**History:** En. 75-6309 by Sec. 122, Ch. 5, L. 1971; R.C.M. 1947, 75-6309(part).

**20-3-334 and 20-3-335 reserved.**

**20-3-336. Single-member trustee districts — legislative intent — minority defined.**

(1) It is the intent of the legislature to provide a board of trustees of a school district with the option to:

(a) review the voting and population patterns of minorities of the school district, as determined by the most recent federal decennial census, voting records, and other pertinent information; and

(b) create single-member trustee districts within the school district:

(i) if the board determines that the present trustee selection process does not serve the best interests of the electors of the district or ensure that the access of minority populations to the political process is not diluted in contravention of federal law; or

(ii) pursuant to a petition as provided in 20-3-337.

(2) “Minority”, as used in 20-3-337 and this section, means a minority whose rights are protected under section 2 of the Voting Rights Act of 1965 (42 U.S.C. 1973), as amended.

**History:** En. Sec. 1, Ch. 539, L. 1987; amd. Sec. 1, Ch. 548, L. 2001.

**20-3-337. Plan for creating single-member trustee districts — petition election.**

(1) Except as provided in subsection (8), the board of trustees of a school district may establish a procedure for studying the appropriateness of creating single-member trustee districts within the school district.

(2) If the board considers a single-member district plan, the plan must establish single-member districts that:

(a) are as compact in area and as equal in population as possible; and

(b) provide equitable voting rights for the minorities residing within the school district by ensuring that the access of minorities to the political process is not diluted in contravention of the Voting Rights Act Amendments of 1982, Public Law 97-205.

(3) If the board determines that it is in the best interest of the electors of the school district, it shall:

(a) propose creation of a single-member trustee district plan;

(b) schedule and hold a public hearing on the proposed plan; and

(c) publish in a newspaper of general circulation in the district a notice of the public hearing, including a map of the proposed single-member trustee district plan, and the reasons why the board believes that the plan satisfies the criteria set forth in subsection (2).

(4) After the public hearing is held, the board shall forward a copy of the proposed single-member trustee district plan to the secretary of state and the superintendent of public instruction for review and comment. The copy of the proposed plan must be accompanied by:

(a) a map indicating the circulation of the newspaper in which the notice required in subsection (3) was published;

(b) the published notice of the public hearing;

(c) a map of the proposed single-member trustee district plan; and

(d) a summary of any public comments to the board regarding the proposed plan.

(5) After receiving comments from the secretary of state and the superintendent of public instruction, the board of trustees may amend, revise, approve, or disapprove the proposed plan. If the plan is adopted by the board, it shall:

(a) inform the county superintendent of schools of its adoption;



(b) publish notice of the adoption in a newspaper of general circulation within the district, including identification of the boundaries of each new single-member trustee district and the implementation date of the plan; and

(c) file with the county clerk and recorder a certificate designating the boundary lines and limits of each single-member trustee district.

(6) All successors to the board of trustees must be elected in accordance with the adopted single-member trustee district plan.

(7) A change in the boundaries of a trustee district may not be made within 3 months preceding a regular school election.

(8) If the board receives a petition signed by 10% or more of the qualified electors of the school district, the board shall submit the request to create a single-member trustee district to the electors who are qualified under 20-20-301 to vote on the request. The petition submitted to the board must:

(a) conform to the requirements of subsections (2)(a) and (2)(b);

(b) be forwarded to the secretary of state and the superintendent of public instruction for review and comment;

(c) include a map of the proposed single-member trustee district, identifying the boundaries of each new single-member trustee district and the implementation date of the district;

(d) be forwarded to the county clerk and recorder, designating the boundary lines and limits of each single-member trustee district; and

(e) include a plan for election and terms of trustees of the single-member district, who must be residents of the proposed district, and provide for the terms of successors to the board of trustees in a single-member trustee district approved by the electors.

(9) If the petition meets the requirements of subsection (8), the board shall call an election on the question of whether to create a single-member trustee district. The election must be held at the next school election scheduled pursuant to 20-20-105 and must be conducted in the manner prescribed by this title for school elections. The published notice must include a map and a description of the boundaries of the proposed district.

(10) If a majority of the votes cast at the election approve the creation of a single-member trustee district, the election administrator shall, within 10 days of receipt of the official canvass of the result, certify that the district is formed.

(11) When a trustee position becomes vacant in a single-member district, the position must be filled in accordance with the provisions of 20-3-309, except that the position must be filled by a person who resides within the single-member district.

**History:** En. Sec. 2, Ch. 539, L. 1987; amd. Sec. 2, Ch. 548, L. 2001; amd. Sec. 206, Ch. 49, L. 2015.

**20-3-338. Trustees elected by single-member district.** (1) At each regular school election, each trustee candidate in a single-member trustee district must be a qualified elector of the trustee district and have resided in the trustee district to be represented for at least 1 year prior to becoming a candidate for the trustee position.

(2) The election of each trustee must be submitted to the electors in the trustee district who are qualified to vote under the provisions of 20-20-301.

**History:** En. Sec. 3, Ch. 539, L. 1987; amd. Sec. 207, Ch. 49, L. 2015.

**20-3-339 and 20-3-340 reserved.**

**20-3-341. Number of trustee positions in elementary districts — transition.** The number of trustee positions in each elementary district shall vary according to the district's classification, as established by 20-6-201:

(1) There must be seven trustee positions in a first-class elementary district.

(2) There must be five trustee positions in a second-class elementary district; however, on a majority vote of the board of trustees, the number may be increased to seven trustee positions at the next trustee election if notice of the action of the board of trustees is published by the clerk of the district in a newspaper of general circulation in the county prior to January 1 of the year of the trustee election. The board of trustees may reduce the number of trustee positions from seven to five upon receiving a petition for that purpose from at least 10 qualified electors of the district.

(3) There must be three trustee positions in a third-class elementary district; however, on a majority vote of the board of trustees, the number may be increased to five trustee positions at the next trustee election if notice of the action of the board of trustees is published by the clerk of the district in a newspaper of general circulation in the county prior to January 1 of the year of the trustee election. The board of trustees may reduce the number of trustee positions from five to three upon receiving a petition for that purpose from at least 10 qualified electors of the district.

(4) (a) If the number of trustee positions in a second-class elementary district is decreased from seven to five in accordance with the provisions of subsection (2), one position is eliminated at the time of the first subsequent regular school election and one position is eliminated at the next regular school election.

(b) If the number of trustee positions in a third-class elementary district is decreased from five to three in accordance with the provisions of subsection (3), one position is eliminated at the time of the first subsequent school election when two trustee positions would have been filled and one position is eliminated at the next school election when two trustee positions would have been filled.

**History:** En. 75-5902 by Sec. 31, Ch. 5, L. 1971; amd. Sec. 1, Ch. 103, L. 1975; R.C.M. 1947, 75-5902(1); amd. Sec. 1, Ch. 591, L. 1989; (4)En. Sec. 2, Ch. 591, L. 1989; amd. Sec. 1, Ch. 45, L. 1993; amd. Sec. 208, Ch. 49, L. 2015.

**20-3-342. Determination of terms after consolidation of elementary districts.**

Whenever the trustees are elected at one regular school election under the circumstances described in 20-3-302(2)(a), the members who are elected shall draw by lot to determine their terms of office. The terms of office by trustee position must be:

- (1) three for 3 years, two for 2 years, and two for 1 year in a first-class elementary district;
- (2) two for 3 years, two for 2 years, and one for 1 year in second-class elementary districts and third-class elementary districts having five trustee positions; or
- (3) one for 3 years, one for 2 years, and one for 1 year in a third-class elementary district having three trustee positions.

**History:** En. 75-5908 by Sec. 37, Ch. 5, L. 1971; amd. Sec. 3, Ch. 103, L. 1975; R.C.M. 1947, 75-5908; amd. Sec. 8, Ch. 219, L. 1997.

**20-3-343. Determination of terms after change of district classification.** Whenever the change of an elementary district classification requires the addition of trustee positions to the trustees of the district under the circumstance described in 20-3-302(2)(c), the members who are elected shall draw by lot to determine their terms of office, which must be one for 3 years and one for 2 years.

**History:** En. 75-5910 by Sec. 39, Ch. 5, L. 1971; R.C.M. 1947, 75-5910; amd. Sec. 9, Ch. 219, L. 1997.

**Cross-References**

Elementary district classification, 20-6-201.

**20-3-344. Repealed.** Sec. 262, Ch. 49, L. 2015.

**History:** En. 75-5914.1 by Sec. 1, Ch. 165, L. 1973; R.C.M. 1947, 75-5914.1; amd. Sec. 5, Ch. 539, L. 1987; amd. Sec. 282, Ch. 56, L. 2009.

**20-3-345 through 20-3-350 reserved.**

**20-3-351. Number of trustee positions in high school districts.** (1) Except as provided in 20-3-352(3) and subsection (2) of this section, the trustees of a high school district must be composed of:

(a) the trustees of the elementary district in which the high school building is located or, if there is more than one elementary district in which the operating high school buildings are located, the trustees of the elementary district in which the operating high school building that was first constructed is located; and

(b) the additional trustee positions determined in accordance with 20-3-352(2).

(2) There must be seven trustee positions for each county high school.

(3) An additional trustee may be elected as the presiding officer of a high school district but may not vote on issues pertaining only to the elementary district. The additional trustee, as the presiding officer of the board, has all other powers, protections, and obligations of a presiding officer of an elementary district, including those under 2-3-203.

**History:** En. 75-5902 by Sec. 31, Ch. 5, L. 1971; amd. Sec. 1, Ch. 103, L. 1975; R.C.M. 1947, 75-5902(2), (3); amd. Sec. 3, Ch. 528, L. 1991; amd. Sec. 10, Ch. 219, L. 1997; amd. Sec. 1, Ch. 91, L. 2005; amd. Sec. 3, Ch. 14, L. 2011.

**Cross-References**

Definition of elementary and high school districts, 20-6-101.

Elementary district classification, 20-6-201.

High school district classification, 20-6-301.

**20-3-352. Request and determination of number of high school district additional trustee positions — nonvoting trustee.** (1) As provided in 20-3-351(1)(b), a high school district, except a county high school district, may have additional trustee positions when the trustees of a majority of the elementary districts with territory located in the high school district, but without equitable representation on the high school district trustees under the provision of 20-3-351(1)(a), request the establishment of additional trustee positions under the provisions of subsection (2) or when the electors approve an alternative method of electing members of the board of trustees under the provisions of subsection (3).

(2) A request for additional trustee positions must be made to the county superintendent by a resolution of the trustees of each elementary district. When a resolution has been received from a majority of the elementary districts without representation on the high school district trustees, the county superintendent shall determine the number of additional trustee positions for the affected high school district in accordance with the following procedure:

(a) The taxable valuation of the elementary district that has its trustees placed on the high school trustees must be divided by the number of positions on the trustees of the elementary district to determine the taxable valuation per trustee position.

(b) The taxable valuation used for the calculation in subsection (2)(a) must be subtracted from the taxable valuation of the high school district to determine the taxable valuation of the territory of the high school district without representation on the high school district trustees.

(c) The taxable valuation determined in subsection (2)(b) must be divided by the taxable valuation per trustee position calculated in subsection (2)(a). The resulting quotient must be rounded off to the nearest whole number, except that when the quotient is less than 0.5, at least one nonvoting trustee position must be established for the territory without representation on the high school district board of trustees under the provision of 20-3-351(1)(a).

(d) Except for a nonvoting trustee position, the number determined in subsection (2)(c) must be the number of additional trustee positions, except that the number of additional trustee positions may not exceed four in a first- or second-class high school district or two in a third-class high school district except when two-thirds or more of the high school enrollment of the high school district and two-thirds or more of the taxable valuation of the high school district are located outside of the elementary district that has its trustees placed on the high school district trustees. When this situation exists, three additional trustees must be elected from the elementary school districts in which the high school is not located and one additional trustee must be elected at large in the high school district.

(e) An additional trustee may serve as the presiding officer of the board of trustees of an elementary district in accordance with 20-3-321(3).

(3) (a) If more than half of the electors of the high school district reside outside the territory of the elementary school district in which the high school district buildings are located, at least 10% of the electors of the high school district who are qualified to vote under the provisions of 20-20-301 may petition the county superintendent, requesting an election to consider a proposition on the question of establishing one of the following alternative methods of electing the members of the high school district board of trustees:

(i) one trustee must be elected from each elementary school district with territory included in the high school district and two or three trustees must be elected at large in the high school district, whichever number results in an odd number of members on the board of trustees; or

(ii) the county superintendent shall establish four trustee nominating districts within the high school district but outside the territory of the elementary school district in which the high school buildings are located. One trustee must be elected from each trustee nominating district and three trustees must be elected from the elementary district in which the high school buildings are located, for a total of seven trustees on the high school district board of trustees. Trustees elected from the elementary district in which the high school buildings are located shall serve

on both the high school district board of trustees and on the elementary school district board of trustees.

(b) (i) When the county superintendent receives a valid petition, the county superintendent shall order the trustees of the high school district to conduct an election on the next regular school election day on the proposition allowed under the provisions of subsection (3)(a).

(ii) If the electors of the district approve a proposition to establish the alternative method of electing the high school district board of trustees, the county superintendent shall order that the members of the board of trustees be elected according to subsection (3)(a) at the next regular school election.

(c) Whenever the trustees are elected at one regular election under subsection (3)(b), the members who are elected shall draw by lot to determine their terms of office. The terms of office by trustee position must be divided as equally as practicable among 1-year, 2-year, and 3-year terms.

(d) A petition to call an election for the purposes of subsection (3) may not be submitted to the county superintendent more than one time in each 5-year period.

**History:** En. 75-5903 by Sec. 32, Ch. 5, L. 1971; amd. Sec. 1, Ch. 328, L. 1973; R.C.M. 1947, 75-5903; amd. Sec. 1, Ch. 528, L. 1991; amd. Sec. 11, Ch. 219, L. 1997; amd. Sec. 1, Ch. 151, L. 2001; amd. Sec. 4, Ch. 14, L. 2011.

**20-3-353. Establishment and purpose of trustee nominating districts.** (1) After the county superintendent has determined the number of additional trustee positions, the county superintendent shall establish trustee nominating districts in that portion of the high school district without representation on the high school trustees. There must be one trustee nominating district for each additional trustee position, except the additional trustee-at-large. Unless it is impossible, the trustee nominating district boundaries must be coterminous with elementary district boundaries.

(2) The purpose of the trustee nominating district is to establish a representative district for the nomination and election of a resident of the district to be an additional member of the trustees of a high school district. The electors qualified to vote in the high school district under the provisions of 20-20-301 and who reside in the trustee nominating district are the only electors who may vote for the additional trustee representing the district. They must also be permitted to vote for a trustee position at large, if there is one, but not for any other high school trustee position.

(3) Any additional trustee position established under the provisions of this section must be filled in a manner prescribed under the provisions of 20-3-309. Each additional trustee position filled by appointment under this section is subject to election at the next regular school election.

**History:** En. 75-5904 by Sec. 33, Ch. 5, L. 1971; R.C.M. 1947, 75-5904; amd. Sec. 283, Ch. 56, L. 2009.

#### **Cross-References**

Regular school election day and special school elections, 20-20-105.

**20-3-354. Redetermination of additional trustee positions and subsequent adjustments.** Whenever there is a revision of the taxable valuation of the high school district or the elementary districts within the high school district or there is a reclassification of the elementary district that has its trustees placed on the high school district board of trustees, the county superintendent shall redetermine the number of additional trustee positions for the high school district in accordance with 20-3-352. If there is a change in the allowable number of additional trustee positions, the county superintendent shall reestablish the trustee nominating districts in accordance with 20-3-353. If the number of additional trustee positions is less than the previous number of positions, the county superintendent shall designate which present additional positions are to terminate upon the order reestablishing the trustee nominating districts. If the number of additional trustee positions is more than the previous number of positions, the additional trustee positions must be filled in the manner prescribed under the provisions of 20-3-309. Each additional trustee position filled by appointment under this section is subject to election at the next regular school election.

**History:** En. 75-5905 by Sec. 34, Ch. 5, L. 1971; R.C.M. 1947, 75-5905; amd. Sec. 2, Ch. 384, L. 1979; amd. Sec. 284, Ch. 56, L. 2009.

**20-3-355. Determination of terms after establishment or reestablishment of additional trustee positions.** (1) Whenever all of the additional trustee positions are subject to election at one regular school election under the circumstance described in 20-3-302(2)(b), the

members who are elected shall draw by lot to determine their terms of office. The terms of office by number of members elected must be:

- (a) two for 3 years, if four are elected;
- (b) one for 3 years, if one, two, or three are elected;
- (c) one for 2 years, if two, three, or four are elected; and
- (d) one for 1 year, if three or four are elected.

(2) Whenever the reestablishment of the additional trustee positions for a high school district under the provisions of 20-3-354 results in an increased number of additional trustee positions, the members who are elected at the next regular school election shall draw by lot to determine their terms of office and the terms must be determined in accordance with the additional trustee terms prescribed in this section.

**History:** En. 75-5909 by Sec. 38, Ch. 5, L. 1971; R.C.M. 1947, 75-5909; amd. Sec. 12, Ch. 219, L. 1997.

**20-3-356. Membership of elected trustees of county high school district and nomination of candidates.** (1) The trustees of a county high school district must include the following:

(a) four trustee positions filled by members residing in the elementary district where the county high school building is located; and

(b) three trustee positions filled by members one of whom resides in each of the three trustee nominating districts in the territory of the high school district outside of the elementary district where the county high school building is located. The county superintendent shall establish the nominating districts, and, unless it is impossible, the districts must have coterminous boundaries with elementary district boundaries.

(2) The provisions of 20-3-305 govern the nomination of candidates for the trustee election prescribed in this section.

**History:** En. 75-5924 by Sec. 53, Ch. 5, L. 1971; amd. Sec. 4, Ch. 122, L. 1975; R.C.M. 1947, 75-5924; amd. Sec. 13, Ch. 219, L. 1997.

**Cross-References**

Rules for determining residence, 1-1-215.

Transactions after approved county high school unification, 20-6-313.

**20-3-357 through 20-3-360 reserved.**

**20-3-361. Joint board of trustees organization and voting membership.** (1) The board of trustees of two or more school districts may form a joint board of trustees for the purpose of coordinating any educational program or support service of the districts. A joint board of trustees may coordinate only those programs and services agreed to by the participating boards of trustees.

(2) When a joint board of trustees is formed, all of the members of the districts' trustees must be members of the joint board of trustees and each member must have the right to participate in the meetings, but voting on matters considered by the joint board is limited by the provisions of this section.

(3) At the first meeting of the joint board of trustees, a presiding officer of the joint board of trustees must be selected from among the membership. A secretary of the joint board must be selected from the membership. The presiding officer, when selected as a voting member, may not be disqualified from voting because of the position. The secretary may not be a voting member except that the secretary shall cast the deciding vote when three successive ballots have resulted in a tie vote of the joint board of trustees.

(4) The voting membership of the joint board of trustees must be equalized among the trustee membership of the participating districts. After the selection of the presiding officer and the secretary, if necessary, the voting membership is:

(a) all of the membership of the board of trustees of the smallest class of district, according to 20-6-201 or 20-6-301, unless one of its members is selected as secretary, in which case that member may not be a voting member; and

(b) the members of the board of trustees of the other district or districts who are selected by the trustees as voting members of the joint board in a number equal to the number of voting members of the district as established under subsection (4)(a). The names of the voting membership selected by the trustees must be submitted in writing to the secretary of the board



and are the only members of the district's trustees eligible to vote on joint board matters unless the list is revised in writing by the trustees.

(5) Each voting member is entitled to cast one vote, individually, upon every matter submitted to the joint board for a vote.

(6) A joint board shall remain in existence for at least 1 school year and may not be dissolved until the end of a school year.

**History:** En. 75-5928 by Sec. 57, Ch. 5, L. 1971; amd. Sec. 6, Ch. 122, L. 1975; R.C.M. 1947, 75-5928; amd. Sec. 1, Ch. 308, L. 1987; amd. Sec. 285, Ch. 56, L. 2009.

**Cross-References**

Authority of joint board to operate junior high school, 20-6-505.

Funding for special education cooperatives or joint boards, 20-7-457.

**20-3-362. Powers of joint board of trustees.** (1) When a joint board of trustees is formed as provided by 20-3-361, it shall have the power to:

- (a) jointly employ a district superintendent under the provisions of 20-4-401;
- (b) jointly employ teachers and specialists under the provisions of 20-4-201;
- (c) open a junior high school under the provisions of 20-6-505 if the trustees of a county high school and the trustees of an elementary district have formed a joint board of trustees;
- (d) prescribe and administer joint administrative policy;
- (e) jointly provide any program or service authorized under 20-3-324, including any joint provision of special education services as provided in 20-7-457; and
- (f) prorate all items of joint expense among the school districts, provided that a controversy over any decision by the joint board to prorate joint costs may, within 30 days, be appealed by the trustees of any district to the superintendent of public instruction for a final decision as to what constitutes a fair and just proration of the cost.

(2) The joint board of trustees shall not have the power to transact business that is not specifically related to the joint administration of the districts.

**History:** En. 75-5929 by Sec. 58, Ch. 5, L. 1971; R.C.M. 1947, 75-5929; amd. Sec. 3, Ch. 511, L. 1979; amd. Sec. 2, Ch. 308, L. 1987; amd. Sec. 1, Ch. 343, L. 1989.

**20-3-363. Multidistrict agreements — fund transfers.** (1) The boards of trustees of any two or more school districts may enter into a multidistrict agreement to create a multidistrict cooperative to perform any services, activities, and undertakings of the participating districts and to provide for the joint funding and operation and maintenance of all participating districts upon the terms and conditions as may be mutually agreed to by the districts subject to the conditions of this section. An agreement must include provisions for dissolution of the cooperative, including the conditions under which dissolution may occur and the disposition of any remaining funds that had been transferred to an interlocal cooperative fund in support of the cooperative. An agreement must be approved by the boards of trustees of all participating districts and must include a provision specifying terms upon which a district may exit the multidistrict cooperative. The agreement may be for a period of up to 3 years.

(2) All expenditures in support of the multidistrict agreement may be made from the interlocal cooperative fund as specified in 20-9-703 and 20-9-704. Each participating district of the multidistrict cooperative may transfer funds into the interlocal cooperative fund from the district's general fund, budgeted funds other than the retirement fund or debt service fund, or nonbudgeted funds other than the compensated absence liability fund. Transfers to the interlocal cooperative fund from each participating school district's general fund are limited to an amount not to exceed the direct state aid in support of the respective school district's general fund. Transfers from the retirement fund and debt service fund are prohibited. Transfers may not be made with funds restricted by federal law unless the transfer is in compliance with any restrictions or conditions imposed by federal law.

(3) Expenditures from the interlocal cooperative fund under this section are limited to those expenditures that are permitted by law and that are within the final budget for the budgeted fund from which the transfer was made.

(4) The intent of this section is to increase the flexibility and efficiency of school districts without an increase in local taxes. In furtherance of this intent, if transfers of funds are made from any school district fund supported by a nonvoted levy, the district may not increase its nonvoted levy for the purpose of restoring the amount of funds transferred.

(5) As used in this title, “multidistrict cooperative” means a public entity created by two or more school districts executing a multidistrict agreement under this section or any school district or other public entity participating in an interlocal cooperative agreement under the provisions of Title 20, chapter 9, part 7, as either a coordinating or a cooperating agency.

**History:** En. Sec. 21, Ch. 462, L. 2005; amd. Sec. 2, Ch. 418, L. 2011; amd. Sec. 1, Ch. 127, L. 2013; amd. Sec. 1, Ch. 329, L. 2013.

## CHAPTER 4 TEACHERS, SUPERINTENDENTS, AND PRINCIPALS

### Part 1 — Certification of Teaching and Supervisory Personnel

- 20-4-101. System and definitions of teacher and specialist certification — student teacher exception.
- 20-4-102. Board of public education policies.
- 20-4-103. Issuance of teacher or specialist certificates.
- 20-4-104. Qualifications.
- 20-4-105. Repealed.
- 20-4-106. Classifications of teacher and specialist certificates.
- 20-4-107. Outstanding teacher certificates.
- 20-4-108. Term of teacher and specialist certificates — renewal.
- 20-4-109. Fees for teacher and specialist certificates.
- 20-4-110. Letter of reprimand, suspension, revocation, and denial of certificate.
- 20-4-111. Emergency authorization of employment.
- 20-4-112. Access to materials — superintendent of public instruction.
- 20-4-113. Access to criminal justice information.
- 20-4-114. Penalty for failure to report.
- 20-4-115 through 20-4-120 reserved.
- 20-4-121. Interstate agreement on qualification of educational personnel.
- 20-4-122. Designated official for purposes of interstate agreement.
- 20-4-123. Preservation and publication of contracts made pursuant to interstate agreement.
- 20-4-124 through 20-4-130 reserved.
- 20-4-131. Definitions.
- 20-4-132. Meetings — assistance.
- 20-4-133. Duties of the council.
- 20-4-134. Professional stipends for teachers certified by national board for professional teaching standards.

### Part 2 — Teacher Employment — Tenure

- 20-4-201. Employment of teachers and specialists by contract.
- 20-4-202. Teacher and specialist certification registration.
- 20-4-203. Teacher tenure.
- 20-4-204. Termination of tenure teacher services.
- 20-4-205. Notification of teacher reelection — acceptance.
- 20-4-206. Notification of nontenure teacher reelection — acceptance — termination.
- 20-4-207. Dismissal of teacher under contract.
- 20-4-208. Transfer from administrative position.
- 20-4-209 and 20-4-210 reserved.
- 20-4-211. Repealed.
- 20-4-212. Repealed.
- 20-4-213. Repealed.
- 20-4-214. Repealed.

### Part 3 — Teachers’ Powers, Duties, and Privileges

- 20-4-301. Duties of teacher — nonpayment for failure to comply.
- 20-4-302. Discipline and punishment of pupils — definition of corporal punishment — penalty — defense.
- 20-4-303. Abuse of teachers.
- 20-4-304. Attendance at instructional and professional development meetings.

### Part 4 — District Superintendent and Principal

- 20-4-401. Appointment and dismissal of district superintendent or county high school principal.
- 20-4-402. Duties of district superintendent or county high school principal.
- 20-4-403. Powers and duties of principal.

### Part 5 — Quality Educator Loan Assistance Program

- 20-4-501. Quality educator loan assistance program — purpose.
- 20-4-502. Definitions.
- 20-4-503. Critical quality educator shortages.
- 20-4-504. Loan repayment assistance.
- 20-4-505. Loan repayment assistance documentation.
- 20-4-506. Funding — priorities.

## Chapter Cross-References

Teachers' retirement system, Title 19, ch. 20.

## Part 1

### Certification of Teaching and Supervisory Personnel

**20-4-101. System and definitions of teacher and specialist certification — student teacher exception.** (1) In order to establish a uniform system of quality education and to ensure the maintenance of professional standards, a system of teacher and specialist certification must be established and maintained under the provisions of this title and a person may not be permitted to teach in the public schools of the state until the person has obtained a teacher or specialist certificate or the district has obtained an emergency authorization of employment from the state.

(2) As used in this part, “teacher or specialist certificate” means a certificate issued or applied for under 20-4-106. The term “teacher or specialist” refers to a person certified under 20-4-106.

(3) The certification requirement does not apply to a student teacher who is a student enrolled in an institution of higher learning approved by the board of regents of higher education for teacher training and who is jointly assigned by the institution of higher learning and the governing board of a district or a public institution to perform practice teaching in a nonsalaried status under the direction of a regularly employed and certificated teacher.

(4) A student teacher, while serving a nonsalaried internship under the supervision of a certificated teacher, must be accorded the same protection of the laws as that accorded a certificated teacher and shall, while acting as a student teacher, comply with all rules of the governing board of the district or public institution and the applicable provisions of 20-4-301 relating to the duties of teachers.

**History:** En. 75-6001 by Sec. 71, Ch. 5, L. 1971; amd. Sec. 1, Ch. 396, L. 1973; R.C.M. 1947, 75-6001; amd. Sec. 4, Ch. 511, L. 1979; amd. Sec. 2, Ch. 227, L. 1987; amd. Sec. 286, Ch. 56, L. 2009.

#### Cross-References

Duty of Board of Public Education to adopt teacher certification policies, 20-2-121.

Health education course, including drug and alcohol abuse instruction, Title 20, ch. 25, part 6.

**20-4-102. Board of public education policies.** To effect an orderly and uniform system of teacher and specialist certification, the board of public education shall, upon the recommendation of the superintendent of public instruction and in accordance with the provisions of this title, prescribe and adopt policies for the issuance of teacher or specialist certificates. Such policies shall provide for:

(1) reasonable training and experience requirements for teacher, specialist, supervisor, and administrative certificates and endorsements thereon as provided by the certification classification in 20-4-106;

(2) the renewal of teacher or specialist certificates based on the same conditions prescribed for the initial issuance of certificates;

(3) the conduct of hearings on teacher or specialist certification revocation, suspension, or denial;

(4) the issuance of emergency authorization to a district to employ a person who is not the holder of a valid teacher certificate as an instructor of pupils; and

(5) any other policy, not inconsistent with the law, which is necessary for the proper operation of a system of teacher and specialist certification.

**History:** En. 75-6002 by Sec. 72, Ch. 5, L. 1971; R.C.M. 1947, 75-6002; amd. Sec. 5, Ch. 511, L. 1979.

#### Cross-References

Duty of Board of Public Education to adopt teacher certification policies, 20-2-121.

**20-4-103. Issuance of teacher or specialist certificates.** The superintendent of public instruction shall issue all teacher and specialist certificates in the state of Montana. In issuing teacher or specialist certificates, the superintendent of public instruction shall comply with the provisions of this title and the teacher and specialist certification policies adopted by the board of public education. The superintendent of public instruction shall not issue a teacher or specialist

certificate to any person who does not satisfy the qualifications or other requirements of this title and of the board of public education policies for teacher or specialist certification.

**History:** En. 75-6003 by Sec. 73, Ch. 5, L. 1971; R.C.M. 1947, 75-6003; amd. Sec. 6, Ch. 511, L. 1979.

**Cross-References**

Duty of Board of Public Education to adopt teacher certification policies, 20-2-121.

Duty to certify special education teachers, 20-7-403.

**20-4-104. Qualifications.** (1) A person may be certified as a teacher when the person satisfies the following qualifications. The person:

- (a) is 18 years of age or older;
- (b) is of good moral and professional character;
- (c) has completed the teacher education program of a unit of the Montana university system or an essentially equivalent program at an accredited institution of equal rank and standing as that of any unit of the Montana university system, and the training is evidenced by at least a bachelor's degree and a certification of the completion of the teacher education program, except as provided for in 20-4-106(1)(d); and
- (d) has subscribed to the following oath or affirmation before an officer authorized by law to administer oaths:

"I solemnly swear (or affirm) that I will support The Constitution of the United States of America and The Constitution of the State of Montana."

(2) Any person may be certified as a specialist when the person satisfies the requirements of subsections (1)(a) and (1)(b) and the requirement for a specialist certificate provided in 20-4-106(2).

**History:** En. 75-6004 by Sec. 74, Ch. 5, L. 1971; R.C.M. 1947, 75-6004; amd. Sec. 7, Ch. 511, L. 1979; amd. Sec. 1, Ch. 165, L. 1981; amd. Sec. 1, Ch. 266, L. 1983; amd. Sec. 1, Ch. 257, L. 1991; amd. Sec. 287, Ch. 56, L. 2009.

**Cross-References**

Constitutional oath of office, Art. III, sec. 3, Mont. Const.

Oaths, Title 1, ch. 6, part 1.

**20-4-105. Repealed.** Sec. 2, Ch. 165, L. 1981.

**History:** En. 75-6005 by Sec. 75, Ch. 5, L. 1971; R.C.M. 1947, 75-6005; amd. Sec. 8, Ch. 511, L. 1979.

**20-4-106. Classifications of teacher and specialist certificates.** (1) The superintendent of public instruction shall issue teacher certificates and the board of public education shall adopt teacher certification policies on the basis of the following classifications of teacher certificates:

(a) The class 1 professional certificate may be issued to an otherwise qualified applicant who has completed a teacher education program that includes a bachelor's degree and a minimum of 1 year of study beyond the degree in a unit of the Montana university system or an equivalent institution. The professional certificate may be endorsed for elementary instruction, for secondary instruction, or both, and for specified subject fields on the basis of the applicant's academic and professional training and according to the board of public education policy for teacher certification endorsement.

(b) The class 2 standard certificate may be issued to an otherwise qualified applicant who has completed a 4-year teacher education program and who has been awarded a bachelor's degree by a unit of the Montana university system or an equivalent institution. The standard certificate may be endorsed for elementary instruction, for secondary instruction, or both, and for specified subject fields on the basis of the applicant's academic and professional training and according to the board of public education policy for teacher certification endorsement.

(c) The class 3 administrative and supervisory certificate may be issued to an otherwise qualified applicant who is eligible for a teacher certificate endorsed for teaching in the school or schools in which the applicant would be an administrator or would supervise. The applicant must also possess the training and experience required by the policies of the board of public education for an endorsement as superintendent, principal, or supervisor.

(d) The class 4 vocational, recreational, or adult education certificate may be issued to an otherwise qualified applicant who has the qualifications of training and experience required by the United States office of education or the qualifications required by the special needs of the

several vocational, recreational, or adult education fields and who can qualify under the policy of the board of public education for the issuance of this classification of teacher certification.

(e) The class 5 provisional certificate may be issued to an otherwise qualified applicant who can provide satisfactory evidence of the intent to qualify in the future for a class 1 or a class 2 certificate and who has completed a 4-year college program or its equivalent and holds a bachelor's degree from a unit of the Montana university system or its equivalent. The provisional certificate may be endorsed for elementary instruction, for secondary instruction, or both, and for special subject fields on the basis of the applicant's academic and professional training and according to the board of public education policy for teacher or specialist certification endorsement.

(2) The superintendent of public instruction shall issue specialist certificates, and the board of public education shall adopt specialist certification policies. The specialist certificate may be issued to an otherwise qualified applicant who has the training, experience, and license required under the standards of the board of public education for the certification of a profession other than the teaching profession.

(3) For purposes of evaluating the qualifications of applicants for either teacher or specialist certificates, a year means the instructional period consisting of three quarters or two semesters or other terms that are recognized as an academic year by any unit of the Montana university system or equivalent institution.

**History:** En. 75-6006 by Sec. 76, Ch. 5, L. 1971; R.C.M. 1947, 75-6006; amd. Sec. 9, Ch. 511, L. 1979; amd. Sec. 1, Ch. 175, L. 1983; amd. Sec. 288, Ch. 56, L. 2009.

**Cross-References**

Duty of Board of Public Education to adopt certification policies, 20-2-121.

Duty of Superintendent of Public Instruction to certify special education teachers, 20-7-403.

**20-4-107. Outstanding teacher certificates.** (1) No provisions of this title shall affect or impair the validity of any certificate that is in force on January 26, 1971, or the rights and privileges of the holders by virtue thereof, except that any certificates may be suspended or revoked for any of the causes and by the procedures provided by law.

(2) Any holder of an elementary school standard certificate issued prior to July 1, 1959, under the previous statute and in force on July 1, 1959, shall be eligible for renewal of such certificate in accordance with the policies of the board of public education until the holder qualifies for the class 2 standard certificate as provided in 20-4-106.

(3) Any holder of a class 5 certificate in force on June 30, 1966, or issued between July 1, 1966, and December 31, 1966, shall be eligible for renewal of such certificate in accordance with the policies of the board of public education until the holder qualifies for the class 2 standard certificate as provided in 20-4-106.

**History:** En. 75-6007 by Sec. 77, Ch. 5, L. 1971; R.C.M. 1947, 75-6007.

**20-4-108. Term of teacher and specialist certificates — renewal.** (1) A teacher or specialist certificate issued by the superintendent of public instruction must bear the dates of issue and validity and is valid for a term of 5 school fiscal years, except that a class 5 provisional certificate is valid for the number of years, up to a maximum of 5 years, provided by the policies of the board of public education. The period of validity for any certificate begins on July 1 immediately preceding the date of issue, except that a teacher or specialist who applies for certification after January 1 may, upon request, have the period of validity of the certificate begin on July 1 following the date of application.

(2) Teacher and specialist certificates must be renewed for similar periods of time on the basis of the board of public education policies for teacher and specialist certification renewal.

**History:** En. 75-6008 by Sec. 78, Ch. 5, L. 1971; amd. Sec. 1, Ch. 171, L. 1977; R.C.M. 1947, 75-6008; amd. Sec. 10, Ch. 511, L. 1979; amd. Sec. 1, Ch. 224, L. 1983; amd. Sec. 1, Ch. 58, L. 1995.

**20-4-109. Fees for teacher and specialist certificates.** (1) A person applying for the issuance or renewal of a teacher or specialist certificate shall pay a fee not to exceed \$6 for each school fiscal year that the certificate is valid. In addition to this fee, a person who has never held any class of Montana teacher or specialist certificate or for whom an emergency authorization of employment has never been issued shall pay a filing fee of \$6. The fees must be paid to the superintendent of public instruction, who shall deposit the fees with the state treasurer to the credit of the state special revenue fund account, created in subsection (2), to be used in the following manner:



(a) \$4 for expenses of the certification standards and practices advisory council created in 2-15-1522;

(b) \$2 to the board of public education and the certification standards and practices advisory council for activities in support of the constitutional and statutory duties of the board of public education and the certification standards and practices advisory council.

(2) There is an account in the state special revenue fund. Money from fees for teacher or specialist certificates required in subsection (1) must be deposited in the account.

**History:** En. 75-6009 by Sec. 79, Ch. 5, L. 1971; R.C.M. 1947, 75-6009; amd. Sec. 11, Ch. 511, L. 1979; amd. Sec. 5, Ch. 465, L. 1987; amd. Sec. 1, Ch. 103, L. 1989; amd. Sec. 4, Ch. 628, L. 1989; amd. Sec. 2, Ch. 495, L. 1991; amd. Sec. 26, Ch. 509, L. 1995; amd. Sec. 1, Ch. 165, L. 1999; amd. Sec. 1, Ch. 173, L. 2003.

**20-4-110. Letter of reprimand, suspension, revocation, and denial of certificate.**

(1) The board of public education may issue a letter of reprimand or may suspend or revoke the teacher, administrator, or specialist certificate of any person for the following reasons:

(a) making any statement of material fact in applying for a certificate that the applicant knows to be false;

(b) any reason that would have required or authorized the denial of the teacher, administrator, or specialist certificate to the person if it had been known at the time the certificate was issued;

(c) incompetency;

(d) gross neglect of duty;

(e) conviction of, entry of a guilty verdict, a plea of guilty, or a plea of no contest to a criminal offense involving moral turpitude in this state or any other state or country;

(f) immoral conduct related to the teaching profession;

(g) substantial and material nonperformance of the employment contract between the teacher, administrator, or specialist and the trustees of a school or school district without good cause or the written consent of the trustees; or

(h) denial, revocation, suspension, or surrender of a teacher, administrator, or specialist certificate in another state for any reason constituting grounds for similar action in this state.

(2) The board may initiate proceedings under this section if a request for the suspension or revocation of the teacher, administrator, or specialist certificate of any person is made to it by:

(a) the trustees of a district as to a teacher, administrator, or specialist employed by that school or school district within the 12 months immediately preceding receipt of the request by the board of public education; or

(b) the superintendent of public instruction.

(3) (a) If the employment relationship between a school district and a teacher, administrator, or specialist is terminated or not renewed or if a teacher, administrator, or specialist resigns to prevent termination or nonrenewal because the trustees have reason to believe that the teacher, administrator, or specialist engaged in conduct described in subsection (1)(e) or (1)(f), the trustees shall make a written report to the superintendent of public instruction describing the circumstances of the termination, nonrenewal, or resignation.

(b) The superintendent shall review the report and any supporting evidence included in the report and may conduct further investigation. If the superintendent is satisfied that sufficient grounds exist, the superintendent may request action by the board of public education under subsection (1). The request must be brought within 1 year after discovery of the events that gave rise to the report.

(c) The trustees and the superintendent shall ensure the confidentiality of the report.

(d) The trustees and the superintendent and their agents and employees are immune from suit for actions taken in good faith under this section with respect to the report.

(4) The board shall give a 30-day written notification to any person when the board intends to consider a letter of reprimand or the suspension or revocation of a certificate. Service of the notice must be accomplished by sending the notification by registered mail to the last address that the person has provided to the school district or the superintendent of public instruction.

(5) The board shall conduct an investigation of the reasons for the suspension or revocation charge and then, if the investigation warrants further action, conduct a hearing in the manner provided by board policies. At the hearing, the board shall afford the person an opportunity for defense against the charge.

(6) After a hearing, the board may place a written reprimand in the person's certification file or may suspend or revoke the person's teacher, administrator, or specialist certificate, except that in the case of a first violation under subsection (1)(g), the maximum penalty is a 2-year suspension of the person's certificate. The board may, upon a request by a school district, inform the school district that a person's certification file includes a letter of reprimand, but the board may not provide a copy of the letter without first determining that the public's right to know outweighs the person's right to privacy.

(7) Whenever the superintendent of public instruction denies the issuance or the renewal of a teacher, administrator, or specialist certificate, the applicant may appeal the denial to the board of public education. The board shall hear the appeal in the same manner provided in this section for suspension or revocation and in accordance with the policies of the board. The decision of the board is final.

**History:** En. 75-6010 by Sec. 80, Ch. 5, L. 1971; R.C.M. 1947, 75-6010; amd. Sec. 1, Ch. 240, L. 1979; amd. Sec. 12, Ch. 511, L. 1979; amd. Sec. 1, Ch. 227, L. 1987; amd. Sec. 1, Ch. 382, L. 1993; amd. Sec. 1, Ch. 486, L. 1995.

#### **Cross-References**

False swearing, 45-7-202.

Unsworn falsification to authorities, 45-7-203.

**20-4-111. Emergency authorization of employment.** (1) A district may request from the superintendent of public instruction an emergency authorization of employment for a person who is not the holder of a valid teacher or specialist certificate as an instructor of pupils when the district cannot secure the services of a person holding a valid certificate. The person must have previously held a valid teacher or specialist certificate or shall meet the standards of preparation prescribed by the policies of the board of public education for and during an emergency. Emergency authorization of employment must indicate:

- (a) the district to which the authorization is issued;
- (b) the person whom the district is authorized to employ;
- (c) the endorsement for elementary or secondary instruction and the specific subject fields for which authorization to employ the person is given; and
- (d) the school fiscal year for which the emergency authorization of employment is given.

(2) Emergency authorization of employment of a person is valid for the school fiscal year identified on the authorization and may be renewed in accordance with the board of public education policies. A fee not to exceed \$6 and, if no teacher or specialist certificate or emergency authorization of employment has ever been issued for the person, a filing fee of \$6 must be paid for the issuance of an emergency authorization of employment. The superintendent of public instruction shall deposit the fees with the state treasurer to the credit of the general fund.

(3) Emergency authorization of employment of a person may be revoked for good cause in accordance with the provisions of 20-4-110.

**History:** En. 75-6011 by Sec. 81, Ch. 5, L. 1971; R.C.M. 1947, 75-6011; amd. Sec. 13, Ch. 511, L. 1979; amd. Sec. 26, Ch. 83, L. 1989; amd. Sec. 2, Ch. 103, L. 1989; amd. Sec. 3, Ch. 495, L. 1991.

**20-4-112. Access to materials — superintendent of public instruction.** The superintendent of public instruction has access to all material considered by or available to the school or school district that may be relevant to an allegation that a teacher, administrator, or specialist has engaged in conduct described in 20-4-110(1)(e) or (1)(f) or that may lead to the discovery of relevant evidence.

**History:** En. Sec. 2, Ch. 382, L. 1993.

**20-4-113. Access to criminal justice information.** (1) Either the trustees of a school district or the superintendent of public instruction may apply to a district court pursuant to 44-5-302 to review confidential criminal justice information that is relevant to the investigation of grounds for suspension or revocation of a teacher, administrator, or specialist certificate under 20-4-110.

(2) The district court shall provide the trustees or the superintendent of public instruction access to any confidential criminal justice information that is relevant to an investigation into possible grounds for suspension or revocation of a teacher, administrator, or specialist certificate. The court shall issue a protective order to protect the confidentiality of the information released.

**History:** En. Sec. 3, Ch. 382, L. 1993.

**20-4-114. Penalty for failure to report.** The failure of a school trustee to report as required in 20-4-110 constitutes official misconduct within the meaning of 2-16-603.

**History:** En. Sec. 4, Ch. 382, L. 1993.

**20-4-115 through 20-4-120 reserved.**

**20-4-121. Interstate agreement on qualification of educational personnel.** The interstate agreement on qualification of educational personnel is enacted into law and entered into with all jurisdictions legally joining therein in the form substantially as follows:

#### Article I. Purpose — Findings — Policy

(1) The states party to this agreement, desiring by common action to improve their respective school systems by utilizing the teacher or other professional educational person wherever educated, declare that it is the policy of each of them, on the basis of cooperation with one another, to take advantage of the preparation and experience of such persons wherever gained, thereby serving the best interests of society, of education, and of the teaching profession. It is the purpose of this agreement to provide for the development and execution of such programs of cooperation as will facilitate the movement of teachers and other professional educational personnel among the states party to it and to authorize specific interstate educational personnel contracts to achieve that end.

(2) The party states find that included in the large movement of population among all sections of the nation are many qualified educational personnel who move for family and other personal reasons but who are hindered in using their professional skill and experience in their new locations. Variations from state to state in requirements for qualifying educational personnel discourage such personnel from taking the steps necessary to qualify in other states. As a consequence, a significant number of professionally prepared and experienced educators are lost to our school systems. Facilitating the employment of qualified educational personnel, without reference to their states of origin, can increase the available educational resources. Participation in this compact can increase the availability of educational personnel.

#### Article II. Definitions

As used in this agreement and contracts made pursuant to it, unless the context clearly requires otherwise, the following definitions apply:

(1) “Educational personnel” means persons who must meet requirements pursuant to state law as a condition of employment in educational programs.

(2) “Designated state official” means the educational official of a state selected by that state to negotiate and enter into, on behalf of the official’s state, contracts pursuant to this agreement.

(3) “Accept” or any variant thereof means to recognize and give effect to one or more determinations of another state relating to the qualifications of educational personnel in lieu of making or requiring a like determination that would otherwise be required by or pursuant to the laws of a receiving state.

(4) “State” means a state, territory, or possession of the United States, the District of Columbia, or the commonwealth of Puerto Rico.

(5) “Originating state” means a state (and the subdivisions thereof, if any) whose determination that certain educational personnel are qualified to be employed for specific duties in schools is acceptable in accordance with the terms of a contract made pursuant to Article III.

(6) “Receiving state” means a state (and the subdivisions thereof) which accept educational personnel in accordance with the terms of a contract made pursuant to Article III.

#### Article III. Interstate Educational Personnel Contracts

(1) The designated state official of a party state may make one or more contracts on behalf of the designated state official’s state with one or more other party states providing for the acceptance of educational personnel. Any such contract for the period of its duration shall be applicable to and binding on the states whose designated state officials enter into it and the subdivisions of those states with the same force and effect as if incorporated in this agreement. A designated state official may enter into a contract pursuant to this article only with states in which the designated state official finds that there are programs of education, certification standards, or other acceptable qualifications that assure preparation or qualification of

educational personnel on a basis sufficiently comparable even though not identical to that prevailing in the designated state official's own state.

(2) Any such contract shall provide for:

(a) its duration;

(b) the criteria to be applied by an originating state in qualifying educational personnel for acceptance by a receiving state;

(c) such waivers, substitutions, and conditional acceptance as shall aid the practical effectuation of the contract without sacrifice of basic educational standards; and

(d) any other necessary matters.

(3) No contract made pursuant to this agreement shall be for a term longer than 5 years, but any such contract may be renewed for like or lesser periods.

(4) Any contract dealing with acceptance of educational personnel on the basis of their having completed an educational program shall specify the earliest date or dates on which originating state approval of the program or programs involved can have occurred. No contract made pursuant to this agreement shall require acceptance by a receiving state of any persons qualified because of successful completion of a program prior to January 1, 1954.

(5) The certification or other acceptance of a person who has been accepted pursuant to the terms of a contract shall not be revoked or otherwise impaired because the contract has expired or been terminated. However, any certificate or other qualifying document may be revoked or suspended on any ground which would be sufficient for revocation or suspension of a certificate or other qualifying document initially granted or approved in the receiving state.

(6) A contract committee composed of the designated state officials of the contracting states or their representatives shall keep the contract under continuous review, study means of improving its administration, and report not less than once a year to the heads of the appropriate education agencies of the contracting states.

#### Article IV. Approved and Accepted Programs

(1) Nothing in this agreement shall be construed to repeal or otherwise modify any law or regulation of a party state relating to the approval of programs of educational preparation having effect solely on the qualification of educational personnel within that state.

(2) To the extent that contracts made pursuant to this agreement deal with the educational requirements for the proper qualification of educational personnel, acceptance of a program of educational preparation shall be in accordance with such procedures and requirements as may be provided in the applicable contract.

#### Article V. Interstate Cooperation

The party states agree that:

(1) they will, so far as practicable, prefer the making of multilateral contracts pursuant to Article III of this agreement; and

(2) they will facilitate and strengthen cooperation in interstate certification and other elements of educational personnel qualification and for this purpose shall cooperate with agencies, organizations, and associations interested in certification and other elements of educational personnel qualification.

#### Article VI. Agreement Evaluation

The designated state officials of any party states may meet from time to time as a group to evaluate progress under the agreement and to formulate recommendations for changes.

#### Article VII. Other Arrangements

Nothing in this agreement shall be construed to prevent or inhibit other arrangements or practices of any party state or states to facilitate the interchange of educational personnel.

#### Article VIII. Effect — Withdrawal

(1) This agreement shall become effective when enacted into law by two states. Thereafter it shall become effective as to any state upon its enactment of this agreement.

(2) Any party state may withdraw from this agreement by enacting a statute repealing the same, but no such withdrawal shall take effect until 1 year after the governor of the withdrawing state has given notice in writing of the withdrawal to the governors of all other party states.

(3) No withdrawal shall relieve the withdrawing state of any obligation imposed upon it by a contract to which it is a party. The duration of contracts and the methods and conditions of withdrawal therefrom shall be those specified in their terms.

#### Article IX. Construction — Severability

This agreement shall be liberally construed so as to effectuate the purpose thereof. The provisions of this agreement shall be severable and if any phrase, clause, sentence, or provision of this agreement is declared to be contrary to the constitution of any state or of the United States or the application thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this agreement and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this agreement is held to be contrary to the constitution of any state participating therein, the agreement shall remain in full force and effect as to the state affected as to all severable matters.

**History:** En. 75-6012 by Sec. 1, Ch. 328, L. 1977; R.C.M. 1947, 75-6012; amd. Sec. 289, Ch. 56, L. 2009.

**20-4-122. Designated official for purposes of interstate agreement.** The designated state official for this state is the state superintendent of public instruction. The state superintendent of public instruction shall enter into contracts pursuant to Article III of the agreement only after approval of the specific text thereof by the board of public education.

**History:** En. 75-6013 by Sec. 2, Ch. 328, L. 1977; R.C.M. 1947, 75-6013.

**20-4-123. Preservation and publication of contracts made pursuant to interstate agreement.** True copies of all contracts made on behalf of this state pursuant to the agreement shall be kept on file in the office of the state superintendent of public instruction. The state superintendent of public instruction shall publish all such contracts in convenient form.

**History:** En. 75-6014 by Sec. 3, Ch. 328, L. 1977; R.C.M. 1947, 75-6014.

#### **20-4-124 through 20-4-130 reserved.**

**20-4-131. Definitions.** As used in 2-15-1522 and 20-4-131 through 20-4-133, the following definitions apply:

(1) “Approved teacher education program” means a program that is offered by an accredited teacher education institution and approved by the board of public education.

(2) “Council” means the certification standards and practices advisory council created in 2-15-1522.

(3) “K-12 specialist” means a person employed by a school district as a librarian, school counselor, or special education or chapter I teacher or a person who has a K-12 endorsement and who is assigned to teach in a classroom that is not self-contained.

(4) “Specialist” means a person employed by a school district as a school psychologist.

**History:** En. Sec. 1, Ch. 465, L. 1987; amd. Sec. 2, Ch. 124, L. 1991.

**20-4-132. Meetings — assistance.** (1) The council shall meet quarterly and at other times as may be required for the proper conduct of the business of the council at the call of the presiding officer.

(2) The council may adopt rules for the conduct of its business.

(3) The council shall keep a record of its proceedings.

(4) The council may request research, administrative, and clerical staff assistance from the board of public education.

(5) The council shall select a presiding officer and a vice presiding officer from its appointed members.

(6) A quorum for a meeting is not less than four council members.

(7) Council members are entitled to travel expenses incurred for each day of attendance at council meetings or in the performance of any duty or service as a council member in accordance with 2-18-501 through 2-18-503.

**History:** En. Sec. 3, Ch. 465, L. 1987; amd. Sec. 290, Ch. 56, L. 2009.



**20-4-133. Duties of the council.** (1) The council shall study and make recommendations to the board of public education in the following areas:

- (a) teacher certification standards, including but not limited to precertification training and education requirements and certification renewal requirements and procedures;
- (b) administrator certification standards, including but not limited to precertification training and education requirements and certification renewal requirements and procedures;
- (c) specialist certification standards, including but not limited to precertification training and education requirements and certification renewal requirements and procedures;
- (d) feasibility of establishing standards of professional practices and ethical conduct;
- (e) the status and efficacy of approved teacher education programs in Montana; and
- (f) policies related to the denial, suspension, and revocation of teacher, administrator, and specialist certification and the appeals process. For the purpose of preparing recommendations in this area, the council is authorized to review the individual cases and files that have been submitted to the board of public education.

(2) The council shall submit a written report annually to the board of public education with its recommendations for the above areas. The council may submit recommendations to the board of public education at other times that the council considers appropriate.

(3) The board of public education shall:

- (a) at a regularly scheduled meeting, consider any recommendations and reports of the council; and
- (b) approve, disapprove, or modify each recommendation of the council by majority vote of the board.

**History:** En. Sec. 4, Ch. 465, L. 1987; amd. Sec. 27, Ch. 83, L. 1989.

**20-4-134. Professional stipends for teachers certified by national board for professional teaching standards.** (1) Pursuant to subsection (5), an annual stipend of up to \$1,500 must be provided to each teacher who holds a current certificate from the national board for professional teaching standards if the teacher is:

- (a) a full-time classroom teacher, librarian, or other full-time employee serving in an assignment covered by national board certification assessment;
- (b) certified to teach in Montana under the provisions of 20-4-103; and
- (c) a full-time employee of:
  - (i) a Montana public school district, as defined in 20-6-101;
  - (ii) an education cooperative, as described in 20-7-451;
  - (iii) the Montana school for the deaf and blind, as described in 20-8-101; or
  - (iv) a state youth correctional facility, as defined in 41-5-103.

(2) An annual stipend of up to \$2,500 must be provided to each teacher who meets the criteria for the stipend in subsection (1) and who has an instructional assignment in a school identified as:

- (a) a school in a high-poverty area eligible to participate in the community eligibility provision under Public Law 111-296; or
- (b) a school impacted by a critical quality educator shortage pursuant to 20-4-503.

(3) A teacher becomes eligible for the stipend in subsection (1) in the school year beginning July 1 after the teacher obtains certification or recertification from the national board for professional teaching standards.

(4) By March 1, the superintendent of public instruction shall distribute stipend payments to any entity listed in subsections (1)(c)(i) through (1)(c)(iv) that employs an eligible teacher.

(5) The obligation for funding a portion of the professional stipends is an obligation of the state. This section may not be construed to require a school district to provide its matching portion of a stipend to a qualifying teacher without a payment from the state to the district. If the money appropriated for the stipends is not enough to provide the full amount for each eligible teacher, the superintendent of public instruction shall request the state budget director to submit a request for a supplemental appropriation in the second year of the biennium that is sufficient to complete the funding of the stipends.

(6) (a) For a stipend under subsection (1), the state shall pay \$500 and another \$1 for each \$1 contributed by the teacher's school district, up to a maximum state contribution of \$1,000.

(b) For a stipend under subsection (2), the state shall pay \$1,000 and another \$2 for each \$1 contributed by the teacher's school district, up to a maximum state contribution of \$2,000.

**History:** En. Sec. 1, Ch. 555, L. 2001; amd. Sec. 2, Ch. 150, L. 2017.

**Compiler's Comments**

**2017 Amendment:** Chapter 150 in (1) substituted "Pursuant to subsection (5), an annual stipend of up to \$1,500 must be provided to each teacher who holds a current certificate" for "Pursuant to subsection (4), a one-time stipend of \$3,000 must be provided to each teacher who obtains certification"; inserted (2) requiring annual stipend of up to \$2,500 for a qualified teacher who teaches in a school in a high-poverty area or a school impacted by a critical quality educator shortage; in (3) near beginning substituted "becomes" for "is", after "eligible for the stipend" inserted "in subsection (1)", and after "obtains certification" inserted "or recertification"; in (4) substituted "any entity listed in subsections (1)(c)(i) through (1)(c)(iv) that employs an eligible teacher" for "each eligible teacher"; in (5) in first sentence near beginning inserted "a portion of", in second sentence substituted "its matching portion of a stipend" for "a stipend", and substituted current last sentence for former text that read: "If the funding for professional stipends is less than the total amount for which Montana teachers qualify, the superintendent of public instruction shall prorate the funding to the districts in a manner that provides the same amount of stipend to each qualifying teacher"; inserted (6) providing for initial state contributions; and made minor changes in style. Amendment effective July 1, 2017.

**Applicability:** Section 4, Ch. 150, L. 2017, provided: "[This act] applies to teachers who obtain certification or recertification from the national board for professional teaching standards on or after July 1, 2017."

## Part 2

### Teacher Employment — Tenure

**20-4-201. Employment of teachers and specialists by contract.** (1) The trustees of any district have the authority to employ any person as a teacher or specialist, but only a person who holds a valid Montana teacher or specialist certificate or for whom an emergency authorization of employment has been issued that qualifies the person to perform the duties prescribed by the trustees for the position of employment. Each teacher or specialist must be employed under written contract, and each contract of employment must be authorized by a proper resolution of the trustees and must be executed in duplicate by the presiding officer of the trustees and the clerk of the district in the name of the district and by the teacher or specialist.

(2) A contract of employment with a teacher or specialist may not require the teacher or specialist to teach more than 5 days a week or on any holiday recognized by 20-1-305. A deduction may not be made from a teacher's or specialist's salary by reason of the fact that a holiday falls on a school day. A teacher's or specialist's contract made in conflict with the 5-days-a-week provision of this section is not enforceable against the teacher or specialist.

(3) Whenever the boards of trustees of two or more school districts form a joint board of trustees under the provisions of 20-3-361 or when the boards of trustees of two or more school districts enter into an interlocal agreement pursuant to Title 7, chapter 11, part 1, to cooperatively share the employment of a teacher or specialist, the joint board of trustees or the boards of trustees of two or more school districts, pursuant to an interlocal agreement, may execute a contract of employment with a teacher or specialist who shall serve the districts. When a contract is executed, the districts shall prorate the compensation provided by the contract on the basis of the total number of instructional hours expended by the teacher or specialist within each district.

(4) Any contract executed under the provisions of this section may contain the oath or affirmation prescribed in 20-4-104, and the teacher or specialist shall subscribe to the oath or affirmation before an officer authorized by law to administer oaths.

**History:** En. 75-6102 by Sec. 83, Ch. 5, L. 1971; R.C.M. 1947, 75-6102; amd. Sec. 14, Ch. 511, L. 1979; amd. Sec. 3, Ch. 308, L. 1987; amd. Sec. 3, Ch. 318, L. 2001.

**Cross-References**

Discrimination on account of religious ideas prohibited, Art. II, sec. 4, Mont. Const.  
 Oaths, Title 1, ch. 6.  
 Nepotism, Title 2, ch. 2, part 3.  
 Indian hiring preference within reservations, 2-18-111.  
 Leave of absence of public employees attending training camp, 10-1-1009.  
 Reemployment of veterans, Title 10, ch. 2, part 2.  
 Powers of joint board of trustees, 20-3-362.  
 Veterans' employment preference, Title 39, ch. 29.  
 Handicapped persons' public employment preference — not applicable to schools, 39-30-103.

**20-4-202. Teacher and specialist certification registration.** (1) Any person employed as a teacher, specialist, principal, or district superintendent shall register the person's certificate

or the district shall register its emergency authorization of employment for a teacher with the county superintendent of the county in which the person is employed in order to validate the person's employment status and permit payment under the employment contract. If a teacher or specialist does not register the person's certificate with the county superintendent within 60 calendar days after the person begins to perform services, the person is not eligible to receive any further compensation under the contract of employment until the person has registered the certificate. After the schools of a district have been open for 60 calendar days in the current school fiscal year, the county superintendent shall notify each district of the county of each teacher or specialist who has registered a current valid certificate, and the district may not pay any teacher who has not registered the person's certificate until the county superintendent does notify the district of the registration.

(2) A teacher or specialist employed by a joint district shall register the person's certificate with the county superintendent of the county in which the person is working. A teacher or specialist employed by a special education cooperative shall register the person's certificate with the county superintendent of the county in which the special education cooperative is based.

**History:** En. 75-6106 by Sec. 87, Ch. 5, L. 1971; amd. Sec. 3, Ch. 277, L. 1977; R.C.M. 1947, 75-6106; amd. Sec. 15, Ch. 511, L. 1979; amd. Sec. 1, Ch. 330, L. 1987; amd. Sec. 291, Ch. 56, L. 2009.

**Cross-References**

Duty of County Superintendent to register teacher or specialist certificates, 20-3-205.

**20-4-203. Teacher tenure.** (1) Except as provided in 20-4-208, whenever a teacher has been elected by the offer and acceptance of a contract for the fourth consecutive year of employment by a district in a position requiring teacher certification except as a district superintendent or specialist, the teacher is considered to be reelected from year to year as a tenured teacher at the same salary and in the same or a comparable position of employment as that provided by the last-executed contract with the teacher unless the trustees resolve by majority vote of their membership to terminate the services of the teacher in accordance with the provisions of 20-4-204.

(2) The tenure of a teacher with a district may not be impaired upon termination of services of the teacher if the following conditions exist:

(a) the tenure teacher is terminated because the financial condition of the district requires a reduction in the number of teachers employed; and

(b) continued employment rights are provided for in a collectively bargained contract of the district.

(3) (a) For the purposes of subsection (1), "same salary" means the daily rate of pay, excluding benefits and excluding stipends for nonteaching duties, multiplied by the number of days worked under the last-executed contract with the teacher, up to the total number of days funded by the state in the per-ANB entitlements, as provided in 20-9-311, including pupil-instruction-related days. The calculation of daily rate of pay is determined by dividing the salary in the last-executed contract with the teacher for pupil-instruction and pupil-instruction-related days, excluding benefits and excluding stipends for nonteaching duties, by the total number of contracted days under the last-executed contract.

(b) The definition of same salary may be modified if negotiated and agreed to in a collective bargaining agreement executed by the district and the teacher's exclusive representative pursuant to Title 39, chapter 31, or in an individual contract between the district and a teacher in a district in which the teachers have no exclusive representative as provided in Title 39, chapter 31.

(4) Upon receiving tenure, the employment of a teacher may be terminated for good cause.

**History:** En. 75-6103 by Sec. 84, Ch. 5, L. 1971; amd. Sec. 1, Ch. 49, L. 1971; R.C.M. 1947, 75-6103; amd. Sec. 16, Ch. 511, L. 1979; amd. Sec. 1, Ch. 521, L. 1983; amd. Sec. 1, Ch. 479, L. 1989; amd. Sec. 1, Ch. 204, L. 1991; amd. Sec. 1, Ch. 259, L. 1997; amd. Sec. 2, Ch. 438, L. 1997.

**Cross-References**

Tenure of teachers employed by cooperatives, 20-7-456.

**20-4-204. Termination of tenure teacher services.** (1) (a) The following persons may make a recommendation in writing to the trustees of the district for termination of the services of a tenure teacher:

(i) a district superintendent;

- (ii) in a district without a district superintendent, a principal;
- (iii) in a district without a district superintendent or a principal, the county superintendent or a trustee of the district.
- (b) The recommendation must state clearly and explicitly the specific reason or reasons leading to the recommendation for termination.
- (2) Whenever the trustees of a district receive a recommendation for termination, the trustees shall notify the teacher of the recommendation for termination and of the teacher's right to a hearing on the recommendation. The notification must be delivered by certified letter or by personal notification for which a signed receipt is returned. The notification must include:
  - (a) the statement of the reason or reasons that led to the recommendation for termination; and
  - (b) a printed copy of this section for the teacher's information.
- (3) The teacher may, in writing, waive the right to a hearing. Unless the teacher waives the right to a hearing, the trustees shall set a hearing date, giving consideration to the convenience of the teacher, not less than 10 days or more than 20 days from receipt of the notice of recommendation for termination.
- (4) The trustees shall:
  - (a) conduct the hearing on the recommendation at a regularly scheduled or special meeting of the board of trustees and in accordance with 2-3-203; and
  - (b) resolve at the conclusion of the hearing to terminate the teacher or to reject the recommendation for termination.
- (5) The tenure teacher may appeal a decision to terminate an employment contract to the county superintendent if the teacher's employment is not covered by a collective bargaining agreement pursuant to Title 39, chapter 31, who may appoint a qualified attorney as a legal adviser who shall assist the superintendent in preparing findings of fact and conclusions of law. If the employment of the teacher is covered by a collective bargaining agreement pursuant to Title 39, chapter 31, a tenure teacher shall appeal a decision to terminate an employment contract to an arbitrator agreed upon by the district and the teacher's exclusive representative. If the exclusive representative has declined to represent the teacher, the teacher or the district may request that the board of personnel appeals provide a list of arbitrators from which the teacher and the district shall, after the toss of a coin to determine the order of striking, alternately strike names from the list until one arbitrator is selected and appointed. By mutual agreement between the parties, the county superintendent of schools may be appointed as the arbitrator.
- (6) In a termination involving a teacher whose employment is not covered by a collective bargaining agreement pursuant to Title 39, chapter 31, either the teacher or the trustees may appeal to the district court of the county in which the teacher was employed. The proceedings must be commenced no later than 60 days after the date of the decision of the county superintendent.
- (7) In a termination involving a teacher whose employment is covered by a collective bargaining agreement pursuant to Title 39, chapter 31, a request for arbitration must be made within 20 days from the date of termination unless an alternative time period is provided by the terms of a collective bargaining agreement.
- (8) The decision of the arbitrator is final and binding. Each party shall pay one-half of an arbitrator's charges unless a different cost allocation arrangement is agreed upon by the parties.
- (9) An arbitrator may order a school district to reinstate a teacher who has been terminated without good cause and to provide compensation, with interest, to a teacher for lost wages and fringe benefits from the date of termination to the date that the teacher is offered reinstatement to the same or a comparable position. Interim earnings, including the amount that the teacher could have earned with reasonable diligence, must be deducted from the amount awarded for lost wages. Before interim earnings are deducted from lost wages, reasonable amounts spent by a teacher in searching for, obtaining, or relocating to new employment must be deducted from interim earnings.
- (10) Except as provided in this section, an arbitrator may not order a school district to provide compensation for punitive damages, pain and suffering, emotional distress, compensatory damages, attorney fees, or any other form of damages.

(11) Upon submission of the termination decision to an arbitrator, the teacher or the teacher's exclusive representative may not file an action against the district for reinstatement or compensation of lost wages and fringe benefits.

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

(a) "Fringe benefits" means the value of any employer-paid vacation leave, sick leave, medical insurance plan, disability or life insurance plan, or pension benefit in effect on the date of termination.

(b) "Lost wages" means the gross amount of wages that would have been reported to the internal revenue service on form W-2 and includes any compensation deferred at the option of the employee.

**History:** En. 75-6104 by Sec. 85, Ch. 5, L. 1971; amd. Sec. 1, Ch. 157, L. 1974; amd. Sec. 2, Ch. 306, L. 1974; R.C.M. 1947, 75-6104; amd. Sec. 2, Ch. 521, L. 1983; amd. Sec. 1, Ch. 56, L. 1985; amd. Sec. 1, Ch. 510, L. 1987; amd. Sec. 3, Ch. 438, L. 1997.

**Cross-References**

Authority of Superintendent of Public Instruction to hear controversy appeals, 20-3-107.

Authority of County Superintendent to hear controversy appeals, 20-3-210.

Dismissal of teachers by cooperative, 20-7-456.

**20-4-205. Notification of teacher reelection — acceptance.** (1) The trustees shall provide written notice by June 1 to all teachers who have been reelected. Any teacher who does not receive notice of reelection or termination is automatically reelected for the ensuing school fiscal year.

(2) Any teacher who receives notification of reelection for the ensuing school fiscal year shall provide the trustees with written acceptance of the conditions of the reelection within 20 days after the receipt of the notice of reelection, and failure to notify the trustees within 20 days constitutes conclusive evidence of the teacher's nonacceptance of the tendered position.

**History:** En. 75-6105 by Sec. 86, Ch. 5, L. 1971; R.C.M. 1947, 75-6105; amd. Sec. 1, Ch. 574, L. 1989; amd. Sec. 4, Ch. 438, L. 1997.

**20-4-206. Notification of nontenure teacher reelection — acceptance — termination.** (1) The trustees shall provide written notice by June 1 to each nontenure teacher employed by the district regarding whether the nontenure teacher has been reelected for the ensuing school fiscal year. A teacher who does not receive written notice of reelection or termination is automatically reelected for the ensuing school fiscal year.

(2) A nontenure teacher who receives notification of reelection for the ensuing school fiscal year shall provide the trustees with written acceptance of the conditions of reelection within 20 days after the receipt of the notice of reelection. Failure to notify the trustees within 20 days constitutes conclusive evidence of the nontenure teacher's nonacceptance of the tendered position.

(3) Subject to the June 1 notice requirements in this section, the trustees may nonrenew the employment of a nontenure teacher at the conclusion of the school fiscal year with or without cause.

**History:** En. Sec. 1, Ch. 324, L. 1973; amd. Sec. 1, Ch. 87, L. 1975; amd. Sec. 1, Ch. 142, L. 1975; R.C.M. 1947, 75-6105.1; amd. Sec. 2, Ch. 510, L. 1987; amd. Sec. 2, Ch. 439, L. 1991; amd. Sec. 5, Ch. 438, L. 1997.

**20-4-207. Dismissal of teacher under contract.** (1) The trustees of any district may dismiss a teacher before the expiration of the teacher's employment contract for good cause.

(2) (a) The following persons may recommend the dismissal of a teacher for cause under subsection (1):

(i) a district superintendent;

(ii) in a district without a district superintendent, a principal; or

(iii) in a district without a district superintendent or a principal, the county superintendent or a trustee of the district.

(b) A person listed in subsection (2)(a) who recommends dismissal of a teacher shall give notice of the recommendation in writing to each trustee of the district and to the teacher.

(c) The notice must state clearly and explicitly the specific reason or reasons that led to the recommendation for dismissal.

(3) (a) Whenever the trustees of any district receive a recommendation for dismissal, the trustees shall notify the teacher of the right to a hearing before the trustees either by certified letter or by personal notification for which a signed receipt must be returned. The teacher may



in writing waive the right to a hearing. Unless the teacher waives the right to a hearing, the teacher and trustees shall agree on a hearing date not less than 10 days or more than 20 days from the notice of intent to recommend dismissal.

(b) The trustees shall conduct a hearing on the recommendation and resolve at the conclusion of the hearing to dismiss the teacher or to reject the recommendation for dismissal.

(4) With the exception of a county superintendent, a person who recommends dismissal pursuant to subsection (2) may suspend the teacher from active performance of duty with pay pending the hearing date if the teacher's behavior or acts that led to the recommendation for dismissal are contrary to the welfare of the students or the effective operation of the school district.

(5) Any teacher who has been dismissed may in writing within 20 days appeal the dismissal under the guidelines set forth in 20-4-204. The teacher may appeal a decision to terminate an employment contract to the county superintendent if the teacher's employment is not covered by a collective bargaining agreement pursuant to Title 39, chapter 31. If the employment of the teacher is covered by a collective bargaining agreement, a teacher shall appeal a decision to terminate an employment contract to an arbitrator.

**History:** En. 75-6107 by Sec. 88, Ch. 5, L. 1971; amd. Sec. 1, Ch. 327, L. 1971; R.C.M. 1947, 75-6107; amd. Sec. 2, Ch. 56, L. 1985; amd. Sec. 1, Ch. 28, L. 1989; amd. Sec. 6, Ch. 438, L. 1997; amd. Sec. 5, Ch. 514, L. 1999.

**Cross-References**

Authority of Superintendent of Public Instruction to hear controversy appeals, 20-3-107.

Authority of County Superintendent to hear controversy appeals, 20-3-210.

Authority of trustees to employ and dismiss teachers, 20-3-324.

Dismissal of teachers by cooperative, 20-7-456.

**20-4-208. Transfer from administrative position.** (1) A tenure teacher serving in an administrative position may be assigned to a teaching position with a reduction in salary when the district reduces the size of its administrative staff. The salary for the new position must be the same as the salary that the teacher would have received if the teacher had been continuously employed in the new position rather than in the administrative position.

(2) If a board policy or a collective bargaining agreement provides seniority rights for teachers, a district that assigns a tenure teacher serving in an administrative position to a teaching position shall recognize for seniority purposes the tenure teacher's time of service in the administrative position.

(3) As used in this section, the term "administrative position" means a position that the trustees of a district designate as administrative or supervisory in nature, not including the position of district superintendent.

(4) A tenure teacher who is transferred to a teaching position under this section must be offered the next comparable administrative position for which the tenure teacher is endorsed that becomes available in the district.

**History:** En. Sec. 2, Ch. 204, L. 1991; amd. Sec. 1, Ch. 114, L. 1993; amd. Sec. 7, Ch. 438, L. 1997.

**20-4-209 and 20-4-210 reserved.**

**20-4-211. Repealed.** Sec. 4, Ch. 527, L. 1999.

**History:** En. Sec. 2, Ch. 464, L. 1973; R.C.M. 1947, 75-6130.

**20-4-212. Repealed.** Sec. 4, Ch. 527, L. 1999.

**History:** En. Sec. 1, Ch. 464, L. 1973; R.C.M. 1947, 75-6129.

**20-4-213. Repealed.** Sec. 4, Ch. 527, L. 1999.

**History:** En. Sec. 3, Ch. 464, L. 1973; R.C.M. 1947, 75-6131; amd. Sec. 1, Ch. 458, L. 1979.

**20-4-214. Repealed.** Sec. 4, Ch. 527, L. 1999.

**History:** En. Sec. 4, Ch. 464, L. 1973; R.C.M. 1947, 75-6132.

### **Part 3** **Teachers' Powers, Duties, and Privileges**

**20-4-301. Duties of teacher — nonpayment for failure to comply.** (1) A teacher under contract with a district shall:

(a) conform to and enforce the laws, board of public education policies, and policies of the trustees of the district;

(b) use the course of instruction prescribed by the trustees;

(c) keep, in a neat and businesslike manner, a teacher's register of attendance and grades;

(d) within 10 days after the conclusion of each school semester, prepare a report that must include the pupil attendance and absence data from the teacher's register and grades. The report must be submitted to:

(i) the district superintendent, if there is one;

(ii) the principal of the school, if there is one and there is no district superintendent; or

(iii) the county superintendent or all county superintendents when the teacher is reporting for a joint district, if there is no district superintendent or principal.

(e) exercise due diligence in the care of school grounds and buildings, furniture, equipment, books, and supplies; and

(f) provide moral and civic instruction by:

(i) endeavoring to impress the pupils with the principles of morality, truth, justice, and patriotism, including any curriculum related to the flag prescribed by the trustees;

(ii) teaching the pupils to avoid idleness, profanity, and falsehood;

(iii) instructing the pupils in the principles of free government and training them to comprehend the rights, responsibilities, and dignity of American citizenship.

(2) The trustees are authorized to withhold the salary warrant of any teacher who does not comply with the provisions of subsection (1)(a) or (1)(b) until the teacher does comply with the provisions.

(3) The trustees may not pay any teacher the teacher's last month's salary until the teacher has provided a complete and accurate semester report to the required person, as determined by the person and as required in subsection (1)(d).

**History:** En. 75-6108 by Sec. 89, Ch. 5, L. 1971; R.C.M. 1947, 75-6108; amd. Sec. 1, Ch. 337, L. 1989; amd. Sec. 7, Ch. 22, L. 1997; amd. Sec. 2, Ch. 320, L. 1997.

#### **Cross-References**

ANB defined, 20-1-101.

Abused or neglected child — duty to report, 41-3-201.

**20-4-302. Discipline and punishment of pupils — definition of corporal punishment — penalty — defense.** (1) A teacher or principal has the authority to hold a pupil to a strict accountability for disorderly conduct in school, on the way to or from school, or during intermission or recess.

(2) For the purposes of this section, "corporal punishment" means knowingly and purposely inflicting physical pain on a pupil as a disciplinary measure.

(3) A person who is employed or engaged by a school district may not inflict or cause to be inflicted corporal punishment on a pupil.

(4) (a) A person who is employed or engaged by a school district may use physical restraint, defined as the placing of hands on a pupil in a manner that is reasonable and necessary to:

(i) quell a disturbance;

(ii) provide self-protection;

(iii) protect the pupil or others from physical injury;

(iv) obtain possession of a weapon or other dangerous object on the person of the pupil or within control of the pupil;

(v) maintain the orderly conduct of a pupil including but not limited to relocating a pupil in a waiting line, classroom, lunchroom, principal's office, or other on-campus facility; or

(vi) protect property from serious harm.

(b) Physical pain resulting from the use of physical restraint as defined in subsection (4)(a) does not constitute corporal punishment as long as the restraint is reasonable and necessary.

(5) A teacher in a district employing neither a district superintendent nor a principal at the school where the teacher is assigned has the authority to suspend a pupil for good cause. When either a district superintendent or a school principal is employed, only the superintendent or principal has the authority to suspend a pupil for good cause. Whenever a teacher suspends a pupil, the teacher shall notify the trustees and the county superintendent immediately of the action.

(6) A teacher has the duty to report the truancy or incorrigibility of a pupil to the district superintendent, the principal, the trustees, or the county superintendent, whichever is applicable.

(7) If a person who is employed or engaged by a school district uses corporal punishment or more physical restraint than is reasonable or necessary, the person is guilty of a misdemeanor and, upon conviction of the misdemeanor by a court of competent jurisdiction, shall be fined not less than \$25 or more than \$500.

(8) A person named as a defendant in an action brought under this section may assert as an affirmative defense that the use of physical restraint was reasonable or necessary. If that defense is denied by the person bringing the charge, the issue of whether the restraint used was reasonable or necessary must be determined by the trier of fact.

**History:** En. 75-6109 by Sec. 90, Ch. 5, L. 1971; amd. Sec. 1, Ch. 388, L. 1977; R.C.M. 1947, 75-6109; amd. Sec. 1, Ch. 135, L. 1981; amd. Sec. 1, Ch. 325, L. 1991.

**Cross-References**

Duties of pupils — sanctions, 20-5-201.

Suspension and expulsion of pupil, 20-5-202.

Confidential communications by student to teacher in educational institution, 26-1-809.

Use of force by parent, guardian, or teacher, 45-3-107.

**20-4-303. Abuse of teachers.** Any parent, guardian, or other person who shall insult or abuse a teacher anywhere on the school grounds or school premises shall be deemed guilty of a misdemeanor and, upon conviction of such misdemeanor by a court of competent jurisdiction, shall be fined no less than \$25 or more than \$500.

**History:** En. 75-6110 by Sec. 91, Ch. 5, L. 1971; amd. Sec. 1, Ch. 100, L. 1971; R.C.M. 1947, 75-6110.

**20-4-304. Attendance at instructional and professional development meetings.** The trustees of a school district shall close the schools of the district for the annual instructional and professional development meetings of teachers' organizations. A teacher may attend instructional and professional development meetings without loss of salary or attend other appropriate inservice training that may be prescribed by the trustees without loss of salary. If a teacher does not attend, the teacher may not be paid.

**History:** En. 75-6111 by Sec. 92, Ch. 5, L. 1971; amd. Sec. 1, Ch. 200, L. 1971; R.C.M. 1947, 75-6111; amd. Sec. 2, Ch. 638, L. 1989; amd. Sec. 292, Ch. 56, L. 2009.

**Cross-References**

Traveling expenses of officers attending meetings, 20-1-211.

Pupil-instruction-related days, 20-1-304.

## **Part 4**

### **District Superintendent and Principal**

**20-4-401. Appointment and dismissal of district superintendent or county high school principal.** (1) The trustees of any high school district, except a county high school or other high school district that operates under a separate board of trustees due to alternative methods of electing the members of the high school board of trustees as provided in 20-3-352(3), and the trustees of the elementary district where its high school building is located shall jointly employ and appoint a district superintendent. The trustees of a county high school or other high school district that operates under a separate board of trustees due to alternative methods of electing the members of the high school board of trustees as provided in 20-3-352(3) shall employ and appoint a district superintendent, except that the trustees of a county high school district may employ and appoint a holder of a class 3 teacher certificate with a district superintendent endorsement as the county high school principal in lieu of a district superintendent. The trustees of any other district may employ and appoint a district superintendent.

(2) Whenever a joint board of trustees has been formed by a county high school and the elementary district where the county high school is located, the joint board shall jointly employ and appoint a district superintendent. During the term of contract of the jointly appointed district superintendent, neither district may separately employ and appoint a district superintendent or county high school principal.

(3) School districts other than those provided in subsection (2) that form a joint board of trustees or the boards of trustees of two or more districts may jointly employ and appoint a district superintendent, as allowed in 20-3-362, or may enter into an interlocal agreement pursuant to Title 7, chapter 11, part 1, to cooperatively share the employment of a district superintendent.

(4) The written contract of employment of a district superintendent or a county high school principal must be authorized by the proper resolution of the trustees of the district or the joint

board of trustees and executed in duplicate by the presiding officer of the trustees or joint board of trustees and the clerks of the districts in the name of the districts and by the district superintendent or the county high school principal. The contract must be for a term of not more than 3 years, and after the second successive contract, the contract is considered to be renewed for a further term of 1 year from year to year unless the trustees, by resolution passed by a majority vote of its membership, resolve to terminate the services of the district superintendent or the county high school principal at the expiration of the existing contract. The trustees shall take the termination action and notify the district superintendent or the county high school principal in writing of their intent to terminate the superintendent's or principal's services at the expiration of the superintendent's or principal's current contract not later than February 1 of the last year of the contract.

(5) Whenever a joint board of trustees or the boards of trustees of two or more districts employs a person as the district superintendent under subsection (2) or (3), the districts shall prorate the compensation provided by the contract of employment on the basis of the number of teachers employed by each district.

(6) At any time the class 3 teacher certification or the endorsement of the certificate of a district superintendent or a county high school principal that qualifies the person to hold the position becomes invalid, the trustees of the district or the joint board of trustees shall discharge the person as the district superintendent or county high school principal regardless of the unexpired term of the contract. The trustees may not compensate the superintendent or principal under the terms of the contract for any services rendered subsequent to the date of the invalidation of the teacher certificate.

(7) A district superintendent or county high school principal may not engage in any work or activity that the trustees consider to be in conflict with the duties and employment as the district superintendent or county high school principal.

**History:** En. 75-6112 by Sec. 93, Ch. 5, L. 1971; amd. Sec. 1, Ch. 105, L. 1973; R.C.M. 1947, 75-6112; amd. Sec. 4, Ch. 308, L. 1987; amd. Sec. 28, Ch. 83, L. 1989; amd. Sec. 4, Ch. 318, L. 2001; amd. Sec. 1, Ch. 144, L. 2009.

#### **Cross-References**

Code of ethics, Title 2, ch. 2, part 1.

Powers of joint board of trustees, 20-3-362.

**20-4-402. Duties of district superintendent or county high school principal.** The district superintendent or county high school principal is the executive officer of the trustees and, subject to the direction and control of the trustees, the executive officer shall:

(1) have general supervision of all schools of the district and the personnel employed by the district;

(2) implement and administer the policies of the trustees of the district;

(3) develop and recommend courses of instruction to the trustees for their consideration and approval in accordance with the provisions of 20-7-111;

(4) select all textbooks and submit the selections to the trustees for their approval in accordance with the provisions of 20-7-602;

(5) select all reference and library books and submit the selections to the trustees for their approval in accordance with provisions of 20-7-204;

(6) have general supervision of all pupils of the district, enforce the compulsory attendance provisions of this title, and have the authority to suspend for good cause a pupil of the district;

(7) report the pupil attendance, absence, and enrollment of the district and other pupil information required by the report form prescribed by the superintendent of public instruction to the county superintendent, or county superintendents when reporting for a joint district; and

(8) perform other duties in connection with the district as the trustees may prescribe.

**History:** En. 75-6113 by Sec. 94, Ch. 5, L. 1971; R.C.M. 1947, 75-6113; amd. Sec. 2, Ch. 135, L. 1981; amd. Sec. 2, Ch. 337, L. 1989; amd. Sec. 3, Ch. 343, L. 1999.

#### **Cross-References**

Powers and duties of trustees, 20-3-324.

Attendance, Title 20, ch. 5, part 1.

Suspension and expulsion, Title 20, ch. 5, part 2.

**20-4-403. Powers and duties of principal.** (1) Whenever the trustees of a district employ and appoint a school principal but do not employ and appoint a district superintendent, such principal shall perform the duties of a district superintendent as prescribed in subsections

(4), (5), (6), (7), and (8) of 20-4-402 and shall have general supervision of such school and the personnel assigned to such school.

(2) If granted authority by the board of trustees, a school principal in a district that does employ and appoint a district superintendent may suspend for good cause any pupil of the school where the principal is employed.

**History:** En. 75-6114 by Sec. 95, Ch. 5, L. 1971; R.C.M. 1947, 75-6114; amd. Sec. 3, Ch. 135, L. 1981.

## Part 5

### Quality Educator Loan Assistance Program

**20-4-501. Quality educator loan assistance program — purpose.** (1) There is a quality educator loan assistance program administered by the board of regents through the office of the commissioner of higher education. The program must provide for the direct repayment of educational loans of eligible quality educators in accordance with policies and procedures adopted by the board of regents in accordance with this part.

(2) The purpose of this program is to aid quality educator recruitment and retention for those schools most impacted by critical quality educator shortages. The program must be implemented in a manner that maximizes recruitment and retention assistance to impacted schools.

**History:** En. Sec. 1, Ch. 1, Sp. L. May 2007; amd. Sec. 1, Ch. 85, L. 2017.

#### Compiler's Comments

*2017 Amendment:* Chapter 85 inserted (2) concerning purpose and implementation of the program; and made minor changes in style. Amendment effective October 1, 2017.

**20-4-502. Definitions.** For purposes of this part, unless the context requires otherwise, the following definitions apply:

(1) "Education cooperative" means a cooperative of Montana public schools as described in 20-7-451.

(2) "Educational loans" means all loans made pursuant to a federal loan program, except federal parent loans for undergraduate students (PLUS) loans, as provided in 20 U.S.C. 1078-2.

(3) "Federal loan program" means educational loans authorized by 20 U.S.C. 1071, et seq., 20 U.S.C. 1087a, et seq., and 20 U.S.C. 1087aa, et seq.

(4) (a) "Quality educator" means a full-time equivalent educator, as reported to the superintendent of public instruction for accreditation purposes in the current school year, who:

(i) holds a valid certificate under the provisions of 20-4-106 and is employed by an entity listed in subsection (4)(b) in a position that requires an educator license in accordance with administrative rules adopted by the board of public education; or

(ii) is a licensed professional under 37-8-405, 37-8-415, 37-11-301, 37-15-301, 37-17-302, 37-22-301, 37-23-201, 37-24-301, or 37-25-302 and is employed by an entity listed in subsection (4)(b) of this section to provide services to students.

(b) For purposes of subsection (4)(a), an entity means:

(i) a school district;

(ii) an education cooperative;

(iii) the Montana school for the deaf and blind, as described in 20-8-101;

(iv) the Montana youth challenge program; and

(v) a state youth correctional facility, as defined in 41-5-103.

(5) "School district" means a public school district, as provided in 20-6-101 and 20-6-701.

**History:** En. Sec. 2, Ch. 1, Sp. L. May 2007; amd. Sec. 1, Ch. 59, L. 2009.

**20-4-503. Critical quality educator shortages.** (1) The board of public education, in consultation with the office of public instruction, shall identify:

(a) specific schools that are impacted by critical quality educator shortages; and

(b) within the schools identified in subsection (1)(a), the specific quality educator licensure or endorsement areas that are impacted by critical quality educator shortages.

(2) In identifying impacted schools under subsection (1)(a), the board of public education, in consultation with the office of public instruction, shall consider including the following:

(a) special education cooperatives;

(b) the Montana school for the deaf and blind, as described in 20-8-101;

(c) the Montana youth challenge program, as established in 10-1-1401;



- (d) state youth correctional facilities, as defined in 41-5-103;
- (e) public schools that are located on an American Indian reservation; and
- (f) public schools that, driving at a reasonable speed for the road surface, are located:
- (i) more than 45 minutes from a city with a population greater than 10,000 based on the most recent federal decennial census; or
- (ii) more than 30 minutes from a city with a population greater than 4,300 based on the most recent federal decennial census.

(3) The board of public education shall publish by December 1 an annual report listing the schools and the licensure or endorsement areas identified as impacted by critical quality educator shortages, explaining the reasons that specific schools and licensure or endorsement areas have been identified and providing information regarding any success in retention. The report must apply to the school year that begins July 1 following the publication of the report in order to assist recruitment by impacted schools. For the school year beginning July 1, 2017, eligibility for the program may be governed by the report adopted by the board of public education by December 1, 2017.

(4) A quality educator working at a school identified in subsection (1) is eligible for repayment of all or part of the quality educator's outstanding educational loans existing at the time of application in accordance with the eligibility and award criteria established under this part.

**History:** En. Sec. 3, Ch. 1, Sp. L. May 2007; amd. Sec. 2, Ch. 85, L. 2017.

**Compiler's Comments**

*2017 Amendment:* Chapter 85 inserted (2) concerning considerations of board of public education in identifying impacted schools; in (3) near beginning inserted "by December 1" and inserted second and third sentences concerning applicable school years and eligibility for the program; and made minor changes in style. Amendment effective October 1, 2017.

**20-4-504. Loan repayment assistance.** Loan repayment assistance may be provided on behalf of a quality educator who:

- (1) is employed in an identified school described in 20-4-503(1); and
- (2) has an educational loan that is not in default and that has a minimum unpaid current balance of at least \$1,000 at the time of application.

**History:** En. Sec. 4, Ch. 1, Sp. L. May 2007.

**20-4-505. Loan repayment assistance documentation.** (1) A quality educator shall submit an application for loan repayment assistance to the board of regents in accordance with policies and procedures adopted by the board of regents. The application must include official verification or proof of the applicant's total unpaid accumulated educational loan debt and other documentation required by the board of regents that is necessary for verification of the applicant's eligibility.

(2) The board of regents may require a quality educator who is eligible for loan repayment assistance to provide documentation that the quality educator has exhausted repayment assistance from other federal, state, or local loan forgiveness, discharge, or repayment incentive programs.

(3) A quality educator is eligible for loan repayment assistance for no more than 3 years, with the maximum annual loan repayment assistance not to exceed:

- (a) \$3,000 after the first complete year of teaching in an impacted school;
- (b) \$4,000 after the second complete year of teaching in the same impacted school or another impacted school within the same school district; and
- (c) \$5,000 after the third complete year of teaching in the same impacted school or another impacted school within the same school district.

(4) The board of regents may remit payment of the loan on behalf of the quality educator in accordance with the requirements of this part and policies and procedures adopted by the board of regents.

**History:** En. Sec. 5, Ch. 1, Sp. L. May 2007; amd. Sec. 3, Ch. 85, L. 2017.

**Compiler's Comments**

*2017 Amendment:* Chapter 85 in (2) deleted former first and second sentences that read: "A quality educator is eligible for loan repayment assistance for up to a maximum of 4 years. The total annual loan repayment assistance for an eligible quality educator may not exceed \$3,000"; inserted (3) concerning 3-year loan repayment assistance eligibility and maximum annual loan repayments; and made minor changes in style. Amendment effective October 1, 2017.

**20-4-506. Funding — priorities.** (1) If the funding for this part in any year is less than the total amount for which Montana quality educators qualify, the board of regents shall provide preference in the award of loan repayment assistance to quality educators working in the specific licensure or endorsement areas that are most impacted by quality educator shortages identified as provided in 20-4-503.

(2) If the funding for this part in any year is greater than the total amount for which Montana quality educators qualify, the board of public education shall consider expanding the number of impacted schools included in subsequent reports pursuant to 20-4-503.

(3) This part may not be construed to require the provision of loan repayment assistance without an express appropriation for that purpose.

**History:** En. Sec. 6, Ch. 1, Sp. L. May 2007; amd. Sec. 4, Ch. 85, L. 2017.

**Compiler's Comments**

*2017 Amendment:* Chapter 85 in (1) after “working in the specific” substituted “licensure or endorsement areas” for “schools”; inserted (2) concerning expanding the number of impacted schools included in subsequent reports; in (3) deleted former last sentence that read: “This part may not be construed to require loan repayment assistance for school years prior to July 1, 2007”; and made minor changes in style. Amendment effective October 1, 2017.

## CHAPTER 5 PUPILS

### Part 1 — Attendance

- 20-5-101. Admittance of child to school.
- 20-5-102. Compulsory enrollment and excuses.
- 20-5-103. Compulsory attendance and excuses.
- 20-5-104. Attendance officer.
- 20-5-105. Attendance officer — powers and duties.
- 20-5-106. Truancy.
- 20-5-107. Incapacitated and indigent child attendance.
- 20-5-108. Tribal agreement with district for Indian child compulsory attendance and other agreements.
- 20-5-109. Nonpublic school requirements for compulsory enrollment exemption.
- 20-5-110. School district assessment for placement of a child who enrolls from a nonaccredited, nonpublic school.
- 20-5-111. Responsibilities and rights of parent who provides home school.

### Part 2 — Duties — Prohibitions — Penalties

- 20-5-201. Duties and sanctions.
- 20-5-202. Suspension and expulsion.
- 20-5-203. Secret organization prohibited.
- 20-5-204 through 20-5-206 reserved.
- 20-5-207. Short title.
- 20-5-208. Definition.
- 20-5-209. Bullying of student prohibited.
- 20-5-210. Enforcement — exhaustion of administrative remedies.

### Part 3 — Attendance Outside School District

- 20-5-301. Repealed.
- 20-5-302. Repealed.
- 20-5-303. Repealed.
- 20-5-304. Repealed.
- 20-5-305. Repealed.
- 20-5-306. Repealed.
- 20-5-307. Repealed.
- 20-5-308 through 20-5-310 reserved.
- 20-5-311. Repealed.
- 20-5-312. Repealed.
- 20-5-313. Repealed.
- 20-5-314. Reciprocal attendance agreement with adjoining state or province.
- 20-5-315. Repealed.
- 20-5-316. Repealed.
- 20-5-317 through 20-5-319 reserved.
- 20-5-320. Attendance with discretionary approval.
- 20-5-321. Attendance with mandatory approval — tuition and transportation.
- 20-5-322. Residency determination — notification — appeal for attendance agreement.
- 20-5-323. Tuition and transportation rates.
- 20-5-324. Tuition report and payment provisions.

### Part 4 — Health

- 20-5-401. Repealed.

- 20-5-402. Definitions.
- 20-5-403. Immunization required — release and acceptance of immunization records.
- 20-5-404. Conditional attendance.
- 20-5-405. Medical or religious exemption.
- 20-5-406. Immunization record.
- 20-5-407. Rulemaking.
- 20-5-408. Enforcement.
- 20-5-409. Failure to immunize or claim exemption — injunction.
- 20-5-410. Civil penalty.
- 20-5-411. Renumbered 20-1-220.
- 20-5-412. Definition — parent-designated adult — administration of glucagon — training.
- 20-5-413. Limits on liability.
- 20-5-414 through 20-5-419 reserved.
- 20-5-420. Self-administration or possession of asthma, severe allergy, or anaphylaxis medication.
- 20-5-421. Emergency use of epinephrine in school setting.
- 20-5-422 through 20-5-425 reserved.
- 20-5-426. Emergency use of opioid antagonist in school setting — limit on liability.

#### **Part 5 — Enrollment of Pupil by Caretaker Relative**

- 20-5-501. Purpose — legislative intent — parental rights — definitions.
- 20-5-502. Enrollment by caretaker relative — residency — affidavit.
- 20-5-503. Caretaker relative educational authorization affidavit — use — immunity — format.

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#### **Chapter Cross-References**

- Penalty for abuse of students, 20-4-302.
- Fees for school supplies, 20-9-214.
- Powers of trustees to require pupils to pay fees, 20-9-214.
- Extracurricular fund for pupil functions, 20-9-504.
- Confidential communications by students, 26-1-809.
- Use of force by parent, guardian, or teacher, 45-3-107.

## **Part 1 Attendance**

#### **Part Cross-References**

- School terms and holidays, Title 20, ch. 1, part 3.
- Duty of trustees to administer attendance laws, 20-3-324.
- School enrollment procedures to aid identification of missing children, 44-2-511.

**20-5-101. Admittance of child to school.** (1) The trustees shall assign and admit a child to a school in the district when the child is:

(a) 6 years of age or older on or before September 10 of the year in which the child is to enroll but is not yet 19 years of age;

(b) a resident of the district; and

(c) otherwise qualified under the provisions of this title to be admitted to the school.

(2) The trustees of a district may assign and admit any nonresident child to a school in the district under the tuition provisions of this title.

(3) The trustees may at their discretion assign and admit a child to a school in the district who is under 6 years of age or an adult who is 19 years of age or older if there are exceptional circumstances that merit waiving the age provision of this section. The trustees may also admit an individual who has graduated from high school but is not yet 19 years of age even though no special circumstances exist for waiver of the age provision of this section.

(4) The trustees shall assign and admit a child who is homeless, as defined in the Stewart B. McKinney Homeless Assistance Act (Public Law 100-77), to a school in the district regardless of residence. The trustees may not require an out-of-district attendance agreement or tuition for a homeless child.

(5) Except for the provisions of subsection (4), tuition for a nonresident child must be paid in accordance with the tuition provisions of this title.

(6) The trustees' assignment of a child meeting the qualifications of subsection (1) to a school in the district outside of the adopted school boundaries applicable to the child is subject to the district's grievance policy. Upon completion of procedures set forth in the district's grievance policy, the trustees' decision regarding the assignment is final.

**History:** En. 75-6302 by Sec. 115, Ch. 5, L. 1971; R.C.M. 1947, 75-6302; amd. Sec. 2, Ch. 334, L. 1979; amd. Sec. 2, Ch. 558, L. 1979; amd. Sec. 74, Ch. 575, L. 1981; amd. Sec. 1, Ch. 120, L. 1989; amd. Sec. 1, Ch. 214, L. 1995; amd. Sec. 1, Ch. 374, L. 2007; amd. Sec. 1, Ch. 128, L. 2013.

**Cross-References**

Free public education required, Art. X, sec. 1, Mont. Const.  
 Aid prohibited to sectarian schools, Art. X, sec. 6, Mont. Const.  
 Nondiscrimination in education, Art. X, sec. 7, Mont. Const.  
 General rules for determining residence, 1-1-215.  
 School enrollment procedures to aid identification of missing children, 44-2-511.  
 Illegal discrimination, Title 49, ch. 2.  
 Governmental code of fair practices, Title 49, ch. 3.

**20-5-102. Compulsory enrollment and excuses.** (1) Except as provided in subsection (2), any parent, guardian, or other person who is responsible for the care of any child who is 7 years of age or older prior to the first day of school in any school fiscal year shall cause the child to be instructed in the program prescribed by the board of public education pursuant to 20-7-111 until the later of the following dates:

- (a) the child's 16th birthday; or
- (b) the date of completion of the work of the 8th grade.

(2) A parent, guardian, or other person shall enroll the child in the school assigned by the trustees of the district within the first week of the school term or when the parent, guardian, or person establishes residence in the district unless the child is:

- (a) enrolled in a school of another district or state under any of the tuition provisions of this title;
- (b) provided with supervised correspondence study or supervised home study under the transportation provisions of this title;
- (c) excused from compulsory school attendance upon a determination by a district judge that attendance is not in the best interest of the child;
- (d) excused by the board of trustees upon a determination that attendance by a child who has attained the age of 16 is not in the best interest of the child and the school; or
- (e) enrolled in a nonpublic or home school that complies with the provisions of 20-5-109. For the purposes of this subsection (2)(e), a home school is the instruction by a parent of the parent's child, stepchild, or ward in the parent's residence and a nonpublic school includes a parochial, church, religious, or private school.

**History:** En. 75-6303 by Sec. 116, Ch. 5, L. 1971; amd. Sec. 1, Ch. 389, L. 1971; amd. Sec. 3, Ch. 91, L. 1973; amd. Sec. 2, Ch. 137, L. 1975; R.C.M. 1947, 75-6303; amd. Sec. 1, Ch. 504, L. 1979; amd. Sec. 1, Ch. 355, L. 1983; amd. Sec. 1, Ch. 249, L. 1991; amd. Sec. 293, Ch. 56, L. 2009.

**Cross-References**

Supervised home and correspondence study, 20-7-116, 20-10-121, 20-10-125, 20-10-142.

**20-5-103. Compulsory attendance and excuses.** (1) Except as provided in subsection (2), any parent, guardian, or other person who is responsible for the care of any child who is 7 years of age or older prior to the first day of school in any school fiscal year shall cause the child to attend the school in which the child is enrolled for the school term and each school day in the term prescribed by the trustees of the district until the later of the following dates:

- (a) the child's 16th birthday; or
- (b) the date of completion of the work of the 8th grade.
- (2) The provisions of subsection (1) do not apply in the following cases:

- (a) The child has been excused under one of the conditions specified in 20-5-102.
- (b) The child is absent because of illness, bereavement, or other reason prescribed by the policies of the trustees.
- (c) The child has been suspended or expelled under the provisions of 20-5-202.

**History:** En. 75-6304 by Sec. 117, Ch. 5, L. 1971; amd. Sec. 8, Ch. 266, L. 1977; R.C.M. 1947, 75-6304; amd. Sec. 2, Ch. 504, L. 1979; amd. Sec. 294, Ch. 56, L. 2009.

**Cross-References**

Definition of habitual truancy, 41-5-103.  
 Notice to parents of children absent from school, 44-2-507.

**20-5-104. Attendance officer.** In order to enforce the compulsory attendance provisions of this title, each district shall have at least one person serving as an attendance officer according to the following requirements:

(1) districts of the first class and districts of the second class with a dropout rate higher than the statewide average dropout rate as calculated by the office of public instruction shall appoint one or more of the district's staff as attendance officers;

(2) districts of the second class with a dropout rate at or below the statewide average dropout rate as calculated by the office of public instruction and districts of the third class may appoint one or more of the district's staff as attendance officers; or

(3) the county superintendent must be the attendance officer in second-class or third-class districts that do not appoint an attendance officer.

**History:** En. 75-6305 by Sec. 118, Ch. 5, L. 1971; R.C.M. 1947, 75-6305; amd. Sec. 1, Ch. 281, L. 2013.

**Cross-References**

Additional positions of County Superintendent, 20-3-206.

**20-5-105. Attendance officer — powers and duties.** The attendance officer of a district:

(1) must, subject to district policy, be vested with police powers, the authority to serve warrants, and the authority to enter places of employment of children in order to enforce the compulsory attendance provisions of this title;

(2) may, subject to district policy, take into custody any child subject to compulsory attendance who is not excused under the provisions of this title and conduct the child to the school in which the child is or should be enrolled;

(3) may, subject to district policy, do whatever else is required to investigate and enforce the compulsory attendance provisions of this title and the pupil attendance policies of the trustees;

(4) may, subject to district policy, institute proceedings against any parent, guardian, or other person violating the compulsory attendance provisions of this title;

(5) may, subject to district policy, keep a record of transactions for the inspection and information of the trustees and shall make reports in the manner and to whomever the trustees designate; and

(6) may, subject to district policy, perform any other duties prescribed by the trustees to preserve the morals and secure good conduct of the pupils of the district.

**History:** En. 75-6306 by Sec. 119, Ch. 5, L. 1971; R.C.M. 1947, 75-6306; amd. Sec. 295, Ch. 56, L. 2009; amd. Sec. 2, Ch. 281, L. 2013.

**Cross-References**

Duties of District Superintendent or county high school principal to enforce attendance laws, 20-4-402.

**20-5-106. Truancy.** (1) For the purposes of this part “truant” or “truancy” means the persistent nonattendance without excuse, as defined by district policy, for all or any part of a school day equivalent to the length of one class period of a child required to attend a school under 20-5-103.

(2) If an attendance officer discovers a child is truant, the attendance officer may make a reasonable effort to notify the parent, guardian, or other person responsible for the care of the child that the continued truancy of the child may result in the prosecution of the parent, guardian, or other person responsible for the care of the child under the provisions of this section. If the child is discovered to be truant after the attendance officer has made a reasonable effort to notify the parent, guardian, or other person responsible for the care of the child, the attendance officer may require that the parent, guardian, or other person responsible for the care of the child and the child meet with an individual designated by the school district to formulate a truancy plan to address and resolve the truancy. If the parent, guardian, or other person responsible for the care of the child fails to meet with the designated individual or fails to uphold the responsibilities under the provisions of the truancy plan, the attendance officer may refer the matter to the prosecuting attorney in a court of competent jurisdiction for a determination regarding whether to prosecute the parent, guardian, or other person responsible for the care of the child.

(3) (a) If convicted, the person shall be fined not more than \$100, ordered to perform up to 20 hours of community service, or required to give bond in the penal sum of \$100, with sureties, conditioned on the person's agreement to cooperate with the district in implementing the truancy plan provided for in subsection (2) for the remainder of the current school term.

(b) If a person fails to comply with an order of the court issued under subsection (3)(a), the person may be imprisoned in the county jail for a term of not more than 3 days.



(4) (a) If the child is discovered by the attendance officer to be truant on 9 or more days or 54 or more parts of a day in 1 school year, the child may be referred to youth court as habitually truant under Title 41, chapter 5.

(b) Following a referral to youth court under subsection (4)(a), an attendance officer shall inform the youth court of any subsequent trancies by the child, and the youth court may find the child to be a youth in need of intervention as defined in 41-5-103 and make any of the dispositions provided in 41-5-1512.

**History:** En. 75-6307 by Sec. 120, Ch. 5, L. 1971; R.C.M. 1947, 75-6307; amd. Sec. 296, Ch. 56, L. 2009; amd. Sec. 3, Ch. 281, L. 2013.

**Cross-References**

Duty of teachers to report truancy, 20-4-302.

**20-5-107. Incapacitated and indigent child attendance.** In lieu of the provisions of 20-5-106 and when an attendance officer is satisfied that a pupil or a child subject to compulsory attendance is not able to attend school because the child does not have the physical capacity or the child is absolutely required to work at home or elsewhere in order to provide support for the child or the child's family, the attendance officer shall report the case to the authorities charged with the relief of the poor. The welfare authorities shall offer relief that will enable the child to attend school. If the parent, guardian, or other person who is responsible for the care of the child denies or neglects the assistance offered to enable the child to attend school, the child must be committed to a state institution, at the discretion of the court.

**History:** En. 75-6308 by Sec. 121, Ch. 5, L. 1971; R.C.M. 1947, 75-6308; amd. Sec. 297, Ch. 56, L. 2009.

**20-5-108. Tribal agreement with district for Indian child compulsory attendance and other agreements.** It shall be the duty of the trustees of any district where an Indian child resides to require the child to attend school in the same manner as any other child residing in the district, unless it is prohibited by the laws or treaties affecting the Indian tribe of which such child is a member or the Indian reservation on which such child resides. When such a prohibition exists, the trustees of any district shall have the authority to accept from the tribal council or other governing body of the Indian tribe or the Indian reservation authorization to enforce the compulsory attendance provisions of this title and compel the school attendance of the Indian children belonging to the tribe or residing on the reservation.

**History:** En. 75-6309 by Sec. 122, Ch. 5, L. 1971; R.C.M. 1947, 75-6309(part).

**Cross-References**

Cooperative agreements with Indian tribes, Title 18, ch. 11.

**20-5-109. Nonpublic school requirements for compulsory enrollment exemption.** To qualify its students for exemption from compulsory enrollment under 20-5-102, a nonpublic or home school:

(1) shall maintain records on pupil attendance and disease immunization and make the records available to the county superintendent of schools on request;

(2) shall provide at least the minimum aggregate hours of pupil instruction in accordance with 20-1-301 and 20-1-302;

(3) must be housed in a building that complies with applicable local health and safety regulations;

(4) shall provide an organized course of study that includes instruction in the subjects required of public schools as a basic instructional program pursuant to 20-7-111; and

(5) in the case of home schools, shall notify the county superintendent of schools of the county in which the home school is located in each school fiscal year of the student's attendance at the school.

**History:** En. Sec. 2, Ch. 355, L. 1983; amd. Sec. 3, Ch. 498, L. 1989; amd. Sec. 9, Ch. 138, L. 2005.

**Cross-References**

Aid prohibited to sectarian schools, Art. X, sec. 6, Mont. Const.

Disease immunization, Title 20, ch. 5, part 4.

School enrollment procedures to aid identification of missing children, 44-2-511.

Building codes and standards, Title 50, ch. 60.

**20-5-110. School district assessment for placement of a child who enrolls from a nonaccredited, nonpublic school.** The trustees of a school district shall:

- (1) adopt a district policy on assessment for placement of any child who enrolls in a school of the district and whose previous place of instruction was a nonpublic school that is not accredited;
- (2) include in the adopted policy the following provisions:
  - (a) the specific assessment for placement to be administered to any child subject to the provisions of subsection (1);
  - (b) a procedure for grade and program placement of the child based on results of the assessment for placement, including considerations for the age and identified abilities of the child; and
  - (c) a hearing process before the board of trustees of the district if the parent or guardian of a child is not in agreement with the placement of the child and requests a hearing before the board; and
- (3) administer the adopted policy required in subsection (1) in a uniform and fair manner.

**History:** En. Sec. 1, Ch. 498, L. 1989.

**20-5-111. Responsibilities and rights of parent who provides home school.** Subject to the provisions of 20-5-109, a parent has the authority to instruct the parent's child, stepchild, or ward in a home school and is solely responsible for:

- (1) the educational philosophy of the home school;
- (2) the selection of instructional materials, curriculum, and textbooks;
- (3) the time, place, and method of instruction; and
- (4) the evaluation of the home school instruction.

**History:** En. Sec. 1, Ch. 444, L. 1991; amd. Sec. 298, Ch. 56, L. 2009.

## Part 2 Duties — Prohibitions — Penalties

### Part Cross-References

University students — qualifications and rights, Title 20, ch. 25, part 5.

**20-5-201. Duties and sanctions.** (1) A pupil:

- (a) shall comply with the policies of the trustees and the rules of the school that the pupil attends;
- (b) shall pursue the required course of instruction;
- (c) shall submit to the authority of the teachers, principal, and district superintendent of the district; and
- (d) is subject to the control and authority of the teachers, principal, and district superintendent while the pupil is in school or on school premises, on the way to and from school, or during intermission or recess.

(2) A pupil who disobeys the provisions of this section, shows open defiance of the authority vested in school personnel by this section, defaces or damages any school building, school grounds, furniture, equipment, or book belonging to the district, harms or threatens to harm another person or the person's property, or otherwise violates district policy regarding pupil conduct is subject to punishment, suspension, or expulsion under the provisions of this title. When a pupil defaces or damages school property, the pupil's parent or guardian is liable for the cost of repair or replacement upon the complaint of the teacher, principal, superintendent, or any trustee and the proof of any damage.

(3) In addition to the sanctions prescribed in this section, the trustees of a high school district may deny a high school pupil the honor of participating in the graduation exercise or exclude a high school pupil from participating in school activities. The trustees may not take action under this subsection until the incident or infraction causing the consideration has been investigated and the trustees have determined that the high school pupil was involved in the incident or infraction.

(4) (a) A school district may withhold the grades, diploma, or transcripts of a pupil who is responsible for the cost of school materials or the loss or damage of school property until the pupil or the pupil's parent or guardian satisfies the obligation.

(b) A school district that decides to withhold a pupil's grades, diploma, or transcripts from the pupil and the pupil's parent or guardian pursuant to subsection (4)(a) shall:

(i) upon receiving notice that the pupil has transferred to another school district in the state, notify the pupil's parent or guardian in writing that the school district to which the pupil has transferred will be requested to withhold the pupil's grades, diploma, or transcripts until any obligation has been satisfied;

(ii) forward appropriate grades or transcripts to the school to which the pupil has transferred;

(iii) at the same time, notify the school district of any financial obligation of the pupil and request the withholding of the pupil's grades, diploma, or transcripts until any obligations are met;

(iv) when the pupil or the pupil's parent or guardian satisfies the obligation, inform the school district to which the pupil has transferred; and

(v) adopt a policy regarding a process for a pupil or the pupil's parent or guardian to appeal the school district's decision to request that another school district withhold a pupil's grades, diploma, or transcripts.

(c) Upon receiving notice that a school district has requested the withholding of the grades, diploma, or transcripts of a pupil under this subsection (4), a school district to which the pupil has transferred shall withhold the grades, diploma, or transcripts of the pupil until it receives notice from the district that initiated the decision that the decision has been rescinded under the terms of subsection (4)(a).

**History:** En. 75-6310 by Sec. 123, Ch. 5, L. 1971; R.C.M. 1947, 75-6310; amd. Sec. 1, Ch. 403, L. 1993; amd. Sec. 2, Ch. 444, L. 2009.

**Cross-References**

Penalty for disturbance of school, 20-1-206.

Power of teacher or principal over pupils, 20-4-302, 20-4-402, 20-4-403.

Liability of parent for property damage by minor, 40-6-237, 40-6-238.

**20-5-202. Suspension and expulsion.** (1) As provided in 20-4-302, 20-4-402, and 20-4-403, a pupil may be suspended by a teacher, superintendent, or principal. The trustees of the district shall adopt a policy defining the authority and procedure to be used by a teacher, superintendent, or principal in the suspension of a pupil and in defining the circumstances and procedures by which the trustees may expel a pupil. Expulsion is any removal of a pupil for more than 20 school days without the provision of educational services and is a disciplinary action available only to the trustees. A pupil may be suspended from school for an initial period not to exceed 10 school days. Upon a finding by a school administrator that the immediate return to school by a pupil would be detrimental to the health, welfare, or safety of others or would be disruptive of the educational process, a pupil may be suspended for one additional period not to exceed 10 school days if the pupil is granted an informal hearing with the school administrator prior to the additional suspension and if the decision to impose the additional suspension does not violate the Individuals With Disabilities Education Act, 20 U.S.C. 1400, et seq.

(2) (a) The trustees of a district shall adopt a policy for the expulsion of a student who is determined to have brought a firearm, as defined in 18 U.S.C. 921, to school and for referring the matter to the appropriate local law enforcement agency. A student who is determined to have brought a firearm to school under this subsection must be expelled from school for a period of not less than 1 year, except that the trustees may authorize the school administration to modify the requirement for expulsion of a student on a case-by-case basis. The trustees shall annually review the district's weapons policy and any policy adopted under this subsection (2)(a) and update the policies as determined necessary by the trustees based on changing circumstances pertaining to school safety.

(b) A decision to change the placement of a student with a disability who has been expelled pursuant to this section must be made in accordance with the Individuals With Disabilities Education Act.

(3) In accordance with 20-4-302, 20-4-402, 20-4-403, and subsection (1) of this section, a teacher, a superintendent, or a principal shall suspend immediately for good cause a student who is determined to have brought a firearm to school.

(4) Nothing in this section prevents a school district from:

(a) offering instructional activities related to firearms or allowing a firearm to be brought to school for instructional activities sanctioned by the district; or

(b) providing educational services in an alternative setting to a student who has been expelled from the student's regular school setting.

**History:** En. 75-6311 by Sec. 124, Ch. 5, L. 1971; R.C.M. 1947, 75-6311; amd. Sec. 4, Ch. 135, L. 1981; amd. Sec. 1, Ch. 457, L. 1995; amd. Sec. 3, Ch. 444, L. 2009; amd. Sec. 4, Ch. 364, L. 2013.

**Cross-References**

Safety instruction required, 87-2-105.

**20-5-203. Secret organization prohibited.** (1) It shall be unlawful for any pupil to participate in or be a member of any secret fraternity or other secret organization that is in any degree a school organization. It also shall be unlawful for any pupil or other person to solicit any pupil to join any such prohibited secret fraternity or other secret organization.

(2) Any person violating the provisions of this section shall be guilty of a misdemeanor and, if convicted by a court of competent jurisdiction, shall be fined not less than \$5 or more than \$25 for each violation.

**History:** En. 75-6312 by Sec. 125, Ch. 5, L. 1971; R.C.M. 1947, 75-6312.

**20-5-204 through 20-5-206 reserved.**

**20-5-207. Short title.** Sections 20-5-207 through 20-5-210 may be cited as the “Bully-Free Montana Act”.

**History:** En. Sec. 1, Ch. 253, L. 2015.

**20-5-208. Definition.** (1) “Bullying” means any harassment, intimidation, hazing, or threatening, insulting, or demeaning gesture or physical contact, including any intentional written, verbal, or electronic communication or threat directed against a student that is persistent, severe, or repeated and that:

(a) causes a student physical harm, damages a student’s property, or places a student in reasonable fear of harm to the student or the student’s property;

(b) creates a hostile environment by interfering with or denying a student’s access to an educational opportunity or benefit; or

(c) substantially and materially disrupts the orderly operation of a school.

(2) The term includes retaliation against a victim or witness who reports information about an act of bullying and includes acts of hazing associated with athletics or school-sponsored organizations or groups.

**History:** En. Sec. 2, Ch. 253, L. 2015.

**20-5-209. Bullying of student prohibited.** Bullying of a student enrolled in a public K-12 school by another student or an employee is prohibited.

**History:** En. Sec. 3, Ch. 253, L. 2015.

**20-5-210. Enforcement — exhaustion of administrative remedies.** (1) A person alleging a violation of 20-5-207 through 20-5-210 may seek redress under any available law after exhausting all administrative remedies.

(2) Nothing in this section precludes a person from contacting law enforcement in relation to incidents of bullying at any point in time.

**History:** En. Sec. 4, Ch. 253, L. 2015; amd. Sec. 1, Ch. 216, L. 2017.

**Compiler’s Comments**

*2017 Amendment:* Chapter 216 in (1) after “available law” deleted “either civil or criminal”; inserted (2) concerning contacting law enforcement regarding bullying; and made minor changes in style. Amendment effective April 20, 2017.

## Part 3 Attendance Outside School District

**Part Cross-References**

Rules for determining residence, 1-1-215.

Duty of trustees to provide transportation, 20-10-121.

**20-5-301. Repealed.** Sec. 19, Ch. 563, L. 1993.

**History:** En. 75-6313 by Sec. 126, Ch. 5, L. 1971; amd. Sec. 9, Ch. 266, L. 1977; R.C.M. 1947, 75-6313; amd. Sec. 1, Ch. 655, L. 1985; amd. Sec. 67, Ch. 370, L. 1987; amd. Sec. 22, Ch. 609, L. 1987; amd. Sec. 1, Ch. 492, L. 1989; amd. Sec. 1, Ch. 765, L. 1991.

**20-5-302. Repealed.** Sec. 19, Ch. 563, L. 1993.

**History:** En. 75-6314 by Sec. 127, Ch. 5, L. 1971; R.C.M. 1947, 75-6314.

**20-5-303. Repealed.** Sec. 19, Ch. 563, L. 1993.

History: En. 75-6320 by Sec. 133, Ch. 5, L. 1971; R.C.M. 1947, 75-6320; amd. Sec. 2, Ch. 249, L. 1981; amd. Sec. 1, Ch. 263, L. 1983; amd. Sec. 1, Ch. 611, L. 1985; amd. Sec. 1, Ch. 42, L. 1989; amd. Sec. 186, Ch. 368, L. 1991.

**20-5-304. Repealed.** Sec. 19, Ch. 563, L. 1993.

History: En. 75-6315 by Sec. 128, Ch. 5, L. 1971; R.C.M. 1947, 75-6315.

**20-5-305. Repealed.** Sec. 19, Ch. 563, L. 1993.

History: En. 75-7201 by Sec. 340, Ch. 5, L. 1971; amd. Sec. 2, Ch. 251, L. 1974; R.C.M. 1947, 75-7201; amd. Sec. 1, Ch. 223, L. 1983; amd. Sec. 1, Ch. 279, L. 1987; amd. Sec. 11, Ch. 11, Sp. L. June 1989; amd. Sec. 1, Ch. 380, L. 1991.

**20-5-306. Repealed.** Sec. 19, Ch. 563, L. 1993.

History: En. 75-7202 by Sec. 341, Ch. 5, L. 1971; amd. Sec. 3, Ch. 251, L. 1974; R.C.M. 1947, 75-7202.

**20-5-307. Repealed.** Sec. 19, Ch. 563, L. 1993.

History: En. 75-7203 by Sec. 342, Ch. 5, L. 1971; amd. Sec. 15, Ch. 277, L. 1977; R.C.M. 1947, 75-7203; amd. Sec. 1, Ch. 207, L. 1987; amd. Sec. 29, Ch. 83, L. 1989; amd. Sec. 4, Ch. 767, L. 1991; amd. Sec. 2, Ch. 133, L. 1993.

**20-5-308 through 20-5-310 reserved.****20-5-311. Repealed.** Sec. 19, Ch. 563, L. 1993.

History: En. 75-6316 by Sec. 129, Ch. 5, L. 1971; amd. Sec. 1, Ch. 211, L. 1974; R.C.M. 1947, 75-6316; amd. Sec. 1, Ch. 401, L. 1979; amd. Sec. 1, Ch. 504, L. 1983; amd. Sec. 1, Ch. 652, L. 1985; amd. Sec. 2, Ch. 655, L. 1985; amd. Sec. 1, Ch. 394, L. 1987; amd. Sec. 2, Ch. 765, L. 1991.

**20-5-312. Repealed.** Sec. 19, Ch. 563, L. 1993.

History: En. 75-6317 by Sec. 130, Ch. 5, L. 1971; amd. Sec. 1, Ch. 251, L. 1974; R.C.M. 1947, 75-6317; amd. Sec. 2, Ch. 401, L. 1979; amd. Sec. 2, Ch. 504, L. 1983; amd. Sec. 1, Ch. 70, L. 1985; amd. Sec. 2, Ch. 279, L. 1987; amd. Sec. 3, Ch. 337, L. 1989; amd. Sec. 12, Ch. 11, Sp. L. June 1989; amd. Sec. 2, Ch. 380, L. 1991; amd. Sec. 5, Ch. 767, L. 1991; amd. Sec. 3, Ch. 133, L. 1993.

**20-5-313. Repealed.** Sec. 19, Ch. 563, L. 1993.

History: En. 75-6321 by Sec. 134, Ch. 5, L. 1971; R.C.M. 1947, 75-6321; amd. Sec. 3, Ch. 401, L. 1979; amd. Sec. 1, Ch. 249, L. 1981; amd. Sec. 2, Ch. 263, L. 1983; amd. Sec. 2, Ch. 611, L. 1985; amd. Sec. 187, Ch. 368, L. 1991.

**20-5-314. Reciprocal attendance agreement with adjoining state or province.**

(1) The superintendent of public instruction may execute a reciprocal attendance agreement with the superintendent of public instruction or a department of education of any state or province adjoining Montana to allow a child who is a Montana resident to attend school in the adjoining state or province and a child of the adjoining state or province to attend school in Montana. In negotiating a reciprocal attendance agreement, the tuition rates prescribed by 20-5-323 are waived and the reciprocal tuition rate may be negotiated as a flat amount or an actual-cost-per-pupil amount. The superintendent of public instruction shall supply a copy of any reciprocal attendance agreement that is executed to the county superintendent of each county that may be affected by the agreement.

(2) An out-of-district attendance agreement approved under the provisions of 20-5-320 and 20-5-321 must be completed for a child's attendance at a school outside the state or for an out-of-state child to attend a school in Montana.

History: En. 75-6318 by Sec. 131, Ch. 5, L. 1971; R.C.M. 1947, 75-6318; amd. Sec. 8, Ch. 563, L. 1993.

**20-5-315. Repealed.** Sec. 195, Ch. 575, L. 1981.

History: En. 75-6319 by Sec. 132, Ch. 5, L. 1971; amd. Sec. 1, Ch. 109, L. 1971; R.C.M. 1947, 75-6319.

**20-5-316. Repealed.** Sec. 7, Ch. 529, L. 1997.

History: En. Sec. 11, Ch. 765, L. 1991; Sec. 20-7-437, MCA 1991; redes. 20-5-316 by Sec. 21, Ch. 563, L. 1993.

**20-5-317 through 20-5-319 reserved.**

**20-5-320. Attendance with discretionary approval.** (1) A child may be enrolled in and attend a school in a Montana school district that is outside of the child's district of residence or a public school in a district of another state or province that is adjacent to the county of the child's residence, subject to discretionary approval by the trustees of the resident district and the district of choice. If the trustees grant discretionary approval of the child's attendance in a



school of the district, the parent or guardian may be charged tuition and may be charged for transportation.

(2) (a) Whenever a parent or guardian of a child wishes to have the child attend a school under the provisions of this section, the parent or guardian shall apply to the trustees of the district where the child wishes to attend. The application must be made on an out-of-district attendance agreement form supplied by the district and developed by the superintendent of public instruction.

(b) The attendance agreement must set forth the financial obligations, if any, for tuition and for costs incurred for transporting the child under Title 20, chapter 10.

(c) (i) The trustees of the district of choice may waive any or all of the tuition rate. The trustees of the district of choice may waive the tuition for all students whose tuition is required to be paid by one type of entity and may charge tuition for all students whose tuition is required to be paid by another type of entity. However, any waiver of tuition must be applied equally to all students whose tuition is paid by the same type of entity.

(ii) As used in this subsection (2)(c), "entity" means a parent or guardian or the trustees of the district of residence.

(3) An out-of-district attendance agreement approved under this section requires that the parent or guardian initiate the request for an out-of-district attendance agreement and that the trustees of both the district of residence and the district of choice approve the agreement.

(4) If the trustees of the district of choice waive tuition, approval of the resident district trustees is not required.

(5) The trustees of a school district may approve or disapprove the out-of-district attendance agreement consistent with this part and the policy adopted by the local board of trustees for out-of-district attendance agreements.

(6) The approval of an out-of-district attendance agreement by the applicable approval agents or as the result of an appeal must authorize the child named in the agreement to enroll in and attend the school named in the agreement for the designated school year.

(7) The trustees of the district where the child wishes to attend have the discretion to approve any attendance agreement.

(8) This section does not preclude the trustees of a district from approving an attendance agreement for educational program offerings not provided by the resident district, such as the kindergarten or grades 7 and 8 programs, if the trustees of both districts agree to the terms and conditions for attendance and any tuition and transportation requirement. For purposes of this subsection, the trustees of the resident district shall initiate the out-of-district agreement.

(9) (a) A provision of this title may not be construed to deny a parent or guardian the right to send a child, at personal expense, to any school of a district other than the resident district when the trustees of the district of choice have approved an out-of-district attendance agreement and the parent or guardian has agreed to pay the tuition as prescribed by 20-5-323. However, under this subsection (9), the tuition rate must be reduced by the amount that the parent or guardian of the child paid in district property taxes during the immediately preceding school fiscal year for the benefit and support of the district in which the child will attend school.

(b) For the purposes of this section, "parent or guardian" includes an individual shareholder of a domestic corporation as defined in 35-1-113 whose shares are 95% held by related family members to the sixth degree of consanguinity or by marriage to the sixth degree of affinity.

(c) The tax amount to be credited to reduce any tuition charge to a parent or guardian under subsection (9)(a) is determined in the following manner:

(i) determine the percentage of the total shares of the corporation held by the shareholder parent or parents or guardian;

(ii) determine the portion of property taxes paid in the preceding school fiscal year by the corporation, parent, or guardian for the benefit and support of the district in which the child will attend school.

(d) The percentage of total shares as determined in subsection (9)(c)(i) is the percentage of taxes paid as determined in subsection (9)(c)(ii) that is to be credited to reduce the tuition charge.

(10) As used in 20-5-320 through 20-5-324, the term "guardian" means the guardian of a minor as provided in Title 72, chapter 5, part 2.

**History:** En. Sec. 1, Ch. 563, L. 1993; amd. Sec. 1, Ch. 464, L. 2001.

**20-5-321. Attendance with mandatory approval — tuition and transportation.**

(1) An out-of-district attendance agreement that allows a child to enroll in and attend a school in a Montana school district that is outside of the child's district of residence or in a public school district of a state or province that is adjacent to the county of the child's residence is mandatory whenever:

(a) the child resides closer to the school that the child wishes to attend and more than 3 miles from the school the child would attend in the resident district and the resident district does not provide transportation;

(b) (i) the child resides in a location where, because of geographic conditions between the child's home and the school that the child would attend within the district of residence, it is impractical to attend school in the district of residence, as determined by the county transportation committee based on the following criteria:

(A) the length of time that is in excess of the 1-hour limit for each bus trip for an elementary child as authorized under 20-10-121;

(B) whether distance traveled is greater than 40 miles one way from the child's home to school on a dirt road or greater than a total of 60 miles one way from the child's home to school in the district of residence over the shortest passable route; or

(C) whether the condition of the road or existence of a geographic barrier, such as a river or mountain pass, causes a hazard that prohibits safe travel between the home and school.

(ii) The decision of the county transportation committee is subject to appeal to the superintendent of public instruction, as provided in 20-3-107, but the decision must be considered as final for the purpose of the payment of tuition under 20-5-324(5)(a)(ii) until a decision is issued by the superintendent of public instruction. The superintendent of public instruction may review and rule upon a decision of the county transportation committee without an appeal being filed.

(c) the child is a member of a family that is required to send another child outside of the elementary district to attend high school and the child of elementary age may more conveniently attend an elementary school where the high school is located, provided that the child resides more than 3 miles from an elementary school in the resident district or that the parent is required to move to the elementary district where the high school is located to enroll another child in high school. A child enrolled in an elementary school pursuant to this subsection (1)(c) may continue to attend the elementary school after the other child has left the high school.

(d) the child is under the protective care of a state agency or has been adjudicated to be a youth in need of intervention or a delinquent youth, as defined in 41-5-103; or

(e) the child is required to attend school outside of the district of residence as the result of a placement in foster care or a group home licensed by the state.

(2) (a) Whenever a parent or guardian of a child, an agency of the state, or a court wishes to have a child attend a school under the provisions of this section, the parent or guardian, agency, or court shall complete an out-of-district attendance agreement in consultation with an appropriate official of the district that the child will attend.

(b) The attendance agreement must set forth the financial obligations, if any, for costs incurred for tuition and transportation as provided in 20-5-323 and Title 20, chapter 10.

(c) (i) The trustees of the district of choice may waive any or all of the tuition rate. The trustees of the district of choice may waive the tuition for all students whose tuition is required to be paid by one type of entity and may charge tuition for all students whose tuition is required to be paid by another type of entity. However, any waiver of tuition must be applied equally to all students whose tuition is paid by the same type of entity.

(ii) As used in this subsection (2)(c), "entity" means a parent, a guardian, the trustees of the district of residence, or a state agency.

(3) Except as provided in subsection (4), the trustees of the resident district and the trustees of the district of attendance shall approve the out-of-district attendance agreement. The trustees of the district of attendance shall:

(a) notify the county superintendent of schools of the county of the child's residence of the approval of the agreement within 10 days; and

(b) submit the agreement for a student attending under the provisions of subsection (1)(d) or (1)(e) to the superintendent of public instruction for approval for payment under 20-5-324.

(4) Unless the child is a child with a disability who resides in the district, the trustees of the district where the school to be attended is located may disapprove an out-of-district attendance agreement whenever they find that, because of insufficient room and overcrowding, the accreditation of the school would be adversely affected by the acceptance of the child.

**History:** En. Sec. 2, Ch. 563, L. 1993; amd. Sec. 1, Ch. 32, Sp. L. November 1993; amd. Sec. 1, Ch. 458, L. 1995; amd. Sec. 65, Ch. 546, L. 1995; amd. Sec. 1, Ch. 529, L. 1997; amd. Sec. 2, Ch. 550, L. 1997; amd. Sec. 99(4), Ch. 51, L. 1999; amd. Sec. 2, Ch. 464, L. 2001; amd. Sec. 2, Ch. 463, L. 2005; amd. Sec. 5, Ch. 442, L. 2007; amd. Sec. 2, Ch. 211, L. 2011.

**20-5-322. Residency determination — notification — appeal for attendance agreement.** (1) In considering an out-of-district attendance agreement, except as provided in 20-9-707, the trustees shall determine the child's district of residence on the basis of the provisions of 1-1-215.

(2) Within 10 days of the initial application for an agreement, the trustees of the district of choice shall notify the parent or guardian of the child and the trustees of the district of residence involved in the out-of-district attendance agreement of the anticipated date for approval or disapproval of the agreement.

(3) Within 10 days of approval or disapproval of an out-of-district attendance agreement, the trustees shall provide copies of the approved or disapproved attendance agreement to the parent or guardian and to the child's district of residence.

(4) Within 15 days of receipt of an approved out-of-district attendance agreement, the trustees of the district of residence shall approve or disapprove the agreement under the provisions of this part and forward the completed agreement to the county superintendent of schools of the county of residence, the trustees of the district of choice, and the parent or guardian.

(5) If an out-of-district attendance agreement is disapproved or no action is taken, the parent may appeal the disapproval or lack of action to the county superintendent and, subsequently, to the superintendent of public instruction under the provisions for the appeal of controversies in this title.

(6) For purposes of payment under 20-5-324(2), a nonresident student who becomes a resident by reaching 18 years of age during the school year may continue to have tuition paid on the student's behalf for the duration of the student's enrollment in the district for that school year.

**History:** En. Sec. 3, Ch. 563, L. 1993; amd. Sec. 1, Ch. 132, L. 2005; amd. Sec. 2, Ch. 215, L. 2005; amd. Sec. 22, Ch. 44, L. 2007.

**20-5-323. Tuition and transportation rates.** (1) Except as provided in subsections (2) through (5), whenever a child has approval to attend a school outside of the child's district of residence under the provisions of 20-5-320 or 20-5-321, the rate of tuition charged for a Montana resident student may not exceed 20% of the per-ANB maximum rate established in 20-9-306 for the year of attendance.

(2) The tuition for a child with a disability must be determined under rules adopted by the superintendent of public instruction for the calculation of tuition for special education pupils.

(3) The tuition rate for out-of-district placement pursuant to 20-5-321(1)(d) and (1)(e) for a student without disabilities who requires a program with costs that exceed the average district costs must be determined as the actual individual costs of providing that program according to the following:

(a) the district of attendance and the district, person, or entity responsible for the tuition payments shall approve an agreement with the district of attendance for the tuition cost;

(b) for a Montana resident student, 80% of the maximum per-ANB rate established in 20-9-306, received in the year for which the tuition charges are calculated, must be subtracted from the per-student program costs for a Montana resident student; and

(c) the maximum tuition rate paid to a district under this section may not exceed \$2,500 per ANB.

(4) When a child attends a public school of another state or province, the amount of daily tuition may not be greater than the average annual cost for each student in the child's district of residence. This calculation for tuition purposes is determined by totaling all of the expenditures for all of the district budgeted funds for the preceding school fiscal year and dividing that

amount by the October 1 enrollment in the preceding school fiscal year. For the purposes of this subsection, the following do not apply:

- (a) placement of a child with a disability pursuant to Title 20, chapter 7, part 4;
- (b) placement made in a state or province with a reciprocal tuition agreement pursuant to 20-5-314;
- (c) an order issued under Title 40, chapter 4, part 2; or
- (d) out-of-state placement by a state agency.
- (5) When a child is placed by a state agency in an out-of-state residential facility, the state agency making the placement is responsible for the education costs resulting from the placement.
- (6) The amount, if any, charged for transportation may not exceed the lesser of the average transportation cost for each student in the child's district of residence or 35 cents a mile. The average expenditures for the district transportation fund for the preceding school fiscal year must be calculated by dividing the transportation fund expenditures by the October 1 enrollment for the preceding fiscal year.

**History:** En. Sec. 4, Ch. 563, L. 1993; amd. Sec. 60, Ch. 633, L. 1993; amd. Sec. 2, Ch. 529, L. 1997; amd. Sec. 99(4), Ch. 51, L. 1999; amd. Sec. 1, Ch. 409, L. 2001; amd. Sec. 3, Ch. 464, L. 2001; amd. Sec. 1, Ch. 462, L. 2005; amd. Sec. 5, Ch. 4, Sp. L. December 2005.

**20-5-324. Tuition report and payment provisions.** (1) Following the close of each school fiscal year, the trustees of a district shall report to the superintendent of public instruction:

- (a) the name and district of residence of each child who attended a school of the district under a mandatory out-of-district attendance agreement approved under the provisions of 20-5-321(1)(d) or (1)(e) in the previous school year;

- (b) the number of days of enrollment for each child reported under the provisions of subsection (1)(a);

- (c) the annual tuition rate for each child's tuition payment, as determined under the provisions of 20-5-323, and the tuition cost for each child reported under the provisions of subsection (1)(a);

- (d) the names, districts of attendance, and amount of tuition paid by the district for resident students attending public schools out of state in the previous school year; and

- (e) the names, schools of attendance, and amount of tuition to be paid by the district for resident students attending day-treatment programs under approved individualized education programs at private, nonsectarian schools in the previous school year.

(2) Subject to the limitations of 20-5-323, the superintendent of public instruction shall:

- (a) pay the district of attendance the amount of the tuition obligation reported under subsection (1)(c), prorated for the actual days of enrollment;

- (b) determine the total per-ANB entitlement for which the district would have been eligible if the students reported in subsections (1)(d) and (1)(e) had been enrolled in the resident district in the prior year; and

- (c) reimburse the district of residence for the state portion of the per-ANB entitlement for each student, not to exceed the district's actual payment of tuition or fees for service for the student in the previous year.

(3) In order to be eligible to receive payment under subsection (2), the trustees of the district of attendance shall submit the report required by subsection (1) within the school fiscal year following the year of attendance.

(4) Notwithstanding the requirements of subsection (5)(a), tuition payment provisions for out-of-district placement of students with disabilities must be determined pursuant to Title 20, chapter 7, part 4.

(5) (a) (i) When a child has approval to attend a school outside the child's district of residence at the resident district's expense under the provisions of 20-5-320 or 20-5-321(1)(a) or (1)(b) or when a child has approval to attend a day-treatment program under an approved individualized education program at a private, nonsectarian school located in or outside of the child's district of residence, the district of residence shall finance the tuition amount from the levy authorized to support the district tuition fund and any transportation amount from the levy authorized to support the transportation fund.

(ii) By December 31 of the school fiscal year following the year of attendance, the district of residence shall pay at least one-half of any tuition and transportation obligation established under subsection (5)(a)(i) out of the money realized to date from the district tuition or transportation fund levy. The remaining tuition and transportation obligation must be paid by June 15 of the school fiscal year following the year of attendance.

(iii) In addition to use of a tuition levy to pay tuition for out-of-district attendance of a resident pupil, a school district may also include in its tuition levy an amount necessary to pay for the full costs of providing a free appropriate public education, as defined in 20-7-401, in the district to any child with a disability who lives in the district. The amount of the levy imposed for the costs associated with educating each child with a disability under this subsection (5)(a)(iii) is limited to the actual cost of service under the child's individualized education program minus:

- (A) the student's state special education payment;
- (B) the student's federal special education payment;
- (C) the student's per-ANB amount;
- (D) the prorated portion of the district's basic entitlement for each qualifying student; and
- (E) the prorated portion of the district's general fund payments in 20-9-327 through 20-9-330 for each qualifying student.

(b) When a child has approval to attend a school outside the child's district of residence because of a parent's or guardian's request under the provisions of 20-5-320 or 20-5-321(1)(c), the parent or guardian of the child shall finance the tuition and transportation amount.

(6) (a) Except as provided in subsections (6)(b) through (6)(d), the district shall credit tuition receipts to the district general fund and transportation receipts to the transportation fund.

(b) Any tuition receipts received under the provisions of 20-5-323(3) for the current school fiscal year that exceed the tuition receipts of the prior year may be deposited in the district miscellaneous programs fund and must be used for that year in the manner provided for in 20-9-507 to support the costs of the program for which the tuition was received.

(c) Any tuition receipts received for the current school fiscal year for a pupil who is a child with a disability that exceed the tuition amount received for a pupil without disabilities may be deposited in the district miscellaneous programs fund and must be used for that year in the manner provided for in 20-9-507 to support the costs of the program for which the tuition was received.

(d) Any other tuition receipts received for the current school fiscal year that exceed the tuition receipts of the prior year may be deposited in the district miscellaneous programs fund and may be used for that year in the manner provided for in that fund. For the ensuing school fiscal year, the receipts must be credited to the district general fund budget.

(7) The reimbursements paid under subsection (2)(c) must be deposited into the district tuition fund and must be used by the district to pay obligations for resident students attending public schools out of state or for resident students attending day-treatment programs under approved individualized education programs at private, nonsectarian schools at district expense.

(8) The provisions of this section do not apply to out-of-state placements made by a state agency pursuant to 20-7-422.

**History:** En. Sec. 5, Ch. 563, L. 1993; amd. Sec. 27, Ch. 509, L. 1995; amd. Sec. 9, Ch. 22, L. 1997; amd. Sec. 1, Ch. 389, L. 1997; amd. Sec. 3, Ch. 529, L. 1997; amd. Sec. 99(4), Ch. 51, L. 1999; amd. Sec. 4, Ch. 464, L. 2001; amd. Sec. 1, Ch. 130, L. 2003; amd. Sec. 3, Ch. 463, L. 2005; amd. Sec. 1, Ch. 305, L. 2013.

## Part 4 Health

### Part Cross-References

Duty of trustees to retain physician and nurse and to visit schools to examine conditions, 20-3-324.  
Contributions by school boards to health boards authorized, 50-2-113.

**20-5-401. Repealed.** Sec. 13, Ch. 147, L. 1979.

**History:** En. 75-5933 by Sec. 62, Ch. 5, L. 1971; amd. Sec. 1, Ch. 69, L. 1973; amd. Sec. 1, Ch. 280, L. 1973; R.C.M. 1947, 75-5933(19).

**20-5-402. Definitions.** As used in this part, the following definitions apply:

(1) "Department" means the department of public health and human services provided for in 2-15-2201.



(2) “Governing authority” means the board of trustees of a school district or the administrator of a private school, preschool, or postsecondary school.

(3) “Immunization” means induction of a state of resistance to a disease through administration of an immunizing agent.

(4) “Local health department” means a city, city-county, county, or district health department.

(5) “Local health officer” means a city, city-county, county, or district health officer.

(6) “Postsecondary school” means a community college, a unit of the Montana university system, or a private university or college.

(7) “Preschool” means a place or facility that provides, on a regular basis and as its primary purpose, educational instruction designed for children 5 years of age or younger and that:

(a) serves no child under 5 years of age for more than 3 hours a day; and

(b) serves no child 5 years of age for more than 6 hours a day.

(8) “School” means a place or institution for the teaching of individuals, the curriculum of which is composed of the work of:

(a) any combination of kindergarten through grade 12;

(b) a postsecondary school; or

(c) a preschool.

**History:** En. Sec. 1, Ch. 147, L. 1979; amd. Sec. 1, Ch. 644, L. 1989; amd. Sec. 12, Ch. 308, L. 1995; amd. Sec. 47, Ch. 418, L. 1995; amd. Sec. 66, Ch. 546, L. 1995.

**20-5-403. Immunization required — release and acceptance of immunization records.** (1) The governing authority of any school other than a postsecondary school may not allow a person to attend as a pupil unless the person:

(a) has been immunized against varicella, diphtheria, pertussis, tetanus, poliomyelitis, rubella, mumps, and measles (rubeola) in the manner and with immunizing agents approved by the department;

(b) has been immunized against *Haemophilus influenza* type “b” before enrolling in a preschool if under 5 years of age;

(c) qualifies for conditional attendance; or

(d) files for an exemption.

(2) (a) The governing authority of a postsecondary school may not allow a person to attend as a pupil unless the person:

(i) has been immunized against rubella and measles (rubeola) in the manner and with immunizing agents approved by the department; or

(ii) files for an exemption.

(b) The governing authority of a postsecondary school may impose immunization requirements as a condition of attendance that are more stringent than those required by this part.

(3) A pupil who transfers from one school district to another may photocopy immunization records in the possession of the school of origin. The school district to which a pupil transfers shall accept the photocopy as evidence of immunization. Within 30 days after a transferring pupil ceases attendance at the school of origin, the school shall retain a certified copy for the permanent record and send the original immunization records for the pupil to the school district to which the pupil transfers.

**History:** En. Sec. 2, Ch. 147, L. 1979; amd. Sec. 1, Ch. 509, L. 1981; amd. Sec. 1, Ch. 102, L. 1983; amd. Sec. 2, Ch. 644, L. 1989; amd. Sec. 1, Ch. 165, L. 1991; amd. Sec. 1, Ch. 156, L. 2005; amd. Sec. 1, Ch. 124, L. 2015.

#### **Cross-References**

Regulation of schools in matters of health, 50-1-206.

**20-5-404. Conditional attendance.** The governing authority of a school other than a postsecondary school may allow the commencement of attendance in school by a person who has not been immunized against each disease listed in 20-5-403 if that person has received one or more doses of the vaccine for each disease listed in 20-5-403, except that *Haemophilus influenza* type “b” vaccine is required only for children under 5 years of age.

**History:** En. Sec. 3, Ch. 147, L. 1979; amd. Sec. 2, Ch. 102, L. 1983; amd. Sec. 3, Ch. 644, L. 1989; amd. Sec. 2, Ch. 165, L. 1991; amd. Sec. 2, Ch. 124, L. 2015.

**20-5-405. Medical or religious exemption.** (1) When a parent, guardian, or adult who has the responsibility for the care and custody of a minor seeking to attend school or the person seeking to attend school, if an adult, signs and files with the governing authority, prior to the commencement of attendance each school year, a notarized affidavit on a form prescribed by the department stating that immunization is contrary to the religious tenets and practices of the signer, immunization of the person seeking to attend the school may not be required prior to attendance at the school. The statement must be maintained as part of the person's immunization records. A person who falsely claims a religious exemption is subject to the penalty for false swearing provided in 45-7-202.

(2) When a parent, guardian, or adult who has the responsibility for the care and custody of a minor seeking to attend school or the person seeking to attend school, if an adult, files with the governing authority a written statement signed by a physician licensed to practice medicine in any jurisdiction of the United States or Canada stating that the physical condition of the person seeking to attend school or medical circumstances relating to the person indicate that some or all of the required immunizations are not considered safe and indicating the specific nature and probable duration of the medical condition or circumstances that contraindicate immunization, the person is exempt from the requirements of this part to the extent indicated by the physician's statement. The statement must be maintained as part of the person's immunization records.

(3) Whenever there is good cause to believe that a person for whom an exemption has been filed under this section has a disease or has been exposed to a disease listed in 20-5-403 or will as the result of school attendance be exposed to the disease, the person may be excluded from the school by the local health officer or the department until the excluding authority is satisfied that the person no longer risks contracting or transmitting that disease.

**History:** En. Sec. 4, Ch. 147, L. 1979; amd. Sec. 3, Ch. 102, L. 1983; amd. Sec. 4, Ch. 644, L. 1989; amd. Sec. 299, Ch. 56, L. 2009.

**20-5-406. Immunization record.** The governing authority of each school shall require written evidence of each pupil's immunization against the diseases listed in 20-5-403 and shall record the immunization of each pupil as part of the pupil's permanent school record on a form prescribed by the department.

**History:** En. Sec. 5, Ch. 147, L. 1979; amd. Sec. 300, Ch. 56, L. 2009.

**Cross-References**

Public records, Title 2, ch. 6.

**20-5-407. Rulemaking.** The department may adopt rules necessary to implement the provisions of this part.

**History:** En. Sec. 6, Ch. 147, L. 1979.

**Cross-References**

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

**20-5-408. Enforcement.** (1) The governing authority of any school other than a postsecondary school shall prohibit from further attendance any pupil allowed to attend conditionally who has failed to obtain the immunizations required by 20-5-403(1) within time periods established by the department until that pupil has been immunized as required by the department or unless that pupil has been exempted under 20-5-405.

(2) Each governing authority shall file a written report on the immunization status of all pupils under its jurisdiction with the department and the local health department at times and on forms prescribed by the department.

(3) The local and state health departments shall have access to all information relating to immunization of any pupil in any school.

**History:** En. Sec. 7, Ch. 147, L. 1979; amd. Sec. 4, Ch. 102, L. 1983; amd. Sec. 5, Ch. 644, L. 1989.

**20-5-409. Failure to immunize or claim exemption — injunction.** (1) A parent, guardian, or adult having the responsibility for the care and custody of a minor required by law to attend school shall elect to do one of the following:

(a) present evidence to the school that the minor has been immunized against the diseases specified in 20-5-403;

(b) take action to fully immunize the minor against the diseases listed in 20-5-403, in the manner and with immunizing agents approved by the department;

(c) file for an exemption pursuant to 20-5-405.

(2) If, as a result of the parent, guardian, or responsible adult's failure to make the election referred to in subsection (1), the minor is excluded from school, the department or the local health department may seek an injunction requiring the parent, guardian, or responsible adult to elect and perform one of the alternatives listed in subsection (1).

(3) Injunction is the exclusive remedy for failure to take any of the actions referred to in subsection (1).

**History:** En. Sec. 8, Ch. 147, L. 1979.

**Cross-References**

Issuance of injunctions on nonjudicial days, 3-1-302, 3-5-302.

Contempts, Title 3, ch. 1, part 5.

Affidavits, Title 26, ch. 1, part 10.

Injunctions, Title 27, ch. 19.

**20-5-410. Civil penalty.** (1) Any person who violates any provision of this part, any rule promulgated under this part, or any order made pursuant to this part, with the exception of 20-5-409 and any rule adopted or order issued pursuant to 20-5-409, is subject to a civil penalty not to exceed \$500. The department or the local health department may institute and maintain any enforcement proceedings hereunder.

(2) Action under subsection (1) is not a bar to enforcement of this part or of rules or orders made under it by injunction or other appropriate civil remedies.

(3) An action for a civil remedy to enforce this part or rules or orders made under it may be brought in the district court of any county where a violation occurs or is threatened.

**History:** En. Sec. 9, Ch. 147, L. 1979.

**20-5-411. Renumbered 20-1-220.** Code Commissioner, 1997.

**20-5-412. Definition — parent-designated adult — administration of glucagon — training.** (1) As used in 20-5-413 and this section, “parent-designated adult” means a school district employee, selected by a parent, an individual who has executed a caretaker relative educational authorization affidavit pursuant to 20-5-503, an individual who has executed a caretaker relative medical authorization affidavit pursuant to 40-6-502, or a guardian of a diabetic student, who voluntarily agrees to administer glucagon to the student.

(2) A parent, an individual who has executed a caretaker relative educational authorization affidavit pursuant to 20-5-503, an individual who has executed a caretaker relative medical authorization affidavit pursuant to 40-6-502, or a guardian of a diabetic student may designate an adult to administer glucagon to the student as provided in subsection (3). Written proof of the designation by a parent, an individual who has executed a caretaker relative educational authorization affidavit pursuant to 20-5-503, an individual who has executed a caretaker relative medical authorization affidavit pursuant to 40-6-502, or a guardian and acceptance of the designation by the parent-designated adult must be filed with the school district.

(3) A parent-designated adult may administer glucagon to a diabetic student in an emergency situation. The glucagon must be provided by the parent, an individual who has executed a caretaker relative educational authorization affidavit pursuant to 20-5-503, an individual who has executed a caretaker relative medical authorization affidavit pursuant to 40-6-502, or a guardian of the student.

(4) A parent-designated adult must be trained in recognizing hypoglycemia and the proper method of administering glucagon. Training must be provided by a health care professional, as defined in 33-36-103, or a recognized expert in diabetic care selected by the parent, an individual who has executed a caretaker relative educational authorization affidavit pursuant to 20-5-503, an individual who has executed a caretaker relative medical authorization affidavit pursuant to 40-6-502, or a guardian. Written documentation of the training received by the parent-designated adult must be filed with the school district.

**History:** En. Sec. 1, Ch. 421, L. 2003; amd. Sec. 3, Ch. 393, L. 2007; amd. Sec. 6, Ch. 442, L. 2007.

**20-5-413. Limits on liability.** (1) A parent-designated adult who administers glucagon pursuant to 20-5-412 is not liable to a person for civil damages resulting from administering the glucagon unless the acts or omission is the result of gross negligence, willful or wanton misconduct, or an intentional tort.

(2) The school district employing the parent-designated adult is not liable to a person for civil damages resulting from the administration of the glucagon unless the acts or omission is the result of gross negligence, willful or wanton misconduct, or an intentional tort.

**History:** En. Sec. 2, Ch. 421, L. 2003.

**20-5-414 through 20-5-419 reserved.**

**20-5-420. Self-administration or possession of asthma, severe allergy, or anaphylaxis medication.** (1) As used in 20-5-421 and this section, the following definitions apply:

(a) “Anaphylaxis” means a systemic allergic reaction that can be fatal in a short time period and is also known as anaphylactic shock.

(b) “Asthma” means a chronic disorder or condition of the lungs that requires lifetime, ongoing medical intervention.

(c) “Medication” means a medicine, including inhaled bronchodilators, inhaled corticosteroids, and autoinjectable epinephrine, prescribed by a licensed physician as defined in 37-3-102, a physician assistant who has been authorized to prescribe medications as provided in 37-20-404, or an advanced practice registered nurse with prescriptive authority as provided in 37-8-202(1)(h).

(d) “Self-administration” means a pupil’s discretionary use of the medication prescribed for the pupil.

(e) “Severe allergies” means a life-threatening hypersensitivity to a specific substance such as food, pollen, or dust.

(2) A school, whether public or nonpublic, shall permit the possession or self-administration of medication, as prescribed, by a pupil with asthma, severe allergies, or anaphylaxis if the parents or guardians of the pupil provide to the school:

(a) written authorization, acknowledging and agreeing to the liability provisions in subsection (4), for the possession or self-administration of medication as prescribed;

(b) a written statement from the pupil’s physician, physician assistant, or advanced practice registered nurse containing the following information:

(i) the name and purpose of the medication;

(ii) the prescribed dosage; and

(iii) the time or times at which or the special circumstances under which the medication is to be administered as prescribed;

(c) documentation that the pupil has demonstrated to the health care practitioner and the school nurse, if available, the skill level necessary to self-administer the asthma, severe allergy, or anaphylaxis medication as prescribed; and

(d) documentation that the pupil’s physician, physician assistant, or advanced practice registered nurse has formulated a written treatment plan for managing asthma, severe allergies, or anaphylaxis episodes of the pupil and for medication use, as prescribed, by the pupil during school hours.

(3) The information provided by the parents or guardians must be kept on file in the office of the school nurse or, in the absence of a school nurse, the school’s administrator.

(4) The school district or nonpublic school and its employees and agents are not liable as a result of any injury arising from the self-administration of medication by the pupil unless an act or omission is the result of gross negligence, willful and wanton conduct, or an intentional tort. The parents or guardians of the pupil must be given a written notice and sign a statement acknowledging that the school district or nonpublic school may not incur liability as a result of any injury arising from the self-administration of medication by the pupil and that the parents or guardians shall indemnify and hold harmless the school district or nonpublic school and its employees and agents against any claims, except a claim based on an act or omission that is the result of gross negligence, willful or wanton misconduct, or an intentional tort.

(5) The permission for self-administration of asthma, severe allergy, or anaphylaxis medication is effective for the school year for which it is granted and must be renewed each subsequent school year or, if the medication expires or the dosage, frequency of administration, or other conditions change, upon fulfillment of the requirements of this section.

(6) If the requirements of this section are fulfilled, a pupil with asthma, severe allergies, or anaphylaxis may possess and use the pupil's medication as prescribed:

- (a) while in school;
- (b) while at a school-sponsored activity;
- (c) while under the supervision of school personnel;
- (d) before or after normal school activities, such as while in before-school or after-school care on school-operated property; or
- (e) while in transit to or from school or school-sponsored activities.

(7) If provided by the parent, an individual who has executed a caretaker relative educational authorization affidavit pursuant to 20-5-503, an individual who has executed a caretaker relative medical authorization affidavit pursuant to 40-6-502, or a guardian and in accordance with documents provided by the pupil's physician, physician assistant, or advanced practice registered nurse, asthma, severe allergy, or anaphylaxis medication may be kept by the pupil and backup medication must be kept at a pupil's school in a predetermined location or locations to which the pupil has access in the event of an asthma, severe allergy, or anaphylaxis emergency.

(8) Immediately after using epinephrine during school hours, a student shall report to the school nurse or other adult at the school who shall provide followup care, including making a 9-1-1 emergency call.

(9) Youth correctional facilities are exempt from this section and shall adopt policies related to access and use of asthma, severe allergy, or anaphylaxis medications.

**History:** En. Sec. 1, Ch. 306, L. 2005; amd. Sec. 33, Ch. 519, L. 2005; amd. Sec. 23, Ch. 44, L. 2007; amd. Sec. 1, Ch. 346, L. 2007; amd. Sec. 4, Ch. 393, L. 2007; amd. Sec. 7, Ch. 442, L. 2007; amd. Sec. 1, Ch. 189, L. 2013.

**20-5-421. Emergency use of epinephrine in school setting.** A school, whether public or nonpublic, may maintain a stock supply of autoinjectable epinephrine to be administered by a school nurse or other authorized personnel to any student or nonstudent as needed for actual or perceived anaphylaxis. A school that intends to obtain an order for emergency use of epinephrine in a school setting or at related activities shall adhere to the following requirements:

(1) A school that stocks an epinephrine autoinjector shall develop a protocol related to the training of school employees, the maintenance and location of the epinephrine autoinjector, and immediate and long-term followup to the administration of the medication, including making a 9-1-1 emergency call.

(2) The epinephrine autoinjector must be prescribed by a physician, advanced practice registered nurse, or physician assistant. The school must be designated as the patient, and each prescription for an epinephrine autoinjector must be filled by a licensed pharmacy.

(3) The school shall provide training to authorized personnel. The training must include causes of anaphylaxis, recognition of signs and symptoms of anaphylaxis, indications for the administration of epinephrine, the administration technique, and the need for immediate access to a certified emergency responder. Training must be provided by a school nurse, certified emergency responder, or other health care professional.

(4) The epinephrine autoinjector must be kept in a secure and easily accessible location.

(5) A school nurse or other authorized personnel may, in good faith, administer the epinephrine to any student or nonstudent who is experiencing a potential life-threatening anaphylactic reaction based on the protocol developed by the school.

(6) If a school stocks an epinephrine autoinjector that has been prescribed to the school, that school shall inform parents or guardians about the potential use of the epinephrine autoinjector in an anaphylactic emergency. The school shall make the protocol available upon request.

(7) In accordance with the provisions of 27-1-714, a school district or nonpublic school and its employees and agents are not liable as a result of any injury arising from the administration of epinephrine to a student or nonstudent unless an act or omission is the result of gross negligence, willful or wanton misconduct, or an intentional tort.

**History:** En. Sec. 2, Ch. 189, L. 2013.

**20-5-422 through 20-5-425 reserved.**



**20-5-426. Emergency use of opioid antagonist in school setting — limit on liability.**

(1) A school, whether public or nonpublic, may maintain a stock supply of an opioid antagonist to be administered by a school nurse or other authorized personnel to any student or nonstudent as needed for an actual or perceived opioid overdose. A school that intends to obtain an order for emergency use of an opioid antagonist in a school setting or at related activities shall adhere to the following requirements:

(a) A school that stocks an opioid antagonist shall develop a protocol related to the training of school employees, the maintenance and location of the opioid antagonist, and immediate and long-term followup to the administration of the medication, including making a 9-1-1 emergency call.

(b) The opioid antagonist must be prescribed by a physician, advanced practice registered nurse, or physician assistant. The school must be designated as the patient, and each prescription for an opioid antagonist must be filled by a licensed pharmacy.

(c) The school shall provide training to authorized personnel. The training must include causes of opioid overdose, recognition of signs and symptoms of opioid overdose, indications for the administration of an opioid antagonist, administration technique, and the need for immediate access to a certified emergency responder. Training must be provided by a school nurse, certified emergency responder, or other health care professional.

(d) The opioid antagonist must be kept in a secure and easily accessible location.

(e) A school nurse or other authorized personnel may, in good faith, administer the opioid antagonist to any student or nonstudent who is experiencing a potential life-threatening opioid overdose based on the protocol developed by the school.

(f) If a school stocks an opioid antagonist that has been prescribed to the school, that school shall inform parents or guardians about the potential use of the opioid antagonist in an opioid overdose emergency. The school shall make the protocol available upon request.

(g) A school district or nonpublic school and its employees and agents are not liable as a result of any injury arising from the administration of an opioid antagonist to a student or nonstudent unless an act or omission is the result of gross negligence, willful or wanton misconduct, or an intentional tort.

(2) For the purposes of this section, “opioid antagonist” means a drug that binds to opioid receptors and blocks or inhibits the effect of opioids acting on those receptors, including but not limited to naloxone hydrochloride or any other similarly acting drug approved by the United States food and drug administration.

**History:** En. Sec. 1, Ch. 154, L. 2017.

**Compiler’s Comments**

*Effective Date:* Section 4, Ch. 154, L. 2017, provided: “[This act] is effective July 1, 2017.”

## **Part 5**

### **Enrollment of Pupil by Caretaker Relative**

**20-5-501. Purpose — legislative intent — parental rights — definitions.** (1) The legislature recognizes that the rights of parents to the custody and control of a child are based upon liberties secured by the United States and Montana constitutions and that a parent’s rights to that custody and control of a child are therefore normally supreme to the interests of other persons. The legislature also recognizes a growing phenomenon in which absent or otherwise unavailable parents have temporarily surrendered the custody and care of their children to a grandparent or other relative for lengthy periods of time. Regardless of the purpose of the absence, a child willfully surrendered to a relative for an extended time period still has the same needs as a child in the care of its parents. In this situation, a caretaker relative assumes responsibilities for the child but has no legal right of control over the child, a situation that interferes in the caretaker relative’s ability to perform routine functions of child rearing, including tending to the educational and educationally related medical needs of the child. It is therefore the purpose of the legislature in these instances to protect the rights of a child granted by Article II, section 15, of the Montana constitution by granting a caretaker relative limited authority for a child left in the relative’s care.

(2) It is the intent of the legislature that a caretaker relative given the responsibility of caring for a child with little or no warning and without any other provision having been made

for the child's care, such as the appointment of a guardian or the provision of a power of attorney, be granted authority to enroll the child in school, discuss with the school district the child's educational progress, and consent to an educational service and to medical care for the child related to an educational service without superseding any parental rights regarding the child.

(3) This part is not intended to affect the rights and responsibilities of a parent, legal guardian, or other custodian regarding the child, does not grant legal custody of the child to the caretaker relative, and does not grant authority to the caretaker relative to consent to the marriage or adoption of the child or to receive notice of a medical procedure, including abortion, not consented to by the relative, if notice is required by law, for the child except as expressly provided in this section.

(4) For the purposes of this part, the following definitions apply:

(a) "Caretaker relative" or "relative" means an individual related by blood, marriage, or adoption by another individual to the child whose care is undertaken by the relative, but who is not a parent, foster parent, stepparent, or legal guardian of the child.

(b) "Caretaker relative educational authorization affidavit" or "affidavit" means an affidavit completed in compliance with 20-5-503.

(c) "Health care provider" means a person who provides medical care.

(d) "Medical care" means care by a health care provider, for which parental consent is normally required, for the prevention, diagnosis, or treatment of a mental, physical, or dental injury or disease.

(e) "Parent" means a biological parent, adoptive parent, or other legal guardian of the child whose parental rights have not been terminated.

**History:** En. Sec. 1, Ch. 442, L. 2007.

**20-5-502. Enrollment by caretaker relative — residency — affidavit.** (1) A caretaker relative of a child who has voluntarily been given custody of the child by a parent of the child may, in accordance with this section, enroll the child in school using the rules of residence provided in 1-1-215 if:

(a) in leaving the child with the caretaker relative, the parent expressed no definite time period in which the parent would return for the child;

(b) the child is residing with the caretaker relative on a full-time basis;

(c) the caretaker relative is unable to contact either of the parents after the parents voluntarily leave the child with the caretaker relative or a parent whom the caretaker relative is able to contact is unable or unwilling to regain custody of the child;

(d) no adequate provision, such as the appointment of a guardian ad litem or execution of a power of attorney, has otherwise been made for the educational needs of the child; and

(e) a caretaker relative educational authorization affidavit is completed in compliance with 20-5-503.

(2) A caretaker relative of a child who has voluntarily been given custody of the child by a parent of the child may enroll the child in school unless the child's residency with the caretaker relative is primarily for the purpose of:

(a) attending a particular school; or

(b) participating in athletics at a particular school.

(3) If the child was subject to formal disciplinary action, including suspension or expulsion, at the child's previous school, the school district in which the caretaker relative seeks to enroll the child may either implement the previous school district's disciplinary action without further due process or hold a hearing and determine whether the student's conduct in the previous school district merits denial of enrollment. If the district decides to enroll the child, then the school district may require the child to comply with a behavior contract as a condition of enrollment.

(4) The school district may require additional reasonable evidence that the caretaker relative lives at the address provided in the affidavit.

**History:** En. Sec. 2, Ch. 442, L. 2007; amd. Sec. 3, Ch. 211, L. 2011.

**20-5-503. Caretaker relative educational authorization affidavit — use — immunity — format.** (1) A caretaker relative of a child who has voluntarily been given custody of the child by a parent of the child has the same authority as a custodial parent of the child to discuss with an educator the educational progress of the child, consent to an educational

service, and consent to medical care related to an educational service for the child for which parental consent is usually required if a caretaker relative educational authorization affidavit is completed in compliance with this section.

(2) An affidavit is effective only if it is signed by the caretaker relative, under oath, before a notary public. A clear photographic copy of an affidavit completed in compliance with this section is sufficient in any instance in which an original is required by a school official or health care provider.

(3) Unless parental rights have been judicially terminated or unless the ability to give legal consent for the child to receive an educational service and any medical care related to the educational service for which parental consent is usually required has been granted to the caretaker relative pursuant to 40-4-211 and 40-4-228, a decision by a parent of the child communicated to a school official, a health care provider, or both, regarding the child supersedes a conflicting decision by a caretaker relative made pursuant to an affidavit completed in compliance with this section. However, a decision by a parent does not supersede a decision by a caretaker relative pursuant to an affidavit completed in compliance with this section if the decision by the parent endangers the life of the child. A school official or health care provider may require reasonable proof of authenticity of a decision by a parent intended to supersede a decision by a caretaker relative.

(4) (a) A public or private entity or individual who acts in good faith reliance on a caretaker relative educational authorization affidavit completed in compliance with this section and who has no actual knowledge of facts contrary to those indicated in the affidavit is not subject to civil liability or criminal prosecution or to a professional disciplinary procedure for an action that would have been proper if the facts had been as the entity or individual believed them to be.

(b) This subsection (4) applies even if an educational service or educationally related medical care, or both, are provided to a child against the wishes of a parent of that child if the person rendering the service does not have actual knowledge of the parent's wishes.

(5) A person who relies on an affidavit completed in compliance with this section has no obligation to make further inquiry or investigation.

(6) An affidavit completed in compliance with this section is effective for the earlier of:

(a) the end of the first school year after delivery of the affidavit to a school district;

(b) until it has been revoked by the caretaker relative; or

(c) until the child no longer resides with the caretaker relative.

(7) If the child ceases to live with the caretaker relative or the caretaker relative revokes the affidavit, the caretaker relative shall provide written notice of that fact to all persons to whom the caretaker relative has given the affidavit or to whom the caretaker relative has caused the affidavit to be given.

(8) This section does not relieve a person from a violation of other law, and this section does not affect the rights of a child's parent except as provided in this section.

(9) A caretaker relative educational authorization affidavit is invalid unless it is written in substantially the following form and contains the warning provided for in paragraph 5 of the format below:

**CARETAKER RELATIVE'S  
EDUCATIONAL AUTHORIZATION AFFIDAVIT**  
Use of this affidavit is authorized by **20-5-503, MCA.**

1. **INSTRUCTIONS:** The completion and signing of the affidavit before a notary public are sufficient to authorize educational enrollment and services and school-related medical care for the named child. Please print clearly.

The child named below lives in my home, and I am 18 years of age or older.

a. Name of child:

b. Child's date of birth:

c. My name (caretaker relative):

d. My home address:

e. My relationship to the child (the caretaker relative must be an individual related by blood, marriage, or adoption by another individual to the child whose care is undertaken by the

caretaker relative, but who is not a parent, foster parent, stepparent, or legal guardian of the child):

2. I hereby certify that this affidavit is not being used for the purpose of circumventing school residency laws, to take advantage of a particular academic program or athletic activity, to circumvent a disciplinary action of a previous school, or for an otherwise unlawful purpose.

3. My date and year of birth:

4. Check the following if true (all must be checked for this affidavit to apply):

☐ A parent of the child identified in paragraph 1a of this affidavit has left the child with me and has expressed no definite time period when the parent will return for the child.

☐ The child is now residing with me on a full-time basis.

☐ No adequate provision, such as appointment of a legal custodian or guardian or execution of a notarized power of attorney, has been made for enrollment of the child in school, other educational services, or educationally related medical services.

5. **WARNING: DO NOT SIGN THIS FORM IF ANY OF THE STATEMENTS ABOVE ARE INCORRECT OR YOU WILL BE COMMITTING A CRIME PUNISHABLE BY A FINE, IMPRISONMENT, OR BOTH.**

6. I declare under penalty of false swearing under the laws of Montana that the foregoing is true and correct.

Signed this .... day of ....., 20....

.....

(Signature of caretaker relative)

.....

(Signature, county, state, and seal of notary public)

7. **NOTICES TO CARETAKER RELATIVE:**

a. Completion of this affidavit does not affect the rights of the child's parents or legal guardian regarding the care, custody, and control of the child and does not mean that the caretaker relative has legal custody of the child.

b. A person who relies on this affidavit has no obligation to make any further inquiry or investigation.

c. This affidavit is effective until the earlier of:

i. the end of the first school year after delivery of the affidavit to a school district;

ii. revocation by the caretaker relative; or

iii. the child no longer resides with the caretaker relative.

d. If the child stops living with you, you shall notify anyone to whom you have given this affidavit.

**History:** En. Sec. 3, Ch. 442, L. 2007; amd. Sec. 1, Ch. 149, L. 2009; amd. Sec. 4, Ch. 211, L. 2011.

## CHAPTER 6 SCHOOL DISTRICTS

### Part 1 — School Districts — General Provisions

20-6-101. Definition of elementary and high school districts.

20-6-102. Confirmation of existing district boundaries.

20-6-103. Permanent record of district boundaries.

20-6-104. Moratorium on creation of new district — exceptions.

20-6-105. Transfer of territory from one district to another — hearing on effects of proposed transfer — burden of proof — standard of proof — appeal to district court.

20-6-106 through 20-6-109 reserved.

20-6-110. Student construction project — disclosure — immunity.

### Part 2 — Elementary School Districts

20-6-201. Elementary district classification.

20-6-202. Time limitation for boundary changes.

20-6-203. Repealed.

20-6-204. Repealed.

20-6-205. Repealed.

20-6-206. Repealed.

20-6-207. Repealed.

20-6-208. Repealed.

20-6-209. Elementary district abandonment.

20-6-210. Repealed.

- 20-6-211. Repealed.
- 20-6-212. Repealed.
- 20-6-213. Repealed.
- 20-6-214. Boundary adjustments in elementary school districts.
- 20-6-215. Review of boundaries by county superintendent.
- 20-6-216. Repealed.
- 20-6-217. Repealed.
- 20-6-218. Relocation of elementary school within district.

### **Part 3 — High School Districts**

- 20-6-301. High school district classification.
- 20-6-302. Repealed.
- 20-6-303. Repealed.
- 20-6-304. Repealed.
- 20-6-305. Repealed.
- 20-6-306. Repealed.
- 20-6-307. High school district abandonment.
- 20-6-308. Organization of joint high school district.
- 20-6-309. Repealed.
- 20-6-310. Repealed.
- 20-6-311. Repealed.
- 20-6-312. County high school unification.
- 20-6-313. Transactions after approved county high school unification.
- 20-6-314. Time limitations for boundary changes.
- 20-6-315. Repealed.
- 20-6-316. Repealed.
- 20-6-317. Repealed.
- 20-6-318. Repealed.
- 20-6-319. Repealed.
- 20-6-320. Repealed.
- 20-6-321. Repealed.
- 20-6-322. Boundary adjustments in high school districts.
- 20-6-323 and 20-6-324 reserved.
- 20-6-325. Repealed.
- 20-6-326. Procedure for expansion of elementary school district into K-12 school district — trustee resolution.

### **Part 4 — School District Reorganization**

- 20-6-401. Repealed.
- 20-6-402. Repealed.
- 20-6-403. Repealed.
- 20-6-404. Repealed.
- 20-6-405. Repealed.
- 20-6-406. Repealed.
- 20-6-407. Repealed.
- 20-6-408. Repealed.
- 20-6-409 reserved.
- 20-6-410. Tenure protected — hiring preference for employees.
- 20-6-411. Bonded indebtedness to remain with original territory except when assumed by election.
- 20-6-412. Property tax valuation after district boundary change.
- 20-6-413. Cash disposition when district ceases to exist — special levy for tuition debt.
- 20-6-414. Cash disposition when districts consolidated.
- 20-6-415. Repealed.
- 20-6-416. No cash disposition when territory transferred.
- 20-6-417. Property disposition when district boundaries changed.
- 20-6-418. Surrender of records when district ceases to exist.
- 20-6-419 and 20-6-420 reserved.
- 20-6-421. Conditions for district annexation.
- 20-6-422. District annexation.
- 20-6-423. District consolidation.
- 20-6-424. Interim governance of consolidated district.

### **Part 5 — Opening and Closing of Schools**

- 20-6-501. Definition of various schools.
- 20-6-502. Opening or reopening of elementary school.
- 20-6-503. Opening or reopening of a high school.
- 20-6-504. Opening of a junior high school.
- 20-6-505. Opening a junior high school when high school district operates a county high school.
- 20-6-506. Budgeting and cost sharing when junior high school operated by elementary district and high school district operating county high school.
- 20-6-507. Opening of middle school.



- 20-6-508. Kindergarten through grade 12 system.  
 20-6-509. School closure.

### Part 6 — School Property

- 20-6-601. Power to accept gifts.  
 20-6-602. Trustees' power over property.  
 20-6-603. Trustees' authority to acquire or dispose of sites and buildings — when election required.  
 20-6-604. Sale of property when resolution passed after hearing — appeal procedure.  
 20-6-605. Land acquired by conditional deed or at will or sufferance.  
 20-6-606. Letting contracts for school facilities.  
 20-6-607. Leasing district property and disposition of any rentals.  
 20-6-608. Authority and duty of trustees to insure district property.  
 20-6-609. Trustees' authority to acquire property by lease-purchase agreement.  
 20-6-610 through 20-6-620 reserved.  
 20-6-621. Selection of school sites — approval election.  
 20-6-622. Review and approval of school building plans and specifications.  
 20-6-623. Repealed.  
 20-6-624. School building plans and specifications approval before payment.  
 20-6-625. Authorization to lease buildings or land for school purposes.  
 20-6-626 through 20-6-629 reserved.  
 20-6-630. Repealed.  
 20-6-631. When contracts for architectural services required.  
 20-6-632. Repealed.  
 20-6-633. Hiring for architectural services authorized.  
 20-6-634. Tentative and final proposals — public meetings.  
 20-6-635. Contracts with Montana firms encouraged.  
 20-6-636. Prohibition against contingent fees — penalty.  
 20-6-637 through 20-6-639 reserved.  
 20-6-640. Long-term loans.

### Part 7 — K-12 School Districts

- 20-6-701. K-12 school districts required — definition — procedure for creation — exception.  
 20-6-702. Funding for K-12 school districts.  
 20-6-703. Transitions after formation of K-12 school district.  
 20-6-704. Dissolution of K-12 school district.  
 20-6-705 through 20-6-710 reserved.  
 20-6-711. Tenure protected — hiring preference for noncertified employees.  
 20-6-712. Repealed.

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### Chapter Cross-References

- County Commissioners' authority to divide county into school districts, 7-5-2103.  
 Interlocal Cooperation Commission, Title 7, ch. 11, part 2.  
 Model school integrated pest and pesticide management safety program, Title 80, ch. 8, part 4.

## Part 1 School Districts — General Provisions

**20-6-101. Definition of elementary and high school districts.** (1) As used in this title, except as defined in 20-9-402 for bonding purposes or unless the context clearly indicates otherwise, the term “district” means the territory, regardless of county boundaries, organized under the provisions of this title to provide public educational services under the jurisdiction of the trustees prescribed by this title. High school districts may encompass all or parts of the territory of one or more elementary districts.

(2) (a) An elementary district is a district organized for the purpose of providing public education for all grades up to and including grade 8 and for preschool programs and kindergartens. An elementary district may be inactive if the district attaches to a high school district under the provisions of 20-6-701 to form a K-12 school district.

(b) A high school district is a district organized for the purpose of providing those public educational services authorized by this title for all grades beyond grade 8, including postsecondary programs, except those programs administered by community college districts or the Montana university system. A high school district with an attached elementary district may provide the educational services for an elementary district through the procedures established in 20-6-701 through 20-6-703.

(3) An elementary district is known as “District No....., ..... County” and a high school district, except a high school district where a county high school is operated, is known as “High School District No....., ..... County”. A district is a body corporate and, as a body corporate, may sue and be sued, contract and be contracted with, and acquire, hold, use, and dispose of real or personal property for school purposes, within the limitations prescribed by law. Unless the context clearly indicates otherwise, the trustees of elementary districts and high school districts have the same types of powers, duties, and responsibilities authorized and imposed by the laws of Montana.

(4) As used in this title, unless the context clearly indicates otherwise, a county high school is a high school district that has not unified with an elementary district under 20-6-312.

**History:** En. 75-6501 by Sec. 160, Ch. 5, L. 1971; R.C.M. 1947, 75-6501; amd. Sec. 6, Ch. 555, L. 1991; amd. Sec. 14, Ch. 219, L. 1997.

#### Cross-References

Powers and duties of district trustees, 20-3-324.

K-12 school district defined, 20-6-701.

School bonds, Title 20, ch. 9, part 4.

**20-6-102. Confirmation of existing district boundaries.** All districts established under the laws of the state of Montana or the territory of Montana and defined by the boundaries described in the records of each county on January 26, 1971, shall be recognized as the districts of the state on such date.

**History:** En. 75-6502 by Sec. 161, Ch. 5, L. 1971; R.C.M. 1947, 75-6502.

**20-6-103. Permanent record of district boundaries.** (1) The board of county commissioners shall maintain a permanent record that plainly and definitely describes the boundaries of each district within the county. The county superintendent shall keep a transcript of the record in the superintendent’s office and is responsible for keeping the record current.

(2) If the county superintendent determines that the boundaries of any elementary district or high school district are in conflict or are incorrectly described, the superintendent shall change, harmonize, and describe the boundaries accurately and shall make a report of the boundary adjustments to the board of county commissioners. When the board of county commissioners approves a district boundary report submitted by the county superintendent, the boundaries are the legal boundaries and description of the district within the county. Whenever district boundaries are clarified under this section, the county superintendent shall supply the trustees of the district with the legal descriptions of the boundaries of their district.

**History:** En. 75-6504 by Sec. 163, Ch. 5, L. 1971; R.C.M. 1947, 75-6504; amd. Sec. 301, Ch. 56, L. 2009.

**20-6-104. Moratorium on creation of new district — exceptions.** (1) Except as provided in subsections (2) and (3), a school district may not initiate the creation of a new elementary district or a new high school district.

(2) Pursuant to the provisions of 20-6-326, the trustees or the electors of an existing elementary district may initiate the creation of a new high school district solely for the purpose of expanding into a K-12 district.

(3) The moratorium in subsection (1) does not apply to a district that results from the procedure for the dissolution of a K-12 school district pursuant to 20-6-704.

**History:** En. Sec. 56, Ch. 633, L. 1993; amd. Sec. 2, Ch. 285, L. 1995; amd. Sec. 15, Ch. 219, L. 1997; amd. Sec. 2, Ch. 194, L. 2007.

**20-6-105. Transfer of territory from one district to another — hearing on effects of proposed transfer — burden of proof — standard of proof — appeal to district court.** (1) (a) Except as provided in 20-6-214, 20-6-215, 20-6-308, 20-6-322, and subsections (1)(b) and (1)(c) of this section, a petition to transfer territory from one school district to another may be presented to the county superintendent if:

(i) the petition is signed by 60% of the registered electors qualified to vote at general elections in the territory proposed for transfer;

(ii) the territory to be transferred is contiguous to the district to which it is to be attached, includes taxable property, and has school-age children living in it;

(iii) the territory to be transferred is not located within 3 miles, over the shortest practicable route, of an operating school in the district from which it is to be transferred; and

(iv) the board of trustees of the school district that would receive the territory has approved the proposed transfer by a resolution adopted by a majority of the members of the board of trustees at a meeting for which proper notice was given.

(b) A petition to transfer territory to or from a K-12 district may not be presented to a county superintendent unless both school boards and the county superintendents have agreed in writing.

(c) Registered voters within the exterior boundaries of school districts that consolidated during the years 2004 to 2008 may petition for changes in their boundaries under the law in effect on July 1, 2005.

(2) Once a petition to transfer territory has been filed, an additional petition to transfer that territory may not be filed for 4 years unless the county superintendents have agreed in writing.

(3) The petition for a transfer of territory must be delivered to the county superintendent and must:

(a) provide a legal description of the territory that is requested to be transferred and a description of the district to which the territory is to be transferred;

(b) state the reasons why the transfer is requested; and

(c) state the number of school-age children residing in the territory.

(4) If both the trustees of the receiving and transferring school districts have approved the proposed territory transfer in writing, the county superintendent shall grant the transfer.

(5) For any petition that meets the criteria specified in subsection (1) and contains the information required by subsection (3) but that has not been approved in writing by the board of trustees of the school district that would transfer the territory, the county superintendent shall:

(a) not more than 40 days after receipt of the petition, set a place, date, and time for a hearing to consider the petition; and

(b) give notice of the place, date, and time of the hearing. The notice must be posted in the districts affected by the petition for the transfer of territory in the manner prescribed in this title for notices for school elections, with at least one notice posted in the territory to be transferred. Notice must also be delivered to the board of trustees of the school district from which the territory is to be transferred.

(6) The county superintendent shall conduct a hearing as scheduled, and any resident, taxpayer, or representative of the receiving or transferring district must, upon request, be heard. At the hearing, the petitioners have the initial burden of presenting evidence on the proposed transfer's effect on:

(a) the educational opportunity for the students in the receiving and transferring districts, including but not limited to:

(i) class size;

(ii) ability to maintain demographic diversity;

(iii) local control;

(iv) parental involvement; and

(v) the capability of the receiving district to provide educational services;

(b) student transportation, including but not limited to:

(i) safety;

(ii) cost; and

(iii) travel time of students;

(c) the economic viability of the proposed new districts, including but not limited to:

(i) the existence of a significant burden on the taxpayers of the district from which the territory will be transferred;

(ii) the significance of any loss in state funding for the students in both the receiving and transferring districts;

(iii) the viability of the future bonding capacity of the receiving and transferring districts, including but not limited to the ability of the receiving district and the transferring district to meet minimum bonding requirements;

(iv) the ability of the receiving district and the transferring district to maintain sufficient reserves; and

(v) the cumulative effect of other transfers of territory out of the district in the previous 8 years on the taxable value of the district from which the territory is to be transferred. In cases

where the cumulative effect of other transfers of territory out of the district in the previous 8 years is equal to or greater than 25% of the district's taxable value, the following additional factors must be considered and weighed in the decision:

(A) the district's rate of passage of discretionary levies placed before the voters over the previous 8 years;

(B) the district's reduction or elimination of instructional staff or programs over the previous 8 years; and

(C) any increase in district taxes over the previous 8 years and the likely increase in district taxes if the transfer is granted.

(7) After receiving evidence from both the proponents and opponents of the proposed territory transfer on the effects described in subsection (6), the county superintendent shall, within 30 days after the hearing, issue findings of fact, conclusions of law, and an order.

(8) If, based on a preponderance of the evidence, the county superintendent determines that the evidence on the effects described in subsection (6) supports a conclusion that a transfer of the territory is in the best and collective interest of students in the receiving and transferring districts and does not negatively impact the ability of the districts to serve those students, the county superintendent shall grant the transfer. If the county superintendent determines that, based on a preponderance of the evidence presented at the hearing, a transfer of the territory is not in the best and collective interest of students in the receiving and transferring districts and will negatively impact the ability of the districts to serve those students, the county superintendent shall deny the territory transfer.

(9) The decision of the county superintendent is final 30 days after the date of the decision unless it is appealed to the district court by a resident, taxpayer, or representative of either district affected by the petitioned territory transfer. The county superintendent's decision must be upheld unless the court finds that the county superintendent's decision constituted an abuse of discretion under this section.

(10) Whenever a petition to transfer territory from one district to another district creates a joint district or affects the boundary of an existing joint district, the petition to transfer territory must be delivered to the county superintendent of the county in which the territory proposed to be transferred is located. The county superintendent shall notify any other county superintendents of counties with districts affected by the petition, and the duties prescribed in this section for the county superintendent must be performed jointly. If the number of county superintendents involved is an even number, the county superintendents shall jointly appoint an additional county superintendent from an unaffected county to join them in conducting the hearing required in subsection (6) and in issuing the decision required in subsection (8). The decision issued under subsection (8) must be made by a majority of the county superintendents.

(11) A petition seeking to transfer territory out of or into a K-12 district must propose the transfer of territory for both elementary and high school purposes. In the case of a proposed transfer out of or into a K-12 district, a petition that fails to propose the transfer of territory for both elementary and high school purposes is invalid for the purposes of this section.

**History:** En. Sec. 1, Ch. 151, L. 2003; amd. Sec. 1, Ch. 284, L. 2007; amd. Sec. 1, Ch. 305, L. 2009.

**20-6-106 through 20-6-109 reserved.**

**20-6-110. Student construction project — disclosure — immunity.** (1) The entity that transfers title to a construction project constructed as part of a public education program shall disclose the fact that the construction project was constructed as part of a public education program on at least one document, form, or application executed prior to or contemporaneously with an offer for the purchase, sale, rental, or lease of the construction project. The disclosure provided for in this subsection must be in the following form or in a substantially similar form: "Student Construction Project: This property was constructed as part of a public education program and was in whole or in part constructed by students. The school district or public postsecondary institution responsible for the education program is not liable for civil damages resulting from construction projects constructed as part of a public education program except in cases of gross negligence or willful misconduct."

(2) Except in cases of gross negligence or willful misconduct, a school district or public postsecondary institution is not liable for civil damages resulting from a construction project

constructed as part of a public education program if the disclosure required in subsection (1) is made.

(3) As used in this section, “public education program” means a program operated by a public school or a public postsecondary institution.

**History:** En. Sec. 1, Ch. 521, L. 2005.

## Part 2 Elementary School Districts

**20-6-201. Elementary district classification.** (1) Each elementary district shall have a classification of:

- (a) first class, if it has a population of 6,500 or more;
- (b) second class, if it has a population of 1,000 or more but less than 6,500; or
- (c) third class, if it has a population of less than 1,000.

(2) The population of an elementary district must be determined by the county superintendent on the basis of the best available population information for the district.

(3) The county superintendent shall establish the classification of each elementary district in the county on the basis of the population determined for the district and the district classification criteria prescribed in this section. Whenever the population of an elementary district increases or decreases requiring an adjustment of the district classification according to the criteria prescribed in this section, the county superintendent shall declare the district’s classification to be changed in accordance with the determined population, except that the classification of an elementary district may not be changed more than once every 5 years.

(4) Whenever the county superintendent changes an elementary district’s classification with the result that a larger number of trustees is required on the elementary board of trustees, the increased number of trustee positions must be filled in the manner provided for in 20-3-302.

**History:** En. 75-6503 by Sec. 162, Ch. 5, L. 1971; amd. Sec. 1, Ch. 353, L. 1971; amd. Sec. 3, Ch. 137, L. 1973; R.C.M. 1947, 75-6503(part); amd. Sec. 2, Ch. 137, L. 1993.

### Cross-References

Election of trustees upon change of district classification, 20-3-302, 20-3-343.

Number of trustee positions in elementary districts, 20-3-341.

**20-6-202. Time limitation for boundary changes.** An elementary district may not be created and elementary district boundaries may not be changed between the first day of January and the fourth Monday of August of any calendar year except when:

- (1) the entire territory of a district is annexed or attached to another district;
- (2) the entire territory of the portion of a joint district located in one county is annexed or attached to another district; or
- (3) two or more districts are consolidated in their entirety.

**History:** En. 75-6505 by Sec. 164, Ch. 5, L. 1971; amd. Sec. 25, Ch. 388, L. 1975; R.C.M. 1947, 75-6505; amd. Sec. 7, Ch. 237, L. 2001.

**20-6-203. Repealed.** Sec. 12, Ch. 510, L. 2005.

**History:** En. 75-6506 by Sec. 165, Ch. 5, L. 1971; R.C.M. 1947, 75-6506.

**20-6-204. Repealed.** Sec. 12, Ch. 510, L. 2005.

**History:** En. 75-6507 by Sec. 166, Ch. 5, L. 1971; R.C.M. 1947, 75-6507.

**20-6-205. Repealed.** Sec. 12, Ch. 510, L. 2005.

**History:** En. 75-6508 by Sec. 167, Ch. 5, L. 1971; amd. Sec. 6, Ch. 91, L. 1973; R.C.M. 1947, 75-6508.

**20-6-206. Repealed.** Sec. 12, Ch. 510, L. 2005.

**History:** En. 75-6509 by Sec. 168, Ch. 5, L. 1971; amd. Sec. 5, Ch. 83, L. 1971; amd. Sec. 1, Ch. 155, L. 1974; R.C.M. 1947, 75-6509.

**20-6-207. Repealed.** Sec. 12, Ch. 510, L. 2005.

**History:** En. 75-6510 by Sec. 169, Ch. 5, L. 1971; R.C.M. 1947, 75-6510.

**20-6-208. Repealed.** Sec. 12, Ch. 510, L. 2005.

**History:** En. 75-6511 by Sec. 170, Ch. 5, L. 1971; R.C.M. 1947, 75-6511.

**20-6-209. Elementary district abandonment.** (1) The county superintendent shall declare an elementary district to be abandoned and order the attachment of the territory of



the district to a contiguous district or districts of the county or, with the consent of the county superintendent of an adjacent county, to a contiguous district or districts in the adjacent county when:

(a) a school has not been operated by a district for at least the minimum aggregate hours under the provisions of 20-1-301 for each of 3 consecutive school fiscal years or a lesser number of aggregate hours as approved by the board of trustees under the provisions of 20-9-806; or

(b) there is an insufficient number of residents who are qualified electors of the district that can serve as the trustees and clerk of the district so that a legal board of trustees can be organized.

(2) The county superintendent shall notify the elementary district that has not operated a school for 2 consecutive years before the first day of the third year that the failure to operate a school for the minimum aggregate hours or a lesser number of aggregate hours than approved by the board of trustees under the provisions of 20-9-806 during the ensuing school fiscal year constitutes grounds for abandonment of the district at the conclusion of the succeeding school fiscal year. Failure by the county superintendent to provide the notification does not constitute a waiver of the abandonment requirement prescribed in subsection (1)(a).

(3) Any abandonment under subsection (1)(a) becomes effective on July 1. Any abandonment of an elementary district under subsection (1)(b) becomes effective immediately on the date of the abandonment order.

**History:** En. 75-6512 by Sec. 171, Ch. 5, L. 1971; R.C.M. 1947, 75-6512; amd. Sec. 7, Ch. 288, L. 1979; amd. Sec. 5, Ch. 430, L. 1997; amd. Sec. 10, Ch. 138, L. 2005; amd. Sec. 8, Ch. 510, L. 2005.

#### **Cross-References**

Trustees of district affected by boundary change, 20-3-312.

School isolation, 20-9-302.

Purpose and establishment of nonoperating fund, 20-9-505.

Budgeting and net levy requirement for nonoperating fund, 20-9-506.

**20-6-210. Repealed.** Sec. 12, Ch. 510, L. 2005.

**History:** En. 75-6513 by Sec. 172, Ch. 5, L. 1971; amd. Sec. 4, Ch. 277, L. 1977; R.C.M. 1947, 75-6513.

**20-6-211. Repealed.** Sec. 12, Ch. 510, L. 2005.

**History:** En. 75-6514 by Sec. 173, Ch. 5, L. 1971; R.C.M. 1947, 75-6514.

**20-6-212. Repealed.** Sec. 80, Ch. 130, L. 2005.

**History:** En. 75-6515 by Sec. 174, Ch. 5, L. 1971; R.C.M. 1947, 75-6515.

**20-6-213. Repealed.** Sec. 7, Ch. 151, L. 2003.

**History:** En. 75-6516 by Sec. 175, Ch. 5, L. 1971; amd. Sec. 6, Ch. 83, L. 1971; amd. Sec. 1, Ch. 256, L. 1975; R.C.M. 1947, 75-6516; amd. Sec. 1, Ch. 287, L. 1979; amd. Sec. 1, Ch. 145, L. 1991; amd. Sec. 1, Ch. 517, L. 1991; amd. Sec. 1, Ch. 403, L. 1997.

**20-6-214. Boundary adjustments in elementary school districts.** The trustees of an elementary school district may, by resolution, request a change in the boundaries between their district and an adjacent district. If the trustees request a transfer by resolution, the territory proposed for transfer must conform to the provisions of 20-6-105(1) and (2) and the resolution must include information outlined in 20-6-105(3). The resolution must be addressed to the county superintendent of schools who, upon receiving the resolution, shall proceed to a hearing as set forth in 20-6-105(6).

**History:** En. Sec. 1, Ch. 29, L. 1974; R.C.M. 1947, 75-6516.1; amd. Sec. 3, Ch. 151, L. 2003.

#### **Cross-References**

Trustees of district affected by boundary change, 20-3-312.

**20-6-215. Review of boundaries by county superintendent.** A county superintendent of schools shall, at least once every 3 years, review the existing elementary school district boundaries in the county. The review and any recommended boundary changes must include information that the territory proposed for transfer complies with the provisions of 20-6-105(1) through (3) and must be presented by the superintendent at a hearing conducted under 20-6-105(6). If the superintendent orders a boundary change after the hearing, the superintendent shall forward copies of the review and the testimony at the hearing to the board of county commissioners and the state superintendent of public instruction.

**History:** En. Sec. 2, Ch. 29, L. 1974; R.C.M. 1947, 75-6516.2; amd. Sec. 4, Ch. 151, L. 2003.

**20-6-216. Repealed.** Sec. 22, Ch. 219, L. 1997.

History: En. 75-6517 by Sec. 176, Ch. 5, L. 1971; amd. Sec. 4, Ch. 137, L. 1973; amd. Sec. 2, Ch. 256, L. 1975; R.C.M. 1947, 75-6517; amd. Sec. 1, Ch. 337, L. 1981; amd. Sec. 1, Ch. 430, L. 1981; amd. Sec. 1, Ch. 371, L. 1987.

**20-6-217. Repealed.** Sec. 22, Ch. 219, L. 1997.

History: En. 75-6518 by Sec. 177, Ch. 5, L. 1971; R.C.M. 1947, 75-6518; amd. Sec. 2, Ch. 430, L. 1981; amd. Sec. 2, Ch. 371, L. 1987.

**20-6-218. Relocation of elementary school within district.** The trustees of an elementary district may relocate an elementary school that is currently operating within the district if the relocation will be more convenient for the majority of the pupils attending. The provisions of 20-6-502 relating to opening or reopening a school do not apply. The provisions of 20-6-603 apply if the new site has not been previously approved as required by 20-6-603.

History: En. Sec. 1, Ch. 281, L. 1989.

### Part 3 High School Districts

**20-6-301. High school district classification.** The classification of a high school district must be the same as the classification of the elementary district (20-6-201) where the high school building is located. If there is more than one elementary district in which operating high school buildings are located, the classification of the high school district must be the same as the classification of the elementary district described in 20-6-201 in which the operating high school building that was first constructed is located. Whenever the classification of such elementary district is changed, the classification of a high school district must be changed accordingly and the county superintendent shall adjust the number of additional high school district trustee positions in accordance with the method prescribed in 20-3-354 for the determination of the number of additional trustee positions required for a high school district. An increased number of trustee positions must be filled by the appointment of the county superintendent, and those positions are subject to election at the next regular trustee election. When the number of positions is decreased, the next additional high school trustee positions that become vacant under any circumstances may not be filled until the number of trustee positions has been reduced to the number required by law.

History: En. 75-6503 by Sec. 162, Ch. 5, L. 1971; amd. Sec. 1, Ch. 353, L. 1971; amd. Sec. 3, Ch. 137, L. 1973; R.C.M. 1947, 75-6503(part); amd. Sec. 2, Ch. 91, L. 2005.

#### Cross-References

Legislative intent to elect less than majority of trustees, 20-3-302.

Number of trustee positions in elementary and high school districts, 20-3-341, 20-3-351.

Request and determination of number of additional high school district trustee positions, 20-3-352.

**20-6-302. Repealed.** Sec. 13, Ch. 617, L. 1983.

History: En. 75-6519 by Sec. 178, Ch. 5, L. 1971; R.C.M. 1947, 75-6519.

**20-6-303. Repealed.** Sec. 22, Ch. 219, L. 1997.

History: En. 75-6520 by Sec. 179, Ch. 5, L. 1971; amd. Sec. 1, Ch. 44, L. 1971; R.C.M. 1947, 75-6520.

**20-6-304. Repealed.** Sec. 22, Ch. 219, L. 1997.

History: En. 75-6521 by Sec. 180, Ch. 5, L. 1971; R.C.M. 1947, 75-6521; amd. Sec. 9, Ch. 617, L. 1983.

**20-6-305. Repealed.** Sec. 13, Ch. 617, L. 1983.

History: En. 75-6522 by Sec. 181, Ch. 5, L. 1971; R.C.M. 1947, 75-6522.

**20-6-306. Repealed.** Sec. 13, Ch. 617, L. 1983.

History: En. 75-6523 by Sec. 182, Ch. 5, L. 1971; amd. Sec. 12, Ch. 266, L. 1977; R.C.M. 1947, 75-6523.

**20-6-307. High school district abandonment.** Within 6 months after a high school district fails to operate an accredited high school within its boundaries for a period of 1 year, the county superintendent shall order the high school district abandoned. At least 20 days before issuing an abandonment order, the county superintendent shall notify the trustees of the high school district of the impending abandonment. When the order is issued, the county superintendent shall also order the attachment of the territory of each elementary district of the abandoned high school district to another high school district or districts of the county or, with the consent of the county superintendent of an adjacent county, to another contiguous high school district or districts in the adjacent county.

**History:** En. 75-6524 by Sec. 183, Ch. 5, L. 1971; R.C.M. 1947, 75-6524; amd. Sec. 9, Ch. 510, L. 2005.

**Cross-References**

School fiscal year, 20-1-301.

School isolation, 20-9-302.

Purpose and establishment of nonoperating fund, 20-9-505.

Budgeting and net levy requirement for nonoperating fund, 20-9-506.

**20-6-308. Organization of joint high school district.** The boundaries of a high school district that encompass a county's portion of a joint elementary district where an elementary school is operated may be changed to establish a joint high school district. The high school district boundary change must be a transfer of all the territory located in another county's portion of the same joint elementary district and must be made pursuant to the procedures provided in 20-6-105.

**History:** En. 75-6525 by Sec. 184, Ch. 5, L. 1971; amd. Sec. 3, Ch. 256, L. 1975; R.C.M. 1947, 75-6525; amd. Sec. 5, Ch. 151, L. 2003.

**20-6-309. Repealed.** Sec. 7, Ch. 151, L. 2003.

**History:** En. 75-6526 by Sec. 185, Ch. 5, L. 1971; R.C.M. 1947, 75-6526.

**20-6-310. Repealed.** Sec. 13, Ch. 617, L. 1983.

**History:** En. 75-6527 by Sec. 186, Ch. 5, L. 1971; R.C.M. 1947, 75-6527.

**20-6-311. Repealed.** Sec. 22, Ch. 219, L. 1997.

**History:** En. 75-6528 by Sec. 187, Ch. 5, L. 1971; R.C.M. 1947, 75-6528; amd. Sec. 10, Ch. 617, L. 1983.

**20-6-312. County high school unification.** (1) Any county high school may be unified with the elementary district where the county high school building is located to establish a unified school system under a unified board of trustees. The territory of an existing joint high school district must remain a part of the joint high school district.

(2) A proposition to unify a county high school with the elementary district where the county high school building is located must be introduced whenever:

(a) the trustees of the county high school and the trustees of the elementary district individually pass resolutions requesting the county superintendent to order an election to consider a unification proposition; or

(b) not less than 20% of the electors of the high school district where the county high school is located who are qualified to vote under the provisions of 20-20-301 petition the county superintendent to order an election to consider a unification proposition.

(3) When the county superintendent has received the trustees' resolutions or a valid petition, the county superintendent shall, within 10 days after the receipt of the last resolution or petition and under the provisions of 20-20-201, order the county high school to call an election to consider a unification proposition. The trustees of the county high school shall call and conduct an election in the manner prescribed in this title for school elections. An elector who may vote on the unification proposition must be qualified to vote under the provisions of 20-20-301. The ballot for a county high school unification proposition must be substantially in the following form:

**“OFFICIAL BALLOT**

**COUNTY HIGH SCHOOL UNIFICATION ELECTION**

Shall.... County High School be unified with District No....., .... County to establish a unified school system under a unified board of trustees?

☐ FOR the unification of the county high school.

☐ AGAINST the unification of the county high school.”

(4) When the county superintendent receives the election certificate from the trustees of the county high school, the county superintendent shall issue an order declaring the unification of the county high school with the elementary district identified on the ballot as of the next July 1, if a majority of those electors voting at the election have voted for the unification proposition.

(5) If a majority of those electors voting at the election have voted against the unification proposition, the county superintendent shall order the disapproval of the unification proposition.

**History:** En. 75-6538 by Sec. 197, Ch. 5, L. 1971; R.C.M. 1947, 75-6538; amd. Sec. 16, Ch. 219, L. 1997.

**Cross-References**

Mail ballot elections prohibited, 13-19-104.

School elections, Title 20, ch. 20.

**20-6-313. Transactions after approved county high school unification.**

(1) Whenever a county high school is unified with the elementary district where the county high school building is located, the following transactions must be completed on or before the July 1 when the unification becomes effective:

(a) The county high school trustees, who do not have the capacity to govern the high school district upon unification, shall surrender all minutes, documents, and other records of the county high school to the trustees of the high school district.

(b) The county superintendent shall order the establishment of additional high school trustee nominating areas in the manner prescribed in 20-3-352 and 20-3-353, if requested to do so by a majority of the outlying elementary districts located in the high school district. When the county superintendent establishes the areas, the county superintendent shall appoint additional high school district trustees from each area, who shall hold office until a successor is elected at the next regular school election and qualified.

(c) The county treasurer, after allowing for any outstanding or registered warrants, shall transfer all end-of-the-year fund cash balances of the county high school to similar funds established for the high school district. All previous years' taxes levied and collected for the county high school shall be credited to the appropriate fund of the high school district.

(2) All county high school bonds outstanding at the time of unification shall remain the obligation of the county or that portion of the county against which the bonds were originally issued. The high school district is responsible for the maintenance of the debt service fund for the bonds. It is the duty of the board of county commissioners and the trustees of the high school district to perform the duties prescribed in the school budgeting and bond redemption provisions of this title for the redemption and interest payments of the county high school bonds in the same manner and by the same means as though the county high school had not been unified.

**History:** En. 75-6539 by Sec. 198, Ch. 5, L. 1971; R.C.M. 1947, 75-6539; amd. Sec. 17, Ch. 219, L. 1997.

**Cross-References**

Trustees of district affected by boundary change, 20-3-312.

**20-6-314. Time limitations for boundary changes.** A high school district may not be created and a high school district boundary may not be changed between the first day of January and the fourth Monday of August of any calendar year except when:

(1) the entire territory of a high school district is annexed or attached to another high school district;

(2) the entire territory or portion of a joint high school district located in one county is annexed or attached to another high school district; or

(3) two or more districts are consolidated in their entirety.

**History:** En. Sec. 1, Ch. 617, L. 1983; amd. Sec. 10, Ch. 22, L. 1997; amd. Sec. 2, Ch. 403, L. 1997; amd. Sec. 8, Ch. 237, L. 2001.

**20-6-315. Repealed.** Sec. 12, Ch. 510, L. 2005.

**History:** En. Sec. 2, Ch. 617, L. 1983.

**20-6-316. Repealed.** Sec. 12, Ch. 510, L. 2005.

**History:** En. Sec. 3, Ch. 617, L. 1983.

**20-6-317. Repealed.** Sec. 12, Ch. 510, L. 2005.

**History:** En. Sec. 4, Ch. 617, L. 1983.

**20-6-318. Repealed.** Sec. 12, Ch. 510, L. 2005.

**History:** En. Sec. 5, Ch. 617, L. 1983.

**20-6-319. Repealed.** Sec. 12, Ch. 510, L. 2005.

**History:** En. Sec. 6, Ch. 617, L. 1983.

**20-6-320. Repealed.** Sec. 7, Ch. 151, L. 2003.

**History:** En. Sec. 7, Ch. 617, L. 1983; amd. Sec. 1, Ch. 299, L. 1987; amd. Sec. 2, Ch. 517, L. 1991; amd. Sec. 3, Ch. 403, L. 1997.

**20-6-321. Repealed.** Sec. 12, Ch. 510, L. 2005.

**History:** En. Sec. 8, Ch. 617, L. 1983; amd. Sec. 2, Ch. 15, L. 1985.

**20-6-322. Boundary adjustments in high school districts.** The trustees of a high school district may, by resolution, request a change in the boundaries between their district

and an adjacent district. If the trustees request a transfer by resolution, the territory proposed for transfer must conform to the provisions of 20-6-105(1) and (2) and the resolution must include information outlined in 20-6-105(3). The resolution must be addressed to the county superintendent of schools who, upon receiving the resolution, shall proceed to a hearing as provided in 20-6-105(6).

**History:** En. Sec. 5, Ch. 403, L. 1997; amd. Sec. 6, Ch. 151, L. 2003.

**20-6-323 and 20-6-324 reserved.**

**20-6-325. Repealed.** Sec. 22, Ch. 219, L. 1997.

**History:** En. Sec. 1, Ch. 585, L. 1985; amd. Sec. 1, Ch. 226, L. 1987; amd. Sec. 3, Ch. 371, L. 1987.

**20-6-326. Procedure for expansion of elementary school district into K-12 school district — trustee resolution.** (1) An existing elementary district that is not part of a unified school system or governed by a joint board with a high school district may expand into a K-12 district under the procedures outlined in this section only if the elementary district's ANB, as calculated under the provisions of 20-9-311, is at least 1,000.

(2) The expansion to a K-12 district may be requested by the trustees of an existing elementary district through passage of a resolution that includes the information outlined in 20-6-105(3) and requests the county superintendent to order an election to allow the electors of the elementary district to consider the proposition of expanding the elementary school district into a K-12 district. The trustees of an existing elementary district with an ANB of at least 1,000 may not pass a resolution for expansion more than one time within a 5-year period.

(3) (a) If the proposition for the expansion is approved by the electors of the elementary district and the trustees issue a certificate of election as provided in 20-20-416, for a period of 2 years from the date of the certification of the election the elementary trustees have the authority to propose to the electors of the elementary district:

(i) a transition costs levy pursuant to 20-9-502; and

(ii) a general obligation bond pursuant to Title 20, chapter 9, part 4, for the purpose of building, altering, repairing, buying, furnishing, equipping, purchasing lands for, or obtaining a water supply for a school to accommodate high school students.

(b) The bond limitations pursuant to 20-9-406 imposed on a district proposing a bond under subsection (3)(a) must be calculated on the limits for a K-12 district with the high school ANB calculated by dividing the ANB of the elementary district by 9 and multiplying the result by 4.

(c) A bond approved under subsection (3)(a) becomes a bond of, and may not be issued until the creation of, the K-12 district formed pursuant to subsection (4).

(d) A district that issues a bond under this subsection (3) is eligible for facility reimbursements and advances pursuant to 20-9-366 through 20-9-371 that, until the new high school has enrolled students in all grades and has established an actual ANB for budgeting purposes, must be based on an estimated high school ANB calculated by dividing the ANB of the elementary district by 9 and multiplying the result by 4.

(e) Until the county superintendent orders the creation of a new high school district and attachment of the expanding elementary district to form a new K-12 district pursuant to subsection (4), the existing high school district remains intact for all purposes.

(4) If elementary electors approve a bond pursuant to subsection (3), on July 1 following the approval of the bond the county superintendent shall order the creation of a new high school district with identical boundaries to the expanding elementary district and the immediate attachment of the expanding elementary district to form a K-12 district. The county superintendent shall send a copy of the order to the board of county commissioners and to the trustees of the districts affected by the creation of the district. The trustees of the expanding elementary district must be designated as the trustees of the new K-12 district.

(5) Prior to the first school fiscal year in which the K-12 district will enroll students in a high school grade, the K-12 trustees shall prepare operating budgets for the new high school according to the school budgeting provisions of this title, except that:

(a) the ANB for the high school program of the K-12 district must be estimated by the trustees and may not exceed the number resulting from dividing the ANB of the elementary program by 9 and multiplying the result by the number of grades in which the high school will enroll students;



(b) the number of quality educators for the high school program must be estimated by the trustees and may not exceed the number resulting from dividing the ANB estimated under subsection (5)(a) by 10;

(c) the taxable value for budgeting purposes of both the elementary and high school programs of the K-12 district must be based on the taxable value as most recently determined by the department of revenue;

(d) the general fund budget adopted by the trustees must be based on only the basic entitlement, the quality educator payment, and the budget components derived from ANB counts; and

(e) the district's BASE aid for the upcoming year must be based on the general fund budget adopted by the trustees for the upcoming school year.

(6) Until the first school year in which the K-12 school district enrolls high school students in all grades and for a period of time not to exceed 6 years following the creation of the K-12 district:

(a) the high school district shall provide high school instruction to high school students of the K-12 district in any grades in which the K-12 district is not enrolling students;

(b) the K-12 district shall be responsible for providing transportation for its students enrolled in the high school district pursuant to subsection (6)(a), may establish a transportation budget for this purpose, and may receive state and county reimbursements under Title 20, chapter 10; and

(c) the K-12 district shall pay the high school district 20% of the per-ANB maximum rate established in 20-9-306 for each of its students enrolled in the high school district with one-half of the amount due by December 31 of the year following the year of attendance and the remainder due no later than June 15 of the year following the year of attendance. The K-12 trustees shall establish a tuition fund and levy to fund these payments.

(7) (a) Bonded indebtedness of the high school district that is outstanding as of the date of creation of the K-12 district must remain secured by and be the indebtedness of the original territory against which the bonds of the high school district were issued and must be paid by tax levies against the original territory.

(b) Bonded indebtedness of the high school district that is issued by the high school district following the creation of the K-12 district is secured by the territory of the high school district as of the date of issuance of the high school district bonds and must be paid by tax levies against the territory of the high school district. However, if bonds of the high school district were approved at a bond election conducted before the creation of the K-12 district, all bonds of the high school district issued by the high school district under the bond election authority must remain secured by and be the indebtedness of the territory of the high school district as of the date the bond authority was approved by voters and must be paid by tax levies against that territory.

(c) Bonded indebtedness of the K-12 district is secured by the territory of the K-12 district as of the date of issuance of the K-12 district bonds and must be paid by tax levies against the territory of the K-12 district.

(d) Bonded indebtedness of the elementary district that is outstanding as of the date of creation of the K-12 district must become upon the date of creation of the K-12 district the bonded indebtedness of the K-12 district and must be secured by the territory of the K-12 district and paid by tax levies against the territory of the K-12 district. The debt service on the bonds must be allocated to the elementary program of the K-12 district.

(e) Bonded indebtedness of the high school district or the K-12 district that is subsequently affected by a later reorganization of the high school district or the K-12 district is governed by the provisions of Title 20, chapter 6, part 4.

(8) When a K-8 district expands to a K-12 district as provided for in this section, a principal, teacher, or other certified employee of the original high school district who has a right of tenure under Montana law must be given preference in hiring for a vacant position in the new K-12 district for which the employee is qualified with the required certification endorsements.

**History:** En. Sec. 1, Ch. 194, L. 2007; amd. Sec. 1, Ch. 205, L. 2017.

**Compiler's Comments**

*2017 Amendment:* Chapter 205 substituted current text concerning expansion of an elementary school district into a K-12 school district for former text (see 2017 Session Law for former text). Amendment effective July 1, 2017.

## Part 4

### School District Reorganization

**20-6-401. Repealed.** Sec. 1, Ch. 36, Sp. L. November 1993.

History: En. Sec. 2, Ch. 125, L. 1971; R.C.M. 1947, 75-6541; amd. Sec. 1, Ch. 205, L. 1981; amd. Sec. 1, Ch. 185, L. 1985; amd. Sec. 4, Ch. 337, L. 1989; amd. Sec. 13, Ch. 11, Sp. L. June 1989.

**20-6-402. Repealed.** Sec. 1, Ch. 36, Sp. L. November 1993.

History: En. Sec. 1, Ch. 125, L. 1971; R.C.M. 1947, 75-6540; amd. Sec. 11, Ch. 617, L. 1983.

**20-6-403. Repealed.** Sec. 1, Ch. 36, Sp. L. November 1993.

History: En. Sec. 3, Ch. 125, L. 1971; R.C.M. 1947, 75-6542; amd. Sec. 12, Ch. 617, L. 1983.

**20-6-404. Repealed.** Sec. 1, Ch. 36, Sp. L. November 1993.

History: En. Sec. 4, Ch. 125, L. 1971; R.C.M. 1947, 75-6543.

**20-6-405. Repealed.** Sec. 1, Ch. 36, Sp. L. November 1993.

History: En. Sec. 5, Ch. 125, L. 1971; R.C.M. 1947, 75-6544.

**20-6-406. Repealed.** Sec. 1, Ch. 36, Sp. L. November 1993.

History: En. Sec. 6, Ch. 125, L. 1971; R.C.M. 1947, 75-6545; amd. Sec. 30, Ch. 703, L. 1985.

**20-6-407. Repealed.** Sec. 1, Ch. 36, Sp. L. November 1993.

History: En. Sec. 7, Ch. 125, L. 1971; R.C.M. 1947, 75-6546.

**20-6-408. Repealed.** Sec. 1, Ch. 36, Sp. L. November 1993.

History: En. Sec. 8, Ch. 125, L. 1971; R.C.M. 1947, 75-6547.

**20-6-409 reserved.**

**20-6-410. Tenure protected — hiring preference for employees.** (1) Whenever two or more school districts consolidate or join through annexation to organize into a single district in the manner provided for in Title 20, chapter 6, a principal, teacher, or other certified employee of the school districts who has a right of tenure under Montana law must be given absolute preference in hiring for the first school fiscal year for any vacant position with the consolidated or enlarged district for which the employee is qualified with the required certification endorsements. Upon acceptance of a position, the certified employee continues to have tenure in the consolidated or enlarged district and the board of trustees of the consolidated or enlarged school district in which the person will perform duties shall recognize and give effect to the right of tenure.

(2) A noncertified, nonprobationary employee of a school district that consolidates or joins another district through annexation must be given preference in hiring for the first school fiscal year for any vacant position with the consolidated or enlarged district for which the employee has substantially equal qualifications and, upon acceptance of a position, may not be given probationary status.

History: En. Sec. 1, Ch. 497, L. 1991.

**20-6-411. Bonded indebtedness to remain with original territory except when assumed by election.** Whenever district boundaries are changed in any manner prescribed in this title, the existing bonded indebtedness against any district or territory affected by a change of boundaries remains the indebtedness of the original territory against which the bonds were issued and must be paid by levies on the original territory, except when districts are consolidated with the mutual assumption of bonded indebtedness or when a district is annexed with a joint assumption of the annexing district's bonded indebtedness. Any money to the credit of the debt service fund of a district when its boundaries are changed must be used to pay the existing bond principal and interest of the original territory issuing the bonds as it becomes due or for bond redemption under the bonding provisions of this title.

History: En. 75-6529 by Sec. 188, Ch. 5, L. 1971; R.C.M. 1947, 75-6529; amd. Sec. 2, Ch. 60, L. 2009.

#### Cross-References

Redemption of bonds — investment of debt service fund money, 20-9-441.

**20-6-412. Property tax valuation after district boundary change.** The property tax valuation used under the provisions of 20-9-142 for the purposes of fixing the tax levies, except the debt service fund tax levy, for a district that has had a boundary change at any time before the fourth Monday in August shall include the property tax valuation of any territory added

to the district by such boundary change or exclude the property tax valuation of any territory detached from the district by such boundary change.

**History:** En. 75-6530 by Sec. 189, Ch. 5, L. 1971; R.C.M. 1947, 75-6530; amd. Sec. 4, Ch. 133, L. 1993.

**20-6-413. Cash disposition when district ceases to exist — special levy for tuition debt.** Whenever a district ceases to exist in any manner prescribed in this title, except when districts are consolidated, the cash on hand to the credit of the funds of the district and the debts of the former district must be allocated in the following manner:

(1) Any cash to the credit of the district must be used to pay any debts of the district, including bonded indebtedness, except that any cash available in the debt service fund must be used first to pay bond interest and all outstanding bonds.

(2) If any cash remains to the credit of the district after paying its debts, the cash must be transferred by the county treasurer to the credit of the district or districts assuming its territory. When the territory is assumed by more than one district, the remaining cash must be prorated between the districts on the basis of the taxable value of the territory assumed by each district as determined by the county superintendent.

(3) If any tuition debt remains as an obligation of the district, the tuition debt is the obligation of the taxable property of the discontinued district, except when the tuition debt has been assumed by the consolidated or annexing district. The tuition debt must be financed by a mill levy on the property of the discontinued district and paid from these proceeds by the county superintendent.

(4) If any debts, other than bonded indebtedness and tuition, remain as an obligation of the district after the cash has been utilized under the provisions of subsection (1), the debts must be assigned in the same manner prescribed for the transfer of cash under subsection (2).

**History:** En. 75-6532 by Sec. 191, Ch. 5, L. 1971; amd. Sec. 5, Ch. 137, L. 1973; R.C.M. 1947, 75-6532; amd. Sec. 1, Ch. 127, L. 1989; amd. Sec. 1, Ch. 214, L. 1999.

**20-6-414. Cash disposition when districts consolidated.** Whenever two or more districts are consolidated without the mutual assumption of bonded indebtedness, all cash and debts, other than cash credited to the debt service fund and debts for bonded indebtedness, must be credited or debited to the same types of funds of the consolidated district as the funds from which they were transferred by the county treasurer. In addition, when two or more districts are consolidated with the mutual assumption of bonded indebtedness, the cash credited to the debt service fund and the bonded indebtedness also must be transferred to a similar fund of the consolidated district.

**History:** En. 75-6533 by Sec. 192, Ch. 5, L. 1971; R.C.M. 1947, 75-6533; amd. Sec. 3, Ch. 60, L. 2009.

**20-6-415. Repealed.** Sec. 22, Ch. 219, L. 1997.

**History:** En. 75-6534 by Sec. 193, Ch. 5, L. 1971; amd. Sec. 6, Ch. 137, L. 1973; R.C.M. 1947, 75-6534.

**20-6-416. No cash disposition when territory transferred.** Whenever only a portion of the territory of one district is transferred to another district, all cash and debts, other than bonded indebtedness, shall be retained by the district originally realizing the cash or debt.

**History:** En. 75-6535 by Sec. 194, Ch. 5, L. 1971; R.C.M. 1947, 75-6535.

**20-6-417. Property disposition when district boundaries changed.** Whenever district boundaries are changed, title to the real and personal property of the districts involved in such boundary change shall vest in the district which encompasses the territory where such real or personal property was located at the time the legal procedure to authorize the boundary change was introduced. The disposition or utilization of such property will be in the discretion of the trustees of the district encompassing the territory of its location, as provided by law.

**History:** En. 75-6536 by Sec. 195, Ch. 5, L. 1971; R.C.M. 1947, 75-6536.

#### **Cross-References**

Power of trustees over property, 20-3-324, 20-6-602.

**20-6-418. Surrender of records when district ceases to exist.** Within 10 days after any district ceases to exist, the trustees shall surrender all minutes, documents, and other records of the district to the trustees of the district assuming its territory or, if more than one district assumes its territory, to the county superintendent.

**History:** En. 75-6537 by Sec. 196, Ch. 5, L. 1971; R.C.M. 1947, 75-6537.

**20-6-419 and 20-6-420 reserved.**

**20-6-421. Conditions for district annexation.** (1) An elementary district may be annexed to a contiguous elementary district under the provisions of 20-6-422 when:

(a) a third-class district where a high school is not located is annexed to a third-class district where a high school is located, to a first-class district, or to a second-class district;

(b) a third-class district where a high school is located is annexed to a first-class district or to a second-class district; or

(c) a second-class district is annexed to a first-class district.

(2) A high school district may be annexed to a contiguous high school district or a K-12 school district may be annexed to a contiguous K-12 school district under the provisions of 20-6-422 when:

(a) a third-class district is annexed to a first-class district or to a second-class district; or

(b) a second-class district is annexed to a first-class district.

**History: En. Sec. 1, Ch. 510, L. 2005.**

**20-6-422. District annexation.** (1) As used in this section, the following definitions apply:

(a) “Annexing district” means the district to which another district is being attached through an annexation procedure.

(b) “District to be annexed” means the district that is being attached to another district through an annexation procedure.

(2) A district may be annexed to a contiguous district when one of the conditions of 20-6-421 is met in accordance with the following procedure:

(a) An annexation proposition may be introduced in the district to be annexed by either of the two following methods:

(i) the trustees may pass a resolution requesting the county superintendent of the county where the district is located to order an election to consider an annexation proposition for their district; or

(ii) not less than 20% of the electors of the district who are qualified to vote under the provisions of 20-20-301 may petition the county superintendent of the county where the district is located requesting an election to consider an annexation proposition for their district.

(b) The resolution or petition must state whether the annexation is to be made with or without the joint assumption of bonded indebtedness of the annexing district by the district to be annexed and the annexing district.

(3) Before ordering an election on the proposition, the county superintendent of the county where the district to be annexed is located must first receive from the trustees of the annexing district a resolution giving the county superintendent the authority to annex the district. The resolution must state whether the annexation is to be made with or without the joint assumption of bonded indebtedness of the annexing district by the district to be annexed and the annexing district. The resolution from the annexing district and the resolution or petition from the district to be annexed must agree on whether or not there will be joint assumption of bonded indebtedness. Without agreement, the annexation proposition may not be considered further.

(4) When the county superintendent of the county where the district to be annexed is located has received the resolution authorizing the annexation from the annexing district and the resolution or valid petition from the district to be annexed, the county superintendent shall, within 10 days and as provided by 20-20-201, order the trustees of the district to be annexed to call an annexation election.

(5) The district to be annexed shall call and conduct an election in the manner prescribed in this title for school elections and subject to subsections (6) and (7). Any elector qualified to vote under the provisions of 20-20-301 may vote.

(6) (a) If the district to be annexed is to jointly assume the bonded indebtedness of the annexing district, the ballots must read, after stating the annexation proposition, “FOR annexation with assumption of bonded indebtedness” and “AGAINST annexation with assumption of bonded indebtedness”.

(b) When the trustees in the district conducting the election canvass the vote under the provisions of 20-20-415, they shall determine the number of votes “FOR” and “AGAINST” the proposition.

(c) The proposition is approved in the district if a majority of those voting approve the proposition.

(7) If the district to be annexed is not to jointly assume the bonded indebtedness of the annexing district, the ballots must read, after stating the annexation proposition, "FOR annexation without assumption of bonded indebtedness" and "AGAINST annexation without assumption of bonded indebtedness". The annexation proposition is approved by a district if a majority of those voting in a district approve the proposition.

(8) After the county superintendent of the county where the district to be annexed is located has received the election certification provided for in 20-20-416 from the trustees of the district conducting the annexation election and if the annexation proposition has been approved by the election, the county superintendent shall order the annexation of the territory of the district voting on the proposition to the district that has authorized the annexation to its territory effective July 1. The order must be issued within 10 days after the receipt of the election certificate. For annexation with joint assumption of bonded indebtedness, the order must specify that there will be joint assumption of the bonded indebtedness of the annexing district by the owners of all taxable real and personal property in the territory of the district to be annexed. The county superintendent of the county where the district to be annexed is located shall send a copy of the order to the board of county commissioners of each county involved in the annexation order and to the trustees of the districts involved in the annexation order.

(9) If the annexation proposition is disapproved in the district to be annexed, the annexation proposition fails and the county superintendent of the county where the district to be annexed is located shall notify each district of the disapproval of the annexation proposition.

**History:** En. Sec. 2, Ch. 510, L. 2005; amd. Sec. 14, Ch. 510, L. 2005; amd. Sec. 4, Ch. 60, L. 2009.

**20-6-423. District consolidation.** (1) Any two or more contiguous elementary school districts may consolidate to organize an elementary district. Any two or more contiguous high school districts may be consolidated to organize a high school district. Any two or more contiguous K-12 school districts may be consolidated to organize a K-12 school district. The consolidation must be conducted as provided in this section.

(2) (a) A consolidation proposition may be introduced, individually, in each of the districts by either of the two following methods:

(i) the trustees may pass a resolution requesting the county superintendent of the county where the district is located to order an election to consider a consolidation proposition involving their district; or

(ii) not less than 20% of the electors of an individual district who are qualified to vote under the provisions of 20-20-301 may petition the county superintendent of the county where the district is located requesting an election to consider a consolidation proposition involving their district.

(b) The resolution or petition must state whether the consolidation is to be made with or without the joint assumption of the bonded indebtedness of each district by all districts included in the consolidation. The resolution or petition from each district must agree on whether or not there will be joint assumption of bonded indebtedness. Without agreement, the consolidation proposition may not be considered further.

(3) When a county superintendent has received a resolution or a valid petition from each of the districts included in the consolidation proposition, the county superintendent shall, within 10 days after the receipt of the last resolution or petition and as provided by 20-20-201, order the trustees of each district included in the consolidation proposition to call a consolidation election to be held no later than December 31 preceding the school year in which the consolidation is to become effective. If the districts involved in the consolidation proposition are located in more than one county, the county superintendents in both counties shall jointly order the district to call a consolidation election.

(4) Each district, individually, shall call and conduct an election in the manner prescribed in this title for school elections and subject to additional requirements of subsections (5) and (6). Any elector qualified to vote under the provisions of 20-20-301 may vote.

(5) (a) If the districts to be consolidated are to jointly assume the bonded indebtedness of each district involved in the consolidation, the ballots must read, after stating the consolidation



proposition, “FOR consolidation with assumption of bonded indebtedness” and “AGAINST consolidation with assumption of bonded indebtedness”.

(b) When the trustees in each district conducting an election canvass the vote under the provisions of 20-20-415, they shall determine the number of votes “FOR” and “AGAINST” the proposition.

(c) The proposition is approved in the district if a majority of those voting approve the proposition.

(6) If the districts to be consolidated are not to jointly assume the bonded indebtedness of each district involved in the consolidation, the ballots must read, after stating the consolidation proposition, “FOR consolidation without assumption of bonded indebtedness” and “AGAINST consolidation without assumption of bonded indebtedness”. The consolidation proposition is approved by a district if a majority of those voting in a district approve the proposition. Otherwise it is disapproved.

(7) (a) After the county superintendent of each county where a district involved in the consolidation proposition is located has received the election certification provided for in 20-20-416 from the trustees of each district included in a consolidation proposition, the appropriate county superintendent shall determine if the consolidation proposition has been approved in each district. If each district has approved the consolidation proposition, each county superintendent shall, within 10 days after the receipt of the last election certificate, order the consolidation of the districts effective July 1 of the ensuing school fiscal year. The order must:

(i) for consolidation with the joint assumption of bonded indebtedness, specify that there will be joint assumption of bonded indebtedness between the owners of all taxable real and personal property in each district forming the consolidated district;

(ii) specify the number of the consolidated district; and

(iii) establish an interim board of trustees for the consolidated district as provided in 20-6-424. The trustees shall serve until their successors are elected at the next succeeding regular school election and qualified.

(b) Each county superintendent shall send a copy of the order to the board of county commissioners of each county where a district involved in the consolidation proposition is located and to the trustees of each district incorporated in the consolidation order.

(8) If any district included in the consolidation proposition disapproves the consolidation proposition, the consolidation of all districts fails and the appropriate county superintendent shall notify each district of the disapproval of the consolidation proposition.

**History:** En. Sec. 3, Ch. 510, L. 2005; amd. Sec. 14, Ch. 510, L. 2005.

**20-6-424. Interim governance of consolidated district.** (1) Upon passage of a consolidation proposition under the provisions of 20-6-423, an interim board of trustees made up of all of the members of the boards of trustees of the districts that consolidated shall serve as the trustees for the consolidated district from the date of the consolidation order until the newly elected board of the consolidated district is organized under 20-3-321. The interim board of trustees shall elect a presiding officer from among its members.

(2) The trustees of each district incorporated in the consolidation order shall continue to perform those duties related to the operation of their individual districts until the effective date of the consolidation. The interim board of trustees shall perform those duties related to the formation of and transition to the consolidated district, including but not limited to:

(a) calling an election of the new board of trustees for the consolidated district to be held on the regular election day preceding the effective date of the consolidation; and

(b) if necessary, calling an election under 20-9-353 for the ensuing budget year of the consolidated district.

(3) At the next regular school election following the consolidation election, trustees for the consolidated district must be elected in accordance with the election provisions of Title 13 and Title 20. The term of office is 3 years, except that the initial terms of the newly elected trustees must be selected by lot in order to comply with the provisions of 20-3-302.

(4) The interim board of trustees must be dissolved upon the organization of the newly elected trustees pursuant to 20-3-321.

**History:** En. Sec. 4, Ch. 510, L. 2005.

## Part 5

### Opening and Closing of Schools

#### Part Cross-References

Power of trustees to open and close schools, 20-3-324(7).

**20-6-501. Definition of various schools.** As used in this title, unless the context clearly indicates otherwise, the term “school” means an institution for the teaching of children that is established and maintained under the laws of the state of Montana at public expense. The trustees of a district shall designate the grade assignments for the schools of the district, but for the purposes of this title each school is known as:

(1) an elementary school when it comprises the work of any combination of kindergarten, other preschool programs, or the first eight grades or their equivalents. A middle school is a school comprising the work of grades 4 through 8 or any combination of grades 4 through 8 that has been accredited as a middle school under the provisions of 20-7-102. When an accredited junior high school is operated by the district, grades 7 and 8 or their equivalents may not be considered as elementary grades.

(2) a high school when it comprises the work of one or more grades of schoolwork or their equivalents intermediate between the elementary schools and the institutions of higher education of the state of Montana. Types of high schools are designated as follows:

(a) a junior high school is a school comprising the work of grades 7 through 9 or their equivalents that has been accredited as a junior high school under the provisions of 20-7-102;

(b) a senior high school is a school that comprises the work of grades 10 through 12 or their equivalents and that is operated in conjunction with a junior high school;

(c) a 4-year high school is a school comprising the work of grades 9 through 12 or their equivalents.

**History:** En. 75-6601 by Sec. 199, Ch. 5, L. 1971; amd. Sec. 1, Ch. 352, L. 1974; R.C.M. 1947, 75-6601(1), (2); amd. Sec. 10, Ch. 658, L. 1987; amd. Sec. 18, Ch. 219, L. 1997; amd. Sec. 4, Ch. 343, L. 1999.

**20-6-502. Opening or reopening of elementary school.** The trustees of any elementary district may open or reopen an elementary school of the district when the opening or reopening has been approved in accordance with the following procedure:

(1) The parents of at least two pupils who would attend the opened or reopened school petition the trustees of the district to open or reopen a school. The petition must identify the school, state the reasons for requesting the opening or reopening, and give the names of the children who would attend the school.

(2) If the trustees approve the opening or reopening of a school, they shall send the petition with a copy of their approval resolution to the county superintendent. The county superintendent shall review the petition to determine if the average number belonging (ANB) of the school would be two or more. If the trustees plan to open or reopen the school during the current school fiscal year, the trustees shall include the proposed opening date in the approval resolution and shall request that the process outlined in this section be expedited.

(3) The county superintendent shall present the petition, the trustees’ approval, and the county superintendent’s findings on the probable ANB to the board of county commissioners for their consideration. The board shall deny the opening or reopening of any school if the county superintendent’s enrollment estimate for the school is less than two ANB. In all other cases, the board may approve or disapprove the requested opening or reopening of the elementary school.

(4) (a) If the board approves a school opening or reopening, the county superintendent shall send a copy of the approval, along with the petition, the trustees’ approval, and the county superintendent’s estimate of the probable ANB, to the superintendent of public instruction. Except under the circumstances described in subsection (4)(b), the trustees shall apply to the superintendent of public instruction for approval to open or reopen the school by June 1 prior to the beginning of the school year in which they intend to open or reopen the elementary school. The superintendent of public instruction shall approve or disapprove the requested opening or reopening of the elementary school by the fourth Monday of June. If the opening or reopening is approved, the superintendent of public instruction shall approve or adjust the ANB estimate of the county superintendent for the school and the ANB amount must be used for budgeting and BASE funding program purposes during the ensuing school fiscal year. An ANB amount may

not be approved for the ensuing school fiscal year for an opening or reopening school when the request for the school has not been received by the superintendent of public instruction by June 1.

(b) (i) If the opening or reopening is approved and the trustees want to open or reopen the school during the current school fiscal year, the trustees shall submit a budget request to the superintendent of public instruction for that portion of the fiscal year in which the school will be in operation prior to the ensuing school fiscal year. The superintendent of public instruction shall approve or adjust the budget request and shall fund the budget for the portion of the school year in which the school will be in operation.

(ii) Before a school may open or reopen during the current school fiscal year, the school must be classified as an isolated school in accordance with the provisions of 20-9-302, except that the dates in that section for the submission and approval of the application for classification do not apply and the application must be made at the same time that the application for opening or reopening the school is made.

**History:** En. 75-6602 by Sec. 200, Ch. 5, L. 1971; R.C.M. 1947, 75-6602; amd. Sec. 1, Ch. 105, L. 2001; amd. Sec. 21, Ch. 237, L. 2001.

**Cross-References**

ANB defined, 20-1-101.

Calculation of average number belonging, 20-9-311.

Circumstances under which regular average number belonging may be increased, 20-9-313.

**20-6-503. Opening or reopening of a high school.** (1) The trustees of any high school district may open or reopen a high school of the district or a branch of a high school of the district when such opening or reopening has been approved by the superintendent of public instruction; except when a county high school is discontinued by a unification action, the trustees may establish, by resolution, a high school to be operated by the high school district without further action or approval. When the trustees of a high school district resolve to open or reopen a high school, they shall apply to the superintendent of public instruction for approval to open or reopen such school by June 1 before the school fiscal year in which they intend to open or reopen the high school. Such application shall state:

- (a) their reasons why the high school should be opened or reopened;
- (b) the probable enrollment of such high school;
- (c) the distance and road conditions of the route to neighboring high schools;
- (d) the taxable value of the district;
- (e) the building and equipment facilities available for such high school;
- (f) the planned course of instruction for such high school;
- (g) the planned methods of complying with high school standards of accreditation; and
- (h) any other information that may be required by the superintendent of public instruction.

(2) The superintendent of public instruction shall investigate the application for the opening or reopening of a high school and shall approve or disapprove the opening of the high school before the fourth Monday of June preceding the first year of intended operation. If the opening is approved, the high school district trustees may open such high school.

(3) Whenever the opening or reopening of a high school is approved for the ensuing school fiscal year, the county superintendent shall estimate the average number belonging (ANB) after investigating the probable enrollment for the high school. The ANB determined by the county superintendent shall be used for budgeting and BASE funding program purposes.

(4) Nothing herein contained shall be construed so as to preclude the trustees of a high school district from establishing more than one high school in the district.

**History:** En. 75-6603 by Sec. 201, Ch. 5, L. 1971; R.C.M. 1947, 75-6603.

**Cross-References**

ANB defined, 20-1-101.

School fiscal year, 20-1-301.

Calculation of average number belonging, 20-9-311.

Circumstances under which regular average number belonging may be increased, 20-9-313.

**20-6-504. Opening of a junior high school.** (1) The trustees of any elementary district and the trustees of the high school district in which such elementary district is located may open a junior high school when such opening has been approved by the superintendent of public

instruction; except that when the high school district operates a county high school, the opening of a junior high school shall be approved under the provisions of 20-6-505.

(2) When the trustees of such districts resolve to open a junior high school, they shall jointly apply to the superintendent of public instruction for approval to open such school by June 1 before the school fiscal year in which they intend to open the junior high school. The application shall contain such information as is required under 20-6-503 for an application to open a high school.

(3) The superintendent of public instruction shall investigate the application for the opening of a junior high school and shall approve or disapprove the opening of the junior high school before the fourth Monday of June preceding the first year of intended operation. If the opening is approved, the trustees of the elementary district and the high school district may jointly open such school.

(4) Whenever the opening of a junior high school is approved for the ensuing school fiscal year, the county superintendent shall estimate the average number belonging (ANB) after investigating the probable enrollment for the junior high school. The ANB determined by the county superintendent shall be used for budgeting and BASE funding program purposes during the ensuing school fiscal year.

**History:** En. 75-6604 by Sec. 202, Ch. 5, L. 1971; R.C.M. 1947, 75-6604.

**Cross-References**

ANB defined, 20-1-101.

Calculation of average number belonging, 20-9-311.

Circumstances under which regular average number belonging may be increased, 20-9-313.

**20-6-505. Opening a junior high school when high school district operates a county high school.** (1) Whenever the trustees of an elementary district and a high school district operating a county high school have formed a joint board of trustees under the provisions of 20-3-361, such joint board of trustees may open a junior high school under the provisions of this section.

(2) When the joint board of trustees resolves to open a junior high school, they shall order an election under the provisions of 20-20-201 to submit a proposition to the electors of the district to approve or disapprove the trustees' resolution to open a junior high school. The joint board of trustees shall call and conduct the election in the manner prescribed in this title for school elections and equally share the cost of the election. Any elector qualified to vote under the provisions of 20-20-301 may vote on the proposition. If a majority of the electors voting at the election approve the proposition, the trustees shall apply to the superintendent of public instruction for approval to open a junior high school. If a majority of the electors voting at the election disapprove the proposition, a junior high school shall not be opened by the joint board of trustees.

(3) The application to the superintendent of public instruction for the approval to open a junior high school shall be submitted by June 1 following the election approving the opening of the junior high school. The application shall contain such information as is required under 20-6-503 for an application to open a high school.

(4) The superintendent of public instruction shall investigate the application for the opening of a junior high school and shall approve or disapprove the opening of the junior high school before the fourth Monday of June preceding the first year of intended operation. If the opening is approved, the joint board of trustees may open the junior high school.

(5) At any time the trustees of the elementary district and the trustees of the high school district shall cease to form a joint board of trustees under the provisions of 20-3-361, the junior high school shall be closed and the districts shall assume the provision of an educational program for the junior high school pupils of their respective districts.

**History:** En. 75-6605 by Sec. 203, Ch. 5, L. 1971; R.C.M. 1947, 75-6605.

**Cross-References**

Powers of joint board of trustees, 20-3-362.

Circumstances under which regular average number belonging may be increased, 20-9-313.

School elections, Title 20, ch. 20.

**20-6-506. Budgeting and cost sharing when junior high school operated by elementary district and high school district operating county high school.**

(1) Whenever the opening of a junior high school is approved for the ensuing school fiscal year

under 20-6-505, the county superintendent shall estimate the average number belonging (ANB) after investigating the probable enrollment for the junior high school. The ANB determined by the county superintendent and the ANB actually realized in subsequent school fiscal years must be applied to prorate the BASE funding program amount between the elementary and high school districts. Each district shall adopt its general fund budget on the basis of the prorated amount and shall finance its proportionate share of the cost of operating the junior high school.

(2) The cost of operating the junior high school must be prorated between the elementary district and the high school district on the basis of the ratio that the number of pupils of their district is to the total enrollment of the junior high school.

**History:** En. 75-6606 by Sec. 204, Ch. 5, L. 1971; amd. Sec. 13, Ch. 266, L. 1977; R.C.M. 1947, 75-6606; amd. Sec. 14, Ch. 11, Sp. L. June 1989; amd. Sec. 8, Ch. 633, L. 1993.

**Cross-References**

ANB defined, 20-1-101.

Powers of joint board of trustees, 20-3-362.

Calculation of average number belonging, 20-9-311.

**20-6-507. Opening of middle school.** The trustees of any elementary district may open a middle school when such opening has been approved by the superintendent of public instruction. The state superintendent shall investigate an application for the opening of a middle school and shall approve or disapprove the opening before the fourth Monday in June preceding the first year of intended operation. When a middle school opening is approved, the county superintendent shall estimate the ANB after investigating the probable enrollment for the middle school. The ANB so estimated shall be used for budgeting and BASE funding program purposes during the ensuing school fiscal year.

**History:** En. 75-6609 by Sec. 2, Ch. 352, L. 1974; R.C.M. 1947, 75-6609.

**Cross-References**

ANB defined, 20-1-101.

Calculation of average number belonging, 20-9-311.

**20-6-508. Kindergarten through grade 12 system.** Unless otherwise required by law, the trustees of an elementary district in which a high school is located and the trustees of the high school district operating such high school may organize the schools of their districts to form a kindergarten through grade 12 school system, provided that the high school and elementary trustees shall not assume responsibility for the administration of grades which are not properly within their jurisdiction.

**History:** En. 75-6601 by Sec. 199, Ch. 5, L. 1971; amd. Sec. 1, Ch. 352, L. 1974; R.C.M. 1947, 75-6601(3).

**20-6-509. School closure.** Whenever it is in the best interest of the pupils affected, the trustees of any district may close any school of the district, except that a junior high school may be closed only by joint action of the trustees of the elementary district and the high school district in which the school is located. Whenever the trustees of a district close a school of the district, they shall provide the pupils of the closed school with transportation and tuition, if required, to other schools in accordance with the provisions of this title.

**History:** En. 75-6607 by Sec. 205, Ch. 5, L. 1971; R.C.M. 1947, 75-6607; amd. Sec. 3, Ch. 384, L. 1979.

**Cross-References**

Powers of joint board of trustees, 20-3-362.

Nonoperating fund, 20-9-505, 20-9-506.

## Part 6 School Property

**Part Cross-References**

Proscribed acts relating to contracts and claims, Title 2, ch. 2, part 2.

Sale of county property to school district, 7-8-2216.

Use of district property by home guard, 10-1-703.

School officers not to act as agents, 20-1-201.

Conflict of interest, 20-1-205.

Liability of parents for pupil's damage to property, 20-5-201, 40-6-237, 40-6-238.

Authority of Board of Public Education when school property used, 20-7-804.

Conflicts of interests, letting contracts, and calling for bids, 20-9-204.

Trustees to execute all contracts, 20-9-213.

Additional levy for furnishing school facilities, 20-9-353.

Nonoperating fund for maintenance of district property, 20-9-505.

Public school fund and grants to schools, Title 20, ch. 9, part 6.



**20-6-601. Power to accept gifts.** All school districts are hereby granted the power and authority to accept, receive, take, hold, and possess any gift, donation, grant, devise, or bequest of property, real or personal, and the right to own, hold, work, and improve the same.

**History:** En. Sec. 1, Ch. 47, L. 1927; re-en. Sec. 5668.17, R.C.M. 1935; R.C.M. 1947, 11-1006(part).

**Cross-References**

Authority to request, accept, and disburse money, 20-3-208.

Acceptance and expenditure of federal money for state, 20-9-603.

Gifts, legacies, devises, and administration of endowment fund, 20-9-604.

**20-6-602. Trustees' power over property.** The trustees of any district other than a high school district operating a county high school shall have the power and the responsibility to hold in trust all real and personal property of the district for the benefit of the schools and children of the district. In the name of the county, the trustees of a high school district operating a county high school, as defined by 20-6-101, shall have the power and the responsibility to hold in trust all real and personal property of the district for the benefit of the schools and children of the district.

**History:** En. 75-8201 by Sec. 473, Ch. 5, L. 1971; R.C.M. 1947, 75-8201.

**20-6-603. Trustees' authority to acquire or dispose of sites and buildings — when election required.** (1) The trustees of a district may purchase, build, exchange, or otherwise acquire, sell, or dispose of sites and buildings of the district. Action may not be taken by the trustees without the approval of the qualified electors of the district at an election called for the purpose of approval unless:

(a) a bond issue has been authorized for the purpose of constructing, purchasing, or acquiring the site or building;

(b) an additional levy under the provisions of 20-9-353 has been approved for the purpose of constructing, purchasing, or acquiring the site or building;

(c) the cost of constructing, purchasing, or acquiring the site or building is financed without exceeding the maximum general fund budget amount for the district and, in the case of a site purchase, the site has been approved under the provisions of 20-6-621; or

(d) money is otherwise available under the provisions of this title and the ballot for the site approval for the building incorporated a description of the building to be located on the site.

(2) Except for land that is granted to or held by the state in trust or land acquired by conditional deed under the provisions of 20-6-605, the trustees may, upon approval by the electorate, accept as partial or total consideration for the exchange of the land a binding written agreement by a public or private entity seeking the exchange to use the property to provide a service that benefits the school district. The deed for the exchange of land must contain reversionary clauses that allow for the return of the land to school district ownership if the binding written agreement is not complied with.

(3) When an election is conducted under the provisions of this section, it must be called under the provisions of 20-20-201 and must be conducted in the manner prescribed by this title for school elections. An elector qualified to vote under the provisions of 20-20-301 may vote in the election. If a majority of those electors voting at the election approve the proposed action, the trustees may take the proposed action.

**History:** En. 75-8204 by Sec. 476, Ch. 5, L. 1971; R.C.M. 1947, 75-8204; amd. Sec. 15, Ch. 11, Sp. L. June 1989; amd. Sec. 9, Ch. 633, L. 1993; amd. Sec. 1, Ch. 276, L. 2001.

**Cross-References**

Mail ballot elections prohibited, 13-19-104.

Bond issues for certain purposes, 20-9-403.

Purpose and authorization of a building reserve fund by election, 20-9-502.

Budgeting, tax levy, and use of building reserve fund, 20-9-503.

Building fund to be credited when property sold, 20-9-508.

Lease or sale of district property, 20-15-107.

School elections, Title 20, ch. 20.

**20-6-604. Sale of property when resolution passed after hearing — appeal procedure.** (1) Whenever the trustees of a district determine that a site, building, or any other real or personal property of the district is or is about to become abandoned, obsolete, undesirable, or unsuitable for the school purposes of the district, the trustees may sell or otherwise dispose

of the real or personal property in accordance with this section and without conforming to the provisions of 20-6-603. If a decision to sell or dispose of property is made, the trustees shall adopt a resolution to sell or otherwise dispose of the district real or personal property because it is or is about to become abandoned, obsolete, undesirable, or unsuitable for the school purposes of the district.

(2) The resolution may not become effective for 14 days after the notice required in subsection (3) is made.

(3) The trustees shall provide notice of the resolution in the manner required for school elections in 20-20-204.

(4) A taxpayer may appeal the resolution of the trustees, at any time prior to the effective date of the resolution, to the district court by filing a verified petition with the clerk of the court and serving a copy of the petition upon the district. The petition must set out in detail the objections of the petitioner to the adoption of the resolution or to the disposal of the property. The service and filing of the petition stay the resolution until final determination of the matter by the court. The court shall immediately fix the time for a hearing at the earliest convenient time. At the hearing, the court shall hear the matter de novo and may take testimony as it considers necessary. Its proceedings are summary and informal, and its decision is final.

(5) The trustees of a district that has adopted a resolution to sell or otherwise dispose of district real or personal property and, if appealed, has been upheld by the court shall sell or dispose of the real or personal property in any reasonable manner that they determine to be in the best interests of the district.

(6) The money realized from the sale or disposal of real or personal property of the district must be credited to the debt service fund, building fund, general fund, or other appropriate fund, at the discretion of the trustees.

**History:** En. 75-8205 by Sec. 477, Ch. 5, L. 1971; amd. Sec. 8, Ch. 91, L. 1973; R.C.M. 1947, 75-8205; amd. Sec. 1, Ch. 150, L. 1987; amd. Sec. 3, Ch. 568, L. 1991; amd. Sec. 1, Ch. 144, L. 1997.

**Cross-References**

Separate debt service fund maintained by County Treasurer, 20-9-440.

Building fund to be credited when property sold, 20-9-508.

School election notice, 20-20-204.

**20-6-605. Land acquired by conditional deed or at will or sufferance.** Whenever the trustees acquire land by deed conditioned upon the use of the land for the conduct of school or related activities or whenever land has been used by the trustees at the will or sufferance of the land's owner or claimant and the district has constructed buildings or made other improvements on the land, the owner or claimant may repossess the land if it ceases to be used as specified by deed or, if not specified, for the conduct of school or related activities. However, the owner or claimant shall first notify the trustees in writing of the intent to repossess the land, and the trustees shall have 1 year after receipt to remove any buildings or improvements placed upon the land by the district. The trustees' failure to remove the buildings or improvements within that time constitutes a forfeiture of the buildings or improvements. Before the owner or claimant has the right to give notice of repossession, the district's intention to permanently cease using the land must have been established by resolution of the trustees and a vote of the district's electors.

**History:** En. 75-8202 by Sec. 474, Ch. 5, L. 1971; R.C.M. 1947, 75-8202; amd. Sec. 302, Ch. 56, L. 2009.

**Cross-References**

Right of reentry, Title 70, ch. 16, part 4.

**20-6-606. Letting contracts for school facilities.** Any letting of contracts related to the construction or furnishing of a new, enlarged, remodeled, or repaired building must be conducted under the provisions of 20-9-204 or Title 18, chapter 2, part 5.

**History:** En. 75-8210 by Sec. 482, Ch. 5, L. 1971; R.C.M. 1947, 75-8210; amd. Sec. 9, Ch. 574, L. 2005.

**Cross-References**

Power of trustees to execute contracts, 20-9-213.

**20-6-607. Leasing district property and disposition of any rentals.** The trustees of a district may rent or lease any buildings, land, facilities, or personal property of the district under the terms specified by the trustees. Any money collected for the rental or lease may, in

the discretion of the trustees, be used for any proper school purpose and deposited in any fund as the trustees consider appropriate.

**History:** En. 75-8211 by Sec. 483, Ch. 5, L. 1971; amd. Sec. 2, Ch. 88, L. 1973; amd. Sec. 3, Ch. 424, L. 1977; R.C.M. 1947, 75-8211; amd. Sec. 2, Ch. 462, L. 2005.

**Cross-References**

Apportionment of rents from school lands, Art. X, sec. 5, Mont. Const.

Lease or rental agreement fund, 20-9-509.

Oil and gas leases, 82-10-201 through 82-10-204.

**20-6-608. Authority and duty of trustees to insure district property.** (1) The trustees of a district shall insure all real and personal property of the district. The trustees shall include the cost of insurance in the general fund budget of the district.

(2) Proceeds received from an insurance settlement on real or personal property insured by the district may, at the discretion of the trustees, be deposited in a fund considered appropriate by the trustees.

**History:** En. 75-8212 by Sec. 484, Ch. 5, L. 1971; R.C.M. 1947, 75-8212; amd. Sec. 16, Ch. 11, Sp. L. June 1989; amd. Sec. 5, Ch. 343, L. 1999.

**Cross-References**

School district may not levy tax, 2-9-212.

**20-6-609. Trustees' authority to acquire property by lease-purchase agreement.** The trustees of a district may acquire real and personal property by an agreement to lease for up to 7 years for personal property and for up to 15 years for real property with an option to purchase. The terms of the lease must comply with 20-6-625. If real property is acquired, the trustees shall comply with 20-6-603.

**History:** En. Sec. 1, Ch. 144, L. 1985; amd. Sec. 11, Ch. 22, L. 1997; amd. Sec. 1, Ch. 66, L. 2015.

**Cross-References**

Montana Procurement Act — local government adoption of provisions, 18-4-124.

Conflicts of interests, letting contracts, and calling for bids, 20-9-204.

Duties of trustees — contracts, 20-9-213.

**20-6-610 through 20-6-620 reserved.**

**20-6-621. Selection of school sites — approval election.** (1) (a) Except as provided in subsection (1)(b), the trustees of a district may select the sites for school buildings or for other school purposes, but the selection must first be approved by the qualified electors of the district before a contract for the purchase of a site is entered into by the trustees.

(b) The trustees may purchase or otherwise acquire property contiguous to an existing site that is in use for school purposes without a site approval election. The trustees may take an option on a site prior to the site approval election.

(2) The election for the approval of a site must be called under the provisions of 20-20-201 and must be conducted in the manner prescribed by this title for school elections. An elector who may vote at a school site election is qualified to vote under the provisions of 20-20-301. If a majority of those voting at the election approve the site selection, the trustees may purchase the site. A site approval election is not required when the site was specifically identified in an election at which an additional levy or the issuance of bonds was approved for the purchase of the site.

(3) Any site for a school building or other building of the district that is selected or purchased by the trustees must:

(a) be in a place that is convenient, accessible, and suitable;

(b) comply with the minimum size and other requirements prescribed by the department of public health and human services; and

(c) comply with the statewide building regulations, if any, promulgated by the department of labor and industry.

**History:** En. 75-8203 by Sec. 475, Ch. 5, L. 1971; R.C.M. 1947, 75-8203; amd. Sec. 75, Ch. 575, L. 1981; amd. Sec. 1, Ch. 352, L. 1985; amd. Sec. 48, Ch. 418, L. 1995; amd. Sec. 67, Ch. 546, L. 1995; amd. Sec. 1, Ch. 79, L. 1997; amd. Sec. 1, Ch. 18, L. 1999; amd. Sec. 50, Ch. 483, L. 2001.

**Cross-References**

Mail ballot elections prohibited, 13-19-104.

Building construction standards, Title 50, ch. 60.

Board of Land Commissioners, Title 77, ch. 1, part 2.

**20-6-622. Review and approval of school building plans and specifications.** (1) A school building, either publicly or privately owned or operated, in which students are housed or instructed may not be built, enlarged, or remodeled until the plans and specifications for construction have been submitted to and approved by the department of labor and industry or a municipality or county with a building code adopted as provided in 50-60-301.

(2) The plans and specifications required in subsection (1) must show in detail the proposed construction of the building and must illustrate and indicate conformity with the applicable building code.

(3) As a service to districts, the superintendent of public instruction may review the plans and specifications required in subsection (1) to assist the districts in designing facilities for optimum utilization.

**History:** En. 75-8206 by Sec. 478, Ch. 5, L. 1971; amd. Sec. 11, Ch. 504, L. 1977; R.C.M. 1947, 75-8206; amd. Sec. 1, Ch. 274, L. 1983; amd. Sec. 2, Ch. 352, L. 1985; amd. Sec. 51, Ch. 483, L. 2001.

**Cross-References**

Building construction standards, Title 50, ch. 60.

**20-6-623. Repealed.** Sec. 15, Ch. 384, L. 1979.

**History:** En. Sec. 1, Ch. 49, L. 1973; R.C.M. 1947, 75-8206.1.

**20-6-624. School building plans and specifications approval before payment.**

(1) The trustees of a district may not make any payment under a contract for the construction of school facilities until the plans and specifications for the construction have been approved under the provisions of 20-6-622.

(2) A contractor, architect, trustee, or any other person, firm, or corporation who violates the provisions of 20-6-622, this section, or any regulation promulgated by the department of public health and human services or the department of justice is guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than \$100 or more than \$500.

**History:** En. 75-8208 by Sec. 480, Ch. 5, L. 1971; R.C.M. 1947, 75-8208; amd. Sec. 1, Ch. 706, L. 1991; amd. Sec. 49, Ch. 418, L. 1995; amd. Sec. 68, Ch. 546, L. 1995.

**Cross-References**

Lapse of budgeted appropriations and provision for unpaid claims, 20-9-209.

Fire safety in public buildings, Title 50, ch. 61.

**20-6-625. Authorization to lease buildings or land for school purposes.** The trustees of any district may lease buildings or land suitable for school purposes when it is within the best interests of the district to lease the buildings or land from the county, municipality, another district, or any person. The term of the lease may not exceed 15 years unless prior approval of the qualified electors of the district is obtained in the manner prescribed by law for school elections, in which case the lease may be for a term approved by the qualified electors, but not exceeding 99 years. Whenever the lease is for a period of time that is longer than the current school fiscal year, the lease requirements for the succeeding school fiscal years shall be an obligation of the final budgets for such years.

**History:** En. 75-8209 by Sec. 481, Ch. 5, L. 1971; amd. Sec. 2, Ch. 424, L. 1977; R.C.M. 1947, 75-8209; amd. Sec. 2, Ch. 66, L. 2015.

**Cross-References**

School fiscal year, 20-1-301.

School elections, Title 20, ch. 20.

**20-6-626 through 20-6-629 reserved.**

**20-6-630. Repealed.** Sec. 8, Ch. 188, L. 2013.

**History:** En. Sec. 1, Ch. 132, L. 2011.

**20-6-631. When contracts for architectural services required.** Whenever the trustees of a school district determine that the building, furnishing, repairing, or other work for the benefit of a school district exceeds \$150,000 and requires architectural services under Title 37, chapter 65, the trustees of the school district shall contract for those services.

**History:** En. 75-6815 by Sec. 1, Ch. 370, L. 1975; R.C.M. 1947, 75-6815; amd. Sec. 1, Ch. 153, L. 1997.

**Cross-References**

Architects on public buildings to be certified, 18-2-113.

Seal and signature of architect on plans, 18-2-114.

**20-6-632. Repealed.** Sec. 1, Ch. 422, L. 1979.

**History:** En. 75-6816 by Sec. 2, Ch. 370, L. 1975; R.C.M. 1947, 75-6816.

**20-6-633. Hiring for architectural services authorized.** If the trustees determine pursuant to 20-6-631 that architectural services are necessary, the trustees shall hire a licensed architect for the architectural services as described by the school district's scope of the work. In the event that the trustees and the architect are unable to negotiate a fair and reasonable fee, the trustees may select another architect if the trustees again give reasonable notice of their selection.

**History:** En. 75-6817 by Sec. 3, Ch. 370, L. 1975; R.C.M. 1947, 75-6817; amd. Sec. 2, Ch. 153, L. 1997.

**20-6-634. Tentative and final proposals — public meetings.** Following the awarding of the contract, the trustees shall meet as often as necessary with the architectural firm to review the firm's plans and proposals. At least two of these meetings, one to review the firm's preliminary plans and one to review the firm's final proposals, shall be public meetings held after the trustees have given reasonable public notice. At these meetings the trustees shall consider any questions and testimony from the public.

**History:** En. 75-6818 by Sec. 4, Ch. 370, L. 1975; R.C.M. 1947, 75-6818.

**Cross-References**

Open meetings, Title 2, ch. 3, part 2.

Meetings and quorum, 20-3-322.

**20-6-635. Contracts with Montana firms encouraged.** The trustees are encouraged but not required to award architectural contracts to firms based or operating in Montana.

**History:** En. 75-6819 by Sec. 5, Ch. 370, L. 1975; R.C.M. 1947, 75-6819.

**20-6-636. Prohibition against contingent fees — penalty.** (1) Each contract entered into by a school district for architectural services shall contain a prohibition against contingent fees as follows: "The architectural firm warrants that it has not employed or retained any company or person, other than a bona fide full-time employee, to solicit or secure this agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide full-time employee, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this agreement." Upon the breach or violation of this prohibition, the trustees shall have the right to terminate the agreement without liability and, at their discretion, to deduct from the contract price or otherwise recover the full amount of such fee, commission, percentage, gift, or consideration.

(2) Any individual, corporation, partnership, firm, or company, other than a bona fide full-time employee, is prohibited from offering, agreeing, or contracting to solicit or secure school district contracts for architectural services for any other individual, company, corporation, partnership, or firm.

(3) A public official or employee is prohibited from soliciting or securing, whether for consideration or not, a contract for professional services for another.

(4) A person convicted of violating subsection (1), (2), or (3) of this section shall be fined not to exceed \$500 or be imprisoned in the county jail for any term not to exceed 6 months, or both.

**History:** En. 75-6820 by Sec. 6, Ch. 370, L. 1975; R.C.M. 1947, 75-6820.

**Cross-References**

Proscribed acts related to contracts and claims, Title 2, ch. 2, part 2.

Conflicts of interests, letting contracts, and calling for bids, 20-9-204.

Classification of offenses, 45-1-201.

Misdemeanor defined, 45-2-101.

**20-6-637 through 20-6-639 reserved.**

**20-6-640. Long-term loans.** School districts that experience a disaster that destroys school property to the extent of rendering the property unfit for its present school use may apply for long-term loans for use in replacing school property under the provisions of Title 17, chapter 5, part 16.

**History:** En. Sec. 1, Ch. 585, L. 1991.

**Cross-References**

Municipal Finance Consolidation Act, Title 17, ch. 5, part 16.



## Part 7 K-12 School Districts

**20-6-701. K-12 school districts required — definition — procedure for creation — exception.** (1) Except as provided in subsection (4), each elementary district with the same district boundaries as a high school district shall attach to the high school district for the purpose of establishing a K-12 school district.

(2) For the purposes of this title, unless the context clearly indicates otherwise, “K-12 school district” means a high school district with an elementary district that has been attached to the high school district under the procedures provided in this section, with the high school district remaining an organized district under the provisions of 20-6-101 and other provisions of law and the elementary district becoming an inactive district under the provisions of 20-6-101.

(3) The attachment of an elementary district to a high school district to form a K-12 school district must be conducted under the following procedure:

(a) The trustees of each district shall pass a resolution requesting the county superintendent to order an attachment involving their districts.

(b) When the county superintendent receives a resolution from each of the districts, the county superintendent shall, within 10 days after receipt of the last resolution, order the attachment of the elementary district to the high school district to take effect on July 1 of the ensuing school fiscal year. Within 30 days of the order, the county superintendent shall send a copy of the order to the board of county commissioners, the trustees of the districts included in the attachment order, and the superintendent of public instruction.

(4) This section does not apply to a school district receiving federal impact aid funding, as provided in 20 U.S.C. 7701, et seq., if creation or continuation of a K-12 district has resulted in or will result in the loss of federal impact aid funding.

**History:** En. Sec. 1, Ch. 555, L. 1991; amd. Sec. 1, Ch. 194, L. 1993; amd. Sec. 12, Ch. 22, L. 1997; amd. Sec. 1, Ch. 95, L. 1997.

**20-6-702. Funding for K-12 school districts.** (1) Notwithstanding the provisions of subsections (2) through (6), a K-12 school district formed under the provisions of 20-6-701 is subject to the provisions of law for high school districts.

(2) The number of elected trustees of the K-12 school district must be based on the classification of the attached elementary district under the provisions of 20-3-341 and 20-3-351.

(3) Calculations for the following must be made separately for the elementary school program and the high school program of a K-12 school district:

(a) the calculation of ANB for purposes of determining the total per-ANB entitlements must be in accordance with the provisions of 20-9-311;

(b) the basic county tax for elementary equalization and revenue for the elementary BASE funding program for the district must be determined in accordance with the provisions of 20-9-331, and the basic county tax for high school equalization and revenue for the high school BASE funding program for the district must be determined in accordance with 20-9-333;

(c) the guaranteed tax base aid for BASE funding program purposes for a K-12 school district must be calculated separately, using each district’s guaranteed tax base ratio, as defined in 20-9-366. The BASE budget levy to be levied for the K-12 school district must be prorated based on the ratio of the BASE funding program amounts for elementary school programs to the BASE funding program amounts for high school programs.

(d) the levy authority limits under 20-9-502(3) and the corresponding state school major maintenance aid under 20-9-525(3) for a K-12 school district must be calculated separately for the K-12 school district’s elementary and high school programs in the same manner as those limits and aid would be calculated if the K-12 school district consisted of a separate elementary and high school district.

(4) The retirement obligation and eligibility for retirement guaranteed tax base aid for a K-12 school district must be calculated and funded as a high school district retirement obligation under the provisions of 20-9-501.

(5) For the purposes of budgeting for a K-12 school district, the trustees shall adopt a single fund for any of the budgeted or nonbudgeted funds described in 20-9-201 for the costs of operating all grades and programs of the district.

(6) Tuition for attendance in the K-12 school district must be determined separately for high school pupils and for elementary pupils under the provisions of 20-5-320 through 20-5-324, except that the actual expenditures used for calculations in 20-5-323 must be based on an amount prorated between the elementary and high school programs in the appropriate funds of each district in the year prior to the attachment of the districts.

**History:** En. Sec. 2, Ch. 555, L. 1991; amd. Sec. 9, Ch. 563, L. 1993; amd. Sec. 10, Ch. 633, L. 1993; amd. Sec. 13, Ch. 22, L. 1997; amd. Sec. 2, Ch. 404, L. 2017.

**Compiler's Comments**

*2017 Amendment:* Chapter 404 inserted (3)(d) regarding calculation of levy authority limits and the state school major maintenance aid for a K-12 school district; and made minor changes in style. Amendment effective May 19, 2017.

*Applicability:* Section 15, Ch. 404, L. 2017, provided that this section applies to school district budgets beginning on or after July 1, 2017.

**20-6-703. Transitions after formation of K-12 school district.** (1) When an attachment order for a K-12 school district becomes effective on July 1 under the provisions of 20-6-701:

(a) the county superintendent shall order the trustees to execute all necessary and appropriate deeds, bills of sale, or other instruments for the conveyance of title to all real and personal property of the elementary district to the high school district;

(b) the trustees of the elementary district shall entrust the minutes of the board of trustees, the elementary district documents, and other records to the high school district to which it is attached; and

(c) the county treasurer shall transfer all end-of-the-year warrants and fund balances of the attached elementary district to the similar funds established for the K-12 school district in the high school district.

(2) All taxes levied by and revenue due from a previous school fiscal year to an elementary district attached to a high school district must be payable to the appropriate fund of the high school district.

(3) The previous year's general fund budget amounts for the elementary district and the high school district that form a K-12 school district must be combined to determine the budget limitation for the ensuing school fiscal year pursuant to 20-9-308.

**History:** En. Sec. 3, Ch. 555, L. 1991; amd. Sec. 49, Ch. 633, L. 1993; amd. Sec. 3, Ch. 36, Sp. L. November 1993; amd. Sec. 4, Ch. 403, L. 1997.

**20-6-704. Dissolution of K-12 school district.** (1) Except as provided in subsection (2), in order to dissolve a K-12 district under the provisions of this section, the trustees of a district shall submit for approval to the electors of the K-12 district a proposition dissolving the K-12 district for the purpose of annexing or consolidating the K-12 district's elementary or high school program with a contiguous school district or districts in an ensuing school fiscal year under the provisions of 20-6-422 or 20-6-423.

(2) If the trustees of the school district determine that the creation or continuation of the K-12 district has resulted in or will result in the loss of federal funding for the elementary or high school programs and that it is in the best interest of the district to dissolve into the original elementary district and high school district that existed prior to the formation of the K-12 district, the trustees may dissolve the district under the following procedure:

(a) The trustees of the district shall pass a resolution requesting the county superintendent to order a dissolution of the district.

(b) When the county superintendent receives the resolution from the district, the county superintendent shall, within 10 days, order the dissolution of the K-12 district into the original elementary district and high school district, to take effect on July 1 of the ensuing school fiscal year. Within 30 days of the order, the county superintendent shall send a copy of the order to the board of county commissioners, the trustees of the district, and the superintendent of public instruction.

(3) If the entire territory of the dissolving K-12 district will be annexed to or consolidated with a contiguous district or districts, the resolution or petition required in subsection (1) or (2) must contain a description of the manner in which the real and personal property and funds of the district are to be apportioned in the dissolution of the district and the subsequent annexation to or consolidation with one or more other districts. If a portion of the dissolving K-12 district

will not be annexed or consolidated with another district or districts, the resolution or petition must contain a description of the manner in which the property, funds, and financial obligations, including bonded indebtedness, of the K-12 district are to be apportioned to the district or districts whose territory is not annexed to or consolidated with another district.

(4) After the county superintendent receives the certificate of election provided for in 20-20-416 from the trustees of the K-12 district and from each district included in a consolidation proposition, the county superintendent shall determine whether the dissolution and annexation or consolidation proposition or propositions have been approved. If the K-12 district has approved the dissolution proposition and each district involved in a consolidation has approved the consolidation proposition, the county superintendent shall, within 10 days after the receipt of the election certificate, order the dissolution of the K-12 district into the original elementary district and high school district, to take effect on July 1 of the ensuing school fiscal year. Within 30 days of the order, the county superintendent shall send a copy of the dissolution order to the board of county commissioners, the trustees of the district included in the dissolution order, and the superintendent of public instruction.

(5) Whenever a K-12 district is dissolved, the following provisions apply:

(a) The trustees of the district whose territory is not annexed or consolidated upon dissolution of the K-12 district are responsible for the execution of remaining financial obligations of the K-12 district and for the apportionment between the elementary and high school programs of any obligations not identified in the resolution required under subsection (3).

(b) The provisions of 20-6-410 apply for tenure teachers in the dissolution of a K-12 district.

(c) For purposes of applying the budget limitation provisions of 20-9-308, the budget of a K-12 district during its last year of operations as a K-12 district will be prorated based on rules promulgated by the superintendent of public instruction.

**History:** En. Sec. 1, Ch. 285, L. 1995; amd. Sec. 2, Ch. 95, L. 1997; amd. Sec. 10, Ch. 510, L. 2005; amd. Sec. 5, Ch. 60, L. 2009.

**20-6-705 through 20-6-710 reserved.**

**20-6-711. Tenure protected — hiring preference for noncertified employees.**

(1) Whenever an elementary district is attached to a high school district to form a K-12 school district under the provisions of 20-6-701, a district superintendent, principal, teacher, or other certified employee of the elementary district who has a right of tenure under Montana law continues to have tenure in the K-12 district and the board of trustees of the high school district in which the person will perform duties shall recognize and give effect to the right of tenure.

(2) A noncertified, nonprobationary employee of an elementary district that is attached to a high school district to form a K-12 district must be given preference in hiring for any position with the K-12 district for which the employee has substantially equal qualifications and, upon acceptance of a position, may not be given probationary status.

**History:** En. Sec. 12, Ch. 555, L. 1991.

**20-6-712. Repealed.** Sec. 2, Ch. 194, L. 1993.

**History:** En. Sec. 5, Ch. 555, L. 1991.

## CHAPTER 7 SCHOOL INSTRUCTION AND SPECIAL PROGRAMS

### Part 1 — Accreditation and Curriculum

20-7-101. Standards of accreditation.

20-7-102. Accreditation of schools.

20-7-103. Montana pathway to excellence program — purpose.

20-7-104. Transparency and public availability of public school performance data — reporting — availability for timely use to improve instruction.

20-7-105. K-12 data task force.

20-7-106 through 20-7-110 reserved.

20-7-111. Instruction in public schools.

20-7-112. Sectarian publications prohibited and prayer permitted.

20-7-113. Maintenance of curriculum guide file and publishing curriculum guides by superintendent of public instruction.

20-7-114. Instructional assistance by superintendent of public instruction.

20-7-115. Private music instruction.

- 20-7-116. Supervised correspondence study.
- 20-7-117. Kindergarten and preschool programs.
- 20-7-118. Offsite provision of educational services by school district.
- 20-7-119. Administration of United States civics test.
- 20-7-120 through 20-7-130 reserved.
- 20-7-131. Equivalency of completion of secondary education.
- 20-7-132. Firearms safety education.
- 20-7-133. Pledge of allegiance required — exemption for students and teachers.
- 20-7-134. Access to public high school campuses — definition.

#### **Part 2 — Libraries**

- 20-7-201. State visual, aural, and other educational media library.
- 20-7-202. School library required.
- 20-7-203. Trustees' policies for school library.
- 20-7-204. School library book selection.
- 20-7-205. Reporting school library information.

#### **Part 3 — Vocational and Technical Education**

- 20-7-301. Duties of superintendent of public instruction.
- 20-7-302. Repealed.
- 20-7-302.1. Renumbered 20-7-308.
- 20-7-303. Authorization to establish and maintain K-12 career and vocational/technical education courses and programs.
- 20-7-304. Repealed.
- 20-7-305. Funding for secondary K-12 career and vocational/technical education programs — application — rules.
- 20-7-306. Distribution of secondary K-12 career and vocational/technical education funds.
- 20-7-307 reserved.
- 20-7-308. State director of K-12 career and vocational/technical education — duties.
- 20-7-309 and 20-7-310 reserved.
- 20-7-311. Renumbered 20-16-106.
- 20-7-312. Renumbered 20-16-104.
- 20-7-313. Repealed.
- 20-7-314. Renumbered 20-16-108.
- 20-7-315 through 20-7-319 reserved.
- 20-7-320. State-level strengthening career and technology student organizations.
- 20-7-321. Acceptance of acts of congress for vocational education.
- 20-7-322. Renumbered 20-16-201.
- 20-7-323. Repealed.
- 20-7-324. Renumbered 20-16-202.
- 20-7-325. Renumbered 20-16-204.
- 20-7-326. Repealed.
- 20-7-327. Renumbered 20-16-203.
- 20-7-328. Legislative intent.
- 20-7-329. Eligible agency for federal vocational education requirements.
- 20-7-330. Creation of state plan committee — meetings — report.
- 20-7-331. Repealed.
- 20-7-332. Renumbered 20-16-205.
- 20-7-333. Renumbered 20-16-206.
- 20-7-334. Advancing agricultural education in Montana program account.

#### **Part 4 — Special Education for Exceptional Children**

- 20-7-401. Definitions.
- 20-7-402. Special education to comply with board policies.
- 20-7-403. Duties of superintendent of public instruction.
- 20-7-404. Cooperation of state agencies.
- 20-7-405 through 20-7-410 reserved.
- 20-7-411. Regular classes preferred — obligation to establish special education program.
- 20-7-412. Repealed.
- 20-7-413. Repealed.
- 20-7-414. Determination of children in need and type of special education needed.
- 20-7-415. Repealed.
- 20-7-416 through 20-7-418 reserved.
- 20-7-419. Rules.
- 20-7-420. Residency requirements — financial responsibility for special education.
- 20-7-421. Arranging attendance in another district in lieu of a special education program — tuition.
- 20-7-422. Out-of-state placement of child with disability — payment of costs.
- 20-7-423. Repealed.
- 20-7-424. No tuition when attending state institution.
- 20-7-425 through 20-7-430 reserved.
- 20-7-431. Allowable cost schedule for special programs — superintendent to make rules — annual accounting.

- 20-7-432 through 20-7-434 reserved.
- 20-7-435. Funding of educational programs at in-state children's psychiatric hospitals and in-state residential treatment programs for eligible children.
- 20-7-436. Definitions.
- 20-7-437. Renumbered 20-5-316.
- 20-7-438 through 20-7-440 reserved.
- 20-7-441. Repealed.
- 20-7-442. Repealed.
- 20-7-443. Financial assistance special education services for children under 6 years of age.
- 20-7-444 through 20-7-450 reserved.
- 20-7-451. Authorization to create full service education cooperatives.
- 20-7-452. Detailed contents of full service education cooperative contracts.
- 20-7-453. Repealed.
- 20-7-454. Final approval and filing of full service education cooperative contract.
- 20-7-455. Authorization to appropriate funds for purpose of full service education cooperative contract.
- 20-7-456. Tenure of teachers employed by cooperatives.
- 20-7-457. Funding provisions for special education purposes of cooperatives or joint boards.
- 20-7-458. Repealed.
- 20-7-459 and 20-7-460 reserved.
- 20-7-461. Appointment and termination of appointment of surrogate parent.
- 20-7-462. Responsibilities of surrogate parent.
- 20-7-463. Surrogate parent — immunity from liability — reimbursement.
- 20-7-464 through 20-7-469 reserved.
- 20-7-470. Blind persons' literacy rights and education — short title.
- 20-7-471. Blind persons' literacy rights and education — definitions.
- 20-7-472. Individualized education program for child with blindness.
- 20-7-473. Standards of competency and instruction — Braille reading and writing.
- 20-7-474. Instructional materials and Braille equipment — Braille equipment loan program.
- 20-7-475. Blind persons' literacy rights and education — personnel training.

#### **Part 5 — Traffic Education**

- 20-7-501. Definitions.
- 20-7-502. Duties of superintendent of public instruction.
- 20-7-503. District establishment of traffic education program.
- 20-7-504. State traffic education account — proceeds earmarked for account — transmittal.
- 20-7-505. Repealed.
- 20-7-506. Annual allocation and distribution of traffic education account proceeds.
- 20-7-507. District traffic education fund.
- 20-7-508 and 20-7-509 reserved.
- 20-7-510. Renumbered 20-25-1003.
- 20-7-511. Renumbered 20-25-1004.
- 20-7-512. Renumbered 20-25-1005.
- 20-7-513. Renumbered 20-25-1006.
- 20-7-514. Renumbered 20-25-1007.

#### **Part 6 — Textbook Regulation**

- 20-7-601. Free textbook provisions.
- 20-7-602. Textbook selection and adoption.
- 20-7-603. Textbooks obtained from licensed textbook dealer.
- 20-7-604. Licensing textbook dealers.
- 20-7-605. Notification and processing of complaint against licensed textbook dealer.
- 20-7-606. Doing business without textbook dealer's license — penalty.
- 20-7-607. Restricting competition — penalty.
- 20-7-608. Offer or acceptance of emoluments or other inducements — penalty.

#### **Part 7 — Adult Education**

- 20-7-701. Definition of adult basic education and adult education.
- 20-7-702. Authorization to establish adult education programs.
- 20-7-703. Trustees' policies for adult education.
- 20-7-704. Adult education tuition and fees.
- 20-7-705. Adult education fund.
- 20-7-706 through 20-7-710 reserved.
- 20-7-711. State policy for adult basic education.
- 20-7-712. Adult basic education fund and its distribution.
- 20-7-713. Adult education fund operating reserve.
- 20-7-714. County adult literacy programs — authorization to levy tax and establish fund.

#### **Part 8 — Public Recreation**

- 20-7-801. Public recreation program authorized.
- 20-7-802. How program operated — independently or cooperatively — delegation.



- 20-7-803. Authority to accept gifts.
- 20-7-804. Authority of board of public education.
- 20-7-805. Recreational use of school facilities secondary.

#### **Part 9 — Gifted and Talented Children**

- 20-7-901. Definitions.
- 20-7-902. School district programs to identify and serve the gifted and talented child.
- 20-7-903. Programs to serve gifted and talented children — compliance with board policy — funding.
- 20-7-904. Review and recommendations of proposals.

#### **Part 10 — Distance Learning (Repealed)**

#### **Part 11 — Earthquake Emergency Procedures (Repealed)**

#### **Part 12 — Montana Digital Academy**

- 20-7-1201. Montana digital academy — purposes — governance.
- 20-7-1202. Funding — rulemaking authority.

#### **Part 13 — Protection and Wellness of Youth**

- 20-7-1301. Purpose — intent — immunity.
- 20-7-1302. Definitions.
- 20-7-1303. Youth athletes — concussion education requirements.
- 20-7-1304. Youth athletes — removal from participation following concussion — medical clearance required before return to participation.
- 20-7-1305 through 20-7-1309 reserved.
- 20-7-1310. Youth suicide awareness and prevention training.
- 20-7-1311. Child sexual abuse awareness and prevention.
- 20-7-1312 through 20-7-1314 reserved.
- 20-7-1315. First aid training in schools.
- 20-7-1316. Child sex trafficking prevention.

#### **Part 14 — Cultural Integrity Commitment Act**

- 20-7-1401. Short title.
- 20-7-1402. Legislative findings — purposes.
- 20-7-1403. Definitions.
- 20-7-1404. Indian language immersion programs — funding — flexibility.

### **Chapter Cross-References**

- Educational goals and duties, Art. X, sec. 1, Mont. Const.
- Tax checkoff for agriculture in Montana schools, 15-30-2388, 15-30-2389.

## **Part 1 Accreditation and Curriculum**

**20-7-101. Standards of accreditation.** (1) Standards of accreditation for all schools must be adopted by the board of public education upon the recommendations of the superintendent of public instruction. The superintendent shall develop recommendations in accordance with subsection (2). The recommendations presented to the board must include an economic impact statement, as described in 2-4-405, prepared in consultation with the negotiated rulemaking committee under subsection (2).

(2) The accreditation standards recommended by the superintendent of public instruction must be developed through the negotiated rulemaking process under Title 2, chapter 5, part 1. The superintendent may form a negotiated rulemaking committee for accreditation standards to consider multiple proposals. The negotiated rulemaking committee may not exist for longer than 2 years. The committee must represent the diverse circumstances of schools of all sizes across the state and must include representatives from the following groups:

- (a) school district trustees;
- (b) school administrators;
- (c) teachers;
- (d) school business officials;
- (e) parents; and
- (f) taxpayers.

(3) Prior to adoption or amendment of any accreditation standard, the board shall submit each proposal, including the economic impact statement required under subsection (1), to the

education interim committee for review at least 1 month in advance of a scheduled committee meeting.

(4) Unless the expenditures by school districts required under the proposal are determined by the education interim committee to be insubstantial expenditures that can be readily absorbed into the budgets of existing district programs, the board may not implement the standard until July 1 following the next regular legislative session and shall request that the same legislature fund implementation of the proposed standard.

(5) Standards for the retention of school records must be as provided in 20-1-212.

**History:** En. 75-7501 by Sec. 372, Ch. 5, L. 1971; R.C.M. 1947, 75-7501; amd. Sec. 2, Ch. 543, L. 1983; amd. Sec. 4, Ch. 208, L. 2005; amd. Sec. 2, Ch. 379, L. 2015.

**Compiler's Comments**

*2017 Code Commissioner Correction:* Pursuant to sec. 24, Ch. 275, L. 2017, the code commissioner in (3) and (4) substituted "education interim committee" for "education and local government interim committee" to reflect amendments made by Ch. 167, L. 2017.

**20-7-102. Accreditation of schools.** (1) The conditions under which each elementary school, each middle school, each junior high school, 7th and 8th grades funded at high school rates, and each high school operates must be reviewed by the superintendent of public instruction to determine compliance with the standards of accreditation. The accreditation status of each school must then be established by the board of public education upon the recommendation of the superintendent of public instruction. Notification of the accreditation status for the applicable school year or years must be given to each district by the superintendent of public instruction.

(2) A school may be accredited for a period consisting of 1, 2, 3, 4, or 5 school years, except that multiyear accreditation may be granted only to schools that are in compliance with 20-4-101.

(3) A nonpublic school may, through its governing body, request that the board of public education accredit the school. Nonpublic schools may be accredited in the same manner as provided in subsection (1).

(4) As used in this section, "7th and 8th grades funded at high school rates" means an elementary school district or K-12 district elementary program whose 7th and 8th grades are funded as provided in 20-9-306(15)(c)(ii).

**History:** En. 75-7502 by Sec. 373, Ch. 5, L. 1971; amd. Sec. 4, Ch. 352, L. 1974; R.C.M. 1947, 75-7502; amd. Sec. 1, Ch. 270, L. 1979; amd. Sec. 1, Ch. 150, L. 1983; amd. Sec. 1, Ch. 73, L. 2001; amd. Secs. 3, 4, Ch. 462, L. 2005; amd. Sec. 6, Ch. 4, Sp. L. December 2005; amd. Sec. 5, Ch. 418, L. 2011; amd. Sec. 3, Ch. 400, L. 2013; amd. Sec. 10, Ch. 275, L. 2017; amd. Sec. 2, Ch. 336, L. 2017.

**Compiler's Comments**

*2017 Purported Amendments:* Section 10, Ch. 275, L. 2017, and section 2, Ch. 336, L. 2017, purported to amend this section by changing a subsection reference to 20-9-306. Section 12, Ch. 275, L. 2017, and section 5, Ch. 336, L. 2017, amended 20-9-306 so that the changes to the subsection reference were unnecessary and the section remains unchanged.

*Applicability:* Section 28, Ch. 336, L. 2017, provided: "[This act] applies to school budgets for school years beginning on or after July 1, 2017."

**Cross-References**

School district assessment for placement of child who enrolls from nonaccredited, nonpublic school, 20-5-110.  
Definitions of various schools, 20-6-501.

**20-7-103. Montana pathway to excellence program — purpose.** (1) Sections 20-7-103 and 20-7-104 may be known as the pathway to excellence program.

(2) The purpose of the pathway to excellence program is to promote educational excellence in Montana's public schools through data-driven decisionmaking.

(3) It is the intent of the program that Montana K-12 public education remain focused on continuous improvement and increased academic achievement for students in public schools.

**History:** En. Sec. 3, Ch. 418, L. 2011.

**20-7-104. Transparency and public availability of public school performance data — reporting — availability for timely use to improve instruction.** (1) The office of public instruction's statewide data system must, at a minimum:

(a) include data entry and intuitive reporting options that school districts can use to make timely decisions that improve instruction and impact student performance while creating a collaborative environment for parents, teachers, and students to work together in improving student performance. Options that the office of public instruction shall incorporate and make available for each school district must include data linkages to provide for automated conversion of data from systems already in use by school districts or by the office of public instruction

that allow districts to collect, manage, and present local classroom assessment scores, grades, attendance, and other data to assist in instructional intervention alongside the existing school accountability and statewide student achievement results. The office of public instruction shall ensure that the design of the system is enhanced to prioritize collaborative support of each student's needs by classroom educators, administrators, and parents.

(b) display a publicly available educational data profile for each school district that protects each student's education records in compliance with the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. 1232g, as amended, and its implementing regulations at 34 CFR, part 99.

(2) Subject to subsection (1)(b), each school district's educational profile must include, at a minimum, the following elements:

- (a) school district contact information and links to district websites, when available;
- (b) state criterion-referenced testing results;
- (c) program and course offerings;
- (d) student enrollment and demographics by grade level; and
- (e) graduation rates.

(3) Each school district shall annually report to the office of public instruction and publish and post on the school district's internet website the following district data for the preceding school year:

- (a) the number and type of employee positions, including administrators;
- (b) for the current employee in each position:
  - (i) the total amount of compensation paid to the employee by the district. The total amount of compensation includes but is not limited to the employee's base wage or salary, overtime pay, and other income from school-sanctioned extracurricular activities, including coaching and similar activities; and
  - (ii) the certification held by and required of the employee;
- (c) the student-teacher ratio by grade;
- (d) (i) the amount, by category, spent by the district for operation and maintenance, stated in total cost and cost per square foot; and
  - (ii) the amount of principal and interest paid on bonds;
- (e) the total district expenditures per student;
- (f) the total budget for all funds;
- (g) the total number of students enrolled and the average daily attendance;
- (h) the total amount spent by the district on extracurricular activities and the total number of students that participated in extracurricular activities; and
- (i) the number of students that entered the 9th grade in the school district but did not graduate from a high school in that district and for which the school district did not receive a transfer request. For reporting purposes, the students identified under this subsection (3)(i) are considered to have dropped out of school.

(4) Each school district shall also post on the school district's internet website a copy of every working agreement the district has with any organized labor organization and the district's costs, if any, associated with employee union representation, collective bargaining, and union grievance procedures and litigation resulting from union employee grievances.

(5) If a school district does not have an internet website, the school district shall publish the information required under subsections (2) and (3) in printed form and provide a copy of the information upon request at the cost incurred by the school district for printing only.

(6) The superintendent of public instruction shall continually work in consultation with the K-12 data task force provided for in 20-7-105 to analyze the best options for a statewide data system that will best enhance the ability of school districts to use data for the purposes identified in this section. Emphasis must be placed on developing or purchasing and customizing a statewide data system that promotes and preserves community ownership and local control and that incorporates innovative technologies available in the marketplace that may be in use and that are successfully working in other states. The office of public instruction and the K-12 data task force shall collaborate to enhance the statewide data system to support:

- (a) the needs of school districts in using data to improve instruction and student performance;
- (b) the collection of data from schools through a process that provides for automated conversion of data from systems already in use by school districts or the office of public instruction

and that resolves the repetition of data entry and redundancy of data requested that has been characteristic of the data system in the past and that otherwise reduces the diversion of district staff time away from instruction and supervision;

(c) increased use of data from the centralized system by various functions within the office of public instruction; and

(d) transparency in reporting to schools, school districts, communities, and the public.

(7) The superintendent of public instruction shall gather, maintain, and distribute longitudinal, actionable data in the following areas:

(a) statewide student identifier;

(b) student-level enrollment data, including average daily attendance;

(c) student-level statewide assessment data;

(d) information on untested students;

(e) student-level graduation and dropout data;

(f) ability to match student-level K-12 and higher education data;

(g) a statewide data audit system;

(h) a system to track student achievement with a direct teacher-to-student match to help track, report, and create opportunities for improved individual student performance;

(i) student-level course completion data, including transcripts, to assess career and college readiness; and

(j) student-level ACT results, scholastic achievement test results, and advanced placement exam data.

(8) The superintendent of public instruction shall emphasize the creation of and distribution of individual diagnostic data for each student in a manner that is timely and protects the privacy rights of students and families as they relate to education so that school districts may use the data to support timely academic intervention as needed and to otherwise improve the academic achievement of the students of each school district.

(9) In addition to the data privacy protections in subsection (1)(b), the superintendent of public instruction may provide personally identifiable information gathered, maintained, and distributed pursuant to subsection (7) and any other personally identifiable data only to the office of public instruction, the school district where the student is or has been enrolled, the parent, and the student. The superintendent of public instruction may not share, sell, or otherwise release personally identifiable information to any for-profit business, nonprofit organization, public-private partnership, governmental unit, or other entity unless the student's parent has provided written consent specifying the data to be released, the reason for the release, and the recipient to whom the data may be released.

(10) On or before June 30, 2013, the superintendent of public instruction shall begin presenting longitudinal data on academic achievement and shall develop plans for a measurement of growth for the statewide student assessment required by the board of public education.

**History:** En. Sec. 4, Ch. 418, L. 2011; amd. Sec. 4, Ch. 400, L. 2013.

**20-7-105. K-12 data task force.** (1) There is a K-12 data task force established by the office of public instruction.

(2) The K-12 data task force is composed of:

(a) The presiding officer and vice presiding officer of the senate and house standing committees on education and the presiding officer and vice presiding officer of the joint subcommittee for education that deals with appropriations or their designees;

(b) additional positions appointed by the majority vote of the presiding officers and vice presiding officers referred to in subsection (2)(a), as follows:

(i) three elected school board trustees consisting of one each from a class 1, class 2, and class 3 school district;

(ii) three school administrators consisting of one each employed by a class 1, class 2, and class 3 school district;

(iii) three teachers consisting of one each employed by a class 1, class 2, and class 3 school district;

(iv) three technology staff consisting of one each employed by a class 1, class 2, and class 3 school district;

(v) six parents, consisting of one parent of an elementary pupil currently enrolled in each of a class 1, class 2, and class 3 school district and one parent of a high school pupil currently enrolled in each of a class 1, class 2, and class 3 school district; and

(vi) three school district clerks, as provided in 20-3-325, consisting of one each employed by a class 1, class 2, and class 3 school district.

(3) The K-12 data task force shall serve in an advisory capacity to the office of public instruction. The task force shall review, monitor, and provide input and guidance in enhancing the statewide K-12 data system pursuant to 20-7-104.

(4) Unless otherwise provided by law, each member is entitled to be paid \$50 for each day in which the member is engaged in the performance of duties under this section and is also entitled to be reimbursed for travel expenses, as provided for in 2-18-501 through 2-18-503, incurred while in the performance of task force duties. Members who are full-time salaried officers or employees of this state or of a political subdivision of this state are not entitled to be compensated for their service as members except when they perform their task force duties outside their regular working hours or during hours charged against their leave time, but those members are entitled to be reimbursed for travel expenses as provided for in 2-18-501 through 2-18-503.

**History:** En. Sec. 1, Ch. 400, L. 2013.

**20-7-106 through 20-7-110 reserved.**

**20-7-111. Instruction in public schools.** The board of public education shall define and specify the basic instructional program for pupils in public schools, and such program shall be set forth in the standards of accreditation. Other instruction may be given when approved by the board of trustees.

**History:** En. 75-7503.1 by Sec. 1, Ch. 137, L. 1975; R.C.M. 1947, 75-7503.1.

#### **Cross-References**

Duty of Superintendent or principal to recommend course of instruction, 20-4-402.

Enrollment in private school providing equivalent instruction as excuse from required enrollment in public schools, 20-5-102.

Nonpublic school requirements for compulsory enrollment exemption, 20-5-109.

**20-7-112. Sectarian publications prohibited and prayer permitted.** A publication of a sectarian or denominational character may not be distributed in any school. Instruction may not be given advocating sectarian or denominational doctrines. However, any teacher, principal, or superintendent may open the school day with a prayer. This section does not prohibit a school library from including the Bible or other religious material having cultural, historical, or educational significance.

**History:** En. 75-7521 by Sec. 392, Ch. 5, L. 1971; R.C.M. 1947, 75-7521; amd. Sec. 1, Ch. 367, L. 1989.

#### **Cross-References**

Freedom of religion guaranteed, Art. II, sec. 5, Mont. Const.

Teaching of sectarian tenets or requiring attendance at religious service prohibited, Art. X, sec. 7, Mont. Const.

Religious instruction released time program, 20-1-308.

**20-7-113. Maintenance of curriculum guide file and publishing curriculum guides by superintendent of public instruction.** The superintendent of public instruction shall collect and maintain a file of curriculum guides to be made available to districts for the use of schools in planning courses of instruction. The superintendent may prepare, publish, and distribute curriculum guides for the use of schools in planning courses of instruction. The superintendent may solicit the assistance of educators and other qualified persons in the preparation of curriculum guides.

**History:** En. 75-7505 by Sec. 376, Ch. 5, L. 1971; R.C.M. 1947, 75-7505; amd. Sec. 303, Ch. 56, L. 2009.

**20-7-114. Instructional assistance by superintendent of public instruction.** The superintendent of public instruction shall, at the request of the district or county superintendent, assist the schools with the planning, implementation, operation, and evaluation of instruction through inservice training and individual consultation.

**History:** En. 75-7506 by Sec. 377, Ch. 5, L. 1971; R.C.M. 1947, 75-7506.

#### **Cross-References**

Pupil-instruction-related day, 20-1-304.



**20-7-115. Private music instruction.** Schools may grant credit to pupils completing courses of private music instruction conducted outside of school hours and at the pupils' own expense. The instruction shall be provided by a teacher holding a valid Montana teacher's certificate with a music endorsement. The district granting such credit shall provide adequate supervision for the instruction and shall determine the allowable credit for such courses.

**History:** En. 75-7508 by Sec. 379, Ch. 5, L. 1971; R.C.M. 1947, 75-7508.

**20-7-116. Supervised correspondence study.** The trustees of a district may provide supervised correspondence study for a pupil when it is impossible for the pupil to attend a school because of the isolation of the pupil's residence or the pupil's mental or physical incapacity. Supervision of the correspondence course must be provided by the district superintendent or the county superintendent if there is no district superintendent.

**History:** En. 75-7510 by Sec. 381, Ch. 5, L. 1971; R.C.M. 1947, 75-7510; amd. Sec. 304, Ch. 56, L. 2009.

#### Cross-References

Duty of trustees to provide alternate forms of transportation, 20-10-121.

Reimbursement for supervised home study, 20-10-125, 20-10-142.

**20-7-117. Kindergarten and preschool programs.** (1) The trustees of an elementary district shall establish or make available a kindergarten program capable of accommodating, at a minimum, all the children in the district who will be 5 years old on or before September 10 of the school year for which the program is to be conducted or who have been enrolled by special permission of the board of trustees. The kindergarten program, which the trustees may designate as either a half-time or full-time program, must be an integral part of the elementary school and must be financed and governed accordingly, provided that to be eligible for inclusion in the calculation of ANB pursuant to 20-9-311, a child must have reached 5 years of age on or before September 10 of the school year covered by the calculation or have been enrolled by special permission of the board of trustees. A kindergarten program must meet the minimum aggregate hour requirements established in 20-1-301. A kindergarten program that is designated as a full-time program must allow a parent, guardian, or other person who is responsible for the enrollment of a child in school, as provided in 20-5-102, to enroll the child half-time.

(2) The trustees of an elementary school district may establish and operate a free preschool program for children between the ages of 3 and 5 years. When preschool programs are established, they must be an integral part of the elementary school and must be governed accordingly. Financing of preschool programs may not be supported by money available from state equalization aid.

**History:** En. 75-7507 by Sec. 378, Ch. 5, L. 1971; amd. Sec. 3, Ch. 345, L. 1973; R.C.M. 1947, 75-7507; amd. Sec. 3, Ch. 334, L. 1979; amd. Sec. 68, Ch. 370, L. 1987; amd. Sec. 1, Ch. 399, L. 1991; amd. Sec. 11, Ch. 1, Sp. L. May 2007.

#### Cross-References

Definition of various schools, 20-6-501.

Circumstances under which regular average number belonging may be increased, 20-9-313.

**20-7-118. Offsite provision of educational services by school district.** (1) A school district may provide educational services at an offsite instructional setting, including the provision of services through electronic means. A district shall comply with any rules adopted by the board of public education that specify standards for the provision of educational services at an offsite instructional setting. The provision of educational services at an offsite instructional setting by a district is limited to pupils:

- (a) meeting the residency requirements for that district as provided in 1-1-215;
- (b) living in the district and eligible for educational services under the Individuals With Disabilities Education Act or under 29 U.S.C. 794; or
- (c) attending school in the district under a mandatory attendance agreement as provided in 20-5-321.

(2) The superintendent of public instruction shall adopt rules for the administration and enforcement of this section.

**History:** En. Sec. 1, Ch. 570, L. 2005.

**20-7-119. Administration of United States civics test.** (1) Each public high school in the state is encouraged to administer to each student, except as provided in subsection (2), at

least once during a student's high school career, a United States civics test administered by the United States citizenship and immigration services to persons seeking to be naturalized citizens.

(2) A public high school may provide each student with the opportunity to take the test as many times as necessary for the student to pass the test. A student who has an individualized education program under which the civics test is determined to be an inappropriate requirement for the student may not be required to take the civics test.

(3) A student passes the civics test if the student correctly answers at least 70% of the questions.

(4) The superintendent of public instruction is encouraged to annually publish a list of high schools in the state whose seniors receiving a regular diploma, except for those exempted from taking the test under subsection (2), all pass the United States civics test under subsection (1) and recognize these schools as United States civics all-star schools for that school year.

**History:** En. Sec. 1, Ch. 303, L. 2017.

#### **Compiler's Comments**

*Effective Date — Applicability:* Section 3, Ch. 303, L. 2017, provided: "[This act] is effective July 1, 2017, and applies to school years beginning on or after July 1, 2017."

#### **20-7-120 through 20-7-130 reserved.**

**20-7-131. Equivalency of completion of secondary education.** The superintendent of public instruction shall issue, in accordance with the policies of the board of public education, appropriate documentation certifying that an eligible applicant has satisfied requirements for equivalency of completion of secondary education. Equivalency of completion of secondary education must include satisfactory completion of a testing program or an external diploma program approved by the board of public education.

**History:** En. Sec. 2, Ch. 94, L. 1983.

#### **Cross-References**

Board of Public Education — rules, 20-2-121.

**20-7-132. Firearms safety education.** The trustees of a district are encouraged to establish and maintain a firearms safety education course. The trustees may adopt a course of instruction developed by the department of fish, wildlife, and parks, a law enforcement agency, or a firearms association as its firearms safety education course. Instructors from the department of fish, wildlife, and parks, a law enforcement agency, or a firearms association or a person recognized by the trustees as having expertise in firearms safety education may be used to provide the instruction.

**History:** En. Sec. 1, Ch. 138, L. 1997.

#### **20-7-133. Pledge of allegiance required — exemption for students and teachers.**

(1) Except as provided in subsection (4), the pledge of allegiance to the flag of the United States of America must be recited in all public schools of the state.

(2) The recitation required in subsection (1) must be conducted at the beginning of the first class:

- (a) of each school day in kindergarten through grade 6; and
- (b) of each school week in grades 7 through 12.

(3) The recitation must be conducted:

- (a) by each individual classroom teacher or the teacher's surrogate; or
- (b) over the school intercom system by a faculty member or person designated by the principal.

(4) A school district shall inform all students and teachers of their right to not participate in recitation of the pledge. Any student or teacher who, for any reason, objects to participating in the pledge exercise must be excused from participation. A student or teacher who declines to participate in the pledge may engage in any alternative form of conduct so long as that conduct does not materially or substantially disrupt the work or discipline of the school.

(5) If a student or teacher declines to participate in the recitation of the pledge pursuant to this section, a school district may not for evaluation purposes include any reference to the student's or teacher's not participating.

**History:** En. Sec. 1, Ch. 320, L. 1997.

#### **Cross-References**

Individual dignity, Art. II, sec. 4, Mont. Const.

**20-7-134. Access to public high school campuses — definition.** (1) The access provided to recruiters for the United States armed forces by a public high school must be equal to the access granted to other recruiting groups and organizations. The access must include any directory information that may be released about students pursuant to the Family Educational Rights and Privacy Act of 1974. Parents or legal guardians have the right to inform the high school that they do not wish to have an armed forces recruiter speak to their children.

(2) For purposes of this section, “armed forces” means the United States army, air force, navy, marines, coast guard, and merchant marine, including the United States military reserves of these services, the Montana national guard, and the service academies and training programs for these services.

**History:** En. Sec. 1, Ch. 271, L. 2003.

## Part 2 Libraries

### Part Cross-References

Authority of Superintendent of Public Instruction to employ educational media supervisor, 20-3-104.  
Libraries, Title 22, ch. 1.

**20-7-201. State visual, aural, and other educational media library.** A library of visual, aural, and other educational media shall be established and maintained by the superintendent of public instruction. The media shall be selected by the superintendent of public instruction on the basis of their usefulness as teaching aids and resources for schools and other educational groups within the state and shall be made available to such schools and groups on a rental fee basis. The rental fees for the use of the materials in the library shall be set by the superintendent of public instruction and shall be deposited in the audiovisual and media library account in the state special revenue fund. The superintendent of public instruction may use these funds, as well as any other funds advanced by a legislative appropriation to the audiovisual and media library account, for the operation, maintenance, enlargement, and other related costs of the library.

**History:** En. 75-7511 by Sec. 382, Ch. 5, L. 1971; amd. Sec. 1, Ch. 193, L. 1974; R.C.M. 1947, 75-7511; amd. Sec. 3, Ch. 277, L. 1983; amd. Sec. 2, Ch. 470, L. 1987.

**20-7-202. School library required.** The trustees of each district shall establish and maintain a school library in each school of the district. Each school library shall comply with at least the minimum requirements of the standards of accreditation adopted by the board of public education.

**History:** En. 75-7517 by Sec. 388, Ch. 5, L. 1971; R.C.M. 1947, 75-7517.

### Cross-References

Contracts with public library board of trustees, 22-1-309.

**20-7-203. Trustees’ policies for school library.** The trustees shall adopt those policies necessary for regulating the use and operation of school libraries. These policies may provide for the use of school libraries by the residents of the district, provided that such use does not interfere with the regular school use of the library.

**History:** En. 75-7518 by Sec. 389, Ch. 5, L. 1971; R.C.M. 1947, 75-7518.

**20-7-204. School library book selection.** School library books shall be selected by the district superintendent or a principal if there is no district superintendent, subject to the approval of the trustees. In districts not employing a superintendent or principal, the trustees shall select the school library books on the basis of recommendations of the county superintendent.

**History:** En. 75-7519 by Sec. 390, Ch. 5, L. 1971; R.C.M. 1947, 75-7519.

**20-7-205. Reporting school library information.** The trustees shall report school library information requested by the superintendent of public instruction, by the board of public education, or when there is no district superintendent or principal, by the county superintendent.

**History:** En. 75-7520 by Sec. 391, Ch. 5, L. 1971; R.C.M. 1947, 75-7520.

## Part 3 Vocational and Technical Education

### Part Cross-References

Vocational-technical education defined, 20-1-101.

**20-7-301. Duties of superintendent of public instruction.** The superintendent of public instruction is the governing agent and executive officer of the state of Montana for K-12 career and vocational/technical education. The superintendent of public instruction shall adopt and administer policies to effect the orderly development of a system of K-12 career and vocational/technical education that is adaptable to changing needs, controlled to prevent unnecessary duplication, coordinated with federal guidelines and requirements for K-12 career and vocational/technical education, and funded to ensure growth and quality programming. In order to accomplish the orderly development of a system of K-12 career and vocational/technical education, the policies adopted by the superintendent of public instruction must include:

- (1) a state plan for development of the system;
- (2) standards for K-12 career and vocational/technical education courses and programs;
- (3) a review process for the establishment and deletion of programs;
- (4) instructor qualifications for K-12 career and vocational/technical education courses and programs;
- (5) criteria for approval of K-12 career and vocational/technical education courses and programs;
- (6) a basis for apportionment of all money appropriated by the legislature for K-12 career and vocational/technical education in accordance with the intent of the legislature as reflected in the terms of the appropriation;
- (7) a basis for apportionment of all money received by the state of Montana for K-12 career and vocational/technical education from the federal government in accordance with the acts of congress;
- (8) a system of evaluation of K-12 career and vocational/technical education that allows for consideration of the current and projected workforce needs and job opportunities; and
- (9) any other policy that is consistent with public law and that is necessary for the proper operation of a system of K-12 career and vocational/technical education.

**History:** En. 75-7702 by Sec. 405, Ch. 5, L. 1971; (amd. Sec. 1, Ch. 434, L. 1975 — [unconstitutional, 167 M 261]; Sec. 1, Ch. 434, L. 1975 repealed by Sec. 1, Ch. 4, L. 1977); R.C.M. 1947, 75-7702; amd. Sec. 1, Ch. 598, L. 1979; amd. Sec. 11, Ch. 658, L. 1987; amd. Sec. 6, Ch. 133, L. 2001.

**20-7-302. Repealed.** Sec. 21, Ch. 598, L. 1979.

**History:** En. 75-7703 by Sec. 406, Ch. 5, L. 1971; (amd. Sec. 2, Ch. 434, L. 1975 — [unconstitutional, 167 M 261]; Sec. 2, Ch. 434, L. 1975 repealed by Sec. 1, Ch. 4, L. 1977); R.C.M. 1947, 75-7703.

**20-7-302.1. Renumbered 20-7-308.** Code Commissioner, 2001.

**20-7-303. Authorization to establish and maintain K-12 career and vocational/technical education courses and programs.** The trustees of an elementary or high school district may establish and maintain a K-12 career and vocational/technical education course or program that complies with the K-12 career and vocational/technical education standards adopted by the superintendent of public instruction. In order for a course or program to be eligible for state or federal funding, it must be approved by the superintendent of public instruction for compliance with K-12 career and vocational/technical education standards.

**History:** En. 75-7704 by Sec. 407, Ch. 5, L. 1971; (amd. Sec. 5, Ch. 434, L. 1975 — [unconstitutional, 167 M 261]; Sec. 5, Ch. 434, L. 1975 repealed by Sec. 1, Ch. 4, L. 1977); R.C.M. 1947, 75-7704; amd. Sec. 13, Ch. 598, L. 1979; amd. Sec. 13, Ch. 658, L. 1987; amd. Sec. 8, Ch. 133, L. 2001.

**Cross-References**

Powers and duties of community college trustees, 20-15-225.

**20-7-304. Repealed.** Sec. 31, Ch. 658, L. 1987.

**History:** En. Sec. 7, Ch. 598, L. 1979.

**20-7-305. Funding for secondary K-12 career and vocational/technical education programs — application — rules.** (1) The superintendent of public instruction shall annually distribute money from the biennial appropriation for secondary K-12 career and vocational/technical education. The money must be allocated to high school districts providing approved secondary K-12 career and vocational/technical education programs in accordance with this section and 20-7-306.

(2) A high school district providing secondary K-12 career and vocational/technical education programs shall apply to the superintendent of public instruction for funds available under this section and 20-7-306. The superintendent of public instruction shall by rule prescribe

the method for distribution, the form of the application, budget procedures, and accounting rules for the funds. The superintendent of public instruction may prescribe other requirements for the receipt of funding consistent with Title 20, chapter 7, part 3.

(3) A secondary K-12 career and vocational/technical education program in a high school district may not be funded until that program has been offered by the school district for 1 school year.

(4) As used in this section and 20-7-306 the term “school district” means a district organized for the purpose of providing educational services for grades 9 through 12, but the term does not include postsecondary vocational education centers.

**History:** En. Sec. 1, Ch. 287, L. 1981; amd. Sec. 9, Ch. 133, L. 2001.

**Cross-References**

ANB defined, 20-1-101.

Definition of elementary and high school districts, 20-6-101.

Definition of various schools, 20-6-501.

Calculation of average number belonging, 20-9-311.

**20-7-306. Distribution of secondary K-12 career and vocational/technical education funds.** (1) The superintendent of public instruction shall categorize secondary K-12 career and vocational/technical education programs based on weighted factors, including but not limited to:

- (a) K-12 career and vocational/technical education enrollment;
- (b) approved career and technical student organizations;
- (c) field supervision of students beyond the school year for K-12 career and vocational/technical education;
- (d) district expenditures related to the K-12 career and vocational/technical education programs; and

(e) student participation in workforce development activities, including but not limited to:

- (i) attainment of industry-recognized professional certifications; and
- (ii) work-based learning programs, such as internships and registered apprenticeships.

(2) The superintendent of public instruction shall adjust the weighted factors outlined in subsection (1) as necessary to ensure that the allocations do not exceed the amount appropriated.

(3) Except for other expenditures outlined in subsection (1)(d), funding must be based upon the calculation for secondary K-12 career and vocational/technical education programs of the high school district in the year preceding the year for which funding is requested. Funding for the expenditures referred to in subsection (1)(d) must be based on the calculation for the secondary K-12 career and vocational/technical education programs of the high school district for the 2 years preceding the year for which funding is requested. The funding must be computed for each separate secondary K-12 career and vocational/technical education program.

(4) For secondary career and vocational/technical education programs, the total funding must be distributed to eligible programs based on the four factors listed in subsections (1)(a) through (1)(d).

(5) The superintendent of public instruction shall annually distribute the funds allocated in this section by November 1. The money received by the high school district must be deposited into the subfund of the miscellaneous programs fund established by 20-9-507 and may be expended only for approved secondary K-12 career and vocational/technical education programs. The expenditure of the money must be reported in the annual trustees’ report as required by 20-9-213.

(6) Any increase in the amount distributed to a school district from the biennial state appropriation for secondary K-12 career and vocational/technical education must be used for the expansion and enhancement of career and vocational/technical education programs and may not be used to reduce previous district spending on career and vocational/technical education programs.

**History:** En. Sec. 2, Ch. 287, L. 1981; amd. Sec. 5, Ch. 337, L. 1989; amd. Sec. 50, Ch. 633, L. 1993; amd. Sec. 10, Ch. 133, L. 2001; amd. Sec. 1, Ch. 350, L. 2015; amd. Sec. 3, Ch. 336, L. 2017.

**Compiler’s Comments**

*2017 Amendment:* Chapter 336 in (1) after “vocational/technical education programs” deleted “according to the relative additional costs of those programs”; inserted (1)(e) regarding student participation in workforce development activities; and made minor changes in style. Amendment effective July 1, 2017.



*Applicability:* Section 28, Ch. 336, L. 2017, provided: “[This act] applies to school budgets for school years beginning on or after July 1, 2017.”

#### **Cross-References**

Calculation of average number belonging, 20-9-311.

#### **20-7-307 reserved.**

**20-7-308. State director of K-12 career and vocational/technical education — duties.** There is a state director of K-12 career and vocational/technical education appointed by the superintendent of public instruction. The director shall:

- (1) administer the K-12 career and vocational/technical education policies adopted by the superintendent of public instruction;
- (2) prepare curriculum guides for adoption by the superintendent of public instruction;
- (3) employ, with the confirmation of the superintendent of public instruction, professional staff consisting of individuals prepared in agriculture education, business and marketing education, family and consumer sciences education, and industrial technology education;
- (4) report the status of K-12 career and vocational/technical education in the state of Montana when requested by the superintendent of public instruction;
- (5) keep all K-12 career and vocational/technical education records in the director’s office;
- (6) provide K-12 career and vocational/technical education supervisory and consultative assistance to districts;
- (7) prepare any necessary reports for the superintendent of public instruction or the legislature; and
- (8) perform any other duty assigned by the superintendent of public instruction.

**History:** En. Sec. 2, Ch. 598, L. 1979; amd. Sec. 12, Ch. 658, L. 1987; amd. Sec. 7, Ch. 133, L. 2001; Sec. 20-7-302.1, MCA 1999; redes. 20-7-308 by Code Commissioner, 2001.

#### **20-7-309 and 20-7-310 reserved.**

**20-7-311. Renumbered 20-16-106.** Sec. 33, Ch. 658, L. 1987.

**20-7-312. Renumbered 20-16-104.** Sec. 33, Ch. 658, L. 1987.

**20-7-313. Repealed.** Sec. 31, Ch. 658, L. 1987.

**History:** En. 75-7711 by Sec. 414, Ch. 5, L. 1971; R.C.M. 1947, 75-7711.

**20-7-314. Renumbered 20-16-108.** Sec. 33, Ch. 658, L. 1987.

#### **20-7-315 through 20-7-319 reserved.**

**20-7-320. State-level strengthening career and technology student organizations.**

- (1) There is a state-level strengthening career and technology student organizations program.
- (2) The purposes of the program are to:
  - (a) strengthen Montana’s career and technology student organizations by increasing graduation rates, enhancing student leadership opportunities, developing workforce skills, and facilitating transitions to postsecondary education and employment for all participating students;
  - (b) ensure alignment of activities of local career and technology student organizations with nationally affiliated programs and activities; and
  - (c) provide a base of funding for the statewide coordination of state-approved career and technology student organizations.
- (3) To be eligible for funding under this section, each state-approved career and technology student organization must be affiliated with a respective national career and technology student organization and be appropriately incorporated as a Montana nonprofit organization in compliance with state law and regulations regarding operations and financial reporting by May 1, 2013.
- (4) The superintendent of public instruction shall distribute funds appropriated for grants to state-approved career and technology student organizations by November 1. Each grant recipient must receive a base amount of funding to support the position of state director for the organization.

(5) The superintendent of public instruction shall supervise and coordinate the program by establishing procedures and criteria for review and approval of grants to state-approved career and technology student organizations.

(6) Proposals submitted to the superintendent of public instruction by career and technology student organizations must contain:

- (a) a program description, including measurable objectives;
- (b) evidence of hiring a state director and a plan for expanding student leadership skills;
- (c) evidence of appropriate activities that will serve to achieve the program objectives; and
- (d) a method to evaluate the effectiveness of the program.

(7) Career and technology student organizations may request assistance from the staff of the superintendent of public instruction in formulating program proposals.

(8) Additional or remaining funds appropriated for the purposes of this section may be allocated to state-approved career and technology student organizations pursuant to policies adopted under 20-7-301.

(9) As used in this section, “career and technology student organization” means an organization for students enrolled in a state-approved career and technology program that engages in career and technology education activities as an integral part of the instructional program.

**History:** En. Sec. 1, Ch. 276, L. 2013.

**20-7-321. Acceptance of acts of congress for vocational education.** The state of Montana hereby reaffirms the acceptance of and assents to the terms and provisions of the act of congress entitled the “Vocational Education Act of 1963” and the “Vocational Education Amendments of 1968” and further hereby accepts and assents to the terms and provisions of all acts of the congress amendatory of the “Vocational Education Act of 1963” and to the terms and provisions of all other acts of congress which provide funds for the benefit of vocational education in Montana.

**History:** En. 75-7705 by Sec. 408, Ch. 5, L. 1971; R.C.M. 1947, 75-7705.

**20-7-322. Renumbered 20-16-201.** Sec. 33, Ch. 658, L. 1987.

**20-7-323. Repealed.** Sec. 31, Ch. 658, L. 1987.

**History:** En. 75-7708 by Sec. 411, Ch. 5, L. 1971; (amd. Sec. 9, Ch. 434, L. 1975 — [unconstitutional, 167 M 261]; Sec. 9, Ch. 434, L. 1975 repealed by Sec. 1, Ch. 4, L. 1977); R.C.M. 1947, 75-7708; amd. Sec. 17, Ch. 598, L. 1979.

**20-7-324. Renumbered 20-16-202.** Sec. 33, Ch. 658, L. 1987.

**20-7-325. Renumbered 20-16-204.** Sec. 33, Ch. 658, L. 1987.

**20-7-326. Repealed.** Sec. 31, Ch. 658, L. 1987.

**History:** En. Sec. 5, Ch. 598, L. 1979; amd. Sec. 1, Ch. 161, L. 1983.

**20-7-327. Renumbered 20-16-203.** Sec. 33, Ch. 658, L. 1987.

**20-7-328. Legislative intent.** (1) It is the intent of the legislature that the administration of the programs authorized by the Carl D. Perkins Career and Technical Education Improvement Act of 2006 provide a seamless system of services to those people seeking to improve their career and technical skills.

(2) It is the intent of the legislature that the superintendent of public instruction and the commissioner work cooperatively in providing that system of career and technical services at both the secondary and postsecondary levels.

(3) It is the intent of the legislature that the development of the state plan for career and technical education be a cooperative effort of the superintendent of public instruction and the commissioner in consultation with teachers, students, and institutions or agencies that provide the services and activities.

**History:** En. Sec. 1, Ch. 460, L. 1999; amd. Sec. 43, Ch. 2, L. 2009.

**20-7-329. Eligible agency for federal vocational education requirements.** (1) The board of regents is the eligible agency for purposes of the Carl D. Perkins Career and Technical Education Improvement Act of 2006, as amended, which requires a state participating

in programs under that act to designate a state board as the eligible agency responsible for administration or supervision of those programs.

(2) The board of regents shall contract with the superintendent of public instruction for the administration and supervision of K-12 career and technical education programs, services, and activities allowed by the Carl D. Perkins Career and Technical Education Improvement Act of 2006, as amended, and in concert with the state plan for career and technical education required by the act. The board of regents may contract with other agencies for the administration and supervision of technical education programs, services, and activities that receive funding allowed by the Carl D. Perkins Career and Technical Education Improvement Act of 2006, as amended.

**History:** En. Sec. 2, Ch. 460, L. 1999; amd. Sec. 11, Ch. 133, L. 2001; amd. Sec. 44, Ch. 2, L. 2009.

**20-7-330. Creation of state plan committee — meetings — report.** (1) The superintendent of public instruction and the commissioner shall each appoint three people from their respective advisory boards to serve on a committee to review and update the 5-year state plan for career and technical education as required by 20 U.S.C. 2323. Two members appointed from each advisory board must be educators, and the remaining member appointed from each advisory board must be a representative of a business or community interest.

(2) At least four times a year, the board of regents shall meet with the superintendent of public instruction, teachers, students, labor organizations, businesses, and institutions or agencies involved in vocational and technical education to:

(a) discuss the state plan;

(b) identify any issues or concerns with the administration of the Carl D. Perkins Career and Technical Education Improvement Act of 2006 in Montana;

(c) identify the needs of technical students and programs in Montana and determine the best way to meet those needs; and

(d) if necessary, make changes in the administration and operation of the Carl D. Perkins Career and Technical Education Improvement Act of 2006 in Montana.

(3) The board of regents shall report the results of the meetings required in subsection (2) to the legislature in accordance with the provisions of 5-11-210.

**History:** En. Sec. 3, Ch. 460, L. 1999; amd. Sec. 1, Ch. 130, L. 2001; amd. Sec. 45, Ch. 2, L. 2009.

**20-7-331. Repealed.** Sec. 31, Ch. 658, L. 1987.

**History:** En. 75-7712 by Sec. 415, Ch. 5, L. 1971; (amd. Sec. 12, Ch. 434, L. 1975 — [unconstitutional, 167 M 261]; Sec. 12, Ch. 434, L. 1975 repealed by Sec. 1, Ch. 4, L. 1977); R.C.M. 1947, 75-7712.

**20-7-332. Renumbered 20-16-205.** Sec. 33, Ch. 658, L. 1987.

**20-7-333. Renumbered 20-16-206.** Sec. 33, Ch. 658, L. 1987.

**20-7-334. Advancing agricultural education in Montana program account.**

(1) There is an advancing agricultural education in Montana program account in the state special revenue fund provided for in 17-2-102.

(2) Money in the account and money appropriated by the legislature for the purpose of this section must be used by the office of public instruction for addressing the stability of and making improvements to Montana's agricultural education programs. The office of public instruction shall adopt rules to implement the national quality program standards.

(3) (a) Each agricultural education program in the state that completes the national quality program standard evaluation as adopted by rule and submits a plan of improvement to the office of public instruction's agricultural education specialist may receive a payment of \$1,000 prorated per full-time equivalent teacher endorsed in agricultural education who teaches approved agricultural education courses through the local agricultural education program.

(b) Each agricultural education program in the state that submits a detailed budget to increase the quality of its agricultural education program based on the plan of improvement may receive a payment of up to \$1,000 prorated per full-time equivalent teacher endorsed in agricultural education who teaches approved agricultural education courses through the local agricultural education program.

(c) Each school that adds agricultural education to its curriculum and recruits and retains an endorsed agricultural education teacher must receive a payment of up to \$7,500. A school with an existing agricultural education program is eligible for an additional payment of up to

\$7,500 each time the school expands the program's teaching staff by adding a full-time equivalent teacher endorsed in agricultural education.

(d) Program administrators in Bozeman and Helena must receive a total of \$20,000 annually for the costs of providing a minimum of one onsite visit each year to each participating school.

**History:** En. Sec. 1, Ch. 418, L. 2009; amd. Sec. 1, Ch. 337, L. 2011; amd. Sec. 1, Ch. 245, L. 2015.

**Cross-References**

Deputy superintendent — staff, 20-3-103.

State director of K-12 career and vocational/technical education — duties, 20-7-308.

## Part 4 Special Education for Exceptional Children

**Part Cross-References**

Nondiscrimination in education, Art. X, sec. 7, Mont. Const.

Attendance of pupils at schools, Title 20, ch. 5, part 1.

Rights of persons with disabilities, Title 49, ch. 4.

Developmental disabilities, Title 53, ch. 20.

**20-7-401. Definitions.** In this title, unless the context clearly indicates otherwise, the following definitions apply:

(1) “Child with a disability” means a child evaluated in accordance with the regulations of the Individuals With Disabilities Education Act as having a disability and who because of the disability needs special education and related services.

(2) “Free appropriate public education” means special education and related services that:

(a) are provided at public expense under public supervision and direction and without charge;

(b) meet the accreditation standards of the board of public education, the special education requirements of the superintendent of public instruction, and the requirements of the Individuals With Disabilities Education Act;

(c) include preschool, elementary school, and high school education in Montana; and

(d) are provided in conformity with an individualized education program that meets the requirements of the Individuals With Disabilities Education Act.

(3) “Related services” means services in accordance with regulations of the Individuals With Disabilities Education Act that are required to assist a child with a disability to benefit from special education.

(4) “Special education” means specially designed instruction, given at no cost to the parents or guardians, to meet the unique needs of a child with a disability, including but not limited to instruction conducted in a classroom, home, hospital, institution, or other setting and instruction in physical education.

(5) “State-operated adult health care facility providing special education services to its residents” means the Montana state hospital, [the Montana developmental center,] the Montana mental health nursing care center, or the Montana chemical dependency treatment center.

(6) “Surrogate parent” means an individual appointed to safeguard a child's rights and protect the child's interests in educational evaluation, placement, and hearing or appeal procedures concerning the child. *(Bracketed language deleted on occurrence of contingency—sec. 19(2), Ch. 444, L. 2015.)*

**History:** En. 75-7801 by Sec. 419, Ch. 5, L. 1971; amd. Sec. 1, Ch. 93, L. 1974; amd. Sec. 27, Ch. 266, L. 1977; amd. Sec. 1, Ch. 539, L. 1977; R.C.M. 1947, 75-7801; amd. Sec. 1, Ch. 311, L. 1981; amd. Sec. 1, Ch. 461, L. 1983; amd. Sec. 1, Ch. 560, L. 1985; amd. Sec. 1, Ch. 618, L. 1985; amd. Sec. 6, Ch. 413, L. 1989; amd. Sec. 19, Ch. 16, L. 1991; amd. Sec. 3, Ch. 249, L. 1991; amd. Sec. 1, Ch. 356, L. 1993; amd. Sec. 19, Ch. 472, L. 1997; amd. Sec. 99(4), Ch. 51, L. 1999; amd. Sec. 1, Ch. 479, L. 2003; amd. Sec. 1, Ch. 44, L. 2011; amd. Sec. 6, Ch. 444, L. 2015.

**Compiler's Comments**

*Contingent Effective Date:* Section 19(2), Ch. 444, L. 2015, provided: “[Section 6] [amending 20-7-401] is effective on the date that the Montana developmental center closes. The director of the department of public health and human services shall certify the closure of the Montana developmental center to the governor, and the governor shall transmit a copy of the certification to the code commissioner.”

**20-7-402. Special education to comply with board policies.** (1) The conduct of special education programs must comply with the policies recommended by the superintendent of

public instruction and adopted by the board of public education. These policies must ensure and include but are not limited to:

- (a) placement of a child with a disability in the least restrictive environment;
  - (b) due process for a child with a disability, including the appointment of a surrogate parent if necessary;
  - (c) use of an evaluation team to identify a child with a disability and to plan individual education programs;
  - (d) an evaluation process consistent with the requirements of the Individuals With Disabilities Education Act; and
  - (e) other policies needed to ensure a free appropriate public education.
- (2) The superintendent of public instruction shall promulgate rules to administer the policies of the board of public education.

**History:** En. 75-7802 by Sec. 420, Ch. 5, L. 1971; amd. Sec. 2, Ch. 539, L. 1977; R.C.M. 1947, 75-7802; amd. Sec. 2, Ch. 618, L. 1985; amd. Sec. 10, Ch. 249, L. 1991; amd. Sec. 99(4), Ch. 51, L. 1999; amd. Sec. 1, Ch. 255, L. 2005.

**Cross-References**

Due process of law, Art. II, sec. 17, Mont. Const.

**20-7-403. Duties of superintendent of public instruction.** The superintendent of public instruction shall supervise and coordinate the conduct of special education in the state by:

- (1) recommending to the board of public education adoption of those policies necessary to establish a planned and coordinated program of special education in the state;
- (2) administering the policies adopted by the board of public education;
- (3) certifying special education teachers on the basis of the special qualifications for the teachers as prescribed by the board of public education;
- (4) establishing procedures to be used by school district personnel in identifying a child with a disability;
- (5) preparing appropriate technical assistance documents to assist local districts in implementing special education policies and procedures;
- (6) seeking for local districts appropriate interdisciplinary assistance from public and private agencies in identifying the special education needs of children, in planning programs, and in admitting and discharging children from those programs;
- (7) assisting local school districts, institutions, and other agencies in developing full-service programs for a child with a disability;
- (8) providing technical assistance to district superintendents, principals, teachers, and trustees;
- (9) conducting conferences, offering advice, and otherwise cooperating with parents and other interested persons;
- (10) ensuring appropriate training and instructional material for persons appointed as surrogate parents that outlines their duties toward the child, limitations on what they may do for the child, duties in relation to the child's records, sources of assistance available to the surrogate parent, and the need to seek competent legal assistance in implementing hearing or appeal procedures;
- (11) ensuring that the requirements of the Individuals With Disabilities Education Act are met and that each educational program for a child with a disability, including a homeless child with a disability, administered within the state, including each program administered by any other agency, is under the general supervision of the superintendent of public instruction, meets the education standards of the board of public education, and meets the requirements of the superintendent of public instruction, reserving to the other agencies and political subdivisions their full responsibilities for other aspects of the care of children needing special education or for providing or paying for some or all of the costs of a free appropriate public education to a child with a disability within the state;
- (12) contracting for the delivery of audiological services to those children allowed by Montana law in accordance with policies of the board of public education; and
- (13) except for those children who qualify for residential services under the Montana public mental health program pursuant to Title 53, chapter 6, contracting with a public school district



or a private residential facility for the provision of a free appropriate public education for a child placed in an in-state residential facility or children's psychiatric hospital.

**History:** En. 75-7803 by Sec. 421, Ch. 5, L. 1971; amd. Sec. 1, Ch. 174, L. 1975; amd. Sec. 3, Ch. 539, L. 1977; R.C.M. 1947, 75-7803; amd. Sec. 1, Ch. 204, L. 1979; amd. Sec. 1, Ch. 434, L. 1981; amd. Sec. 3, Ch. 618, L. 1985; amd. Sec. 10, Ch. 249, L. 1991; amd. Sec. 3, Ch. 765, L. 1991; amd. Sec. 2, Ch. 356, L. 1993; amd. Sec. 4, Ch. 529, L. 1997; amd. Sec. 99(4), Ch. 51, L. 1999; amd. Sec. 2, Ch. 255, L. 2005.

**Cross-References**

Special education supervisor employed by Superintendent of Public Instruction, 20-3-103.

Board of Public Education policies, 20-4-102.

Issuance of teacher or specialist certificates, 20-4-103.

Classifications of teacher and specialist certificates, 20-4-106.

**20-7-404. Cooperation of state agencies.** The department of public health and human services and the state school for the deaf and blind shall cooperate with the superintendent of public instruction in assisting school districts in discovering children in need of special education. This section may not be construed to interfere with the purpose and function of these state agencies.

**History:** En. 75-7804 by Sec. 422, Ch. 5, L. 1971; amd. Sec. 5, Ch. 539, L. 1977; R.C.M. 1947, 75-7804; amd. Sec. 23, Ch. 609, L. 1987; amd. Sec. 69, Ch. 546, L. 1995.

**20-7-405 through 20-7-410 reserved.**

**20-7-411. Regular classes preferred — obligation to establish special education program.** (1) A child with a disability in Montana is entitled to a free appropriate public education provided in the least restrictive environment. To the maximum extent appropriate, a child with a disability, including a child in a public or private institution or other care facility, must be educated with children who do not have disabilities. Separate schooling or other removal of a child with a disability from the regular educational environment may occur only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

(2) The board of trustees of every school district or a state-operated adult health care facility providing special education services to its residents shall provide or establish and maintain a special education program for each child with a disability who is 6 years of age or older and under 19 years of age.

(3) The board of trustees of each elementary district shall provide or establish and maintain a special education program for each preschool child with a disability who is 3 years of age or older and under 7 years of age.

(4) (a) The board of trustees of a school district or a state-operated adult health care facility providing special education services to its residents may provide or establish and maintain a special education program for a child with a disability who is 2 years of age or under or who is 19 years of age or older and under 22 years of age.

(b) Programs established pursuant to subsection (4)(a) do not obligate the state, a school district, or a state-operated adult health care facility providing special education services to its residents to offer regular educational programs to a similar age group unless specifically provided by law.

(5) The board of trustees of a school district or a state-operated adult health care facility providing special education services to its residents may meet its obligation to serve persons with disabilities by establishing its own special education program, by establishing a cooperative special education program, by participating in a regional services program, or by contracting for services from qualified providers. A state-operated adult health care facility providing special education services to its residents may also meet its obligation by coordinating appropriate services with the resident's school district of residence, the local high school district, or both.

(6) The trustees of a school district or a state-operated adult health care facility providing special education services to its residents shall ensure that assistive technology devices or assistive technology services, or both, are made available to a child with a disability if required as a part of the child's special education services, related services, or supplementary aids.

**History:** En. 75-7805 by Sec. 423, Ch. 5, L. 1971; amd. Sec. 1, Ch. 123, L. 1971; amd. Sec. 2, Ch. 93, L. 1974; amd. Sec. 6, Ch. 539, L. 1977; R.C.M. 1947, 75-7805; amd. Sec. 3, Ch. 558, L. 1979; amd. Sec. 1, Ch. 258, L. 1987; amd. Sec. 4, Ch. 249, L. 1991; amd. Sec. 3, Ch. 356, L. 1993; amd. Sec. 99(4), Ch. 51, L. 1999; amd. Sec. 3, Ch. 255, L. 2005; amd. Sec. 2, Ch. 44, L. 2011.

**Compiler's Comments**

*Implementation Contingency:* Section 3, Ch. 258, L. 1987, provided: "A board of trustees of a school district is not required to implement this act[, which inserted subsection (3),] if the federal government does not appropriate at least one-half of the authorized amount for each qualifying handicapped preschool child [now preschool child with disabilities] for school fiscal year 1991 and beyond."

**Cross-References**

Educational goals and duties, Art. X, sec. 1, Mont. Const.

**20-7-412. Repealed.** Sec. 10, Ch. 255, L. 2005.

**History:** En. 75-7806 by Sec. 424, Ch. 5, L. 1971; amd. Sec. 1, Ch. 122, L. 1971; amd. Sec. 2, Ch. 123, L. 1971; amd. Sec. 3, Ch. 93, L. 1974; amd. Sec. 7, Ch. 539, L. 1977; R.C.M. 1947, 75-7806; amd. Sec. 4, Ch. 558, L. 1979; amd. Sec. 5, Ch. 249, L. 1991.

**20-7-413. Repealed.** Sec. 7, Ch. 356, L. 1993.

**History:** En. 75-7807 by Sec. 425, Ch. 5, L. 1971; amd. Sec. 3, Ch. 123, L. 1971; amd. Sec. 4, Ch. 93, L. 1974; amd. Sec. 8, Ch. 539, L. 1977; R.C.M. 1947, 75-7807.

**20-7-414. Determination of children in need and type of special education needed.** (1) The determination of the children requiring special education and the type of special education needed by these children is the responsibility of the school district, and the determination must be made in compliance with the procedures established in the rules of the superintendent of public instruction. The school district shall make available a free appropriate public education, in accordance with 20-7-411, to all children who are eligible under the Individuals With Disabilities Education Act and who reside in the school district.

(2) The trustees of a school district shall establish and implement policies and procedures for the conduct of special education that are consistent with the Individuals With Disabilities Education Act and with state laws and rules of the board of public education and the superintendent of public instruction.

**History:** En. 75-7811 by Sec. 429, Ch. 5, L. 1971; amd. Sec. 12, Ch. 539, L. 1977; R.C.M. 1947, 75-7811; amd. Sec. 4, Ch. 618, L. 1985; amd. Sec. 17, Ch. 11, Sp. L. June 1989; amd. Sec. 6, Ch. 249, L. 1991; amd. Sec. 4, Ch. 356, L. 1993; amd. Sec. 55, Ch. 633, L. 1993; amd. Sec. 4, Ch. 255, L. 2005.

**Cross-References**

Guardians of minors, Title 72, ch. 5, part 2.

**20-7-415. Repealed.** Sec. 7, Ch. 356, L. 1993.

**History:** En. 75-7817 by Sec. 4, Ch. 539, L. 1977; R.C.M. 1947, 75-7817; amd. Sec. 10, Ch. 249, L. 1991.

**20-7-416 through 20-7-418 reserved.**

**20-7-419. Rules.** The superintendent of public instruction shall adopt rules for the implementation of 20-7-420, 20-7-421, 20-7-422, 20-7-435, and 20-7-436, including but not limited to:

- (1) the calculation of tuition under 20-7-420;
- (2) the calculation and distribution of funds under 20-7-435; and
- (3) the determination of responsibilities of children's psychiatric hospitals, residential treatment facilities, and public schools.

**History:** En. Sec. 7, Ch. 375, L. 1993.

**20-7-420. Residency requirements — financial responsibility for special education.** (1) Except for a pupil attending the Montana youth challenge program or a job corps program pursuant to 20-9-707, a child's district of residence for special education purposes must be determined in accordance with the provisions of 1-1-215.

(2) The superintendent of public instruction is financially responsible for tuition and transportation as established under 20-5-323 and 20-5-324 for a child with a disability, as defined in 20-7-401, who attends school outside the district and county of residence because the student has been placed in a foster care or group home licensed by the state. The superintendent of public instruction is not financially responsible for tuition and transportation for a child who is placed by a state agency in an out-of-state public school or an out-of-state private residential facility.

(3) If an eligible child, as defined in 20-7-436, is receiving inpatient treatment in an in-state residential treatment facility or children's psychiatric hospital, as defined in 20-7-436, and the educational services are provided by a public school district under the provisions of 20-7-411 or 20-7-435, the superintendent of public instruction shall reimburse the district providing the

services for the negotiated amount, as established pursuant to 20-7-435(5), that represents the district's costs of providing education and related services. Payments must be made from funds appropriated for this purpose. If the negotiated amount exceeds the daily membership rate under 20-7-435(3) and any per-ANB amount of direct state aid, the superintendent of public instruction shall pay the remaining balance from available funds. However, the amount spent from available funds for this purpose may not exceed \$500,000 during a biennium.

(4) A state agency that makes a placement of a child with a disability is responsible for the financial costs of room and board and the treatment of the child. The state agency that makes an out-of-state placement of a child with a disability is responsible for the education fees required to provide a free appropriate public education that complies with the requirements of Title 20, chapter 7, part 4.

**History:** En. Sec. 1, Ch. 470, L. 1979; amd. Sec. 4, Ch. 765, L. 1991; amd. Sec. 1, Ch. 375, L. 1993; amd. Sec. 10, Ch. 563, L. 1993; amd. Sec. 28, Ch. 509, L. 1995; amd. Sec. 5, Ch. 529, L. 1997; amd. Sec. 99(4), Ch. 51, L. 1999; amd. Sec. 6, Ch. 343, L. 1999; amd. Sec. 2, Ch. 132, L. 2005; amd. Sec. 5, Ch. 255, L. 2005; amd. Sec. 4, Ch. 463, L. 2005; amd. Sec. 1, Ch. 137, L. 2009; amd. Sec. 5, Ch. 211, L. 2011.

**20-7-421. Arranging attendance in another district in lieu of a special education program — tuition.** (1) In accordance with a placement decision made by persons determining an individualized education program for a child with a disability, the trustees may arrange for the attendance of a child in need of special education and related services in another district within the state of Montana.

(2) Tuition and transportation as required under 20-5-323 may be charged as provided in 20-7-420.

**History:** En. 75-7808 by Sec. 426, Ch. 5, L. 1971; amd. Sec. 1, Ch. 140, L. 1975; amd. Sec. 9, Ch. 539, L. 1977; R.C.M. 1947, 75-7808; amd. Sec. 2, Ch. 470, L. 1979; amd. Sec. 2, Ch. 481, L. 1979; amd. Sec. 2, Ch. 661, L. 1979; amd. Sec. 5, Ch. 765, L. 1991; amd. Sec. 2, Ch. 375, L. 1993; amd. Sec. 11, Ch. 563, L. 1993; amd. Sec. 99(4), Ch. 51, L. 1999.

**20-7-422. Out-of-state placement of child with disability — payment of costs.** (1) In accordance with a placement made by persons determining an individualized education program for a child with a disability, the trustees of a district may arrange for the attendance of the child in a special education program offered outside of the state of Montana.

(2) Except as provided in subsection (3), when the persons determining the individualized education program of a child with a disability who is in need of special education recommend placement in an out-of-state private residential facility, the trustees of the district of residence shall negotiate the amount and manner of payment of all costs associated with the placement.

(3) Whenever a child with a disability who is in need of special education and related services is placed by a state agency in an out-of-state residential facility, the state agency making the placement shall pay the education costs resulting from the placement.

(4) The state agency shall place the child with a disability in a facility that will provide the child with a free appropriate public education that complies with the requirements of Title 20, chapter 7, part 4.

**History:** En. 75-7809 by Sec. 427, Ch. 5, L. 1971; amd. Sec. 2, Ch. 140, L. 1975; amd. Sec. 10, Ch. 539, L. 1977; R.C.M. 1947, 75-7809; amd. Sec. 3, Ch. 661, L. 1979; amd. Sec. 24, Ch. 609, L. 1987; amd. Sec. 18, Ch. 11, Sp. L. June 1989; amd. Sec. 6, Ch. 765, L. 1991; amd. Sec. 3, Ch. 375, L. 1993; amd. Sec. 12, Ch. 563, L. 1993; amd. Sec. 2, Ch. 458, L. 1995; amd. Sec. 6, Ch. 529, L. 1997; amd. Sec. 3, Ch. 550, L. 1997; amd. Sec. 99(4), Ch. 51, L. 1999.

**20-7-423. Repealed.** Sec. 13, Ch. 765, L. 1991.

**History:** En. 75-7809.1 by Sec. 11, Ch. 539, L. 1977; R.C.M. 1947, 75-7809.1; amd. Sec. 4, Ch. 661, L. 1979; amd. Sec. 10, Ch. 249, L. 1991.

**20-7-424. No tuition when attending state institution.** Whenever a child is attending a state-funded institution in Montana, the resident district or county is not required to pay tuition to the state institution for the child, but whenever at the recommendation of institution officials the child attends classes conducted by a school within a local district, the district or county where the parents or guardian of the child maintains legal residence shall pay tuition to the district operating the school in accordance with the provisions of 20-5-321 or 20-7-421, whichever section applies to the circumstances of the child. Transportation payments must be made for students enrolled in any school district classes or receiving training, including summer sessions, at the state institution. The schedule of transportation payments must be approved in

accordance with existing transportation payment schedules and must be approved by the county transportation committee and the superintendent of public instruction.

**History:** En. 75-7810 by Sec. 428, Ch. 5, L. 1971; amd. Sec. 1, Ch. 282, L. 1971; amd. Sec. 1, Ch. 45, L. 1973; amd. Sec. 7, Ch. 91, L. 1973; R.C.M. 1947, 75-7810; amd. Sec. 13, Ch. 563, L. 1993.

**Cross-References**

Duty of trustees to provide transportation, 20-10-121.

**20-7-425 through 20-7-430 reserved.**

**20-7-431. Allowable cost schedule for special programs — superintendent to make rules — annual accounting.** (1) For the purpose of determining the allowable cost payment amount for special education as defined in 20-9-321, the following allowable costs and reports must be reviewed by the superintendent of public instruction for the purposes of determining the amount of the allowable cost payment for special education payments and a district's special education expenditures:

- (a) instruction: salaries, benefits, supplies, textbooks, and other expenses, including:
  - (i) the cost of salaries and benefits of special program teachers, regular program teachers, and teacher aides, corresponding to the working time that each person devotes to the special program;
  - (ii) the total cost of teaching supplies and textbooks for special programs;
  - (iii) the purchase, rental, repair, and maintenance of instructional equipment required to implement a student's individualized education program;
  - (iv) activities associated with teacher assistance teams that provide prereferral intervention;
  - (v) the cost of contracted services, including fees paid for professional advice and consultation regarding special students or the special program, and the delivery of special education services by public or private agencies;
  - (vi) transportation costs for special education instructional personnel who travel on an itinerant basis from school to school or district to district or to in-state evaluation team meetings or in-state individualized education program meetings;
- (b) related services, including:
  - (i) the cost of salaries and benefits of professional supportive personnel, corresponding to the working time that each person devotes to the special program. Professional supportive personnel may include special education supervisors, speech-language pathologists, audiologists, counselors, social workers, psychologists, psychometrists, physicians, nurses, and physical and occupational therapists.
  - (ii) the cost of salaries and benefits of clerical personnel who assist professional personnel in supportive services, corresponding to the working time that each person devotes to the special program;
  - (iii) the cost of supplies for special programs;
  - (iv) activities associated with teacher assistance teams that provide prereferral interventions;
  - (v) the cost of contracted services, including fees paid for professional advice and consultation regarding special students or the special program, and the delivery of special education services by public or private agencies;
  - (vi) transportation costs for special education-related services personnel who travel on an itinerant basis from school to school or district to district or to in-state evaluation team meetings or in-state individualized education program meetings;
  - (vii) equipment purchase, rental, repair, and maintenance required to implement a student's individualized education program;
  - (viii) the additional cost of special education cooperatives or joint boards, including operation and maintenance, travel, recruitment, and administration.

(2) The superintendent of public instruction shall adopt rules in accordance with the policies of the board of public education for keeping necessary records for supportive and administrative personnel and any personnel shared between special and regular programs.

(3) An annual accounting of all expenditures of school district general fund money for special education must be made by the district trustees on forms furnished by the superintendent of public instruction. The superintendent of public instruction shall make rules for the accounting.



(4) Allowable costs prescribed in this section do not include the costs of the teachers' retirement system, the public employees' retirement system, or the federal social security system or the costs for unemployment compensation insurance.

(5) Notwithstanding other provisions of the law, the superintendent of public instruction may not approve an allowable cost payment amount for special education that exceeds legislative appropriations. However, any unexpended balance from the first year of a biennial appropriation may be spent in the second year of the biennium in addition to the second year appropriation.

**History:** En. 75-7813.1 by Sec. 1, Ch. 344, L. 1974; amd. Sec. 13, Ch. 539, L. 1977; R.C.M. 1947, 75-7813.1; amd. Sec. 1, Ch. 481, L. 1979; amd. Sec. 1, Ch. 661, L. 1979; amd. Sec. 1, Ch. 166, L. 1981; amd. Sec. 1, Ch. 548, L. 1983; amd. Sec. 1, Ch. 376, L. 1985; amd. Sec. 1, Ch. 243, L. 1987; amd. Sec. 19, Ch. 11, Sp. L. June 1989; amd. Sec. 7, Ch. 765, L. 1991; amd. Sec. 1, Ch. 466, L. 1993; amd. Sec. 55, Ch. 633, L. 1993; amd. Sec. 1, Ch. 145, L. 2001; amd. Sec. 6, Ch. 255, L. 2005.

#### **Cross-References**

Limit on expenditures, 17-8-103.

Financing special education, 20-9-303.

#### **20-7-432 through 20-7-434 reserved.**

**20-7-435. Funding of educational programs at in-state children's psychiatric hospitals and in-state residential treatment programs for eligible children.** (1) It is the intent of the legislature that eligible children in in-state children's psychiatric hospitals and residential treatment facilities be provided with an appropriate educational opportunity in a cost-effective manner, including the provision of a free appropriate public education for an eligible child with a disability that is consistent with state standards for the provision of special education and related services. General education programs for eligible children without disabilities must be provided in accordance with the requirements for a nonpublic school under the provisions of 20-5-109.

(2) The superintendent of public instruction may contract with an in-state children's psychiatric hospital or residential treatment facility for provision of an educational program for an eligible child in the hospital or treatment facility.

(3) Whenever the superintendent of public instruction contracts with an in-state children's psychiatric hospital or residential treatment facility for provision of an educational program for an eligible child in the children's psychiatric hospital or residential treatment facility, the superintendent of public instruction shall:

(a) ensure the provision of a free appropriate public education and an education that is consistent with the requirements for a nonpublic school in 20-5-109 for children attending the hospital or residential treatment facility;

(b) negotiate the approval of allowable costs under the provisions of 20-7-431 for allowable costs for providing special education, including the costs of retirement benefits, federal social security system contributions, and unemployment compensation insurance;

(c) from appropriations provided for this purpose, fund any approved allowable costs under this section, with the exception of services for which reimbursement is made under any provision of state or federal law or an insurance policy;

(d) provide funding for allowable costs according to a proration based on average daily membership.

(4) A supplemental education fee or tuition may not be charged for an eligible Montana child who receives inpatient treatment and an education under contract with an in-state children's psychiatric hospital or residential treatment facility.

(5) If a children's psychiatric hospital or residential treatment facility fails to provide an education in accordance with 20-5-109 or a free appropriate public education under the provisions of this part for an eligible child at the children's psychiatric hospital or residential treatment facility or fails to negotiate a contract under the provisions of subsection (2), the superintendent of public instruction shall negotiate with the school district in which the children's psychiatric hospital or residential treatment facility is located for the supervision and implementation of an appropriate educational program that is consistent with accreditation standards provided for in 20-7-111 and with the provisions of 20-7-402 for children attending the children's psychiatric hospital or residential treatment facility. The amount negotiated with the school district must include all education and related services costs that may be negotiated under the provisions of



subsection (3) and all education and related services costs necessary to fulfill the requirements of providing the child with an education.

(6) Funds provided to a district under this section, including funds received under the provisions of 20-7-420:

(a) must be deposited in the miscellaneous programs fund of the district that provides the education program for an eligible child, regardless of the age or grade placement of the child who is served under a negotiated contract; and

(b) are not subject to the budget limitations in 20-9-308.

**History:** En. Sec. 9, Ch. 765, L. 1991; amd. Sec. 4, Ch. 375, L. 1993; amd. Sec. 51, Ch. 633, L. 1993; amd. Sec. 99(4), Ch. 51, L. 1999.

**20-7-436. Definitions.** For the purposes of 20-7-435 and this section, the following definitions apply:

(1) (a) “Children’s psychiatric hospital” means a freestanding hospital in Montana that:

(i) has the primary purpose of providing clinical care for children and youth whose clinical diagnosis and resulting treatment plan require in-house residential psychiatric care; and

(ii) is accredited by the joint commission on accreditation of healthcare organizations, the standards of the centers for medicare and medicaid services, or other comparable accreditation.

(b) The term does not include programs for children and youth for whom the treatment of chemical dependency is the primary reason for treatment.

(2) “Eligible child” means a Montana resident child or youth who is less than 19 years of age and who has an emotional problem that is so severe that the child or youth has been placed in a children’s psychiatric hospital or residential treatment facility for inpatient treatment of emotional problems.

(3) (a) “Residential treatment facility” means a facility in the state that:

(i) provides services for children or youth with emotional disturbances;

(ii) operates for the primary purpose of providing residential psychiatric care to individuals under 21 years of age;

(iii) is licensed by the department of public health and human services; and

(iv) participates in the Montana medicaid program for psychiatric facilities or programs providing psychiatric services to individuals under 21 years of age; or

(v) notwithstanding the provisions of subsections (3)(a)(iii) and (3)(a)(iv), has received a certificate of need from the department of public health and human services pursuant to Title 50, chapter 5, part 3, prior to January 1, 1993.

(b) The term does not include programs for children and youth for whom the treatment of chemical dependency is the primary reason for treatment.

**History:** En. Sec. 10, Ch. 765, L. 1991; amd. Sec. 5, Ch. 375, L. 1993; amd. Sec. 34, Ch. 18, L. 1995; amd. Sec. 50, Ch. 418, L. 1995; amd. Sec. 70, Ch. 546, L. 1995; amd. Sec. 2, Ch. 479, L. 2003.

**20-7-437. Renumbered 20-5-316.** Sec. 21, Ch. 563, L. 1993.

**20-7-438 through 20-7-440 reserved.**

**20-7-441. Repealed.** Sec. 10, Ch. 255, L. 2005.

**History:** En. 75-7814 by Sec. 432, Ch. 5, L. 1971; amd. Sec. 14, Ch. 539, L. 1977; R.C.M. 1947, 75-7814.

**20-7-442. Repealed.** Sec. 10, Ch. 255, L. 2005.

**History:** En. 75-7815 by Sec. 433, Ch. 5, L. 1971; R.C.M. 1947, 75-7815; amd. Sec. 4, Ch. 711, L. 1991; amd. Sec. 1, Ch. 9, Sp. L. July 1992.

**20-7-443. Financial assistance special education services for children under 6 years of age.** Any district providing special education services for children under 6 years of age is eligible for financial assistance in accordance with 20-7-431 and for transportation reimbursement in accordance with Title 20, chapters 7 and 10, and rules adopted by the superintendent of public instruction.

**History:** En. 75-7816 by Sec. 434, Ch. 5, L. 1971; amd. Sec. 2, Ch. 122, L. 1971; amd. Sec. 15, Ch. 539, L. 1977; R.C.M. 1947, 75-7816; amd. Sec. 7, Ch. 255, L. 2005.

#### **Cross-References**

Maximum general fund budget for special education, 20-9-321.

Computation of revenue and net tax levy requirements for transportation fund budget, 20-10-144.

County transportation reimbursement, 20-10-146.

**20-7-444 through 20-7-450 reserved.**

**20-7-451. Authorization to create full service education cooperatives.** (1) A school district may contract with one or more other school districts to establish a cooperative to perform any or all education administrative services, activities, and undertakings that the school district entering into the contract is authorized by law to perform. The cooperative contract must be authorized by the boards of trustees of the districts entering into the contract.

(2) A cooperative contract may allow money allocated to a cooperative to be expended for:

(a) recruitment of professionals or employees for the cooperative; and

(b) facility rental and supportive services, including but not limited to janitorial and communication services.

**History:** En. Sec. 1, Ch. 471, L. 1979; amd. Sec. 1, Ch. 156, L. 1985; amd. Sec. 2, Ch. 343, L. 1989; amd. Sec. 1, Ch. 136, L. 1991.

**Cross-References**

Interlocal Cooperation Act, Title 7, ch. 11, part 1.

Trustees to execute all contracts in name of school district, 20-9-213.

Educational cooperative agreements, Title 20, ch. 9, part 7.

**20-7-452. Detailed contents of full service education cooperative contracts.** The contract authorized in 20-7-451 may include all necessary and proper matters but must specify the following:

(1) its duration, which may not be less than 3 years for purposes of providing special education services;

(2) the precise organization, composition, and nature of the cooperative;

(3) the purpose of the cooperative;

(4) the manner of financing the cooperative and establishing and maintaining a budget for the cooperative;

(5) the permissible method to be employed in accomplishing the partial or complete termination of the cooperative agreement and for disposing of property upon partial or complete termination;

(6) provision for a management board that is responsible for administering the cooperative and that is comprised of trustees of the contracting districts or their authorized representatives;

(7) the manner of acquiring, holding, and disposing of real and personal property used by the cooperative;

(8) any other necessary and proper matters.

**History:** En. Sec. 2, Ch. 471, L. 1979; amd. Sec. 3, Ch. 343, L. 1989; amd. Sec. 2, Ch. 136, L. 1991.

**Cross-References**

School property, Title 20, ch. 6, part 6.

Contracts, Title 28, ch. 2.

**20-7-453. Repealed.** Sec. 14, Ch. 94, L. 2007.

**History:** En. Sec. 3, Ch. 471, L. 1979.

**20-7-454. Final approval and filing of full service education cooperative contract.** Prior to commencement of its performance, a full service education cooperative contract made pursuant to 20-7-451, 20-7-452, and 20-7-454 through 20-7-456 must be:

(1) submitted to the superintendent of public instruction who has final approval authority pursuant to the policies of the board of public education;

(2) filed with the county clerk and recorder of the county or counties in which the school districts involved are located; and

(3) filed with the secretary of state.

**History:** En. Sec. 4, Ch. 471, L. 1979; amd. Sec. 3, Ch. 136, L. 1991; amd. Sec. 4, Ch. 94, L. 2007.

**Cross-References**

Filing fees of Secretary of State, 2-6-1006.

Fees of County Clerk, 7-4-2631.

**20-7-455. Authorization to appropriate funds for purpose of full service education cooperative contract.** A school district entering into a full service education cooperative contract pursuant to 20-7-451, 20-7-452, and 20-7-454 through 20-7-456 may appropriate funds for and may sell, lease, or otherwise give or supply to the administrative officer, management

board, or joint board created for the purpose of performance of the cooperative contract any material, personnel, or services that are within its legal power to furnish.

**History:** En. Sec. 5, Ch. 471, L. 1979; amd. Sec. 4, Ch. 136, L. 1991; amd. Sec. 5, Ch. 94, L. 2007.

**Cross-References**

School property, Title 20, ch. 6, part 6.

**20-7-456. Tenure of teachers employed by cooperatives.** (1) Teachers who have tenure rights with a district and are employed by a cooperative of which their district is a member do not lose their tenure with the district.

(2) Nontenured teachers employed by a cooperative acquire tenure with a cooperative in the same manner as prescribed in 20-4-203, and the provisions of 20-4-204 through 20-4-207 are applicable to teachers employed by a cooperative.

(3) Tenure for a teacher employed by a cooperative is acquired only with the cooperative and not with a member school district of a cooperative.

(4) For the purposes of tenure of a teacher employed by a cooperative, cooperative contract renewals may not be used to limit the teacher's progress toward tenure status.

**History:** En. Sec. 6, Ch. 471, L. 1979; amd. Sec. 5, Ch. 136, L. 1991.

**Cross-References**

Teacher tenure, 20-4-203.

**20-7-457. Funding provisions for special education purposes of cooperatives or joint boards.** (1) The superintendent of public instruction shall pay directly to a cooperative or to a joint board formed under 20-3-361 prior to July 1, 1992, for special education purposes the special education allowable cost payments determined pursuant to 20-9-321.

(2) A school district that elects to participate in a cooperative for special education purposes shall agree in the cooperative contract to participate for a period of at least 3 years.

(3) A school district that elects to participate in a joint board formed under 20-3-361 for special education purposes shall confirm in writing to the joint board by October 1 of the current school fiscal year the district's intention to participate or to not participate in a joint board agreement for the next school fiscal year.

(4) A cooperative that has not met the requirements of 20-7-454 may not be funded under the provisions of this section except by approval of the superintendent of public instruction. The superintendent shall adopt rules for approval of full service education cooperatives.

(5) A full service education cooperative may establish a retirement fund, a miscellaneous programs fund, and a transportation fund, as provided for in 20-9-201, for the purposes of a full service education cooperative contract and the purposes allowed by law.

(6) The superintendent of public instruction, after consulting with regional representatives, shall define boundaries for cooperatives established for special education programs that incorporate the territory of all public school districts.

(7) Restructuring of cooperatives established for providing special education services must:

(a) be limited to a statewide total of no more than 23;

(b) include districts that are adjacent to each other and not overlapping into another cooperative's territory; and

(c) provide that all districts located within a cooperative's boundary may voluntarily become a cooperative member.

**History:** En. Sec. 4, Ch. 343, L. 1989; amd. Sec. 6, Ch. 136, L. 1991; amd. Sec. 4, Ch. 568, L. 1991; amd. Sec. 2, Ch. 466, L. 1993; amd. Sec. 6, Ch. 94, L. 2007.

**Cross-References**

Joint board organization and voting membership, 20-3-361.

**20-7-458. Repealed.** Secs. 9, 10(2), Ch. 466, L. 1993.

**History:** En. Sec. 5, Ch. 343, L. 1989; amd. Sec. 7, Ch. 136, L. 1991.

**20-7-459 and 20-7-460 reserved.**

**20-7-461. Appointment and termination of appointment of surrogate parent.**

(1) A school district or institution that provides education to a child with a disability shall adopt procedures to assign an individual to act as a surrogate parent for a child with a disability whenever the parents or guardian cannot be identified or, after reasonable efforts, the location of the parents cannot be discovered or if the child is a ward of the state. Within 10 days of

determining that a child is in need of a surrogate parent, the school district or its designee or the governing authority of an institution or its designee shall nominate a surrogate parent and deliver the appropriate documentation to the youth court.

(2) The person nominated as a surrogate parent must be an adult who is not an employee of a state or local educational agency that is providing educational services to the child. The surrogate parent may not have a vested interest that will conflict with the person's representation and protection of the child. The surrogate, whenever practicable, must be knowledgeable about the educational system, special education requirements, and the legal rights of the child in relation to the educational system. Whenever practicable, the surrogate parent must be familiar with the cultural or language background of the child.

(3) The nomination for appointment of a surrogate parent, along with all necessary supporting documents, must be submitted to the youth court for official appointment of the surrogate parent by the court. The trustees of a school district or their designee or the governing authority of an institution or its designee shall take all reasonable action to ensure that the youth court appoints or denies the appointment of a person nominated as a surrogate parent within 20 days of the court's receipt of all necessary supporting documents. If the youth court denies an appointment, the trustees of a district or their designee or the governing authority of an institution or its designee shall nominate another person to be appointed as the surrogate parent. If the youth court fails to act within 20 days, the individual nominated is the surrogate parent for the child.

(4) The superintendent of public instruction shall adopt rules for a procedure to terminate the appointment of a surrogate parent when:

- (a) a child's parents are identified;
- (b) the location of the parents is discovered;
- (c) the child is no longer a ward of the state; or
- (d) the surrogate parent wishes to discontinue the appointment.

**History:** En. Sec. 5, Ch. 618, L. 1985; amd. Sec. 7, Ch. 249, L. 1991; amd. Sec. 5, Ch. 356, L. 1993; amd. Sec. 99(4), Ch. 51, L. 1999; amd. Sec. 1, Ch. 16, L. 2003; amd. Sec. 8, Ch. 255, L. 2005.

#### **Cross-References**

Montana Youth Court Act, Title 41, ch. 5.

**20-7-462. Responsibilities of surrogate parent.** A person assigned as a surrogate parent shall represent the child with a disability in all decisionmaking processes concerning the child's education by:

(1) becoming thoroughly acquainted with the child's history and other information contained in school and other pertinent files, records, and reports relating to that child's educational needs;

(2) complying with state and federal law as to the confidentiality of all records and information to which the person is privy pertaining to that child and using discretion in the necessary sharing of the information with appropriate people for the purpose of furthering the interests of the child;

(3) becoming familiar with the educational evaluation and placement for the child and by giving approval or disapproval for the evaluation and placement and reviewing and evaluating special education programs pertaining to the child and other programs that may be available; and

(4) initiating any mediation, hearing, or appeal procedures necessary and seeking qualified legal assistance whenever the assistance is in the best interest of the child.

**History:** En. Sec. 6, Ch. 618, L. 1985; amd. Sec. 10, Ch. 249, L. 1991; amd. Sec. 99(4), Ch. 51, L. 1999; amd. Sec. 305, Ch. 56, L. 2009.

**20-7-463. Surrogate parent — immunity from liability — reimbursement.** (1) A person appointed as a surrogate parent is exempt from liability for any act or omission performed by the person in the capacity as a surrogate parent except an act or omission that is found to have been committed in a grossly negligent or malicious manner.

(2) A surrogate parent has the same protection and immunity in professional communications as a teacher.

(3) A surrogate parent must be reimbursed by the school district for all reasonable and necessary expenses incurred in the pursuit of the surrogate parent's duties, as prescribed by rules adopted by the superintendent of public instruction.

**History:** En. Sec. 7, Ch. 618, L. 1985; amd. Sec. 306, Ch. 56, L. 2009.

**20-7-464 through 20-7-469 reserved.**

**20-7-470. Blind persons' literacy rights and education — short title.** Sections 20-7-470 through 20-7-475 may be cited as the “Blind Persons' Literacy Rights and Education Act”.

**History:** En. Sec. 1, Ch. 490, L. 2005.

**20-7-471. Blind persons' literacy rights and education — definitions.** As used in 20-7-470 through 20-7-475, unless the context requires otherwise, the following definitions apply:

(1) “Blind or visually impaired child” means an individual who is eligible for special education services and who:

(a) has a visual acuity of 20/70 or less in the better eye with correcting lenses or has a limited field of vision such that the widest diameter subtends an angular distance of no greater than 20 degrees; or

(b) has a medically indicated expectation of visual deterioration that would qualify the child as having a visual acuity as described in subsection (1)(a).

(2) “Braille” means the system of reading and writing through touch, commonly known as standard English Braille.

(3) “Individualized education program” means a written statement developed for a student eligible for special education services pursuant to the Individuals With Disabilities Education Act, 20 U.S.C. 1401(11).

**History:** En. Sec. 2, Ch. 490, L. 2005.

**20-7-472. Individualized education program for child with blindness.** The individualized education program for each blind or visually impaired child must be provided in accordance with the requirements of the Individuals With Disabilities Education Act, 20 U.S.C. 1400, et seq.

**History:** En. Sec. 3, Ch. 490, L. 2005.

**20-7-473. Standards of competency and instruction — Braille reading and writing.** Instruction in Braille reading and writing must be provided in accordance with the requirements of the Individuals With Disabilities Education Act, 20 U.S.C. 1400, et seq.

**History:** En. Sec. 4, Ch. 490, L. 2005.

**20-7-474. Instructional materials and Braille equipment — Braille equipment loan program.** The Montana school for the deaf and blind shall establish a Braille electronic equipment loan program that may be used by a school district to provide Braille equipment as specified in a student's individualized education program. The equipment must be loaned on a temporary basis to a school district, but the district is responsible for purchasing like equipment required by the student's individualized education program.

**History:** En. Sec. 5, Ch. 490, L. 2005.

**20-7-475. Blind persons' literacy rights and education — personnel training.** The board of public education shall establish standards to ensure that individuals who provide Braille instruction are appropriately trained and supervised.

**History:** En. Sec. 6, Ch. 490, L. 2005.

## Part 5 Traffic Education

### Part Cross-References

National defense highway plans and drivers' training, 10-3-107.

Highway traffic safety administration, 61-2-103.

Licensure of persons 15 years of age upon completion of driver's education, 61-5-105.

Instruction and traffic education permits and temporary licenses, 61-5-106.

Traffic regulation, Title 61, ch. 8.

Violation of safety patrol signals, 61-8-502.

**20-7-501. Definitions.** As used in this title, unless the context clearly indicates otherwise, the following definitions apply:

(1) “Teacher of traffic education” means an instructor approved by the superintendent of public instruction to teach traffic education.



(2) “Traffic education” means instruction in motor vehicle, bicycle, pedestrian, and school bus traffic laws or motorcycle laws, in the acceptance of personal responsibility on the public highways, in the causes and consequences of traffic accidents, and in the skills necessary for the safe operation of bicycles and motor vehicles or motorcycles. The instruction must be designed to improve public awareness of motor vehicle, pedestrian, and school bus safety with regard to protecting school-age children.

(3) “Traffic education account” means the state treasury account in the state special revenue fund for the deposit and disbursement of state traffic education revenue.

(4) “Traffic education course” means a course of traffic education that has been approved by the superintendent of public instruction.

**History:** En. 75-7901 by Sec. 435, Ch. 5, L. 1971; R.C.M. 1947, 75-7901; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 1, Ch. 428, L. 1991; amd. Sec. 4, Ch. 701, L. 1991; amd. Sec. 3, Ch. 181, L. 1999.

**20-7-502. Duties of superintendent of public instruction.** The superintendent of public instruction shall:

- (1) develop, administer, and supervise a program of instruction in traffic education;
- (2) establish basic course requirements in instruction for traffic education;
- (3) establish the qualifications for a teacher of traffic education;
- (4) approve teachers of traffic education when the teachers are qualified;
- (5) establish criteria for traffic education course approval based on the basic course requirements, teacher of traffic education qualifications, and the requirements of law;
- (6) approve traffic education courses when the courses meet the criteria for approval;
- (7) promulgate a policy for the distribution of the traffic education money to approved traffic education courses and annually order the distribution of the proceeds of the traffic education account in the manner required by law;
- (8) assist districts with the conduct of traffic education; and
- (9) periodically conduct onsite driver education program reviews.

**History:** En. 75-7904 by Sec. 438, Ch. 5, L. 1971; R.C.M. 1947, 75-7904; amd. Sec. 5, Ch. 701, L. 1991; amd. Sec. 4, Ch. 181, L. 1999.

**20-7-503. District establishment of traffic education program.** The trustees of any district operating a junior high school or high school may establish and maintain a traffic education course. The traffic education course shall be:

- (1) for students who are 15 years old or older or will have reached their 15th birthday within 6 months of the course completion;
- (2) taught by a teacher of traffic education;
- (3) conducted in accordance with the basic course requirements established by the superintendent of public instruction; and
- (4) taught during regular school hours, after regular school hours, on Saturdays, or as a summer school course, at the option of the trustees.

**History:** En. 75-7905 by Sec. 439, Ch. 5, L. 1971; R.C.M. 1947, 75-7905.

**20-7-504. State traffic education account — proceeds earmarked for account — transmittal.** (1) There is a traffic education account in the treasury of the state of Montana.

(2) When a county is required to transmit fees directly to the department of revenue, the gross proceeds, including the portion of the fees to be credited to the traffic education account, must be transmitted to the department of revenue and the appropriate portion must be deposited in the traffic education account.

**History:** En. 75-7902 by Sec. 436, Ch. 5, L. 1971; R.C.M. 1947, 75-7902; amd. Sec. 96, Ch. 421, L. 1979; amd. Sec. 1, Ch. 487, L. 1981; amd. Sec. 7, Ch. 277, L. 1985; amd. Sec. 13, Ch. 557, L. 1987; amd. Sec. 3, Ch. 512, L. 1991; amd. Sec. 6, Ch. 701, L. 1991; amd. Sec. 2, Ch. 11, Sp. L. July 1992; amd. Sec. 3, Ch. 39, Sp. L. November 1993; amd. Sec. 29, Ch. 509, L. 1995; amd. Sec. 111, Ch. 42, L. 1997; amd. Sec. 5, Ch. 181, L. 1999; amd. Sec. 10, Ch. 237, L. 2001; amd. Sec. 47, Ch. 257, L. 2001.

#### **Cross-References**

Instruction permits — traffic education learner licenses and permits — temporary licenses, 61-5-106.

Fees for licenses, 61-5-111, 61-5-114.

Penalties for violation of traffic laws, Title 61, ch. 8, part 7.

Disposition of fines and forfeitures, 61-12-701.

**20-7-505. Repealed.** Sec. 315, Ch. 42, L. 1997.

**History:** En. 75-7903 by Sec. 437, Ch. 5, L. 1971; R.C.M. 1947, 75-7903; amd. Sec. 2, Ch. 487, L. 1981; amd. Sec. 14, Ch. 557, L. 1987.

**20-7-506. Annual allocation and distribution of traffic education account proceeds.** (1) Subject to the provisions of subsection (2), the superintendent of public instruction shall annually order the distribution of all money in the traffic education account to the districts conducting approved traffic education courses. The distribution of the traffic education money must be based on the distribution policy promulgated by the superintendent of public instruction, provided that the reimbursements to districts must be based upon the number of pupils who, in a given school fiscal year, complete an approved traffic education course, including both the classroom instruction and behind-the-wheel driving.

(2) Before the funds in the traffic education account are disbursed, there must be appropriated to the superintendent of public instruction funds to administer the statewide traffic education program for eligible, young, novice drivers. The administration may include:

- (a) supervision and assessment of approved traffic education courses;
- (b) preparation for teachers of traffic education;
- (c) development, printing, and distribution of essential instructional materials for traffic education; and

(d) any other activities considered necessary by the superintendent of public instruction, provided that the money is available only to support traffic education for young, novice drivers.

**History:** En. 75-7906 by Sec. 440, Ch. 5, L. 1971; amd. Sec. 1, Ch. 307, L. 1973; R.C.M. 1947, 75-7906; amd. Sec. 4, Ch. 39, Sp. L. November 1993; amd. Sec. 30, Ch. 509, L. 1995.

**20-7-507. District traffic education fund.** The trustees of any district maintaining a traffic education course shall establish a special nonbudgeted fund with the county treasurer for traffic education. All nontax receipts for traffic education must be deposited in the district's traffic education fund. The expenditure of the money deposited in the district's traffic education fund is not subject to the budgeting provisions of this title, and the money may be expended for traffic education.

**History:** En. 75-7907 by Sec. 441, Ch. 5, L. 1971; R.C.M. 1947, 75-7907; amd. Sec. 5, Ch. 39, Sp. L. November 1993.

#### **Cross-References**

Traffic education fund, 20-9-510.

**20-7-508 and 20-7-509 reserved.**

**20-7-510. Renumbered 20-25-1003.** Sec. 14(2), Ch. 181, L. 1999.

**20-7-511. Renumbered 20-25-1004.** Sec. 14(2), Ch. 181, L. 1999.

**20-7-512. Renumbered 20-25-1005.** Sec. 14(2), Ch. 181, L. 1999.

**20-7-513. Renumbered 20-25-1006.** Sec. 14(2), Ch. 181, L. 1999.

**20-7-514. Renumbered 20-25-1007.** Sec. 14(2), Ch. 181, L. 1999.

## **Part 6 Textbook Regulation**

#### **Part Cross-References**

Proscribed acts relating to contracts and claims, Title 2, ch. 2, part 2.

Textbook and textbook dealer defined, 20-1-101.

Conflict of interest, 20-1-205.

School property, Title 20, ch. 6, part 6.

Conflicts of interests, letting contracts, and calling for bids, 20-9-204.

**20-7-601. Free textbook provisions.** (1) The trustees of each district shall provide free textbooks to the public school pupils of the district. The trustees shall purchase such textbooks at the expense of the district and loan them to such pupils free of charge, subject to the textbook damage policy of the trustees.

(2) For the purpose of this section only, textbooks shall not include those books or manuals which are rendered unusable as a result of having pages designed to be written upon or removed during the course of the study they serve. When the parents of a pupil attending a school of the district so request, such textbooks shall be sold to them at cost.

**History:** En. 75-7602 by Sec. 394, Ch. 5, L. 1971; R.C.M. 1947, 75-7602.

#### **Cross-References**

Free education to be provided, Art. X, sec. 1, Mont. Const.

**20-7-602. Textbook selection and adoption.** (1) Textbooks must be selected by the district superintendent or by the school principal if there is no district superintendent. The selections are subject to the approval of the trustees. In districts not employing a district superintendent or principal, the trustees shall select and adopt the textbooks on the basis of recommendations of the county superintendent.

(2) In selecting textbooks, the district shall ensure that the materials are made available to each blind or visually impaired child in a timely manner in accordance with the requirements of the Individuals With Disabilities Education Act, 20 U.S.C. 1400, et seq.

**History:** En. 75-7603 by Sec. 395, Ch. 5, L. 1971; R.C.M. 1947, 75-7603; amd. Sec. 7, Ch. 490, L. 2005.

**Cross-References**

Blind Persons' Literacy Rights and Education Act, 20-7-470 through 20-7-475.

**20-7-603. Textbooks obtained from licensed textbook dealer.** Textbooks selected and adopted by districts shall be obtained from a licensed textbook dealer.

**History:** En. 75-7604 by Sec. 396, Ch. 5, L. 1971; amd. Sec. 1, Ch. 89, L. 1973; R.C.M. 1947, 75-7604.

**Cross-References**

School officers not to act as agents, 20-1-201.

**20-7-604. Licensing textbook dealers.** (1) Textbook dealers must be licensed to sell textbooks by the superintendent of public instruction. To obtain a license, a textbook dealer shall first file with the superintendent of public instruction the dealer's written agreement to:

(a) guarantee that textbooks must be supplied to any district at the listed, uniform sales prices in effect for schools, except that the prices may be reduced in accordance with this section;

(b) guarantee that at no time will any textbook sale price in Montana be a larger amount than the sale price to schools anywhere else in the United States under similar conditions of transportation and marketing; and

(c) reduce automatically the listed, uniform sales price to schools whenever reductions of these prices are made anywhere in the United States.

(2) (a) Textbook dealers filing the written agreement with the superintendent of public instruction shall also file a surety bond with the secretary of state. The surety bond must run to the state of Montana and be conditioned on the faithful performance of all duties imposed upon textbook dealers for the purpose of regulating the supply of textbooks to districts. The amount of the surety bond must be set by the superintendent of public instruction and may not be less than \$2,000 or more than \$10,000. It is the responsibility of the textbook dealer to maintain the surety bond on a current basis.

(b) The secretary of state may charge a fee for the filing of the surety bond required under this section. The fee must be set by rule and deposited in accordance with 2-15-405.

(3) When the textbook dealer has complied with the written agreement and surety bond requirements for licensing, the superintendent of public instruction shall issue a license to the textbook dealer.

**History:** En. 75-7605 by Sec. 397, Ch. 5, L. 1971; amd. Sec. 2, Ch. 89, L. 1973; R.C.M. 1947, 75-7605; amd. Sec. 7, Ch. 94, L. 2007; amd. Sec. 1, Ch. 69, L. 2015.

**Cross-References**

Suretyship, Title 28, ch. 11, part 4.

**20-7-605. Notification and processing of complaint against licensed textbook dealer.** (1) A district or county superintendent shall notify the superintendent of public instruction whenever it is ascertained that a licensed textbook dealer is:

(a) offering to sell textbooks at a higher price than the listed uniform sales price filed with the superintendent of public instruction;

(b) offering to sell textbooks at a higher shipping point price than the shipping point price of the same textbooks distributed elsewhere in the United States; or

(c) in any other way performing contrary to the laws regulating the offering of textbooks for sale or adoption to districts.

(2) Upon receipt of such notification from the district or county superintendent, the superintendent of public instruction shall notify the appropriate licensed textbook dealer of the complaint. If the superintendent of public instruction finds that the licensed textbook dealer has violated any provision of this section and the dealer fails to rectify the error within 30 days of the notification of the finding of a violation, the dealer shall forfeit the dealer's surety bond. The

attorney general, upon written request of the superintendent of public instruction, shall proceed to collect by legal action the full amount of the surety bond. Any amount recovered must be paid into the state general fund.

**History:** En. 75-7607 by Sec. 399, Ch. 5, L. 1971; amd. Sec. 3, Ch. 89, L. 1973; amd. Sec. 25, Ch. 266, L. 1977; R.C.M. 1947, 75-7607; amd. Sec. 31, Ch. 509, L. 1995.

**20-7-606. Doing business without textbook dealer's license — penalty.** A textbook dealer who sells or offers for sale or adoption a textbook to any district or county superintendent without first obtaining a textbook license from the superintendent of public instruction shall be guilty of a misdemeanor. Upon conviction of the misdemeanor, the person shall be fined not less than \$500 or more than \$2,000.

**History:** En. 75-7608 by Sec. 400, Ch. 5, L. 1971; R.C.M. 1947, 75-7608; amd. Sec. 307, Ch. 56, L. 2009.

**20-7-607. Restricting competition — penalty.** At any time a licensed textbook dealer enters into any understanding, agreement, or combination to control textbook prices or otherwise restrict competition in the sale of textbooks, the dealer shall forfeit the dealer's surety bond and license. The attorney general shall institute and prosecute legal proceedings for the forfeiture of the surety bond of the licensed textbook dealer and for revocation of the dealer's license.

**History:** En. 75-7609 by Sec. 401, Ch. 5, L. 1971; R.C.M. 1947, 75-7609; amd. Sec. 308, Ch. 56, L. 2009.

#### Cross-References

Suretyship, Title 28, ch. 11, part 4.

**20-7-608. Offer or acceptance of emoluments or other inducements — penalty.** (1) A textbook dealer or the dealer's agent may not offer any emolument or other inducement to any trustee or school employee to influence the selection, adoption, or purchase of textbooks.

(2) A trustee, county superintendent, or school employee may not accept any emolument or other inducement from a textbook dealer or agent of the dealer for the use of the official's or employee's influence in the selection, adoption, or purchase of textbooks.

(3) The violation of any provisions of this section is a misdemeanor. In addition, any trustee, county superintendent, or school employee convicted of the misdemeanor must be removed from the officer's or employee's position.

(4) This section may not be construed to prevent the supplying of a necessary number of sample textbooks for the purpose of examination by school officials or school employees.

**History:** En. 75-7610 by Sec. 402, Ch. 5, L. 1971; R.C.M. 1947, 75-7610; amd. Sec. 309, Ch. 56, L. 2009.

#### Cross-References

Trustee removal, 20-3-310.

Personal immunity and liability of trustees, 20-3-332.

Official misconduct, 45-7-401.

Misdemeanor — no penalty specified, 46-18-212.

## Part 7 Adult Education

#### Part Cross-References

High school equivalency — certification, 20-7-131.

**20-7-701. Definition of adult basic education and adult education.** As used in this title, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Adult basic education" means instruction in basic skills, such as reading, writing, arithmetic, and other skills required to function in society, offered to persons 16 years of age or older who are not regularly enrolled, full-time pupils for the purposes of ANB computation. Adult basic education may include any subject normally offered in the basic curricula of an accredited elementary or secondary school in the state.

(2) "Adult education" means the instruction of persons 16 years of age or older who are not regularly enrolled, full-time pupils for the purposes of ANB computation.

**History:** En. 75-7512 by Sec. 383, Ch. 5, L. 1971; amd. Sec. 2, Ch. 290, L. 1977; R.C.M. 1947, 75-7512; amd. Sec. 34, Ch. 658, L. 1987; amd. Sec. 13, Ch. 308, L. 1995.

#### Cross-References

ANB defined, 20-1-101.

Calculation of average number belonging (ANB), 20-9-311.

**20-7-702. Authorization to establish adult education programs.** The trustees of a district or community college district may establish and operate an adult education program

at any time of the day when facilities and personnel are available. An adult education program may provide both basic and secondary general education, career and technical education, vocational-technical education, American citizenship education, including courses in the English language and American history and government, or any other areas of instruction approved by the trustees.

**History:** En. 75-7513 by Sec. 384, Ch. 5, L. 1971; R.C.M. 1947, 75-7513; amd. Sec. 12, Ch. 133, L. 2001; amd. Sec. 1, Ch. 171, L. 2011.

**20-7-703. Trustees' policies for adult education.** The trustees shall adopt such policies as are necessary for the supervision and administration of adult education when a program is established in the district.

**History:** En. 75-7514 by Sec. 385, Ch. 5, L. 1971; R.C.M. 1947, 75-7514.

**20-7-704. Adult education tuition and fees.** The trustees of a district or community college district shall have the authority to charge tuition for instruction and to charge fees for the use of equipment and materials. The amount of such tuition and fees shall be determined on a per-course basis or on the basis of the cost of the entire adult education program. All proceeds from tuition and fees shall be deposited in the adult education fund.

**History:** En. 75-7516 by Sec. 387, Ch. 5, L. 1971; R.C.M. 1947, 75-7516.

**20-7-705. Adult education fund.** (1) A separate adult education fund must be established when an adult education program is operated by a district or community college district. The financial administration of the fund must comply with the budgeting, financing, and expenditure provisions of the laws governing the schools.

(2) Whenever the trustees of a district establish an adult education program under the provisions of 20-7-702, they shall establish an adult education fund under the provisions of this section. The adult education fund is the depository for all district money received by the district in support of the adult education program. Federal and state adult education program money must be deposited in the miscellaneous programs fund.

(3) The trustees of a district may authorize the levy of a tax on the taxable value of all taxable property within the district for the operation of an adult education program.

(4) Whenever the trustees of a district decide to offer an adult education program during the ensuing school fiscal year, they shall budget for the cost of the program in the adult education fund of the final budget. Any expenditures in support of the adult education program under the final adult education budget must be made in accordance with the financial administration provisions of this title for a budgeted fund.

(5) When a tax levy for an adult education program is included as a revenue item on the final adult education budget, the county superintendent shall report the levy requirement to the county commissioners by the later of the first Tuesday in September or within 30 calendar days after receiving certified taxable values and a levy on the district must be made by the county commissioners in accordance with 20-9-142.

**History:** En. Secs. 346, 386, Ch. 5, L. 1971; R.C.M. 1947, 75-7207, 75-7515; amd. Sec. 1, Ch. 215, L. 1981; amd. Sec. 9, Ch. 555, L. 1991; amd. Sec. 5, Ch. 568, L. 1991; amd. Sec. 5, Ch. 133, L. 1993; amd. Sec. 1, Ch. 34, Sp. L. November 1993; amd. Sec. 1, Ch. 38, L. 1995; amd. Sec. 2, Ch. 211, L. 1997; amd. Sec. 6, Ch. 430, L. 1997; amd. Sec. 103, Ch. 584, L. 1999; amd. Sec. 3, Ch. 220, L. 2001; amd. Sec. 115, Ch. 574, L. 2001; amd. Sec. 5, Ch. 152, L. 2011.

#### Cross-References

School budgets, Title 20, ch. 9, part 1.

Administration of finances, Title 20, ch. 9, part 2.

**20-7-706 through 20-7-710 reserved.**

**20-7-711. State policy for adult basic education.** Affirming that reading, writing, and other basic educational skills are vital for all citizens in modern society, the legislature declares that it is the continuing policy of Montana to encourage adult basic education programs that will develop the full educational potential of each citizen. The legislature recognizes that funds from local, state, and federal sources may be necessary to provide the basic education needed by Montana citizens.

**History:** En. 75-7514.1 by Sec. 1, Ch. 290, L. 1977; R.C.M. 1947, 75-7514.1.

**20-7-712. Adult basic education fund and its distribution.** (1) To encourage adult basic education, the legislature may appropriate funds to the superintendent of public



instruction for the support of adult basic education programs in any school district, community college district, tribal college, public library, community-based organization, or a consortium of those organizations located in Montana.

(2) The superintendent of public instruction shall direct the distribution of funds appropriated by the legislature for adult basic education. The trustees or authorized representative of any district or tribal college may apply to the superintendent for funds for its adult basic education program. The financial administration, accounting, and reporting of adult basic education funds must conform to policies established by the office of public instruction.

**History:** En. 75-7515.1 by Sec. 3, Ch. 290, L. 1977; R.C.M. 1947, 75-7515.1; amd. Sec. 1, Ch. 148, L. 2001; amd. Sec. 2, Ch. 171, L. 2011.

**Cross-References**

School budgets, Title 20, ch. 9, part 1.

Administration of finances, Title 20, ch. 9, part 2.

**20-7-713. Adult education fund operating reserve.** At the end of each school fiscal year, the trustees of a school district that operates an adult education program may designate the portion of the adult education end-of-the-year fund balance that is to be earmarked as operating reserve for the purpose of paying, whenever a cash flow shortage occurs, adult education fund warrants issued by the district from July 1 through June 30 of the ensuing school fiscal year. The amount of the adult education fund balance that is earmarked as operating reserve may not exceed 35% of the final adult education fund budget for the ensuing school fiscal year.

**History:** En. Sec. 1, Ch. 120, L. 1981; amd. Sec. 6, Ch. 568, L. 1991; amd. Sec. 6, Ch. 767, L. 1991.

**Cross-References**

School fiscal year, 20-1-301.

**20-7-714. County adult literacy programs — authorization to levy tax and establish fund.** (1) (a) Subject to 15-10-420, the governing body of a county may, in its discretion, establish a fund and levy a tax on the taxable value of all taxable property in the county for the support of county literacy programs that give first priority to providing direct instruction to adults. The tax levy is in addition to all other tax levies and is subject to limitations on property taxes set forth in 15-10-402.

(b) The fund may be used only for the support of adult literacy programs within the county.

(2) (a) If a county levies a property tax for adult literacy programs, the county governing body shall appoint a county adult literacy board to administer the expenditure of funds from the county adult literacy fund established in subsection (1).

(b) The county adult literacy board shall coordinate all adult literacy programs receiving county adult literacy funds. The board may adopt policies concerning program standards and financial accountability for organizations receiving adult literacy funds. The board may require that adult literacy programs match adult literacy funds with federal, state, or private money. The board may, with the concurrence of the appropriate county officials, arrange for county in-kind services to support adult literacy programs.

(c) County adult literacy funding may be expended only on literacy programs for persons who are 16 years of age or older and who are not regularly enrolled, full-time pupils for the purposes of ANB computation.

**History:** En. Sec. 1, Ch. 792, L. 1991; amd. Sec. 1, Ch. 264, L. 1997; amd. Sec. 104, Ch. 584, L. 1999; amd. Sec. 116, Ch. 574, L. 2001.

## Part 8 Public Recreation

**Part Cross-References**

Culture, social services, and recreation, Title 7, ch. 16.

Recreation, Title 23, ch. 2.

Shared-use paths, Title 60, ch. 3, part 3.

**20-7-801. Public recreation program authorized.** (1) Any city or town, including any board of park commissioners, may expend funds from the band fund and the park fund of the city or town for the purpose of operating a program of public recreation and playgrounds and for this purpose may acquire, equip, and maintain land, buildings, and other recreation facilities.

(2) Any school district may cooperate in such program.

**History:** En. Sec. 1, Ch. 71, L. 1939; R.C.M. 1947, 62-211; amd. Sec. 4, Ch. 384, L. 1979.

**Cross-References**

Interlocal Cooperation Act, Title 7, ch. 11, part 1.

Use of park funds for public recreation, 7-16-4107.

**20-7-802. How program operated — independently or cooperatively — delegation.**

Any city, town, school district, or any board thereof, including a board of park commissioners, may:

- (1) (a) operate such a program independently; or
- (b) cooperate in its operation and conduct with any other body authorized hereby to conduct such a program and in any manner upon which they may mutually agree; or
- (2) delegate the operation of the program to a board of recreation created by any city, town, school district, or any board thereof, including any board of park commissioners, operating or proposing to operate a program independently or with any cooperating bodies in such manner as they may agree, and all moneys appropriated for the purposes of such program may be expended by such board.

**History:** En. Sec. 2, Ch. 71, L. 1939; R.C.M. 1947, 62-212.

**Cross-References**

Interlocal Cooperation Act, Title 7, ch. 11, part 1.

**20-7-803. Authority to accept gifts.** Any corporation, board, or body hereinbefore designated, given authority to operate and conduct a recreation program or given charge of such program, is authorized to accept gifts and bequests in the name or names of the sponsors of said program, as said sponsors may agree, for the benefit of said recreational work, to employ directors and instructors of said recreational work, and to conduct its activities on:

- (1) property under its custody and management;
- (2) other public property under the custody of any other public corporation, body, or board, with the consent of such corporation, body, or board; and
- (3) private property, with the consent of its owners.

**History:** En. Sec. 3, Ch. 71, L. 1939; R.C.M. 1947, 62-213.

**20-7-804. Authority of board of public education.** In all cases where school property is utilized, the board of public education shall have authority:

- (1) to establish minimum qualifications of local recreational directors and instructors; and
- (2) to prepare or cause to be prepared, published, and distributed adequate and appropriate manuals and other materials as it may deem necessary or suitable to carry on said recreational program and to carry out the provisions of this part.

**History:** En. Sec. 4, Ch. 71, L. 1939; R.C.M. 1947, 62-214.

**20-7-805. Recreational use of school facilities secondary.** The facilities of any school district operating a recreational program pursuant to the provisions of this part shall be used primarily for the purpose of conducting a regular school curriculum, and the use of school facilities for recreational purposes authorized by this part shall be secondary.

**History:** En. Sec. 5, Ch. 71, L. 1939; R.C.M. 1947, 62-215.

## Part 9 Gifted and Talented Children

**Part Cross-References**

Board of Public Education — policies on gifted and talented children, 20-2-121.

**20-7-901. Definitions.** As used in this part the following definitions apply:

(1) “Gifted and talented children” means children of outstanding abilities who are capable of high performance and require differentiated educational programs beyond those normally offered in public schools in order to fully achieve their potential contribution to self and society. The children so identified include those with demonstrated achievement or potential ability in a variety of worthwhile human endeavors.

(2) “Professionally qualified persons” means teachers, administrators, school psychologists, counselors, curriculum specialists, artists, musicians, and others with special training who are qualified to appraise pupils’ special competencies.

**History:** En. Sec. 1, Ch. 310, L. 1979.

**20-7-902. School district programs to identify and serve the gifted and talented child.** (1) A school district may identify gifted and talented children and devise programs to serve them.

(2) In identifying gifted and talented children, the school district shall:

- (a) consult with professionally qualified persons and the parents of children being evaluated;
- (b) consider a child's demonstrated or potential gifts or talents; and
- (c) use comprehensive and appropriate assessment methods including objective measures and professional assessment measures.

**History:** En Sec. 2, Ch. 310, L. 1979.

**20-7-903. Programs to serve gifted and talented children — compliance with board policy — funding.** (1) The conduct of programs to serve gifted and talented children must comply with the policies recommended by the superintendent of public instruction and adopted by the board of public education.

(2) Proposals approved by the superintendent of public instruction in accordance with policies of the board of public education must be funded by money appropriated to the superintendent for that purpose.

(3) A school district shall match funds provided by the superintendent for a gifted and talented children's program with equal funds from other sources. "In kind" contributions may not be used to constitute such a match. Funds must be administered by the school district as provided in 20-9-507.

(4) The superintendent of public instruction may deduct reasonable costs of administration from the funds appropriated for the purposes of this part.

**History:** En Sec. 3, Ch. 310, L. 1979; amd. Sec. 2, Ch. 312, L. 1983.

**20-7-904. Review and recommendations of proposals.** (1) The policies of the board of public education must assure that program proposals submitted by school districts to the superintendent of public instruction contain:

- (a) evidence that identification procedures are comprehensive and appropriate;
- (b) a program description including stated needs and measurable objectives designed to meet those needs;
- (c) evidence that the activities are appropriate and will serve to achieve the program objectives; and
- (d) a method to evaluate the effectiveness of the program.

(2) School districts may request assistance from the staff of the superintendent in formulating program proposals.

(3) The superintendent of public instruction shall supervise and coordinate the programs for gifted and talented children by:

- (a) recommending to the board of public education the adoption of those policies necessary to establish a planned and coordinated program; and
- (b) establishing a procedure for review and approval of program proposals.

**History:** En Sec. 4, Ch. 310, L. 1979; amd. Sec. 3, Ch. 312, L. 1983.

## **Part 10 Distance Learning (Repealed)**

**20-7-1001. Repealed.** Sec. 8, Ch. 622, L. 1991.

**History:** En. Sec. 52, Ch. 11, Sp. L. June 1989.

## **Part 11 Earthquake Emergency Procedures (Repealed)**

**20-7-1101. Repealed.** Sec. 5, Ch. 423, L. 1997.

**History:** En. Sec. 1, Ch. 534, L. 1991.

## Part 12

### Montana Digital Academy

#### Part Cross-References

Basic system of free quality public elementary and secondary schools, 20-9-309.

Calculation of average number belonging (ANB), 20-9-311.

University system, Title 20, ch. 25.

**20-7-1201. Montana digital academy — purposes — governance.** (1) There is a Montana digital academy at a unit of the Montana university system.

(2) The purposes of the Montana digital academy are to:

(a) make distance learning opportunities available to all school-age children through public school districts in the state of Montana;

(b) offer high-quality instructors who are licensed and endorsed in Montana and courses that are in compliance with all relevant education and distance learning rules, standards, and policies; and

(c) emphasize the core subject matters required under the accreditation standards, offer advanced courses for dual credit in collaboration with the Montana university system, and offer enrichment courses.

(3) The Montana digital academy must be governed by a board with equal representation from:

(a) the commissioner of higher education or a designee;

(b) the superintendent of public instruction or a designee;

(c) a Montana-licensed and Montana-endorsed classroom teacher appointed by the board of public education;

(d) a Montana-licensed school district administrator appointed by the board of public education;

(e) a trustee of a Montana school district appointed by the board of public education;

(f) the dean of the school of education of the hosting unit of the Montana university system or a designee as a nonvoting member; and

(g) the two officers provided for in subsection (5) as nonvoting members.

(4) The governing board shall elect a presiding officer and vice presiding officer to 2-year terms without limitation on the number of terms.

(5) The governing board shall hire a program director and a curriculum director who shall serve as chief executive officer and vice chief executive officer respectively on the governing board in a nonvoting capacity. The program director shall develop and, upon approval of the governing board, implement and publish policies and guidelines for the Montana digital academy pertaining to:

(a) course offerings;

(b) software and hardware selection;

(c) instructor selection;

(d) partnering school agreements;

(e) instructor training and curriculum development;

(f) course evaluation;

(g) grant opportunities; and

(h) other activities that are essential to the success of a statewide distance learning program.

**History:** En. Sec. 1, Ch. 417, L. 2009; amd. Sec. 14, Ch. 19, L. 2011; amd. Sec. 6, Ch. 418, L. 2011; amd. Sec. 1, Ch. 142, L. 2015.

**20-7-1202. Funding — rulemaking authority.** (1) (a) In addition to any amount appropriated to the Montana digital academy by the legislature, beginning July 1, 2016, school districts enrolling students at the digital academy shall pay to the digital academy any supplemental fee established by the digital academy that is required to pay for the prorated costs of course delivery that exceed the amount appropriated to the digital academy by the legislature. The fee must be established by the governing board of the digital academy by rule and must be commensurate with the costs of operating the digital academy that exceed the appropriation provided by the legislature.

(b) Fees collected under subsection (1)(a) may be spent only on the operating costs of the digital academy.

(c) The governing board of the digital academy shall adopt rules regarding the establishment of any fees required under subsection (1)(a).

(2) A school district is prohibited from charging a fee to a student who enrolls in a class provided by the Montana digital academy that the school district requires for graduation.

**History:** En. Sec. 2, Ch. 142, L. 2015.

## **Part 13**

### **Protection and Wellness of Youth**

**20-7-1301. Purpose — intent — immunity.** (1) The legislature finds that protecting youth athletes from serious injury is a compelling state interest. The purpose of 20-7-1301 through 20-7-1304 is to prevent permanent injury and death to youth athletes in the state of Montana. To further this interest, the legislature finds:

(a) concussions are one of the most commonly reported injuries in children and adolescents who participate in sports and recreational activities;

(b) a concussion is caused by a blow or motion to the head or body that causes the brain to move rapidly inside the skull;

(c) the risks of catastrophic injuries or death are significant when a concussion or brain injury is not properly evaluated and managed;

(d) concussions are a type of brain injury that can range from mild to severe and can disrupt the way the brain normally works;

(e) concussions can occur in any organized or unorganized sport or recreational activity and can result from a fall or from players colliding with each other, with the ground, or with obstacles;

(f) concussions occur with or without loss of consciousness; and

(g) continuing to play with a concussion or symptoms of brain injury leaves the youth athlete especially vulnerable to greater injury and even death.

(2) (a) Sections 20-7-1301 through 20-7-1304 do not create a new cause of action.

(b) A person acting in an individual capacity and not on behalf of the state or any political subdivision of the state who volunteers to assist with an organized youth athletic activity is not liable for civil damages arising out of an act or omission relating to the requirements of 20-7-1301 through 20-7-1304. This subsection (2)(b) does not apply to liability for willful or wanton misconduct.

**History:** En. Sec. 2, Ch. 260, L. 2013; amd. Sec. 1, Ch. 331, L. 2017.

#### **Compiler's Comments**

*2017 Amendment:* Chapter 331 inserted (2)(b) concerning liability of entities acting individually and not on behalf of state or political subdivision; and made minor changes in style. Amendment effective October 1, 2017.

*Applicability:* Section 4, Ch. 331, L. 2017, provided that this section applies to occurrences on or after October 1, 2017."

**20-7-1302. Definitions.** As used in 20-7-1301 through 20-7-1304, the following definitions apply:

(1) "Concussion" means an injury to the brain arising from blunt trauma, an acceleration force, or a deceleration force, which may include one of the following observed or self-reported conditions attributable to the injury:

(a) transient confusion, disorientation, or impaired consciousness;

(b) dysfunction of memory;

(c) loss of consciousness; or

(d) signs of other neurological or neuropsychological dysfunction, including:

(i) increased irritability;

(ii) lethargy;

(iii) vomiting;

(iv) headache;

(v) dizziness;

(vi) fatigue;

(vii) decreased balance; and

(viii) seizures.



(2) “Licensed health care professional” means a registered, licensed, certified, or otherwise statutorily recognized health care professional whose training includes the evaluation and management of concussions consistent with current medical knowledge.

(3) (a) “Organized youth athletic activity” means an athletic activity organized or sponsored by a school district, nonpublic school, or youth athletic organization in which the participants are engaged in an athletic game or competition against another team, club, or entity, in practice, tryouts, training exercises, or sports camps, or in preparation for an athletic game or competition against another team, club, or entity.

(b) The term does not include recess or physical education classes conducted by a school district or nonpublic school.

(4) “Youth athlete” means an individual who is an active participant in an organized youth athletic activity.

(5) “Youth athletic organization” means any entity that organizes or sponsors an organized youth athletic activity.

**History:** En. Sec. 3, Ch. 260, L. 2013; amd. Sec. 2, Ch. 331, L. 2017.

#### **Compiler’s Comments**

*2017 Amendment:* Chapter 331 in definition of licensed health care professional at end inserted “consistent with current medical knowledge”; in definition of organized youth athletic activity near beginning substituted “organized or sponsored by a school district, nonpublic school, or youth athletic organization” for “sponsored by a school or school district” and inserted (b) regarding exceptions; inserted definition of youth athletic organization; and made minor changes in style. Amendment effective October 1, 2017.

*Applicability:* Section 4, Ch. 331, L. 2017, provided that this section applies to occurrences on or after October 1, 2017.”

**20-7-1303. Youth athletes — concussion education requirements.** (1) Each school district, nonpublic school, or youth athletic organization in this state offering organized youth athletic activities shall adopt policies and procedures to inform coaches, officials, youth athletes, and parents or guardians of the nature and risk of brain injuries, including the effects of continuing to play after a concussion. The policies, content, and protocols must be consistent with current medical knowledge as to:

- (a) the nature and risk of brain injuries associated with athletic activity;
- (b) the signs, symptoms, and behaviors consistent with a brain injury;
- (c) the need to alert a licensed health care professional for urgent recognition and treatment when a youth athlete exhibits signs, symptoms, or behaviors consistent with a concussion; and
- (d) the need to follow proper medical direction and protocols for treatment and returning to play after a youth athlete sustains a concussion.

(2) A form documenting that educational materials referred to in subsection (1) have been provided to and viewed by each youth athlete and the youth athlete’s parent or guardian must be signed by each youth athlete and the youth athlete’s parent or guardian and returned to an official designated by the school district, nonpublic school, or youth athletic organization prior to the youth athlete’s participation in organized youth athletic activities. The form must apply for a period not to exceed 1 year.

(3) School districts, nonpublic schools, and youth athletic organizers shall ensure access to a training program consistent with subsection (1). Each coach and official participating in organized youth athletic activities shall complete the training program at least once each year.

(4) School districts, nonpublic schools, and youth athletic organizations may invite the participation of appropriate advocacy groups and appropriate sports governing bodies to facilitate the requirements of subsections (1) through (3).

**History:** En. Sec. 4, Ch. 260, L. 2013; amd. Sec. 3, Ch. 331, L. 2017.

#### **Compiler’s Comments**

*2017 Amendment:* Chapter 331 in (1) in first sentence near beginning inserted “nonpublic school, or youth athletic organization” and after “procedures to inform” deleted “athletic trainers” and in second sentence near end after “current medical knowledge” deleted “and guidelines provided by the U.S. department of health and human services, centers for disease control and prevention”; in (2) in first sentence near end substituted “official designated by the school district, nonpublic school, or youth athletic organization” for “official designated by the school or school district” and after “youth athletic activities” deleted “for the subsequent school year” and inserted last sentence limiting applicability of form; in (3) in first sentence inserted “nonpublic schools, and youth athletic organizers”, in second sentence after “Each coach” deleted “athletic trainer”, and at end substituted “each year” for “each school year”; in (4) near beginning inserted “nonpublic schools, and youth athletic organizations”; and made minor changes in style. Amendment effective October 1, 2017.

*Applicability:* Section 4, Ch. 331, L. 2017, provided that this section applies to occurrences on or after October 1, 2017.”

**20-7-1304. Youth athletes — removal from participation following concussion — medical clearance required before return to participation.** (1) An athletic trainer, coach, or official shall remove a youth athlete from participation in any organized youth athletic activity at the time the youth athlete exhibits signs, symptoms, or behaviors consistent with a concussion.

(2) A youth athlete who has been removed from participation in an organized youth athletic activity after exhibiting signs, symptoms, or behaviors consistent with a concussion may not return to organized youth athletic activities until the youth athlete:

- (a) no longer exhibits signs, symptoms, or behaviors consistent with a concussion; and
- (b) receives an evaluation by a licensed health care professional and receives written clearance to return to play from the licensed health care professional. The written clearance must state:
  - (i) that the licensed health care professional has evaluated the youth athlete; and
  - (ii) that in the licensed health care professional's opinion, the youth athlete is capable of safely resuming participation in organized youth athletic activities.

**History:** En. Sec. 5, Ch. 260, L. 2013.

**20-7-1305 through 20-7-1309 reserved.**

**20-7-1310. Youth suicide awareness and prevention training.** (1) This section may be cited as the "Suicide Awareness and Prevention Training Act".

(2) The office of public instruction shall provide guidance and technical assistance to Montana schools on youth suicide awareness and prevention training materials. All training materials offered must be approved by the office of public instruction, meet the standards for professional development in the state, and be periodically reviewed by a qualified person or committee for consistency with generally accepted principles of youth suicide awareness and prevention training.

(3) The legislature recommends that youth suicide awareness and prevention training be made available annually to each employee of a school district and to staff of the office of public instruction who work directly with any students enrolled in Montana public schools. The training must be provided at no cost to the employee. The training may be offered through any method of training identified in subsection (4).

(4) The legislature recommends that employees under subsection (3) take at least 2 hours of youth suicide awareness and prevention training every 5 years. Appropriate methods for delivery of the training include:

- (a) in-person attendance at a live training;
- (b) videoconference;
- (c) an individual program of study of designated materials;
- (d) self-review modules available online; and
- (e) any other method chosen by the local school board that is consistent with professional development standards.

(5) The trustees of a school district shall establish policies, procedures, or plans related to suicide prevention and response.

(6) No cause of action may be brought for any loss or damage caused by any act or omission resulting from the implementation of the provisions of this section or resulting from any training or lack of training related to this section. Nothing in this section may be construed to impose a specific duty of care.

**History:** En. Secs. 1, 2, Ch. 351, L. 2015; amd. Sec. 1, Ch. 256, L. 2017.

**Compiler's Comments**

*2017 Amendment:* Chapter 256 inserted (5) requiring establishment of policies, procedures, or plans related to suicide prevention and response; and inserted (6) providing immunity. Amendment effective July 1, 2017.

**20-7-1311. Child sexual abuse awareness and prevention.** (1) The office of public instruction is encouraged to develop and maintain model school district policies and procedures for child sexual abuse awareness, prevention, response, and reporting.

(2) The office of public instruction shall make any model policies and procedures developed under subsection (1) available for voluntary adoption by school district trustees.

(3) Any model policies and procedures developed under subsection (1) may include the following topics:

- (a) basic principles of child sexual abuse prevention;
- (b) warning signs of a child who is being sexually abused;
- (c) actions that a child who is a victim of sexual abuse may take to obtain assistance;
- (d) counseling options;
- (e) educational support available for a child who is a victim of sexual abuse to enable the child to develop the child's full educational potential; and
- (f) response and reporting procedures.

**History:** En. Sec. 1, Ch. 218, L. 2017.

**Compiler's Comments**

*Effective Date:* Section 4, Ch. 218, L. 2017, provided: "[This act] is effective on passage and approval." Approved April 20, 2017.

**20-7-1312 through 20-7-1314 reserved.**

**20-7-1315. First aid training in schools.** (1) The office of public instruction shall, in consultation with school districts, the department of public health and human services, the American heart association, and the American red cross, provide guidance and technical support and make available a program of study to Montana schools on:

- (a) basic first aid;
- (b) basic cardiopulmonary resuscitation; and
- (c) the use of automated external defibrillators.

(2) The guidance and program of study under subsection (1) must comply with current evidence-based guidance from the American heart association or another national science organization. The office of public instruction shall annually notify high school and K-12 school districts during the month of August in writing or electronically of the availability and any updating of the guidance and program of study under subsection (1).

(3) School districts are encouraged to incorporate the program of study under subsection (1) during health enhancement courses during high school as required in the accreditation standards and to include in the program of study hands-on practicing of cardiopulmonary resuscitation.

(4) A school district and the office of public instruction may accept from any person, public entity, or other legal entity in-kind donations of materials, equipment, or services that may be used in the program of study under subsection (1).

(5) The office of public instruction, in consultation with the department of public health and human services, shall assist districts in carrying out a program under this section, including providing guidelines and advice for seeking grants for the purchase of automated external defibrillators or seeking donations of automated external defibrillators. The office of public instruction may coordinate with local health districts or other organizations in seeking grants and donations for this purpose.

(6) A school district may use any of the following persons to provide instruction and training pursuant to this section:

- (a) emergency medical technicians;
- (b) paramedics;
- (c) fire department personnel;
- (d) police officers;
- (e) representatives of the American heart association;
- (f) representatives of the American red cross;
- (g) teachers;
- (h) other school employees; and
- (i) other similarly qualified persons.

**History:** En. Sec. 1, Ch. 190, L. 2017.

**Compiler's Comments**

*Effective Date:* Section 3, Ch. 190, L. 2017, provided: "[This act] is effective on passage and approval." Approved April 13, 2017.

**20-7-1316. Child sex trafficking prevention.** The office of public instruction is encouraged to undertake activities to educate Montanans about and prevent child sex trafficking. Activities may include but are not limited to:

- (1) reviewing best practices for preventing child sex trafficking;

(2) providing access to educational resources for interested parents, teachers, child-care providers, and other community members on how to prevent child sex trafficking, on the warning signs of child sex trafficking, and on predatory behaviors;

(3) coordinating educational and prevention efforts with law enforcement, the department of public health and human services, and local organizations that work to prevent child sex trafficking; and

(4) supporting school districts in developing:

(a) policies on child sex trafficking awareness, prevention, response, and reporting; and

(b) educational materials and curricula aimed at preventing child sex trafficking.

**History:** En. Sec. 1, Ch. 294, L. 2017.

**Compiler's Comments**

*Effective Date:* This section is effective October 1, 2017.

## Part 14

### Cultural Integrity Commitment Act

**20-7-1401. (Temporary) Short title.** This part may be cited as the “Cultural Integrity Commitment Act”. (*Terminates June 30, 2019—sec. 10, Ch. 442, L. 2015.*)

**History:** En. Sec. 1, Ch. 442, L. 2015.

**20-7-1402. (Temporary) Legislative findings — purposes.** (1) The legislature finds that:

(a) language in the form of spoken, written, or sign language is foundational to cultural integrity;

(b) Montana tribal languages are in a time of crisis through the loss of native speakers, writers, and signers;

(c) achievement gaps persist for Indian students, including higher dropout rates;

(d) Article X, section 1, of the Montana constitution established the educational goals of:

(i) establishing an education system that develops the full educational potential of each person; and

(ii) preserving Indian cultural integrity.

(2) The purpose of this part is to promote innovative, culturally relevant, Indian language immersion programs for Indian and non-Indian students with the goal of raising student achievement, strengthening families, and preserving and perpetuating Indian language and culture throughout Indian country and Montana. (*Terminates June 30, 2019—sec. 10, Ch. 442, L. 2015.*)

**History:** En. Sec. 2, Ch. 442, L. 2015.

**20-7-1403. (Temporary) Definitions.** As used in this part, the following definitions apply:

(1) “Eligible district” means a school district encompassing or adjacent to an Indian reservation or a school district that includes one or more schools with an Indian population of 10% or greater.

(2) “Immersion program” means a program of an eligible district in which:

(a) all participating students receive content area instruction in an Indian language at least 50% of the day;

(b) teachers are fully proficient in the languages they use for instruction; and

(c) the goal of the program is perpetuating cultural integrity and promoting bilingualism and biliteracy.

(3) “Indian language” means any of the languages of the tribes located on the seven Montana reservations and the Little Shell Chippewa tribe. (*Terminates June 30, 2019—sec. 10, Ch. 442, L. 2015.*)

**History:** En. Sec. 3, Ch. 442, L. 2015.

**20-7-1404. (Temporary) Indian language immersion programs — funding — flexibility.** (1) School districts are encouraged to create Indian language immersion programs and in doing so:

(a) collaborate with other school districts, the Montana digital academy, tribal governments, and tribal colleges;

(b) utilize materials produced in the Montana Indian language preservation pilot program pursuant to section 1, Chapter 410, Laws of 2013;

(c) utilize American Indian language and culture specialists as teachers of language and culture; and

(d) look to existing native language schools in Montana and around the world for guidance and best practices.

(2) In acknowledgment of Article X, section 1, of the Montana constitution, the educationally relevant factors for the school funding formula under 20-9-309(3), and the increased costs associated with language immersion programs, a district creating an Indian language immersion program is entitled to the following in addition to the school funding formula in Title 20, chapter 9:

(a) (i) subject to subsections (3) and (4), for every Indian student participating in an Indian language immersion program, an additional American Indian achievement gap payment, as calculated in 20-9-306, multiplied by 2; and

(ii) for every non-Indian student participating in an Indian language immersion program, an additional Indian education for all payment, as calculated in 20-9-306, multiplied by 2; and

(b) for every full-time American Indian language and culture specialist teaching in an Indian language immersion program, a quality educator payment as calculated in 20-9-306.

(3) For a district operating an Indian language immersion program that improves the district's graduation rate for American Indians by 5 percentage points or more from the previous year as measured by the office of public instruction, the multiplier in subsection (2)(a)(i) must be increased to 3.

(4) If the money appropriated for Indian language immersion programs is insufficient to provide the amounts in subsections (2) and (3), the office of public instruction shall prorate the payments accordingly.

(5) The board of public education is encouraged to approve proposed variances to standards of accreditation for Indian language immersion programs when the board finds the proposal to be educationally sound and in alignment with the purpose described in 20-7-1402(2).

(6) The cultural and intellectual property rights from materials developed for an Indian language immersion program belong to the tribe to which the materials relate. Use of the cultural and intellectual property outside of the Indian language immersion program may be negotiated with the tribe.

(7) A district may use payments received pursuant to this section as matching funds for federal or private fund sources to accomplish the purposes of this part. (*Terminates June 30, 2019—sec. 10, Ch. 442, L. 2015.*)

**History:** En. Sec. 4, Ch. 442, L. 2015; amd. Sec. 1, Ch. 8, L. 2017; amd. Sec. 11, Ch. 275, L. 2017.

**Compiler's Comments**

*2017 Amendments — Composite Section:* Chapter 8 inserted (7) concerning matching funds; and made minor changes in style. Amendment effective July 1, 2017.

Chapter 275 in (4) near beginning deleted brackets around "language". Amendment effective October 1, 2017.

## CHAPTER 8 MONTANA SCHOOL FOR THE DEAF AND BLIND

### Part 1 — General Provisions

- 20-8-101. Montana school for deaf and blind — state-supported special school.
- 20-8-102. Objects and purposes — assistance to programs — tracking sensory impaired children — fee.
- 20-8-103. Board of public education rules.
- 20-8-104. Eligibility of children for admittance.
- 20-8-105. Repealed.
- 20-8-106. Duration of attendance at school — suspension or expulsion — transfer.
- 20-8-107. Admission of nonresident children and advance payment of cost — Indian children.
- 20-8-108. Provisions for indigent students.
- 20-8-109. Time of regular school term.
- 20-8-110. Property vested in school.
- 20-8-111. Duty of board of public education as to property of school.
- 20-8-112. Expenditure of school moneys.
- 20-8-113. Duties of superintendent of school for the deaf and blind.
- 20-8-114. Repealed.
- 20-8-115. Repealed.
- 20-8-116. Employment placement — continuing education.
- 20-8-117. Repealed.



- 20-8-118. Repealed.
  - 20-8-119. Repealed.
  - 20-8-120. Communications skills required of certain employees.
  - 20-8-121. Transportation of students at school.
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#### Chapter Cross-References

- Application of statewide classification and pay plan to school employees, 2-18-103.
- Attendance of pupils at schools, Title 20, ch. 5, part 1.
- No tuition when attending state institution, 20-7-424.
- Rights of persons with disabilities, Title 49, ch. 4.
- Developmental disabilities, Title 53, ch. 20.

## Part 1 General Provisions

**20-8-101. Montana school for deaf and blind — state-supported special school.** The school for the deaf and blind, located in the city of Great Falls, is known and designated as the Montana school for the deaf and blind and must be conducted as a separate and independent unit and special school of the state of Montana under the general supervision, direction, and control of the board of public education. However, the transfer of that school or any change in the name of the school or in the objects or purposes of the school may not be considered or construed to impair or work any forfeiture or alteration of any rights, grants, or property made to or acquired by that school or by the state for the use and benefit of that school.

**History:** En. Sec. 1, Ch. 182, L. 1943; amd. Sec. 39, Ch. 266, L. 1977; R.C.M. 1947, 80-102; amd. Sec. 1, Ch. 151, L. 1983; amd. Sec. 1, Ch. 72, L. 2003.

#### Cross-References

- Board of Public Education, 20-2-121.

**20-8-102. Objects and purposes — assistance to programs — tracking sensory impaired children — fee.** (1) The Montana school for the deaf and blind is a residential and day school for children and adolescents who are deaf or blind or whose hearing or sight is so defective that they cannot be successfully taught and are unable to receive a sufficient or proper education in the public schools of the state.

(2) The school shall serve as a consultative resource for parents of hearing impaired and visually impaired children not yet enrolled in an educational program and for public schools of the state where hearing impaired or visually impaired children are enrolled. The school upon request shall ensure that services and programs for hearing impaired or visually impaired children are appropriate and sufficient. The school may provide assistance to the programs that the school determines is needed. The school may collect a reasonable fee for the assistance from the public school or other responsible agency receiving the assistance.

(3) The school shall establish a system for tracking a child identified as hearing impaired or visually impaired from the time of impairment identification through the child's exit from intervention or educational services.

(4) The object and purpose of the school are to furnish and provide, by the use of specialized methods and systems, an education for the hearing impaired and visually impaired children of this state that is commensurate with the education provided to nonhandicapped children in the public schools and that will enable children being served by the school to become independent and self-sustaining citizens.

**History:** En. Sec. 2, Ch. 182, L. 1943; re-en. Sec. 1, Ch. 169, L. 1949; R.C.M. 1947, 80-103; amd. Sec. 2, Ch. 151, L. 1983; amd. Sec. 1, Ch. 392, L. 1989; amd. Sec. 1, Ch. 537, L. 1993; amd. Sec. 1, Ch. 73, L. 2003; amd. Sec. 1, Ch. 74, L. 2003.

**20-8-103. Board of public education rules.** The board of public education shall adopt and prescribe rules as the board considers necessary and proper for the maintenance and government of the school, the admission of children in conformity with the provisions of this chapter, and the qualifications and compensation of the superintendent and teaching staff of the school, provided that the superintendent must have a ready and working knowledge of the sign language.

**History:** En. Sec. 3, Ch. 182, L. 1943; R.C.M. 1947, 80-104; amd. Sec. 2, Ch. 392, L. 1989.

**20-8-104. Eligibility of children for admittance.** In order to be eligible for services from the Montana school for the deaf and blind, a child may not yet have reached 22 years of age and must be identified as deaf, hearing impaired, or visually impaired pursuant to the Individuals With Disabilities Education Act, 20 U.S.C. 1414.

**History:** En. Sec. 4, Ch. 182, L. 1943; amd. Sec. 1, Ch. 282, L. 1967; R.C.M. 1947, 80-105; amd. Sec. 3, Ch. 151, L. 1983; amd. Sec. 1, Ch. 291, L. 1995; amd. Sec. 1, Ch. 41, L. 2005.

**20-8-105. Repealed.** Sec. 6, Ch. 291, L. 1995.

**History:** En. Sec. 5, Ch. 182, L. 1943; R.C.M. 1947, 80-106; amd. Sec. 4, Ch. 151, L. 1983.

**20-8-106. Duration of attendance at school — suspension or expulsion — transfer.**

(1) Each child admitted to the school is entitled to attend the school until reaching the age of 21 years if attendance at the Montana school for the deaf and blind is the most appropriate educational placement for the child.

(2) Nothing in this section may be construed to prevent the suspension or expulsion of a child at any time for insubordination or other cause considered good and sufficient by the board of public education and superintendent of the Montana school for the deaf and blind if the suspension or expulsion complies with other applicable state and federal law.

(3) Transfer of a student from the school to another educational placement must comply with rules adopted by the board of public education.

**History:** En. Sec. 6, Ch. 182, L. 1943; amd. Sec. 2, Ch. 282, L. 1967; R.C.M. 1947, 80-107; amd. Sec. 5, Ch. 151, L. 1983; amd. Sec. 2, Ch. 291, L. 1995.

**20-8-107. Admission of nonresident children and advance payment of cost — Indian children.** (1) Hearing impaired or visually impaired children who are not residents of the state of Montana may be admitted to the Montana school for the deaf and blind after proper application for admission, subject to all eligibility requirements prescribed for children who are residents of the state if:

(a) the school is paid in advance a sum of money for each child equal to an estimate of the whole per capita cost of maintaining the school during the year immediately preceding the date of the application; and

(b) the full capacity of the school is not required for children who are residents of the state.

(2) The Montana school for the deaf and blind is authorized to negotiate with an out-of-state educational institution to place a student at the school. If a group of out-of-state students attends the Montana school for the deaf and blind, the educational institution of the other state shall pay in advance to the Montana school for the deaf and blind an amount of money for each student determined as a result of a negotiated agreement between the superintendent of the Montana school for the deaf and blind and the out-of-state educational institution. The agreement must be approved by the board of public education.

(3) Indian children who are Montana residents are eligible for admission and must be admitted to the school on the same terms as residents.

(4) The money paid by an out-of-state institution must be deposited in a state special revenue account and is statutorily appropriated, pursuant to 17-7-502, to the Montana school for the deaf and blind for educational purposes.

(5) The provisions of 17-2-108 that require the expenditure of nongeneral fund money prior to the expenditure of general fund money do not apply to the expenditure of revenue made available to the Montana school for the deaf and blind from the negotiated agreements described in subsection (2) of this section and through the statutory appropriation provided for in subsection (4) of this section.

**History:** En. Sec. 7, Ch. 182, L. 1943; amd. Sec. 1, Ch. 194, L. 1953; amd. Sec. 1, Ch. 182, L. 1957; R.C.M. 1947, 80-108; amd. Sec. 6, Ch. 151, L. 1983; amd. Sec. 3, Ch. 291, L. 1995; amd. Sec. 2, Ch. 151, L. 2005.

#### **Cross-References**

Rules for determining residence, 1-1-215.

**20-8-108. Provisions for indigent students.** If a person to be sent to the Montana school for the deaf and blind is too poor to pay for necessary clothing and transportation, the judge of the district court of the district where the person resides, upon application of any relative or friend or of any officer of the county where the person resides, shall, if the judge considers the person a proper subject, make an order to that effect. The order must be certified by the clerk of the court to the superintendent of the school, who shall then provide the necessary clothing

and transportation at the expense of the county, and upon the superintendent rendering proper accounts for the expenditures quarter-annually, the county commissioners shall allow and pay the accounts out of the county treasury.

**History:** En. Sec. 2344, Pol. C. 1895; re-en. Sec. 1170, Rev. C. 1907; re-en. Sec. 1463, R.C.M. 1921; Cal. Pol. C. Sec. 2240; re-en. Sec. 1463, R.C.M. 1935; R.C.M. 1947, 80-109; amd. Sec. 310, Ch. 56, L. 2009.

**20-8-109. Time of regular school term.** The regular term of school shall be as provided in 20-1-301.

**History:** En. Sec. 9, Ch. 182, L. 1943; R.C.M. 1947, 80-111; amd. Sec. 7, Ch. 151, L. 1983.

**20-8-110. Property vested in school.** All lands heretofore granted by the government of the United States to the state of Montana for the use and benefit of the deaf and dumb are hereby set apart and declared to be for the use and benefit in perpetuity of the Montana school for the deaf and blind, and all funds arising from the sale or leasing of said lands, or any part or portion thereof, shall be applied to the proper use and benefit thereof and shall vest in the state of Montana for the use and benefit thereof.

**History:** En. Sec. 11, Ch. 182, L. 1943; R.C.M. 1947, 80-113; amd. Sec. 8, Ch. 151, L. 1983.

**20-8-111. Duty of board of public education as to property of school.** The board of public education shall, either directly or through a contract with a nonprofit corporation, receive, hold, manage, use, and dispose of real and personal property transferred to the board or to the state of Montana by purchase, gift, devise, or bequest or otherwise acquired and the proceeds, interest, and income of the property for the use and benefit of the school for the deaf and blind. All donations, gifts, devises, or grants vest in the board or its designee, as trustee for the state of Montana, for the use and benefit of the school and its students.

**History:** En. Sec. 12, Ch. 182, L. 1943; R.C.M. 1947, 80-114; amd. Sec. 9, Ch. 151, L. 1983; amd. Sec. 31, Ch. 703, L. 1985; amd. Sec. 30, Ch. 422, L. 1997.

**20-8-112. Expenditure of school moneys.** No moneys belonging to the deaf and blind school fund shall be expended for any purpose other than for the Montana school for the deaf and blind, and any moneys belonging to any fund or funds which may be hereafter created for such school shall be expended for the express purpose designated in the act or acts creating such fund or funds and for no other purpose.

**History:** En. Sec. 14, Ch. 182, L. 1943; R.C.M. 1947, 80-116; amd. Sec. 10, Ch. 151, L. 1983.

**20-8-113. Duties of superintendent of school for the deaf and blind.** The superintendent of the Montana school for the deaf and blind shall:

- (1) administer the programs and functions of the school within the guidelines of statutes and under policies prescribed by the board of public education;
- (2) prepare and submit reports, summaries, and other information requested by the board;
- (3) establish and pursue professional and technical contacts that will contribute information and guidance toward effective and efficient operation of the school;
- (4) maintain effective liaison between the school, the superintendent of public instruction, local school districts, and other public and private agencies that have an interest in or influence upon the school;
- (5) pursue a program of information for parents, professionals, and the general public.

**History:** En. Sec. 1, Ch. 189, L. 1945; R.C.M. 1947, 80-117; amd. Sec. 11, Ch. 151, L. 1983.

**20-8-114. Repealed.** Sec. 14, Ch. 151, L. 1983.

**History:** En. Sec. 2, Ch. 189, L. 1945; R.C.M. 1947, 80-118.

**20-8-115. Repealed.** Sec. 14, Ch. 151, L. 1983.

**History:** En. Sec. 3, Ch. 189, L. 1945; R.C.M. 1947, 80-119.

**20-8-116. Employment placement — continuing education.** (1) The superintendent of the Montana school for the deaf and blind or the superintendent's designee shall assist in locating suitable employment for hearing impaired or visually impaired persons in attendance at the school. The superintendent or the superintendent's designee shall:

- (a) consult with various county, state, and federal agencies and with the department of public health and human services to secure employment for self-sustaining persons; and
- (b) coordinate work with federal programs, such as social security and reemployment for those out of work, as required by this part.

(2) The superintendent or the superintendent's designee, may, within funding limitations, develop and offer continuing education programs of a vocational nature for the hearing impaired and visually impaired who use the campus and facilities of the school during the summer months and other times when the school's facilities are not being used by its students.

**History:** En. Sec. 4, Ch. 189, L. 1945; R.C.M. 1947, 80-120; amd. Sec. 12, Ch. 151, L. 1983; amd. Sec. 4, Ch. 291, L. 1995; amd. Sec. 71, Ch. 546, L. 1995.

**20-8-117. Repealed.** Sec. 14, Ch. 151, L. 1983.

**History:** En. Sec. 5, Ch. 189, L. 1945; R.C.M. 1947, 80-121.

**20-8-118. Repealed.** Sec. 14, Ch. 151, L. 1983.

**History:** En. Sec. 6, Ch. 189, L. 1945; R.C.M. 1947, 80-122.

**20-8-119. Repealed.** Sec. 14, Ch. 151, L. 1983.

**History:** En. Sec. 7, Ch. 189, L. 1945; R.C.M. 1947, 80-123.

**20-8-120. Communications skills required of certain employees.** (1) Each permanent employee of the school who works with deaf children or works for or with a fellow employee who is deaf shall acquire acceptable total communications skills as prescribed by the board of public education by the end of the first year of employment.

(2) Upon request to the board of public education by the superintendent, an exception to this requirement may be made for an employee not working directly with deaf children.

**History:** En. Sec. 13, Ch. 151, L. 1983; amd. Sec. 311, Ch. 56, L. 2009.

**20-8-121. Transportation of students at school.** (1) The school for the deaf and blind shall provide the transportation expenses allowed in subsection (4) for a residential student at the school for the deaf and blind who is a resident of the state of Montana if the student is conveyed to and from the student's residence by:

- (a) a scheduled air carrier as defined in 67-1-101;
- (b) charter with a commercial air operator as defined in 67-1-101;
- (c) a parent or guardian of the student, under an individual transportation contract with the school for the deaf and blind; or
- (d) other transportation arrangements, provided that the transportation is by a carrier of passengers certified by the public service commission and approved by the superintendent of the school for the deaf and blind, pursuant to rules adopted by the board of public education.

(2) The superintendent of the school for the deaf and blind shall determine which method of transportation in subsection (1) is to be provided to a student, pursuant to rules adopted by the board of public education on transportation of residential and boarding students at the school.

(3) A parent or guardian who transports a student to or from the school under an individual transportation contract is entitled to reimbursement for transportation, pursuant to rules adopted by the board of public education on reimbursement.

(4) The transportation of a residential student provided in subsection (1) is limited to the number of round trips to the student's residence as specified in the school calendar approved by the board of public education. The superintendent of the school for the deaf and blind may grant a variance from this provision, but in no event may a reimbursement for travel expenses be provided for travel in excess of the total number of trips approved in any school fiscal year.

**History:** En. Sec. 1, Ch. 396, L. 1987; amd. Sec. 3, Ch. 392, L. 1989.

## CHAPTER 9 FINANCE

### Part 1 — School Budgets

20-9-101. Application of budget system for districts and counties.

20-9-102. General supervision of school budgeting system.

20-9-103. School budget form.

20-9-104. General fund operating reserve.

20-9-105. Repealed.

20-9-106 through 20-9-110 reserved.

20-9-111. Repealed.

20-9-112. Repealed.

20-9-113. Repealed.

20-9-114. Repealed.

- 20-9-115. Notice of final budget meeting.
- 20-9-116. Resolution of intent to increase nonvoted levy — notice.
- 20-9-117 through 20-9-120 reserved.
- 20-9-121. County treasurer's statement of cash balances and bond information.
- 20-9-122. Statement of district, city, and town valuations.
- 20-9-123. Repealed.
- 20-9-124 through 20-9-129 reserved.
- 20-9-130. District obligation for students in youth detention facility.
- 20-9-131. Final budget meeting.
- 20-9-132. Final budget adjustment procedures.
- 20-9-133. Adoption and expenditure limitations of final budget.
- 20-9-134. Completion, filing, and delivery of final budgets.
- 20-9-135 through 20-9-139 reserved.
- 20-9-140. Terminated.
- 20-9-141. Computation of general fund net levy requirement by county superintendent.
- 20-9-142. Fixing and levying taxes by board of county commissioners.
- 20-9-143. Allocation of federal funds in lieu of property taxation.
- 20-9-144 reserved.
- 20-9-145. Repealed.
- 20-9-146 reserved.
- 20-9-147. Repealed.
- 20-9-148 through 20-9-150 reserved.
- 20-9-151. Budgeting procedure for joint districts.
- 20-9-152. Fixing and levying taxes for joint districts.
- 20-9-153 through 20-9-160 reserved.
- 20-9-161. Definition of budget amendment for budgeting purposes.
- 20-9-162. Authorization for budget amendment adoption.
- 20-9-163. Resolution for budget amendment — petition to superintendent of public instruction.
- 20-9-164. Notice of budget amendment resolution.
- 20-9-165. Budget amendment limitation, preparation, and adoption procedures.
- 20-9-166. State financial aid for budget amendments.
- 20-9-167. Repealed.
- 20-9-168. Emergency budget amendment tax levy.

### **Part 2 — Administration of Finances**

- 20-9-201. Definitions and application.
- 20-9-202. County officials for financial administration when joint district.
- 20-9-203. Examination of district accounting records.
- 20-9-204. Conflicts of interests, letting contracts, and calling for bids — exceptions.
- 20-9-205. Prohibition on division of contracts to circumvent bid requirements.
- 20-9-206. Repealed.
- 20-9-207. Documentation of expenditures.
- 20-9-208. Transfers among appropriation items of fund — transfers from fund to fund.
- 20-9-209. Lapse of budgeted appropriations and provision for unpaid claims.
- 20-9-210. Expenditure limitation of nonbudgeted fund.
- 20-9-211. Repealed.
- 20-9-212. Duties of county treasurer.
- 20-9-213. Duties of trustees.
- 20-9-214. Fees.
- 20-9-215. Destruction of certain financial records.
- 20-9-216 through 20-9-219 reserved.
- 20-9-220. Clearing accounts.
- 20-9-221. Procedure for issuance of warrants.
- 20-9-222. Repealed.
- 20-9-223. Cancellation of outstanding warrants — duplication.
- 20-9-224. Repealed.
- 20-9-225. Definitions relating to interest assessment.
- 20-9-226. Interest assessed on amounts due.
- 20-9-227. Exemptions from interest assessment.
- 20-9-228 through 20-9-230 reserved.
- 20-9-231. Metal mines tax reserve fund.
- 20-9-232 through 20-9-234 reserved.
- 20-9-235. Authorization for school district investment account.
- 20-9-236. Transfer of funds — improvements to school safety and security.

### **Part 3 — Funding of Basic System of Quality Public Schools**

- 20-9-301. Repealed.
- 20-9-302. School isolation.
- 20-9-303. Nonisolated school BASE budget funding — special education funds.



- 20-9-304. Repealed.
- 20-9-305. Proration and calculation of BASE funding program for joint district.
- 20-9-306. Definitions.
- 20-9-307. Repealed.
- 20-9-308. BASE budgets and maximum general fund budgets.
- 20-9-309. Basic system of free quality public elementary and secondary schools defined — identifying educationally relevant factors — establishment of funding formula and budgetary structure — legislative review.
- 20-9-310. Oil and natural gas production taxes for school districts — allocation and limits.
- 20-9-311. Calculation of average number belonging (ANB) — 3-year averaging.
- 20-9-312. Repealed.
- 20-9-313. Circumstances under which regular average number belonging may be increased.
- 20-9-314. Procedures for determining eligibility and amount of increased average number belonging due to unusual enrollment increase.
- 20-9-315. Repealed.
- 20-9-316. Repealed.
- 20-9-317. Repealed.
- 20-9-318. Repealed.
- 20-9-319. Repealed.
- 20-9-320. Repealed.
- 20-9-321. Allowable cost payment for special education.
- 20-9-322. Repealed.
- 20-9-323. Ending fund balance limits.
- 20-9-324 reserved.
- 20-9-325. Data-for-achievement payment.
- 20-9-326. Annual inflation-related adjustments to basic entitlements and per-ANB entitlements.
- 20-9-327. Quality educator payment.
- 20-9-328. At-risk student payment.
- 20-9-329. Indian education for all payment.
- 20-9-330. American Indian achievement gap payment.
- 20-9-331. Basic county tax for elementary equalization and other revenue for county equalization of elementary BASE funding program.
- 20-9-332. Fines and penalties proceeds for elementary county equalization.
- 20-9-333. Basic county tax for high school equalization and other revenue for county equalization of high school BASE funding program.
- 20-9-334. Repealed.
- 20-9-335. Formula for apportionment of county equalization money.
- 20-9-336 through 20-9-340 reserved.
- 20-9-341. Definition of interest and income money.
- 20-9-342. Deposit of interest and income money by state board of land commissioners.
- 20-9-343. Definition of and revenue for state equalization aid.
- 20-9-344. Duties of board of public education for distribution of BASE aid.
- 20-9-345. Repealed.
- 20-9-346. Duties of superintendent of public instruction for state and county equalization aid distribution.
- 20-9-347. Distribution of BASE aid and special education allowable cost payments in support of BASE funding program — exceptions.
- 20-9-348. Estimation of state equalization aid for budget purposes.
- 20-9-349 and 20-9-350 reserved.
- 20-9-351. Funding of deficiency in BASE aid.
- 20-9-352. Repealed.
- 20-9-353. Additional financing for general fund — election for authorization to impose.
- 20-9-354 through 20-9-359 reserved.
- 20-9-360. State equalization aid levy.
- 20-9-361. County equalization revenue.
- 20-9-362 through 20-9-365 reserved.
- 20-9-366. Definitions.
- 20-9-367. Eligibility to receive guaranteed tax base aid or state debt service assistance for school facilities.
- 20-9-368. Amount of guaranteed tax base aid.
- 20-9-369. Duties of superintendent of public instruction and department of revenue.
- 20-9-370. Definitions.
- 20-9-371. Calculation and uses of school facility entitlement amount.
- 20-9-372 through 20-9-374 reserved.
- 20-9-375. Repealed.
- 20-9-376. Purpose of increased funding beyond inflation.
- 20-9-377 through 20-9-379 reserved.
- 20-9-380. School facilities fund — school major maintenance aid special revenue account.

#### **Part 4 — School Bonds**

- 20-9-401. Applicable laws for school district bonding.

- 20-9-402. Definition of school district for bonding purposes.
- 20-9-403. Bond issues for certain purposes.
- 20-9-404. Contracts and bonds for joint construction.
- 20-9-405. Proportional joint ownership — disposition of money.
- 20-9-406. Limitations on amount of bond issue — definition of federal impact aid basic support payment — oil and natural gas payment.
- 20-9-407. Industrial facility agreement for bond issue in excess of maximum.
- 20-9-408. Definition of forms of bonds.
- 20-9-409. Repealed.
- 20-9-410. Limitation of term and interest — timing for redemption.
- 20-9-411. Dates of issue and payments.
- 20-9-412. Issuance of refunding bonds without election.
- 20-9-413 through 20-9-420 reserved.
- 20-9-421. Election to authorize the issuance of school district bonds and the methods of introduction.
- 20-9-422. Additional requirements for trustees' resolution calling bond election.
- 20-9-423. Form, contents, and circularization of petition proposing school district bond election.
- 20-9-424. Validation of petition — election administrator's certificate.
- 20-9-425. Trustees' consideration of validated petition proposing bond election.
- 20-9-426. Preparation and form of ballots for bond election.
- 20-9-427. Notice of bond election by separate purpose.
- 20-9-428. Determination of approval or rejection of proposition at bond election.
- 20-9-429. Trustees' resolution to issue school district bonds pursuant to public sale.
- 20-9-430. Sale of school district bonds and notice of public sale.
- 20-9-431. Publication of notice of sale of school district bonds.
- 20-9-432. Sale of school district bonds.
- 20-9-433. Form and execution of school district bonds.
- 20-9-434. Registration of school district bonds by county treasurer and copy for preservation.
- 20-9-435. Delivery of school district bonds and disposition of sale money.
- 20-9-436. County attorney to assist in proceedings.
- 20-9-437. School district liable on bonds.
- 20-9-438. Preparation of general obligation debt service fund budget — operating reserve.
- 20-9-439. Computation of net levy requirement for general obligation bonds — procedure when levy inadequate.
- 20-9-440. Payment of debt service obligations — termination of interest.
- 20-9-441. Redemption of bonds — investment of debt service fund money.
- 20-9-442. Entries of payments and notification of school district.
- 20-9-443. Disposition of remaining debt service fund.
- 20-9-444. Liability of officers for failure to provide fund for payment of bonds.
- 20-9-445. Liability for misuse of bond payment fund.
- 20-9-446. Duty of county attorney to prosecute.
- 20-9-447 through 20-9-450 reserved.
- 20-9-451. Repealed.
- 20-9-452. Repealed.
- 20-9-453. Repealed.
- 20-9-454. Repealed.
- 20-9-455. Repealed.
- 20-9-456. Repealed.
- 20-9-457 through 20-9-460 reserved.
- 20-9-461. Purpose.
- 20-9-462. Repealed.
- 20-9-463. Repealed.
- 20-9-464. Statute of limitations — action to test validity.
- 20-9-465. Action to restrain bond issue — time for bringing.
- 20-9-466. Repealed.
- 20-9-467. Repealed.
- 20-9-468 through 20-9-470 reserved.
- 20-9-471. Issuance of obligations — authorization — conditions.
- 20-9-472. Security for impact aid revenue bonds — agreement of state.
- 20-9-473. Security for oil and natural gas revenue bonds.
- 20-9-474. Oil and natural gas revenue bond debt service reserve account.

#### **Part 5 — Special Purpose Funds**

- 20-9-501. Retirement costs and retirement fund.
- 20-9-502. Purpose and authorization of building reserve fund — levy for school transition costs.
- 20-9-503. Budgeting, tax levy, and use of building reserve fund.
- 20-9-504. Extracurricular fund for pupil functions.
- 20-9-505. Purpose and establishment of nonoperating fund.
- 20-9-506. Budgeting and net levy requirement for nonoperating fund.
- 20-9-507. Miscellaneous programs fund.

- 20-9-508. Building fund.
- 20-9-509. Lease or rental agreement fund.
- 20-9-510. Traffic education fund.
- 20-9-511. Interlocal cooperative fund.
- 20-9-512. Compensated absence liability fund.
- 20-9-513. Repealed.
- 20-9-514. Impact aid fund.
- 20-9-515. Litigation reserve fund.
- 20-9-516. School facility and technology account.
- 20-9-517. State school oil and natural gas impact account.
- 20-9-518. County school oil and natural gas impact fund.
- 20-9-519 reserved.
- 20-9-520. State school oil and natural gas distribution account.
- 20-9-521. Terminated.
- 20-9-522 through 20-9-524 reserved.
- 20-9-525. School major maintenance aid account — formula.
- 20-9-526 through 20-9-530 reserved.
- 20-9-531. Repealed.
- 20-9-532. Repealed.
- 20-9-533. Technology acquisition and depreciation fund — limitations.
- 20-9-534. Statutory appropriation for school technology purposes.
- 20-9-535 and 20-9-536 reserved.
- 20-9-537. Montana Indian language preservation program.
- 20-9-538 through 20-9-540 reserved.
- 20-9-541. Definitions.
- 20-9-542. School flexibility account — distribution of funds.
- 20-9-543. School flexibility fund — uses.
- 20-9-544. District school flexibility fund levy.
- 20-9-545 through 20-9-569 reserved.
- 20-9-570. Statewide average per-pupil spending.

#### **Part 6 — Public School Fund and Grants to Schools**

- 20-9-601. Public school fund.
- 20-9-602. Title to farm mortgage lands vested in state and transfers validated.
- 20-9-603. Acceptance and expenditure of federal moneys for state.
- 20-9-604. Gifts, legacies, devises, and administration of endowment fund.
- 20-9-605 through 20-9-614 reserved.
- 20-9-615. Voluntary rural residential impact payments.
- 20-9-616 through 20-9-619 reserved.
- 20-9-620. Definition.
- 20-9-621. Permanent fund.
- 20-9-622. Guarantee account.
- 20-9-623 through 20-9-629 reserved.
- 20-9-630. School district block grants.
- 20-9-631. Repealed.
- 20-9-632. Countywide school transportation block grants.
- 20-9-633 and 20-9-634 reserved.
- 20-9-635. Natural resource development K-12 school facilities payment.
- 20-9-636 and 20-9-637 reserved.
- 20-9-638. Coal-fired generating unit closure mitigation block grant.
- 20-9-639 reserved.
- 20-9-640. State lands reimbursement block grant.

#### **Part 7 — Educational Cooperative Agreements**

- 20-9-701. Definitions of prime and cooperating agencies.
- 20-9-702. Financial administration of interlocal cooperative agreement.
- 20-9-703. District as prime agency.
- 20-9-704. District as cooperating agency.
- 20-9-705. Joint interstate school agreements.
- 20-9-706. Running start program — authorizing class credits at postsecondary institution — eligibility — payment for credits.
- 20-9-707. Agreement with Montana youth challenge program or accredited Montana job corps program.

#### **Part 8 — Emergency School Closure**

- 20-9-801. Purpose.
- 20-9-802. Definitions.
- 20-9-803. Repealed.
- 20-9-804. Repealed.
- 20-9-805. Rate of reduction in annual apportionment entitlement.
- 20-9-806. School closure by declaration of emergency.

**Part 9 — Supplemental Funding for  
Innovative Educational Programs**

- 20-9-901. Purpose.
- 20-9-902. Definitions.
- 20-9-903. Establishment of geographic regions and large districts — innovative educational program.
- 20-9-904. Distribution of supplemental revenue to public schools — innovative educational program.
- 20-9-905. Educational improvement account — revenue allocated — appropriations from account.
- 20-9-906. Rulemaking.

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**Chapter Cross-References**

Appropriations for public schools, Art. V, sec. 11, Mont. Const.  
 School district property — exemption from taxation, Art. VIII, sec. 5, Mont. Const.  
 Investment of public school fund, Art. VIII, sec. 13, Mont. Const.  
 Public school fund constitutional provisions, Art. X, sec. 2, 3, 5, Mont. Const.  
 Aid to sectarian schools prohibited, Art. X, sec. 6, Mont. Const.  
 Statutes imposing new duties on school district to provide means of financing, 1-2-113.  
 School district tax and revenue anticipation notes, Title 7, ch. 6, part 11.  
 Investment of local government funds, 17-6-204, 17-6-205.

**Part 1  
School Budgets**

**20-9-101. Application of budget system for districts and counties.** The school budgeting procedure and provisions of this title apply to elementary and high school districts, to county funds supporting school district transportation and retirement obligations, and, whenever specified, to community college districts and to all funds requiring the adoption of a budget. Each district shall separately propose and adopt a budget in accordance with the requirements of this title.

**History:** En. 75-6701 by Sec. 207, Ch. 5, L. 1971; amd. Sec. 14, Ch. 266, L. 1977; R.C.M. 1947, 75-6701; amd. Sec. 16, Ch. 392, L. 1979; amd. Sec. 2, Ch. 276, L. 2003.

**Cross-References**

Definition of elementary and high school districts, 20-6-101.  
 Definition of community college districts, 20-15-101.

**20-9-102. General supervision of school budgeting system.** The superintendent of public instruction has general supervision over the school budgeting procedure and provisions, as they relate to elementary and high school districts, prescribed by law and shall establish such rules as are necessary to secure compliance with the school budgeting laws.

**History:** En. 75-6702 by Sec. 208, Ch. 5, L. 1971; amd. Sec. 15, Ch. 266, L. 1977; R.C.M. 1947, 75-6702.

**Cross-References**

Adoption and publication of rules, Title 2, ch. 4, part 3.  
 Powers and duties of Superintendent of Public Instruction, 20-3-106.

**20-9-103. School budget form.** (1) The format of the school budget form shall be prescribed by the superintendent of public instruction and shall provide for proper school budgeting procedures in accordance with the budgeting requirements of this title and generally accepted accounting principles. The superintendent of public instruction shall cause a sufficient number of the budget forms to be printed for use by all districts for each school fiscal year.

(2) Each district shall use the budget forms prescribed by the superintendent of public instruction, except that a district may in addition, with the approval of the superintendent of public instruction, use a more detailed form.

**History:** En. 75-6704 by Sec. 210, Ch. 5, L. 1971; R.C.M. 1947, 75-6704; amd. Sec. 3, Ch. 35, L. 1989.

**20-9-104. (Temporary) General fund operating reserve.** (1) At the end of each school fiscal year, the trustees of each district shall designate the portion of the general fund end-of-the-year fund balance that is to be earmarked as operating reserve for the purpose of paying general fund warrants issued by the district from July 1 to November 30 of the ensuing school fiscal year. Except as provided in subsections (6) and (7), the amount of the general fund balance that is earmarked as operating reserve may not exceed 10% of the final general fund budget for the ensuing school fiscal year.

(2) The amount held as operating reserve may not be used for property tax reduction in the manner permitted by 20-9-141(1)(b) for other receipts.

(3) Excess reserves as provided in subsection (6) may be appropriated to reduce the BASE budget levy, the over-BASE budget levy, or the additional levy provided by 20-9-353.

(4) Except as provided in subsection (9), any portion of the general fund end-of-the-year fund balance, including any portion attributable to a tax increment remitted under 7-15-4291, that is not reserved under subsection (2) or reappropriated under subsection (3) is fund balance reappropriated and must be used for property tax reduction as provided in 20-9-141(1)(b) up to an amount not exceeding 15% of a school district's maximum general fund budget.

(5) Except as provided in subsection (9), any unreserved fund balance in excess of 15% of a school district's maximum general fund budget must be remitted to the state and allocated as follows:

(a) 70% of the excess amount must be remitted to the state to be deposited in the guarantee account provided for in 20-9-622; and

(b) 30% of the excess amount must be remitted to the school facility and technology account.

(6) The limitation of subsection (1) does not apply when the amount in excess of the limitation is equal to or less than the unused balance of any amount:

(a) received in settlement of tax payments protested in a prior school fiscal year;

(b) received in taxes from a prior school fiscal year as a result of a tax audit by the department of revenue or its agents; or

(c) received in delinquent taxes from a prior school fiscal year.

(7) The limitation of subsection (1) does not apply when the amount earmarked as operating reserve is \$10,000 or less.

(8) Any amounts remitted to the state under subsection (5) are not considered expenditures to be applied against budget authority.

(9) Any portion of a tax increment remitted under 7-15-4291 and deposited in the district's general fund is not subject to the:

(a) 15% fund balance limit provided for in subsection (4); or

(b) provisions of subsection (5). (*Terminates June 30, 2020—sec. 38, Ch. 400, L. 2013.*)

**20-9-104. (Effective July 1, 2020) General fund operating reserve.** (1) At the end of each school fiscal year, the trustees of each district shall designate the portion of the general fund end-of-the-year fund balance that is to be earmarked as operating reserve for the purpose of paying general fund warrants issued by the district from July 1 to November 30 of the ensuing school fiscal year. Except as provided in subsections (6) and (7), the amount of the general fund balance that is earmarked as operating reserve may not exceed 10% of the final general fund budget for the ensuing school fiscal year.

(2) The amount held as operating reserve may not be used for property tax reduction in the manner permitted by 20-9-141(1)(b) for other receipts.

(3) Excess reserves as provided in subsection (6) may be appropriated to reduce the BASE budget levy, the over-BASE budget levy, or the additional levy provided by 20-9-353.

(4) Any portion of the general fund end-of-the-year fund balance that is not reserved under subsection (2) or reappropriated under subsection (3), including any portion attributable to a tax increment remitted under 7-15-4291, is fund balance reappropriated and must be used for property tax reduction as provided in 20-9-141(1)(b).

(5) Except as provided in subsection (9), any unreserved fund balance in excess of 15% of a school district's maximum general fund budget must be remitted to the state and allocated as follows:

(a) 70% of the excess amount must be remitted to the state to be deposited in the guarantee account provided for in 20-9-622; and

(b) 30% of the excess amount must be remitted to the school facility and technology account.

(6) The limitation of subsection (1) does not apply when the amount in excess of the limitation is equal to or less than the unused balance of any amount:

(a) received in settlement of tax payments protested in a prior school fiscal year;

(b) received in taxes from a prior school fiscal year as a result of a tax audit by the department of revenue or its agents; or

(c) received in delinquent taxes from a prior school fiscal year.

(7) The limitation of subsection (1) does not apply when the amount earmarked as operating reserve is \$10,000 or less.



(8) Any amounts remitted to the state under subsection (5) are not considered expenditures to be applied against budget authority.

(9) Any portion of a tax increment remitted under 7-15-4291 and deposited in the district's general fund is not subject to the provisions of subsection (5).

**History:** En. 75-6924 by Sec. 274, Ch. 5, L. 1971; R.C.M. 1947, 75-6924; amd. Sec. 20, Ch. 11, Sp. L. June 1989; amd. Sec. 7, Ch. 767, L. 1991; amd. Secs. 2, 12, Ch. 6, Sp. L. July 1992; amd. Sec. 11, Ch. 633, L. 1993; amd. Sec. 1, Ch. 35, Sp. L. November 1993; amd. Sec. 4, Ch. 36, Sp. L. November 1993; amd. Sec. 35, Ch. 18, L. 1995; amd. Sec. 38, Ch. 451, L. 1995; amd. Sec. 1, Ch. 506, L. 1995; amd. Sec. 9, Ch. 554, L. 1999; amd. Sec. 11, Ch. 237, L. 2001; amd. Sec. 7, Ch. 418, L. 2011; amd. Sec. 2, Ch. 329, L. 2013; amd. Sec. 2, Ch. 405, L. 2015.

**20-9-105. Repealed.** Sec. 94, Ch. 11, Sp. L. June 1989.

**History:** En. Sec. 1, Ch. 121, L. 1981.

**20-9-106 through 20-9-110 reserved.**

**20-9-111. Repealed.** Sec. 56, Ch. 767, L. 1991.

**History:** En. 75-6705 by Sec. 211, Ch. 5, L. 1971; R.C.M. 1947, 75-6705; amd. Sec. 4, Ch. 35, L. 1989.

**20-9-112. Repealed.** Sec. 4, Ch. 183, L. 1983.

**History:** En. 75-6706 by Sec. 212, Ch. 5, L. 1971; R.C.M. 1947, 75-6706; amd. Sec. 17, Ch. 392, L. 1979.

**20-9-113. Repealed.** Sec. 14, Ch. 211, L. 1997.

**History:** En. 75-6707 by Sec. 213, Ch. 5, L. 1971; R.C.M. 1947, 75-6707; amd. Sec. 1, Ch. 183, L. 1983; (4)En. Sec. 2, Ch. 183, L. 1983; amd. Sec. 12, Ch. 633, L. 1993.

**20-9-114. Repealed.** Sec. 14, Ch. 211, L. 1997.

**History:** En. 75-6708 by Sec. 214, Ch. 5, L. 1971; R.C.M. 1947, 75-6708.

**20-9-115. Notice of final budget meeting.** Between July 1 and August 10 of each year, the clerk of each district shall publish one notice, in the local or county newspaper that the trustees of the district determine to be the newspaper with the widest circulation in the district, stating the date, time, and place that the trustees will meet for the purpose of considering and adopting the final budget of the district, stating that the meeting of the trustees may be continued from day to day until the final adoption of the district's budget, and stating that any taxpayer in the district may appear at the meeting and be heard for or against any part of the budget.

**History:** En. 75-6709 by Sec. 215, Ch. 5, L. 1971; amd. Sec. 5, Ch. 277, L. 1977; amd. Sec. 1, Ch. 354, L. 1977; R.C.M. 1947, 75-6709; amd. Sec. 1, Ch. 131, L. 1979; amd. Sec. 31, Ch. 581, L. 1979; amd. Sec. 1, Ch. 77, L. 1989; amd. Sec. 36, Ch. 18, L. 1995; amd. Sec. 14, Ch. 22, L. 1997; amd. Sec. 112, Ch. 42, L. 1997; amd. Sec. 3, Ch. 211, L. 1997; amd. Sec. 1, Ch. 376, L. 2001; amd. Sec. 6, Ch. 152, L. 2011.

#### **Cross-References**

Open meetings, Title 2, ch. 3, part 2.

**20-9-116. Resolution of intent to increase nonvoted levy — notice.** (1) The trustees of a school district shall adopt a resolution no later than June 1 in fiscal year 2017 only and no later than March 31 in fiscal year 2018 and subsequent fiscal years and provide notice pursuant to subsection (2) whenever the trustees intend to impose an increase in a nonvoted levy in the ensuing school fiscal year for the purposes of funding any of the funds listed below:

- (a) the tuition fund under 20-5-324;
- (b) the adult education fund under 20-7-705;
- (c) the building reserve fund under 20-9-502 and 20-9-503;
- (d) the transportation fund under 20-10-143 and 20-10-144; and
- (e) the bus depreciation reserve fund under 20-10-147.

(2) The trustees shall provide notice of intent to impose an increase in a nonvoted levy for the ensuing school fiscal year by:

(a) adopting a resolution of intent to impose an increase in a nonvoted levy that includes, at a minimum, the estimated number of increased or decreased mills to be imposed and the estimated increased or decreased revenue to be raised compared to nonvoted levies under (1)(a) through (1)(e) imposed in the current school fiscal year and, based on the district's taxable valuation most recently certified by the department of revenue under 15-10-202, the estimated impacts of the increase or decrease on a home valued at \$100,000 and a home valued at \$200,000; and

(b) publishing a copy of the resolution in a newspaper that will give notice to the largest number of people of the district as determined by the trustees and posting a copy of the resolution to the school district's website.

**History:** En. Sec. 1, Ch. 404, L. 2017.

**Compiler's Comments**

*Effective Date — Applicability — Retroactive Applicability:* Section 15, Ch. 404, L. 2017, provided that: (1) this section is effective on passage and approval and applies to school district budgets beginning on or after July 1, 2017; and (2) the authority and requirement for notice under this section applies retroactively, within the meaning of 1-2-109, to levies noticed on or after January 1, 2017. Approved May 19, 2017.

**20-9-117 through 20-9-120 reserved.**

**20-9-121. County treasurer's statement of cash balances and bond information.**

(1) By July 20, the county treasurer shall prepare a statement for each district showing the amount of cash on hand for each fund maintained by the district at the close of the last-completed school fiscal year. The county treasurer shall also include on each district's statement the details on the obligation for bond retirement and interest for the school fiscal year just beginning. The format of the statement on fund cash balances and bond information must be prescribed by the superintendent of public instruction.

(2) By July 20, the county treasurer shall prepare a statement for each county school fund supported by countywide levies, showing the amount of cash on hand at the beginning of the school fiscal year, the receipts and apportionments, and the amount of cash on hand at the end of the school fiscal year, for each county school fund maintained during the immediately preceding school fiscal year. The format of this statement must be prescribed by the superintendent of public instruction.

(3) By July 20, the county treasurer shall deliver the statements of district and county fund cash balances and the bond information for each district to the county superintendent, who shall forward the information to each district.

**History:** En. 75-6710 by Sec. 216, Ch. 5, L. 1971; R.C.M. 1947, 75-6710; amd. Sec. 1, Ch. 260, L. 1995; amd. Sec. 4, Ch. 211, L. 1997; amd. Sec. 7, Ch. 152, L. 2011.

**Cross-References**

School fiscal year, 20-1-301.

Payment of debt service obligations, 20-9-440.

Redemption of bonds, 20-9-441.

**20-9-122. Statement of district, city, and town valuations.** (1) By the first Monday of August, the department of revenue shall deliver to the county superintendent and to each city or town clerk a statement showing separately for each district and each city or town in the county the total assessed value and the total taxable value of all property in the districts, cities, or towns, as these valuations appear in the property tax record.

(2) In the case of a joint school district, the department of revenue shall, at the time of delivering the statement to the county superintendent, send a statement of the assessed value and taxable value of the portion of the joint school district situated in the appropriate county to the county superintendents and to the county commissioners of each county in which a part of the joint school district is situated.

**History:** En. 75-6711 by Sec. 217, Ch. 5, L. 1971; amd. Sec. 51, Ch. 391, L. 1973; R.C.M. 1947, 75-6711; amd. Sec. 128, Ch. 27, Sp. L. November 1993; amd. Sec. 5, Ch. 34, L. 2003.

**Cross-References**

Assessment and map books, Title 15, ch. 8, part 7.

Entry of taxes, Title 15, ch. 10, part 3.

**20-9-123. Repealed.** Sec. 14, Ch. 211, L. 1997.

**History:** En. 75-6712 by Sec. 218, Ch. 5, L. 1971; R.C.M. 1947, 75-6712.

**20-9-124 through 20-9-129 reserved.**

**20-9-130. District obligation for students in youth detention facility.** A school district is responsible for providing funding for the education of students of the district who are detained in a youth detention facility. The school district's obligation must be funded from the district's tuition fund or impact aid fund.

**History:** En. Sec. 1, Ch. 536, L. 1999; amd. Sec. 12, Ch. 237, L. 2001; amd. Sec. 5, Ch. 462, L. 2005.

**20-9-131. Final budget meeting.** (1) On or before August 20, on the date and at the time and place stated in the notice published pursuant to 20-9-115, the trustees of each district shall meet to consider all budget information and any attachments required by law.

(2) The trustees may continue the meeting from day to day but shall adopt the final budget for the district and determine the amounts to be raised by tax levies for the district not later than August 25 and before the computation of the general fund net levy requirement by the county superintendent and the fixing of the tax levies for each district. Any taxpayer in the district may attend any portion of the trustees' meeting and be heard on the budget of the district or on any item or amount contained in the budget.

(3) Upon final approval, the trustees shall deliver the adopted budget, including the amounts to be raised by tax levies, to the county superintendent of schools within 3 days.

**History:** En. 75-6713 by Sec. 219, Ch. 5, L. 1971; amd. Sec. 6, Ch. 277, L. 1977; R.C.M. 1947, 75-6713; amd. Sec. 2, Ch. 131, L. 1979; amd. Sec. 1, Ch. 133, L. 1993; amd. Sec. 5, Ch. 211, L. 1997; amd. Sec. 105, Ch. 584, L. 1999; amd. Sec. 2, Ch. 376, L. 2001; amd. Sec. 6, Ch. 462, L. 2005; amd. Sec. 8, Ch. 152, L. 2011.

**Cross-References**

Open meetings, Title 2, ch. 3, part 2.

Meetings and quorum, 20-3-322.

**20-9-132. Final budget adjustment procedures.** At the final budget meeting of the trustees, the trustees may make any changes or corrections they may consider necessary or proper in any item or amount of the budget either by eliminating the item or amount or by increasing or reducing the amount of any item. When it appears to the trustees that the amount proposed to be expended for any item of the final budget is in excess of the amount actually required to be expended for the item, the trustees shall reduce the amount to the amount actually required to be expended and shall enter in its minutes the reasons for the reduction. If any appropriation item of the final budget provides for the payment of wages or salary to more than one person, the district shall attach to the budget a separate listing of each position of employment, with the budgeted amount of compensation for each position.

**History:** En. 75-6714 by Sec. 220, Ch. 5, L. 1971; amd. Sec. 7, Ch. 277, L. 1977; R.C.M. 1947, 75-6714; amd. Sec. 6, Ch. 211, L. 1997.

**20-9-133. Adoption and expenditure limitations of final budget.** (1) When the trustees determine and set the amount of the budget for each budgeted fund, they shall enter the amount in the portion of the budget form provided for the reporting of the final budget and the presiding officer and clerk shall sign the budget form. The resulting budget constitutes the final budget and the appropriations for the district for the current school fiscal year.

(2) Except as provided in subsection (3), the trustees and all officers and employees of the district are limited in making expenditures or incurring liabilities to the total amount of each fund's budget. Transfers from any appropriation item to another appropriation item within a fund's budget or transfers between different funds or between the final budget and a budget amendment may be made as provided by 20-9-208. Except as provided in subsection (3), money of the district may not be used to pay expenditures made, liabilities incurred, or warrants issued in excess of the final budget established for each budgeted fund.

(3) If a district incurs a legal bonded debt payment after the final debt service fund budget for the current fiscal year has been adopted and if payment on the debt is required for the current fiscal year, payment on the debt in the current school fiscal year is allowed if money is available.

**History:** En. 75-6716 by Sec. 222, Ch. 5, L. 1971; amd. Sec. 8, Ch. 277, L. 1977; R.C.M. 1947, 75-6716; amd. Sec. 1, Ch. 222, L. 1987; amd. Sec. 7, Ch. 568, L. 1991; amd. Sec. 1, Ch. 480, L. 2001.

**Cross-References**

Personal immunity and liability of trustees, 20-3-332.

Authorization to lease land as obligation of final budget, 20-6-625.

**20-9-134. Completion, filing, and delivery of final budgets.** After the final budget of the elementary, high school, or community college district has been adopted by the trustees, the county superintendent shall complete all the remaining portions of the budget forms and shall:

(1) send the final budget information to the superintendent of public instruction, on the forms provided by the superintendent, on or before September 15; and

(2) in the case of the community college districts, send the final budget information to the board of regents, on the forms provided by the community college coordinator, on or before September 1.

**History:** En. 75-6719 by Sec. 225, Ch. 5, L. 1971; amd. Sec. 10, Ch. 277, L. 1977; R.C.M. 1947, 75-6719; amd. Sec. 18, Ch. 392, L. 1979; amd. Sec. 2, Ch. 260, L. 1995; amd. Sec. 7, Ch. 343, L. 1999; amd. Sec. 9, Ch. 152, L. 2011.

**20-9-135 through 20-9-139 reserved.**

**20-9-140. Terminated.** Sec. 5, Ch. 561, L. 1999.

**History:** En. Sec. 2, Ch. 561, L. 1999.

**20-9-141. Computation of general fund net levy requirement by county superintendent.** (1) The county superintendent shall compute the levy requirement for each district's general fund on the basis of the following procedure:

(a) Determine the funding required for the district's final general fund budget less the sum of direct state aid and the special education allowable cost payment for the district by totaling:

(i) the district's nonisolated school BASE budget requirement to be met by a district levy as provided in 20-9-303; and

(ii) any general fund budget amount adopted by the trustees of the district under the provisions of 20-9-308 and 20-9-353.

(b) Determine the money available for the reduction of the property tax on the district for the general fund by totaling:

(i) the general fund balance reappropriated, as established under the provisions of 20-9-104;

(ii) amounts received in the last fiscal year for which revenue reporting was required for each of the following:

(A) interest earned by the investment of general fund cash in accordance with the provisions of 20-9-213(4); and

(B) any other revenue received during the school fiscal year that may be used to finance the general fund, excluding any guaranteed tax base aid;

(iii) anticipated oil and natural gas production taxes;

(iv) pursuant to subsection (4), anticipated revenue from coal gross proceeds under 15-23-703;

(v) any portion of the combined fund block grant allocated to the district general fund by the trustees pursuant to 20-9-630;

(vi) if applicable, a coal-fired generating unit closure mitigation block grant as provided in 20-9-638; and

(vii) any portion of the increment remitted to a school district under 7-15-4291 used to reduce the BASE levy budget.

(c) Notwithstanding the provisions of subsection (2), subtract the money available to reduce the property tax required to finance the general fund that has been determined in subsection (1)(b) from any general fund budget amount adopted by the trustees of the district, up to the BASE budget amount, to determine the general fund BASE budget levy requirement.

(d) Determine the sum of:

(i) any amount remaining after the determination in subsection (1)(c);

(ii) any portion of the increment remitted to a school district under 7-15-4291 used to reduce the over-BASE budget levy; and

(iii) any tuition payments for out-of-district pupils to be received under the provisions of 20-5-320 through 20-5-324, except the amount of tuition received for a pupil who is a child with a disability in excess of the amount received for a pupil without disabilities, as calculated under 20-5-323(2).

(e) Subtract the amount determined in subsection (1)(d) from any additional funding requirement to be met by an over-BASE budget amount, a district levy as provided in 20-9-303, and any additional financing as provided in 20-9-353 to determine any additional general fund levy requirements.

(2) The county superintendent shall calculate the number of mills to be levied on the taxable property in the district to finance the general fund levy requirement for any amount that does not exceed the BASE budget amount for the district by dividing the amount determined in subsection (1)(c) by the sum of:

(a) the amount of guaranteed tax base aid that the district will receive for each mill levied, as certified by the superintendent of public instruction; and

(b) the current total taxable valuation of the district, as certified by the department of revenue under 15-10-202, divided by 1,000.

(3) The net general fund levy requirement determined in subsections (1)(c) and (1)(d) must be reported to the county commissioners by the later of the first Tuesday in September or within 30 calendar days after receiving certified taxable values by the county superintendent as the general fund net levy requirement for the district, and a levy must be set by the county commissioners in accordance with 20-9-142.

(4) For each school district, the department of revenue shall calculate and report to the county superintendent the amount of revenue anticipated for the ensuing fiscal year from revenue from coal gross proceeds under 15-23-703.

**History:** En. 75-6926 by Sec. 276, Ch. 5, L. 1971; R.C.M. 1947, 75-6926; amd. Sec. 1, Ch. 699, L. 1983; amd. Sec. 1, Ch. 110, L. 1985; amd. Sec. 1, Ch. 265, L. 1985; amd. Sec. 12, Ch. 695, L. 1985; amd. Sec. 15, Ch. 611, L. 1987; amd. Sec. 19, Ch. 655, L. 1987; amd. Sec. 5, Ch. 35, L. 1989; amd. Secs. 21, 83, Ch. 11, Sp. L. June 1989; amd. Sec. 8, Ch. 267, L. 1991; amd. Sec. 8, Ch. 767, L. 1991; amd. Sec. 6, Ch. 133, L. 1993; amd. Sec. 2, Ch. 325, L. 1993; amd. Sec. 14, Ch. 563, L. 1993; amd. Sec. 13, Ch. 633, L. 1993; amd. Sec. 16, Ch. 9, Sp. L. November 1993; amd. Sec. 2, Ch. 35, Sp. L. November 1993; amd. Sec. 39, Ch. 451, L. 1995; amd. Sec. 2, Ch. 580, L. 1995; amd. Sec. 2, Ch. 389, L. 1997; amd. Sec. 9, Ch. 496, L. 1997; amd. Sec. 99(4), Ch. 51, L. 1999; amd. Sec. 1, Ch. 180, L. 1999; amd. Sec. 14, Ch. 515, L. 1999; amd. Secs. 106, 170(3), Ch. 584, L. 1999; amd. Sec. 7, Ch. 11, Sp. L. May 2000; amd. Sec. 5, Ch. 191, L. 2001; amd. Sec. 5, Ch. 464, L. 2001; amd. Sec. 117, Ch. 574, L. 2001; amd. Sec. 27, Ch. 130, L. 2005; amd. Sec. 1, Ch. 173, L. 2007; amd. Sec. 10, Ch. 152, L. 2011; amd. Sec. 5, Ch. 400, L. 2013; amd. Sec. 3, Ch. 405, L. 2015; amd. Sec. 4, Ch. 336, L. 2017.

#### Compiler's Comments

*2017 Amendment:* Chapter 336 in (1)(a) after "sum of direct state aid" deleted "the natural resource development K-12 funding payment"; in (1)(b)(v) substituted current text regarding combined fund block grant for "school district block grants distributed under 20-9-630"; inserted (1)(b)(vi) regarding a coal-fired generating unit closure mitigation block grant; and made minor changes in style. Amendment effective July 1, 2017.

*Applicability:* Section 28, Ch. 336, L. 2017, provided: "[This act] applies to school budgets for school years beginning on or after July 1, 2017."

#### Cross-References

Computation of revenue and net tax levy requirements for transportation fund budget, 20-10-144.

**20-9-142. Fixing and levying taxes by board of county commissioners.** By the later of the first Tuesday in September or within 30 calendar days after receiving certified taxable values, the county superintendent shall place before the board of county commissioners the final adopted budget of the district. It is the duty of the board of county commissioners, as provided in 7-6-4036, to fix and levy on all the taxable value of all the real and personal property within the district all district and county taxation required to finance, within the limitations provided by law, the final budget.

**History:** En. 75-6717 by Sec. 223, Ch. 5, L. 1971; amd. Sec. 9, Ch. 277, L. 1977; R.C.M. 1947, 75-6717; amd. Sec. 3, Ch. 726, L. 1985; amd. Sec. 6, Ch. 26, Sp. L. June 1986; amd. Sec. 9, Ch. 767, L. 1991; amd. Sec. 7, Ch. 133, L. 1993; amd. Sec. 107, Ch. 584, L. 1999; amd. Sec. 7, Ch. 462, L. 2005; amd. Sec. 11, Ch. 152, L. 2011.

#### Cross-References

Property tax levies, Title 15, ch. 10.

Boundary change — effect on property tax valuation, 20-6-412.

Adult education fund levy, 20-7-705.

Bus depreciation reserve fund, 20-10-147.

**20-9-143. Allocation of federal funds in lieu of property taxation.** Federal funds received by a district under the provisions of impact aid, as provided in 20 U.S.C. 7701, et seq., or funds designated in lieu of the federal act by the congress of the United States must be deposited in the impact aid fund established in 20-9-514.

**History:** En. 75-6718 by Sec. 224, Ch. 5, L. 1971; R.C.M. 1947, 75-6718; amd. Sec. 14, Ch. 633, L. 1993; amd. Sec. 15, Ch. 22, L. 1997.

#### Cross-References

Power to accept gifts, 20-6-601.

Trustees allocation of federal funds to school food service, 20-10-204, 20-10-205.

**20-9-144 reserved.**

**20-9-145. Repealed.** Sec. 54, Ch. 633, L. 1993.

**History:** En. Sec. 101, Ch. 11, Sp. L. June 1989; amd. Sec. 10, Ch. 767, L. 1991.

**20-9-146 reserved.**

**20-9-147. Repealed.** Sec. 54, Ch. 633, L. 1993.

**History:** En. Sec. 50, Ch. 767, L. 1991; amd. Sec. 3, Ch. 466, L. 1993.



**20-9-148 through 20-9-150 reserved.**

**20-9-151. Budgeting procedure for joint districts.** (1) The trustees of a joint district shall adopt a budget according to the school budgeting laws and send a copy of the budget to the county superintendent of each county in which a part of the joint district is located. After approval by the trustees of the joint district, the final budgets of joint districts must be filed in the office of the county superintendent of each county in which a part of a joint district is located.

(2) The county superintendents receiving the budget of a joint district shall jointly compute the estimated budget revenue and determine the number of mills that need to be levied in the joint district for each fund for which a levy is to be made. The superintendent of public instruction shall establish a communication procedure to facilitate the joint estimation of revenue and determination of the tax levies.

(3) After determining, in accordance with law, the number of mills that need to be levied for each fund included on the final budget of the joint district, a joint statement of the required mill levies must be prepared and signed by the county superintendents involved in the computation. A copy of the statement must be delivered to the board of county commissioners of each county in which a part of the joint district is located by the later of the first Tuesday in September or within 30 calendar days after receiving certified taxable values.

**History:** Ap. p. 75-6721 by Sec. 227, Ch. 5, L. 1971; amd. Sec. 12, Ch. 277, L. 1977; Sec. 75-6721, R.C.M. 1947; Ap. p. 75-6720 by Sec. 226, Ch. 5, L. 1971; amd. Sec. 11, Ch. 277, L. 1977; Sec. 75-6720, R.C.M. 1947; R.C.M. 1947, 75-6720, 75-6721; amd. Sec. 108, Ch. 584, L. 1999; amd. Sec. 8, Ch. 462, L. 2005; amd. Sec. 12, Ch. 152, L. 2011.

**20-9-152. Fixing and levying taxes for joint districts.** (1) At the time of fixing levies for county and school purposes by the later of the first Thursday after the first Tuesday in September or within 30 calendar days after receiving certified taxable values, the board of county commissioners of each county in which a part of a joint district is located shall fix and levy taxes on that portion of the joint district located in each board's county at the number of mills for each levy recommended by the joint statement of the county superintendents.

(2) The board of county commissioners shall include in the amounts to be raised by the county levies for schools all the amounts required for the final budget of each part of a joint district located in the county, in accordance with the recommendations of the county superintendent.

**History:** En. 75-6722 by Sec. 228, Ch. 5, L. 1971; R.C.M. 1947, 75-6722; amd. Sec. 109, Ch. 584, L. 1999; amd. Sec. 9, Ch. 462, L. 2005; amd. Sec. 13, Ch. 152, L. 2011; amd. Sec. 5, Ch. 62, L. 2013.

**Cross-References**

Property tax levies, Title 15, ch. 10.

**20-9-153 through 20-9-160 reserved.**

**20-9-161. Definition of budget amendment for budgeting purposes.** As used in this title, unless the context clearly indicates otherwise, the term "budget amendment" for the purpose of school budgeting means an amendment to an adopted budget of the district for the following reasons:

(1) an increase in the enrollment of an elementary or high school district that is beyond what could reasonably have been anticipated at the time of the adoption of the budget for the current school fiscal year whenever, because of the enrollment increase, the district's budget for any or all of the regularly budgeted funds does not provide sufficient financing to properly maintain and support the district for the entire current school fiscal year;

(2) the destruction or impairment of any school property necessary to the maintenance of the school, by fire, flood, storm, riot, insurrection, or act of God, to an extent rendering school property unfit for its present school use;

(3) a judgment for damages against the district issued by a court after the adoption of the budget for the current year;

(4) an enactment of legislation after the adoption of the budget for the current year that imposes an additional financial obligation on the district;

(5) the receipt of:

(a) a settlement of taxes protested in a prior school fiscal year;

(b) taxes from a prior school fiscal year as the result of a tax audit by the department of revenue or its agents;

(c) delinquent taxes from a prior school fiscal year; and

(d) a determination by the trustees that it is necessary to expend all or a portion of the taxes received under subsection (5)(a), (5)(b), or (5)(c) for a project or projects that were deferred from a previous budget of the district; or

(6) any other unforeseen need of the district that cannot be postponed until the next school year without dire consequences affecting:

(a) the safety of the students and district employees; or

(b) the educational functions of the district. Any budget amendment adopted pursuant to this subsection (6)(b) that in combination with other budget amendments within the same school fiscal year exceeds 10% of the district's adopted general fund budget must be reported by the school district to the education interim committee and the board of public education with an explanation of why the budget amendment is necessary.

**History:** En. 75-6723 by Sec. 229, Ch. 5, L. 1971; R.C.M. 1947, 75-6723; amd. Sec. 19, Ch. 392, L. 1979; amd. Sec. 11, Ch. 767, L. 1991; amd. Sec. 40, Ch. 451, L. 1995; amd. Sec. 16, Ch. 22, L. 1997; amd. Sec. 10, Ch. 554, L. 1999; amd. Sec. 11, Ch. 418, L. 2011.

**Compiler's Comments**

*2017 Code Commissioner Correction:* Pursuant to sec. 24, Ch. 275, L. 2017, the code commissioner in (6)(b) substituted "education interim committee" for "education and local government interim committee" to reflect amendments made by Ch. 167, L. 2017.

**Cross-References**

Statutes imposing new duties on school district to provide means of financing, 1-2-113.

Liability exposure and insurance coverage, Title 2, ch. 9.

Disaster and emergency services, Title 10, ch. 3.

**20-9-162. Authorization for budget amendment adoption.** (1) (a) Notwithstanding the provisions of subsections (2) and (3), a budget amendment may be adopted at any time of the school fiscal year, except that a budget amendment required by an enrollment increase as provided in 20-9-161(1) may not be adopted until after October 1.

(b) The trustees may approve a budget amendment pursuant to 20-9-161(2) through (6) by a resolution.

(c) Whenever the trustees of a district decide that a budget amendment is necessary, they may proclaim the need for the budget amendment by a majority vote of the trustees. The proclamation must state the facts constituting the need for the budget amendment, the funds affected by the budget amendment, the anticipated source of financing, the estimated amount of money required to finance the budget amendment, and the time and place the trustees will meet for the purpose of considering and adopting the budget amendment for the current school fiscal year.

(2) The trustees shall send a copy of the proclamation to the county superintendent and to the board of county commissioners of the county.

(3) The trustees shall submit a budget amendment for an enrollment increase to the superintendent of public instruction for approval in the manner provided in 20-9-163.

**History:** En. 75-6724 by Sec. 230, Ch. 5, L. 1971; R.C.M. 1947, 75-6724; amd. Sec. 12, Ch. 767, L. 1991; amd. Sec. 15, Ch. 633, L. 1993.

**Cross-References**

Emergency transportation fund budget, 20-10-143.

**20-9-163. Resolution for budget amendment — petition to superintendent of public instruction.** (1) Whenever the trustees of a district decide that a budget amendment is necessary because of an enrollment increase, they may petition the superintendent of public instruction to adopt a resolution for the budget amendment. The petition must be signed by a majority of the trustees.

(2) The petition must state the facts constituting the need for the budget amendment, the estimated amount of money required to fund the budget amendment, the funds affected by the budget amendment, the anticipated source of financing for the budget amendment, and the current year enrollment.

(3) The superintendent of public instruction shall promptly approve or disapprove the petition requesting approval to adopt a resolution for a budget amendment because of increased enrollment. The superintendent of public instruction shall adjust the district's maximum general fund budget based on the approved enrollment increase. Upon approval, a district may not adopt a budget amendment if the amount will cause the district to exceed the district's adjusted maximum general fund budget. If the petition is approved, the trustees may adopt a

resolution for a budget amendment and take all other steps required for the adoption of a budget amendment. Approval of a petition by the superintendent of public instruction authorizes the board of trustees to initiate a budget amendment by resolution and does not relieve the trustees of the necessity of complying with the requirements of the school budgeting laws. Approval of the petition may not be construed as approval of any subsequent application for increased state aid on account of the budget amendment.

**History:** En. 75-6725 by Sec. 231, Ch. 5, L. 1971; R.C.M. 1947, 75-6725; amd. Sec. 20, Ch. 392, L. 1979; amd. Sec. 13, Ch. 767, L. 1991; amd. Sec. 16, Ch. 633, L. 1993; amd. Sec. 13, Ch. 237, L. 2001.

**20-9-164. Notice of budget amendment resolution.** A copy of the budget amendment resolution must be published one time in a newspaper that will give notice to the largest number of people of the district as determined by the trustees, and a copy of the resolution must be posted at each schoolhouse of the district. A copy of the budget amendment resolution must also be delivered to the county superintendent and to the county clerk as the clerk of the board of county commissioners of the county. The publication, posting, and delivery of the resolution must be done not less than 1 week before the day specified in the resolution for the consideration and adoption of a budget amendment.

**History:** En. 75-6726 by Sec. 232, Ch. 5, L. 1971; R.C.M. 1947, 75-6726; amd. Sec. 14, Ch. 767, L. 1991.

**20-9-165. Budget amendment limitation, preparation, and adoption procedures.**

(1) The meeting of the trustees to consider and adopt a budget amendment must be open to the public, and any taxpayer in the district has the right to appear and be heard. If at the meeting a majority of the trustees present find that there is sufficient need for a budget amendment, the trustees may make and adopt a final budget amendment, setting forth fully the facts constituting the need for the budget amendment. In adopting the final budget amendment, the trustees may budget for any fund that was included on the final budget of the district for the current school fiscal year. The budget must be itemized to show the amount appropriated for each item.

(2) When the budget amendment is the result of increased enrollment, the maximum amount of the budget amendment for all funds must be determined in the following manner:

(a) determine the total amount in the final budget for the current school fiscal year of all funds affected by the enrollment increase, less any amounts appropriated as capital outlay and any amount appropriated for addition to the operating reserve;

(b) divide the amount determined in subsection (2)(a) by the number of pupils originally enrolled in the district during the immediately preceding school fiscal year. The resulting cost per pupil is the maximum permissible per-pupil expenditure in the budget amendment.

(c) determine the enrollment increase of the current school fiscal year by subtracting the number of pupils originally enrolled during the immediately preceding school fiscal year from the number of pupils enrolled for the current school year. The result is the enrollment increase for the current school fiscal year.

(d) multiply the cost per pupil determined in subsection (2)(b) by the enrollment increase determined in subsection (2)(c). The result is the maximum limitation on a budget amendment for amendments resulting from increased enrollment.

(3) For other types of budget amendments, the budget amendment is limited to the expenditures considered by the trustees to be reasonable and necessary to finance the conditions of the budget amendment and the final budget amendment must include the details of the proposed expenditures.

(4) Whenever the trustees adopt a budget amendment for the transportation fund, the trustees shall attach to the budget amendment a copy of each transportation contract that is connected with the budget amendment and that has been prepared and executed in accordance with the school transportation contract laws.

(5) After the trustees have adopted the budget amendment by a majority vote of the trustees, it must be signed by the presiding officer of the trustees and the clerk of the district and copies must be sent to the county superintendent and the superintendent of public instruction.

**History:** En. 75-6727 by Sec. 233, Ch. 5, L. 1971; amd. Sec. 13, Ch. 277, L. 1977; R.C.M. 1947, 75-6727; amd. Sec. 21, Ch. 392, L. 1979; amd. Sec. 69, Ch. 370, L. 1987; amd. Sec. 15, Ch. 767, L. 1991; amd. Sec. 42, Ch. 633, L. 1993; amd. Sec. 3, Ch. 260, L. 1995; amd. Sec. 7, Ch. 211, L. 1997.

**Cross-References**

Open meetings, Title 2, ch. 3, part 2.  
 School fiscal year, 20-1-301.  
 Meetings and quorum, 20-3-322.

**20-9-166. State financial aid for budget amendments.** Whenever a final budget amendment has been adopted for the general fund to finance the cost of an amendment resulting from increased enrollment, the trustees may apply to the superintendent of public instruction for an increased payment from the state for direct state aid. Whenever a final budget amendment has been adopted for the transportation fund, the trustees may apply to the superintendent of public instruction for an increased payment for state transportation reimbursement. The superintendent of public instruction shall adopt rules for the application. The superintendent of public instruction shall approve or disapprove each application for increased state aid made in accordance with 20-9-314 and this section. When the superintendent of public instruction approves an application, the superintendent of public instruction shall determine the additional amount of direct state aid or the state transportation reimbursement that will be made available to the applicant district because of the increase in enrollment or additional pupil transportation obligations. The superintendent of public instruction shall notify the applicant district of the superintendent's approval or disapproval and, in the event of approval, the amount of additional state aid that will be made available for the general fund or the transportation fund. The superintendent of public instruction shall disburse the state aid to the eligible district at the time the next regular state aid payment is made.

**History:** En. 75-6729 by Sec. 235, Ch. 5, L. 1971; R.C.M. 1947, 75-6729; amd. Sec. 16, Ch. 767, L. 1991; amd. Sec. 43, Ch. 633, L. 1993; amd. Sec. 32, Ch. 509, L. 1995; amd. Sec. 17, Ch. 22, L. 1997; amd. Sec. 8, Ch. 343, L. 1999.

**Cross-References**

Adoption and publication of rules, Title 2, ch. 4, part 3.  
 State transportation reimbursement, 20-10-145.

**20-9-167. Repealed.** Sec. 56, Ch. 767, L. 1991.

**History:** En. 75-6730 by Sec. 236, Ch. 5, L. 1971; R.C.M. 1947, 75-6730.

**20-9-168. Emergency budget amendment tax levy.** When a budget amendment has been adopted by the board of trustees under 20-9-161(2) and a district does not have sufficient funds, including insurance proceeds and reserves, to finance the budget amendment, the district may levy a tax in the ensuing school year to fund the expenditures authorized by the budget amendment. The amount levied may not exceed the unfunded amount of the budget amendment.

**History:** En. Sec. 11, Ch. 6, Sp. L. July 1992; amd. Sec. 44, Ch. 633, L. 1993; amd. Sec. 110, Ch. 584, L. 1999; amd. Sec. 14, Ch. 237, L. 2001; amd. Sec. 118, Ch. 574, L. 2001.

## Part 2

### Administration of Finances

**Part Cross-References**

Management of school money, Title 7, ch. 6, part 28.  
 Duty of Superintendent of Public Instruction to supervise school financial administration, 20-3-106.  
 Duty of trustees to conduct financial business of district, 20-3-324.

**20-9-201. Definitions and application.** (1) As used in this title, unless the context clearly indicates otherwise, "fund" means a separate detailed account of receipts and expenditures for a specific purpose as authorized by law or by the superintendent of public instruction under the provisions of subsection (2). Funds are classified as follows:

(a) A "budgeted fund" means any fund for which a budget must be adopted in order to expend money from the fund. The general fund, transportation fund, bus depreciation reserve fund, tuition fund, retirement fund, debt service fund, building reserve fund, adult education fund, nonoperating fund, and any other funds designated by the legislature are budgeted funds.

(b) A "nonbudgeted fund" means any fund for which a budget is not required in order to expend money on deposit in the fund. The school food services fund, miscellaneous programs fund, building fund, lease or rental agreement fund, traffic education fund, interlocal cooperative fund, internal service fund, impact aid fund, enterprise fund, agency fund, extracurricular fund, metal mines tax reserve fund, endowment fund, litigation reserve fund, and any other funds designated by the legislature are nonbudgeted funds.

(2) The school financial administration provisions of this title apply to all money of any elementary or high school district. Elementary and high school districts shall record the receipt and disbursement of all money in accordance with generally accepted accounting principles. The superintendent of public instruction has general supervisory authority as prescribed by law over the school financial administration provisions, as they relate to elementary and high school districts. The superintendent of public instruction shall adopt rules necessary to secure compliance with the law.

(3) Except as otherwise provided by law, whenever the trustees of a district determine that a fund is inactive and will no longer be used, the trustees shall close the fund by transferring all cash and other account balances to any fund considered appropriate by the trustees if the fund does not have a cash or fund balance deficit.

**History:** (1)En. Sec. 237, Ch. 5, L. 1971; amd. Sec. 1, Ch. 424, L. 1977; Sec. 75-6801, R.C.M. 1947; (2)En. Sec. 238, Ch. 5, L. 1971; amd. Sec. 16, Ch. 266, L. 1977; Sec. 75-6802, R.C.M. 1947; R.C.M. 1947, 75-6801, 75-6802; amd. Sec. 22, Ch. 392, L. 1979; amd. Sec. 3, Ch. 135, L. 1987; amd. Sec. 34, Ch. 658, L. 1987; amd. Sec. 2, Ch. 1, Sp. L. June 1989; amd. Sec. 22, Ch. 11, Sp. L. June 1989; amd. Sec. 8, Ch. 568, L. 1991; amd. Sec. 17, Ch. 767, L. 1991; amd. Sec. 17, Ch. 633, L. 1993; amd. Sec. 2, Ch. 493, L. 1995; amd. Sec. 1, Ch. 356, L. 2001; amd. Sec. 2, Ch. 480, L. 2001; amd. Sec. 12, Ch. 418, L. 2011.

#### Cross-References

Appropriation for sectarian purpose prohibited, Art. V, sec. 11, Mont. Const.  
Public school fund, Art. X, sec. 5, Mont. Const.  
Adoption and publication of rules, Title 2, ch. 4, part 3.  
Adult education fund, 20-7-705.  
Special purpose funds — budgeted funds, Title 20, ch. 9, part 5.  
Transportation fund budget required, 20-10-143.  
School food services fund a nonbudgeted fund, 20-10-207.

**20-9-202. County officials for financial administration when joint district.** (1) When all of the schools of the joint district are located in one county, the school financial administration duties assigned to county officials shall be performed by those officials of the county wherein the schools of the district are located. When the schools of a joint district are located in more than one county, the superintendent of public instruction shall designate the county officials to perform such duties for the joint district.

(2) The designated county treasurer shall be the custodian of all joint district moneys and shall perform all other duties of the county treasurer for the joint district. The superintendent of public instruction shall disburse all moneys for a joint district to such county treasurer.

**History:** En. 75-6803 by Sec. 239, Ch. 5, L. 1971; amd. Sec. 14, Ch. 277, L. 1977; R.C.M. 1947, 75-6803.

#### Cross-References

Duties of County Treasurer, 7-6-2111.

**20-9-203. Examination of district accounting records.** The accounting records of all first-, second-, and third-class school districts must be audited in accordance with 2-7-503. The trustees of the district shall file a copy of the completed audit report with the department of administration, the superintendent of public instruction, and the county superintendent.

**History:** En. 75-6807 by Sec. 243, Ch. 5, L. 1971; amd. Sec. 17, Ch. 266, L. 1977; R.C.M. 1947, 75-6807; amd. Sec. 2, Ch. 336, L. 1979; amd. Sec. 7, Ch. 274, L. 1981; amd. Sec. 5, Ch. 573, L. 1981; amd. Sec. 1, Ch. 115, L. 1985; amd. Sec. 24, Ch. 489, L. 1991; amd. Sec. 52, Ch. 483, L. 2001.

#### Cross-References

Audits of political subdivisions, Title 2, ch. 7, part 5.

**20-9-204. Conflicts of interests, letting contracts, and calling for bids — exceptions.**

(1) It is unlawful for a trustee to:

(a) have any pecuniary interest, either directly or indirectly, in any contract made by the trustee while acting in that official capacity or by the board of trustees of which the trustee is a member; or

(b) be employed in any capacity by the trustee's own school district, with the exception of officiating at athletic competitions under the auspices of the Montana officials association.

(2) For the purposes of subsection (1):

(a) "contract" does not include:

(i) merchandise sold to the highest bidder at public auctions;

(ii) investments or deposits in financial institutions that are in the business of loaning or receiving money when the investments or deposits are made on a rotating or ratable basis



among financial institutions in the community or when there is only one financial institution in the community; or

(iii) contracts for professional services, other than salaried services, or for maintenance or repair services or supplies when the services or supplies are not reasonably available from other sources if the interest of any board member and a determination of the lack of availability are entered in the minutes of the board meeting at which the contract is considered; and

(b) “pecuniary interest” does not include holding an interest of 10% or less in a corporation.

(3) (a) Except for district needs that must be met because of an unforeseen emergency, as defined in 20-3-322(5), or as provided in subsections (4) and (6) of this section, whenever any building, furnishing, repairing, or other work for the benefit of the district or purchasing of supplies for the district is necessary, the work done or the purchase made must be by contract if the sum exceeds \$80,000.

(b) Except as provided in Title 18, chapter 2, part 5, each contract must be let to the lowest responsible bidder after advertisement for bids. The advertisement for bids under this subsection (3)(b) must be published in the newspaper that will give notice to the largest number of people of the district as determined by the trustees. The advertisement must be made once each week for 2 consecutive weeks, and the second publication must be made not less than 5 days or more than 12 days before consideration of bids. A contract not let pursuant to this section is void. The bidding requirements applicable to services performed for the benefit of the district under this section do not apply to:

- (i) a registered professional engineer, surveyor, real estate appraiser, or registered architect;
- (ii) a physician, dentist, pharmacist, or other medical, dental, or health care provider;
- (iii) an attorney;
- (iv) a consulting actuary;
- (v) a private investigator licensed by any jurisdiction;
- (vi) a claims adjuster;
- (vii) an accountant licensed under Title 37, chapter 50; or

(viii) a project, as defined in 18-2-501, for which a governing body, as defined in 18-2-501, enters into an alternative project delivery contract pursuant to Title 18, chapter 2, part 5.

(4) A district may enter into a cooperative purchasing contract for the procurement of supplies or services with one or more districts. A district participating in a cooperative purchasing group may purchase supplies and services through the group without complying with the provisions of subsection (3) if the cooperative purchasing group has a publicly available master list of items available with pricing included and provides an opportunity at least twice yearly for any vendor, including a Montana vendor, to compete, based on a lowest responsible bidder standard, for inclusion of the vendor's supplies and services on the cooperative purchasing group's master list.

(5) This section may not require the board of trustees to let a contract for any routine and regularly performed maintenance or repair project or service that can be accomplished by district staff whose regular employment with the school district is related to the routine performance of maintenance for the district.

(6) Subsection (3) does not apply to the solicitation or award of a contract for an investment grade energy audit or an energy performance contract pursuant to Title 90, chapter 4, part 11, including construction and installation of conservation measures pursuant to the energy performance contract.

**History:** En. 75-6808 by Sec. 244, Ch. 5, L. 1971; amd. Sec. 1, Ch. 42, L. 1971; amd. Sec. 1, Ch. 149, L. 1973; amd. Sec. 18, Ch. 266, L. 1977; R.C.M. 1947, 75-6808; amd. Sec. 1, Ch. 314, L. 1979; amd. Sec. 23, Ch. 392, L. 1979; amd. Sec. 1, Ch. 452, L. 1983; amd. Sec. 1, Ch. 154, L. 1991; amd. Sec. 1, Ch. 39, L. 1995; amd. Sec. 1, Ch. 368, L. 1999; amd. Sec. 1, Ch. 75, L. 2001; amd. Sec. 1, Ch. 103, L. 2001; amd. Sec. 10, Ch. 162, L. 2005; amd. Sec. 10, Ch. 574, L. 2005; amd. Sec. 1, Ch. 106, L. 2007; amd. Sec. 1, Ch. 178, L. 2009; amd. Sec. 13, Ch. 418, L. 2011; amd. Sec. 3, Ch. 110, L. 2013.

#### **Cross-References**

- Code of ethics, Title 2, ch. 2, part 1.
- Preference to Montana contractors, 18-1-102.
- Security to accompany bids, 18-1-203.
- Preference to Montana labor, 18-2-403.
- Procurement of architectural, engineering, and land surveying services by governmental entities, Title 18, ch. 8, part 2.
- School officers not to act as agents, 20-1-201.
- Conflict of interest, 20-1-205.

Penalty for violation of school laws, 20-1-207.  
 Candidate qualification and nomination, 20-3-305.  
 Letting contracts for school facilities, 20-6-606.  
 School bus purchase — contract — bids, 20-10-110.  
 Transportation contract — bid letting, 20-10-125.

**20-9-205. Prohibition on division of contracts to circumvent bid requirements.**

(1) Whenever any law of this state provides a limitation upon the amount of money that a school district can expend upon any public work or construction project without letting such public work or construction project to contract under competitive bidding procedures, a school district shall not circumvent such provision by dividing a public work or construction project or quantum of work to be performed thereunder which by its nature or character is integral to such public work or construction project, or serves to accomplish one of the basic purposes or functions thereof, into several contracts, separate work orders, or by any similar device.

(2) This section shall apply not only where the public work or construction project is divided into several projects which are constructed at approximately the same period of time but also where the public work or construction project is divided into several projects which are constructed in different time periods or over an extended period of time.

**History:** En. Sec. 2, Ch. 149, L. 1973; R.C.M. 1947, 75-6808.1.

**20-9-206. Repealed.** Sec. 12, Ch. 260, L. 1995.

**History:** En. 75-6809 by Sec. 245, Ch. 5, L. 1971; amd. Sec. 1, Ch. 241, L. 1973; R.C.M. 1947, 75-6809; amd. Sec. 18, Ch. 767, L. 1991.

**20-9-207. Documentation of expenditures.** (1) The expenditure of district money, other than employee contract payments, may be authorized by the trustees when:

(a) payee-signed claims, in which the payee attests to the accuracy of the claim and that the payee has not received the claimed amount, have been issued to the district; or

(b) the payee has provided the district with an invoice or other document identifying the quantity and total cost per item included on the invoice.

(2) The intention of this section is to provide sufficient documentation for each expenditure of district money.

**History:** En. Sec. 1, Ch. 366, L. 1973; R.C.M. 1947, 75-6809.1; amd. Sec. 312, Ch. 56, L. 2009.

**Cross-References**

Claims and actions against political subdivisions, Title 2, ch. 9, part 3.

**20-9-208. Transfers among appropriation items of fund — transfers from fund to fund.** (1) Whenever it appears to the trustees of a district that the appropriated amount of an item of a budgeted fund of the final budget or a budget amendment is in excess of the amount actually required during the school fiscal year for the appropriation item, the trustees may transfer any of the excess appropriation amount to any other appropriation item of the same budgeted fund.

(2) Unless otherwise restricted by a specific provision in this title, transfers may be made between different funds of the same district or between the final budget and a budget amendment under one of the following circumstances:

(a) (i) Except as provided in subsections (2)(a)(ii) through (2)(a)(iv), transfers may be made from one budgeted fund to another budgeted fund or between the final budget and a budget amendment for a budgeted fund whenever the trustees determine, in their discretion, that the transfer of funds is necessary to improve the efficiency of spending within the district or when an action of the trustees results in savings in one budgeted fund that can be put to more efficient use in another budgeted fund. Transfers may not be made with funds approved by the voters or with funds raised by a nonvoted levy unless:

(A) the transfer is within or directly related to the purposes for which the funds were raised and the trustees hold a properly noticed hearing to accept public comment on the transfer; or

(B) the transfer is approved by the qualified electors of the district in an election called for the purpose of approving the transfer, in which case the funds may be spent for the purpose approved on the ballot.

(ii) Unless otherwise authorized by a specific provision in this title, transfers from the general fund to any other fund and transfers to the general fund from any other fund are prohibited.

(iii) Unless otherwise authorized by a specific provision in this title, transfers from the retirement fund to any other fund are prohibited.

(iv) Unless otherwise authorized by a specific provision in this title, transfers from the debt service fund to any other fund are prohibited.

(b) Transfers may be made from one nonbudgeted fund to another nonbudgeted fund whenever the trustees determine that the transfer of funds is necessary to improve the efficiency of spending within the district. Transfers may not be made with funds restricted by federal law unless the transfer is in compliance with any restrictions or conditions imposed by federal law. Before a transfer can occur, the trustees shall hold a properly noticed hearing to accept public comment on the transfer.

(3) The trustees shall enter the authorized transfers upon the permanent records of the district.

(4) The intent of this section is to increase the flexibility and efficiency of school districts without an increase in local taxes. In furtherance of this intent, if transfers of funds are made from any school district fund supported by a nonvoted levy, the district may not increase its nonvoted levy for the purpose of restoring the amount of funds transferred.

**History:** En. 75-6812 by Sec. 248, Ch. 5, L. 1971; amd. Sec. 4, Ch. 241, L. 1973; R.C.M. 1947, 75-6812; amd. Sec. 19, Ch. 767, L. 1991; amd. Sec. 45, Ch. 633, L. 1993; amd. Sec. 3, Ch. 480, L. 2001; amd. Sec. 14, Ch. 418, L. 2011; amd. Sec. 3, Ch. 329, L. 2013.

**Cross-References**

School fiscal year, 20-1-301.

**20-9-209. Lapse of budgeted appropriations and provision for unpaid claims.**

(1) All appropriations for a budgeted fund in the regular budget or for a budget amendment for a given school fiscal year lapse on the last day of the school fiscal year, except the appropriations for:

(a) uncompleted improvements in progress of construction; and

(b) an obligation for the purchase of personal property ordered but not paid for during the current fiscal year.

(2) A lawful claim presented to the district for payment under a lapsed appropriation is an obligation of the budget for the next school fiscal year.

**History:** En. 75-6813 by Sec. 249, Ch. 5, L. 1971; R.C.M. 1947, 75-6813; amd. Sec. 1, Ch. 478, L. 1983; amd. Sec. 20, Ch. 767, L. 1991; amd. Sec. 4, Ch. 260, L. 1995.

**Cross-References**

School fiscal year, 20-1-301.

**20-9-210. Expenditure limitation of nonbudgeted fund.** The expenditure limitation, at any time during the school fiscal year, for a nonbudgeted fund is the amount of cash balance of the nonbudgeted fund.

**History:** En. 75-6814 by Sec. 250, Ch. 5, L. 1971; R.C.M. 1947, 75-6814; amd. Sec. 21, Ch. 767, L. 1991.

**20-9-211. Repealed.** Sec. 26, Ch. 152, L. 2011.

**History:** En. 75-6804 by Sec. 240, Ch. 5, L. 1971; R.C.M. 1947, 75-6804; amd. Sec. 16, Ch. 133, L. 1993.

**20-9-212. Duties of county treasurer.** The county treasurer of each county:

(1) must receive and shall hold all school money subject to apportionment and keep a separate accounting of its apportionment to the several districts that are entitled to a portion of the money according to the apportionments ordered by the county superintendent or by the superintendent of public instruction. A separate accounting must be maintained for each county fund supported by a countywide levy for a specific, authorized purpose, including:

(a) the basic county tax for elementary equalization;

(b) the basic county tax for high school equalization;

(c) the county tax in support of the transportation schedules;

(d) the county tax in support of the elementary and high school district retirement obligations; and

(e) any other county tax for schools, including the community colleges, that may be authorized by law and levied by the county commissioners.

(2) whenever requested, shall notify the county superintendent and the superintendent of public instruction of the amount of county school money on deposit in each of the funds enumerated in subsection (1) and the amount of any other school money subject to apportionment

and apportion the county and other school money to the districts in accordance with the apportionment ordered by the county superintendent or the superintendent of public instruction;

(3) shall keep a separate accounting of the receipts, expenditures, and cash balances for each fund;

(4) except as otherwise limited by law, shall pay all warrants properly drawn on the county or district school money;

(5) must receive all revenue collected by and for each district and shall deposit these receipts in the fund designated by law or by the district if a fund is not designated by law. Interest and penalties on delinquent school taxes must be credited to the same fund and district for which the original taxes were levied.

(6) shall send all revenue received for a joint district, part of which is situated in the county, to the county treasurer designated as the custodian of the revenue, no later than December 15 of each year and every 3 months after that date until the end of the school fiscal year;

(7) at the direction of the trustees of a district, shall assist the district in the issuance and sale of tax and revenue anticipation notes as provided in Title 7, chapter 6, part 11;

(8) shall register district warrants drawn on a budgeted fund in accordance with 7-6-2604 when there is insufficient money available in all funds of the district to make payment of the warrant. Redemption of registered warrants must be made in accordance with 7-6-2605 and 7-6-2606.

(9) when directed by the trustees of a district, shall invest the money of the district within 3 working days of the direction;

(10) each month, shall give to the trustees of each district an itemized report for each fund maintained by the district, showing the paid warrants, registered warrants, interest distribution, amounts and types of revenue received, and the cash balance;

(11) shall remit promptly to the department of revenue receipts for the county tax for a vocational-technical program within a unit of the university system when levied by the board of county commissioners under the provisions of 20-25-439;

(12) shall invest the money received from the basic county taxes for elementary and high school equalization, the county levy in support of the elementary and high school district retirement obligations, and the county levy in support of the transportation schedules within 3 working days of receipt. The money must be invested until the working day before it is required to be distributed to school districts within the county or remitted to the state. Clerks of a school district shall provide a minimum of 30 hours' notice in advance of cash demands to meet payrolls, claims, and electronic transfers that are in excess of \$50,000, pursuant to 20-3-325. If a clerk of a district fails to provide the required 30-hour notice, the county treasurer shall assess a fee equal to any charges demanded by the state investment pool or other permissible investment manager for improperly noticed withdrawal of funds. Permissible investments are specified in 20-9-213(4). All investment income must be deposited, and credited proportionately, in the funds established to account for the taxes received for the purposes specified in subsections (1)(a) through (1)(d).

(13) shall remit on a monthly basis to the department of revenue, as provided in 15-1-504, all county equalization revenue received under the provisions of 20-9-331 and 20-9-333, including all interest earned, in repayment of the state advance for county equalization prescribed in 20-9-347. Any funds in excess of a state advance must be used as required in 20-9-331(1)(b) and 20-9-333(1)(b).

**History:** En. 75-6805 by Sec. 241, Ch. 5, L. 1971; amd. Sec. 5, Ch. 241, L. 1973; amd. Sec. 3, Ch. 304, L. 1975; amd. Sec. 1, Ch. 180, L. 1977; amd. Sec. 1, Ch. 291, L. 1977; R.C.M. 1947, 75-6805; amd. Sec. 24, Ch. 392, L. 1979; amd. Sec. 5, Ch. 682, L. 1979; amd. Sec. 1, Ch. 234, L. 1983; amd. Sec. 1, Ch. 438, L. 1985; amd. Sec. 12, Ch. 481, L. 1985; amd. Sec. 34, Ch. 658, L. 1987; amd. Sec. 23, Ch. 11, Sp. L. June 1989; amd. Sec. 5, Ch. 711, L. 1991; amd. Sec. 3, Ch. 6, Sp. L. July 1992; amd. Sec. 17, Ch. 133, L. 1993; amd. Sec. 46, Ch. 633, L. 1993; amd. Sec. 5, Ch. 260, L. 1995; amd. Sec. 14, Ch. 308, L. 1995; amd. Sec. 18, Ch. 22, L. 1997; amd. Sec. 1, Ch. 102, L. 1999; amd. Sec. 9, Ch. 257, L. 2001; amd. Sec. 6, Ch. 464, L. 2001; amd. Sec. 2, Ch. 196, L. 2005; amd. Sec. 5, Ch. 463, L. 2005; amd. Sec. 21, Ch. 262, L. 2015.

#### Cross-References

Local government — duties of County Treasurer, 7-6-2111.  
 Management of school funds, 7-6-2801.  
 Teachers' retirement, Title 19, ch. 20.  
 School fiscal year, 20-1-301.  
 School buses and transportation, Title 20, ch. 10, part 1.

**20-9-213. Duties of trustees.** The trustees of each district have the authority to transact all fiscal business and execute all contracts in the name of the district. A person other than the trustees acting as a governing board may not expend money of the district. In conducting the fiscal business of the district, the trustees shall:

(1) cause the keeping of an accurate, detailed accounting of all receipts and expenditures of school money for each fund and account maintained by the district in accordance with generally accepted accounting principles and the rules prescribed by the superintendent of public instruction. The record of the accounting must be open to public inspection at any meeting of the trustees.

(2) authorize all expenditures of district money and cause warrants or checks, as applicable, to be issued for the payment of lawful obligations;

(3) issue warrants or checks, as applicable, on any budgeted fund in anticipation of budgeted revenue, except that the expenditures may not exceed the amount budgeted for the fund;

(4) invest any money of the district, whenever in the judgment of the trustees the investment would be advantageous to the district, either by directing the county treasurer to invest any money of the district or by directly investing the money of the district in eligible securities, as identified in 7-6-202, in savings or time deposits in a state or national bank, building or loan association, savings and loan association, or credit union insured by the FDIC or NCUA located in the state, or in a repurchase agreement that meets the criteria provided for in 7-6-213. All interest collected on the deposits or investments must be credited to the fund from which the money was withdrawn, except that interest earned on account of the investment of money realized from the sale of bonds must be credited to the debt service fund or the building fund, at the discretion of the board of trustees. The placement of the investment by the county treasurer is not subject to ratable distribution laws and must be done in accordance with the directive from the board of trustees. A district may invest money under the state unified investment program established in Title 17, chapter 6, or in a unified investment program with the county treasurer, with other school districts, or with any other political subdivision if the unified investment program is limited to investments that meet the requirements of this subsection (4), including those investments authorized by the board of investments under Title 17, chapter 6. A school district that enters into a unified investment program with another school district or political subdivision other than the state shall do so under the auspices of and by complying with the provisions governing interlocal cooperative agreements authorized under Title 7, chapter 11, and educational cooperative agreements authorized under Title 20, chapter 9, part 7. A school district either shall contract for investment services with any company complying with the provisions of Title 30, chapter 10, or shall contract with the state board of investments for investment services.

(5) cause the district to record each transaction in the appropriate account before the accounts are closed at the end of the fiscal year in order to properly report the receipt, use, and disposition of all money and property for which the district is accountable;

(6) report annually to the county superintendent, not later than August 15, the financial activities of each fund maintained by the district during the last-completed school fiscal year, on the forms prescribed and furnished by the superintendent of public instruction. Annual fiscal reports for joint school districts must be submitted on or before August 15 to the county superintendent of each county in which part of the joint district is situated.

(7) whenever requested, report any other fiscal activities to the county superintendent, superintendent of public instruction, or board of public education;

(8) cause the accounting records of the district to be audited as required by 2-7-503; and

(9) perform, in the manner permitted by law, other fiscal duties that are in the best interests of the district.

**History:** En. 75-6806 by Sec. 242, Ch. 5, L. 1971; amd. Sec. 7, Ch. 137, L. 1973; amd. Sec. 2, Ch. 366, L. 1973; amd. Sec. 4, Ch. 304, L. 1975; R.C.M. 1947, 75-6806; amd. Sec. 1, Ch. 45, L. 1981; amd. Sec. 16, Ch. 421, L. 1985; amd. Sec. 1, Ch. 428, L. 1987; amd. Sec. 6, Ch. 35, L. 1989; amd. Sec. 3, Ch. 1, Sp. L. June 1989; amd. Sec. 24, Ch. 11, Sp. L. June 1989; amd. Sec. 25, Ch. 489, L. 1991; amd. Sec. 39, Ch. 10, L. 1993; amd. Sec. 18, Ch. 133, L. 1993; amd. Sec. 6, Ch. 260, L. 1995; amd. Sec. 3, Ch. 406, L. 1995; amd. Sec. 2, Ch. 102, L. 1999; amd. Sec. 2, Ch. 205, L. 2001; amd. Sec. 14, Ch. 152, L. 2011.

#### **Cross-References**

Investment of certain construction bond proceeds, 7-7-2112.

Authority to request, accept, and disburse money, 20-3-208.



Duties of trustees, 20-3-324.

Trustees' authority to acquire property by lease-purchase agreement, 20-6-609.

**20-9-214. Fees.** (1) The trustees of a district may:

(a) require pupils in the commercial, industrial arts, music, domestic science, scientific, or agricultural courses to pay reasonable fees to cover the actual cost of breakage and of excessive supplies used; and

(b) charge pupils a reasonable fee for a course or activity not reasonably related to a recognized academic and educational goal of the district or a course or activity held outside normal school functions. The trustees may waive the fee in cases of financial hardship.

(2) The fees collected pursuant to subsection (1)(a) must be deposited in the general fund, and the fees collected pursuant to subsection (1)(b) must be deposited in a nonbudgeted fund as provided in 20-9-210.

**History:** En. 75-6322 by Sec. 135, Ch. 5, L. 1971; R.C.M. 1947, 75-6322; amd. Sec. 1, Ch. 486, L. 1985; amd. Sec. 22, Ch. 767, L. 1991.

**20-9-215. Destruction of certain financial records.** Any claim, warrant, voucher, bond, or treasurer's general receipt may be destroyed by any county or school district officer after a period of 5 years.

**History:** En. Sec. 4, Ch. 92, L. 1935; re-en. Sec. 455.4, R.C.M. 1935; amd. Sec. 12, Ch. 189, L. 1953; amd. Sec. 1, Ch. 90, L. 1963; amd. Sec. 1, Ch. 95, L. 1967; R.C.M. 1947, 59-516; amd. Sec. 5, Ch. 384, L. 1979; amd. Sec. 3, Ch. 543, L. 1983.

#### **Cross-References**

Destruction of old records by officer, 20-1-212.

**20-9-216 through 20-9-219 reserved.**

**20-9-220. Clearing accounts.** (1) A clearing account may be used by a school district for bookkeeping purposes if:

(a) all funds from the account are disbursed through issuance of warrants as provided in 20-9-221;

(b) records are kept showing the source and use of the funds that passed through the account; and

(c) the balance in the account is no greater than the amount necessary to cover outstanding warrants written against the account.

(2) An elementary school district and a high school district that are unified may use the same clearing account if the account is maintained in accordance with rules adopted by the superintendent of public instruction.

(3) Nothing in this section may be construed to allow the use of funds for any purpose or in any manner other than that expressly authorized in this title.

**History:** En. Sec. 1, Ch. 263, L. 1987.

**20-9-221. Procedure for issuance of warrants.** (1) The trustees of each district shall issue all warrants, and the warrants must identify the fund on which the warrant is drawn.

(2) All warrants issued by a district must be countersigned by the presiding officer of the trustees and the clerk of the district before the warrants are negotiable. Facsimile signatures may be used in accordance with the provisions of 2-16-114. A facsimile signature device used under authority of this section may not be available to the other countersigner of the warrant, or the device must have a nonresettable metering control that can provide a positive reconciliation between the number of warrants issued and the number of signatures applied. Either split signature plates or a double signature plate may be used according to the requirements of the district. The signature plates and the device keys must be kept secure by the district clerk under the supervision of the board of trustees of the district.

(3) The trustees may issue warrants in multiple copies. If multiple copies are issued, the copies must be identified on the face of the warrant as "Not Negotiable—Copy of Original".

(4) However, the trustees may elect to issue warrants in payment of wages and salaries on a direct deposit basis to the employee's account in a local bank, provided the consent of the employee has been obtained and the employee is given an itemized statement of payroll deductions for each pay period.

**History:** En. 75-6810 by Sec. 246, Ch. 5, L. 1971; amd. Sec. 1, Ch. 341, L. 1971; amd. Sec. 2, Ch. 241, L. 1973; R.C.M. 1947, 75-6810; amd. Sec. 1, Ch. 279, L. 1979; amd. Sec. 1, Ch. 43, L. 1989; amd. Sec. 23, Ch. 767, L. 1991; amd. Sec. 7, Ch. 260, L. 1995.

**Cross-References**

County warrants, Title 7, ch. 6, part 26.

**20-9-222. Repealed.** Sec. 12, Ch. 260, L. 1995.

**History:** En. 75-6811 by Sec. 247, Ch. 5, L. 1971; amd. Sec. 3, Ch. 241, L. 1973; R.C.M. 1947, 75-6811.

**20-9-223. Cancellation of outstanding warrants — duplication.** The trustees of any school district shall be authorized to cancel any warrant that has been issued for at least 1 year. However, the contractual obligation of the district that has been satisfied by the issuance of the warrant shall not be terminated until the time specified by 27-2-202(1) has elapsed. When a warrant has been canceled and the obligation has not terminated under 27-2-202(1), the district may issue a duplicate warrant without the completion of an indemnity bond by the payee.

**History:** En. Sec. 1, Ch. 365, L. 1973; R.C.M. 1947, 75-6811.1.

**20-9-224. Repealed.** Sec. 12, Ch. 260, L. 1995.

**History:** En. 75-6811.2 by Sec. 1, Ch. 329, L. 1977; R.C.M. 1947, 75-6811.2; amd. Sec. 1, Ch. 83, L. 1979.

**20-9-225. Definitions relating to interest assessment.** As used in 20-9-226 and 20-9-227, the following definitions apply:

(1) “Services” means the furnishing of labor, time, or effort, including construction services, purchased or contracted for by a school district.

(2) “Supplies” means all personal property purchased, leased, or contracted for by a school district, including leases of equipment. The term also includes leases of buildings or other real property by a school district.

**History:** En. Sec. 4, Ch. 413, L. 1985.

**20-9-226. Interest assessed on amounts due.** (1) Except as provided in 20-9-227, a school district shall pay simple interest at the rate of 0.05% each day on amounts due for supplies and services received if the district fails to make timely payment.

(2) For purposes of this section, payment is timely if a warrant is mailed or is otherwise made available to the payee when due and for the amount specified in the applicable contract or agreement. If no date is specified in the applicable contract or agreement, payment is timely if paid within 45 days after receipt of a properly completed invoice, addressed to the payer school district, or receipt of the supplies or services by the school district, whichever is later.

**History:** En. Sec. 5, Ch. 413, L. 1985.

**20-9-227. Exemptions from interest assessment.** Section 20-9-226 does not apply to the following:

- (1) third-class school districts where the board of trustees does not meet monthly;
- (2) interdistrict or intergovernmental transactions;
- (3) claims subject to a good faith dispute;
- (4) delinquencies due to natural disasters, disruptions in postal or delivery service, work stoppage due to labor disputes, power failures, or any other cause resulting from circumstances clearly beyond the control of the district;
- (5) contracts entered into before October 1, 1985; or
- (6) wages due and payable to school district employees or payments from any retirement system created pursuant to Title 19.

**History:** En. Sec. 6, Ch. 413, L. 1985.

**20-9-228 through 20-9-230 reserved.**

**20-9-231. Metal mines tax reserve fund.** (1) The governing body of a local school district receiving tax collections under 15-37-117(1)(e) may establish a metal mines tax reserve fund to be used to hold the collections. The governing body may hold money in the fund for any time period considered appropriate by the governing body. Money held in the fund may not be considered as fund balance for the purpose of reducing mill levies.

(2) Money may be expended from the fund for any purpose provided by law.

(3) Money in the fund must be invested as provided by law. Interest and income from the investment of the metal mines tax reserve fund must be credited to the fund.

(4) The fund must be financially administered as a nonbudgeted fund under the provisions of this title.

**History:** En. Sec. 18, Ch. 672, L. 1989; amd. Sec. 24, Ch. 767, L. 1991; amd. Sec. 7, Ch. 577, L. 1995; amd. Sec. 6, Ch. 144, L. 1999.

**20-9-232 through 20-9-234 reserved.**

**20-9-235. Authorization for school district investment account.** (1) The trustees of a school district may establish investment accounts and may temporarily transfer into the accounts all or a portion of any of its budgeted or nonbudgeted funds.

(2) Money transferred into investment accounts established under this section may be expended from a subsidiary checking account under the conditions specified in subsection (3)(b).

(3) The district may either:

(a) establish and use the accounts as nonspending accounts to ensure that district funds remain in an interest-bearing status until money is reverted to the budgeted or nonbudgeted fund of original deposit as necessary for use by the county treasurer to pay claims against the district. The district shall ensure that sufficient money is reverted to the district's budgeted and nonbudgeted funds maintained by the county treasurer in sufficient time to pay all claims presented against the applicable funds of the district. The county treasurer shall accept all money that is reverted upon tendered transfer of the district.

(b) establish a subsidiary checking account for expenditures from the investment accounts. The district may write checks on or provide electronic payments from the account if:

(i) the payments made from the accounts representing budgeted funds are in compliance with the budget adopted by the trustees;

(ii) the accounts are subject to the audit of district finances completed for compliance with 2-7-503 and 20-9-503; and

(iii) the district complies with all accounting system requirements required by the superintendent of public instruction.

(4) (a) A district that chooses to establish a school district investment account described in this section shall enter into a written agreement with the county treasurer. The agreement must:

(i) establish specific procedures and reporting dates to comply with the requirements of subsection (3);

(ii) be binding upon the district and the county treasurer for a negotiated period of time;

(iii) be signed by the presiding officer of the board of trustees and the county treasurer; and

(iv) coincide with fiscal years beginning on July 1 and ending on June 30.

(b) The district and the county treasurer may renew an agreement, including terms and conditions on which they agree, provided that the terms and conditions comply with the provisions of this section.

(5) Except for debt service money that the county treasurer is required by law to collect and report to the districts and state transportation reimbursement payments provided for in 20-10-141 and 20-10-142, all other revenue may be sent directly to a participating district's investment account.

(6) The trustees shall implement an accounting system for the investment account pursuant to rules adopted by the superintendent of public instruction. The rules for the accounting system must include but are not limited to:

(a) providing for the internal control of deposits into and transfers between a district's investment accounts and budgeted and nonbudgeted funds of the district;

(b) requiring that the principal and interest earned on the principal is allocated to the budgeted or nonbudgeted fund from which the deposit was originally made; and

(c) ensuring that other proper accounting principles are followed.

(7) All interest earned on the district's general fund deposits must be allocated for district property tax reduction as required by 20-9-141.

(8) In making deposits to investment accounts under this section, a district shall comply with the requirements of Title 17, chapter 6, part 1, with respect to deposits in excess of the amount insured by the federal deposit insurance corporation or the national credit union administration, as applicable.

(9) A district establishing investment accounts under the section shall pay the automated clearinghouse system charges for all automated clearinghouse transfers made by the office of public instruction to the district's accounts.

**History:** En. Sec. 1, Ch. 205, L. 2001; amd. Sec. 1, Ch. 411, L. 2003; amd. Sec. 15, Ch. 19, L. 2011; amd. Sec. 4, Ch. 329, L. 2013.

**20-9-236. Transfer of funds — improvements to school safety and security.** (1) A school district may transfer state or local revenue from any budgeted or nonbudgeted fund, other than the debt service fund or retirement fund, to its building reserve fund in an amount not to exceed the school district's estimated costs of improvements to school safety and security as follows:

(a) planning for improvements to school safety, including but not limited to the cost of services provided by architects, engineers, and other consultants;

(b) installing or updating locking mechanisms and ingress and egress systems at public school access points, including but not limited to systems for exterior egress doors and interior passageways and rooms, using contemporary technologies;

(c) installing or updating bullet-resistant windows and barriers; and

(d) installing or updating emergency response systems using contemporary technologies.

(2) Any transfers made pursuant to subsection (1) are not considered expenditures to be applied against budget authority. Any revenue transfers that are not encumbered for expenditures in compliance with subsection (1) within 2 full school fiscal years after the funds are transferred must be transferred back to the originating fund from which the revenue was transferred.

(3) The intent of this section is to increase the flexibility and efficiency of school districts without an increase in local taxes. In furtherance of this intent, if transfers of funds are made from any school district fund supported by a nonvoted levy, the district may not increase its nonvoted levy for the purpose of restoring the transferred funds.

**History:** En. Sec. 9, Ch. 364, L. 2013; amd. Sec. 2, Ch. 323, L. 2015; amd. Sec. 3, Ch. 404, L. 2017.

#### **Compiler's Comments**

*2017 Amendment:* Chapter 404 in (2) substituted "within 2 full school fiscal years after the funds are transferred" for "by June 30, 2019"; and made minor changes in style. Amendment effective May 19, 2017.

*Applicability:* Section 15, Ch. 404, L. 2017, provided that this section applies to school district budgets beginning on or after July 1, 2017.

*Termination Provision Repealed:* Section 11, Ch. 404, L. 2017, repealed sec. 12, Ch. 364, L. 2013, and sec. 3, Ch. 323, L. 2015, which terminated this section June 30, 2015.

## **Part 3**

### **Funding of Basic System of Quality Public Schools**

#### **Part Cross-References**

Legislature to provide free public education — equality of educational opportunity, Art. X, sec. 1, Mont. Const. ANB defined, 20-1-101.

School fiscal year, 20-1-301.

Definition of various schools, 20-6-501.

**20-9-301. Repealed.** Sec. 54, Ch. 633, L. 1993.

**History:** En. 75-6901 by Sec. 251, Ch. 5, L. 1971; R.C.M. 1947, 75-6901; amd. Sec. 25, Ch. 11, Sp. L. June 1989; amd. Sec. 25, Ch. 767, L. 1991.

**20-9-302. School isolation.** (1) Except as provided in 20-6-502(4)(b), the trustees of any district operating an elementary school of less than 10 ANB or a high school of less than 25 ANB for 2 consecutive years shall apply to have the school classified as an isolated school. The application must be submitted by the trustees to the county superintendent by May 1 of the second consecutive year that enrollment falls below the amount specified in this subsection. The application must include:

(a) the name of each pupil who will attend the school during the ensuing school fiscal year with the distance the pupil resides from the nearest county road or highway;

(b) a description of conditions affecting transportation such as poor roads, mountains, rivers, or other obstacles to travel, the distance the school is from the nearest open school having room and facilities for the pupils of the school, or any other condition that would result in an unusual hardship to the pupils of the school if they were transported to another school; and

(c) any other information prescribed by the superintendent of public instruction.

(2) The county superintendent shall submit the applications to the board of county commissioners for their consideration on or before May 15. The board shall approve or disapprove the application on the basis of the criteria established by the superintendent of public instruction. The board may approve an application because of the existence of other conditions which would result in an unusual hardship to the pupils of the school if they were transported to another school.

(3) When an application is approved, the county superintendent shall submit the application to the superintendent of public instruction before June 1. The superintendent of public instruction shall approve or disapprove the application for isolated classification by the fourth Monday of June on the basis of the information supplied by the application or objective information the superintendent of public instruction may collect on the superintendent's own initiative. An elementary or high school may not be considered an isolated school until the approval of the superintendent of public instruction has been received.

**History:** En. 75-6608 by Sec. 206, Ch. 5, L. 1971; amd. Sec. 1, Ch. 212, L. 1973; R.C.M. 1947, 75-6608; amd. Sec. 1, Ch. 347, L. 1981; amd. Sec. 2, Ch. 105, L. 2001.

**Cross-References**

Abandonment of elementary district, 20-6-209.

Abandonment of high school district, 20-6-307.

**20-9-303. Nonisolated school BASE budget funding — special education funds.**

(1) An elementary school that has an ANB of nine or fewer pupils for 2 consecutive years and that is not approved as an isolated school under the provisions of 20-9-302 may budget and spend the BASE budget amount, but the county and state shall provide one-half of the direct state aid, and the district shall finance the remaining one-half of the direct state aid by a tax levied on the property of the district. When a school of nine or fewer pupils is approved as isolated under the provisions of 20-9-302, the county and state shall participate in the financing of the total amount of the direct state aid.

(2) Funds provided to support the special education program may be expended only for special education purposes as approved by the superintendent of public instruction in accordance with the special education budgeting provisions of this title. Expenditures for special education must be accounted for separately from and in addition to the balance of the school district general fund budgeting requirements provided in 20-9-308. The amount of the special education allowable cost payments that is not matched with district funds, as required in 20-9-321, will reduce by a like amount the district's ensuing year's allowable cost payment for special education.

**History:** En. 75-6906 by Sec. 256, Ch. 5, L. 1971; amd. Sec. 8, Ch. 137, L. 1973; amd. Sec. 2, Ch. 345, L. 1974; R.C.M. 1947, 75-6906; amd. Sec. 1, Ch. 317, L. 1981; amd. Sec. 2, Ch. 347, L. 1981; amd. Sec. 26, Ch. 11, Sp. L. June 1989; amd. Sec. 18, Ch. 633, L. 1993; amd. Sec. 5, Ch. 208, L. 2005.

**Cross-References**

Property tax levies, Title 15, ch. 10.

Special education for exceptional children, Title 20, ch. 7, part 4.

Schedule of allowable costs for determining maximum-budget-without-a-vote, 20-7-431.

**20-9-304. Repealed.** Sec. 3, Ch. 325, L. 1993.

**History:** En. 75-6925 by Sec. 275, Ch. 5, L. 1971; R.C.M. 1947, 75-6925; amd. Sec. 25, Ch. 609, L. 1987; amd. Sec. 1, Ch. 262, L. 1991.

**20-9-305. Proration and calculation of BASE funding program for joint district.**

(1) In joint districts, the direct state aid of a joint district must be prorated among the counties in which any part of the joint district is located for the purpose of determining the amount of each source of revenue for the direct state aid for which each county is obligated. The proration of the joint district direct state aid must be calculated as follows:

(a) Divide the joint district direct state aid by the ANB of the joint district to determine the per-ANB amount of the direct state aid.

(b) Determine the ANB for each county's portion of the joint district on the basis of each pupil's resident county. When taken together, the sum of the ANB assigned to all the counties must equal the total ANB for the joint district.

(c) Multiply the per-ANB amount of the direct state aid determined in subsection (1)(a) by the ANB for each county's portion, as determined in subsection (1)(b), to determine the portion of the direct state aid for each county.



(2) The portion of a joint district direct state aid for each county, as determined in subsection (1)(c), is a separate direct state aid amount in the county for the purposes of calculating the various revenues for the BASE funding program. After the calculation of the direct state aid revenues, the remainder of the general fund revenues must be calculated in accordance with the provisions for general fund financing.

**History:** En. 75-6927 by Sec. 277, Ch. 5, L. 1971; amd. Sec. 13, Ch. 137, L. 1973; R.C.M. 1947, 75-6927; amd. Sec. 19, Ch. 633, L. 1993.

**20-9-306. Definitions.** As used in this title, unless the context clearly indicates otherwise, the following definitions apply:

- (1) "BASE" means base amount for school equity.
- (2) "BASE aid" means:
  - (a) direct state aid for 44.7% of the basic entitlement and 44.7% of the total per-ANB entitlement for the general fund budget of a district;
  - (b) guaranteed tax base aid for an eligible district for any amount up to 35.3% of the basic entitlement, up to 35.3% of the total per-ANB entitlement budgeted in the general fund budget of a district, and 40% of the special education allowable cost payment;
  - (c) the total quality educator payment;
  - (d) the total at-risk student payment;
  - (e) the total Indian education for all payment;
  - (f) the total American Indian achievement gap payment; and
  - (g) the total data-for-achievement payment.
- (3) "BASE budget" means the minimum general fund budget of a district, which includes 80% of the basic entitlement, 80% of the total per-ANB entitlement, 100% of the total quality educator payment, 100% of the total at-risk student payment, 100% of the total Indian education for all payment, 100% of the total American Indian achievement gap payment, 100% of the total data-for-achievement payment, and 140% of the special education allowable cost payment.
- (4) "BASE budget levy" means the district levy in support of the BASE budget of a district, which may be supplemented by guaranteed tax base aid if the district is eligible under the provisions of 20-9-366 through 20-9-369.
- (5) "BASE funding program" means the state program for the equitable distribution of the state's share of the cost of Montana's basic system of public elementary schools and high schools, through county equalization aid as provided in 20-9-331 and 20-9-333 and state equalization aid as provided in 20-9-343, in support of the BASE budgets of districts and special education allowable cost payments as provided in 20-9-321.
- (6) "Basic entitlement" means:
  - (a) for each high school district:
    - (i) \$306,897 for fiscal year 2018 and \$312,636 for each succeeding fiscal year for school districts with an ANB of 800 or fewer; and
    - (ii) \$306,897 for fiscal year 2018 and \$312,636 for each succeeding fiscal year for school districts with an ANB of more than 800, plus \$15,345 for fiscal year 2018 and \$15,632 for each succeeding fiscal year for each additional 80 ANB over 800;
  - (b) for each elementary school district or K-12 district elementary program without an approved and accredited junior high school, 7th and 8th grade program, or middle school:
    - (i) \$51,149 for fiscal year 2018 and \$52,105 for each succeeding fiscal year for school districts or K-12 district elementary programs with an ANB of 250 or fewer; and
    - (ii) \$51,149 for fiscal year 2018 and \$52,105 for each succeeding fiscal year for school districts or K-12 district elementary programs with an ANB of more than 250, plus \$2,558 for fiscal year 2018 and \$2,606 for each succeeding fiscal year for each additional 25 ANB over 250;
  - (c) for each elementary school district or K-12 district elementary program with an approved and accredited junior high school, 7th and 8th grade program, or middle school:
    - (i) for the district's kindergarten through grade 6 elementary program:
      - (A) \$51,149 for fiscal year 2018 and \$52,105 for each succeeding fiscal year for school districts or K-12 district elementary programs with an ANB of 250 or fewer; and
      - (B) \$51,149 for fiscal year 2018 and \$52,105 for each succeeding fiscal year for school districts or K-12 district elementary programs with an ANB of more than 250, plus \$2,558 for

fiscal year 2018 and \$2,606 for each succeeding fiscal year for each additional 25 ANB over 250; and

(ii) for the district's approved and accredited junior high school, 7th and 8th grade programs, or middle school:

(A) \$102,299 for fiscal year 2018 and \$104,212 for each succeeding fiscal year for school districts or K-12 district elementary programs with combined grades 7 and 8 with an ANB of 450 or fewer; and

(B) \$102,299 for fiscal year 2018 and \$104,212 for each succeeding fiscal year for school districts or K-12 district elementary programs with combined grades 7 and 8 with an ANB of more than 450, plus \$5,115 for fiscal year 2018 and \$5,211 for each succeeding fiscal year for each additional 45 ANB over 450.

(7) "Budget unit" means the unit for which the ANB of a district is calculated separately pursuant to 20-9-311.

(8) "Direct state aid" means 44.7% of the basic entitlement and 44.7% of the total per-ANB entitlement for the general fund budget of a district and funded with state and county equalization aid.

(9) "Maximum general fund budget" means a district's general fund budget amount calculated from the basic entitlement for the district, the total per-ANB entitlement for the district, the total quality educator payment, the total at-risk student payment, the total Indian education for all payment, the total American Indian achievement gap payment, the total data-for-achievement payment, and the greater of the district's special education allowable cost payment multiplied by:

(a) 175%; or

(b) the ratio, expressed as a percentage, of the district's special education allowable cost expenditures to the district's special education allowable cost payment for the fiscal year that is 2 years previous, with a maximum allowable ratio of 200%.

(10) "Over-BASE budget levy" means the district levy in support of any general fund amount budgeted that is above the BASE budget and below the maximum general fund budget for a district.

(11) "Total American Indian achievement gap payment" means the payment resulting from multiplying \$210 for fiscal year 2018 and \$214 for each succeeding fiscal year times the number of American Indian students enrolled in the district as provided in 20-9-330.

(12) "Total at-risk student payment" means the payment resulting from the distribution of any funds appropriated for the purposes of 20-9-328.

(13) "Total data-for-achievement payment" means the payment provided in 20-9-325 resulting from multiplying \$20.46 for fiscal year 2018 and \$20.84 for each succeeding fiscal year by the district's ANB calculated in accordance with 20-9-311.

(14) "Total Indian education for all payment" means the payment resulting from multiplying \$21.36 for fiscal year 2018 and \$21.76 for each succeeding fiscal year times the ANB of the district or \$100 for each district, whichever is greater, as provided for in 20-9-329.

(15) "Total per-ANB entitlement" means the district entitlement resulting from the following calculations and using either the current year ANB or the 3-year ANB provided for in 20-9-311:

(a) for a high school district or a K-12 district high school program, a maximum rate of \$7,005 for fiscal year 2018 and \$7,136 for each succeeding fiscal year for the first ANB, decreased at the rate of 50 cents per ANB for each additional ANB of the district up through 800 ANB, with each ANB in excess of 800 receiving the same amount of entitlement as the 800th ANB;

(b) for an elementary school district or a K-12 district elementary program without an approved and accredited junior high school, 7th and 8th grade program, or middle school, a maximum rate of \$5,471 for fiscal year 2018 and \$5,573 for each succeeding fiscal year for the first ANB, decreased at the rate of 20 cents per ANB for each additional ANB of the district up through 1,000 ANB, with each ANB in excess of 1,000 receiving the same amount of entitlement as the 1,000th ANB; and

(c) for an elementary school district or a K-12 district elementary program with an approved and accredited junior high school, 7th and 8th grade program, or middle school, the sum of:

(i) a maximum rate of \$5,471 for fiscal year 2018 and \$5,573 for each succeeding fiscal year for the first ANB for kindergarten through grade 6, decreased at the rate of 20 cents per ANB

for each additional ANB up through 1,000 ANB, with each ANB in excess of 1,000 receiving the same amount of entitlement as the 1,000th ANB; and

(ii) a maximum rate of \$7,005 for fiscal year 2018 and \$7,136 for each succeeding fiscal year for the first ANB for grades 7 and 8, decreased at the rate of 50 cents per ANB for each additional ANB for grades 7 and 8 up through 800 ANB, with each ANB in excess of 800 receiving the same amount of entitlement as the 800th ANB.

(16) “Total quality educator payment” means the payment resulting from multiplying \$3,185 for fiscal year 2018 and \$3,245 for each succeeding fiscal year by the number of full-time equivalent educators as provided in 20-9-327.

**History:** En. Sec. 1, Ch. 633, L. 1993; amd. Sec. 1, Ch. 38, Sp. L. November 1993; amd. Secs. 1, 2, Ch. 437, L. 1997; amd. Sec. 1, Ch. 211, L. 1999; amd. Sec. 8, Ch. 11, Sp. L. May 2000; amd. Secs. 1, 2, Ch. 231, L. 2001; amd. Secs. 1, 2, Ch. 556, L. 2001; amd. Secs. 2, 3, Ch. 550, L. 2003; amd. Secs. 10, 11, Ch. 462, L. 2005; amd. Sec. 7, Ch. 4, Sp. L. December 2005; amd. Sec. 12, Ch. 1, Sp. L. May 2007; amd. Sec. 14, Ch. 486, L. 2009; amd. Sec. 26, Ch. 418, L. 2011; amd. Sec. 6, Ch. 400, L. 2013; amd. Sec. 1, Ch. 8, L. 2015; amd. Sec. 1, Ch. 60, L. 2015; amd. Sec. 1, Ch. 47, L. 2017; amd. Sec. 12, Ch. 275, L. 2017; amd. Sec. 5, Ch. 336, L. 2017.

#### Compiler's Comments

*2017 Amendments — Composite Section:* Chapter 47 in definition of basic entitlement in (a)(i) and (a)(ii) at beginning substituted “\$306,897 for fiscal year 2018 and \$312,636 for each succeeding fiscal year” for “\$300,000 for fiscal year 2016 and \$305,370 for each succeeding fiscal year”, in (a)(ii) in middle substituted “\$15,345 for fiscal year 2018 and \$15,632 for each succeeding fiscal year” for “\$15,000 for fiscal year 2016 and \$15,269 for each succeeding fiscal year”, in (b)(i), (b)(ii), (c)(i)(A), and (c)(i)(B) at beginning substituted “\$51,149 for fiscal year 2018 and \$52,105 for each succeeding fiscal year” for “\$50,000 for fiscal year 2016 and \$50,895 for each succeeding fiscal year”, in (b)(ii) and (c)(i)(B) in middle substituted “\$2,558 for fiscal year 2018 and \$2,606 for each succeeding fiscal year” for “\$2,500 for fiscal year 2016 and \$2,545 for each succeeding fiscal year”, in (c)(ii)(A) and (c)(ii)(B) at beginning substituted “\$102,299 for fiscal year 2018 and \$104,212 for each succeeding fiscal year” for “\$100,000 for fiscal year 2016 and \$101,790 for each succeeding fiscal year”, and in (c)(ii)(B) in middle substituted “\$5,115 for fiscal year 2018 and \$5,211 for each succeeding fiscal year” for “\$5,000 for fiscal year 2016 and \$5,090 for each succeeding fiscal year”; in definition of total American Indian achievement gap payment substituted “\$210 for fiscal year 2018 and \$214 for each succeeding fiscal year” for “\$205 in fiscal year 2016 and \$209 for each succeeding fiscal year”; in definition of total Indian education for all payment substituted “\$21.36 for fiscal year 2018 and \$21.76 for each succeeding fiscal year” for “\$20.88 in fiscal year 2016 and \$21.25 for each succeeding fiscal year”; in definition of total per-ANB entitlement in (a) and (c)(ii) near beginning substituted “\$7,005 for fiscal year 2018 and \$7,136 for each succeeding fiscal year” for “\$6,847 for fiscal year 2016 and \$6,970 for each succeeding fiscal year” and in (b) and (c)(i) substituted “\$5,471 for fiscal year 2018 and \$5,573 for each succeeding fiscal year” for “\$5,348 for fiscal year 2016 and \$5,444 for each succeeding fiscal year”; in definition of total data-for-achievement payment in middle substituted “\$20.46 for fiscal year 2018 and \$20.84 for each succeeding fiscal year” for “\$20 for fiscal year 2016 and \$20.36 for each succeeding fiscal year”; and in definition of total quality educator payment in middle substituted “\$3,185 for fiscal year 2018 and \$3,245 for each succeeding fiscal year” for “\$3,113 in fiscal year 2016 and \$3,169 for each succeeding fiscal year”. Amendment effective July 1, 2017.

Chapter 275 renumbered definitions to put in alphabetical order; and made minor changes in style. Amendment effective October 1, 2017.

Chapter 336 in definition of BASE aid deleted former (b) that read: “(b) the natural resource development K-12 funding payment for a variable percentage of the basic and per-ANB entitlements above the direct state aid for the general fund budget of a district, as referenced in subsection (10)”; deleted former definition that read: ““Natural resource development K-12 funding payment” means the payment of a variable percentage of the basic and per-ANB entitlements above the direct state aid for the general fund budget of a district. The total payment to school districts may not exceed the greater of 50% of the fiscal year 2012 oil and natural gas production taxes deposited into the general fund pursuant to 15-36-331(4) or 50% of the oil and natural gas production taxes deposited into the general fund pursuant to 15-36-331(4) for the fiscal year occurring 2 fiscal years prior to the school fiscal year in which the payment is provided, plus any excess interest and income revenue appropriated by the legislature pursuant to 20-9-622(2)(a). The amount of the natural resource development K-12 funding payment must be, subject to the limitations of this subsection (10), an amount sufficient to offset any estimated increase in statewide revenue from the general fund BASE budget levy provided for in 20-9-141 that is anticipated to result from increases in the basic or per-ANB entitlements plus any excess interest and income revenue appropriated by the legislature pursuant to 20-9-622(2)(a). The superintendent of public instruction shall incorporate a natural resource development K-12 funding payment calculated in compliance with this subsection (10) in preparing and submitting an agency budget pursuant to 17-7-111 and 17-7-112”; and made minor changes in style. Amendment effective July 1, 2017.

*Applicability:* Section 4, Ch. 47, L. 2017, provided: “[This act] applies to school budgets for school years beginning on or after July 1, 2017.”

Section 28, Ch. 336, L. 2017, provided: “[This act] applies to school budgets for school years beginning on or after July 1, 2017.”

#### **20-9-307. Repealed.** Sec. 6, Ch. 208, L. 2005.

**History:** En. Sec. 2, Ch. 633, L. 1993; amd. Sec. 9, Ch. 343, L. 1999.

**20-9-308. BASE budgets and maximum general fund budgets.** (1) (a) The trustees of a district shall adopt a general fund budget that is at least equal to the BASE budget established for the district. The trustees of a district may adopt a general fund budget up to the maximum general fund budget or the previous year’s general fund budget, whichever is greater.

(b) For purposes of the budget limitation in subsection (1)(a), the trustees may add any increase in direct state aid for the basic and per-ANB entitlements and any increases in state

funding of the data-for-achievement payment under 20-9-325 and in the general fund payments in 20-9-327 through 20-9-330 to the district's previous year's general fund budget.

(2) (a) Except as provided in subsection (2)(b), whenever the trustees of a district propose to adopt a general fund budget that exceeds the BASE budget for the district and propose to increase the over-BASE budget levy over the highest revenue previously authorized by the electors of the district or imposed by the district in any of the previous 5 years to support the general fund budget, the trustees shall submit a proposition to the electors of the district, as provided in 20-9-353.

(b) The intent of this section is to increase the flexibility and efficiency of elected school boards without increasing school district property taxes. In furtherance of this intent and provided that budget limitations otherwise specified in law are not exceeded, the trustees of a district may increase the district's over-BASE budget levy without a vote if the board of trustees reduces nonvoted property tax levies authorized by law to be imposed by action of the trustees of the district by at least as much as the amount by which the over-BASE budget levy is increased. The ongoing authority for any nonvoted increase in the over-BASE budget levy imposed under this subsection (2)(b) must be decreased in future years to the extent that the trustees of the district impose any increase in other nonvoted property tax levies.

(3) The BASE budget for the district must be financed by the following sources of revenue:

(a) state equalization aid, as provided in 20-9-343, including any guaranteed tax base aid for which the district may be eligible, as provided in 20-9-366 through 20-9-369;

(b) county equalization aid, as provided in 20-9-331 and 20-9-333;

(c) a district levy for support of a school not approved as an isolated school under the provisions of 20-9-302;

(d) payments in support of special education programs under the provisions of 20-9-321;

(e) nonlevy revenue, as provided in 20-9-141; and

(f) a BASE budget levy on the taxable value of all property within the district.

(4) The over-BASE budget amount of a district must be financed by a levy on the taxable value of all property within the district or other revenue available to the district, as provided in 20-9-141.

**History:** En. Sec. 3, Ch. 633, L. 1993; amd. Sec. 2, Ch. 38, Sp. L. November 1993; amd. Secs. 6, 10(2), Ch. 514, L. 1999; amd. Sec. 1, Ch. 146, L. 2001; amd. Sec. 15, Ch. 237, L. 2001; amd. Sec. 1, Ch. 190, L. 2005; amd. Sec. 12, Ch. 462, L. 2005; amd. Sec. 2, Ch. 173, L. 2007; amd. Sec. 16, Ch. 418, L. 2011; amd. Sec. 7, Ch. 400, L. 2013.

**20-9-309. Basic system of free quality public elementary and secondary schools defined — identifying educationally relevant factors — establishment of funding formula and budgetary structure — legislative review.** (1) Pursuant to Article X, section 1, of the Montana constitution, the legislature is required to provide a basic system of free quality public elementary and secondary schools throughout the state of Montana that will guarantee equality of educational opportunity to all.

(2) As used in this section, a "basic system of free quality public elementary and secondary schools" means:

(a) the educational program specified by the accreditation standards provided for in 20-7-111, which represent the minimum standards upon which a basic system of free quality public elementary and secondary schools is built;

(b) educational programs to provide for students with special needs, such as:

(i) a child with a disability, as defined in 20-7-401;

(ii) an at-risk student;

(iii) a student with limited English proficiency;

(iv) a child who is qualified for services under 29 U.S.C. 794; and

(v) gifted and talented children, as defined in 20-7-901;

(c) educational programs to implement the provisions of Article X, section 1(2), of the Montana constitution and Title 20, chapter 1, part 5, through development of curricula designed to integrate the distinct and unique cultural heritage of American Indians into the curricula, with particular emphasis on Montana Indians;

(d) qualified and effective teachers or administrators and qualified staff to implement the programs in subsections (2)(a) through (2)(c);



(e) facilities and distance learning technologies associated with meeting the accreditation standards;

(f) transportation of students pursuant to Title 20, chapter 10;

(g) a procedure to assess and track student achievement in the programs established pursuant to subsections (2)(a) through (2)(c); and

(h) preservation of local control of schools in each district vested in a board of trustees pursuant to Article X, section 8, of the Montana constitution.

(3) In developing a mechanism to fund the basic system of free quality public elementary and secondary schools and in making adjustments to the funding formula, the legislature shall, at a minimum, consider the following educationally relevant factors:

(a) the number of students in a district;

(b) the needs of isolated schools with low population density;

(c) the needs of urban schools with high population density;

(d) the needs of students with special needs, such as a child with a disability, an at-risk student, a student with limited English proficiency, a child who is qualified for services under 29 U.S.C. 794, and gifted and talented children;

(e) the needs of American Indian students; and

(f) the ability of school districts to attract and retain qualified educators and other personnel.

(4) The legislature shall:

(a) determine the costs of providing the basic system of free quality public elementary and secondary schools;

(b) establish a funding formula that:

(i) is based on the definition of a basic system of free quality public elementary and secondary schools and reflects the costs associated with providing that system as determined in subsection (4)(a);

(ii) allows the legislature to adjust the funding formula based on the educationally relevant factors identified in this section;

(iii) is self-executing and includes a mechanism for annual inflationary adjustments;

(iv) is based on state laws;

(v) is based on federal education laws consistent with Montana's constitution and laws; and

(vi) distributes to school districts in an equitable manner the state's share of the costs of the basic system of free quality public elementary and secondary schools; and

(c) consolidate the budgetary fund structure to create the number and types of funds necessary to provide school districts with the greatest budgetary flexibility while ensuring accountability and efficiency.

(5) At least every 10 years, the legislature shall form the school funding interim commission pursuant to 5-20-301 for the purpose of reassessing the state's school funding formula.

**History:** En. Sec. 2, Ch. 208, L. 2005; amd. Sec. 2, Ch. 359, L. 2015.

#### **Cross-References**

School funding interim commission, 5-20-301.

**20-9-310. Oil and natural gas production taxes for school districts — allocation and limits.** (1) Except as provided in subsection (5), the maximum amount of oil and natural gas production taxes that a school district may retain is 130% of the school district's maximum budget, determined in accordance with 20-9-308.

(2) Upon receipt of school district budget reports required under 20-9-134, the superintendent of public instruction shall provide the department of revenue with a list reporting the maximum general fund budget for each school district.

(3) Except as provided by 15-36-332(9), the department of revenue shall make the full quarterly distribution of oil and natural gas production taxes as required under 15-36-332(6) until the amount distributed reaches the limitation in subsection (1) of this section. The department of revenue shall deposit any amount exceeding the limitation in subsection (1) in the guarantee account provided for in 20-9-622.

(4) (a) Subject to the limitation in subsection (1) and the conditions in subsection (4)(b), the trustees shall budget and allocate the oil and natural gas production taxes anticipated by the district in any budgeted fund at the discretion of the trustees. Oil and natural gas production



taxes allocated to the district general fund may be applied to the BASE or over-BASE portions of the general fund budget at the discretion of the trustees.

(b) Except as provided in subsection (4)(c), if the trustees apply an amount less than 12.5% of the total oil and natural gas production taxes received by the district in the prior school fiscal year to the district's general fund BASE budget for the upcoming school fiscal year, then:

(i) the trustees shall levy the number of mills required to raise an amount equal to the difference between 12.5% of the oil and natural gas production taxes received by the district in the prior school fiscal year and the amount of oil and natural gas production taxes the trustees budget in the district's general fund BASE budget for the upcoming school fiscal year;

(ii) the mills levied under subsection (4)(b)(i) are not eligible for the guaranteed tax base subsidy under the provisions of 20-9-366 through 20-9-369; and

(iii) the general fund BASE budget levy requirement calculated in 20-9-141 must be calculated as though the trustees budgeted 12.5% of the oil and natural gas production taxes received by the district in the prior year and the number of mills calculated in subsection (4)(b)(i) must be added to the number of mills calculated in 20-9-141(2).

(c) The provisions of subsection (4)(b) do not apply to the following:

(i) a district that has a maximum general fund budget of less than \$1 million;

(ii) a district whose oil and natural gas revenue combined with its adopted general fund budget totals 105% or less of its maximum general fund budget;

(iii) a district that has a maximum general fund budget of \$1 million or more and has had an unusual enrollment increase approved by the superintendent of public instruction as provided in 20-9-314 in the year immediately preceding the fiscal year to which the provisions of this subsection (4) would otherwise apply; or

(iv) a district that has issued outstanding oil and natural gas revenue bonds. Funds received pursuant to this section must first be applied by the district to payment of debt service obligations for oil and natural gas revenue bonds for the next 12-month period.

(5) The limit on oil and natural gas production taxes that a school district may retain under subsection (1) must be increased for any school district with an unusual enrollment increase approved by the superintendent of public instruction as provided in 20-9-314. The increase in the limit on oil and natural gas production taxes that a school district may retain under subsection (1) applies in the year immediately following the fiscal year in which the office of public instruction has approved the district's unusual enrollment increase and must be calculated by multiplying \$45,000 times each additional ANB approved by the superintendent of public instruction as provided in 20-9-314.

(6) In any year in which the actual oil and natural gas production taxes received by a school district are less than 50% of the total oil and natural gas production taxes received by the district in the prior year, the district may transfer money from any budgeted fund to its general fund in an amount not to exceed the amount of the shortfall.

**History:** En. Sec. 8, Ch. 418, L. 2011; amd. Secs. 8, 9, Ch. 400, L. 2013; amd. Sec. 2, Ch. 432, L. 2015; amd. Sec. 2, Ch. 433, L. 2015; amd. Sec. 9, Ch. 173, L. 2017; amd. Sec. 6, Ch. 336, L. 2017.

**Compiler's Comments**

*2017 Amendments — Composite Section:* Chapter 173 in (3) at beginning inserted exception clause; and made minor changes in style. Amendment effective July 1, 2017.

Chapter 336 in (3) at end substituted "guarantee account provided for in 20-9-622" for "state school oil and natural gas distribution account provided for in 20-9-520"; deleted former (4) that read: "(4) By the last day of the month immediately following the month in which the quarterly distribution of oil and natural gas production taxes in subsection (3) is made, the office of public instruction shall distribute any amount of oil and natural gas production taxes exceeding the limitation in subsection (1) based on allocations determined by the department of revenue pursuant to subsection (3) as follows:

(a) 70% of the retained amount must be deposited in the guarantee account provided for in 20-9-622;

(b) 5% of the retained amount must be deposited in the state school oil and natural gas impact account provided for in 20-9-517; and

(c) 25% of the retained amount must be distributed to the counties in proportion to a county's oil and natural gas production taxes for the preceding 3 years compared to the total of all counties' oil and natural gas production taxes for the preceding 3 years. Funds distributed must be deposited in a county's county school oil and natural gas impact fund provided for in 20-9-518"; and made minor changes in style. Amendment effective July 1, 2017.

*Termination Provision Modified:* Section 20, Ch. 336, L. 2017, amended sec. 7, Ch. 433, L. 2015, by changing the termination date of the 2015 amendments to this section from June 30, 2019, to June 30, 2017. Effective May 4, 2017.

*Applicability:* Section 28, Ch. 336, L. 2017, provided: "[This act] applies to school budgets for school years beginning on or after July 1, 2017."

**20-9-311. Calculation of average number belonging (ANB) — 3-year averaging.**

(1) Average number belonging (ANB) must be computed for each budget unit as follows:

(a) compute an average enrollment by adding a count of regularly enrolled pupils who were enrolled as of the first Monday in October of the prior school fiscal year to a count of regularly enrolled pupils on the first Monday in February of the prior school fiscal year or the next school day if those dates do not fall on a school day, and divide the sum by two; and

(b) multiply the average enrollment calculated in subsection (1)(a) by the sum of 180 and the approved pupil-instruction-related days for the current school fiscal year and divide by 180.

(2) For the purpose of calculating ANB under subsection (1), up to 7 approved pupil-instruction-related days may be included in the calculation.

(3) When a school district has approval to operate less than the minimum aggregate hours under 20-9-806, the total ANB must be calculated in accordance with the provisions of 20-9-805.

(4) (a) Except as provided in subsection (4)(d), for the purpose of calculating ANB, enrollment in an education program:

(i) from 180 to 359 aggregate hours of pupil instruction per school year is counted as one-quarter-time enrollment;

(ii) from 360 to 539 aggregate hours of pupil instruction per school year is counted as half-time enrollment;

(iii) from 540 to 719 aggregate hours of pupil instruction per school year is counted as three-quarter-time enrollment; and

(iv) 720 or more aggregate hours of pupil instruction per school year is counted as full-time enrollment.

(b) Except as provided in subsection (4)(d), enrollment in a program intended to provide fewer than 180 aggregate hours of pupil instruction per school year may not be included for purposes of ANB.

(c) Enrollment in a self-paced program or course may be converted to an hourly equivalent based on the hours necessary and appropriate to provide the course within a regular classroom schedule.

(d) A school district may include in its calculation of ANB a pupil who is enrolled in a program providing fewer than the required aggregate hours of pupil instruction required under subsection (4)(a) or (4)(b) if the pupil has demonstrated proficiency in the content ordinarily covered by the instruction as determined by the school board using district assessments. The ANB of a pupil under this subsection (4)(d) must be converted to an hourly equivalent based on the hours of instruction ordinarily provided for the content over which the student has demonstrated proficiency.

(e) A pupil in kindergarten through grade 12 who is concurrently enrolled in more than one public school, program, or district may not be counted as more than one full-time pupil for ANB purposes.

(5) For a district that is transitioning from a half-time to a full-time kindergarten program, the state superintendent shall count kindergarten enrollment in the previous year as full-time enrollment for the purpose of calculating ANB for the elementary programs offering full-time kindergarten in the current year. For the purposes of calculating the 3-year ANB, the superintendent of public instruction shall count the kindergarten enrollment as one-half enrollment and then add the additional kindergarten ANB to the 3-year average ANB for districts offering full-time kindergarten.

(6) When a pupil has been absent, with or without excuse, for more than 10 consecutive school days, the pupil may not be included in the enrollment count used in the calculation of the ANB unless the pupil resumes attendance prior to the day of the enrollment count.

(7) The enrollment of preschool pupils, as provided in 20-7-117, may not be included in the ANB calculations.

(8) The average number belonging of the regularly enrolled pupils for the public schools of a district must be based on the aggregate of all the regularly enrolled pupils attending the schools of the district, except that:

(a) the ANB is calculated as a separate budget unit when:

(i) a school of the district is located more than 20 miles beyond the incorporated limits of a city or town located in the district and at least 20 miles from any other school of the district,

the number of regularly enrolled pupils of the school must be calculated as a separate budget unit for ANB purposes and the district must receive a basic entitlement for the school calculated separately from the other schools of the district;

(ii) a school of the district is located more than 20 miles from any other school of the district and incorporated territory is not involved in the district, the number of regularly enrolled pupils of the school must be calculated separately for ANB purposes and the district must receive a basic entitlement for the school calculated separately from the other schools of the district;

(iii) the superintendent of public instruction approves an application not to aggregate when conditions exist affecting transportation, such as poor roads, mountains, rivers, or other obstacles to travel, or when any other condition exists that would result in an unusual hardship to the pupils of the school if they were transported to another school, the number of regularly enrolled pupils of the school must be calculated separately for ANB purposes and the district must receive a basic entitlement for the school calculated separately from the other schools of the district; or

(iv) two or more districts consolidate or annex under the provisions of 20-6-422 or 20-6-423, the ANB and the basic entitlements of the component districts must be calculated separately for a period of 3 years following the consolidation or annexation. Each district shall retain a percentage of its basic entitlement for 3 additional years as follows:

(A) 75% of the basic entitlement for the fourth year;

(B) 50% of the basic entitlement for the fifth year; and

(C) 25% of the basic entitlement for the sixth year.

(b) when a junior high school has been approved and accredited as a junior high school, all of the regularly enrolled pupils of the junior high school must be considered as high school district pupils for ANB purposes;

(c) when a middle school has been approved and accredited, all pupils below the 7th grade must be considered elementary school pupils for ANB purposes and the 7th and 8th grade pupils must be considered high school pupils for ANB purposes; or

(d) when a school has been designated as nonaccredited by the board of public education because of failure to meet the board of public education's assurance and performance standards, the regularly enrolled pupils attending the nonaccredited school are not eligible for average number belonging calculation purposes, nor will an average number belonging for the nonaccredited school be used in determining the BASE funding program for the district.

(9) The district shall provide the superintendent of public instruction with semiannual reports of school attendance, absence, and enrollment for regularly enrolled students, using a format determined by the superintendent.

(10) (a) Except as provided in subsections (10)(b) and (10)(c), enrollment in a basic education program provided by the district through any combination of onsite or offsite instruction may be included for ANB purposes only if the pupil is offered access to the complete range of educational services for the basic education program required by the accreditation standards adopted by the board of public education.

(b) Access to school programs and services for a student placed by the trustees in a private program for special education may be limited to the programs and services specified in an approved individual education plan supervised by the district.

(c) Access to school programs and services for a student who is incarcerated in a facility, other than a youth detention center, may be limited to the programs and services provided by the district at district expense under an agreement with the incarcerating facility.

(d) This subsection (10) may not be construed to require a school district to offer access to activities governed by an organization having jurisdiction over interscholastic activities, contests, and tournaments to a pupil who is not otherwise eligible under the rules of the organization.

(11) A district may include only, for ANB purposes, an enrolled pupil who is otherwise eligible under this title and who is:

(a) a resident of the district or a nonresident student admitted by trustees under a student attendance agreement and who is attending a school of the district;

(b) unable to attend school due to a medical reason certified by a medical doctor and receiving individualized educational services supervised by the district, at district expense, at a home or facility that does not offer an educational program;

(c) unable to attend school due to the student's incarceration in a facility, other than a youth detention center, and who is receiving individualized educational services supervised by the district, at district expense, at a home or facility that does not offer an educational program;

(d) receiving special education and related services, other than day treatment, under a placement by the trustees at a private nonsectarian school or private program if the pupil's services are provided at the district's expense under an approved individual education plan supervised by the district;

(e) participating in the running start program at district expense under 20-9-706;

(f) receiving educational services, provided by the district, using appropriately licensed district staff at a private residential program or private residential facility licensed by the department of public health and human services;

(g) enrolled in an educational program or course provided at district expense using electronic or offsite delivery methods, including but not limited to tutoring, distance learning programs, online programs, and technology delivered learning programs, while attending a school of the district or any other nonsectarian offsite instructional setting with the approval of the trustees of the district. The pupil shall:

(i) meet the residency requirements for that district as provided in 1-1-215;

(ii) live in the district and must be eligible for educational services under the Individuals With Disabilities Education Act or under 29 U.S.C. 794; or

(iii) attend school in the district under a mandatory attendance agreement as provided in 20-5-321.

(h) a resident of the district attending the Montana youth challenge program or a Montana job corps program under an interlocal agreement with the district under 20-9-707.

(12) A district shall, for ANB purposes, calculate the enrollment of an eligible Montana youth challenge program participant as half-time enrollment.

(13) (a) For an elementary or high school district that has been in existence for 3 years or more, the district's maximum general fund budget and BASE budget for the ensuing school fiscal year must be calculated using the current year ANB for all budget units or the 3-year average ANB for all budget units, whichever generates the greatest maximum general fund budget.

(b) For a K-12 district that has been in existence for 3 years or more, the district's maximum general fund budget and BASE budget for the ensuing school fiscal year must be calculated separately for the elementary and high school programs pursuant to subsection (13)(a) and then combined.

(14) The term "3-year ANB" means an average ANB over the most recent 3-year period, calculated by:

(a) adding the ANB for the budget unit for the ensuing school fiscal year to the ANB for each of the previous 2 school fiscal years; and

(b) dividing the sum calculated under subsection (14)(a) by three.

**History:** En. 75-6902 by Sec. 252, Ch. 5, L. 1971; amd. Sec. 1, Ch. 345, L. 1973; amd. Sec. 1, Ch. 343, L. 1974; amd. Sec. 3, Ch. 352, L. 1974; amd. Sec. 1, Ch. 373, L. 1974; amd. Sec. 1, Ch. 132, L. 1975; R.C.M. 1947, 75-6902(part); amd. Sec. 8, Ch. 288, L. 1979; amd. Sec. 1, Ch. 498, L. 1987; amd. Sec. 6, Ch. 337, L. 1989; amd. Sec. 27, Ch. 11, Sp. L. June 1989; amd. Sec. 1, Ch. 250, L. 1991; amd. Secs. 20, 33, Ch. 633, L. 1993; amd. Sec. 1, Ch. 212, L. 1997; amd. Sec. 7, Ch. 430, L. 1997; amd. Sec. 10, Ch. 343, L. 1999; amd. Sec. 1, Ch. 252, L. 2001; amd. Sec. 11, Ch. 138, L. 2005; amd. Sec. 3, Ch. 215, L. 2005; amd. Sec. 13, Ch. 462, L. 2005; amd. Sec. 11, Ch. 510, L. 2005; amd. Sec. 8, Ch. 4, Sp. L. December 2005; amd. Sec. 13, Ch. 1, Sp. L. May 2007; amd. Sec. 2, Ch. 137, L. 2009; amd. Sec. 10, Ch. 400, L. 2013; amd. Sec. 1, Ch. 157, L. 2015.

#### **Cross-References**

School fiscal year, 20-1-301.

Released time for religious purposes to be counted as part of school day, 20-1-308.

Preschool program to be included in calculation of ANB, 20-7-117.

#### **20-9-312. Repealed.** Sec. 54, Ch. 633, L. 1993.

**History:** En. 75-6905.1 by Sec. 1, Ch. 354, L. 1974; R.C.M. 1947, 75-6905.1; amd. Sec. 1, Ch. 340, L. 1979; amd. Sec. 28, Ch. 11, Sp. L. June 1989.

**20-9-313. Circumstances under which regular average number belonging may be increased.** (1) The average number belonging of a school, calculated in accordance with the ANB formula prescribed in 20-9-311, may be increased when:

(a) the opening of a new elementary school or the reopening of an elementary school has been approved in accordance with 20-6-502. The average number belonging for the school must



be established by the county superintendent and approved, disapproved, or adjusted by the superintendent of public instruction.

(b) the opening or reopening of a high school or a branch of the county high school has been approved in accordance with 20-6-503, 20-6-504, or 20-6-505. The average number belonging for the high school must be established by the county superintendent's estimate, after an investigation of the probable number of pupils that will attend the high school.

(c) a district anticipates an increase in the average number belonging due to the closing of a private or public school in the district or a neighboring district. The estimated increase in average number belonging must be established by the trustees and the county superintendent and approved, disapproved, or adjusted by the superintendent of public instruction no later than the fourth Monday in June.

(d) a district anticipates an unusual enrollment increase in the ensuing school fiscal year. The increase in average number belonging must be based on estimates of increased enrollment approved by the superintendent of public instruction and must be computed in the manner prescribed by 20-9-314.

(e) for the initial year of operation of a kindergarten program established under 20-7-117(1), the ANB to be used for budget purposes is:

(i) one-half the number of 5-year-old children residing in the district as of September 10 of the preceding school year, either as shown on the official school census or as determined by some other procedure approved by the superintendent of public instruction, for the purpose of implementing a half-time kindergarten program as provided in 20-1-301; or

(ii) the number of 5-year-old children residing in the district as of September 10 of the preceding school year, either as shown on the official school census or as determined by some other procedure approved by the superintendent of public instruction, for the purpose of implementing a full-time kindergarten program as provided in 20-1-301; or

(f) a high school district provides early graduation for a student who completes graduation requirements in less than eight semesters or the equivalent amount of secondary school enrollment. The increase must be established by the trustees as though the student had attended to the end of the school fiscal year and must be approved, disapproved, or adjusted by the superintendent of public instruction.

(2) This section does not apply to the expansion of a half-time kindergarten program to a full-time kindergarten program.

**History:** En. 75-6903 by Sec. 253, Ch. 5, L. 1971; amd. Sec. 4, Ch. 345, L. 1973; amd. Sec. 2, Ch. 343, L. 1974; amd. Sec. 1, Ch. 141, L. 1975; R.C.M. 1947, 75-6903; amd. Sec. 4, Ch. 334, L. 1979; amd. Sec. 2, Ch. 148, L. 1981; amd. Sec. 7, Ch. 337, L. 1989; amd. Sec. 6, Ch. 466, L. 1993; amd. Sec. 11, Ch. 343, L. 1999; amd. Sec. 14, Ch. 1, Sp. L. May 2007.

**20-9-314. Procedures for determining eligibility and amount of increased average number belonging due to unusual enrollment increase.** A district that anticipates an unusual increase in enrollment in the ensuing school fiscal year, as provided for in 20-9-313(1)(d), may increase its basic entitlement and total per-ANB entitlement for the ensuing school fiscal year in accordance with the following provisions:

(1) Prior to June 1, the district shall estimate the elementary or high school enrollment to be realized during the ensuing school fiscal year, based on as much factual information as may be available to the district.

(2) No later than June 1, the district shall submit its application for an anticipated unusual enrollment increase by elementary or high school level to the superintendent of public instruction. The application must include:

(a) the enrollment for the current school fiscal year;

(b) the average number belonging used to calculate the basic entitlement and total per-ANB entitlement for the current school fiscal year;

(c) the average number belonging that will be used to calculate the basic entitlement and total per-ANB entitlement for the ensuing school fiscal year;

(d) the anticipated enrollment, including the factual information on which the estimate is based, as provided in subsection (1); and

(e) any other information or data that may be requested by the superintendent of public instruction.



(3) The superintendent of public instruction shall immediately review all the factors of the application and shall approve or disapprove the application or adjust the enrollment used to calculate the budgeted average number belonging for the ensuing school fiscal year. After approving an estimate, with or without adjustment, the superintendent of public instruction shall:

(a) determine the percentage by which the adjusted enrollment exceeds the enrollment used for the budgeted average number belonging; and

(b) approve an increase of the average number belonging used to establish the ensuing year's basic entitlement and total per-ANB entitlement in accordance with subsection (5) if the increase in subsection (3)(a) is at least 4% or 40 students, whichever is less.

(4) The superintendent of public instruction shall notify the district of the decision by the fourth Monday in June.

(5) Whenever an unusual enrollment increase is approved by the superintendent of public instruction, the maximum allowable increase to the average number belonging is equal to the adjusted enrollment as determined by the superintendent of public instruction in subsection (3) minus the sum of:

(a) the enrollment used to calculate the budgeted average number belonging for the ensuing school fiscal year; and

(b) the lesser of 40 students or 4% of the enrollment used to calculate the budgeted average number belonging for the ensuing school fiscal year.

(6) (a) Any entitlement increases resulting from provisions of this section must be reviewed at the end of the ensuing school fiscal year.

(b) If the actual enrollment is less than the enrollment used to determine the budgeted ANB, the superintendent of public instruction shall recalculate the district's BASE budget and maximum budget limitations and BASE aid using the actual enrollment in place of the adjusted enrollment and:

(i) any BASE aid received by the district in excess of the amount recalculated is an overpayment subject to the refund provisions of 20-9-344(4); and

(ii) any revenue received by the district from BASE budget and over-BASE budget levies increased by the difference between the adjusted enrollment and the actual enrollment is an overpayment and must be used for reducing BASE budget and over-BASE budget levies in the ensuing school fiscal year.

**History:** En. 75-6904 by Sec. 254, Ch. 5, L. 1971; amd. Sec. 1, Ch. 113, L. 1973; R.C.M. 1947, 75-6904; amd. Sec. 1, Ch. 484, L. 1979; amd. Sec. 1, Ch. 203, L. 1981; amd. Sec. 8, Ch. 337, L. 1989; amd. Sec. 10, Ch. 555, L. 1991; amd. Sec. 21, Ch. 633, L. 1993; amd. Sec. 37, Ch. 18, L. 1995; amd. Sec. 19, Ch. 22, L. 1997; amd. Sec. 16, Ch. 237, L. 2001; amd. Sec. 14, Ch. 462, L. 2005; amd. Sec. 15, Ch. 1, Sp. L. May 2007; amd. Sec. 11, Ch. 400, L. 2013; amd. Sec. 1, Ch. 259, L. 2017.

#### **Compiler's Comments**

*2017 Amendment:* Chapter 259 in (6)(b) substituted "recalculate the district's BASE budget and maximum budget limitations and BASE aid" for "revise the total per-ANB entitlement and basic entitlement calculations"; in (6)(b)(i) substituted "any BASE aid received by the district in excess of the amount recalculated is an overpayment" for "All total per-ANB entitlements received by the district in excess of the revised entitlements are overpayments"; inserted (6)(b)(ii) requiring the use of overpayment of funds received from BASE budget and over-BASE budget levies to reduce the BASE budget and over-BASE budget levies in the next school fiscal year; and made minor changes in style. Amendment effective July 1, 2017.

*Applicability:* Section 5, Ch. 259, L. 2017, provided: "[This act] applies to school fiscal years beginning on or after July 1, 2017."

#### **20-9-315. Repealed.** Sec. 54, Ch. 633, L. 1993.

**History:** En. 75-6905 by Sec. 255, Ch. 5, L. 1971; amd. Sec. 1, Ch. 404, L. 1971; amd. Sec. 1, Ch. 400, L. 1973; amd. Sec. 1, Ch. 345, L. 1974; amd. Sec. 1, Ch. 347, L. 1974; amd. Sec. 1, Ch. 518, L. 1975; amd. Sec. 1, Ch. 505, L. 1977; R.C.M. 1947, 75-6905(part); amd. Sec. 1, Ch. 72, L. 1979; amd. Sec. 29, Ch. 11, Sp. L. June 1989; amd. Sec. 26, Ch. 767, L. 1991.

#### **20-9-316. Repealed.** Sec. 54, Ch. 633, L. 1993.

**History:** En. 75-6905 by Sec. 255, Ch. 5, L. 1971; amd. Sec. 1, Ch. 404, L. 1971; amd. Sec. 1, Ch. 400, L. 1973; amd. Sec. 1, Ch. 345, L. 1974; amd. Sec. 1, Ch. 347, L. 1974; amd. Sec. 1, Ch. 518, L. 1975; amd. Sec. 1, Ch. 505, L. 1977; R.C.M. 1947, 75-6905(1) thru (6); amd. Sec. 1, Ch. 690, L. 1979; amd. Sec. 1, Ch. 75, L. 1981; amd. Secs. 2, 5, Ch. 475, L. 1983; amd. Sec. 1, Ch. 629, L. 1983; amd. Sec. 1, Ch. 738, L. 1985; amd. Sec. 1, Ch. 4, Sp. L. June 1989.

#### **20-9-317. Repealed.** Sec. 54, Ch. 633, L. 1993.

**History:** En. 75-6905 by Sec. 255, Ch. 5, L. 1971; amd. Sec. 1, Ch. 404, L. 1971; amd. Sec. 1, Ch. 400, L. 1973; amd. Sec. 1, Ch. 345, L. 1974; amd. Sec. 1, Ch. 347, L. 1974; amd. Sec. 1, Ch. 518, L. 1975; amd. Sec. 1, Ch. 505,

L. 1977; R.C.M. 1947, 75-6905(7) thru (9); amd. Sec. 2, Ch. 690, L. 1979; amd. Sec. 2, Ch. 75, L. 1981; amd. Sec. 2, Ch. 629, L. 1983; amd. Sec. 2, Ch. 738, L. 1985; amd. Sec. 2, Ch. 4, Sp. L. June 1989.

**20-9-318. Repealed.** Sec. 54, Ch. 633, L. 1993.

**History:** En. 75-6905 by Sec. 255, Ch. 5, L. 1971; amd. Sec. 1, Ch. 404, L. 1971; amd. Sec. 1, Ch. 400, L. 1973; amd. Sec. 1, Ch. 345, L. 1974; amd. Sec. 1, Ch. 347, L. 1974; amd. Sec. 1, Ch. 518, L. 1975; amd. Sec. 1, Ch. 505, L. 1977; R.C.M. 1947, 75-6905(10) thru (15); amd. Sec. 3, Ch. 690, L. 1979; amd. Sec. 3, Ch. 75, L. 1981; amd. Secs. 3, 5, Ch. 475, L. 1983; amd. Sec. 3, Ch. 629, L. 1983; amd. Sec. 3, Ch. 738, L. 1985; amd. Sec. 1, Ch. 7, Sp. L. June 1986; amd. Sec. 3, Ch. 666, L. 1987; amd. Sec. 30, Ch. 11, Sp. L. June 1989.

**20-9-319. Repealed.** Sec. 54, Ch. 633, L. 1993.

**History:** En. 75-6905 by Sec. 255, Ch. 5, L. 1971; amd. Sec. 1, Ch. 404, L. 1971; amd. Sec. 1, Ch. 400, L. 1973; amd. Sec. 1, Ch. 345, L. 1974; amd. Sec. 1, Ch. 347, L. 1974; amd. Sec. 1, Ch. 518, L. 1975; amd. Sec. 1, Ch. 505, L. 1977; R.C.M. 1947, 75-6905(16) thru (18); amd. Sec. 4, Ch. 690, L. 1979; amd. Sec. 4, Ch. 75, L. 1981; amd. Sec. 4, Ch. 629, L. 1983; amd. Sec. 4, Ch. 738, L. 1985; amd. Sec. 2, Ch. 7, Sp. L. June 1986; amd. Sec. 4, Ch. 666, L. 1987; amd. Sec. 31, Ch. 11, Sp. L. June 1989.

**20-9-320. Repealed.** Sec. 54, Ch. 633, L. 1993.

**History:** En. 75-6905 by Sec. 255, Ch. 5, L. 1971; amd. Sec. 1, Ch. 404, L. 1971; amd. Sec. 1, Ch. 400, L. 1973; amd. Sec. 1, Ch. 345, L. 1974; amd. Sec. 1, Ch. 347, L. 1974; amd. Sec. 1, Ch. 518, L. 1975; amd. Sec. 1, Ch. 505, L. 1977; R.C.M. 1947, 75-6905(19); amd. Sec. 32, Ch. 11, Sp. L. June 1989.

**20-9-321. Allowable cost payment for special education.** (1) As used in this section, "ANB" means the current year ANB.

(2) The 3-year average ANB provided for in 20-9-311 does not apply to the calculation and distribution of state special education allowable cost payments provided for in this section.

(3) For the purpose of establishing the allowable cost payment for a current year special education program for a school district, the superintendent of public instruction shall determine the total special education payment to a school district, cooperative, or joint board for special education services formed under 20-3-361 prior to July 1, 1992, using the following factors:

- (a) the district ANB student count as established pursuant to 20-9-311 and 20-9-313;
- (b) a per-ANB amount for the special education instructional block grant;
- (c) a per-ANB amount for the special education-related services block grant;

(d) an amount for cooperatives or joint boards meeting the requirements of 20-7-457, to compensate for the additional costs of operations and maintenance, travel, supportive services, recruitment, and administration; and

(e) any other data required by the superintendent of public instruction to administer the provisions of this section.

(4) (a) The total special education allocation must be distributed according to the following formula:

- (i) 52.5% through instructional block grants;
- (ii) 17.5% through related services block grants;
- (iii) 25% to reimbursement of local districts; and
- (iv) 5% to special education cooperatives and joint boards for administration and travel.

(b) Special education allowable cost payments outlined in subsection (4)(a) must be granted to each school district and cooperative with a special education program as follows:

(i) The instructional block grant limit prescribed in subsection (4)(a)(i) must be awarded to each school district, based on the district ANB and the per-ANB special education instructional amount.

(ii) The special education-related services block grant limit prescribed in subsection (4)(a)(ii) must be awarded to each school district that is not a cooperative member, based on the district ANB and the per-ANB special education-related services amount, or to a cooperative or joint board that meets the requirements of 20-7-457. The special education-related services block grant amount for districts that are members of approved cooperatives or a joint board must be awarded to the cooperatives or joint board.

(iii) If a district's allowable costs of special education exceed the total of the special education instructional and special education-related services block grant plus the required district match required by subsection (6), the district is eligible to receive at least a 40% reimbursement of the additional costs. To ensure that the total of reimbursements to all districts does not exceed 25% of the total special education allocation limit established in subsection (4)(a)(iii), reimbursement must be made to districts for amounts that exceed a threshold level calculated annually by the

office of public instruction. The threshold level is calculated as a percentage amount above the sum of the district's block grants plus the required district match.

(iv) Of the amount distributed under subsection (4)(a)(iv), three-fifths must be distributed based on the ANB count of the school districts that are members of the special education cooperative or joint board and two-fifths must be distributed based on distances, population density, and the number of itinerant personnel under rules adopted by the superintendent of public instruction.

(5) The superintendent of public instruction shall adopt rules necessary to implement this section.

(6) A district shall provide a 25% local contribution for special education, matching every \$3 of state special education instructional and special education-related services block grants with at least one local dollar. A district that is a cooperative member is required to provide the 25% match of the special education-related services grant amount to the special education cooperative.

(7) The superintendent of public instruction shall determine the actual district match based on the trustees' reports. Any unmatched portion reverts to the state and must be subtracted from the district's ensuing year's special education allowable cost payment.

(8) A district that demonstrates severe economic hardship because of exceptional special education costs may apply to the superintendent of public instruction for an advance on the reimbursement for the year in which the actual costs will be incurred.

**History:** En. 75-6905 by Sec. 255, Ch. 5, L. 1971; amd. Sec. 1, Ch. 404, L. 1971; amd. Sec. 1, Ch. 400, L. 1973; amd. Sec. 1, Ch. 345, L. 1974; amd. Sec. 1, Ch. 347, L. 1974; amd. Sec. 1, Ch. 518, L. 1975; amd. Sec. 1, Ch. 505, L. 1977; R.C.M. 1947, 75-6905(20) thru (22); amd. Sec. 1, Ch. 315, L. 1983; amd. Sec. 33, Ch. 11, Sp. L. June 1989; amd. Sec. 8, Ch. 249, L. 1991; amd. Sec. 27, Ch. 767, L. 1991; amd. Secs. 22, 23, Ch. 633, L. 1993; amd. Sec. 2, Ch. 145, L. 2001; amd. Sec. 15, Ch. 462, L. 2005; amd. Sec. 9, Ch. 4, Sp. L. December 2005.

**20-9-322. Repealed.** Sec. 54, Ch. 633, L. 1993.

**History:** En. Sec. 1, Ch. 475, L. 1983; amd. Sec. 9, Ch. 337, L. 1989; amd. Sec. 34, Ch. 11, Sp. L. June 1989.

**20-9-323. Ending fund balance limits.** (1) Beginning July 1, 2020, the combined ending fund balance for all budgeted funds of a school district may not exceed 300% of the maximum general fund budget. The 300% limit is not applicable to the building reserve fund, the debt service fund, or the bus depreciation reserve fund.

(2) The county superintendent shall, upon completion of a school fiscal year, redistribute any amounts in excess of the 300% limit among any other school districts in the same county whose combined ending fund balance for all budgeted funds included in subsection (1) has not exceeded the 300% limit. The county superintendent shall redistribute funds equally to the school districts qualifying for redistribution on a per-quality-educator basis, calculated by dividing the total funds by the total number of quality educators, as defined in 20-4-502, employed by the qualifying school districts in the county in the immediately preceding school fiscal year. School districts receiving the funds may place the funds in any budgeted fund of the district at the discretion of the board of trustees of each district.

(3) Unless an exception is granted under subsection (5), upon completion of a school fiscal year, a school district with combined ending fund balances in excess of the 300% limit shall cooperate with the county superintendent in effectuating the redistribution of excess funds as provided in subsection (2). A school district may make the payment required under this subsection from any fund or funds of the district other than the debt service fund, the building reserve fund, and the bus depreciation reserve fund.

(4) Any funds that cannot be redistributed within a county without causing a school district in the county to exceed the 300% limit must be remitted by the county treasurer to the state for deposit in the guarantee account and distribution in the same manner as provided in 20-9-622(2).

(5) In accordance with 20-9-161, a school district shall report to the education interim committee for any exception taken to the limits prescribed by subsection (1) of this section.

(6) This section does not apply to school districts that are in a nonoperating status under 20-9-505 or that are in the first year of operation after reopening under 20-6-502 or 20-6-503.

(7) Beginning July 1, 2020, the balance of a school district's flexibility fund may not exceed 150% of the school district's maximum general fund budget.

**History:** En. Sec. 22, Ch. 418, L. 2011; amd. Sec. 12, Ch. 400, L. 2013.

**Compiler's Comments**

*2017 Code Commissioner Correction:* Pursuant to sec. 24, Ch. 275, L. 2017, the code commissioner in (5) substituted "education interim committee" for "education and local government interim committee" to reflect amendments made by Ch. 167, L. 2017.

**20-9-324 reserved.**

**20-9-325. Data-for-achievement payment.** (1) The state shall provide a data-for-achievement payment to public school districts as defined in 20-6-101 and 20-6-701. The data-for-achievement payment is calculated as provided in 20-9-306.

(2) Funds received for the data-for-achievement payment must be used by a school district to pay for access fees or other costs associated with use of or participation in the statewide data system administered by the office of public instruction or a comparable data system provided by a private vendor, including data entry and staff training on use of the systems.

(3) Unless funds are otherwise appropriated at higher amounts by the legislature, the office of public instruction may spend no more than \$500,000 per biennium for the purposes of mediating with vendors, developing a plan, preparing a request for proposal solicitation package, managing the vendor contract, and implementing a plan with school districts for the statewide data system. This limitation does not apply if the office of public instruction develops and administers the statewide data system without a vendor.

**History:** En. Sec. 2, Ch. 400, L. 2013; amd. Sec. 2, Ch. 60, L. 2015.

**20-9-326. Annual inflation-related adjustments to basic entitlements and per-ANB entitlements.** (1) In preparing and submitting an agency budget pursuant to 17-7-111 and 17-7-112, the superintendent of public instruction shall determine the inflation factor for the basic and per-ANB entitlements, the data-for-achievement payment, and the general fund payments in 20-9-327 through 20-9-330 in each fiscal year of the ensuing biennium. The inflation factor is calculated as follows:

(a) for the first year of the biennium, divide the consumer price index for July 1 of the prior calendar year by the consumer price index for July 1 of the calendar year 3 years prior to the prior calendar year and raise the resulting ratio to the power of one-third; and

(b) for the second year of the biennium, divide the consumer price index for July 1 of the current calendar year by the consumer price index for July 1 of the calendar year 3 years prior to the current calendar year and raise the resulting ratio to the power of one-third.

(2) The present law base for the entitlements referenced in subsection (1), calculated under Title 17, chapter 7, part 1, must consist of any enrollment increases or decreases plus the inflation factor calculated pursuant to this section, not to exceed 3% in each year, applied to both years of the biennium.

(3) For the purposes of this section, "consumer price index" means the consumer price index, U.S. city average, all urban consumers, for all items, using the 1982-84 base of 100, as published by the bureau of labor statistics of the U.S. department of labor.

**History:** En. Sec. 1, Ch. 550, L. 2003; amd. Sec. 13, Ch. 400, L. 2013.

**20-9-327. Quality educator payment.** (1) (a) The state shall provide a quality educator payment to:

- (i) public school districts, as defined in 20-6-101 and 20-6-701;
- (ii) special education cooperatives, as described in 20-7-451;
- (iii) the Montana school for the deaf and blind, as described in 20-8-101;
- (iv) state youth correctional facilities, as defined in 41-5-103; and
- (v) the Montana youth challenge program.

(b) A special education cooperative that has not met the requirements of 20-7-454 may not be funded under the provisions of this section except by approval of the superintendent of public instruction.

(2) (a) The quality educator payment for special education cooperatives must be distributed directly to those entities by the superintendent of public instruction.

(b) The quality educator payment for the Montana school for the deaf and blind must be distributed to the Montana school for the deaf and blind.

(c) The quality educator payment for Pine Hills and Riverside youth correctional facilities must be distributed to those facilities by the department of corrections.



(d) The quality educator payment for the Montana youth challenge program must be distributed to that program by the department of military affairs.

(3) The quality educator payment is calculated as provided in 20-9-306, using the number of full-time equivalent educators, as reported to the superintendent of public instruction for accreditation purposes in the previous school year, each of whom:

(a) holds a valid certificate under the provisions of 20-4-106 and is employed by an entity listed in subsection (1) of this section in a position that requires an educator license in accordance with the administrative rules adopted by the board of public education;

(b) (i) is a licensed professional under 37-8-405, 37-8-415, 37-11-301, 37-15-301, 37-17-302, 37-22-301, 37-23-201, 37-24-301, or 37-25-302; and

(ii) is employed by an entity listed in subsection (1) to provide services to students; or

(c) (i) holds an American Indian language and culture specialist license; and

(ii) is employed by an entity listed in subsection (1) to provide services to students in an Indian language immersion program pursuant to Title 20, chapter 7, part 14. (*Subsection (3)(c) terminates June 30, 2019—sec. 10, Ch. 442, L. 2015.*)

**History:** En. Sec. 1, Ch. 4, Sp. L. December 2005; amd. Sec. 8, Ch. 94, L. 2007; amd. Sec. 1, Ch. 354, L. 2007; amd. Sec. 16, Ch. 1, Sp. L. May 2007; amd. Sec. 5, Ch. 442, L. 2015.

**20-9-328. At-risk student payment.** (1) The state shall provide an at-risk student payment to public school districts, as defined in 20-6-101 and 20-6-701, for at-risk students, as defined in 20-1-101 and referred to in 20-9-309.

(2) The at-risk student payment must be distributed to public school districts by the office of public instruction in the same manner that the office of public instruction allocates the funds received under 20 U.S.C. 6332, et seq. The office of public instruction shall prorate payments to districts based upon the available appropriation.

(3) On or before September 15 of even-numbered years, the office of public instruction shall report to the governor and the legislature on the change in status of standardized test scores, graduation rates, and drop-out rates of at-risk students.

**History:** En. Sec. 2, Ch. 4, Sp. L. December 2005; amd. Sec. 2, Ch. 118, L. 2013.

**20-9-329. Indian education for all payment.** (1) The state shall provide an Indian education for all payment to public school districts, as defined in 20-6-101 and 20-6-701, to implement the provisions of Article X, section 1(2), of the Montana constitution and Title 20, chapter 1, part 5.

(2) The Indian education for all payment is calculated as provided in 20-9-306 and is a component of the BASE budget of the district.

(3) The district shall deposit the payment in the general fund of the district.

(4) A public school district that receives an Indian education for all payment may not divert the funds to any purpose other than curriculum development, providing curriculum and materials to students, and providing training to teachers about the curriculum and materials. A public school district shall file an annual report with the office of public instruction, in a form prescribed by the superintendent of public instruction, that specifies how the Indian education for all funds were expended.

**History:** En. Sec. 3, Ch. 4, Sp. L. December 2005; amd. Sec. 17, Ch. 1, Sp. L. May 2007.

**20-9-330. American Indian achievement gap payment.** (1) The state shall provide an American Indian achievement gap payment to public school districts, as defined in 20-6-101 and 20-6-701, for the purpose of closing the educational achievement gap that exists between American Indian students and non-Indian students.

(2) (a) The American Indian achievement gap payment is calculated as provided in 20-9-306, using the number of American Indian students enrolled in the district based on the count of regularly enrolled students on the first Monday in October of the prior school year as reported to the office of public instruction.

(b) A school district may not require a student to disclose the student's race.

(3) The district shall deposit the payment in the general fund of the district.

(4) On or before September 15 of even-numbered years, the office of public instruction shall report to the governor and the legislature on the change in status of standardized test scores, graduation rates, and drop-out rates of American Indian students.



**History:** En. Sec. 4, Ch. 4, Sp. L. December 2005; amd. Sec. 18, Ch. 1, Sp. L. May 2007; amd. Sec. 3, Ch. 118, L. 2013.

**20-9-331. Basic county tax for elementary equalization and other revenue for county equalization of elementary BASE funding program.** (1) Subject to 15-10-420, the county commissioners of each county shall levy an annual basic county tax of 33 mills on the dollar of the taxable value of all taxable property within the county, except for property subject to a tax or fee under 61-3-321(2) or (3), 61-3-529, 61-3-537, 61-3-562, 61-3-570, and 67-3-204, for the purposes of elementary equalization and state BASE funding program support. The revenue collected from this levy must be apportioned to the support of the elementary BASE funding programs of the school districts in the county and to the state general fund in the following manner:

(a) In order to determine the amount of revenue raised by this levy that is retained by the county, the sum of the estimated revenue identified in subsection (2) must be subtracted from the total of the BASE funding programs of all elementary districts of the county.

(b) If the basic levy and other revenue prescribed by this section produce more revenue than is required to repay a state advance for county equalization, the county treasurer shall remit the surplus funds to the department of revenue, as provided in 15-1-504, for deposit to the state general fund immediately upon occurrence of a surplus balance and each subsequent month, with any final remittance due no later than June 20 of the fiscal year for which the levy has been set.

(2) The revenue realized from the county's portion of the levy prescribed by this section and the revenue from the following sources must be used for the equalization of the elementary BASE funding program of the county as prescribed in 20-9-335, and a separate accounting must be kept of the revenue by the county treasurer in accordance with 20-9-212(1):

(a) the portion of the federal Taylor Grazing Act funds designated for the elementary county equalization fund under the provisions of 17-3-222;

(b) the portion of the federal flood control act funds distributed to a county and designated for expenditure for the benefit of the county common schools under the provisions of 17-3-232;

(c) all money paid into the county treasury as a result of fines for violations of law, except money paid to a justice's court, and the use of which is not otherwise specified by law;

(d) any money remaining at the end of the immediately preceding school fiscal year in the county treasurer's accounts for the various sources of revenue established or referred to in this section;

(e) any federal or state money distributed to the county as payment in lieu of property taxation, including federal forest reserve funds allocated under the provisions of 17-3-213;

(f) gross proceeds taxes from coal under 15-23-703; and

(g) oil and natural gas production taxes.

**History:** En. 75-6912 by Sec. 262, Ch. 5, L. 1971; amd. Sec. 1, Ch. 355, L. 1973; R.C.M. 1947, 75-6912; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 2, Ch. 413, L. 1983; amd. Sec. 1, Ch. 418, L. 1983; amd. Sec. 2, Ch. 699, L. 1983; amd. Sec. 1, Ch. 50, L. 1985; amd. Sec. 2, Ch. 265, L. 1985; amd. Sec. 1, Ch. 552, L. 1985; amd. Sec. 13, Ch. 695, L. 1985; amd. Sec. 15, Ch. 557, L. 1987; amd. Sec. 16, Ch. 611, L. 1987; amd. Sec. 20, Ch. 655, L. 1987; amd. Secs. 35, 84, Ch. 11, Sp. L. June 1989; amd. Sec. 9, Ch. 267, L. 1991; amd. Sec. 4, Ch. 6, Sp. L. July 1992; amd. Sec. 55, Ch. 633, L. 1993; amd. Sec. 17, Ch. 9, Sp. L. November 1993; amd. Sec. 41, Ch. 451, L. 1995; amd. Sec. 33, Ch. 509, L. 1995; amd. Sec. 3, Ch. 580, L. 1995; amd. Sec. 20, Ch. 22, L. 1997; amd. Sec. 10, Ch. 496, L. 1997; amd. Sec. 15, Ch. 515, L. 1999; amd. Sec. 11, Ch. 554, L. 1999; amd. Sec. 111, Ch. 584, L. 1999; amd. Sec. 6, Ch. 191, L. 2001; amd. Sec. 10, Ch. 257, L. 2001; amd. Sec. 119, Ch. 574, L. 2001; amd. Sec. 5, Ch. 41, L. 2003; amd. Sec. 17, Ch. 542, L. 2005.

#### **Cross-References**

Collection and disposition of fines, penalties, forfeitures, and fees in Justice Court, 3-10-601.

**20-9-332. Fines and penalties proceeds for elementary county equalization.** All fines and penalties collected under the provisions of this title, except those collected by a justice's court, must be paid into the elementary county equalization fund as provided by 20-9-331(2)(c). In order to implement this section and any other provision of law requiring the deposit of fines in the elementary county equalization fund, a report must be made to the county superintendent of the county, at the close of each term, by the clerk of each district court, reporting all fines imposed and collected during the term and indicating the type of violation and the date of collection.

**History:** En. 75-8302 by Sec. 486, Ch. 5, L. 1971; R.C.M. 1947, 75-8302; amd. Sec. 3, Ch. 413, L. 1983; amd. Sec. 16, Ch. 557, L. 1987; amd. Sec. 21, Ch. 22, L. 1997.

**Cross-References**

Collection and disposition of fines, penalties, forfeitures, and fees in Justice Court, 3-10-601.  
 Penalty for violation of school laws, 20-1-207.

**20-9-333. Basic county tax for high school equalization and other revenue for county equalization of high school BASE funding program.** (1) Subject to 15-10-420, the county commissioners of each county shall levy an annual basic county tax of 22 mills on the dollar of the taxable value of all taxable property within the county, except for property subject to a tax or fee under 61-3-321(2) or (3), 61-3-529, 61-3-537, 61-3-562, 61-3-570, and 67-3-204, for the purposes of high school equalization and state BASE funding program support. The revenue collected from this levy must be apportioned to the support of the BASE funding programs of high school districts in the county and to the state general fund in the following manner:

(a) In order to determine the amount of revenue raised by this levy that is retained by the county, the sum of the estimated revenue identified in subsection (2) must be subtracted from the sum of the county's high school tuition obligation and the total of the BASE funding programs of all high school districts of the county.

(b) If the basic levy and other revenue prescribed by this section produce more revenue than is required to repay a state advance for county equalization, the county treasurer shall remit the surplus funds to the department of revenue, as provided in 15-1-504, for deposit to the state general fund immediately upon occurrence of a surplus balance and each subsequent month, with any final remittance due no later than June 20 of the fiscal year for which the levy has been set.

(2) The revenue realized from the county's portion of the levy prescribed in this section and the revenue from the following sources must be used for the equalization of the high school BASE funding program of the county as prescribed in 20-9-335, and a separate accounting must be kept of the revenue by the county treasurer in accordance with 20-9-212(1):

(a) any money remaining at the end of the immediately preceding school fiscal year in the county treasurer's accounts for the various sources of revenue established in this section;

(b) any federal or state money distributed to the county as payment in lieu of property taxation, including federal forest reserve funds allocated under the provisions of 17-3-213;

(c) gross proceeds taxes from coal under 15-23-703; and

(d) oil and natural gas production taxes.

**History:** En. 75-6913 by Sec. 263, Ch. 5, L. 1971; amd. Sec. 2, Ch. 355, L. 1973; R.C.M. 1947, 75-6913; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 2, Ch. 418, L. 1983; amd. Sec. 3, Ch. 699, L. 1983; amd. Sec. 2, Ch. 50, L. 1985; amd. Sec. 3, Ch. 265, L. 1985; amd. Sec. 3, Ch. 299, L. 1985; amd. Sec. 2, Ch. 552, L. 1985; amd. Sec. 14, Ch. 695, L. 1985; amd. Sec. 17, Ch. 611, L. 1987; amd. Sec. 21, Ch. 655, L. 1987; amd. Secs. 36, 85, Ch. 11, Sp. L. June 1989; amd. Sec. 10, Ch. 267, L. 1991; amd. Sec. 5, Ch. 6, Sp. L. July 1992; amd. Sec. 55, Ch. 633, L. 1993; amd. Sec. 18, Ch. 9, Sp. L. November 1993; amd. Sec. 42, Ch. 451, L. 1995; amd. Sec. 34, Ch. 509, L. 1995; amd. Sec. 4, Ch. 580, L. 1995; amd. Sec. 22, Ch. 22, L. 1997; amd. Sec. 11, Ch. 496, L. 1997; amd. Sec. 16, Ch. 515, L. 1999; amd. Sec. 12, Ch. 554, L. 1999; amd. Sec. 112, Ch. 584, L. 1999; amd. Sec. 7, Ch. 191, L. 2001; amd. Sec. 11, Ch. 257, L. 2001; amd. Sec. 120, Ch. 574, L. 2001; amd. Sec. 18, Ch. 542, L. 2005.

**20-9-334. Repealed.** Sec. 9, Ch. 464, L. 2001.

**History:** En. 75-6914 by Sec. 264, Ch. 5, L. 1971; amd. Sec. 19, Ch. 266, L. 1977; R.C.M. 1947, 75-6914; amd. Sec. 3, Ch. 552, L. 1985; amd. Sec. 6, Ch. 711, L. 1991; amd. Sec. 8, Ch. 765, L. 1991; amd. Sec. 6, Ch. 6, Sp. L. July 1992; amd. Sec. 23, Ch. 22, L. 1997.

**20-9-335. Formula for apportionment of county equalization money.** (1) The superintendent of public instruction shall calculate the apportionment of revenue available in the elementary and high school county equalization funds in accordance with the following procedure:

(a) determine the percentage that the county equalization money available for the support of the elementary direct state aid of the districts in the county is of the total elementary direct state aid of all districts in the county;

(b) multiply the elementary direct state aid amount of each district by the percentage determined in subsection (1)(a) to determine the portion of the county equalization money available to each school district.

(2) The procedure in subsection (1) must also be applied for the high school direct state aid.

(3) Territory situated within a county may not be excluded from the calculations of the county equalization money under this section solely because the territory lies within the

boundaries of a joint district. Cash balances to the credit of any district at the end of a school fiscal year may not be considered in the apportionment procedure prescribed in this section.

(4) The county equalization money reported under these procedures is the first source of revenue for financing the elementary and high school direct state aid payments.

**History:** En. 75-6915 by Sec. 265, Ch. 5, L. 1971; amd. Sec. 11, Ch. 137, L. 1973; amd. Sec. 1, Ch. 255, L. 1973; R.C.M. 1947, 75-6915; amd. Sec. 4, Ch. 413, L. 1983; amd. Sec. 4, Ch. 299, L. 1985; amd. Sec. 7, Ch. 6, Sp. L. July 1992; amd. Sec. 47, Ch. 633, L. 1993; amd. Sec. 24, Ch. 22, L. 1997; amd. Sec. 7, Ch. 464, L. 2001; amd. Sec. 6, Ch. 463, L. 2005.

**20-9-336 through 20-9-340 reserved.**

**20-9-341. Definition of interest and income money.** (1) Subject to deductions made under 77-1-109, as used in this title, the term “interest and income money” means the total of the following revenue, as provided for by Article X, section 5, of the 1972 Montana constitution:

- (a) 95% of the interest received from the investment of the public school fund;
- (b) 95% of the interest received from the investment of any other school funds held in trust by the state board of land commissioners;
- (c) 95% of the income received from the leasing of or sale of timber from state school lands; and
- (d) 95% of any other income derived from any other covenant affecting the use of state school lands.

(2) The remaining 5% of the revenue described in subsections (1)(a) through (1)(d) must be annually credited to the public school fund after any deductions made under 77-1-109.

**History:** En. 75-6907 by Sec. 257, Ch. 5, L. 1971; amd. Sec. 9, Ch. 137, L. 1973; R.C.M. 1947, 75-6907; amd. Sec. 3, Ch. 14, Sp. L. January 1992; amd. Sec. 113, Ch. 42, L. 1997; amd. Sec. 5, Ch. 122, L. 1999; amd. Sec. 4, Ch. 465, L. 2009.

**Cross-References**

Public school fund, Art. X, sec. 2, Mont. Const.  
Board of Land Commissioners, Art. X, sec. 4, Mont. Const.  
The Enabling Act, sec. 11 (see anno. vol. 1).

**20-9-342. Deposit of interest and income money by state board of land commissioners.** (1) Except as provided in 20-9-516, the state board of land commissioners shall deposit the interest and income money for each fiscal year into the guarantee account, provided for in 20-9-622, by the last business day of February and June before the close of the fiscal year in which the money was received. Except as provided in subsection (2), money in the guarantee account must be used for state equalization aid.

(2) Any excess interest and income revenue deposited in the guarantee account in each fiscal year must be distributed in accordance with 20-9-622(2).

(3) For purposes of this section, “excess interest and income revenue” means an annual amount in excess of \$56 million.

**History:** En. 75-6908 by Sec. 258, Ch. 5, L. 1971; amd. Sec. 10, Ch. 137, L. 1973; R.C.M. 1947, 75-6908; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 35, Ch. 509, L. 1995; amd. Sec. 4, Ch. 554, L. 2001; amd. Sec. 2, Ch. 10, Sp. L. August 2002; amd. Sec. 12, Ch. 377, L. 2009; amd. Sec. 1, Ch. 93, L. 2011; amd. Sec. 14, Ch. 400, L. 2013; amd. Sec. 7, Ch. 336, L. 2017.

**Compiler’s Comments**

*2017 Amendment:* Chapter 336 in (2) at beginning deleted “Subject to subsection (3)”; deleted former (3) that read: “(3) The excess interest and income revenue must equal at least \$1 million in order to be distributed pursuant to subsection (2). Excess interest and income revenue of \$1 million or less must be carried forward and added to the excess interest and income revenue in the next ensuing school fiscal year and distributed in accordance with 20-9-622(2)”; and made minor changes in style. Amendment effective July 1, 2017.

*Applicability:* Section 28, Ch. 336, L. 2017, provided: “[This act] applies to school budgets for school years beginning on or after July 1, 2017.”

**Cross-References**

Disposition of revenue and profits from state lands, 77-1-216.

**20-9-343. Definition of and revenue for state equalization aid.** (1) As used in this title, the term “state equalization aid” means revenue as required in this section for:

- (a) distribution to the public schools for guaranteed tax base aid, BASE aid, and state debt service assistance; and
- (b) negotiated payments authorized under 20-7-420(3) up to \$500,000 a biennium.

(2) The superintendent of public instruction may spend throughout the biennium funds appropriated for the purposes of guaranteed tax base aid, BASE aid for the BASE funding program, state debt service assistance, and negotiated payments authorized under 20-7-420(3).

(3) The following money must be paid into the guarantee account provided for in 20-9-622 for the public schools of the state as indicated:

(a) subject to 20-9-516(2)(a), interest and income money described in 20-9-341 and 20-9-342; and

(b) investment income earned by investing interest and income money described in 20-9-341 and 20-9-342.

**History:** En. 75-6916 by Sec. 266, Ch. 5, L. 1971; amd. Sec. 12, Ch. 137, L. 1973; amd. Sec. 3, Ch. 355, L. 1973; amd. Sec. 12, Ch. 502, L. 1975; amd. Sec. 1, Ch. 356, L. 1977; R.C.M. 1947, 75-6916; amd. Sec. 15, Ch. 634, L. 1979; amd. Sec. 2, Ch. 317, L. 1981; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 2, Ch. 20, Sp. L. June 1986; amd. Sec. 70, Ch. 370, L. 1987; amd. Sec. 3, Ch. 662, L. 1987; amd. Sec. 5, Ch. 666, L. 1987; amd. Sec. 37, Ch. 11, Sp. L. June 1989; amd. Sec. 5, Ch. 622, L. 1991; amd. Secs. 1, 3, Ch. 729, L. 1991; amd. Sec. 18, Ch. 787, L. 1991; amd. Sec. 6, Ch. 375, L. 1993; amd. Sec. 8, Ch. 593, L. 1993; amd. Sec. 24, Ch. 633, L. 1993; amd. Sec. 36, Ch. 509, L. 1995; amd. Sec. 4, Ch. 517, L. 1995; amd. Sec. 17, Ch. 237, L. 2001; amd. Sec. 5, Ch. 554, L. 2001; amd. Secs. 3, 5, Ch. 10, Sp. L. August 2002; amd. Sec. 13, Ch. 377, L. 2009; amd. Sec. 4, Ch. 404, L. 2017.

#### **Compiler's Comments**

*2017 Amendment:* Chapter 404 in (1)(a) and in (2) substituted "state debt service assistance" for "state reimbursement for school facilities". Amendment effective May 19, 2017.

*Applicability:* Section 15, Ch. 404, L. 2017, provided that this section applies to school district budgets beginning on or after July 1, 2017.

#### **Cross-References**

Disposal of severance taxes, 15-35-108.

Funding for special education cooperatives or joint boards, 20-7-457.

Local impact and education trust fund account created, 90-6-202.

**20-9-344. Duties of board of public education for distribution of BASE aid.** (1) The board of public education shall administer and distribute the BASE aid and state advances for county equalization in the manner and with the powers and duties provided by law. The board of public education:

(a) shall adopt policies for regulating the distribution of BASE aid and state advances for county equalization in accordance with the provisions of law;

(b) may require reports from the county superintendents, county treasurers, and trustees that it considers necessary; and

(c) shall order the superintendent of public instruction to distribute the BASE aid on the basis of each district's annual entitlement to the aid as established by the superintendent of public instruction. In ordering the distribution of BASE aid, the board of public education may not increase or decrease the BASE aid distribution to any district on account of any difference that may occur during the school fiscal year between budgeted and actual receipts from any other source of school revenue.

(2) The board of public education may order the superintendent of public instruction to withhold distribution of BASE aid from a district when the district fails to:

(a) submit reports or budgets as required by law or rules adopted by the board of public education; or

(b) maintain accredited status because of failure to meet the board of public education's assurance and performance standards.

(3) Prior to any proposed order by the board of public education to withhold distribution of BASE aid or county equalization money, the district is entitled to a contested case hearing before the board of public education, as provided under the Montana Administrative Procedure Act.

(4) If a district or county receives more BASE aid than it is entitled to, the county treasurer shall return the overpayment to the state upon the request of the superintendent of public instruction in the manner prescribed by the superintendent of public instruction.

(5) Except as provided in 20-9-347(2), the BASE aid payment must be distributed according to the following schedule:

(a) from August to October of the school fiscal year, to each district 10% of:

(i) direct state aid;

(ii) the total quality educator payment;

(iii) the total at-risk student payment;



- (iv) the total Indian education for all payment;
- (v) the total American Indian achievement gap payment; and
- (vi) the total data-for-achievement payment;
- (b) from December to April of the school fiscal year, to each district 10% of:
  - (i) direct state aid;
  - (ii) the total quality educator payment;
  - (iii) the total at-risk student payment;
  - (iv) the total Indian education for all payment;
  - (v) the total American Indian achievement gap payment; and
  - (vi) the total data-for-achievement payment;
- (c) in November of the school fiscal year, one-half of the guaranteed tax base aid payment to each district or county that has submitted a final budget to the superintendent of public instruction in accordance with the provisions of 20-9-134;
- (d) in May of the school fiscal year, the remainder of the guaranteed tax base aid payment to each district or county; and
- (e) in June of the school fiscal year, the remaining payment to each district of direct state aid, the total quality educator payment, the total at-risk student payment, the total Indian education for all payment, the total American Indian achievement gap payment, and the total data-for-achievement payment.
- (6) The distribution provided for in subsection (5) must occur by the last working day of each month.

**History:** En. 75-6917 by Sec. 267, Ch. 5, L. 1971; amd. Sec. 1, Ch. 166, L. 1973; amd. Sec. 2, Ch. 345, L. 1973; amd. Sec. 1, Ch. 346, L. 1973; amd. Sec. 1, Ch. 55, L. 1974; amd. Sec. 41, Ch. 213, L. 1975; R.C.M. 1947, 75-6917; amd. Sec. 7, Ch. 274, L. 1981; amd. Sec. 6, Ch. 317, L. 1981; amd. Secs. 1, 3, Ch. 236, L. 1983; amd. Sec. 1, Ch. 287, L. 1983; amd. Sec. 1, Ch. 18, Sp. L. June 1986; amd. Sec. 4, Ch. 1, Sp. L. June 1989; amd. Sec. 38, Ch. 11, Sp. L. June 1989; amd. Sec. 6, Ch. 622, L. 1991; amd. Sec. 28, Ch. 767, L. 1991; amd. Sec. 1, Ch. 1, Sp. L. July 1992; amd. Sec. 8, Ch. 6, Sp. L. July 1992; amd. Sec. 25, Ch. 633, L. 1993; amd. Sec. 1, Ch. 308, L. 1999; amd. Sec. 62, Ch. 114, L. 2003; amd. Sec. 10, Ch. 4, Sp. L. December 2005; amd. Sec. 15, Ch. 400, L. 2013; amd. Sec. 8, Ch. 336, L. 2017.

**Compiler's Comments**

*2017 Amendment:* Chapter 336 in (5)(a), (5)(b), and (5)(e) deleted "the total natural resource development K-12 funding payment"; and made minor changes in style. Amendment effective July 1, 2017.

*Applicability:* Section 28, Ch. 336, L. 2017, provided: "[This act] applies to school budgets for school years beginning on or after July 1, 2017."

**20-9-345. Repealed.** Sec. 7, Ch. 317, L. 1981.

**History:** En. 75-6917.1 by Sec. 2, Ch. 55, L. 1974; R.C.M. 1947, 75-6917.1; amd. Sec. 1, Ch. 540, L. 1981.

**20-9-346. Duties of superintendent of public instruction for state and county equalization aid distribution.** The superintendent of public instruction shall administer the distribution of the state and county equalization aid by:

(1) establishing the annual entitlement of each district and county to state and county equalization aid, based on the data reported in the retirement, general fund, and debt service fund budgets for each district that have been adopted for the current school fiscal year and verified by the superintendent of public instruction;

(2) for the purposes of state advances and reimbursements for school facilities, limiting the distribution to no more than the amount appropriated for the school fiscal year to the districts that are eligible under the provisions of 20-9-366 through 20-9-371 by:

(a) determining the debt service payment obligation in each district for debt service on bonds that were sold as provided in 20-9-370(3) that qualify for a state advance or reimbursement for school facilities under the provisions of 20-9-366 through 20-9-369 and 20-9-370;

(b) based on the limitation of state equalization aid appropriated for debt service purposes, determining the state advance for school facilities and the proportionate share of state reimbursement for school facilities that each eligible district must receive for the school fiscal year; and

(c) distributing that amount by May 31 of each school fiscal year to each eligible district for reducing the property tax for the debt service fund for the ensuing school fiscal year;

(3) distributing by electronic transfer the BASE aid and state advances for county equalization, for each district or county entitled to the aid, to the county treasurer of the respective county for county equalization or to the county treasurer of the county where the



district is located or to the investment account identified by the applicable district for BASE aid, in accordance with the distribution ordered by the board of public education;

(4) keeping a record of the full and complete data concerning money available for state equalization aid, state advances for county equalization, and the entitlements for BASE aid of the districts of the state;

(5) reporting to the board of public education the estimated amount that will be available for state equalization aid; and

(6) reporting to the office of budget and program planning, as provided in 17-7-111:

(a) the figures and data available concerning distributions of state and county equalization aid during the preceding 2 school fiscal years;

(b) the amount of state equalization aid then available;

(c) the apportionment made of the available money but not yet distributed;

(d) the latest estimate of accruals of money available for state equalization aid; and

(e) the amount of state advances and repayment for county equalization.

**History:** En. 75-6918 by Sec. 268, Ch. 5, L. 1971; amd. Sec. 2, Ch. 166, L. 1973; R.C.M. 1947, 75-6918; amd. Sec. 39, Ch. 11, Sp. L. June 1989; amd. Sec. 26, Ch. 112, L. 1991; amd. Sec. 9, Ch. 6, Sp. L. July 1992; amd. Sec. 26, Ch. 349, L. 1993; amd. Sec. 26, Ch. 633, L. 1993; amd. Sec. 37, Ch. 509, L. 1995; amd. Sec. 1, Ch. 586, L. 1995; amd. Sec. 3, Ch. 205, L. 2001.

**20-9-347. Distribution of BASE aid and special education allowable cost payments in support of BASE funding program — exceptions.** (1) The superintendent of public instruction shall:

(a) supply the county treasurer and the county superintendent with a monthly report of the payment of BASE aid in support of the BASE funding program of each district of the county;

(b) in the manner described in 20-9-344, provide for a state advance to each county in an amount that is no less than the amount anticipated to be raised for the elementary and high school county equalization funds as provided in 20-9-331 and 20-9-333; and

(c) adopt rules to implement the provisions of subsection (1)(b).

(2) (a) The superintendent of public instruction is authorized to adjust the schedule prescribed in 20-9-344 for distribution of the BASE aid payments if the distribution will cause a district to register warrants under the provisions of 20-9-212(8).

(b) To qualify for an adjustment in the payment schedule, a district shall demonstrate to the superintendent of public instruction, in the manner required by the office, that the payment schedule prescribed in 20-9-344 will result in insufficient money available in all funds of the district to make payment of the district's warrants. The county treasurer shall confirm the anticipated deficit. This section may not be construed to authorize the superintendent of public instruction to exceed a district's annual payment for BASE aid.

(3) The superintendent of public instruction shall:

(a) distribute special education allowable cost payments to districts; and

(b) supply the county treasurer and the county superintendent of schools with a report of payments for special education allowable costs to districts of the county.

**History:** En. 75-6919 by Sec. 269, Ch. 5, L. 1971; R.C.M. 1947, 75-6919; amd. Sec. 40, Ch. 11, Sp. L. June 1989; amd. Sec. 10, Ch. 6, Sp. L. July 1992; amd. Sec. 27, Ch. 633, L. 1993; amd. Sec. 25, Ch. 22, L. 1997; amd. Sec. 114, Ch. 42, L. 1997.

**20-9-348. Estimation of state equalization aid for budget purposes.** The apportionment of state equalization aid shall be the second source of revenue in calculating the financing of the elementary district BASE funding program and the high school district BASE funding program. In order to allow for the estimation of the amount of money to be realized from this source of revenue when the county superintendent is estimating the general fund budget revenues, the county superintendent shall consider that the state BASE funding program revenues and county equalization moneys, together, will be capable of financing 100% of the BASE funding program.

**History:** En. 75-6920 by Sec. 270, Ch. 5, L. 1971; R.C.M. 1947, 75-6920; amd. Sec. 5, Ch. 299, L. 1985.

**20-9-349 and 20-9-350 reserved.**

**20-9-351. Funding of deficiency in BASE aid.** If the money available for BASE aid is not the result of a reduction in spending under 17-7-140 and is not sufficient to provide the guaranteed tax base aid required under 20-9-366 through 20-9-369 and BASE aid support

determined under 20-9-347, the superintendent of public instruction shall request the budget director to submit a request for a supplemental appropriation in the second year of the biennium that is sufficient to complete the funding of BASE aid for the elementary and high school districts for the current biennium.

**History:** En. 75-6921 by Sec. 271, Ch. 5, L. 1971; amd. Sec. 4, Ch. 355, L. 1973; R.C.M. 1947, 75-6921; amd. Sec. 3, Ch. 317, L. 1981; amd. Sec. 2, Ch. 540, L. 1981; amd. Sec. 4, Ch. 15, L. 1985; amd. Sec. 6, Ch. 299, L. 1985; amd. Sec. 41, Ch. 11, Sp. L. June 1989; amd. Sec. 3, Ch. 5, Sp. L. July 1992; amd. Sec. 28, Ch. 633, L. 1993.

**Cross-References**

Supplemental appropriations, 17-7-301.

**20-9-352. Repealed.** Sec. 94, Ch. 11, Sp. L. June 1989.

**History:** En. 75-6922 by Sec. 272, Ch. 5, L. 1971; amd. Sec. 5, Ch. 355, L. 1973; amd. Sec. 1, Ch. 212, L. 1975; R.C.M. 1947, 75-6922; amd. Sec. 4, Ch. 317, L. 1981; amd. Sec. 3, Ch. 540, L. 1981; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 3, Ch. 418, L. 1983; amd. Sec. 4, Ch. 699, L. 1983; amd. Sec. 5, Ch. 15, L. 1985; amd. Sec. 4, Ch. 265, L. 1985; amd. Sec. 15, Ch. 695, L. 1985; amd. Sec. 18, Ch. 611, L. 1987; amd. Sec. 22, Ch. 655, L. 1987; amd. Sec. 30, Ch. 83, L. 1989; amd. Sec. 86, Ch. 11, Sp. L. June 1989.

**20-9-353. Additional financing for general fund — election for authorization to impose.** (1) The trustees of a district may propose to adopt an over-BASE budget amount for the district general fund that does not exceed the general fund budget limitations, as provided in 20-9-308.

(2) When the trustees of the district propose to adopt an over-BASE budget under subsection (1), any increase in local property taxes authorized by 20-9-308(4) over revenue previously authorized by the electors of the district or imposed by the district in any of the previous 5 years must be submitted to a vote of the qualified electors of the district, as provided in 15-10-425. The trustees are not required to submit to the qualified electors any increase in state funding of the basic or per-ANB entitlements or of the general fund payments established in 20-9-327 through 20-9-330 approved by the legislature. When the trustees of a district determine that a voted amount of financing is required for the general fund budget, the trustees shall submit the proposition to finance the voted amount to the electors who are qualified under 20-20-301 to vote upon the proposition. The election must be called and conducted in the manner prescribed by this title for school elections and must conform to the requirements of 15-10-425. The ballot for the election must conform to the requirements of 15-10-425.

(3) If the proposition on any additional financing for the general fund is approved by a majority vote of the electors voting at the election, the proposition carries and the trustees may use any portion or all of the authorized amount in adopting the final general fund budget. The trustees shall certify any additional levy amount authorized by the election on the budget form that is submitted to the county superintendent, and the county commissioners shall levy the authorized number of mills on the taxable value of all taxable property within the district, as prescribed in 20-9-141.

(4) All levies adopted under this section must be authorized by the election conducted before August 1 of the school fiscal year for which it is effective.

(5) If the trustees of a district are required to submit a proposition to finance an over-BASE budget amount, as allowed by 20-9-308, to the electors of the district, the trustees shall comply with the provisions of subsections (2) through (4) of this section.

**History:** En. 75-6923 by Sec. 273, Ch. 5, L. 1971; amd. Sec. 7, Ch. 83, L. 1971; amd. Sec. 6, Ch. 355, L. 1973; amd. Sec. 2, Ch. 214, L. 1974; amd. Sec. 1, Ch. 230, L. 1974; amd. Sec. 1, Ch. 346, L. 1974; amd. Sec. 1, Ch. 454, L. 1975; R.C.M. 1947, 75-6923; amd. Sec. 2, Ch. 72, L. 1979; amd. Sec. 5, Ch. 75, L. 1981; amd. Sec. 2, Ch. 110, L. 1985; amd. Sec. 1, Ch. 338, L. 1987; amd. Sec. 42, Ch. 11, Sp. L. June 1989; amd. Sec. 29, Ch. 767, L. 1991; amd. Sec. 29, Ch. 633, L. 1993; amd. Sec. 1, Ch. 266, L. 1995; amd. Sec. 8, Ch. 211, L. 1997; amd. Secs. 7, 10(2), Ch. 514, L. 1999; amd. Sec. 27, Ch. 495, L. 2001; amd. Sec. 16, Ch. 462, L. 2005; amd. Sec. 3, Ch. 173, L. 2007; amd. Sec. 17, Ch. 418, L. 2011.

**Cross-References**

Property tax levies, Title 15, ch. 10.

School property, Title 20, ch. 6, part 6.

School elections, Title 20, ch. 20.

**20-9-354 through 20-9-359 reserved.**

**20-9-360. State equalization aid levy.** Subject to 15-10-420, there is a levy of 40 mills imposed by the county commissioners of each county on all taxable property within the state, except property for which a tax or fee is required under 61-3-321(2) or (3), 61-3-529, 61-3-537,

61-3-562, 61-3-570, and 67-3-204. Proceeds of the levy must be remitted to the department of revenue, as provided in 15-1-504, and must be deposited to the credit of the state general fund for state equalization aid to the public schools of Montana.

**History:** En. Sec. 50, Ch. 11, Sp. L. June 1989; amd. Sec. 30, Ch. 767, L. 1991; amd. Sec. 38, Ch. 509, L. 1995; amd. Sec. 5, Ch. 580, L. 1995; amd. Sec. 31, Ch. 422, L. 1997; amd. Sec. 12, Ch. 496, L. 1997; amd. Sec. 17, Ch. 515, L. 1999; amd. Sec. 113, Ch. 584, L. 1999; amd. Sec. 13, Ch. 257, L. 2001; amd. Sec. 19, Ch. 542, L. 2005.

**20-9-361. County equalization revenue.** Revenue received in support of county equalization under the provisions of 20-9-331 and 20-9-333 is to be used for county equalization aid for the public schools, as provided by law, and must be accounted for in accordance with generally accepted accounting principles.

**History:** En. Sec. 51, Ch. 11, Sp. L. June 1989; amd. Sec. 2, Ch. 729, L. 1991; amd. Sec. 39, Ch. 509, L. 1995; amd. Sec. 32, Ch. 422, L. 1997.

**20-9-362 through 20-9-365 reserved.**

**20-9-366. Definitions.** As used in 20-9-366 through 20-9-371, the following definitions apply:

(1) “County retirement mill value per elementary ANB” or “county retirement mill value per high school ANB” means the sum of the taxable valuation in the previous year of all property in the county divided by 1,000, with the quotient divided by the total county elementary ANB count or the total county high school ANB count used to calculate the elementary school districts’ and high school districts’ prior year total per-ANB entitlement amounts.

(2) (a) “District guaranteed tax base ratio” for guaranteed tax base funding for the BASE budget of an eligible district means the taxable valuation in the previous year of all property in the district, except for property value disregarded because of protested taxes under 15-1-409(2) or property subject to the creation of a new school district under 20-6-326, divided by the district’s prior year GTBA budget area.

(b) “District mill value per ANB”, for school facility entitlement purposes, means the taxable valuation in the previous year of all property in the district, except for property subject to the creation of a new school district under 20-6-326, divided by 1,000, with the quotient divided by the ANB count of the district used to calculate the district’s prior year total per-ANB entitlement amount.

(3) “Facility guaranteed mill value per ANB”, for school facility entitlement guaranteed tax base purposes, means the sum of the taxable valuation in the previous year of all property in the state, multiplied by 140% and divided by 1,000, with the quotient divided by the total state elementary ANB count or the total state high school ANB count used to calculate the elementary school districts’ and high school districts’ prior year total per-ANB entitlement amounts.

(4) “Guaranteed tax base aid budget area” or “GTBA budget area” means the portion of a district’s BASE budget after the following payments are subtracted:

- (a) direct state aid;
- (b) the total data-for-achievement payment;
- (c) the total quality educator payment;
- (d) the total at-risk student payment;
- (e) the total Indian education for all payment;
- (f) the total American Indian achievement gap payment; and
- (g) the state special education allowable cost payment.

(5) (a) “Statewide elementary guaranteed tax base ratio” or “statewide high school guaranteed tax base ratio”, for guaranteed tax base funding for the BASE budget of an eligible district, means the sum of the taxable valuation in the previous year of all property in the state, multiplied by 193% for fiscal year 2018, 216% for fiscal year 2019, 224% for fiscal year 2020, and 232% for fiscal year 2021 and each succeeding fiscal year and divided by the prior year statewide GTBA budget area for the state elementary school districts or the state high school districts.

(b) “Statewide mill value per elementary ANB” or “statewide mill value per high school ANB”, for school retirement guaranteed tax base purposes, means the sum of the taxable valuation in the previous year of all property in the state, multiplied by 121% and divided by 1,000, with the quotient divided by the total state elementary ANB count or the total state high school ANB amount used to calculate the elementary school districts’ and high school districts’ prior year total per-ANB entitlement amounts.

**History:** En. Sec. 60, Ch. 11, Sp. L. June 1989; amd. Sec. 4, Ch. 3, Sp. L. May 1990; amd. Sec. 7, Ch. 711, L. 1991; amd. Sec. 1, Ch. 790, L. 1991; amd. Sec. 30, Ch. 633, L. 1993; amd. Sec. 3, Ch. 211, L. 1999; amd. Sec. 4, Ch. 550, L. 2003; amd. Sec. 17, Ch. 462, L. 2005; amd. Sec. 3, Ch. 194, L. 2007; amd. Sec. 19, Ch. 1, Sp. L. May 2007; amd. Sec. 3, Ch. 261, L. 2011; amd. Sec. 2, Ch. 8, L. 2015; amd. Sec. 9, Ch. 336, L. 2017.

**Compiler's Comments**

*2017 Amendment:* Chapter 336 in (5)(a) after “multiplied by 193%” inserted “for fiscal year 2018, 216% for fiscal year 2019, 224% for fiscal year 2020, and 232% for fiscal year 2021 and each succeeding fiscal year”. Amendment effective July 1, 2017.

*Applicability:* Section 28, Ch. 336, L. 2017, provided: “[This act] applies to school budgets for school years beginning on or after July 1, 2017.”

**20-9-367. Eligibility to receive guaranteed tax base aid or state debt service assistance for school facilities.** (1) If the district guaranteed tax base ratio of an elementary or high school district is less than the corresponding statewide elementary or high school guaranteed tax base ratio, the district may receive guaranteed tax base aid based on the number of mills levied in the district in support of up to 35.3% of the basic entitlement, up to 35.3% of the total per-ANB entitlement, and up to 40% of the special education allowable cost payment budgeted within the general fund budget.

(2) If the county retirement mill value per elementary ANB or the county retirement mill value per high school ANB is less than the corresponding statewide mill value per elementary ANB or high school ANB, the county may receive guaranteed tax base aid based on the number of mills levied in the county in support of the retirement fund budgets of the respective elementary or high school districts in the county.

(3) For the purposes of 20-9-370 and 20-9-371, if the district mill value per elementary ANB or the district mill value per high school ANB is less than the corresponding statewide mill value per elementary ANB or statewide mill value per high school ANB, the district may receive debt service assistance in the form of a state advance or reimbursement for school facilities in support of the debt service fund.

**History:** En. Sec. 61, Ch. 11, Sp. L. June 1989; amd. Sec. 8, Ch. 711, L. 1991; amd. Sec. 32, Ch. 767, L. 1991; amd. Sec. 31, Ch. 633, L. 1993; amd. Sec. 2, Ch. 586, L. 1995; amd. Secs. 4, 5, Ch. 211, L. 1999; amd. Sec. 9, Ch. 11, Sp. L. May 2000; amd. Sec. 5, Ch. 404, L. 2017.

**Compiler's Comments**

*2017 Amendment:* Chapter 404 in (3) after “the district may receive” inserted “debt service assistance in the form of”; and made minor changes in style. Amendment effective May 19, 2017.

*Applicability:* Section 15, Ch. 404, L. 2017, provided that this section applies to school district budgets beginning on or after July 1, 2017.

**20-9-368. Amount of guaranteed tax base aid.** (1) The amount of guaranteed tax base aid per ANB that a county may receive in support of the retirement fund budgets of the elementary school districts in the county is the difference between the county mill value per elementary ANB and the statewide mill value per elementary ANB, multiplied by the number of mills levied in support of the retirement fund budgets for the elementary districts in the county.

(2) The amount of guaranteed tax base aid per ANB that a county may receive in support of the retirement fund budgets of the high school districts in the county is the difference between the county mill value per high school ANB and the statewide mill value per high school ANB, multiplied by the number of mills levied in support of the retirement fund budgets for the high school districts in the county.

(3) The amount of guaranteed tax base aid that a district may receive in support of up to 35.3% of the basic entitlement, up to 35.3% of the total per-ANB entitlement budgeted within the general fund budget, and up to 40% of the special education payment is calculated in the following manner:

(a) multiply the sum of the district's prior year GTBA budget area by the corresponding statewide guaranteed tax base ratio;

(b) subtract the prior year taxable valuation of the district from the product obtained in subsection (3)(a); and

(c) divide the remainder by 1,000 to determine the equivalent to the dollar amount of guaranteed tax base aid for each mill levied.

(4) Guaranteed tax base aid provided to any county or district under this section is earmarked to finance the fund or portion of the fund for which it is provided. If a county or district receives more guaranteed tax base aid than it is entitled to, the excess must be returned to the state as required by 20-9-344.



**History:** En. Sec. 62, Ch. 11, Sp. L. June 1989; amd. Sec. 9, Ch. 711, L. 1991; amd. Sec. 33, Ch. 767, L. 1991; amd. Sec. 32, Ch. 633, L. 1993; amd. Secs. 6, 7, Ch. 211, L. 1999; amd. Sec. 10, Ch. 11, Sp. L. May 2000; amd. Sec. 3, Ch. 8, L. 2015.

**20-9-369. Duties of superintendent of public instruction and department of revenue.** (1) The superintendent of public instruction shall administer the distribution of guaranteed tax base aid by:

(a) providing each school district and county superintendent, by March 1 of each year, with the preliminary statewide and district guaranteed tax base ratios and, by May 1 of each year, with the final statewide and district guaranteed tax base ratios, for use in calculating the guaranteed tax base aid available for the ensuing school fiscal year;

(b) providing each school district and county superintendent, by March 1 of each year, with the preliminary statewide, county, and district mill values per ANB and, by May 1 of each year, with the final statewide, county, and district mill values per ANB, for use in calculating the guaranteed tax base aid and state advance and reimbursement for school facilities available to counties and districts for the ensuing school fiscal year;

(c) requiring each county and district that qualifies and applies for guaranteed tax base aid to report to the county superintendent all budget and accounting information required to administer the guaranteed tax base aid;

(d) keeping a record of the complete data concerning appropriations available for guaranteed tax base aid and the entitlements for the aid of the counties and districts that qualify;

(e) distributing the guaranteed tax base aid entitlement to each qualified county or district from the appropriations for that purpose.

(2) The superintendent shall adopt rules necessary to implement 20-9-366 through 20-9-369.

(3) The department of revenue shall provide the superintendent of public instruction by December 1 of each year a final determination of the taxable value of property within each school district and county of the state reported to the department of revenue based on information delivered to the county clerk and recorder as required in 15-10-305.

(4) The superintendent of public instruction shall calculate the district and statewide guaranteed tax base ratios by applying the prior year's direct state aid payment.

**History:** En. Sec. 63, Ch. 11, Sp. L. June 1989; amd. Sec. 2, Ch. 790, L. 1991; amd. Sec. 34, Ch. 633, L. 1993; amd. Sec. 3, Ch. 586, L. 1995.

**20-9-370. Definitions.** As used in this title, unless the context clearly indicates otherwise, the following definitions apply:

(1) "School facility entitlement" means:

(a) \$300 per ANB for an elementary school district;

(b) \$450 per ANB for a high school district; or

(c) \$370 per ANB for an approved and accredited junior high school or middle school.

(2) "State advance for school facilities" is the amount of state equalization aid distributed to an eligible district to pay the debt service obligation for a bond in the first school fiscal year in which a debt service payment is due for the bond.

(3) "State reimbursement for school facilities" means the amount of state equalization aid distributed to a district that:

(a) has a district mill value per ANB that is less than the corresponding facility guaranteed mill value per ANB; and

(b) has a debt service obligation in the ensuing school year on bonds.

(4) "Total school facility entitlement" means the school facility entitlement times the total ANB for the district.

**History:** En. Sec. 38, Ch. 633, L. 1993; amd. Sec. 38, Ch. 18, L. 1995; amd. Sec. 4, Ch. 586, L. 1995; amd. Sec. 5, Ch. 550, L. 2003.

**20-9-371. Calculation and uses of school facility entitlement amount.** (1) The state reimbursement for school facilities for a district is the percentage determined in 20-9-346(2)(b) times (1-(district mill value per ANB/facility guaranteed mill value per ANB)) times the lesser of the total school facility entitlement calculated under the provisions of 20-9-370 or the district's current year debt service obligations on general obligation bonds that qualify under the provisions of 20-9-370(3).

(2) The state advance for school facilities for a district is determined as follows:



(a) Calculate the percentage of the district's debt service payment that will be advanced by the state using the district ANB, the district mill value and the statewide mill value for the current year, and the percentage used to determine the proportionate share of state reimbursement for school facilities in the prior year.

(b) Multiply the percentage determined in subsection (2)(a) by the lesser of the total school facility entitlement calculated under the provisions of 20-9-370 or the district's current year debt service obligation for general obligation bonds to which the state advance applies.

(3) Within the available appropriation, the superintendent of public instruction shall first distribute to eligible districts the state advance for school facilities. From the remaining appropriation, the superintendent shall distribute to eligible districts the state reimbursement for school facilities.

(4) The trustees of a district may apply the state reimbursement for school facilities to reduce the levy requirement in the ensuing school fiscal year for all outstanding bonded indebtedness on general obligation bonds sold in the debt service fund of the district. The trustees may apply the state advance for school facilities to reduce the levy requirement in the current school fiscal year for debt service payments on general obligation bonds to which the state advance for school facilities applies.

**History:** En. Sec. 39, Ch. 633, L. 1993; amd. Sec. 5, Ch. 586, L. 1995; amd. Sec. 1, Ch. 492, L. 2003; amd. Sec. 6, Ch. 550, L. 2003.

**Cross-References**

Duty of Superintendent of Public Instruction to distribute state and county equalization aid, 20-9-346.

**20-9-372 through 20-9-374 reserved.**

**20-9-375. Repealed.** Sec. 22, Ch. 462, L. 2005.

**History:** En. Sec. 3, Ch. 437, L. 1997; amd. Sec. 1, Ch. 474, L. 2001.

**20-9-376. Purpose of increased funding beyond inflation.** The increases in state funding of BASE aid, as defined in 20-9-306, that a school district uses to increase its previous year's adopted general fund budget by an amount in excess of the inflation calculated in compliance with 20-9-326 are for the purpose of assisting school districts in meeting costs of implementing the changes to the Administrative Rules of Montana adopted by the Montana board of public education during fiscal years 2012 and 2013 and to continue to enhance efforts at improving academic achievement for students enrolled in Montana's public schools.

**History:** En. Sec. 33, Ch. 400, L. 2013.

**20-9-377 through 20-9-379 reserved.**

**20-9-380. School facilities fund — school major maintenance aid special revenue account.** (1) There is a school facilities fund administered by the department of administration. Pursuant to 17-5-703, a percentage of coal severance taxes received by the state must be deposited into this fund. Earnings not transferred to the school major maintenance aid account as provided in subsection (2) must be retained in the school facilities fund.

(2) The school major maintenance aid account established in 20-9-525 receives earnings from the school facilities fund as provided in 17-5-703.

(3) A school district that receives funds from the school major maintenance aid account shall, within 30 days of receiving the funds, file with the office of the superintendent of public instruction a document acknowledging it has received funds from the coal severance tax trust fund.

**History:** En. Sec. 1, Ch. 377, L. 2017; amd. Sec. 3, Ch. 259, L. 2017.

**Compiler's Comments**

*2017 Enactment — Coordination:* The enactment of this section by sec. 1, Ch. 377, L. 2017, was rendered void and replaced by sec. 3(1), Ch. 259, L. 2017, a coordination section.

*Effective Date:* Section 4, Ch. 259, L. 2017, and sec. 4, Ch. 377, L. 2017, provided: "[This act] is effective July 1, 2017."

*Applicability:* Section 5, Ch. 259, L. 2017, provided: "[This act] applies to school fiscal years beginning on or after July 1, 2017."

## Part 4 School Bonds

### Part Cross-References

Investment of county money, Title 7, ch. 6, part 27.

Bond issues, Title 17, ch. 5.

Pledge of school bonds to secure deposits of public funds, 17-6-103.

**20-9-401. Applicable laws for school district bonding.** (1) The school district bonding provisions of this title and all applicable laws of the state shall govern:

- (a) the issuance, refunding, and sale of school district bonds;
- (b) the levying of taxes for payment of the principal and interest on school district bonds; and

- (c) the redemption of bonds.

(2) Should there be a conflict between the provisions of this title and the provisions of any other law of the state, the provisions of this title shall govern.

**History:** En. 75-7101 by Sec. 302, Ch. 5, L. 1971; R.C.M. 1947, 75-7101.

### Cross-References

Property tax levies, Title 15, ch. 10.

Refunding bonds, Title 17, ch. 5, part 3.

**20-9-402. Definition of school district for bonding purposes.** For the purposes of incurring an elementary district, a high school district, or a community college district by the issuance of bonds under the provisions of this title, the term “school district” means any elementary district, high school district, county high school district, or community college district.

**History:** En. 75-7102 by Sec. 303, Ch. 5, L. 1971; amd. Sec. 1, Ch. 419, L. 1973; R.C.M. 1947, 75-7102; amd. Sec. 19, Ch. 219, L. 1997.

**20-9-403. Bond issues for certain purposes.** (1) The trustees of a school district may issue and negotiate general obligation bonds, oil and natural gas revenue bonds, or impact aid bonds of the school district for the purpose of:

- (a) building, altering, repairing, buying, furnishing, equipping, purchasing lands for, or obtaining a water supply for a school, teacherage, dormitory, gymnasium, other building, or combination of buildings for school purposes;
- (b) buying a school bus or buses;
- (c) providing the necessary money to redeem matured bonds, maturing bonds, or coupons appurtenant to bonds when there is not sufficient money to redeem them;
- (d) providing the necessary money to redeem optional or redeemable bonds when it is for the best interest of the school district to issue refunding bonds;
- (e) funding a judgment against the district, including the repayment of tax protests lost by the district; or
- (f) funding a debt service reserve account that may be required for oil and natural gas revenue bonds or impact aid revenue bonds.

(2) Money realized from the sale of bonds issued on the credit of a high school district may not be used for any of the purposes listed in subsection (1) in an elementary school district, and the money may be used for any of the purposes listed in subsection (1) for a junior high school but only to the extent that the 9th grade of the high school is served.

(3) If applicable, the trustees shall specify whether the bonds are qualified school construction bonds as described in 17-5-116(1) or tax credit bonds as provided in 17-5-117.

**History:** En. 75-7103 by Sec. 304, Ch. 5, L. 1971; amd. Sec. 1, Ch. 76, L. 1973; amd. Sec. 1, Ch. 189, L. 1973; R.C.M. 1947, 75-7103; amd. Sec. 23, Ch. 658, L. 1987; amd. Sec. 8, Ch. 213, L. 1989; amd. Sec. 2, Ch. 492, L. 2003; amd. Sec. 21, Ch. 489, L. 2009; amd. Sec. 16, Ch. 400, L. 2013.

### Cross-References

Sale of notes in anticipation of federal or state revenue or issuance of bonds, 7-7-109.

Vote unnecessary if bond issue authorized, 20-6-603.

**20-9-404. Contracts and bonds for joint construction.** (1) The trustees of a school district may enter into a contract with the trustees of any school district within the county, with any school district in an adjoining county, with the governing body of another political subdivision within the county in which the school district is located, or with the governing

body of a political subdivision of a county adjoining the school district to provide for the joint construction of a facility upon terms and conditions mutually agreed upon between the districts.

(2) The trustees of any district executing a contract in accordance with this section may, subject to 15-10-420, levy taxes and issue bonds for the purpose of constructing the facilities authorized by this section.

**History:** En. 75-7103.1 by Sec. 1, Ch. 371, L. 1975; R.C.M. 1947, 75-7103.1; amd. Sec. 2, Ch. 397, L. 1997; amd. Sec. 1, Ch. 166, L. 1999; amd. Sec. 114, Ch. 584, L. 1999.

**Cross-References**

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

**20-9-405. Proportional joint ownership — disposition of money.** The facility constructed under 20-9-404 must be jointly owned by the school districts or other political subdivisions contributing to its construction in proportion to the contribution of each political subdivision. The sale or other disposition of a district's interest in the facility must be made in accordance with 20-6-604. Money received from the sale or disposition of a district's interest in a facility must be credited to the debt service fund, building fund, general fund, or any combination of these three funds, at the discretion of the trustees.

**History:** En. 75-7103.2 by Sec. 2, Ch. 371, L. 1975; R.C.M. 1947, 75-7103.2; amd. Sec. 3, Ch. 397, L. 1997; amd. Sec. 2, Ch. 166, L. 1999.

**20-9-406. Limitations on amount of bond issue — definition of federal impact aid basic support payment — oil and natural gas payment.** (1) (a) Except as provided in subsection (1)(c), the maximum amount for which an elementary district or a high school district may become indebted by the issuance of general obligation bonds, including all indebtedness represented by outstanding general obligation bonds of previous issues, registered warrants, outstanding obligations under 20-9-471, oil and natural gas revenue bonds to which a deficiency tax levy is pledged, and any other loans or notes payable that are held as general obligations of the district, is 100% of the taxable value of the property subject to taxation, as ascertained by the last assessment for state, county, and school taxes previous to the incurring of the indebtedness.

(b) Except as provided in subsection (1)(c), the maximum amount for which a K-12 school district, as formed pursuant to 20-6-701, may become indebted by the issuance of general obligation bonds, including all indebtedness represented by outstanding general obligation bonds of previous issues, registered warrants, outstanding obligations under 20-9-471, oil and natural gas revenue bonds to which a deficiency tax levy is pledged, and any other loans or notes payable that are held as general obligations of the district, regardless of whether the general obligation bonds finance elementary program improvements or high school program improvements, is the sum of 100% of the taxable value of the property in its elementary program subject to taxation and 100% of the taxable value of the property in its high school program subject to taxation, as ascertained by the last assessment for state, county, and school taxes previous to the incurring of the indebtedness.

(c) (i) Unless the maximum amount calculated under subsection (1)(a) yields a greater amount, the maximum amount for which an elementary district or a high school district with a district mill value per elementary ANB or per high school ANB that is less than the facility guaranteed mill value per elementary ANB or high school ANB under 20-9-366 may become indebted by the issuance of general obligation bonds, including all indebtedness represented by outstanding general obligation bonds of previous issues, registered warrants, outstanding obligations under 20-9-471, oil and natural gas revenue bonds to which a deficiency tax levy is pledged, and any other loans or notes payable that are held as general obligations of the district, is the corresponding facility guaranteed mill value per ANB times 1,000 times the ANB of the district. For a K-12 district, unless the maximum amount calculated under subsection (1)(b) yields a greater amount, the maximum amount for which the district may become indebted is the sum of the facility guaranteed mill value per elementary ANB times 1,000 times the elementary ANB of the district and the facility guaranteed mill value per high school ANB times 1,000 times the high school ANB of the district. For the purpose of calculating ANB under this subsection, a district may use the greater of the current year ANB or the 3-year ANB calculated under 20-9-311.

(ii) If mutually agreed upon by the affected districts, for the purpose of calculating its maximum bonded indebtedness under this subsection (1)(c), a district may include the ANB

of the district plus the number of students residing within the district for which the district or county pays tuition for attendance at a school in an adjacent district. The receiving district may not use out-of-district ANB for the purpose of calculating its maximum indebtedness if the out-of-district ANB has been included in the ANB of the sending district pursuant to the mutual agreement. For the purpose of calculating ANB under this subsection, a district may use the greater of the current year ANB or the 3-year ANB calculated under 20-9-311.

(2) The maximum amounts determined in subsection (1) do not pertain to indebtedness imposed by special improvement district obligations or assessments against the school district or to general obligation bonds issued for the repayment of tax protests lost by the district. All general obligation bonds issued in excess of the amount are void, except as provided in this section.

(3) The maximum amount of impact aid revenue bonds that an elementary district, high school district, or K-12 school district may issue may not exceed a total aggregate amount equal to three times the average of the school district's annual federal impact aid basic support payments for the 5 years immediately preceding the issuance of the bonds. However, at the time of issuance of the bonds, the average annual payment of principal of and interest on the impact aid bonds each year may not exceed 35% of the total federal impact aid basic support payments of the school district for the current year.

(4) The maximum amount of oil and natural gas revenue bonds that an elementary district, high school district, or K-12 school district may issue may not exceed a total aggregate amount equal to three times the average of the school district's annual oil and natural gas production taxes received pursuant to 15-36-331, 15-36-332, and 20-9-310 for the 2 fiscal years immediately preceding the issuance of the bonds. At the time of the issuance of the bonds, the average annual payment of principal of and interest on the oil and natural gas revenue bonds each year may not exceed 35% of the total oil and natural gas production taxes received by the school district under the limitations in 20-9-310 for the immediately preceding fiscal year. If the oil and natural gas revenue bonds are also secured by a deficiency tax levy as provided in 20-9-437, the debt limitation provided in subsection (1) of this section applies to the bonds.

(5) When the total indebtedness of a school district has reached the limitations prescribed in this section, the school district may pay all reasonable and necessary expenses of the school district on a cash basis in accordance with the financial administration provisions of this chapter.

(6) Whenever bonds are issued for the purpose of refunding bonds, any money to the credit of the debt service fund for the payment of the bonds to be refunded is applied toward the payment of the bonds and the refunding bond issue is decreased accordingly.

(7) As used in this part, "federal impact aid basic support payment" means the annual impact aid revenue received by a district under 20 U.S.C. 7703(b) but excludes revenue received for impact aid special education under 20 U.S.C. 7703(d) and impact aid construction under 20 U.S.C. 7707.

**History:** En. 75-7104 by Sec. 305, Ch. 5, L. 1971; amd. Sec. 3, Ch. 33, L. 1973; amd. Sec. 32, Ch. 100, L. 1973; amd. Sec. 1, Ch. 353, L. 1974; amd. Sec. 1, Ch. 56, L. 1975; amd. Sec. 1, Ch. 432, L. 1975; amd. Sec. 46, Ch. 566, L. 1977; R.C.M. 1947, 75-7104(1), (2); amd. Sec. 61, Ch. 614, L. 1981; amd. Sec. 12, Ch. 213, L. 1989; amd. Sec. 7, Ch. 555, L. 1991; amd. Sec. 34, Ch. 767, L. 1991; amd. Sec. 35, Ch. 633, L. 1993; amd. Sec. 15, Ch. 570, L. 1995; amd. Sec. 6, Ch. 586, L. 1995; amd. Sec. 23, Ch. 285, L. 1999; amd. Sec. 37, Ch. 426, L. 1999; amd. Sec. 30, Ch. 556, L. 1999; amd. Sec. 1, Ch. 10, L. 2001; amd. Sec. 3, Ch. 492, L. 2003; amd. Sec. 18, Ch. 462, L. 2005; amd. Sec. 1, Ch. 279, L. 2007; amd. Sec. 1, Ch. 213, L. 2009; amd. Sec. 5, Ch. 271, L. 2011; amd. Sec. 17, Ch. 400, L. 2013; amd. Sec. 1, Ch. 307, L. 2015.

#### **Cross-References**

Refunding bonds, Title 17, ch. 5, part 3.

**20-9-407. Industrial facility agreement for bond issue in excess of maximum.** (1) In a school district within which a new major industrial facility that seeks to qualify for taxation as class five property under 15-6-135 is being constructed or is about to be constructed, the school district may require, as a precondition of the new major industrial facility qualifying as class five property, that the owners of the proposed industrial facility enter into an agreement with the school district concerning the issuing of bonds in excess of the limitation prescribed in 20-9-406. Under an agreement, the school district may, with the approval of the voters, issue bonds that exceed the limitation prescribed in this section by a maximum of 100% of the estimated taxable value of the property of the new major industrial facility subject to taxation when completed. The

estimated taxable value of the property of the new major industrial facility subject to taxation must be computed by the department of revenue when requested to do so by a resolution of the board of trustees of the school district. A copy of the department's statement of estimated taxable value must be printed on each ballot used to vote on a bond issue proposed under this section.

(2) Pursuant to the agreement between the new major industrial facility and the school district and as a precondition to qualifying as class five property, the new major industrial facility and its owners shall pay, in addition to the taxes imposed by the school district on property owners generally, as much of the principal and interest on the bonds provided for under this section as represents payment on an indebtedness in excess of the limitation prescribed in 20-9-406. After the completion of the new major industrial facility and when the indebtedness of the school district no longer exceeds the limitation prescribed in this section, the new major industrial facility is entitled, after all the current indebtedness of the school district has been paid, to a tax credit over a period of no more than 20 years. The credit must as a total amount be equal to the amount that the facility paid the principal and interest of the school district's bonds in excess of its general liability as a taxpayer within the district.

(3) A major industrial facility is a facility subject to the taxing power of the school district, whose construction or operation will increase the population of the district, imposing a significant burden upon the resources of the district and requiring construction of new school facilities. A significant burden is an increase in ANB of at least 20% in a single year.

**History:** En. 75-7104 by Sec. 305, Ch. 5, L. 1971; amd. Sec. 3, Ch. 33, L. 1973; amd. Sec. 32, Ch. 100, L. 1973; amd. Sec. 1, Ch. 353, L. 1974; amd. Sec. 1, Ch. 56, L. 1975; amd. Sec. 1, Ch. 432, L. 1975; amd. Sec. 46, Ch. 566, L. 1977; R.C.M. 1947, 75-7104(3) thru (5); amd. Sec. 26, Ch. 693, L. 1979; amd. Sec. 3, Ch. 15, L. 1985; amd. Sec. 2, Ch. 279, L. 2007; amd. Sec. 2, Ch. 307, L. 2015.

#### **Cross-References**

ANB defined, 20-1-101.

Educational impact statements, 20-1-208.

Calculation of average number belonging, 20-9-311.

**20-9-408. Definition of forms of bonds.** As used in this part, the following definitions apply:

(1) "Amortization bond" means that form of bond on which a part of the principal is required to be paid each time that interest becomes due and payable. The part payment of principal increases with each following installment in the same amount that the interest payment decreases, so that the combined amount payable on principal and interest is the same on each payment date. However, the payment on the initial interest payment date may be less or greater than the amount of other payments on the bond, reflecting the payment of interest only or the payment of interest for a period different from that between other interest payment dates. The final payment may vary from prior payments in amount as a result of rounding prior payments.

(2) "General obligation bonds" means bonds that pledge the full faith and credit and the taxing power of a school district.

(3) "Impact aid revenue bonds" means bonds that pledge and are payable solely from federal impact aid basic support payments received and deposited to the credit of the fund established in 20-9-514.

(4) "Oil and natural gas revenue bonds" means bonds that pledge and are payable from a first lien on oil and natural gas production taxes received by a school district pursuant to 20-9-310. Oil and natural gas revenue bonds to which a tax deficiency is pledged are not considered general obligation bonds that are eligible to receive guaranteed tax base aid pursuant to 20-9-367 but are to be considered in determining the debt limit of a school district for the purposes of 20-9-406.

(5) "Serial bonds" means a bond issue payable in annual installments of principal commencing not more than 2 years from the date of issue, any one installment consisting of one or more bonds, with the principal amount of bonds maturing or subject to mandatory sinking fund redemption in each installment, commencing with the installment payable in the fourth year after the date of issue, not exceeding three times the principal amount of the bonds payable in the immediately preceding installment.

**History:** En. 75-7105 by Sec. 306, Ch. 5, L. 1971; R.C.M. 1947, 75-7105; amd. Sec. 7, Ch. 631, L. 1983; amd. Sec. 7, Ch. 256, L. 1989; amd. Sec. 40, Ch. 423, L. 1995; amd. Sec. 4, Ch. 492, L. 2003; amd. Sec. 18, Ch. 451, L. 2005; amd. Sec. 24, Ch. 44, L. 2007; amd. Sec. 18, Ch. 400, L. 2013.



**20-9-409. Repealed.** Sec. 52, Ch. 423, L. 1995.

**History:** En. 75-7106 by Sec. 307, Ch. 5, L. 1971; R.C.M. 1947, 75-7106.

**20-9-410. Limitation of term and interest — timing for redemption.** (1) Except as provided in subsection (2), school district bonds may not be issued for a term longer than 20 years, except that bonds issued to refund or redeem outstanding bonds may not be issued for a term longer than 10 years unless the unexpired term of the bonds to be refunded or redeemed is in excess of 10 years, in which case the refunding or redeeming bonds may be issued for the unexpired term. Other than refunding or redeeming bonds, all bonds issued for a longer term than 5 years must be redeemable at the option of the school district on any interest payment date after one-half of the term for which they were issued has expired, and the redemption option must be stated on the face of the bonds. The interest must be as provided under 17-5-102 and must be payable semiannually.

(2) School district bonds may be issued for a term of up to 30 years if the rate on the bonds is less than or equal to the rate on bonds issued with a term of 20 years and the bonds are sold to the United States or an agency, instrumentality, or corporation of the United States.

(3) For purposes of this section, the term of a bond issue commences on July 1 of the fiscal year in which the school district first levies taxes to pay the principal and interest on the bonds.

**History:** En. 75-7107 by Sec. 308, Ch. 5, L. 1971; amd. Sec. 7, Ch. 234, L. 1971; amd. Sec. 3, Ch. 284, L. 1973; R.C.M. 1947, 75-7107; amd. Sec. 11, Ch. 500, L. 1981; amd. Sec. 1, Ch. 11, L. 1983; amd. Sec. 71, Ch. 370, L. 1987; amd. Sec. 8, Ch. 256, L. 1989; amd. Sec. 19, Ch. 451, L. 2005; amd. Sec. 1, Ch. 337, L. 2017.

**Compiler's Comments**

*2017 Amendment:* Chapter 337 in (1) at beginning of first sentence inserted exception clause; inserted (2) concerning issuance of school district bonds for term of up to 30 years; and made minor changes in style. Amendment effective May 7, 2017.

**20-9-411. Dates of issue and payments.** In order that the dates of payment of installments on school district bond issues may coincide as nearly as possible with the largest monthly tax collections, all school district bonds shall preferably bear a date of some day in June or December. For this reason, the bonds may be dated back not more than 5 months from the time of the actual sale, but no interest shall be charged on these bonds before they have been delivered to the purchaser and payment has been made by the purchaser. Interest accrued on such bonds according to their terms at the time of delivery shall either be refunded by the purchaser or deducted from the first interest payments. The failure to date such bonds in June or December shall not affect their validity.

**History:** En. 75-7108 by Sec. 309, Ch. 5, L. 1971; R.C.M. 1947, 75-7108.

**20-9-412. Issuance of refunding bonds without election.** (1) Bonds of a school district issued for the purpose of providing the money needed to redeem outstanding bonds may be issued without submitting the proposition to the electorate at an election. In order to issue refunding bonds, the trustees, at a regular meeting or a special meeting, shall adopt a resolution setting forth:

- (a) the facts regarding the outstanding bonds that are to be redeemed;
- (b) the reasons for issuing new bonds; and
- (c) the term and details of the new bond issue.

(2) After the adoption of the resolution, the trustees shall:

- (a) sell the bonds at a private negotiated sale; or

(b) at their option, give notice of the sale of the new bonds in the same manner that notice is required to be given for the sale of bonds authorized at a school election and sell the new bonds in open competitive bidding, by written bids or by sealed bids.

(3) Except for bonds refunded by a school district under the provisions of Title 17, chapter 5, part 16, including any variable rate finance program that is authorized, bonds may not be refunded by the issuance of new bonds unless the rate of interest offered on the new bonds is at least 1/2 of 1% a year less than the rate of interest in the bonds to be refunded or redeemed.

(4) If a refunding bond issue refunds only a portion of an outstanding bond issue, the unrefunded portion of the outstanding bond issue and the refunding bond issue must be treated as a single bond issue for the purposes of 20-9-408.

(5) Refunding bonds may be issued in a principal amount greater than the principal amount of the outstanding bonds if there is a reduction of total debt service cost to the district.

(6) (a) Refunding bonds issued pursuant to this section may be issued to refund outstanding bonds in advance of the date on which the bonds mature or are subject to redemption, provided that the proceeds of the refunding bonds, less any accrued interest or premium received upon the sale of the bonds, are deposited with other funds appropriated to the payment of the outstanding bonds in escrow with a suitable banking institution in or outside of the state.

(b) Except as provided in subsection (6)(c), funds deposited must be invested in securities that are general obligations of the United States or the principal and interest of which are guaranteed by the United States and that mature or are callable at the option of the holder on the dates and bear interest at the rates and are payable on the dates that are required to provide funds sufficient, with any cash retained in the escrow account, to pay when due the interest to accrue on each bond being refunded to its maturity or redemption date, if called for redemption, to pay the principal of the bond at maturity or upon the redemption date, and to pay any redemption premium.

(c) If the funds initially deposited in escrow are sufficient, without regard to any investment income on those funds, to redeem in full the bonds being refunded as of their redemption date and to pay the principal of and interest and premium on the bonds being refunded at their stated maturities, the funds may be invested in the securities described in subsection (6)(b) or in a money market fund that is composed exclusively of eligible securities described in 7-6-202 and that otherwise satisfies the requirements of 7-6-202(3).

(d) The escrow account must be irrevocably appropriated to the payment of the principal of and interest and redemption premium on the bonds being refunded. Funds in the debt service fund for the payment of the bonds being refunded and not required for the payment of principal of or interest on the bonds being refunded due prior to issuance of the refunding bonds may be appropriated by the district to the escrow account. The school district may pay the reasonable costs and expenses of printing the refunding bonds and of establishing and maintaining the escrow account. Bonds that are refunded pursuant to this part are not to be considered outstanding for purposes of 20-9-406 or any other debt limitation.

**History:** En. 75-7109 by Sec. 310, Ch. 5, L. 1971; R.C.M. 1947, 75-7109; amd. Sec. 6, Ch. 647, L. 1983; amd. Sec. 1, Ch. 158, L. 1993; amd. Sec. 41, Ch. 423, L. 1995; amd. Sec. 21, Ch. 277, L. 2003.

#### **Cross-References**

Counties — advance refunding bonds, 7-7-2316.

Cities — advance refunding bonds, 7-7-4316.

Refunding bonds, Title 17, ch. 5, part 3.

#### **20-9-413 through 20-9-420 reserved.**

**20-9-421. Election to authorize the issuance of school district bonds and the methods of introduction.** A school district may not issue bonds for any purpose other than that provided in 15-1-402, 20-9-412, and 20-9-471 unless the issuance of bonds has been authorized by the qualified electors of the school district at an election called for the purpose of considering a proposition to issue the bonds. A school district bond election must be called by a resolution as prescribed under the provisions of 20-20-201 when:

- (1) the trustees, of their own volition, adopt a resolution to that effect; or
- (2) the trustees have received a petition that asks for an election to be held to consider a bond proposition and that has been validated under the provisions of 20-9-425.

**History:** En. 75-7110 by Sec. 311, Ch. 5, L. 1971; R.C.M. 1947, 75-7110; amd. Sec. 9, Ch. 213, L. 1989; amd. Sec. 1, Ch. 25, L. 2011.

#### **Cross-References**

Mail ballot elections prohibited, 13-19-104.

School elections, Title 20, ch. 20.

#### **20-9-422. Additional requirements for trustees' resolution calling bond election.**

(1) In addition to the requirements for calling an election that are prescribed in 20-20-201 and 20-20-203, the trustees' resolution calling a school district bond election must:

- (a) specify whether the bonds will be general obligation bonds, oil and natural gas revenue bonds, or impact aid revenue bonds and, if oil and natural gas revenue bonds, whether a tax deficiency is pledged to the repayment of the bonds;
- (b) fix the exact amount of the bonds proposed to be issued, which may be more or less than the amounts estimated in a petition;

- (c) fix the maximum number of years in which the proposed bonds would be paid;
- (d) in the case of initiation by a petition, state the essential facts about the petition and its presentation; and
- (e) state the amount of the state advance for school facilities estimated, pursuant to subsection (2), to be received by the district in the first school fiscal year in which a debt service payment would be due on the proposed bonds.

(2) Prior to the adoption of the resolution calling for a school bond election for a general obligation bond, the trustees of a district may request from the superintendent of public instruction a statement of the estimated amount of state advance for school facilities that the district will receive for debt service payments on the proposed general obligation bonds in the first school fiscal year in which a debt service payment is due. The district shall provide the superintendent with an estimate of the debt service payment due in the first school fiscal year. The superintendent shall estimate the state advance for the general obligation bond issue pursuant to 20-9-371(2).

**History:** En. 75-7111 by Sec. 312, Ch. 5, L. 1971; R.C.M. 1947, 75-7111; amd. Sec. 7, Ch. 586, L. 1995; amd. Sec. 5, Ch. 492, L. 2003; amd. Sec. 19, Ch. 400, L. 2013.

**20-9-423. Form, contents, and circularization of petition proposing school district bond election.** Any petition for the calling of an election on the proposition of issuing school district bonds must:

- (1) specify whether the bonds will be general obligation bonds, oil and natural gas revenue bonds, or impact aid revenue bonds and, if oil and natural gas revenue bonds, whether a tax deficiency is pledged to the repayment of the bonds;
- (2) plainly state each purpose of the proposed bond issue and the estimated amount of the bonds that would be issued for each purpose;
- (3) be signed by not less than 20% of the school district electors qualified to vote under the provisions of 20-20-301 in order to constitute a valid petition;
- (4) be a single petition or it may be composed of more than one petition, all being identical in form, and after being circulated and signed, they must be fastened together to form a single petition when submitted to the county registrar;
- (5) be circulated by any one or more qualified electors of the school district; and
- (6) contain an affidavit of each registered elector circulating a petition attached to the portion of the petition circulated. The affidavit must attest to the authenticity of the signatures and that the signers knew the contents of the petition at the time of signing it.

**History:** En. 75-7112 by Sec. 313, Ch. 5, L. 1971; amd. Sec. 8, Ch. 83, L. 1971; R.C.M. 1947, 75-7112; amd. Sec. 6, Ch. 492, L. 2003; amd. Sec. 20, Ch. 400, L. 2013.

**20-9-424. Validation of petition — election administrator's certificate.** (1) The petitioners for a school district bond election shall submit their petition to the county election administrator of the county where the school district is located for validation of the signatures on the petition. The county election administrator shall examine the petition and attach or endorse on the petition a certificate that must state:

- (a) the total number of electors of the school district who are, at the time, qualified to vote under the provisions of 20-20-301;
  - (b) which and how many of the individuals whose names are subscribed to the petition possess the qualifications to vote on a bond proposition; and
  - (c) whether the number of qualified signers established in subsection (1)(b) is more or less than 20% of the total number of registered electors established in subsection (1)(a).
- (2) After completing the examination, the county election administrator shall immediately send the petition and certificate to the school district. The county election administrator may not receive compensation for the examination of school district bond petitions.

**History:** En. 75-7113 by Sec. 314, Ch. 5, L. 1971; amd. Sec. 9, Ch. 83, L. 1971; R.C.M. 1947, 75-7113; amd. Sec. 354, Ch. 571, L. 1979; amd. Sec. 313, Ch. 56, L. 2009.

#### **Cross-References**

Local Election Administrator, Title 13, ch. 1, part 3.

**20-9-425. Trustees' consideration of validated petition proposing bond election.** When a school district receives a school district bond petition from the county registrar, a meeting of the trustees shall be called for the consideration of the petition. The trustees shall

be the judges of the adequacy of the petition, and their findings shall be conclusive against the school district in favor of the innocent holder of bonds issued pursuant to the election called and held by reason of the presentation of such petition. The petition shall be valid if the trustees find that it is in proper form and bears the signatures of not less than 20% of the school district electors who are qualified to vote under the provisions of 20-20-301.

**History:** En. 75-7114 by Sec. 315, Ch. 5, L. 1971; amd. Sec. 10, Ch. 83, L. 1971; R.C.M. 1947, 75-7114.

**Cross-References**

Trustees' meetings and quorum, 20-3-322.

**20-9-426. Preparation and form of ballots for bond election.** (1) The school district shall cause ballots to be prepared for all bond elections.

(2) All ballots must be substantially in the following form:

OFFICIAL BALLOT  
SCHOOL DISTRICT BOND ELECTION

INSTRUCTIONS TO VOTERS: Make an X or similar mark in the vacant square before the words "BONDS—YES" if you wish to vote for the bond issue; if you are opposed to the bond issue, make an X or similar mark in the square before the words "BONDS—NO".

Shall the board of trustees be authorized to issue and sell (state type of bonds here: general obligation, oil and natural gas revenue, oil and natural gas revenue for which a tax deficiency is pledged, or impact aid revenue) bonds of this school district in the amount of ..... dollars (\$ .....), payable semiannually, during a period not more than ..... years, for the purpose ..... (here state the purpose the same way as in the notice of election)?

- ☐ BONDS — YES.  
☐ BONDS — NO.

**History:** En. 75-7115 by Sec. 316, Ch. 5, L. 1971; amd. Sec. 39, Ch. 234, L. 1971; R.C.M. 1947, 75-7115; amd. Sec. 12, Ch. 500, L. 1981; amd. Sec. 1, Ch. 11, L. 1983; amd. Sec. 2, Ch. 144, L. 1997; amd. Sec. 7, Ch. 492, L. 2003; amd. Sec. 6, Ch. 271, L. 2011; amd. Sec. 21, Ch. 400, L. 2013; amd. Sec. 209, Ch. 49, L. 2015.

**20-9-427. Notice of bond election by separate purpose.** (1) A school district bond election must be conducted in accordance with the school election provisions of this title, except that the election notice must be in substantially the following form:

NOTICE OF SCHOOL DISTRICT BOND ELECTION

Notice is hereby given by the trustees of School District No. .... of ..... County, state of Montana, that pursuant to a certain resolution adopted at a meeting of the board of trustees of the school district held on the ..... day of ....., an election of the registered electors of School District No. .... of ..... County, state of Montana, will be held on the ..... day of ....., at ..... for the purpose of voting upon the question of whether or not the trustees may issue and sell (state here: general obligation, oil and natural gas revenue, oil and natural gas revenue for which a tax deficiency is pledged, or impact aid revenue) bonds of the school district in the amount of ..... dollars (\$.....), payable semiannually, for the purpose of ..... (here state purpose). The bonds to be issued will be payable in installments over a period not exceeding ..... (state number) years.

The polls will be open from ..... o'clock .....m. and until ..... o'clock .....m. of the election day.

Dated and posted this ..... day of .....

.....  
Presiding officer, School District No. ....  
of ..... County  
Address .....

(2) If the bonds proposed to be issued are for more than one purpose, then each purpose must be separately stated in the notice, together with the proposed amount of bonds for each purpose.

(3) The notice must specify whether the bonds will be general obligation bonds, oil and natural gas revenue bonds, or impact aid revenue bonds.

**History:** En. 75-7116 by Sec. 317, Ch. 5, L. 1971; amd. Sec. 40, Ch. 234, L. 1971; amd. Sec. 1, Ch. 176, L. 1973; R.C.M. 1947, 75-7116; amd. Sec. 13, Ch. 500, L. 1981; amd. Sec. 1, Ch. 11, L. 1983; amd. Sec. 42, Ch. 423, L. 1995; amd. Sec. 8, Ch. 492, L. 2003; amd. Sec. 7, Ch. 271, L. 2011; amd. Sec. 22, Ch. 400, L. 2013.

**Cross-References**

School elections, Title 20, ch. 20.

**20-9-428. Determination of approval or rejection of proposition at bond election.**

(1) When the trustees canvass the vote of a school district bond election under the provisions of 20-20-415, they shall determine the approval or rejection of the school bond proposition in the following manner:

(a) Except as provided in subsection (1)(c), if the school district bond election is held at a regular school election or at a special election called by the trustees, the trustees shall:

(i) determine the total number of electors of the school district who are qualified to vote under the provisions of 20-20-301 from the list of electors supplied by the county registrar for the school bond election;

(ii) determine the total number of qualified electors voting at the school bond election from the tally sheets for the election; and

(iii) calculate the percentage of qualified electors voting at the school bond election by dividing the amount determined in subsection (1)(a)(ii) by the amount determined in subsection (1)(a)(i).

(b) When the calculated percentage in subsection (1)(a)(iii) is:

(i) 40% or more, the school bond proposition is approved and adopted if a majority of the votes were cast in favor of the proposition, otherwise it is rejected;

(ii) more than 30% but less than 40%, the school bond proposition is approved and adopted if 60% or more of the votes were cast in favor of the proposition, otherwise it is rejected; or

(iii) 30% or less, the school bond proposition is rejected.

(c) If the school district bond election is held in conjunction with an election that is conducted by mail ballot, as provided in Title 13, chapter 19, or in conjunction with a general or primary election, the determination of the approval or rejection of the bond proposition is made by a majority of the votes cast on the issue.

(2) If the canvass of the vote establishes the approval and adoption of the school bond proposition, the trustees shall issue a certificate proclaiming the passage of the proposition and the authorization to issue bonds of the school district for the purposes specified on the ballot for the school district bond election.

**History:** En. 75-7117 by Sec. 318, Ch. 5, L. 1971; amd. Sec. 11, Ch. 83, L. 1971; R.C.M. 1947, 75-7117; amd. Sec. 3, Ch. 503, L. 2005; amd. Sec. 8, Ch. 271, L. 2011; amd. Sec. 210, Ch. 49, L. 2015.

**Cross-References**

Cancellation and challenge of voter registration, Title 13, ch. 2, part 4.

Challenge of elector's right to vote, Title 13, ch. 13, part 3.

General canvassing requirements, Title 13, ch. 15.

**20-9-429. Trustees' resolution to issue school district bonds pursuant to public sale.** If the trustees conduct a public sale, at any time after the date of the election certificate, the trustees shall adopt a resolution calling for the sale of bonds of the school district. The resolution must specify:

(1) the number of series or installments in which the bonds are to be issued;

(2) the amount of bonds to be issued;

(3) the minimum purchase price of the bonds;

(4) the purpose or purposes of the issue;

(5) the date that the issue will bear;

(6) the period of time through which the issue will be paid;

(7) the manner of execution of the bonds;

(8) whether bids will be accepted for either serial or amortization bonds and, if so, the denomination of serial or amortization bonds;

(9) the date and time that the sale of the bonds must be conducted; and

(10) the minimum price fixed by the board of trustees for the bonds, which may not be less than 97% of the principal amount of the bonds if the board determines that the sale is in the best interests of the district.

**History:** En. 75-7118 by Sec. 319, Ch. 5, L. 1971; R.C.M. 1947, 75-7118; amd. Sec. 43, Ch. 423, L. 1995; amd. Sec. 21, Ch. 253, L. 2011.

**20-9-430. Sale of school district bonds and notice of public sale.** The trustees may sell school district bonds at public or private sale pursuant to 17-5-107. If the trustees conduct



a public sale, the trustees shall give notice of the sale of school district bonds. The notice must state the purpose for which the bonds are to be issued and the amount proposed to be issued and must be substantially in the following form:

### NOTICE OF SALE OF SCHOOL DISTRICT BONDS

Notice is hereby given by the trustees of School District No. .... of ..... County, state of Montana, that the trustees will on the ..... day of ....., ....., at the hour of ..... o'clock .....m. at ....., in the school district, sell to the highest and best bidder for cash (state here: general obligation, oil and natural gas revenue, or impact aid revenue) bonds of the school district in the total amount of ..... dollars (\$.....), for the purpose of .....

The bonds will be issued and sold in the aggregate principal amount of ..... dollars (\$.....) each and will become payable according to the maturity schedule set forth below (set forth maturity schedule adopted by the school district). (If the bonds are to be issued as amortization bonds, indicate that here.)

The bonds will bear an original issue date of ....., ....., will pay interest commencing on the ..... day of ..... (month), ....., will be payable semiannually on the ..... day of ..... (month) and ..... (month) in each year thereafter, and will be redeemable in full. (Here insert optional provisions, if any, to be recited on the bonds.)

The bonds will be sold for not less than \$ ....., with accrued interest on the principal amount of the bonds to the date of their delivery, and all bidders shall state the lowest rate of interest at which they will purchase the bonds at the price specified for the bonds. The trustees reserve the right to reject any bids and to sell the bonds at private sale.

All bids must be accompanied by (insert appropriate bid security as permitted by 18-1-202) in the sum of ..... dollars (\$ .....) payable to the order of the district, which will be forfeited by the successful bidder in the event that the bidder refuses to purchase the bonds.

All bids should be addressed to the undersigned district.

.....  
Presiding officer, School District No. ....  
of ..... County  
Address: .....

#### ATTEST:

Subscribed and sworn to before me this ..... day of ....., .....; .....  
Notary Public for the State residing at ....., Montana. My commission expires .....

**History:** En. 75-7119 by Sec. 320, Ch. 5, L. 1971; amd. Sec. 41, Ch. 234, L. 1971; amd. Sec. 23, Ch. 266, L. 1977; R.C.M. 1947, 75-7119; amd. Sec. 14, Ch. 500, L. 1981; amd. Sec. 1, Ch. 11, L. 1983; amd. Sec. 8, Ch. 631, L. 1983; amd. Sec. 44, Ch. 423, L. 1995; amd. Sec. 9, Ch. 492, L. 2003; amd. Sec. 22, Ch. 253, L. 2011; amd. Sec. 23, Ch. 400, L. 2013.

**20-9-431. Publication of notice of sale of school district bonds.** If the trustees conduct a public sale, the trustees shall publish the notice of sale of the bonds, as provided in 17-5-106, in one or more newspapers as determined by the trustees.

**History:** En. 75-7120 by Sec. 321, Ch. 5, L. 1971; R.C.M. 1947, 75-7120; amd. Sec. 6, Ch. 384, L. 1979; amd. Sec. 4, Ch. 173, L. 1987; amd. Sec. 45, Ch. 423, L. 1995; amd. Sec. 23, Ch. 253, L. 2011.

**20-9-432. Sale of school district bonds.** (1) If the trustees conduct a public sale, the trustees shall meet at the time and place fixed in the notice to consider bids on the bond issue. The bonds must be sold at not less than the minimum bid specified for bonds with accrued interest to date of delivery, and each bidder shall specify the rate of interest and purchase price at which the bidder will purchase the bonds. The trustees shall accept the bid that they judge most advantageous to the school district. Consultant fees and attorney fees may be paid to any person or corporation for assisting in the proceedings, in the preparation of the bonds, or in negotiating the sale. The trustees are authorized to reject any bids and to sell the bonds at private sale if they consider it in the best interests of the school district, except that the bonds may not be sold at less than the minimum sale price with accrued interest to date of delivery.

(2) The trustees may cooperate and combine with other school districts within the same county for the purpose of preparing and negotiating the sale of bond issues if, in the opinion

of the trustees, the cooperation or combination will facilitate the sale of school district bonds under more advantageous terms or with lower interest rates. However, bond issues prepared or negotiated for sale under this section may not be combined for any other purpose but must be entered separately on the books of the county treasurer and must be otherwise treated as separate bond issues.

**History:** En. 75-7121 by Sec. 322, Ch. 5, L. 1971; amd. Sec. 10, Ch. 234, L. 1971; amd. Sec. 1, Ch. 66, L. 1974; R.C.M. 1947, 75-7121; amd. Sec. 9, Ch. 631, L. 1983; amd. Sec. 46, Ch. 423, L. 1995; amd. Sec. 24, Ch. 253, L. 2011.

**20-9-433. Form and execution of school district bonds.** (1) At the time of the sale of the bonds or at a meeting held after the sale, the trustees shall adopt a resolution or indenture of trust providing for the issuance of the bonds, prescribing the form of the bonds, whether amortization or serial bonds, and prescribing the manner of execution of the bonds. If applicable, the trustees shall specify whether the bonds are qualified school construction bonds as described in 17-5-116(1) or tax credit bonds as provided in 17-5-117.

(2) Each bond and coupon attached to a bond must be signed by or bear the facsimile signatures of the presiding officer of the trustees and the school district clerk, provided that one signature of a school official or the bond registrar must be a manual signature.

**History:** En. 75-7122 by Sec. 323, Ch. 5, L. 1971; R.C.M. 1947, 75-7122; amd. Sec. 7, Ch. 384, L. 1979; amd. Sec. 47, Ch. 423, L. 1995; amd. Sec. 10, Ch. 492, L. 2003; amd. Sec. 22, Ch. 489, L. 2009.

**20-9-434. Registration of school district bonds by county treasurer and copy for preservation.** (1) When the school district bonds have been executed by the presiding officer of the trustees and the school district clerk, the bonds must be registered by the county treasurer in the treasurer's bond registration book before the bonds are delivered to the purchaser. The bond registration must show:

- (a) the date of issue;
- (b) the redeemable date of each bond; and
- (c) the amount and due date of all payments required on the bonds.

(2) The trustees shall provide the county treasurer with an unsigned and canceled printed specimen copy of each issue of school district bonds for preservation in the office of the county treasurer.

**History:** En. 75-7123 by Sec. 324, Ch. 5, L. 1971; R.C.M. 1947, 75-7123; amd. Sec. 48, Ch. 423, L. 1995.

**20-9-435. Delivery of school district bonds and disposition of sale money.** (1) After the school district bonds have been registered, the county treasurer shall:

(a) when the board of investments has purchased the bonds, forward the bonds to the board that, in turn, shall send the bonds to the state treasurer and shall pay the bonds in the manner provided by law; or

(b) if the purchaser is anybody other than the board of investments, deliver the bonds to the purchaser when full payment of the bonds has been made by the purchaser.

(2) If any of the trustees fails or refuses to pay into the proper county treasury the money arising from the sale of a bond, the trustee is guilty of a felony and shall be punished by imprisonment in the state prison for not less than 1 year or more than 10 years or by a fine of not more than \$50,000, or both.

(3) All money realized from the sale of school district bonds must be paid to the county treasurer. The county treasurer shall credit the money to the building fund of the school district issuing the bonds, except money realized for accrued interest or the purposes defined in 20-9-403(1)(c) and (1)(d) must be deposited in the debt service fund and money realized for the purposes authorized in 20-9-403(1)(e) must be deposited in a fund, as provided for in 2-9-316, to pay a final judgment against the school district. The money realized from the sale of school district bonds must be immediately available to the school district, and the trustees may expend the money without budgeted authorization only for the purposes for which the bonds were authorized by the school district bond election.

**History:** En. 75-7124 by Sec. 325, Ch. 5, L. 1971; R.C.M. 1947, 75-7124; amd. Sec. 8, Ch. 384, L. 1979; amd. Sec. 7, Ch. 198, L. 1981; amd. Sec. 9, Ch. 568, L. 1991; amd. Sec. 35, Ch. 767, L. 1991; amd. Sec. 20, Ch. 219, L. 1997.

**20-9-436. County attorney to assist in proceedings.** The trustees of a school district conducting bond proceedings shall prepare and maintain a transcript of their bond proceedings. It is a part of the official duties of the county attorney of every county of this state to advise

and assist the trustees of each school district of the county in its bond proceedings. Before any transcript of school district bond proceedings is sent to the board of investments, the county attorney shall carefully examine the transcript, and the transcript may not be sent until the county attorney has attached an opinion to the transcript that the proceedings are in full compliance with law. However, the trustees of any school district may, upon consent of the county attorney, employ any attorney licensed in Montana to assist the county attorney in the performance of these duties.

**History:** En. 75-7125 by Sec. 326, Ch. 5, L. 1971; amd. Sec. 1, Ch. 263, L. 1971; R.C.M. 1947, 75-7125; amd. Sec. 9, Ch. 384, L. 1979; amd. Sec. 314, Ch. 56, L. 2009.

**Cross-References**

Conflict of interest, 20-1-205.

**20-9-437. School district liable on bonds.** (1) The full faith, credit, and taxable resources of a school district issuing general obligation bonds under the provisions of this title are pledged for the repayment of the bonds with interest according to the terms of the bonds. For the purpose of making the provisions of this part enforceable, each school district is a body corporate that may sue and be sued by or in the name of the trustees of the school district.

(2) A school district may use up to 25% of its federal impact aid funds received pursuant to 20-9-514 for repayment of general obligation bonds.

(3) Impact aid revenue bonds must be payable solely from the federal impact aid basic support payment received by the school district and deposited to the credit of the impact aid fund established in 20-9-514 and do not constitute a general obligation of the school district. The school district's taxing power is not pledged for the repayment of impact aid revenue bonds.

(4) (a) Oil and natural gas revenue bonds must be payable from the oil and natural gas production taxes received by the school district under the limitations in 20-9-310 and deposited to the debt service fund.

(b) A school district, as long as it has specified that its oil and natural gas revenue bonds are further secured by a deficiency tax levy in the bond election question and notice under 20-9-426 and 20-9-427, may additionally provide that if for any reason the oil and natural gas production taxes received by the school district and the amounts in the debt service reserve account are inadequate to pay the principal of or interest on the bonds as they become due, payment will be made from a deficiency tax levy.

(5) If for any reason the oil and natural gas taxes or the amounts in the debt service reserve account are inadequate to pay the principal of or interest on any oil and natural gas revenue bonds as to which the school district has pledged a deficiency tax levy in accordance with subsection (4) as it becomes due, the school district shall, at least 15 days before the first day of the month in which the board of county commissioners of the county or counties in which the school district is located levies the amount of taxes required, furnish to the county treasurer an estimate in writing of the amount of money required:

(a) by the school district for the payment of the principal of or interest on the bonded debt as it becomes due and to replenish the debt service reserve account;

(b) to establish reasonable reserve funds for either purpose; and

(c) by the school district for any other purpose set forth in this section.

(6) Annually and at the time and in the manner of levying other county or city and county taxes, the county treasurer shall, as instructed by the school district, to the extent of any deficiency resulting from oil and natural gas taxes to pay or secure oil and natural gas revenue bonds to which a deficiency tax is pledged and for any other purpose set forth in this section:

(a) until the bonded debt is fully paid, levy upon the taxable property located in the school district and collect a school district oil and natural gas revenue bond deficiency tax sufficient for the payment or reimbursement of the payment of the bonded debt in the current or ensuing fiscal year, or both; and

(b) until the bonded debt is fully paid, levy upon all of the taxable property located in the school district and collect a school district oil and natural gas revenue bond deficiency tax sufficient for replenishing amounts in the debt service reserve account.

(7) Taxes for the payment of any oil and natural gas revenue bonds to which the school district has pledged a deficiency tax must be levied on the taxable property located in the school

district as stated in the resolution fixing the terms and conditions of the bonds, and all taxes for other purposes must be levied on all property located within the school district.

**History:** En. 75-7126 by Sec. 327, Ch. 5, L. 1971; R.C.M. 1947, 75-7126; amd. Sec. 1, Ch. 549, L. 2001; amd. Sec. 11, Ch. 492, L. 2003; amd. Sec. 24, Ch. 400, L. 2013.

**Cross-References**

Claims and actions against political subdivisions, Title 2, ch. 9, part 3.

**20-9-438. Preparation of general obligation debt service fund budget — operating reserve.** (1) The trustees of each school district having outstanding general obligation bonds shall include in the debt service fund of the final budget adopted in accordance with 20-9-133 an amount of money that is necessary to pay the interest and the principal amount becoming due during the ensuing school fiscal year for each series or installment of bonds, according to the terms and conditions of the bonds and the redemption plans of the trustees.

(2) The trustees shall also include in the debt service fund of the final budget:

(a) the amount of money necessary to pay the special improvement district assessments levied against the school district that become due during the ensuing school fiscal year;

(b) a limited operating reserve for the school fiscal year following the ensuing school fiscal year as provided in subsection (4); and

(c) an amount to satisfy the reserve requirement for oil and natural gas revenue bonds.

(3) The trustees of a school district having outstanding oil and natural gas revenue bonds shall include in the debt service reserve account of the final budget adopted in accordance with 20-9-133 oil and natural gas production taxes received by a school district or other legally available funds sufficient to satisfy the reserve requirement. Funds remaining in the debt service reserve account may not be reappropriated or reverted and must be used for the purposes set forth in 20-9-474.

(4) At the end of each school fiscal year, the trustees of a school district may designate a portion of the end-of-the-year fund balance of the debt service fund to be earmarked as a limited operating reserve for the purpose of paying, whenever a cash flow shortage occurs, debt service fund warrants and bond obligations that must be paid from July 1 through November 30 of the school fiscal year following the ensuing school fiscal year. Any portion of the debt service fund end-of-the-year fund balance not earmarked for limited operating reserve purposes must be reappropriated to be used for property tax reduction as provided in 20-9-439.

(5) The county superintendent shall compare the final budgeted amount for the debt service fund with the bond retirement and interest requirement and the special improvement district assessments for the school fiscal year just beginning as reported by the county treasurer in the statement supplied under the provisions of 20-9-121. If the county superintendent finds that the requirement stated by the county treasurer is more than the final budget amount, the county superintendent shall increase the budgeted amount for interest or principal in the debt service fund of the final budget. The amount confirmed or revised by the county superintendent is the final budget expenditure amount for the debt service fund of the school district.

**History:** En. 75-7127 by Sec. 328, Ch. 5, L. 1971; amd. Sec. 2, Ch. 432, L. 1975; R.C.M. 1947, 75-7127; amd. Sec. 1, Ch. 132, L. 1987; amd. Sec. 36, Ch. 767, L. 1991; amd. Sec. 9, Ch. 211, L. 1997; amd. Sec. 12, Ch. 492, L. 2003; amd. Sec. 25, Ch. 400, L. 2013.

**20-9-439. Computation of net levy requirement for general obligation bonds — procedure when levy inadequate.** Subject to 20-6-326, the following provisions apply:

(1) The county superintendent shall compute the levy requirement for each school district's general obligation debt service fund on the basis of the following procedure:

(a) Determine the total money available in the debt service fund for the reduction of the property tax on the district by totaling:

(i) the end-of-the-year fund balance in the debt service fund, less any limited operating reserve as provided in 20-9-438;

(ii) anticipated interest to be earned by the investment of debt service cash in accordance with the provisions of 20-9-213(4) or by the investment of bond proceeds under the provisions of 20-9-435;

(iii) any state advance for school facilities distributed to a qualified district under the provisions of 20-9-346, 20-9-370, and 20-9-371;

(iv) funds transferred from the impact aid fund established pursuant to 20-9-514 that are authorized by 20-9-437(2) to be used to repay the district's bonds; and

(v) any other money, including money from federal sources, anticipated by the trustees to be available in the debt service fund during the ensuing school fiscal year from sources such as legally authorized money transfers into the debt service fund or from rental income, excluding any guaranteed tax base aid.

(b) Subtract the total amount available to reduce the property tax, determined in subsection (1)(a), from the final budget for the debt service fund as established in 20-9-438.

(2) The net debt service fund levy requirement determined in subsection (1)(b) must be reported to the county commissioners by the later of the first Tuesday in September or within 30 calendar days after receiving certified taxable values by the county superintendent as the net debt service fund levy requirement for the district, and a levy must be made by the county commissioners in accordance with 20-9-142.

(3) If the board of county commissioners fails in any school fiscal year to make a levy for any issue or series of bonds of a school district sufficient to raise the money necessary for payment of interest and principal becoming due during the next ensuing school fiscal year, in any amounts established under the provisions of this section, the holder of any bond of the issue or series or any taxpayer of the district may apply to the district court of the county in which the school district is located for a writ of mandate to compel the board of county commissioners of the county to make a sufficient levy for payment purposes. If, upon the hearing of the application, it appears to the satisfaction of the court that the board of county commissioners of the county has failed to make a levy or has made a levy that is insufficient to raise the amount required to be raised as established in the manner provided in this section, the court shall determine the amount of the deficiency and shall issue a writ of mandate directed to and requiring the board of county commissioners, at the next meeting for the purpose of fixing tax levies for county purposes, to fix and make a levy against all taxable property in the school district that is sufficient to raise the amount of the deficiency. The levy is in addition to any levy required to be made at that time for the ensuing school fiscal year. Any costs that may be allowed or awarded the petitioner in the proceeding must be paid by the members of the board of county commissioners and may not be a charge against the school district or the county.

**History:** En. 75-7128 by Sec. 329, Ch. 5, L. 1971; R.C.M. 1947, 75-7128; amd. Sec. 2, Ch. 132, L. 1987; amd. Sec. 37, Ch. 767, L. 1991; amd. Sec. 8, Ch. 133, L. 1993; amd. Sec. 36, Ch. 633, L. 1993; amd. Sec. 8, Ch. 586, L. 1995; amd. Sec. 2, Ch. 549, L. 2001; amd. Sec. 13, Ch. 492, L. 2003; amd. Sec. 4, Ch. 194, L. 2007; amd. Sec. 15, Ch. 152, L. 2011.

#### **Cross-References**

Property tax levies, Title 15, ch. 10.

Mandamus, Title 27, ch. 26.

**20-9-440. Payment of debt service obligations — termination of interest.** (1) The school district shall provide the county treasurer with a general obligation bond, oil and natural gas revenue bond, or impact aid revenue bond debt services schedule. The county treasurer shall maintain a separate debt service fund for each school district and, if bonds are to be issued as either impact aid revenue bonds or oil and natural gas revenue bonds, shall maintain a separate impact aid revenue bond debt service fund or oil and natural gas revenue bond debt service fund, as applicable, and an impact aid revenue bond debt service reserve account or oil and natural gas revenue bond debt service reserve account, if required. The school district shall credit all tax money, oil and natural gas revenue, or impact aid revenue collected for debt service to the appropriate fund and use the money credited to the fund for the payment of debt service obligations in accordance with the school financial administration provisions of this title.

(2) The county treasurer shall pay from the debt service fund all amounts of interest and principal on school district bonds as the interest or principal becomes due when the coupons or bonds are presented and surrendered for payment and shall pay all special improvement district assessments as they become due. If the bonds are held by the state of Montana, then all payments must be remitted to the state treasurer who shall cancel the coupons or bonds and return the coupons or bonds to the county treasurer with the state treasurer's receipt. If the bonds are not held by the state of Montana and the interest or principal is made payable at some designated bank or financial institution, the county treasurer shall remit the amount due



for interest or principal to the bank or financial institution for payment against the surrender of the canceled coupons or bonds.

(3) Whenever any school district bond or installment on school district bonds becomes due and payable, interest ceases on that date unless sufficient funds are available to pay the bond when it is presented for payment or when payment of an installment is demanded. In either case, interest on the bond or installment continues until payment is made.

(4) Any installment on interest and principal on bonds held by the state that is not promptly paid when due draws interest at an annual rate of 6% from the date due until actual payment, irrespective of the rate of interest on the bonds.

**History:** En. 75-7129 by Sec. 330, Ch. 5, L. 1971; amd. Sec. 3, Ch. 432, L. 1975; R.C.M. 1947, 75-7129; amd. Sec. 14, Ch. 492, L. 2003; amd. Sec. 26, Ch. 400, L. 2013.

**Cross-References**

Administration of finances, Title 20, ch. 9, part 2.

**20-9-441. Redemption of bonds — investment of debt service fund money.**

(1) Whenever there is a sufficient amount of money in any school district debt service fund available to pay and redeem one or more bonds of the school district held by the state of Montana, the county treasurer shall apply the money in payment of as many of the bonds as can be paid and redeemed. The county treasurer shall give notice not less than 30 days before the next interest due date to the board of investments that the bonds will be paid on the interest due date. Before the interest due date, the county treasurer shall remit to the state treasurer the amount of money that is necessary to pay the bonds that are being redeemed and the interest due on the bonds. When the state treasurer receives the payment, the treasurer shall cancel the bonds and any unpaid coupons of the bonds and return the canceled bonds and coupons to the county treasurer.

(2) Whenever there is a sufficient amount of money in any school district debt service fund available to pay and redeem one or more optional bonds of the school district not held by the state of Montana, not yet due but then redeemable or becoming redeemable on the next interest due date, the county treasurer shall apply the available money in payment of as many of the bonds as can be paid and redeemed. The county treasurer shall give notice to the holder of the bonds, if known, or to any bank or financial institution at which the bonds are payable, at least 30 days before the next interest due date, that the bonds will be paid and redeemed on that date. If the bonds are payable at some bank or financial institution, the county treasurer shall remit to the bank or financial institution, before the interest due date, an amount sufficient to pay and redeem the bonds. If the bonds are not presented for payment and redemption on the interest due date, the accrual of interest ceases on the interest due date.

(3) Whenever there is money available in any school district debt service fund sufficient to pay and redeem one or more outstanding bonds not yet due or redeemable and not held by the state of Montana, the trustees of the school district may direct the county treasurer to purchase the bonds of the district if this can be done at not more than par and accrued interest or at a reasonable premium that the trustees may feel justified in paying, but not exceeding 6%.

(4) Whenever the trustees cannot purchase outstanding bonds of the school district at a reasonable price, the available debt service fund money must be invested by the trustees under the provisions of 20-9-213(4). The investments must be sold in ample time before the debt service fund money is required for the payment of the bonds of the school district.

**History:** En. 75-7130 by Sec. 331, Ch. 5, L. 1971; R.C.M. 1947, 75-7130; amd. Sec. 10, Ch. 384, L. 1979; amd. Sec. 315, Ch. 56, L. 2009.

**20-9-442. Entries of payments and notification of school district.** The county treasurer shall make the necessary entries of all payments of interest and principal on the treasurer's bond registration record and shall promptly notify the clerk of the school district when the payments are made. The county treasurer also shall deliver the canceled coupons and bonds to the county clerk at the end of each month. The county clerk shall file the canceled coupons and bonds in the clerk's office.

**History:** En. 75-7131 by Sec. 332, Ch. 5, L. 1971; R.C.M. 1947, 75-7131; amd. Sec. 316, Ch. 56, L. 2009.

**20-9-443. Disposition of remaining debt service fund.** (1) Except as provided in subsection (2), when all of the bonds, bond interest, and special improvement district obligations of a school district have been fully paid, all money remaining in the debt service fund for the

school district and all money that may come into the debt service fund from the payment of the delinquent taxes must be transferred by the county treasurer to the building reserve levy fund, the technology acquisition and depreciation fund, or the general fund as designated by the school district if the subsequent use of the funds by the school district is limited to constructing, equipping, or enlarging school buildings or purchasing land needed for school purposes in the district.

(2) Any federal impact aid funding remaining in the debt service fund of a school district that has fully repaid the bonds and bond interest must revert to the district's impact aid fund established pursuant to 20-9-514.

**History:** En. 75-7132 by Sec. 333, Ch. 5, L. 1971; R.C.M. 1947, 75-7132; amd. Sec. 4, Ch. 480, L. 2001; amd. Sec. 3, Ch. 549, L. 2001; amd. Sec. 19, Ch. 462, L. 2005; amd. Sec. 25, Ch. 44, L. 2007.

**20-9-444. Liability of officers for failure to provide fund for payment of bonds.**

When the trustees of a school district are required by law to provide, by a levy of taxes or by certifying the amount of money required or otherwise, a sinking fund or fund required to pay at maturity any bonds issued or created after February 6, 1923, such trustees are jointly and severally liable to the school district which they represent if they fail to perform any duties so required by law, as specified in this section, in an amount equal to the sum which would have been added to such fund had they performed such duty. However, whenever any such board of trustees fails or neglects to perform any such duty, no minority member of the board who moved the board or voted in favor of performance of such duty may be held liable.

**History:** En. Sec. 1, Ch. 5, L. 1923; re-en. Sec. 463.1, R.C.M. 1935; R.C.M. 1947, 59-534; amd. Sec. 11, Ch. 384, L. 1979.

**Cross-References**

Penalty for violation of school laws, 20-1-207.

Trustee removal, 20-3-310.

Personal immunity and liability of trustees, 20-3-332.

**20-9-445. Liability for misuse of bond payment fund.** Any person or persons who shall take, use, appropriate, or permit to be taken, used, or appropriated any portion of any such fund as herein specified for any purpose other than that permitted by law shall be jointly and severally liable to the county, city, school district, irrigation district, or other municipal or public corporation to which said fund shall belong for the portion of such fund so unlawfully taken, used, or appropriated.

**History:** En. Sec. 2, Ch. 5, L. 1923; re-en. Sec. 463.2, R.C.M. 1935; R.C.M. 1947, 59-535.

**Cross-References**

Penalty for violation of school laws, 20-1-207.

Trustee removal, 20-3-310.

Personal immunity and liability of trustees, 20-3-332.

**20-9-446. Duty of county attorney to prosecute.** It shall be the duty of the county attorney in each county to commence and prosecute all actions to enforce any liability created by 20-9-444 or 20-9-445. Such actions shall be tried as civil actions at law.

**History:** En. Sec. 3, Ch. 5, L. 1923; re-en. Sec. 463.3, R.C.M. 1935; R.C.M. 1947, 59-536.

**Cross-References**

Conflict of interest, 20-1-205.

**20-9-447 through 20-9-450 reserved.**

**20-9-451. Repealed.** Sec. 22, Ch. 219, L. 1997.

**History:** En. 75-7133 by Sec. 334, Ch. 5, L. 1971; R.C.M. 1947, 75-7133.

**20-9-452. Repealed.** Sec. 22, Ch. 219, L. 1997.

**History:** En. 75-7134 by Sec. 335, Ch. 5, L. 1971; amd. Sec. 12, Ch. 83, L. 1971; R.C.M. 1947, 75-7134; amd. Sec. 1, Ch. 42, L. 1985.

**20-9-453. Repealed.** Sec. 22, Ch. 219, L. 1997.

**History:** En. 75-7135 by Sec. 336, Ch. 5, L. 1971; R.C.M. 1947, 75-7135.

**20-9-454. Repealed.** Sec. 22, Ch. 219, L. 1997.

**History:** En. 75-7136 by Sec. 337, Ch. 5, L. 1971; R.C.M. 1947, 75-7136.

**20-9-455. Repealed.** Sec. 22, Ch. 219, L. 1997.

**History:** En. 75-7137 by Sec. 338, Ch. 5, L. 1971; R.C.M. 1947, 75-7137.

**20-9-456. Repealed.** Sec. 22, Ch. 219, L. 1997.

**History:** En. 75-7138 by Sec. 339, Ch. 5, L. 1971; R.C.M. 1947, 75-7138.

**20-9-457 through 20-9-460 reserved.**

**20-9-461. Purpose.** Section 20-9-464 and this section are intended to improve the marketability of bonds issued by school districts in order that the bonds may be sold upon the most favorable terms.

**History:** En. Sec. 4, Ch. 139, L. 1939; R.C.M. 1947, 82-413(part); amd. Sec. 9, Ch. 94, L. 2007.

**20-9-462. Repealed.** Sec. 14, Ch. 94, L. 2007.

**History:** En. Sec. 1, Ch. 139, L. 1939; R.C.M. 1947, 82-410(part).

**20-9-463. Repealed.** Sec. 14, Ch. 94, L. 2007.

**History:** En. Sec. 2, Ch. 139, L. 1939; R.C.M. 1947, 82-411(part).

**20-9-464. Statute of limitations — action to test validity.** A bond of any issue may not be held invalid because of any defect or failure to comply with a statutory provision relating to the authorization, issuance, or sale of the bonds unless an action to contest the validity of the bonds is brought within 30 days after the date of the adoption of the resolution calling for the sale of bonds of the school district.

**History:** En. Sec. 3, Ch. 139, L. 1939; R.C.M. 1947, 82-412(part); amd. Sec. 20, Ch. 451, L. 2005; amd. Sec. 10, Ch. 94, L. 2007.

#### **Cross-References**

Bond Validating Act, Title 17, ch. 5, part 2.

**20-9-465. Action to restrain bond issue — time for bringing.** (1) No action may be brought for the purpose of restraining the issuance and sale of bonds or other obligations by any school district or for the purpose of restraining the levy and collection of taxes for the payment of such bonds or other obligations after the expiration of 60 days from the date of the election on such bonds or obligations or, if no election was held thereon, after the expiration of 60 days from the date of the resolution authorizing the issuance thereof on account of any defect, irregularity, or informality in giving notice of or in holding the election; nor may any defense based upon any such defect, irregularity, or informality be interposed in any action unless brought within this period.

(2) This section applies but is not limited to any action and defense in which the issue is raised whether a voted debt or liability has carried by the required majority vote of the electors qualified and offering to vote thereon.

**History:** En. Sec. 1, Ch. 114, L. 1919; re-en. Sec. 9040, R.C.M. 1921; re-en. Sec. 9040, R.C.M. 1935; amd. Sec. 15, Ch. 158, L. 1971; R.C.M. 1947, 93-2612(part); amd. Sec. 12, Ch. 384, L. 1979.

#### **Cross-References**

Issuance of injunctions on nonjudicial days, 3-1-302, 3-5-302.

Contempts, Title 3, ch. 1, part 5.

Property tax levies, Title 15, ch. 10.

Bond Validating Act, Title 17, ch. 5, part 2.

Injunctions, Title 27, ch. 19.

**20-9-466. Repealed.** Sec. 3, Ch. 14, L. 2007.

**History:** En. Sec. 1, Ch. 12, Sp. L. January 1992; amd. Sec. 39, Ch. 18, L. 1995; amd. Sec. 115, Ch. 42, L. 1997.

**20-9-467. Repealed.** Sec. 3, Ch. 14, L. 2007.

**History:** En. Sec. 2, Ch. 12, Sp. L. January 1992.

**20-9-468 through 20-9-470 reserved.**

**20-9-471. Issuance of obligations — authorization — conditions.** (1) The trustees of a school district may, without a vote of the electors of the district, issue and sell to the board of investments obligations for the purpose of financing all or a portion of:

(a) the costs of vehicles and equipment and construction of buildings used primarily for the storage and maintenance of vehicles and equipment;

(b) the costs associated with renovating, rehabilitating, and remodeling facilities, including but not limited to roof repairs, heating, plumbing, electrical systems, and cost-saving measures as defined in 90-4-1102;

(c) the costs of nonpermanent modular classrooms necessary for student instruction when existing buildings of the district are determined to be inadequate by the trustees;

(d) any other expenditure that the district is otherwise authorized to make, subject to subsection (4), including the payment of settlements of legal claims and judgments; and

(e) the costs associated with the issuance and sale of the obligations.

(2) The term of the obligation, including an obligation for a qualified energy project, may not exceed 15 fiscal years. For the purposes of this subsection, a “qualified energy project” means a project designed to reduce energy use in a school facility and from which the resulting energy cost savings are projected to meet or exceed the debt service obligation for financing the project, as determined by the department of environmental quality.

(3) (a) At the time of issuing the obligation, there must exist an amount in the budget of an applicable budgeted fund of the district for the current fiscal year available and sufficient to make the debt service payment on the obligation coming due in the current year. The budget of an applicable budgeted fund of the district for each following year in which any portion of the principal of and interest on the obligation is due must provide for payment of that principal and interest.

(b) For an obligation sold under subsection (1)(d) for the purposes of paying a tax protest refund, a district may pledge revenue from a special tax protest refund levy for the repayment of the obligation, pursuant to 15-1-402(7).

(4) Except as provided in 20-9-502, 20-9-503, and subsections (1)(a) and (1)(c) of this section, the proceeds of the obligation may not be used to acquire real property or construct a facility unless:

(a) the acquisition or construction project does not constitute more than 20% of the square footage of the existing real property improvements made to a facility containing classrooms;

(b) the 20% square footage limitation may not be exceeded within any 5-year period; and

(c) the electors of the district approve a proposition authorizing the trustees to apply for funds through the board of investments for the construction project. The proposition must be approved at an election held in accordance with all of the requirements of 20-9-428, except that the proposition is considered to have passed if a majority of the qualified electors voting approve the proposition.

(5) The school district may not submit for a vote of the electors of the district a proposition to impose a levy to pay the principal or any interest on an obligation that is payable from the guaranteed cost savings under energy performance contracts as defined in 90-4-1102.

(6) Except as provided in subsection (3)(b), the obligation must state clearly on its face that the obligation is not secured by a pledge of the school district’s taxing power but is payable from amounts in its general fund or other legally available funds.

(7) An obligation issued is payable from any legally available fund of the district and constitutes a general obligation of the district.

(8) The obligation may bear interest at a fixed or variable rate and may be sold to the board of investments at par, at a discount, or with a premium and on any other terms and conditions that the trustees determine to be in the best interests of the district.

(9) The principal amount of the obligation, when added to the outstanding bonded indebtedness of the district, may not exceed the debt limitation established in 20-9-406.

**History:** En. Sec. 1, Ch. 264, L. 1989; amd. Sec. 1, Ch. 719, L. 1991; amd. Sec. 38, Ch. 767, L. 1991; amd. Sec. 1, Ch. 37, L. 1995; amd. Sec. 1, Ch. 23, L. 1997; amd. Sec. 1, Ch. 499, L. 1997; amd. Sec. 2, Ch. 25, L. 2011; amd. Sec. 211, Ch. 49, L. 2015; amd. Sec. 7, Ch. 344, L. 2015; amd. Sec. 1, Ch. 1, L. 2017.

#### **Compiler’s Comments**

*2017 Amendment:* Chapter 1 in (1)(a) after “costs of vehicles and equipment” inserted “and construction of buildings used primarily for the storage and maintenance of vehicles and equipment”; inserted (1)(c) concerning the costs of nonpermanent modular classrooms; in (3)(a) in two places after “budget” inserted “of an applicable budgeted fund of the district”; inserted (3)(b) concerning pledging revenue; in (4) inserted references to subsections (1)(a) and (1)(c); in (6) at beginning inserted exception clause; and made minor changes in style. Amendment effective February 8, 2017.

**20-9-472. Security for impact aid revenue bonds — agreement of state.** (1) To secure the payment of principal and interest on impact aid revenue bonds, the trustees of a school district by resolution or indenture of trust may provide that impact aid revenue bonds are secured by a first lien on the federal impact aid basic support payments received and credited to

the fund established in 20-9-514 and pledge to the holders of the impact aid revenue bonds all of the money in the impact aid revenue bond debt service fund.

(2) Upon receipt of the federal impact aid basic support payment, the county treasurer shall deposit in the impact aid revenue bond debt service fund the amount that is required to pay the principal of and interest on the impact aid revenue bonds coming due in the next 12-month period and to restore any deficiency in the impact aid revenue bond debt service reserve account. Excess federal impact aid basic support payment revenue must be deposited as provided in 20-9-514. The school district and county treasurer may designate a trustee for holders of the bonds to receive the school district's impact aid revenue for purposes of making the annual debt service payments on impact aid revenue bonds and may authorize the trustee to establish and maintain the impact aid revenue bond debt service fund and impact aid revenue bond debt service reserve account.

(3) Any pledge made pursuant to this section is valid and binding from the time the pledge is made, and the money pledged and received by the county treasurer on behalf of the school district to be placed in the impact aid revenue bond debt service fund account is immediately subject to the lien of the pledge without any future physical delivery or further act. A lien of any pledge is valid and binding against all parties that have claims of any kind against the school district, regardless of whether the parties have notice of the lien. The bond resolution or indenture of trust that creates the pledge, when adopted by the trustees of any district, is notice of the creation of the pledge, and those instruments are not required to be recorded in any other place to perfect the pledge.

(4) The state pledges to and agrees with the holders of impact aid revenue bonds that the state will not limit, alter, or impair the ability of a school district to qualify for impact aid revenue or in any way impair the rights and remedies of the bondholders until all bonds issued under this section, together with interest on the bonds, interest on any unpaid installments of principal or interest, and all costs and expenses in connection with any action or proceedings by or on behalf of the bondholders, are fully met and discharged. The trustees of any district, as agents for the state, may include this pledge and undertaking in resolutions and indentures authorizing and securing the bonds.

**History:** En. Sec. 15, Ch. 492, L. 2003; amd. Sec. 26, Ch. 44, L. 2007.

**20-9-473. Security for oil and natural gas revenue bonds.** (1) To secure the payment of principal of and interest on oil and natural gas revenue bonds, the trustees of a school district, by resolution or indenture of trust, may provide that oil and natural gas revenue bonds are secured by a first lien on the oil and natural gas production revenue received pursuant to 20-9-310 and pledge to the holders of the oil and natural gas revenue bonds all of the oil and natural gas revenue deposited in the district's debt service fund.

(2) Upon receipt of oil and natural gas revenue, the county treasurer shall deposit in the district's debt service fund the amount that is required to pay the principal of and interest on the oil and natural gas revenue bonds due in the next 12-month period and to restore any deficiency in the oil and natural gas revenue debt service reserve account up to reserve requirements. Any remaining oil and natural gas revenue must be deposited as directed by the board of trustees as provided in 20-9-310. The school district and county treasurer may designate a trustee for holders of the bonds to receive the school district's oil and natural gas revenue for purposes of making the annual debt service payments on oil and natural gas revenue bonds and may authorize the trustee to establish and maintain the oil and natural gas revenue bond debt service fund and oil and natural gas revenue bond debt service reserve account.

(3) Any pledge made pursuant to this section is valid and binding from the time the pledge is made, and the money pledged and received by the county treasurer on behalf of the school district to be placed in the debt service fund is immediately subject to the lien of the pledge without any future physical delivery or further act. A lien of any pledge is valid and binding against all parties that have claims of any kind against the school district regardless of whether the parties have notice of the lien. The bond resolution or indenture of trust that creates the pledge, when adopted by the trustees of any district, is notice of the creation of the pledge, and those instruments are not required to be recorded in any other place to perfect the pledge.

(4) The state may not limit, alter, or impair the ability of a school district to qualify for oil and natural gas revenue or in any way impair the rights and remedies of the bondholders until



all bonds issued under this section, together with interest on the bonds, interest on any unpaid installments of principal or interest, and all costs and expenses in connection with any action or proceedings by or on behalf of the bondholders, are fully met and discharged. The trustees of any district, as agents for the state, may include a pledge and undertaking in resolutions and indentures authorizing and securing the bonds as described in this subsection.

**History:** En. Sec. 27, Ch. 400, L. 2013.

**20-9-474. Oil and natural gas revenue bond debt service reserve account.** (1) If a school district issues oil and natural gas revenue bonds, the school district shall establish and maintain an oil and natural gas revenue bond debt service reserve account, to which there must be deposited or transferred an amount from bond proceeds or oil and natural gas production taxes received by a school district or other legally available funds sufficient to satisfy the reserve requirement.

(2) All money held in the oil and natural gas revenue bond debt service reserve account must be used solely for the payment of the principal of or interest on the bonds secured in whole or in part by the account or the debt service fund payments with respect to the bonds, the purchase or redemption of the bonds, the payment of interest on the bonds, or the payment of any redemption premium required to be paid when the bonds are redeemed prior to maturity.

**History:** En. Sec. 28, Ch. 400, L. 2013.

## Part 5 Special Purpose Funds

### Part Cross-References

Management of school money, Title 7, ch. 6, part 28.

Bus depreciation reserve fund, 20-10-147.

School food services fund, 20-10-204, 20-10-207.

**20-9-501. Retirement costs and retirement fund.** (1) The trustees of a district or the management board of a cooperative employing personnel who are members of the teachers' retirement system or the public employees' retirement system, who are covered by unemployment insurance, or who are covered by any federal social security system requiring employer contributions shall establish a retirement fund for the purposes of budgeting and paying the employer's contributions to the systems as provided in subsection (2)(a). The district's or the cooperative's contribution for each employee who is a member of the teachers' retirement system must be calculated in accordance with Title 19, chapter 20, part 6. The district's or the cooperative's contribution for each employee who is a member of the public employees' retirement system must be calculated in accordance with 19-3-316. The district's or the cooperative's contributions for each employee covered by any federal social security system must be paid in accordance with federal law and regulation. The district's or the cooperative's contribution for each employee who is covered by unemployment insurance must be paid in accordance with Title 39, chapter 51, part 11.

(2) (a) The district or the cooperative shall pay the employer's contributions to the retirement, federal social security, and unemployment insurance systems from the retirement fund for the following:

(i) a district employee whose salary and health-related benefits, if any health-related benefits are provided to the employee, are paid from state or local funding sources;

(ii) a cooperative employee whose salary and health-related benefits, if any health-related benefits are provided to the employee, are paid from the cooperative's interlocal cooperative fund if the fund is supported solely from districts' general funds and state special education allowable cost payments, pursuant to 20-9-321, or are paid from the miscellaneous programs fund, provided for in 20-9-507, from money received from the medicaid program, pursuant to 53-6-101;

(iii) a district employee whose salary and health-related benefits, if any health-related benefits are provided to the employee, are paid from the district's school food services fund provided for in 20-10-204; and

(iv) a district employee whose salary and health-related benefits, if any health-related benefits are provided to the employee, are paid from the district impact aid fund, pursuant to 20-9-514.

(b) For an employee whose benefits are not paid from the retirement fund, the district or the cooperative shall pay the employer's contributions to the retirement, federal social security, and unemployment insurance systems from the funding source that pays the employee's salary.

(3) The trustees of a district required to make a contribution to a system referred to in subsection (1) shall include in the retirement fund of the final budget the estimated amount of the employer's contribution. After the final retirement fund budget has been adopted, the trustees shall pay the employer contributions to the systems in accordance with the financial administration provisions of this title.

(4) When the final retirement fund budget has been adopted, the county superintendent shall establish the levy requirement by:

(a) determining the sum of the money available to reduce the retirement fund levy requirement by adding:

(i) any anticipated money that may be realized in the retirement fund during the ensuing school fiscal year;

(ii) oil and natural gas production taxes;

(iii) coal gross proceeds taxes under 15-23-703;

(iv) any fund balance available for reappropriation as determined by subtracting the amount of the end-of-the-year fund balance earmarked as the retirement fund operating reserve for the ensuing school fiscal year by the trustees from the end-of-the-year fund balance in the retirement fund. The retirement fund operating reserve may not be more than 20% of the final retirement fund budget for the ensuing school fiscal year and must be used for the purpose of paying retirement fund warrants issued by the district under the final retirement fund budget.

(v) property tax reimbursements made pursuant to 15-1-123(6);

(vi) any other revenue anticipated that may be realized in the retirement fund during the ensuing school fiscal year, excluding any guaranteed tax base aid;

(b) notwithstanding the provisions of subsection (9), subtracting the money available for reduction of the levy requirement, as determined in subsection (4)(a), from the budgeted amount for expenditures in the final retirement fund budget.

(5) The county superintendent shall:

(a) total the net retirement fund levy requirements separately for all elementary school districts, all high school districts, and all community college districts of the county, including any prorated joint district or special education cooperative agreement levy requirements; and

(b) report each levy requirement to the county commissioners by the later of the first Tuesday in September or within 30 calendar days after receiving certified taxable values as the respective county levy requirements for elementary district, high school district, and community college district retirement funds.

(6) The county commissioners shall fix and set the county levy or district levy in accordance with 20-9-142.

(7) The net retirement fund levy requirement for a joint elementary district or a joint high school district must be prorated to each county in which a part of the district is located in the same proportion as the district ANB of the joint district is distributed by pupil residence in each county. The county superintendents of the counties affected shall jointly determine the net retirement fund levy requirement for each county as provided in 20-9-151.

(8) The net retirement fund levy requirement for districts that are members of special education cooperative agreements must be prorated to each county in which the district is located in the same proportion as the special education cooperative budget is prorated to the member school districts. The county superintendents of the counties affected shall jointly determine the net retirement fund levy requirement for each county in the same manner as provided in 20-9-151, and the county commissioners shall fix and levy the net retirement fund levy for each county in the same manner as provided in 20-9-152.

(9) The county superintendent shall calculate the number of mills to be levied on the taxable property in the county to finance the retirement fund net levy requirement by dividing the amount determined in subsection (5)(a) by the sum of:

(a) the amount of guaranteed tax base aid that the county will receive for each mill levied, as certified by the superintendent of public instruction; and

(b) the taxable valuation of the district divided by 1,000.

(10) The levy for a community college district may be applied only to property within the district.

(11) The county superintendent of each county shall submit a report of the revenue amounts used to establish the levy requirements for county school funds supporting elementary and high school district retirement obligations to the superintendent of public instruction on or before September 15. The report must be completed on forms supplied by the superintendent of public instruction.

**History:** En. 75-7204 by Sec. 343, Ch. 5, L. 1971; amd. Sec. 1, Ch. 281, L. 1973; amd. Sec. 1, Ch. 202, L. 1975; amd. Sec. 1, Ch. 121, L. 1977; R.C.M. 1947, 75-7204; amd. Sec. 2, Ch. 57, L. 1979; amd. Sec. 3, Ch. 481, L. 1979; amd. Sec. 5, Ch. 699, L. 1983; amd. Sec. 16, Ch. 695, L. 1985; amd. Sec. 19, Ch. 611, L. 1987; amd. Sec. 4, Ch. 635, L. 1987; amd. Sec. 23, Ch. 655, L. 1987; amd. Secs. 43, 89, Ch. 11, Sp. L. June 1989; amd. Sec. 39, Ch. 767, L. 1991; amd. Sec. 9, Ch. 133, L. 1993; amd. Sec. 43, Ch. 451, L. 1995; amd. Sec. 6, Ch. 580, L. 1995; amd. Sec. 10, Ch. 211, L. 1997; amd. Sec. 13, Ch. 496, L. 1997; amd. Sec. 1, Ch. 379, L. 1999; amd. Sec. 18, Ch. 515, L. 1999; amd. Sec. 13, Ch. 554, L. 1999; amd. Sec. 121, Ch. 574, L. 2001; amd. Sec. 3, Ch. 276, L. 2003; amd. Sec. 7, Ch. 550, L. 2003; amd. Sec. 28, Ch. 130, L. 2005; amd. Sec. 1, Ch. 405, L. 2005; amd. Sec. 27, Ch. 44, L. 2007; amd. Sec. 46, Ch. 2, L. 2009; amd. Sec. 23, Ch. 489, L. 2009; amd. Sec. 16, Ch. 152, L. 2011; amd. Sec. 8, Ch. 411, L. 2011; amd. Sec. 19, Ch. 389, L. 2013.

#### **Cross-References**

Participation of teachers in Social Security system, Title 19, ch. 1, part 8.

School fiscal year, 20-1-301.

Special funding provisions for special education cooperatives, 20-7-451.

Administration of finances, Title 20, ch. 9, part 2.

**20-9-502. Purpose and authorization of building reserve fund — levy for school transition costs.** (1) The trustees of any district may establish a building reserve fund to budget for and expend funds for any of the purposes set forth in this section. Appropriate subfunds must be created to ensure separate tracking of the expenditure of funds from voted and nonvoted levies and transfers for school safety pursuant to 20-9-236.

(2) (a) A voted levy may be imposed and a subfund must be created with the approval of the qualified electors of the district for the purpose of raising money for the future construction, equipping, or enlarging of school buildings or for the purpose of purchasing land needed for school purposes in the district. In order to submit to the qualified electors of the district a building reserve proposition for the establishment of or addition to a building reserve, the trustees shall pass a resolution that specifies:

(i) the purpose or purposes for which the new or addition to the building reserve will be used;

(ii) the duration of time over which the new or addition to the building reserve will be raised in annual, equal installments;

(iii) the total amount of money that will be raised during the duration of time specified for the levy; and

(iv) any other requirements under 15-10-425 and 20-20-201 for the calling of an election.

(b) Except as provided in subsection (4)(b), a building reserve tax authorization may not be for more than 20 years.

(c) The election must be conducted in accordance with the school election laws of this title, and the electors qualified to vote in the election must be qualified under the provisions of 20-20-301. The ballot for a building reserve proposition must be substantially in compliance with 15-10-425.

(d) The building reserve proposition is approved if a majority of those electors voting at the election approve the establishment of or addition to the building reserve. The annual budgeting and taxation authority of the trustees for a building reserve is computed by dividing the total authorized amount by the specified number of years. The authority of the trustees to budget and impose the taxation for the annual amount to be raised for the building reserve lapses when, at a later time, a bond issue is approved by the qualified electors of the district for the same purpose or purposes for which the building reserve fund of the district was established. Whenever a subsequent bond issue is made for the same purpose or purposes of a building reserve, the money in the building reserve must be used for the purpose or purposes before any money realized by the bond issue is used.

(3) (a) A subfund must be created to account for revenue and expenditures for school major maintenance and repairs authorized under this subsection (3). Except as provided in subsection

(3)(g), the trustees of a district may authorize and impose a levy of no more than 10 mills on the taxable value of all taxable property within the district for that school fiscal year for the purposes of raising revenue for identified school major maintenance projects meeting the requirements of 20-9-525(2). The 10-mill limit under this section must be calculated using the district's total taxable valuation most recently certified by the department of revenue under 15-10-202. The amount of money raised by the levy, the deposits and transfers authorized under subsection (3)(f) of this section, and anticipated state aid pursuant to 20-9-525(3) may not exceed the district's school major maintenance amount. For the purposes of this section, the term "school major maintenance amount" means the sum of \$15,000 and the product of \$100 multiplied by the district's budgeted ANB for the prior fiscal year. To authorize and impose a levy under this subsection (3), the trustees shall:

(i) following public notice requirements pursuant to 20-9-116, adopt no later than June 1 for fiscal year 2017 only and no later than March 31 for fiscal years 2018 and subsequent fiscal years, a resolution:

(A) identifying the anticipated school major maintenance projects for which the proceeds of the levy, the deposits and transfers authorized under subsection (3)(f) of this section, and anticipated state aid pursuant to 20-9-525(3) will be used; and

(B) estimating a total dollar amount of money to be raised by the levy, the deposits and transfers authorized under subsection (3)(f) of this section, anticipated state aid pursuant to 20-9-525(3), and the resulting estimated number of mills to be levied using the district's taxable valuation most recently certified by the department of revenue under 15-10-202; and

(ii) include the amount of any final levy to be imposed as part of its final budget meeting noticed in compliance with 20-9-131.

(b) Proceeds from the levy may be expended only for the purposes under 20-9-525(2), and the expenditure of the money must be reported in the annual trustees' report as required by 20-9-213.

(c) Whenever the trustees of a district impose a levy pursuant to this section during the current school fiscal year, they shall budget for the proceeds of the levy, the deposits and transfers authorized under subsection (3)(f) of this section, and anticipated state aid pursuant to 20-9-525(3) in the district's building reserve fund budget. Any expenditures of the funds must be made in accordance with the financial administration provisions of this title for a budgeted fund.

(d) When a tax levy pursuant to this section is included as a revenue item on the final building reserve fund budget, the county superintendent shall report the levy requirement to the county commissioners by the later of the first Tuesday in September or within 30 calendar days after receiving certified taxable values and a levy on the district must be made by the county commissioners in accordance with 20-9-142.

(e) A subfund in the building reserve fund must be created for the deposit of proceeds from the levy, the deposits and transfers authorized under subsection (3)(f) of this section, and anticipated state aid pursuant to 20-9-525(3).

(f) If the imposition of 10 mills pursuant to subsection (3)(a) is estimated by the trustees to generate an amount less than the maximum levy revenue specified in subsection (3)(a), the trustees may deposit additional funds from any lawfully available revenue source and may transfer additional funds from any lawfully available fund of the district to the subfund provided for in subsection (3)(a), up to the difference between the revenue estimated to be raised by the imposition of 10 mills and the maximum levy revenue specified in subsection (3)(a). The district's local effort for purposes of calculating its eligibility for state school major maintenance aid pursuant to 20-9-525 consists of the combined total of funds raised from the imposition of 10 mills and additional funds raised from deposits and transfers in compliance with this subsection (3)(f).

(g) A district awarded a quality schools facility grant pursuant to [former] Title 90, chapter 6, part 8, during the biennium beginning July 1, 2017, may not impose the levy under this subsection (3) during the biennium beginning July 1, 2017.

(4) (a) A voted levy may be imposed and a subfund must be created with the approval of the qualified electors of the district to provide funding for transition costs incurred when the trustees:

(i) open a new school under the provisions of Title 20, chapter 6;



- (ii) close a school;
- (iii) replace a school building;
- (iv) consolidate with or annex another district under the provisions of Title 20, chapter 6; or
- (v) receive approval from voters to expand an elementary district into a K-12 district pursuant to 20-6-326.

(b) Except as provided in subsection (4)(c), the total amount the trustees may submit to the electorate for transition costs may not exceed the number of years specified in the proposition times the greater of 5% of the district's maximum general fund budget for the current year or \$250 per ANB for the current year. The duration of the levy for transition costs may not exceed 6 years.

(c) If the levy for transition costs is for consolidation or annexation:

- (i) the limitation on the amount levied is calculated using the ANB and the maximum general fund budget for the districts that are being combined; and

- (ii) the proposition must be submitted to the qualified electors in the combined district.

(d) The levy for transition costs may not be considered as outstanding indebtedness for the purpose of calculating the limitation in 20-9-406.

(5) A subfund in the building reserve fund must be created for the funds transferred to the building reserve fund for school safety and security pursuant to 20-9-236.

**History:** En. 75-7205 by Sec. 344, Ch. 5, L. 1971; amd. Sec. 13, Ch. 83, L. 1971; amd. Sec. 1, Ch. 29, L. 1975; R.C.M. 1947, 75-7205; amd. Sec. 62, Ch. 614, L. 1981; amd. Sec. 8, Ch. 555, L. 1991; amd. Sec. 18, Ch. 237, L. 2001; amd. Sec. 28, Ch. 495, L. 2001; amd. Sec. 5, Ch. 194, L. 2007; amd. Sec. 2, Ch. 213, L. 2009; amd. Sec. 13, Ch. 404, L. 2017.

#### Compiler's Comments

*2017 Amendment — Coordination — Code Commissioner Correction:* Chapter 404 in (1) after "The trustees of any district" deleted "with the approval of the qualified electors of the district", at end of first sentence inserted "fund to budget for and expend funds for any of the purposes set forth in this section", and inserted second sentence requiring appropriate subfunds; in (2)(a) at beginning inserted "A voted levy may be imposed and a subfund must be created with the approval of the qualified electors of the district" and at end of first sentence deleted "or for the purpose of funding school transition costs as provided in subsections (5) and (6)"; in (2)(a)(iii) substituted "for the levy" for "in subsection (1)(b)"; in (2)(b) substituted "subsection (4)(b)" for "subsections (5)(b) and (6)"; inserted (3) requiring a subfund for school major maintenance and repairs, authorizing a nonvoted levy of up to 10 mills, defining school major maintenance amount, requiring certain public notice requirements to adopt the levy, requiring the county superintendent to report to the county commissioners, and prohibiting a district with a quality schools facility grant from imposing levy until after June 30, 2019; in (4)(a) substituted "A voted levy may be imposed and a subfund must be created with the approval of the qualified electors of the district" for "The trustees may submit a proposition to the qualified electors of the district for a levy"; inserted (4)(a)(v) regarding approval from voters to expand an elementary district into a K-12 district; in (4)(b) substituted "subsection (4)(c)" for "subsections (5)(c) and (6)" and in last sentence at beginning deleted "Except as provided in subsection (6)"; inserted (5) requiring a subfund for school safety and security purposes in the building reserve fund; deleted former (6) that read: "(6) The trustees of a K-12 district shall impose a levy for transition costs to fund the payment required by 20-6-326(6)(b) when a proposition to create the K-12 district and to assess the transition levy has been approved pursuant to 20-6-326(2). The levy is limited to the amount required by 20-6-326(6)(b) for a period not to exceed 3 years"; and made minor changes in style. Amendment effective May 19, 2017.

In (3)(g) the code commissioner inserted "[former]" before "Title 90, chapter 6, part 8" to reflect the repeal of that part.

The amendments to this section made by sec. 2, Ch. 205, L. 2017, and sec. 6, Ch. 404, L. 2017, were rendered void by sec. 13, Ch. 404, L. 2017, a coordination section.

*Applicability — Retroactive Applicability:* Section 15, Ch. 404, L. 2017, provided that: (1) this section applies to school district budgets beginning on or after July 1, 2017; and (2) the authority and requirement for notice under subsection (3) of this section applies retroactively, within the meaning of 1-2-109, to levies noticed on or after January 1, 2017. Approved May 19, 2017.

#### Cross-References

Mail ballot elections prohibited, 13-19-104.

School property, Title 20, ch. 6, part 6.

**20-9-503. Budgeting, tax levy, and use of building reserve fund.** (1) Whenever an annual building reserve authorization to budget is available to a district, the trustees shall include the authorized amount in the building reserve fund of the final budget. The county superintendent shall report the amount as the building reserve fund levy requirement to the county commissioners by the later of the first Tuesday in September or within 30 calendar days after receiving certified taxable values, and a levy on the district must be made by the county commissioners in accordance with 20-9-142.

(2) The trustees of any district maintaining a building reserve fund may:

- (a) pledge the revenue from the building reserve fund levy for up to 15 years to repay loans used only for projects authorized by the electors of the district pursuant to 20-9-502.



(b) expend money from the fund for the purpose or purposes for which it was authorized without the specific expenditures being included in the final budget when, in their discretion, there is a sufficient amount of money to begin the authorized projects. The expenditures may not invalidate the district's authority to continue the annual imposition of the building reserve taxation authorized by the electors of the district.

(3) Whenever there is money credited to the building reserve fund for which there is no immediate need, the trustees may invest the money in accordance with 20-9-213(4). The interest earned from the investment must be credited to the building reserve fund or the debt service fund, at the discretion of the trustees, and expended for any purpose authorized by law for the fund.

**History:** En. 75-7206 by Sec. 345, Ch. 5, L. 1971; R.C.M. 1947, 75-7206; amd. Sec. 10, Ch. 133, L. 1993; amd. Sec. 2, Ch. 23, L. 1997; amd. Sec. 11, Ch. 211, L. 1997; amd. Sec. 17, Ch. 152, L. 2011; amd. Sec. 2, Ch. 1, L. 2017.

**Compiler's Comments**

*2017 Amendment:* Chapter 1 in (2)(a) after "revenue" deleted "for loans", substituted "15 years to repay loans" for "5 years. However, loan proceeds may be", and after "projects authorized by" inserted "the electors of the district pursuant to"; and made minor changes in style. Amendment effective February 8, 2017.

**20-9-504. Extracurricular fund for pupil functions.** (1) The trustees of a district may establish an extracurricular fund for the purposes of receiving and expending money collected for pupil extracurricular functions. All extracurricular money of a pupil organization of the school must be deposited and expended by check from a bank account maintained for the extracurricular fund.

(2) An accounting system for the extracurricular fund recommended by the superintendent of public instruction must be implemented by the trustees. The accounting system must provide for:

- (a) the internal control of the cash receipts and expenditures of the money; and
- (b) a general account that can be reconciled with the bank account for the extracurricular fund and reconciled with the detailed accounts within the extracurricular fund maintained for each student function.

(3) The trustees may invest any excess money in the extracurricular fund in accordance with the provisions of 20-9-213(4). Interest earned as a result of the investments may either be:

- (a) credited to a general operating account within the fund to be used to offset expenses incurred in administering the fund; or
- (b) distributed to the fund from which the money was withdrawn for investment.

**History:** En. 75-6323 by Sec. 136, Ch. 5, L. 1971; amd. Sec. 1, Ch. 349, L. 1971; amd. Sec. 1, Ch. 218, L. 1973; amd. Sec. 17, Ch. 380, L. 1975; R.C.M. 1947, 75-6323; amd. Sec. 7, Ch. 274, L. 1981; amd. Sec. 1, Ch. 287, L. 1983; amd. Sec. 40, Ch. 767, L. 1991; amd. Sec. 1, Ch. 38, L. 2013.

**20-9-505. Purpose and establishment of nonoperating fund.** (1) The trustees of a district that will not operate a school during the ensuing school fiscal year shall establish a nonoperating fund on the first day of the school fiscal year. In establishing the nonoperating fund, the trustees shall cause the transfer of the end-of-the-year fund balance of each fund maintained by the district during the immediately preceding school fiscal year to the nonoperating fund. However, fund balances of the debt service fund and the miscellaneous programs fund, if any, must be maintained in their individual funds.

(2) The trustees of a district establishing a nonoperating fund for the first year of nonoperation may earmark a portion of the nonoperating fund balance as a nonoperating fund operating reserve when they anticipate the reopening of a school in the following school fiscal year. The operating reserve may not be more than the general fund operating reserve designated for the immediately preceding school fiscal year. If a school is not operated in the following school fiscal year, the authority of the trustees to earmark a nonoperating fund operating reserve terminates and the money earmarked as an operating reserve must be used to reduce the levy requirement of the nonoperating fund. If the trustees acquire approval to reopen a school in the following school fiscal year under the provisions of 20-6-502 or 20-6-503 and operate the school, the nonoperating fund operating reserve must be restored as the general fund operating reserve.

(3) The purpose of the nonoperating fund is to centralize the financing and budgeting for the limited functions of a district not operating a school. The functions include:

- (a) elementary tuition obligations to other districts;
- (b) transportation of the resident pupils;

(c) maintenance of district-owned property; and  
 (d) any other nonoperating school function of the district considered necessary by the trustees or required by law.

(4) Any expenditure of nonoperating fund money must be made in accordance with the financial administration provisions of this title for a budgeted fund.

**History:** En. 75-7209 by Sec. 348, Ch. 5, L. 1971; R.C.M. 1947, 75-7209; amd. Sec. 41, Ch. 767, L. 1991.

**Cross-References**

School fiscal year, 20-1-301.

Elementary district abandonment, 20-6-209.

High school district abandonment, 20-6-307.

**20-9-506. Budgeting and net levy requirement for nonoperating fund.** (1) The trustees of any district that does not operate a school or will not operate a school during the ensuing school fiscal year shall adopt a nonoperating school district budget in accordance with the school budgeting provisions of this title. The nonoperating budget must contain the nonoperating fund and, when appropriate, a debt service fund. The nonoperating budget form must be promulgated and distributed by the superintendent of public instruction under the provisions of 20-9-103.

(2) After the adoption of a final budget for the nonoperating fund, the county superintendent shall compute the net levy requirement for the fund by subtracting from the amount authorized by the budget the sum of:

(a) the end-of-the-year cash balance of the nonoperating fund or, if it is the first year of nonoperation, the cash balance determined under the transfer provisions of 20-9-505;

(b) the estimated state and county transportation reimbursements; and

(c) any other money that may become available during the ensuing school fiscal year.

(3) The county superintendent shall report the net nonoperating fund levy requirement and any net debt service fund levy requirement determined under the provisions of 20-9-439 to the county commissioners on or before the later of the first Tuesday in September or within 30 calendar days after receiving certified taxable values, and the county commissioners shall impose the required levies on the district in accordance with 20-9-142.

**History:** En. 75-7210 by Sec. 349, Ch. 5, L. 1971; R.C.M. 1947, 75-7210; amd. Sec. 11, Ch. 133, L. 1993; amd. Sec. 18, Ch. 152, L. 2011.

**Cross-References**

Property tax levies, Title 15, ch. 10.

State transportation reimbursement, 20-10-145.

County transportation reimbursement, 20-10-146.

**20-9-507. Miscellaneous programs fund.** (1) The trustees of a district receiving money from local, state, federal, or other sources provided in 20-5-324, other than money under the provisions of impact aid, as provided in 20 U.S.C. 7701, et seq., or federal money designated for deposit in a specific fund of the district, shall establish a miscellaneous programs fund for the deposit of the money. The money may be a reimbursement of miscellaneous program fund expenditures already realized by the district, indirect cost recoveries, or a grant of money for the financing of expenditures to be realized by the district for a special, approved program to be operated by the district. When the money is a reimbursement, the money may be expended at the discretion of the trustees for school purposes. When the money is a grant, the money must be expended according to the conditions of the program approval by the superintendent of public instruction or any other approval agent. Within the miscellaneous programs fund, the trustees shall maintain a separate accounting for each local, state, or federal grant project and the indirect cost recoveries.

(2) The financial administration of the miscellaneous programs fund must be in accordance with the financial administration provisions of this title for a nonbudgeted fund.

**History:** En. 75-7212 by Sec. 351, Ch. 5, L. 1971; R.C.M. 1947, 75-7212; amd. Sec. 5, Ch. 310, L. 1979; amd. Sec. 42, Ch. 767, L. 1991; amd. Sec. 8, Ch. 466, L. 1993; amd. Sec. 15, Ch. 563, L. 1993; amd. Sec. 37, Ch. 633, L. 1993; amd. Sec. 44, Ch. 451, L. 1995; amd. Sec. 26, Ch. 22, L. 1997; amd. Sec. 14, Ch. 554, L. 1999; amd. Sec. 2, Ch. 356, L. 2001; amd. Sec. 18, Ch. 418, L. 2011; amd. Sec. 3, Ch. 46, L. 2013.

**Cross-References**

Administration of finances, Title 20, ch. 9, part 2.

**20-9-508. Building fund.** (1) The trustees of a district shall establish or credit the building fund whenever the district:

- (a) issues and sells bonds under the school district bonding provisions of this title for purposes other than refunding bonds of the district;
- (b) receives federal money for the express purpose of building, enlarging, or remodeling a school building or other building of the district;
- (c) sells property of the district in accordance with the law authorizing the sale;
- (d) earns interest from the investment of building fund money under the provisions of 20-9-213(4), except that interest earned from the investment of bond money under the provisions of 20-9-435 must be credited to a fund in accordance with that section; or
- (e) receives any other money, including payments made by a developer under the provisions of 20-9-615, for the express purpose of building, enlarging, or remodeling a school building or other building of the district.

(2) The financial administration of the building fund must be in accordance with the financial administration provisions of this title for a nonbudgeted fund and must provide for a separate accounting of the money realized by each bond issue or by each construction project financed by a federal grant of money. Any other money deposited to the credit of this fund must be expended for building, enlargement, remodeling, or repairing of buildings of the district at the discretion of the trustees.

(3) Money credited to the building fund under the provisions of subsection (1)(a) must be expended for the express purpose or purposes authorized by the bond proposition approved at the election authorizing the issuance of the bonds. Any money realized by the sale of bonds and remaining to the credit of the building fund after the full accomplishment of the purpose for which the bonds were sold must be transferred to the debt service fund to be used for the redemption of the bonds.

(4) Money credited to the building fund under the provisions of subsection (1)(b) must be expended for the express purpose or purposes authorized by the federal government in granting the money.

**History:** En. 75-7213 by Sec. 352, Ch. 5, L. 1971; R.C.M. 1947, 75-7213; amd. Sec. 3, Ch. 506, L. 1995; amd. Sec. 12, Ch. 343, L. 1999.

**Cross-References**

Trustees' authority to acquire or dispose of sites and buildings, 20-6-603.  
 Sale of property when resolution passed after hearing, 20-6-604.  
 Administration of finances, Title 20, ch. 9, part 2.  
 Lease or sale of district property, 20-15-107.

**20-9-509. Lease or rental agreement fund.** (1) The trustees of any district that provides pupil or teacher housing in district-owned buildings under a lease or rental agreement with pupils or teachers or receives money under the provision of 20-6-607 may establish a lease or rental agreement fund. All money received from the lease or rental agreements may be deposited with the county treasurer to the credit of the lease or rental agreement fund, general fund, the debt service fund, or any other appropriate fund. Whenever the end-of-the-year cash balance of a lease or rental agreement fund is more than \$10,000 for an elementary or high school district or \$20,000 for a K-12 district, the cash balance in excess of this limit must be transferred to the general fund of the district.

(2) Any expenditure of money from a lease or rental agreement fund must be made for the maintenance and operation of the district-owned buildings to which the lease or rental agreements apply or for the acquisition of additional housing or dormitory facilities. The financial administration of the lease or rental agreement fund must be in accordance with the financial administration provisions of this title for a nonbudgeted fund.

**History:** En. 75-7214 by Sec. 353, Ch. 5, L. 1971; amd. Sec. 1, Ch. 88, L. 1973; amd. Sec. 4, Ch. 424, L. 1977; R.C.M. 1947, 75-7214; amd. Sec. 1, Ch. 58, L. 1983; amd. Sec. 1, Ch. 135, L. 1987; amd. Sec. 27, Ch. 22, L. 1997.

**Cross-References**

Leasing district property and disposition of any rentals, 20-6-607.

**20-9-510. Traffic education fund.** The trustees of any district offering a state reimbursed traffic education program shall establish a traffic education fund under the provisions of 20-7-507. Such fund shall be a nonbudgeted fund and shall be financially administered under the provisions of this title for a nonbudgeted fund.

**History:** En. 75-7215 by Sec. 354, Ch. 5, L. 1971; R.C.M. 1947, 75-7215.

**20-9-511. Interlocal cooperative fund.** The trustees of any district serving as a prime agency under an interlocal cooperative agreement shall establish an interlocal cooperative fund under the provisions of 20-9-703 for the financial administration of the interlocal cooperative agreement. Such fund shall be a nonbudgeted fund and shall be financially administered under the provisions of this title for a nonbudgeted fund.

**History:** En. 75-7216 by Sec. 355, Ch. 5, L. 1971; R.C.M. 1947, 75-7216.

**Cross-References**

Interlocal Cooperation Act, Title 7, ch. 11, part 1.

**20-9-512. Compensated absence liability fund.** (1) The trustees of a school district may establish a compensated absence liability fund for the purpose of paying:

(a) any accumulated amount of sick leave that a nonteaching or administrative school district employee is entitled to upon termination of employment with the district in accordance with the provisions of 2-18-618; and

(b) any accumulated amount of vacation leave that a nonteaching or administrative school district employee is entitled to upon termination of employment with the district.

(2) The compensated absence liability fund may be used only for the stated purpose of this section.

(3) The trustees may transfer money from the general fund, within the adopted budget, to establish and maintain the compensated absence liability fund.

(4) The maximum amount in a reserve fund established under the provisions of subsections (1) and (3) may not exceed 30% of:

(a) the total school district liability for accumulated sick leave of nonteaching and administrative school district employees on June 30 of the current school fiscal year; and

(b) the total school district liability for accumulated vacation leave of nonteaching and administrative school district employees on June 30 of the current school fiscal year.

(5) For the purposes of this section, "administrative school district employee" means a school district employee who is employed in an administrative position and who accrues vacation leave as part of the employee's contract with the school district.

**History:** En. Sec. 1, Ch. 138, L. 1981; amd. Sec. 10, Ch. 568, L. 1991; amd. Sec. 1, Ch. 754, L. 1991; amd. Sec. 1, Ch. 129, L. 1995.

**Cross-References**

School fiscal year, 20-1-301.

**20-9-513. Repealed.** Sec. 94, Ch. 11, Sp. L. June 1989.

**History:** En. Sec. 1, Ch. 384, L. 1983; amd. Sec. 48, Ch. 281, L. 1983; amd. Sec. 24, Ch. 658, L. 1987.

**20-9-514. Impact aid fund.** (1) The trustees of a district that receives federal funds under the provisions of impact aid, as provided in 20 U.S.C. 7701, et seq., shall establish an impact aid fund. Money received under the provisions of 20 U.S.C. 7701, et seq., must be deposited with the county treasurer to the credit of the impact aid fund.

(2) The expenditure of money from the impact aid fund must be made pursuant to 20 U.S.C. 7701, et seq. The impact aid fund must be administered pursuant to the financial administration provisions of this title for nonbudgeted funds.

**History:** En. Sec. 41, Ch. 633, L. 1993; amd. Sec. 28, Ch. 22, L. 1997.

**Cross-References**

State educational goals to preserve cultural integrity of American Indians, Art. X, sec. 1, Mont. Const.

**20-9-515. Litigation reserve fund.** (1) The trustees of a school district may establish a litigation reserve fund only when litigation that is pending against the district could result in an award against the district.

(2) At the end of each school fiscal year, the trustees of a district may transfer money from the general fund, within the adopted budget, to establish the fund.

(3) Upon conclusion of litigation, the balance of the money in the fund reverts to the general fund and must be used to reduce the district's general fund BASE budget levy requirement computed pursuant to 20-9-141.

**History:** En. Sec. 1, Ch. 493, L. 1995.

**20-9-516. School facility and technology account.** (1) There is a school facility and technology account in the state special revenue fund provided for in 17-2-102. The purpose of the

account is to provide, contingent on appropriation from the legislature, funding for the following in priority order:

- (a) school technology purposes as provided in 20-9-534; and
- (b) state debt service assistance as provided in 20-9-371.
- (2) There must be deposited in the account:
  - (a) an amount of money equal to the income attributable to the difference between the average sale value of 18 million board feet and the total income produced from the annual timber harvest on common school trust lands during the fiscal year; and
  - (b) the income received from certain lands and riverbeds as provided in 17-3-1003(5).
- (3) If in any fiscal year the amount of revenue in the school facility and technology account is sufficient to fund debt service assistance without a proration reduction pursuant to 20-9-346(2)(b) and if in that same fiscal year the amount of revenue available in the school major maintenance aid account established in 20-9-525 will result in a proration reduction in school major maintenance aid pursuant to 20-9-525(5) for that fiscal year, the state treasurer shall transfer any excess funds in the school facility and technology account to the school major maintenance aid account not to exceed the amount required to avoid a proration reduction.

**History:** En. Sec. 8, Ch. 1, Sp. L. May 2007; amd. Sec. 14, Ch. 377, L. 2009; amd. Sec. 2, Ch. 371, L. 2011; amd. Sec. 19, Ch. 418, L. 2011; amd. Sec. 5, Ch. 17, L. 2013; amd. Sec. 7, Ch. 404, L. 2017.

**Compiler's Comments**

*2017 Amendment:* Chapter 404 in (1) at end substituted "contingent on appropriation from the legislature, funding for the following in priority order" for "money to schools for"; substituted current language in (1)(a) and (1)(b) for former language that read: "(a) major deferred maintenance;

- (b) improving energy efficiency in school facilities;
- (c) critical infrastructure in school districts;
- (d) emergency facility needs;
- (e) technological improvements; and
- (f) state reimbursement for school facilities as provided in 20-9-371; inserted (3) regarding a transfer of excess funds from the school facility and technology account to the school major maintenance aid account; and made minor changes in style. Amendment effective May 19, 2017.

*Applicability:* Section 15, Ch. 404, L. 2017, provided that this section applies to school district budgets beginning on or after July 1, 2017.

**20-9-517. State school oil and natural gas impact account.** (1) There is a state school oil and natural gas impact account in the state special revenue fund provided for in 17-2-102. The purpose of the account is to provide money to schools that are not receiving oil and natural gas production taxes under 15-36-331 in an amount sufficient to address oil and natural gas development impacts.

(2) A school district may apply to the superintendent of public instruction for funds from the account for circumstances that are directly related to impacts resulting from the development or cessation of development of oil and natural gas as follows:

- (a) an unusual enrollment increase as determined pursuant to 20-9-161 and 20-9-314;
- (b) an unusual enrollment decrease;
- (c) higher rates of student mobility;
- (d) a district's need to hire new teachers or staff as a result of increased enrollment;
- (e) the opening or reopening of an elementary or high school approved by the superintendent of public instruction pursuant to 20-6-502 or 20-6-503; or
- (f) major maintenance for a school or district.

(3) In reviewing an applicant's request for funding, the superintendent of public instruction shall consider the following:

- (a) the local district's or school's need;
  - (b) the severity of the energy development impacts;
  - (c) availability of funds in the account; and
  - (d) the applicant district's ability to meet the needs identified in subsection (3).
- (4) The superintendent of public instruction shall adopt rules necessary to implement the application and distribution process.

(5) The amount in the account may not exceed \$7.5 million. Any amount over \$7.5 million must be deposited in the guarantee account and distributed in the same manner as provided in 20-9-622(2).

**History:** En. Sec. 9, Ch. 418, L. 2011; amd. Sec. 5, Ch. 329, L. 2013; amd. Secs. 29, 30, Ch. 400, L. 2013; amd. Sec. 3, Ch. 432, L. 2015; amd. Sec. 3, Ch. 433, L. 2015; amd. Sec. 10, Ch. 336, L. 2017.



**Compiler's Comments**

*2017 Amendment:* Chapter 336 deleted former (2) that read: “(2) There must be deposited in the account oil and natural gas production taxes, if any, pursuant to 20-9-310(4)”; and made minor changes in style. Amendment effective July 1, 2017.

*Termination Provision Modified:* Section 20, Ch. 336, L. 2017, amended sec. 7, Ch. 433, L. 2015, by changing the termination date of the 2015 amendments to this section from June 30, 2019, to June 30, 2017. Effective May 4, 2017.

*Applicability:* Section 28, Ch. 336, L. 2017, provided: “[This act] applies to school budgets for school years beginning on or after July 1, 2017.”

**20-9-518. County school oil and natural gas impact fund.** The governing body of a county receiving an allocation under 20-9-310 shall establish a county school oil and natural gas impact fund.

**History:** En. Sec. 10, Ch. 418, L. 2011; amd. Sec. 8, Ch. 329, L. 2013; amd. Sec. 3, Ch. 29, L. 2015; amd. Sec. 4, Ch. 433, L. 2015; amd. Sec. 11, Ch. 336, L. 2017.

**Compiler's Comments**

*2017 Amendment:* Chapter 336 in middle substituted “20-9-310” for “20-9-310(4)(b)”; deleted former (2) through (7) (see 2017 Session Law for text); and made minor changes in style. Amendment effective July 1, 2017.

*Termination Provision Modified:* Section 20, Ch. 336, L. 2017, amended sec. 7, Ch. 433, L. 2015, by changing the termination date of the 2015 amendments to this section from June 30, 2019, to June 30, 2017. Effective May 4, 2017.

*Applicability:* Section 28, Ch. 336, L. 2017, provided: “[This act] applies to school budgets for school years beginning on or after July 1, 2017.”

**20-9-519 reserved.**

**20-9-520. State school oil and natural gas distribution account.** There is a state school oil and natural gas distribution account in the state special revenue fund provided for in 17-2-102.

**History:** En. Sec. 34, Ch. 400, L. 2013; amd. Sec. 4, Ch. 432, L. 2015; amd. Sec. 5, Ch. 433, L. 2015; amd. Sec. 12, Ch. 336, L. 2017.

**Compiler's Comments**

*2017 Amendment:* Chapter 336 at end deleted former second and third sentence and (2) and (3) that read: “The purpose of the account is for distribution of the oil and natural gas production revenue exceeding the limitation in 20-9-310 (1) in accordance with 20-9-310(4). The funds deposited in this account for distribution to school districts and counties under 20-9-310(4) are statutorily appropriated as provided in 17-7-502.

(2) The department of revenue shall deposit in the account oil and natural gas production taxes that exceed the limitations in 20-9-310.

(3) The superintendent of public instruction shall distribute the money from the account in accordance with 20-9-310(4)”; and made minor changes in style. Amendment effective July 1, 2017.

*Applicability:* Section 28, Ch. 336, L. 2017, provided: “[This act] applies to school budgets for school years beginning on or after July 1, 2017.”

**20-9-521. Terminated.** Sec. 43, Ch. 400, L. 2013.

**History:** En. Sec. 35, Ch. 400, L. 2013.

**20-9-522 through 20-9-524 reserved.**

**20-9-525. School major maintenance aid account — formula.** (1) There is a school major maintenance aid account in the state special revenue fund provided for in 17-2-102.

(2) The purpose of the account is to provide, contingent on appropriation from the legislature, funding for school major maintenance aid as provided in subsection (3) for school facility projects that support a basic system of free quality public elementary and secondary schools under 20-9-309 and that involve:

(a) first, making any repairs categorized as “safety”, “damage/wear out”, or “codes and standards” in the facilities condition inventory for buildings of the school district as referenced in the K-12 public schools facility condition and needs assessment final report prepared by the Montana department of administration pursuant to section 1, Chapter 1, Special Laws of December 2005; and

(b) after addressing the repairs in subsection (2)(a), any of the following:

(i) updating the facility condition inventory as recommended in the final report referenced in subsection (2)(a) with the scope and methods of the review to be determined by the trustees, employing experts as the trustees determine necessary. The first update must be completed by July 1, 2019, and each district shall certify the completion to the office of public instruction no later than October 31, 2019. Subsequent updates must be certified to the office of public instruction no less than once every 5 years following the first certification.

(ii) undertaking projects designed to produce operational efficiencies such as utility savings, reduced future maintenance costs, improved utilization of staff, and enhanced learning environments for students, including but not limited to projects addressing:

- (A) roofing systems;
- (B) heating, air conditioning, and ventilation systems;
- (C) energy-efficient window and door systems and insulation;
- (D) plumbing systems;
- (E) electrical systems and lighting systems;
- (F) information technology infrastructure, including internet connectivity both within and to the school facility; and
- (G) other critical repairs to an existing school facility or facilities.

(3) (a) In any year in which the legislature has appropriated funds for distribution from the school major maintenance aid account, the superintendent of public instruction shall administer the distribution of school major maintenance aid from the school major maintenance aid account for deposit in the subfund of the building reserve fund provided for in 20-9-502(3)(e). Subject to proration under subsection (5) of this section, aid must be annually distributed no later than the last working day of May to a school district imposing a levy pursuant to 20-9-502(3) in the current school fiscal year, with the amount of state support per dollar of local effort of the applicable elementary and high school program of each district determined as follows:

(i) using the taxable valuation most recently certified by the department of revenue under 15-10-202:

(A) divide the total statewide taxable valuation by the statewide total of school major maintenance amounts and multiply the result by 171%;

(B) multiply the result determined under subsection (3)(a)(i)(A) by the district's school major maintenance amount;

(C) subtract the district's taxable valuation from the amount determined under subsection (3)(a)(i)(B); and

(D) divide the amount determined under subsection (3)(a)(i)(C) by 1,000;

(ii) determine the greater of the amount determined in subsection (3)(a)(i) or 18% of the district's mill value; and

(iii) multiply the result determined under subsection (3)(a)(ii) by the district's school major maintenance amount, then divide the product by the sum of the result determined under subsection (3)(a)(ii) and the district's school major maintenance amount.

(b) For a district with an adopted general fund budget in the prior year greater than or equal to 97% of the district's general fund maximum budget in the prior year, the amount determined in subsection (3)(a)(iii) rounded to the nearest cent is the amount of school major maintenance aid per dollar of local effort, not to exceed an amount that would result in the state aid composing more than 80% of the district's school major maintenance amount.

(c) For a district with an adopted general fund budget in the prior year less than 97% of the district's maximum budget in the prior year, multiply the amount determined in subsection (3)(a)(iii) by the ratio of the district's adopted general fund budget in the prior year to the district's maximum general fund budget in the prior year. The result, rounded to the nearest cent, is the amount of state school major maintenance aid per dollar of local effort, not to exceed an amount that would result in the state aid composing more than 80% of the district's school major maintenance amount.

(4) Using the taxable valuation most recently certified by the department of revenue under 15-10-202, the superintendent shall provide school districts with a preliminary estimated amount of state school major maintenance aid per dollar of local effort for the ensuing school year no later than March 1 and a final amount for the current school year no later than July 31.

(5) If the appropriation from or the available funds in the school major maintenance aid account in any school fiscal year are less than the amount for which school districts would otherwise qualify, the superintendent of public instruction shall proportionally prorate the aid distributed to ensure that the distributions do not exceed the appropriated or available funds.

(6) If in any fiscal year the amount of revenue in the school major maintenance aid account is sufficient to fund school major maintenance aid without a proration reduction pursuant to subsection (5) and if in that same fiscal year the amount of revenue available in the school

facility and technology account established in 20-9-516 will result in a proration reduction in debt service assistance pursuant to 20-9-346(2)(b) for that fiscal year, the state treasurer shall transfer any excess funds in the school major maintenance aid account to the school facility and technology account, not to exceed the amount required to avoid a proration reduction.

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

(a) “Local effort” means an amount of money raised by levying no more than 10 mills pursuant to 20-9-502(3) and, provided that 10 mills have been levied, any additional amount of money deposited or transferred by trustees to the subfund pursuant to 20-9-502(3).

(b) “School major maintenance amount” means the sum of \$15,000 and the product of \$100 multiplied by the district’s budgeted ANB for the prior fiscal year.

**History:** En. Sec. 8, Ch. 404, L. 2017.

**Compiler’s Comments**

*Effective Date — Applicability:* Section 15, Ch. 404, L. 2017, provided that this section is effective on passage and approval and applies to school district budgets beginning on or after July 1, 2017. Approved May 19, 2017.

**20-9-526 through 20-9-530 reserved.**

**20-9-531. Repealed.** Sec. 94, Ch. 11, Sp. L. June 1989.

**History:** En. Sec. 1, Ch. 635, L. 1987.

**20-9-532. Repealed.** Sec. 94, Ch. 11, Sp. L. June 1989.

**History:** En. Sec. 2, Ch. 635, L. 1987; amd. Sec. 10, Ch. 337, L. 1989.

**20-9-533. Technology acquisition and depreciation fund — limitations.** (1) The trustees of a district may establish a technology acquisition and depreciation fund for school district expenditures incurred for:

(a) the purchase, rental, repair, and maintenance of technological equipment, including computers and computer network access;

(b) cloud computing services for technology infrastructure, platform, software, network, storage, security, data, database, test environment, curriculum, or desktop virtualization purposes, including any subscription or any license-based or pay-per-use service that is accessed over the internet or other remote network to meet the district’s information technology and other needs; and

(c) associated technical training for school district personnel.

(2) Any expenditures from the technology acquisition and depreciation fund must be made in accordance with the financial administration requirements for a budgeted fund pursuant to this title. The trustees of a district shall fund the technology acquisition and depreciation fund with:

(a) the state money received under 20-9-534; and

(b) other local, state, private, and federal funds received for the purpose of funding technology or technology-associated training.

(3) In depreciating the technological equipment of a school district for levies approved prior to July 1, 2013, the trustees may include in the district’s budget, contingent upon voter approval of a levy under subsection (6) and pursuant to the school budgeting requirements of this title, an amount each fiscal year that does not exceed 20% of the original cost of any technological equipment, including computers and computer network access, that is owned by the district. The amount budgeted pursuant to levies approved prior to July 1, 2013, may not, over time, exceed 150% of the original cost of the equipment.

(4) The annual revenue requirement for each district’s technology acquisition and depreciation fund determined within the limitations of this section must be reported by the county superintendent of schools to the board of county commissioners on or before the later of the first Tuesday in September or within 30 calendar days after receiving certified taxable values as the technology acquisition and depreciation fund levy requirement for that district, and a levy must be made by the county commissioners in accordance with 20-9-142.

(5) Any expenditure of technology acquisition and depreciation fund money must be within the limitations of the district’s final technology acquisition and depreciation fund budget and the school financial administration provisions of this title.

(6) In addition to the funds received pursuant to subsection (2), the trustees of a school district may submit a proposition to the qualified electors of the district to approve an additional

levy to fund costs of providing the technologies included in subsection (1). The election must be called and conducted in the manner prescribed by this title for school elections and in the manner prescribed by 15-10-425. A technology levy authorization approved after July 1, 2013, may not exceed 10 years.

(7) The technology proposition is approved if a majority of those electors voting at the election approve the levy. Notwithstanding any other provision of law, the levy under subsection (6) is subject to 15-10-420.

(8) A district whose qualified electors have previously approved a technology levy of perpetual duration prior to July 1, 2013, may submit a proposition to the qualified electors on or after July 1, 2013, for an increase in the amount of the levy to cover the costs of providing technologies under subsections (1)(b) and (1)(c) or to seek relief from the obligation of tracking depreciation of equipment under a levy approved prior to July 1, 2013. In seeking approval of the proposition, the district shall specify a proposed revised duration of the underlying perpetual levy previously approved and a proposed duration for the proposed increase in the amount of the levy, neither of which may exceed 10 years. If the proposition is approved by the qualified electors, both the underlying levy previously approved for a perpetual duration and the increase in the amount of the levy are subject to the revised durational limit specified on the ballot.

(9) The trustees of a district may not use revenue in the technology acquisition and depreciation fund to finance contributions to the teachers' retirement system, the public employees' retirement system, or the federal social security system or for unemployment compensation insurance.

**History:** En. Sec. 5, Ch. 517, L. 1995; amd. Sec. 29, Ch. 22, L. 1997; amd. Secs. 2, 3, Ch. 474, L. 2001; amd. Sec. 19, Ch. 152, L. 2011; amd. Sec. 1, Ch. 262, L. 2013.

**20-9-534. (Temporary) Statutory appropriation for school technology purposes.** The amount of \$1 million a year is statutorily appropriated, as provided in 17-7-502, from the school facility and technology account established in 20-9-516 to the department of commerce for providing funds for schools to use as state matching funds for special construction under the federal e-rate broadband program pursuant to 47 CFR 54.505, provided that none of the state matching funds may be used by schools for self-construction of their own or portions of their own networks. (*Terminates June 30, 2019—sec. 6, Ch. 259, L. 2017.*)

**20-9-534. (Effective July 1, 2019) Statutory appropriation for school technology purposes.** (1) The amount of \$1 million a year is statutorily appropriated, as provided in 17-7-502, from the school facility and technology account established in 20-9-516 for grants for school technology purposes.

(2) By the third Friday in July, the superintendent of public instruction shall allocate the annual statutory appropriation for school technology purposes to each district based on the ratio that each district's BASE budget bears to the statewide BASE budget amount for all school districts multiplied by the amount of money provided in 20-9-343 for the purposes of 20-9-533.

**History:** En. Sec. 6, Ch. 517, L. 1995; amd. Sec. 30, Ch. 22, L. 1997; amd. Sec. 6, Ch. 554, L. 2001; amd. Sec. 2, Ch. 3, Sp. L. August 2002; amd. Sec. 15, Ch. 377, L. 2009; amd. Sec. 20, Ch. 152, L. 2011; amd. Sec. 7, Ch. 329, L. 2013; amd. Sec. 2, Ch. 259, L. 2017.

#### **Compiler's Comments**

**2017 Amendment:** Chapter 259 in (1) substituted "to the department of commerce for providing funds for schools to use as state matching funds for special construction under the federal e-rate broadband program pursuant to 47 CFR 54.505, provided that none of the state matching funds may be used by schools for self-construction of their own or portions of their own networks" for "for grants for school technology purposes"; deleted former (2) that read: "(2) By the third Friday in July, the superintendent of public instruction shall allocate the annual statutory appropriation for school technology purposes to each district based on the ratio that each district's BASE budget bears to the statewide BASE budget amount for all school districts multiplied by the amount of money provided in 20-9-343 for the purposes of 20-9-533"; and made minor changes in style. Amendment effective July 1, 2017, and terminates June 30, 2019.

**Applicability:** Section 5, Ch. 259, L. 2017, provided: "[This act] applies to school fiscal years beginning on or after July 1, 2017."

**20-9-535 and 20-9-536 reserved.**

**20-9-537. (Temporary) Montana Indian language preservation program.** (1) There is a Montana Indian language preservation program. The program is established to support efforts of Montana tribes to preserve and perpetuate Indian languages in the form of spoken, written, sung, or signed language and to assist in the preservation and curricular goals of Indian

education for all pursuant to Article X, section 1(2), of the Montana constitution and Title 20, chapter 1, part 5.

(2) (a) The state-tribal economic development commission established in 90-1-131 shall administer the program and, in collaboration with the Montana historical society, the state director of Indian affairs, and each tribal government located on the seven Montana reservations and the Little Shell Chippewa tribe, shall create program guidelines.

(b) The program guidelines must address performance and output standards, distribution of funds, accounting of funds, and use of funds.

(c) The performance and output standards must include:

(i) development of audio and visual recordings;

(ii) creation of reference materials, which may be in audio, visual, electronic, or written format;

(iii) creation and publication of curricula, which may include electronic curricula; and

(iv) administration and maintenance of a long-term language preservation strategic plan.

(d) The performance and output standards may include:

(i) language classes;

(ii) language immersion camps;

(iii) storytelling;

(iv) publication of literature; and

(v) language programs, workshops, seminars, camps, and other presentations in formal or informal settings.

(3) Any tangible goods produced under this section must be submitted within 1 year of production to the Montana historical society for the benefit of related language preservation efforts and for preservation and archival purposes.

(4) Tribal governments or their designees receiving program funds may form local program advisory boards. Members of a local program advisory board may include but are not limited to representatives from any of the entities listed in subsection (6).

(5) (a) Each tribal government or designee shall provide reports on expenditures of grant funds, overall program progress, and other criteria required under the guidelines established pursuant to subsection (2)(a) to the state-tribal economic development commission.

(b) The state-tribal economic development commission shall report any findings, comments, or recommendations regarding each local program and the Montana Indian language preservation program to the legislature as provided in 5-11-210.

(6) Tribal governments and their designees are encouraged to maximize the impact of grant funds by forming partnerships among state and tribal entities and leveraging existing resources for the preservation of Indian languages and the education of all Montanans in a way that honors the cultural integrity of American Indians. Suggested partner entities include but are not limited to:

(a) the governor's office of Indian affairs;

(b) school districts located on reservations;

(c) tribal colleges;

(d) tribal historic preservation offices;

(e) tribal language and cultural programs;

(f) units of the Montana university system;

(g) the Montana historical society;

(h) the office of public instruction;

(i) Montana public television organizations;

(j) school districts not located on reservations; and

(k) the Montana state library.

(7) State entities that operate film and video studios and equipment shall cooperate with each local tribal preservation program in the production of materials for preservation and archival purposes.

(8) Any cultural and intellectual property rights from program efforts belong to the tribe. Use of the cultural and intellectual property may be negotiated between the tribe and other partnering entities.



(9) A tribe may use payments received pursuant to this section as matching funds for federal or private fund sources to accomplish the purposes of this section. (*Terminates June 30, 2019—secs. 2, 3, 4, 9, Ch. 232, L. 2017.*)

**History:** En. Sec. 1, Ch. 410, L. 2013; amd. Sec. 1, Ch. 426, L. 2015; amd. Sec. 1, Ch. 232, L. 2017.

**Compiler's Comments**

*2017 Amendment:* Chapter 232 in (1) substituted “spoken, written, sung, or signed language” for “spoken, written, or sign language”; in (2)(c)(iv) substituted “administration” for “development”; in (3) at beginning deleted “By December 15, 2016” and after “submitted” inserted “within 1 year of production”; inserted (9) concerning payments used for matching funds; and made minor changes in style. Amendment effective April 25, 2017, and terminates June 30, 2019.

*Extension of Termination Date:* Sections 2, 3, and 4, Ch. 232, L. 2017, amended sec. 7, Ch. 410, L. 2013, and secs. 3 and 7, Ch. 426, L. 2015, by extending the termination dates imposed by those sections to June 30, 2019. Effective April 25, 2017.

**20-9-538 through 20-9-540 reserved.**

**20-9-541. Definitions.** As used in 20-9-542 and this section, the following definitions apply:

- (1) “Average student amount” means the amount calculated by:
  - (a) multiplying the money available in the school flexibility account, provided for in 20-9-542, by 40%; and
  - (b) dividing the amount calculated in subsection (1)(a) by the total statewide ANB in the previous fiscal year when averaged with the total statewide ANB for the previous 4 fiscal years.
- (2) “Current student amount” means the amount calculated by:
  - (a) multiplying the money available in the school flexibility account, provided for in 20-9-542, by 20%; and
  - (b) dividing the amount calculated in subsection (2)(a) by the total statewide ANB in the previous fiscal year.
- (3) “District K-12 public school funding amount” means the K-12 public schools amount multiplied by the number of K-12 public schools in the school district in the fiscal year in which the funding is distributed.
- (4) “District large K-12 public school funding amount” means the large K-12 public schools amount multiplied by the number of K-12 public schools with an enrollment of at least 250 students in the school district in the fiscal year in which the funding is distributed.
- (5) “District student funding amount” means the current student amount multiplied by a district’s ANB for the previous fiscal year plus the average student amount multiplied by a district’s ANB for the previous fiscal year when averaged with the district’s ANB for the 4 previous fiscal years.
- (6) “K-12 public schools amount” means the amount calculated by:
  - (a) multiplying the money available in the school flexibility account, provided for in 20-9-542, by 15%; and
  - (b) dividing the amount calculated in subsection (6)(a) by the number of K-12 public schools that anticipate having students in the fiscal year in which the funding is distributed.
- (7) “Large K-12 public schools amount” means the amount calculated by:
  - (a) multiplying the money available in the school flexibility account, provided for in 20-9-542, by 25%; and
  - (b) dividing the amount calculated in subsection (7)(a) by the number of K-12 public schools with an enrollment of at least 250 students that anticipate having students in the fiscal year in which the funding is distributed.

**History:** En. Sec. 1, Ch. 237, L. 2001.

**20-9-542. School flexibility account — distribution of funds.** (1) There is a school flexibility account in the state special revenue fund. The superintendent of public instruction shall allocate the money in the account, including any interest earned on money allocated to the account, to each school district. Each school district’s total allocation is the sum of the district K-12 public school funding amount, the district large K-12 public school funding amount, and the district student funding amount.

(2) In addition to funds allocated or appropriated to the school flexibility account, all money saved by the state if the actual statewide ANB in a given fiscal year is less than the statewide ANB projected by the legislature during the preceding legislative session must be deposited in the school flexibility account.

(3) A portion of the money in the school flexibility account may be expended by a district to alleviate certified staff shortages in the district or for retirement incentives only if a portion of the account is specified for that purpose in a general appropriation act.

**History:** En. Sec. 2, Ch. 237, L. 2001; amd. Sec. 8, Ch. 550, L. 2003.

**20-9-543. (Temporary) School flexibility fund — uses.** (1) (a) The trustees of a district shall establish a school flexibility fund and may use the fund, in their discretion, for school district expenditures incurred for:

- (i) technological equipment enhancements and expansions considered by the trustees to support enhanced educational programs in the classroom;
  - (ii) facility expansion and remodeling considered by the trustees to support the delivery of educational programs or the removal and replacement of obsolete facilities;
  - (iii) supplies and materials considered by the trustees to support the delivery of enhanced educational programs;
  - (iv) student assessment and evaluation;
  - (v) the development of curriculum materials;
  - (vi) training for classroom staff considered by the trustees to support the delivery of enhanced educational programs;
  - (vii) purchase, lease, or rental of real property that must be used to provide free or reduced price housing for classroom teachers;
  - (viii) salaries, benefits, bonuses, and other incentives for the recruitment and retention of classroom teachers and other certified staff, subject to collective bargaining when applicable;
  - (ix) increases in energy costs caused by an increase in energy rates from the rates paid by the district in fiscal year 2001 or from increased use of energy as a result of the expansion of facilities, equipment, or other resources of the district; or
  - (x) innovative educational programs as defined in 20-9-902 and technology deficiencies.
- (b) If the district's ANB calculated for the current fiscal year is less than the ANB for the current fiscal year when averaged with the 4 previous fiscal years, the district may use money from the school flexibility fund to phase in over a 5-year period the spending reductions necessary because of the reduction in ANB.

(2) The trustees of a district shall fund the school flexibility fund with the money allocated under [20-9-904 and] 20-9-542 and with the money raised by the levy under 20-9-544.

(3) The financial administration of the school flexibility fund must be in accordance with the financial administration provisions of this title for a budgeted fund. (*Subsection (1)(a)(x) and bracketed language in subsection (2) terminate December 31, 2023—sec. 33, Ch. 457, L. 2015.*)

**20-9-543. (Effective January 1, 2024) School flexibility fund — uses.** (1) (a) The trustees of a district shall establish a school flexibility fund and may use the fund, in their discretion, for school district expenditures incurred for:

- (i) technological equipment enhancements and expansions considered by the trustees to support enhanced educational programs in the classroom;
- (ii) facility expansion and remodeling considered by the trustees to support the delivery of educational programs or the removal and replacement of obsolete facilities;
- (iii) supplies and materials considered by the trustees to support the delivery of enhanced educational programs;
- (iv) student assessment and evaluation;
- (v) the development of curriculum materials;
- (vi) training for classroom staff considered by the trustees to support the delivery of enhanced educational programs;
- (vii) purchase, lease, or rental of real property that must be used to provide free or reduced price housing for classroom teachers;
- (viii) salaries, benefits, bonuses, and other incentives for the recruitment and retention of classroom teachers and other certified staff, subject to collective bargaining when applicable; or
- (ix) increases in energy costs caused by an increase in energy rates from the rates paid by the district in fiscal year 2001 or from increased use of energy as a result of the expansion of facilities, equipment, or other resources of the district.

(b) If the district's ANB calculated for the current fiscal year is less than the ANB for the current fiscal year when averaged with the 4 previous fiscal years, the district may use money

from the school flexibility fund to phase in over a 5-year period the spending reductions necessary because of the reduction in ANB.

(2) The trustees of a district shall fund the school flexibility fund with the money allocated under 20-9-542 and with the money raised by the levy under 20-9-544.

(3) The financial administration of the school flexibility fund must be in accordance with the financial administration provisions of this title for a budgeted fund.

**History:** En. Sec. 3, Ch. 237, L. 2001; amd. Sec. 27, Ch. 457, L. 2015.

**20-9-544. District school flexibility fund levy.** (1) In addition to the money allocated in 20-9-542 for a district's school flexibility fund, the trustees of a school district may submit a proposition to the qualified electors of the district to approve a levy in an amount not to exceed 25% of the district's allocation in 20-9-542 to fund the school flexibility fund authorized under 20-9-543. An election called pursuant to this section must be called and conducted in the manner prescribed by this title for school elections. The ballot for a proposition must provide "FOR" and "AGAINST" provisions, stating whether the district is authorized to impose a levy of (state the dollars) dollars and (state the approximate number of mills) mills to fund the school flexibility fund in the school district. The school flexibility fund proposition is approved if a majority of those electors voting at the election approve the levy.

(2) Money collected from the levy must be deposited in the district's school flexibility fund and spent in accordance with 20-9-543.

**History:** En. Sec. 4, Ch. 237, L. 2001.

**20-9-545 through 20-9-569 reserved.**

**20-9-570. (Temporary) Statewide average per-pupil spending.** (1) The superintendent of public instruction shall calculate the per-pupil average of total public school expenditures in Montana for the second most recently completed school fiscal year by August 1 of the ensuing school fiscal year and make the calculation available to the public. The calculation is made by dividing total expenditures calculated in subsection (2) by total pupils calculated in subsection (3).

(2) Funds to be included in total school expenditures for the second most recently completed school year include but are not limited to:

- (a) district general fund expenditures;
- (b) transportation;
- (c) bus depreciation;
- (d) food services;
- (e) tuition;
- (f) retirement;
- (g) miscellaneous programs;
- (h) traffic education;
- (i) nonoperating fund;
- (j) lease-rental agreement;
- (k) compensated absence fund;
- (l) metal mines tax reserve;
- (m) state mining impact;
- (n) impact aid;
- (o) litigation reserve;
- (p) technology acquisition;
- (q) flexibility fund;
- (r) debt service;
- (s) building reserve; and
- (t) interlocal agreement.

(3) Total pupils are computed using an amount equal to the per-pupil average, but not the per-ANB average provided in 20-9-311, for Montana school districts for the second most recently completed school year. (*Terminates December 31, 2023—sec. 33, Ch. 457, L. 2015.*)

**History:** En. Sec. 22, Ch. 457, L. 2015.

## Part 6

### Public School Fund and Grants to Schools

**20-9-601. Public school fund.** The public school fund must be maintained by the state treasurer as a fund in the permanent fund type, and the principal amount of the fund is irreducible and permanent. The following money must be credited to the fund as an addition to the irreducible and permanent principal amount:

- (1) appropriations and donations by the state;
- (2) donations and bequests by individuals to the state or schools;
- (3) the proceeds of land and other property that revert to the state by escheat and forfeiture;
- (4) the proceeds of all property granted to the state, when the purpose of the grant is not specified or is uncertain;
- (5) funds accumulated in the treasury of the state for the disbursement of which provision has not been made by law;
- (6) except as provided in 77-1-109, the proceeds of the sale of stone, materials, or other property from school lands other than those granted for specific purposes and all money other than rental recovered from persons trespassing on the lands;
- (7) the principal of all money arising from the sale of lands and other property that has been and may be granted to the state for the support of common schools;
- (8) except as provided in 77-1-109, the amount earmarked for deposit in this fund under the provisions of 20-9-341; and
- (9) other money as may be provided by the legislature.

**History:** En. 75-7301 by Sec. 356, Ch. 5, L. 1971; R.C.M. 1947, 75-7301; amd. Sec. 16, Ch. 281, L. 1983; amd. Sec. 4, Ch. 14, Sp. L. January 1992; amd. Sec. 6, Ch. 122, L. 1999; amd. Sec. 13, Ch. 34, L. 2001.

#### Cross-References

Public school fund, Art. X, sec. 2, Mont. Const.  
 Public school fund inviolate, Art. X, sec. 3, Mont. Const.  
 Board of Land Commissioners, Art. X, sec. 4, Mont. Const.  
 Public school fund revenue, Art. X, sec. 5, Mont. Const.  
 The Enabling Act, sec. 11 (see anno. vol. 1).  
 Escheated estates, Title 72, ch. 14.

#### **20-9-602. Title to farm mortgage lands vested in state and transfers validated.**

(1) The transfer of farm mortgage lands, made by Chapter 250, Laws of 1953, shall be deemed to have vested title in such lands in the state of Montana in trust for the state public school fund.

(2) All contracts, certificates of purchase, deeds, and conveyances executed by the state of Montana in the administration of such lands since March 11, 1953, shall be deemed sufficient in law to dispose of the right, title, and interest therein described by the state of Montana.

**History:** En. 75-7302 by Sec. 357, Ch. 5, L. 1971; R.C.M. 1947, 75-7302.

**20-9-603. Acceptance and expenditure of federal moneys for state.** (1) The governor and the superintendent of public instruction are authorized on behalf of the state of Montana to request and accept money that is or will be made available under any act of congress of the United States or otherwise for purposes of public school building construction or for any other purposes of public schools and public education as permitted under the laws of the state of Montana and as authorized by the grants from the federal government. The money must be deposited by the governor and superintendent of public instruction in the state treasury and is available for appropriation to the superintendent of public instruction. The money must be expended for the purpose of public school building construction or for any other purposes of public schools and public education as permitted under the laws of the state of Montana and as authorized by the grants from the federal government.

(2) The governor and superintendent of public instruction are further authorized on behalf of the state of Montana to accept money provided from federal sources for the express purpose of distribution to nonpublic education. The money must be deposited by the governor and superintendent of public instruction in the state treasury and is available for appropriation to the superintendent of public instruction. The money must be distributed in the manner provided by the laws of the state of Montana and as authorized or expressed by grants from the federal government.

(3) All expenditures of money from federal sources under this section must be made under the supervision and in the discretion of the superintendent of public instruction. Any balance in the account in which the money is maintained may not lapse at any time but must be continuously available to the superintendent of public instruction for expenditures consistent with this title and acts of the federal government.

**History:** En. 75-7303 by Sec. 358, Ch. 5, L. 1971; amd. Sec. 1, Ch. 34, L. 1973; (amd. Sec. 7, Ch. 434, L. 1975 — [unconstitutional, 167 M 261]; Sec. 7, Ch. 434, L. 1975 repealed by Sec. 1, Ch. 4, L. 1977); R.C.M. 1947, 75-7303; amd. Sec. 7, Ch. 10, L. 2009.

**Cross-References**

Aid prohibited to sectarian schools, Art. X, sec. 6, Mont. Const.

Power to accept gifts, 20-6-601.

Trustees' authority to acquire or dispose of sites and buildings — when election required, 20-6-603.

**20-9-604. Gifts, legacies, devises, and administration of endowment fund.** (1) The trustees of a district may accept gifts, legacies, and devises, subject to the conditions imposed by the deed of the donor or the will of the testator or without any conditions imposed. Unless otherwise specified by the donor, devisor, or testator, when a district receives a gift, legacy, or devise, the trustees shall deposit the gift, legacy, devise, or the proceeds in an endowment fund. The trustees shall administer the endowment fund so as to preserve the principal from loss, and only the income from the fund may be appropriated for any purpose.

(2) Unless the conditions of the endowment instrument require an immediate disbursement of the money, the money deposited in the endowment fund must be invested by the trustees according to the provisions of the Uniform Management of Institutional Funds Act, Title 72, chapter 30.

(3) All interest collected on the deposits or investments must be credited to the endowment fund. No portion of the endowment fund may be loaned to the district, nor may any money of the fund be invested in warrants of the district.

(4) Whenever a district has been abandoned, the endowment fund of the abandoned district must be transferred and placed in the endowment fund in the district to which the territory is attached.

(5) As the custodian of the endowment fund, the county treasurer is liable on the treasurer's official bond for the endowment fund of any district of the county. By July 20, the county treasurer shall report to the trustees of each district on the condition of its endowment fund, including the status of the investments that have been made with the money of the fund. The county treasurer shall also include the endowment fund in the treasurer's reports to the board of county commissioners.

(6) The trustees of any district having an endowment fund shall provide suitable memorials for all persons or associations of persons making gifts to the district that become a part of the endowment fund.

**History:** En. 75-7309 by Sec. 364, Ch. 5, L. 1971; amd. Sec. 1, Ch. 342, L. 1971; amd. Sec. 24, Ch. 266, L. 1977; R.C.M. 1947, 75-7309; amd. Sec. 1, Ch. 76, L. 2001; amd. Sec. 21, Ch. 152, L. 2011.

**Cross-References**

General provisions related to official bonds, Title 2, ch. 9, part 5.

Power to accept gifts, 20-6-601.

**20-9-605 through 20-9-614 reserved.**

**20-9-615. Voluntary rural residential impact payments.** (1) The trustees of a rural school district may negotiate with a real estate developer or subdivision developer in the school district to voluntarily contribute an impact payment to the district's building fund. The maximum amount of the payment that the trustees may accept must be based upon the number of pupils reasonably expected to move into the district because of the real estate development or subdivision development. Negotiations and any resulting contributions must be voluntary.

(2) For the purposes of this section, "rural school district" means a school district in which a majority of the pupils in the district reside outside the limits of any incorporated city or town.

**History:** En. Sec. 2, Ch. 506, L. 1995.

**20-9-616 through 20-9-619 reserved.**

**20-9-620. Definition.** (1) As used in 20-9-621, 20-9-622, and this section, "distributable revenue" means, except for that portion of revenue described in 20-9-516(2)(a) and 77-1-109, 95%



of all revenue from the management of school trust lands and the permanent fund, including timber sale proceeds, lease fees, interest, dividends, and net realized capital gains.

(2) The term does not include mineral royalties or land sale proceeds that are deposited directly in the permanent fund or net unrealized capital gains that remain in the permanent fund until realized.

**History:** En. Sec. 1, Ch. 418, L. 2001; amd. Sec. 9(1), Ch. 554, L. 2001; amd. Sec. 3, Ch. 3, Sp. L. August 2002; amd. Sec. 16, Ch. 377, L. 2009; amd. Sec. 5, Ch. 465, L. 2009.

**20-9-621. Permanent fund.** (1) The public school fund provided for in Article X, section 2, of the Montana constitution consists of the permanent fund, which consists of the permanent corpus fund.

(2) The permanent fund must be invested for the purpose of generating future income for distribution to public elementary and secondary school districts as provided in Article X, section 5, of the Montana constitution.

**History:** En. Sec. 2, Ch. 418, L. 2001.

**20-9-622. Guarantee account.** (1) There is a guarantee account in the state special revenue fund. The guarantee account is intended to:

(a) stabilize the long-term growth of the permanent fund; and

(b) maintain a constant and increasing distributable revenue stream. All realized capital gains and all distributable revenue must be deposited in the guarantee account. The guarantee account is statutorily appropriated, as provided in 17-7-502, for distribution to school districts through school equalization aid as provided in 20-9-343.

(2) Any excess interest and income revenue deposited in the guarantee account for distribution under this section must be transferred to the school major maintenance aid account provided for in 20-9-525.

**History:** En. Sec. 3, Ch. 418, L. 2001; amd. Sec. 9(2), Ch. 554, L. 2001; amd. Sec. 4, Ch. 10, Sp. L. August 2002; amd. Sec. 1, Ch. 291, L. 2003; amd. Sec. 20, Ch. 1, Sp. L. May 2007; amd. Sec. 17, Ch. 377, L. 2009; amd. Sec. 6, Ch. 17, L. 2013; amd. Sec. 32, Ch. 400, L. 2013; amd. Secs. 13, 23, Ch. 336, L. 2017.

#### Compiler's Comments

*2017 Amendments — Coordination:* Chapter 336 substituted (2) concerning transfer of excess revenue for former (2) that read: “(2) Any excess interest and income revenue deposited in the guarantee account for distribution under this section must be allocated as follows:

(a) 50% of the excess interest and income revenue must be reserved for an appropriation in the next regular session of the legislature as part of the natural resource development K-12 funding payment referred to in 20-9-306; and

(b) 50% of the excess interest and income revenue must be distributed to schools on a per-quality-educator basis, with the amount to be distributed to each district calculated by dividing the total funds available for distribution under this subsection (2)(b) by the total number of quality educators, as defined in 20-4-502, employed by each school district in the state in the immediately preceding school fiscal year. A school district receiving funds under this section shall deposit the funds in its miscellaneous programs fund provided for in 20-9-507 and shall use the funds in the following order:

(i) to address any repairs categorized as “safety”, “damage/wear out”, or “codes and standards” in the facilities condition inventory for buildings of the school district as referenced in the K-12 public schools facility condition and needs assessment prepared by the Montana department of administration pursuant to section 1, Chapter 1, Special Laws of December 2005; and

(ii) if repairs under subsection (2)(b)(i) have been completed, to any other purpose authorized by 20-9-543”. Amendment effective July 1, 2017.

Section 23, Ch. 336, L. 2017, a coordination section, in (2) substituted “school major maintenance aid account provided for in 20-9-525” for “school facility and technology account provided for in 20-9-516”. Amendment effective July 1, 2017.

*Applicability:* Section 28, Ch. 336, L. 2017, provided: “[This act] applies to school budgets for school years beginning on or after July 1, 2017.”

#### **20-9-623 through 20-9-629 reserved.**

**20-9-630. School district block grants.** (1) (a) The office of public instruction shall provide block grants to school districts in accordance with this section.

(b) The electronic reporting system that is used by the office of public instruction and school districts must be used to allocate the block grant amount into each district’s budget as an anticipated revenue source by fund.

(2) If the legislature enacts a reimbursement provision effective on or after July 1, 2017, that is to be distributed pursuant to this section, the office of public instruction shall determine the reimbursement amount as provided in the enactment and add the appropriate amount to block grant distributions under this section. The total of reimbursement distributions made

pursuant to this subsection in a fiscal year must be added to all other distributions to the school district in the fiscal year to determine the distribution for the subsequent fiscal year.

(3) Each year, 70% of each district's block grant must be distributed in November and 30% of each district's block grant must be distributed in May at the same time that guaranteed tax base aid is distributed.

(4) (a) The block grant for the district transportation fund is equal to the amount received in fiscal year 2017 by the district transportation fund from the block grants provided for in subsection (1) and the amount received by the district transportation fund under subsection (2).

(b) (i) The combined fund block grant is equal to the amount received in fiscal year 2017 and the amount received under subsection (2).

(ii) The school district may deposit the combined fund block grant into any budgeted fund of the district.

(5) Upon creation of a new K-12 district under the provisions of 20-6-326, new block grant payments to the resulting high school district and the new K-12 district must be established by the office of public instruction based on the proportion of each district's taxable valuation.

**History:** En. Sec. 244, Ch. 574, L. 2001; amd. Sec. 25, Ch. 13, Sp. L. August 2002; amd. Sec. 11, Ch. 550, L. 2003; amd. Sec. 13, Ch. 411, L. 2011; amd. Sec. 34, Ch. 268, L. 2013; amd. Sec. 3, Ch. 205, L. 2017; amd. Sec. 3, Ch. 332, L. 2017; amd. Sec. 14, Ch. 336, L. 2017.

#### **Compiler's Comments**

*2017 Amendments — Composite Section:* Chapter 205 inserted (5) requiring establishment of new block grant payments to the resulting high school district and the new K-12 district based on the proportion of each district's taxable valuation; and made minor changes in style. Amendment effective July 1, 2017.

Chapter 332 in (2) in last sentence at beginning deleted "Except for the reimbursement made under 15-1-123(3)(b)"; in (4)(a), (4)(b), and (4)(c)(i) at end deleted "except the amount received under 15-1-123(3)(b)"; and made minor changes in style. Amendment effective May 4, 2017.

Chapter 336 in (1)(a) after "shall provide" substituted "block grants to school districts in accordance with this section" for "a block grant to each school district based on:

(i) the revenue received by each district in fiscal year 2001 from vehicle taxes and fees, corporate income taxes paid by financial institutions, aeronautics fees, state land payments in lieu of taxes, and property tax reimbursements pursuant to sections 167(1) through (5) and 169(6), Chapter 584, Laws of 1999; and

(ii) any reimbursement to be made to a school district pursuant to subsection (2)"; in (1)(b) at beginning deleted "Block grants must be calculated using" and in middle after "school districts" deleted "The electronic reporting system"; in (2) near beginning of first sentence after "reimbursement provision" inserted "effective on or after July 1, 2017"; deleted former (4)(a) that read: "(a) The block grant for the district general fund is equal to the amount received in fiscal year 2011 by the district general fund from the block grants provided for in subsection (1) and the amount received by the district general fund under subsection (2), except the amount received under 15-1-123(3)(b)"; in (4)(a) and (4)(b)(i) substituted "fiscal year 2017" for "fiscal year 2011"; and made minor changes in style. Amendment effective July 1, 2017.

*Applicability:* Section 28, Ch. 336, L. 2017, provided: "[This act] applies to school budgets for school years beginning on or after July 1, 2017."

#### **20-9-631. Repealed.** Sec. 123, Ch. 2, L. 2009.

**History:** En. Sec. 245, Ch. 574, L. 2001; amd. Sec. 26, Ch. 13, Sp. L. August 2002; amd. Sec. 1, Ch. 518, L. 2003; amd. Sec. 12, Ch. 550, L. 2003.

**20-9-632. Countywide school transportation block grants.** The office of public instruction shall distribute one-half of the amount appropriated for countywide school transportation in November and the remainder in May. The total amount for each county is equal to the amount received in fiscal year 2017.

**History:** En. Sec. 246, Ch. 574, L. 2001; amd. Sec. 27, Ch. 13, Sp. L. August 2002; amd. Sec. 2, Ch. 518, L. 2003; amd. Sec. 15, Ch. 336, L. 2017.

#### **Compiler's Comments**

*2017 Amendment:* Chapter 336 at end of second sentence substituted "equal to the amount received in fiscal year 2017" for prior text listing specific block grant payments for each county for fiscal years 2002 and 2003, with increases of 0.76% (see 2017 Session Law for text); and made minor changes in style. Amendment effective July 1, 2017.

*Applicability:* Section 28, Ch. 336, L. 2017, provided: "[This act] applies to school budgets for school years beginning on or after July 1, 2017."

#### **20-9-633 and 20-9-634 reserved.**

**20-9-635. (Temporary) Natural resource development K-12 school facilities payment.** (1) The natural resource development K-12 school facilities payment replaces the former natural resource development K-12 funding payment as a means to provide local property tax relief by supporting school district facility needs. The legislature intends for the new payment to grow in a manner similar to the previous payment as described in subsection (2) through fiscal year 2022 until other revenue to support school facilities has increased.

(2) Beginning in fiscal year 2020, the superintendent of public instruction shall annually deposit no later than March 31 in the school major maintenance aid account provided for in 20-9-525 the natural resource development K-12 school facilities payment, which is calculated as the greater of:

(a) \$6.4 million in fiscal year 2020, \$7.6 million in fiscal year 2021, and \$10 million in fiscal year 2022, increased by an inflationary adjustment calculated as provided in 20-9-326 in each succeeding fiscal year; or

(b) 5% of the oil and natural gas production taxes deposited in the general fund pursuant to 15-36-331(4) for the fiscal year occurring 2 fiscal years prior to the fiscal year of the payment.

(3) In preparing and submitting an agency budget pursuant to 17-7-111 and 17-7-112, the superintendent of public instruction shall include a natural resource development K-12 school facilities payment for each year of the ensuing biennium calculated as described in subsection (2). (*Terminates June 30, 2019—secs. 27, 35, Ch. 429, L. 2017.*)

**20-9-635. (Effective July 1, 2019) Natural resource development K-12 school facilities payment.** (1) The natural resource development K-12 school facilities payment replaces the former natural resource development K-12 funding payment as a means to provide local property tax relief by supporting school district facility needs. The legislature intends for the new payment to grow in a manner similar to the previous payment as described in subsection (2) through fiscal year 2022 until other revenue to support school facilities has increased.

(2) Beginning in fiscal year 2019, the superintendent of public instruction shall annually deposit no later than March 31 in the school major maintenance aid account provided for in 20-9-525 the natural resource development K-12 school facilities payment, which is calculated as the greater of:

(a) \$5.8 million in fiscal year 2019, \$6.4 million in fiscal year 2020, \$7.6 million in fiscal year 2021, and \$10 million in fiscal year 2022, increased by an inflationary adjustment calculated as provided in 20-9-326 in each succeeding fiscal year; or

(b) 5% of the oil and natural gas production taxes deposited in the general fund pursuant to 15-36-331(4) for the fiscal year occurring 2 fiscal years prior to the fiscal year of the payment.

(3) In preparing and submitting an agency budget pursuant to 17-7-111 and 17-7-112, the superintendent of public instruction shall include a natural resource development K-12 school facilities payment for each year of the ensuing biennium calculated as described in subsection (2).

**History:** En. Sec. 18, Ch. 336, L. 2017; amd. Sec. 24, Ch. 336, L. 2017; amd. Sec. 27, Ch. 429, L. 2017.

#### **Compiler's Comments**

**2017 Amendments — Coordination:** Section 24, Ch. 336, L. 2017, a coordination section, in (2) substituted “school major maintenance aid account provided for in 20-9-525” for “school facility and technology account provided for in 20-9-516”. Amendment effective July 1, 2017.

Section 27, Ch. 429, L. 2017, a coordination section, in (2) near beginning substituted “fiscal year 2020” for “fiscal year 2019”; and in (2)(a) at beginning deleted “\$5.8 million in fiscal year 2019”. Amendment effective on occurrence of contingency and terminates June 30, 2019.

**Effective Date:** Section 27, Ch. 336, L. 2017, provided that this section is effective July 1, 2017.

**Contingent Effective Date:** Section 27, Ch. 429, L. 2017, provided that the amendments in subsection (2) are effective if: (1) “the amount of the certified unaudited state general fund revenue and transfers into the general fund received at the end of fiscal year 2017 is less than \$2,180,000,000, as determined by the state treasurer on or before August 15, 2017”; or (2) “the amount of the certified unaudited state general fund revenue and transfers into the general fund received at the end of fiscal year 2018 is at level 4 or below as provided in [section 10(3)], and if prior general fund collections for fiscal year 2017 were high enough to prevent implementation of subsection (1)”. On August 1, 2017, the state treasurer reported that the amount of the unaudited and unadjusted general fund revenue and transfers-in for the fiscal year ended June 30, 2017, was \$2,139,414,715.40.

**Applicability:** Section 28, Ch. 336, L. 2017, provided: “[This act] applies to school budgets for school years beginning on or after July 1, 2017.”

**20-9-636 and 20-9-637 reserved.**

**20-9-638. Coal-fired generating unit closure mitigation block grant.** (1) (a) The office of public instruction shall provide a coal-fired generating unit closure mitigation block grant to each school district with a fiscal year 2017 taxable valuation that includes a coal-fired generating unit with a generating capacity that is greater than or equal to 200 megawatts, was placed in service prior to 1980, and is retiring or planned for retirement on or before July 1, 2022.

(b) The electronic reporting system that is used by the office of public instruction and school districts must be used to allocate the block grant amount into each district's general fund budget as an anticipated revenue source.

(2) Each year, 70% of each district's block grant must be distributed in November and 30% of each district's block grant must be distributed in May at the same time that guaranteed tax base aid is distributed.

(3) The block grant is equal to the amount received in fiscal year 2017 by the district general fund from the block grants provided for in 20-9-630(4)(a) as that section read prior to July 1, 2017.

(4) (a) If the owner of a coal-fired generating unit that is retired or planned for retirement on or before July 1, 2022, makes a payment in accordance with a retirement plan approved by the department of environmental quality or a transition agreement with the governor and attorney general for the purpose of decommissioning requirements and a portion of the payment is allocated to a school district for the purposes of school funding cost shifts, then that portion must repay to the state general fund the cost of the block grant payments under this section, as discounted in accordance with an agreement for payment to the state, on the following schedule, not to exceed the limitation provided in subsection (4)(b):

(i) if the generating unit closes prior to June 30, 2018, 100% of the total block grant payments under this section must be returned to the general fund;

(ii) if the generating unit closes during fiscal year 2019, 90% of the block grant payments under this section must be returned to the general fund;

(iii) if the generating unit closes during fiscal year 2020, 80% of the block grant payments under this section must be returned to the general fund;

(iv) if the generating unit closes during fiscal year 2021, 70% of the block grant payments under this section must be returned to the general fund; and

(v) if the generating unit closes during fiscal year 2022 or on July 1, 2022, 60% of the block grant payments under this section must be returned to the general fund.

(b) Repayment under subsection (4)(a) may not exceed the amount of any portion of a payment allocated to a school district in accordance with a retirement plan or a transition plan.

**History:** En. Sec. 19, Ch. 336, L. 2017.

#### **Compiler's Comments**

*Effective Date:* Section 27, Ch. 336, L. 2017, provided that this section is effective July 1, 2017.

*Applicability:* Section 28, Ch. 336, L. 2017, provided: "[This act] applies to school budgets for school years beginning on or after July 1, 2017."

#### **20-9-639 reserved.**

**20-9-640. (Temporary) State lands reimbursement block grant.** (1) (a) For each fiscal year of the biennium beginning July 1, 2017, the office of public instruction shall provide a state lands reimbursement block grant of \$100,000 to each school district in a county with greater than 20% of the county's land area composed of state school trust lands.

(b) The electronic reporting system that is used by the office of public instruction and school districts must be used to allocate the block grant amount into each district's general fund budget as an anticipated revenue source.

(2) Each year, 70% of each district's block grant must be distributed in November and 30% of each district's block grant must be distributed in May at the same time that guaranteed tax base aid is distributed. (*Terminates June 30, 2019—sec. 20, Ch. 416, L. 2017.*)

**History:** En. Sec. 4, Ch. 416, L. 2017.

#### **Compiler's Comments**

*Effective Date:* Section 19(1), Ch. 416, L. 2017, provided that this section is effective July 1, 2017.

*Termination:* Section 20, Ch. 416, L. 2017, provided that this section terminates June 30, 2019.

## **Part 7 Educational Cooperative Agreements**

### **Part Cross-References**

Interlocal Cooperation Act, Title 7, ch. 11, part 1.

Authorization to create full service special education cooperatives, 20-7-451.

**20-9-701. Definitions of prime and cooperating agencies.** For the purposes of an interlocal cooperative agreement, the prime agency shall be the district or other public agency



vested with the financial administration of the interlocal cooperative agreement under the terms of such agreement and the cooperating agency shall be any district or public agency other than a prime agency who is a party to the contract creating the interlocal cooperative agreement.

**History:** En. 75-7305 by Sec. 360, Ch. 5, L. 1971; R.C.M. 1947, 75-7305.

**20-9-702. Financial administration of interlocal cooperative agreement.** Any district contracting with other districts or other public agencies to establish an interlocal cooperative agreement under the provisions of Title 7, chapter 11, part 1, shall be subject to the provisions of 20-9-701, 20-9-703, and 20-9-704 for the purposes of the financial administration of such agreement.

**History:** En. 75-7304 by Sec. 359, Ch. 5, L. 1971; R.C.M. 1947, 75-7304.

**20-9-703. District as prime agency.** (1) When the prime agency is a district, it is authorized and required to establish a nonbudgeted interlocal cooperative fund for the purpose of the financial administration of the interlocal cooperative agreement. All revenues received, including federal, state, or other types of grant payments in direct support of the agreement and the financial support provided by cooperating agencies, shall be deposited in such fund. All financial support of the agreement contributed by a district designated as the prime agency may be transferred to the interlocal cooperative fund from any fund maintained by such district by resolution of the trustees. Any such transfer to the interlocal cooperative fund shall be used to finance those expenditures under the agreement which are comparable to those that are permitted by law to be made out of the fund from which the transfer was made and which are within the final budget for the fund from which the transfer was made. No transfer shall be made from the miscellaneous federal programs fund without the express approval of the superintendent of public instruction.

(2) All expenditures in support of the interlocal cooperative agreement shall be made from the interlocal cooperative fund established by the district which is the prime agency, except that expenditures in support of such agreement may be made from the miscellaneous federal programs fund when the express approval of the superintendent of public instruction is given.

**History:** En. 75-7306 by Sec. 361, Ch. 5, L. 1971; R.C.M. 1947, 75-7306.

**20-9-704. District as cooperating agency.** (1) When a district is the cooperating agency, it shall transfer its financial support under the interlocal cooperative contract to the prime agency by district warrant.

(2) The financial support may be provided from any fund maintained by the district. Any such fund utilized for the financial support of an interlocal cooperative agreement shall finance only those expenditures of such agreement that are comparable to those permitted under the statutory provisions creating such fund, and such financial support must be within the currently adopted budget for such fund. No financial support shall be financed from the miscellaneous federal programs fund without the express approval of the superintendent of public instruction.

**History:** En. 75-7307 by Sec. 362, Ch. 5, L. 1971; R.C.M. 1947, 75-7307.

**20-9-705. Joint interstate school agreements.** (1) The trustees of any district adjacent to another state may enter into a contract with a school district in such adjoining state to provide for the joint erection, operation, and maintenance of school facilities for both districts upon such terms and conditions as may be mutually agreed to by such districts and as are in accord with this section. Any such contract proposed for adoption by the trustees shall be in the form and contain only terms that may be prescribed by the superintendent of public instruction, and any such contract shall be approved by the superintendent of public instruction before it is considered by the electors of the district.

(2) Before any contract negotiated under the provisions of this section shall be executed, the trustees shall call an election under the provisions of 20-20-201 and submit to the qualified electors of the district the proposition that such contract be approved and that the trustees execute such contract. No agreement shall be valid until it has been approved at an election. The electors at the election shall be qualified to vote under the provisions of 20-20-301, and the election shall be conducted under the school election provisions of this title. The ballot for the election shall be substantially in the following form:



PROPOSITION  
SCHOOL DISTRICT NO. ...., .... COUNTY

Shall the trustees of this district be authorized and directed to execute the proposed contract with school district number .... of .... County, state of ...., for the purpose of (insert the purpose of such contract)?

- ☐ FOR execution of contract.
- ☐ AGAINST execution of contract.

(3) The trustees of any district executing a contract under this section shall have the power and authority to levy taxes and issue bonds for the purpose of erecting and maintaining the facilities authorized by this section. Furthermore, the facilities erected or maintained under this section may be located in either Montana or the adjoining state.

**History:** En. 75-7308 by Sec. 363, Ch. 5, L. 1971; R.C.M. 1947, 75-7308.

**Cross-References**

Mail ballot elections prohibited, 13-19-104.  
School elections, Title 20, ch. 20.

**20-9-706. Running start program — authorizing class credits at postsecondary institution — eligibility — payment for credits.** (1) As used in this section, “postsecondary institution” means a unit of the Montana university system, a public community college, or a tribal college.

(2) A school district may enter into an interlocal agreement pursuant to Title 7, chapter 11, with a postsecondary institution to institute a “running start” program to allow 11th and 12th grade students, as defined by the district, to attend classes at the postsecondary institution at a cost determined by the interlocal agreement and to obtain credits in classes not available through the school district.

(3) An agreement entered into by the district and the postsecondary institution must state the amount for each credit to be paid to the postsecondary institution by the district or the student.

(4) To participate in the program, a student shall complete a running start application provided by the district. The district shall determine whether the student has the skills needed to succeed in the proposed college coursework. If accepted, a student may earn both high school and college credits as determined by the interlocal agreement.

(5) In registering 11th and 12th grade students in the program, a postsecondary institution may not displace adult students attending the postsecondary institution.

(6) If accepted into the program, the student is responsible for transportation, books, and all supplies.

(7) If a student accepted into the program drops out of a class or classes at the postsecondary institution during the drop period established by the postsecondary institution, the postsecondary institution shall reimburse the district or the student the cost associated with the student’s credits as determined by the interlocal agreement.

**History:** En. Sec. 1, Ch. 377, L. 2001.

**20-9-707. Agreement with Montana youth challenge program or accredited Montana job corps program.** (1) The trustees of a school district may enter into an interlocal cooperative agreement for the ensuing school fiscal year under the provisions of Title 7, chapter 11, part 1, with the Montana youth challenge program or with a Montana job corps program accredited by the northwest commission on colleges and universities to provide educational or vocational services that are supplemental to the educational programs offered by the resident school district.

(2) A student who receives educational or vocational services at the Montana youth challenge program or a Montana job corps program pursuant to an agreement authorized under subsection (1) must be enrolled, for purposes of calculating average number belonging, in a public school in the student’s district of residence. Credits taken at the Montana youth challenge program or an accredited Montana job corps program must be approved by the school district and meet the requirements for graduation at a school in the student’s district of residence, must be taught by an instructor who has a current and appropriate Montana high school certification, and must be reported by the institution to the student’s district of residence. Upon accumulating

the necessary credits at a school in the district of residence or at the Montana youth challenge program or an accredited Montana job corps program pursuant to an interlocal cooperative agreement, a student must be allowed to graduate from the school in the student's district of residence.

(3) A school district that, pursuant to an interlocal cooperative agreement, allows an enrolled student to attend the Montana youth challenge program or a Montana job corps program accredited as prescribed in subsection (1) is not responsible for payment of the student's transportation costs to the job corps program.

(4) A student attending the Montana youth challenge program or a job corps program may not claim the Montana youth challenge program's or job corps program's facility as the student's residence for the purposes of this section.

**History:** En. Sec. 1, Ch. 462, L. 2001; amd. Sec. 3, Ch. 132, L. 2005; amd. Sec. 47, Ch. 2, L. 2009; amd. Sec. 3, Ch. 137, L. 2009.

## Part 8 Emergency School Closure

### Part Cross-References

Disaster and emergency services, Title 10, ch. 3.

School terms and holidays — released time, Title 20, ch. 1, part 3.

Energy supply emergencies, Title 90, ch. 4, part 3.

**20-9-801. Purpose.** This part governs a school district's entitlement to state equalization apportionment funds for any school year during which the school district is unable to conduct the minimum aggregate hours by grade required by 20-1-301 by reason of one or more unforeseen emergencies. The provisions of this part must be narrowly interpreted.

**History:** En. Sec. 1, Ch. 288, L. 1979; amd. Sec. 8, Ch. 430, L. 1997; amd. Sec. 12, Ch. 138, L. 2005.

**20-9-802. Definitions.** As used in this part, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Declaration of emergency" means a declaration by a board of trustees that an unforeseen emergency has occurred in the district.

(2) "Reasonable effort" means the rescheduling or extension of the school district's instructional calendar in an effort to attain the minimum aggregate hours required by law by:

(a) extending the school year 12 hours for 1st through 3rd grades and 18 hours for 4th through 12th grades or the equivalent aggregate hours of pupil instruction beyond the last scheduled day; or

(b) the use of scheduled vacation days.

(3) "School day" means the school day set by the trustees as provided in 20-1-302.

(4) "Unforeseen emergency" means a fire, flood, explosion, storm, earthquake, riot, insurrection, community disaster, or act of God or a combination of the foregoing that acts as a principal cause for a school district's inability to conduct 1 or more scheduled school days.

**History:** En. Sec. 2, Ch. 288, L. 1979; amd. Sec. 1, Ch. 85, L. 1981; amd. Sec. 9, Ch. 430, L. 1997; amd. Sec. 13, Ch. 138, L. 2005.

**20-9-803. Repealed.** Sec. 11, Ch. 430, L. 1997.

**History:** En. Sec. 3, Ch. 288, L. 1979.

**20-9-804. Repealed.** Sec. 11, Ch. 430, L. 1997.

**History:** En. Sec. 4, Ch. 288, L. 1979.

**20-9-805. Rate of reduction in annual apportionment entitlement.** (1) Except as provided in 20-9-806(2), for each hour short of the minimum number of aggregate hours required by law that a school district fails to conduct by reason of one or more unforeseen emergencies, the superintendent of public instruction shall reduce the equalization apportionment and entitlement of the district for that school year by a proportionate amount.

(2) Kindergarten, grade 1 through 3, and grade 4 through 12 programs must be considered separately for the purpose of computing compliance with minimum aggregate hour requirements and any loss of apportionment.

**History:** En. Sec. 5, Ch. 288, L. 1979; amd. Sec. 7, Ch. 299, L. 1985; amd. Sec. 14, Ch. 138, L. 2005.

**20-9-806. School closure by declaration of emergency.** (1) (a) Except as provided in subsection (2), if a school is closed by reason of an unforeseen emergency that results in a declaration of emergency by the board of trustees, the trustees may later adopt a resolution that a reasonable effort has been made to reschedule the pupil-instruction time lost because of the unforeseen emergency. If the trustees adopt the resolution, the pupil-instruction time lost during the closure need not be rescheduled to meet the minimum requirement for aggregate hours that a school district must conduct during the school year in order to be entitled to full annual equalization apportionment.

(b) At least 3 school days or the equivalent aggregate hours must have been made up before the trustees can declare that a reasonable effort has been made.

(2) The board of trustees may close school for 1 school day each school year because of an unforeseen emergency and may not be required to reschedule the pupil-instruction time lost because of the unforeseen emergency.

**History:** En. Sec. 2, Ch. 85, L. 1981; amd. Sec. 10, Ch. 430, L. 1997; amd. Sec. 15, Ch. 138, L. 2005.

**Cross-References**

Pupil-instruction-related days, 20-1-304.

## Part 9 Supplemental Funding for Innovative Educational Programs

**20-9-901. (Temporary) Purpose.** Pursuant to 5-4-104, the legislature finds that the purpose of innovative educational programs is to enhance the curriculum of public schools with supplemental private contributions through tax replacement programs. The tax credit for taxpayer donations under this part must be administered in compliance with Article V, section 11(5), and Article X, section 6, of the Montana constitution. (*Terminates December 31, 2023—sec. 33, Ch. 457, L. 2015.*)

**History:** En. Sec. 1, Ch. 457, L. 2015.

**20-9-902. (Temporary) Definitions.** As used in this part, the following definitions apply:

(1) “Department” means the department of revenue provided for in 2-15-1301.  
 (2) “Eligible public school” means a Montana public school.  
 (3) “Geographic region” has the meaning provided in 20-9-903.  
 (4) “Innovative educational program” means an advanced academic program that enhances the curriculum or academic program of an eligible public school and that is not part of the regular academic program of an eligible public school. The instruction, program, or other activities offered through an innovative educational program must include at least one of the following characteristics:

(a) provides different focus, methodology, skill training, or delivery, including internet-based and distance learning technologies, than is provided in a typical academic program of a public school;

(b) is accessible before or after public school hours, on weekends, as a year-round program, as an extension of the public school year, or in a combination of these characteristics;

(c) uses specialized instructional materials, instructors, or instruction not provided by a public school;

(d) uses internships and other work-based learning opportunities for a student that supplement the curriculum or academic program of a student and provide a student with the opportunity to apply the knowledge and skills learned in the academic program; or

(e) offers instruction or programming that provides credits or advanced placement, or both, at a 2-year or 4-year college or university.

(5) “Large district” has the meaning provided in 20-9-903.

(6) “Quality educator” has the meaning provided in 20-4-502.

(7) “Taxpayer” has the meaning provided in 15-30-2101. (*Terminates December 31, 2023—sec. 33, Ch. 457, L. 2015.*)

**History:** En. Sec. 2, Ch. 457, L. 2015.

**20-9-903. (Temporary) Establishment of geographic regions and large districts — innovative educational program.** (1) (a) Geographic regions are established on the basis

of county boundaries and are designed to achieve approximate statewide equity among the 11 regions in terms of the number of trustees on school boards located within the applicable regions. The equity must be reviewed periodically by the superintendent of public instruction by dividing the number of trustees serving on school boards located within the applicable region, including trustees on school boards referenced in subsection (2), by the total number of geographic regions and large districts.

(b) The geographic regions are established as follows:

(i) 1st region: Flathead, Lake, and Lincoln Counties;

(ii) 2nd region: Blaine, Hill, and Phillips Counties;

(iii) 3rd region: Daniels, Roosevelt, Sheridan, and Valley Counties;

(iv) 4th region: Dawson, Garfield, McCone, Prairie, Richland, and Wibaux Counties;

(v) 5th region: Cascade, Fergus, Golden Valley, Judith Basin, Musselshell, Petroleum, and Wheatland Counties;

(vi) 6th region: Mineral, Missoula, Ravalli, and Sanders Counties;

(vii) 7th region: Beaverhead, Deer Lodge, Granite, Jefferson, Madison, Powell, and Silver Bow Counties;

(viii) 8th region: Broadwater, Gallatin, Meagher, Park, and Sweet Grass Counties;

(ix) 9th region: Big Horn, Carbon, Stillwater, Treasure, and Yellowstone Counties;

(x) 10th region: Carter, Custer, Fallon, Powder River, and Rosebud Counties; and

(xi) 11th region: Chouteau, Glacier, Lewis and Clark, Liberty, Pondera, Teton, and Toole Counties.

(2) (a) Large districts are established as each of the seven largest school districts in the state based on combined pupil enrollment from kindergarten through the 12th grade.

(b) The seven largest school districts are established as follows:

(i) Billings;

(ii) Butte;

(iii) Bozeman;

(iv) Great Falls;

(v) Helena;

(vi) Kalispell; and

(vii) Missoula.

(3) The superintendent of public instruction shall make recommendations to the education interim committee regarding any adjustments to the regions and large districts necessary to preserve equity and fairness. (*Terminates December 31, 2023—sec. 33, Ch. 457, L. 2015.*)

**History:** En. Sec. 3, Ch. 457, L. 2015.

#### **Compiler's Comments**

*2017 Code Commissioner Correction:* Pursuant to sec. 24, Ch. 275, L. 2017, the code commissioner in (3) substituted "education interim committee" for "education and local government interim committee" to reflect amendments made by Ch. 167, L. 2017.

#### **20-9-904. (Temporary) Distribution of supplemental revenue to public schools — innovative educational program.** (1) The superintendent of public instruction shall:

(a) obligate at least 95% of its annual revenue from the educational improvement account provided for in 20-9-905 for supplemental funding to eligible public schools for innovative educational programs and technology deficiencies;

(b) provide innovative educational program or technology deficiency supplemental funding to eligible public schools; and

(c) distribute supplemental funding from the educational improvement account to each geographic region and each large district in a manner that provides proportionate funding based on the amount of donations under 15-30-3110 in each of the respective geographic regions and large districts. In distributing the supplemental funding, the superintendent of public instruction shall determine the allocation for each school district in a geographic region based on the ratio of the school district's number of quality educators compared to the total number of quality educators in the school district's geographic region.

(2) (a) Subject to subsection (2)(b), the superintendent of public instruction shall use the taxpayer's residential address and allocate the supplemental funding to the geographic region or large district schools that serve the taxpayer's residence. If a residential address is served by schools that are part of a large district and a smaller district, then the superintendent of

public instruction shall allocate the supplemental funding between the large district and the geographic region of the smaller district based on the average number belonging served by each district.

(b) A taxpayer may specify the geographic region or large district in which the supplemental funding must be used. If a taxpayer specifies that an allocation is to be used in a:

- (i) geographic region, the allocation may not be used in a large district; and
- (ii) large district, the allocation may not be used in a geographic region.

(3) The supplemental funding must be deposited in the district's school flexibility fund provided for in 20-9-543. Each district shall report the expenditure of supplemental funding for specific schools to the superintendent of public instruction. (*Terminates December 31, 2023—sec. 33, Ch. 457, L. 2015.*)

**History:** En. Sec. 4, Ch. 457, L. 2015.

**20-9-905. (Temporary) Educational improvement account — revenue allocated — appropriations from account.** (1) There is an educational improvement account in the state special revenue fund established in 17-2-102. The funds in the account must be administered by the superintendent of public instruction.

(2) The superintendent of public instruction shall accept donations for the purpose of funding innovative educational programs and deposit the donations into the account. The department shall preapprove tax credits for donations as provided in 15-30-3110. In order to implement and administer the provisions of this part, the department and the superintendent of public instruction shall exchange taxpayer information and develop policies to prevent the unauthorized disclosure of confidential records and information.

(3) Interest and earnings on the account must be deposited in the account.

(4) Money in the account is statutorily appropriated, as provided in 17-7-502, to the superintendent of public instruction for administrative expenses and for supplemental funding to public schools as provided in 20-9-904. (*Terminates December 31, 2023—sec. 33, Ch. 457, L. 2015.*)

**History:** En. Sec. 5, Ch. 457, L. 2015.

**20-9-906. (Temporary) Rulemaking.** The superintendent of public instruction may adopt rules, prepare forms, and maintain records that are necessary to implement and administer this part. (*Terminates December 31, 2023—sec. 33, Ch. 457, L. 2015.*)

**History:** En. Sec. 6, Ch. 457, L. 2015.

## CHAPTER 10 TRANSPORTATION AND FOOD SERVICES

### Part 1 — School Buses and Transportation

- 20-10-101. Definitions.
- 20-10-102. School bus requirements.
- 20-10-103. School bus driver qualifications.
- 20-10-104. Penalty for violating law or rules.
- 20-10-105. Determination of residence.
- 20-10-106. Determination of mileage distances.
- 20-10-107. Power of trustees.
- 20-10-108. Two-way radio operation.
- 20-10-109. Liability insurance for school bus.
- 20-10-110. School bus purchase — contract — bids.
- 20-10-111. Duties of board of public education.
- 20-10-112. Duties of superintendent of public instruction.
- 20-10-113 through 20-10-120 reserved.
- 20-10-121. Duty of trustees to provide transportation — types of transportation — bus riding time limitation.
- 20-10-122. Discretionary provision of transportation and payment for this transportation.
- 20-10-123. Provision of transportation for nonpublic school children.
- 20-10-124. Private party contract for transportation — individual transportation contract.
- 20-10-125. Bid letting for contract bus — payments under transportation contract.
- 20-10-126. Establishment of transportation service areas.
- 20-10-127. Repealed.
- 20-10-128. Repealed.
- 20-10-129 and 20-10-130 reserved.
- 20-10-131. County transportation committee membership.
- 20-10-132. Duties of county transportation committee.



20-10-133 through 20-10-140 reserved.

20-10-141. Schedule of maximum reimbursement by mileage rates.

20-10-142. Schedule of maximum reimbursement for individual transportation.

20-10-143. Budgeting for transportation and transmittal of transportation contracts.

20-10-144. Computation of revenue and net tax levy requirements for district transportation fund budget.

20-10-145. State transportation reimbursement.

20-10-146. County transportation reimbursement.

20-10-147. Bus depreciation reserve fund.

20-10-148. Cost-effectiveness analysis required before purchase of small school bus.

### Part 2 — Food Services

20-10-201. Acceptance, expenditure, and administration of federal school food services money.

20-10-202. Records, reports, and reviews.

20-10-203. School food commodities.

20-10-204. Duties of trustees.

20-10-205. Allocation of federal funds to school food services fund for federally connected, indigent pupils.

20-10-206. Pupils in state institutional schools included.

20-10-207. School food services fund.

20-10-208. Terminated.

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## Part 1 School Buses and Transportation

### Part Cross-References

Rules for determining residence, 1-1-215.

School property, Title 20, ch. 6, part 6.

Nonoperating fund to include funds for transportation of resident pupils, 20-9-505.

Meeting or passing school bus, 61-8-351.

**20-10-101. Definitions.** As used in this title, unless the context clearly indicates otherwise, the following definitions apply:

(1) “Bus route” means a route approved by the board of trustees of a school district and by the county transportation committee.

(2) “Eligible transportee” means a public school pupil who:

(a) is 5 years of age or older and has not reached the age of 21 on or before September 10 of the current school year or who is a preschool child with a disability between the ages of 3 and 6;

(b) is a resident of the state of Montana;

(c) regardless of district and county boundaries:

(i) resides at least 3 miles, over the shortest practical route, from the nearest operating public elementary school or public high school, whichever the case may be; or

(ii) has transportation identified as a related service in an individualized education program as developed and implemented in accordance with the Individuals With Disabilities Education Act, 20 U.S.C. 1400, et seq.; and

(d) is considered to reside with a parent or guardian who maintains legal residence within the boundaries of the district furnishing the transportation regardless of where the eligible transportee actually lives when attending school.

(3) “Passenger seating position” means, as defined in 49 CFR 571.222, the space on a school bus allocated for one passenger.

(4) (a) “School bus” means, except as provided in subsection (4)(b), any motor vehicle that complies with the bus standards established by the board of public education as verified by the department of justice’s semiannual inspection of school buses and the superintendent of public instruction and:

(i) is owned by a district or other public agency and operated for the transportation of pupils to or from school or owned by a carrier under contract with a district or public agency to provide transportation of pupils to or from school; or

(ii) is district-owned, is designed to carry 10 or fewer passengers, has an overall safety rating of five stars from the national highway traffic safety administration at the time of purchase, and is insured in accordance with minimum coverage requirements set forth in 20-10-109.

(b) A school bus does not include a vehicle that is:

(i) privately owned and not operated for compensation under this title;

(ii) privately owned and operated for reimbursement under 20-10-142;

(iii) either district-owned or privately owned, designed to carry not more than nine passengers, and used to transport pupils to or from activity events or to transport pupils to their homes in case of illness or other emergency situations and that was purchased prior to July 1, 2017; or

(iv) an over-the-road passenger coach used only to transport pupils to activity events.

(5) "Transportation" means:

(a) a district's conveyance of a pupil by a school bus between the pupil's legal residence or an officially designated bus stop and the school designated by the trustees for the pupil's attendance; or

(b) "individual transportation" by which a district is relieved of actually conveying a pupil. Individual transportation may include paying the parent or guardian for conveying the pupil, reimbursing the parent or guardian for the pupil's board and room, or providing supervised correspondence study or supervised home study.

(6) "Transportation service area" means the geographic area of responsibility for school bus transportation for each district that operates a school bus transportation program.

**History:** (1), (2) En. Sec. 278, Ch. 5, L. 1971; amd. Sec. 1, Ch. 61, L. 1974; amd. Sec. 3, Ch. 371, L. 1975; Sec. 75-7001, R.C.M. 1947; (3) En. Sec. 279, Ch. 5, L. 1971; amd. Sec. 2, Ch. 141, L. 1973; Sec. 75-7002, R.C.M. 1947; R.C.M. 1947, 75-7001, 75-7002(part); amd. Sec. 1, Ch. 525, L. 1983; amd. Sec. 10, Ch. 249, L. 1991; amd. Sec. 43, Ch. 767, L. 1991; amd. Sec. 1, Ch. 359, L. 1993; amd. Sec. 1, Ch. 298, L. 1995; amd. Sec. 99(4), Ch. 51, L. 1999; amd. Sec. 9, Ch. 550, L. 2003; amd. Sec. 1, Ch. 221, L. 2017.

#### **Compiler's Comments**

*2017 Amendment:* Chapter 221 in definition of school bus inserted (a)(ii) concerning qualifying criteria and in (b)(iii) inserted "and that was purchased prior to July 1, 2017"; and made minor changes in style. Amendment effective July 1, 2017.

#### **Cross-References**

Rules for determining residence, 1-1-215.

**20-10-102. School bus requirements.** (1) A school bus may be operated by the district or other public agency for the conveyance of pupils or may be privately operated by a carrier to provide such conveyance of pupils under contract with a district or other public agency.

(2) Every school bus shall bear on the front and rear of the bus a plainly visible sign containing the words "school bus" in letters at least 8 inches in height.

(3) When a school bus is operated on a highway for purposes other than transporting pupils to and from school or for school functions, all markings identifying it as a school bus shall be concealed.

**History:** En. 75-7002 by Sec. 279, Ch. 5, L. 1971; amd. Sec. 2, Ch. 141, L. 1973; R.C.M. 1947, 75-7002(part).

#### **Cross-References**

Power of Board of Public Education to adopt design, construction, and operation standards, 20-2-121.

Lettering requirement under highway code, 61-8-351.

Lighting equipment, 61-8-351, 61-8-352, 61-9-226, 61-9-402.

When studded tires permitted — tires for school buses generally, 61-9-406.

Safety glazing material required, 61-9-408.

Semiannual inspection of school buses, 61-9-502.

**20-10-103. School bus driver qualifications.** A driver of a school bus is qualified to drive a school bus if the driver:

(1) is not less than 18 years of age;

(2) is of good moral character;

(3) (a) is the holder of a commercial driver's license to operate a school bus designed to carry more than 10 passengers; or

(b) is the holder of a Montana driver's license to operate a school bus designed to carry 10 or fewer passengers;

(4) has filed with the district a satisfactory medical examination report, on a form approved by the United States department of transportation, signed by any physician licensed in the United States or, if acceptable to an insurance carrier, any licensed physician;

(5) has completed a basic first aid course and holds a valid basic first aid certificate from an authorized instructor. The issuance of the certificate is governed by rules established by the superintendent of public instruction, provided that the rules may suspend this requirement for a reasonable period of time if there has been an inadequate opportunity for securing the basic first aid course and certificate.

(6) has complied with any other qualifications established by the board of public education; and

(7) has filed with the county superintendent a certificate from the trustees of the district for which the school bus is to be driven, certifying compliance with the driver qualifications enumerated in this section.

**History:** En. 75-7003 by Sec. 280, Ch. 5, L. 1971; amd. Sec. 1, Ch. 50, L. 1977; amd. Sec. 1, Ch. 151, L. 1977; R.C.M. 1947, 75-7003; amd. Sec. 37, Ch. 443, L. 1987; amd. Sec. 1, Ch. 311, L. 1989; amd. Sec. 3, Ch. 195, L. 1993; amd. Sec. 2, Ch. 298, L. 1995; amd. Sec. 2, Ch. 221, L. 2017.

#### Compiler's Comments

*2017 Amendment:* Chapter 221 in (3)(a) at end inserted "to operate a school bus designed to carry more than 10 passengers"; inserted (3)(b) concerning driver's license to operate school bus designed to carry 10 or fewer passengers; and made minor changes in style. Amendment effective July 1, 2017.

#### Cross-References

Power of trustees to employ and dismiss bus drivers, 20-3-324.

Chauffeur's license — special restrictions, 61-5-112.

**20-10-104. Penalty for violating law or rules.** (1) Every district, its trustees and employees, and every person under a transportation contract with a district is subject to the policies prescribed by the board of public education and the rules prescribed by the superintendent of public instruction. When a district knowingly violates a transportation law or board of public education transportation policy, the district shall forfeit any reimbursement otherwise payable under 20-10-145 and 20-10-146 for any bus miles actually traveled during that fiscal year in violation of the law or policies.

(2) A district knowingly violates a transportation law or board of public education policy when it operates a bus route in a manner that does not comply with state law or board policy related to student safety. As provided in 20-10-141(1), a district that operates a bus route not approved by its county transportation committee may not receive transportation reimbursement on that route, but if the route is operated in compliance with transportation law, the operation of the routes is not a violation that will result in the forfeiture of all transportation aid to the district.

(3) The county superintendent shall suspend all reimbursements payable to the district under 20-10-145 and 20-10-146 for all miles being traveled, including both miles being traveled in compliance with the transportation laws or policies and miles being traveled in violation of the transportation laws or policies, until the district corrects the violation. When the district corrects the violation, the county superintendent shall pay all reimbursements otherwise payable under 20-10-145 and 20-10-146, including amounts suspended during the violation, but the amount forfeited under subsection (1) may not be paid to the district.

(4) When a person operating a bus under contract with a district knowingly fails to comply with the transportation law or the board of public education transportation policies, the district may not pay the person for any bus miles traveled during the contract year in violation of law or policies. Upon discovering a violation, the trustees of the district shall give written notice to the person that unless the violation is corrected within 10 days of the giving of notice, the contract will be canceled. The trustees of a district shall order the operation of a bus operated under contract suspended when the bus is being operated in violation of transportation law or policies and the trustees find that the violation jeopardizes the safety of pupils.

**History:** En. 75-7006 by Sec. 283, Ch. 5, L. 1971; amd. Sec. 1, Ch. 78, L. 1974; R.C.M. 1947, 75-7006; amd. Sec. 1, Ch. 427, L. 1997.

#### Cross-References

Penalty for violation of school laws, 20-1-207.

Knowingly defined, 45-2-101.

**20-10-105. Determination of residence.** When the residence of an eligible transportee is a matter of controversy and is an issue before a board of trustees, a county transportation committee, or the superintendent of public instruction, except as provided in 20-9-707, the residence must be established on the basis of the general state residence law as provided in 1-1-215. Whenever the state is determined to be responsible for paying tuition for any pupil in accordance with 20-5-321 through 20-5-323, the residence of the pupil for tuition purposes is the residence of the pupil for transportation purposes.

**History:** En. 75-7016 by Sec. 293, Ch. 5, L. 1971; amd. Sec. 20, Ch. 266, L. 1977; R.C.M. 1947, 75-7016; amd. Sec. 16, Ch. 563, L. 1993; amd. Sec. 4, Ch. 132, L. 2005; amd. Sec. 7, Ch. 463, L. 2005.

**20-10-106. Determination of mileage distances.** When the mileage distance that transportation services are to be provided is a matter of controversy and is an issue before a board of trustees, a county transportation committee, or the superintendent of public instruction, the mileage shall be established on the following basis:

(1) The distance in mileage shall be measured by a vehicle equipped with an accurate odometer.

(2) A representative of the applicable district and a parent or guardian of the child to be transported shall be present when the distance is measured.

(3) The measurement shall begin 6 yards from the family home and end 6 yards from the entrance of the school grounds closest to the route.

(4) The route traversed for the measurement shall be the route designated by the trustees, except that the route shall be reasonably passable during the entire school fiscal year by the vehicle that provides the child's transportation. In determining reasonable passage, a route may not be disqualified because it is impassable during temporary, extreme weather conditions such as rains, snow, or floods.

**History:** En. 75-7017 by Sec. 294, Ch. 5, L. 1971; amd. Sec. 21, Ch. 266, L. 1977; R.C.M. 1947, 75-7017.

**20-10-107. Power of trustees.** The trustees of any district may:

(1) purchase or rent a school bus;

(2) purchase or rent a communication system or safety device for a school bus when the trustees authorize a communication system or safety device as standard equipment in a school bus because the bus is operated where weather and road conditions may constitute a hazard to the safety of the school pupil passengers;

(3) provide for the operation, maintenance, and insurance of a school bus or a communication system or safety device owned or rented by the district; or

(4) contract with a private party for the transportation of eligible transportees. The contract may not exceed the term of 5 years.

**History:** En. 75-7011 by Sec. 288, Ch. 5, L. 1971; amd. Sec. 1, Ch. 198, L. 1971; R.C.M. 1947, 75-7011(part); amd. Sec. 4, Ch. 8, L. 2015.

**20-10-108. Two-way radio operation.** When the trustees authorize a two-way radio as standard equipment on a school bus, the two-way radio may be operated on the same frequency as that used by the Montana highway patrol and the sheriff of the county when their permission and the permission of the federal communications commission is secured. If permission is not secured from these agencies, the frequency assigned by the federal communications commission shall be used for the operation of the two-way radio.

**History:** En. 75-7011 by Sec. 288, Ch. 5, L. 1971; amd. Sec. 1, Ch. 198, L. 1971; R.C.M. 1947, 75-7011(part).

**20-10-109. Liability insurance for school bus.** Whenever a bus is owned and operated by a district or the bus is operated by a private party under a contract but no condition of such contract requires the private party to carry liability insurance, the trustees shall carry automobile bodily injury and liability insurance in an amount not less than \$10,000 per person and \$100,000 for each accident for each bus operated by or under contract with the district.

**History:** En. 75-7011 by Sec. 288, Ch. 5, L. 1971; amd. Sec. 1, Ch. 198, L. 1971; R.C.M. 1947, 75-7011(part).

**20-10-110. School bus purchase — contract — bids.** When a district purchases a school bus, the trustees may purchase such school bus under an installment contract which will be completely executed within 3 years from the date of the purchase. The trustees also may purchase a school bus without advertising for bids under the provisions of 20-9-204.

**History:** En. 75-7011 by Sec. 288, Ch. 5, L. 1971; amd. Sec. 1, Ch. 198, L. 1971; R.C.M. 1947, 75-7011(part).

**20-10-111. Duties of board of public education.** (1) The board of public education, with the advice of the Montana department of justice and the superintendent of public instruction, shall adopt and enforce policies, not inconsistent with the motor vehicle laws, to provide uniform standards and regulations for the design, construction, and operation of school buses in the state of Montana. The policies must:

(a) prescribe minimum standards for the design, construction, and operation of school buses consistent with:

- (i) the recommendations adopted by the national conference on school transportation; and
- (ii) the federal motor vehicle safety standards;

(b) prescribe standards and specifications for the lighting equipment and special warning devices to be carried by school buses in conformity with:

- (i) current specifications approved by the society of automobile engineers;
- (ii) motor vehicle laws; and
- (iii) the requirement that all school buses have an alternately flashing prewarning lighting system of four amber signal lamps to be used while preparing to stop and an alternately flashing warning lighting system of four red signal lamps to be used while stopped in accordance with 61-9-402;

(c) establish other driver qualifications considered necessary in addition to the qualifications required in 20-10-103;

(d) prescribe criteria for the establishment of transportation service areas for school bus purposes by the county transportation committee that shall allow for the establishment of service areas without regard to the district boundary lines within the county;

(e) prescribe other criteria for the determination of the residence of a pupil that may be considered necessary in addition to the criteria established in 20-10-105; and

(f) prescribe standards for the measurement of the child seating capacity of school buses, to be known as the rated capacity.

(2) The board of public education shall prescribe other policies necessary for the proper administration and operation of individual transportation programs that are consistent with the transportation provisions of this title.

**History:** En. 75-7004 by Sec. 281, Ch. 5, L. 1971; amd. Sec. 1, Ch. 416, L. 1973; R.C.M. 1947, 75-7004; amd. Sec. 1, Ch. 455, L. 1981; amd. Sec. 1, Ch. 280, L. 1989; amd. Sec. 13, Ch. 343, L. 1999; amd. Sec. 19, Ch. 237, L. 2001.

#### **Cross-References**

Lighting equipment, 61-8-351, 61-8-352, 61-9-226, 61-9-402.

**20-10-112. Duties of superintendent of public instruction.** In order to have a uniform and equal provision of transportation by all districts in the state of Montana, the superintendent of public instruction shall:

(1) prescribe rules and forms for the implementation and administration of the transportation policies adopted by the board of public education;

(2) prescribe rules for the approval of school bus routing by the county transportation committee;

(3) prescribe the format of the contract for individual transportation and supply each county superintendent with a sufficient number of contracts;

(4) prescribe rules for the approval of individual transportation contracts, including the increases of the schedule rates because of isolation under the policy of the board of public education, and provide a degree-of-isolation chart to school district trustees to serve as a guide;

(5) approve, disapprove, or adjust all school bus routing submitted by the county superintendent;

(6) approve, disapprove, or adjust all individual transportation contracts submitted by the county superintendent;

(7) prescribe rules for the consideration of controversies appealed to the superintendent and rule on the controversies; and

(8) disburse the state transportation reimbursement in accordance with the provisions of law and the transportation policies of the board of public education.

**History:** En. 75-7005 by Sec. 282, Ch. 5, L. 1971; amd. Sec. 2, Ch. 416, L. 1973; R.C.M. 1947, 75-7005; amd. Sec. 317, Ch. 56, L. 2009.

**20-10-113 through 20-10-120 reserved.**

**20-10-121. Duty of trustees to provide transportation — types of transportation — bus riding time limitation.** (1) The trustees of a district may furnish transportation to an eligible transportee who attends a school of the district or has been granted permission to attend a school outside of the district. Whenever the trustees of a district provide transportation for an eligible transportee, the trustees shall provide all eligible transportees of the district with transportation. The trustees shall furnish transportation when directed to do so by the county transportation committee and when that direction is upheld by the superintendent of public instruction.



(2) The tendering of a contract to the parent or guardian under which the district would pay the parent or guardian for individually transporting the pupil or pupils fulfills the district's obligation to furnish transportation for an eligible transportee. The parent or guardian of an eligible transportee may provide transportation or arrange for transportation for the parent's or guardian's child at the parent's or guardian's own expense to any district willing to accept the child.

(3) The type of transportation provided by a district may be:

- (a) by a school bus; or
- (b) by individual transportation:
  - (i) paying the parent or guardian for individually transporting the pupil;
  - (ii) paying board and room reimbursements;
  - (iii) providing supervised correspondence study; or
  - (iv) providing supervised home study.

(4) When the parent or guardian of an elementary pupil consents to a trip of over 1 hour, the trustees may require the eligible transportee to ride a school bus for more than 1 hour each trip.

**History:** En. 75-7008 by Sec. 285, Ch. 5, L. 1971; amd. Sec. 1, Ch. 245, L. 1973; R.C.M. 1947, 75-7008; amd. Sec. 318, Ch. 56, L. 2009.

**Cross-References**

Supervised correspondence study, 20-7-116.

**20-10-122. Discretionary provision of transportation and payment for this transportation.** (1) The trustees of a district may provide school bus transportation to any pupil of a public school who is not an eligible transportee of the district:

(a) on a school bus conveying eligible transportees when the ineligible transportee will not displace an eligible transportee from the school bus because of the lack of seating capacity;

(b) on a school bus operated by the district for the sole purpose of providing transportation for ineligible transportees. The school bus must service those children living the greatest distance from the school to be attended.

(c) on a school bus operated for the purpose of relieving congestion in a school building or to avoid the necessity of erecting a new building or for any other reasons of economy or convenience.

(2) When the trustees of a district provide school bus transportation to an ineligible transportee under the conditions of subsection (1)(a) or (1)(b), the district may charge each ineligible transportee a proportionate share, as determined by the trustees, of the cost of operating the school bus. Money realized from the payments must be deposited to the credit of the transportation fund.

**History:** En. 75-7009 by Sec. 286, Ch. 5, L. 1971; R.C.M. 1947, 75-7009; amd. Sec. 319, Ch. 56, L. 2009.

**Cross-References**

Transportation fund as budgeted fund, 20-9-201.

**20-10-123. Provision of transportation for nonpublic school children.** Any child attending a nonpublic school may ride a school bus when a permit to ride the school bus is secured from the operating district by the parent or guardian of the nonpublic school child and when there is seating capacity available on the school bus. When a nonpublic school child rides a school bus, the operating district may charge the child a proportionate share, as determined by the trustees, of the cost of operating the school bus. Money realized from the payments must be deposited to the credit of the transportation fund.

**History:** En. 75-7010 by Sec. 287, Ch. 5, L. 1971; R.C.M. 1947, 75-7010; amd. Sec. 1, Ch. 320, L. 1987; amd. Sec. 320, Ch. 56, L. 2009.

**Cross-References**

Transportation fund as budgeted fund, 20-9-201.

**20-10-124. Private party contract for transportation — individual transportation contract.** (1) When the trustees contract with any private party to provide transportation to eligible transportees, the private party shall comply with the regulations of the board of public education for the standards of equipment, operation and safety of the school bus, and qualifications of the driver. The trustees may require added safeguards by supplementing the board of public education policies in the contract with additional requirements for bus specifications, age of

drivers, liability insurance, operating speed, or any other contractual condition considered necessary by the trustees.

(2) Any school bus transportation by a private party or individual transportation that is furnished by a district must be under contract, and district, county, or state money may not be paid for transportation services to any person or firm who does not hold a legal contract with the district. Transportation contracts for the ensuing year must be completed by the fourth Monday of June, except when an eligible transportee establishes residence in the district after the fourth Monday of June and a contingency amount is included in the regular transportation budget or an emergency transportation budget is adopted.

(3) Transportation contracts between a district and a private party for the provision of school bus transportation must:

(a) be completed in triplicate, with one copy for the county superintendent, one copy for the private party, and one copy for the district;

(b) conform to the transportation law, policies of the board of public education, and rules of the superintendent of public instruction; and

(c) be signed by the presiding officer of the trustees and the private party.

(4) A transportation contract between a parent or guardian of an eligible transportee and a district for the provision of individual transportation is subject to the following requirements:

(a) it must be completed in quadruplicate, with one copy for the parent or guardian, one copy for the district, one copy for the county superintendent, and one copy for the superintendent of public instruction;

(b) it must be completed on forms promulgated by the superintendent of public instruction;

(c) the parent or guardian shall sign an affidavit attesting to the place of residence of the child or children; and

(d) it must be signed by the presiding officer of the trustees and the parent or guardian of the eligible transportees.

**History:** (1)En. 75-7011 by Sec. 288, Ch. 5, L. 1971; amd. Sec. 1, Ch. 198, L. 1971; Sec. 75-7011, R.C.M. 1947; (2) thru (4)En. 75-7012 by Sec. 289, Ch. 5, L. 1971; Sec. 75-7012, R.C.M. 1947; R.C.M. 1947, 75-7011(part), 75-7012; amd. Sec. 31, Ch. 22, L. 1997.

#### **Cross-References**

Conflicts of interests, letting contracts, calling for bids, 20-9-204.

Trustees to execute all contracts, 20-9-213.

#### **20-10-125. Bid letting for contract bus — payments under transportation contract.**

(1) Before any contract with a private party for the provision of school bus transportation is awarded, the trustees shall:

(a) secure bids by publishing during a period of 21 days at least three calls for bids in a newspaper of the county that will give notice to the largest number of people of the district or in the official newspaper of the county; the trustees shall let the contract to the lowest responsible bidder, and the trustees shall have the right to reject any and all bids; or

(b) negotiate a new contract with the current school bus contractor, provided the negotiated contract costs do not exceed by more than 12% per year the basic costs of the previous year's contract. Such a negotiated contract can be entered into only at a public meeting of the trustees at which meeting the patrons of the district may appear and be heard. Notice of the meeting must have been published in a newspaper of wide circulation within the district at least 1 week prior to the meeting.

(2) The provisions of this section for awarding a contract for school bus transportation shall be subject to the provisions of 20-9-204.

(3) The trustees shall not expend any moneys of the district for school bus transportation by a private party or for individual transportation unless:

(a) a contract for such transportation services has been completed; and

(b) such contracted services for school bus transportation by a private party have been actually furnished except that the failure to perform may be excused by the trustees for reasons not under the control of the contractor; or

(c) such contracted services for individual transportation have been actually furnished as confirmed by the actual attendance of school by the eligible transportees and recorded on the school attendance records or, in the case of a supervised correspondence course or supervised

home study, as confirmed by the trustees; except that the contracted services furnished one way on any school day shall be reimbursed at one-half the daily contract amount.

**History:** En. 75-7013 by Sec. 290, Ch. 5, L. 1971; amd. Sec. 1, Ch. 362, L. 1973; R.C.M. 1947, 75-7013; amd. Sec. 1, Ch. 349, L. 1979; amd. Sec. 1, Ch. 97, L. 1981.

**Cross-References**

Open meetings, Title 2, ch. 3, part 2.

Conflict of interest, 20-1-205.

Meetings and quorum, 20-3-322.

Supervised correspondence or home study as exception to compulsory enrollment, 20-5-102.

Supervised correspondence study, 20-7-116.

Trustees to execute all contracts, 20-9-213.

**20-10-126. Establishment of transportation service areas.** (1) The territory of a transportation service area is the territory of a school district unless the county transportation committee approves alternative boundaries after determining that the adjustments will improve pupil safety, transportation efficiency, or the cost-effectiveness of the pupil transportation system of the county.

(2) (a) Except as provided in subsection (2)(b), a district may not extend a bus route to transport pupils from outside its transportation service area unless the district has a written agreement with the district that the county transportation committee has assigned to transport the pupils.

(b) A district may extend a bus route across another transportation service area if the district determines that it is necessary in order to provide transportation to pupils in the district's own transportation service area. Under this subsection (2)(b), a district may not transport pupils from outside its transportation service area.

(3) When the trustees of two or more districts enter into a written agreement to authorize transportation services among transportation service areas, a copy of the agreement must be submitted to the county superintendent and approved by the county transportation committee. Upon approval by the committee, the transportation agreements are valid for the current school year.

(4) The trustees of any district who object to a particular bus route or transportation service area to which the district has been assigned may request a transfer to another bus route or transportation service area. The county transportation committee may transfer the territory of the district to an adjacent transportation service area or approved bus route with the consent of the district providing transportation in the adjacent transportation service area.

(5) The trustees of any district who object to a bus route operated by another district may bring that route to the attention of the county transportation committee. If the committee agrees that the district is operating a portion of its route as an unapproved route outside of its district boundaries, the committee shall file with the district a written warning concerning the unapproved route, and if the district, in spite of the warning, continues to operate the route, the committee may withdraw its approval of the entire route.

(6) If the qualified electors of the district object to the decision of the county transportation committee and the adjacent district is willing to provide school bus service, 20% of the qualified electors, as prescribed in 20-20-301, may petition the trustees to conduct an election on the proposition that the territory of the district be transferred for pupil transportation purposes to the adjacent transportation service area. If a satisfactory petition is presented to the trustees, the trustees shall call an election on the proposition in accordance with 20-20-201 for the next ensuing regular school election day. The election must be conducted in accordance with the school election laws. If a majority of those voting at the election approve the transfer, the transfer is effective on July 1 of the ensuing school fiscal year.

(7) Unless a transfer of territory from one transportation service area or approved bus route to another area or bus route is approved by the superintendent of public instruction and the county transportation committee, the state transportation reimbursement is limited to the reimbursement amount for pupil transportation to the nearest operating public elementary school or public high school, whichever is appropriate for the affected pupils.

**History:** En. Sec. 8, Ch. 298, L. 1995; amd. Sec. 2, Ch. 427, L. 1997; amd. Sec. 1, Ch. 508, L. 2005.

**Cross-References**

Interlocal Cooperation Act, Title 7, ch. 11, part 1.

**20-10-127. Repealed.** Sec. 13, Ch. 550, L. 2003.

**History:** En. Sec. 9, Ch. 298, L. 1995.

**20-10-128. Repealed.** Sec. 13, Ch. 550, L. 2003.

**History:** En. Sec. 10, Ch. 298, L. 1995.

**20-10-129 and 20-10-130 reserved.**

**20-10-131. County transportation committee membership.** (1) To coordinate the orderly provision of a uniform transportation program within a county, there must be a county transportation committee created in each county of the state of Montana. The membership of the committee consists of:

- (a) the county superintendent;
- (b) the presiding officer of the board of county commissioners or a member of the board designated by the presiding officer;
- (c) except for a K-12 school district, a trustee or district employee designated by the trustees of each high school district of the county;
- (d) one representative from each high school district of the county who is a trustee of an elementary district encompassed within the high school district and who has been selected at a meeting of the trustees of the elementary districts;
- (e) two representatives of each K-12 school district of the county, each of whom is either a trustee or a district employee designated by the trustees; and
- (f) a representative of a district of another county when the transportation services of the district are affected by the actions of the county transportation committee, but the representative has a voice only in matters affecting transportation within the district or by the district.

(2) The county transportation committee must have at least five members, and if this minimum membership cannot be realized in the manner prescribed in subsections (1)(a) through (1)(e), the county superintendent shall appoint a sufficient number of members to satisfy the minimum membership requirement.

(3) The county superintendent is the presiding officer of the county transportation committee, and a quorum is a majority of the membership. A quorum must be present for the committee to conduct business. The committee shall meet on the call of the presiding officer or any three members of the committee.

**History:** En. 75-7014 by Sec. 291, Ch. 5, L. 1971; R.C.M. 1947, 75-7014; amd. Sec. 3, Ch. 298, L. 1995.

**20-10-132. Duties of county transportation committee.** (1) It is the duty of the county transportation committee to:

- (a) establish the transportation service areas within the county, without regard to district boundary lines, for each district that operates a school bus transportation program;
- (b) except as provided in subsection (2), approve, disapprove, or adjust the school bus routes submitted by the trustees of each district in conformity with the transportation service areas established in subsection (1)(a);
- (c) approve, disapprove, or adjust applications, approved by the trustees, for increased reimbursements for individual transportation because of isolated conditions of the eligible transportee's residence;
- (d) conduct hearings to establish the facts of transportation controversies that have been appealed from the decision of the trustees and act on the appeals on the basis of the facts established at the hearing; and
- (e) determine if geographic conditions make it impractical for a child to attend school in the district of residence, in accordance with 20-5-321(1)(b).

(2) In an emergency situation, a temporary bus route change may be approved by the county superintendent. A bus route change approved by the county superintendent must be confirmed by the county transportation committee within 90 days in order to be continued for a period longer than 90 days.

(3) When the county transportation committee reviews a request for a new bus route or a change to an existing route, the committee shall consider the following:

- (a) a map of the existing and proposed bus route;
- (b) a description of turnarounds;
- (c) conditions affecting safety;

- (d) the total mileage and change in mileage of the affected bus route;
- (e) the approximate total cost;
- (f) reasons for the proposed bus route change;
- (g) the number of children to be served;
- (h) a copy of the official minutes of the meeting at which the school trustees approved the new bus route or route change; and

(i) any other information that the county transportation committee considers relevant.

(4) When an application for increased reimbursement for individual transportation is presented to the county transportation committee, it must include a signed individual transportation contract and a copy of the official minutes of the meeting at which the trustees acted upon the request for increased reimbursement.

(5) After a factfinding hearing and decision on a transportation controversy, the trustees or a patron of the district may appeal the decision to the superintendent of public instruction, who shall issue a decision on the basis of the facts established at the county transportation committee hearing.

**History:** En. 75-7015 by Sec. 292, Ch. 5, L. 1971; R.C.M. 1947, 75-7015; amd. Sec. 4, Ch. 298, L. 1995; amd. Sec. 8, Ch. 464, L. 2001; amd. Sec. 1, Ch. 128, L. 2015.

**Cross-References**

School fiscal year, 20-1-301.

**20-10-133 through 20-10-140 reserved.**

**20-10-141. Schedule of maximum reimbursement by mileage rates.** (1) The mileage rates in subsection (2) for school transportation constitute the maximum reimbursement to districts for school transportation from state and county sources of transportation revenue under the provisions of 20-10-145 and 20-10-146. These rates may not limit the amount that a district may budget in its transportation fund budget in order to provide for the estimated and necessary cost of school transportation during the ensuing school fiscal year. All bus miles traveled on bus routes approved by the county transportation committee are reimbursable. Nonbus mileage is reimbursable for a vehicle driven by a bus driver to and from an overnight location of a school bus when the location is more than 10 miles from the school. A district may approve additional bus or nonbus miles within its own district or approved service area but may not claim reimbursement for the mileage. Any vehicle, the operation of which is reimbursed for bus mileage under the rate provisions of this schedule, must be a school bus, as defined by this title, driven by a qualified driver on a bus route approved by the county transportation committee and the superintendent of public instruction.

(2) (a) The rate for each bus mile traveled must be determined in accordance with the following schedule:

- (i) 50 cents for a school bus as defined in 20-10-101(4)(a)(ii);
  - (ii) 95 cents for a school bus with a rated capacity of not more than 49 passenger seating positions;
  - (iii) \$1.15 for a school bus with a rated capacity of 50 to 59 passenger seating positions;
  - (iv) \$1.36 for a school bus with a rated capacity of 60 to 69 passenger seating positions;
  - (v) \$1.57 for a school bus with a rated capacity of 70 to 79 passenger seating positions; and
  - (vi) \$1.80 for a school bus with 80 or more passenger seating positions.
- (b) Nonbus mileage, as provided in subsection (1), must be reimbursed at a rate of 50 cents a mile.

(3) The rated capacity is the number of passenger seating positions of a school bus as determined under the policy adopted by the board of public education. If modification of a school bus to accommodate pupils with disabilities reduces the rated capacity of the bus, the reimbursement to a district for pupil transportation is based on the rated capacity of the bus prior to modification.

(4) The number of pupils riding the school bus may not exceed the passenger seating positions of the bus.

**History:** En. 75-7018 by Sec. 295, Ch. 5, L. 1971; amd. Sec. 1, Ch. 469, L. 1975; amd. Sec. 22, Ch. 266, L. 1977; amd. Sec. 1, Ch. 529, L. 1977; R.C.M. 1947, 75-7018; amd. Sec. 1, Ch. 590, L. 1979; amd. Sec. 1, Ch. 454, L. 1981; amd. Sec. 1, Ch. 515, L. 1983; amd. Sec. 1, Ch. 559, L. 1983; amd. Sec. 1, Ch. 344, L. 1985; amd. Sec. 10, Ch. 711, L. 1991; amd. Sec. 6, Ch. 298, L. 1995; amd. Sec. 10, Ch. 550, L. 2003; amd. Sec. 3, Ch. 221, L. 2017.



**Compiler's Comments**

*2017 Amendment:* Chapter 221 inserted (2)(a)(i) concerning 50-cent rate certain school buses; and made minor changes in style. Amendment effective July 1, 2017.

**Cross-References**

School fiscal year, 20-1-301.

Emergency budget for transportation fund, 20-9-162, 20-9-165.

Transportation fund as budgeted fund, 20-9-201.

**20-10-142. Schedule of maximum reimbursement for individual transportation.**

The following rates for individual transportation constitute the maximum reimbursement to districts for individual transportation from state and county sources of transportation revenue under the provisions of 20-10-145 and 20-10-146. These rates constitute the limitation of the budgeted amounts for individual transportation for the ensuing school fiscal year. The schedules provided in this section may not be altered by any authority other than the legislature. When the trustees contract with the parent or guardian of any eligible transportee to provide individual transportation for each day of school attendance, they shall reimburse the parent or guardian for actual miles transported on the basis of the following schedule:

(1) When a parent or guardian transports an eligible transportee or transportees from the residence of the parent or guardian to a school or to schools located within 3 miles of one another, the total reimbursement for each day of attendance is determined by multiplying the distance in miles between the residence and the school, or the most distant school if more than one, by 2, subtracting 6 miles from the product, and multiplying the difference by 35 cents, provided that:

(a) if two or more eligible transportees are transported by a parent or guardian to two or more schools located within 3 miles of one another and if the schools are operated by different school districts, the total amount of the reimbursement must be divided equally between the districts;

(b) if two or more eligible transportees are transported by a parent or guardian to two or more schools located more than 3 miles from one another, the parent or guardian must be separately reimbursed for transporting the eligible transportee or transportees to each school;

(c) if a parent transports two or more eligible transportees to a school and a bus stop that are located within 3 miles of one another, the total reimbursement must be determined under the provisions of this subsection (1) and must be divided equally between the district operating the school and the district operating the bus;

(d) if a parent transporting two or more eligible transportees to a school or bus stop must, because of varying arrival and departure times, make more than one round-trip journey to the bus stop or school, the total reimbursement allowed by this section is limited to one round trip a day for each scheduled arrival or departure time;

(e) notwithstanding subsection (1)(a), (1)(b), (1)(c), or (1)(d), a reimbursement may not be less than 35 cents a day.

(2) When the parent or guardian transports an eligible transportee or transportees from the residence to a bus stop of a bus route approved by the trustees for the transportation of the transportee or transportees, the total reimbursement for each day of attendance is determined by multiplying the distance in miles between the residence and the bus stop by 2, subtracting 6 miles from the product, and multiplying the difference by 35 cents, provided that:

(a) if the eligible transportees attend schools in different districts but ride on one bus, the districts shall divide the total reimbursement equally; and

(b) if the parent or guardian is required to transport the eligible transportees to more than one bus, the parent or guardian must be separately reimbursed for transportation to each bus.

(3) When, because of excessive distances, impassable roads, or other special circumstances of isolation, the rates prescribed in subsection (1) or (2) would be an inadequate reimbursement for the transportation costs or would result in a physical hardship for the eligible transportee, a parent or guardian may request an increase in the reimbursement rate. A request for increased rates because of isolation must be made by the parent or guardian on the contract for individual transportation for the ensuing school fiscal year by indicating the special facts and circumstances that exist to justify the increase. Before an increased rate because of isolation may be paid to the requesting parent or guardian, the rate must be approved by the county transportation committee and the superintendent of public instruction after the trustees have indicated their approval or disapproval. Regardless of the action of the trustees and when approval is given by

the committee and the superintendent of public instruction, the trustees shall pay the increased rate because of isolation. The increased rate is 1 ½ times the rate prescribed in subsection (1).

(4) The state and county transportation reimbursement for an individual transportation contract may not exceed \$12.95 for each day of attendance for the first eligible transportee and \$8.40 for each day of attendance for each additional eligible transportee.

(5) When the isolated conditions of the household where an eligible transportee resides require an eligible transportee to live away from the household in order to attend school, the eligible transportee is eligible for the room and board reimbursement. Approval to receive the room and board reimbursement must be obtained in the same manner prescribed in subsection (3). The per diem rate for room and board is \$12.95 for one eligible transportee and \$8.40 for each additional eligible transportee of the same household.

(6) When the individual transportation provision is to be satisfied by supervised home study or supervised correspondence study, the reimbursement rate is the cost of the study, provided that the course of instruction is approved by the trustees and supervised by the district.

**History:** En. 75-7019 by Sec. 296, Ch. 5, L. 1971; amd. Sec. 1, Ch. 169, L. 1973; amd. Sec. 3, Ch. 416, L. 1973; amd. Sec. 1, Ch. 470, L. 1975; amd. Sec. 1, Ch. 534, L. 1977; R.C.M. 1947, 75-7019; amd. Sec. 2, Ch. 590, L. 1979; amd. Sec. 2, Ch. 454, L. 1981; amd. Sec. 11, Ch. 711, L. 1991; amd. Sec. 2, Ch. 359, L. 1993; amd. Sec. 7, Ch. 298, L. 1995; amd. Sec. 2, Ch. 409, L. 2001; amd. Sec. 11, Ch. 4, Sp. L. December 2005.

**Cross-References**

Supervised correspondence or home study as exception to compulsory enrollment, 20-5-102.

Supervised correspondence study, 20-7-116.

**20-10-143. Budgeting for transportation and transmittal of transportation contracts.** (1) The trustees of a district furnishing transportation to pupils who are residents of the district shall provide a transportation fund budget that is adequate to finance the district's transportation contractual obligations and any other transportation expenditures necessary for the conduct of its transportation program. The transportation fund budget must include:

- (a) an adequate amount to finance the maintenance and operation of school buses owned and operated by the district;
- (b) the annual contracted amount for the maintenance and operation of school buses by a private party;
- (c) the annual contracted amount for individual transportation, including any increased amount because of isolation, which may not exceed the schedule amounts prescribed in 20-10-142;
- (d) any amount necessary for the purchase, rental, or insurance of school buses; and
- (e) any other amount necessary to finance the administration, operation, or maintenance of the transportation program of the district, as determined by the trustees.

(2) The trustees may include a contingency amount in the transportation fund budget for the purpose of enabling the district to fulfill an obligation to provide transportation in accordance with this title for:

- (a) pupils not residing in the district at the time of the adoption of the final budget and who subsequently became residents of the district during the school fiscal year;
- (b) pupils who have become eligible transportees since the adoption of the final budget because their legal residence has been changed; or
- (c) other unforeseen increases in bus route mileage or obligations for payment of additional contracts for individual transportation for an eligible transportee for which state and county reimbursement is authorized under 20-10-141 and 20-10-142. The budgeted contingency amount may not exceed 10% of the transportation schedule amount as calculated under the provisions of 20-10-141 and 20-10-142 for all transportation services authorized by the schedules and provided by the district unless 10% of the transportation schedule amount is less than \$100, in which case \$100 is the maximum limitation for the budgeted contingency amount.

(3) A budget amendment to the transportation fund budget may be adopted subject to the provisions of 20-9-161 through 20-9-166.

(4) The trustees shall report the transportation fund budget on the regular budget form prescribed by the superintendent of public instruction in accordance with 20-9-103, and the adoption of the transportation fund budget must be completed in accordance with the school budgeting laws. When the adopted final budget is sent to the county superintendent, the trustees shall also send copies of all completed transportation contracts for school bus transportation

to the county superintendent. The contracts must substantiate all contracted school bus transportation services incorporated in the final budget.

**History:** En. 75-7020 by Sec. 297, Ch. 5, L. 1971; R.C.M. 1947, 75-7020; amd. Sec. 12, Ch. 711, L. 1991; amd. Sec. 44, Ch. 767, L. 1991; amd. Sec. 12, Ch. 211, L. 1997; amd. Sec. 14, Ch. 343, L. 1999.

**Cross-References**

Transportation fund as budgeted fund, 20-9-201.

**20-10-144. Computation of revenue and net tax levy requirements for district transportation fund budget.** Before the second Monday of August, the county superintendent shall compute the revenue available to finance the transportation fund budget of each district. The county superintendent shall compute the revenue for each district on the following basis:

(1) The “schedule amount” of the budget expenditures that is derived from the rate schedules in 20-10-141 and 20-10-142 must be determined by adding the following amounts:

(a) the sum of the maximum reimbursable expenditures for all approved school bus routes maintained by the district (to determine the maximum reimbursable expenditure, multiply the applicable rate for each bus mile by the total number of miles to be traveled during the ensuing school fiscal year on each bus route approved by the county transportation committee and maintained by the district); plus

(b) the total of all individual transportation per diem reimbursement rates for the district as determined from the contracts submitted by the district multiplied by the number of pupil-instruction days scheduled for the ensuing school attendance year; plus

(c) any estimated costs for supervised home study or supervised correspondence study for the ensuing school fiscal year; plus

(d) the amount budgeted in the budget for the contingency amount permitted in 20-10-143, except if the amount exceeds 10% of the total of subsections (1)(a), (1)(b), and (1)(c) or \$100, whichever is larger, the contingency amount on the budget must be reduced to the limitation amount and used in this determination of the schedule amount; plus

(e) any estimated costs for transporting a child out of district when the child has mandatory approval to attend school in a district outside the district of residence.

(2) (a) The schedule amount determined in subsection (1) or the total transportation fund budget, whichever is smaller, is divided by 2 and is used to determine the available state and county revenue to be budgeted on the following basis:

(i) one-half is the budgeted state transportation reimbursement; and

(ii) one-half is the budgeted county transportation fund reimbursement and must be financed in the manner provided in 20-10-146.

(b) When the district has a sufficient amount of fund balance for reappropriation and other sources of district revenue, as determined in subsection (3), to reduce the total district obligation for financing to zero, any remaining amount of district revenue and fund balance reappropriated must be used to reduce the county financing obligation in subsection (2)(a)(ii) and, if the county financing obligations are reduced to zero, to reduce the state financial obligation in subsection (2)(a)(i).

(c) The county revenue requirement for a joint district, after the application of any district money under subsection (2)(b), must be prorated to each county incorporated by the joint district in the same proportion as the ANB of the joint district is distributed by pupil residence in each county.

(3) The total of the money available for the reduction of property tax on the district for the transportation fund must be determined by totaling:

(a) anticipated federal money received under the provisions of 20 U.S.C. 7701, et seq., or other anticipated federal money received in lieu of that federal act;

(b) anticipated payments from other districts for providing school bus transportation services for the district;

(c) anticipated payments from a parent or guardian for providing school bus transportation services for a child;

(d) anticipated or reappropriated interest to be earned by the investment of transportation fund cash in accordance with the provisions of 20-9-213(4);

(e) anticipated revenue from coal gross proceeds under 15-23-703;

(f) anticipated oil and natural gas production taxes;

(g) anticipated transportation payments for out-of-district pupils under the provisions of 20-5-320 through 20-5-324;

(h) school district block grants distributed under 20-9-630;

(i) any other revenue anticipated by the trustees to be earned during the ensuing school fiscal year that may be used to finance the transportation fund; and

(j) any fund balance available for reappropriation as determined by subtracting the amount of the end-of-the-year fund balance earmarked as the transportation fund operating reserve for the ensuing school fiscal year by the trustees from the end-of-the-year fund balance in the transportation fund. The operating reserve may not be more than 20% of the final transportation fund budget for the ensuing school fiscal year and is for the purpose of paying transportation fund warrants issued by the district under the final transportation fund budget.

(4) The district levy requirement for each district's transportation fund must be computed by:

(a) subtracting the schedule amount calculated in subsection (1) from the total preliminary transportation budget amount; and

(b) subtracting the amount of money available to reduce the property tax on the district, as determined in subsection (3), from the amount determined in subsection (4)(a).

(5) The transportation fund levy requirements determined in subsection (4) for each district must be reported to the county commissioners on or before the later of the first Tuesday in September or within 30 calendar days after receiving certified taxable values by the county superintendent as the transportation fund levy requirements for the district, and the levy must be made by the county commissioners in accordance with 20-9-142.

**History:** En. 75-7021 by Sec. 298, Ch. 5, L. 1971; R.C.M. 1947, 75-7021; amd. Sec. 6, Ch. 699, L. 1983; amd. Sec. 17, Ch. 695, L. 1985; amd. Sec. 20, Ch. 611, L. 1987; amd. Sec. 24, Ch. 655, L. 1987; amd. Sec. 7, Ch. 35, L. 1989; amd. Sec. 87, Ch. 11, Sp. L. June 1989; amd. Sec. 11, Ch. 267, L. 1991; amd. Sec. 13, Ch. 711, L. 1991; amd. Sec. 45, Ch. 767, L. 1991; amd. Sec. 2, Ch. 9, Sp. L. July 1992; amd. Sec. 12, Ch. 133, L. 1993; amd. Sec. 17, Ch. 563, L. 1993; amd. Sec. 19, Ch. 9, Sp. L. November 1993; amd. Sec. 45, Ch. 451, L. 1995; amd. Sec. 7, Ch. 580, L. 1995; amd. Sec. 32, Ch. 22, L. 1997; amd. Sec. 13, Ch. 211, L. 1997; amd. Sec. 14, Ch. 496, L. 1997; amd. Sec. 19, Ch. 515, L. 1999; amd. Sec. 122, Ch. 574, L. 2001; amd. Sec. 29, Ch. 130, L. 2005; amd. Sec. 9, Ch. 255, L. 2005; amd. Sec. 22, Ch. 152, L. 2011; amd. Sec. 4, Ch. 46, L. 2013.

#### Cross-References

Property tax levies, Title 15, ch. 10.

Supervised correspondence study, 20-7-116.

**20-10-145. State transportation reimbursement.** (1) A district providing school bus transportation or individual transportation in accordance with this title, board of public education transportation policy, and superintendent of public instruction transportation rules must receive a state reimbursement of its transportation expenditures under the transportation reimbursement rate provisions of 20-10-141 and 20-10-142. The state transportation reimbursement is one-half of the reimbursement amounts established in 20-10-141 and 20-10-142 or one-half of the district's transportation fund budget, whichever is smaller, and must be computed on the basis of the number of days the transportation services were actually rendered to transport eligible transportees, as defined in 20-10-101, to or from school to participate in the minimum aggregate hours of instruction required pursuant to 20-1-301. In determining the amount of the state transportation reimbursement, an amount claimed by a district may not be considered for reimbursement unless the amount has been paid in the regular manner provided for the payment of other financial obligations of the district.

(2) Requests for the state transportation reimbursement must be made by each district semiannually during the school fiscal year on the claim forms and procedure promulgated by the superintendent of public instruction. The claims for state transportation reimbursements must be routed by the district to the county superintendent, who after reviewing the claims shall send them to the superintendent of public instruction. The superintendent of public instruction shall establish the validity and accuracy of the claims for the state transportation reimbursements by determining compliance with this title, board of public education transportation policy, and the transportation rules of the superintendent of public instruction. After making any necessary adjustments to the claims, the superintendent of public instruction shall order a disbursement from the state money appropriated by the legislature of the state of Montana for the state transportation reimbursement.



(3) The superintendent of public instruction shall make the disbursement to each school district according to the following schedule:

(a) By September 1 of each year, the superintendent of public instruction shall make a payment equal to 50% of the state transportation reimbursement paid to the district in the previous school year.

(b) By March 31 of each year, the superintendent of public instruction shall make a payment to the district equal to the approved amount of state reimbursement for first semester transportation claims less the amount distributed to the district under subsection (3)(a).

(c) By June 30 of each year, the superintendent of public instruction shall make a payment to the district to pay the balance of the approved amount due to the district for first and second semester transportation.

(4) The payment of all the district's claims within one county must be made to the county treasurer of the county, and the county superintendent shall apportion the payment in accordance with the apportionment order supplied by the superintendent of public instruction.

(5) After adopting a budget amendment for the transportation fund in accordance with 20-9-161 through 20-9-166, the district shall send to the superintendent of public instruction a copy of each new or amended individual transportation contract and each new or amended bus route form to which the budget amendment applies. State reimbursement for the additional obligations must be paid as provided in subsection (1).

**History:** En. 75-7022 by Sec. 299, Ch. 5, L. 1971; R.C.M. 1947, 75-7022; amd. Sec. 14, Ch. 711, L. 1991; amd. Sec. 46, Ch. 767, L. 1991; amd. Sec. 15, Ch. 343, L. 1999; amd. Sec. 21, Ch. 389, L. 2013; amd. Sec. 1, Ch. 299, L. 2017.

#### **Compiler's Comments**

*2017 Amendment:* Chapter 299 in (1) in second sentence at end substituted "to transport eligible transportees, as defined in 20-10-101, to or from school to participate in the minimum aggregate hours of instruction required pursuant to 20-1-301" for "not to exceed 180 pupil-instruction days"; and made minor changes in style. Amendment effective July 1, 2017.

#### **Cross-References**

School fiscal year, 20-1-301.

**20-10-146. County transportation reimbursement.** (1) The apportionment of the county transportation reimbursement by the county superintendent for school bus transportation or individual transportation that is actually rendered by a district in accordance with this title, board of public education transportation policy, and the transportation rules of the superintendent of public instruction must be the same as the state transportation reimbursement payment, except that:

(a) if any cash was used to reduce the budgeted county transportation reimbursement under the provisions of 20-10-144(2)(b), the annual apportionment is limited to the budget amount;

(b) when the county transportation reimbursement for a school bus has been prorated between two or more counties because the school bus is conveying pupils of more than one district located in the counties, the apportionment of the county transportation reimbursement must be adjusted to pay the amount computed under the proration; and

(c) when county transportation reimbursement is required under the mandatory attendance agreement provisions of 20-5-321.

(2) The county transportation net levy requirement for the financing of the county transportation fund reimbursements to districts is computed by:

(a) totaling the net requirement for all districts of the county, including reimbursements to a special education cooperative or prorated reimbursements to joint districts or reimbursements under the mandatory attendance agreement provisions of 20-5-321;

(b) determining the sum of the money available to reduce the county transportation net levy requirement by adding:

(i) anticipated money that may be realized in the county transportation fund during the ensuing school fiscal year;

(ii) oil and natural gas production taxes;

(iii) coal gross proceeds taxes under 15-23-703;

(iv) countywide school transportation block grants distributed under 20-9-632;

(v) any fund balance available for reappropriation from the end-of-the-year fund balance in the county transportation fund;



(vi) federal forest reserve funds allocated under the provisions of 17-3-213;  
 (vii) property tax reimbursements made pursuant to 15-1-123(7); and  
 (viii) other revenue anticipated that may be realized in the county transportation fund during the ensuing school fiscal year; and

(c) subtracting the money available, as determined in subsection (2)(b), to reduce the levy requirement from the county transportation net levy requirement.

(3) The net levy requirement determined in subsection (2)(c) must be reported to the county commissioners on or before the later of the first Tuesday in September or within 30 calendar days after receiving certified taxable values by the county superintendent, and a levy must be set by the county commissioners in accordance with 20-9-142.

(4) The county superintendent of each county shall submit a report of the revenue amounts used to establish the levy requirements to the superintendent of public instruction on or before September 15. The report must be completed on forms supplied by the superintendent of public instruction.

(5) The county superintendent shall apportion the county transportation reimbursement from the proceeds of the county transportation fund. The county superintendent shall order the county treasurer to make the apportionments in accordance with 20-9-212(2) and after the receipt of the semiannual state transportation reimbursement payments.

**History:** En. 75-7023 by Sec. 300, Ch. 5, L. 1971; R.C.M. 1947, 75-7023; amd. Sec. 15, Ch. 711, L. 1991; amd. Sec. 40, Ch. 10, L. 1993; amd. Sec. 13, Ch. 133, L. 1993; amd. Sec. 3, Ch. 359, L. 1993; amd. Sec. 18, Ch. 563, L. 1993; amd. Sec. 46, Ch. 451, L. 1995; amd. Sec. 8, Ch. 580, L. 1995; amd. Sec. 15, Ch. 496, L. 1997; amd. Sec. 20, Ch. 515, L. 1999; amd. Sec. 123, Ch. 574, L. 2001; amd. Sec. 4, Ch. 276, L. 2003; amd. Sec. 30, Ch. 130, L. 2005; amd. Sec. 23, Ch. 152, L. 2011; amd. Sec. 10, Ch. 411, L. 2011; amd. Sec. 5, Ch. 46, L. 2013.

**20-10-147. Bus depreciation reserve fund.** (1) The trustees of a district owning a bus used for purposes of transportation, as defined in 20-10-101, or for purposes of conveying pupils to and from school functions or activities may establish a bus depreciation reserve fund to be used for the conversion, remodeling, or rebuilding of a bus or for the replacement of a bus or communication systems and safety devices installed on the bus, including but not limited to global positioning systems, cameras, and two-way radios. The trustees of a district may also use the bus depreciation reserve fund to purchase an additional bus for purposes of transportation, as defined in 20-10-101.

(2) Whenever a bus depreciation reserve fund is established, the trustees may include in the district's budget, in accordance with the school budgeting provisions of this title, an amount each year that does not exceed 20% of the original cost of a bus or communication systems and safety devices installed on the bus. The amount budgeted may not, over time, exceed 150% of the original cost of a bus or communication systems and safety devices installed on the bus. The annual revenue requirement for each district's bus depreciation reserve fund, determined within the limitations of this section, must be reported by the county superintendent to the county commissioners by the later of the first Tuesday in September or within 30 calendar days after receiving certified taxable values as the bus depreciation reserve fund levy requirement for that district, and a levy must be made by the county commissioners in accordance with 20-9-142.

(3) Any expenditure of bus depreciation reserve fund money must be within the limitations of the district's final bus depreciation reserve fund budget and the school financial administration provisions of this title and may be made only to convert, remodel, or rebuild buses, to replace the buses or communication systems and safety devices installed on the bus, or for the purchase of an additional bus as provided in subsection (1), for which the bus depreciation reserve fund was created.

**History:** En. 75-7024 by Sec. 301, Ch. 5, L. 1971; amd. Sec. 1, Ch. 194, L. 1977; R.C.M. 1947, 75-7024; amd. Sec. 1, Ch. 69, L. 1991; amd. Sec. 11, Ch. 568, L. 1991; amd. Sec. 14, Ch. 133, L. 1993; amd. Sec. 1, Ch. 238, L. 1997; amd. Sec. 1, Ch. 157, L. 1999; amd. Sec. 115, Ch. 584, L. 1999; amd. Sec. 4, Ch. 220, L. 2001; amd. Sec. 24, Ch. 152, L. 2011; amd. Sec. 21, Ch. 418, L. 2011; amd. Sec. 5, Ch. 8, L. 2015.

#### **Cross-References**

Administration of finances, Title 20, ch. 9, part 2.

School elections, Title 20, ch. 20.

**20-10-148. Cost-effectiveness analysis required before purchase of small school bus.** The trustees of a district may not purchase and operate a school bus as defined in 20-10-101(4)(a)(ii) until the trustees have:

(1) conducted an analysis of the costs associated with purchase and operation of the school bus compared to the costs associated with purchase or contract and operation of a school bus designed to carry more than 10 passengers; and

(2) adopted a written finding that the purchase and operation of a school bus as defined in 20-10-101(4)(a)(ii) is the most cost-effective means of transporting eligible transportees on the bus route or routes to which the school bus will be assigned.

**History:** En. Sec. 4, Ch. 221, L. 2017.

**Compiler's Comments**

*Effective Date:* Section 6, Ch. 221, L. 2017, provided: "[This act] is effective July 1, 2017."

## Part 2 Food Services

**Part Cross-References**

School food services defined, 20-1-101.

Montana Food, Drug, and Cosmetic Act, Title 50, ch. 31.

Wild animal meat to be donated to school lunch program, 87-1-226.

**20-10-201. Acceptance, expenditure, and administration of federal school food services money.** (1) The superintendent of public instruction is authorized to accept and direct the disbursement of funds appropriated by act of congress and apportioned to the state for use in financing school food services. This authorization applies to federal funds available for school food services under the National School Lunch Act (Public Law 396, 79th congress, chapter 281, 2nd session), Child Nutrition Act of 1966 (Public Law 642, 89th congress), any amendments to these public laws, and any other public laws enacted to provide assistance for school food services.

(2) The superintendent of public instruction shall deposit all federal funds for school food services with the state treasurer who shall credit the funds to the federal special revenue fund. Any disbursement of the federal school food services funds must be directed by the superintendent of public instruction.

(3) The superintendent of public instruction may:

(a) enter into agreements and cooperate with any federal agency, district, or other agency or person, prescribe regulations, employ personnel, and take any other action that the superintendent of public instruction may consider necessary to:

(i) provide for the establishment, operation, and expansion of school food services; and

(ii) disburse federal and state funds according to the requirements of federal and state law;

(b) give technical advice and assistance to any district establishing or operating school food services and assist in the training of personnel for the services;

(c) accept any gift for use in providing school food services;

(d) conduct studies of methods of improving and expanding school food services and appraise the nutritive benefits of school food services.

(4) The superintendent of public instruction shall report annually to the board of public education on the financial, administrative, and operational phases of school food services.

**History:** En. 75-8002 by Sec. 443, Ch. 5, L. 1971; R.C.M. 1947, 75-8002; amd. Sec. 17, Ch. 281, L. 1983; amd. Sec. 20, Ch. 237, L. 2001.

**Cross-References**

Miscellaneous programs fund, 20-9-507.

Acceptance and expenditure of federal money for state, 20-9-603.

**20-10-202. Records, reports, and reviews.** (1) The superintendent of public instruction shall prescribe regulations for keeping the financial and commodity records and making reports on school food services operated by a district. The financial records must be available for inspection and audit by federal and state officials authorized by law or contract to perform audits and be preserved for the period of time, not to exceed 5 years, the superintendent of public instruction may prescribe.

(2) The superintendent of public instruction shall conduct or cause to be conducted the inspections and administrative reviews of the financial records and the operation of school food services.

**History:** En. 75-8003 by Sec. 444, Ch. 5, L. 1971; R.C.M. 1947, 75-8003; amd. Sec. 26, Ch. 489, L. 1991.

**Cross-References**

Audits of political subdivisions, Title 2, ch. 7, part 5.

**20-10-203. School food commodities.** The superintendent of public instruction is authorized to accept food commodities from the federal government and to distribute the food commodities to any district or nonpublic school that contracts for such distribution. The superintendent of public instruction may use for the shipping, handling, and other related costs of distributing the food commodities any funds advanced by legislative appropriation for the commodity state special revenue account. Such distribution costs shall be reimbursed by the participating districts and nonpublic schools. Those reimbursements shall be returned to the fund from which payments for the distribution costs were made.

**History:** En. 75-8004 by Sec. 445, Ch. 5, L. 1971; R.C.M. 1947, 75-8004; amd. Sec. 18, Ch. 281, L. 1983.

**Cross-References**

Power of districts to accept gifts, 20-6-601.

Duty of trustees to execute all contracts, 20-9-213.

**20-10-204. Duties of trustees.** (1) The trustees of any district offering school food services may:

(a) enter into contracts with the superintendent of public instruction for the purpose of obtaining funds, supplies and equipment, food commodities, and facilities necessary for the establishment, operation, and maintenance of the school food services;

(b) sell food to the pupils and adults participating in the school food services in accordance with the policies of the superintendent of public instruction;

(c) accept any gift for use of the school food services;

(d) allocate federal funds received in lieu of property taxation to the school food services fund in accordance with the provisions of 20-10-205; and

(e) adopt such policies for the operation of school food services as are consistent with the regulations of the superintendent of public instruction and with the laws of Montana.

(2) When the trustees of any district offer school food services, they shall establish a school food services fund for the deposit of proceeds from the sale of food, gifts, and other moneys specified in this section and for the expenditure of such moneys in support of the school food services.

**History:** En. 75-8005 by Sec. 446, Ch. 5, L. 1971; R.C.M. 1947, 75-8005.

**Cross-References**

Powers and duties of trustees generally, 20-3-324.

Power of districts to accept gifts, 20-6-601.

Conflicts of interests, letting contracts, and calling for bids, 20-9-204.

Duty of trustees to execute all contracts, 20-9-213.

**20-10-205. Allocation of federal funds to school food services fund for federally connected, indigent pupils.** The trustees of any school district receiving federal reimbursement in lieu of taxes may request the allocation of a portion of those federal funds to the school food services fund to provide free meals for federally connected, indigent pupils when the pupils are declared eligible. In granting the request, the county superintendent shall comply with the following procedures:

(1) The indigency must be certified by the local office of public assistance, assisted by a committee of three composed of the county superintendent, a representative of the county health department, and an authorized representative of the district.

(2) A certified, detailed claim for the amount of the federal reimbursement in lieu of taxes that is to be allocated to the school food services fund must be filed by the district with the county superintendent. The county superintendent shall confirm or adjust the amount of the claim by:

(a) determining that the pupils included on the claim have been declared indigent under subsection (1);

(b) determining the number of meals provided the indigent pupils by the school food services;

(c) determining the price for each meal that is charged to the nonindigent pupil; and

(d) multiplying the number of meals provided to indigent pupils by the price for each meal.

(3) After the county superintendent's confirmation or adjustment of the claim, the county superintendent shall notify the district and the county treasurer of the approved amounts for

allocation to the school food services fund. The district shall deposit the approved amount in the school food services fund on receipt of the succeeding federal payment in lieu of taxes.

**History:** En. 75-8006 by Sec. 447, Ch. 5, L. 1971; R.C.M. 1947, 75-8006; amd. Sec. 63, Ch. 114, L. 2003.

**Cross-References**

Allocation of federal funds in lieu of property taxes, 20-9-143.

**20-10-206. Pupils in state institutional schools included.** The provisions of 20-10-201 through 20-10-205 shall apply to pupils in state institutional schools meeting the requirements established by the superintendent of public instruction and the applicable federal laws and regulations.

**History:** En. Sec. 1, Ch. 92, L. 1973; R.C.M. 1947, 75-8007.

**20-10-207. School food services fund.** The trustees of any district offering school food services shall establish a school food services fund under the provisions of 20-10-204. Such fund shall be a nonbudgeted fund and shall be financially administered under the provisions of this title for a nonbudgeted fund.

**History:** En. 75-7211 by Sec. 350, Ch. 5, L. 1971; R.C.M. 1947, 75-7211.

**Cross-References**

Nonbudgeted fund defined, 20-9-201.

**20-10-208. Terminated.** Sec. 4, Ch. 437, L. 2001.

**History:** En. Sec. 1, Ch. 437, L. 2001.

## CHAPTER 15 COMMUNITY COLLEGE DISTRICTS

### Part 1 — General Provisions

- 20-15-101. Definition.
- 20-15-102. Community college districts — name and corporate powers.
- 20-15-103. Supervision and coordination by board of regents.
- 20-15-104. Pecuniary interest and letting contracts.
- 20-15-105. Courses of instruction — tuition and fees.
- 20-15-106. Retirement systems for employees, teachers, and administrators.
- 20-15-107. Lease or sale of district property.
- 20-15-108. Baccalaureate degrees not to be granted.
- 20-15-109. Acceptance of donations.

### Part 2 — Organization and Trustees

- 20-15-201. Requirements for organization of community college district.
- 20-15-202. Petition for organization of community college district.
- 20-15-203. Call of community college district organization election — proposition statement.
- 20-15-204. Election of trustees — districts from which elected — terms of office.
- 20-15-205. Repealed.
- 20-15-206. Repealed.
- 20-15-207. Notice of organization election.
- 20-15-208. Conduct of community college district elections — cost.
- 20-15-209. Determination of approval or disapproval of proposition — subsequent procedures if approved.
- 20-15-210. Qualification and organization of board of trustees.
- 20-15-211 through 20-15-218 reserved.
- 20-15-219. Qualifications for office of trustee — declaration of candidacy.
- 20-15-220. Trustee election ballot.
- 20-15-221. Election of trustees after organization of community college district.
- 20-15-222. Results of election — qualifying oath — term of office.
- 20-15-223. Vacancies.
- 20-15-224. Board of trustees — organization, meetings, quorum, mileage, and seal.
- 20-15-225. Powers and duties of trustees.
- 20-15-226. Personal liability of trustees.
- 20-15-227. Trustee removal procedure.
- 20-15-228. Grounds for removal.
- 20-15-229. Audit of district.
- 20-15-230 reserved.
- 20-15-231. Annexation of territory of districts to community college district.
- 20-15-232 through 20-15-240 reserved.
- 20-15-241. Community college service regions — creation.

### Part 3 — Finance

- 20-15-301. Sources of financing for and types of capital expenditures.

- 20-15-302. Repealed.
- 20-15-303. Repealed.
- 20-15-304. Federal and state aid.
- 20-15-305. Adult education tax levy.
- 20-15-306. Repealed.
- 20-15-307. Repealed.
- 20-15-308. Deposit of moneys.
- 20-15-309. Proposed budget.
- 20-15-310. Appropriation — definitions.
- 20-15-311. Funding sources.
- 20-15-312. Calculation and approval of operating budget.
- 20-15-313. Tax levy.
- 20-15-314. Tax levy for community college service region.
- 20-15-315 through 20-15-320 reserved.
- 20-15-321. General fund cash reserve.
- 20-15-322 reserved.
- 20-15-323. Definition of emergency for budgeting purposes.
- 20-15-324. Resolution for emergency budget — petition to board of regents.
- 20-15-325. Emergency budget limitation, preparation, and adoption procedures.
- 20-15-326. Determination of available financing — fixing and levying property taxation for emergency budget.
- 20-15-327. Revenue-producing facilities — powers of board of trustees.

#### Part 4 — Relationship to Other Laws

- 20-15-401. Purpose.
- 20-15-402. Precedence of community college chapter.
- 20-15-403. Applications of other school district provisions.
- 20-15-404. Trustees to adhere to certain other laws.

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### Part 1 General Provisions

**20-15-101. Definition.** As used in this title, unless the context clearly indicates otherwise, the term “community college district” means a body corporate and a subdivision of the state of Montana organized under a single board of trustees for the purpose of providing community college instruction open to all people, subject to uniform regulations as determined by the trustees. Community college districts shall be in addition to any other districts existing in any portion of the area encompassed by the community college district.

**History:** En. 75-8101 by Sec. 448, Ch. 5, L. 1971; R.C.M. 1947, 75-8101; amd. Sec. 1, Ch. 74, L. 2017.

#### Compiler’s Comments

*2017 Amendment:* Chapter 74 in (1) substituted “open to all people, subject to uniform regulations as determined by the trustees” for “to high school graduates and other persons who have terminated their formal high school education”. Amendment effective March 13, 2017.

**20-15-102. Community college districts — name and corporate powers.** A community college district shall be known as “Community College District of ....., Montana”. In this name, the community college district may sue and be sued, levy and collect taxes within the limitations of the laws of Montana, and possess the same corporate powers as districts in this state, except as otherwise provided by law.

**History:** En. 75-8102 by Sec. 449, Ch. 5, L. 1971; R.C.M. 1947, 75-8102.

#### Cross-References

Claims and actions against political subdivisions, Title 2, ch. 9, part 3.

**20-15-103. Supervision and coordination by board of regents.** Community college districts shall be under the supervision and coordination of the regents. The regents shall:

- (1) supervise community college districts in accordance with the provisions of this section and 20-15-105;
- (2) appoint a coordinator of community college districts and prescribe the duties of the coordinator;
- (3) formulate and put into effect general policies for the supervision and coordination of community college districts;
- (4) after consultation with the community college trustees, develop and implement policies that distinguish the regents’ authority to supervise and coordinate and the trustees’ authority to administer and control community colleges; and



(5) call an election, determine the results of the election, and order and implement the organization of a community college district in accordance with this chapter.

**History:** (1), (5)En. 75-5607.1 by Sec. 2, Ch. 266, L. 1977; Sec. 75-5607.1, R.C.M. 1947; (2)En. Sec. 450, Ch. 5, L. 1971; amd. Sec. 1, Ch. 406, L. 1971; Sec. 75-8103, R.C.M. 1947; R.C.M. 1947, 75-5607.1, 75-8103; (3), (4)En. Sec. 25, Ch. 392, L. 1979.

**Cross-References**

Board of Regents established, Art. X, sec. 9, Mont. Const.; 2-15-1505.

Powers and duties of Board of Regents generally, 20-25-301.

**20-15-104. Pecuniary interest and letting contracts.** (1) It is unlawful for any community college district trustee to:

(a) have a pecuniary interest, either directly or indirectly, in the erection of any community college building in the trustee's district;

(b) have a pecuniary interest, either directly or indirectly, in furnishing or repairing a community college building;

(c) be in any manner connected with the furnishing of supplies for the maintenance of the college; or

(d) receive or accept any compensation or reward for services rendered as trustee, except as provided in this section.

(2) Except for the letting of an investment grade energy audit or energy performance contract pursuant to Title 90, chapter 4, part 11, including construction or installation of conservation measures pursuant to an energy performance contract, the board of trustees shall let contracts for building, furnishing, repairing, or other work or supplies for the benefit of the district according to the following rules and procedures:

(a) The board of trustees need not meet requirements relating to advertising or bidding if a proposed contract for building, furnishing, repairing, or other work or supplies is for less than \$80,000.

(b) Whenever the proposed contract costs are more than \$80,000, the board of trustees shall solicit formal bids and advertise once each week for at least 2 weeks in a newspaper published in each county in which the area of the district lies, calling for bids to perform the work or furnish the supplies. If advertising is required, the board shall award the contract to the lowest responsible bidder. However, the board of trustees has the right to reject any bids.

**History:** En. 75-8118 by Sec. 465, Ch. 5, L. 1971; R.C.M. 1947, 75-8118; amd. Sec. 26, Ch. 392, L. 1979; amd. Sec. 11, Ch. 162, L. 2005; amd. Sec. 1, Ch. 68, L. 2015.

**Cross-References**

Code of ethics, Title 2, ch. 2, part 1.

Procurement of architectural, engineering, and land surveying services by governmental entities, Title 18, ch. 8, part 2.

Penalty for violation of school laws, 20-1-207.

**20-15-105. Courses of instruction — tuition and fees.** (1) A community college district shall provide instruction in academic, occupational, and adult education, subject to the approval of the board of regents of higher education. The board of trustees of such district may, in their discretion and upon approval of the board of regents, prescribe:

(a) tuition rates for in-district students, out-of-district students who are residents of the state of Montana, and students who are not residents of the state of Montana;

(b) matriculation charges; and

(c) incidental fees, including building fees, for students in the community college.

(2) In addition thereto, such board of trustees may prescribe such other fees as it considers necessary to maintain courses, taking into consideration such other funds as may be available under law for the support of such courses.

**History:** En. 75-8119 by Sec. 466, Ch. 5, L. 1971; amd. Sec. 8, Ch. 406, L. 1971; amd. Sec. 4, Ch. 121, L. 1977; R.C.M. 1947, 75-8119.

**Cross-References**

Vocational education, Title 20, ch. 7, part 3.

Adult education, Title 20, ch. 7, part 7.

Charges for tuition — waivers, 20-25-421.

Capacity of minors to borrow for education, 41-1-303.

**20-15-106. Retirement systems for employees, teachers, and administrators.** (1) Teachers and administrators of a community college district are subject to and eligible for

the benefits of the Montana teachers' retirement system pursuant to the provisions of Title 19, chapter 20.

(2) The employees of a community college district not eligible for teachers' retirement system benefits are subject to and eligible for the benefits of the Montana public employees' retirement system pursuant to Title 19, chapters 2 and 3.

**History:** En. 75-8120 by Sec. 467, Ch. 5, L. 1971; R.C.M. 1947, 75-8120; amd. Sec. 27, Ch. 392, L. 1979; amd. Sec. 18, Ch. 282, L. 2009.

**Cross-References**

Applicability of public employees' retirement system, 19-3-403.

Teachers' retirement system, Title 19, ch. 20.

**20-15-107. Lease or sale of district property.** Whenever a district has property that is not required for the use of the district, such property may be leased or sold and conveyed to the community college district. Such lease or sale of property shall be consummated in accordance with the provisions of the law of Montana.

**History:** En. 75-8124 by Sec. 471, Ch. 5, L. 1971; R.C.M. 1947, 75-8124.

**Cross-References**

School property, Title 20, ch. 6, part 6.

Trustees to execute all contracts, 20-9-213.

Building fund to be credited when property sold, 20-9-508.

**20-15-108. Baccalaureate degrees not to be granted.** A community college district shall be prohibited from granting baccalaureate degrees.

**History:** En. 75-8126 by Sec. 1, Ch. 407, L. 1971; R.C.M. 1947, 75-8126.

**Cross-References**

Regulation of award of degrees — penalty, 20-25-107.

Authority of Board of Regents to grant diplomas and degrees, 20-25-301.

**20-15-109. Acceptance of donations.** The board of trustees of a community college district, on behalf of the district, is hereby authorized and empowered to accept gifts, legacies, and devises, subject to the conditions imposed by the deed of the dower or will of the testator or without any conditions imposed.

**History:** En. 75-8123 by Sec. 470, Ch. 5, L. 1971; R.C.M. 1947, 75-8123.

## **Part 2 Organization and Trustees**

**20-15-201. Requirements for organization of community college district.** The registered electors in any area of the state of Montana may request an election for the organization of a community college district where the proposed community college district conforms to the following requirements:

(1) The proposed area coincides with the then-existing boundaries of contiguous elementary districts of one or more counties.

(2) The taxable value of the proposed area is at least \$10 million.

(3) There are at least 700 pupils regularly enrolled in public and private high schools located in the proposed area.

**History:** En. 75-8104 by Sec. 451, Ch. 5, L. 1971; amd. Sec. 47, Ch. 566, L. 1977; R.C.M. 1947, 75-8104.

**Cross-References**

Elementary districts, Title 20, ch. 6, part 2.

**20-15-202. Petition for organization of community college district.** When the area of a proposed community college district satisfies the specified requirements, the registered electors of the area may petition the regents to call an election for the organization of a community college district. Such petition shall be signed by at least 20% of the registered electors within each county or a part of a county included in the area of the proposed community college district.

**History:** En. 75-8105 by Sec. 452, Ch. 5, L. 1971; amd. Sec. 2, Ch. 406, L. 1971; R.C.M. 1947, 75-8105.

**Cross-References**

Registration of electors, Title 13, ch. 2.

Qualification and registration of electors, Title 20, ch. 20, part 3.

**20-15-203. Call of community college district organization election — proposition statement.** (1) A petition for the organization of a community college district must be presented

to the county election administrator responsible for conducting elections pursuant to 20-15-208. The county election administrator shall notify the regents of the petition and examine the petition to determine if the petition satisfies the petitioning and community college district organizational requirements.

(2) If the county election administrator determines that the petition satisfies the requirements, the county election administrator shall notify the regents and conduct an election on the community college district organization proposition. The election must be held on the next regular school election day that, pursuant to 13-1-504(4), is not less than 85 days after the order.

(3) At the election the proposition must be in substantially the following form:

#### PROPOSITION

Shall there be organized within the area comprising the School Districts of .... (elementary districts must be listed by county), State of Montana, a community college district for the offering of 13th- and 14th-year courses, to be known as the Community College District of ....., Montana, under the provisions of the laws authorizing community college districts in Montana, as requested in the petition filed with the county election administrator on the .... day of ....., 20...?

☐ FOR organization.

☐ AGAINST organization.

**History:** En. 75-8106 by Sec. 453, Ch. 5, L. 1971; amd. Sec. 3, Ch. 406, L. 1971; R.C.M. 1947, 75-8106; amd. Sec. 56, Ch. 51, L. 1999; amd. Sec. 212, Ch. 49, L. 2015.

#### Cross-References

Regular school election day and special school elections, 20-20-105.

#### **20-15-204. Election of trustees — districts from which elected — terms of office.**

(1) Pursuant to 20-15-208, the board of regents shall call and the county election administrator shall conduct the election of trustees of the proposed community college district at the same time as the election to be held for the approval of the community college district's organization.

(2) Seven trustees must be elected at large, except that if there is in the proposed community college district one or more high school districts or part of a high school district within the community college district with more than 43% and not more than 50% of the total population of the proposed district, as determined by the last census, then each such district or part of district shall elect three trustees and the remaining trustees must be elected at large from the remainder of the proposed community college district. Should any high school district or part of a high school district within the community college district have more than 50% of the population of the proposed district, then four trustees must be elected from that high school district or part of a high school district and the remaining trustees must be elected at large from the remainder of the proposed community college district.

(3) If the trustees are elected at large throughout the entire proposed community college district, the three receiving the greatest number of votes must be elected for a term of 3 years, the two receiving the next greatest number of votes, for a term of 2 years, and the two receiving the next greatest number of votes, for a term of 1 year. If the trustees are elected in any manner other than at large throughout the entire proposed community college district, then the trustees elected shall determine by lot the three who shall serve for 3 years, the two who shall serve for 2 years, and the two who shall serve for 1 year. Thereafter, all trustees elected shall serve for terms of 3 years each.

**History:** En. 75-8107 by Sec. 454, Ch. 5, L. 1971; amd. Sec. 4, Ch. 406, L. 1971; amd. Sec. 14, Ch. 137, L. 1973; amd. Sec. 1, Ch. 159, L. 1975; R.C.M. 1947, 75-8107; amd. Sec. 213, Ch. 49, L. 2015.

**20-15-205. Repealed.** Sec. 262, Ch. 49, L. 2015.

**History:** En. 75-8108 by Sec. 455, Ch. 5, L. 1971; amd. Sec. 5, Ch. 406, L. 1971; R.C.M. 1947, 75-8108.

**20-15-206. Repealed.** Sec. 262, Ch. 49, L. 2015.

**History:** En. 75-8109 by Sec. 456, Ch. 5, L. 1971; amd. Sec. 6, Ch. 406, L. 1971; R.C.M. 1947, 75-8109.

**20-15-207. Notice of organization election.** Notice of the community college district organization election and the accompanying election of a board of trustees for the proposed community college district must be given by the county election administrator in accordance with 13-1-108.

**History:** En. 75-8110 by Sec. 457, Ch. 5, L. 1971; amd. Sec. 7, Ch. 406, L. 1971; R.C.M. 1947, 75-8110; amd. Sec. 214, Ch. 49, L. 2015.

**20-15-208. Conduct of community college district elections — cost.** (1) An election for the organization of the community college district and the concurrent election of trustees for the proposed community college district must be supervised by the board of regents acting as the governing body for the election and conducted by the county election administrator.

(2) For any community college district election held subsequent to the initial election under subsection (1), the community college district's board of trustees is the governing body for the election and the county election administrator shall conduct the election.

(3) If a proposed or existing community college district is within the boundaries of more than one county, the county election administrator of the county with the highest number of qualified electors in the proposed or existing community college district shall conduct the election.

(4) A community college district election must be conducted in accordance with Title 13, chapter 1, part 5.

(5) The cost of conducting an initial community college district election under subsection (1) must be paid by the university system.

**History:** En. 75-8111 by Sec. 458, Ch. 5, L. 1971; R.C.M. 1947, 75-8111; amd. Sec. 215, Ch. 49, L. 2015.

**Cross-References**

School elections generally, Title 20, ch. 20.

Election expenses, 20-20-107.

**20-15-209. Determination of approval or disapproval of proposition — subsequent procedures if approved.** (1) To carry, the proposal to organize the community college district must receive a majority of the total number of votes cast. The county election administrator shall determine whether the proposal has received the majority of the votes cast for each county within the proposed district and shall certify the results to the regents. Approval for the organization of a new community college district must be granted at the discretion of the legislature acting on the recommendation of the regents. If the certificate of the election shows that the proposition to organize the community college district has received a majority of the votes cast in each county within the proposed district, the regents may make an order declaring the community college district organized and cause a copy of the order to be recorded in the office of the county clerk and recorder in each county in which a portion of the new district is located. If the proposition carries, the county election administrator shall determine which candidates have been elected trustees. If the proposition to organize the community college district fails to receive a majority of the votes cast, a tabulation may not be made to determine the candidates elected trustees.

(2) Within 30 days of the date of the organization order, the regents shall set a date and call an organization meeting for the board of trustees of the community college district and shall notify the elected trustees of their membership and of the organization meeting. The notification must designate a temporary presiding officer and secretary for the purposes of organization.

**History:** En. 75-8112 by Sec. 459, Ch. 5, L. 1971; amd. Sec. 1, Ch. 164, L. 1971; amd. Sec. 2, Ch. 407, L. 1971; R.C.M. 1947, 75-8112; amd. Sec. 321, Ch. 56, L. 2009; amd. Sec. 216, Ch. 49, L. 2015.

**20-15-210. Qualification and organization of board of trustees.** (1) Newly elected members of the board of trustees of the community college district must be qualified by taking the oath of office prescribed by the constitution of Montana. At the organization meeting called by the board of regents, the board of trustees must be organized by the election of a presiding officer and a secretary.

(2) The treasurer of the community college district is the county treasurer of the county in which the community college facilities are located. The duties of the county treasurer are referenced in 20-9-212.

**History:** En. 75-8113 by Sec. 460, Ch. 5, L. 1971; amd. Sec. 33, Ch. 100, L. 1973; R.C.M. 1947, 75-8113; amd. Sec. 28, Ch. 392, L. 1979; amd. Sec. 8, Ch. 260, L. 1995.

**Cross-References**

Constitutional oath of office, Art. III, sec. 3, Mont. Const.

Declaration in lieu of oath, 1-6-104.

Oath of office, 20-1-202.

**20-15-211 through 20-15-218 reserved.**

**20-15-219. Qualifications for office of trustee — declaration of candidacy.** (1) Any person who is qualified to vote in a community college district under the provisions of 20-20-301 is eligible for the office of community college trustee.

(2) A declaration of candidacy must be submitted to the county election administrator within the time period specified in 20-3-305(2). If there are different terms to be filled, the term for which the candidate is filing must be indicated on the declaration.

**History:** En. Sec. 3, Ch. 392, L. 1979; amd. Sec. 322, Ch. 56, L. 2009; amd. Sec. 1, Ch. 251, L. 2013; amd. Sec. 217, Ch. 49, L. 2015.

**Cross-References**

Regular school election day and special school elections, 20-20-105.

**20-15-220. Trustee election ballot.** (1) The trustee election ballot must be substantially in the following form:

Official Ballot  
Community College Trustee Election  
Instructions to Voters

Make an "X" or similar mark in the vacant square before the name of the candidate for whom you wish to vote.

Vote for (indicate number to be elected) for a 3-year term.

☐ ..... List the names of the candidates for the 3-year term with a vacant square in front of each name.

Vote for (indicate number to be elected) for a 2-year term.

☐ ..... List the names of the candidates for the 2-year term with a vacant square in front of each name.

Vote for (indicate number to be elected) for a 1-year term.

☐ ..... List the names of the candidates for the 1-year term with a vacant square in front of each name.

(2) In preparing the ballots, only those portions of the prescribed ballot that are applicable to the election to be conducted need be used. The ballot must also be prepared with blank lines and vacant squares in front of the lines in a sufficient number to allow write-in voting for each trustee position that is subject to election.

**History:** En. Sec. 4, Ch. 392, L. 1979.

**20-15-221. Election of trustees after organization of community college district.**

(1) After organization, the registered electors of the community college district qualified to vote under the provisions of 20-20-301 shall annually vote for trustees on the regular school election day provided for in 20-20-105(1). The election must be conducted in accordance with the election provisions of this title whenever the provisions are made applicable to community college districts. Pursuant to 20-15-208, the elections must be conducted by the county election administrator on the order of the board of trustees of the community college district. The order must be transmitted to the appropriate trustees at least 85 days prior to the regular school election day.

(2) Notice of the community college district trustee election must be given as provided in 13-1-108.

(3) If trustees are elected other than at large throughout the entire district, then only those qualified electors within the area from which the trustee or trustees are to be elected may cast their ballots for the trustee or trustees from that area.

(4) Candidates for the office of trustee shall file their declarations of candidacy with the county election administrator within the time period specified in 20-3-305(2).

(5) All costs incident to election of the community college trustees must be borne by the community college district, including one-half of the compensation of the judges for the school elections.

**History:** En. 75-8114 by Sec. 461, Ch. 5, L. 1971; amd. Sec. 2, Ch. 121, L. 1977; R.C.M. 1947, 75-8114; amd. Sec. 29, Ch. 392, L. 1979; amd. Sec. 31, Ch. 130, L. 2005; amd. Sec. 2, Ch. 251, L. 2013; amd. Sec. 218, Ch. 49, L. 2015.

**Cross-References**

School elections, Title 20, ch. 20.

Regular school election day and special school elections, 20-20-105.

Election expenses, 20-20-107.



**20-15-222. Results of election — qualifying oath — term of office.** (1) When the board of trustees of the community college district has received all of the certified results of the election from the county election administrator, the then-qualified members of the board of trustees of the community college district shall tabulate the results received, shall declare and certify the candidate or candidates receiving the greatest number of votes to be elected to the position or positions to be filled, and shall declare and certify the results of the votes cast on any proposition presented at the election.

(2) (a) A person who receives a certificate of election as a community college trustee may not assume the trustee position until the person has qualified by taking an oath of office prescribed by the constitution of Montana at the next regularly scheduled meeting of the board of trustees after receipt of the certificate of election.

(b) If the elected person does not qualify in accordance with this requirement, another person must be appointed in a manner provided by 20-15-223 and shall serve until the next regular school election.

(3) After a person has qualified for a trustee position, the person shall hold the position for the term of the position and until a successor has been elected or appointed and has been qualified.

**History:** En. 75-8115 by Sec. 462, Ch. 5, L. 1971; R.C.M. 1947, 75-8115; amd. Sec. 5, Ch. 392, L. 1979; amd. Sec. 323, Ch. 56, L. 2009; amd. Sec. 219, Ch. 49, L. 2015.

**Cross-References**

Constitutional oath of office, Art. III, sec. 3, Mont. Const.

Declaration in lieu of oath, 1-6-104.

Oath of office, 20-1-202.

**20-15-223. Vacancies.** (1) A community college trustee position is vacant whenever the incumbent:

- (a) dies;
- (b) resigns; or
- (c) is removed under the provisions of 20-15-227.

(2) A trustee position is also vacant whenever an elected candidate fails to qualify under the provisions of 20-3-307.

(3) Any vacancy of a trustee position shall be filled by appointment by majority vote of the remaining trustees, and the person appointed shall hold office until the next regular school election day, when a trustee shall be elected for the remainder of the unexpired term.

**History:** En. 75-8116 by Sec. 463, Ch. 5, L. 1971; R.C.M. 1947, 75-8116; amd. Sec. 30, Ch. 392, L. 1979.

**Cross-References**

Regular school election day and special school elections, 20-20-105.

**20-15-224. Board of trustees — organization, meetings, quorum, mileage, and seal.**

(1) (a) The trustees of each community college district shall annually organize as a governing board of the community college district at the next regularly scheduled meeting after the regular school election day and after the issuance of the election certificate to the newly elected trustees.

(b) In order to organize, the trustees of the community college district must be given notice by the coordinator of the time and place where the organization meeting will be held, and at the meeting they shall choose one of their members as presiding officer and as secretary. In addition, the trustees may employ or appoint a competent person who is not a member of the trustees as the clerk of the community college district.

(c) The presiding officer and secretary of the trustees of the community college district shall serve until the next organization meeting. The presiding officer shall preside at all meetings of the trustees in accordance with the customary rules of order. The presiding officer shall perform the duties prescribed by this title and any other duties that normally pertain to the office.

(2) The board of trustees of the community college shall hold monthly meetings within the community college district on the day of the month the trustees may set. The presiding officer and secretary of the board or a majority of the board may also call special meetings of the board of trustees at any time and place within the community college district if in its judgment necessity requires the meeting. The secretary of the board shall give each member a 48-hour written notice of all special meetings.

(3) A majority of the board of trustees constitutes a quorum for the transaction of business, except that a contract may not be let, teacher employed or dismissed, or bill approved unless a majority of the total board membership votes in favor of the action.

(4) A member of the board of trustees must receive mileage, as provided for in 2-18-503, for the distance necessarily traveled in going to and returning from the place of the meeting and the member's place of residence each day that the trip is actually made.

(5) The board shall keep a common seal with which to attest its official acts.

**History:** En. 75-8117 by Sec. 464, Ch. 5, L. 1971; amd. Sec. 1, Ch. 163, L. 1971; amd. Sec. 3, Ch. 121, L. 1977; R.C.M. 1947, 75-8117; (1)En. Sec. 8, Ch. 392, L. 1979; amd. Sec. 324, Ch. 56, L. 2009; amd. Sec. 220, Ch. 49, L. 2015.

#### Cross-References

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

Open meetings, Title 2, ch. 3, part 2.

Disrupting meeting as disorderly conduct, 45-8-101.

**20-15-225. Powers and duties of trustees.** (1) The trustees of a community college district shall, subject to supervision by the board of regents:

- (a) have general control and supervision of the community college;
- (b) adopt rules, not inconsistent with the constitution and the laws of the state, for the government and administration of the community college;
- (c) grant certificates and degrees to the graduates of the community college;
- (d) keep a record of their proceedings;
- (e) when not otherwise provided by law, have control of all books, records, buildings, grounds, and other property of the community college;
- (f) receive from the state board of land commissioners; other boards, agencies, or persons; or the government of the United States all funds, income, and other property the community college may be entitled to receive or accept and use and appropriate the property for the specific purpose of the entitlement, grant, or donation;
- (g) have general control of all receipts and disbursements of the community college;
- (h) appoint and dismiss a president and faculty for the community college; appoint and dismiss any other necessary officers, agents, and employees; fix their compensation; and set the terms and conditions of their employment;
- (i) administer the tuition provision and otherwise govern the students of the community college district in accordance with the provisions of this chapter;
- (j) call the elections of the district in accordance with the school election chapter of this title;
- (k) participate in the teachers' retirement system of the state of Montana in accordance with the provisions of the teachers' retirement system chapter of this title;
- (l) establish employee benefits, other than retirement benefits, and fix their limits in accordance with 2-18-701 through 2-18-704; and
- (m) participate in district boundary change actions in accordance with the provisions of the district organization chapter of this title.

(2) The trustees of a community college district shall hold in trust all real and personal property of the district for the benefit of the college and students.

(3) The trustees of a community college district may enter into agreements with the western interstate commission for higher education, or similar intrastate, interstate, or international agreements, for the benefit of the district and students.

**History:** En. 75-8117.1 by Sec. 5, Ch. 121, L. 1977; R.C.M. 1947, 75-8117.1; (2), (3)En. Secs. 10, 11, Ch. 392, L. 1979; amd. Sec. 31, Ch. 392, L. 1979; amd. Sec. 221, Ch. 49, L. 2015.

#### Cross-References

Applicability of public employees' retirement system, 19-3-403.

Teachers' retirement system, Title 19, ch. 20.

School elections, Title 20, ch. 20.

Governmental code of fair practices, Title 49, ch. 3.

**20-15-226. Personal liability of trustees.** (1) The trustees of each community college district are responsible for the proper administration and utilization of all money of the district. Failure or refusal to do so constitutes grounds for removal from office.

(2) Trustees consenting to illegal use of money are jointly and individually liable to the district for any losses sustained by the district. The county attorney shall prosecute any

proceedings arising pursuant to this section, or a party seeking such action may retain private counsel. The party commencing the action is liable for the costs if the action fails.

**History:** En. Sec. 9, Ch. 392, L. 1979.

**Cross-References**

Penalty for violation of school laws, 20-1-207.  
Official misconduct, 45-7-401.

**20-15-227. Trustee removal procedure.** (1) Any person may seek the removal of a community college trustee by filing a complaint with the board of county commissioners, containing charges based on one or more of the grounds cited in 20-15-228.

(2) If upon receiving a complaint it appears that there is probable cause for removal, the board of county commissioners shall suspend the trustee from the trustee position until charges can be heard in the appropriate district court. The board of county commissioners shall then transmit the complaint, together with a statement of suspension, to the district court.

**History:** En. Sec. 6, Ch. 392, L. 1979; amd. Sec. 325, Ch. 56, L. 2009.

**20-15-228. Grounds for removal.** A community college trustee may be removed if the trustee:

- (1) moves the trustee's residence from the applicable community college district;
- (2) is no longer a registered elector of the community college district under the provisions of 20-20-301;
- (3) is absent from the district 60 consecutive days;
- (4) fails to attend three consecutive meetings of the trustees without reasonable cause;
- (5) fails to perform responsibilities in accordance with 20-15-226; or
- (6) ceases to have the capacity to hold office.

**History:** En. Sec. 7, Ch. 392, L. 1979; amd. Sec. 326, Ch. 56, L. 2009.

**Cross-References**

Residence — rules for determining, 1-1-215.

**20-15-229. Audit of district.** A community college district is subject to audit by the legislative auditor in the same manner as a state agency. A community college district may contract for an audit with a private accounting firm, subject to approval of the legislative auditor.

**History:** En. Sec. 14, Ch. 392, L. 1979.

**Cross-References**

Legislative Audit Act, Title 5, ch. 13.

**20-15-230 reserved.**

**20-15-231. Annexation of territory of districts to community college district.** (1) Whenever 10% of the registered electors of an elementary district or districts of a county that is contiguous to the existing community college district petition the board of trustees of a community college district for annexation of the territory encompassed in such elementary school districts, the board of trustees of the community college district may order an annexation election in the area defined by the petition. The election must be held on the next school election day that, pursuant to 13-1-504, is at least 85 days after the order for the election.

(2) (a) Prior to the election on the question of annexation, the trustees shall adopt a plan that includes:

- (i) a schedule that provides for the orderly transition from the existing trustee representation to the representation required by 20-15-204, with such transition period not to exceed 3 years from the date of the election on the question of annexation;
- (ii) provisions relating to the assumption or nonassumption of existing community college district bonded indebtedness by the annexed area and provisions relating to the responsibilities of the annexed area for any bonded indebtedness if it withdraws from the district; and
- (iii) a procedure by means of which the electors of the annexed area may withdraw the annexed area from the community college district and the conditions of such withdrawal.

(b) The plan required by this subsection (2) may not be changed by the trustees without the approval of a majority of the electors of the annexed area voting on the question. The bonding provisions of the plan set forth pursuant to subsection (2)(a)(ii) may not be changed.

(3) The election must be conducted in the proposed area for annexation in accordance with the requirements of the community college organization election under 20-15-203, except that

the board of trustees of the community college shall act as the governing body for the election and the election may not include an election of the board of trustees of the community college.

(4) The proposition on the ballot must be as follows:

Shall school districts .... be annexed to and become a part of the Community College District of ...., Montana?

- ☐ FOR annexation.
- ☐ AGAINST annexation.

(5) To carry, the proposals to annex must receive a majority of the total votes cast at the election. On receipt of the certified results of the election from the county election administrator, the board of trustees of the community college district shall canvass the vote and declare the results of the election. If the annexation proposition carries, a certified copy of the canvassing resolution must be filed in the office of the county clerk and recorder of the county encompassing the area to be annexed and, on such filing, the area to be annexed shall then become a part of the community college district.

**History:** En. 75-8125 by Sec. 472, Ch. 5, L. 1971; amd. Sec. 1, Ch. 162, L. 1971; R.C.M. 1947, 75-8125; amd. Sec. 4, Ch. 575, L. 1983; amd. Sec. 1, Ch. 474, L. 1985; amd. Sec. 222, Ch. 49, L. 2015.

### **20-15-232 through 20-15-240 reserved.**

**20-15-241. Community college service regions — creation.** (1) The governing body of an elementary school district, high school district, county, or municipality not within a community college district may designate itself a community college service region, as provided in this section.

(2) A service region may be designated only if, within 12 months preceding any designation, the following conditions are met:

- (a) the service plan required by subsection (3) is available;
- (b) the board of trustees of the community college district that will offer services within the region has approved the designation;
- (c) the electors within the region have approved the designation by a majority of votes cast on the question in an election held on a regular school election day in accordance with 20-15-208; and
- (d) the board of regents has approved the designation.

(3) (a) At least 90 days prior to the granting of any of the approvals listed in subsections (2)(b) through (2)(d), a written plan must be made available that:

- (i) details the services the community college district will offer within the region;
- (ii) details who will be eligible to use the services and the charges that will be made to users;
- (iii) indicates the facilities that will be used to house the services;
- (iv) lists the direct and indirect costs of the services and the apportionment of those costs between the community college district and the governing body designating the service region;
- (v) estimates the number of persons expected to use the services within the region; and
- (vi) estimates the mill levy necessary to fund the service region and estimates the impact of the election on a home valued at \$100,000 and a home valued at \$200,000 in the district in terms of actual dollars in additional property taxes that would be imposed on residences with those values. The plan may also include a statement of the impact of the election on homes of any other value in the district, if appropriate.

(b) The plan may be revised jointly by the region governing body, board of regents, and the board of trustees of the community college district as a revision may be necessary.

(4) A designation is effective for 5 years and after 5 years is effective unless rescinded by a majority of electors casting votes on the question in an election held on any general election day following expiration of the 5-year period. The question on rescission must be put on the ballot when requested at least 90 days prior to the election by the governing body designating the service region, by the community college board, or by a petition signed by 20% of the registered electors within the service region. The rescission is effective at the end of the first full academic year following the election rescinding the district designation.

**History:** En. Sec. 1, Ch. 575, L. 1983; amd. Sec. 29, Ch. 495, L. 2001; amd. Sec. 223, Ch. 49, L. 2015.

### **Cross-References**

Tax levy for community college service region, 20-15-314.

### Part 3 Finance

**20-15-301. Sources of financing for and types of capital expenditures.** (1) The board of trustees of a community college district may:

- (a) purchase, lease, build, enlarge, alter, or repair school buildings and dormitories;
- (b) furnish and equip buildings;
- (c) purchase sites for buildings; and
- (d) issue, refund, sell, budget, and redeem the bonds of the district in accordance with the provisions of 20-15-327 and chapter 9, part 4, of this title.

(2) The board of trustees of a community college district may borrow money for the purposes of 20-15-327 and this section and repay the obligations from the various revenues of the college as described in 20-15-327.

**History:** En. 75-8122 by Sec. 469, Ch. 5, L. 1971; amd. Sec. 2, Ch. 419, L. 1973; R.C.M. 1947, 75-8122; amd. Sec. 1, Ch. 488, L. 1989; amd. Sec. 1, Ch. 421, L. 2017.

**Compiler's Comments**

*2017 Amendment:* Chapter 421 in (1)(d) after "provisions of" inserted "20-15-327 and"; in (2) after "purposes of" inserted "20-15-327 and" and at end inserted "as described in 20-15-327"; and made minor changes in style. Amendment effective July 1, 2017.

**Cross-References**

School bonds, Title 20, ch. 9, part 4.

**20-15-302. Repealed.** Sec. 8, Ch. 495, L. 1981.

**History:** En. Sec. 1, Ch. 401, L. 1971; R.C.M. 1947, 75-8127; amd. Sec. 32, Ch. 392, L. 1979.

**20-15-303. Repealed.** Sec. 8, Ch. 495, L. 1981.

**History:** En. Sec. 2, Ch. 401, L. 1971; amd. Sec. 1, Ch. 243, L. 1975; R.C.M. 1947, 75-8128.

**20-15-304. Federal and state aid.** The board of trustees of a community college district is hereby authorized to accept funds from the federal government or the state of Montana, their instrumentalities, or any of their agencies in aid of any one or more purposes or in maintaining and operating the community college.

**History:** En. Sec. 4, Ch. 401, L. 1971; R.C.M. 1947, 75-8130.

**20-15-305. Adult education tax levy.** A community college is considered a district for the purposes of adult education and under the provisions for adult education may, subject to 15-10-420, levy a tax for the support of its adult education program when the superintendent of public instruction approves the program.

**History:** En. Sec. 3, Ch. 401, L. 1971; R.C.M. 1947, 75-8129; amd. Sec. 116, Ch. 584, L. 1999; amd. Sec. 124, Ch. 574, L. 2001.

**Cross-References**

Adult education, Title 20, ch. 7, part 7.

**20-15-306. Repealed.** Sec. 8, Ch. 495, L. 1981.

**History:** En. Sec. 5, Ch. 401, L. 1971; R.C.M. 1947, 75-8131.

**20-15-307. Repealed.** Sec. 8, Ch. 495, L. 1981.

**History:** En. Sec. 6, Ch. 401, L. 1971; amd. Sec. 28, Ch. 266, L. 1977; R.C.M. 1947, 75-8132.

**20-15-308. Deposit of moneys.** Community college district moneys shall be deposited with the county treasurer of the county where the community college is located or with other depositories approved by the regents.

**History:** En. Sec. 7, Ch. 401, L. 1971; R.C.M. 1947, 75-8133.

**20-15-309. Proposed budget.** The board of trustees of a community college district shall submit a proposed budget to the board of regents by August 15 immediately preceding each regular legislative session. The proposed budget shall be for the next biennium and in a form approved by the state budget director and the commissioner of higher education and shall be calculated in the same manner as the operating budget described in 20-15-312. The board of regents shall review the proposed budget and all its components and make any changes it determines necessary. By the following September 1, the board of regents shall submit its proposal for funding the community colleges to the budget director and the legislative fiscal analyst.

**History:** En. Sec. 1, Ch. 495, L. 1981.



**Cross-References**

School budgeting procedure applicable to community colleges, 20-9-101.

Completion, filing, and delivery of final budgets, 20-9-134.

Emergency budget petitions, 20-9-161, 20-9-163.

Emergency budgets, 20-9-165.

**20-15-310. Appropriation — definitions.** (1) It is the intent of the legislature that all community college spending, other than from restricted funds, designated funds, or funds generated by an optional, voted levy, be governed by the provisions of this part and the state general appropriations act.

(2) (a) The state general fund appropriation for each community college must be determined as follows:

(i) multiply the variable cost of education per student by the full-time equivalent student count and add the budget amount for the fixed cost of education; and

(ii) multiply the total in subsection (2)(a)(i) by the state share.

(b) The variable cost of education per student, the budget amount for fixed costs, and the state share for each community college must be determined by the legislature. The state share for each community college, expressed as a percentage, and the variable cost of education per student must be specified in the appropriations act appropriating funds to the community colleges for each biennium.

(3) The state general fund appropriation for each full-time equivalent resident student at a community college may not exceed the lesser of \$2,500 plus:

(a) the weighted average of state support per resident full-time equivalent student within the Montana university system; or

(b) the weighted average of state support per resident full-time equivalent student within the community college system.

(4) If enrollment for a community college is less than 200 full-time equivalent resident students for 24 consecutive academic months, the maximum state general fund appropriation for that community college may not exceed the lesser of:

(a) the weighted average of state support per resident full-time equivalent student within the Montana university system; or

(b) the weighted average of state support per resident full-time equivalent student within the community college system.

(5) At any time enrollment at a community college falls below 200 full-time equivalent resident students, the community college shall submit a business plan to the board of regents for review, approval, and monitoring. The business plan must include identifying what measures the community college will take to increase enrollment. The plan must be submitted to the board of regents within 1 month after enrollment falls below 200 full-time equivalent resident students.

(6) The student count may not include those enrolled in community service courses as defined by the board of regents.

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

(a) “Adjusted cost of education” means the cost of education minus any reversion calculated under 17-7-142, expenditures from one-time-only legislative appropriations, and expenditures funded by local mill levies provided for in 2-9-212 and 20-9-501 in excess of the 2012 mill levy levels.

(b) “Cost of education” means the actual costs incurred by the community colleges during the budget base fiscal year, as reported on the current unrestricted operating fund schedule that is statutorily required to be submitted to the board of regents.

(c) “Fixed cost of education” means that portion of the adjusted cost of education, as determined by the legislature, that is not influenced by increases or decreases in student enrollment.

(d) “Variable cost of education per student” means that portion of the adjusted cost of education, as determined by the legislature, that is subject to change as a result of increases or decreases in student enrollment, divided by the actual student enrollment during the budget base fiscal year.

**History:** En. Sec. 2, Ch. 495, L. 1981; amd. Sec. 1, Ch. 494, L. 1989; amd. Sec. 1, Ch. 493, L. 2007; amd. Sec. 1, Ch. 3, L. 2013; amd. Sec. 16, Ch. 336, L. 2017.

**Compiler's Comments**

*2017 Amendment:* Chapter 336 in (2)(a) after “general fund appropriation” inserted “for each community college”; in (2)(b) after “state share” in two places inserted “for each community college”; inserted (3) providing for a maximum state general fund appropriation for each full-time equivalent resident student; inserted (4) and (5) providing for a lower state general fund appropriation and requiring submission of a business plan if enrollment is less than 200 full-time equivalent resident students; and made minor changes in style. Amendment effective July 1, 2017.

*Applicability:* Section 28, Ch. 336, L. 2017, provided: “[This act] applies to school budgets for school years beginning on or after July 1, 2017.”

**20-15-311. Funding sources.** The annual operating budget of a community college district must be financed from the following sources:

- (1) the estimated revenue to be realized from student tuition and fees, except revenue related to community service courses, as defined by the board of regents;
- (2) subject to 15-10-420, a mandatory mill levy on the community college district;
- (3) subject to 15-10-420, the adult education levy authorized under provisions of 20-15-305;
- (4) the state general fund appropriation;
- (5) an optional voted levy on the community college district that must be submitted to the electorate in accordance with general school election laws and 15-10-425;
- (6) all other income, revenue, balances, or reserves not restricted by a source outside the community college district to a specific purpose;
- (7) income, revenue, balances, or reserves restricted by a source outside the community college district to a specific purpose. Student fees paid for community service courses, as defined by the board of regents, are considered restricted to a specific purpose.
- (8) income from a political subdivision that is designated a community college service region under 20-15-241.

**History:** En. Sec. 3, Ch. 495, L. 1981; amd. Sec. 3, Ch. 575, L. 1983; amd. Sec. 117, Ch. 584, L. 1999; amd. Sec. 30, Ch. 495, L. 2001; amd. Sec. 125, Ch. 574, L. 2001.

**20-15-312. Calculation and approval of operating budget.** (1) Annually by September 1, the board of trustees of a community college shall submit an operating budget to the board of regents for their review. The operating budget of the community college must be financed in the following manner:

- (a) The general fund appropriation must be determined pursuant to 20-15-310.
- (b) The mandatory levy amount must represent a specific percentage of the combined total of the fixed cost of education and the variable cost of education, as those terms are defined in 20-15-310, and as determined by the legislature. This percentage must be specified for each community college by the board of trustees of the district and approved by the board of regents.
- (c) The funding obtained pursuant to subsections (1)(a) and (1)(b) plus the revenue derived from tuition and fee schedules approved by the board of regents and unrestricted income from any other source is the amount of the unrestricted budget. A detailed expenditure schedule for the unrestricted budget must be submitted to the board of regents for their review and approval.
- (d) The amount estimated to be raised by the voted levy must be detailed separately in an expenditure schedule.
- (e) The spending of each restricted or designated funding source must be detailed separately in an expenditure schedule.
- (f) The expenditure schedules provided in subsections (1)(c) through (1)(e) represent the total operating budget of the community college.
- (2) The board of regents shall review the proposed total operating budget and all its components and make any changes it determines necessary. The board of trustees of a community college district shall operate within the limits of the operating budget approved by the board of regents.

**History:** En. Sec. 4, Ch. 495, L. 1981; amd. Sec. 2, Ch. 494, L. 1989; amd. Sec. 4, Ch. 243, L. 1997; amd. Sec. 2, Ch. 493, L. 2007.

**Cross-References**

School budgeting procedure applicable to community colleges, 20-9-101.  
 Completion, filing, and delivery of final budgets, 20-9-134.  
 Emergency budget petitions, 20-9-161, 20-9-163.  
 Emergency budgets, 20-9-165.

**20-15-313. Tax levy.** By the later of the first Thursday after the first Tuesday in September or within 30 calendar days after receiving certified taxable values, the board

of county commissioners of any county where a community college district is located shall, subject to 15-10-420, fix and levy a tax on all the real and personal property within the community college district at the rate required to finance the mandatory mill levy prescribed by 20-15-312(1)(b) and the voted levy prescribed by 20-15-311(5) if one has been approved by the voters. When a community college district has territory in more than one county, the board of county commissioners in each county shall fix and levy the community college district tax on all the real and personal property of the community college district situated in its county.

**History:** En. Sec. 5, Ch. 495, L. 1981; amd. Sec. 118, Ch. 584, L. 1999; amd. Sec. 25, Ch. 152, L. 2011; amd. Sec. 6, Ch. 62, L. 2013.

**Cross-References**

Property tax levies, Title 15, ch. 10.

**20-15-314. Tax levy for community college service region.** Subject to 15-10-420, a governing body designating a community college service region as provided in 20-15-241 may levy a tax on all real and personal property within the region at a rate required to finance the services offered by a community college district for the region. The levy is in addition to any other levies allowed by law and is not subject to any statutory or charter limitations on levies other than 15-10-420. The levy must be made at the same time and in the same manner as the general levy of the political subdivision designating the region is made, and the revenue generated must be collected at the same time and in the same manner. Within 30 days of collection, the appropriate revenue must be transmitted to the participating community college district.

**History:** En. Sec. 2, Ch. 575, L. 1983; amd. Sec. 119, Ch. 584, L. 1999.

**Cross-References**

Community college service regions, 20-15-241.

**20-15-315 through 20-15-320 reserved.**

**20-15-321. General fund cash reserve.** At the end of each school fiscal year the board of trustees of a community college district may designate a portion of the general fund end-of-the-year cash balance as a cash reserve for the purpose of paying general fund warrants issued by the district from July 1 to November 30 of the ensuing school fiscal year. The amount of the general fund cash balance that is earmarked as cash reserve may not exceed 10% of the final general fund budget for the ensuing school fiscal year.

**History:** En. Sec. 3, Ch. 488, L. 1989.

**20-15-322 reserved.**

**20-15-323. Definition of emergency for budgeting purposes.** As used in this chapter, unless the context clearly indicates otherwise, the term “emergency” for the purpose of community college budgeting means:

- (1) the destruction or impairment of any community college district property necessary to the maintenance of the district, by fire, flood, storm, riot, insurrection, or act of God, to an extent rendering the property unfit for its present use;
- (2) a judgment for damages against the district issued by a court after the adoption of the budget for the current year;
- (3) an enactment of legislation after the adoption of the budget for the current year that imposes an additional financial obligation on the district; or
- (4) any other reason of similar consequence that has been approved by the board of regents upon petition by the trustees of the district.

**History:** En. Sec. 51, Ch. 767, L. 1991.

**20-15-324. Resolution for emergency budget — petition to board of regents.** (1) Whenever the trustees of a community college district decide that an emergency exists, they may adopt a resolution proclaiming the emergency by a unanimous vote of all members present at any meeting for which each trustee has been given reasonable notice of the time and place of holding the meeting. The emergency resolution must also state the facts constituting the emergency, the estimated amount of money required to meet the emergency, the funds affected by the emergency, and the time and place the board will meet for the purpose of considering and adopting an emergency budget for the funds for the current school fiscal year.

(2) If the trustees decide that an emergency exists for any reason other than the conditions specified in 20-9-161(1) through (3), they shall petition the board of regents for permission to

adopt a resolution of emergency. The petition must set forth in writing the reasons for the request, the district funds affected by the emergency, the estimated amount of money required to meet the emergency for each affected fund, the anticipated sources of financing for the emergency expenditures, and any other information required by the board of regents. The petition must be signed by each trustee.

(3) The board of regents shall promptly approve or disapprove the petition requesting approval to adopt a resolution of emergency. If the petition is approved, the trustees may adopt a resolution of emergency and take all other steps required for the adoption of an emergency budget. Approval of a petition by the board of regents authorizes the board of trustees to initiate emergency budget proceedings by resolution and does not relieve the trustees of the necessity of complying with the requirements of the emergency budgeting laws.

**History:** En. Sec. 52, Ch. 767, L. 1991.

**20-15-325. Emergency budget limitation, preparation, and adoption procedures.**

(1) The meeting of the trustees of a community college district to consider and adopt an emergency budget must be open to the public, and any taxpayer in the district has the right to appear and be heard. If at the meeting a majority of the trustees present find that an emergency exists, the trustees may make and adopt a preliminary emergency budget, on the regular budget form, setting forth fully the facts constituting the emergency. In adopting the preliminary emergency budget, the trustees may budget for any fund that was included on the final budget of the district for the current fiscal year. The budget must be itemized to show the amount appropriated for each item as required on the budget form.

(2) When the emergency is the result of increased enrollment, the maximum amount of the emergency budget for all funds must be determined by budget amendment.

(3) If another type of emergency occurs, the budget must be limited to the expenditures considered by the trustees to be reasonable and necessary to finance the conditions of the emergency, and the preliminary emergency budget must include the details of the proposed expenditures.

(4) After a majority of the trustees have voted to adopt the emergency budget, it must be signed by the presiding officer of the trustees and the clerk of the district and copies must be sent to the county superintendent and the board of regents.

**History:** En. Sec. 53, Ch. 767, L. 1991; amd. Sec. 9, Ch. 260, L. 1995.

**20-15-326. Determination of available financing — fixing and levying property taxation for emergency budget.** (1) After the last day of the fiscal year for which an emergency budget has been adopted, the board of trustees shall determine the amount of the cash balance that is available to finance the emergency budget's outstanding warrants or registered warrants for each fund included on the emergency budget. The available amount of the cash balance of each fund must be determined by deducting from the county treasurer's yearend cash balance for the fund the outstanding warrants or registered warrants issued under the regularly adopted final budget for the fund and the cash reserve for the fund that the trustees have established, within the limitations of law, for the following fiscal year.

(2) The county treasurer shall prepare and deliver a statement on the financial cash status of each fund included on an emergency budget for a district that had an emergency budget during the preceding year to the board of county commissioners by the first Monday in August. The statement for each district emergency budget must include:

(a) the total amount of emergency warrants that are registered against each fund of the district; and

(b) the additional amount of money that is required to finance the registered warrants and interest on the warrants and that must be raised by a tax levy.

(3) For each fund of the emergency budget of each district requiring a tax levy as established by subsection (2)(b), the board of county commissioners shall at the time all other district and county taxes are fixed and levied, levy a tax on the taxable value of all taxable property of each applicable district that will raise sufficient financing to pay the amount established by the county treasurer.

**History:** En. Sec. 54, Ch. 767, L. 1991; amd. Sec. 10, Ch. 260, L. 1995; amd. Sec. 116, Ch. 42, L. 1997; amd. Sec. 120, Ch. 584, L. 1999; amd. Sec. 126, Ch. 574, L. 2001.

**20-15-327. Revenue-producing facilities — powers of board of trustees.** The board of trustees of a community college district may:

- (1) purchase, construct, equip, or improve the following types of revenue-producing facilities:
  - (a) land;
  - (b) residence halls, dormitories, houses, apartments, and other housing facilities;
  - (c) dining rooms and halls, restaurants, cafeterias, and other food service facilities;
  - (d) student union buildings, activity centers, and other facilities;
  - (e) other revenue-producing facilities as determined by the board of trustees; and
  - (f) other facilities specifically authorized by joint resolution of the legislature;
- (2) rent housing facilities and provide food and other services to the students, officers, guests, and employees of the college at rates that will ensure a reasonable net income over operating expenses and will provide for debt service and reserves and provide for the collection of charges, admissions, and fees for the use of other facilities by students and other persons. The charges, admissions, and fees are not considered tuition and may be collected from any or all students.
- (3) hold the net income derived from the operation of the facilities and the charges, admissions, and fees collected and devote the revenue from these sources to debt service and reserves, repairs, replacements, and betterments of the facilities or, so far as the revenue has not been previously obligated for these purposes, to the acquisition, erection, equipping, enlarging, or improvement of additional facilities of the types described in this section;
- (4) exercise full control and complete management of the facilities;
- (5) rent the facilities to other public or private persons, firms, and corporations for uses, at times, for periods, and at rates that in the board of trustees' judgment will be consistent with the full use of the facilities for academic purposes and will add to the revenue available for capital costs and debt service;
- (6) do all things necessary to plan for and propose financing, including all necessary loan applications, for:
  - (a) classroom, laboratory, library, bookstore, and other instructional facilities;
  - (b) office, recordkeeping, storage, equipment maintenance, and other administrative and operational facilities;
  - (c) stadiums, fieldhouses, armories, arenas, gymnasiums, swimming pools, and other facilities for athletic and military instruction, exhibitions, games, and contests;
  - (d) auditoriums, theaters, music halls, and other assembly, theatrical, musical, and entertainment facilities;
  - (e) hospital, nursing, and other health instruction and service facilities;
  - (f) nurseries, barns, arenas, pavilions, and other facilities for agricultural and livestock breeding, development, and exhibition;
  - (g) parking lots and ramps and other parking facilities; and
  - (h) land needed for the facilities;
- (7) borrow money for any purpose stated in this section, including, if considered desirable by the board of trustees, the payment of interest on the money borrowed for a facility during the construction of the facility and for 1 year after construction and the creation of a reserve for the payment of bond principal and interest;
- (8) make purchases on a time or installment basis;
- (9) issue bonds, notes, and other securities, negotiable or otherwise, secured as provided in this section, including bearer bonds with appurtenant interest coupons, which must be fully negotiable notwithstanding any limitation on the source of payment of the bonds, notes, or securities, or fully registered bonds or bonds registered as to ownership of principal only;
- (10) pledge for the payment of the purchase price of a facility or of the principal and interest on bonds, notes, or other securities authorized in this chapter or otherwise obligate:
  - (a) the net income received from rents, board, or both in housing, food service, and other facilities;
  - (b) receipts from student building, activity, union, and other special fees prescribed by the board of trustees for all students;
  - (c) other income in the form of:



- (i) gifts, bequests, contributions, or federal grants of funds, including the proceeds or income from grants of lands or other real or personal property;
- (ii) receipts from athletic and other contests, exhibitions, and performances; and
- (iii) collections of admissions and other charges for the use of facilities, including all use by other persons, firms, and corporations for athletic and other contests, exhibitions, and performances and for the conduct of their business, educational, or governmental functions; and
- (d) the sum of subsections (10)(a) through (10)(c) in part or in whole;
- (11) make payments on loans or purchases from any other available income not obligated for those purposes, including receipts from sale of materials, equipment, and fixtures of the facilities or from sales of the facilities themselves, including land; and
- (12) issue and sell or exchange bonds for the refunding of any outstanding bonds or other obligations issued for revenue-producing facilities.

**History:** En. Sec. 2, Ch. 421, L. 2017.

**Compiler's Comments**

*Effective Date:* Section 4, Ch. 421, L. 2017, provided: "[This act] is effective July 1, 2017."

## Part 4 Relationship to Other Laws

**Part Cross-References**

Pupil immunization requirements, Title 20, ch. 5, part 4.

**20-15-401. Purpose.** It is the purpose of this chapter to establish the governance of community college districts in Montana. The legislature intends that the board of regents and the local boards of trustees of community college districts coordinate their responsibilities to insure an orderly development of educational services to the citizens of Montana in accordance with this chapter.

**History:** En. Sec. 1, Ch. 392, L. 1979.

**20-15-402. Precedence of community college chapter.** Unless specifically identified in any other sections of the school laws prescribed in this title, community college districts are governed by the provisions of this chapter. Should there be a conflict between other requirements of this title and the provisions of this chapter regulating community college districts, the provisions of this chapter shall govern.

**History:** En. Sec. 2, Ch. 392, L. 1979.

**20-15-403. Applications of other school district provisions.** (1) When the term "school district" appears in the following sections outside of Title 20, the term includes community college districts and the provisions of those sections applicable to school districts apply to community college districts: 2-9-101, 2-9-111, 2-9-316, 2-16-114, 2-16-602, 2-16-614, 2-18-703, 7-3-1101, 7-6-2604, 7-6-2801, 7-7-123, 7-8-2214, 7-8-2216, 7-11-103, 7-12-4106, 7-13-110, 7-15-4206, 10-1-703, 15-1-101, 15-6-204, 15-16-101, 15-16-605, 15-70-401, 17-5-101, 17-5-202, 17-6-103, 17-6-204, 17-6-205, 17-6-213, 17-7-201, 18-1-201, 18-2-101, 18-2-103, 18-2-113, 18-2-114, 18-2-401, 18-2-404, 18-2-432, 18-5-205, 19-1-102, 19-1-811, 19-20-302, 22-1-309, 25-1-402, 27-18-406, 33-20-1104, 39-3-104, 39-4-107, 39-31-103, 39-31-304, 39-71-116, 39-71-117, 39-71-2106, 40-6-237, 49-3-101, 49-3-102, 50-71-112, 52-2-617, 53-20-304, 82-10-201 through 82-10-203, 85-7-2158, and 90-6-208 and Rules 4(k) and 15(c), M.R.Civ.P., as amended.

(2) When the term "school district" appears in a section outside of Title 20 but the section is not listed in subsection (1), the school district provision does not apply to a community college district.

**History:** En. Sec. 12, Ch. 392, L. 1979; amd. Sec. 6, Ch. 495, L. 1981; amd. Sec. 2, Ch. 570, L. 1981; amd. Sec. 76, Ch. 575, L. 1981; amd. Sec. 27, Ch. 465, L. 1983; amd. Sec. 6, Ch. 15, L. 1985; amd. Sec. 72, Ch. 370, L. 1987; amd. Sec. 5, Ch. 512, L. 1987; amd. Sec. 58, Ch. 587, L. 1987; amd. Sec. 14, Ch. 10, Sp. L. July 1992; amd. Sec. 43, Ch. 525, L. 1993; amd. Sec. 8, Ch. 539, L. 1993; amd. Sec. 1, Ch. 310, L. 1997; amd. Sec. 7, Ch. 522, L. 1997; amd. Sec. 2, Ch. 18, L. 1999; amd. Sec. 14, Ch. 27, L. 2009; amd. Sec. 19, Ch. 282, L. 2009; amd. Sec. 36, Ch. 286, L. 2009; amd. Sec. 3, Ch. 84, L. 2015.

**20-15-404. Trustees to adhere to certain other laws.** Unless the context clearly indicates otherwise, the trustees of a community college district shall adhere to:

- (1) the teachers' retirement provisions of Title 19, chapter 20;
- (2) the provisions of 20-1-201, 20-1-205, 20-1-211, and 20-1-212;

(3) the school property provisions of 20-6-604, 20-6-605, 20-6-621, 20-6-622, 20-6-624, 20-6-631, and 20-6-633 through 20-6-636;

(4) the adult education provisions of Title 20, chapter 7, part 7;

(5) the administration of finances provisions of 20-9-115, 20-9-134, 20-9-207, 20-9-208, 20-9-210, 20-9-215, 20-9-221, 20-9-223, and 20-9-512;

(6) the school bond provisions of 20-9-401 through 20-9-408, 20-9-410 through 20-9-412, 20-9-421 through 20-9-446, 20-9-461, 20-9-464, and 20-9-465;

(7) the special purpose funds provisions of 20-9-502, 20-9-503, 20-9-507, 20-9-508, and 20-9-511;

(8) the educational cooperative agreements provisions of 20-9-701 through 20-9-704;

(9) the school elections provisions of Title 20, chapter 20;

(10) the students' rights provisions of 20-25-511 through 20-25-516; and

(11) the health provisions of 50-1-206.

**History:** En. Sec. 13, Ch. 392, L. 1979; amd. Sec. 7, Ch. 495, L. 1981; amd. Sec. 1, Ch. 270, L. 1983; amd. Sec. 73, Ch. 370, L. 1987; amd. Sec. 2, Ch. 488, L. 1989; amd. Sec. 49, Ch. 767, L. 1991; amd. Sec. 11, Ch. 260, L. 1995; amd. Sec. 49, Ch. 423, L. 1995; amd. Sec. 117, Ch. 42, L. 1997; amd. Sec. 21, Ch. 219, L. 1997; amd. Sec. 12, Ch. 94, L. 2007.

## CHAPTER 20 SCHOOL ELECTIONS

### Part 1 — General Provisions

- 20-20-101. Repealed.
- 20-20-102. Precedence of school election provisions.
- 20-20-103. Election by ballot.
- 20-20-104. Forms.
- 20-20-105. Regular school election day and special school elections — limitation — exception.
- 20-20-106. Poll hours.
- 20-20-107. Election expenses.
- 20-20-108. Rescheduling of school election canceled due to declaration of state of emergency or disaster.
- 20-20-109. Election judges — qualifications — training.

### Part 2 — Calling of and Preparation for School Elections

- 20-20-201. Calling of school election.
- 20-20-202. Repealed.
- 20-20-203. Resolution for poll hours, polling places, and judges.
- 20-20-204. Election notice.

### Part 3 — Qualification and Registration of Electors

- 20-20-301. Qualifications of elector.
- 20-20-302. Repealed.
- 20-20-303. Elector challenges.
- 20-20-304 through 20-20-310 reserved.
- 20-20-311. Voter registration.
- 20-20-312. Listing of registered electors — late registration.
- 20-20-313. Delivery and charge for lists of registered electors.

### Part 4 — Election Procedure

- 20-20-401. Trustees' election duties — ballot certification.
- 20-20-402. Clerk of election judges and appointment for absent judge.
- 20-20-403 through 20-20-409 reserved.
- 20-20-410. Oath of judges.
- 20-20-411. Conduct of election.
- 20-20-412. Repealed.
- 20-20-413. Repealed.
- 20-20-414. Repealed.
- 20-20-415. Trustees to canvass votes.
- 20-20-416. Certificate of election.
- 20-20-417. Request for county election administrator to conduct election.
- 20-20-418. Tie votes.
- 20-20-419 reserved.
- 20-20-420. School recount board — duties — composition.
- 20-20-421. Voting systems.

**Chapter Cross-References**

General election provision, Title 13, ch. 1.  
 Registration of electors, Title 13, ch. 2.  
 Voting systems, Title 13, ch. 17.  
 Election and campaign practices and criminal provisions, Title 13, ch. 35.  
 Control of campaign practices, Title 13, ch. 37.  
 Bribery in official and political matters, 45-7-101.  
 Threats and other improper influence in official and political matters, 45-7-102.  
 Exemption of electors from arrest, 46-6-102.  
 Basic political rights, Title 49, ch. 1, part 2.

## Part 1

### General Provisions

**20-20-101. Repealed.** Sec. 262, Ch. 49, L. 2015.

**History:** En. 75-6401 by Sec. 137, Ch. 5, L. 1971; R.C.M. 1947, 75-6401.

**20-20-102. Precedence of school election provisions.** Except as otherwise provided in this title, school elections shall be conducted and canvassed and the results shall be returned in the same manner as provided for general elections in Title 13. Should there be a conflict between the requirements of Title 13 and the provisions of this title regulating school elections, the provisions of this title shall govern. The superintendent of public instruction may make any necessary rules to clarify Title 13 provisions for use in school elections.

**History:** En. 75-6402 by Sec. 138, Ch. 5, L. 1971; R.C.M. 1947, 75-6402; amd. Sec. 355, Ch. 571, L. 1979.

**20-20-103. Election by ballot.** All school elections shall be by ballot.

**History:** En. 75-6403 by Sec. 139, Ch. 5, L. 1971; R.C.M. 1947, 75-6403.

**Cross-References**

Mail ballot elections prohibited, 13-19-104.

**20-20-104. Forms.** The forms necessary for school district elections shall be the same as those prescribed by law or the secretary of state. The superintendent of public instruction may issue prescribed forms for school elections with any necessary revisions of prescribed or statutory forms.

**History:** En. Sec. 120, Ch. 368, L. 1969; R.C.M. 1947, 23-3702; amd. Sec. 356, Ch. 571, L. 1979.

**20-20-105. Regular school election day and special school elections — limitation — exception.** (1) Except as provided in subsection (5), the first Tuesday after the first Monday in May of each year is the regular school election day.

(2) Except as provided in subsections (4) and (5), a proposition requesting additional funding under 20-9-353 may be submitted to the electors only once each calendar year on the regular school election day.

(3) Subject to the provisions of subsection (2), other school elections may be conducted at times determined by the trustees.

(4) In the event of an unforeseen emergency occurring on the date scheduled for the funding election pursuant to subsection (2), the district will be allowed to reschedule the election for a different day of the calendar year. As used in this section, “unforeseen emergency” has the meaning provided in 20-3-322(5).

(5) In years when the legislature meets in regular session or in a special session that affects school funding, the trustees may order an election on a date other than the regular school election day in order for the electors to consider a proposition requesting additional funding under 20-9-353.

**History:** En. 75-6404 by Sec. 140, Ch. 5, L. 1971; amd. Sec. 1, Ch. 109, L. 1974; R.C.M. 1947, 75-6404; amd. Sec. 8, Ch. 644, L. 1987; amd. Sec. 8, Ch. 514, L. 1999; amd. Sec. 1, Ch. 192, L. 2007; amd. Sec. 224, Ch. 49, L. 2015.

**20-20-106. Poll hours.** (1) The polls for any school election in any district shall open not later than noon. The trustees may order the polls to open earlier, but no earlier than 7 a.m.

(2) If the school election is held on the same day as an election held by a political subdivision and at the same polling place pursuant to 13-1-305, the polls must be opened and closed at the times required for the school election.

(3) If the school election is held on the same day as a general or primary election, the polls must be opened and closed at the times required for the general or primary election under 13-1-106.

(4) Once opened, the polls must be kept open continuously until 8 p.m., except that whenever all the registered electors at any poll have voted, the poll must be closed immediately.

**History:** En. 75-6405 by Sec. 141, Ch. 5, L. 1971; R.C.M. 1947, 75-6405; amd. Sec. 357, Ch. 571, L. 1979; amd. Sec. 2, Ch. 57, L. 1985; amd. Sec. 2, Ch. 372, L. 1987; amd. Sec. 225, Ch. 49, L. 2015.

**Cross-References**

Time of opening and closing of polls for all elections, 13-1-106.

**20-20-107. Election expenses.** (1) All expenses necessarily incurred in the matter of holding school elections must be paid out of the school funds of the district, except when the expenses are by law to be shared by a community college district for which the district is conducting an election.

(2) The trustees shall pay the election judges of a school election at least the state or federal minimum wage, whichever is greater, for each hour of service in connection with the election, including the number of hours required to attend training pursuant to 20-20-109.

(3) Election judges are exempt from unemployment insurance coverage for services performed pursuant to this chapter if the remuneration received by the election judge is less than \$1,000 per calendar year.

**History:** En. 75-6420 by Sec. 156, Ch. 5, L. 1971; R.C.M. 1947, 75-6420; amd. Sec. 54, Ch. 297, L. 2009.

**Cross-References**

Conduct of community college elections, 20-15-208.

Trustee election upon order of trustees, 20-15-221.

**20-20-108. Rescheduling of school election canceled due to declaration of state of emergency or disaster.** If the governor declares a state of emergency or disaster under Title 10, chapter 3, a school election may be canceled by the county superintendent of schools or, in the absence of the county superintendent, by the state superintendent of public instruction. As soon as convenient after the declaration of a state of emergency or disaster is terminated, the trustees of the district shall set a new date for the election. Notice of such election shall be published for 7 consecutive days in a newspaper of general circulation in the district and posted for 7 days at district polling places. Whenever the best interests of the district would be served, the trustees may give additional notice of the election through appropriate radio and television stations that serve the people of the district.

**History:** En. Sec. 1, Ch. 153, L. 1981.

**20-20-109. Election judges — qualifications — training.** (1) Election judges must be qualified registered electors of the school district in which they serve.

(2) An election judge may not be:

- (a) the candidate;
- (b) an ascendant, descendant, brother, or sister of a candidate; or
- (c) the spouse of the candidate or of any of the individuals listed in subsection (2)(b).

(3) School election judges must meet the training and certification requirements of 13-4-203.

**History:** En. Sec. 55, Ch. 297, L. 2009.

**Cross-References**

Instruction of judges — training materials, 13-4-203.

## Part 2

### Calling of and Preparation for School Elections

**20-20-201. Calling of school election.** (1) At least 70 days before any school election, the trustees of a district or other entity or official authorized by law to call a school election shall call the school election by resolution, stating the date and purpose of each election and whether, pursuant to 13-19-202, any election is requested to be by mail.

(2) To enable the county election administrator to manage voter registration and prepare the lists of registered electors:

(a) the resolution calling for a school election must be transmitted to the county election administrator no later than 3 days after the resolution is passed; and

(b) if the election is to be conducted by mail, the school clerk must also transmit to the county election administrator a copy of the written plan required under 13-19-205 as soon as the plan has been approved by the secretary of state.

**History:** En. 75-6406 by Sec. 142, Ch. 5, L. 1971; R.C.M. 1947, 75-6406; amd. Sec. 358, Ch. 571, L. 1979; amd. Sec. 327, Ch. 56, L. 2009; amd. Sec. 226, Ch. 49, L. 2015.

**Cross-References**

Election Administrator, 13-1-301.  
 Mail ballot elections prohibited, 13-19-104.  
 Conduct of elections, 20-3-306.  
 County high school unification, 20-6-312.  
 Opening junior high school when high school district operates county high school, 20-6-505.  
 Trustees' authority to acquire and dispose of sites and buildings, 20-6-603.  
 Selection of school sites, approval election, and lease of state lands, 20-6-621.  
 Election to authorize issuance of school district bonds, 20-9-421.  
 Purpose and authorization of a building reserve fund by election, 20-9-502.  
 Joint interstate school agreements, 20-9-705.  
 Duties of County Transportation Committee, 20-10-132.

**20-20-202. Repealed.** Sec. 262, Ch. 49, L. 2015.

**History:** En. 75-6407 by Sec. 143, Ch. 5, L. 1971; R.C.M. 1947, 75-6407.

**20-20-203. Resolution for poll hours, polling places, and judges.** (1) At the trustee meeting when a school election is called, the trustees shall:

(a) except as provided in 20-20-106(3), establish the time at which the polls are to open if in their discretion they determine that the polls must be open before noon;

(b) establish the polling places for the election, using the established polling places for general elections within the district wherever possible; and

(c) appoint at least three judges for each polling place.

(2) There must be one polling place in each district unless the trustees establish additional polling places. If more than one polling place is established, the trustees shall define the boundaries for each polling place so that the boundaries for each polling place are coterminous with county precinct boundaries existing within a district. If the site of a polling place is changed from the polling place site used for the last preceding school election, special reference to the changed site of the polling place must be included in the notice for the election.

**History:** En. 75-6408 by Sec. 144, Ch. 5, L. 1971; R.C.M. 1947, 75-6408; amd. Sec. 359, Ch. 571, L. 1979; amd. Sec. 3, Ch. 57, L. 1985; amd. Sec. 56, Ch. 297, L. 2009.

**Cross-References**

Election precincts, Title 13, ch. 3.  
 Designation of polling place, 13-3-105.  
 Election judges, Title 13, ch. 4.

**20-20-204. Election notice.** (1) (a) When the trustees of a district call a school election, they shall give notice of the election not less than 10 days or more than 40 days before the election by:

(i) publishing a notice in a newspaper of general circulation if there is one in the district;

(ii) posting notices in three public places in the district; and

(iii) posting notice on the district's website, if the district has an active website, for 10 days prior to the election.

(b) Whenever, in the judgment of the trustees, the best interest of the district will be served by the supplemental publication or broadcast of the school election notice by any recognized media organization in the district, the trustees may cause the supplemental notification to be made.

(2) The notice of a school election, unless otherwise required by law, must specify:

(a) the date and polling places of the election;

(b) the hours that the polling places will be open;

(c) each proposition to be considered by the electorate;

(d) if there are trustees to be elected, the number of positions subject to election and the length of term of each position;

(e) where and how absentee ballots may be obtained; and

(f) where and how late registrants may obtain a ballot on election day.



(3) If more than one proposition is to be considered at the same school election, each proposition must be set apart and separately identified in the same notice or published in separate notices.

**History:** En. 75-6409 by Sec. 145, Ch. 5, L. 1971; R.C.M. 1947, 75-6409; amd. Sec. 360, Ch. 571, L. 1979; amd. Sec. 3, Ch. 372, L. 1987; amd. Sec. 3, Ch. 144, L. 1997; amd. Sec. 227, Ch. 49, L. 2015; amd. Sec. 16, Ch. 242, L. 2017.

**Compiler's Comments**

*2017 Amendment:* Chapter 242 inserted (2)(f) regarding where and how late registrants may obtain ballot on election day; and made minor changes in style. Amendment effective May 3, 2017.

**Cross-References**

Supplemental publication of notice by radio or television, 2-3-105 through 2-3-107.  
Notice of school bond election by separate purpose, 20-9-427.

## Part 3

### Qualification and Registration of Electors

**20-20-301. Qualifications of elector.** An individual is entitled to vote at school elections if the individual has the qualifications set forth in 13-1-111 and is a resident of the school district or, in a school district that has been apportioned into single-member trustee districts according to 20-3-337, a resident of the trustee district.

**History:** En. 75-6410 by Sec. 146, Ch. 5, L. 1971; amd. Sec. 2, Ch. 83, L. 1971; amd. Sec. 1, Ch. 118, L. 1971; amd. Sec. 4, Ch. 91, L. 1973; amd. Sec. 31, Ch. 100, L. 1973; amd. Sec. 10, Ch. 266, L. 1977; R.C.M. 1947, 75-6410; amd. Sec. 361, Ch. 571, L. 1979; amd. Sec. 6, Ch. 539, L. 1987; amd. Sec. 328, Ch. 56, L. 2009.

**Cross-References**

Qualifications of electors, Art. IV, sec. 2, Mont. Const.  
Rules for determining residence, 1-1-215, 13-1-112, 13-1-113.

**20-20-302. Repealed.** Sec. 1, Ch. 208, L. 1983.

**History:** En. Sec. 1, Ch. 98, L. 1923; amd. Sec. 1, Ch. 47, L. 1929; re-en. Sec. 5199.1, R.C.M. 1935; amd. Sec. 1, Ch. 126, L. 1959; R.C.M. 1947, 84-4711(part).

**20-20-303. Elector challenges.** (1) An elector may challenge the qualifications of another elector under the provisions of 13-13-301(1). Any person offering to vote in a school election may be challenged by any elector of the district on any of the grounds for challenge established in 13-13-301(2). The challenge must be determined in the same manner, using the same oath as provided in Title 13, chapter 13, part 3.

(2) Any person who has been challenged under any of the provisions of this section and who swears or affirms falsely before any school election judge is guilty of false swearing and is punishable as provided in 45-7-202.

**History:** En. 75-6412 by Sec. 148, Ch. 5, L. 1971; amd. Sec. 3, Ch. 83, L. 1971; amd. Sec. 5, Ch. 91, L. 1973; amd. Sec. 11, Ch. 266, L. 1977; R.C.M. 1947, 75-6412; amd. Sec. 32, Ch. 130, L. 2005.

**20-20-304 through 20-20-310 reserved.**

**20-20-311. Voter registration.** Voter registration for school elections must be as provided in Title 13, chapter 2.

**History:** En. 75-6413 by Sec. 149, Ch. 5, L. 1971; R.C.M. 1947, 75-6413; amd. Sec. 228, Ch. 49, L. 2015.

**Cross-References**

Registration of electors, Title 13, ch. 2.

**20-20-312. Listing of registered electors — late registration.** (1) After closing regular registration, the county election administrator shall prepare a list of registered electors for each polling place established by the trustees. The list for each polling place must be prepared in the format of a precinct register book.

(2) An elector may register as provided in 13-2-304 to vote in a school election after the close of regular registration.

**History:** En. 75-6414 by Sec. 150, Ch. 5, L. 1971; amd. Sec. 4, Ch. 83, L. 1971; R.C.M. 1947, 75-6414; amd. Sec. 362, Ch. 571, L. 1979; amd. Sec. 229, Ch. 49, L. 2015.

**Cross-References**

Local election administration, Title 13, ch. 1, part 3.

**20-20-313. Delivery and charge for lists of registered electors.** Before the day of the election, the election administrator shall deliver a certified copy of the lists of registered electors for each polling place to the district. The district shall deliver them to the election judges prior to

the opening of the polls. The district shall reimburse the county for the actual costs of preparing the lists of registered electors.

**History:** En. 75-6415 by Sec. 151, Ch. 5, L. 1971; R.C.M. 1947, 75-6415; amd. Sec. 363, Ch. 571, L. 1979.

**Cross-References**

Local election administration, Title 13, ch. 1, part 3.

## **Part 4**

### **Election Procedure**

**20-20-401. Trustees' election duties — ballot certification.** (1) The trustees are the general supervisors of school elections unless the trustees request and the county election administrator agrees to conduct a school election under 20-20-417.

(2) Not less than 30 days before an election, the clerk of the district shall certify the ballot by preparing a certified list of the names of all candidates entitled to be on the ballot subject to 13-37-126 and certifying the official wording for each ballot issue. The candidates' names must appear on the ballot in accordance with 13-12-203. The clerk shall arrange for printing the ballots. Ballots for absentee voting must be printed and available at least 20 days before the election. Names of candidates on school election ballots need not be rotated.

(3) Before the opening of the polls, the trustees shall cause each polling place to be supplied with the ballots and supplies necessary to conduct the election.

**History:** En. 75-6418 by Sec. 154, Ch. 5, L. 1971; R.C.M. 1947, 75-6418; amd. Sec. 364, Ch. 571, L. 1979; amd. Sec. 2, Ch. 481, L. 1983; amd. Sec. 4, Ch. 372, L. 1987; amd. Sec. 4, Ch. 144, L. 1997; amd. Sec. 9, Ch. 514, L. 1999; amd. Sec. 230, Ch. 49, L. 2015; amd. Sec. 2, Ch. 214, L. 2015.

**Cross-References**

Election supplies and ballots, Title 13, ch. 12.

**20-20-402. Clerk of election judges and appointment for absent judge.** Before conducting the school election and on the day of the election, the judges shall designate one of their number to act as clerk of such election. If any of the judges appointed by the trustees are not present at the time for the opening of the poll, the electors present at that time may appoint a qualified elector for such election to act in the place of the absent judge.

**History:** En. 75-6419 by Sec. 155, Ch. 5, L. 1971; R.C.M. 1947, 75-6419.

**Cross-References**

Election judges, Title 13, ch. 4.

**20-20-403 through 20-20-409 reserved.**

**20-20-410. Oath of judges.** Before votes are cast, the school election judges shall take and subscribe the official oath prescribed by the constitution. The election judges may administer the oath to each other.

**History:** En. Sec. 5, Ch. 372, L. 1987.

**20-20-411. Conduct of election.** Election judges shall conduct school elections in a manner that ensures a fair and unbiased determination of the matters put before the electorate and see that each elector has an adequate opportunity to cast the elector's vote.

**History:** En. 75-6421 by Sec. 157, Ch. 5, L. 1971; R.C.M. 1947, 75-6421; amd. Sec. 365, Ch. 571, L. 1979; amd. Sec. 329, Ch. 56, L. 2009.

**Cross-References**

Election procedure, Title 13, ch. 13.

**20-20-412. Repealed.** Sec. 407, Ch. 571, L. 1979.

**History:** En. 75-6416 by Sec. 152, Ch. 5, L. 1971; R.C.M. 1947, 75-6416(part).

**20-20-413. Repealed.** Sec. 407, Ch. 571, L. 1979.

**History:** En. 75-6422 by Sec. 158, Ch. 5, L. 1971; R.C.M. 1947, 75-6422(1), (2).

**20-20-414. Repealed.** Sec. 407, Ch. 571, L. 1979.

**History:** En. 75-6422 by Sec. 158, Ch. 5, L. 1971; R.C.M. 1947, 75-6422(3) thru (6).

**20-20-415. Trustees to canvass votes.** At the first regular or special meeting of the trustees conducted after the receipt of the certified tally sheets of any school election from all the polls of the district, the trustees shall canvass the vote.

**History:** En. 75-6423 by Sec. 159, Ch. 5, L. 1971; R.C.M. 1947, 75-6423(part); amd. Sec. 366, Ch. 571, L. 1979.

**Cross-References**

Canvassing, returns, and certificates, Title 13, ch. 15.  
 Meetings and quorum, 20-3-322.  
 School bond elections — canvassing, 20-9-428.

**20-20-416. Certificate of election.** After the canvass of the total votes cast, the trustees shall issue a certificate of election. In the case of a trustee election, either by vote or by acclamation, the certificate must be issued to the elected trustee and the county superintendent designating the term of the trustee position to which the trustee has been elected. In the case of an election on a proposition, the trustees shall issue a certificate specifying the outcome of the election. The certificate must be issued to the official or public body that ordered the election within 15 days after the election. When the election has been ordered by resolution of the trustees, the canvassed results must be published immediately in a newspaper that will give notice to the largest number of people of the district.

**History:** En. 75-6423 by Sec. 159, Ch. 5, L. 1971; R.C.M. 1947, 75-6423(part); amd. Sec. 367, Ch. 571, L. 1979; amd. Sec. 4, Ch. 132, L. 1999.

**Cross-References**

Canvassing, returns, and certificates, Title 13, ch. 15.  
 Election of trustees, 20-3-301.  
 Qualification and oath of person receiving certificate, 20-3-307.

**20-20-417. Request for county election administrator to conduct election.** (1) By June 1 of each year, the trustees of a district may request the county election administrator to conduct certain school elections during the ensuing school fiscal year. The request must be made by a resolution of the board of trustees.

(2) Whenever the county election administrator agrees to conduct a school election, the administrator shall:

(a) perform the duties imposed on the trustees and the clerk of the district for school elections in 20-20-203, 20-20-313, and 20-20-401; and

(b) deliver to the trustees, for the purpose of canvassing the vote, the certified tally sheets and other items as provided in 13-15-301.

(3) Whenever the trustees request and the county election administrator agrees to conduct a school election, the school district shall pay the costs of the election as provided in 13-1-302.

**History:** En. Sec. 1, Ch. 481, L. 1983; amd. Sec. 330, Ch. 56, L. 2009; amd. Sec. 231, Ch. 49, L. 2015.

**Cross-References**

County Election Administrator, 13-1-301.

**20-20-418. Tie votes.** If a tie vote occurs among the candidates for a school trustee position, the trustees shall appoint one of the candidates who tied to fill the office as in other cases of vacancy.

**History:** En. Sec. 57, Ch. 297, L. 2009.

**Cross-References**

Casting of ballot, 13-10-301.

**20-20-419 reserved.**

**20-20-420. School recount board — duties — composition.** (1) There is a school recount board. If a school election requires a recount pursuant to 13-16-201, the school recount board shall perform the recount following the procedures for a recount board as provided in Title 13, chapter 16.

(2) (a) The school recount board must consist of three members of the board of trustees of the school district for which the school election took place.

(b) If there are more than three members of the board of trustees, the presiding officer of the board of trustees shall appoint three trustees to serve as school recount board members. If the presiding officer of the board of trustees is a candidate for an office or nomination for which votes are to be recounted, another trustee chosen by majority vote shall serve as the presiding officer for purposes of appointing the school recount board members.

(c) If one or more of the trustees appointed to the school recount board cannot serve or cannot attend when the school recount board meets, the presiding officer shall appoint one or more remaining trustees to serve. If there is an insufficient number of trustees to serve on the school recount board, the presiding officer may appoint the school district clerk or the

clerk's designee or the county superintendent or the superintendent's designee to serve as the remaining member or members.

(d) A candidate for an office or nomination for which votes are to be recounted may not be a member of the school recount board.

(e) The school district clerk is secretary of the school recount board, and the board may appoint school district employees or hire any additional clerks as needed.

**History:** En. Sec. 1, Ch. 347, L. 2013.

**20-20-421. Voting systems.** Whenever a voting system, as defined in 13-1-101, is available to a district, the voting system may be used for a school election if the voting system has been approved pursuant to 13-17-101 and if the election administrator complies with the provisions of Title 13, chapter 17. In construing the provisions of that chapter, the "county governing body" and the "election administrator" are, for the purposes of this section, considered to refer to trustees and "county" is considered to refer to district.

**History:** En. 75-6417 by Sec. 153, Ch. 5, L. 1971; R.C.M. 1947, 75-6417; amd. Sec. 368, Ch. 571, L. 1979; amd. Sec. 77, Ch. 575, L. 1981; amd. Sec. 89, Ch. 414, L. 2003.

## CHAPTER 25 UNIVERSITY SYSTEM

### Part 1 — University System — General

- 20-25-101. Antidiscrimination.
- 20-25-102. Prohibition against use of name of system.
- 20-25-103. Authority to accept gifts.
- 20-25-104. Supplementary conservation education in university system.
- 20-25-105. Repealed.
- 20-25-106. Repealed.
- 20-25-107. Regulation of award of degrees — penalty.
- 20-25-108. Research programs — powers of units.
- 20-25-109. Authorized university system employee or individual activities.
- 20-25-110. Student construction project — disclosure — immunity.

### Part 2 — University Units

- 20-25-201. Units constituting university system.
- 20-25-202 through 20-25-204 reserved.
- 20-25-205. Purpose of university — law and forestry schools.
- 20-25-206. Departments and courses of university of Montana-Missoula.
- 20-25-207. Bureau of government research — purpose — funding.
- 20-25-208 through 20-25-210 reserved.
- 20-25-211. Montana tech of the university of Montana — purpose — fees for assays.
- 20-25-212. Bureau of mines and geology — purpose.
- 20-25-213. Bureau director and assistants — duties.
- 20-25-214 through 20-25-220 reserved.
- 20-25-221. Montana state university-Bozeman — designation and purpose.
- 20-25-222. Agricultural experiment station — establishment and purpose.
- 20-25-223. Director of agricultural experiment station — duties.
- 20-25-224. Agricultural research centers.
- 20-25-225. Experimental farms.
- 20-25-226. Assents to acts of congress.
- 20-25-227. Montana wool laboratory — designation and purpose.
- 20-25-228. Wool laboratory funds and fees.
- 20-25-229. Montana seed laboratory — purpose — fees.
- 20-25-230. Acceptance of donations.
- 20-25-231. Federal grants and cooperative research studies.
- 20-25-232. Income from sale of products — disposition.
- 20-25-233. Short title.
- 20-25-234. Purpose.
- 20-25-235. Duties of Montana agricultural experiment station and cooperative extension service.
- 20-25-236. Report to legislature.
- 20-25-237. Local government center — purpose — funding.
- 20-25-238 through 20-25-240 reserved.
- 20-25-241. Montana forest and conservation experiment station established.
- 20-25-242. Purpose of station.
- 20-25-243. Director of station.
- 20-25-244. Oath of office.
- 20-25-245. Reports — disposition of income.

20-25-246 through 20-25-250 reserved.

20-25-251. Repealed.

20-25-252. Donations to Montana state university-Billings.

20-25-253. Purpose of university of Montana-western.

20-25-254. Donations to university of Montana-western.

20-25-255. Acceptance of public lands.

20-25-256. Purposes of Montana state university-northern.

### **Part 3 — Administration of University System**

20-25-301. Regents' powers and duties.

20-25-302. Revenue-producing facilities — powers of regents.

20-25-303. Repealed.

20-25-304. Repealed.

20-25-305. President — powers and duties.

20-25-306. Designation of holidays by board of regents.

20-25-307. Disposition of land.

20-25-308. Prohibition on transfer to foundation.

20-25-309. Exemption from state construction and contract laws for certain university projects.

20-25-310 reserved.

20-25-311. Motor vehicle regulation — parking and operation.

20-25-312. Motor vehicle regulation — enforcement of regulations — appeals.

20-25-313 through 20-25-320 reserved.

20-25-321. Security department members — appointment — campus security officer powers.

20-25-322. Traffic citations — agreements with city or county.

20-25-323. Control and direction of security department.

20-25-324. Firearms.

20-25-325 through 20-25-330 reserved.

20-25-331. Definitions.

20-25-332. Competition between for-profit fitness centers and university fitness centers prohibited — exception.

### **Part 4 — Miscellaneous Finance**

20-25-401. Repealed.

20-25-402. Borrowing by regents.

20-25-403. State not obligated.

20-25-404. Revenue-producing facilities considered as one.

20-25-405. Restriction on use of state funds.

20-25-406. Previous contracts unimpaired.

20-25-407. Prior obligations not affected.

20-25-408 through 20-25-420 reserved.

20-25-421. Charges for tuition — waivers.

20-25-422. Support of university system.

20-25-423. Repealed.

20-25-424. Receipt of funds.

20-25-425. Control of expenditures.

20-25-426. Donations, grants, gifts.

20-25-427. Allocation of indirect cost reimbursements.

20-25-428. Tribal college reimbursement for services provided to resident nonbeneficiary students.

20-25-429 and 20-25-430 reserved.

20-25-431. Repealed.

20-25-432. Repealed.

20-25-433. Repealed.

20-25-434. Repealed.

20-25-435 through 20-25-438 reserved.

20-25-439. Vocational-technical education — mill levy required.

20-25-440. Honors college program building.

20-25-441. Lease of university of Montana-Missoula property for stadium authorized.

20-25-442. Stadium construction on leased land.

20-25-443 through 20-25-450 reserved.

20-25-451. Interest on student activity fees.

20-25-452 through 20-25-454 reserved.

20-25-455. Montana university system assistance program — purpose — duties of board of regents.

20-25-456. Voluntary contribution account for Montana's universities, colleges, and community colleges.

### **Part 5 — University Students — Qualifications and Rights**

20-25-501. Definitions.

20-25-502. Qualification of students.

20-25-503. Presumptions and rules as to domicile.

20-25-504. Evidence as to domiciliary intent — changes in status.

20-25-505. Repealed.

20-25-506. Military instruction.

20-25-507 through 20-25-510 reserved.



- 20-25-511. Student's right of privacy — legislative intent.
- 20-25-512. Contracts waiving right to privacy prohibited.
- 20-25-513. Written notice required for entry to student's room — emergency.
- 20-25-514. Search in accordance with law.
- 20-25-515. Release of student records.
- 20-25-516. Academic records to be kept separate — student's right to examine records.
- 20-25-517. Awarding credit for military service — policy.

#### **Part 6 — Health Education — Drug and Alcohol Instruction**

- 20-25-601. Purpose of part — legislative intent.
- 20-25-602. Teacher instruction — colleges to offer course.
- 20-25-603. Teacher instruction — course required of education students.
- 20-25-604. Department in advisory capacity.

#### **Part 7 — Work-Study Program**

- 20-25-701. Definitions and purpose.
- 20-25-702. Montana work-study program.
- 20-25-703. Limitation on use of funds.
- 20-25-704. Funds supplemental to other funds.
- 20-25-705. Administration.
- 20-25-706. Eligibility.
- 20-25-707. Antidiscrimination.
- 20-25-708. Approval of salaries.
- 20-25-709. Contributions from employers.

#### **Part 8 — Medical Education Agreements**

- 20-25-801. Western Regional Higher Education Compact approved.
- 20-25-802. Effective date — notice of approval.
- 20-25-803. Authority of western interstate commission for higher education to make agreements for placement of students.
- 20-25-804. Form and contents of agreements.
- 20-25-805. State obligations or rights under compact not altered.
- 20-25-806. Appointment of commissioners to the western interstate commission for higher education.
- 20-25-807 through 20-25-809 reserved.
- 20-25-810. Contract requirements for university of Washington cooperative medical education program.

#### **Part 9 — Family Education Savings Program**

- 20-25-901. Family education savings program oversight committee — membership — powers and duties.
- 20-25-902. Board — powers and duties.

#### **Part 10 — Motorcycle Safety Training Program**

- 20-25-1001. Definitions.
- 20-25-1002. State motorcycle safety account — proceeds earmarked for account.
- 20-25-1003. Motorcycle safety promotion.
- 20-25-1004. Motorcycle safety advisory committee.
- 20-25-1005. Standards for motorcycle safety training.
- 20-25-1006. Motorcycle safety training course — tuition.
- 20-25-1007. Repealed.

#### **Parts 11 and 12 reserved**

#### **Part 13 — Group Benefits**

- 20-25-1301. Purpose.
- 20-25-1302. Definitions.
- 20-25-1303. Duties of commissioner — group benefits plans and employee premium levels not mandatory subjects for collective bargaining.
- 20-25-1304. Functions of advisory committee.
- 20-25-1305 through 20-25-1309 reserved.
- 20-25-1310. Alternatives to conventional insurance for providing employee group benefits — requirements.
- 20-25-1311 through 20-25-1314 reserved.
- 20-25-1315. Legislative findings and purpose.
- 20-25-1316. Hold harmless.
- 20-25-1317. Disclosures by air ambulance service.
- 20-25-1318. Independent dispute resolution.
- 20-25-1319. Independent dispute resolution procedure — exemptions.
- 20-25-1320. Insurance commissioner duties — independent reviewer qualifications.

#### **Part 14 — Self-Insured Student Health Plan**

- 20-25-1401. Purpose.
- 20-25-1402 reserved.
- 20-25-1403. Authorization to establish self-insured health plan for students — requirements — exemption.
- 20-25-1404. Authorization to finance self-insured health plan for students.

**Chapter Cross-References**

Educational goals and duties, Art. X, sec. 1, Mont. Const.

Board of Regents of Higher Education created, Art. X, sec. 9, Mont. Const.; 2-15-1505.

## Part 1

### University System — General

**20-25-101. Antidiscrimination.** The Montana university system shall instruct all individuals on equal terms.

**History:** En. 75-8401 by Sec. 1, Ch. 2, L. 1971; R.C.M. 1947, 75-8401; amd. Sec. 331, Ch. 56, L. 2009.

**Cross-References**

Nondiscrimination in education, Art. X, sec. 7, Mont. Const.

**20-25-102. Prohibition against use of name of system.** (1) The state has the exclusive right to the name “the Montana university system”.

(2) No other institution of learning or corporation may use the name “the Montana university system” or similar name.

(3) The attorney general shall bring an action in the name of the state against any person, association, or corporation using the same or similar name.

(4) The penalty for violation of this section shall be the dissolution of the corporation and a fine in a sum not exceeding \$500 or less than \$100.

**History:** En. 75-8404 by Sec. 4, Ch. 2, L. 1971; amd. Sec. 31, Ch. 266, L. 1977; R.C.M. 1947, 75-8404.

**20-25-103. Authority to accept gifts.** On behalf of the state, the regents may accept all gifts or grants of any kind for the use of any of the units of the university system. Gifts or grants subject to specific provisions shall be accepted and used subject to the terms of the gift or grant.

**History:** En. 75-8429 by Sec. 29, Ch. 2, L. 1971; R.C.M. 1947, 75-8429.

**20-25-104. Supplementary conservation education in university system.** (1) To supplement the broad conservation program in the elementary and secondary schools, the units of the university system shall make available to all students in teacher preparatory courses basic instruction in conservation education.

(2) The units at Bozeman and Missoula shall include instruction in conservation in their community or public service programs.

**History:** En. 75-8803 by Sec. 59, Ch. 2, L. 1971; R.C.M. 1947, 75-8803.

**20-25-105. Repealed.** Sec. 8, Ch. 21, L. 1985.

**History:** En. 75-8804 by Sec. 60, Ch. 2, L. 1971; R.C.M. 1947, 75-8804.

**20-25-106. Repealed.** Sec. 4, Ch. 428, L. 1983.

**History:** En. 75-8805 by Sec. 61, Ch. 2, L. 1971; R.C.M. 1947, 75-8805.

**20-25-107. Regulation of award of degrees — penalty.** (1) No person, corporation, association, or institution shall issue any degree or such similar literary honors as are usually granted by universities or colleges without the prior approval of the regents of the adequacy of the course of study.

(2) This section does not apply to any educational institution accredited by an educational accrediting association whose accrediting is found by the regents to be generally recognized by state and other universities in the United States.

(3) Violation of this section is a misdemeanor.

**History:** En. 75-8502 by Sec. 31, Ch. 2, L. 1971; R.C.M. 1947, 75-8502.

**Cross-References**

Penalty for violation of school laws, 20-1-207.

Community college not to grant baccalaureate degree, 20-15-108.

Penalty for misdemeanor when none specified, 46-18-212.

**20-25-108. Research programs — powers of units.** (1) The units of the system are authorized, singly or in cooperation, to engage in research and development programs with the prior approval of the regents.

(2) Such programs may be conducted by any department of a unit or any organization established to assist the unit. A unit or organization may:

- (a) contract with private organizations, companies, firms, or individuals relative to research programs;
  - (b) conduct research programs with the penal, corrective, or custodial institutions of Montana and engage the voluntary participation of the inmates with the prior approval of the governing board of the institution;
  - (c) accept contributions, grants, or gifts from private organizations, companies, firms, individuals, governmental agencies or departments for research programs;
  - (d) make agreements or cooperative undertakings with private organizations, companies, firms, individuals, governmental agencies or departments for research programs;
  - (e) match the funds of private organizations, companies, firms, individuals, governmental agencies or departments with available funds for research programs;
  - (f) accumulate, invest, and expend the funds and proceeds from research programs;
  - (g) acquire real and personal property reasonably required for research programs;
  - (h) not divert funds, proceeds, or real and personal property from the research programs; and
  - (i) not charge or obligate the state of Montana or the general funds or a unit or agency.
- (3) The legislature declares a public need for scientific research in the units of the system to promote the general welfare and to provide an adequate defense for the United States.

**History:** En. 75-8801 by Sec. 57, Ch. 2, L. 1971; amd. Sec. 10, Ch. 343, L. 1977; R.C.M. 1947, 75-8801.

**Cross-References**

Contracts and agreements for research by state agencies, 90-1-107.

**20-25-109. Authorized university system employee or individual activities.** (1) A Montana university system employee who, as part of the employee's authorized work for the university system, conceives, creates, discovers, invents, or develops intellectual property may:

- (a) if approved by the board of regents, own or be awarded equity interest or participation in the intellectual property; or
- (b) if approved by the board of regents, serve as a member of the board of directors or other governing board of or as a director, officer, or employee of a business entity that:
  - (i) has an agreement with the university system or with any other Montana state agency or political subdivision that relates to the research, development, licensing, or exploitation of that intellectual property; or
  - (ii) shares an ownership interest in the intellectual property with the university system.

(2) An individual, at the request of and on behalf of the university system, may serve as a member of the board of directors or other governing board of a business entity that:

- (a) has an agreement with the university system or with any other Montana state agency or political subdivision that relates to the research, development, licensing, or exploitation of the individual's intellectual property; or
- (b) shares an ownership interest in the intellectual property with the university system.

(3) For purposes of this section, "intellectual property" means inventions, discoveries, and creations that may be eligible for copyright or patent. The term also includes other economic development activity of a proprietary nature, including but not limited to business practices, ideas, processes, or arrangements that may not be eligible for either patent or copyright but for which the possibility of profitable commercialization exists.

(4) An employee or individual included under the provisions of subsection (1) or (2) shall report the name of the business entity with which the employee or individual is affiliated to the commissioner of higher education and to the appropriate person within the unit of the university system at which the person is employed or on behalf of which the individual is serving.

(5) The provisions of 2-2-104, 2-2-105, 2-2-121, and 2-2-201 do not apply to this section.

**History:** En. Sec. 1, Ch. 379, L. 2001.

**20-25-110. Student construction project — disclosure — immunity.** (1) The entity that transfers title to a construction project constructed as part of a public education program shall disclose the fact that the construction project was constructed as part of a public education program on at least one document, form, or application executed prior to or contemporaneously with an offer for the purchase, sale, rental, or lease of the construction project. The disclosure provided for in this subsection must be in the following form or in a substantially similar form: "Student Construction Project: This property was constructed as part of a public education

program and was in whole or in part constructed by students. The school district or public postsecondary institution responsible for the education program is not liable for civil damages resulting from construction projects constructed as part of a public education program except in cases of gross negligence or willful misconduct.”

(2) Except in cases of gross negligence or willful misconduct, a school district or public postsecondary institution is not liable for civil damages resulting from a construction project constructed as part of a public education program if the disclosure required in subsection (1) is made.

(3) As used in this section, “public education program” means a program operated by a public school or a public postsecondary institution.

**History:** En. Sec. 1, Ch. 521, L. 2005.

## Part 2 University Units

### Part Compiler’s Comments

*Study of State Labs at Montana State University-Bozeman:* Section 1, Ch. 352, L. 2017, provided: “(1) The legislative finance committee shall direct a study of the long-term future of and possible efficiencies to be gained from state-supported labs on the Montana state university campus in Bozeman, including:

- (a) the veterinary diagnostic lab;
- (b) the wool lab;
- (c) the wildlife lab; and
- (d) the seed lab.

(2) (a) The study analysis must be conducted by a bipartisan subcommittee consisting of the following:

- (i) two members of the legislative finance committee, with one member from each political party;
- (ii) two members of the economic affairs interim committee, with one member from each political party; and
- (iii) two members of the environmental quality council, with one member from each political party.

(b) The committees and the environmental quality council shall elect their representatives to serve on the subcommittee.

(3) The subcommittee shall develop and analyze at least three economically viable proposals for each lab identified in subsection (1), including:

- (a) necessary infrastructural changes and upgrades, their costs, and potential funding sources;
- (b) organizational changes and any financial efficiencies they would create; and
- (c) statutory changes needed to facilitate proposed infrastructural or organizational changes.

(4) Subject to direction provided by the legislative finance committee, the study may include but is not limited to:

- (a) onsite visits to the labs and interviews with relevant state and university personnel;
- (b) comparison with labs in other states that provide similar services, including North Dakota, South Dakota, Wyoming, Washington, Texas, and California;
- (c) onsite visits to labs in other states; and
- (d) comparison with labs that provide services unrelated to natural resources.

- (5) The subcommittee may work with engineering and architectural consultants as needed.
- (6) The appropriation provided for [section 3] [not codified] may be used for any purpose of the study, including but not limited to:

- (a) conducting onsite lab visits;
- (b) contracting with consultants pursuant to subsection (5);
- (c) providing study-related training for legislators and legislative staff; and
- (d) publication and communication costs.” Section 1, Ch. 352, L. 2017, was effective May 7, 2017, and terminates December 31, 2018.

**20-25-201. Units constituting university system.** The Montana university system is composed of the following units, each designated by its legal name:

(1) The university of Montana, with campuses at the following locations:

- (a) Missoula;
- (b) Butte;
- (c) Dillon; and
- (d) Helena.

(2) Montana state university, with campuses located at the following locations:

- (a) Bozeman;
- (b) Billings;
- (c) Havre; and
- (d) Great Falls.

**History:** En. 75-8403 by Sec. 3, Ch. 2, L. 1971; R.C.M. 1947, 75-8403; amd. Sec. 1, Ch. 224, L. 1989; amd. Sec. 15, Ch. 308, L. 1995.

**20-25-202 through 20-25-204 reserved.**

**20-25-205. Purpose of university — law and forestry schools.** (1) The university of Montana-Missoula shall have for its purpose instruction in all the departments of science, in literature, in the arts, and in industrial and professional education.

(2) A law school is established at the university of Montana-Missoula.

(3) A forestry school is established at the university of Montana-Missoula.

**History:** En. 75-8405 by Sec. 5, Ch. 2, L. 1971; R.C.M. 1947, 75-8405; amd. sec. 36, Ch. 308, L. 1995.

**Cross-References**

Administrative rules distributed to university law library, 2-4-313.

Supreme Court opinions distributed to university law library, 3-2-604.

Justices of the Peace orientation course to be held at law school, 3-10-203.

**20-25-206. Departments and courses of university of Montana-Missoula.** (1) The departments of the university are:

(a) a preparatory department, which may be dissolved as the regents deem wise, containing courses designed to prepare a student for the regular department;

(b) a department of literature, science, and the arts, offering courses which shall include:

(i) mathematics, physical and natural sciences, with their application to the industrial arts;

(ii) languages, literature, history, and philosophy; and

(iii) other courses at the regents' discretion; and

(c) professional and technical departments.

(2) When the income of the university allows and demands require, the courses may form departments with a faculty and an appropriate title.

**History:** En. 75-8406 by Sec. 6, Ch. 2, L. 1971; R.C.M. 1947, 75-8406; amd. sec. 36, Ch. 308, L. 1995.

**20-25-207. Bureau of government research — purpose — funding.** (1) There is a bureau of government research at the university of Montana-Missoula. The purpose of the bureau is to facilitate research and publication in the area of state and local government and to maintain a liaison between political scientists and government officials through the exchange of information.

(2) The bureau of government research may:

(a) receive and administer gifts, donations, and bequests;

(b) contract with individuals, organizations, and governmental agencies for cooperative endeavors; and

(c) apply for and receive grants from public and private agencies.

**History:** En. Sec. 2, Ch. 443, L. 1993; amd. sec. 36, Ch. 308, L. 1995.

**20-25-208 through 20-25-210 reserved.**

**20-25-211. Montana tech of the university of Montana — purpose — fees for assays.**

(1) Montana tech of the university of Montana has for its purpose instruction and education in chemistry, metallurgy, mineralogy, geology, mining, milling, engineering, mathematics, mechanics and drawing, and the laws of the United States and Montana relating to mining.

(2) A department designated as “the Montana state bureau of mines and geology”, which is under the direction of the regents, is established at Montana tech of the university of Montana.

(3) The chancellor of Montana tech of the university of Montana may charge and collect reasonable fees for any assays and analyses made by the college.

(4) The chancellor shall keep an account of the fees and pay them monthly to the treasurer for deposit to the college fund.

**History:** En. Secs. 7, 49, Ch. 2, L. 1971; R.C.M. 1947, 75-8407, 75-8608; amd. Sec. 16, Ch. 308, L. 1995.

**20-25-212. Bureau of mines and geology — purpose.** The bureau of mines and geology shall:

(1) compile and publish statistics relative to Montana geology, mining, milling, and metallurgy;

(2) collect:

(a) typical geological and mineral specimens;

(b) samples of products;

(c) photographs, models, and drawings of appliances used in the mines, mills, and smelters of Montana; and



(d) a library and a bibliography of literature relative to the progress of geology, mining, milling, and smelting in Montana;

(3) study the geological formations of Montana, with special reference to their economic mineral resources and ground water;

(4) examine the topography and physical features of Montana relative to their bearing upon the occupation of the people;

(5) study the mining, milling, and smelting in Montana relative to their improvement;

(6) publish bulletins and reports of a general and detailed description of the natural resources, geology, mines, mills, and reduction plants of Montana;

(7) make qualitative examinations of rocks and mineral samples;

(8) consider scientific and economic problems that the regents consider valuable to the people of Montana;

(9) communicate special information on Montana geology, mining, and metallurgy;

(10) cooperate with:

(a) departments of the university system;

(b) the state mine inspector;

(c) departments of the state;

(d) the United States geological survey; and

(e) the United States bureau of mines;

(11) make examinations of state land regarding its geology and mineral value at the request of the department of natural resources and conservation and make investments. These services are limited to the time available for the services after all other duties of the bureau of mines and geology are served. Written reports must be made. Travel expenses incurred by the examiner must be paid, as provided for in 2-18-501 through 2-18-503, by the agency requesting the examination upon the presentation of claims in the ordinary form.

(12) deposit all material collected in the state museums or at Montana tech of the university of Montana after completed use by the bureau of mines and geology;

(13) distribute duplicates of representative material to the units of the university system to their best educational advantage; and

(14) print the regular and special reports with illustrations and maps and distribute them on direction of the board of regents.

**History:** En. 75-8408 by Sec. 8, Ch. 2, L. 1971; amd. Sec. 17, Ch. 453, L. 1977; R.C.M. 1947, 75-8408; amd. Sec. 36, Ch. 308, L. 1995; amd. Sec. 51, Ch. 418, L. 1995.

#### **Cross-References**

Membership on Board of Water Well Contractors, 2-15-3307.

Testing of coal production, 15-35-106.

Drilling data available to Bureau representative, 82-11-126.

**20-25-213. Bureau director and assistants — duties.** The director and assistants of the bureau of mines and geology shall:

(1) take an oath to perform all required services;

(2) guard all confidential information accumulated in their work;

(3) refrain from pecuniary speculation or remunerative private work based upon knowledge of a commercial or economic nature acquired through their services until the knowledge is published and submitted to the people of Montana; and

(4) turn in to the bureau of mines and geology, as state property, all correspondence, notes, illustrations, and other accumulated data.

**History:** En. 75-8409 by Sec. 9, Ch. 2, L. 1971; R.C.M. 1947, 75-8409.

#### **Cross-References**

Oath of office, 20-1-202.

**20-25-214 through 20-25-220 reserved.**

**20-25-221. Montana state university-Bozeman — designation and purpose.**

(1) The land-grant university for the state of Montana, designated as “Montana state university-Bozeman”, is established at Bozeman under the provisions of the Morrill Act of 1862.

(2) Montana state university-Bozeman shall be a comprehensive institution carrying out programs of research and public service and offering instruction in the sciences, literature, and

arts, including military science, as well as professional programs in agriculture, engineering, and other fields as may be prescribed by the regents.

**History:** En. 75-8410 by Sec. 10, Ch. 2, L. 1971; R.C.M. 1947, 75-8410; amd. sec. 36, Ch. 308, L. 1995.

**20-25-222. Agricultural experiment station — establishment and purpose.**

(1) There is established at the state university at Bozeman and under its direction an agricultural experiment station, by virtue of the Hatch Act approved by congress on March 2, 1887. The provisions, donations, and benefits contained in that act and all acts supplementary thereto or amendatory thereof are accepted and adopted by the state of Montana.

(2) The purpose of the agricultural experiment station shall be to conduct and promote studies, scientific investigations, and experiments relating to agriculture, natural resources, and rural life and to diffuse information thereby acquired among the people of Montana.

(3) The agricultural experiment station shall include, in addition to the central location at Bozeman, the designated research centers and other affiliated testing and research facilities.

**History:** En. 75-8411 by Sec. 11, Ch. 2, L. 1971; amd. Sec. 1, Ch. 29, L. 1971; R.C.M. 1947, 75-8411.

**Cross-References**

Experiment station defined, 20-1-101.

Advice to Department of Transportation regarding seeding, 60-2-208.

Duty of Department of Agriculture to cooperate with station, 80-1-102.

Funds for experiment station, 80-10-104.

**20-25-223. Director of agricultural experiment station — duties.** The director shall have the immediate direction, management, and control of the agricultural experiment station, subject to the general supervision, direction, and control of the regents and the president of the state university.

**History:** En. Sec. 3, Ch. 29, L. 1971; R.C.M. 1947, 75-8411.1.

**Cross-References**

Membership appointment to Fertilizer Advisory Committee, 2-15-1516.

Duty to meet with Fertilizer Advisory Committee, 80-10-106.

**20-25-224. Agricultural research centers.** (1) The following agricultural research centers are established as a part of the agricultural experiment station:

- (a) the central agricultural research center, located near Moccasin;
- (b) the western agricultural research center, located near Corvallis;
- (c) the northern agricultural research center, located near Havre;
- (d) the southern agricultural research center, located near Huntley;
- (e) the northwestern agricultural research center, located near Kalispell;
- (f) the eastern agricultural research center, located near Sidney.

(2) All research centers shall be under the general supervision of the director of the agricultural experiment station.

**History:** En. Sec. 4, Ch. 29, L. 1971; R.C.M. 1947, 75-8411.2.

**20-25-225. Experimental farms.** (1) In accordance with the provisions of the Morrill Act of July 2, 1862, the regents shall make available for the purchase of sites or experimental farms from any funds deposited in the Montana permanent fund credited to the state university through provisions of the Morrill Land Act of 1862, known as the agricultural college Morrill permanent fund, a sum not to exceed 10% of the amount of the fund.

(2) The total amount that may be used for purchase of lands for sites or experimental farms may not exceed 10% of the total amount accrued to the credit of the agricultural college Morrill permanent fund.

(3) Money apportioned from the endowment funds for the purchase of sites or experimental farms may not be applied directly or indirectly to the purchase, erection, preservation, or repair of any building.

(4) The regents shall approve purchases of sites or experimental farms, which must be essential for the research programs of the state university.

**History:** En. 75-8606 by Sec. 47, Ch. 2, L. 1971; R.C.M. 1947, 75-8606; amd. Sec. 19, Ch. 281, L. 1983; amd. Sec. 14, Ch. 34, L. 2001.

**20-25-226. Assents to acts of congress.** (1) (a) The state of Montana assents to the provisions of an act of congress entitled "An Act to Provide for an Increased Annual Appropriation for Agricultural Experiment Stations and Regulating the Expenditure Thereof", approved March

16, 1906, and consents to receive the benefits of the act in the manner and for the purposes intended and provided in the act.

(b) The agricultural experiment station must be the beneficiary of the funds in the act and shall use the funds only for the purposes provided in the act.

(c) The treasurer of Montana state university-Bozeman may receive all money appropriated by the act, to be expended under the supervision of the regents in the manner designated in the act, and must receive and shall hold and account for the funds and make reports to the secretary of agriculture as required by the act.

(2) (a) The state accepts and assents to the terms and provisions of the act of congress approved May 8, 1914, entitled "An Act to Provide for Cooperative Agricultural Extension Work Between the Agricultural Colleges in the Several States Receiving the Benefits of an Act of Congress Approved July Second, Eighteen Hundred and Sixty-two, and of Acts Supplementary Thereto, and the United States Department of Agriculture".

(b) The president of Montana state university-Bozeman may enter into all necessary agreements with the secretary of agriculture of the United States for the receipt and expenditure of all money paid under the provisions of the act.

(c) The president may receive and expend the money in accordance with the provisions of the act and any agreements made pursuant to the act.

**History:** (1)Ap. p. Sec. 44, Ch. 2, L. 1971; Sec. 75-8603, R.C.M. 1947; Ap. p. Sec. 46, Ch. 2, L. 1971; amd. Sec. 9, Ch. 343, L. 1977; Sec. 75-8605, R.C.M. 1947; (2)En. Sec. 45, Ch. 2, L. 1971; Sec. 75-8604, R.C.M. 1947; R.C.M. 1947, 75-8603(1) thru (3), 75-8604, 75-8605(1)(b); amd. sec. 36, Ch. 308, L. 1995; amd. Sec. 332, Ch. 56, L. 2009.

**20-25-227. Montana wool laboratory — designation and purpose.** (1) There is established as a part of the agricultural experiment station the Montana wool laboratory.

(2) The purpose of the laboratory shall be the carrying on of effective scientific and practical research and testing work to develop as complete and accurate a knowledge of wools as possible.

(3) The wool laboratory shall be under the general direction of the director of the agricultural experiment station.

**History:** En. Sec. 5, Ch. 29, L. 1971; R.C.M. 1947, 75-8411.3.

**20-25-228. Wool laboratory funds and fees.** (1) The wool laboratory shall:

(a) cooperate fully with the United States department of agriculture for the benefit of the Montana wool industry; and

(b) keep a complete and comprehensive system of records covering its internal administration, activities, and meetings of its advisory committee and all sampling, testing, and research work.

(2) The wool laboratory may:

(a) receive any moneys which the federal government may make available for the use of the laboratory and pay all such funds to the state treasurer to be deposited in a special trust fund; and

(b) receive donations from individuals for the purposes of the laboratory, which shall also be paid to the state treasurer to be deposited in the special trust fund.

(3) All federal funds which may be provided and all funds which may be received by the laboratory for its use and benefit are hereby appropriated for the Montana wool laboratory.

(4) All moneys collected by the Montana wool laboratory shall be used for the payment of salaries and expenses, including purchase of equipment and supplies, and the erection of necessary buildings.

(5) The laboratory shall charge fees to woolgrowers which will cover actual costs for furnishing specific testing services. Such fees shall not include costs of doing research.

**History:** En. 75-8607 by Sec. 48, Ch. 2, L. 1971; R.C.M. 1947, 75-8607.

**20-25-229. Montana seed laboratory — purpose — fees.** (1) There is established as a part of the agricultural experiment station the Montana seed laboratory.

(2) The purpose of the laboratory is to conduct effective scientific and practical research or testing work to develop as complete and accurate an analysis of grains and seeds as requested.

(3) The laboratory is under the general direction of the director of the agricultural experiment station.

(4) The laboratory shall:

(a) establish procedures for submitting seed samples for analysis; and

(b) determine the appropriate fees for analytical services provided by the laboratory.

**History:** En. Sec. 6, Ch. 29, L. 1971; R.C.M. 1947, 75-8411.4; amd. Sec. 31, Ch. 83, L. 1989; amd. Sec. 2, Ch. 300, L. 2011.

**Cross-References**

Testing agricultural seeds, 80-5-126 through 80-5-129.

**20-25-230. Acceptance of donations.** The director, with the consent of the regents, may accept on behalf of the state of Montana, for the use of the agricultural experiment station, donations of real property, money, implements, scientific equipment, building materials, animals, supplies, and any other gifts considered beneficial by the director. Such donations may be accepted from both public and private sources, including the government of the United States.

**History:** En. Sec. 7, Ch. 29, L. 1971; R.C.M. 1947, 75-8411.5.

**20-25-231. Federal grants and cooperative research studies.** The director of the agricultural experiment station may take appropriate steps to qualify for and receive grants and other forms of assistance made available by the government of the United States and may enter into agreements with governmental agencies for cooperative research studies.

**History:** En. Sec. 8, Ch. 29, L. 1971; R.C.M. 1947, 75-8411.6.

**Cross-References**

Contracts and agreements for research by state agencies, 90-1-107.

**20-25-232. Income from sale of products — disposition.** Any income received from the sale of agricultural products and services by the agricultural experiment station or by any of the agricultural substations shall be deposited in the state treasury and shall be used to defray the costs of operating the station and substations.

**History:** En. Sec. 9, Ch. 29, L. 1971; Sec. 75-8411.7, R.C.M. 1947; En. 75-8603 by Sec. 44, Ch. 2, L. 1971; Sec. 75-8603, R.C.M. 1947; R.C.M. 1947, 75-8411.7, 75-8603(4).

**20-25-233. Short title.** Sections 20-25-233 through 20-25-236 may be cited as the “Montana Sustainable Agriculture Research and Education Act”.

**History:** En. Sec. 1, Ch. 659, L. 1989.

**20-25-234. Purpose.** The purpose of 20-25-233 through 20-25-236 is to promote more research and education on sustainable agricultural practices, such as crop rotations, green manuring, integrated pest management, and maintenance of livestock health and quality with reduced use of growth hormones and antibiotics. Sections 20-25-233 through 20-25-236 are intended to foster economically and ecologically beneficial means of soil improvement, pest management, irrigation, cultivation, harvesting, animal husbandry, transportation, and marketing for Montana agriculture, based on methods designed to accomplish the following:

- (1) control pests and diseases of agricultural importance through management practices and alternatives that reduce or eliminate dependence on pesticides and petrochemicals;
- (2) improve soil fertility and tilth through the use of practices that reduce dependence on synthetically compounded petrochemical-based fertilizers;
- (3) produce, process, and distribute food and fiber in ways that consider the interactions among soil, plants, water, air, animals, tillage, machinery, labor, energy, and transportation to enhance resource efficiency, conservation, and public health; and
- (4) provide Montana farmers and ranchers with useful agriculture production and marketing information on alternative and specialty crops and livestock, including ostriches, rheas, and emus.

**History:** En. Sec. 2, Ch. 659, L. 1989; amd. Sec. 3, Ch. 206, L. 1995.

**20-25-235. Duties of Montana agricultural experiment station and cooperative extension service.** The Montana agricultural experiment station and the cooperative extension service shall:

- (1) develop a usable database of existing research in low-input, sustainable agriculture;
- (2) conduct educational programs for producers using material from the database. Programs must include teaching producers techniques of low-input agriculture, assessment of risks involved with change, and marketing of products from their farms and ranches.
- (3) extend research on the use of legumes to supply a portion of the nitrogen required by field crops;
- (4) work with producers in establishing integrated pest management;

(5) begin research and development of marketable specialty crops and livestock that are integral to sustainable farming systems; and

(6) identify specific areas in which additional research is needed to enhance the adoption and success of low-input, sustainable agriculture in Montana.

**History:** En. Sec. 3, Ch. 659, L. 1989.

**20-25-236. Report to legislature.** The Montana agricultural experiment station and the cooperative extension service may, as provided in 5-11-210, report to the legislature regarding the expenditures, activities, and outcomes of the program provided for in 20-25-233 through 20-25-236.

**History:** En. Sec. 4, Ch. 659, L. 1989; amd. Sec. 27, Ch. 112, L. 1991; amd. Sec. 27, Ch. 349, L. 1993.

**20-25-237. Local government center — purpose — funding.** (1) There is a local government center at Montana state university-Bozeman. The purpose of the center is to strengthen the capacities of Montana's local governmental units to deliver essential services efficiently and to provide training, technical assistance, and research to local officials.

(2) The local government center may:

(a) receive and administer gifts, donations, and bequests;

(b) contract with individuals, organizations, and governmental agencies for cooperative endeavors; and

(c) apply for and receive grants from public and private agencies.

**History:** En. Sec. 1, Ch. 443, L. 1993; amd. sec. 36, Ch. 308, L. 1995.

**20-25-238 through 20-25-240 reserved.**

**20-25-241. Montana forest and conservation experiment station established.** There is hereby established in the university of Montana-Missoula forestry school a station to be known as the Montana forest and conservation experiment station, which shall be under the direction of the board of regents.

**History:** En. Sec. 1, Ch. 141, L. 1937; amd. Sec. 25, Ch. 253, L. 1974; R.C.M. 1947, 28-301; amd. sec. 36, Ch. 308, L. 1995.

**20-25-242. Purpose of station.** (1) It is the purpose of the Montana forest and conservation experiment station to:

(a) study the forest and forest land resources of the state to the end that the state and its citizens may attain the highest economic and social benefits from the forest soils within the state and the influences and products flowing from forests;

(b) study the growth and the utilization of timber with special reference to their improvement and the widening of the markets available to the state;

(c) determine:

(i) the relationship between the forest and water conservation and waterflow regulation;

(ii) the relationship between the forest and pasturage for domestic livestock and wildlife;

(iii) the relationship between the forest and recreation; and

(iv) those other direct and indirect benefits that may be secured by the maintenance of or the establishment of forests or woodlands;

(d) study and develop the establishment of windbreaks, shelterbelts, and woodlots on the farms of the state that moisture may be conserved by windbreaks, shelterbelts, and woodlots for the best production of agricultural crops and forage, for the prevention of soil wastage and erosion, to make the farm home more comfortable, and to produce forest material for the use of the farmer and the livestock producer;

(e) study the findings of other agencies so that the information may be used to improve the growth, management, and utilization of the timber within the state and to protect it against damage by fire, insects, disease, and other harmful agencies;

(f) collect, compile, and publish statistics relative to Montana forests and forestry and the influences flowing from forests and forestry;

(g) prepare and publish bulletins and reports, along with the necessary illustrations and maps, so that the information collected by the station in forestry and in conservation may be made available for use and distribute this information or material in other ways that the board of regents may direct;



(h) collect a library and bibliography of literature pertaining to or useful for the purpose of 20-25-241 through 20-25-245;

(i) study logging, lumbering, and milling operations and other operations dealing with the products of forest soils with special reference to their improvement;

(j) investigate and make tests of forest products produced or that may be produced within the state so that markets may be improved;

(k) consider other scientific and economic problems that, in the judgment of the board of regents, are of value to the people of the state;

(l) cooperate with the other departments of the university of Montana-Missoula, with the departments of the state government when mutually beneficial, and with private individuals and agencies and cooperate with the United States government and its branches as a land-grant institution or otherwise in accordance with their regulations; and

(m) establish field experiment stations that, in the judgment of the board of regents, may be necessary.

(2) The board of regents may accept, for and in behalf of the state of Montana, gifts of land or other donations that may be made to the state for the purposes of 20-25-241 through 20-25-245.

**History:** En. Sec. 3, Ch. 141, L. 1937; amd. Sec. 26, Ch. 253, L. 1974; R.C.M. 1947, 28-303; amd. sec. 36, Ch. 308, L. 1995; amd. Sec. 333, Ch. 56, L. 2009.

**Cross-References**

Conservation districts, Title 76, ch. 15.

**20-25-243. Director of station.** The dean of the forestry school, whoever shall hold that office from time to time, shall be the director of said Montana forest and conservation experiment station. The board of regents shall have the power and it shall be its duty to appoint or designate such assistants and employees as may be necessary and to fix the compensation of all persons connected with said station.

**History:** En. Sec. 2, Ch. 141, L. 1937; R.C.M. 1947, 28-302.

**20-25-244. Oath of office.** The dean of the forestry school, the officers and employees of said station, appointed or assigned, and their assistants shall take an oath to:

(1) perform all the services required of them under 20-25-241 through 20-25-245;

(2) guard carefully all confidential information accumulated in the progress of their work; and

(3) turn in to the station as state property all correspondence, notes, illustrations, and data of any kind accumulated by them in performing the work of the station.

**History:** En. Sec. 5, Ch. 141, L. 1937; R.C.M. 1947, 28-305.

**Cross-References**

Constitutional oath of office, Art. III, sec. 3, Mont. Const.

Oath of office, 20-1-202.

**20-25-245. Reports — disposition of income.** (1) The board of regents may require such regular and special reports to be prepared as it deems necessary. Such regular reports and the special reports and bulletins, with proper illustrations and maps, shall be printed and distributed as the board of regents may direct and as the interests of the state and of science and industry may demand.

(2) Income received by the station shall be deposited in the state treasury and used for the purposes of administering 20-25-241 through 20-25-245.

**History:** En. Sec. 4, Ch. 141, L. 1937; amd. Sec. 234, Ch. 147, L. 1963; R.C.M. 1947, 28-304.

**20-25-246 through 20-25-250 reserved.**

**20-25-251. Repealed.** Sec. 35, Ch. 308, L. 1995.

**History:** En. 75-8423 by Sec. 23, Ch. 2, L. 1971; R.C.M. 1947, 75-8423.

**20-25-252. Donations to Montana state university-Billings.** The regents may accept for and on behalf of Montana state university-Billings college any donations of lands and any other gifts for the use and benefit of the college.

**History:** En. 75-8425 by Sec. 25, Ch. 2, L. 1971; R.C.M. 1947, 75-8425; amd. sec. 36, Ch. 308, L. 1995.

**20-25-253. Purpose of university of Montana-western.** The university of Montana-western has for its primary purpose the instruction and training of teachers for the public schools of Montana.

**History:** En. 75-8424 by Sec. 24, Ch. 2, L. 1971; R.C.M. 1947, 75-8424; amd. Sec. 2, Ch. 224, L. 1989; amd. Sec. 2, Ch. 38, L. 2001.

**20-25-254. Donations to university of Montana-western.** The regents may accept for and on behalf of the university of Montana-western any donations of lands and any other gifts for the use and benefit of the college.

**History:** En. 75-8426 by Sec. 26, Ch. 2, L. 1971; R.C.M. 1947, 75-8426; amd. Sec. 3, Ch. 224, L. 1989; amd. Sec. 3, Ch. 38, L. 2001.

**20-25-255. Acceptance of public lands.** (1) The regents must receive, in the names of the university of Montana-western and Montana state university-Billings, all benefits derived from the distribution of lands contemplated in section 17 of an act of congress, approved February 22, 1889, entitled "An Act to Provide for the Division of Dakota Into Two States and to Enable the People of North Dakota, South Dakota, Montana, and Washington to Form Constitutions and State Governments and to be Admitted Into the Union on an Equal Footing With the Original States, and to Make Donations of Public Lands to Such States".

(2) The regents may, in carrying out the provisions of Title 20, pledge one-half of all interest and income derived from the land grant for the payment in whole or in part of notes, bonds, or other obligations issued by the regents for residence halls or other facilities at the university of Montana-western or at Montana state university-Billings, provided that any pledge must be subject to any prior pledge.

**History:** En. 75-8427 by Sec. 27, Ch. 2, L. 1971; amd. Sec. 1, Ch. 289, L. 1971; amd. Sec. 8, Ch. 343, L. 1977; R.C.M. 1947, 75-8427; amd. Sec. 4, Ch. 224, L. 1989; amd. sec. 36, Ch. 308, L. 1995; amd. Sec. 4, Ch. 38, L. 2001.

**20-25-256. Purposes of Montana state university-northern.** Montana state university-northern has for its purpose instruction and education in:

(1) the English language, history, literature, mathematics, bookkeeping, moral philosophy, and political, rural, and household economy;

(2) mechanical arts, agricultural chemistry, animal and vegetable anatomy and physiology, and veterinary art;

(3) entomology, geology, and such other natural sciences as may be prescribed by the regents;

(4) agriculture, horticulture, and especially the application of science and the mechanical arts to practical agriculture in the field;

(5) irrigation and use of water for agricultural purposes; and

(6) all that relates to an efficient, modern manual training school.

**History:** En. 75-8428 by Sec. 28, Ch. 2, L. 1971; amd. Sec. 2, Ch. 29, L. 1971; R.C.M. 1947, 75-8428; amd. sec. 36, Ch. 308, L. 1995.

### Part 3 Administration of University System

#### Part Cross-References

Cooperative agreements with district weed boards, 7-22-2151.

**20-25-301. Regents' powers and duties.** The board of regents of higher education shall serve as regents of the Montana university system, shall use and adopt this style in all its dealings with the university system, and:

(1) must have general control and supervision of the units of the Montana university system, which is considered for all purposes one university;

(2) shall adopt rules for its own government that are consistent with the constitution and the laws of the state and that are proper and necessary for the execution of the powers and duties conferred upon it by law;

(3) shall provide, subject to the laws of the state, rules for the government of the system;

(4) shall grant diplomas and degrees to the graduates of the system upon the recommendation of the faculties and have discretion to confer honorary degrees upon persons other than graduates upon the recommendation of the faculty of the institutions;

(5) shall keep a record of its proceedings;

(6) must have, when not otherwise provided by law, control of all books, records, buildings, grounds, and other property of the system;

(7) must receive from the board of land commissioners, from other boards or persons, or from the government of the United States all funds, income, and other property that the system may be entitled to and use and appropriate the property for the specific purpose of the grant or donation;

(8) must have general control of all receipts and disbursements of the system;

(9) shall appoint a president or chancellor and faculty for each of the institutions of the system, appoint any other necessary officers, agents, and employees, and fix their compensation;

(10) shall confer, at the regents' discretion, upon the president and faculty of each of the units of the system for the best interest of the unit authority relating to the immediate control and management, other than financial, and the selection of teachers and employees;

(11) shall prevent unnecessary duplication of courses at the units of the system;

(12) shall appoint a certified professional geologist or registered mining engineer as the director of the Montana state bureau of mines and geology, who is the state geologist, and appoint any other necessary assistants and employees and fix their compensation;

(13) shall supervise and control the agricultural experiment station, along with any executive or subordinate board or authority that may be appointed by the governor with the advice and consent of the regents;

(14) shall adopt a seal bearing on its face the words "Montana university system", which must be affixed to all diplomas and all other papers, instruments, or documents that may require it;

(15) shall ensure an adequate level of security for data, as defined in 2-15-102, within the state university system. In carrying out this responsibility, the board of regents shall, at a minimum, address the responsibilities prescribed in 2-15-114.

(16) shall offer courses in vocational-technical education of a type and in a manner considered necessary or practical by the regents.

**History:** En. 75-8501 by Sec. 30, Ch. 2, L. 1971; R.C.M. 1947, 75-8501; amd. Sec. 7, Ch. 125, L. 1983; amd. Sec. 5, Ch. 21, L. 1985; (16)En. Sec. 4, Ch. 592, L. 1987; amd. Sec. 28, Ch. 112, L. 1991; amd. Sec. 28, Ch. 349, L. 1993; amd. Sec. 17, Ch. 308, L. 1995; amd. Sec. 64, Ch. 114, L. 2003; amd. Sec. 1, Ch. 78, L. 2013.

#### **Cross-References**

Rulemaking exempt from Montana Administrative Procedure Act, 2-4-102.

Creation of advisory councils by Board of Regents, 2-15-122.

Number and notice of meetings, 20-2-112.

Duty to adopt rules and keep records, 20-2-114.

Duty of Board of Regents to prescribe duties of Commissioner of Higher Education, 20-2-131.

Supervision and coordination of community colleges by Board of Regents, 20-15-103.

Board of Land Commissioners, Title 77, ch. 1, part 2.

**20-25-302. Revenue-producing facilities — powers of regents.** The regents of the Montana university system may:

(1) purchase, construct, equip, or improve, at any unit of the Montana university system, any of the following types of revenue-producing facilities:

(a) land;

(b) residence halls, dormitories, houses, apartments, and other housing facilities;

(c) dining rooms and halls, restaurants, cafeterias, and other food service facilities;

(d) student union buildings and facilities; and

(e) those other facilities specifically authorized by joint resolution of the legislature;

(2) rent housing facilities and provide food and other services to the students, officers, guests, and employees of the unit at rates that will ensure a reasonable net income over operating expenses and will provide for debt service and reserves and provide for the collection of charges, admissions, and fees for the use of other facilities by students and other persons. The charges, admissions, and fees are not considered tuition within the meaning of 20-25-421 and may be collected from any or all students.

(3) hold the net income derived from the operation of the facilities and the charges, admissions, and fees collected and devote the revenue from these sources to debt service and reserves, repairs, replacements, and betterments of the facilities or, so far as the revenue has not been previously obligated for these purposes, to the acquisition, erection, equipping, enlarging, or improvement of additional facilities of the types described in this section;

(4) exercise full control and complete management of the facilities;

(5) rent the facilities to other public or private persons, firms, and corporations for uses, at times, for periods, and at rates as in the regents' judgment will be consistent with the full use

of the facilities for academic purposes and will add to the revenue available for capital costs and debt service;

(6) do all things necessary to plan for and propose financing, including all necessary loan applications, for:

- (a) classroom, laboratory, library, bookstore, and other instructional facilities;
- (b) office, recordkeeping, storage, equipment maintenance, and other administrative and operational facilities;
- (c) stadiums, fieldhouses, armories, arenas, gymnasiums, swimming pools, and other facilities for athletic and military instruction, exhibitions, games, and contests;
- (d) auditoriums, theaters, music halls, and other assembly, theatrical, musical, and entertainment facilities;
- (e) hospital, nursing, and other health instruction and service facilities;
- (f) nurseries, barns, arenas, pavilions, and other facilities for agricultural and livestock breeding, development, and exhibition;
- (g) parking lots and ramps and other parking facilities; and
- (h) land needed for the facilities.

**History:** En. 75-8503 by Sec. 32, Ch. 2, L. 1971; R.C.M. 1947, 75-8503; amd. Sec. 74, Ch. 370, L. 1987; amd. sec. 36, Ch. 308, L. 1995; amd. Sec. 5, Ch. 243, L. 1997.

#### Cross-References

When construction authorized by Regents, 18-2-102.

Legislative intent regarding construction of student housing, 18-2-103.

**20-25-303. Repealed.** Sec. 3, Ch. 78, L. 2013.

**History:** En. 75-8510 by Sec. 39, Ch. 2, L. 1971; R.C.M. 1947, 75-8510; amd. Sec. 18, Ch. 308, L. 1995.

**20-25-304. Repealed.** Sec. 3, Ch. 78, L. 2013.

**History:** En. 75-8511 by Sec. 40, Ch. 2, L. 1971; amd. Sec. 1, Ch. 351, L. 1971; R.C.M. 1947, 75-8511.

**20-25-305. President — powers and duties.** Subject to the supervision of the regents, the president of each of the units of the system:

- (1) is responsible for the immediate direction, management, and control of the respective units, including instruction, practical affairs, and scientific investigations;
- (2) is the president of the general faculty and of the special faculties of the departments or colleges and the executive head of the unit in all its departments;
- (3) has the duties of one of the professorships as long as the interests of the unit require it;
- (4) shall perform the duties of corresponding secretary for the unit;
- (5) may offer multiyear contracts to athletic coaches;
- (6) shall make an annual report to the regents containing any information that they may request; and
- (7) shall furnish any special report on request of the regents or the legislature.

**History:** En. 75-8512 by Sec. 41, Ch. 2, L. 1971; R.C.M. 1947, 75-8512; amd. Sec. 1, Ch. 139, L. 2005.

**20-25-306. Designation of holidays by board of regents.** (1) The board of regents of higher education may designate the following business days as holidays for all employees of the university system in exchange for the same number of legal holidays enumerated in 1-1-216:

- (a) the Friday following Thanksgiving;
- (b) the Monday before Christmas Day or New Year's Day if either holiday falls on Tuesday; and

- (c) the Friday after Christmas Day or New Year's Day if either holiday falls on Thursday.

(2) A full-time employee who is scheduled for a day off on a day that is designated as a holiday under subsection (1) is entitled to receive another day off with pay during the same pay period of the designated holiday or as scheduled by the employee and the employee's supervisor in addition to the employee's regularly scheduled days off if the employee is in a pay status on the last regularly scheduled working day immediately before the holiday or on the first regularly scheduled working day immediately after the holiday. Part-time employees receive pay for the designated holiday on a prorated basis according to rules adopted by the department of administration or appropriate administrative officer under 2-18-604.

**History:** En. Sec. 1, Ch. 340, L. 1981; amd. Sec. 334, Ch. 56, L. 2009.

**20-25-307. Disposition of land.** (1) The board of regents may sell, exchange, and lease land and grant easements and licenses on land that is held or administered by the board of regents or the system and that is held by the state for the use and benefit of the board of regents or the system.

(2) The board of regents may not grant an estate or interest in land that was granted to the state in trust for the support and benefit of the system.

(3) In disposing of any estate or interest in land pursuant to subsection (1), the board of regents shall obtain consideration that equals or exceeds the full market value of the land. For sales and exchanges, full market value must be determined by the board of regents after an appraisal by a certified or licensed appraiser. If the appraiser determines that the valuation is not complicated and estimates, based on available data, that the full market value of the property is \$10,000 or less, the board of regents may use a restricted or limited appraisal.

(4) Before approving an exchange of land, the board of regents shall give the public notice of the proposed exchange and an opportunity to comment. The board of regents shall, upon request of any person, hold a public hearing in the area where the state land to be conveyed is located. Subject to subsection (6), the board of regents may, after review of the comments, approve the exchange if it determines that the exchange is in the best interests of the system.

(5) Prior to the sale of land, the board of regents shall prepare a request for proposals to purchase the land and publish public notice of the sale once a week for 4 consecutive weeks in a newspaper of general circulation published in the county where the land is situated. If a newspaper is not published in that county, notice must be published in any newspaper of general circulation in that county. The notice must describe the land to be sold, the appraised value of the land, the procedure by which persons may obtain the request for proposals, the terms and conditions of sale, and the criteria upon which each proposal will be evaluated. The sale procedure must provide reasonable opportunity for members of the public to submit proposals to purchase the land. The board of regents may sell the land only if it determines that the sale is in the best interests of the system. If the board of regents sells the land, the sale must be to the offeror whose proposal the board determines to be the most advantageous to the system, taking into consideration the price and the other evaluation criteria listed in the request for proposals.

(6) (a) The board of regents may sell or exchange the land only if the board of regents first:

(i) requests and obtains the written concurrence of the board of land commissioners;

(ii) provides proof that no use restrictions, encumbrances, or other conditions have been placed by the board of regents on the land proposed for sale or exchange that prevent the state from obtaining full market value for the land, taking into consideration the price and the other evaluation criteria listed in the request for proposals;

(iii) complies with the requirements of the Montana Environmental Policy Act provided in Title 75, chapter 1, parts 1 through 3; and

(iv) complies with the requirements of Montana antiquities laws provided in Title 22, chapter 3, part 4.

(b) The board of land commissioners may refuse to concur if it determines that:

(i) the sale or exchange does not return to the state full market value;

(ii) the evaluation criteria in the request for proposals or the sale procedure and proposal selection process did not provide the public with a reasonable opportunity to submit proposals to purchase the land or to have reasonable proposals selected;

(iii) the sale or exchange is not in the best interests of the state; or

(iv) the system has not complied with the requirements of subsections (6)(a)(ii) through (6)(a)(iv).

(7) After obtaining written concurrence of the board of land commissioners required in subsection (6), the board of regents shall convey the land by deed, executed by the presiding officer of the board or other person designated by the board, without covenants of warranty.

**History:** En. Sec. 2, Ch. 370, L. 1995; amd. Sec. 1, Ch. 425, L. 1997.

#### **Cross-References**

Public land trust — disposition, Art. X, sec. 11, Mont. Const.

Transfers and reservations of property interests in state lands, Title 77, ch. 2.

**20-25-308. Prohibition on transfer to foundation.** In order to implement the provisions of Article VIII, section 12, of the Montana constitution, ownership of the following



may not be transferred to a nonprofit corporation or foundation established for the benefit of a unit of the university system unless full market value is received for the transfer and laws applicable to the disposition of property are followed:

- (1) money in the higher education funds provided for in 17-2-102;
- (2) excess proceeds of money borrowed pursuant to 20-25-402; and
- (3) except as provided in 20-25-309, real or personal property acquired with money listed in subsection (1) or proceeds listed in subsection (2).

**History:** En. Sec. 1, Ch. 371, L. 1995; amd. Sec. 6, Ch. 478, L. 1995; amd. sec. 36, Ch. 308, L. 1995; amd. Sec. 33, Ch. 130, L. 2005; amd. Sec. 3, Ch. 419, L. 2007.

**20-25-309. Exemption from state construction and contract laws for certain university projects.** (1) The board of regents may lease land or land and facilities to a private nonprofit foundation organized to solicit, manage, and administer nonstate funds, gifts, grants, donations, in-kind contributions, and revenue on behalf of a unit of the Montana university system for the purpose of constructing or renovating athletic facilities. The terms, guaranties, and agreements relating to a facility subject to this subsection must be negotiated in the best interests of the state and must include guarantees that a commitment of state appropriations for design, construction, operations, or maintenance is not expressed or implied. The terms, guaranties, and agreements are subject to review and approval by the board of regents. After approval, the board of regents shall submit a report to the budget director certifying that the conditions of this subsection have been satisfied.

(2) The design and construction of projects pursuant to subsection (1) are not subject to the requirements of Title 18, chapters 2 and 8, except that:

- (a) the department of administration shall execute the provisions of 18-2-103(1)(a) and (1)(e); and
- (b) the provisions of Title 18, chapter 2, part 4, apply to all labor other than donated labor.

**History:** En. Sec. 1, Ch. 419, L. 2007.

**20-25-310 reserved.**

**20-25-311. Motor vehicle regulation — parking and operation.** The regents of the Montana university system are authorized to make rules at each unit of the university system concerning the parking and operation of motor vehicles upon the grounds, streets, drives, and alleys of each unit.

**History:** En. Sec. 1, Ch. 398, L. 1971; R.C.M. 1947, 75-8503.2.

#### **Cross-References**

Rulemaking by Regents not subject to Montana Administrative Procedure Act, 2-4-102.

Driver's licenses, Title 61, ch. 5.

Responsibility of vehicle users and owners, Title 61, ch. 6.

Traffic regulation, Title 61, ch. 8.

**20-25-312. Motor vehicle regulation — enforcement of regulations — appeals.**

(1) The regents may authorize the president of each unit to:

- (a) assess fees for parking on campus subject to the approval of the regents after the regents' consultation with the respective student governing body of the unit;
- (b) assess fines in accordance with a published schedule approved by the regents for violations of motor vehicle or parking regulations of each unit;
- (c) order the removal of vehicles parked in violation of motor vehicle regulations of each unit at the expense of the violator;
- (d) establish a system of appeals at each unit concerning parking violations;
- (e) withhold the amount of any unpaid parking fine from any amount owing any student, employee, or faculty member, subject to the provisions of 17-4-105;
- (f) prohibit a student from registering if the student has unpaid parking assessments or fines outstanding resulting from on-campus motor vehicle or parking violations within the previous year.

(2) The proceeds from fines and fees collected must be remitted to the unit at which collections are made and must be used for appropriate maintenance and construction of parking facilities and for traffic control.

**History:** En. Sec. 2, Ch. 398, L. 1971; amd. Sec. 1, Ch. 246, L. 1974; R.C.M. 1947, 75-8503.3; amd. Sec. 1, Ch. 150, L. 1979; amd. Sec. 1, Ch. 91, L. 1985; amd. Sec. 3, Ch. 160, L. 1985; amd. Sec. 1, Ch. 220, L. 2003.

**Cross-References**

Authority of Regents to authorize construction of facilities, 18-2-102.

**20-25-313 through 20-25-320 reserved.**

**20-25-321. Security department members — appointment — campus security officer powers.** (1) The regents of the Montana university system may appoint one or more persons to be members of security departments at each unit of the university system. Persons who are qualified under 7-32-303 to be campus security officers and who are employed and compensated by a security department as campus security officers are peace officers and may exercise their authority:

(a) upon the campuses of the Montana university system and, for campus-related activities, an area within 1 mile of the exterior boundaries of each campus;

(b) in or about other grounds or properties owned, operated, controlled, or administered by the regents or any unit of the Montana university system; and

(c) if an agreement is reached under subsection (3), for activities and in areas described in the agreement.

(2) Campus security officers may not serve or execute civil processes.

(3) Any university system security department may seek an agreement with local law enforcement agencies that specifies geographic and subject matter jurisdiction of campus security officers in areas outside the area described in subsections (1)(a) and (1)(b).

**History:** En. Sec. 1, Ch. 405, L. 1971; R.C.M. 1947, 75-8513; amd. Sec. 1, Ch. 416, L. 2003.

**Cross-References**

Peace officer defined, 1-1-207, 45-2-101.

Enforcement of Montana Alcoholic Beverage Code by peace officers, 16-1-101, 16-6-102 through 16-6-107.

Mutual assistance for peace officers, Title 44, ch. 11.

False alarms or reports to peace officers, 45-7-204, 45-7-205.

Failure to aid police officer, 45-7-304.

Failure to report felony to peace officers, 45-7-305.

Exemption for peace officers from concealed weapon laws, 45-8-317.

Stop and frisk authority of peace officers, 46-5-401.

**20-25-322. Traffic citations — agreements with city or county.** The president of each unit may enter into an agreement with the city or county in which the unit is located to authorize members of the unit's security department to issue citations for parking or moving traffic violations as defined by state or municipal laws that occur within the boundaries of the campus or on streets or alleys contiguous to the campus. All citations must be considered within the jurisdiction of the appropriate local authority and must be handled in the same manner as citations issued by peace officers of the local authority.

**History:** En. Sec. 2, Ch. 405, L. 1971; R.C.M. 1947, 75-8514; amd. Sec. 335, Ch. 56, L. 2009.

**Cross-References**

Traffic regulation, Title 61, ch. 8.

Power of local authorities, 61-8-103.

**20-25-323. Control and direction of security department.** The president of each unit has general control and direction of the security department of the unit.

**History:** En. Sec. 3, Ch. 405, L. 1971; R.C.M. 1947, 75-8515; amd. Sec. 336, Ch. 56, L. 2009.

**20-25-324. Firearms.** Security guards who have successfully completed the basic course in law enforcement conducted by the Montana law enforcement academy may carry firearms in accordance with policies established by the board of regents after consulting with the student body government at the unit of the university system affected by the regents' policy.

**History:** En. Sec. 4, Ch. 405, L. 1971; R.C.M. 1947, 75-8516; amd. Sec. 1, Ch. 404, L. 1981; amd. Sec. 1, Ch. 430, L. 1991.

**Cross-References**

Training standards prescribed by Board of Crime Control, 44-7-101.

Curriculum of Law Enforcement Academy, 44-10-202.

Weapons, Title 45, ch. 8, part 3.

**20-25-325 through 20-25-330 reserved.**

**20-25-331. Definitions.** As used in 20-25-332, the following definitions apply:

(1) “For-profit fitness center” means a private sector facility that offers instruction, training, consultation, equipment, or space to the public for a fee to maintain, encourage, or develop physical fitness or conditioning.

(2) (a) “University fitness center” means a facility at a university unit, as provided in 20-25-201, that offers instruction, training, consultation, equipment, or space to maintain, encourage, or develop physical fitness or conditioning.

(b) The term does not include a university’s swimming pool facilities, golf course facilities, or youth camps.

**History:** En. Sec. 1, Ch. 545, L. 2001.

**20-25-332. Competition between for-profit fitness centers and university fitness centers prohibited — exception.** (1) Except as provided in subsection (2), a university fitness center may not sell a contract or charge a monthly fee to individual members of the general public for the use of fitness center facilities if a for-profit fitness center offering similar services operates in the community where the university fitness center operates.

(2) The provisions of subsection (1) do not apply to:

(a) contracts or monthly fees that may be charged to students, employees, or the immediate family members of a student or an employee of a university;

(b) contracts or monthly fees that may be charged to alumni of the university as long as the number of alumni memberships does not exceed 10% of the total number of alumni who are dues-paying members of the university’s alumni association and who reside in the municipality where the university is located and as long as the cost of the alumni membership is at least as much as the average cost of membership in for-profit fitness centers in the municipality; and

(c) daily passes sold to relatives of university students or employees.

(3) The provisions of this section do not apply to units of the university system with less than 3,500 full-time students.

**History:** En. Sec. 2, Ch. 545, L. 2001.

## Part 4 Miscellaneous Finance

### Part Cross-References

State university funds, Art. X, sec. 10, Mont. Const.

Genetic engineering technology research and development account — Montana State University - Bozeman, 17-2-131.

Submission deadline for budget reports, 17-7-112.

Collection of retirement fund contributions, 19-1-825.

**20-25-401. Repealed.** Sec. 35, Ch. 308, L. 1995.

**History:** En. Sec. 1, Ch. 223, L. 1971; R.C.M. 1947, 75-8503.1.

**20-25-402. Borrowing by regents.** (1) In carrying out the powers provided in 20-25-107, 20-25-301, and 20-25-302, the regents may:

(a) borrow money for any purpose or purposes stated in parts 3 and 4 of this chapter, including, if considered desirable by the regents, the payment of interest on the money borrowed for a facility during the construction of the facility and for 1 year after construction and the creation of a reserve for the payment of bond principal and interest;

(b) make purchases on a time or installment basis;

(c) issue bonds, notes, and other securities, negotiable or otherwise, secured as provided in this section, including bearer bonds with appurtenant interest coupons, which must be fully negotiable notwithstanding any limitation on the source of payment of the bonds, notes, or securities, or fully registered bonds or bonds registered as to ownership of principal only;

(d) pledge for the payment of the purchase price of any facility or of the principal and interest on bonds, notes, or other securities authorized in this chapter or otherwise obligate:

(i) the net income received from rents, board, or both in housing, food service, and other facilities;

(ii) receipts from student building, activity, union, and other special fees prescribed by the regents for all students; and

- (iii) (A) other income in the form of gifts, bequests, contributions, or federal grants of funds, including the proceeds or income from grants of lands or other real or personal property;
- (B) receipts from athletic and other contests, exhibitions, and performances; and
- (C) collections of admissions and other charges for the use of facilities, including all use by other persons, firms, and corporations for athletic and other contests, exhibitions, and performances and for the conduct of their business, educational, or governmental functions;
- (e) make payments on loans or purchases from any other available income not obligated for those purposes, including receipts from sale of materials, equipment, and fixtures of the facilities or from sales of the facilities themselves, other than land;
- (f) secure any bonds authorized under this section by a trust indenture between the regents and any bank or trust company within or outside of the state of Montana or by a resolution establishing covenants of the regents with the holders of the bonds relating to:
  - (i) the construction, operation, use, and insurance of the facilities;
  - (ii) the segregation, expenditure, and audit of accounts of the bond proceeds and of the income pledged;
  - (iii) the establishment and collection of rents, charges, admissions, and fees sufficient to provide net income adequate for prompt payment of principal and interest on bonds and creation and maintenance of reserves for that purpose; and
  - (iv) other matters that the regents may determine to be necessary or desirable for the security and marketability of the bonds;
- (g) subject to the following provisions, issue and sell or exchange bonds, secured as provided in this section, for the refunding of any outstanding bonds or other obligations issued by the regents:
  - (i) refunding bonds may, with the consent of the holders of the bonds to be refunded, be exchanged at par plus accrued interest for all or part of the bonds or may be sold at a price not less than par plus accrued interest. They may be secured by a pledge of the same revenue as the bonds refunded or by a pledge of different or additional revenues received at the same unit of the university. This subsection (1)(g) may not require the holder of any outstanding bond to accept payment of the bond or the delivery of a refunding bond in exchange for the bond, except in accordance with the terms of the outstanding bond. Bonds may be issued to refund interest as well as principal actually due and payable if the revenue pledged for the bonds are not sufficient, but not to refund any bonds or interest due that can be paid from revenue then on hand.
  - (ii) refunding bonds may bear interest at a rate lower or higher than the bonds refunded by the refunding bonds if they are issued to refund matured principal or interest for the payment of which revenue on hand is not sufficient, for the purpose of releasing revenue required for payment of the outstanding bonds permitting the pledge of the revenue for the security of other bonds as well as the refunding bonds, subject to the rights of the holders of the outstanding bonds until those bonds are fully paid and redeemed. Except as authorized in the preceding sentence, refunding bonds may not be issued unless their average annual interest rate, computed to their stated maturity dates and excluding any premium from the computation, is at least  $\frac{3}{8}$  of 1% less than the average annual interest rate on the bonds refunded, computed to their respective stated maturity dates.
  - (iii) in any case in which refunding bonds are issued and sold 6 months or more before the earliest date on which all bonds refunded by the refunding bonds mature or are prepayable in accordance with their terms, the proceeds of the refunding bonds, including any premium and accrued interest, must be deposited in escrow with a suitable bank or trust company having its principal place of business within or outside of the state, which is a member of the federal reserve system and has a combined capital and surplus of not less than \$1 million, and must be invested in the amount and in securities maturing on the dates and bearing interest at the rates that will be required to provide funds sufficient to pay when due the interest to accrue on each bond refunded to its maturity or, if it is prepayable, to the earliest prior date upon which the bond may be called for redemption from the proceeds of the refunding bonds and to pay and redeem the principal amount of each bond at maturity or, if prepayable, on that redemption date and any premium required for redemption on that date. The resolution or indenture authorizing the refunding bonds must irrevocably appropriate for these purposes the escrow fund and all income from the escrow fund and must provide for the call of all prepayable

bonds in accordance with their terms. The securities to be purchased with the escrow funds must be limited to general obligations of the United States, securities for which principal and interest payments are guaranteed by the United States, and securities issued by the following United States government agencies, including only banks for cooperatives, federal home loan banks, federal intermediate credit banks, federal land banks, and the federal national mortgage association. The securities must be purchased simultaneously with the delivery of the refunding bonds.

(iv) revenue or other funds on hand in excess of the amount pledged by resolutions or indentures authorizing outstanding bonds for the payment of principal and interest currently due on the outstanding bonds and reserves securing the payment may be used to pay the expenses incurred by the regents for the purpose of refunding, including but without limitation the cost of advertising and printing refunding bonds, legal and financial advice and assistance in connection with refunding the bonds, and the reasonable and customary charges of escrow agents and paying agents. Revenue and other funds on hand, including reserves pledged for the payment and security of outstanding revenue bonds, may be deposited in an escrow fund created for the retirement of those bonds and may be invested and disbursed as provided in subsection (1)(g)(iii) to the extent consistent with the resolutions or indentures authorizing the outstanding bonds.

(h) sell bonds and sell or exchange refunding bonds issued under this section in the manner and upon the terms as to maturities, interest rates, and redemption privileges and for the price that the regents determine with the approval of the department of administration.

(2) If applicable, the regents shall specify whether the bonds issued under this section are tax credit bonds as provided in 17-5-117.

**History:** En. 75-8504 by Sec. 33, Ch. 2, L. 1971; amd. Sec. 32, Ch. 266, L. 1977; R.C.M. 1947, 75-8504; amd. Sec. 26, Ch. 489, L. 2009.

#### **Cross-References**

Bond issues, Title 17, ch. 5.

**20-25-403. State not obligated.** No obligation created under this chapter shall ever become a charge against the state of Montana, and all such obligations, including principal and interest, shall be payable solely from the sources authorized in this chapter.

**History:** En. 75-8505 by Sec. 34, Ch. 2, L. 1971; R.C.M. 1947, 75-8505.

**20-25-404. Revenue-producing facilities considered as one.** In creating and discharging obligations under this chapter, all of the revenue-producing facilities at each unit of the Montana university system may be considered as one, but income received at one unit shall not be used to discharge obligations created for facilities at another unit.

**History:** En. 75-8506 by Sec. 35, Ch. 2, L. 1971; R.C.M. 1947, 75-8506.

#### **Cross-References**

Authorization for construction of revenue-producing facilities, 18-2-102.

**20-25-405. Restriction on use of state funds.** No state funds except those specified in 20-25-402 shall be obligated or used for the purposes of parts 3 and 4 of this chapter unless specifically directed by the legislature.

**History:** En. 75-8507 by Sec. 36, Ch. 2, L. 1971; R.C.M. 1947, 75-8507.

**20-25-406. Previous contracts unimpaired.** This chapter shall not impair any contract, indenture, or agreement executed under previous laws.

**History:** En. 75-8508 by Sec. 37, Ch. 2, L. 1971; R.C.M. 1947, 75-8508.

#### **Cross-References**

Impairment of contracts prohibited, Art. II, sec. 31, Mont. Const.

**20-25-407. Prior obligations not affected.** No provision of this chapter shall affect or impair:

(1) any contract or undertaking or the financing or agreement to finance any contract or undertaking entered into under the provisions of the laws repealed hereby prior to January 18, 1971; and

(2) the issuance of bonds to finance facilities authorized or commenced under the laws repealed hereby prior to January 18, 1971.

**History:** En. 75-8509 by Sec. 38, Ch. 2, L. 1971; R.C.M. 1947, 75-8509.



**Cross-References**

Impairment of contracts prohibited, Art. II, sec. 31, Mont. Const.

**20-25-408 through 20-25-420 reserved.**

**20-25-421. Charges for tuition — waivers.** (1) The regents may prescribe tuition rates, matriculation charges, and incidental fees for students in institutions under their jurisdiction.

(2) The regents may utilize waivers in tuition and fees to aid in the recruitment of students to units of the university system and to promote the policy of assisting the categories of students specified in this subsection. The regents may:

(a) waive or discount nonresident tuition for selected and approved nonresident students, including nonresident students who enroll under provisions of any WICHE-sponsored state reciprocal agreements that provide for the payment, when required, of the student support fee by the reciprocal state;

(b) waive resident tuition for students at least 62 years of age;

(c) waive tuition and fees for:

(i) persons who have one-fourth Indian blood or more or are enrolled members of a state-recognized or federally recognized Indian tribe located within the boundaries of the state of Montana and who have been bona fide residents of Montana for at least 1 year prior to enrollment in the Montana university system;

(ii) persons designated by the department of corrections pursuant to 52-5-112 or 53-1-214;

(iii) residents of Montana who served with the armed forces of the United States in any of its wars and who were honorably discharged from military service;

(iv) children of residents of Montana who served with the armed forces of the United States in any of its wars and who were killed in action or died as a result of injury, disease, or other disability incurred while in the service of the armed forces of the United States;

(v) the spouses or children of residents of Montana who have been declared to be prisoners of war or missing in action; or

(vi) the spouse or children of a Montana national guard member who was killed or died as a result of injury, disease, or other disability incurred in the line of duty while serving on state military duty;

(d) waive tuition charges for qualified survivors of Montana firefighters or peace officers killed in the course and scope of employment. For purposes of this subsection, a qualified survivor is a person who meets the entrance requirements at the state university or college of the person's choice and is the surviving spouse or child of any of the following who were killed in the course and scope of employment:

(i) a paid or volunteer member of a municipal or rural fire department;

(ii) a law enforcement officer as defined in 7-32-201; or

(iii) a full-time highway patrol officer.

**History:** En. 75-8601 by Sec. 42, Ch. 2, L. 1971; amd. Sec. 1, Ch. 231, L. 1971; amd. Sec. 1, Ch. 286, L. 1971; amd. Sec. 1, Ch. 432, L. 1971; amd. Sec. 1, Ch. 472, L. 1973; amd. Sec. 1, Ch. 171, L. 1974; R.C.M. 1947, 75-8601; amd. Sec. 1, Ch. 170, L. 1989; amd. Sec. 72, Ch. 546, L. 1995; amd. Sec. 1, Ch. 41, L. 1997; amd. Sec. 2, Ch. 418, L. 1997; amd. Sec. 2, Ch. 255, L. 2003; amd. Sec. 1, Ch. 577, L. 2005; amd. Sec. 1, Ch. 27, L. 2007; amd. Sec. 28, Ch. 44, L. 2007; amd. Sec. 1, Ch. 280, L. 2013; amd. Sec. 1, Ch. 73, L. 2015; amd. Sec. 8, Ch. 235, L. 2015.

**Cross-References**

Rules for determining residence, 1-1-215, 20-25-503, 20-25-504.

Free tuition to residents of Pine Hills youth correctional facility, 52-5-112.

**20-25-422. Support of university system.** (1) For the support and endowment of the university, there is annually and perpetually appropriated:

(a) the university fund income, the proceeds and revenue from the grant of any estate or interest disposed of pursuant to 20-25-307, and all other sums of money appropriated by law to the university fund after any deductions made under 77-1-109;

(b) all tuition and matriculation fees; and

(c) all contributions derived from public or private bounty.

(2) The entire income of all the funds must be placed at the disposal of the board of regents by transfer to its treasurer and must be kept separate and distinct from all other funds. The income must be used solely for the support of the colleges and departments of the university or those connected with the colleges and departments.

(3) All means derived from other public or private bounty must be exclusively devoted to the specific objects designated by the donor.

**History:** En. 75-8602 by Sec. 43, Ch. 2, L. 1971; R.C.M. 1947, 75-8602; amd. Sec. 7, Ch. 533, L. 1993; amd. Sec. 1, Ch. 370, L. 1995; amd. sec. 36, Ch. 308, L. 1995; amd. Sec. 7, Ch. 122, L. 1999; amd. Sec. 6, Ch. 465, L. 2009.

**Cross-References**

Investment of public funds, Art. VIII, sec. 13, Mont. Const.  
State university funds inviolate, Art. X, sec. 10, Mont. Const.  
Deposits and investments, Title 17, ch. 6.

**20-25-423. Repealed.** Sec. 8, Ch. 57, L. 2009.

**History:** En. Sec. 1, Ref. No. 75, app. Nov. 7, 1978; amd. Sec. 1, Ref. No. 106, app. Nov. 8, 1988; amd. Ref. No. 113, app. Nov. 3, 1998; amd. Sec. 121, Ch. 584, L. 1999.

**20-25-424. Receipt of funds.** (1) The treasurer of Montana state university-Bozeman may receive the cash appropriation received from the United States by authority of the act of congress of August 30, 1890, known as the second Morrill Act and the act of congress of March 4, 1907, known as the Nelson Amendment, to be expended under the general supervision of the regents only for the purpose for which it was appropriated by congress.

(2) On or before December 1 of each year, the state university shall make detailed reports of the amounts received and disbursed under the provisions of the acts of congress of August 30, 1890, March 16, 1906, and March 4, 1907, to the secretaries of agriculture and interior of the United States, as required by the acts of congress.

**History:** En. 75-8605 by Sec. 46, Ch. 2, L. 1971; amd. Sec. 9, Ch. 343, L. 1977; R.C.M. 1947, 75-8605(1)(a), (2); amd. Sec. 6, Ch. 21, L. 1985; amd. sec. 36, Ch. 308, L. 1995; amd. Sec. 2, Ch. 78, L. 2013.

**Cross-References**

Fiscal year and financial reports, 17-2-110.

**20-25-425. Control of expenditures.** Pursuant to the terms of appropriations of the legislature or of congress or of gifts of donors, the regents shall determine the need for all expenditures and control the purposes for which all funds shall be spent, subject to the provisions of the law dealing with state purchases.

**History:** En. 75-8609 by Sec. 50, Ch. 2, L. 1971; amd. Sec. 33, Ch. 266, L. 1977; R.C.M. 1947, 75-8609.

**Cross-References**

Uniform accounting system and expenditure control requirements, 17-1-102.  
Procurement generally, Title 18, ch. 4.  
Special purchasing conditions, Title 18, ch. 5.

**20-25-426. Donations, grants, gifts.** All donations, grants, gifts, or devises must be made to each unit in its legal name or to the Montana university system assistance program established by 20-25-455. If made to any officer or board of the unit, the donations, grants, gifts, or devises must be immediately transferred to the unit.

**History:** En. 75-8610 by Sec. 51, Ch. 2, L. 1971; R.C.M. 1947, 75-8610; amd. Sec. 3, Ch. 202, L. 2011.

**20-25-427. Allocation of indirect cost reimbursements.** Any reimbursement for indirect costs associated with a grant to or contract with the Montana university system or any of its units is allocated to the designated subfund of the current fund, as provided in 17-2-102, for distribution to the unit receiving the grant or under the contract.

**History:** En. Sec. 1, Ch. 624, L. 1989; amd. Sec. 65, Ch. 114, L. 2003; amd. Sec. 27, Ch. 489, L. 2009.

**20-25-428. Tribal college reimbursement for services provided to resident nonbeneficiary students.** (1) Subject to a line item appropriation for purposes of this section, the regents shall provide a reimbursement to tribally controlled community colleges for enrolled resident nonbeneficiary students who are taking courses for which credit is transferable to another Montana college or university.

(2) Each tribal community college shall apply to the regents for this reimbursement. Except as provided in subsection (6), the money must be distributed on a prorated basis according to the eligible resident nonbeneficiary student enrollment in each tribal community college during the previous year. To qualify, a resident nonbeneficiary student must meet the residency requirements as prescribed for the system by the regents and must be enrolled in courses for which credit is transferable to another Montana college or university. The distribution for any

resident nonbeneficiary student reimbursement must be limited to a maximum annual amount of \$3,280 for each full-time equivalent student.

(3) A reimbursement is contingent upon the tribal community college:

(a) being accredited or being a candidate for accreditation by the northwest commission on colleges and universities;

(b) entering into a contract or a state-tribal cooperative agreement, pursuant to Title 18, chapter 11, with the regents to provide the regents with information relating to eligibility of resident nonbeneficiary students and documentation on the curriculum to ensure that the content and quality of courses offered by the tribal community college are consistent with the standards adopted by the system;

(c) providing the regents with documentation that credits for the courses in which the resident nonbeneficiary students are enrolled will be accepted at another Montana college or university; and

(d) filing with the regents evidence that the college's enrollment of Indian students is at least 51%, as required by the Tribally Controlled Community College Assistance Act of 1978, 25 U.S.C. 1804.

(4) If funding is available pursuant to subsection (1), the legislature intends that the money be an amount in addition to the system budget approved in the general appropriations act.

(5) All funds appropriated under subsection (1) that are unspent revert to the state general fund.

(6) Prior to receiving money pursuant to subsection (1), each tribal community college shall grant to eligible resident nonbeneficiary students who meet the residency requirements, as prescribed for the system by the regents, fee waivers in the same percentage as the number of Indian students who are receiving fee waivers to attend a unit of the system bears to the total enrollment in the system.

(7) The calculation in subsection (6) is not intended to allow the university system to retain the calculated amount of funds. Waivers must be given to eligible students.

(8) As used in this section, "resident nonbeneficiary student" means a resident of the state of Montana who is not:

(a) a member of an Indian tribe; or

(b) a biological child of a member of an Indian tribe, living or deceased.

**History:** En. Sec. 1, Ch. 362, L. 1997; amd. Sec. 1, Ch. 147, L. 2005; amd. Sec. 1, Ch. 255, L. 2007; amd. Sec. 2, Ch. 286, L. 2015; amd. Sec. 1, Ch. 105, L. 2017.

#### **Compiler's Comments**

*2017 Amendment:* Chapter 105 in (1) near middle after "nonbeneficiary students who" deleted "except as provided in subsection (8)"; in (2) near middle after "for the system by the regents and" deleted "except as provided in subsection (8)"; in (3)(c) after "enrolled" deleted "except as provided in subsection (8)"; deleted former (8) that read: "(8) The limit of financial assistance to nonbeneficiary students is limited to students enrolled in courses for which credit is transferable to another Montana college or university"; and made minor changes in style. Amendment effective October 1, 2017.

**20-25-429 and 20-25-430 reserved.**

**20-25-431. Repealed.** Sec. 35, Ch. 308, L. 1995.

**History:** En. Sec. 1, Ch. 672, L. 1979.

**20-25-432. Repealed.** Sec. 35, Ch. 308, L. 1995.

**History:** En. Sec. 2, Ch. 672, L. 1979.

**20-25-433. Repealed.** Sec. 35, Ch. 308, L. 1995.

**History:** En. Sec. 3, Ch. 672, L. 1979; amd. Sec. 24, Ch. 298, L. 1983.

**20-25-434. Repealed.** Sec. 35, Ch. 308, L. 1995.

**History:** En. Sec. 4, Ch. 672, L. 1979; amd. Sec. 25, Ch. 298, L. 1983.

**20-25-435 through 20-25-438 reserved.**

**20-25-439. Vocational-technical education — mill levy required.** (1) Subject to 15-10-420, the boards of county commissioners of Cascade, Lewis and Clark, Missoula, Silver Bow, and Yellowstone Counties shall in each calendar year levy a tax of 1 ½ mills on the dollar value of all taxable property, real and personal, located within the respective county.

(2) The funds from the mill levy must be deposited in the general fund and must be distributed for vocational-technical education on the basis of budgets approved by the board of regents.

**History:** En. Sec. 34, Ch. 308, L. 1995; amd. Sec. 122, Ch. 584, L. 1999.

**20-25-440. Honors college program building.** The university of Montana-Missoula may construct an honors college program building costing up to \$2 million to be financed with private funds. The department of administration shall administer the construction project.

**History:** En. Sec. 1, Ch. 22, L. 1993; amd. sec. 36, Ch. 308, L. 1995.

**20-25-441. Lease of university of Montana-Missoula property for stadium authorized.** The board of regents may lease land or land and facilities to a private, nonprofit foundation organized to solicit, manage, and administer gift revenues on behalf of the university of Montana-Missoula for the purpose of renovation or construction by the foundation of a football stadium for the university of Montana-Missoula. The terms of the lease must be advantageous to the state and must include a guarantee that no commitment of funds to any portion of the initial construction, other than as approved in Senate Joint Resolution No. 14 of the 48th Legislature, is expressed or implied.

**History:** En. Sec. 1, Ch. 477, L. 1985; amd. sec. 36, Ch. 308, L. 1995.

#### **Cross-References**

State building leases, Title 18, ch. 3, part 1.

**20-25-442. Stadium construction on leased land.** The construction of stadium facilities on land leased under 20-25-441 is not subject to the requirements of Title 18, chapter 2, except that:

- (1) the department of administration shall execute the provisions of 18-2-103(1)(a) and (1)(e);
- (2) the provisions of Title 18, chapter 2, part 4, apply to all labor except donated labor; and
- (3) such other provisions of law as may be required to protect the interests of the state of Montana.

**History:** En. Sec. 2, Ch. 477, L. 1985.

**20-25-443 through 20-25-450 reserved.**

**20-25-451. Interest on student activity fees.** Interest earned on investment of student activity fees used to support a student government at a unit of the university system may be retained by the student government supported by the fees.

**History:** En. Sec. 1, Ch. 341, L. 1987.

**20-25-452 through 20-25-454 reserved.**

**20-25-455. Montana university system assistance program — purpose — duties of board of regents.** (1) There is a Montana university system assistance program administered by the board of regents through the office of the commissioner of higher education. The program must allow a private donor to make tax deductible contributions by cash, check, or money order that benefit a qualifying institution and students of these public institutions.

(2) As part of the program, the board of regents shall:

- (a) provide a donor with a receipt that reflects the contribution in sufficient detail for the donor to claim any applicable credits or deductions for state and federal income tax purposes;
- (b) deposit donations to the program in the state special revenue account established by 20-25-456;

(c) develop procedures and forms that enable a donor to make contributions by cash, check, or money order for the benefit of a specific qualifying institution. If a donor does not select an institution, the donation must be allocated on an equal basis to all qualifying institutions by dividing the total donation by the number of qualifying institutions.

(d) develop procedures and forms that enable a donor to select the percentage of the donation that will be used by a qualifying institution for building projects, educational programs, and academic scholarships. If a donor does not make a selection, the donation may be used for the general support, maintenance, or improvement of the institution as provided in 17-3-1001(2).

(e) maintain adequate records to account for contributions that are allocated to each specific qualifying institution and any donor selection preference;

(f) provide each qualifying institution with a schedule showing the total donations credited to the institution at the end of each fiscal year; and

(g) distribute donor contributions to the qualifying institution's endowment fund as provided in 20-25-456.

(3) For the purposes of 20-25-456 and this section, "qualifying institution" means:

(a) a Montana community college that is part of a community college district, defined and organized as provided in 20-15-101; and

(b) a unit of the Montana university system, as described in 20-25-201, or any of its affiliated campuses.

**History:** En. Sec. 1, Ch. 202, L. 2011.

**20-25-456. Voluntary contribution account for Montana's universities, colleges, and community colleges.** (1) There is an account in the state special revenue fund established by 17-2-102 to be known as the Montana university system assistance account. The board of regents shall deposit donations to the Montana university system assistance program in the account as provided in 20-25-455.

(2) All donations must be from a private source and may not be expended for any purpose other than for the benefit of qualifying institutions.

(3) Earnings in the account are allocable to each qualifying institution in proportion to each qualifying institution's share of the account balance.

(4) The board of regents shall distribute donor contributions to the qualifying institution's endowment fund. A distribution may not exceed the institution's allocation and must be used for the purpose established by the donor as provided in 20-25-455(2)(d). The distributions are derived from a private nonstate source and are payable without an appropriation pursuant to 17-8-101.

**History:** En. Sec. 2, Ch. 202, L. 2011.

## Part 5 University Students — Qualifications and Rights

### Part Cross-References

Pupil immunization requirements, Title 20, ch. 5, part 4.

Student financial assistance, Title 20, ch. 26.

Use of force by parent, guardian, or teacher, 45-3-107.

**20-25-501. Definitions.** (1) Terms used in this part are defined as follows:

(a) "Domicile" means a person's true, fixed, and permanent home and place of habitation.

(b) "Minor" means a male or female person who has not obtained the age of 18 years.

(c) "Qualified person" means a person legally qualified to determine the person's own domicile.

(d) "Resident student" means:

(i) a student who has been domiciled in Montana for 1 year immediately preceding registration at any unit for any term or session for which resident classification is claimed. Attendance as a full-time student at any college, university, or other institution of higher education is not alone sufficient to qualify for residence in Montana.

(ii) any graduate of a Montana high school who is a citizen or resident alien of the United States and whose parents, parent, or guardian has resided in Montana at least 1 full year of the 2 years immediately preceding the student's graduation from high school. The classification continues for not more than 4 academic years if the student remains in continuous attendance at a unit; or

(iii) a member of the armed forces of the United States assigned to and residing in Montana, the member's spouse, or the member's dependent children.

(2) In the event that the definition of residency or any portion of the definition is declared unconstitutional as it is applied to payment of nonresident fees and tuition, the regents of the Montana university system may make rules on what constitutes adequate evidence of residency status not inconsistent with those court decisions.

**History:** En. 75-8702 by Sec. 53, Ch. 2, L. 1971; amd. Sec. 17, Ch. 240, L. 1971; amd. Sec. 1, Ch. 395, L. 1971; amd. Sec. 28, Ch. 94, L. 1973; amd. Sec. 1, Ch. 397, L. 1973; R.C.M. 1947, 75-8702; amd. Sec. 1, Ch. 435, L. 1979; amd. Sec. 19, Ch. 308, L. 1995; amd. Sec. 118, Ch. 42, L. 1997.



**Cross-References**

Rules for determining residence, 1-1-215.

Rulemaking power of Regents not subject to Montana Administrative Procedure Act, 2-4-102.

**20-25-502. Qualification of students.** The university system is open to all people, subject to such uniform regulations as the regents deem proper.

**History:** En. 75-8701 by Sec. 52, Ch. 2, L. 1971; amd. Sec. 37, Ch. 535, L. 1975; R.C.M. 1947, 75-8701(part).

**Cross-References**

Nondiscrimination in education, Art. X, sec. 7, Mont. Const.

Illegal discrimination, Title 49, ch. 2.

Governmental code of fair practices, Title 49, ch. 3.

**20-25-503. Presumptions and rules as to domicile.** (1) Unless the contrary appears to the unit registering authority, it is presumed the domicile of a minor is that:

(a) of the parents or, if one of them is deceased or they do not share the same domicile, of the parent having legal custody or, if neither parent has legal custody, the parent with whom the minor customarily resides; or

(b) of the minor's guardian when the court appointing the guardian certifies that the primary purpose of the appointment is not to qualify the minor as a resident of this state.

(2) A resident student who marries a nonresident does not by that fact alone lose resident status for tuition and fee purposes for a period of 4 years after marriage.

(3) Residence is not lost because of relocation as a member of the armed forces of the United States.

(4) A new domicile is established by a qualified person if the person is physically present in Montana with no intention to acquire a domicile outside of Montana.

(5) Domicile is not lost by absence from Montana with no intention to establish a new domicile.

(6) Montana high school graduates who are citizens or resident aliens of the United States are resident students of the system for 4 consecutive years of attendance if:

(a) they apply for admittance to the system within 1 year after graduation; and

(b) their parents or the parent having legal custody or, if neither parent has legal custody, the parent with whom they customarily reside has resided in Montana in one of the 2 years immediately preceding the graduation.

(7) Upon moving to Montana, an adult employed on a full-time basis within the state of Montana may apply for in-state tuition classification for the adult's spouse or any dependent minor child, or both. If the person meets the requirement of full-time employment within the state of Montana and files for the payment of Montana state income taxes or files estimates of those taxes or is subject to withholding of those taxes and renounces residency in any other state and is not in the state primarily as a student, the person's spouse or any dependent minor child, or both, may at the next registration after qualifying be classified at the in-state rate so long as the person continues a Montana domicile. In the administration of this subsection, neither the full-time employee or spouse is eligible for in-state tuition classification if the primary purpose for coming to Montana was the education of the employee or spouse.

**History:** En. 75-8703 by Sec. 54, Ch. 2, L. 1971; amd. Sec. 2, Ch. 395, L. 1971; amd. Sec. 2, Ch. 164, L. 1975; amd. Sec. 34, Ch. 266, L. 1977; R.C.M. 1947, 75-8703; amd. Sec. 2, Ch. 435, L. 1979; amd. Sec. 20, Ch. 308, L. 1995; amd. Sec. 6, Ch. 243, L. 1997.

**Cross-References**

Rules for determining residence, 1-1-215.

**20-25-504. Evidence as to domiciliary intent — changes in status.** (1) To determine the domicile of a person, the units of the system shall apply the following rules:

(a) Nonpayment of Montana income tax by a person whose income is sufficient to be taxed is highly persuasive evidence of non-Montana domicile.

(b) A person shall intend to establish a domicile in Montana.

(2) After registration, a student's classification for tuition and fee purposes remains unchanged in the absence of evidence to the contrary. A written statement of the evidence must be filed with the registering authority of the unit. Changes in classification must be in writing signed by the registering authority and take effect at the student's next registration.

(3) A minor shall qualify for a change in status only if the minor's parents or the parent having legal custody or, if neither parent has legal custody, the parent with whom the minor

customarily resides or legal guardian or person having legal custody completes the requirements for establishing domicile.

(4) It is presumed a minor or adult registered as a full-time student at any unit is not qualified for a change in the person's dependent's classification for tuition and fee purposes unless the person completes 12 continuous months of residence while not attending a unit of the system or other institution of higher learning or while serving in the armed forces.

(5) Any student whose request for classification as a resident student is denied has the right of appeal to the executive secretary of the Montana university system. Immediately upon rejection and at the request of the student, the registering authority shall forward a copy of the authority's decision and a complete file on the student to the executive secretary. The executive secretary may accept other evidence of residence from either the student, the registering authority, or other interested persons. Within 30 days of the receipt of the decision of the registering authority, the executive secretary shall determine the resident status of the student and shall notify the student and the registering authority of the decision. The executive secretary's decision may be appealed to the regents if the regents agree to entertain an appeal.

**History:** En. 75-8704 by Sec. 55, Ch. 2, L. 1971; amd. Sec. 3, Ch. 395, L. 1971; amd. Sec. 3, Ch. 164, L. 1975; R.C.M. 1947, 75-8704; amd. Sec. 337, Ch. 56, L. 2009.

**20-25-505. Repealed.** Sec. 3, Ch. 170, L. 1989.

**History:** En. 75-8705 by Sec. 56, Ch. 2, L. 1971; amd. Sec. 1, Ch. 350, L. 1971; amd. Sec. 35, Ch. 266, L. 1977; R.C.M. 1947, 75-8705.

**20-25-506. Military instruction.** All able-bodied students of the university system may receive instruction and discipline in military tactics, the requisite arms for which shall be furnished by the state.

**History:** En. 75-8701 by Sec. 52, Ch. 2, L. 1971; amd. Sec. 37, Ch. 535, L. 1975; R.C.M. 1947, 75-8701(part).

**20-25-507 through 20-25-510 reserved.**

**20-25-511. Student's right of privacy — legislative intent.** It is the legislature's intent that an institution of the university system of Montana is obligated to respect a student's right of privacy. This obligation must be observed by establishing procedures to safeguard the institution's activities that are necessary to protect the health, safety, and privacy of a person's residence and the privacy of the person's records. Intrusions by peace officers and other officials exercising responsibility for law enforcement must be governed by standards and procedures no less stringent than those applicable to intrusions on private quarters outside the institutions. A student may not be subjected to discrimination by the use of covert records.

**History:** En. Sec. 1, Ch. 357, L. 1973; R.C.M. 1947, 75-8706; amd. Sec. 78, Ch. 575, L. 1981; amd. Sec. 338, Ch. 56, L. 2009.

#### **Cross-References**

Right of privacy, Art. II, sec. 10, Mont. Const.  
Peace officer defined, 1-1-207, 45-2-101.  
Public records, Title 2, ch. 6.  
Confidential communications by student, 26-1-809.

**20-25-512. Contracts waiving right to privacy prohibited.** A university or college facility may not require a student to sign any contract that would waive the student's right to privacy and due process of law.

**History:** En. Sec. 2, Ch. 357, L. 1973; R.C.M. 1947, 75-8707; amd. Sec. 339, Ch. 56, L. 2009.

#### **Cross-References**

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

**20-25-513. Written notice required for entry to student's room — emergency.** An authorized official of the university or college may not enter the room of a student located at an institution unless the official has given the student a notice in writing. An emergency such as a fire or a call for help or when there is probable cause to believe the occupant needs assistance is the only exception to the written notice requirement. In an emergency, evidence of a crime obtained as a result of the emergency entry may not be admissible in any court of law unless due process of law has been satisfied in obtaining the evidence.

**History:** En. Sec. 3, Ch. 357, L. 1973; R.C.M. 1947, 75-8708; amd. Sec. 340, Ch. 56, L. 2009.

#### **Cross-References**

Search and seizure, Title 46, ch. 5.

**20-25-514. Search in accordance with law.** A search or entry by any law enforcement official shall be in accordance with the laws of the city, county, state, and nation.

**History:** En. Sec. 4, Ch. 357, L. 1973; R.C.M. 1947, 75-8709.

**Cross-References**

Search and seizure, Title 46, ch. 5.

**20-25-515. Release of student records.** A university or college shall release a student's academic record only when requested by the student or by a subpoena issued by a court or tribunal of competent jurisdiction. A student's written permission must be obtained before the university or college may release any other kind of record unless such record shall have been subpoenaed by a court or tribunal of competent jurisdiction.

**History:** En. Sec. 5, Ch. 357, L. 1973; R.C.M. 1947, 75-8710.

**Cross-References**

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

Public records, Title 2, ch. 6.

**20-25-516. Academic records to be kept separate — student's right to examine records.** (1) Academic records must be kept separate from disciplinary and all other records. Academic transcripts may contain only information of an academic nature.

(2) A student has the right to examine all written summaries, descriptions, statements, or reports of an academic or disciplinary nature that may have been compiled upon the student.

**History:** En. Sec. 6, Ch. 357, L. 1973; R.C.M. 1947, 75-8711; amd. Sec. 341, Ch. 56, L. 2009.

**Cross-References**

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

Public records, Title 2, ch. 6.

**20-25-517. Awarding credit for military service — policy.** (1) The commissioner may develop criteria for awarding academic credit at a postsecondary institution for a student's prior learning through military service and submit a proposed policy that incorporates those criteria to the board of regents for approval.

(2) For the purposes of this section, "postsecondary institution" has the meaning provided in 20-26-603.

**History:** En. Sec. 1, Ch. 77, L. 2013.

## Part 6 Health Education — Drug and Alcohol Instruction

**Part Cross-References**

Dangerous drugs, Title 45, ch. 9; Title 50, ch. 32.

Alcoholism and drug dependence, Title 53, ch. 24.

**20-25-601. Purpose of part — legislative intent.** It is the purpose of this part to protect the health and safety of the people of Montana from the menace of drug and alcohol abuse. The legislature intends to require education graduates of any unit of the Montana university system or any private college or private university in Montana to be aware of the problems resulting from drug and alcohol abuse and to be somewhat knowledgeable in dealing with these problems among students.

**History:** En. Sec. 1, Ch. 396, L. 1971; amd. Sec. 3, Ch. 137, L. 1975; R.C.M. 1947, 75-8901.

**20-25-602. Teacher instruction — colleges to offer course.** All units of the Montana university system and all private colleges and private universities in Montana that offer any degree in education shall establish a credit course in health education to include drug and alcohol education and abuse by July 1, 1972. The content of the courses established in the Montana university system shall be reviewed and approved by the board of regents of the Montana university system before being offered for study in the units of the Montana university system.

**History:** En. Sec. 2, Ch. 396, L. 1971; R.C.M. 1947, 75-8902.

**20-25-603. Teacher instruction — course required of education students.** All units of the Montana university system and all private colleges and universities in Montana that offer any degree in education shall require that any person who receives any degree in education from that unit, private college, or private university must have successfully completed a course in health education to include drug and alcohol education and abuse prior to being awarded the degree.

**History:** En. Sec. 3, Ch. 396, L. 1971; R.C.M. 1947, 75-8903; amd. Sec. 342, Ch. 56, L. 2009.

**20-25-604. Department in advisory capacity.** The department of public health and human services shall act in an advisory capacity in establishing all courses required under this part, and the courses may be established only after consultation with and advice by the department.

**History:** En. Sec. 5, Ch. 396, L. 1971; R.C.M. 1947, 75-8905; amd. Sec. 52, Ch. 418, L. 1995; amd. Sec. 73, Ch. 546, L. 1995.

## **Part 7 Work-Study Program**

### **Part Cross-References**

Student financial assistance, Title 20, ch. 26.

**20-25-701. Definitions and purpose.** (1) As used in this part, unless the context otherwise requires, the following definitions apply:

(a) “Institution” means any public institution of postsecondary education governed, supervised, or coordinated by the board of regents of higher education.

(b) “Student” means any Montana resident, as established by the board of regents of higher education, who has met the qualifications for enrollment as a full-time student at an institution or who is presently enrolled as a full-time student in good standing, as determined by the institution.

(2) It is the purpose of this part to help ensure that no resident of Montana be denied attendance at institutions governed, supervised, or coordinated by the board of regents of higher education because of financial barriers and further to provide low-cost supplemental assistance for all governing units within Montana. The legislature intends that any Montana resident wishing to gain admittance to such institutions in Montana, within necessary budgetary limitations as provided by law, shall be allowed the opportunity to earn in part or in total sufficient money to pay the costs accompanying such attendance through employment by state and local governing units and certain public interest organizations.

**History:** En. 75-9101, 75-9102 by Secs. 1, 2, Ch. 307, L. 1974; R.C.M. 1947, 75-9101, 75-9102.

**20-25-702. Montana work-study program.** The Montana work-study program is hereby established to be administered by the board of regents of higher education as provided by this part.

**History:** En. 75-9103 by Sec. 3, Ch. 307, L. 1974; R.C.M. 1947, 75-9103.

**20-25-703. Limitation on use of funds.** At least 70% of the funds allocated to the program must be used to provide job opportunities for students with demonstrated financial need. The remainder of the funds allocated to this program may be used to provide job opportunities on a basis other than financial need. The other bases include but are not limited to:

(1) laboratory, teaching, and tutorial assistantships requiring particular skills; and

(2) cases in which a student’s family cannot demonstrate financial need but in which the student has a desire to contribute toward the student’s education through employment.

**History:** En. 75-9104 by Sec. 4, Ch. 307, L. 1974; R.C.M. 1947, 75-9104; amd. Sec. 343, Ch. 56, L. 2009.

**20-25-704. Funds supplemental to other funds.** All funds allocated through this program are supplemental in nature and are not meant to replace existing federal and state student financial assistance funds or any other funds that would otherwise be appropriated for student assistance.

**History:** En. 75-9105 by Sec. 5, Ch. 307, L. 1974; R.C.M. 1947, 75-9105.

**20-25-705. Administration.** The board of regents of higher education shall promulgate rules for the allocation of program funds among the institutions.

**History:** En. 75-9106 by Sec. 6, Ch. 307, L. 1974; R.C.M. 1947, 75-9106.

### **Cross-References**

Rulemaking power of Regents not subject to Montana Administrative Procedure Act, 2-4-102.

**20-25-706. Eligibility.** Any local governing body; state or local administrative agency, department, board, commission; judicial, legislative, or other governmental unit; or nonprofit private organization is eligible to employ Montana students under the program as determined

by the board of regents of higher education and within the funding limitations of the program, which eligibility:

- (1) will not result in the displacement of employed workers or impair existing contracts for services;
- (2) will not involve any partisan or nonpartisan political activity associated with a candidate or contending group or faction in an election for public or party office;
- (3) will not involve the construction, operation, or maintenance of so much of any facility as is used or to be used for sectarian instruction or as a place of worship; and
- (4) in the case of nonprofit organizations other than governmental units, will result in employment which is in the general public interest rather than in the interest of a particular group.

**History:** En. 75-9107 by Sec. 7, Ch. 307, L. 1974; R.C.M. 1947, 75-9107; amd. Sec. 13, Ch. 384, L. 1979.

**20-25-707. Antidiscrimination.** An employer is not eligible to employ any person under this program if the employer practices discrimination in employment against any individual because of race, creed, religion, color, political ideas, sex, age, marital status, physical or mental disability, ancestry, or national origin.

**History:** En. 75-9108 by Sec. 8, Ch. 307, L. 1974; amd. Sec. 36, Ch. 266, L. 1977; R.C.M. 1947, 75-9108; amd. Sec. 20, Ch. 472, L. 1997.

#### **Cross-References**

Nondiscrimination in education, Art. X, sec. 7, Mont. Const.  
 Illegal discrimination, Title 49, ch. 2.  
 Governmental code of fair practices, Title 49, ch. 3.  
 Rights of persons with disabilities, Title 49, ch. 4.

**20-25-708. Approval of salaries.** The salaries paid to students employed under this program and the number of hours each student works shall be approved by institution officers administering the program, subject to guidelines promulgated by the board of regents of higher education; provided that in no case will any student employed under the program be paid less than the minimum wage as provided by law.

**History:** En. 75-9109 by Sec. 9, Ch. 307, L. 1974; R.C.M. 1947, 75-9109.

#### **Cross-References**

Minimum wages, Title 39, ch. 3, part 4.

**20-25-709. Contributions from employers.** Each employer must contribute toward the salary of each student employed under the program at a level determined by the board of regents of higher education but at a level no less than 30% of the student's hourly wage.

**History:** En. 75-9110 by Sec. 10, Ch. 307, L. 1974; R.C.M. 1947, 75-9110.

## **Part 8 Medical Education Agreements**

**20-25-801. Western Regional Higher Education Compact approved.** The legislature of the state of Montana approves, ratifies, and adopts the Western Regional Higher Education Compact approved by the western governors conference meeting at Denver, Colorado, on November 10, 1950, which compact is as follows:

### **WESTERN REGIONAL HIGHER EDUCATION COMPACT**

#### **ARTICLE I**

(1) WHEREAS, the future of this nation and of the western states is dependent upon the quality of the education of its youth; and

(2) WHEREAS, many of the western states individually do not have sufficient numbers of potential students to warrant the establishment and maintenance within their borders of adequate facilities in all of the essential fields of technical, professional, and graduate training, nor do all of the states have the financial ability to furnish within their borders institutions capable of providing acceptable standards of training in all of the fields mentioned above; and

(3) WHEREAS, it is believed that the western states, or groups of such states within the region, cooperatively can provide acceptable and efficient educational facilities to meet the needs of the region and of the students thereof;



(4) NOW, THEREFORE, the states of Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming and the territories of Alaska and Hawaii do hereby covenant and agree as follows:

## ARTICLE II

Each of the compacting states and territories pledges to each of the other compacting states and territories faithful cooperation in carrying out all the purposes of this compact.

## ARTICLE III

The compacting states and territories hereby create the western interstate commission for higher education, hereinafter called the commission. Said commission shall be a body corporate of each compacting state and territory and an agency thereof. The commission shall have all the powers and duties set forth herein, including the power to sue and be sued and such additional powers as may be conferred upon it by subsequent action of the respective legislatures of the compacting states and territories.

## ARTICLE IV

(1) The commission shall consist of three resident members from each compacting state or territory. At all times one commissioner from each compacting state or territory shall be an educator engaged in the field of higher education in the state or territory from which the educator is appointed.

(2) The commissioners from each state and territory shall be appointed by the governor thereof as provided by law in such state or territory. Any commissioner may be removed or suspended from office as provided by the law of the state or territory from which the commissioner is appointed.

(3) The terms of each commissioner shall be 4 years; provided, however, that the first three commissioners shall be appointed as follows: one for 2 years, one for 3 years, and one for 4 years. Each commissioner shall hold office until a successor shall be appointed and qualified. If any office becomes vacant for any reason, the governor shall appoint a commissioner to fill the office for the remainder of the unexpired term.

## ARTICLE V

(1) Any business transacted at any meeting of the commission must be by affirmative vote of a majority of the whole number of compacting states and territories.

(2) One or more commissioners from a majority of the compacting states and territories shall constitute a quorum for the transaction of business.

(3) Each compacting state and territory represented at any meeting of the commission is entitled to one vote.

## ARTICLE VI

(1) The commission shall elect from its number a presiding officer and a vice presiding officer and may appoint and, at its pleasure, dismiss or remove such officers, agents, and employees as may be required to carry out the purpose of this compact and shall fix and determine their duties, qualifications, and compensation, having due regard for the importance of the responsibilities involved.

(2) The commissioners shall serve without compensation but shall be reimbursed for their actual and necessary expenses from the funds of the commission.

## ARTICLE VII

(1) The commission shall adopt a seal and bylaws and shall adopt and promulgate rules and regulations for its management and control.

(2) The commission may elect such committees as it deems necessary for the carrying out of its functions.

(3) The commission shall establish and maintain an office within one of the compacting states for the transaction of its business and may meet at any time but in any event must meet at least once a year. The presiding officer may call such additional meetings and upon the

request of a majority of the commissioners of three or more compacting states or territories shall call additional meetings.

(4) The commission shall submit a budget to the governor of each compacting state and territory at such time and for such period as may be required.

(5) The commission shall, after negotiations with interested institutions, determine the cost of providing the facilities for graduate and professional education for use in its contractual agreements throughout the region.

(6) On or before January 15 of each year, the commission shall submit to the governors and legislatures of the compacting states and territories a report of its activities for the preceding calendar year.

(7) The commission shall keep accurate books of account, showing in full its receipts and disbursements, and said books of account shall be open at any reasonable time for inspection by the governor of any compacting state or territory or the governor's designated representative. The commission shall not be subject to the audit and accounting procedure of any of the compacting states or territories. The commission shall provide for an independent annual audit.

#### ARTICLE VIII

(1) It shall be the duty of the commission to enter into such contractual agreements with any institutions in the region offering graduate or professional education and with any of the compacting states or territories as may be required in the judgment of the commission to provide adequate service and facilities of graduate and professional education for the citizens of the respective compacting states or territories. The commission shall first endeavor to provide adequate services and facilities in the fields of dentistry, medicine, public health, and veterinary medicine and may undertake similar activities in other professional and graduate fields.

(2) For this purpose the commission may enter into contractual agreements:

(a) with the governing authority of any educational institution in the region or with any compacting state or territory to provide such graduate or professional educational services upon terms and conditions to be agreed upon between contracting parties; and

(b) with the governing authority of any educational institution in the region or with any compacting state or territory to assist in the placement of graduate or professional students in educational institutions in the region providing the desired services and facilities, upon such terms and conditions as the commission may prescribe.

(3) It shall be the duty of the commission to undertake studies of needs for professional and graduate educational facilities in the region, the resources for meeting such needs, and the long-range effects of the compact on higher education and from time to time to prepare comprehensive reports on such research for presentation to the western governors' conference and to the legislatures of the compacting states and territories. In conducting such studies, the commission may confer with any national or regional planning body which may be established. The commission shall draft and recommend to the governors of the various compacting states and territories uniform legislation dealing with problems of higher education in the region.

(4) For the purpose of this compact the word "region" shall be construed to mean the geographical limits of the several compacting states and territories.

#### ARTICLE IX

The operating costs of the commission shall be apportioned equally among the compacting states and territories.

#### ARTICLE X

This compact shall become operative and binding immediately as to those states and territories adopting it whenever five or more of the states or territories of Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, Wyoming, Alaska, and Hawaii have duly adopted it prior to July 1, 1953. This compact shall become effective as to any additional states or territories adopting thereafter at the time of such adoption.

#### ARTICLE XI

This compact may be terminated at any time by consent of a majority of the compacting states or territories. Consent shall be manifested by passage and signature in the usual manner

of legislation expressing such consent by the legislature and governor of such terminating state. Any state or territory may at any time withdraw from this compact by means of appropriate legislation to that end. Such withdrawal shall not become effective until 2 years after written notice thereof by the governor of the withdrawing state or territory, accompanied by a certified copy of the requisite legislative action, is received by the commission. Such withdrawal shall not relieve the withdrawing state or territory from its obligations hereunder accruing prior to the effective date of withdrawal. The withdrawing state or territory may rescind its action of withdrawal at any time within the 2-year period. Thereafter, the withdrawing state or territory may be reinstated by application to and the approval by a majority vote of the commission.

## ARTICLE XII

(1) If any compacting state or territory shall at any time default in the performance of any of its obligations assumed or imposed in accordance with the provisions of this compact, all rights, privileges, and benefits conferred by this compact or agreements hereunder shall be suspended from the effective date of such default as fixed by the commission.

(2) Unless such default shall be remedied within a period of 2 years following the effective date of such default, this compact may be terminated with respect to such defaulting state or territory by affirmative vote of three-fourths of the other member states or territories.

(3) Any such defaulting state may be reinstated by:

- (a) performing all acts and obligations upon which it has heretofore defaulted; and
- (b) application to and the approval by a majority vote of the commission.

**History:** En. Sec. 1, Ch. 216, L. 1951; R.C.M. 1947, 75-4901; amd. Sec. 344, Ch. 56, L. 2009.

**20-25-802. Effective date — notice of approval.** Said compact shall become operative and binding at the time provided and in accordance with Article X of said compact. The governor of Montana shall give notice of the approval, ratification, and adoption of said compact by the 32nd legislative assembly of the state of Montana to the governors of each of the states and territories named in said Article X of said compact. The governors shall have power to appoint the commissioners for which provision is made in the compact, and said commissioners shall have the power and authority specified in said compact and such other power and authority as may hereafter be prescribed by law.

**History:** En. Sec. 2, Ch. 216, L. 1951; R.C.M. 1947, 75-4902.

**20-25-803. Authority of western interstate commission for higher education to make agreements for placement of students.** The western interstate commission for higher education is authorized to act on behalf of this state in making arrangements for the placement of students in institutions and programs of higher learning outside the states which are parties to the compact for establishing the commission. For that purpose, the commission may negotiate and enter into arrangements and contracts with this state or any appropriate agency thereof, with public and private educational institutions and agencies, and with states and other governmental entities. Such arrangements and contracts may provide for the obtaining of one or more places for students on either a special or continuing basis, the payment of partial or full tuition and other charges, and the furnishing of reciprocal, compensating, or other advantages and benefits in support of the educational program involved.

**History:** En. Sec. 1, Ch. 128, L. 1971; R.C.M. 1947, 75-4903.

### Cross-References

Power of community college board of trustees to enter into agreements with Commission, 20-15-225.

**20-25-804. Form and contents of agreements.** The authority conferred by 20-25-803 shall be exercised only pursuant to written agreement between an agency of this state having responsibility for or duties with respect to programs for assisting residents of this state to obtain higher education. Any such agreements shall include provisions for the payment of tuition and any other costs, and no such agreement shall be made which commits this state or any agency or officer thereof to any obligation for which funds have not been appropriated or otherwise made available in accordance with law.

**History:** En. Sec. 2, Ch. 128, L. 1971; R.C.M. 1947, 75-4904.

### Cross-References

Appropriation and disbursement of money from treasury, 17-8-101.

Limit on expenditures, 17-8-103.

**20-25-805. State obligations or rights under compact not altered.** Nothing contained in this chapter shall be construed to alter any of the obligations or restrict or impair any rights which this state may have under the compact establishing the commission.

**History:** En. Sec. 3, Ch. 128, L. 1971; R.C.M. 1947, 75-4905.

**Cross-References**

Impairment of contracts prohibited, Art. II, sec. 31, Mont. Const.

**20-25-806. Appointment of commissioners to the western interstate commission for higher education.** (1) In making the appointments of commissioners provided for in 20-25-801, the governor shall appoint three members as follows:

- (a) one member who is an educator engaged in the field of higher education in Montana;
- (b) one member who is engaged in a professional occupation; and
- (c) one member who is a legislator.

(2) The term of each commissioner is 4 years as provided in the compact. The legislator appointed shall serve until the expiration of the term of appointment, even though the legislative term may have ended.

**History:** En. Sec. 1, Ch. 130, L. 1979; amd. Sec. 345, Ch. 56, L. 2009.

**20-25-807 through 20-25-809 reserved.**

**20-25-810. Contract requirements for university of Washington cooperative medical education program.** (1) (a) An individual accepted into the cooperative medical education program with the university of Washington school of medicine shall, before confirming enrollment in the program, enter into a contract specifying whether the individual will commit to entering active full-time professional practice in Montana for a period of 3 years within 1 year of obtaining professional status.

(b) Residency in a family medicine residency program in Montana must be credited toward the practice requirement of this section at a rate of one-third year for each year of service in the residency program.

(2) An individual who decides against committing to entering full-time professional practice in Montana shall pay 2.5 times the fee established in 20-26-1502. The fee must be deposited in the state special revenue account provided for in 20-26-1501.

(3) (a) An individual who fails to honor a commitment to return to Montana to enter full-time professional practice for the full 3-year period shall repay the full amount of the individual medicine support fee paid by the state for the individual's medical education.

(b) Repayment must begin within 1 year of obtaining professional status and must be completed within 10 years of the date the repayment requirement began.

(c) Interest must accrue at the time the loan becomes due at a rate equal to the rate for the federal Stafford loan, adjusted annually but not to exceed 8%.

(4) The repayment obligation may be:

(a) suspended if repayment is temporarily impossible or would create extreme hardship for a temporary period, including but not limited to suspension for medical reasons, personal reasons, parental leave, or call to active duty in the armed forces; or

(b) waived if repayment is permanently impossible or would create extreme hardship, including but not limited to death, inability to complete the program, or inability to obtain professional status due to disability or another reason.

(5) The board of regents may adopt policies to carry out the provisions of this section including but not limited to:

(a) determination of the time at which an individual obtains professional status; and

(b) the circumstances under which repayment of the medicine support fee may be suspended or waived.

**History:** En. Sec. 1, Ch. 436, L. 2017.

**Compiler's Comments**

*Effective Date:* This section is effective October 1, 2017.

*Applicability:* Section 7, Ch. 436, L. 2017, provided: "[This act] applies to individuals entering the cooperative medical education program with the university of Washington as freshmen in academic year 2018-2019 or later."

## Part 9 Family Education Savings Program

### Part Cross-References

Family education savings program account, Title 15, ch. 62.

**20-25-901. Family education savings program oversight committee — membership — powers and duties.** (1) There is a family education savings program oversight committee under the authority of the board.

(2) The committee consists of seven members appointed by the governor to staggered 4-year terms. The members must include:

- (a) the commissioner of insurance or the commissioner's designee;
- (b) the state treasurer or the state treasurer's designee;
- (c) the presiding officer of the board or the presiding officer's designee; and
- (d) four members of the general public, each of whom possesses knowledge, skill, and experience in accounting, risk management, or investment management or as an actuary.

(3) The committee shall select a presiding officer and a vice presiding officer from among the committee's membership.

(4) A majority of the membership constitutes a quorum for the transaction of business. The committee shall meet at least once a year, with additional meetings called by the presiding officer.

(5) The committee:

(a) shall recommend financial institutions for approval by the board to act as the managers of family education savings accounts pursuant to 15-62-201; and

(b) may submit proposed policies to the board to assist in the implementation and administration of Title 15, chapter 62.

(6) The committee is allocated to the board for administrative purposes only, as prescribed in 2-15-121.

(7) Members of the committee must be compensated as provided in 2-15-124.

(8) The definitions in 15-62-103 apply to this section.

**History:** En. Sec. 6, Ch. 540, L. 1997; amd. Sec. 53, Ch. 483, L. 2001; amd. Sec. 7, Ch. 566, L. 2003.

**20-25-902. Board — powers and duties.** (1) The board shall:

(a) retain professional services, if necessary, including services of accountants, auditors, consultants, and other experts;

(b) seek rulings and other guidance relating to the program from the United States department of the treasury and the internal revenue service;

(c) make changes to the program as required for the participants in the program to obtain the federal income tax benefits or treatment provided by section 529 of the Internal Revenue Code, 26 U.S.C. 529, as amended;

(d) charge, impose, and collect administrative fees and service charges pursuant to any agreement, contract, or transaction relating to the program;

(e) select the financial institution or institutions to act as the program manager pursuant to 15-62-203;

(f) on the recommendation of the committee, adopt rules to prevent contributions on behalf of a designated beneficiary in excess of those necessary to pay the qualified higher education expenses of the designated beneficiaries. The rules must address the following:

(i) procedures for aggregating the total balances of multiple accounts established for a designated beneficiary;

(ii) the establishment of a maximum total balance that may be held in accounts for a designated beneficiary;

(iii) requirements that persons who contribute to an account certify that to the best of their knowledge, the balance in all qualified state tuition programs, as defined in section 529 of the Internal Revenue Code, 26 U.S.C. 529, for the designated beneficiary does not exceed the lesser of:

(A) a maximum college savings amount established by the board; or

(B) the cost in current dollars of qualified higher education expenses that the contributor reasonably anticipates the designated beneficiary will incur;



(iv) requirements that any excess balances with respect to a designated beneficiary be promptly withdrawn in a nonqualified withdrawal or rolled over to another account in accordance with this section;

(g) adopt procedures as necessary to implement Title 15, chapter 62;

(h) serve as trustee of the family education savings trust established in 15-62-301;

(i) enter into participating trust agreements with account owners; and

(j) maintain the program on behalf of the state as required by section 529 of the Internal Revenue Code, 26 U.S.C. 529.

(2) The definitions in 15-62-103 apply to this section.

**History:** En. Sec. 7, Ch. 540, L. 1997; amd. Sec. 8, Ch. 566, L. 2003; amd. Sec. 6, Ch. 549, L. 2005.

## Part 10

### Motorcycle Safety Training Program

**20-25-1001. Definitions.** As used in this title, unless the context clearly indicates otherwise, the following definitions apply:

(1) “Instructor of motorcycle safety training” means an instructor approved by the board of regents to instruct motorcycle safety training.

(2) “Motorcycle safety training course” means a course for beginning and experienced motorcycle riders with both classroom and on-road components that has been approved by the board of regents and that is designed to teach motorcyclists how to safely operate their vehicles.

**History:** En. Sec. 1, Ch. 181, L. 1999.

**20-25-1002. State motorcycle safety account — proceeds earmarked for account.**

(1) There is a state motorcycle safety account in the treasury of the state of Montana.

(2) Money collected and accrued from motorcycle safety training courses, motorcycle endorsement fees, motorcycle safety fees, and designated grants or an amount equal to that amount must be deposited in the state motorcycle safety account and must be available to support only approved motorcycle safety training courses, appropriate instructor of motorcycle safety training, and other related motorcycle safety training activities.

**History:** En. Sec. 2, Ch. 181, L. 1999; amd. Sec. 127, Ch. 574, L. 2001.

**20-25-1003. Motorcycle safety promotion.** In cooperation with other state, local government, and private agencies, the department of justice and the board of regents are encouraged to promote safety and awareness in the use and operation of motorcycles through action appropriate to the agencies’ purposes and goals, including advertising and encouraging both publicly and privately offered motorcycle safety training.

**History:** En. Sec. 1, Ch. 324, L. 1989; Sec. 61-2-401, MCA 1989; redes. 20-7-510 by Sec. 10, Ch. 701, L. 1991; amd. Sec. 6, Ch. 181, L. 1999; Sec. 20-7-510, MCA 1997; redes. 20-25-1003 by Sec. 14(2), Ch. 181, L. 1999.

**20-25-1004. Motorcycle safety advisory committee.** (1) There is a motorcycle safety advisory committee. The committee is allocated to the office of the board of regents for administrative purposes.

(2) The purpose of the motorcycle safety advisory committee is to advise the board of regents and the department of justice concerning motorcycle rider safety issues, motorcycle safety training, motorcycle endorsement testing, and other matters relating to motorcycle safety.

(3) The motorcycle safety advisory committee consists of five members. Except as provided in subsection (5)(a), each member must be appointed for a term of 4 years. The committee consists of:

(a) one peace officer appointed by the governor;

(b) one certified instructor of motorcycle safety training, as provided in 20-25-1005, who is appointed by the board of regents;

(c) two motorcycle riders representing motorcycle riding groups, such as the American motorcyclist association or American bikers aiming toward education (ABATE), to be nominated by these groups for appointment by the governor; and

(d) one representative from the department of justice who is appointed by the attorney general.

(4) A member may be removed for cause. If a vacancy occurs, a member must be appointed to fill the unexpired term by the authority that appointed the vacating member.

(5) (a) (i) To allow for staggered membership appointments, the initial terms of two committee members must be for 2 years. These members are:

(A) the peace officer provided for in subsection (3)(a); and

(B) one motorcycle rider, provided for in subsection (3)(c), to be chosen by lot at the organizational meeting.

(ii) The successors for the peace officer and motorcycle rider shall serve 4-year terms.

(b) The first instructor of motorcycle safety training member appointed under subsection (3)(b) need not be certified by the board of regents, but the member must have an instructor of motorcycle safety training certification awarded by a national organization concerned with motorcycle safety.

**History:** En. Sec. 2, Ch. 324, L. 1989; Sec. 61-2-402, MCA 1989; redes. 20-7-511 by Sec. 10, Ch. 701, L. 1991; amd. Sec. 7, Ch. 181, L. 1999; Sec. 20-7-511, MCA 1997; redes. 20-25-1004 by Sec. 14(2), Ch. 181, L. 1999.

**20-25-1005. Standards for motorcycle safety training.** The board of regents may establish minimum motorcycle safety training standards, including instruction, courses, and instructor certification for conducting training authorized by 20-25-1006. The standards must be based upon national standards promulgated by the motorcycle safety foundation or a similar organization recognized by the board of regents.

**History:** En. Sec. 3, Ch. 324, L. 1989; Sec. 61-2-403, MCA 1989; redes. 20-7-512 by Sec. 10, Ch. 701, L. 1991; amd. Sec. 8, Ch. 181, L. 1999; Sec. 20-7-512, MCA 1997; redes. 20-25-1005 by Sec. 14(2), Ch. 181, L. 1999.

**20-25-1006. Motorcycle safety training course — tuition.** (1) The board of regents may prescribe tuition rates for the motorcycle safety training courses. The tuition collected must be deposited in the state motorcycle safety account, as provided in 20-25-1002.

(2) The board of regents may delegate authority to a unit of the university system to conduct motorcycle safety training courses and to approve instructors of motorcycle safety training.

(3) State agencies and subdivisions of the state may provide facilities, such as classrooms and outdoor paved areas or other resources, for conducting motorcycle safety training courses.

(4) Subject to the availability of funds, the board of regents may pay for construction, repair, or purchases from the state motorcycle safety account to provide facilities for motorcycle safety training courses.

**History:** En. Sec. 4, Ch. 324, L. 1989; amd. Sec. 1, Ch. 701, L. 1991; Sec. 61-2-404, MCA 1989; redes. 20-7-513 by Sec. 10, Ch. 701, L. 1991; amd. Sec. 9, Ch. 181, L. 1999; Sec. 20-7-513, MCA 1997; redes. 20-25-1006 by Sec. 14(2), Ch. 181, L. 1999; amd. Sec. 10, Ch. 307, L. 2001.

**20-25-1007. Repealed.** Sec. 253, Ch. 574, L. 2001.

**History:** En. Sec. 5, Ch. 324, L. 1989; amd. Sec. 12, Ch. 383, L. 1991; amd. Sec. 2, Ch. 701, L. 1991; Sec. 61-2-405, MCA 1989; redes. 20-7-514 by Sec. 10, Ch. 701, L. 1991; amd. Sec. 1, Ch. 432, L. 1995; amd. Sec. 10, Ch. 181, L. 1999; Sec. 20-7-514, MCA 1997; redes. 20-25-1007 by Sec. 14(2), Ch. 181, L. 1999; amd. Sec. 9, Ch. 409, L. 1999.

## Parts 11 and 12 reserved

### Part 13 Group Benefits

**20-25-1301. Purpose.** The purpose of this part is to establish the structure by which the Montana university system may develop group benefits plans for employees of the Montana university system and their dependents and to clarify that the plan design and employee premium levels are not mandatory subjects for collective bargaining under Title 39, chapter 31.

**History:** En. Sec. 1, Ch. 256, L. 1999.

**20-25-1302. Definitions.** As used in this part, the following definitions apply:

(1) “Advisory committee” means the Montana university system interunit benefits advisory committee established in 2-15-1530.

(2) “Group benefits” means group hospitalization, health, medical, surgical, disability, life, and other related group benefits provided to employees and dependents of the Montana university system. The term does not include casualty insurance, marine insurance, property insurance, surety insurance, and title insurance.

**History:** En. Sec. 2, Ch. 256, L. 1999.

**20-25-1303. Duties of commissioner — group benefits plans and employee premium levels not mandatory subjects for collective bargaining.** (1) The commissioner shall:

- (a) design group benefits plans and establish premium levels for employees;
- (b) establish specifications for bids and accept or reject bids for administering group benefits plans;
- (c) negotiate and administer contracts for group benefits plans;
- (d) prepare an annual report that:
  - (i) describes the group benefits plans being administered; and
  - (ii) details the historical and projected program costs and the status of reserve funds; and
- (e) adopt policies for the conduct of business of the advisory committee and to carry out the provisions of this part.

(2) The provisions of Title 33 do not apply to the commissioner when exercising the duties provided for in this part.

(3) The design or modification of group benefits plans and the establishment of employee premium levels are not mandatory subjects for collective bargaining under Title 39, chapter 31.

**History:** En. Sec. 3, Ch. 256, L. 1999.

**20-25-1304. Functions of advisory committee.** (1) The commissioner shall consult with the advisory committee before modifying Montana university system group benefits plans or before adjusting employee premium levels.

(2) The advisory committee shall meet at least semiannually to:

- (a) review the existing employee group benefits plans;
- (b) review claims experience, projections, and problems;
- (c) recommend changes in plan design;
- (d) recommend employee premium rates; and
- (e) advise the commissioner on employee group benefits matters.

(3) The advisory committee is the exclusive means by which collective bargaining agents may participate in the design or modification of group benefits plans and the establishment of employee premium levels.

**History:** En. Sec. 5, Ch. 256, L. 1999.

#### **Cross-References**

Interunit Benefits Advisory Committee established, 2-15-1530.

**20-25-1305 through 20-25-1309 reserved.**

**20-25-1310. Alternatives to conventional insurance for providing employee group benefits — requirements.** (1) The commissioner may establish alternative plans to conventional insurance for providing Montana university system employee group benefits. In developing an alternative plan, the commissioner shall:

- (a) maintain an alternative group benefits plan on an actuarially sound basis;
- (b) maintain reserves sufficient to liquidate the unrevealed claims liability and other liabilities of an alternative group benefits plan; and
- (c) deposit all reserve funds, state contributions, interest earnings, and premiums paid to an alternative group benefits plan. The deposits must be expended for claims under the alternative plan and for costs for administering the alternative plan, including the costs of hiring consultants, actuaries, and auditors.

(2) Prior to implementation of an alternative group benefits plan, the commissioner shall present to the advisory committee evidence upon which the commissioner has concluded that the alternative method is more efficient, less costly, or otherwise superior to contracting for conventional insurance.

**History:** En. Sec. 6, Ch. 256, L. 1999.

**20-25-1311 through 20-25-1314 reserved.**

**20-25-1315. Legislative findings and purpose.** (1) The legislature finds that:

- (a) air ambulance services provide a necessary, and sometimes lifesaving, means of transporting Montanans experiencing health emergencies;
- (b) Montanans desire adequate access to air ambulance services;

(c) in many cases the high charges assessed by out-of-network air ambulance services and limited insurer and health plan reimbursements have resulted in Montanans incurring excessive out-of-pocket expenses; and

(d) the federal Airline Deregulation Act preempts states from enacting any law related to a price, route, or service of an air carrier, which is interpreted as applying to air ambulance services.

(2) The purpose of 20-25-1315 through 20-25-1320 is to prevent Montanans from incurring excessive out-of-pocket expenses in out-of-network air ambulance situations in a manner that is not preempted by the Airline Deregulation Act.

**History:** En. Sec. 1, Ch. 231, L. 2017.

**Compiler's Comments**

*Effective Date:* Section 13, Ch. 231, L. 2017, provided: "[This act] is effective on passage and approval." Approved April 25, 2017.

*Applicability:* Section 14, Ch. 231, L. 2017, provided: "[This act] applies to all air ambulance transports that occur on or after [the effective date of this act]." Effective April 25, 2017.

**20-25-1316. Hold harmless.** (1) If a covered person receives services from a non-Montana hospital-controlled out-of-network air ambulance service for an emergency medical condition, an insurer or health plan shall assume the covered person's responsibility, if any, for amounts charged in excess of allowed amounts for covered services and supplies, applicable copayments, coinsurance, and deductibles.

(2) An insurer or health plan that assumes a responsibility pursuant to subsection (1) shall notify the air ambulance service of that assumption no later than the date the insurer or health plan issues payment under subsection (4).

(3) If an air ambulance service receives notice pursuant to subsection (2), with the exception of amounts owed for applicable copayments, coinsurance, and deductibles, the air ambulance service may not:

(a) bill, collect, or attempt to collect from the covered person for the responsibility assumed under subsection (1);

(b) report to a consumer reporting agency that the covered person is delinquent on the responsibility assumed under subsection (1); or

(c) obtain a lien on the covered person's property in connection with the responsibility assumed under subsection (1).

(4) (a) An insurer or health plan is responsible for payment or denial of a claim within 30 days after receipt of a proof of loss, except as provided in 33-18-232(1). Within the timeframe provided in this subsection (4)(a), the insurer or health plan shall notify the covered person of the amount of deductible, coinsurance, or copayment that is the covered person's responsibility to pay.

(b) The insurer or health plan responsible under subsection (1) shall make payment based on:

(i) the billed charges of the air ambulance service;

(ii) another amount negotiated with the air ambulance service; or

(iii) the median amount the insurer or health plan would pay to an in-network air ambulance service for the services performed.

(5) If after payment is made under subsection (4) the insurer or health plan and air ambulance service dispute whether any further payment obligation exists, the insurer or health plan and air ambulance service shall enter into the dispute resolution process set forth in 20-25-1318 through 20-25-1320. After the independent dispute resolution process is exhausted, the aggrieved party may pursue any available remedies in a court of competent jurisdiction.

(6) For the purposes of this section:

(a) "emergency medical condition" means a medical condition manifesting itself by acute symptoms of sufficient severity, including severe pain, so that a person who possesses knowledge of health and medicine could reasonably expect the absence of immediate medical attention to result in:

(i) placing the health of the individual or, with respect to a pregnant woman, the health of the woman or her unborn child in serious jeopardy;

(ii) serious impairment to bodily functions; or

(iii) serious dysfunction of any bodily organ or part; and

(b) “insurer” means a health insurance issuer as defined in 33-22-140 and includes issuers of health insurance under Titles 2 and 20.

(7) Sections 20-25-1315 through 20-25-1320 do not apply if a covered person used an air ambulance membership subscription, as provided in 50-6-320, for the services provided by the air ambulance service.

**History:** En. Sec. 2, Ch. 231, L. 2017.

**Compiler’s Comments**

*Effective Date:* Section 13, Ch. 231, L. 2017, provided: “[This act] is effective on passage and approval.” Approved April 25, 2017.

*Applicability:* Section 14, Ch. 231, L. 2017, provided: “[This act] applies to all air ambulance transports that occur on or after [the effective date of this act].” Effective April 25, 2017.

**20-25-1317. Disclosures by air ambulance service.** An out-of-network nonhospital-controlled air ambulance service must disclose by July 1 of each year any relationships or financial arrangements with health care providers, insurers, or health plans. This includes but is not limited to employment arrangements, ownership interests, first call agreements, and board memberships. This information must be filed with the department of public health and human services and also posted prominently on the commissioner of insurance’s website. The air ambulance service must ensure the continued accuracy of this information throughout the year by submitting written updates within 5 days of any changes to the information.

**History:** En. Sec. 3, Ch. 231, L. 2017.

**Compiler’s Comments**

*Effective Date:* Section 13, Ch. 231, L. 2017, provided: “[This act] is effective on passage and approval.” Approved April 25, 2017.

*Applicability:* Section 14, Ch. 231, L. 2017, provided: “[This act] applies to all air ambulance transports that occur on or after [the effective date of this act].” Effective April 25, 2017.

**20-25-1318. Independent dispute resolution.** (1) If an insurer or health plan and air ambulance service enter into dispute resolution, the procedure in 20-25-1319 is to be used to determine the fair market price of the services that are the subject of the claim.

(2) Payment of the fair market price calculated pursuant to 20-25-1319 constitutes payment in full of the claim.

(3) A determination under this section is not binding on the insurer or health plan and the air ambulance service.

(4) Unless otherwise agreed to by the parties, each party shall:

(a) bear its own attorney fees and costs incurred under the procedure provided in 20-25-1319; and

(b) equally bear all fees and costs of the independent reviewer.

(5) As used in this section, “fair market price” means the value of the services provided as determined by the independent reviewer based on the factors provided in 20-25-1319(6).

**History:** En. Sec. 4, Ch. 231, L. 2017.

**Compiler’s Comments**

*Effective Date:* Section 13, Ch. 231, L. 2017, provided: “[This act] is effective on passage and approval.” Approved April 25, 2017.

*Applicability:* Section 14, Ch. 231, L. 2017, provided: “[This act] applies to all air ambulance transports that occur on or after [the effective date of this act].” Effective April 25, 2017.

**20-25-1319. Independent dispute resolution procedure — exemptions.** (1) To initiate a dispute resolution procedure under 20-25-1315 through 20-25-1320, the parties shall file a written notice of dispute with the insurance commissioner.

(2) Except as provided in subsection (3), within 30 days after the date of receipt of the notice of dispute, and if no independent reviewer is mutually agreed to by the insurer or health plan and air ambulance service under subsection (3), the insurance commissioner shall appoint an independent reviewer having the qualifications listed in 20-25-1320. The insurance commissioner shall select an independent reviewer randomly from a list established under 20-25-1320.

(3) The insurer or health plan and air ambulance provider may by mutual agreement select an independent reviewer. The parties shall notify the insurance commissioner of the mutually agreed independent reviewer prior to the appointment of an independent reviewer under subsection (2).

(4) An independent reviewer’s sole substantive determination under this part is the fair market price of the services that are the subject of the claim.



(5) The independent reviewer may make procedural rulings necessary to regulate the proceedings.

(6) The factors to be used in the independent reviewer's determination are:

- (a) the training, qualifications, and composition of the air ambulance service personnel;
- (b) the fees for rotor wing or fixed wing services originating or provided entirely within the state of Montana that are:
  - (i) usually charged by the air ambulance service in Montana;
  - (ii) usually accepted as payment in full by the air ambulance service in Montana;
  - (iii) usually charged by other air ambulance services doing business in Montana;
  - (iv) usually accepted as payment in full by other air ambulance services doing business in Montana; and
  - (v) usually paid by the insurer or health plan for the service provided in Montana;
- (c) whether the air ambulance service was provided in a rural or urban context;
- (d) the applicable medicare rate of payment for the services that are the subject of the claim; and
- (e) any other factors the independent reviewer determines to be relevant in determining fair market price in accordance with established precedent.

(7) Participation in a dispute resolution procedure under 20-25-1318 through 20-25-1320 exempts an insurer from 33-18-201(6) and (8) and 33-18-232(2).

**History:** En. Sec. 5, Ch. 231, L. 2017.

**Compiler's Comments**

*Effective Date:* Section 13, Ch. 231, L. 2017, provided: "[This act] is effective on passage and approval." Approved April 25, 2017.

*Applicability:* Section 14, Ch. 231, L. 2017, provided: "[This act] applies to all air ambulance transports that occur on or after [the effective date of this act]." Effective April 25, 2017.

**20-25-1320. Insurance commissioner duties — independent reviewer qualifications.**

(1) The insurance commissioner shall:

- (a) approve any independent reviewer that is eligible to adjudicate disputes under 20-25-1315 through 20-25-1320;
- (b) maintain a list of independent reviewers eligible to adjudicate disputes under 20-25-1315 through 20-25-1320;
- (c) terminate approval of an independent reviewer and remove the independent reviewer from the list of approved independent reviewers upon determining that an independent reviewer no longer meets the requirements to adjudicate disputes; and
- (d) adopt rules necessary to implement 20-25-1315 through 20-25-1320, including rules regarding discovery and other procedures regarding the dispute resolution process and eligibility of an independent reviewer.

(2) An individual is eligible to be an independent reviewer under 20-25-1315 through 20-25-1320 if the individual is knowledgeable and experienced in applicable principles of contract and insurance law.

(3) In approving an individual as an independent reviewer, the insurance commissioner shall ensure that the individual does not have a conflict of interest that would adversely impact the individual's independence and impartiality in rendering a decision in an independent dispute resolution procedure under 20-25-1318 and 20-25-1319. A conflict of interest includes but is not limited to an ownership or direct familial interest in an insurer, a health care provider, or an air ambulance service that may be involved in an independent dispute resolution procedure under 20-25-1318 and 20-25-1319.

(4) In approving an individual as an independent reviewer, the insurance commissioner may not approve an individual who is currently serving in any matter as a hearing officer for the commissioner.

**History:** En. Sec. 6, Ch. 231, L. 2017.

**Compiler's Comments**

*Effective Date:* Section 13, Ch. 231, L. 2017, provided: "[This act] is effective on passage and approval." Approved April 25, 2017.

*Applicability:* Section 14, Ch. 231, L. 2017, provided: "[This act] applies to all air ambulance transports that occur on or after [the effective date of this act]." Effective April 25, 2017.

## Part 14

### Self-Insured Student Health Plan

**20-25-1401. Purpose.** The purpose of this part is to establish the structure by which the Montana university system may develop a self-insured student health plan, to work in conjunction with available campus student health services for enrolled students of the Montana university system and their dependents, including students of a community college district, and to clarify that the plan is not regulated by or subject to the provisions of Title 33.

**History:** En. Sec. 1, Ch. 199, L. 2011.

**20-25-1402 reserved.**

**20-25-1403. Authorization to establish self-insured health plan for students — requirements — exemption.** (1) The commissioner may establish a self-insured student health plan for enrolled students of the system and their dependents, including students of a community college district. In developing a self-insured student health plan, the commissioner shall:

- (a) maintain the plan on an actuarially sound basis;
- (b) maintain reserves sufficient to liquidate the unrevealed claims liability and other liabilities of the plan; and
- (c) deposit all reserve funds, contributions and payments, interest earnings, and premiums paid to the plan. The deposits must be expended for claims under the plan and for the costs of administering the plan, including but not limited to the costs of hiring staff, consultants, actuaries, and auditors, purchasing necessary reinsurance, and repaying debts.

(2) Prior to the implementation of a self-insured student health plan, the commissioner shall consult with affected parties, including but not limited to the board of regents and representatives of enrolled students of the system.

(3) A self-insured student health plan developed under this part is not responsible for and may not cover any services or pay any expenses for which payment has been made or is due under an automobile, premises, or other private or public medical payment coverage plan or provision or under a workers' compensation plan or program, except when the other payor is required by federal law to be a payor of last resort. The term "services" includes but is not limited to all medical services, procedures, supplies, medications, or other items or services provided to treat an injury or medical condition sustained by a member of the plan.

(4) The provisions of 20-25-1315 through 20-25-1320 apply to any self-insured student health plan developed under this part.

(5) The provisions of Title 33 do not apply to the commissioner when exercising the duties provided for in this part.

**History:** En. Sec. 2, Ch. 199, L. 2011; amd. Sec. 7, Ch. 363, L. 2013; amd. Sec. 7, Ch. 231, L. 2017.

**Compiler's Comments**

*2017 Amendment:* Chapter 231 inserted (4) pertaining to applicability; and made minor changes in style. Amendment effective April 25, 2017.

*Applicability:* Section 14, Ch. 231, L. 2017, provided: "[This act] applies to all air ambulance transports that occur on or after [the effective date of this act]." Effective April 25, 2017.

**20-25-1404. Authorization to finance self-insured health plan for students.** The commissioner may, subject to the approval of the board of regents, finance the initial costs to establish the plan established pursuant to 20-25-1401 by using any of the following methods:

(1) authorizing a long-term loan of university funds. The loan must bear interest at a rate equivalent to the previous fiscal year's average rate of return on the board of investments' short-term investment pool.

(2) issuing and selling bonds and notes in whole or in part for this purpose; or

(3) using any other lawful means, including the assessment of student fees.

**History:** En. Sec. 3, Ch. 199, L. 2011.

## CHAPTER 26

### STUDENT FINANCIAL ASSISTANCE

#### Part 1 — Resident Student Assistance General Provisions

- 20-26-101. Short title.
- 20-26-102. Purpose.
- 20-26-103. Definitions.
- 20-26-104. Resident student financial assistance program created.

#### Part 2 — Resident Student Assistance Administration of Program

- 20-26-201. Duties of commissioner of higher education relative to program.
- 20-26-202. Administrative costs.
- 20-26-203. Deposit of moneys.

#### Parts 3 through 5 reserved

#### Part 6 — Scholarship Programs

- 20-26-601. Short title.
- 20-26-602. Governor's postsecondary scholarship program — duties of council — duties of board.
- 20-26-603. Definitions.
- 20-26-604. Types and amounts of scholarships — criteria.
- 20-26-605. Eligibility requirements — renewals — limited appeals.
- 20-26-606. Public and private sources of funding — restrictions on use — accounting.
- 20-26-607 through 20-26-610 reserved.
- 20-26-611. Repealed.
- 20-26-612. Repealed.
- 20-26-613. Repealed.
- 20-26-614. Montana STEM scholarship program.
- 20-26-615. Eligibility requirements — ineligibility.
- 20-26-616. STEM scholarship amounts — renewal requirements.
- 20-26-617. Montana STEM scholarship program state special revenue account.
- 20-26-618 through 20-26-620 reserved.
- 20-26-621. Short title.
- 20-26-622. Purpose.
- 20-26-623. Montana promise grant program — student eligibility — administration.

#### Parts 7 through 10 reserved

#### Part 11 — Guaranteed Student Loan Program

- 20-26-1101. Definitions.
- 20-26-1102. Authorization to establish student loan program.
- 20-26-1103. Duties of board.
- 20-26-1104. Repealed.
- 20-26-1105. Student loan account.
- 20-26-1106. No state obligation.
- 20-26-1107. Dissolution — disposition of money.
- 20-26-1108 through 20-26-1110 reserved.
- 20-26-1111. Access to governmental records.
- 20-26-1112 through 20-26-1114 reserved.
- 20-26-1115. Repealed.
- 20-26-1116. Repealed.
- 20-26-1117. Repealed.
- 20-26-1118. Repealed.
- 20-26-1119. Repealed.
- 20-26-1120. Repealed.
- 20-26-1121. Repealed.

#### Parts 12 and 13 reserved

#### Part 14 — Heritage of Montana Enterprise Act (Repealed)

#### Part 15 — Health Care Provider Incentive Programs

- 20-26-1501. Incentive for physicians practicing in rural areas or medically underserved areas or for underserved populations state special revenue account.
- 20-26-1502. Fee assessments — deposits.
- 20-26-1503. Use of incentive for physicians practicing in rural areas or medically underserved areas or for underserved populations state special revenue account.
- 20-26-1504 through 20-26-1510 reserved.
- 20-26-1511. Institutional nursing incentive program.

**Chapter Cross-References**

Work-study program, Title 20, ch. 25, part 7.

## Part 1

### Resident Student Assistance General Provisions

**20-26-101. Short title.** Parts 1 and 2 may be cited as “The Montana Resident Student Financial Assistance Program”.

**History:** En. 75-9401 by Sec. 1, Ch. 515, L. 1977; R.C.M. 1947, 75-9401.

**20-26-102. Purpose.** The purpose of parts 1 and 2 is to establish a program to provide financial assistance to resident Montana postsecondary students.

**History:** En. 75-9402 by Sec. 2, Ch. 515, L. 1977; R.C.M. 1947, 75-9402.

**20-26-103. Definitions.** As used in parts 1 and 2, the following definitions apply:

(1) “Postsecondary institution” includes the units of the university system and any private postsecondary institution.

(2) “Resident student” means a person who was a resident of Montana prior to enrolling and who is attending a qualified postsecondary institution within Montana.

**History:** (1), (2)En. 75-9403 by Sec. 3, Ch. 515, L. 1977; Sec. 75-9403, R.C.M. 1947; (3)En. by Code Commissioner, 1979; R.C.M. 1947, 75-9403; amd. Sec. 7, Ch. 21, L. 1985; amd. Sec. 7, Ch. 243, L. 1997; amd. Sec. 35, Ch. 7, L. 2001; amd. Sec. 1, Ch. 39, L. 2013.

**Cross-References**

Rules for determining residence, 1-1-215.

**20-26-104. Resident student financial assistance program created.** There is a resident student financial assistance program administered by the commissioner of higher education.

**History:** En. 75-9404 by Sec. 4, Ch. 515, L. 1977; R.C.M. 1947, 75-9404; amd. Sec. 2, Ch. 39, L. 2013.

## Part 2

### Resident Student Assistance Administration of Program

**Part Cross-References**

Appointment of Commissioner of Higher Education, 2-15-1506.

Duties of Commissioner of Higher Education, 20-2-131.

**20-26-201. Duties of commissioner of higher education relative to program.** The commissioner of higher education shall:

(1) adopt rules to administer the resident student financial assistance program, including the establishment of criteria for student eligibility which shall consider financial need;

(2) determine the amount of individual grants;

(3) establish procedures for fiscal control, fund accounting, and necessary reports; and

(4) apply for, receive, and administer federal and private money.

**History:** En. 75-9406 by Sec. 6, Ch. 515, L. 1977; R.C.M. 1947, 75-9406; amd. Sec. 3, Ch. 39, L. 2013.

**Cross-References**

Regents’ rulemaking power not subject to Montana Administrative Procedure Act, 2-4-102.

**20-26-202. Administrative costs.** Administration costs not provided by the federal grant that are attributable to parts 1 and 2 shall be negotiated and charged to the individual participants.

**History:** En. 75-9408 by Sec. 8, Ch. 515, L. 1977; R.C.M. 1947, 75-9408.

**20-26-203. Deposit of moneys.** Funds received by the commissioner of higher education for the resident student financial assistance program, including funds for the administration of parts 1 and 2, shall be deposited in the state treasury.

**History:** En. 75-9407 by Sec. 7, Ch. 515, L. 1977; R.C.M. 1947, 75-9407.

**Cross-References**

Deposits and investments, Title 17, ch. 6.

## Parts 3 through 5 reserved

## Part 6 Scholarship Programs

**20-26-601. Short title.** Sections 20-26-601 through 20-26-605 may be cited as the “Governor’s Postsecondary Scholarship Program”.

**History:** En. Sec. 1, Ch. 489, L. 2005; amd. Sec. 6, Ch. 385, L. 2015.

**20-26-602. Governor’s postsecondary scholarship program — duties of council — duties of board.** (1) There is a governor’s postsecondary scholarship program administered by the board through the office of the commissioner of higher education with assistance from the council.

(2) The purpose of the governor’s postsecondary scholarship program is to provide scholarships on the basis of need and merit to Montana residents toward the cost of attendance at 2-year and 4-year postsecondary institutions and to allocate some of the scholarships to specific areas of study that promote economic development or address critical workforce shortage areas in Montana.

(3) The council shall gather information and make recommendations for the board to consider in the board’s adoption of policies and procedures under 20-26-601 through 20-26-605. The recommendations must attempt to promote efficient administration of the governor’s postsecondary scholarship program.

(4) After consideration of the council’s recommendations pursuant to subsection (3), the board shall adopt policies and procedures for administration of the governor’s postsecondary scholarship program consistent with 20-26-601 through 20-26-605.

(5) Subject to available funding, scholarships must be awarded on an annual basis to qualified recipients pursuant to policies adopted by the board. The board may delegate to Montana high schools and postsecondary institutions the authority to review scholarship applications and select scholarship recipients.

**History:** En. Sec. 2, Ch. 489, L. 2005; amd. Sec. 21, Ch. 1, Sp. L. May 2007; amd. Sec. 7, Ch. 385, L. 2015.

**20-26-603. Definitions.** As used in this part, the following definitions apply:

(1) “Accredited” means a school that is accredited by the board of public education pursuant to 20-7-102.

(2) “Board” means the board of regents of higher education created by Article X, section 9(2), of the Montana constitution.

(3) “Council” means the governor’s postsecondary scholarship advisory council created in 2-15-1524.

(4) “Montana high school” means an accredited public or nonpublic high school.

(5) “Montana private college” means a nonprofit private educational institution:

(a) with its main campus and primary operations located within the state; and

(b) that offers education on the level of a baccalaureate degree and is accredited for that purpose by a national or regional accrediting agency recognized by the board.

(6) “Postsecondary institution” means:

(a) a unit of the Montana university system, as defined in 20-25-201;

(b) a Montana community college, defined and organized as provided in 20-15-101; or

(c) an accredited tribal community college located in the state of Montana.

(7) “Scholarship” means a payment toward the cost of attendance at a qualifying postsecondary institution, rounded up to the nearest dollar.

(8) “STEM or health care major” means a major that is related to science, technology, engineering, mathematics, or health care. Specific qualifying majors are identified in board policy.

(9) “Title IV” refers to Title IV of the Higher Education Act of 1965, as amended.

**History:** En. Sec. 3, Ch. 489, L. 2005; amd. Sec. 22, Ch. 1, Sp. L. May 2007; amd. Sec. 4, Ch. 140, L. 2011; amd. Sec. 8, Ch. 385, L. 2015.

**20-26-604. Types and amounts of scholarships — criteria.** (1) Scholarships must be awarded under the governor’s postsecondary scholarship program in accordance with the requirements of this section and criteria established by board policy and procedures pursuant to 20-26-602 and this section.



(2) Scholarships must be awarded on the basis of merit or need. Scholarships may be for either \$1,000 or \$2,000. Merit-based and need-based scholarships must be awarded in approximately equal monetary amounts.

(3) A merit-based scholarship must be awarded to at least one graduate of every accredited high school in Montana, including accredited nonpublic high schools.

(4) A portion of the money appropriated for need-based scholarships must be designated for applicants planning to attend 2-year postsecondary institutions or 2-year programs at 4-year postsecondary institutions and who plan to focus on specific areas of study that promote economic development or address current or projected critical workforce shortage areas in Montana, such as technology, health sciences, or trades, as provided under policies established by the board pursuant to 20-26-602.

**History:** En. Sec. 23, Ch. 1, Sp. L. May 2007.

**20-26-605. Eligibility requirements — renewals — limited appeals.** (1) Scholarships must be awarded under the governor's postsecondary scholarship program in accordance with the eligibility requirements of this section and pursuant to policies and procedures established by the board pursuant to 20-26-602 and this section.

(2) To be eligible to receive a scholarship, a student must be a Montana resident eligible for in-state tuition as determined by board policy.

(3) To be eligible to receive a merit-based scholarship, a student must have attained a minimum grade point average or numerical score on a standardized college admission test as prescribed by board policy.

(4) To be eligible to receive a need-based scholarship, a student must complete the standard free application for federal student aid form and the student's expected family contributions may not exceed the cost of attendance at the postsecondary institution that the student expects to attend.

(5) Scholarships must be awarded to students seeking their first certificate or their 2-year or 4-year degree at a postsecondary institution.

(6) Scholarships may be renewed in accordance with board policy. The policy must include proof of satisfactory academic performance.

(7) Scholarships may be terminated in accordance with board policy.

(8) The board shall establish policies and procedures:

(a) to allow a student to transfer from one postsecondary institution to another without loss of the scholarship; and

(b) to ensure compliance with 20-26-606(3) if a student transfers from a postsecondary institution to a Montana private college.

(9) A scholarship recipient's right to receive other financial aid, awards, and scholarships may be limited as required by federal or state law or board policy.

(10) A student is ineligible to receive a scholarship under the governor's postsecondary scholarship program if the student:

(a) has been awarded a Montana university system honor scholarship;

(b) has failed to meet the federal Title IV selective service registration requirements;

(c) is in default on a Title IV or state of Montana educational loan or owes a refund to a federal Title IV or state of Montana student financial aid program; or

(d) is incarcerated. Upon release, the student may begin receiving scholarship payments if the student meets all other eligibility requirements. If approved by the board, credits earned during incarceration may be counted toward eligibility.

(11) (a) Except as provided in subsection (11)(b), scholarship awards are not subject to appeal.

(b) A student may appeal the termination of a scholarship based on extenuating circumstances in accordance with board policy.

**History:** En. Sec. 24, Ch. 1, Sp. L. May 2007; amd. Sec. 9, Ch. 385, L. 2015.

**20-26-606. Public and private sources of funding — restrictions on use — accounting.** (1) The board may accept donations from public or private sources and shall distribute those funds in accordance with this part.

(2) Except when a donor of private funds designates that scholarship funds must be given to students attending a private college, scholarship awards are determined solely by the board or an entity designated by the board pursuant to board policy adopted under 20-26-602 and 20-26-614.

(3) Funds from public sources may not be used to pay for scholarships for students enrolled in Montana private colleges.

(4) Funds from private sources must be deposited into an account in the state special revenue fund established in 17-2-102 to pay for scholarships for students enrolled in postsecondary institutions or, when designated by the donor, in Montana private colleges.

(5) Each postsecondary institution or Montana private college that receives scholarship payments shall prepare and submit to the board, in accordance with procedures and policies established by the board, a report of the postsecondary institution's or Montana private college's administration of the scholarships and a complete accounting of scholarship funds.

(6) Funds from a scholarship may not be used to pay for remedial or college-preparatory course work.

(7) Except for funds donated from private sources, the obligation for funding the governor's postsecondary scholarship program is an obligation of the state. This section may not be construed to require the board to provide scholarships to an eligible student without an appropriation to the board for the purposes of the governor's postsecondary scholarship program. Funds from private sources may not be used as an offset to general fund appropriations.

**History:** En. Sec. 25, Ch. 1, Sp. L. May 2007; amd. Sec. 10, Ch. 385, L. 2015.

**20-26-607 through 20-26-610 reserved.**

**20-26-611. Repealed.** Sec. 29, Ch. 1, Sp. L. May 2007.

**History:** En. Sec. 5, Ch. 489, L. 2005.

**20-26-612. Repealed.** Sec. 29, Ch. 1, Sp. L. May 2007.

**History:** En. Sec. 6, Ch. 489, L. 2005.

**20-26-613. Repealed.** Sec. 29, Ch. 1, Sp. L. May 2007.

**History:** En. Sec. 7, Ch. 489, L. 2005.

**20-26-614. Montana STEM scholarship program.** (1) There is a Montana STEM scholarship program. The program is administered by the board through the office of the commissioner of higher education.

(2) The purpose of the Montana STEM scholarship program is to provide an incentive for Montana high school students to prepare for, enter into, and complete degrees in postsecondary fields related to science, technology, engineering, mathematics, and health care, with the goal of increasing the number of STEM degree recipients participating in Montana's workforce.

(3) The board shall adopt policies and procedures for the administration of the Montana STEM scholarship program consistent with 20-26-614 through 20-26-617.

**History:** En. Sec. 1, Ch. 385, L. 2015.

**20-26-615. Eligibility requirements — ineligibility.** (1) To be eligible for the Montana STEM scholarship, a student must:

(a) be a Montana resident who graduated from a Montana high school with a cumulative grade point average of at least 3.25;

(b) be eligible for in-state tuition pursuant to the board's policies;

(c) have completed a rigorous college preparation program, including 4 years of mathematics and 3 years of science;

(d) be enrolled full time in at least 15 credit hours at a postsecondary institution in the fall semester immediately following the student's graduation from high school;

(e) be seeking the student's first certificate or 2-year or 4-year degree at a postsecondary institution; and

(f) have declared a STEM or health care major as the student's intended course of study.

(2) A student is ineligible for the Montana STEM scholarship if the student:

(a) has failed to meet the federal Title IV selective service registration requirements;

(b) is in default on a Title IV or state of Montana educational loan or owes a refund to a federal Title IV or state of Montana student financial aid program; or

(c) is incarcerated. A student may receive a Montana STEM scholarship upon release if the student meets all other eligibility requirements.

**History:** En. Sec. 2, Ch. 385, L. 2015.

**20-26-616. STEM scholarship amounts — renewal requirements.** (1) A student who meets the requirements of 20-26-615 will receive a \$1,000 scholarship for the first academic year the student is enrolled at a postsecondary institution.

(2) A student who meets the requirements of this subsection will receive a \$2,000 scholarship for the student's second academic year. To be eligible for the STEM scholarship in the student's second academic year, the student must:

- (a) have completed at least 30 credit hours in the first academic year;
- (b) have maintained a grade point average of at least 3.0;
- (c) be enrolled full time at the postsecondary institution in the current academic year; and
- (d) continue to pursue a STEM or health care major.

(3) The board shall adopt a policy regarding the award of scholarships when the funds in the account established in 20-26-617 are insufficient to fully fund the STEM scholarship program. The policy must prioritize scholarships in the following order:

(a) Renewals for qualified applicants of scholarships that were previously awarded have the highest priority.

(b) If funds remain after renewal scholarships are awarded pursuant to subsection (3)(a), then the number of new scholarships must be reduced but the individual award amounts must meet the requirements of subsections (1) and (2).

**History:** En. Sec. 3, Ch. 385, L. 2015.

**20-26-617. Montana STEM scholarship program state special revenue account.**

(1) There is a Montana STEM scholarship program account within the state special revenue fund established in 17-2-102. The purpose of the account is to fund the Montana STEM scholarship program. The account is administered by the board through the office of the commissioner of higher education.

(2) There must be paid into the account the lottery net revenue calculated pursuant to 23-7-402. Every student who is eligible under the provisions of 20-26-615 and 20-26-616 must be awarded a Montana STEM scholarship.

(3) If the amount in this account is greater than the amount required to fund the scholarships as required by subsection (2), the excess funds may be carried over and used to fund scholarships in the next fiscal year.

(4) The board may use up to 1% of the funds transferred into the account in each fiscal year for costs related to administering the Montana STEM scholarship program.

(5) This account is statutorily appropriated, as provided in 17-7-502, to the board for the Montana STEM scholarship program established in 20-26-614 through 20-26-616.

**History:** En. Sec. 4, Ch. 385, L. 2015.

**20-26-618 through 20-26-620 reserved.**

**20-26-621. Short title.** Sections 20-26-621 through 20-26-623 may be cited as the "Montana Promise Act".

**History:** En. Sec. 1, Ch. 234, L. 2017.

**Compiler's Comments**

*Effective Date:* Section 6, Ch. 234, L. 2017, provided: "[This act] is effective July 1, 2017."

**20-26-622. Purpose.** The purpose of 20-26-621 through 20-26-623 is to increase college affordability and attainment for and decrease the amount of college debt incurred by Montana residents who utilize community and tribal colleges and 2-year institutions of the Montana university system.

**History:** En. Sec. 2, Ch. 234, L. 2017.

**Compiler's Comments**

*Effective Date:* Section 6, Ch. 234, L. 2017, provided: "[This act] is effective July 1, 2017."

**20-26-623. Montana promise grant program— student eligibility— administration.**

(1) There is a Montana promise grant program for the purpose of providing grants to students who meet the criteria for certain postsecondary programs pursuant to subsection (2). The program is administered by the board of regents through the office of the commissioner of higher education.

The board of regents shall adopt policies for the administration of the program consistent with 20-26-621 through 20-26-623.

(2) To be eligible for a grant under the program, a student must:

(a) be enrolled at least half-time in a community or tribal college located in the state of Montana or in a 2-year institution of the Montana university system and taking courses that lead to:

(i) the ability to transfer to another postsecondary institution entering as at least a second-year student;

(ii) an associate degree offered by the institution; or

(iii) a professional credential offered by the institution;

(b) have been a resident of Montana for at least 12 months prior to applying for the grant program;

(c) have graduated from high school or received a secondary education equivalency certificate;

(d) have demonstrated academic ability through earning a cumulative grade point average of at least 2.5 in high school or through other measures as determined by the board of regents;

(e) have completed and submitted the free application for federal student aid for the current academic year and accepted all federal and state aid grants available; and

(f) have not completed more than 60 credit hours or the equivalent at a postsecondary institution or earned an associate degree.

(3) A student awarded a grant under the Montana promise grant program may receive a grant for no more than 2 years and is eligible for grants only if the student is making satisfactory progress as determined by the board of regents in courses described in subsection (2)(a), maintaining a cumulative grade point average of at least 2.7, and contributing a minimum of 8 hours of community service each semester.

(4) Montana promise grants must be awarded based on each term for which a student is eligible. The amount of the grant must be the greater of \$75 per enrolled credit or the amount of tuition remaining due after any other federal, state, or private aid grants or waivers have reduced the tuition amount.

(5) (a) Except as provided in subsection (5)(b), the total amount in grants awarded under this section may not exceed \$2 million in each fiscal year or any lesser amount appropriated by the legislature.

(b) The board of regents may accept donations from private or out-of-state public sources for this program and shall distribute any funding received in accordance with 20-26-621 through 20-26-623.

(6) If the amount of funding is not sufficient to provide grants to all eligible students, the board of regents may adopt policies for the prioritization of grants based on the following criteria in order:

(a) previous participation in the grant program with students who have previously received grants through the program receiving priority;

(b) financial need;

(c) students in programs for professional credentialing in high-demand labor markets; and

(d) recency of graduation from high school or completion of secondary education equivalency certification, with priority to more recent graduates and completers.

**History:** En. Sec. 3, Ch. 234, L. 2017.

**Compiler's Comments**

*Effective Date:* Section 6, Ch. 234, L. 2017, provided: "[This act] is effective July 1, 2017."

## **Parts 7 through 10 reserved**

### **Part 11**

## **Guaranteed Student Loan Program**

**20-26-1101. Definitions.** As used in this part, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Agency" means the entity designated by the board to administer student loans.

(2) "Board" means the board of regents of higher education.

(3) “Eligible educational institution” means any institution approved by the United States secretary of education as eligible to participate in the student loan program pursuant to Title IV of the Higher Education Act of 1965, as amended.

(4) “Eligible lender” means any lender as defined under Title IV of the Higher Education Act of 1965, as amended.

(5) “Student loan program” means the program established by the board pursuant to this part.

**History:** En. Sec. 3, Ch. 691, L. 1979; amd. Sec. 1, Ch. 205, L. 1993; amd. Sec. 8, Ch. 243, L. 1997; amd. Sec. 8, Ch. 446, L. 1997; amd. Sec. 4, Ch. 39, L. 2013; amd. Sec. 1, Ch. 227, L. 2015.

**Cross-References**

Nonprofit corporations, Title 35, ch. 2.

**20-26-1102. Authorization to establish student loan program.** (1) The board may establish and contract for the operation of a student loan program to make available to students improved opportunities for education by guaranteeing loans in accordance with applicable federal law to persons attending or accepted for enrollment at an eligible educational institution.

(2) The board is designated as the state representative for receiving federal, public, or private money that is now or will be made available under any act of the congress of the United States or otherwise for purposes of a student loan program.

**History:** En. Sec. 4, Ch. 691, L. 1979; amd. Sec. 9, Ch. 243, L. 1997.

**20-26-1103. Duties of board.** In discharging its duties in relation to the student loan program, the board shall:

(1) act as guarantor and administrator on loans of money, upon terms and conditions that the board may prescribe, to assist persons attending or accepted for enrollment at an eligible educational institution to meet their educational expenses;

(2) approve financial or credit institutions or other lenders as eligible lenders upon their meeting the standards established by the board for making student loans;

(3) incur and discharge debts, including defaulted loan obligations that have been guaranteed by the board;

(4) make and execute agreements, contracts, and other instruments with any public or private person or agency, including the United States secretary of education, for the administration of the student loan program;

(5) provide for the operation of the student loan program to conduct loan approval processing, essential and special loan servicing, preclaims assistance, supplemental preclaims assistance, claim processing and collections, and other services that would promote lender and school participation and loan availability to students;

(6) perform any other duties necessary for the administration of the student loan program and other student financial aid-related activities for the benefit of students as determined by the board.

**History:** En. Sec. 5, Ch. 691, L. 1979; amd. Sec. 2, Ch. 205, L. 1993; amd. Sec. 10, Ch. 243, L. 1997; amd. Sec. 5, Ch. 38, L. 2001.

**20-26-1104. Repealed.** Sec. 5, Ch. 39, L. 2013.

**History:** En. Sec. 6, Ch. 691, L. 1979; amd. Sec. 3, Ch. 205, L. 1993; amd. Sec. 11, Ch. 243, L. 1997.

**20-26-1105. Student loan account.** (1) There is a student loan account within the federal special revenue fund provided for in 17-2-102.

(2) The board shall credit to the account established in subsection (1) all money designated for the student loan program by the United States or by any other public or private source. All expenses incurred by the board in connection with the student loan program, including principal and interest payments required because of loan defaults, must be charged against the account.

(3) Money in the account not needed to meet current obligations of the board in the exercise of its responsibilities as guarantor and administrator, as provided for in this part, must be invested in accordance with the provisions of Title 17, chapter 6. Interest proceeds must be credited to the account.

(4) Money on deposit in the student loan account may not revert to the general fund at the close of any fiscal year.

**History:** En. Sec. 7, Ch. 691, L. 1979; amd. Sec. 20, Ch. 281, L. 1983; amd. Sec. 1, Ch. 134, L. 1987; amd. Sec. 4, Ch. 700, L. 1989; amd. Sec. 12, Ch. 243, L. 1997.



**20-26-1106. No state obligation.** The legislature is not obligated to appropriate any money to pay for student loan defaults. For the purpose of the student loan program, neither the board nor the agency may obligate the credit of the state.

**History:** En. Sec. 8, Ch. 691, L. 1979; amd. Sec. 13, Ch. 243, L. 1997.

**Cross-References**

Appropriation for private educational purpose prohibited, Art. V, sec. 11, Mont. Const.

**20-26-1107. Dissolution — disposition of money.** (1) The student loan program may not be dissolved until all contractual obligations have been satisfied and all loans have been paid by the borrower or, if in default, by the board or have been otherwise accounted for under Title IV of the Higher Education Act of 1965, as amended.

(2) Upon dissolution of the program or the cessation of the program's activities, all property and money of the board relating to the student loan program not refundable to the federal government as provided by law vest in the state and must be credited to the general fund.

**History:** En. Sec. 9, Ch. 691, L. 1979; amd. Sec. 14, Ch. 243, L. 1997.

**20-26-1108 through 20-26-1110 reserved.**

**20-26-1111. Access to governmental records.** The board may request from any state or local government agency or officer information that would aid in the collection of delinquent student loans. All state and local government officials and employees shall cooperate with the board in supplying the information and shall on request supply the board with any relevant information regarding the location of the debtor. The board shall use the information only for purposes related to the collection of student loans or other educational debts.

**History:** En. Sec. 1, Ch. 358, L. 1989.

**Cross-References**

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

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

Public records, Title 2, ch. 6.

Records of university student, 20-25-515, 20-25-516.

Vital statistics information, Title 50, ch. 15.

Confidentiality of vehicle accident reports, 61-7-114.

**20-26-1112 through 20-26-1114 reserved.**

**20-26-1115. Repealed.** Sec. 2, Ch. 227, L. 2015.

**History:** En. Sec. 1, Ch. 446, L. 1997.

**20-26-1116. Repealed.** Sec. 2, Ch. 227, L. 2015.

**History:** En. Sec. 2, Ch. 446, L. 1997.

**20-26-1117. Repealed.** Sec. 2, Ch. 227, L. 2015.

**History:** En. Sec. 3, Ch. 446, L. 1997; amd. sec. 11, Ch. 446, L. 1997.

**20-26-1118. Repealed.** Sec. 2, Ch. 227, L. 2015.

**History:** En. Sec. 4, Ch. 446, L. 1997.

**20-26-1119. Repealed.** Sec. 2, Ch. 227, L. 2015.

**History:** En. Sec. 5, Ch. 446, L. 1997.

**20-26-1120. Repealed.** Sec. 2, Ch. 227, L. 2015.

**History:** En. Sec. 6, Ch. 446, L. 1997.

**20-26-1121. Repealed.** Sec. 2, Ch. 227, L. 2015.

**History:** En. Sec. 7, Ch. 446, L. 1997.

**Parts 12 and 13 reserved**

**Part 14**

**Heritage of Montana Enterprise Act  
(Repealed)**

**20-26-1401. Repealed.** Sec. 128, Ch. 429, L. 1995.

**History:** En. Sec. 1, Ch. 526, L. 1993.

**20-26-1402. Repealed.** Sec. 128, Ch. 429, L. 1995.

**History:** En. Sec. 2, Ch. 526, L. 1993.

**20-26-1403. Repealed.** Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 3, Ch. 526, L. 1993.

**20-26-1404. Repealed.** Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 4, Ch. 526, L. 1993.

**20-26-1405 and 20-26-1406 reserved.**

**20-26-1407. Repealed.** Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 5, Ch. 526, L. 1993; amd. Sec. 12, Ch. 526, L. 1993.

**20-26-1408. Repealed.** Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 6, Ch. 526, L. 1993.

**20-26-1409. Repealed.** Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 7, Ch. 526, L. 1993.

**20-26-1410. Repealed.** Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 8, Ch. 526, L. 1993.

**20-26-1411. Repealed.** Sec. 128, Ch. 429, L. 1995.

History: En. Sec. 9, Ch. 526, L. 1993; amd. Sec. 12, Ch. 526, L. 1993.

## Part 15

### Health Care Provider Incentive Programs

**20-26-1501. Incentive for physicians practicing in rural areas or medically underserved areas or for underserved populations state special revenue account.** There is an incentive for physicians practicing in rural areas or medically underserved areas or for underserved populations state special revenue account. Money is payable into the account as provided in 17-1-511, 20-25-810, and 20-26-1502. Income and earnings on the account must be redeposited in the account. The account must be administered by the board of regents as provided in this part.

History: En. Sec. 1, Ch. 394, L. 1991; amd. Sec. 14, Ch. 389, L. 1999; amd. Sec. 3, Ch. 361, L. 2007; amd. Sec. 2, Ch. 436, L. 2017.

#### Compiler's Comments

*2017 Amendment:* Chapter 436 in second sentence inserted reference to 20-25-810; and made minor changes in style. Amendment effective October 1, 2017.

*Applicability:* Section 7, Ch. 436, L. 2017, provided: "[This act] applies to individuals entering the cooperative medical education program with the university of Washington as freshmen in academic year 2018-2019 or later."

**20-26-1502. Fee assessments — deposits.** (1) The board of regents may assess a fee to students preparing to be physicians in the fields of medicine or osteopathic medicine who are supported by the state pursuant to an interstate compact for a professional education program in those fields, as those fields are defined by the compact.

(2) Except as provided in 20-25-810, the fee may not exceed an amount equal to 16% of the annual individual medicine support fee paid by the state pursuant to 20-25-804.

(3) The fee provided for in 20-25-810 and this section must be assessed by the board of regents and deposited in the state special revenue account established in 20-26-1501.

History: En. Sec. 2, Ch. 394, L. 1991; amd. Sec. 15, Ch. 389, L. 1999; amd. Sec. 4, Ch. 361, L. 2007; amd. Sec. 3, Ch. 436, L. 2017.

#### Compiler's Comments

*2017 Amendment:* Chapter 436 in (2) at beginning inserted exception clause; in (3) inserted "provided for in 20-25-810 and this section"; and made minor changes in style. Amendment effective October 1, 2017.

*Applicability:* Section 7, Ch. 436, L. 2017, provided: "[This act] applies to individuals entering the cooperative medical education program with the university of Washington as freshmen in academic year 2018-2019 or later."

**20-26-1503. Use of incentive for physicians practicing in rural areas or medically underserved areas or for underserved populations state special revenue account.**

(1) The state special revenue account established in 20-26-1501 is statutorily appropriated, as provided in 17-7-502, to the board of regents to be used to pay:

(a) the educational debts of physicians who practice in rural areas or medically underserved areas or for medically underserved populations of the state that demonstrate a need for assistance in physician recruitment; and

(b) the expenses of administering the incentive program. The expenses of administering the program may not exceed 10% of the annual fees assessed pursuant to 20-26-1502.

(2) The board of regents shall establish procedures for determining rural areas and medically underserved areas or populations of the state that qualify for assistance in physician recruitment. An eligible area or eligible population must demonstrate that a physician shortage exists or that the area or population has been unsuccessful in recruiting physicians in other ways.

(3) A physician from an area or serving a population determined to be eligible under subsection (2) may apply to the board of regents for payment of an educational debt directly related to a professional school, as provided in subsection (4). Physicians who have paid the fee authorized in 20-25-810 or 20-26-1502 must be given a preference over other applicants. To receive the educational debt payments, the physician shall sign an annual contract with the board of regents. The contract must provide that the physician is liable for the payments if the physician ceases to practice in the eligible area or serve the eligible population during the contract period.

(4) The maximum amount of educational debt payment that a physician practicing in a rural area or medically underserved area or for a medically underserved population may receive is \$150,000 over a 5-year period or a proportionally reduced amount for a shorter period.

(5) The amount contractually committed in a year may not exceed the annual amount deposited in the state special revenue account established in 20-26-1501.

**History:** En. Sec. 3, Ch. 394, L. 1991; amd. Sec. 1, Ch. 89, L. 1997; amd. Sec. 16, Ch. 389, L. 1999; amd. Sec. 5, Ch. 361, L. 2007; amd. Sec. 1, Ch. 310, L. 2017; amd. Sec. 4, Ch. 436, L. 2017.

**Compiler's Comments**

*2017 Amendments — Composite Section:* Chapter 310 in (4) substituted “\$150,000” for “\$100,000”. Amendment effective July 1, 2017.

Chapter 436 in (3) in second sentence inserted reference to 20-25-810; and made minor changes in style. Amendment effective October 1, 2017.

*Applicability:* Section 7, Ch. 436, L. 2017, provided: “[This act] applies to individuals entering the cooperative medical education program with the university of Washington as freshmen in academic year 2018-2019 or later.”

**20-26-1504 through 20-26-1510 reserved.**

**20-26-1511. Institutional nursing incentive program.** (1) There is a loan reimbursement program for an individual who is licensed to practice as a registered professional nurse pursuant to 37-8-406 and who works at the Montana state prison or the Montana state hospital.

(2) (a) The board of regents shall, subject to available appropriations, pay up to 50% of a loan balance of \$30,000 for a registered professional nurse working at the Montana state prison or the Montana state hospital who applies for the program and submits proof of the balance related to loans for nursing education.

(b) The reimbursement under this section is limited to a maximum of \$3,750 a year for 4 years and must be based on a participant's actual loan balance.

(c) An individual with a loan balance of less than \$1,000 is not eligible for the program provided for in this section.

(3) (a) The board of regents shall reimburse a participant in the loan reimbursement program at the end of every 12-month period that the participant works at either the Montana state prison or the Montana state hospital. The amount to be reimbursed as determined in subsection (2) must be reimbursed in equal annual installments over 4 years as long as the participant continues to work at either facility.

(b) A participant who works less than a full 12-month period must receive a reimbursement that is prorated to reflect the amount of time worked during that 12-month period.

(c) The reimbursement payment by the board of regents must be to the participant and the loan institution.

**History:** En. Sec. 1, Ch. 379, L. 2009.

**Cross-References**

Department of public health and human services, 53-1-602.

Location and primary function of hospital, 53-21-601.

Location and function of prisons — definitions, 53-30-101.

## CHAPTER 31 FIRE SERVICES TRAINING SCHOOL

### Part 1 — General Provisions

- 20-31-101. Definitions.
- 20-31-102. Fire services training school — creation — supervision by board of regents.
- 20-31-103. Purpose of school.
- 20-31-104. Coordination with other agencies.

### Part 2 — Director

- 20-31-201. Director responsible to board.
- 20-31-202. Duties of director.

### Part 3 — Advisory Council

- 20-31-301. Organization — procedural rules — compensation of members.
- 20-31-302. Duties.

### Part 4 — Miscellaneous Provisions

- 20-31-401. Acceptance of gifts and grants — contractual agreements.
- 20-31-402. Cost recovery fee.

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#### Chapter Cross-References

- Firefighters, Title 7, ch. 33, parts 22, 23, and 41.
- Fire protection equipment, Title 50, ch. 39.
- Fire safety in public buildings, Title 50, ch. 61.
- Fire hazards, Title 50, ch. 62.
- Investigation of fires, Title 50, ch. 63.

## Part 1 General Provisions

**20-31-101. Definitions.** In this chapter, unless the context requires otherwise, the following definitions apply:

(1) “Board” means the board of regents provided for in Article X, section 9, subsection (2), of the 1972 Montana constitution and 2-15-1505.

(2) “Council” means the fire services training advisory council provided for in 2-15-1519.

(3) “Director” means the director of the fire services training school provided for in 2-15-1518.

**History:** En. by Code Commissioner, 1979; amd. Sec. 3, Ch. 20, L. 1989.

**20-31-102. Fire services training school — creation — supervision by board of regents.** There is a fire services training school. The fire services training school is allocated to the board of regents for purposes of planning and coordination. The budget request for the fire services training school shall be submitted through the board of regents. The general supervision of the school is vested in the board of regents.

**History:** En. 75-7716 by Sec. 1, Ch. 104, L. 1977; R.C.M. 1947, 75-7716; amd. Sec. 4, Ch. 20, L. 1989.

**20-31-103. Purpose of school.** The purpose of the fire services training school is to:

- (1) provide fire service personnel with professional training;
- (2) identify new methods of fire prevention and suppression and disseminate information about them;

(3) provide a resource center for use by local fire services;

(4) provide testing and certification for personnel and apparatus; and

(5) coordinate fire services training in the state.

**History:** En. 75-7717 by Sec. 2, Ch. 104, L. 1977; R.C.M. 1947, 75-7717; amd. Sec. 2, Ch. 6, L. 1987.

**20-31-104. Coordination with other agencies.** (1) The fire services training school shall coordinate its programs and cooperate with state and local fire services to the maximum possible extent in accordance with the policy of the board of regents.

(2) The fire services training school may make its resources available, upon request of a local fire protection entity, for assistance in local emergencies.

**History:** En. 75-7725 by Sec. 10, Ch. 104, L. 1977; R.C.M. 1947, 75-7725; amd. Sec. 5, Ch. 20, L. 1989; amd. Sec. 1, Ch. 38, L. 2007.

## Part 2 Director

**20-31-201. Director responsible to board.** The director is responsible to the board for carrying out the provisions of this chapter.

**History:** En. 75-7721 by Sec. 6, Ch. 104, L. 1977; R.C.M. 1947, 75-7721(part).

**20-31-202. Duties of director.** The director shall appoint a staff and execute policies and programs established by the board of regents for the fire services training school. The director is responsible for the direction of staff and operation of the school.

**History:** En. 75-7722 by Sec. 7, Ch. 104, L. 1977; R.C.M. 1947, 75-7722; amd. Sec. 6, Ch. 20, L. 1989.

## Part 3 Advisory Council

**20-31-301. Organization — procedural rules — compensation of members.** (1) The members of the fire services advisory council shall elect a presiding officer, a vice presiding officer, and other officers considered advisable by the council. The terms of the officers must be established by the council.

(2) The council shall adopt rules governing its procedures, subject to approval of the board of regents.

(3) Members of the council must receive compensation under 2-18-501 through 2-18-503.

**History:** En. 75-7719 by Sec. 4, Ch. 104, L. 1977; R.C.M. 1947, 75-7719; amd. Sec. 7, Ch. 20, L. 1989; amd. Sec. 346, Ch. 56, L. 2009.

**20-31-302. Duties.** The fire services training advisory council shall advise the board and director of the fire services training school on planning, coordination, governance, management, and control of the fire services training school to promote the purposes of the school.

**History:** En. 75-7720 by Sec. 5, Ch. 104, L. 1977; R.C.M. 1947, 75-7720.

## Part 4 Miscellaneous Provisions

**20-31-401. Acceptance of gifts and grants — contractual agreements.** The board of regents may accept gifts, donations, and grants of property and services on behalf of the fire services training school. The board may enter into contractual agreements necessary to facilitate achievement of the purposes of the school.

**History:** En. 75-7723 by Sec. 8, Ch. 104, L. 1977; R.C.M. 1947, 75-7723; amd. Sec. 8, Ch. 20, L. 1989.

**20-31-402. Cost recovery fee.** The board of regents may establish a cost recovery fee for training of commercially employed firefighters, and the fees must be deposited in accordance with the higher education fund structure.

**History:** En. 75-7724 by Sec. 9, Ch. 104, L. 1977; R.C.M. 1947, 75-7724; amd. Sec. 9, Ch. 20, L. 1989; amd. Sec. 1, Ch. 146, L. 2017.

### Compiler's Comments

*2017 Amendment:* Chapter 146 near end substituted "in accordance with the higher education fund structure" for "to the general fund"; and made minor changes in style. Amendment effective April 3, 2017.

## CHAPTER 32 MONTANA EDUCATIONAL TELECOMMUNICATIONS NETWORK

### Part 1 — General

- 20-32-101. Purpose — definition.
- 20-32-102. Agency cooperation — responsibilities.
- 20-32-103. Fee collection and disposition for operational costs.
- 20-32-104. Apportionment of costs.



## Part 1 General

**20-32-101. Purpose — definition.** (1) The purpose of this part is to establish a Montana educational telecommunications network.

(2) For the purposes of this part, “network” means the Montana educational telecommunications network (METNET).

(3) The aims of the network are to provide:

(a) instructional and educational coursework and materials through telecommunications delivery to students in kindergarten through 12th grade in the Montana public school system;

(b) instructional and educational coursework and materials through telecommunications delivery to students enrolled in units of the Montana university system and the community colleges;

(c) instructional and professional development or other appropriate inservice training for teachers in the schools of the state; and

(d) telecommunications capabilities to agencies, subdivisions of state government, and public libraries in order to improve their ability to perform their responsibilities and duties.

**History:** En. Sec. 1, Ch. 622, L. 1991; amd. Sec. 21, Ch. 308, L. 1995.

**20-32-102. Agency cooperation — responsibilities.** (1) To meet the objectives of the network, the following entities shall cooperate with one another:

(a) the department of administration, with its responsibilities for telecommunications for agencies of state government;

(b) the superintendent of public instruction, with a supervisory role over the public system of elementary and high schools; and

(c) the commissioner of higher education, with responsibilities to the Montana university system and the community colleges.

(2) The responsibilities of the superintendent of public instruction to the network include but are not limited to:

(a) general supervision of delivery of educational materials through telecommunications to elementary and high school districts in the state;

(b) compilation, maintenance, and dissemination to participating school districts of information that identifies the educational programming available from within and from outside the state;

(c) training of teachers and other school personnel in the use of telecommunications technologies for instructional purposes;

(d) assistance to school districts in identifying and procuring the telecommunications technologies needed to interface with the network;

(e) identification of production capability for telecommunication of educational materials;

(f) assistance to participating school districts with group purchases of instructional and educational materials;

(g) coordination with the commissioner of higher education and the units of the Montana university system to offer advanced placement courses, teacher inservice training, and other instruction through the network;

(h) payment of the superintendent’s share of the network costs to the department of administration, as provided in 20-32-104;

(i) coordination with the department of administration to ensure compatibility of network components, to minimize duplication of efforts on behalf of the network, and to maximize use of the network by school districts; and

(j) determination of kinds of equipment, inservice, and district accounting necessary to implement the provisions of this part for school districts.

(3) The responsibilities of the department of administration to the network include but are not limited to:

(a) provision of technical support to the coordinating agencies referred to in subsection (1);

(b) development of standards of compatibility for the network;

(c) procurement and management of network equipment and facilities that have shared use by multiple users or agencies;

(d) assistance with procurement, installation, maintenance, and operation of end-terminal equipment and facilities of the network;

(e) minimizing any duplication of equipment and facilities within the network and in conjunction with the department of administration's other networking capabilities;

(f) coordination of use of the network by state agencies, subdivisions of the state, and public libraries in a manner that does not interfere with the delivery of the primary network function of providing educational services to school districts and state units of higher education;

(g) studying the use of the network by Native American tribal colleges and other nonpublic education institutions in the state, with the long-range goal of coordinating the use of the network with those entities; and

(h) maintenance of cost and usage records and a billing system for user agencies for services rendered that incur marginal costs for the network.

(4) The responsibilities of the commissioner of higher education to the network include but are not limited to:

(a) coordination of the use of the network among the units of higher education and with the superintendent of public instruction and the department of administration;

(b) assistance to the units of the Montana university system to provide college credit courses through the network to students throughout the state;

(c) coordination with the superintendent of public instruction to develop advance placement courses for high school students in Montana, teacher inservice training, and other services and instruction through the network;

(d) assistance to the units of the Montana university system and the community colleges in defining their specific needs for interfacing with the network;

(e) assistance to participating units, centers, and colleges with group purchases of instructional and educational materials; and

(f) determination of the kinds of equipment, inservice, and accounting necessary to implement the provisions of this part for the university system and community colleges.

**History:** En. Sec. 2, Ch. 622, L. 1991; amd. Sec. 22, Ch. 308, L. 1995.

**20-32-103. Fee collection and disposition for operational costs.** As a condition of participation in the network, the Montana university system and community colleges shall collect from appropriate discretionary funds in a manner approved by the board of regents an amount not to exceed \$5 for each full-time equivalent student enrolled in the units or colleges. The funds collected must be deposited with the commissioner of higher education for the purposes of 20-32-102(4). The commissioner of higher education shall pay the department of administration the commissioner's share of the network costs.

**History:** En. Sec. 3, Ch. 622, L. 1991; amd. Sec. 1, Ch. 547, L. 1993; amd. Sec. 23, Ch. 308, L. 1995; amd. Sec. 15, Ch. 243, L. 1997.

**20-32-104. Apportionment of costs.** The superintendent of public instruction and the commissioner of higher education shall share on a prorated basis according to the related student counts any costs incurred by the department of administration for the purposes of 20-32-102(3).

**History:** En. Sec. 4, Ch. 622, L. 1991.

# TITLE 22

## LIBRARIES, ARTS, AND ANTIQUITIES

### CHAPTER 1

#### LIBRARIES

#### Part 3

##### Free Public Libraries

**22-1-301. Definitions.** Unless otherwise provided, the following definitions apply in this part:

(1) “City” means city or town.

(2) “Commission” means the state library commission.

(3) “Public library” means a library created under:

(a) 22-1-303 through 22-1-317 that provides library services to the public by means of central facilities, branch facilities, or bookmobiles; or

(b) Title 7.

**History:** En. Sec. 11, Ch. 260, L. 1967; R.C.M. 1947, 44-227; amd. Sec. 8, Ch. 670, L. 1989; amd. Sec. 1, Ch. 356, L. 1991; amd. Sec. 1, Ch. 47, L. 2009.

**22-1-302. Purpose.** It is the purpose of this part to encourage the establishment, adequate financing, and effective administration of free public libraries in this state to give the people of Montana the fullest opportunity to enrich and inform themselves through reading.

**History:** En. Sec. 1, Ch. 260, L. 1967; R.C.M. 1947, 44-218.

**22-1-303. Creation of public library.** A public library may be established in any county or city in any of the following ways:

(1) The governing body of any county or city desiring to establish and maintain a public library may pass and enter upon its minutes a resolution to the effect that a free public library is established under the provision of Montana laws relating to public libraries.

(2) A public library may be established by a petition that is signed by not less than 10% of the resident taxpayers whose names appear upon the last-completed assessment roll of the city or county and that is filed with the governing body requesting the establishment of a public library. The governing body of a city or county shall set a time of meeting at which it may by resolution establish a public library. The governing body shall give notice of the contemplated action in a newspaper of general circulation for 2 consecutive weeks giving the date and place of the meeting at which the contemplated action is proposed to be taken.

(3) (a) Upon a petition being filed with the governing body and signed by not less than 5% of the resident taxpayers of any city or county requesting an election, the governing body shall submit to a vote of the qualified electors at the next general election the question of whether a free public library is to be established.

(b) If a petition is submitted for a city, the petition must be signed by resident taxpayers of the city.

(c) If a petition is submitted to the county commissioners of a county asking for the establishment of a county library, the petition must be signed by resident taxpayers of the county who reside outside the corporate limits of an incorporated city that is located in the county and that may already have established a free public library for the city.

(d) If the petition specifically asks that a special election be called and the petition is signed by 35% of the resident freeholders affected by the petition, then the governing body shall, upon receipt of the petition, immediately set a date for a special election. The special election must be held in conjunction with a regular or primary election.

(e) If at the election a majority of the electors voting on the question vote in favor of the establishment of a library, the governing body shall immediately take the necessary steps to establish and maintain the library or to contract with any city or county for library service to be rendered to the inhabitants of the city or county.

**History:** En. Sec. 2, Ch. 260, L. 1967; amd. Sec. 1, Ch. 263, L. 1969; R.C.M. 1947, 44-219; amd. Sec. 65, Ch. 387, L. 1995.

**22-1-304. Tax levy — special library fund — bonds.** (1) Subject to 15-10-420, the governing body of a city or county that has established a public library may levy in the same manner and at the same time as other taxes are levied a tax in the amount necessary to maintain adequate public library service.

(2) (a) The governing body of a city or county may by resolution submit the question of imposing a tax levy to a vote of the qualified electors at an election as provided in 15-10-425. The resolution must be adopted at least 85 days prior to the election at which the question will be voted on, and, pursuant to the deadline in 13-1-504, the election may not be held less than 85 days after the resolution is adopted.

(b) Upon a petition being filed with the governing body and signed by not less than 5% of the resident taxpayers of any city or county requesting an election for the purpose of imposing a mill levy, the governing body shall submit to a vote of the qualified electors at an election conducted as provided in 15-10-425 the question of imposing the mill levy. The petition must be delivered to the governing body at least 85 days prior to the election at which the question will be voted on.

(3) The proceeds of the tax constitute a separate fund called the public library fund and may not be used for any purpose except those of the public library.

(4) Money may not be paid out of the public library fund by the treasurer of the city or county except by order or warrant of the board of library trustees.

(5) Bonds may be issued by the governing body in the manner prescribed by law for the following purposes:

(a) building, altering, repairing, furnishing, or equipping a public library or purchasing land for the library;

(b) buying a bookmobile or bookmobiles; and

(c) funding a judgment against the library.

**History:** En. Sec. 3, Ch. 260, L. 1967; R.C.M. 1947, 44-220; amd. Sec. 1, Ch. 431, L. 1983; amd. Sec. 39, Ch. 250, L. 1985; amd. Sec. 1, Ch. 333, L. 1999; amd. Sec. 123, Ch. 584, L. 1999; amd. Sec. 31, Ch. 495, L. 2001; amd. Sec. 128, Ch. 574, L. 2001; amd. Sec. 16, Ch. 453, L. 2005; amd. Sec. 232, Ch. 49, L. 2015.

**22-1-305. Library depreciation reserve fund authorized.** The governing body of any city or county or a combination of city and county in Montana may establish a library depreciation reserve fund for the replacement and acquisition of property, capital improvements, and equipment necessary to maintain and improve city, county, or city-county library services.

**History:** En. 44-229 by Sec. 1, Ch. 78, L. 1975; R.C.M. 1947, 44-229.

**22-1-306. Moneys for library depreciation reserve fund.** Moneys for the library depreciation reserve fund are those funds which have been allocated to the library in any year but which have not been expended by the end of the year. Such moneys include but are not limited to city or county or city-county appropriations, federal revenue sharing funds, and public and private grants.

**History:** En. 44-230 by Sec. 2, Ch. 78, L. 1975; R.C.M. 1947, 44-230.

**22-1-307. Investment of fund.** The moneys held in the library depreciation reserve fund may be invested as provided by law. All interest earned on the fund must be credited to the library depreciation reserve fund.

**History:** En. 44-231 by Sec. 3, Ch. 78, L. 1975; R.C.M. 1947, 44-231.

**22-1-308. Public library — board of trustees.** (1) Upon the establishment of a public library under the provisions of this part, the mayor, with the advice and consent of the city council or city commissioners, shall appoint a board of trustees for the city library and the presiding officer of the board of county commissioners, with the advice and consent of the board, shall appoint a board of trustees for the county library.

(2) The library board must consist of five trustees. Not more than one member of the governing body may be, at any one time, a member of the board.

(3) Trustees shall serve without compensation, but their actual and necessary expenses incurred in the performance of their official duties may be paid from library funds.

(4) Trustees shall hold their office for 5 years from the date of appointment and until their successors are appointed. Initially, appointments must be made for 1-, 2-, 3-, 4-, and 5-year terms. Annually thereafter, there must be appointed before July 1 of each year, in the same

manner as the original appointments for a 5-year term, a trustee to take the place of the retiring trustee. Trustees may not serve more than two full terms in succession.

(5) Following the appointments, in July of each year, the trustees shall meet and elect a presiding officer and other officers that they consider necessary, for 1-year terms. Vacancies in the board of trustees must be filled for the unexpired term in the same manner as original appointments.

**History:** En. Sec. 4, Ch. 260, L. 1967; R.C.M. 1947, 44-221; amd. Sec. 348, Ch. 56, L. 2009.

**22-1-309. Trustees — powers and duties.** The library board of trustees shall have exclusive control of the expenditure of the public library fund, of construction or lease of library buildings, and of the operation and care of the library. The library board of trustees of every public library shall:

(1) adopt bylaws and rules for its own transaction of business and for the government of the library, not inconsistent with law;

(2) establish and locate a central public library and may establish branches thereof at such places as are deemed necessary;

(3) have the power to contract, including the right to contract with regions, counties, cities, school districts, educational institutions, the state library, and other libraries, to give and receive library service, through the boards of such regions, counties, and cities and the district school boards, and to pay out or receive funds to pay costs of such contracts;

(4) have the power to acquire, by purchase, devise, lease or otherwise, and to own and hold real and personal property in the name of the city or county or both, as the case may be, for the use and purposes of the library and to sell, exchange or otherwise dispose of property real or personal, when no longer required by the library and to insure the real and personal property of the library;

(5) pay necessary expenses of members of the library staff when on business of the library;

(6) prepare an annual budget, indicating what support and maintenance of the public library will be required from public funds, for submission to the appropriate agency of the governing body. A separate budget request shall be submitted for new construction or for capital improvement of existing library property.

(7) make an annual report to the governing body of the city or county on the condition and operation of the library, including a financial statement. The trustees shall also provide for the keeping of such records as shall be required by the Montana state library in its request for an annual report from the public libraries and shall submit such an annual report to the state library.

(8) have the power to accept gifts, grants, donations, devises, or bequests of property, real or personal, from whatever source and to expend or hold, work, and improve the same for the specific purpose of the gift, grant, donation, devise, or bequest. These gifts, grants, donations, devises, and bequests shall be kept separate from regular library funds and are not subject to reversion at the end of the fiscal year.

(9) exercise such other powers, not inconsistent with law, necessary for the effective use and management of the library.

**History:** Ap. p. Sec. 5, Ch. 260, L. 1967; Sec. 44-222, R.C.M. 1947; Ap. p. Sec. 1, Ch. 47, L. 1927; re-en. Sec. 5668.17, R.C.M. 1935; Sec. 11-1006, R.C.M. 1947; R.C.M. 1947, 11-1006(part), 44-222.

**22-1-310. Chief librarian — personnel — compensation.** The board of trustees of each library shall appoint and set the compensation of the chief librarian who shall serve as the secretary of the board and shall serve at the pleasure of the board. With the recommendation of the chief librarian, the board shall employ and discharge such other persons as may be necessary in the administration of the affairs of the library, fix and pay their salaries and compensation, and prescribe their duties.

**History:** En. Sec. 6, Ch. 260, L. 1967; R.C.M. 1947, 44-223.

**22-1-311. Use of library — privileges.** Every library established under the provisions of this part shall be free to the use of the inhabitants of the city or the county supporting such library. The board may exclude from the use of the library any and all persons who shall willfully violate the rules of the library. The board may extend the privileges and use of the library to



persons residing outside of the city or county upon such terms and conditions as it may prescribe by its regulations.

**History:** En. Sec. 7, Ch. 260, L. 1967; R.C.M. 1947, 44-224.

**22-1-312. Cooperation and merger.** Library boards of trustees, boards of other educational institutions, library agencies, and local political subdivisions are hereby empowered to cooperate, merge, or combine in providing library service.

**History:** En. Sec. 8, Ch. 260, L. 1967; R.C.M. 1947, 44-225.

**22-1-313. Existing tax-supported libraries — notification — exemption from county taxes.** After the establishment of a county free library as provided in this part, the governing body of any city which has an existing tax-supported public library may notify the board of county commissioners that such city does not desire to be a part of the county library system. Such notification shall exempt the property in such city from liability for taxes for county library purposes.

**History:** En. Sec. 9, Ch. 260, L. 1967; R.C.M. 1947, 44-226.

**22-1-314. Continued existence of all public libraries.** All public libraries heretofore established shall continue in existence, subject to the changes in administration provided herein.

**History:** En. Sec. 12, Ch. 260, L. 1967; R.C.M. 1947, 44-228.

**22-1-315. City library may assume functions of county library.** (1) Instead of establishing a separate county free library, the board of county commissioners may enter into a contract with the board of library trustees or other authority in charge of the free public library of any incorporated city, and the board of library trustees or other authority in charge of such free public library is hereby authorized to make such a contract.

(2) Such contract may provide that the free public library of such incorporated city shall assume the functions of a county free library within the county with which such contract is made, and the board of county commissioners may agree to pay out of the county free library fund into the library fund of such incorporated city such sum as may be agreed upon.

(3) Either party to such contract may terminate the same by giving 6 months' notice of intention to do so.

**History:** En. Sec. 11, Ch. 45, L. 1915; re-en. Sec. 4573, R.C.M. 1921; re-en. Sec. 4573, R.C.M. 1935; R.C.M. 1947, 44-211.

**22-1-316. Joint city-county library.** (1) A county and any city or cities within the county, by action of their respective governing bodies, may join in establishing and maintaining a joint city-county library under the terms of a contract agreed upon by all parties.

(2) The expenses of a joint city-county library must be apportioned between or among the county and cities on the basis agreed upon in the contract.

(3) Subject to 15-10-420, the governing body of any city or county entering into a contract may levy a special tax as provided in 22-1-304 for the establishment and operation of a joint city-county library.

(4) The treasurer of the county or of a participating city within the county, as provided in the contract, has custody of the funds of the joint city-county library, and the other treasurers of the county or cities joining in the contract shall transfer quarterly to the designated treasurer all money collected for the joint city-county library.

(5) The contract must provide for the disposition of property upon dissolution of the joint city-county library.

**History:** En. Sec. 1, Ch. 273, L. 1973; R.C.M. 1947, 44-219.1; amd. Sec. 124, Ch. 584, L. 1999.

**22-1-317. City-county library — board of trustees.** (1) A joint city-county library must be governed by a board of trustees composed of five members chosen as specified in the contract, with terms not to exceed 5 years.

(2) Trustees may not serve more than two full terms in succession.

(3) Trustees shall serve without compensation, but their actual and necessary expenses incurred in the performance of their official duties may be paid from library funds.

(4) Trustees shall meet and elect a presiding officer and other officers that they consider necessary, for 1-year terms.

(5) The board of trustees has the same powers and duties as the board of trustees of a city library or a county library.

**History:** En. Sec. 2, Ch. 273, L. 1973; amd. Sec. 3, Ch. 3, L. 1977; R.C.M. 1947, 44-219.2; amd. Sec. 349, Ch. 56, L. 2009.

**22-1-318 through 22-1-324 reserved.**

**22-1-325. Short title.** Sections 22-1-325 through 22-1-331 may be cited as the “Information Access Montana Act”.

**History:** En. Sec. 1, Ch. 670, L. 1989.

**22-1-326. State aid to public libraries.** (1) As used in 22-1-326 through 22-1-331, “public library” means a library created under Title 7 or under 22-1-301 through 22-1-317.

(2) As provided in 22-1-325 through 22-1-329, the commission shall administer state aid to public libraries and public library districts created and operated under part 7 of this chapter. The purposes of state aid are to:

(a) broaden access to existing information by strengthening public libraries and public library districts;

(b) augment and extend services provided by public libraries and public library districts; and

(c) permit new types of library services based on local need.

(3) Money appropriated for the purposes of this section may not be used to supplant general operating funds of recipient public libraries or public library districts. The commission may withhold a distribution to a library or district that receives less support from a mill levy or local government appropriation than its average for the preceding 3 fiscal years if the decrease may reasonably be linked to money received or expected to be received under 22-1-325 through 22-1-329.

**History:** En. Sec. 2, Ch. 670, L. 1989; amd. Sec. 2, Ch. 356, L. 1991; amd. Sec. 1, Ch. 203, L. 2005.

**22-1-327. State aid — per capita — per square mile.** (1) The commission shall distribute grants to public libraries and public library districts on a per capita and per square mile basis.

(2) The total amount of annual per capita and per square mile funding to public libraries for each fiscal year is the base amount of 40 cents multiplied by the total number of residents of the state as determined by the most recent decennial census of the population produced by the U.S. bureau of the census.

(3) The amount determined under subsection (2) is statutorily appropriated, as provided in 17-7-502, from the general fund to the commission for distribution as state aid to public libraries. *(Subsections (2) and (3) terminate July 1, 2023—sec. 1, Ch. 340, L. 2017, and pursuant to sec. 2, Ch. 340, L. 2017, and sec. 32, Ch. 429, L. 2017, the statutory appropriation is void for fiscal years 2018 and 2019.)*

**History:** En. Sec. 3, Ch. 670, L. 1989; amd. Sec. 2, Ch. 203, L. 2005; amd. Sec. 2, Ch. 244, L. 2013.

**22-1-328. Statewide interlibrary resource-sharing program.** The commission shall establish a statewide interlibrary resource-sharing program. The purpose of the program is to administer funds appropriated by the legislature to support and facilitate resource-sharing among libraries in Montana, including but not limited to public libraries, public library districts, libraries operated by public schools or school districts, libraries operated by public colleges or universities, tribal libraries, libraries operated by public agencies for institutionalized persons, and libraries operated by nonprofit, private medical, educational, or research institutions.

**History:** En. Sec. 4, Ch. 670, L. 1989; amd. Sec. 1, Ch. 183, L. 1999; amd. Sec. 2, Ch. 47, L. 2009.

**22-1-329. Statewide library access program.** The commission shall develop a voluntary statewide library access program whereby a participating library may allow access to the library’s materials and services by patrons registered and in good standing with another library.

**History:** En. Sec. 5, Ch. 670, L. 1989; amd. Sec. 3, Ch. 47, L. 2009.

**22-1-330. Commission rulemaking authority.** The commission may adopt rules and procedures for:

(1) the distribution of state aid to public libraries and public library districts on a per capita and per square mile basis, as provided in 22-1-327;

(2) the statewide library access program provided for in 22-1-329;

- (3) the statewide interlibrary resource-sharing program provided for in 22-1-328;
- (4) distribution of base grants provided for in 22-1-331; and
- (5) the composition of the library federation board of trustees, as provided in 22-1-404.

**History:** En. Sec. 6, Ch. 670, L. 1989; amd. Sec. 2, Ch. 183, L. 1999; amd. Sec. 3, Ch. 203, L. 2005; amd. Sec. 4, Ch. 47, L. 2009.

**22-1-331. Base grants.** The commission shall provide a base grant for each public library to support the cooperative activities and services of the six library federations in the state.

**History:** En. Sec. 7, Ch. 670, L. 1989.

## **Part 11**

### **Library Records Confidentiality Act**

**22-1-1101. Short title.** This part may be cited as the “Montana Library Records Confidentiality Act”.

**History:** En. Sec. 1, Ch. 476, L. 1985.

**22-1-1102. Definitions.** As used in 22-1-1103, the following definitions apply:

(1) “Library” means a library that is established by the state, a county, city, town, school district, or a combination of those units of government, a college or university, or any private library open to the public.

(2) “Library records” means any document, record, or any other method of storing information retained, received, or generated by a library that identifies a person as having requested, used, or borrowed library material or other records identifying the names or other personal identifiers of library users. Library records does not include nonidentifying material that may be retained for the purpose of studying or evaluating the circulation of library materials in general or records that are not retained or retrieved by personal identifier.

**History:** En. Sec. 2, Ch. 476, L. 1985.

**22-1-1103. Nondisclosure of library records.** (1) No person may release or disclose a library record or portion of a library record to any person except in response to:

(a) a written request of the person identified in that record, according to procedures and forms giving written consent as determined by the library; or

(b) an order issued by a court of competent jurisdiction, upon a finding that the disclosure of such record is necessary because the merits of public disclosure clearly exceed the demand for individual privacy.

(2) A library is not prevented from publishing or making available to the public reasonable statistical reports regarding library registration and book circulation if those reports are presented so that no individual is identified therein.

(3) Library records may be disclosed to the extent necessary to return overdue or stolen materials or collect fines.

**History:** En. Sec. 3, Ch. 476, L. 1985.

**22-1-1104 through 22-1-1110 reserved.**

**22-1-1111. Penalty.** Any person who violates 22-1-1103 is guilty of a misdemeanor and is liable to the person identified in a record that is improperly released or disclosed. The person identified may bring a civil action for actual damages or \$100, whichever is greater. Reasonable attorney fees and the costs of bringing the action may be awarded to the prevailing party.

**History:** En. Sec. 6, Ch. 476, L. 1985.

# TITLE 26

## EVIDENCE

### CHAPTER 1

#### STATUTORY PROVISIONS ON EVIDENCE

#### Part 8

#### Privileges

**26-1-801. Policy to protect confidentiality in certain relations.** There are particular relations in which it is the policy of the law to encourage confidence and to preserve it inviolate; therefore, a person cannot be examined as a witness in the cases enumerated in this part.

**History:** En. Secs. 373-377, pp. 210, 211, L. 1867; re-en. Secs. 447-451, p. 125, Cod. Stat. 1871; en. Secs. 629, 630, pp. 203, 204, L. 1877; re-en. Secs. 629, 630, 1st Div. Rev. Stat. 1879; re-en. Secs. 650, 651, 1st Div. Comp. Stat. 1887; re-en. Sec. 3163, C. Civ. Proc. 1895; re-en. Sec. 7892, Rev. C. 1907; re-en. Sec. 10536, R.C.M. 1921; amd. Sec. 1, Ch. 83, L. 1925; amd. Sec. 1, Ch. 130, L. 1931; re-en. Sec. 10536, R.C.M. 1935; amd. Sec. 1, Ch. 61, L. 1971; amd. Sec. 1, Ch. 318, L. 1973; amd. Sec. 15, Ch. 543, L. 1975; amd. Sec. 2, Ch. 225, L. 1977; R.C.M. 1947, 93-701-4(part).

**26-1-806. Speech-language pathologist, audiologist-client privilege.** A speech-language pathologist or audiologist may not, without the consent of the client, be examined in a civil action as to any communication made by the client to the pathologist or audiologist.

**History:** En. Secs. 373-377, pp. 210, 211, L. 1867; re-en. Secs. 447-451, p. 125, Cod. Stat. 1871; en. Secs. 629, 630, pp. 203, 204, L. 1877; re-en. Secs. 629, 630, 1st Div. Rev. Stat. 1879; re-en. Secs. 650, 651, 1st Div. Comp. Stat. 1887; re-en. Sec. 3163, C. Civ. Proc. 1895; re-en. Sec. 7892, Rev. C. 1907; re-en. Sec. 10536, R.C.M. 1921; amd. Sec. 1, Ch. 83, L. 1925; amd. Sec. 1, Ch. 130, L. 1931; re-en. Sec. 10536, R.C.M. 1935; amd. Sec. 1, Ch. 61, L. 1971; amd. Sec. 1, Ch. 318, L. 1973; amd. Sec. 15, Ch. 543, L. 1975; amd. Sec. 2, Ch. 225, L. 1977; R.C.M. 1947, 93-701-4(8); amd. Sec. 6, Ch. 413, L. 1989; amd. Sec. 534, Ch. 56, L. 2009.

**26-1-807. Mental health professional-client privilege.** The confidential relations and communications between a psychologist, psychiatrist, licensed professional counselor, or licensed clinical social worker and a client must be placed on the same basis as provided by law for those between an attorney and a client. Nothing in any act of the legislature may be construed to require the privileged communications to be disclosed.

**History:** En. Sec. 12, Ch. 73, L. 1971; R.C.M. 1947, 66-3212; amd. Sec. 535, Ch. 56, L. 2009; amd. Sec. 1, Ch. 183, L. 2015.

**26-1-808. Information gathered by psychology teachers and observers.** Any person who is engaged in teaching psychology in any school or who, acting as such, is engaged in the study and observation of child mentality shall not, without the consent of the parent or guardian of such child being so taught or observed, testify in any civil action as to any information so obtained.

**History:** En. Secs. 373-377, pp. 210, 211, L. 1867; re-en. Secs. 447-451, p. 125, Cod. Stat. 1871; en. Secs. 629, 630, pp. 203, 204, L. 1877; re-en. Secs. 629, 630, 1st Div. Rev. Stat. 1879; re-en. Secs. 650, 651, 1st Div. Comp. Stat. 1887; re-en. Sec. 3163, C. Civ. Proc. 1895; re-en. Sec. 7892, Rev. C. 1907; re-en. Sec. 10536, R.C.M. 1921; amd. Sec. 1, Ch. 83, L. 1925; amd. Sec. 1, Ch. 130, L. 1931; re-en. Sec. 10536, R.C.M. 1935; amd. Sec. 1, Ch. 61, L. 1971; amd. Sec. 1, Ch. 318, L. 1973; amd. Sec. 15, Ch. 543, L. 1975; amd. Sec. 2, Ch. 225, L. 1977; R.C.M. 1947, 93-701-4(6).

**26-1-809. Confidential communications by student to employee of educational institution.** A counselor, psychologist, nurse, or teacher employed by an educational institution may not be examined as to communications made to the individual in confidence by a registered student of the institution. However, this provision does not apply when consent has been given by the student, if not a minor, or, if the student is a minor, by the student and the student's parent or legal guardian.

**History:** En. Secs. 373-377, pp. 210, 211, L. 1867; re-en. Secs. 447-451, p. 125, Cod. Stat. 1871; en. Secs. 629, 630, pp. 203, 204, L. 1877; re-en. Secs. 629, 630, 1st Div. Rev. Stat. 1879; re-en. Secs. 650, 651, 1st Div. Comp. Stat. 1887; re-en. Sec. 3163, C. Civ. Proc. 1895; re-en. Sec. 7892, Rev. C. 1907; re-en. Sec. 10536, R.C.M. 1921; amd. Sec. 1, Ch. 83, L. 1925; amd. Sec. 1, Ch. 130, L. 1931; re-en. Sec. 10536, R.C.M. 1935; amd. Sec. 1, Ch. 61,

L. 1971; amd. Sec. 1, Ch. 318, L. 1973; amd. Sec. 15, Ch. 543, L. 1975; amd. Sec. 2, Ch. 225, L. 1977; R.C.M. 1947, 93-701-4(7); amd. Sec. 536, Ch. 56, L. 2009.

**26-1-810. Confidential communications made to public officer.** A public officer may not be examined as to communications made to the officer in official confidence when the public interests would suffer by the disclosure.

**History:** En. Secs. 373-377, pp. 210, 211, L. 1867; re-en. Secs. 447-451, p. 125, Cod. Stat. 1871; en. Secs. 629, 630, pp. 203, 204, L. 1877; re-en. Secs. 629, 630, 1st Div. Rev. Stat. 1879; re-en. Secs. 650, 651, 1st Div. Comp. Stat. 1887; re-en. Sec. 3163, C. Civ. Proc. 1895; re-en. Sec. 7892, Rev. C. 1907; re-en. Sec. 10536, R.C.M. 1921; amd. Sec. 1, Ch. 83, L. 1925; amd. Sec. 1, Ch. 130, L. 1931; re-en. Sec. 10536, R.C.M. 1935; amd. Sec. 1, Ch. 61, L. 1971; amd. Sec. 1, Ch. 318, L. 1973; amd. Sec. 15, Ch. 543, L. 1975; amd. Sec. 2, Ch. 225, L. 1977; R.C.M. 1947, 93-701-4(5); amd. Sec. 537, Ch. 56, L. 2009.

**26-1-813. Mediation — confidentiality — privilege — exceptions.** (1) Mediation means a private, confidential, informal dispute resolution process in which an impartial and neutral third person, the mediator, assists disputing parties to resolve their differences. In the mediation process, decisionmaking authority remains with the parties and the mediator does not have authority to compel a resolution or to render a judgment on any issue. A mediator may encourage and assist the parties to reach their own mutually acceptable settlement by facilitating an exchange of information between the parties, helping to clarify issues and interests, ensuring that relevant information is brought forth, and assisting the parties to voluntarily resolve their dispute.

(2) Except upon written agreement of the parties and the mediator, mediation proceedings must be:

- (a) confidential;
- (b) held without a verbatim record; and
- (c) held in private.

(3) A mediator's files and records, with the exception of signed, written agreements, are closed to all persons unless the parties and the mediator mutually agree otherwise. Except as provided in subsection (5), all mediation-related communications, verbal or written, between the parties or from the parties to the mediator and any information and evidence presented to the mediator during the proceedings are confidential. The mediator's report, if any, and the information or recommendations contained in it, with the exception of a signed, written agreement, are not admissible as evidence in any action subsequently brought in any court of law or before any administrative agency and are not subject to discovery or subpoena in any court or administrative proceeding unless all parties waive the rights to confidentiality and privilege.

(4) Except as provided in subsection (5), the parties to the mediation and a mediator are not subject to subpoena by any court or administrative agency and may not be examined in any action as to any communication made during the course of the mediation proceeding without the consent of the parties to the mediation and the mediator.

(5) The confidentiality and privilege provisions of this section do not apply to information revealed in a mediation if disclosure is:

- (a) required by any statute;
- (b) agreed to by the parties and the mediator in writing, whether prior to, during, or subsequent to the mediation; or
- (c) necessary to establish a claim or defense on behalf of the mediator in a controversy between a party to the mediation and the mediator.

(6) Nothing in this section prohibits a mediator from conveying information from one party to another during the mediation, unless a party objects to disclosure.

**History:** En. Sec. 1, Ch. 481, L. 1999.



# **TITLE 32**

## **FINANCIAL INSTITUTIONS**

### **CHAPTER 1**

#### **BANKS AND TRUST COMPANIES**

##### **Part 1**

##### **General Provisions — Definitions**

**32-1-115. Student financial institution defined — obligations of minor — applicability of laws.** (1) The term “student financial institution” means a financial institution that:

- (a) is operated as a high school education program;
- (b) is adopted by a school district board of trustees;
- (c) is advised by but not owned by one or more state-chartered or federally chartered financial institutions, limited to a state or national bank, a state or federal savings and loan association, a trust company, an investment company, or a state or federal credit union;
- (d) is located on property owned by a high school district, as defined in 20-6-101, or a K-12 school district, as defined in 20-6-701;
- (e) has as its customers only those students who are enrolled in the high school in which the institution is located; and
- (f) has a written commitment from the school district board of trustees guaranteeing reimbursement of any depositor’s funds that are lost due to insolvency of the student financial institution.

(2) The funds of a student financial institution are not school district or public funds for the purposes of any state law governing the use or investment of school district or other public funds.

(3) To advise a student financial institution, a state-chartered bank, savings and loan association, trust company, investment company, or credit union shall provide written notice to the department of administration.

(4) With regard to the operation of a student financial institution, the obligations of a minor pertaining to borrowing money, cashing checks, and making deposits have the same force and effect as though they were the obligations of a person over the age of majority.

(5) Except as provided in 32-1-102, 32-1-402, and 32-3-106, a student financial institution established pursuant to this section is not subject to Title 32, chapters 1 through 3, or any other provision of state law that regulates banks, credit unions, other financial institutions, or currency exchanges.

**History:** En. Sec. 1, Ch. 340, L. 2003.

# **TITLE 33**

## **INSURANCE AND INSURANCE COMPANIES**

### **CHAPTER 22**

#### **DISABILITY INSURANCE**

**33-22-139. Coverage of therapies for Down syndrome.** (1) Health insurance coverage sold in the group or individual market in this state must provide coverage for diagnosis and treatment of Down syndrome for a covered child 18 years of age or younger.

(2) Coverage under this section must include:

- (a) habilitative or rehabilitative care that is prescribed, provided, or ordered by a licensed physician, including but not limited to professional, counseling, and guidance services and

treatment programs that are medically necessary to develop and restore, to the maximum extent practicable, the functioning of the covered child; and

(b) medically necessary therapeutic care that is provided as follows:

(i) up to 104 sessions per year with a speech-language pathologist licensed pursuant to Title 37;

(ii) up to 52 sessions per year with a physical therapist licensed pursuant to Title 37; and

(iii) up to 52 sessions per year with an occupational therapist licensed pursuant to Title 37.

(3) Habilitative and rehabilitative care includes medically necessary interactive therapies derived from evidence-based research, including intensive intervention programs and early intensive behavioral intervention.

(4) Benefits provided under this section may not be construed as limiting physical health benefits that are otherwise available to the covered child.

(5) (a) Coverage under this section may be subject to deductibles, coinsurance, and copayment provisions.

(b) Special deductible, coinsurance, copayment, or other limitations that are not generally applicable to other medical care covered under the plan may not be imposed on the coverage for Down syndrome therapies provided for under this section.

(6) When treatment is expected to require continued services, the insurer may request that the treating physician provide a treatment plan consisting of diagnosis, proposed treatment by type and frequency, the anticipated duration of treatment, the anticipated outcomes stated as goals, and the reasons the treatment is medically necessary. The treatment plan must be based on evidence-based screening criteria. The insurer may ask that the treatment plan be updated every 6 months.

(7) As used in this section, “medically necessary” means any care, treatment, intervention, service, or item that is prescribed, provided, or ordered by a physician licensed in this state and that will or is reasonably expected to:

(a) reduce or improve the physical, mental, or developmental effects of Down syndrome; or

(b) assist in achieving maximum functional capacity in performing daily activities, taking into account both the functional capacity of the recipient and the functional capacities that are appropriate for a child of the same age.

(8) This section applies to the state employee group insurance program, the university system employee group insurance program, any employee group insurance program of a city, town, school district, or other political subdivision of this state, and any self-funded multiple employer welfare arrangement that is not regulated by the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1001, et seq.

(9) This section does not apply to disability income, hospital indemnity, medicare supplement, accident-only, vision, dental, specific disease, or long-term care policies.

**History:** En. Sec. 1, Ch. 256, L. 2015.

## TITLE 37

### PROFESSIONS AND OCCUPATIONS

#### CHAPTER 8

#### NURSING

##### Part 1

##### General

**37-8-101. Purpose.** To safeguard life and health, a person practicing or offering to practice:

(1) professional nursing in this state shall submit evidence that the person is qualified to practice and is licensed as provided in this chapter;

(2) practical nursing in this state shall submit evidence that the person is qualified to practice and is licensed as provided in this chapter;

(3) as a medication aide in this state shall submit evidence that the person is qualified to practice and is licensed as provided in this chapter.

**History:** En. Sec. 1, Ch. 243, L. 1953; amd. Sec. 1, Ch. 291, L. 1967; R.C.M. 1947, 66-1221(part); amd. Sec. 1, Ch. 448, L. 2003; amd. Sec. 28, Ch. 126, L. 2005.

**37-8-102. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) “Advanced practice registered nurse” means a registered professional nurse who has completed educational requirements related to the nurse’s specific practice role, in addition to basic nursing education, as specified by the board pursuant to 37-8-202.

(2) “Board” means the board of nursing provided for in 2-15-1734.

(3) “Department” means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(4) “Medication aide I” means a person who in an assisted living facility uses standardized procedures in the administration of drugs, as defined in 37-7-101, that are prescribed by a physician, naturopathic physician, physician assistant, optometrist, advanced practice registered nurse, dentist, osteopath, or podiatrist authorized by state law to prescribe drugs.

(5) “Medication aide II” means a person who in a long-term care facility licensed to provide skilled nursing care, as defined in 50-5-101, uses standardized procedures in the administration of drugs, as defined in 37-7-101, that are prescribed by a physician, naturopathic physician, physician assistant, optometrist, advanced practice registered nurse, dentist, osteopath, or podiatrist authorized by state law to prescribe drugs.

(6) “Nursing education program” means any board-approved school that prepares graduates for initial licensure under this chapter. Nursing education programs for:

(a) professional nursing may be a department, school, division, or other administrative unit in a junior college, college, or university;

(b) practical nursing may be a department, school, division, or other administrative unit in a vocational-technical institution or junior college.

(7) “Practice of nursing” embraces the practice of practical nursing and the practice of professional nursing.

(8) (a) “Practice of practical nursing” means the performance of services requiring basic knowledge of the biological, physical, behavioral, psychological, and sociological sciences and of nursing procedures. The practice of practical nursing uses standardized procedures in the observation and care of the ill, injured, and infirm, in the maintenance of health, in action to safeguard life and health, and in the administration of medications and treatments prescribed by a physician, naturopathic physician, physician assistant, optometrist, advanced practice registered nurse, dentist, osteopath, or podiatrist authorized by state law to prescribe medications and treatments. These services are performed under the supervision of a registered nurse or a physician, naturopathic physician, physician assistant, optometrist, dentist, osteopath, or podiatrist authorized by state law to prescribe medications and treatments.

(b) These services may include a charge-nurse capacity in a long-term care facility that provides skilled nursing care or intermediate nursing care, as defined in 50-5-101, under the general supervision of a registered nurse.

(9) “Practice of professional nursing” means the performance of services requiring substantial specialized knowledge of the biological, physical, behavioral, psychological, and sociological sciences and of nursing theory as a basis for the nursing process. The nursing process is the assessment, nursing analysis, planning, nursing intervention, and evaluation in the promotion and maintenance of health, the prevention, casefinding, and management of illness, injury, or infirmity, and the restoration of optimum function. The term also includes administration, teaching, counseling, supervision, delegation, and evaluation of nursing practice and the administration of medications and treatments prescribed by physicians, naturopathic physicians, physician assistants, optometrists, advanced practice registered nurses, dentists, osteopaths, or podiatrists authorized by state law to prescribe medications and treatments. Each registered nurse is directly accountable and responsible to the consumer for the quality of nursing care rendered. As used in this subsection (9):

(a) “nursing analysis” is the identification of those client problems for which nursing care is indicated and may include referral to medical or community resources;

(b) “nursing intervention” is the implementation of a plan of nursing care necessary to accomplish defined goals.

**History:** En. Sec. 2, Ch. 243, L. 1953; amd. Sec. 2, Ch. 291, L. 1967; amd. Sec. 114, Ch. 350, L. 1974; amd. Sec. 1, Ch. 180, L. 1975; R.C.M. 1947, 66-1222; amd. Sec. 4, Ch. 248, L. 1981; amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 1, Ch. 504, L. 1989; amd. Sec. 1, Ch. 584, L. 1993; amd. Sec. 25, Ch. 308, L. 1995; amd. Sec. 1, Ch. 136, L. 1997; amd. Sec. 117, Ch. 483, L. 2001; amd. Sec. 12, Ch. 54, L. 2003; amd. Sec. 1, Ch. 317, L. 2003; amd. Sec. 2, Ch. 448, L. 2003; amd. Sec. 42, Ch. 467, L. 2005; amd. Sec. 12, Ch. 502, L. 2007; amd. Sec. 1, Ch. 392, L. 2011.

**37-8-103. Exemptions — limitations on authority conferred.** (1) This chapter may not be construed as prohibiting:

- (a) gratuitous nursing by friends or members of the family;
- (b) incidental care of the sick by domestic servants or persons primarily employed as housekeepers;
- (c) nursing assistance in the case of an emergency;
- (d) the practice of nursing by students enrolled in approved nursing education programs;
- (e) the practice of nursing in this state by any legally qualified nurse of another state whose engagement requires the nurse to accompany and care for a patient temporarily residing in this state during the period of one engagement not to exceed 6 months in length, provided that person does not represent to the public that the person is a nurse licensed to practice in this state;
- (f) the practice of any legally qualified nurse of another state who is employed by the United States government or any bureau, division, or agency of the United States while in the discharge of that nurse’s official duties;
- (g) nursing or care of the sick, with or without compensation, when done in connection with the practice of the religious tenets of any well-established religion or denomination by adherents of the religion or denomination;
- (h) nursing or care of a minor who is in the care of a licensed foster parent, to the same extent that the care may be provided by a parent or guardian;
- (i) the execution of a death sentence pursuant to 46-19-103;
- (j) nursing tasks delegated by licensed nurses to unlicensed persons according to rules adopted by the board; and
- (k) the provision of nutrition, inclusive of supplements and medications prescribed by a physician, an advanced practice registered nurse, or a physician assistant, to be administered to an individual through a gastrostomy or jejunostomy tube by a parent, guardian, foster parent, surrogate parent, other family member, or individual, regardless of compensation, who is authorized and trained by the individual receiving the nutrition, inclusive of supplements and prescribed medications, or who is authorized and trained by a parent, guardian, foster parent, surrogate parent, or other adult family member. The exemption in this subsection (1)(k) does not apply to provision of nutrition, inclusive of supplements and prescribed medications, in a licensed facility that provides skilled nursing care as provided in Title 50, chapter 5.

(2) This chapter may not be construed:

- (a) as conferring any authority to practice medicine, surgery, or any combination of medicine or surgery;
- (b) to confer any authority to practice any of the healing arts prescribed by law to be practiced in the state of Montana; or

(c) to permit any person to undertake the treatment of disease by any of the methods employed in the healing arts unless the licensee has been qualified under the applicable law or laws licensing the practice of those professions or healing arts in the state of Montana.

(3) (a) This chapter may not be construed to apply to a personal assistant performing health maintenance activities and acting at the direction of a person with a disability.

(b) The following definitions apply to this subsection:

(i) “Health care professional” means an individual licensed pursuant to Title 37 as a physician assistant, advanced practice registered nurse, registered nurse, or occupational therapist or a medical social worker working as a member of a case management team for the purposes of the home and community-based services program of the department of public health and human services.

(ii) “Health maintenance activities” includes urinary systems management, bowel treatments, administration of medications, and wound care if the activities in the opinion of the

physician or other health care professional for the person with a disability could be performed by the person if the person were physically capable and if the procedure may be safely performed in the home.

(iii) “Physician” means an individual licensed pursuant to Title 37, chapter 3.

**History:** En. Sec. 22, Ch. 243, L. 1953; amd. Sec. 7, Ch. 291, L. 1967; amd. Sec. 4, Ch. 101, L. 1977; R.C.M. 1947, 66-1242; amd. Sec. 1, Ch. 148, L. 1979; amd. Sec. 5, Ch. 248, L. 1981; amd. Sec. 2, Ch. 411, L. 1983; amd. Sec. 2, Ch. 584, L. 1993; amd. Sec. 2, Ch. 525, L. 1995; amd. Sec. 1, Ch. 454, L. 2001; amd. Sec. 5, Ch. 519, L. 2005.

## CHAPTER 11 PHYSICAL THERAPY

### Part 3 Licensing

**37-11-301. License required for physical therapist and assistant — unauthorized representation as licensed therapist.** (1) A person may not practice or purport to practice physical therapy without first obtaining a license under the provisions of this chapter.

(2) A person who is not licensed under this chapter as a physical therapist, whose license has been suspended or revoked, or whose license has lapsed and has not been revived and who uses the words or letters “L.P.T.”, “Licensed Physical Therapist”, “P.T.”, “Physical Therapist”, “R.P.T.”, “Registered Physical Therapist”, or any other letters, words, or insignia indicating or implying that the person is a licensed physical therapist or who in any way, orally or in writing or in print or by sign, directly or by implication, purports to be a physical therapist is guilty of a misdemeanor.

(3) A person who is not licensed as a physical therapist assistant in accordance with this chapter may not assist a physical therapist in the practice of physical therapy.

**History:** En. Sec. 11, Ch. 39, L. 1961; R.C.M. 1947, 66-2511; amd. Sec. 11, Ch. 491, L. 1979; amd. Sec. 5, Ch. 253, L. 1995.

## CHAPTER 15 SPEECH-LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS

### Part 1 General

**37-15-101. Purpose.** The legislature declares it to be a policy of this state that in order to safeguard the public health, safety, and welfare and to protect the public from being misled by incompetent, unscrupulous, and unauthorized persons and to protect the public from unprofessional conduct by qualified speech-language pathologists and audiologists and to help ensure the availability of the highest possible quality speech-language pathology and audiology services to the people of this state with communicative disorders, it is necessary to provide regulatory authority over persons offering speech-language pathology or audiology services to the public.

**History:** En. 66-3901 by Sec. 1, Ch. 543, L. 1975; R.C.M. 1947, 66-3901; amd. Sec. 6, Ch. 413, L. 1989; amd. Sec. 26, Ch. 472, L. 1997; amd. Sec. 1, Ch. 262, L. 2005.

**37-15-102. Definitions.** As used in this chapter, the following definitions apply:

(1) “Audiologist” means a person who practices audiology and who meets the qualifications set forth in this chapter. A person represents to the public that the person is an audiologist by incorporating in any title or description of services or functions that the person directly or indirectly performs the words “audiologist”, “audiology”, “audiometrist”, “audiometry”, “audiological”, “audiometrics”, “hearing clinician”, “hearing clinic”, “hearing therapist”, “hearing therapy”, “hearing center”, “hearing aid audiologist”, or any similar title or description of services.

(2) “Audiology aide or assistant” means any person meeting the minimum requirements established by the board of speech-language pathologists and audiologists who works directly under the supervision of a licensed audiologist.



(3) “Board” means the board of speech-language pathologists and audiologists provided for in 2-15-1739.

(4) “Department” means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(5) “Facilitator” means a trained individual who is physically present with the patient and facilitates telepractice at the direction of an audiologist or speech-language pathologist. A facilitator may be but is not limited to an audiology or speech-language pathology aide or assistant.

(6) “Patient” means a consumer of services from an audiologist or speech-language pathologist, including a consumer of those services provided through telepractice.

(7) “Practice of audiology” means nonmedical diagnosis, assessment, and treatment services relating to auditory and vestibular disorders as provided by board rule and includes the selling, dispensing, and fitting of hearing aids.

(8) “Practice of speech-language pathology” means nonmedical diagnosis, assessment, and treatment services relating to speech-language pathology as provided by board rule.

(9) “Speech-language pathologist” means a person who practices speech-language pathology and who meets the qualifications set forth in this chapter. A person represents to the public that the person is a speech-language pathologist by incorporating in any title or description of services or functions that the person directly or indirectly performs the words “speech pathologist”, “speech pathology”, “speech correctionist”, “speech corrections”, “speech therapist”, “speech therapy”, “speech clinician”, “speech clinic”, “language pathologist”, “language pathology”, “voice therapist”, “voice therapy”, “voice pathologist”, “voice pathology”, “logopedist”, “logopedics”, “communicologist”, “communicology”, “aphasiologist”, “aphasiology”, “phoniatrist”, “language therapist”, “language clinician”, or any similar title or description of services or functions.

(10) “Speech-language pathology aide or assistant” means a person meeting the minimum requirements established by the board who works directly under the supervision of a licensed speech-language pathologist.

(11) “Telepractice” means the practice of audiology or speech-language pathology by an audiologist or speech-language pathologist at a distance through any means, method, device, or instrumentality for the purposes of assessment, intervention, and consultation.

**History:** En. 66-3902 by Sec. 2, Ch. 543, L. 1975; R.C.M. 1947, 66-3902; amd. Sec. 11, Ch. 22, L. 1979; amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 2, Ch. 413, L. 1989; amd. Sec. 1, Ch. 93, L. 1993; amd. Sec. 56, Ch. 429, L. 1995; amd. Sec. 124, Ch. 483, L. 2001; amd. Sec. 2, Ch. 262, L. 2005; amd. Sec. 1, Ch. 342, L. 2011; amd. Sec. 1, Ch. 162, L. 2013.

**37-15-103. Exemptions — rulemaking.** (1) This chapter does not prevent a person licensed in this state under any other law from engaging in the profession or business for which that person is licensed.

(2) This chapter does not restrict or prevent activities of a speech-language pathology or audiology nature or the use of the official title of the position for which the activities were performed on the part of a speech-language pathologist or audiologist employed by federal agencies.

(3) Those persons performing activities described in subsection (2) who are not licensed under this chapter may perform those activities only within the confines of or under the jurisdiction of the organization in which they are employed and may not offer speech-language pathology or audiology services to the public for compensation over and above the salary they receive for performance of their official duties with organizations by which they are employed. However, without obtaining a license under this chapter, these persons may consult or disseminate their research findings and scientific information to other accredited academic institutions or governmental agencies. They also may offer lectures to the public for a fee without being licensed under this chapter.

(4) This chapter does not restrict the activities and services of a student in speech-language pathology or audiology from pursuing a course of study in speech-language pathology or audiology at an accredited or approved college or university or an approved clinical training facility. However, these activities and services must constitute a part of a supervised course of study, and a fee may not accrue directly or indirectly to the student. These students must be designated by the title “speech-language pathology or audiology intern”, “speech-language

pathology or audiology trainee”, or a title clearly indicating the training status appropriate to the level of training.

(5) This chapter does not restrict a person from another state from offering speech-language pathology or audiology services in this state if the services are performed for not more than 5 days in any calendar year and if the services are performed in cooperation with a speech-language pathologist or audiologist licensed under this chapter. However, by securing a temporary license from the board subject to limitations that the board may impose, a person not a resident of this state who is not licensed under this chapter but who is licensed under the law of another state that has established licensure requirements at least equivalent to those established by this chapter may offer speech-language pathology or audiology services in this state for not more than 30 days in any calendar year if the services are performed in cooperation with a speech-language pathologist or audiologist licensed under this chapter.

(6) This chapter does not restrict a person holding a class A certificate issued by the conference of executives of American schools of the deaf from performing the functions for which the person qualifies.

(7) This chapter does not restrict a person who is licensed in this state as a hearing aid dispenser from performing the functions for which the person qualifies and that are described in Title 37, chapter 16.

(8) (a) An audiologist who sells, dispenses, or fits hearing aids is exempt from the licensing requirements or other provisions of Title 37, chapter 16, except for the provisions of 37-16-304.

(b) The board may adopt rules pertaining to the selling, dispensing, and fitting of hearing aids and hearing aid parts, attachments, and accessories.

**History:** En. 66-3904 by Sec. 4, Ch. 543, L. 1975; R.C.M. 1947, 66-3904; amd. Sec. 3, Ch. 413, L. 1989; amd. Sec. 1, Ch. 367, L. 1999; amd. Sec. 3, Ch. 262, L. 2005; amd. Sec. 24, Ch. 19, L. 2011; amd. Sec. 2, Ch. 342, L. 2011.

### Part 3 Licensing

**37-15-301. License required.** (1) A license must be issued to qualified persons either in speech-language pathology or audiology. A person may be licensed in both areas if the person meets the respective qualifications, and in those instances, the license fee must be as though for one license.

(2) A person may not practice or represent to the public that the person is a speech-language pathologist or audiologist in this state unless the person is licensed in accordance with the provisions of this chapter.

(3) The board may issue a limited license to qualified individuals engaged in supervised professional experience, as defined by board rule.

**History:** En. 66-3903 by Sec. 3, Ch. 543, L. 1975; R.C.M. 1947, 66-3903; amd. Sec. 6, Ch. 413, L. 1989; amd. Sec. 2, Ch. 367, L. 1999; amd. Sec. 1377, Ch. 56, L. 2009; amd. Sec. 1, Ch. 90, L. 2017.

#### Compiler's Comments

*2017 Amendment:* Chapter 90 inserted (3) concerning limited licenses issued to qualified individuals engaged in supervised professional experience. Amendment effective March 23, 2017.

## CHAPTER 23 PROFESSIONAL COUNSELING

### Part 2 Licensing

**37-23-201. Representation or practice as licensed clinical professional counselor — license required.** (1) Upon issuance of a license in accordance with this chapter, a licensee may use the title “licensed clinical professional counselor” or “professional counselor”.

(2) Except as provided in subsection (3), a person may not represent that the person is a licensed professional counselor or licensed clinical professional counselor by adding the letters “LPC” or “LCPC” after the person’s name or by any other means, engage in the practice of professional counseling, or represent that the person is engaged in the practice of professional counseling, unless licensed under this chapter.

(3) Individuals licensed in accordance with this chapter before October 1, 1993, who use the title “licensed professional counselor” or “LPC” may use the title “licensed clinical professional counselor” or “LCPC”.

(4) Subsection (2) does not prohibit:

(a) a qualified member of another profession, such as a physician, lawyer, pastoral counselor, probation officer, court employee, nurse, school counselor, educator, chemical dependency counselor accredited by a federal agency, or addiction counselor licensed pursuant to Title 37, chapter 35, from performing duties and services consistent with the person’s licensure or certification and the code of ethics of the person’s profession or, in the case of a qualified member of another profession who is not licensed or certified or for whom there is no applicable code of ethics, from performing duties and services consistent with the person’s training, as long as the person does not represent by title that the person is engaging in the practice of professional counseling;

(b) an activity or service or use of an official title by a person employed by or acting as a volunteer for a federal, state, county, or municipal agency or an educational, research, or charitable institution that is a part of the duties of the office or position;

(c) an activity or service of an employee of a business establishment performed solely for the benefit of the establishment’s employees;

(d) an activity or service of a student, intern, or resident in mental health counseling pursuing a course of study at an accredited university or college or working in a generally recognized training center if the activity or service constitutes a part of the supervised course of study;

(e) an activity or service of a person who is not a resident of this state, which activity or service is rendered for a period that does not exceed, in the aggregate, 60 days during a calendar year, if the person is authorized under the law of the state or country of residence to perform the activity or service. However, the person shall report to the department of labor and industry the nature and extent of the activity or service if it exceeds 10 days in a calendar year.

(f) pending disposition of the application for a license, the activity or service by a person who has recently become a resident of this state, has applied for a license within 90 days of taking up residency in this state, and is licensed to perform the activity or service in the state of the person’s former residence;

(g) an activity or service of a person who is a social worker licensure candidate, professional counselor licensure candidate, or marriage and family therapist licensure candidate; or

(h) an activity or service performed by a licensed social worker, licensed psychiatrist, or licensed psychologist when performing the activity or service in a manner consistent with the person’s license and the code of ethics of the person’s profession.

**History:** En. Sec. 4, Ch. 572, L. 1985; amd. Sec. 9, Ch. 552, L. 1993; amd. Sec. 2, Ch. 536, L. 1995; amd. Sec. 12, Ch. 507, L. 1997; amd. Sec. 4, Ch. 23, L. 2001; amd. Sec. 130, Ch. 483, L. 2001; amd. Sec. 7, Ch. 130, L. 2015.

## CHAPTER 24 OCCUPATIONAL THERAPY

### Part 3 Licensing

**37-24-301. License required.** (1) (a) A person may not hold out to the public that the person is an occupational therapist or is able to practice occupational therapy or able to render occupational therapy services in this state unless the person is licensed as an occupational therapist under the provisions of this chapter.

(b) A person may not practice or hold out to the public that the person is an occupational therapy assistant in this state unless the person is licensed as an occupational therapist or as an occupational therapy assistant.

(2) Only an individual may be licensed under this chapter.

**History:** En. Sec. 9, Ch. 629, L. 1985; amd. Sec. 1391, Ch. 56, L. 2009.

## CHAPTER 25 NUTRITIONISTS

### Part 3 Licensing

**37-25-301. Scope of dietetic-nutrition practice.** Only a nutritionist can provide the following services:

- (1) assessing the nutrition needs of individuals and groups and determining resources and constraints in the practice setting;
- (2) establishing priorities and objectives that meet nutritive needs and are consistent with available resources and constraints;
- (3) providing nutrition counseling for any individual;
- (4) developing, implementing, and managing nutrition care systems; and
- (5) evaluating, adjusting, and maintaining appropriate standards of quality in food and nutrition services.

**History:** En. Sec. 3, Ch. 529, L. 1987.

**37-25-302. Licensing requirements.** (1) An applicant for licensure as a licensed nutritionist shall file a written application with the board and demonstrate to the board that the person is registered by the commission.

- (2) An applicant shall pay an application fee set by the board.

**History:** En. Sec. 4, Ch. 529, L. 1987; amd. Sec. 1392, Ch. 56, L. 2009.

**37-25-303. Issuance of license.** Upon successful completion of the requirements in 37-25-302, an applicant must be issued a license attesting to the date and fact of licensure.

**History:** En. Sec. 5, Ch. 529, L. 1987; amd. Sec. 34, Ch. 109, L. 2009.

**37-25-304. Exemptions from licensure requirements.** This chapter does not prevent:

- (1) a student or intern in an approved academic program or a paraprofessional with approved dietetic-nutrition training from engaging in the practice of dietetics-nutrition if a licensed nutritionist is available for direct supervision and if the student, intern, or paraprofessional does not represent to the public that the individual is a nutritionist;

- (2) a licensed physician or nurse from engaging in the practice of dietetics-nutrition when it is incidental to the practice of that profession;

- (3) a person licensed under any other law from engaging in the profession or business for which the person is licensed if the person does not represent to the public that the person is a nutritionist;

- (4) an educator or adviser employed by a nonprofit agency acceptable to the board or by an accredited degree-granting institution or an accredited elementary or secondary school from engaging in an activity within the scope of the individual's salaried position;

- (5) a person employed by or under contract with an agency of the state or federal government from discharging an official duty if the person does not represent to the public that the person is a nutritionist;

- (6) a person from furnishing general nutritional information, including dissemination of literature, as to the use of food, food materials, or dietary supplements or from engaging in the explanation as to the use of foods or food products, including dietary supplements, in connection with the marketing and distribution of those products if the person does not represent to the public that the person is a nutritionist;

- (7) a person from furnishing general nutrition information or disseminating literature if the person does not represent to the public that the person is a dietitian or a nutritionist; or

- (8) a person from fulfilling state or federal regulations governing the delivery or provision of nutritional health services to hospitals or long-term care facilities if the person does not represent to the public that the person is a nutritionist.

**History:** En. Sec. 6, Ch. 529, L. 1987; amd. Sec. 1393, Ch. 56, L. 2009.

**37-25-305. Representation to public as nutritionist — limitation on use of title.** A person may not represent to the public by any title, sign, or advertisement or description of

services that the person is a nutritionist or a licensed nutritionist unless the person has been licensed under this chapter or has met the requirements of 37-25-102(9)(b).

**History:** En. Sec. 7, Ch. 529, L. 1987; amd. Sec. 157, Ch. 42, L. 1997.

## CHAPTER 36 ATHLETIC TRAINERS

### Part 1 General

**37-36-101. Definitions.** As used in this chapter, the following definitions apply:

(1) “Athlete” means a person who participates in an athletic activity that involves exercises, sports, or games requiring physical strength, agility, flexibility, range of motion, speed, or stamina and the exercises, sports, or games are of the type conducted in association with an educational institution or a professional, amateur, or recreational sports club or organization.

(2) “Athletic injury” means a physical injury received by an athlete.

(3) “Athletic trainer” means an individual who is licensed to practice athletic training.

(4) “Athletic training” means the practice of prevention, recognition, assessment, management, treatment, disposition, and reconditioning of athletic injuries. The term includes the following:

(a) the use of heat, light, sound, cold, electricity, exercise, reconditioning, or mechanical devices related to the care and conditioning of athletes; and

(b) the education and counseling of the public on matters related to athletic training.

(5) “Board” means the board of athletic trainers provided for in 2-15-1771.

(6) “Department” means the department of labor and industry provided for in 2-15-1701.

(7) “Licensee” means an individual licensed under this chapter.

**History:** En. Sec. 2, Ch. 388, L. 2007.

### Part 2 Regulations — Penalties

**37-36-201. Qualifications — temporary license — exemption from examination.**

(1) Applicants for licensure as an athletic trainer shall:

(a) satisfactorily complete an application and an examination prescribed by the department in accordance with rules adopted by the board;

(b) pay application, examination, and licensure fees established by the board;

(c) provide documentation that the applicant has received at least a baccalaureate degree from a postsecondary institution that meets the academic standards for athletic trainers established by the national athletic trainers’ association board of certification;

(d) provide the board with letters of recommendation from at least two clinical supervisors familiar with the applicant’s clinical training and other documentation by which the board may determine that an applicant has not had a criminal conviction or disciplinary action taken against the applicant by a board or a licensing agency in another state or territory of the United States that may have a direct bearing on the applicant’s ability to practice athletic training competently.

(2) (a) The board may issue a temporary license to an applicant who:

(i) meets the qualifications in subsections (1)(b) through (1)(d) but has not yet met the examination requirement in subsection (1)(a); or

(ii) has a valid license from another state or certification as provided in subsection (3)(a) or (3)(b).

(b) A temporary license issued under this section is valid after the date of issuance for 90 days or until the board acts on the person’s license application, whichever is earlier.

(3) An applicant may be exempted from the examination requirement in subsection (1)(a) if the applicant:

(a) has a current, valid license to practice athletic training in another state and that state’s standards, as determined by the board, are at least equal to the standards for licensure in this state; or



(b) is certified as an athletic trainer by an organization recognized by the national commission for certifying agencies.

**History:** En. Sec. 4, Ch. 388, L. 2007.

**37-36-202. License — revocation.** (1) Except as provided in subsection (2), a license issued under this chapter is valid for 1 year.

(2) The board may revoke a license if a licensee knowingly:

(a) provided fraudulent information on the application or documentation required in 37-36-201;

(b) violated standards of conduct as prescribed by the board; or

(c) engaged in practices beyond the scope and limitation of the person's training and education as determined by the board.

**History:** En. Sec. 5, Ch. 388, L. 2007; amd. Sec. 38, Ch. 109, L. 2009.

**37-36-203. Representation to public — practice — exemptions.** (1) (a) Except as provided in subsection (2), an individual may not practice athletic training without a license.

(b) Upon issuance of a license in accordance with this chapter, a licensee may use the title "licensed athletic trainer" or "certified athletic trainer" and may use the abbreviations "LAT" or "AT" indicating that the individual is licensed in the practice of athletic training. A person who is not licensed may not use the titles listed in this subsection (1)(b). Except for an individual listed in subsection (2)(a), an individual who is not certified or licensed as an athletic trainer may not advertise for athletic training services.

(2) This section does not prohibit:

(a) a health care professional licensed under Title 37, chapter 3, 6, 8, 11, 12, 20, 24, or 26, from practicing an occupation or profession for which the health care professional is licensed or from practicing on an athlete;

(b) an educator or an information specialist from providing general information regarding prevention of athletic injuries;

(c) an individual from providing a first aid procedure incidental to the individual's employment or volunteer duties;

(d) an intern or student trainee studying a course of athletic training at an accredited postsecondary institution from providing athletic training under qualified supervision as part of the intern or student trainee's course of study. The intern or student trainee shall use the title "athletic training student" while carrying out athletic training activities.

(e) a personal trainer from providing personal training services;

(f) a massage therapist from providing massage; or

(g) a coach, physical education teacher, athletic director, other school employee, or supervised volunteer from providing first aid, preventative care, or continuous followup care of athletes and athletic injuries in a school setting.

**History:** En. Sec. 6, Ch. 388, L. 2007.

**37-36-204. Application and administration of topical medications.** (1) A licensed athletic trainer may apply or administer topical medications by:

(a) direct application;

(b) iontophoresis, a process by which topical medications are applied through the use of electricity; or

(c) phonophoresis, a process by which topical medications are applied through the use of ultrasound.

(2) A licensed athletic trainer may apply or administer the following topical medications:

(a) bactericidal agents;

(b) debriding agents;

(c) anesthetic agents;

(d) anti-inflammatory agents;

(e) antispasmodic agents; and

(f) adrenocorticosteroids.

(3) Topical medications applied or administered by a licensed athletic trainer must be prescribed on a specific or standing basis by a licensed medical practitioner authorized to order or prescribe topical medications and must be purchased from a pharmacy certified under 37-7-321.

Topical medications dispensed under this section must comply with packaging and labeling guidelines developed by the board of pharmacy under Title 37, chapter 7.

(4) Appropriate recordkeeping is required of a licensed athletic trainer who applies or administers topical medications as authorized in this section.

**History:** En. Sec. 7, Ch. 388, L. 2007.

**37-36-205. Violation — penalties.** A person who knowingly violates any provision of this chapter is guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than \$50 or more than \$500, by imprisonment in the county jail for a term of not less than 30 days or more than 6 months, or by both fine and imprisonment.

**History:** En. Sec. 8, Ch. 388, L. 2007.

## CHAPTER 48 PRIVATE ALTERNATIVE ADOLESCENT RESIDENTIAL OR OUTDOOR PROGRAMS

### Part 1 General Provisions

**37-48-101. Purpose.** The purpose of the board is to license and regulate private alternative adolescent residential or outdoor programs as a public service to monitor and maintain a high standard of care and to ensure the safety and well-being of the adolescents and parents using the programs. Necessary licensure processes and safety standards for programs are best developed and monitored by the professionals that are actively engaged in providing private alternative adolescent residential care.

**History:** En. Sec. 2, Ch. 294, L. 2005; amd. Sec. 7, Ch. 178, L. 2007.

**37-48-102. Definitions.** As used in this part, the following definitions apply:

(1) “Board” means the board of private alternative adolescent residential or outdoor programs provided for in 2-15-1745.

(2) “Department” means the department of labor and industry provided for in 2-15-1701.

(3) “Direct access” means that an individual has or will likely have person-to-person spoken contact or physical contact with or access to the program participant.

(4) “Manager” means an individual who has or will likely have person-to-person spoken contact or physical contact with or access to the program participant.

(5) “Plan of operation” means the operational structures and parameters describing the program as identified in 37-48-103 and as required by the board by rule.

(6) (a) “Program” means a private alternative adolescent residential or outdoor program that provides a structured, private, alternative residential setting for youth who are experiencing emotional, behavioral, or learning problems and who have a history of failing in academic, social, moral, or emotional development at home or in less-structured traditional settings.

(b) The term does not include:

(i) any program that is required to be licensed or regulated by the state under Title 50, 52, or 53;

(ii) recreational programs such as boy scouts, girl scouts, or 4-H clubs;

(iii) organizations, boarding schools, or residential schools with a sole focus on academics;

(iv) residential training or vocational programs with a sole focus on education and vocational training;

(v) youth camps with a focus on recreation and faith-related activities; or

(vi) an organization, boarding school, or residential school that is an adjunct ministry of a church incorporated in the state of Montana.

(7) “Program participant” means an adolescent enrolled in or participating in a program, other than an adolescent serving as an employee of the program.

(8) “Worker affiliated with the program” means any owner, partner, member, employee, or contractor providing professional or occupational services to a program.

**History:** En. Sec. 3, Ch. 294, L. 2005; amd. Sec. 8, Ch. 178, L. 2007.

**37-48-103. Registration and licensing requirements — fees.** (1) The board shall develop and adopt rules and set fees for mandatory registration and licensing programs. Each program is required to provide policies of insurance in a form and in an adequate amount as determined by board rule.

(2) The board shall require the following information to be provided for licensing. The information includes but is not limited to:

- (a) a description of the program and facility;
- (b) a description of the goals and objectives of the program for program participants;
- (c) a description of the population served by the program, including the maximum number of program participants to be served and the gender of program participants;
- (d) the location and contact information for each program, including the person responsible for the conduct of the program;
- (e) a list of professional and supervisory employees and relevant credentials and other qualifications;
- (f) the average daily census;
- (g) a copy of program policies and procedures on:
  - (i) admission;
  - (ii) behavior management;
  - (iii) communication with family members;
  - (iv) the availability of routine and emergency medical and psychological care;
  - (v) medication management;
  - (h) any information that the board may require to facilitate a fingerprint and background check by the department of justice and the federal bureau of investigation of a manager or a worker affiliated with the program who has direct access to program participants, including information pertaining to criminal convictions; and
  - (i) any other related information specified by the board by rule.

(3) The board shall issue licenses upon receipt of the appropriate fees and a finding that the information provided in subsection (2) is satisfactory. The board shall make available to the public information on the name, address, and contact information for each licensed program.

**History:** En. Sec. 4, Ch. 294, L. 2005; amd. Sec. 9, Ch. 178, L. 2007.

**37-48-104 and 37-48-105 reserved.**

**37-48-106. Licensure.** (1) A program must be licensed by the board.

(2) The board may issue a license that is valid for a period of between 1 year and 3 years or may issue a provisional license as provided in 37-48-107.

(3) A license is valid only for the program for which it is issued and may not be sold, assigned, or transferred without the approval of the board.

(4) The board may suspend or revoke a license if the board, upon a hearing, as provided in 37-1-131, determines that the program is not operated in a manner consistent with the rules adopted and is not in substantial compliance with the program's plan of operation.

(5) The board may approve a modification of the program's plan of operation. A program may not deviate from its plan of operation without the prior approval of the board.

(6) A license terminates and the holder of the program license shall return the license to the department if:

- (a) program operations are discontinued;
  - (b) ownership of the program is transferred without approval of the board;
  - (c) the board suspends or revokes the license; or
  - (d) the license expires without being renewed.
- (7) The program license must be displayed in a conspicuous place near the admitting office of the program.

**History:** En. Sec. 1, Ch. 178, L. 2007.

**37-48-107. Provisional license.** (1) The board may grant a provisional license to a program:

- (a) that was registered with the board as of December 31, 2006; and
- (b) that has submitted to the board:
  - (i) a completed application;

(ii) background materials, as described in 37-48-108, necessary to conduct background investigations on the program's managers and workers affiliated with the program; and

(iii) the required fees.

(2) A provisional license allows a program to operate for a period of up to 1 year, pending an onsite inspection of the program's facilities and the completion of background investigations on all managers and workers affiliated with the program who have direct access to program participants.

(3) The board may terminate a provisional license by notifying the program of any of the following:

(a) the program's failure to pass the onsite inspection;

(b) the program's failure to provide timely background materials for investigation of all managers and workers affiliated with the program who have direct access to program participants; or

(c) the determination that one or more of the workers affiliated with the program with direct access to program participants are considered unsuitable, based on background information, for having direct access to program participants although the program upon notification may take corrective action within 30 days.

(4) If the program shows good cause, the board may extend a provisional license to complete background investigations on managers and workers affiliated with the program.

(5) The board may decline to grant a provisional license or a license to a program that the board determines is substantially the same in ownership, management, and plan of operation as a program that had previously been denied a provisional license or a license.

**History:** En. Sec. 2, Ch. 178, L. 2007.

**37-48-108. Background investigations — waiver.** (1) The program shall submit background checks for the program manager and each worker affiliated with the program who has or will have direct access to program participants in a manner prescribed by the board or shall provide to the board the information necessary for the board to conduct a background investigation, including a set of fingerprints as required for a fingerprint check by the department of justice and the federal bureau of investigation.

(2) For the purposes of the background investigation required by this section, each individual subject to subsection (1) must be evaluated pursuant to the provisions of Title 37, chapter 1, part 2.

(3) The board may, by rule, identify specific criminal offenses for which a conviction disqualifies a worker affiliated with the program and procedures for disqualification based upon substantiated child abuse or neglect of children.

(4) (a) The board may, by rule, waive the requirement for a background investigation for an individual who holds a professional or occupational license granted by the state that is not suspended or restricted by action of the appropriate licensing entity.

(b) The board may grant a waiver of the background investigation upon a determination that the class or type of licensure referenced in subsection (4)(a):

(i) subjects the individual to at least as rigorous a background investigation as required by this section; and

(ii) contains provisions disqualifying applicants for a professional or occupational license that are similar to the provisions in subsection (3) and that are specified by the board by rule as disqualifying an individual whose job requires direct access to a program participant.

**History:** En. Sec. 3, Ch. 178, L. 2007.

**37-48-109 through 37-48-112 reserved.**

**37-48-113. Rules — program criteria — application evaluations.** (1) The board shall adopt rules establishing specific minimum criteria to ensure the health and safety of program participants and other rules necessary to implement this part. Those criteria may incorporate by reference appropriate standards established by other governmental entities, including:

(a) building codes for those structures used as a residence for program participants;

(b) health and sanitation requirements; and

(c) other standards adopted by the board by rule.

(2) The board shall evaluate each application for a license to determine whether the proposed plan of operation:

- (a) meets the specific minimum criteria set by rule;
- (b) reasonably provides for the safety and well-being of program participants; and
- (c) is consistent with the goals and objectives stated in the plan of operation.

(3) The board shall adopt rules by October 1, 2008, to begin licensing the programs, and the programs have 30 days from the effective date to apply for a license once the rules are effective.

**History:** En. Sec. 4, Ch. 178, L. 2007.

**37-48-114 reserved.**

**37-48-115. Department or board inspection.** (1) The department or board may enter and inspect, without prior notice, program premises and facilities in response to a complaint. The inspection may be for purposes of determining compliance with the provisions of this part or for other purposes provided for by rule.

(2) The department or board may enlist the assistance of other governmental entities in inspections, including but not limited to a county health officer or a county sanitarian.

(3) (a) Except as provided in subsection (3)(b), the department or board shall conduct an onsite inspection of:

- (i) each program applying for a license; and
- (ii) each licensed program at least once every 3 years.

(b) Instead of an onsite inspection of a licensed program, the department or board may consider verified proof of successful certification by a national or regional certifying organization approved by the board by rule.

**History:** En. Sec. 5, Ch. 178, L. 2007.

**37-48-116 and 37-48-117 reserved.**

**37-48-118. Penalty for failure to obtain license — notice of violation.** (1) It is unlawful to operate a program without a license or a provisional license. A person who maintains or operates a program in violation of this section is guilty of a misdemeanor punishable under 46-18-212. Absolute liability, as provided for in 45-2-104, is imposed for a violation of this section.

(2) If the department receives a complaint or information alleging a violation of this part, the department may serve written notice to the program management either in person or by certified mail. The notice must inform the program management of the right to a hearing and whether injunctive action is being sought. The notice may also recommend corrective action to achieve voluntary compliance and a schedule for completing the corrective action if the program prefers to take corrective action rather than proceed to a contested case hearing.

**History:** En. Sec. 6, Ch. 178, L. 2007.

## TITLE 39

### LABOR

#### CHAPTER 2

#### THE EMPLOYMENT RELATIONSHIP

##### Part 2

##### General Obligations of Employers

**39-2-215. Public employer policy on support of women and breastfeeding — unlawful discrimination.** (1) All state and county governments, municipalities, and school districts and the university system must have a written policy supporting women who want to continue breastfeeding after returning from maternity leave. The policy must state that employers shall support and encourage the practice of breastfeeding, accommodate the breastfeeding-related needs of employees, and ensure that employees are provided with adequate facilities for breastfeeding or the expression of milk for their children. At a minimum,



the policy must identify the means by which an employer will make available a space suitable for breastfeeding and breast pumping for a lactating employee, including the provision of basic necessities of privacy, lighting, and electricity for the pump apparatus. The space does not need to be fully enclosed or permanent, but must be readily available during the term that the employee needs the space.

(2) It is an unlawful discriminatory practice for any public employer:

(a) to refuse to hire or employ or to bar or to discharge from employment an employee who expresses milk in the workplace; or

(b) to discriminate against an employee who expresses milk in the workplace in compensation or in terms, conditions, or privileges of employment unless based upon a bona fide occupational qualification.

**History:** En. Sec. 1, Ch. 290, L. 2007.

**39-2-216. Private place for nursing mothers.** (1) All state and county governments, municipalities, and school districts and the university system shall make reasonable efforts to provide a room or other location in close proximity to the work area, other than a toilet stall, where an employee can express the employee's breast milk as provided in 39-2-215.

(2) All public employers are encouraged to establish policies to allow mothers who wish to continue to breastfeed after returning to work to have privacy in order to express milk and to provide facilities for milk storage.

**History:** En. Sec. 2, Ch. 290, L. 2007.

**39-2-217. Break time for nursing mothers.** All state and county governments, municipalities, and school districts and the university system shall provide reasonable unpaid break time each day to an employee who needs to express breast milk for the employee's child, as provided in 39-2-215 and 39-2-216, if breaks are currently allowed. If breaks are not currently allowed, the public employer shall consider each case and make accommodations as possible. The break time must, if possible, run concurrently with any break time already provided to the employee. A public employer is not required to provide break time under this section if to do so would unduly disrupt the public employer's operations.

**History:** En. Sec. 3, Ch. 290, L. 2007.

### Part 3 General Prohibitions on Employers

**39-2-307. Employer access limited regarding personal social media account of employee or job applicant — conditions for exceptions — employer retaliation prohibited — penalties.** (1) Except as provided in subsection (2), an employer or employer's agent may not require or request an employee or an applicant for employment to:

(a) disclose a user name or password for the purpose of allowing the employer or employer's agent to access a personal social media account of the employee or job applicant;

(b) access personal social media in the presence of the employer or employer's agent; or

(c) divulge any personal social media or information contained on personal social media.

(2) An employee shall provide, if requested, to an employer or employer's agent the employee's user name or password to access personal social media when:

(a) (i) the employer has specific information about an activity by the employee that indicates work-related employee misconduct or criminal defamation, as provided in 45-8-212;

(ii) the employer has specific information about the unauthorized transfer by the employee of the employer's proprietary information, confidential information, trade secrets, or financial data to a personal online account or personal online service; or

(iii) an employer is required to ensure compliance with applicable federal laws or federal regulatory requirements or with the rules of self-regulatory organizations as defined in section 3(a)(26) of the Securities and Exchange Act of 1934, 15 U.S.C. 78c(a)(26); and

(b) an investigation is under way and the information requested of the employee is necessary to make a factual determination in the investigation.

(3) Nothing in this section:

(a) limits an employer's right to promulgate and maintain lawful workplace policies governing the use of the employer's electronic equipment, including a requirement for an

employee to disclose to the employer the employee's user name, password, or other information necessary to access employer-issued electronic devices, including but not limited to cell phones, computers, and tablet computers, or to access employer-provided software or e-mail accounts;

(b) prevents an employee from seeking injunctive relief in response to the provisions of subsection (2); or

(c) prevents the prosecution of a person for violating privacy in communications under 45-8-213.

(4) An employer may not discharge, discipline, threaten to discharge or discipline, or otherwise retaliate against an employee or job applicant for not complying with a request or demand by the employer that violates this section.

(5) (a) As used in this section, "personal social media" means a password-protected electronic service or account containing electronic content, including but not limited to e-mail, videos, still photographs, blogs, video blogs, podcasts, instant and text messages, internet website profiles or locations, and online services or accounts, including password-protected services or accounts to which an employee may post information, data, or pictures.

(b) The term does not include a social media account that is:

(i) opened for or provided by an educational institution and intended solely for educational purposes; or

(ii) opened for or provided by an employer and intended solely for business-related purposes.

(6) (a) An employee or an applicant for employment may bring an action against an employer for violating this section within 1 year in a small claims court. An employee or an applicant for employment may also have a cause of action under 45-8-213.

(b) Damages are limited to \$500 or actual damages up to the limit provided in 3-10-1004. Legal costs may be awarded to the party that prevails in court.

(7) If an employer gains information improperly under this section and subsequently is involved in a computer security breach as provided in 30-14-1704, the employer is subject to penalties under 30-14-142.

**History:** En. Sec. 1, Ch. 263, L. 2015.

## CHAPTER 4 HOURS OF LABOR IN CERTAIN EMPLOYMENTS

### Part 1 Hours of Labor — Penalties and Liability for Violations Thereof

**39-4-107. State and municipal governments and school districts.** (1) A period of 8 hours constitutes a day's work in all works and undertakings carried on or aided by any municipal or county government, the state government, or a first-class school district, on all contracts let by them, and for all janitors, except in courthouses of counties having a taxable valuation of less than \$10 million, engineers, firefighters, caretakers, custodians, and laborers employed in or about any buildings, works, or grounds used or occupied for any purpose by a municipal, county, or state government or first-class school district. This subsection does not apply in the event of an emergency when life or property is in imminent danger or to the situations specified in subsections (3) and (4).

(2) The provisions of subsection (1) do not apply to firefighters who are working a work period established in a collective bargaining agreement entered into between a public employer and a firefighters' organization or its exclusive representative.

(3) In counties where regular road and bridge departments are maintained, the county commissioners may, with the approval of the employees or their constituted representative, establish a 40-hour workweek consisting of 4 consecutive 10-hour days. An employee may not be required to work in excess of 8 hours in any one workday if the employee is opposed to working more than 8 hours.

(4) In municipal and county governments, the employer and employee may agree to a workday of more than 8 hours and to a 7-day, 40-hour work period:

(a) through a collective bargaining agreement when a collective bargaining unit represents the employee; or

(b) by mutual agreement when a bargaining unit is not recognized.

**History:** (1) thru (3)En. Sec. 1, Ch. 50, L. 1905; amd. Sec. 1, Ch. 108, L. 1907; re-en. Sec. 1739, Rev. C. 1907; amd. Sec. 1, Ch. 30, L. 1917; re-en. Sec. 3079, R.C.M. 1921; Cal. Pol. C. Secs. 3244, 3245; amd. Sec. 2, Ch. 116, L. 1929; re-en. Sec. 3079, R.C.M. 1935; amd. Sec. 1, Ch. 135, L. 1943; amd. Sec. 1, Ch. 244, L. 1957; amd. Sec. 1, Ch. 395, L. 1975; Sec. 41-1121, R.C.M. 1947; (4)En. Sec. 2, Ch. 50, L. 1905; amd. Sec. 2, Ch. 108, L. 1907; re-en. Sec. 1740, Rev. C. 1907; re-en. Sec. 3080, R.C.M. 1921; amd. Sec. 3, Ch. 116, L. 1929; re-en. Sec. 3080, R.C.M. 1935; Sec. 41-1122, R.C.M. 1947; R.C.M. 1947, 41-1121, 41-1122; amd. Sec. 22, Ch. 397, L. 1979; amd. Sec. 2, Ch. 375, L. 1983; amd. Sec. 2, Ch. 640, L. 1983; amd. Sec. 1505, Ch. 56, L. 2009; amd. Sec. 30, Ch. 128, L. 2011; amd. Sec. 3, Ch. 212, L. 2011.

## CHAPTER 29 VETERANS' EMPLOYMENT PREFERENCE

### Part 1 General Provisions

**39-29-101. Definitions.** For the purposes of this chapter, the following definitions apply:

- (1) "Armed forces" means the:
  - (a) United States army, navy, air force, marine corps, and coast guard;
  - (b) merchant marine for service recognized by the United States department of defense as active military service for the purpose of laws administered by the department of veterans affairs; and
  - (c) Montana army and air national guard.
- (2) "Disabled veteran" means a person:
  - (a) whether or not the person is a veteran who was separated under honorable conditions from military duty in the armed forces and has established the present existence of a service-connected disability or is receiving compensation, disability retirement benefits, or a pension because of a law administered by the department of veterans affairs, a military department, or the state of Montana; or
  - (b) who has received a purple heart medal.
- (3) "Eligible relative" means:
  - (a) the unmarried surviving spouse of a veteran or disabled veteran;
  - (b) the spouse of a disabled veteran who is unable to qualify for appointment to a position;
  - (c) the mother of a veteran who died under honorable conditions while serving in the armed forces if:
    - (i) the mother's spouse is totally and permanently disabled; or
    - (ii) the mother is the widow of the father of the veteran and has not remarried;
    - (d) the mother of a service-connected permanently and totally disabled veteran if:
      - (i) the mother's spouse is totally and permanently disabled; or
      - (ii) the mother is the widow of the father of the veteran and has not remarried.
  - (4) "Military duty" means duty with military pay and allowances in the armed forces.
  - (5) (a) "Position" means a position occupied by a permanent, temporary, or seasonal employee, as defined in 2-18-101, for the state or a similar permanent, temporary, or seasonal employee with a public employer other than the state.
    - (b) The term does not include:
      - (i) a state or local elected office;
      - (ii) appointment by an elected official to a body, such as a board, commission, committee, or council;
      - (iii) appointment by an elected official to a public office if the appointment is provided for by law;
      - (iv) a department head appointment by the governor or an executive department head appointment by a mayor, city manager, county commissioner, or other chief administrative or executive officer of a local government;
      - (v) engagement as an independent contractor or employment by an independent contractor; or
      - (vi) a position occupied by a student intern, as defined in 2-18-101.

(6) “Public employer” means:

- (a) a department, office, board, bureau, commission, agency, or other instrumentality of the executive, legislative, or judicial branches of the government of this state;
- (b) a unit of the Montana university system;
- (c) a school district or community college; and
- (d) a county, city, or town.

(7) “Scored procedure” means a written test, structured oral interview, performance test, or other selection procedure or a combination of these procedures that results in a numerical score to which percentage points may be added.

(8) (a) “Under honorable conditions” means a discharge or separation from military duty characterized by the armed forces as under honorable conditions. The term includes honorable discharges and general discharges.

(b) The term does not include dishonorable discharges or other administrative discharges characterized as other than honorable.

(9) “Veteran” means a person who:

(a) was separated under honorable conditions from active federal military duty in the armed forces after having served more than 180 consecutive days, other than for training;

(b) as a member of a reserve component under an order of federal duty pursuant to 10 U.S.C. 12301(a), (d), or (g), 10 U.S.C. 12302, or 10 U.S.C. 12304 served on active duty during a period of war or in a campaign or expedition for which a campaign badge is authorized and was discharged or released from duty under honorable conditions; or

(c) is or has been a member of the Montana army or air national guard and who has satisfactorily completed a minimum of 6 years of service in the armed forces, the last 3 years of which have been served in the Montana army or air national guard.

**History:** En. Sec. 1, Ch. 646, L. 1989; amd. Sec. 1, Ch. 78, L. 1993; amd. Sec. 27, Ch. 308, L. 1995; amd. Sec. 162, Ch. 42, L. 1997; amd. Sec. 11, Ch. 339, L. 1997; amd. Sec. 1, Ch. 24, L. 2003; amd. Sec. 10, Ch. 75, L. 2005.

**39-29-102. Point preference or alternative preference in initial hiring for certain applicants — substantially equivalent selection procedure.** (1) Subject to the restrictions in subsections (2) and (3), whenever a public employer uses a scored procedure, an applicant for an initial hiring, as defined in 39-30-103, must have added to the applicant’s score the following percentage points of the total possible points that may be granted in the scored procedure:

(a) 5 percentage points if the applicant is a veteran; and

(b) 10 percentage points if the applicant is a disabled veteran or an eligible relative.

(2) A veteran, disabled veteran, or eligible relative may not receive the percentage points provided for in subsection (1) unless the person:

(a) is a United States citizen; and

(b) meets the minimum qualifications required for the position. If no applicant meets the minimum qualifications and the public employer fills a training position, veterans’ preference must be applied.

(3) A disabled veteran who receives 10 percentage points under subsection (1)(b) may not receive an additional 5 percentage points under subsection (1)(a).

(4) Whenever a public employer uses a selection procedure other than a scored procedure, the public employer shall give preference to a disabled veteran, a person with a disability, a veteran, an eligible relative as defined in 39-29-101, and an eligible spouse as defined in 39-30-103, in that order, over any nonpreferred applicant holding substantially equal qualifications, as defined in 39-30-103.

(5) The preference under this section may include a guaranteed job interview for a veteran who meets the required qualifications for the position and has requested a preference, as provided in 39-29-103, if the public employer provides for a job interview preference by rule or ordinance. The guarantee of a job interview is not part of the preference claim that may be enforced as provided in 39-29-104.

**History:** En. Sec. 2, Ch. 646, L. 1989; amd. Sec. 1, Ch. 168, L. 1999; amd. Sec. 1, Ch. 191, L. 2013.

**39-29-103. Notice and claim of preference.** (1) A public employer shall, by posting or on the application form, give notice of the preference provided in 39-29-102.

(2) A job applicant who believes that the applicant is eligible to receive a preference shall claim the preference in writing before the time for filing applications for the position involved

has passed. Failure to make a timely preference claim for a position is a complete defense to an action instituted by an applicant under 39-29-104 with regard to that position.

(3) If an applicant for a position makes a timely written preference claim, the public employer:

(a) may, under an existing rule or ordinance implementing this subsection (3)(a), guarantee to a veteran a job interview for a position for which the veteran meets the required qualifications and has submitted a preference claim; and

(b) shall give written notice of its hiring decision to the applicant claiming preference.

**History:** En. Sec. 3, Ch. 646, L. 1989; amd. Sec. 2, Ch. 168, L. 1999; amd. Sec. 2, Ch. 191, L. 2013.

**39-29-104. Enforcement of preference.** (1) An applicant who believes that the applicant is entitled to but has not been given the preference provided in 39-29-102 may, within 30 days of receipt of the notice of the hiring decision provided for in 39-29-103, submit to the public employer a written request for an explanation of the public employer's hiring decision. Within 15 days of receipt of the request, the public employer shall give the applicant a written explanation.

(2) After following the procedure described in subsection (1), the applicant may, within 90 days after receipt of notice of the hiring decision, file a petition in the district court in the county in which the application was received by the public employer. The petition must state facts that on their face entitle the applicant to a preference.

(3) (a) Upon filing of the petition, the court shall order the public employer to appear in court at a specified time not less than 5 or more than 10 days after the day the petition was filed and show cause why the applicant was not hired for the position. At the hearing, the public employer has the burden of proving by a preponderance of the evidence that the public employer applied the preference under 39-29-102 and made a reasonable hiring decision. The applicant has the burden of proving by a preponderance of the evidence that the applicant is a preference-eligible applicant.

(b) The time to appear provided in subsection (3)(a) may be waived by stipulation of the parties. If a time to appear has been specified pursuant to subsection (3)(a), the court may, on motion of one of the parties or on stipulation of all of the parties, grant a continuance.

(c) If the public employer does not carry its burden of proof under subsection (3)(a) and the court finds that the applicant is a preference-eligible applicant, the court shall order the public employer to comply with the provisions of 39-29-102. In addition, the court shall, upon proper proof, grant an award of backpay, reasonable attorney fees, and costs.

(4) Failure of an applicant to file a petition under subsection (2) within 90 days bars the filing of a petition. If a public employer fails to provide an explanation under subsection (1) within 15 days and a petition is filed under subsection (2), the court shall order the public employer to comply with the provisions of 39-29-102.

(5) The Montana Rules of Civil Procedure apply to a proceeding under this section to the extent that they do not conflict with this section.

**History:** En. Sec. 4, Ch. 646, L. 1989; amd. Sec. 3, Ch. 168, L. 1999.

**39-29-105 through 39-29-110 reserved.**

**39-29-111. Retention during reduction in force.** (1) Subject to the restrictions in subsections (2) and (3), during a reduction in force, a public employer shall retain in a position:

(a) a veteran, disabled veteran, or eligible relative whose performance has not been rated unacceptable under a performance appraisal system over other employees with similar job duties and qualifications and same length of service; and

(b) a disabled veteran with a service-connected disability of 30% or more whose performance has not been rated unacceptable under a performance appraisal system over other veterans, disabled veterans, and eligible relatives with similar job duties and qualifications and same length of service.

(2) An employee is not entitled to preference in retention under subsection (1) unless the employee is a United States citizen.

(3) The preference in retention under subsection (1) does not apply to a position covered by a collective bargaining agreement.

**History:** En. Sec. 5, Ch. 646, L. 1989; amd. Sec. 1508, Ch. 56, L. 2009.



**39-29-112. Adoption of rules.** The department of administration shall adopt rules implementing this chapter, except that the decision of whether to guarantee a job interview to a veteran is a decision that may be made by a local government by ordinance. The department's rules apply to all local and state public employers.

**History:** En. Sec. 6, Ch. 646, L. 1989; amd. Sec. 3, Ch. 191, L. 2013.

## **Part 2**

### **Private Employer Hiring Preference**

**39-29-201. Short title.** This part may be cited as the “Montana Veteran Hiring Preference Act for Private Employers”.

**History:** En. Sec. 1, Ch. 147, L. 2015.

**39-29-202. Legislative intent — interpretation.** (1) The purpose of this part is to authorize private sector employers to adopt a hiring preference for veterans.

(2) Pursuant to Article II, section 35, of the Montana constitution, this part may not be interpreted to violate any other state or local equal employment opportunity law.

**History:** En. Sec. 2, Ch. 147, L. 2015.

**39-29-203. Veteran hiring preference for private employers authorized — definition.** (1) A private sector employer may adopt an employment policy that gives preference in hiring to a veteran.

(2) For the purposes of this part, “private sector employer” means any employer that is not a public employer. The term includes for-profit and not-for-profit employers.

**History:** En. Sec. 3, Ch. 147, L. 2015.

## **CHAPTER 31**

### **COLLECTIVE BARGAINING FOR PUBLIC EMPLOYEES**

## **Part 1**

### **General Provisions**

**39-31-101. Policy.** In order to promote public business by removing certain recognized sources of strife and unrest, it is the policy of the state of Montana to encourage the practice and procedure of collective bargaining to arrive at friendly adjustment of all disputes between public employers and their employees.

**History:** En. Sec. 1, Ch. 441, L. 1973; R.C.M. 1947, 59-1601.

**39-31-102. Chapter not limit on legislative authority.** This chapter does not limit the authority of the legislature, any political subdivision, or the governing body relative to appropriations for salary and wages, hours, fringe benefits, and other conditions of employment.

**History:** En. Sec. 5, Ch. 441, L. 1973; amd. Sec. 1, Ch. 36, L. 1975; amd. Sec. 1, Ch. 97, L. 1975; amd. Sec. 2, Ch. 384, L. 1975; R.C.M. 1947, 59-1605(5).

**39-31-103. Definitions.** When used in this chapter, the following definitions apply:

(1) “Appropriate unit” means a group of public employees banded together for collective bargaining purposes as designated by the board.

(2) “Board” means the board of personnel appeals provided for in 2-15-1705.

(3) “Confidential employee” means any person found by the board to be a confidential labor relations employee and any person employed in the personnel division, department of administration, who acts with discretionary authority in the creation or revision of state classification specifications.

(4) “Exclusive representative” means the labor organization which has been designated by the board as the exclusive representative of employees in an appropriate unit or has been so recognized by the public employer.

(5) “Labor dispute” includes any controversy concerning terms, tenure, or conditions of employment or concerning the association or representation of persons in negotiating, fixing,

maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.

(6) "Labor organization" means any organization or association of any kind in which employees participate and which exists for the primary purpose of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, fringe benefits, or other conditions of employment.

(7) "Management official" means a representative of management having authority to act for the agency on any matters relating to the implementation of agency policy.

(8) "Person" includes one or more individuals, labor organizations, public employees, associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers.

(9) (a) "Public employee" means:

(i) except as provided in subsection (9)(b), a person employed by a public employer in any capacity; and

(ii) an individual whose work has ceased as a consequence of or in connection with any unfair labor practice or concerted employee action.

(b) Public employee does not mean:

(i) an elected official;

(ii) a person directly appointed by the governor;

(iii) a supervisory employee, as defined in subsection (11);

(iv) a management official, as defined in subsection (7);

(v) a confidential employee, as defined in subsection (3);

(vi) a member of any state board or commission who serves the state intermittently;

(vii) a school district clerk;

(viii) a school administrator;

(ix) a registered professional nurse performing service for a health care facility;

(x) a professional engineer; or

(xi) an engineer intern.

(10) "Public employer" means the state of Montana or any political subdivision thereof, including but not limited to any town, city, county, district, school board, board of regents, public and quasi-public corporation, housing authority or other authority established by law, and any representative or agent designated by the public employer to act in its interest in dealing with public employees. Public employer also includes any local public agency designated as a head start agency as provided in 42 U.S.C. 9836.

(11) (a) "Supervisory employee" means an individual having the authority on a regular, recurring basis while acting in the interest of the employer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees or to effectively recommend the above actions if, in connection with the foregoing, the exercise of the authority is not of a merely routine or clerical nature but requires the use of independent judgment.

(b) The authority described in subsection (11)(a) is the only criteria that may be used to determine if an employee is a supervisory employee. The use of any other criteria, including any secondary test developed or applied by the national labor relations board or the Montana board of personnel appeals, may not be used to determine if an employee is a supervisory employee under this section.

(12) "Unfair labor practice" means any unfair labor practice listed in 39-31-401 or 39-31-402.

**History:** En. Sec. 2, Ch. 441, L. 1973; amd. Sec. 1, Ch. 117, L. 1975; amd. Sec. 1, Ch. 384, L. 1975; R.C.M. 1947, 59-1602(part); amd. Sec. 1, Ch. 271, L. 1979; amd. Sec. 31, Ch. 397, L. 1979; amd. Sec. 1, Ch. 354, L. 1987; amd. Sec. 14, Ch. 108, L. 1995; amd. Sec. 1, Ch. 483, L. 2005.

**39-31-104. Rules.** The board shall adopt, amend, or rescind such rules it considers necessary and administratively feasible to carry out the provisions of this chapter.

**History:** En. Sec. 13, Ch. 441, L. 1973; R.C.M. 1947, 59-1613(4).

**39-31-105. Administrative procedure act applicable — conduct of hearing.** All hearings and appeals must be in accordance with the appropriate provisions of the Montana Administrative Procedure Act. Hearings and appeals may be conducted by telephone or by videoconference, with the consent of the necessary parties.

**History:** En. Sec. 17, Ch. 441, L. 1973; R.C.M. 1947, 59-1616; amd. Sec. 9, Ch. 90, L. 1995.

**39-31-106. Board authorized to subpoena witnesses and administer oaths.** (1) To accomplish the objectives and to carry out the duties prescribed by this chapter, the board may subpoena witnesses and may administer oaths and affirmations.

(2) In cases of neglect or refusal to obey a subpoena issued to any person, the district court of the county in which the investigations or the public hearings are taking place or the district court of the first judicial district of this state, upon application by the board, may issue an order requiring such person to appear before the board or agent to produce evidence or give testimony about the matter under investigation. Failure to obey such order may be punished by the court as contempt.

**History:** En. Sec. 13, Ch. 441, L. 1973; R.C.M. 1947, 59-1613(1), (2).

**39-31-107. Service of subpoenas, notices of hearing, and other process.** Any subpoena, notice of hearing, or other process or notice of the board issued under the provisions of this chapter may be served by depositing it in the U.S. mail, postage prepaid.

**History:** En. Sec. 13, Ch. 441, L. 1973; R.C.M. 1947, 59-1613(3); amd. Sec. 1, Ch. 10, L. 2011.

**39-31-108. Counsel for public parties to litigation.** In any action brought under the provisions of this chapter in the courts of this state, the public employer shall be represented by the attorney general or attorney of subdivision and the board shall be represented by counsel hired to represent the board for purposes of that proceeding.

**History:** En. Sec. 11, Ch. 441, L. 1973; R.C.M. 1947, 59-1611.

**39-31-109. Existing collective bargaining agreements not affected.** Nothing in this chapter shall be construed to remove recognition of established collective bargaining agreements already recognized or in existence prior to July 1, 1973.

**History:** En. Sec. 16, Ch. 441, L. 1973; R.C.M. 1947, 59-1615.

## **Part 2**

### **Public Employee Self-Organization and Certification of Bargaining Representative**

**39-31-201. Public employees protected in right of self-organization.** Public employees shall have and shall be protected in the exercise of the right of self-organization, to form, join, or assist any labor organization, to bargain collectively through representatives of their own choosing on questions of wages, hours, fringe benefits, and other conditions of employment, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection free from interference, restraint, or coercion.

**History:** En. Sec. 3, Ch. 441, L. 1973; amd. Sec. 1, Ch. 244, L. 1974; R.C.M. 1947, 59-1603(1).

**39-31-202. Board to determine appropriate bargaining unit — factors to be considered.** (1) In order to ensure employees the fullest freedom in exercising the rights guaranteed by this chapter, the board or an agent of the board shall decide the unit appropriate for the purpose of collective bargaining and shall consider such factors as community of interest, wages, hours, fringe benefits, and other working conditions of the employees involved, the history of collective bargaining, common supervision, common personnel policies, extent of integration of work functions and interchange among employees affected, and the desires of the employees.

(2) If a state agency or facility of a state agency is reorganized to the extent that the reorganization results in substantial changes to the factors listed in subsection (1), the public employer representative, as provided in 39-31-301, may petition the board to make a new determination of the appropriate unit for the purpose of collective bargaining. In making this determination, the board shall take into account the consequences of the reorganization on each position in the affected agency or facility.

(3) Unless the board has received a petition, as provided in 39-31-207, to consider a collective bargaining unit that was not designated as an appropriate unit prior to the reorganization described in subsection (2), the board may not consider any labor organization that was not designated to represent employees of the affected agency or facility at the time that the reorganization became effective.

**History:** En. Sec. 6, Ch. 441, L. 1973; amd. Sec. 1, Ch. 136, L. 1975; R.C.M. 1947, 59-1606(2); amd. Sec. 1, Ch. 176, L. 1999.

**39-31-203. Deduction of dues from employee's pay.** Upon written authorization of any public employee within a bargaining unit, the public employer shall deduct from the pay of the public employee the monthly amount of dues as certified by the secretary of the exclusive representative and shall deliver the dues to the treasurer of the exclusive representative.

**History:** En. Sec. 12, Ch. 441, L. 1973; R.C.M. 1947, 59-1612.

**39-31-204. Right of nonassociation with labor organization on religious grounds — requirements and procedure for assertion of right.** (1) A public employee who is a member of a bona fide religious sect or division of a sect, the established and traditional tenets or teachings of which oppose a requirement that a member of the sect or division join or financially support a particular or any labor organization, may not be required to join or financially support that particular labor organization or any labor organization if the tenets or teachings oppose a requirement that any labor organization be joined or supported as a condition of employment. However, the public employee shall pay in lieu of periodic union dues, initiation fees, and assessments, at the same time or times the periodic union dues, initiation fees, and assessments would otherwise be payable, a sum of money equivalent to the periodic union dues, initiation fees, and assessments to a nonreligious, nonunion charity designated by the labor organization. The public employee shall furnish to the labor organization written receipts evidencing the payments, and failure to make the payments or furnish the receipts subjects the employee to the same sanctions as would nonpayment of dues, initiation fees, or assessments under the applicable collective bargaining agreement.

(2) A public employee desiring to exercise the right of nonassociation with a labor organization as provided in this section shall make written application to the presiding officer of the board of personnel appeals. Within 10 days of the date of receipt of an application, the presiding officer shall appoint a committee of three consisting of a member of the clergy not connected with the sect in question, a labor union official not directly connected with the labor organization in question, and a member of the public at large who is the presiding officer. The committee shall within 10 days of the date of its appointment meet at the locale of either the employee's residence or place of employment and, after receiving written or oral presentations from all interested parties, determine by a majority vote whether or not the public employee qualifies for the right of nonassociation with the labor organization. The committee's decision must be made in writing within 3 days of the meeting date, and a copy of the decision must be mailed to the public employee, labor organization, and presiding officer of the board of personnel appeals.

**History:** En. Sec. 3, Ch. 441, L. 1973; amd. Sec. 1, Ch. 244, L. 1974; R.C.M. 1947, 59-1603(5); amd. Sec. 1, Ch. 237, L. 1985; amd. Sec. 1511, Ch. 56, L. 2009.

**39-31-205. Designated labor organizations to represent employees without discrimination.** Labor organizations designated in accordance with the provisions of this chapter are responsible for representing the interest of all employees in the exclusive bargaining unit without discrimination for the purposes of collective bargaining with respect to rates of pay, hours, fringe benefits, and other conditions of employment.

**History:** En. Sec. 3, Ch. 441, L. 1973; amd. Sec. 1, Ch. 244, L. 1974; R.C.M. 1947, 59-1603(3).

**39-31-206. Labor organization to guarantee certain rights and safeguards prior to certification or recognition.** (1) Certification or recognition as an exclusive representative shall be extended or continued, as the case may be, only to a labor or employee organization the written bylaws of which provide for and guarantee the following rights and safeguards and whose practices conform to such rights and safeguards as:

- (a) provisions are made for democratic organization and procedures;
- (b) elections are conducted pursuant to adequate standards and safeguards;
- (c) controls are provided for the regulation of officers and agents having fiduciary responsibility to the organization; and
- (d) requirements exist for maintenance of sound accounting and fiscal controls, including annual audits.

(2) The board shall hear and decide all disputes arising under subsection (1).

**History:** En. Sec. 3, Ch. 441, L. 1973; amd. Sec. 1, Ch. 244, L. 1974; R.C.M. 1947, 59-1603(4); amd. Sec. 1, Ch. 18, L. 1985.

**39-31-207. Petition on representation question — investigation by board — hearing.** (1) The board or an agent of the board shall investigate the petition and, if it has reasonable cause to believe that a question of representation exists, it shall provide for an appropriate hearing upon due notice whenever, in accordance with such rules as may be prescribed by the board, a petition has been filed:

(a) by an employee or group of employees or any labor organization acting in their behalf alleging that 30% of the employees:

(i) wish to be represented for collective bargaining by a labor organization as exclusive representative; or

(ii) assert that the labor organization which has been certified or is currently being recognized by the public employer as bargaining representative is no longer the representative of the majority of employees in the unit; or

(b) by the public employer alleging that one or more labor organizations have presented to it a claim to be recognized as the exclusive representative in an appropriate unit.

(2) In this hearing, the board is not bound by common law and statutory rules of evidence.

**History:** En. Sec. 6, Ch. 441, L. 1973; amd. Sec. 1, Ch. 136, L. 1975; R.C.M. 1947, 59-1606(part).

**39-31-208. Representation election at direction of board.** (1) If the board or an agent of the board, in the hearing provided for in 39-31-207, finds that there is a question of representation, it shall direct an election by secret ballot to determine whether and by which labor organization the employees desire to be represented or whether they desire to have no labor organization represent them and shall certify the results thereof.

(2) Only those labor organizations which have been designated by more than 10% of the employees in the unit found to be appropriate shall be placed on the ballot.

(3) The board or an agent of the board shall determine who is eligible to vote in the election and shall establish rules governing the election.

(4) Unless the majority vote is for no representation by a labor organization and in any election where none of the choices for a representative on the ballot receives a majority, a runoff election shall be conducted, the ballot providing for selection between the two choices receiving the largest and the second largest number of valid votes cast in the election.

(5) A labor organization which receives the majority of the votes cast in an election shall be certified by the board as the exclusive representative.

**History:** En. Sec. 6, Ch. 441, L. 1973; amd. Sec. 1, Ch. 136, L. 1975; R.C.M. 1947, 59-1606(part); amd. Sec. 32, Ch. 397, L. 1979.

**39-31-209. Consent election.** Nothing in 39-31-207 or 39-31-208 prohibits the waiving of hearings by stipulation for the purpose of a consent election in conformity with the rules of the board.

**History:** En. Sec. 6, Ch. 441, L. 1973; amd. Sec. 1, Ch. 136, L. 1975; R.C.M. 1947, 59-1606(part).

**39-31-210. Election in 12-month period following valid election prohibited.** An election shall not be directed in any bargaining unit or in any subdivision thereof within which in the preceding 12-month period a valid election has been held.

**History:** En. Sec. 6, Ch. 441, L. 1973; amd. Sec. 1, Ch. 136, L. 1975; R.C.M. 1947, 59-1606(part).

**39-31-211. Labor organizations representing employees of the board to be unaffiliated.** A labor organization representing employees of the board may not affiliate or associate itself with a labor organization that represents any employees other than employees of the board. The board may not certify a labor organization as the exclusive representative of the employees of the board if, at the time of certification or thereafter, the labor organization is associated or affiliated with a labor organization that represents employees other than employees of the board.

**History:** En Sec. 2, Ch. 271, L. 1979.

### **Part 3 Bargaining**

**39-31-301. Representative of public employer.** The chief executive officer of the state, the governing body of a political subdivision, the commissioner of higher education, whether



elected or appointed, or the designated authorized representative shall represent the public employer in collective bargaining with an exclusive representative.

**History:** En. Sec. 9, Ch. 441, L. 1973; amd. Sec. 3, Ch. 313, L. 1974; amd. Sec. 1, Ch. 35, L. 1975; R.C.M. 1947, 59-1609.

**39-31-302. Participation by student representative when public employer is board of regents.** When the board of regents is the public employer defined in 39-31-103, the student government at an institution of higher education may designate an agent or representative to meet and confer with the board of regents and the faculty bargaining agent prior to negotiations with the professional educational employees, to observe those negotiations and participate in caucuses as part of the public employer's bargaining team, and to meet and confer with the board of regents regarding the terms of agreement prior to the execution of a written contract between the regents and the professional educational employees. The student observer is obliged to maintain the confidentiality of these negotiations.

**History:** En. Sec. 2, Ch. 441, L. 1973; amd. Sec. 1, Ch. 117, L. 1975; amd. Sec. 1, Ch. 384, L. 1975; R.C.M. 1947, 59-1602(part).

**39-31-303. Management rights of public employers.** Public employees and their representatives shall recognize the prerogatives of public employers to operate and manage their affairs in such areas as, but not limited to:

- (1) direct employees;
- (2) hire, promote, transfer, assign, and retain employees;
- (3) relieve employees from duties because of lack of work or funds or under conditions where continuation of such work be inefficient and nonproductive;
- (4) maintain the efficiency of government operations;
- (5) determine the methods, means, job classifications, and personnel by which government operations are to be conducted;
- (6) take whatever actions may be necessary to carry out the missions of the agency in situations of emergency;
- (7) establish the methods and processes by which work is performed.

**History:** En. Sec. 3, Ch. 441, L. 1973; amd. Sec. 1, Ch. 244, L. 1974; R.C.M. 1947, 59-1603(2).

**39-31-304. Negotiable items for school districts.** Nothing in this chapter shall require or allow boards of trustees of school districts to bargain collectively upon any matter other than matters specified in 39-31-305(2).

**History:** En. Sec. 2, Ch. 117, L. 1975; R.C.M. 1947, 59-1617.

**39-31-305. Duty to bargain collectively — good faith.** (1) The public employer and the exclusive representative, through appropriate officials or their representatives, have the authority and the duty to bargain collectively. This duty extends to the obligation to bargain collectively in good faith as set forth in subsection (2).

(2) For the purpose of this chapter, to bargain collectively is the performance of the mutual obligation of the public employer or the public employer's designated representatives and the representatives of the exclusive representative to meet at reasonable times and negotiate in good faith with respect to wages, hours, fringe benefits, and other conditions of employment or the negotiation of an agreement or any question arising under an agreement and the execution of a written contract incorporating any agreement reached. The obligation does not compel either party to agree to a proposal or require the making of a concession.

(3) For purposes of state government only, the requirement of negotiating in good faith may be met by the submission of a negotiated settlement to the legislature in the executive budget or by bill or joint resolution. The failure to reach a negotiated settlement for submission is not, by itself, prima facie evidence of a failure to negotiate in good faith.

**History:** (1)En. Sec. 4, Ch. 441, L. 1973; Sec. 59-1604, R.C.M. 1947; (2), (3)En. Sec. 5, Ch. 441, L. 1973; amd. Sec. 1, Ch. 36, L. 1975; amd. Sec. 1, Ch. 97, L. 1975; amd. Sec. 2, Ch. 384, L. 1975; Sec. 59-1605, R.C.M. 1947; R.C.M. 1947, 59-1604, 59-1605(3), (4); amd. Sec. 1512, Ch. 56, L. 2009.

**39-31-306. Collective bargaining agreements.** (1) An agreement reached by the public employer and the exclusive representative must be reduced to writing and must be executed by both parties.

(2) Except as provided in subsection (5), an agreement may contain a grievance procedure culminating in final and binding arbitration of unresolved grievances and disputed interpretations of agreements.

(3) An agreement between the public employer and a labor organization must be valid and enforced under its terms when entered into in accordance with the provisions of this chapter and signed by the chief executive officer of the state or political subdivision or commissioner of higher education or by a representative. A publication of the agreement is not required to make it effective.

(4) The procedure for the making of an agreement between the state or political subdivision and a labor organization provided by this chapter is the exclusive method of making a valid agreement for public employees represented by a labor organization.

(5) An agreement to which a school is a party must contain a grievance procedure culminating in final and binding arbitration of unresolved and disputed interpretations of agreements. The aggrieved party may have the grievance or disputed interpretation of the agreement resolved either by final and binding arbitration or by any other available legal method and forum, but not by both. After a grievance has been submitted to arbitration, the grievant and the exclusive representative waive any right to pursue against the school an action or complaint that seeks the same remedy. If a grievant or the exclusive representative files a complaint or other action against the school, arbitration seeking the same remedy may not be filed or pursued under this section.

**History:** En. Sec. 10, Ch. 441, L. 1973; amd. Sec. 4, Ch. 313, L. 1974; R.C.M. 1947, 59-1610; amd. Sec. 1, Ch. 582, L. 1993.

**39-31-307. Mediation of disputes.** If, after a reasonable period of negotiation over the terms of an agreement or upon expiration of an existing collective bargaining agreement, a dispute concerning the collective bargaining agreement exists between the public employer and a labor organization, the parties shall request mediation.

**History:** En. Sec. 14, Ch. 441, L. 1973; amd. Sec. 1, Ch. 18, L. 1975; R.C.M. 1947, 59-1614(1).

**39-31-308. Initiation of factfinding — designation of fact finder.** (1) If, upon expiration of an existing collective bargaining agreement or 30 days following certification or recognition of an exclusive representative, a dispute concerning the collective bargaining agreement exists between the employer and the exclusive representative, either party may petition the board to initiate factfinding.

(2) Within 3 days of receipt of such petition, the board shall submit to the parties a list of five qualified, disinterested persons from which the parties shall alternate in striking two names. The remaining person shall be designated fact finder. This process shall be completed within 5 days of receipt of the list. The parties shall notify the board of the designated fact finder.

(3) If no request for factfinding is made by either party before the expiration of the agreement or 30 days following certification or recognition of an exclusive representative, the board may initiate factfinding as provided for in subsection (2) above.

**History:** En. Sec. 14, Ch. 441, L. 1973; amd. Sec. 1, Ch. 18, L. 1975; R.C.M. 1947, 59-1614(2) thru (4).

**39-31-309. Factfinding proceedings.** (1) The fact finder shall immediately establish dates and place of hearings.

(2) The public employer and the exclusive representative are the only proper parties to factfinding proceedings.

(3) Upon request of either party or the fact finder, the board shall issue subpoenas for hearings conducted by the fact finder. The fact finder may administer oaths.

(4) Upon completion of the hearings, but no later than 20 days from the date of appointment, the fact finder shall make written findings of facts and recommendations for resolution of the dispute and shall serve the findings on the public employer and the exclusive representative. The fact finder may make this report public 5 days after it is submitted to the parties. If the dispute is not resolved 15 days after the report is submitted to the parties, the report must be made public.

(5) When a party petitions the board to initiate factfinding, the cost of factfinding proceedings must be equally borne by the parties. When the board initiates factfinding, the cost of factfinding proceedings must be equally borne by the board and the parties.

(6) Nothing in 39-31-307 through 39-31-310 prohibits the fact finder from endeavoring to mediate the dispute in which the fact finder has been selected or appointed.

**History:** En. Sec. 14, Ch. 441, L. 1973; amd. Sec. 1, Ch. 18, L. 1975; R.C.M. 1947, 59-1614(5) thru (8); amd. Sec. 33, Ch. 397, L. 1979; amd. Sec. 10, Ch. 90, L. 1995.

**39-31-310. Submission of issues to arbitration.** Nothing in 39-31-307 through 39-31-310 prohibits the parties from voluntarily agreeing to submit any or all of the issues to final and binding arbitration, and if such agreement is reached, the arbitration shall supersede the factfinding procedures set forth in those sections. An agreement to arbitrate and the award issued in accordance with such agreement shall be enforceable in the same manner as is provided in this chapter for enforcement of collective bargaining agreements.

**History:** En. Sec. 14, Ch. 441, L. 1973; amd. Sec. 1, Ch. 18, L. 1975; R.C.M. 1947, 59-1614(9).

**39-31-311. Training of fact finders and arbitrators.** The board of personnel appeals shall establish a course of education for the training of fact finders and arbitrators. A person may not serve as a fact finder or as an arbitrator under this chapter until the person has successfully completed the course or equivalent education.

**History:** En. 59-1614.1 by Sec. 1, Ch. 57, L. 1977; R.C.M. 1947, 59-1614.1; amd. Sec. 1513, Ch. 56, L. 2009.

**39-31-312. Nonnegotiable items for state prison.** Collective bargaining agreements entered after July 14, 1982, may not contain provisions prohibiting or restricting the use of inmate labor as provided for in 53-30-151.

**History:** En. Sec. 3, Ch. 7, Sp. L. 1982.

## Part 4 Unfair Labor Practices

**39-31-401. Unfair labor practices of public employer.** It is an unfair labor practice for a public employer to:

(1) interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in 39-31-201;

(2) dominate, interfere, or assist in the formation or administration of any labor organization. However, subject to rules adopted by the board under 39-31-104, an employer is not prohibited from permitting employees to confer with the employer during working hours without loss of time or pay.

(3) discriminate in regard to hire or tenure of employment or any term or condition of employment in order to encourage or discourage membership in any labor organization. However, nothing in this chapter or in any other statute of this state precludes a public employer from making an agreement with an exclusive representative to require, as a condition of employment, that an employee who is not or does not become a union member must have an amount equal to the union initiation fee and monthly dues deducted from the employee's wages in the same manner as checkoff of union dues.

(4) discharge or otherwise discriminate against an employee because the employee has signed or filed an affidavit, petition, or complaint or given any information or testimony under this chapter; or

(5) refuse to bargain collectively in good faith with an exclusive representative.

**History:** En. Sec. 5, Ch. 441, L. 1973; amd. Sec. 1, Ch. 36, L. 1975; amd. Sec. 1, Ch. 97, L. 1975; amd. Sec. 2, Ch. 384, L. 1975; R.C.M. 1947, 59-1605(1); amd. Sec. 34, Ch. 397, L. 1979; amd. Sec. 1514, Ch. 56, L. 2009.

**39-31-402. Unfair labor practices of labor organization.** It is an unfair labor practice for a labor organization or its agents to:

(1) restrain or coerce:

(a) employees in the exercise of the right guaranteed in 39-31-201; or

(b) a public employer in the selection of a representative for the purpose of collective bargaining or the adjustment of grievances;

(2) refuse to bargain collectively in good faith with a public employer if it has been designated as the exclusive representative of employees;

(3) use agency shop fees for contributions to political candidates or parties at state or local levels.

**History:** En. Sec. 5, Ch. 441, L. 1973; amd. Sec. 1, Ch. 36, L. 1975; amd. Sec. 1, Ch. 97, L. 1975; amd. Sec. 2, Ch. 384, L. 1975; R.C.M. 1947, 59-1605(2); amd. Sec. 1515, Ch. 56, L. 2009.

**39-31-403. Remedies for unfair labor practices.** Violations of the provisions of 39-31-401 or 39-31-402 are unfair labor practices remediable by the board pursuant to this part.

**History:** En. Sec. 7, Ch. 441, L. 1973; R.C.M. 1947, 59-1607(part); amd. Sec. 35, Ch. 397, L. 1979.

**39-31-404. Six-month limitation on unfair labor practice complaint — exception.**

A notice of hearing may not be issued based upon any unfair labor practice more than 6 months before the filing of the charge with the board unless the person aggrieved was prevented from filing the charge by reason of service in the armed forces, in which event the 6-month period must be computed from the day of discharge.

**History:** En. Sec. 7, Ch. 441, L. 1973; R.C.M. 1947, 59-1607(part); amd. Sec. 1516, Ch. 56, L. 2009.

**39-31-405. Unfair labor practice complaint — investigation — notice of hearing — service — answer.** (1) Whenever a complaint is filed alleging that any person has engaged in or is engaging in any such unfair labor practice, the board shall issue and cause to be served upon the person a copy of the complaint and provide the person with an opportunity to respond to all charges. After receipt of responses from the charged party, an agent designated by the board for such purposes shall investigate the alleged unfair labor practice.

(2) If, after the investigation, the agent designated by the board determines that the charge is without probable merit, the board shall issue and cause to be served upon the complaining party and the person being charged notice of its intention to dismiss the complaint. The dismissal becomes a final order of the board unless either party requests a review of the decision to dismiss the complaint. The request for a review must be made in writing within 10 days of receipt of the notice of intention to dismiss. If a review is requested, the board may uphold its decision to dismiss the complaint or, pursuant to subsection (3), schedule a hearing on the merits. If the board upholds its decision to dismiss the complaint, the dismissal becomes a final order of the board.

(3) If after the investigation or after the review provided for in subsection (2), the board determines that there is probable merit for the charge, the board shall issue and cause to be served upon the complaining party and the party charged a notice of hearing before the board, a member thereof, or before a designated agent at a time and place therein fixed, not less than 5 working days after the date of service.

(4) If a hearing is to be held, the person against whom the charge is filed shall file an answer to the complaint.

(5) Each party to an unfair labor practice proceeding has the right to disqualify, without cause, the hearing examiner designated by the board to hear the complaint. The right may be exercised only once by each party and must be exercised within 5 days from the time a party is notified by the board of the hearing examiner designated to hear the matter. The exercise of this right is in addition to any rights a party has to disqualify a hearing examiner under 2-4-611.

**History:** En. Sec. 7, Ch. 441, L. 1973; R.C.M. 1947, 59-1607(part); amd. Sec. 1, Ch. 95, L. 1983; (5)En. Sec. 1, Ch. 211, L. 1983.

**39-31-406. Hearing on complaint — findings — order.** (1) The complainant and the person charged must be parties and shall appear in person or otherwise give testimony at the place and time fixed in the notice of hearing. In the discretion of the board or its agent conducting the hearing, any other person may be allowed to intervene in the proceeding and present testimony.

(2) In a hearing, the board is not bound by the rules of evidence prevailing in the courts.

(3) The testimony taken by the board or its agent must be reduced to writing and filed with the board. Thereafter, in its discretion, the board upon notice may take further testimony or hear argument.

(4) If, upon the preponderance of the testimony taken, the board is of the opinion that any person named in the complaint has engaged in or is engaging in an unfair labor practice, it shall state its findings of fact and shall issue and cause to be served on the person an order requiring the person to cease and desist from the unfair labor practice and to take affirmative action, including reinstatement of employees with or without backpay, that will effectuate the policies of this chapter. The order may further require the person to make reports from time to



time showing the extent to which the person has complied with the order. An order of the board may not require the reinstatement of an individual as an employee who has been suspended or discharged or the payment to the employee of any backpay if it is found that the individual was suspended or discharged for cause.

(5) If, upon the preponderance of the testimony taken, the board is not of the opinion that the person named in the complaint has engaged in or is engaging in the unfair labor practice, then the board shall state its findings of fact and shall issue an order dismissing the complaint.

(6) If the evidence is presented before a member of the board or before an examiner, the member or the examiner shall issue and cause to be served on the parties to the proceeding a proposed decision, together with a recommended order, which must be filed with the board, and if exceptions are not filed within 20 days after service of the proposed decision and recommended order upon the parties or within a further period that the board may authorize, the recommended order becomes the order of the board. The board shall issue a final order within 5 months after final briefs are submitted to the hearings officer. If briefs are to be submitted but either or both of the parties fail to submit their brief on the date set by the hearings examiner at the close of the hearing on the matter, then the board shall issue a final order within 5 months after the date the last brief was ordered to be submitted. If no briefs are to be submitted, the board shall issue a final order within 5 months after the hearing.

**History:** En. Sec. 7, Ch. 441, L. 1973; R.C.M. 1947, 59-1607(part); amd. Sec. 1, Ch. 369, L. 1979; amd. Sec. 1, Ch. 213, L. 1983; amd. Sec. 1517, Ch. 56, L. 2009.

**39-31-407. Amendment of complaint.** Any complaint may be amended by the complainant at any time prior to the issuance of an order based thereon, provided that the charged party is not unfairly prejudiced thereby.

**History:** En. Sec. 7, Ch. 441, L. 1973; R.C.M. 1947, 59-1607(part).

**39-31-408. Modification by board of findings and order.** Until the record in a proceeding has been filed in district court, the board at any time, upon reasonable notice and in such manner as it considers proper, may modify or set aside, in whole or in part, any finding or order made or issued by it.

**History:** En. Sec. 7, Ch. 441, L. 1973; R.C.M. 1947, 59-1607(3).

**39-31-409. Court enforcement and review of board order.** (1) The board or the complaining party may petition for the enforcement of the order of the board and for appropriate temporary relief or a restraining order and shall file in the district court at its own expense the record in the proceedings.

(2) Upon the filing of the petition, the district court shall have jurisdiction of the proceeding. Thereafter, the district court shall set the matter for hearing and shall order the party charged to be served with notice of hearing at least 20 days before the date set for hearing.

(3) No objection that has not been raised before the board shall be considered by the court unless the failure or neglect to raise the objection is excused because of extraordinary circumstances.

(4) The findings of the board with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive.

(5) If either party applies to the court for leave to present additional evidence and shows to the satisfaction of the court that the additional evidence is material and that there were reasonable grounds for the failure to present it in the hearing before the board, the court may order the additional evidence to be taken before the board and to be made part of the record. The board may modify its findings as to the facts or make new findings by reason of additional evidence so taken and filed, and it shall file the modifying or new findings with the district court.

(6) After the hearing, the district court shall issue its order granting such temporary or permanent relief or restraining order as it considers just and proper, enforcing as so modified or setting aside, in whole or in part, the order of the board. Any order of the district court shall be subject to review by the supreme court in accordance with rules of civil procedure.

(7) The commencement of proceedings under subsections (1) through (6) of this section shall not, unless specifically ordered by the court, operate as a stay of the board's order.

**History:** En. Sec. 8, Ch. 441, L. 1973; R.C.M. 1947, 59-1608.



## CHAPTER 71 WORKERS' COMPENSATION

### Part 15 Montana Safety Culture Act

**39-71-1501. Short title.** This part may be cited as the "Montana Safety Culture Act".

**History:** En. Sec. 1, Ch. 295, L. 1993; amd. Sec. 1, Ch. 170, L. 2003.

**39-71-1502. Purpose.** The purpose of this part is to reduce the incidence of occupational injury and illness by promoting safety in the workplace in order to control the costs of claims for workers' compensation insurance. The creation of a safety culture requires employers to provide training and education to make safety awareness part of the requirement for each worker's satisfactory job performance and requires the department to promote safety awareness for the public through the education and preparation of each student for entrance into the labor market. A reduction in workplace injuries, illnesses, and deaths through enhanced safety on the job benefits the public as well as the employers and the employees by lowering both financial and physical costs. Ensuring immunity to insurers in the provision of safety consultation services encourages and promotes safety in the workplace and improves the relationship between employers and employees.

**History:** En. Sec. 2, Ch. 295, L. 1993; amd. Sec. 2, Ch. 170, L. 2003.

**39-71-1503. Safety consultation.** (1) As used in this part, "safety consultation services" means assistance rendered by an insurer or the department to advise and aid an employer in the identification, evaluation, and control of existing and potential accidental and occupational health problems. The services may be delivered in person, by mail, electronically, or by telephone, based upon need.

(2) Safety consultation services include but are not limited to:

(a) surveys consisting of onsite identification and subsequent evaluation of exposures relative to employees, materials, equipment, work methods, processes, and facilities;

(b) recommendations expressed in the form of communications to an employer, with reference to control of exposures to occupational accident, injury, or illness and to improvement of safety programs and systems;

(c) education and training programs, including aids, programs, and materials made available to assist in the control of exposures;

(d) consultations to advise employers relative to risk, exposure, and experience in the employer's business;

(e) accident analysis consisting of review of reported accidents to determine cause and trends; and

(f) industrial hygiene services, including recognition, evaluation, and control of chemical, physical, and biological exposures.

**History:** En. Sec. 3, Ch. 295, L. 1993; amd. Sec. 3, Ch. 170, L. 2003; amd. Sec. 16, Ch. 27, L. 2009.

**39-71-1504. Safety programs — educational activities.** (1) To promote health and safety in places of employment in this state:

(a) each public or private employer shall establish and administer a safety program in accordance with rules adopted by the department pursuant to 39-71-1505; and

(b) the department, relying upon the support and assistance of concerned private entities or other governmental agencies, shall produce and distribute material to the schools of Montana and provide guest speakers intended to:

(i) educate students about the necessity for safe work practices;

(ii) prepare students to embark on accident-free careers; and

(iii) disseminate information promoting the reduction and control of the rate of incidence of workplace injuries or occupational disease.

(2) An employer who employs temporary workers shall include those workers in the employer's safety program. A temporary services contractor shall provide a safety program for employees not employed by other employers.

(3) The department may issue a safety recommendation to an employer who fails to comply with the requirements of this section or with rules adopted by the department pursuant to 39-71-1505.

**History:** En. Sec. 4, Ch. 295, L. 1993; amd. Sec. 1, Ch. 58, L. 2001.

**39-71-1505. Rulemaking authority.** The department shall adopt rules, including but not limited to rules that require:

(1) each employer to conduct an educational-based safety program, including but not limited to:

- (a) a safety training program to provide:
  - (i) new employee general safety orientation;
  - (ii) job- or task-specific safety training; and
  - (iii) continuous refresher safety training, including periodic safety meetings;
- (b) periodic hazard assessment, with corrective actions identified; and
- (c) appropriate documentation of performance of the activities; and

(2) an employer of more than five employees to have a comprehensive and effective safety program, including but not limited to:

(a) subject to subsection (3), a safety committee composed of employee and employer representatives that holds regularly scheduled meetings;

(b) procedures of reporting and investigating all work-related incidents, accidents, injuries, and illnesses; and

(c) policies and procedures that assign specific safety responsibilities and safety performance accountability.

(3) The department may adopt rules authorizing:

(a) a plan No. 2 or plan No. 3 insurer to waive the requirement in subsection (2)(a) for a safety committee if the employer presents sufficient evidence of an effective written safety plan and has a satisfactory modification factor, if applicable, or has a low incident record of injuries; or

(b) the department to waive the requirement in subsection (2)(a) for a safety committee if a plan No. 1 insurer approved by the department presents sufficient evidence of an effective safety program, including a written safety plan. A waiver granted under this subsection (3)(b) to a member of the self-insurers guaranty fund must be made with the concurrence of the fund.

**History:** En. Sec. 5, Ch. 295, L. 1993; amd. Sec. 1, Ch. 238, L. 1995.

**39-71-1506. Notification of safety consultation services available by insurer.** To implement safety requirements, each insurer shall notify each insured employer of the type of safety consultation services available and the location where the safety consultation services may be requested.

**History:** En. Sec. 6, Ch. 295, L. 1993.

**39-71-1507. Safety consultation services — safety program as provision of insurance contract or agreement.** (1) Each insurer shall provide safety consultation services to each of its insured employers who request the assistance.

(2) The safety consultation services to be provided are within the discretion of the insurer but must include consideration of the hazard, experience, and size of the insured employer's operations.

(3) The insurer shall establish a system of priorities to use in responding to worksite safety consultation service requests, giving first priority to insured employers that have an unreasonably high actual or potential loss experience.

(4) Each insurer's insurance contract or agreement must require each insured employer to implement a safety program as part of the contract or agreement to provide workers' compensation coverage.

**History:** En. Sec. 7, Ch. 295, L. 1993.

**39-71-1508. Safety consultation services — insurer's exemption from civil liability — exceptions.** (1) The furnishing of or the failure to furnish safety consultation services related to, in connection with, or incidental to a workers' compensation insurance contract or agreement to provide workers' compensation coverage does not subject the insurer or its agents, employees, or service contractors to liability for damages from injury, loss, or death, whether

direct or consequential, occurring as a result of any act or omission by any person in the course of providing safety consultation services.

(2) Subsection (1) does not apply:

(a) if the injury, loss, or death occurred during the actual performance of safety consultation services and was directly and proximately caused by the negligence of the insurer or its agents, employees, or service contractors;

(b) to any safety consultation services required to be performed under the provisions of a written service contract for which a specific charge is made and not incidental to a policy of insurance; or

(c) in an action against an insurer or its agents, employees, or service contractors for damages caused by the act or omission of the insurer or its agents, employees, or service contractors in which it is judicially determined that the act or omission constituted a crime or involved actual malice.

**History:** En. Sec. 9, Ch. 295, L. 1993.

## TITLE 40

### FAMILY LAW

#### CHAPTER 4

#### TERMINATION OF MARRIAGE, CHILD CUSTODY, SUPPORT

##### Part 2

##### Support, Custody, Visitation, and Related Provisions

**40-4-225. Access to records by parent.** Notwithstanding any other provision of law, access to records and information pertaining to a minor child, including but not limited to medical, dental, law enforcement, and school records, may not be denied to a parent who is a party to a parenting plan.

**History:** En. Sec. 4, Ch. 416, L. 1981; amd. Sec. 26, Ch. 343, L. 1997.

#### CHAPTER 6

#### PARENT AND CHILD

##### Part 2

##### Obligations of Parents

**40-6-234. When parental authority ceases.** The authority of the parent ceases:

(1) upon the appointment, by a court, of a guardian of the person of a child;

(2) upon the marriage of a child; or

(3) upon its attaining majority.

**History:** En. Sec. 291, Civ. C. 1895; re-en. Sec. 3749, Rev. C. 1907; re-en. Sec. 5841, R.C.M. 1921; Cal. Civ. C. Sec. 204; Field Civ. C. Sec. 95; re-en. Sec. 5841, R.C.M. 1935; R.C.M. 1947, 61-112.

**40-6-237. Destruction of property by minor — liability of parents.** A municipal corporation, county, city, town, school district, or department of the state of Montana, a person, or a religious organization whether incorporated or unincorporated is entitled to recover damages in a civil action in an amount not to exceed \$6,900 in a court of competent jurisdiction from the parents of a person under 18 years of age, living with the parents, who maliciously or willfully destroys property, real, personal, or mixed, belonging to the municipal corporation, county, city, town, school district, department of the state of Montana, person, or religious organization.

**History:** En. Sec. 1, Ch. 195, L. 1957; amd. Sec. 1, Ch. 227, L. 1977; R.C.M. 1947, 61-112.1; amd. Sec. 1, Ch. 560, L. 1981; amd. Sec. 1, Ch. 4, L. 2013.

## Part 5

### Caretaker Relative — Authorization for Medical Care

**40-6-501. Purpose — legislative intent — parental rights — definitions.** (1) The legislature recognizes that the rights of parents to the custody and control of a child are based upon liberties secured by the United States and Montana constitutions and that a parent's rights to that custody and control of a child are therefore normally supreme to the interests of other persons. The legislature also recognizes a growing phenomenon in which absent or otherwise unavailable parents have temporarily surrendered the custody and care of their children to a grandparent or other relative for lengthy periods of time. Regardless of the purpose of the absence, a child willfully surrendered to a relative for an extended time period still has the same needs as a child in the care of its parents. In this situation, a caretaker relative assumes responsibilities for the child but has no legal right of control over the child, a situation that interferes in the caretaker relative's ability to perform routine functions of child rearing, including tending to the medical needs of the child. It is therefore the purpose of the legislature in these instances to protect the rights of a child granted by Article II, section 15, of the Montana constitution by granting a caretaker relative limited authority for a child left in the relative's care.

(2) It is the intent of the legislature that a caretaker relative given the responsibility of caring for a child with little or no warning and without any other provision having been made for the child's care, such as the appointment of a guardian or the provision of a power of attorney, be granted authority to consent to medical care for the child without superseding any parental rights regarding the child.

(3) Section 40-6-502 and this section are not intended to affect the rights and responsibilities of a parent, legal guardian, or other custodian regarding the child, do not grant legal custody of the child to the caretaker relative, and do not grant authority to the caretaker relative to consent to the marriage or adoption of the child or to receive notice of a medical procedure, including abortion, not consented to by the relative, if notice is required by law, for the child except as expressly provided in this section.

(4) For the purposes of 40-6-502 and this section, the following definitions apply:

(a) "Caretaker relative" or "relative" means an individual related by blood, marriage, or adoption by another individual to the child whose care is undertaken by the relative, but who is not a parent, foster parent, stepparent, or legal guardian of the child.

(b) "Caretaker relative medical authorization affidavit" or "affidavit" means an affidavit completed in compliance with 40-6-502.

(c) "Health care provider" means a person who provides medical care.

(d) "Medical care" means care by a health care provider, for which parental consent is normally required, for the prevention, diagnosis, or treatment of a mental, physical, or dental injury or disease.

(e) "Parent" means a biological or adoptive parent or other legal guardian of a child.

**History:** En. Sec. 1, Ch. 393, L. 2007.

**40-6-502. Caretaker relative medical authorization affidavit — use — immunity — format.** (1) A caretaker relative of a child who has voluntarily been given custody of the child by a parent of the child has the same authority as a custodial parent of the child to consent to medical care for the child for which parental consent is usually required if:

(a) in leaving the child with the caretaker relative, the parent expressed no definite time period in which the parent would return for the child;

(b) the child is residing with the caretaker relative on a full-time basis;

(c) the caretaker relative is unable to contact the parent following the voluntary leaving of the child with the relative or the parent refuses to regain custody of the child after a written request by the relative to do so;

(d) no adequate provision, such as the appointment of a guardian ad litem or execution of a power of attorney, has otherwise been made for the medical care of the child; and

(e) a caretaker relative medical authorization affidavit is completed in compliance with this section.

(2) An affidavit is effective only if it is signed by the caretaker relative, under oath, before a notary public. A clear photographic copy of an affidavit completed in compliance with this section is sufficient in any instance in which an original is required by a health care provider.

(3) Unless the rights of a parent have been judicially terminated or unless the ability to give legal consent for the child to receive medical care for which parental consent is usually required has been granted to the caretaker relative pursuant to 40-4-211 and 40-4-228, a decision by a parent of the child communicated to the health care provider regarding the health care of the child supersedes a conflicting decision by a caretaker relative made pursuant to an affidavit completed in compliance with this section. However, a decision by a parent does not supersede a decision by a caretaker relative made pursuant to an affidavit completed in compliance with this section if the decision by the parent endangers the life of the child. A health care provider may require reasonable proof of authenticity of a decision by a parent intended to supersede a decision by a caretaker relative.

(4) (a) A public or private health care provider or a public or private school official who acts in good faith reliance on a caretaker relative medical authorization affidavit completed in compliance with this section and who has no actual knowledge of facts contrary to those indicated in the affidavit is not subject to civil liability or criminal prosecution or to a professional disciplinary procedure for an action that would have been proper if the facts had been as the health care provider believed them to be.

(b) This subsection (4) applies even if medical care is provided to a child against the wishes of a parent of that child if the health care provider rendering the service does not have actual knowledge of the parent's wishes.

(5) A health care provider who relies on an affidavit completed in compliance with this section has no obligation to make further inquiry or investigation.

(6) An affidavit completed in compliance with this section is effective for the earlier of:

(a) 6 months;

(b) until it has been revoked by the caretaker relative; or

(c) until the child no longer resides with the caretaker relative.

(7) If the child ceases to live with the caretaker relative or the caretaker relative revokes the affidavit, the caretaker relative shall provide written notice of that fact to all health care providers to whom the caretaker relative has given the affidavit or to whom the caretaker relative has caused the affidavit to be given.

(8) This section does not relieve a person from a violation of other law, and this section does not affect the rights of a child's parent except as provided in this section.

(9) A caretaker relative medical authorization affidavit is invalid unless it is written in substantially the following form and contains the warning provided for in paragraph 5 of the format below:

#### CARETAKER RELATIVE'S MEDICAL AUTHORIZATION AFFIDAVIT

Use of this affidavit is authorized by 40-6-502, MCA.

1. INSTRUCTIONS: The completion and signing of the affidavit before a notary public are sufficient to authorize medical care for the named child. Please print clearly.

The child named below lives in my home, and I am 18 years of age or older.

a. Name of child:

b. Child's date of birth:

c. My name (caretaker relative):

d. My home address:

e. My relationship to the child (the caretaker relative must be an individual related by blood, marriage, or adoption by another individual to the child whose care is undertaken by the caretaker relative, but who is not a parent, foster parent, stepparent, or legal guardian of the child):

2. I hereby certify that this affidavit is not being used for an unlawful purpose.

3. My date and year of birth:

4. Check the following if true (all must be checked for this affidavit to apply):

☐ A parent of the child identified in paragraph 1a of this affidavit has left the child with me and has expressed no definite time period when the parent will return for the child.



- ☐ The child is now residing with me on a full-time basis.
- ☐ I am unable to locate or contact the parent of the child at this time to notify that parent of my intended authorization, or the parent refuses to regain custody of the child even though I have asked in writing that the parent do so.
- ☐ No adequate provision, such as appointment of a guardian ad litem or execution of a power of attorney, has been made for medical care for the child.

5. **WARNING: DO NOT SIGN THIS FORM IF ANY OF THE STATEMENTS ABOVE ARE INCORRECT OR YOU WILL BE COMMITTING A CRIME PUNISHABLE BY A FINE, IMPRISONMENT, OR BOTH.**

6. I declare under penalty of false swearing under the laws of Montana that the foregoing is true and correct.

Signed this \_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
(Signature of caretaker relative)

\_\_\_\_\_  
(Signature, county, state, and seal of notary public)

7. **NOTICES:**

a. Completion of this affidavit does not affect the rights of the child's parent or legal guardian regarding the care, custody, and control of the child and does not mean that the caretaker relative has legal custody of the child.

b. A health care provider who relies on this affidavit has no obligation to make any further inquiry or investigation.

c. This affidavit is not valid for more than 6 months after the date on which it is signed by the caretaker relative.

8. **ADDITIONAL INFORMATION:**

a. **TO CARETAKER RELATIVES:** If the child stops living with you, you shall notify anyone to whom you have given this affidavit, as well as anyone who has received the affidavit from someone else.

b. **TO PUBLIC AND PRIVATE HEALTH CARE PROVIDERS AND PUBLIC AND PRIVATE SCHOOL OFFICIALS:** A public or private health care provider or a public or private school official who acts in good faith reliance upon a caretaker relative medical authorization affidavit to provide medical care, without actual knowledge of facts contrary to those indicated in the affidavit, is not subject to criminal prosecution or civil liability to any person, or subject to any professional disciplinary action, for reliance on the affidavit if the form is completed in compliance with 40-6-502, MCA.

**History:** En. Sec. 2, Ch. 393, L. 2007.

## Part 6 Caretaker Relative — Child Custody Rights

**40-6-601. Legislative finding and purpose — definitions.** (1) The legislature recognizes that the right of parents to the custody and control of their children is based upon the liberties secured by the United States and Montana constitutions and that a parent's right to that custody and control is therefore normally supreme to the interests of other persons. The legislature also recognizes a growing phenomenon in which absent or otherwise unavailable parents have temporarily surrendered the custody and care of a child to a grandparent or other caretaker relative for a lengthy period of time. The legislature finds that a caretaker relative frequently offers continuity of care by providing a child a loving, stable, and secure environment in which to live, make friends, and attend school, which is an environment not provided by a parent who temporarily abandons a child. However, a child is deprived of that caring and safe environment, and the related continuity of care it may provide, when a parent returns to claim the child with little or no notice to the caretaker relative. This situation, which in some instances has occurred multiple times with the same child, is disruptive to the more stable life offered by the caretaker relative and may violate the child's rights ensured by Article II, section 15, of the Montana constitution, such as the right under Article II, section 3, of the Montana constitution of seeking safety, health, and happiness. For these reasons, it is the purpose of the legislature in enacting 40-6-602 and this section to exercise its police powers for the health and welfare of children

who have been abandoned by their parents to the care of relatives and to create a procedure, applicable in limited situations caused by the voluntary surrender of a child by a parent, under circumstances indicating abandonment, whereby a child in the care of a relative may remain with that relative while the issue of abandonment by the parent is reviewed and determined by a court of law. The legislature believes that this temporary infringement on the right of a parent to the custody and control of a minor child is justified by the possibility of abandonment by the parent, because the welfare of the child is at stake, and because of the likely violation of the child's rights ensured by Article II, section 15, of the Montana constitution.

(2) As used in 40-6-602 and this section, the following definitions apply:

(a) "Caretaker relative" or "relative" means an individual related to a child by blood, marriage, or adoption by another individual, who has care and custody of a child but who is not a parent, foster parent, stepparent, or legal guardian of the child.

(b) "Parent" means a biological or adoptive parent or other legal guardian of a child.

History: En. Sec. 1, Ch. 496, L. 2007; amd. Sec. 2, Ch. 210, L. 2009.

**40-6-602. Caretaker relative rights upon return of parent — continuing custody affidavit — review, finding, and order by district court — limited reconsideration — immunity.** (1) If custody of a child has been voluntarily given to a relative of the child by a parent of the child and the child has remained with that relative for at least 6 months under circumstances in which it is unclear whether or when the parent will return and retake custody of the child, the provisions of this section apply unless, during that 6-month period, the parent expresses to the relative a firm intention and a date on which the parent will return and resume custody of the child and subsequently adheres to that schedule.

(2) Upon a return of the parent and an expression by the parent of an intent by that parent to reassert the parent's right of custody and control over the child, the caretaker relative may file, without payment of a filing fee, with the district court in the county of the relative's residence a detailed affidavit as provided in this section. The affidavit must contain the following matters, the exclusion of any of which makes the affidavit void:

(a) the identification of:

(i) the caretaker relative, including the relative's address;

(ii) the child in the custody of the relative; and

(iii) the parent demanding custody of the child, including the parent's address, if known;

(b) a statement of the facts, as nearly as can be determined, of:

(i) the date, time, and circumstances surrounding the voluntary surrender of the custody of the child to the caretaker relative, including any conversation between the relative and the parent concerning the purpose of the parent's absence and when the parent would return and resume custody of the child;

(ii) the reason for the surrender of the child to the relative, as far as is known by the relative;

(iii) the efforts made by the relative to care for the child, including:

(A) facts explaining the nature and permanency or stability of the home provided by the relative for the child;

(B) the schooling of the child while in the relative's custody; and

(C) the socialization of the child with other children and adults, both inside and outside the family of the caretaker relative; and

(iv) whether any contact was made by the child's parent with the relative, the child, or both, during the absence of the parent and if so, the date, time, and circumstances of that contact, including any conversation between the relative and the parent concerning when the parent would return and resume custody of the child;

(c) a statement by the caretaker relative as to:

(i) why the relative wishes to maintain custody of the child; and

(ii) how the relative has offered and will continue to offer continuity of care by providing permanency or stability in residence, schooling, and activities outside of the home;

(d) a warning, in at least 14-point type, to the caretaker relative in the following language: "WARNING: DO NOT SIGN THE FOREGOING AFFIDAVIT IF ANY OF THE ABOVE STATEMENTS ARE INCORRECT OR YOU WILL BE COMMITTING AN OFFENSE PUNISHABLE BY FINE, IMPRISONMENT, OR BOTH"; and

(e) a notarized signature of the caretaker relative following a written declaration that the affidavit is made under oath and under penalty of the laws of Montana governing the giving of false sworn testimony and that the information stated by the caretaker relative in the affidavit is true and correct.

(3) A copy of the affidavit filed with the district court must be provided by the caretaker relative to the child's parent, if the address or location of the parent is known to the relative, and may be provided to the department of public health and human services. A caretaker relative may maintain temporary custody of the child for 5 days following the return of the parent and the demand by the parent for custody of the child pending completion of the affidavit and the order of the district court. During that 5-day period, the caretaker relative may not be deprived of the custody of the child by a peace officer or by the order of a court unless a court finds, upon petition by the child's parent and after a hearing and upon notice to the caretaker relative as the court shall require, that:

(a) the child has not been in the custody of the caretaker relative for at least 6 months;

(b) the caretaker relative has committed child abuse or neglect with regard to the child in the custody of the relative; or

(c) the action by the caretaker relative to make and file the affidavit with the district court in accordance with this section was not made in good faith.

(4) Upon receipt of the caretaker relative's affidavit pursuant to subsection (3), the department may proceed pursuant to 41-3-202 as if a report of abandonment of the child had been received.

(5) (a) Within 48 hours of the filing of the affidavit, the district court shall review the affidavit and determine ex parte whether the affidavit contains prima facie evidence that the child was abandoned by the child's parent. If the court determines that there is prima facie evidence that the child was abandoned by the child's parent, the court shall within 3 business days of its determination of prima facie evidence enter appropriate findings of fact concerning the abandonment and enter an ex parte order approving and ordering continued custody and control of the child by the caretaker relative. An order of the district court pursuant to this subsection approving and ordering continued custody by the caretaker relative is effective for 14 days following entry of the order.

(b) If the court determines that the affidavit does not provide prima facie evidence of abandonment by the parent, the court shall within 3 business days of its determination make appropriate findings of fact and order the child returned to the parent. Upon receipt of the written findings and order of the court, the caretaker relative shall surrender the custody and control of the child to the child's parent.

(c) During or after the 14-day period established under subsection (5)(a), the caretaker relative may commence a parenting plan proceeding under 40-4-211 or petition the court to be appointed the guardian of the minor under 72-5-225.

(6) Upon entry of an order by the district court pursuant to subsection (5)(a), a copy of the order must be sent to the child's parent, if the address of the parent is known.

(7) The child's parent may, after receipt of the court's findings and order ordering continued custody of a child by a caretaker relative, apply to the court, upon notice to the caretaker relative as the court shall provide, for a reconsideration of the court's order approving continued custody of the child by the relative. The court shall reconsider its order and may reverse its order based upon presentation of evidence of nonabandonment. Pending a reconsideration pursuant to this subsection, custody of the child must remain with the relative unless the order of the district court approving that custody expires or a court has ordered a change of custody pursuant to subsection (3).

(8) (a) A caretaker relative refusing to surrender custody of a child while acting in good faith and in accordance with this section is immune from civil or criminal action brought because of that refusal.

(b) A peace officer acting in good faith and taking or refusing to take custody of a child from a relative in accordance with this section and the entity employing the officer is immune from civil or criminal action or professional discipline brought because of the taking of or refusal to take custody of the child.

(9) Subject to availability of appropriations, the attorney general shall prepare a form for the affidavit provided for in this section and shall distribute the form as the attorney general determines appropriate.

History: En. Sec. 2, Ch. 496, L. 2007; amd. Sec. 3, Ch. 210, L. 2009.

# TITLE 41

## MINORS

### CHAPTER 1

### RIGHTS AND OBLIGATIONS OF MINORS

#### Part 1

#### Minority

**41-1-101. Minors and adults defined.** (1) Minors are:

- (a) males under 18 years of age;
- (b) females under 18 years of age.
- (2) All other persons are adults.

History: En. Secs. 10, 12, Civ. C. 1895; re-en. Secs. 3584, 3586, Rev. C. 1907; re-en. Sec. 5673, R.C.M. 1921; Cal. Civ. C. Sec. 25; Field Civ. C. Sec. 11; re-en. Sec. 5673, R.C.M. 1935; amd. Sec. 16, Ch. 240, L. 1971; amd. Sec. 23, Ch. 94, L. 1973; R.C.M. 1947, 64-101.

**41-1-102. Periods of minority — how calculated.** The periods specified in 41-1-101 must be calculated from the first minute of the day on which persons are born to the same minute of the corresponding day completing the period of minority.

History: En. Sec. 11, Civ. C. 1895; re-en. Sec. 3585, Rev. C. 1907; re-en. Sec. 5674, R.C.M. 1921; Cal. Civ. C. Sec. 26; re-en. Sec. 5674, R.C.M. 1935; R.C.M. 1947, 64-102.

**41-1-103. Unborn children.** A child conceived but not yet born is to be deemed an existing person, so far as may be necessary for its interests in the event of its subsequent birth.

History: En. Sec. 13, Civ. C. 1895; re-en. Sec. 3587, Rev. C. 1907; re-en. Sec. 5675, R.C.M. 1921; Cal. Civ. C. Sec. 29; Field Civ. C. Sec. 12; re-en. Sec. 5675, R.C.M. 1935; R.C.M. 1947, 64-103.

#### Part 2

#### Civil Actions Concerning Minors

**41-1-201. Liability of minors for wrongs — exemplary damages.** A minor is civilly liable for a wrong done by the minor but is not liable for exemplary damages unless at the time of the act, the minor was capable of knowing that it was wrongful.

History: En. Sec. 24, Civ. C. 1895; re-en. Sec. 3598, Rev. C. 1907; re-en. Sec. 5686, R.C.M. 1921; Cal. Civ. C. Sec. 41; re-en. Sec. 5686, R.C.M. 1935; R.C.M. 1947, 64-113(part); amd. Sec. 1588, Ch. 56, L. 2009.

**41-1-202. Enforcement of minor's rights.** A minor may enforce the minor's rights by civil action or other legal proceedings in the same manner as a person of full age, except that a guardian shall conduct the action or proceedings.

History: En. Sec. 25, Civ. C. 1895; re-en. Sec. 3599, Rev. C. 1907; re-en. Sec. 5687, R.C.M. 1921; Cal. Civ. C. Sec. 42; Field Civ. C. Sec. 25; re-en. Sec. 5687, R.C.M. 1935; R.C.M. 1947, 64-114; amd. Sec. 1589, Ch. 56, L. 2009.

#### Part 3

#### Power to Contract

**41-1-301. Delegation of power by minors forbidden.** A minor cannot give a delegation of power.

History: En. Sec. 16, Civ. C. 1895; re-en. Sec. 3590, Rev. C. 1907; re-en. Sec. 5678, R.C.M. 1921; Cal. Civ. C. Sec. 33; Field Civ. C. Sec. 15; re-en. Sec. 5678, R.C.M. 1935; R.C.M. 1947, 64-105.

**41-1-302. Contracts of minors — disaffirmance.** A minor may make a conveyance or other contract in the same manner as any other person, subject only to the minor's power of disaffirmance under the provisions of this chapter and to the provisions of Title 40, chapter 1.

**History:** En. Sec. 17, Civ. C. 1895; re-en. Sec. 3591, Rev. C. 1907; re-en. Sec. 5679, R.C.M. 1921; Cal. Civ. C. Sec. 34; Field Civ. C. Sec. 16; re-en. Sec. 5679, R.C.M. 1935; R.C.M. 1947, 64-106; amd. Sec. 1590, Ch. 56, L. 2009.

**41-1-303. Capacity of minors to borrow money for education.** A minor who contracts to borrow money to defray the expenses of attending any college or university or other institution of higher education beyond high school has full legal capacity to act on the minor's own behalf and has all the rights, powers, and privileges and is subject to the obligations of persons of full age with respect to those contracts.

**History:** En. Sec. 1, Ch. 34, L. 1963; R.C.M. 1947, 64-106.1; amd. Sec. 1591, Ch. 56, L. 2009.

**41-1-304. When minors may disaffirm.** (1) Except as provided in subsection (2), in all cases other than those specified by 41-1-303, 41-1-305, and 41-1-306, the contract of a minor may, upon restoring the consideration to the party from whom it was received, be disaffirmed by the minor, either before the minor reaches majority or within a reasonable time afterwards, or, in case of the minor's death within that period, by the minor's heirs or personal representatives.

(2) A minor subject to the provisions of 31-1-115 is not required to restore any consideration received from the issuer of a credit card or similar loan advance access device that has not obtained the consent of the minor's parent or legal guardian before issuing the card or similar loan advance access device to the minor.

**History:** En. Sec. 18, Civ. C. 1895; re-en. Sec. 3592, Rev. C. 1907; re-en. Sec. 5680, R.C.M. 1921; Cal. Civ. C. Sec. 35; Field Civ. C. Sec. 17; re-en. Sec. 5680, R.C.M. 1935; R.C.M. 1947, 64-107; amd. Sec. 1, Ch. 29, L. 1979; amd. Sec. 2, Ch. 21, L. 1997.

**41-1-305. Minor may not disaffirm contract for necessities.** A minor may not disaffirm a contract, otherwise valid, to pay the reasonable value of things necessary for the minor's support or that of the minor's family, entered into by the minor when not under the care of a parent or guardian able to provide for the minor or the minor's family.

**History:** En. Sec. 19, Civ. C. 1895; re-en. Sec. 3593, Rev. C. 1907; re-en. Sec. 5681, R.C.M. 1921; Cal. Civ. C. Sec. 36; Field Civ. C. Sec. 18; re-en. Sec. 5681, R.C.M. 1935; R.C.M. 1947, 64-108(part); amd. Sec. 1592, Ch. 56, L. 2009.

**41-1-306. Minor may not disaffirm certain obligations.** A minor may not disaffirm an obligation, otherwise valid, entered into by the minor under the express authority or direction of a statute or when the minor has been granted limited emancipation, including a specific right to enter into contracts, under 41-1-503 and 41-3-438.

**History:** En. Sec. 20, Civ. C. 1895; re-en. Sec. 3594, Rev. C. 1907; re-en. Sec. 5682, R.C.M. 1921; Cal. Civ. C. Sec. 37; Field Civ. C. Sec. 19; re-en. Sec. 5682, R.C.M. 1935; R.C.M. 1947, 64-109; amd. Sec. 6, Ch. 564, L. 1983; amd. Sec. 1593, Ch. 56, L. 2009; amd. Sec. 1, Ch. 179, L. 2009.

## **Part 4**

### **Consent for Health Services**

**41-1-401. Definitions.** As used in this part, the following definitions apply:

(1) "Emancipated minor" means an individual under 18 years of age who:

(a) is or has been married;

(b) is separated from the individual's parent, parents, or legal guardian and is self-supporting;

or

(c) has been granted the right to consent to medical treatment pursuant to an order of limited emancipation granted by a court pursuant to 41-3-438.

(2) "Health care facility" has the meaning provided in 50-5-101.

(3) "Health professional" includes only those persons licensed in Montana as physicians, psychiatrists, psychologists, advanced practice registered nurses, dentists, physician assistants, professional counselors, or social workers.

**History:** En. 69-6105.1 by Sec. 6, Ch. 312, L. 1974; R.C.M. 1947, 69-6105.1; amd. Sec. 1, Ch. 396, L. 2003; amd. Sec. 21, Ch. 519, L. 2005.

**41-1-402. Validity of consent of minor for health services.** (1) This part does not limit the right of an emancipated minor to consent to the provision of health services or to control access to protected health care information under applicable law.



(2) The consent to the provision of health services and to control access to protected health care information by a health care facility or to the performance of health services by a health professional may be given by a minor who professes or is found to meet any of the following descriptions:

(a) a minor who professes to be or to have been married or to have had a child or graduated from high school;

(b) a minor who professes to be or is found to be separated from the minor's parent, parents, or legal guardian for whatever reason and is providing self-support by whatever means;

(c) a minor who professes or is found to be pregnant or afflicted with any reportable communicable disease, including a sexually transmitted disease, or drug and substance abuse, including alcohol. This self-consent applies only to the prevention, diagnosis, and treatment of those conditions specified in this subsection. The self-consent in the case of pregnancy, a sexually transmitted disease, or drug and substance abuse also obliges the health professional, if the health professional accepts the responsibility for treatment, to counsel the minor or to refer the minor to another health professional for counseling.

(d) a minor who needs emergency care, including transfusions, without which the minor's health will be jeopardized. If emergency care is rendered, the parent, parents, or legal guardian must be informed as soon as practical except under the circumstances mentioned in this subsection (2).

(3) A minor who has had a child may give effective consent to health service for the child.

(4) A minor may give consent for health care for the minor's spouse if the spouse is unable to give consent by reason of physical or mental incapacity.

**History:** En. Sec. 1, Ch. 189, L. 1969; amd. Sec. 1, Ch. 312, L. 1974; amd. Sec. 23, Ch. 100, L. 1977; R.C.M. 1947, 69-6101; amd. Sec. 14, Ch. 440, L. 1989; amd. Sec. 188, Ch. 42, L. 1997; amd. Sec. 2, Ch. 396, L. 2003.

**41-1-403. Release of information by health professional.** (1) Except with regard to an emancipated minor, a health professional may inform the parent, custodian, or guardian of a minor in the circumstances enumerated in 41-1-402 of any treatment given or needed when:

(a) in the judgment of the health professional, severe complications are present or anticipated;

(b) major surgery or prolonged hospitalization is needed;

(c) failure to inform the parent, parents, or legal guardian would seriously jeopardize the safety and health of the minor patient, younger siblings, or the public;

(d) informing them would benefit the minor's physical and mental health and family harmony; or

(e) the health professional or health care facility providing treatment desires a third-party commitment to pay for services rendered or to be rendered.

(2) Notification or disclosure to the parent, parents, or legal guardian by the health professional may not constitute libel or slander, a violation of the right of privacy, a violation of the rule of privileged communication, or any other legal basis of liability. If the minor is found not to be pregnant or not afflicted with a sexually transmitted disease or not suffering from drug abuse or substance abuse, including alcohol, then information with respect to any appointment, examination, test, or other health procedure may not be given to the parent, parents, or legal guardian, if they have not already been informed as permitted in this part, without the consent of the minor.

**History:** En. Sec. 2, Ch. 189, L. 1969; amd. Sec. 2, Ch. 312, L. 1974; R.C.M. 1947, 69-6102; amd. Sec. 15, Ch. 440, L. 1989; amd. Sec. 3, Ch. 396, L. 2003.

**41-1-404. Financial responsibility of minor.** Consent of the minor shall not be subject to later disaffirmance or revocation because of minority. The spouse, parent, parents, or legal guardian of a consenting minor shall not be liable for payment for such service unless the spouse, parent, parents, or legal guardian have expressly agreed to pay for such care. Minors so consenting for such health services shall thereby assume financial responsibility for the cost of said services, except those who are proven unable to pay and who receive the services in public institutions. If the minor is covered by health insurance, payment may be applied for services rendered.

**History:** En. Sec. 3, Ch. 189, L. 1969; amd. Sec. 3, Ch. 312, L. 1974; R.C.M. 1947, 69-6103.

**41-1-405. Emergencies and special situations.** (1) A health professional may render or attempt to render emergency service or first aid, medical, surgical, dental, or psychiatric treatment, without compensation, to any injured person or any person regardless of age who is in need of immediate health care when, in good faith, the professional believes that the giving of aid is the only alternative to probable death or serious physical or mental damage.

(2) A health professional may render nonemergency services to minors for conditions that will endanger the health or life of the minor if services would be delayed by obtaining consent from spouse, parent, parents, or legal guardian.

(3) Consent may not be required of a minor who does not possess the mental capacity or who has a physical disability that renders the minor incapable of giving consent and who has no known relatives or legal guardians, if a physician determines that the health service should be given.

(4) Self-consent of minors does not apply to sterilization or abortion, except as provided in Title 50, chapter 20, part 5.

**History:** En. Sec. 4, Ch. 189, L. 1969; amd. Sec. 4, Ch. 312, L. 1974; R.C.M. 1947, 69-6104; amd. Sec. 11, Ch. 469, L. 1995; amd. Sec. 10, Ch. 307, L. 2011; amd. Sec. 12, Ch. 307, L. 2013.

**41-1-406. Psychiatric or psychological counseling under urgent circumstances.** When executed by a minor, the consent to the providing of psychiatric or psychological counseling by a physician or psychologist licensed to practice in this state, under circumstances when the need for the counseling is urgent in the opinion of the physician or psychologist involved because of danger to the life, safety, or property of a minor or of another person or persons and the consent of the spouse, parent, custodian, or guardian of the minor cannot be obtained within a reasonable time to offset the danger to life or safety, is as valid and binding as if the minor had achieved majority. The minor has the same legal capacity to act and the same legal obligations with regard to the giving of consent as a person of full legal age and capacity, and the consent is not subject to disaffirmance by reason of minority. The consent of another person, including but not limited to a spouse, parent, custodian, or guardian, is not necessary in order to authorize the psychiatric or psychological counseling of the minor. However, a parent may not be obligated for the cost of the counseling without the parent's consent.

**History:** En. Sec. 1, Ch. 315, L. 1971; amd. Sec. 24, Ch. 100, L. 1977; R.C.M. 1947, 69-6106; amd. Sec. 1594, Ch. 56, L. 2009.

**41-1-407. Immunity and responsibility of psychologist, physician, or health care facility.** (1) A physician, surgeon, dentist, or health or mental health care facility may not be compelled against the entity's best judgment to treat a minor on the minor's own consent.

(2) This section may not be construed to relieve any physician, surgeon, dentist, or health or mental health care facility from liability for negligence in the diagnosis and treatment rendered a minor.

(3) In any case arising under the provisions of 41-1-406, the physician or licensed psychologist who provides the psychiatric or psychological counseling services may not incur civil or criminal liability by reason of having provided the counseling services, but the immunity does not apply to any negligent acts or omissions.

**History:** (1), (2) En. Sec. 5, Ch. 189, L. 1969; amd. Sec. 5, Ch. 312, L. 1974; Sec. 69-6105, R.C.M. 1947; (3) En. Sec. 2, Ch. 315, L. 1971; Sec. 69-6107, R.C.M. 1947; R.C.M. 1947, 69-6105, 69-6107; amd. Sec. 1595, Ch. 56, L. 2009.

## **Part 5**

### **Limited Emancipation**

**41-1-501. Petition for limited emancipation.** (1) A youth who is 16 years of age or older, the youth's parent, or the department of public health and human services may petition the court for an order granting limited emancipation to the youth.

(2) The petition for limited emancipation must be in writing and must set forth:

- (a) the name, age, and address of the youth;
- (b) the names and addresses of:
  - (i) the parents of the youth;
  - (ii) any legal guardian of the youth; or

(iii) if no parent or guardian can be found, the last-known address of the youth's parent or guardian and the name and address of the youth's nearest known relative residing in the state;

(c) that limited emancipation is in the youth's best interests;

(d) that the youth desires limited emancipation;

(e) that there exists no public interest compelling denial of limited emancipation;

(f) that the youth has, or will reasonably obtain, money sufficient to pay for financial obligations incurred as a result of limited emancipation;

(g) that the youth, as shown by prior conduct and preparation, understands and may be expected to responsibly exercise those rights and responsibilities incurred as a result of limited emancipation;

(h) that the youth has graduated or will continue to diligently pursue graduation from high school, unless circumstances clearly compel deferral of education; and

(i) that, if it is considered necessary by the court, the youth will undergo periodic counseling with an appropriate advisor.

**History:** En. Sec. 5, Ch. 564, L. 1983; amd. Sec. 8, Ch. 696, L. 1991; amd. Sec. 16, Ch. 458, L. 1995; amd. Sec. 17(3)(b), Ch. 281, L. 2001; Sec. 41-3-408, MCA 1999; reded. 41-1-501 by Sec. 17(3)(b), Ch. 281, L. 2001; amd. Sec. 2, Ch. 179, L. 2009.

**41-1-502. Hearing and notice.** (1) At least 10 days before the petition for limited emancipation is heard, notice that the court determines is reasonable must be given to the youth's parent, guardian, or other person identified in 41-1-501(2)(b). Service must be waived if proof is made to the court that the address of the parents or legal guardian is unavailable or unascertainable.

(2) The notice must include the date and place of hearing and a form on which the youth's parents, legal guardian, or other person entitled to the custody of the youth may give the person's written consent to the limited emancipation.

**History:** En. Sec. 3, Ch. 179, L. 2009.

**41-1-503. Order of limited emancipation.** (1) Limited emancipation may be granted only if the court has found that the youth satisfies the requirements of 41-1-501(2)(c) through (2)(i).

(2) An order of limited emancipation must specifically set forth the rights and responsibilities that are being conferred upon the youth. These may include but are not limited to one or more of the following:

(a) the right to live independently of in-house supervision;

(b) the right to live in housing of the youth's choice;

(c) the right to directly receive and expend money to which the youth is entitled and to conduct the youth's own financial affairs;

(d) the right to enter into contractual agreements and incur debts;

(e) the right to obtain access to medical treatment and records upon the youth's own authorization; and

(f) the right to obtain a license to operate equipment or perform a service.

(3) An order of limited emancipation must include a provision requiring that the youth make periodic reports to the court subject to terms prescribed by the court.

(4) The court, on its own motion or on the motion of the county attorney or any parties to the dispositional hearing, may modify or revoke the order upon a showing that:

(a) the youth has committed a material violation of the law;

(b) the youth has violated a condition of the limited emancipation order; or

(c) the best interests of the youth are no longer served by limited emancipation.

**History:** En. Sec. 4, Ch. 179, L. 2009.

## CHAPTER 2 CHILD LABOR

### Part 1 Child Labor Standards Act

**41-2-102. Short title.** This part may be cited as the "Child Labor Standards Act".

**History:** En. Sec. 1, Ch. 391, L. 1993.

**41-2-103. Definitions.** As used in this part, the following definitions apply:

- (1) "Agriculture" means:
  - (a) all aspects of farming, including the cultivation and tillage of the soil;
  - (b) (i) dairying; and
  - (ii) the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities, including commodities defined as agricultural commodities in the federal Agricultural Marketing Act, 12 U.S.C. 1141j(g);
  - (c) the raising of livestock, bees, fur-bearing animals, or poultry; and
  - (d) any practices, including forestry or lumbering operations, performed by a farmer or on a farm as an incident to or in conjunction with farming operations, including preparation for market or delivery to storage, to market, or to carriers for transportation to market.
- (2) "Department" means the department of labor and industry provided for in 2-15-1701.
- (3) "Domestic service" means an occasional, irregular, or incidental nonhazardous occupational activity related to and conducted in or around a private residence, including but not limited to babysitting, pet sitting or similar household chore, and manual yard work. Domestic service specifically excludes industrial homework.
- (4) (a) "Employed" or "employment" means an occupation engaged in, permitted, or suffered, with or without compensation in money or other valuable consideration, whether paid to the minor or to some other person, including but not limited to occupations as servant, agent, subagent, or independent contractor.
  - (b) The term does not include casual, community service, nonrevenue raising, uncompensated activities.
- (5) "Employer" includes an individual, partnership, association, corporation, business trust, person, or group of persons acting directly or indirectly in the interest of an employer in relation to an employee.
- (6) "Minor" means an individual under 18 years of age, except for an individual who:
  - (a) has received a high school diploma or a high school equivalency diploma; or
  - (b) is 16 years of age or older and is enrolled in a registered state or federal apprenticeship program.
- (7) "Occupation" means:
  - (a) an occupation, service, trade, business, or industry in which employees are employed;
  - (b) any branch or group of industries in which employees are employed; or
  - (c) any employment or class of employment in which employees are employed.

**History:** En. Sec. 2, Ch. 391, L. 1993; amd. Sec. 59, Ch. 2, L. 2009; amd. Sec. 19, Ch. 55, L. 2015.

**41-2-104. Exemptions.** The provisions of this part do not apply to a minor who is employed:

- (1) in an agricultural occupation not otherwise prohibited by this part and who has received written consent from the minor's parents or a person standing in place of the parent who works on a farm or ranch where the parent or person is also employed;
  - (2) in domestic service or an agricultural pursuit performed outside school hours in connection with a home or a farm owned or operated by the minor's parent or by a person standing in place of the parent;
  - (3) by the parent or a person standing in place of the parent;
  - (4) during periods of school vacations on a campsite of a nonprofit corporation engaged in citizenship training and character building;
  - (5) as an actor, model, or performer;
  - (6) outside school hours by a home owner in casual work usual to the home of the home owner and not in connection with the home owner's business, trade, or profession;
  - (7) by the legislature as a legislative aide or page;
  - (8) in the distribution or sale of or in the collection for newspapers, periodicals, or circulars;
- or
- (9) as an official or referee for a nonprofit athletic organization. A minor who is under the age of 14 may not officiate at adult events or activities.

**History:** En. Sec. 3, Ch. 391, L. 1993; amd. Sec. 1, Ch. 89, L. 1995.

**41-2-105. Prohibited employment of minors under 14 years of age.** Except as provided in 41-2-104, a minor who is under 14 years of age may not be employed in or in connection with an occupation.

**History:** En. Sec. 4, Ch. 391, L. 1993.

**41-2-106. Prohibited employment of minors who are 14 and 15 years of age.** Unless otherwise exempted, a minor 14 or 15 years of age may not be employed in the prohibited occupations in 41-2-107 or in:

- (1) a manufacturing occupation;
- (2) a processing occupation, including but not limited to filleting fish, dressing poultry, cracking nuts, or laundering and drycleaning;
- (3) an occupation that requires the performance of duties in a workroom or workplace where goods are manufactured, mined, or processed;
- (4) the operation or tending of a hoisting apparatus or of power-driven machinery;
- (5) an occupation in connection with:
  - (a) transporting persons or property by rail, highway, air, water, pipeline, or other means;
  - (b) warehousing and storage;
  - (c) communication and public utilities; or
  - (d) construction or repair;
- (6) an occupation in a retail, food service, or gasoline establishment, including:
  - (a) work performed in or around a boiler or an engine room;
  - (b) work in connection with the maintenance or the repair of an establishment, machine, or equipment;
- (c) outside window washing that involves working from windowsills and all work requiring the use of ladders, scaffolds, or their substitutes at a height of more than 20 feet;
- (d) an occupation that involves operating, assembling, adjusting, cleaning, oiling, or repairing power-driven food slicers and grinders, food choppers and cutters, or bakery-type mixers;
- (e) work in freezers and meat coolers and all work preparing meat for sale, except wrapping, scaling, labeling, weighing, pricing, and stacking when performed in other areas;
- (f) loading or unloading goods to and from a truck, railroad car, or conveyor; or
- (g) an occupation in a warehouse, except for office or clerical work;
- (7) the following agricultural occupations, unless otherwise exempt or working as a student-learner pursuant to 41-2-109:
  - (a) felling, bucking, skidding, loading, or unloading timber with a butt diameter of more than 9 inches;
  - (b) repairing a building from a ladder or scaffold at a height of more than 20 feet;
  - (c) working inside:
    - (i) a fruit, forage, or grain storage structure designed to retain an oxygen-deficient or toxic atmosphere; or
    - (ii) an upright silo within 2 weeks after silage has been added or when a top unloading device is in operating position;
  - (d) handling or using agricultural chemicals classified as poisonous;
  - (e) handling or using a blasting agent, including but not limited to dynamite, black powder, sensitized ammonium nitrate, blasting caps, or primer cord; or
  - (f) transporting, transferring, or applying anhydrous ammonia.

**History:** En. Sec. 5, Ch. 391, L. 1993.

**41-2-107. Prohibited employment of minors who are 16 and 17 years of age.** Unless working as an apprentice or student-learner under the provisions of 41-2-110, a minor 16 or 17 years of age may not be employed in or in connection with any of the following occupations:

- (1) manufacturing or storing explosives or articles containing explosive components;
- (2) logging and the operation of a sawmill, lath mill, or shingle mill;
- (3) the operation of power-driven woodworking machines;
- (4) an occupation involving exposure to a radioactive substance or ionizing radiation;



(5) the operation of a freight elevator, except for a freight elevator permitted for use under the child labor provisions of the federal Fair Labor Standards Act of 1938, or other power-driven hoisting apparatus;

(6) the operation of a power-driven metal forming, punching, and shearing machine;

(7) a mining occupation;

(8) slaughtering, meatpacking, meat processing, or rendering;

(9) the operation of a power-driven bakery machine;

(10) the operation of a power-driven paper products machine;

(11) the manufacture of brick, tile, or similar products;

(12) the operation of a circular saw, bandsaw, or guillotine shears;

(13) a wrecking or demolition operation;

(14) an excavation operation;

(15) a roofing operation;

(16) riding outside a motor vehicle to assist in transporting or delivering goods; and

(17) a coal mining operation.

**History:** En. Sec. 6, Ch. 391, L. 1993.

**41-2-108. Employment of minors who are 14 and 15 years of age.** (1) Unless enrolled in and employed pursuant to a school-supervised and school-administered work experience or career exploration program pursuant to 41-2-115(2), a minor 14 or 15 years of age may not be employed in any occupation during school hours.

(2) A minor 14 or 15 years of age may be employed outside school hours in:

(a) the distribution or sale of or in the collection for newspapers, magazines, periodicals, or circulars; and

(b) the following occupations in retail, food service, and gasoline service establishments:

(i) office and clerical work, including the operation of an office machine;

(ii) cashiering, selling, modeling, art work, work in an advertising department, window trimming, and comparative shopping;

(iii) price marking and tagging by hand or by machine, assembling orders, packing, and shelving;

(iv) bagging and carrying out a customer's order;

(v) errand and delivery work by foot, bicycle, or public transportation;

(vi) cleanup work, including the use of a vacuum cleaner and a floor waxer, and maintenance of grounds, but not including the use of a power-driven mower or cutter;

(vii) kitchen work and other work involved in preparing and serving food and beverages, including the operation of machines and devices used in the performance of the work, which may include but are not limited to a dishwasher, toaster, dumbwaiter, popcorn popper, milkshake blender, and coffee grinder; or

(viii) work in connection with cars and trucks if confined to dispensing gasoline and oil; courtesy service; car cleaning, washing, and polishing; but not including work involving the use of a pit, a rack, or a lifting apparatus or involving the inflation of a tire mounted on a rim equipped with a removable ring.

**History:** En. Sec. 7, Ch. 391, L. 1993.

**41-2-109. Exemptions from prohibited occupations in agriculture.** (1) The prohibitions from employment in agricultural operations provided for in 41-2-106(7) do not apply to the employment of a student-learner who is 14 or 15 years of age if all of the following requirements are met:

(a) The student-learner is enrolled in a K-12 career and vocational/technical education training program in agriculture under a recognized state or local educational authority or in a substantially similar program conducted by a private school.

(b) The student-learner is employed under a written agreement, providing that:

(i) the work is incidental to training;

(ii) the work is intermittent, for short periods of time, and under the direct and close supervision of a qualified and experienced person;

(iii) safety instruction is given by the school and correlated by the employer with on-the-job training; and

(iv) a schedule of organized and progressive work processes to be performed on the job has been prepared.

(c) The written agreement contains the name of the student-learner and is signed by the employer and by a person authorized to represent the educational authority or school.

(d) Copies of each agreement are kept on file both by the educational authority or school and by the employer.

(2) The prohibitions in 41-2-106(7) do not apply to the employment of a minor who is 14 or 15 years of age in those occupations in which the minor has successfully completed a work training program, including safety instruction and training in the use of machinery, under the 4-H program of the federal extension service, a program of the United States department of education, or a similar program if the safety program has been approved by the department and if the minor is employed outside school hours on the equipment for which the minor has been trained.

**History:** En. Sec. 8, Ch. 391, L. 1993; amd. Sec. 13, Ch. 133, L. 2001.

**41-2-110. Exemptions from prohibited employment of minors who are 16 or 17 years of age.** (1) The prohibitions in 41-2-107 do not apply to the employment of an apprentice or student-learner who is 16 or 17 years of age if the minor is employed under the following conditions:

(a) for an apprentice, if:

(i) the minor is employed in a craft recognized as an apprenticeable trade;

(ii) the work is incidental to the minor's training;

(iii) the work is intermittent, for short periods of time, and under the direct and close supervision of a journeyman as a necessary part of the apprentice training; and

(iv) the minor is registered by the bureau of apprenticeship and training of the United States department of labor as employed in accordance with the standards established by that bureau or is registered by the department as employed in accordance with the standards of the department;

(b) for a student-learner, if:

(i) the student-learner is enrolled in a course of study and training in a cooperative vocational training program under a recognized state or local educational authority or in a course of study in a substantially similar program conducted by a private school;

(ii) the student-learner is employed under a written agreement, providing that:

(A) the work of the student-learner is incidental to the student-learner's training;

(B) the work is intermittent, for short periods of time, and under the direct and close supervision of a qualified and experienced person;

(C) safety instruction is given by the school and correlated by the employer with on-the-job training; and

(D) a schedule of organized and progressive work processes to be performed on the job has been prepared;

(iii) the written agreement contains the name of the student-learner and is signed by the employer and the school coordinator or principal; and

(iv) copies of each agreement are kept on file both by the educational authority or school and by the employer.

(2) This exemption for the employment of student-learners may be revoked by the department in any situation if the department finds that reasonable precautions have not been observed for the safety of minors employed under the exemption.

(3) A high school graduate who is 16 or 17 years of age may be employed in an occupation in which the graduate has completed training as a student-learner as provided in this section.

**History:** En. Sec. 9, Ch. 391, L. 1993.

**41-2-115. Working hours.** (1) Unless otherwise exempt or as provided in subsection (2), a minor who is 14 or 15 years of age:

(a) may not be employed before 7 a.m. or after 7 p.m., except that the minor may be employed until 9 p.m. during periods outside the school year (June 1 through Labor Day, depending on local standards); or

(b) may not be employed more than:

(i) 3 hours on a school day;

- (ii) 18 hours in a school week;
- (iii) 8 hours on a nonschool day; or
- (iv) 40 hours in a week in a nonschool week.

(2) A minor who is 14 or 15 years of age and who is enrolled in and employed pursuant to a school-supervised and school-administered work experience or career exploration program approved by the department or the office of public instruction may be employed up to 23 hours in 1 week when the program is in session, any portion of which may be during school hours.

**History:** En. Sec. 10, Ch. 391, L. 1993.

**41-2-116. Enforcement — right to enter and inspect premises and records — subpoena power.** The department shall enforce the provisions of this part and file a complaint against a person who violates the provisions of this part. The department may at any time enter and inspect any place or establishment governed by the provisions of this part and have access to employment records kept on file by the employer that may aid in the enforcement of this part. The department may subpoena documentary evidence relating to an investigation under this part.

**History:** En. Sec. 11, Ch. 391, L. 1993.

**41-2-117. Power to adopt rules.** The department may adopt rules, including definitions of terms, to carry out the purposes of this part and to prevent the circumvention or evasion of this part.

**History:** En. Sec. 12, Ch. 391, L. 1993; amd. Sec. 1, Ch. 260, L. 2003.

**41-2-118. Penalties.** An employer who violates any of the provisions of this part is guilty of a misdemeanor and is punishable as provided in 46-18-212. Each day during which a violation of this part continues constitutes a separate offense, and the employment of a minor in violation of this part constitutes, with respect to each minor employed, a separate offense.

**History:** En. Sec. 13, Ch. 391, L. 1993.

## CHAPTER 3 CHILD ABUSE AND NEGLECT

### Part 1 General

**41-3-101. Declaration of policy.** (1) It is the policy of the state of Montana to:

(a) provide for the protection of children whose health and welfare are or may be adversely affected and further threatened by the conduct of those responsible for the children's care and protection;

(b) achieve these purposes in a family environment and preserve the unity and welfare of the family whenever possible;

(c) ensure that there is no forced removal of a child from the family based solely on an allegation of abuse or neglect unless the department has reasonable cause to suspect that the child is at imminent risk of harm;

(d) recognize that a child is entitled to assert the child's constitutional rights;

(e) ensure that all children have a right to a healthy and safe childhood in a permanent placement; and

(f) ensure that whenever removal of a child from the home is necessary, the child is entitled to maintain ethnic, cultural, and religious heritage whenever appropriate.

(2) It is intended that the mandatory reporting of abuse or endangerment cases by professional people and other community members to the appropriate authority will cause the protective services of the state to seek to prevent further abuses, protect and enhance the welfare of these children, and preserve family life whenever appropriate.

(3) In implementing this chapter, whenever it is necessary to remove a child from the child's home, the department shall, when it is in the best interests of the child, place the child with the child's noncustodial birth parent or with the child's extended family, including adult siblings, grandparents, great-grandparents, aunts, and uncles, when placement with the extended family is approved by the department, prior to placing the child in an alternative protective or

residential facility. Prior to approving a placement, the department shall investigate whether anyone living in the home has been convicted of a crime involving serious harm to children.

(4) (a) The department shall create a registry for voluntary registration by close relatives of a child for purposes of notifying those relatives when a child that is related has been removed from the child's home pursuant to this chapter.

(b) The registry must contain the names of the child and the child's parents and may contain the names of the child's grandparents, aunts, uncles, adult brothers, and adult sisters and must contain the contact information for the child and parents and any of the relatives whose names appear in the registry.

(5) The department shall consult the registry and notify the relatives on the registry on the first working day after placing the child in accordance with 41-3-301.

(6) The department may charge a fee commensurate with the cost of operating the registry. The fee may be charged only to those persons whose names are voluntarily entered in the registry.

(7) In implementing the policy of this section, the child's health and safety are of paramount concern.

**History:** (1)En. 10-1300 by Sec. 1, Ch. 328, L. 1974; Sec. 10-1300, R.C.M. 1947; (2)En. Sec. 1, Ch. 178, L. 1965; amd. Sec. 1, Ch. 292, L. 1973; Sec. 10-901, R.C.M. 1947; redes. 10-1303 by Sec. 14, Ch. 328, L. 1974; Sec. 10-1303, R.C.M. 1947; R.C.M. 1947, 10-1300, 10-1303; amd. Sec. 1, Ch. 543, L. 1979; amd. Sec. 1, Ch. 494, L. 1995; amd. Sec. 1, Ch. 564, L. 1995; amd. Sec. 1, Ch. 501, L. 1997; amd. Sec. 1, Ch. 566, L. 1999; amd. Sec. 1, Ch. 281, L. 2001; amd. Sec. 1, Ch. 311, L. 2001; amd. Sec. 1, Ch. 504, L. 2003; amd. Sec. 1, Ch. 196, L. 2009.

**41-3-102. Definitions.** As used in this chapter, the following definitions apply:

(1) (a) "Abandon", "abandoned", and "abandonment" mean:

(i) leaving a child under circumstances that make reasonable the belief that the parent does not intend to resume care of the child in the future;

(ii) willfully surrendering physical custody for a period of 6 months and during that period not manifesting to the child and the person having physical custody of the child a firm intention to resume physical custody or to make permanent legal arrangements for the care of the child;

(iii) that the parent is unknown and has been unknown for a period of 90 days and that reasonable efforts to identify and locate the parent have failed; or

(iv) the voluntary surrender, as defined in 40-6-402, by a parent of a newborn who is no more than 30 days old to an emergency services provider, as defined in 40-6-402.

(b) The terms do not include the voluntary surrender of a child to the department solely because of parental inability to access publicly funded services.

(2) "A person responsible for a child's welfare" means:

(a) the child's parent, guardian, or foster parent or an adult who resides in the same home in which the child resides;

(b) a person providing care in a day-care facility;

(c) an employee of a public or private residential institution, facility, home, or agency; or

(d) any other person responsible for the child's welfare in a residential setting.

(3) "Abused or neglected" means the state or condition of a child who has suffered child abuse or neglect.

(4) (a) "Adequate health care" means any medical care or nonmedical remedial health care recognized by an insurer licensed to provide disability insurance under Title 33, including the prevention of the withholding of medically indicated treatment or medically indicated psychological care permitted or authorized under state law.

(b) This chapter may not be construed to require or justify a finding of child abuse or neglect for the sole reason that a parent or legal guardian, because of religious beliefs, does not provide adequate health care for a child. However, this chapter may not be construed to limit the administrative or judicial authority of the state to ensure that medical care is provided to the child when there is imminent substantial risk of serious harm to the child.

(5) "Best interests of the child" means the physical, mental, and psychological conditions and needs of the child and any other factor considered by the court to be relevant to the child.

(6) "Child" or "youth" means any person under 18 years of age.

(7) (a) "Child abuse or neglect" means:

(i) actual physical or psychological harm to a child;

(ii) substantial risk of physical or psychological harm to a child; or

(iii) abandonment.

(b) (i) The term includes:

(A) actual physical or psychological harm to a child or substantial risk of physical or psychological harm to a child by the acts or omissions of a person responsible for the child's welfare; or

(B) exposing a child to the criminal distribution of dangerous drugs, as prohibited by 45-9-101, the criminal production or manufacture of dangerous drugs, as prohibited by 45-9-110, or the operation of an unlawful clandestine laboratory, as prohibited by 45-9-132.

(ii) For the purposes of this subsection (7), "dangerous drugs" means the compounds and substances described as dangerous drugs in Schedules I through IV in Title 50, chapter 32, part 2.

(c) In proceedings under this chapter in which the federal Indian Child Welfare Act is applicable, this term has the same meaning as "serious emotional or physical damage to the child" as used in 25 U.S.C. 1912(f).

(d) The term does not include self-defense, defense of others, or action taken to prevent the child from self-harm that does not constitute physical or psychological harm to a child.

(8) "Concurrent planning" means to work toward reunification of the child with the family while at the same time developing and implementing an alternative permanent plan.

(9) "Department" means the department of public health and human services provided for in 2-15-2201.

(10) "Family group decisionmaking meeting" means a meeting that involves family members in either developing treatment plans or making placement decisions, or both.

(11) "Indian child" means any unmarried person who is under 18 years of age and who is either:

(a) a member of an Indian tribe; or

(b) eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe.

(12) "Indian child's tribe" means:

(a) the Indian tribe in which an Indian child is a member or eligible for membership; or

(b) in the case of an Indian child who is a member of or eligible for membership in more than one Indian tribe, the Indian tribe with which the Indian child has the more significant contacts.

(13) "Indian custodian" means any Indian person who has legal custody of an Indian child under tribal law or custom or under state law or to whom temporary physical care, custody, and control have been transferred by the child's parent.

(14) "Indian tribe" means any Indian tribe, band, nation, or other organized group or community of Indians recognized by:

(a) the state of Montana; or

(b) the United States secretary of the interior as being eligible for the services provided to Indians or because of the group's status as Indians, including any Alaskan native village as defined in federal law.

(15) "Limited emancipation" means a status conferred on a youth by a court in accordance with 41-1-503 under which the youth is entitled to exercise some but not all of the rights and responsibilities of a person who is 18 years of age or older.

(16) "Parent" means a biological or adoptive parent or stepparent.

(17) "Parent-child legal relationship" means the legal relationship that exists between a child and the child's birth or adoptive parents, as provided in Title 40, chapter 6, part 2, unless the relationship has been terminated by competent judicial decree as provided in 40-6-234, Title 42, or part 6 of this chapter.

(18) "Permanent placement" means reunification of the child with the child's parent, adoption, placement with a legal guardian, placement with a fit and willing relative, or placement in another planned permanent living arrangement until the child reaches 18 years of age.

(19) "Physical abuse" means an intentional act, an intentional omission, or gross negligence resulting in substantial skin bruising, internal bleeding, substantial injury to skin, subdural hematoma, burns, bone fractures, extreme pain, permanent or temporary disfigurement, impairment of any bodily organ or function, or death.



(20) “Physical neglect” means either failure to provide basic necessities, including but not limited to appropriate and adequate nutrition, protective shelter from the elements, and appropriate clothing related to weather conditions, or failure to provide cleanliness and general supervision, or both, or exposing or allowing the child to be exposed to an unreasonable physical or psychological risk to the child.

(21) (a) “Physical or psychological harm to a child” means the harm that occurs whenever the parent or other person responsible for the child’s welfare:

(i) inflicts or allows to be inflicted upon the child physical abuse, physical neglect, or psychological abuse or neglect;

(ii) commits or allows sexual abuse or exploitation of the child;

(iii) induces or attempts to induce a child to give untrue testimony that the child or another child was abused or neglected by a parent or other person responsible for the child’s welfare;

(iv) causes malnutrition or a failure to thrive or otherwise fails to supply the child with adequate food or fails to supply clothing, shelter, education, or adequate health care, though financially able to do so or offered financial or other reasonable means to do so;

(v) exposes or allows the child to be exposed to an unreasonable risk to the child’s health or welfare by failing to intervene or eliminate the risk; or

(vi) abandons the child.

(b) The term does not include a youth not receiving supervision solely because of parental inability to control the youth’s behavior.

(22) (a) “Protective services” means services provided by the department:

(i) to enable a child alleged to have been abused or neglected to remain safely in the home;

(ii) to enable a child alleged to have been abused or neglected who has been removed from the home to safely return to the home; or

(iii) to achieve permanency for a child adjudicated as a youth in need of care when circumstances and the best interests of the child prevent reunification with parents or a return to the home.

(b) The term includes emergency protective services provided pursuant to 41-3-301, voluntary protective services provided pursuant to 41-3-302, and court-ordered protective services provided pursuant to parts 4 and 6 of this chapter.

(23) (a) “Psychological abuse or neglect” means severe maltreatment through acts or omissions that are injurious to the child’s emotional, intellectual, or psychological capacity to function, including the commission of acts of violence against another person residing in the child’s home.

(b) The term may not be construed to hold a victim responsible for failing to prevent the crime against the victim.

(24) “Qualified expert witness” as used in cases involving an Indian child in proceedings subject to the federal Indian Child Welfare Act means:

(a) a member of the Indian child’s tribe who is recognized by the tribal community as knowledgeable in tribal customs as they pertain to family organization and child-rearing practices;

(b) a lay expert witness who has substantial experience in the delivery of child and family services to Indians and extensive knowledge of prevailing social and cultural standards and child-rearing practices within the Indian child’s tribe; or

(c) a professional person who has substantial education and experience in providing services to children and families and who possesses significant knowledge of and experience with Indian culture, family structure, and child-rearing practices in general.

(25) “Reasonable cause to suspect” means cause that would lead a reasonable person to believe that child abuse or neglect may have occurred or is occurring, based on all the facts and circumstances known to the person.

(26) “Residential setting” means an out-of-home placement where the child typically resides for longer than 30 days for the purpose of receiving food, shelter, security, guidance, and, if necessary, treatment.

(27) (a) “Sexual abuse” means the commission of sexual assault, sexual intercourse without consent, indecent exposure, sexual abuse, ritual abuse of a minor, or incest, as described in Title 45, chapter 5.

(b) Sexual abuse does not include any necessary touching of an infant's or toddler's genital area while attending to the sanitary or health care needs of that infant or toddler by a parent or other person responsible for the child's welfare.

(28) "Sexual exploitation" means allowing, permitting, or encouraging a child to engage in a prostitution offense, as described in 45-5-601 through 45-5-603, or allowing, permitting, or encouraging sexual abuse of children as described in 45-5-625.

(29) (a) "Social worker" means an employee of the department who, before the employee's field assignment, has been educated or trained in a program of social work or a related field that includes cognitive and family systems treatment or who has equivalent verified experience or verified training in the investigation of child abuse, neglect, and endangerment.

(b) This definition does not apply to any provision of this code that is not in this chapter.

(30) "Treatment plan" means a written agreement between the department and the parent or guardian or a court order that includes action that must be taken to resolve the condition or conduct of the parent or guardian that resulted in the need for protective services for the child. The treatment plan may involve court services, the department, and other parties, if necessary, for protective services.

(31) "Unfounded" means that after an investigation, the investigating person has determined that the reported abuse, neglect, or exploitation has not occurred.

(32) "Unsubstantiated" means that after an investigation, the investigator was unable to determine by a preponderance of the evidence that the reported abuse, neglect, or exploitation has occurred.

(33) (a) "Withholding of medically indicated treatment" means the failure to respond to an infant's life-threatening conditions by providing treatment, including appropriate nutrition, hydration, and medication, that, in the treating physician's or physicians' reasonable medical judgment, will be most likely to be effective in ameliorating or correcting the conditions.

(b) The term does not include the failure to provide treatment, other than appropriate nutrition, hydration, or medication, to an infant when, in the treating physician's or physicians' reasonable medical judgment:

(i) the infant is chronically and irreversibly comatose;

(ii) the provision of treatment would:

(A) merely prolong dying;

(B) not be effective in ameliorating or correcting all of the infant's life-threatening conditions;

or

(C) otherwise be futile in terms of the survival of the infant; or

(iii) the provision of treatment would be virtually futile in terms of the survival of the infant and the treatment itself under the circumstances would be inhumane. For purposes of this subsection (33), "infant" means an infant less than 1 year of age or an infant 1 year of age or older who has been continuously hospitalized since birth, who was born extremely prematurely, or who has a long-term disability. The reference to less than 1 year of age may not be construed to imply that treatment should be changed or discontinued when an infant reaches 1 year of age or to affect or limit any existing protections available under state laws regarding medical neglect of children 1 year of age or older.

(34) "Youth in need of care" means a youth who has been adjudicated or determined, after a hearing, to be or to have been abused, neglected, or abandoned.

**History:** En. 10-1301 by Sec. 2, Ch. 328, L. 1974; amd. Sec. 18, Ch. 100, L. 1977; R.C.M. 1947, 10-1301; amd. Sec. 2, Ch. 543, L. 1979; amd. Sec. 2, Ch. 511, L. 1981; amd. Sec. 31, Ch. 465, L. 1983; amd. Sec. 1, Ch. 564, L. 1983; amd. Sec. 1, Ch. 626, L. 1985; amd. Sec. 1, Ch. 463, L. 1987; amd. Sec. 36, Ch. 609, L. 1987; amd. Sec. 1, Ch. 474, L. 1989; amd. Sec. 1, Ch. 439, L. 1993; amd. Sec. 6, Ch. 458, L. 1995; amd. Sec. 2, Ch. 528, L. 1995; amd. Sec. 159, Ch. 546, L. 1995; amd. Sec. 2, Ch. 564, L. 1995; amd. Sec. 3, Ch. 514, L. 1997; amd. Secs. 2, 19(1), Ch. 516, L. 1997; amd. Sec. 2, Ch. 566, L. 1999; amd. Sec. 1, Ch. 194, L. 2001; amd. Sec. 16, Ch. 277, L. 2001; amd. Sec. 2, Ch. 311, L. 2001; amd. Sec. 1, Ch. 398, L. 2003; amd. Sec. 1, Ch. 406, L. 2003; amd. Sec. 1, Ch. 458, L. 2003; amd. Sec. 2, Ch. 504, L. 2003; amd. Sec. 1, Ch. 555, L. 2003; amd. Sec. 1, Ch. 349, L. 2005; amd. Sec. 5, Ch. 179, L. 2009; amd. Sec. 2, Ch. 225, L. 2013.

**41-3-103. Jurisdiction and venue.** (1) Except as provided in the federal Indian Child Welfare Act, in all matters arising under this chapter, a person is subject to a proceeding under this chapter and the district court has jurisdiction over:

(a) a youth who is within the state of Montana for any purpose;

(b) a youth or other person subject to this chapter who under a temporary or permanent order of the court has voluntarily or involuntarily left the state or the jurisdiction of the court;

(c) a person who is alleged to have abused or neglected a youth who is in the state of Montana for any purpose;

(d) a youth or youth's parent or guardian who resides in Montana;

(e) a youth or youth's parent or guardian who resided in Montana within 180 days before the filing of a petition under this chapter if the alleged abuse and neglect is alleged to have occurred in whole or in part in Montana.

(2) Venue is proper in the county where a youth is located or has resided within 180 days before the filing of a petition under this part or a county where the youth's parent or guardian resides or has resided within 180 days before the filing of a petition under this part.

**History:** En. 10-1302 by Sec. 3, Ch. 328, L. 1974; R.C.M. 1947, 10-1302; amd. Sec. 7, Ch. 458, L. 1995; amd. Sec. 1, Ch. 114, L. 2001; amd. Sec. 3, Ch. 504, L. 2003; amd. Sec. 1, Ch. 223, L. 2011.

**41-3-104. Renumbered 41-3-1122.** Sec. 31, Ch. 465, L. 1983.

**41-3-105. Renumbered 41-3-1125.** Sec. 31, Ch. 465, L. 1983.

**41-3-106. Prosecution of offenders.** (1) If the evidence indicates violation of the criminal code, it is the responsibility of the county attorney to file appropriate charges against the alleged offender.

(2) The filing of a criminal charge does not toll a proceeding under this chapter.

(3) The district court has original jurisdiction under this section.

**History:** En. 10-1322 by Sec. 12, Ch. 328, L. 1974; R.C.M. 1947, 10-1322; amd. Sec. 3, Ch. 311, L. 2001.

**41-3-107. Interagency cooperation.** (1) To effectuate the purposes of this chapter, the department of public health and human services shall cooperate with and shall seek the cooperation and involvement of all appropriate public and private agencies, including health, education, social services, and law enforcement agencies; juvenile courts; and any other agency, organization, or program providing or concerned with human services related to the prevention, identification, or treatment of child abuse or neglect. The cooperation and involvement may not include joint case management but may include joint policy planning, public education, information services, staff development, and other training.

(2) The department shall enter into a cooperative agreement with other state agencies, as provided in 52-2-203, for the purpose of implementing this section.

**History:** En. Sec. 4, Ch. 543, L. 1979; amd. Sec. 12, Ch. 609, L. 1987; amd. Sec. 4, Ch. 655, L. 1991; amd. Sec. 160, Ch. 546, L. 1995.

**41-3-108. Child protective teams.** The county attorney, county commissioners, guardian ad litem, or department may convene one or more temporary or permanent interdisciplinary child protective teams. These teams may assist in assessing the needs of, formulating and monitoring a treatment plan for, and coordinating services to the child and the child's family. The supervisor of child protective services in a local service area or the supervisor's designee shall serve as the team's coordinator. Members must include:

(1) a social worker;

(2) a member of a local law enforcement agency;

(3) a representative of the medical profession;

(4) a representative of a public school system;

(5) a county attorney; and

(6) if an Indian child or children are involved, someone, preferably an Indian person, knowledgeable about Indian culture and family matters.

**History:** En. Sec. 5, Ch. 543, L. 1979; amd. Sec. 37, Ch. 609, L. 1987; amd. Sec. 1, Ch. 67, L. 1989; amd. Sec. 161, Ch. 546, L. 1995; amd. Sec. 3, Ch. 566, L. 1999.

**41-3-109. Proceedings subject to Indian Child Welfare Act.** If a proceeding under this chapter involves an Indian child, as defined in the Indian Child Welfare Act, 25 U.S.C. 1901, et seq., the proceeding is subject to the Indian Child Welfare Act.

**History:** En. Sec. 16, Ch. 516, L. 1997.

**41-3-110. Audio or video testimony allowed.** A court may permit testimony by telephone, videoconference, or other audio or audiovisual means at any time in a proceeding pursuant to this chapter.

**History:** En. Sec. 1, Ch. 166, L. 2007.

**41-3-111 reserved.**

**41-3-112. Appointment of court-appointed special advocate — guardian ad litem.**

(1) In every judicial proceeding, the court shall appoint a court-appointed special advocate as the guardian ad litem for any child alleged to be abused or neglected. If a court-appointed special advocate is not available for appointment, the court may appoint an attorney or other qualified person to serve as the guardian ad litem. The department or any member of its staff who has a direct conflict of interest may not be appointed as the guardian ad litem in a judicial proceeding under this title. When necessary, the guardian ad litem may serve at public expense.

(2) The guardian ad litem must have received appropriate training that is specifically related to serving as a child's court-appointed representative.

(3) The guardian ad litem is charged with the representation of the child's best interests and shall perform the following general duties:

- (a) to conduct investigations to ascertain the facts constituting the alleged abuse or neglect;
- (b) to interview or observe the child who is the subject of the proceeding;
- (c) to have access to court, medical, psychological, law enforcement, social services, and school records pertaining to the child and the child's siblings and parents or custodians;
- (d) to make written reports to the court concerning the child's welfare;
- (e) to appear and participate in all proceedings to the degree necessary to adequately represent the child and make recommendations to the court concerning the child's welfare;
- (f) to perform other duties as directed by the court; and
- (g) if an attorney, to file motions, including but not limited to filing to expedite proceedings or otherwise assert the child's rights.

(4) Information contained in a report filed by the guardian ad litem or testimony regarding a report filed by the guardian ad litem is not hearsay when it is used to form the basis of the guardian ad litem's opinion as to the best interests of the child.

(5) Any party may petition the court for the removal and replacement of the guardian ad litem if the guardian ad litem fails to perform the duties of the appointment.

**History:** En. Sec. 14, Ch. 543, L. 1979; amd. Sec. 1, Ch. 384, L. 1985; amd. Sec. 4, Ch. 434, L. 1993; amd. Sec. 5, Ch. 516, L. 1997; amd. Sec. 7, Ch. 566, L. 1999; Sec. 41-3-303, MCA 1999; redes. 41-3-112 by Sec. 17(3)(a), Ch. 281, L. 2001; amd. Sec. 1, Ch. 382, L. 2005; amd. Sec. 1, Ch. 132, L. 2017.

**Compiler's Comments**

*2017 Amendment:* Chapter 132 in (1) in first sentence inserted "court-appointed special advocate as the" and inserted second sentence concerning appointment of guardian ad litem if court-appointed special advocate is not available; and made minor changes in style. Amendment effective October 1, 2017.

**41-3-113. Appeals.** (1) Appeals of court orders or decrees made under this part must be given precedence on the calendar of the supreme court over all other matters, unless otherwise provided by law.

(2) An appeal does not stay the order or decree appealed from and does not divest the presiding district court judge of jurisdiction to take steps that are necessary, in the best interests of the child, and in order to protect the health and safety of the child. The supreme court may order a stay upon application and hearing if suitable provision is made for the care and custody of the child.

(3) If the appeal results in the reversal of the order appealed, the legal status of the child reverts to the child's legal status before the entry of the order that was appealed. The child's prior legal status remains in effect until further order of the district court unless the supreme court orders otherwise.

**History:** En. Sec. 3, Ch. 463, L. 1987; Sec. 41-3-409, MCA 1999; redes. 41-3-113 by Sec. 17(3)(a), Ch. 281, L. 2001; amd. Sec. 4, Ch. 504, L. 2003.

**41-3-114 reserved.**

**41-3-115. Foster care review committee — foster care reviews — permanency hearings.** (1) Except as provided in Title 41, chapter 3, part 10, in every judicial district the district court judge, in consultation with the department, shall appoint a foster care review

committee. The foster care review committee shall conduct foster care reviews as provided in this section and may, at the discretion of the court and absent an objection by a party to the proceeding, conduct permanency hearings as provided in 41-3-445.

(2) (a) The members of the committee must be willing to act without compensation. The committee must be composed of not less than three or more than seven members. To the extent practicable, the members of the committee must be representatives of the various socioeconomic, racial, and ethnic groups of the area served.

(b) The members must include:

(i) one representative of the department who may not be responsible for the placement of the child or have any other direct conflict of interest;

(ii) a person who is knowledgeable in the needs of children in foster care placements and who is not employed by the department or the youth court; and

(iii) if the child whose care is under review is an Indian child, a person, preferably an Indian person, who is knowledgeable about Indian cultural and family matters and who is appointed effective only for and during that review.

(c) Members may also include but are not limited to:

(i) a representative of the youth court;

(ii) a representative of a local school district;

(iii) a public health nurse;

(iv) an at-large community member with knowledge of child protective services.

(3) (a) When a child is in foster care under the supervision of the department or if payment for care is made pursuant to 52-2-611, the committee shall conduct a review of the foster care status of the child. The review must be conducted within the time limit established under the Adoption and Safe Families Act of 1997, 42 U.S.C. 675(5).

(b) The committee shall hear the case of each child in foster care to review issues that are germane to the goals of permanency and to accessing appropriate services for parents and children. In evaluating the accessibility, availability, and appropriateness of services, the committee shall consider:

(i) the safety, history, and specific needs of the child;

(ii) whether an involved agency has selected services specifically relevant to the problems and needs of the child and family;

(iii) whether appropriate services have been available to the child and family on a timely basis; and

(iv) the results of intervention.

(c) If the department has placed a child in foster care in another state, the committee shall consider whether the placement is appropriate and in the best interests of the child. In the case of a child who will not be returned to the parent, the committee shall consider both in-state and out-of-state placement options.

(d) The committee may hear the case of a child who remains in or returns to the child's home and for whom the department retains legal custody.

(4) (a) Prior to the beginning of the review, reasonable notice of each review must be sent to the following:

(i) the parents of the child or their attorneys;

(ii) if applicable, the foster parents, a relative caring for the child, the preadoptive parents, or the surrogate parents;

(iii) the child who is the subject of the review if the child is 12 years of age or older;

(iv) the child's attorney, if any;

(v) the guardian ad litem;

(vi) the court-appointed attorney or special advocate of the child; and

(vii) the child's Indian tribe if the child is an Indian.

(b) When applicable, notice of each review may be sent to other interested persons who are authorized by the committee to receive notice.

(c) All persons receiving notice are subject to the confidentiality provisions of 41-3-205.

(d) If a foster care review is held in conjunction with a permanency hearing, notice of both proceedings must be provided.



(e) If a foster care review is held in conjunction with a permanency hearing, notice must be provided to the attorney who initiated the child abuse or neglect proceedings.

(5) The committee may elect to hold joint or separate reviews for groups of siblings, but findings and recommendations made by the committee must be specific to each child.

(6) After reviewing each case, the committee shall prepare written findings and recommendations with respect to:

(a) the continuing need for the placement and the appropriateness and safety of the placement;

(b) compliance with the case plan;

(c) the progress that has been made toward alleviating the need for placement;

(d) a likely date by which the child may be returned home or by which a permanent placement may be finalized.

(7) Following the permanency hearing, the committee shall send copies of its minutes and written findings and recommendations to the court and to the parties. If a party objects to the findings and recommendations, the party may within 10 days serve written objections upon the other party and file them with the court. A request for a hearing before the court upon the objections may be made by a party by motion. The court, after hearing the objections or upon its own motion and without objection, may adopt the findings and recommendations and shall issue an appropriate order.

(8) Because of the individual privacy involved, meetings of the committee, reports of the committee, and information on individuals' cases shared by committee members are confidential and subject to the confidentiality requirements of the department.

(9) The committee is subject to the call of the district court judge to meet and confer with the judge on all matters pertaining to the foster care of a child before the district court.

**History:** En. Sec. 2, Ch. 297, L. 1981; amd. Sec. 1, Ch. 201, L. 1983; MCA 1981, 41-5-807; amd. and redes. 41-3-1115 by Sec. 31, Ch. 465, L. 1983; amd. Sec. 1, Ch. 260, L. 1987; amd. Sec. 51, Ch. 609, L. 1987; amd. Sec. 16, Ch. 610, L. 1993; amd. Sec. 19, Ch. 311, L. 2001; amd. Sec. 13, Ch. 570, L. 2001; Sec. 41-3-1115, MCA 1999; redes. 41-3-115 by Sec. 17(3)(a), Ch. 281, L. 2001; amd. Sec. 2, Ch. 382, L. 2005; amd. Sec. 2, Ch. 166, L. 2007.

#### **41-3-116 and 41-3-117 reserved.**

**41-3-118. Purpose.** The intent of 41-3-119 is to provide reimbursement for mental health outpatient counseling services to foster parents who experience the death of a foster child placed with them by the department or a licensed child placing agency. Many of the children have disabilities, terminal illnesses, or other special needs, and often these children spend their childhood in the homes of foster parents. The death of a child is a traumatic experience, and the legislature finds that providing reimbursement for counseling is a necessary support to those persons who are willing to open their homes to foster children who need a stable and safe environment.

**History:** En. Sec. 1, Ch. 127, L. 1999; Sec. 41-3-1160, MCA 1999; redes. 41-3-118 by Sec. 17(3)(a), Ch. 281, L. 2001.

**41-3-119. Foster parent counseling services.** (1) A person who provides substitute care to a foster child who dies while residing in a youth care facility must be offered reimbursement for mental health outpatient counseling services at the expense of the department.

(2) Upon the death of a foster child in substitute care, the department shall provide information about available reimbursement for mental health outpatient counseling services for the person or persons who were providing care to the foster child.

(3) The reimbursement for mental health outpatient counseling services must be available for up to 1 year in duration by a provider of the person's choice at an amount equivalent to that offered as a benefit to state employees under 2-18-702, subject to the same maximum benefit levels and copayments.

**History:** En. Sec. 2, Ch. 127, L. 1999; Sec. 41-3-1161, MCA 1999; redes. 41-3-119 by Sec. 17(3)(a), Ch. 281, L. 2001.

**41-3-120. Liability insurance for foster parents.** (1) The department shall provide for liability and property damage insurance for a foster parent providing foster care services to children placed by the department and for a foster parent providing therapeutic foster care services under the auspices of a licensed child-placing agency.

(2) The state shall pay the cost of the premium for each policy issued under subsection (1). The foster parent may be required, as provided by rule, to pay a reasonable deductible for personal injury or property damage.

(3) The department shall adopt rules for the provision of insurance coverage to foster parents as provided in this section, including rules on premium payment and any deductibles required.

**History:** En. Sec. 1, Ch. 165, L. 2007.

**41-3-121 reserved.**

**41-3-122. Strategic plan for child abuse and neglect prevention — report to legislature.** (1) (a) By August 15, 2018, the department shall develop a strategic plan that sets out measurable goals and strategies for reducing child abuse and neglect in Montana over a 5-year period. The plan must address ways to:

- (i) increase family stability;
- (ii) enhance child development for all families; and
- (iii) mitigate the factors known to lead to child abuse and neglect.

(b) The plan must review factors and propose strategies specific to Montana's urban and rural areas, as well as the state's Indian communities and reservations.

(2) The strategic plan must:

(a) outline the degree to which child abuse and neglect are occurring in Montana and the projections for the occurrence of child abuse and neglect in future years;

(b) discuss the effects that child abuse and neglect have on children, families, and society as a whole, including the effects on the physical, psychological, cognitive, and behavioral development of children;

(c) examine the risk factors that lead to child abuse and neglect and the protective factors that reduce the potential for child abuse and neglect to occur, using the social-ecological model that takes into account individual, family, community, and societal factors, including factors specific to Indian communities and reservations;

(d) review research related to risk and protective factors to evaluate the effectiveness of various prevention efforts and identify the characteristics of successful prevention responses;

(e) inventory the prevention responses currently being used in Montana at the state and local levels; and

(f) propose additional prevention strategies.

(3) The department shall, at a minimum, include the following entities in development of the strategic plan:

(a) the interagency coordinating council for state prevention programs provided for in 2-15-225;

(b) the Montana children's trust fund board provided for in 2-15-2214;

(c) the state advisory council for the child and family services division of the department;

(d) former members of the protect Montana kids commission established by the governor by executive order on September 21, 2015;

(e) representatives of Montana's tribal communities; and

(f) representatives of other state and local agencies and organizations that work to reduce or prevent child abuse and neglect, including juvenile courts and health, education, social services, and law enforcement agencies.

(4) The department shall provide a copy of the strategic plan to the children, families, health, and human services interim committee and the legislative finance committee.

**History:** En. Sec. 1, Ch. 270, L. 2017.

**Compiler's Comments**

*Effective Date:* This section is effective October 1, 2017.

**41-3-123. (Temporary) Child abuse and neglect review commission — duties — confidentiality — liability — report to legislature.** (1) Within existing resources, the child abuse and neglect review commission established in 2-15-2019 shall:

(a) examine the trends and patterns of child abuse and neglect, including fatalities and near fatalities attributable to child abuse and neglect;

(b) educate the public, service providers, and policymakers about child abuse and neglect, including fatalities and near fatalities attributable to child abuse and neglect, and about strategies for intervention in and prevention of child abuse and neglect;

(c) coordinate with the child fatality review team and the domestic fatality review commission as appropriate;

(d) study the laws, practices, policies, successes, and failures of surrounding states in the area of combating child abuse and neglect and consider whether any should be adopted in Montana; and

(e) recommend policies, practices, and services that may encourage collaboration and reduce fatalities and near fatalities attributable to child abuse and neglect.

(2) The commission members may determine the frequency with which the commission will meet, but the commission shall meet at least once a year.

(3) The commission shall select and review a representative sample of child abuse and neglect cases that resulted in a fatality or near fatality.

(4) Upon written request from the commission, a person who possesses records necessary and relevant to a review being conducted under this section shall, as soon as practicable, provide the commission with the records.

(5) The meetings and proceedings of the commission are confidential and are exempt from the provisions of Title 2, chapter 3.

(6) (a) The records of the commission are confidential and are exempt from the provisions of Title 2, chapter 6. The records are not subject to subpoena, discovery, or introduction into evidence in a civil or criminal action unless the records are reviewed by a district court judge in camera and ordered to be provided to the person seeking access.

(b) The commission shall disclose conclusions and recommendations on request but may not disclose records that are otherwise confidential.

(c) The commission may not use the records for purposes other than those allowed under subsections (1)(a) and (1)(c).

(7) The commission may:

(a) require a person appearing before it to sign a confidentiality agreement created by the commission in order to maintain the confidentiality of the proceedings; and

(b) enter into agreements with nonprofit organizations and private agencies to obtain otherwise confidential records.

(8) A member of the commission who knowingly uses records obtained pursuant to subsection (4) for a purpose not authorized in subsection (1) or who discloses records in violation of subsection (6) is subject to a civil penalty of not more than \$500.

(9) (a) The commission shall report its findings and recommendations in writing to the children, families, health, and human services interim committee, the law and justice interim committee, the governor, and the chief justice of the Montana supreme court prior to each regular legislative session. The report shall contain the following information:

(i) the cause and circumstances of each fatality and near fatality attributable to child abuse or neglect reviewed by the commission;

(ii) the age and gender of each child involved;

(iii) information describing any previous reports of child abuse or neglect and the results of any investigations into those reports that are pertinent to the child abuse or neglect that led to each fatality or near fatality; and

(iv) the services provided by and actions of the department of public health and human services on behalf of the child that are pertinent to the child abuse or neglect that led to the fatality or near fatality.

(b) The commission periodically may issue other data or information in addition to the report.

(10) The biennial report may exclude information required under subsection (9) for cases in which reporting the information would:

(a) be detrimental to the safety and well-being of the child, parents, or family;

(b) jeopardize a criminal investigation; or

(c) interfere with the protection of individuals who report child abuse or neglect.

(11) For the purposes of this section, “near fatality” means an incident in which a child was certified by a physician to be in a medically serious or critical condition because of an action that constituted child abuse or neglect. (*Terminates September 30, 2021—sec. 12, Ch. 235, L. 2017.*)

**History:** En. Sec. 2, Ch. 235, L. 2017.

**Compiler’s Comments**

*Effective Date — Applicability:* Section 11, Ch. 235, L. 2017, provided: “[This act] is effective on passage and approval and applies to child abuse and neglect cases resulting in a fatality or near fatality that occurred on or after [the effective date of this act].” Approved April 25, 2017.

*Termination:* Section 12, Ch. 235, L. 2017, provided that this section terminates September 30, 2021.

**41-3-124 through 41-3-130 reserved.**

**41-3-131. Rulemaking authority.** The department shall adopt rules necessary to carry out the purposes of this chapter.

**History:** En. Sec. 31, Ch. 311, L. 2001.

## Part 2 Reports and Investigations

**41-3-201. Reports.** (1) When the professionals and officials listed in subsection (2) know or have reasonable cause to suspect, as a result of information they receive in their professional or official capacity, that a child is abused or neglected by anyone regardless of whether the person suspected of causing the abuse or neglect is a parent or other person responsible for the child’s welfare, they shall report the matter promptly to the department of public health and human services.

(2) Professionals and officials required to report are:

- (a) a physician, resident, intern, or member of a hospital’s staff engaged in the admission, examination, care, or treatment of persons;
- (b) a nurse, osteopath, chiropractor, podiatrist, medical examiner, coroner, dentist, optometrist, or any other health or mental health professional;
- (c) religious healers;
- (d) school teachers, other school officials, and employees who work during regular school hours;
- (e) a social worker, operator or employee of any registered or licensed day-care or substitute care facility, staff of a resource and referral grant program organized under 52-2-711 or of a child and adult food care program, or an operator or employee of a child-care facility;
- (f) a foster care, residential, or institutional worker;
- (g) a peace officer or other law enforcement official;
- (h) a member of the clergy, as defined in 15-6-201(2)(b);
- (i) a guardian ad litem or a court-appointed advocate who is authorized to investigate a report of alleged abuse or neglect; or
- (j) an employee of an entity that contracts with the department to provide direct services to children.

(3) A professional listed in subsection (2)(a) or (2)(b) involved in the delivery or care of an infant shall report to the department any infant known to the professional to be affected by a dangerous drug, as defined in 50-32-101.

(4) Any person may make a report under this section if the person knows or has reasonable cause to suspect that a child is abused or neglected.

(5) (a) When a professional or official required to report under subsection (2) makes a report, the department may share information with:

- (i) that professional or official;
- (ii) other individuals with whom the professional or official works in an official capacity if the individuals are part of a team that responds to matters involving the child or the person about whom the report was made and the professional or official has asked that the information be shared with the individuals; or

(iii) the child abuse and neglect review commission established in 2-15-2019.

(b) The department may provide information in accordance with 41-3-202(8) and also share information about the investigation, limited to its outcome and any subsequent action that will be taken on behalf of the child who is the subject of the report.

(c) Individuals who receive information pursuant to this subsection (5) shall maintain the confidentiality of the information as required by 41-3-205.

(6) (a) Except as provided in subsection (6)(b) or (6)(c), a person listed in subsection (2) may not refuse to make a report as required in this section on the grounds of a physician-patient or similar privilege.

(b) A member of the clergy or a priest is not required to make a report under this section if:

(i) the knowledge or suspicion of the abuse or neglect came from a statement or confession made to the member of the clergy or the priest in that person's capacity as a member of the clergy or as a priest;

(ii) the statement was intended to be a part of a confidential communication between the member of the clergy or the priest and a member of the church or congregation; and

(iii) the person who made the statement or confession does not consent to the disclosure by the member of the clergy or the priest.

(c) A member of the clergy or a priest is not required to make a report under this section if the communication is required to be confidential by canon law, church doctrine, or established church practice.

(7) The reports referred to under this section must contain:

(a) the names and addresses of the child and the child's parents or other persons responsible for the child's care;

(b) to the extent known, the child's age and the nature and extent of the child's injuries, including any evidence of previous injuries;

(c) any other information that the maker of the report believes might be helpful in establishing the cause of the injuries or showing the willful neglect and the identity of the person or persons responsible for the injury or neglect; and

(d) the facts that led the person reporting to believe that the child has suffered injury or injuries or willful neglect, within the meaning of this chapter. (*Subsection (5)(a)(iii) terminates September 30, 2021—sec. 12, Ch. 235, L. 2017.*)

**History:** En. Sec. 2, Ch. 178, L. 1965; amd. Sec. 2, Ch. 292, L. 1973; Sec. 10-902, R.C.M. 1947; redes. 10-1304 by Sec. 14, Ch. 328, L. 1974; R.C.M. 1947, 10-1304; amd. Sec. 6, Ch. 543, L. 1979; amd. Sec. 3, Ch. 511, L. 1981; amd. Sec. 11, Ch. 609, L. 1987; amd. Sec. 1, Ch. 79, L. 1989; amd. Sec. 1, Ch. 785, L. 1991; amd. Sec. 8, Ch. 458, L. 1995; amd. Sec. 162, Ch. 546, L. 1995; amd. Sec. 4, Ch. 514, L. 1997; amd. Sec. 4, Ch. 311, L. 2001; amd. Sec. 3, Ch. 382, L. 2005; amd. Sec. 3, Ch. 166, L. 2007; amd. Sec. 2, Ch. 223, L. 2011; amd. Sec. 2, Ch. 278, L. 2011; amd. Sec. 1, Ch. 337, L. 2013; amd. Sec. 3, Ch. 235, L. 2017.

#### **Compiler's Comments**

*2017 Amendment:* Chapter 235 inserted (5)(a)(iii) relating to the child abuse and neglect review commission; and made minor changes in style. Amendment effective April 25, 2017, and terminates September 30, 2021.

*Effective Date — Applicability:* Section 11, Ch. 235, L. 2017, provided: "[This act] is effective on passage and approval and applies to child abuse and neglect cases resulting in a fatality or near fatality that occurred on or after [the effective date of this act]." Approved April 25, 2017.

**41-3-202. Action on reporting.** (1) Upon receipt of a report that a child is or has been abused or neglected, the department shall promptly assess the information contained in the report and make a determination regarding the level of response required and the timeframe within which action must be initiated. If the department determines that an investigation is required, a social worker, the county attorney, or a peace officer shall promptly conduct a thorough investigation into the circumstances surrounding the allegations of abuse or neglect of the child. The investigation may include an investigation at the home of the child involved, the child's school or day-care facility, or any other place where the child is present and into all other nonfinancial matters that in the discretion of the investigator are relevant to the investigation. In conducting an investigation under this section, a social worker may not inquire into the financial status of the child's family or of any other person responsible for the child's care, except as necessary to ascertain eligibility for state or federal assistance programs or to comply with the provisions of 41-3-446.

(2) An initial investigation of alleged abuse or neglect may be conducted when an anonymous report is received. However, the investigation must within 48 hours result in the development of independent, corroborative, and attributable information in order for the investigation to continue. Without the development of independent, corroborative, and attributable information, a child may not be removed from the home.



(3) The social worker is responsible for assessing the family and planning for the child. If the child is treated at a medical facility, the social worker, county attorney, or peace officer, consistent with reasonable medical practice, has the right of access to the child for interviews, photographs, and securing physical evidence and has the right of access to relevant hospital and medical records pertaining to the child. If an interview of the child is considered necessary, the social worker, county attorney, or peace officer may conduct an interview of the child. The interview may be conducted in the presence of the parent or guardian or an employee of the school or day-care facility attended by the child.

(4) Subject to 41-3-205(3), if the child's interview is audiotaped or videotaped, an unedited audiotape or videotape with audio track must be made available, upon request, for unencumbered review by the family.

(5) (a) If from the investigation the department has reasonable cause to suspect that the child suffered abuse or neglect, the department may provide emergency protective services to the child, pursuant to 41-3-301, or voluntary protective services pursuant to 41-3-302, and may provide protective services to any other child under the same care. The department shall:

(i) after interviewing the parent or guardian, if reasonably available, document its determination regarding abuse or neglect of a child; and

(ii) notify the child's family of its investigation and determination, unless the notification can reasonably be expected to result in harm to the child or other person.

(b) If from the investigation it is determined that the child has not suffered abuse or neglect and the initial report is determined to be unfounded, the department and the social worker, county attorney, or peace officer who conducted the investigation into the circumstances surrounding the allegations of abuse or neglect shall destroy all of their records concerning the report and the investigation. The destruction must be completed within 30 days of the determination that the child has not suffered abuse or neglect.

(c) (i) If the report is unsubstantiated, the department and the social worker who conducted the investigation into the circumstances surrounding the initial allegations of abuse or neglect shall destroy all of the records, except for medical records, concerning the unsubstantiated report and the investigation within 30 days after the end of the 3-year period starting from the date the report was determined to be unsubstantiated, unless:

(A) there had been a previous or there is a subsequent substantiated report concerning the same person; or

(B) an order has been issued under this chapter based on the circumstances surrounding the initial allegations.

(ii) A person who is the subject of an unsubstantiated report that was made prior to October 1, 2003, and after which a period of 3 years has elapsed without there being submitted a subsequent substantiated report or an order issued under this chapter based on the circumstances surrounding the initial allegations may request that the department destroy all of the records concerning the unsubstantiated report as provided in subsection (5)(c)(i).

(6) The investigating social worker, within 60 days of commencing an investigation, shall also furnish a written report to the department and, upon request, to the family. Subject to subsections (5)(b) and (5)(c), the department shall maintain a record system documenting investigations and determinations of child abuse and neglect cases.

(7) Any person reporting abuse or neglect that involves acts or omissions on the part of a public or private residential institution, home, facility, or agency is responsible for ensuring that the report is made to the department.

(8) The department shall, upon request from any reporter of alleged child abuse or neglect, verify whether the report has been received, describe the level of response and timeframe for action that the department has assigned to the report, and confirm that it is being acted upon.

**History:** En. Sec. 3, Ch. 178, L. 1965; amd. Sec. 3, Ch. 292, L. 1973; Sec. 10-903, R.C.M. 1947; redes. 10-1305 by Sec. 14, Ch. 328, L. 1974; R.C.M. 1947, 10-1305; amd. Sec. 8, Ch. 543, L. 1979; amd. Sec. 3, Ch. 567, L. 1979; amd. Sec. 11, Ch. 609, L. 1987; amd. Sec. 1, Ch. 126, L. 1989; amd. Sec. 1, Ch. 329, L. 1993; amd. Sec. 1, Ch. 146, L. 1995; amd. Sec. 163, Ch. 546, L. 1995; amd. Sec. 3, Ch. 564, L. 1995; amd. Sec. 5, Ch. 514, L. 1997; amd. Sec. 3, Ch. 516, L. 1997; amd. Sec. 4, Ch. 566, L. 1999; amd. Sec. 5, Ch. 311, L. 2001; amd. Sec. 2, Ch. 406, L. 2003; amd. Sec. 2, Ch. 555, L. 2003; amd. Sec. 4, Ch. 382, L. 2005; amd. Sec. 1, Ch. 61, L. 2013.

**41-3-203. Immunity from liability.** (1) Anyone investigating or reporting any incident of child abuse or neglect under 41-3-201 or 41-3-202, participating in resulting judicial

proceedings, or furnishing hospital or medical records as required by 41-3-202 is immune from any liability, civil or criminal, that might otherwise be incurred or imposed unless the person was grossly negligent or acted in bad faith or with malicious purpose or provided information knowing the information to be false.

(2) A person who provides information pursuant to 41-3-201 that is substantiated by the department or a person who uses information received pursuant to 41-3-205 that is substantiated by the department to refuse to hire or to discharge a prospective or current employee, volunteer, or other person who through employment or volunteer activities may have unsupervised contact with children is immune from civil liability unless the person acted in bad faith or with malicious purpose.

**History:** En. Sec. 4, Ch. 178, L. 1965; Sec. 10-904, R.C.M. 1947; redes. 10-1306 by Sec. 14, Ch. 328, L. 1974; R.C.M. 1947, 10-1306; amd. Sec. 9, Ch. 543, L. 1979; amd. Sec. 1, Ch. 181, L. 1993; amd. Sec. 9, Ch. 458, L. 1995; amd. Sec. 5, Ch. 566, L. 1999.

**41-3-204. Admissibility and preservation of evidence.** (1) In any proceeding resulting from a report made pursuant to the provisions of this chapter or in any proceeding for which the report or its contents are sought to be introduced into evidence, the report or its contents or any other fact related to the report or to the condition of the child who is the subject of the report may not be excluded on the ground that the matter is or may be the subject of a privilege related to the examination or treatment of the child and granted in Title 26, chapter 1, part 8, except the attorney-client privilege granted by 26-1-803.

(2) A person or official required to report under 41-3-201 may take or cause to be taken photographs of the area of trauma visible on a child who is the subject of a report. The cost of photographs taken under this section must be paid by the department.

(3) When a person required to report under 41-3-201 finds visible evidence that a child has suffered abuse or neglect, the person shall include in the report either a written description or photographs of the evidence.

(4) A physician, either in the course of providing medical care to a minor or after consultation with child protective services, the county attorney, or a law enforcement officer, may require x-rays to be taken when, in the physician's professional opinion, there is a need for radiological evidence of suspected abuse or neglect. X-rays may be taken under this section without the permission of the parent or guardian. The cost of the x-rays ordered and taken under this section must be paid by the county child protective service agency.

(5) All written, photographic, or radiological evidence gathered under this section must be sent to the local affiliate of the department at the time that the written confirmation report is sent or as soon after the report is sent as is possible. If a confirmation report is not made, the evidence and the initial report must be destroyed as provided in 41-3-202.

**History:** En. Sec. 5, Ch. 178, L. 1965; Sec. 10-905, R.C.M. 1947; redes. 10-1307 by Sec. 14, Ch. 328, L. 1974; R.C.M. 1947, 10-1307; amd. Sec. 10, Ch. 543, L. 1979; amd. Sec. 38, Ch. 609, L. 1987; amd. Sec. 2, Ch. 146, L. 1995; amd. Sec. 189, Ch. 42, L. 1997; amd. Sec. 6, Ch. 514, L. 1997; amd. Sec. 4, Ch. 516, L. 1997.

**41-3-205. Confidentiality — disclosure exceptions.** (1) The case records of the department and its local affiliate, the local office of public assistance, the county attorney, and the court concerning actions taken under this chapter and all records concerning reports of child abuse and neglect must be kept confidential except as provided by this section. Except as provided in subsections (9) and (10), a person who purposely or knowingly permits or encourages the unauthorized dissemination of the contents of case records is guilty of a misdemeanor.

(2) Records may be disclosed to a court for in camera inspection if relevant to an issue before it. The court may permit public disclosure if it finds disclosure to be necessary for the fair resolution of an issue before it.

(3) Records, including case notes, correspondence, evaluations, videotapes, and interviews, unless otherwise protected by this section or unless disclosure of the records is determined to be detrimental to the child or harmful to another person who is a subject of information contained in the records, may be disclosed to the following persons or entities in this state and any other state or country:

(a) a department, agency, or organization, including a federal agency, military enclave, or Indian tribal organization, that is legally authorized to receive, inspect, or investigate reports of child abuse or neglect and that otherwise meets the disclosure criteria contained in this section;

(b) a licensed youth care facility or a licensed child-placing agency that is providing services to the family or child who is the subject of a report in the records or to a person authorized by the department to receive relevant information for the purpose of determining the best interests of a child with respect to an adoptive placement;

(c) a health or mental health professional who is treating the family or child who is the subject of a report in the records;

(d) a parent, grandparent, aunt, uncle, brother, sister, guardian, mandatory reporter provided for in 41-3-201(2) and (5), or person designated by a parent or guardian of the child who is the subject of a report in the records or other person responsible for the child's welfare, without disclosure of the identity of any person who reported or provided information on the alleged child abuse or neglect incident contained in the records;

(e) a child named in the records who was allegedly abused or neglected or the child's legal guardian or legal representative, including the child's guardian ad litem or attorney or a special advocate appointed by the court to represent a child in a pending case;

(f) the state protection and advocacy program as authorized by 42 U.S.C. 15043(a)(2);

(g) approved foster and adoptive parents who are or may be providing care for a child;

(h) a person about whom a report has been made and that person's attorney, with respect to the relevant records pertaining to that person only and without disclosing the identity of the reporter or any other person whose safety may be endangered;

(i) an agency, including a probation or parole agency, that is legally responsible for the supervision of an alleged perpetrator of child abuse or neglect;

(j) a person, agency, or organization that is engaged in a bona fide research or evaluation project and that is authorized by the department to conduct the research or evaluation;

(k) the members of an interdisciplinary child protective team authorized under 41-3-108 or of a family group decisionmaking meeting for the purposes of assessing the needs of the child and family, formulating a treatment plan, and monitoring the plan;

(l) the coroner or medical examiner when determining the cause of death of a child;

(m) a child fatality review team recognized by the department[, including the child abuse and neglect review commission established in 2-15-2019];

(n) a department or agency investigating an applicant for a license or registration that is required to operate a youth care facility, day-care facility, or child-placing agency;

(o) a person or entity who is carrying out background, employment-related, or volunteer-related screening of current or prospective employees or volunteers who have or may have unsupervised contact with children through employment or volunteer activities. A request for information under this subsection (3)(o) must be made in writing. Disclosure under this subsection (3)(o) is limited to information that indicates a risk to children, persons with developmental disabilities, or older persons posed by the person about whom the information is sought, as determined by the department.

(p) the news media, if disclosure is limited to confirmation of factual information regarding how the case was handled and if disclosure does not violate the privacy rights of the child or the child's parent or guardian, as determined by the department;

(q) an employee of the department or other state agency if disclosure of the records is necessary for administration of programs designed to benefit the child;

(r) an agency of an Indian tribe, a qualified expert witness, or the relatives of an Indian child if disclosure of the records is necessary to meet requirements of the federal Indian Child Welfare Act;

(s) a juvenile probation officer who is working in an official capacity with the child who is the subject of a report in the records;

(t) an attorney who is hired by or represents the department if disclosure is necessary for the investigation, defense, or prosecution of a case involving child abuse or neglect;

(u) a foster care review committee established under 41-3-115 or, when applicable, a citizen review board established under Title 41, chapter 3, part 10;

(v) a school employee participating in an interview of a child by a social worker, county attorney, or peace officer, as provided in 41-3-202;

(w) a member of a county interdisciplinary child information and school safety team formed under the provisions of 52-2-211;

- (x) members of a local interagency staffing group provided for in 52-2-203;
- (y) a member of a youth placement committee formed under the provisions of 41-5-121; or
- (z) a principal of a school or other employee of the school district authorized by the trustees of the district to receive the information with respect to a student of the district who is a client of the department.

(4) (a) The records described in subsection (3) must be disclosed to a member of the United States congress or a member of the Montana legislature if all of the following requirements are met:

- (i) the member receives a written inquiry regarding a child and whether the laws of the United States or the state of Montana that protect children from abuse or neglect are being complied with or whether the laws need to be changed to enhance protections for children;

- (ii) the member submits a written request to the department requesting to review the records relating to the written inquiry. The member's request must include a copy of the written inquiry, the name of the child whose records are to be reviewed, and any other information that will assist the department in locating the records.

- (iii) before reviewing the records, the member:

- (A) signs a form that outlines the state and federal laws regarding confidentiality and the penalties for unauthorized release of the information; and

- (B) receives from the department an orientation of the content and structure of the records.

- (b) Records disclosed pursuant to subsection (4)(a) are confidential, must be made available for the member to view at a location determined by the department but may not be copied, recorded, photographed, or otherwise replicated by the member, and must remain solely in the department's possession.

- (c) Access to records requested pursuant to this subsection (4) is limited to 6 months from the date the written request to review records was received by the department.

(5) (a) The records described in subsection (3) must be promptly released to any of the following individuals upon a written request by the individual to the department or the department's designee:

- (i) the attorney general;

- (ii) a county attorney or deputy county attorney of the county in which the alleged abuse or neglect occurred;

- (iii) a peace officer, as defined in 45-2-101, in the jurisdiction in which the alleged abuse or neglect occurred; or

- (iv) the office of the child and family ombudsman.

- (b) The records described in subsection (3) must be promptly disclosed by the department to an appropriate individual described in subsection (5)(a) or to a county interdisciplinary child information and school safety team established pursuant to 52-2-211 upon the department's receipt of a report indicating that any of the following has occurred:

- (i) the death of the child as a result of child abuse or neglect;

- (ii) a sexual offense, as defined in 46-23-502, against the child;

- (iii) exposure of the child to an actual and not a simulated violent offense as defined in 46-23-502; or

- (iv) child abuse or neglect, as defined in 41-3-102, due to exposure of the child to circumstances constituting the criminal manufacture or distribution of dangerous drugs.

- (c) (i) The department shall promptly disclose the results of an investigation to an individual described in subsection (5)(a) or to a county interdisciplinary child information and school safety team established pursuant to 52-2-211 upon the determination that:

- (A) there is reasonable cause to suspect that a child has been exposed to a Schedule I or Schedule II drug whose manufacture, sale, or possession is prohibited under state law; or

- (B) a child has been exposed to drug paraphernalia used for the manufacture, sale, or possession of a Schedule I or Schedule II drug that is prohibited by state law.

- (ii) For the purposes of this subsection (5)(c), exposure occurs when a child is caused or permitted to inhale, have contact with, or ingest a Schedule I or Schedule II drug that is prohibited by state law or have contact with drug paraphernalia as defined in 45-10-101.



(6) A school or school district may disclose, without consent, personally identifiable information from the education records of a pupil to the department, the court, a review board, and the child's assigned attorney, guardian ad litem, or special advocate.

(7) Information that identifies a person as a participant in or recipient of substance abuse treatment services may be disclosed only as allowed by federal substance abuse confidentiality laws, including the consent provisions of the law.

(8) The confidentiality provisions of this section must be construed to allow a court of this state to share information with other courts of this state or of another state when necessary to expedite the interstate placement of children.

(9) A person who is authorized to receive records under this section shall maintain the confidentiality of the records and may not disclose information in the records to anyone other than the persons described in subsections (3)(a) and (5). However, this subsection may not be construed to compel a family member to keep the proceedings confidential.

(10) A news organization or its employee, including a freelance writer or reporter, is not liable for reporting facts or statements made by an immediate family member under subsection (9) if the news organization, employee, writer, or reporter maintains the confidentiality of the child who is the subject of the proceeding.

(11) This section is not intended to affect the confidentiality of criminal court records, records of law enforcement agencies, or medical records covered by state or federal disclosure limitations.

(12) Copies of records, evaluations, reports, or other evidence obtained or generated pursuant to this section that are provided to the parent, grandparent, aunt, uncle, brother, sister, guardian, or parent's or guardian's attorney must be provided without cost. *(Bracketed language in subsection (3)(m) terminates September 30, 2021—sec. 12, Ch. 235, L. 2017.)*

**History:** En. 10-1308 by Sec. 4, Ch. 328, L. 1974; R.C.M. 1947, 10-1308; amd. Sec. 11, Ch. 543, L. 1979; amd. Sec. 1, Ch. 287, L. 1987; amd. Sec. 39, Ch. 609, L. 1987; amd. Sec. 1, Ch. 110, L. 1989; amd. Sec. 2, Ch. 126, L. 1989; amd. Sec. 2, Ch. 510, L. 1991; amd. Sec. 5, Ch. 655, L. 1991; amd. Sec. 15, Ch. 610, L. 1993; amd. Sec. 10, Ch. 458, L. 1995; amd. Sec. 164, Ch. 546, L. 1995; amd. Sec. 4, Ch. 564, L. 1995; amd. Sec. 7, Ch. 514, L. 1997; amd. Sec. 5, Ch. 550, L. 1997; amd. Sec. 6, Ch. 566, L. 1999; amd. Sec. 2, Ch. 281, L. 2001; amd. Sec. 6, Ch. 311, L. 2001; amd. Sec. 1, Ch. 570, L. 2001; amd. Sec. 45, Ch. 571, L. 2001; amd. Sec. 5, Ch. 504, L. 2003; amd. Sec. 2, Ch. 349, L. 2005; amd. Sec. 29, Ch. 449, L. 2005; amd. Sec. 4, Ch. 166, L. 2007; amd. Sec. 60, Ch. 2, L. 2009; amd. Sec. 2, Ch. 61, L. 2013; amd. Sec. 1, Ch. 332, L. 2013; amd. Sec. 8, Ch. 333, L. 2013; amd. Sec. 2, Ch. 337, L. 2013; amd. Sec. 5, Ch. 364, L. 2013; amd. Sec. 8, Ch. 354, L. 2015; amd. Sec. 1, Ch. 99, L. 2017; amd. Sec. 1, Ch. 180, L. 2017; amd. Sec. 4, Ch. 235, L. 2017.

#### **Compiler's Comments**

*2017 Amendments — Composite Section:* Chapter 99 inserted (5)(c) regarding disclosure of investigation results to certain individuals or a county interdisciplinary child information and school safety team if a child has been exposed to certain Schedule I or Schedule II drugs or drug paraphernalia. Amendment effective July 1, 2017.

Chapter 180 in (3)(p) after "news media" deleted "a member of the United States congress, or a state legislator"; inserted (4) regarding disclosure of records to a member of the United States congress or a member of the Montana legislature; and made minor changes in style. Amendment effective October 1, 2017.

Chapter 235 in (3)(m) inserted "including the child abuse and neglect review commission established in 2-15-2019"; and made minor changes in style. Amendment effective April 25, 2017, and terminates September 30, 2021.

*Effective Date — Applicability:* Section 11, Ch. 235, L. 2017, provided: "[This act] is effective on passage and approval and applies to child abuse and neglect cases resulting in a fatality or near fatality that occurred on or after [the effective date of this act]." Approved April 25, 2017.

**41-3-206. Procedure in case of child's death.** (1) A person or official required to report by law who has reasonable cause to suspect that a child has died as a result of child abuse or neglect shall report the person's suspicion to the appropriate medical examiner or law enforcement officer. Any other person who has reasonable cause to suspect that a child has died as a result of child abuse or neglect may report the person's suspicion to the appropriate medical examiner or law enforcement officer.

(2) The medical examiner or coroner shall investigate the report and submit findings, in writing, to the local law enforcement agency, the appropriate county attorney, the local child protective service, the family of the deceased child, and, if the person making the report is a physician, the physician.

**History:** En. Sec. 7, Ch. 543, L. 1979; amd. Sec. 5, Ch. 564, L. 1995.

**41-3-207. Penalty for failure to report.** (1) Any person, official, or institution required by law to report known or suspected child abuse or neglect who fails to do so or who prevents



another person from reasonably doing so is civilly liable for the damages proximately caused by such failure or prevention.

(2) Any person or official required by law to report known or suspected child abuse or neglect who purposely or knowingly fails to report known child abuse or neglect or purposely or knowingly prevents another person from doing so is guilty of a misdemeanor.

**History:** En. Sec. 15, Ch. 543, L. 1979; amd. Sec. 1, Ch. 367, L. 1985.

**41-3-208. Rulemaking authority.** (1) The department of public health and human services shall adopt rules to govern the procedures used by department personnel in preparing and processing reports and in making investigations authorized by this chapter.

(2) The department may adopt rules to govern the disclosure of case records containing reports of child abuse and neglect.

(3) The department shall adopt a rule specifying the procedure to be used for the release and disclosure of records as provided in 41-3-205(5). In adopting the rule, the department shall collaborate with the attorney general, the office of the child and family ombudsman, and appropriate county attorneys, law enforcement agencies, and county interdisciplinary child information and school safety teams established pursuant to 52-2-211.

**History:** En. Sec. 1, Ch. 567, L. 1979; amd. Sec. 31, Ch. 465, L. 1983; amd. Sec. 2, Ch. 287, L. 1987; amd. Sec. 40, Ch. 609, L. 1987; amd. Sec. 7, Ch. 696, L. 1991; amd. Sec. 165, Ch. 546, L. 1995; amd. Sec. 2, Ch. 332, L. 2013; amd. Sec. 9, Ch. 354, L. 2015; amd. Sec. 2, Ch. 180, L. 2017.

**Compiler's Comments**

*2017 Amendment:* Chapter 180 in (3) at end of first sentence substituted "41-3-205(5)" for "41-3-205(4)". Amendment effective October 1, 2017.

**41-3-209. Reports to office of child and family ombudsman.** The department shall report to the office of the child and family ombudsman:

- (1) within 1 business day, a death of a child who, within the last 12 months:
  - (a) had been the subject of a report of abuse or neglect;
  - (b) had been the subject of an investigation of alleged abuse or neglect;
  - (c) was in out-of-home care at the time of the child's death; or
  - (d) had received services from the department under a voluntary protective services agreement;
- (2) within 5 business days:
  - (a) any criminal act concerning the abuse or neglect of a child;
  - (b) any critical incident, including but not limited to elopement, a suicide attempt, rape, nonroutine hospitalizations, and neglect or abuse by a substitute care provider, involving a child who is receiving services from the department pursuant to this chapter; or
  - (c) a third report received within the last 12 months about a child at risk of or who is suspected of being abused or neglected.

**History:** En. Sec. 7, Ch. 354, L. 2015.

## Part 3 Protective Care

**41-3-301. Emergency protective service.** (1) Any child protective social worker of the department, a peace officer, or the county attorney who has reason to believe any child is in immediate or apparent danger of harm may immediately remove the child and place the child in a protective facility. After ensuring that the child is safe, the department may make a request for further assistance from the law enforcement agency or take appropriate legal action. The person or agency placing the child shall notify the parents, parent, guardian, or other person having physical or legal custody of the child of the placement at the time the placement is made or as soon after placement as possible. Notification under this subsection must include the reason for removal, information regarding the show cause hearing, and the purpose of the show cause hearing and must advise the parents, parent, guardian, or other person having physical or legal custody of the child that the parents, parent, guardian, or other person may have a support person present during any in-person meeting with the social worker concerning emergency protective services.

(2) If a social worker of the department, a peace officer, or the county attorney determines in an investigation of abuse or neglect of a child that the child is in danger because of the occurrence

of partner or family member assault, as provided for in 45-5-206, or strangulation of a partner or family member, as provided for in 45-5-215, against an adult member of the household or that the child needs protection as a result of the occurrence of partner or family member assault or strangulation of a partner or family member against an adult member of the household, the department shall take appropriate steps for the protection of the child, which may include:

(a) making reasonable efforts to protect the child and prevent the removal of the child from the parent or guardian who is a victim of alleged partner or family member assault or strangulation of a partner or family member;

(b) making reasonable efforts to remove the person who allegedly committed the partner or family member assault or strangulation of a partner or family member from the child's residence if it is determined that the child or another family or household member is in danger of partner or family member assault or strangulation of a partner or family member; and

(c) providing services to help protect the child from being placed with or having unsupervised visitation with the person alleged to have committed partner or family member assault or strangulation of a partner or family member until the department determines that the alleged offender has met conditions considered necessary to protect the safety of the child.

(3) If the department determines that an adult member of the household is the victim of partner or family member assault or strangulation of a partner or family member, the department shall provide the adult victim with a referral to a domestic violence program.

(4) A child who has been removed from the child's home or any other place for the child's protection or care may not be placed in a jail.

(5) The department may locate and contact extended family members upon placement of a child in out-of-home care. The department may share information with extended family members for placement and case planning purposes.

(6) [Except as provided in 41-3-305,] if a child is removed from the child's home by the department, a child protective social worker shall submit an affidavit regarding the circumstances of the emergency removal to the county attorney and provide a copy of the affidavit to the parents or guardian, if possible, within 2 working days of the emergency removal. An abuse and neglect petition must be filed within 5 working days, excluding weekends and holidays, of the emergency removal of a child unless arrangements acceptable to the agency for the care of the child have been made by the parents or voluntary protective services are provided pursuant to 41-3-302.

(7) Except as provided in the federal Indian Child Welfare Act, if applicable, a show cause hearing must be held within 20 days of the filing of the petition unless otherwise stipulated by the parties pursuant to 41-3-434.

(8) If the department determines that a petition for immediate protection and emergency protective services must be filed to protect the safety of the child, the social worker shall interview the parents of the child to whom the petition pertains, if the parents are reasonably available, before the petition may be filed. The district court may immediately issue an order for immediate protection of the child.

(9) The department shall make the necessary arrangements for the child's well-being as are required prior to the court hearing. (*Bracketed language in subsection (6) terminates June 30, 2019—sec. 5, Ch. 141, L. 2017.*)

**History:** En. 10-1309 by Sec. 5, Ch. 328, L. 1974; amd. Sec. 19, Ch. 100, L. 1977; R.C.M. 1947, 10-1309; amd. Sec. 12, Ch. 543, L. 1979; amd. Sec. 1, Ch. 659, L. 1985; amd. Sec. 41, Ch. 609, L. 1987; amd. Sec. 166, Ch. 546, L. 1995; amd. Sec. 3, Ch. 281, L. 2001; amd. Sec. 2, Ch. 398, L. 2003; amd. Sec. 6, Ch. 504, L. 2003; amd. Sec. 3, Ch. 555, L. 2003; amd. Sec. 1, Ch. 422, L. 2005; amd. Sec. 1, Ch. 212, L. 2007; amd. Sec. 1, Ch. 11, L. 2011; amd. Sec. 3, Ch. 223, L. 2011; amd. Sec. 3, Ch. 376, L. 2015; amd. Sec. 4, Ch. 394, L. 2017.

#### **Compiler's Comments**

*2017 Amendment:* Chapter 394 throughout (2) and (3) inserted references to strangulation of partner or family member; and made minor changes in style. Amendment effective May 19, 2017.

*Extension of Termination Date:* Section 5, Ch. 141, L. 2017, amended sec. 7, Ch. 376, L. 2015, by extending the termination date imposed by Ch. 376 to June 30, 2019. Effective April 3, 2017.

**41-3-302. (Effective July 1, 2019) Responsibility of providing protective services — voluntary protective services agreement.** (1) The department of public health and human services has the primary responsibility to provide the protective services authorized by this chapter and has the authority pursuant to this chapter to take temporary or permanent custody of a child when ordered to do so by the court, including the right to give consent to adoption.

(2) The department shall respond to emergency reports of known or suspected child abuse or neglect 24 hours a day, 7 days a week.

(3) (a) The department may provide voluntary protective services by entering into a written voluntary protective services agreement with a parent, guardian, or other person having physical or legal custody of the child for the purpose of keeping the child safely in the home or for the purpose of returning the child to the home within a 30-day temporary out-of-home protective placement.

(b) The department shall inform a parent, guardian, or other person having physical or legal custody of a child who is considering entering into a voluntary protective services agreement that the parent, guardian, or other person may have another person of the parent's, guardian's, or other person's choice present whenever the terms of the voluntary protective services agreement are under discussion by the parent, guardian, or other person and the department. Reasonable accommodations must be made regarding the time and place of meetings at which a voluntary protective services agreement is discussed.

(4) A voluntary protective services agreement may include provisions for:

(a) a family group decisionmaking meeting and implementation of safety plans developed during the meeting;

(b) a professional evaluation and treatment of the parent, guardian, or other person having physical or legal custody of the child or of the child, or both;

(c) a safety plan for the child;

(d) in-home services aimed at permitting the child to remain safely in the home;

(e) temporary relocation of a parent, guardian, or other person having physical or legal custody of the child in order to permit the child to remain safely in the home;

(f) a 30-day temporary out-of-home protective placement; or

(g) any other terms or conditions agreed upon by the parties that would allow the child to remain safely in the home or allow the child to safely return to the home within the 30-day period, including referrals to other service providers.

(5) A voluntary protective services agreement is subject to termination by either party at any time. Termination of a voluntary protective services agreement does not preclude the department from filing a petition pursuant to 41-3-422 in any case in which the department determines that there is a risk of harm to a child.

(6) If a voluntary protective services agreement is terminated by a party to the agreement, a child who has been placed in a temporary out-of-home protective placement pursuant to the agreement must be returned to the parent, guardian, or other person having physical or legal custody of the child within 2 working days of termination of the agreement unless an abuse and neglect petition is filed by the department.

**History:** En. 10-1315 by Sec. 11, Ch. 328, L. 1974; R.C.M. 1947, 10-1315; amd. Sec. 13, Ch. 543, L. 1979; amd. Sec. 4, Ch. 511, L. 1981; amd. Sec. 42, Ch. 609, L. 1987; amd. Sec. 167, Ch. 546, L. 1995; amd. Sec. 4, Ch. 555, L. 2003; amd. Sec. 54, Ch. 130, L. 2005; amd. Sec. 3, Ch. 141, L. 2017.

#### **Compiler's Comments**

*2017 Amendment:* (Version effective July 1, 2019) In (3) throughout subsection substituted references to parent, guardian, or other person having physical or legal custody of the child for references to a parent or other person responsible for a child's welfare; in (3)(a) after "home" inserted "or for the purpose of returning the child to the home within a 30-day temporary out-of-home protective placement"; in (4)(b) after "treatment of" substituted "the parent, guardian, or other person having physical or legal custody of the child or of the child, or both" for "a parent or child, or both"; in (4)(e) after "parent" inserted "guardian, or other person having physical or legal custody of the child"; in (6) near beginning after "out-of-home" inserted "protective" and before "within 2 working days" substituted "parent, guardian, or other person having physical or legal custody of the child" for "parents"; and made minor changes in style. Amendment effective July 1, 2019.

**41-3-303. Renumbered 41-3-112.** Sec. 17(3)(a), Ch. 281, L. 2001.

**41-3-304. Criminal background checks of adults residing in potential emergency placements authorized — rulemaking.** (1) (a) If a child is removed from the child's parental or custodial home for protective care pursuant to this part and an emergency placement is offered, the department or an authorized tribe may request, in accordance with the procedures set forth in 28 CFR 901.1 through 901.4, that each adult 18 years of age or older who is residing in a home where the potential emergency placement is to be made consent to a preliminary state and federal name-based background check that must be followed within 15 calendar days from the date that the name-based background search was conducted with the submission of

fingerprints to the state repository, as defined in 44-5-103, for a fingerprint-based background check conducted in accordance with subsection (2) of this section.

(b) If a name-based background check demonstrates that none of the adults residing in the home where the emergency placement is to be made has been convicted of a disqualifying criminal offense, the department or authorized tribe may place the child in the home pending the outcome of the fingerprint-based background check.

(c) If an adult refuses to consent to the department's or an authorized tribe's request for a name-based and fingerprint-based background check, the department or authorized tribe may not place the child in a home in which the adult resides, or if the child was already placed in the home, the department or authorized tribe shall immediately remove the child from the home.

(2) An adult who consents to a name-based and fingerprint-based background check pursuant to subsection (1) shall submit to the department or an authorized tribe a complete set of fingerprints and written permission authorizing the department or the authorized tribe to submit the fingerprints to the state repository for processing of the state and federal background check. Results of the name-based and fingerprint-based background check must be provided to the quality assurance division of the department of public health and human services or to an authorized tribe.

(3) If the department or an authorized tribe elects to perform an initial name-based background check and a fingerprint-based background check pursuant to this section, the department or the authorized tribe may not make an emergency placement or continue an emergency placement in a home in which an adult resident has been convicted of a disqualifying criminal offense.

(4) The state repository and the federal bureau of investigation may charge a reasonable fee for processing a fingerprint-based criminal background check.

(5) If an emergency placement is denied as a result of a name-based background check of a resident and the resident contests the denial, the resident may within 15 calendar days of the denial submit to the department or authorized tribe a complete set of fingerprints with written permission allowing the department or authorized tribe to submit the fingerprints to the state repository for processing of the state and federal background check.

(6) The department shall by rule designate those criminal offenses that constitute a disqualifying criminal offense under this section, which may include but are not limited to felony convictions for violent crimes, crimes involving children, family members, or the elderly or disabled, and crimes involving drugs in which the conviction occurred within a certain period of time.

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

(a) "Authorized tribe" means the tribal child services unit and its approved designees responsible for overseeing foster care licensing for an Indian tribe located within the borders of Montana that has in place a valid tribal fingerprint program user agreement with the Montana department of justice.

(b) "Emergency placement" means an instance in which the department or an authorized tribe provides protective services and places a child in the home of private individuals, including but not limited to family, neighbors, or friends of the child.

**History:** En. Sec. 1, Ch. 267, L. 2013.

**41-3-305. (Temporary) Child abuse and neglect court diversion pilot project.**

(1) There is a child abuse and neglect court diversion pilot project. The purpose of the pilot project is to use meetings facilitated by a court diversion officer to informally resolve cases, prior to the filing of an abuse and neglect petition under Title 41, chapter 3, part 4, in which the department has exercised emergency protective services pursuant to 41-3-301 and has removed a child from the custody of a parent, guardian, or other person having physical or legal custody of the child or cases in which the department has provided voluntary protective services pursuant to 41-3-302.

(2) (a) The office of the court administrator provided for in Title 3, chapter 1, part 7, shall administer the pilot project, including:

(i) selecting judicial districts in which to implement the pilot project;

(ii) hiring court diversion officers to staff a pilot project in each of the selected judicial districts; and

(iii) establishing and measuring performance benchmarks.



(b) The office of the court administrator shall report to the law and justice interim committee regarding the administration and performance of the pilot project.

(3) (a) (i) Within 2 working days of an emergency removal pursuant to 41-3-301 of a child from a parent, guardian, or other person having physical or legal custody of the child or within 2 working days of the termination of a voluntary protective services agreement, the department and the parent, guardian, or other person having physical or legal custody of the child from whom the child was removed or with whom a voluntary protective services agreement was terminated may, if the requirements of subsection (3)(a)(ii) are met, enter into a written agreement to participate in the pilot project for a period of not more than 180 days from either the date of the emergency removal or the date the child was placed in a temporary out-of-home protective placement pursuant to a voluntary protective services agreement or, if voluntary protective services were provided and the child remained in the home, the date the voluntary protective services agreement was terminated. Execution of the written agreement to participate in the pilot project suspends the requirements provided in 41-3-301(6) for a period of not more than 180 days. A party to the written agreement to participate in the pilot project may terminate the agreement at any time.

(ii) Before a person may enter into a written agreement to participate in the pilot project, the person:

(A) must be informed in writing of the person's rights, including:

(I) advisement on the person's rights if the person voluntarily participates in the pilot project or chooses not to participate in the pilot project; and

(II) advisement that the person may have another person of the person's choosing present whenever the terms of the written agreement to participate in the pilot project or the terms of the written diversion plan are under discussion with the department or the court diversion officer; and

(B) shall sign and acknowledge that the person fully understands the person's rights and voluntarily agrees to participate in the pilot project.

(b) Within 15 working days of executing the written agreement to participate in the pilot project, the parties shall meet with the court diversion officer and execute a written diversion plan for the case, subject to the court diversion officer's approval, which may include but is not limited to:

(i) an ongoing out-of-home placement of the child for a period of not more than 180 days from the date of the emergency removal or initiation of the temporary out-of-home protective placement; and

(ii) any other terms or conditions agreed to by the parties, including referrals to other service providers, that would allow the child to safely return to the home within the time period covered by the agreement or safely remain in the home.

(c) The written diversion plan may be amended in writing with the approval of the court diversion officer.

(d) If a written diversion plan is not executed by the parties, is not approved by the court diversion officer under this subsection (3), or is not successfully completed or if reunification of the child with the parent, guardian, or other person having physical or legal custody of the child will not occur before the written agreement to participate in the pilot project expires, the department shall terminate the written agreement to participate in the pilot project and initiate the process for filing a petition for child abuse and neglect under Title 41, chapter 3, part 4. The social worker shall submit an affidavit regarding the circumstances of the emergency removal or the provision of voluntary protective services and a copy of the written agreement to participate in the pilot project, as well as the written diversion plan if one exists, to the county attorney within 10 working days of the termination of the written agreement to participate in the pilot project.

(e) An audio recording must be made of each meeting that a court diversion officer has with the parties.

(4) A party involved in the pilot project does not have a right to counsel prior to the filing of an abuse and neglect petition.



(5) A court may consider any services that are provided as part of the pilot project when making findings required under Title 41, chapter 3, parts 4 and 6. (*Terminates June 30, 2019—secs. 5, 7, Ch. 141, L. 2017.*)

**History:** En. Sec. 1, Ch. 376, L. 2015; amd. Sec. 4, Ch. 141, L. 2017.

**Compiler's Comments**

*2017 Amendment:* Chapter 141 in (1) in first sentence after “abuse” inserted “and neglect” and in last sentence near end after “custody of the child” inserted “or cases in which the department has provided voluntary protective services pursuant to 41-3-302”; in (2)(a)(i) after “selecting” deleted “three”; in (3)(a)(i) in first sentence near beginning after “of the child” inserted “or within 2 working days of the termination of a voluntary protective services agreement”, in middle of first sentence after “removed” inserted “or with whom a voluntary protective services agreement was terminated”, in first and second sentences substituted “180 days” for “6 months”, and at end of first sentence inserted clause concerning date child was placed in temporary out-of-home protective placement or date the voluntary protective services agreement was terminated, and in second and last sentences substituted “written agreement to participate in the pilot project” for “agreement”; inserted (3)(a)(ii)(A)(II) concerning advisement of right to have another person present for certain discussions; in (3)(b) substituted “written agreement to participate in the pilot project” for “agreement” and at end of introductory clause substituted “execute a written diversion plan for the case, subject to the court diversion officer’s approval, which may include but is not limited to” for “the officer shall approve”; in (3)(b)(i) substituted “180 days” for “6 months” and after “removal” inserted “or initiation of the temporary out-of-home protective placement”; in (3)(b)(ii) after “agreement” inserted “or safely remain in the home”; inserted (3)(c) concerning amendment of the written diversion plan; in (3)(d) at beginning of first sentence substituted “If a written diversion plan is not executed by the parties, is not” for “If an agreement”, in middle of first sentence after “subsection (3)” inserted “or”, near end of first sentence in two places substituted “written agreement to participate in the pilot project” for “agreement”, and in last sentence after “removal” inserted “or the provision of voluntary protective services”, in two places substituted “written agreement to participate in the pilot project” for “agreement”, and before “to the county attorney” inserted “as well as the written diversion plan if one exists”; and made minor changes in style. Amendment effective April 3, 2017, and terminates June 30, 2019.

*Extension of Termination Date:* Section 5, Ch. 141, L. 2017, amended sec. 7, Ch. 376, L. 2015, by extending the termination date imposed by Ch. 376 to June 30, 2019. Effective April 3, 2017.

## Part 4 Abuse or Neglect Proceedings

**41-3-422. Abuse and neglect petitions — burden of proof.** (1) (a) Proceedings under this chapter must be initiated by the filing of a petition. A petition may request the following relief:

- (i) immediate protection and emergency protective services, as provided in 41-3-427;
- (ii) temporary investigative authority, as provided in 41-3-433;
- (iii) temporary legal custody, as provided in 41-3-442;
- (iv) long-term custody, as provided in 41-3-445;
- (v) termination of the parent-child legal relationship, as provided in 41-3-607;
- (vi) appointment of a guardian pursuant to 41-3-444;
- (vii) a determination that preservation or reunification services need not be provided; or
- (viii) any combination of the provisions of subsections (1)(a)(i) through (1)(a)(vii) or any other relief that may be required for the best interests of the child.

(b) The petition may be modified for different relief at any time within the discretion of the court.

(c) A petition for temporary legal custody may be the initial petition filed in a case.

(d) A petition for the termination of the parent-child legal relationship may be the initial petition filed in a case if a request for a determination that preservation or reunification services need not be provided is made in the petition.

(2) The county attorney, attorney general, or an attorney hired by the county shall file all petitions under this chapter. A petition filed by the county attorney, attorney general, or an attorney hired by the county must be accompanied by:

(a) an affidavit by the department alleging that the child appears to have been abused or neglected and stating the basis for the petition; and

(b) a separate notice to the court stating any statutory time deadline for a hearing.

(3) Abuse and neglect petitions must be given highest preference by the court in setting hearing dates.

(4) An abuse and neglect petition is a civil action brought in the name of the state of Montana. The Montana Rules of Civil Procedure and the Montana Rules of Evidence apply except as modified in this chapter. Proceedings under a petition are not a bar to criminal prosecution.

(5) (a) Except as provided in subsection (5)(b), the person filing the abuse and neglect petition has the burden of presenting evidence required to justify the relief requested and establishing:

- (i) probable cause for the issuance of an order for immediate protection and emergency protective services or an order for temporary investigative authority;
- (ii) a preponderance of the evidence for an order of adjudication or temporary legal custody;
- (iii) a preponderance of the evidence for an order of long-term custody; or
- (iv) clear and convincing evidence for an order terminating the parent-child legal relationship.

(b) If a proceeding under this chapter involves an Indian child, as defined in the federal Indian Child Welfare Act, 25 U.S.C. 1901, et seq., the standards of proof required for legal relief under the federal Indian Child Welfare Act apply.

(6) (a) Except as provided in the federal Indian Child Welfare Act, if applicable, the parents or parent, guardian, or other person or agency having legal custody of the child named in the petition, if residing in the state, must be served personally with a copy of the initial petition and a petition to terminate the parent-child legal relationship at least 5 days before the date set for hearing. If the person or agency cannot be served personally, the person or agency may be served by publication as provided in 41-3-428 and 41-3-429.

(b) Copies of all other petitions must be served upon the person or the person's attorney of record by certified mail, by personal service, or by publication as provided in 41-3-428 and 41-3-429. If service is by certified mail, the department must receive a return receipt signed by the person to whom the notice was mailed for the service to be effective. Service of the notice is considered to be effective if, in the absence of a return receipt, the person to whom the notice was mailed appears at the hearing.

(7) If personal service cannot be made upon the parents or parent, guardian, or other person or agency having legal custody, the court shall immediately provide for the appointment or assignment of an attorney as provided for in 41-3-425 to represent the unavailable party when, in the opinion of the court, the interests of justice require. If personal service cannot be made upon a putative father, the court may not provide for the appointment or assignment of counsel as provided for in 41-3-425 to represent the father unless, in the opinion of the court, the interests of justice require counsel to be appointed or assigned.

(8) If a parent of the child is a minor, notice must be given to the minor parent's parents or guardian, and if there is no guardian, the court shall appoint one.

(9) (a) Any person interested in any cause under this chapter has the right to appear. Any foster parent, preadoptive parent, or relative caring for the child must be given legal notice by the attorney filing the petition of all judicial hearings for the child and has the right to be heard. The right to appear or to be heard does not make that person a party to the action. Any foster parent, preadoptive parent, or relative caring for the child must be given notice of all reviews by the reviewing body.

(b) A foster parent, preadoptive parent, or relative of the child who is caring for or a relative of the child who has cared for a child who is the subject of the petition who appears at a hearing set pursuant to this section may be allowed by the court to intervene in the action if the court, after a hearing in which evidence is presented on those subjects provided for in 41-3-437(4), determines that the intervention of the person is in the best interests of the child. A person granted intervention pursuant to this subsection is entitled to participate in the adjudicatory hearing held pursuant to 41-3-437 and to notice and participation in subsequent proceedings held pursuant to this chapter involving the custody of the child.

(10) An abuse and neglect petition must state:

- (a) the nature of the alleged abuse or neglect and of the relief requested;
- (b) the full name, age, and address of the child and the name and address of the child's parents or the guardian or person having legal custody of the child; and
- (c) the names, addresses, and relationship to the child of all persons who are necessary parties to the action.

(11) Any party in a proceeding pursuant to this section is entitled to counsel as provided in 41-3-425.

(12) At any stage of the proceedings considered appropriate by the court, the court may order an alternative dispute resolution proceeding or the parties may voluntarily participate in an

alternative dispute resolution proceeding. An alternative dispute resolution proceeding under this chapter may include a family group decisionmaking meeting, mediation, or a settlement conference. If a court orders an alternative dispute resolution proceeding, a party who does not wish to participate may file a motion objecting to the order. If the department is a party to the original proceeding, a representative of the department who has complete authority to settle the issue or issues in the original proceeding must be present at any alternative dispute resolution proceeding.

(13) Service of a petition under this section must be accompanied by a written notice advising the child's parent, guardian, or other person having physical or legal custody of the child of the:

(a) right, pursuant to 41-3-425, to appointment or assignment of counsel if the person is indigent or if appointment or assignment of counsel is required under the federal Indian Child Welfare Act, if applicable;

(b) right to contest the allegations in the petition; and

(c) timelines for hearings and determinations required under this chapter.

(14) If appropriate, orders issued under this chapter must contain a notice provision advising a child's parent, guardian, or other person having physical or legal custody of the child that:

(a) the court is required by federal and state laws to hold a permanency hearing to determine the permanent placement of a child no later than 12 months after a judge determines that the child has been abused or neglected or 12 months after the first 60 days that the child has been removed from the child's home;

(b) if a child has been in foster care for 15 of the last 22 months, state law presumes that termination of parental rights is in the best interests of the child and the state is required to file a petition to terminate parental rights; and

(c) completion of a treatment plan does not guarantee the return of a child.

(15) A court may appoint a standing master to conduct hearings and propose decisions and orders to the court for court consideration and action. A standing master may not conduct a proceeding to terminate parental rights. A standing master must be a member of the state bar of Montana and must be knowledgeable in the area of child abuse and neglect laws.

**History:** En. 10-1310 by Sec. 6, Ch. 328, L. 1974; amd. Sec. 20, Ch. 100, L. 1977; R.C.M. 1947, 10-1310; amd. Sec. 4, Ch. 567, L. 1979; amd. Sec. 5, Ch. 511, L. 1981; amd. Sec. 2, Ch. 659, L. 1985; amd. Sec. 2, Ch. 463, L. 1987; amd. Sec. 43, Ch. 609, L. 1987; amd. Sec. 2, Ch. 329, L. 1993; amd. Sec. 11, Ch. 458, L. 1995; amd. Sec. 168, Ch. 546, L. 1995; amd. Sec. 6, Ch. 516, L. 1997; amd. Sec. 1, Ch. 428, L. 1999; amd. Sec. 8, Ch. 566, L. 1999; amd. Sec. 4, Ch. 83, L. 2001; amd. Sec. 2, Ch. 194, L. 2001; amd. Secs. 4, 18(2), Ch. 281, L. 2001; amd. Sec. 7, Ch. 311, L. 2001; Sec. 41-3-401, MCA 1999; redes. 41-3-422 by Sec. 17(2), Ch. 281, L. 2001; amd. Sec. 1, Ch. 189, L. 2003; amd. Sec. 7, Ch. 504, L. 2003; amd. Sec. 1, Ch. 118, L. 2005; amd. Sec. 30, Ch. 449, L. 2005; amd. Sec. 5, Ch. 166, L. 2007; amd. Sec. 1, Ch. 52, L. 2017.

#### **Compiler's Comments**

*2017 Amendment:* Chapter 52 in (7) inserted last sentence regarding no appointment or assignment of counsel if service cannot be made upon a putative father; and made minor changes in style. Amendment effective March 1, 2017.

**41-3-423. Reasonable efforts required to prevent removal of child or to return — exemption — findings — permanency plan.** (1) The department shall make reasonable efforts to prevent the necessity of removal of a child from the child's home and to reunify families that have been separated by the state. Reasonable efforts include but are not limited to voluntary protective services agreements, development of individual written case plans specifying state efforts to reunify families, placement in the least disruptive setting possible, provision of services pursuant to a case plan, and periodic review of each case to ensure timely progress toward reunification or permanent placement. In determining preservation or reunification services to be provided and in making reasonable efforts at providing preservation or reunification services, the child's health and safety are of paramount concern.

(2) Except in a proceeding subject to the federal Indian Child Welfare Act, the department may, at any time during an abuse and neglect proceeding, make a request for a determination that preservation or reunification services need not be provided. If an indigent parent is not already represented by counsel, the court shall immediately provide for the appointment or assignment of counsel to represent the indigent parent in accordance with the provisions of 41-3-425. A court may make a finding that the department need not make reasonable efforts to provide preservation or reunification services if the court finds that the parent has:

(a) subjected a child to aggravated circumstances, including but not limited to abandonment, torture, chronic abuse, or sexual abuse or chronic, severe neglect of a child;

(b) committed, aided, abetted, attempted, conspired, or solicited deliberate or mitigated deliberate homicide of a child;

(c) committed aggravated assault against a child;

(d) committed neglect of a child that resulted in serious bodily injury or death; or

(e) had parental rights to the child's sibling or other child of the parent involuntarily terminated and the circumstances related to the termination of parental rights are relevant to the parent's ability to adequately care for the child at issue.

(3) Preservation or reunification services are not required for a putative father, as defined in 42-2-201, if the court makes a finding that the putative father has failed to do any of the following:

(a) contribute to the support of the child for an aggregate period of 1 year, although able to do so;

(b) establish a substantial relationship with the child. A substantial relationship is demonstrated by:

(i) visiting the child at least monthly when physically and financially able to do so; or

(ii) having regular contact with the child or with the person or agency having the care and custody of the child when physically and financially able to do so; and

(iii) manifesting an ability and willingness to assume legal and physical custody of the child if the child was not in the physical custody of the other parent.

(c) register with the putative father registry pursuant to Title 42, chapter 2, part 2, and the person has not been:

(i) adjudicated in Montana to be the father of the child for the purposes of child support; or

(ii) recorded on the child's birth certificate as the child's father.

(4) A judicial finding that preservation or reunification services are not necessary under this section must be supported by clear and convincing evidence.

(5) If the court finds that preservation or reunification services are not necessary pursuant to subsection (2) or (3), a permanency hearing must be held within 30 days of that determination and reasonable efforts, including consideration of both in-state and out-of-state permanent placement options for the child, must be made to place the child in a timely manner in accordance with the permanency plan and to complete whatever steps are necessary to finalize the permanent placement of the child.

(6) If reasonable efforts have been made to prevent removal of a child from the home or to return a child to the child's home but continuation of the efforts is determined by the court to be inconsistent with the permanency plan for the child, the department shall make reasonable efforts to place the child in a timely manner in accordance with the permanency plan, including, if appropriate, placement in another state, and to complete whatever steps are necessary to finalize the permanent placement of the child. Reasonable efforts to place a child permanently for adoption or to make an alternative out-of-home permanent placement may be made concurrently with reasonable efforts to return a child to the child's home. Concurrent planning, including identifying in-state and out-of-state placements, may be used.

(7) When determining whether the department has made reasonable efforts to prevent the necessity of removal of a child from the child's home or to reunify families that have been separated by the state, the court shall review the services provided by the agency including, if applicable, protective services provided pursuant to 41-3-302.

**History:** En. 10-1311 by Sec. 7, Ch. 328, L. 1974; amd. Sec. 21, Ch. 100, L. 1977; R.C.M. 1947, 10-1311(4), (5); amd. Sec. 4, Ch. 659, L. 1985; amd. Sec. 11, Ch. 609, L. 1987; amd. Sec. 1, Ch. 696, L. 1991; amd. Sec. 1, Ch. 112, L. 1993; amd. Sec. 1, Ch. 362, L. 1993; amd. Sec. 13, Ch. 458, L. 1995; amd. Sec. 3, Ch. 501, L. 1997; amd. Sec. 7, Ch. 516, L. 1997; amd. Sec. 9, Ch. 566, L. 1999; amd. Sec. 5, Ch. 83, L. 2001; amd. Secs. 8, 18(3), Ch. 281, L. 2001; amd. Sec. 9, Ch. 311, L. 2001; Sec. 41-3-403, MCA 1999; reded. 41-3-423 by Sec. 17(2), Ch. 281, L. 2001; amd. Sec. 5, Ch. 555, L. 2003; amd. Sec. 31, Ch. 449, L. 2005; amd. Sec. 6, Ch. 166, L. 2007.

**41-3-424. Dismissal.** Unless the petition has been previously dismissed, the court shall dismiss an abuse and neglect petition on the motion of a party, or on its own motion, in any case in which all of the following criteria are met:

(1) a child who has been placed in foster care is reunited with the child's parents and returned home;



(2) the child remains in the home for a minimum of 6 months with no additional confirmed reports of child abuse or neglect; and

(3) the department determines and informs the court that the issues that led to department intervention have been resolved and that no reason exists for further department intervention or monitoring.

**History:** En. Sec. 6, Ch. 555, L. 2003.

**41-3-425. Right to counsel.** (1) Any party involved in a petition filed pursuant to 41-3-422 has the right to counsel in all proceedings held pursuant to the petition.

(2) Except as provided in subsections (3) through (5), the court shall immediately appoint the office of state public defender to assign counsel for:

(a) any indigent parent, guardian, or other person having legal custody of a child or youth in a removal, placement, or termination proceeding pursuant to 41-3-422, pending a determination of eligibility pursuant to 47-1-111;

(b) any child or youth involved in a proceeding under a petition filed pursuant to 41-3-422 when a guardian ad litem is not appointed for the child or youth; and

(c) any party entitled to counsel at public expense under the federal Indian Child Welfare Act.

(3) When appropriate, the court may appoint the office of state public defender to assign counsel for any child or youth involved in a proceeding under a petition filed pursuant to 41-3-422 when a guardian ad litem is appointed for the child or youth.

(4) When appropriate and in accordance with judicial branch policy, the court may assign counsel at the court's expense for a guardian ad litem or a court-appointed special advocate involved in a proceeding under a petition filed pursuant to 41-3-422.

(5) Except as provided in the federal Indian Child Welfare Act, a court may not appoint a public defender to a putative father, as defined in 42-2-201, of a child or youth in a removal, placement, or termination proceeding pursuant to 41-3-422 until:

(a) the putative father is successfully served notice of a petition filed pursuant to 41-3-422; and

(b) the putative father makes a request to the court in writing to appoint the office of state public defender to assign counsel.

**History:** En. Sec. 15, Ch. 449, L. 2005; amd. Sec. 1, Ch. 511, L. 2007; amd. Sec. 1, Ch. 343, L. 2011; amd. Sec. 1, Ch. 29, L. 2013; amd. Sec. 2, Ch. 52, L. 2017.

**Compiler's Comments**

*2017 Amendment:* Chapter 52 inserted (5) requiring certain requirements to be met before court may appoint public defender to a putative father; and made minor changes in style. Amendment effective March 1, 2017.

**41-3-426 reserved.**

**41-3-427. Petition for immediate protection and emergency protective services — order — service.** (1) (a) In a case in which it appears that a child is abused or neglected or is in danger of being abused or neglected, the county attorney, the attorney general, or an attorney hired by the county may file a petition for immediate protection and emergency protective services. In implementing the policy of this section, the child's health and safety are of paramount concern.

(b) A petition for immediate protection and emergency protective services must state the specific authority requested and must be supported by an affidavit signed by a representative of the department stating in detail the alleged facts upon which the request is based and the facts establishing probable cause or, if the case is subject to the federal Indian Child Welfare Act, clear and convincing evidence that a child is abused or neglected or is in danger of being abused or neglected. The affidavit of the department representative must contain information, if any, regarding statements made by the parents about the facts of the case.

(c) If from the alleged facts presented in the affidavit it appears to the court that there is probable cause or, if the case is subject to the federal Indian Child Welfare Act, clear and convincing evidence to believe that the child has been abused or neglected or is in danger of being abused and neglected, the judge shall grant emergency protective services and the relief authorized by subsection (2) until the adjudication hearing or the temporary investigative hearing. If it appears from the alleged facts contained in the affidavit that there is insufficient probable cause or, if the case is subject to the federal Indian Child Welfare Act, clear and



convincing evidence to believe that the child has been abused or neglected or is in danger of being abused or neglected, the court shall dismiss the petition.

(d) If the parents, parent, guardian, person having physical or legal custody of the child, or attorney for the child disputes the material issues of fact contained in the affidavit or the veracity of the affidavit, the person may request a contested show cause hearing pursuant to 41-3-432 within 10 days following service of the petition and affidavit.

(e) The petition for immediate protection and emergency protective services must include a notice advising the parents, parent, guardian, or other person having physical or legal custody of the child that the parents, parent, guardian, or other person having physical or legal custody of the child may have a support person present during any in-person meeting with a social worker concerning emergency protective services. Reasonable accommodation must be made in scheduling an in-person meeting with the social worker.

(2) Pursuant to subsection (1), if the court finds probable cause or, if the case is subject to the federal Indian Child Welfare Act, clear and convincing evidence based on the petition and affidavit, the court may issue an order for immediate protection of the child. The court shall consider the parents' statements, if any, included with the petition and any accompanying affidavit or report to the court. If the court finds probable cause or, if the case is subject to the federal Indian Child Welfare Act, clear and convincing evidence, the court may issue an order granting the following forms of relief, which do not constitute a court-ordered treatment plan under 41-3-443:

(a) the right of entry by a peace officer or department worker;

(b) the right to place the child in temporary medical or out-of-home care, including but not limited to care provided by a noncustodial parent, kinship or foster family, group home, or institution;

(c) the right for the department to locate, contact, and share information with any extended family members who may be considered as placement options for the child;

(d) a requirement that the parents, guardian, or other person having physical or legal custody furnish information that the court may designate and obtain evaluations that may be necessary to determine whether a child is a youth in need of care;

(e) a requirement that the perpetrator of the alleged child abuse or neglect be removed from the home to allow the child to remain in the home;

(f) a requirement that the parent provide the department with the name and address of the other parent, if known, unless parental rights to the child have been terminated;

(g) a requirement that the parent provide the department with the names and addresses of extended family members who may be considered as placement options for the child who is the subject of the proceeding; and

(h) any other temporary disposition that may be required in the best interests of the child that does not require an expenditure of money by the department unless the court finds after notice and a hearing that the expenditure is reasonable and that resources are available for payment. The department is the payor of last resort after all family, insurance, and other resources have been examined.

(3) An order for removal of a child from the home must include a finding that continued residence of the child with the parent is contrary to the welfare of the child or that an out-of-home placement is in the best interests of the child.

(4) The order for immediate protection of the child must require the person served to comply immediately with the terms of the order and to appear before the court issuing the order on the date specified for a show cause hearing. Upon a failure to comply or show cause, the court may hold the person in contempt or place temporary physical custody of the child with the department until further order.

(5) The petition must be served as provided in 41-3-422.

**History:** En. 10-1311 by Sec. 7, Ch. 328, L. 1974; amd. Sec. 21, Ch. 100, L. 1977; R.C.M. 1947, 10-1311(1) thru (3); amd. Sec. 3, Ch. 659, L. 1985; amd. Sec. 44, Ch. 609, L. 1987; amd. Sec. 12, Ch. 458, L. 1995; amd. Sec. 169, Ch. 546, L. 1995; amd. Sec. 2, Ch. 501, L. 1997; amd. Sec. 5, Ch. 281, L. 2001; amd. Sec. 8, Ch. 311, L. 2001; Sec. 41-3-402, MCA 1999; redes. 41-3-427 by Sec. 17(2), Ch. 281, L. 2001; amd. Sec. 8, Ch. 504, L. 2003; amd. Sec. 2, Ch. 422, L. 2005; amd. Sec. 2, Ch. 11, L. 2011; amd. Sec. 4, Ch. 223, L. 2011.

**41-3-428. Service of process — service by publication — effect.** (1) Except as otherwise provided in this chapter, service of process must be made as provided in the Montana Rules of Civil Procedure.

(2) If a person cannot be served personally or by certified mail, the person may be served by publication as provided in 41-3-429. Publication constitutes conclusive evidence of service, and a hearing must then proceed at the time and date set, with or without the appearance of the person served by publication. At or after the hearing, the court may issue an order that will adjudicate the interests of the person served by publication.

(3) If a parent cannot be identified or found prior to the initial hearings allowed by part 4, the court may grant the following relief, pending service by publication on the parent who cannot be identified or found and based upon service of process on only the parent, guardian, or other person having legal custody of the child:

- (a) immediate protection;
- (b) temporary investigative authority; and
- (c) temporary legal custody.

**History:** En. Sec. 1, Ch. 83, L. 2001; amd. Sec. 2, Ch. 118, L. 2005.

**41-3-429. Service by publication — summons — form.** (1) Before service by publication is authorized in a proceeding under this chapter, the department shall file with the court an affidavit stating that, after due diligence, the person cannot be identified or found and stating the diligent efforts made to identify, locate, and serve the person. The affidavit is sufficient evidence of the diligence of any inquiry made by the department. The affidavit may be combined with any other affidavit filed by the department. Upon complying with this subsection, the department may obtain an order for the service to be made upon the party by publication. The order may be issued by either the judge or the clerk of the court.

(2) Service by publication must be made by publishing notice three times, once each week for 3 successive weeks:

(a) in a newspaper in a community in which the publication can reasonably be calculated to be seen by the person, based upon the last-known address or whereabouts, if known, of the person if in the state of Montana; or

(b) if no last-known address exists, if the last-known address is outside Montana, or if the identity of the person is unknown, in a newspaper in the county in which the action is pending, if a newspaper is published in the county, and, if a newspaper is not published in the county, in a newspaper published in an adjoining county and having a general circulation in the county.

(3) Service by publication is complete on the date of the last publication required by subsection (2).

(4) A summons required under this chapter must:

(a) be directed to the parent, legal guardian, other person having legal custody of the child, or any other person who is required to be served; and

(b) be signed by the clerk of court, be under the seal of the court, and contain:

- (i) the name of the court and the cause number;
- (ii) the initials of the child who is the subject of the proceedings;
- (iii) the name of the child's parents, if known;
- (iv) the time within which an interested person shall appear;
- (v) the department's address;

(vi) a statement in general terms of the nature of the proceedings, including the date and place of birth of the child, the date and place of the hearing, and the phone number of the clerk of the court in which the hearing is scheduled; and

(vii) notification apprising the person served by publication that failure to appear at the hearing will constitute a denial of interest in the child, which denial may result, without further notice of this proceeding or any subsequent proceeding, in judgment by default being entered for the relief requested in the petition.

**History:** En. Sec. 2, Ch. 83, L. 2001; amd. Sec. 3, Ch. 118, L. 2005.

**41-3-430. Putative fathers—service by publication—continuation of proceedings.**

(1) Reasonable efforts must be made to resolve issues of paternity, if any, as early as possible in

proceedings under this chapter. The department shall make every reasonable effort to obtain service of process of a petition on a putative father, as defined in 42-2-201.

(2) If a putative father cannot be served personally, the putative father may be served by publication as provided in 41-3-428 and 41-3-429.

(3) Regardless of the provisions of subsections (1) and (2), if a putative father cannot be identified or found prior to the initial hearings allowed by part 4, the court may grant the following relief, pending service by publication on the putative father and based upon service of process on only the parent, guardian, or other person having legal custody of the child:

- (a) immediate protection;
- (b) temporary investigative authority; and
- (c) temporary legal custody.

(4) Throughout the proceedings, the court, in its discretion, may order the department to continue to attempt to identify, locate, and serve a putative father.

(5) A court may order termination of the parental rights of a putative father under this chapter based on service by publication if the provisions of 41-3-428 and 41-3-429 have been met.

**History:** En. Sec. 3, Ch. 83, L. 2001.

**41-3-431 reserved.**

**41-3-432. Show cause hearing — order.** (1) (a) Except as provided in the federal Indian Child Welfare Act, a show cause hearing must be conducted within 20 days of the filing of an initial child abuse and neglect petition unless otherwise stipulated by the parties pursuant to 41-3-434 or unless an extension of time is granted by the court. A separate notice to the court stating the statutory time deadline for a hearing must accompany any petition to which the time deadline applies.

(b) If a proceeding under this chapter involves an Indian child and is subject to the federal Indian Child Welfare Act, a qualified expert witness is required to testify that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

(c) The court may grant an extension of time for a show cause hearing only upon a showing of substantial injustice and shall order an appropriate remedy that considers the best interests of the child.

(2) The person filing the petition has the burden of presenting evidence establishing probable cause for the issuance of an order for temporary investigative authority after the show cause hearing, except as provided by the federal Indian Child Welfare Act, if applicable.

(3) If a contested show cause hearing is requested pursuant to 41-3-427 based upon a disputed issue of material fact or a dispute regarding the veracity of the affidavit of the department, the court may consider all evidence and shall provide an opportunity for a parent, guardian, or other person having physical or legal custody of the child to provide testimony regarding the disputed issues. Hearsay evidence of statements made by the affected child is admissible at the hearing. The parent, guardian, or other person may be represented by legal counsel and may be appointed or assigned counsel as provided for in 41-3-425.

(4) At the show cause hearing, the court shall explain the procedures to be followed in the case and explain the parties' rights, including the right to request appointment or assignment of counsel if indigent or if appointment or assignment of counsel is required under the federal Indian Child Welfare Act, if applicable, and the right to challenge the allegations contained in the petition. The parent, guardian, or other person having physical or legal custody of the child must be given the opportunity to admit or deny the allegations contained in the petition at the show cause hearing. Inquiry must be made to determine whether the notice requirements of the federal Indian Child Welfare Act, if applicable, have been met.

(5) Except as provided in the federal Indian Child Welfare Act, if applicable, the court shall make written findings on issues including but not limited to the following:

(a) whether the child should be returned home immediately if there has been an emergency removal or remain in temporary out-of-home care or be removed from the home;

(b) if removal is ordered or continuation of removal is ordered, why continuation of the child in the home would be contrary to the child's best interests and welfare;

(c) whether the department has made reasonable efforts to avoid protective placement of the child or to make it possible to safely return the child to the child's home;

(d) financial support of the child, including inquiry into the financial ability of the parents, guardian, or other person having physical or legal custody of the child to contribute to the costs for the care, custody, and treatment of the child and requirements of a contribution for those costs pursuant to 41-3-446; and

(e) whether another hearing is needed and, if so, the date and time of the next hearing.

(6) The court may consider:

(a) terms and conditions for parental visitation; and

(b) whether orders for examinations, evaluations, counseling, immediate services, or protection are needed.

(7) Following the show cause hearing, the court may enter an order for the relief requested or amend a previous order for immediate protection of the child if one has been entered. The order must be in writing.

(8) If a child who has been removed from the child's home is not returned home after the show cause hearing or if removal is ordered, the parents or parent, guardian, or other person or agency having physical or legal custody of the child named in the petition may request that a citizen review board, if available pursuant to part 10 of this chapter, review the case within 30 days of the show cause hearing and make a recommendation to the district court, as provided in 41-3-1010.

(9) Adjudication of a child as a youth in need of care may be made at the show cause hearing if the requirements of 41-3-437(2) are met. If not made at the show cause hearing, adjudication under 41-3-437 must be made within the time limits required by 41-3-437 unless adjudication occurs earlier by stipulation of the parties pursuant to 41-3-434 and order of the court.

**History:** En. Sec. 6, Ch. 281, L. 2001; amd. Sec. 2, Ch. 189, L. 2003; amd. Sec. 9, Ch. 504, L. 2003; amd. Sec. 3, Ch. 349, L. 2005; amd. Sec. 32, Ch. 449, L. 2005; amd. Sec. 7, Ch. 166, L. 2007; amd. Sec. 5, Ch. 223, L. 2011.

**41-3-433. Temporary investigative authority.** The department may petition the court for authorization to conduct an investigation into allegations of child abuse, neglect, or abandonment when necessary. An order for temporary investigative authority may not be issued for a period longer than 90 days. The petition must be served as provided in 41-3-422.

**History:** En. Sec. 7, Ch. 281, L. 2001.

**41-3-434. Stipulations.** Subject to approval by the court, the parties may stipulate to any of the following:

(1) the child meets the definition of a youth in need of care by the preponderance of the evidence;

(2) a treatment plan, if the child has been adjudicated a youth in need of care;

(3) the disposition; or

(4) extension of the timeframes contained in this chapter, except for the timeframe contained in 41-3-445.

**History:** En. Sec. 14, Ch. 281, L. 2001; en. Sec. 32, Ch. 311, L. 2001; amd. Sec. 10, Ch. 504, L. 2003.

**41-3-435 and 41-3-436 reserved.**

**41-3-437. Adjudication — temporary disposition — findings — order.** (1) Upon the filing of an appropriate petition, an adjudicatory hearing must be held within 90 days of a show cause hearing under 41-3-432. Adjudication may take place at the show cause hearing if the requirements of subsection (2) are met or may be made by prior stipulation of the parties pursuant to 41-3-434 and order of the court. Exceptions to the time limit may be allowed only in cases involving newly discovered evidence, unavoidable delays, stipulation by the parties pursuant to 41-3-434, and unforeseen personal emergencies.

(2) The court may make an adjudication on a petition under 41-3-422 if the court determines by a preponderance of the evidence, except as provided in the federal Indian Child Welfare Act, if applicable, that the child is a youth in need of care. Except as otherwise provided in this part, the Montana Rules of Civil Procedure and the Montana Rules of Evidence apply to adjudication and to an adjudicatory hearing. Adjudication must determine the nature of the abuse and neglect and establish facts that resulted in state intervention and upon which disposition, case work, court review, and possible termination are based.

(3) The court shall hear evidence regarding the residence of the child, paternity, if in question, the whereabouts of the parents, guardian, or nearest adult relative, and any other matters the court considers relevant in determining the status of the child. Hearsay evidence of statements made by the affected youth is admissible according to the Montana Rules of Evidence.

(4) In a case in which abandonment has been alleged by the county attorney, the attorney general, or an attorney hired by the county, the court shall hear offered evidence, including evidence offered by a person appearing pursuant to 41-3-422(9)(a) or (9)(b), regarding any of the following subjects:

(a) the extent to which the child has been cared for, nurtured, or supported by a person other than the child's parents; and

(b) whether the child was placed or allowed to remain by the parents with another person for the care of the child, and, if so, then the court shall accept evidence regarding:

(i) the intent of the parents in placing the child or allowing the child to remain with that person;

(ii) the continuity of care the person has offered the child by providing permanency or stability in residence, schooling, and activities outside of the home; and

(iii) the circumstances under which the child was placed or allowed to remain with that other person, including:

(A) whether a parent requesting return of the child was previously prevented from doing so as a result of an order issued pursuant to Title 40, chapter 15, part 2, or of a conviction pursuant to 45-5-206; and

(B) whether the child was originally placed with the other person to allow the parent to seek employment or attend school.

(5) In all civil and criminal proceedings relating to abuse or neglect, the privileges related to the examination or treatment of the child do not apply, except the attorney-client privilege granted by 26-1-803 and the mediation privilege granted by 26-1-813.

(6) (a) If the court determines that the child is not an abused or neglected child, the petition must be dismissed and any order made pursuant to 41-3-427 or 41-3-432 must be vacated.

(b) If the child is adjudicated a youth in need of care, the court shall set a date for a dispositional hearing to be conducted within 20 days, as provided in 41-3-438(1), and order any necessary or required investigations. The court may issue a temporary dispositional order pending the dispositional hearing. The temporary dispositional order may provide for any of the forms of relief listed in 41-3-427(2).

(7) (a) Before making an adjudication, the court may make oral findings, and following the adjudicatory hearing, the court shall make written findings on issues, including but not limited to the following:

(i) which allegations of the petition have been proved or admitted, if any;

(ii) whether there is a legal basis for continued court and department intervention; and

(iii) whether the department has made reasonable efforts to avoid protective placement of the child or to make it possible to safely return the child to the child's home.

(b) The court may order:

(i) terms for visitation, support, and other intrafamily communication pending disposition if the child is to be placed or to remain in temporary out-of-home care prior to disposition;

(ii) examinations, evaluations, or counseling of the child or parents in preparation for the disposition hearing that does not require an expenditure of money by the department unless the court finds after notice and a hearing that the expenditure is reasonable and that resources are available for payment. The department is the payor of last resort after all family, insurance, and other resources have been examined.

(iii) the department to evaluate the noncustodial parent or relatives as possible caretakers, if not already done;

(iv) the perpetrator of the alleged child abuse or neglect to be removed from the home to allow the child to remain in the home; and

(v) the department to continue efforts to notify noncustodial parents.

(8) If a proceeding under this chapter involves an Indian child and is subject to the federal Indian Child Welfare Act, a qualified expert witness is required to testify that the continued



custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

**History:** En. 10-1312 by Sec. 8, Ch. 328, L. 1974; R.C.M. 1947, 10-1312; amd. Sec. 19, Ch. 543, L. 1979; amd. Sec. 5, Ch. 567, L. 1979; amd. Sec. 5, Ch. 659, L. 1985; amd. Sec. 14, Ch. 458, L. 1995; amd. Sec. 8, Ch. 516, L. 1997; amd. Sec. 3, Ch. 481, L. 1999; amd. Sec. 10, Ch. 566, L. 1999; amd. Sec. 3, Ch. 194, L. 2001; amd. Sec. 9, Ch. 281, L. 2001; amd. Sec. 10, Ch. 311, L. 2001; Sec. 41-3-404, MCA 1999; redes. 41-3-437 by Sec. 17(2), Ch. 281, L. 2001; amd. Sec. 11, Ch. 504, L. 2003; amd. Sec. 55, Ch. 130, L. 2005; amd. Sec. 4, Ch. 349, L. 2005; amd. Sec. 4, Ch. 210, L. 2009.

**41-3-438. Disposition — hearing — order.** (1) Unless a petition is dismissed or unless otherwise stipulated by the parties pursuant to 41-3-434 or ordered by the court, a dispositional hearing must be held on every petition filed under this chapter within 20 days after an adjudicatory order has been entered under 41-3-437. Exceptions to the time limit may be allowed only in cases involving newly discovered evidence, unavoidable delays, stipulation by the parties pursuant to 41-3-434, and unforeseen personal emergencies.

(2) (a) A dispositional order must be made after a dispositional hearing that is separate from the adjudicatory hearing under 41-3-437. The hearing process must be scheduled and structured so that dispositional issues are specifically addressed apart from adjudicatory issues. Hearsay evidence is admissible at the dispositional hearing.

(b) A dispositional hearing may follow an adjudicatory hearing in a bifurcated manner immediately after the adjudicatory phase of the proceedings if:

(i) all required reports are available and have been received by all parties or their attorneys at least 5 working days in advance of the hearing; and

(ii) the judge has an opportunity to review the reports after the adjudication.

(c) The dispositional hearing may be held prior to the entry of written findings required by 41-3-437.

(3) If a child is found to be a youth in need of care under 41-3-437, the court may enter its judgment, making any of the following dispositions to protect the welfare of the child:

(a) permit the child to remain with the child's custodial parent or guardian, subject to those conditions and limitations the court may prescribe;

(b) order the department to evaluate the noncustodial parent as a possible caretaker;

(c) order the temporary placement of the child with the noncustodial parent, superseding any existing custodial order, and keep the proceeding open pending completion by the custodial parent of any treatment plan ordered pursuant to 41-3-443;

(d) order the placement of the child with the noncustodial parent, superseding any existing custodial order, and dismiss the proceeding with no further obligation on the part of the department to provide services to the parent with whom the child is placed or to work toward reunification of the child with the parent or guardian from whom the child was removed in the initial proceeding;

(e) grant an order of limited emancipation to a child who is 16 years of age or older, as provided in 41-1-503;

(f) transfer temporary legal custody to any of the following:

(i) the department;

(ii) a licensed child-placing agency that is willing and able to assume responsibility for the education, care, and maintenance of the child and that is licensed or otherwise authorized by law to receive and provide care of the child; or

(iii) a nonparent relative or other individual who has been evaluated and recommended by the department or a licensed child-placing agency designated by the court and who is found by the court to be qualified to receive and care for the child;

(g) order a party to the action to do what is necessary to give effect to the final disposition, including undertaking medical and psychological evaluations, treatment, and counseling that does not require an expenditure of money by the department unless the department consents and informs the court that resources are available for payment. The department is the payor of last resort after all family, insurance, and other resources have been examined.

(h) order further care and treatment as the court considers in the best interests of the child that does not require an expenditure of money by the department unless the department consents and informs the court that resources are available for the proposed care and treatment.

The department is the payor of last resort after all family, insurance, and other resources have been examined pursuant to 41-3-446.

(4) (a) If the court awards temporary legal custody of an abandoned child other than to the department or to a noncustodial parent, the court shall award temporary legal custody of the child to a member of the child's extended family, including adult siblings, grandparents, great-grandparents, aunts, and uncles, if:

(i) placement of the abandoned child with the extended family member is in the best interests of the child;

(ii) the extended family member requests that the child be placed with the family member;

(iii) the extended family member is able to offer continuity of care for the child by providing permanency or stability in residence, schooling, and activities outside of the home; and

(iv) the extended family member is found by the court to be qualified to receive and care for the child.

(b) If more than one extended family member satisfies the requirements of subsection (4)(a), the court may award custody to the extended family member who can best meet the child's needs.

(c) If a member of the child's extended family, including an adult sibling, grandparent, great-grandparent, aunt, or uncle, has requested that custody be awarded to that family member, the department shall investigate and determine if awarding custody to the family member is in the best interests of the child. The department shall provide the reasons for any denial to the court. If the court accepts the department's custody recommendation, the court shall inform any denied family member of the reasons for the denial to the extent that confidentiality laws allow. The court shall include the reasons for denial in the court order if the family member who is denied temporary legal custody requests it to be included.

(5) If reasonable efforts have been made to prevent removal of a child from the home or to return a child to the child's home but continuation of the efforts is determined by the court to be inconsistent with permanency for the child, the department shall make reasonable efforts to place the child in a timely manner in accordance with a permanent plan and to complete whatever steps are necessary to finalize the permanent placement of the child.

(6) If the court finds that reasonable efforts are not necessary pursuant to 41-3-442(1) or subsection (5) of this section, a permanency hearing must be held within 30 days of that determination and reasonable efforts must be made to place the child in a timely manner in accordance with the permanency plan and to complete whatever steps are necessary to finalize the permanent placement of the child.

(7) If the time limitations of this section are not met, the court shall review the reasons for the failure and order an appropriate remedy that considers the best interests of the child.

**History:** En. 10-1314 by Sec. 10, Ch. 328, L. 1974; R.C.M. 1947, 10-1314; amd. Sec. 7, Ch. 567, L. 1979; amd. Sec. 170, Ch. 575, L. 1981; amd. Sec. 3, Ch. 564, L. 1983; amd. Sec. 6, Ch. 659, L. 1985; amd. Sec. 11, Ch. 609, L. 1987; amd. Sec. 2, Ch. 696, L. 1991; amd. Sec. 2, Ch. 362, L. 1993; amd. Sec. 15, Ch. 458, L. 1995; amd. Sec. 170, Ch. 546, L. 1995; amd. Sec. 9, Ch. 516, L. 1997; amd. Sec. 2, Ch. 428, L. 1999; amd. Sec. 11, Ch. 566, L. 1999; amd. Sec. 4, Ch. 194, L. 2001; amd. Secs. 10, 18(3), Ch. 281, L. 2001; amd. Sec. 11, Ch. 311, L. 2001; Sec. 41-3-406, MCA 1999; red. 41-3-438 by Sec. 17(2), Ch. 281, L. 2001; amd. Sec. 12, Ch. 504, L. 2003; amd. Sec. 1, Ch. 178, L. 2005; amd. Sec. 5, Ch. 382, L. 2005; amd. Sec. 1, Ch. 73, L. 2007; amd. Sec. 6, Ch. 179, L. 2009; amd. Sec. 5, Ch. 210, L. 2009.

**41-3-439. Department to give placement priority to extended family member of abandoned child.** (1) If the department has received temporary legal custody of an abandoned child pursuant to 41-3-438 or permanent legal custody pursuant to 41-3-607, the department shall give priority to a member of the child's extended family, including adult siblings, grandparents, great-grandparents, aunts, and uncles, in determining the person or persons with whom the abandoned child should be placed if:

(a) placement with the extended family member is in the best interests of the abandoned child;

(b) the extended family member has requested that the abandoned child be placed with the family member;

(c) the extended family member is able to offer the child continuity of care by providing permanency or stability in residence, schooling, and activities outside of the home; and

(d) the department has determined that the extended family member is qualified to receive and care for the abandoned child.

(2) If more than one extended family member of the abandoned child has requested that the child be placed with the family member and all are qualified to receive and care for the child, the department may determine which extended family member to place the abandoned child with in the same manner as provided for in 41-3-438(4).

(3) This part does not affect the department's ability to assess the appropriateness of placement of the child with a noncustodial parent when abandonment has been found against only one parent.

(4) If a member of the child's extended family, including an adult sibling, grandparent, great-grandparent, aunt, or uncle, has requested that the child be placed with that family member and the department denies the request, the department shall give that family member a written statement of the reasons for the denial to the extent that confidentiality laws allow.

**History:** En. Sec. 6, Ch. 194, L. 2001; amd. Sec. 80, Ch. 114, L. 2003; amd. Sec. 2, Ch. 178, L. 2005; amd. Sec. 6, Ch. 210, L. 2009.

**41-3-440. Limitation on placement.** Except as provided in 41-3-301(1) and in the absence of a dispute between the parties to the action regarding the appropriate placement, the department shall determine the appropriate placement for a child alleged to be or adjudicated as a youth in need of care. The court shall settle any dispute between the parties to an action regarding the appropriate placement. The child may not be placed in a youth assessment center, youth detention facility, detention center, or other facility intended or used for the confinement of adults or youth accused or convicted of criminal offenses.

**History:** En. Sec. 30, Ch. 311, L. 2001.

**41-3-441 reserved.**

**41-3-442. Temporary legal custody.** (1) If a child is found to be a youth in need of care under 41-3-437, the court may grant temporary legal custody under 41-3-438 if the court determines by a preponderance of the evidence that:

(a) dismissing the petition would create a substantial risk of harm to the child or would be a detriment to the child's physical or psychological well-being; and

(b) unless there is a finding that reasonable efforts are not required pursuant to 41-3-423, reasonable services have been provided to the parent or guardian to prevent the removal of the child from the home or to make it possible for the child to safely return home.

(2) An order for temporary legal custody may be in effect for no longer than 6 months.

(3) The granting of temporary legal custody to the department allows the department to place a child in care provided by a custodial or noncustodial parent, kinship foster home, youth foster home, youth group home, youth shelter care facility, or institution.

(4) Before the expiration of the order for temporary legal custody, the county attorney, the attorney general, or an attorney hired by the county shall petition for one of the following:

(a) an extension of temporary legal custody, not to exceed 6 months, upon a showing that:

(i) additional time is necessary for the parent or guardian to successfully complete a treatment plan; or

(ii) continuation of temporary legal custody is necessary because of the child's individual circumstances;

(b) continued temporary placement of the child with the noncustodial parent, superseding any existing custodial order;

(c) termination of the parent-child legal relationship and:

(i) permanent legal custody with the right of adoption;

(ii) permanent placement of the child with the noncustodial parent, superseding any existing custodial order; or

(iii) appointment of a guardian pursuant to 41-3-607;

(d) long-term custody when the child is in a planned permanent living arrangement pursuant to 41-3-445;

(e) appointment of a guardian pursuant to 41-3-444; or

(f) dismissal.

(5) The court may continue an order for temporary legal custody pending a hearing on a petition provided for in subsection (2).

(6) If an extension of temporary legal custody is granted to the department, the court shall state the reasons why the child was not returned home and the conditions upon which the child may be returned home and shall specifically find that an extension is in the child's best interests.

(7) If the time limitations of this section are not met, the court shall review the reasons for the failure and order an appropriate remedy that considers the best interests of the child.

(8) In implementing the policy of this section, the child's health and safety are of paramount concern.

(9) A petition requesting temporary legal custody must be served as provided in 41-3-422.

**History:** En. Sec. 11, Ch. 281, L. 2001; amd. Sec. 13, Ch. 504, L. 2003; amd. Sec. 2, Ch. 73, L. 2007.

**41-3-443. Treatment plan — contents — changes.** (1) The court may order a treatment plan if:

(a) the parent or parents admit the allegations of an abuse and neglect petition;

(b) the parent or parents stipulate to the allegations of abuse or neglect pursuant to 41-3-434; or

(c) the court has made an adjudication under 41-3-437 that the child is a youth in need of care.

(2) Every treatment plan must contain the following information:

(a) the identification of the problems or conditions that resulted in the abuse or neglect of a child;

(b) the treatment goals and objectives for each condition or requirement established in the plan. If the child has been removed from the home, the treatment plan must include but is not limited to the conditions or requirements that must be established for the safe return of the child to the family.

(c) the projected time necessary to complete each of the treatment objectives;

(d) the specific treatment objectives that clearly identify the separate roles and responsibilities of all parties addressed in the treatment plan; and

(e) the signature of the parent or parents or guardian, unless the plan is ordered by the court.

(3) A treatment plan may include but is not limited to any of the following remedies, requirements, or conditions:

(a) the right of entry into the child's home for the purpose of assessing compliance with the terms and conditions of a treatment plan;

(b) the requirement of either the child or the child's parent or guardian to obtain medical or psychiatric diagnosis and treatment through a physician or psychiatrist licensed in the state of Montana;

(c) the requirement of either the child or the child's parent or guardian to obtain psychological treatment or counseling;

(d) the requirement of either the child or the child's parent or guardian to obtain and follow through with alcohol or substance abuse evaluation and counseling, if necessary;

(e) the requirement that either the child or the child's parent or guardian be restricted from associating with or contacting any individual who may be the subject of a department investigation;

(f) the requirement that the child be placed in temporary medical or out-of-home care;

(g) the requirement that the parent, guardian, or other person having physical or legal custody furnish services that the court may designate.

(4) A treatment plan may not be altered, amended, continued, or terminated without the approval of the parent or parents or guardian pursuant to a stipulation and order or order of the court.

(5) A treatment plan must contain a notice provision advising parents:

(a) of timelines for hearings and determinations required under this chapter;

(b) that the state is required by federal and state laws to hold a permanency hearing to determine the permanent placement of a child no later than 12 months after a judge determines that the child has been abused or neglected or 12 months after the first 60 days that the child has been removed from the child's home;

(c) that if a child has been in foster care for 15 of the last 22 months, state law presumes that termination of parental rights is in the best interests of the child and the state is required to file a petition to terminate parental rights; and

(d) that completion of a treatment plan does not guarantee the return of a child and that completion of the plan without a change in behavior that caused removal in the first instance may result in termination of parental rights.

(6) A treatment plan must be ordered by no later than 30 days after the date of the dispositional hearing held pursuant to 41-3-438, except for good cause shown.

**History:** En. Sec. 15, Ch. 566, L. 1999; amd. Sec. 13, Ch. 281, L. 2001; amd. Sec. 15, Ch. 311, L. 2001; Sec. 41-3-420, MCA 1999; redes. 41-3-443 by Sec. 17(2), Ch. 281, L. 2001; amd. Sec. 6, Ch. 382, L. 2005; amd. Sec. 1, Ch. 131, L. 2017.

**Compiler's Comments**

*2017 Amendment:* Chapter 131 inserted (6) providing a 30-day timeline for ordering a treatment plan. Amendment effective October 1, 2017.

**41-3-444. Abuse and neglect proceedings — appointment of guardian — financial subsidies.** (1) The court may, upon the petition of the department or guardian ad litem, enter an order appointing a guardian for a child who has been placed in the temporary or permanent custody of the department pursuant to 41-3-438, 41-3-445, or 41-3-607. The guardianship may be subsidized by the department under subsection (9) if the guardianship meets the department's criteria, or the guardianship may be nonsubsidized.

(2) The court may appoint a guardian for a child pursuant to this section if the following facts are found by the court:

(a) the department has given its written consent to the appointment of the guardian, whether the guardianship is to be subsidized or not;

(b) if the guardianship is to be subsidized, the department has given its written consent after the department has considered initiating or continuing financial subsidies pursuant to subsection (9);

(c) the child has been adjudicated a youth in need of care;

(d) the department has made reasonable efforts to reunite the parent and child, further efforts to reunite the parent and child by the department would likely be unproductive, and reunification of the parent and child would be contrary to the best interests of the child;

(e) the child has lived with the potential guardian in a family setting and the potential guardian is committed to providing a long-term relationship with the child;

(f) it is in the best interests of the child to remain or be placed with the potential guardian;

(g) either termination of parental rights to the child is not in the child's best interests or parental rights to the child have been terminated, but adoption is not in the child's best interests; and

(h) if the child concerning whom the petition for guardianship has been filed is an Indian child, as defined in the Indian Child Welfare Act, 25 U.S.C. 1901, et seq., the child's tribe has received notification from the state of the initiation of the proceedings.

(3) In the case of an abandoned child, the court may give priority to a member of the abandoned child's extended family, including adult siblings, grandparents, great-grandparents, aunts, and uncles, if placement with the extended family member is in the best interests of the child. If more than one extended family member has requested to be appointed as guardian, the court may determine which extended family member to appoint in the same manner provided for in 41-3-438(4).

(4) The entry of a decree of guardianship pursuant to this section terminates the custody of the department and the involvement of the department with the child and the child's parents except for the department's provision of a financial subsidy, if any, pursuant to subsection (9).

(5) A guardian appointed under this section may exercise the powers and has the duties provided in 72-5-231.

(6) The court may revoke a guardianship ordered pursuant to this section if the court finds, after hearing on a petition for removal of the child's guardian, that continuation of the guardianship is not in the best interests of the child. Notice of hearing on the petition must be provided by the moving party to the child's lawful guardian, the department, any court-appointed guardian ad litem, the child's parent if the rights of the parent have not been terminated, and other persons directly interested in the welfare of the child.



(7) A guardian may petition the court for permission to resign the guardianship. A petition may include a request for appointment of a successor guardian.

(8) After notice and hearing on a petition for removal or permission to resign, the court may appoint a successor guardian or may terminate the guardianship and restore temporary legal custody to the department pursuant to 41-3-438.

(9) The department may provide a financial subsidy to a guardian appointed pursuant to this section if the guardianship meets the department's criteria and if the department determines that a subsidy is in the best interests of the child. The amount of the subsidy must be determined by the department.

(10) This section does not apply to guardians appointed pursuant to Title 72, chapter 5.

**History:** En. Sec. 4, Ch. 428, L. 1999; amd. Sec. 5, Ch. 194, L. 2001; amd. Sec. 15, Ch. 281, L. 2001; Sec. 41-3-421, MCA 1999; redes. 41-3-444 by Sec. 17(2), Ch. 281, L. 2001.

**41-3-445. Permanency hearing.** (1) (a) (i) Subject to subsection (1)(b), a permanency hearing must be held by the court or, subject to the approval of the court and absent an objection by a party to the proceeding, by the foster care review committee, as provided in 41-3-115, or the citizen review board, as provided in 41-3-1010:

(A) within 30 days of a determination that reasonable efforts to provide preservation or reunification services are not necessary under 41-3-423, 41-3-438(6), or 41-3-442(1); or

(B) no later than 12 months after the initial court finding that the child has been subjected to abuse or neglect or 12 months after the child's first 60 days of removal from the home, whichever comes first.

(ii) Within 12 months of a hearing under subsection (1)(a)(i)(B) and every 12 months thereafter until the child is permanently placed in either an adoptive or a guardianship placement, the court or the court-approved entity holding the permanency hearing shall conduct a hearing and the court shall issue a finding as to whether the department has made reasonable efforts to finalize the permanency plan for the child.

(b) A permanency hearing is not required if the proceeding has been dismissed, the child was not removed from the home, the child has been returned to the child's parent or guardian, or the child has been legally adopted or appointed a legal guardian.

(c) The permanency hearing may be combined with a hearing that is required in other sections of this part or with a review held pursuant to 41-3-115 or 41-3-1010 if held within the applicable time limits. If a permanency hearing is combined with another hearing or a review, the requirements of the court related to the disposition of the other hearing or review must be met in addition to the requirements of this section.

(d) The court-approved entity conducting the permanency hearing may elect to hold joint or separate reviews for groups of siblings, but the court shall issue specific findings for each child.

(2) At least 3 working days prior to the permanency hearing, the department shall submit a report regarding the child to the entity that will be conducting the hearing for review. The report must address the department's efforts to effectuate the permanency plan for the child, address the options for the child's permanent placement, examine the reasons for excluding higher priority options, and set forth the proposed plan to carry out the placement decision, including specific times for achieving the plan.

(3) At least 3 working days prior to the permanency hearing, the guardian ad litem or an attorney or advocate for a parent or guardian may submit an informational report to the entity that will be conducting the hearing for review.

(4) In a permanency hearing, the court or other entity conducting the hearing shall consult, in an age-appropriate manner, with the child regarding the proposed permanency or transition plan for the child.

(5) (a) The court's order must be issued within 20 days after the permanency hearing if the hearing was conducted by the court. If a member of the child's extended family, including an adult sibling, grandparent, great-grandparent, aunt, or uncle, has requested that custody be awarded to that family member or that a prior grant of temporary custody with that family member be made permanent, the department shall investigate and determine if awarding custody to that family member is in the best interests of the child. The department shall provide the reasons for any denial to the court. If the court accepts the department's custody recommendation, the court shall inform any denied family member of the reasons for the denial to the extent that

confidentiality laws allow. The court shall include the reasons for denial in the court order if the family member who is denied custody requests it to be included.

(b) If an entity other than the court conducts the hearing, the entity shall keep minutes of the hearing and the minutes and written recommendations must be provided to the court within 20 days of the hearing.

(c) If an entity other than the court conducts the hearing and the court concurs with the recommendations, the court may adopt the recommendations as findings with no additional hearing required. In this case, the court shall issue written findings within 10 days of receipt of the written recommendations.

(6) The court shall approve a specific permanency plan for the child and make written findings on:

- (a) whether the child has been asked about the desired permanency outcome;
- (b) whether the permanency plan is in the best interests of the child;
- (c) whether the department has made reasonable efforts to effectuate the permanency plan for the individual child;
- (d) whether the department has made reasonable efforts to finalize the plan;
- (e) whether there are compelling reasons why it is not in the best interest of the individual child to:
  - (i) return to the child's home; or
  - (ii) be placed for adoption, with a legal guardian, or with a fit and willing relative; and
  - (f) other necessary steps that the department is required to take to effectuate the terms of the plan.

(7) In its discretion, the court may enter any other order that it determines to be in the best interests of the child that does not conflict with the options provided in subsection (8) and that does not require an expenditure of money by the department unless the court finds after notice and a hearing that the expenditures are reasonable and that resources are available for payment. The department is the payor of last resort after all family, insurance, and other resources have been examined.

(8) Permanency options include:

- (a) reunification of the child with the child's parent or guardian;
- (b) permanent placement of the child with the noncustodial parent, superseding any existing custodial order;
- (c) adoption;
- (d) appointment of a guardian pursuant to 41-3-444; or
- (e) long-term custody if the child is in a planned permanent living arrangement and if it is established by a preponderance of the evidence, which is reflected in specific findings by the court, that:

- (i) the child is being cared for by a fit and willing relative;
- (ii) the child has an emotional or mental handicap that is so severe that the child cannot function in a family setting and the best interests of the child are served by placement in a residential or group setting;

(iii) the child is at least 16 years of age and is participating in an independent living program and that termination of parental rights is not in the best interests of the child;

(iv) the child's parent is incarcerated and circumstances, including placement of the child and continued, frequent contact with the parent, indicate that it would not be in the best interests of the child to terminate parental rights of that parent; or

(v) the child meets the following criteria:

- (A) the child has been adjudicated a youth in need of care;
- (B) the department has made reasonable efforts to reunite the parent and child, further efforts by the department would likely be unproductive, and reunification of the child with the parent or guardian would be contrary to the best interests of the child;

(C) there is a judicial finding that other more permanent placement options for the child have been considered and found to be inappropriate or not to be in the best interests of the child; and

(D) the child has been in a placement in which the foster parent or relative has committed to the long-term care and to a relationship with the child, and it is in the best interests of the child to remain in that placement.

(9) For a child 14 years of age or older, the permanency plan must:

(a) be developed in consultation with the child and in consultation with up to two members of the child's case planning team who are chosen by the child and who are not a foster parent or social worker for the child;

(b) identify one person from the case management team, who is selected by the child, to be designated as the child's advisor and advocate for the application of the reasonable and prudent parenting standard; and

(c) include services that will be needed to transition the child from foster care to adulthood.

(10) A permanency hearing must document the intensive, ongoing, and unsuccessful efforts made by the department to return the child to the child's home or to secure a permanent placement of the child with a relative, legal guardian, or adoptive parent.

(11) The court may terminate a planned permanent living arrangement upon petition of the birth parents or the department if the court finds that the circumstances of the child or family have substantially changed and the best interests of the child are no longer being served.

**History:** En. Sec. 11, Ch. 516, L. 1997; amd. Sec. 3, Ch. 428, L. 1999; amd. Sec. 12, Ch. 566, L. 1999; amd. Sec. 12, Ch. 281, L. 2001; amd. Sec. 13, Ch. 311, L. 2001; Sec. 41-3-412, MCA 1999; reded. 41-3-445 by Sec. 17(2), Ch. 281, L. 2001; amd. Sec. 14, Ch. 504, L. 2003; amd. Sec. 56, Ch. 130, L. 2005; amd. Sec. 3, Ch. 178, L. 2005; amd. Sec. 7, Ch. 382, L. 2005; amd. Sec. 3, Ch. 73, L. 2007; amd. Sec. 8, Ch. 166, L. 2007; amd. Sec. 1, Ch. 182, L. 2017.

#### **Compiler's Comments**

*2017 Amendment:* Chapter 182 inserted (6)(a) regarding child's opinion on permanency outcome; inserted (6)(c) regarding reasonable efforts to effectuate permanency plan; inserted (6)(e) regarding compelling reasons why it is not in the best interest of child to return to child's home or be placed for adoption; inserted (9) and (10) regarding permanency plan development, case management team selection, and transition services for child age 14 or older and documentation of permanency hearing; and made minor changes in style. Amendment effective October 1, 2017.

**41-3-446. Contributions by parents or guardians for youth's care.** (1) If physical or legal custody of the youth is transferred to the department, the court shall examine the financial ability of the youth's parents or guardians to pay a contribution covering all or part of the costs for the care, custody, and treatment of the youth, including the costs of necessary medical, dental, and other health care.

(2) If the court determines that the youth's parents or guardians are financially able to pay a contribution as provided in subsection (1), the court shall order the youth's parent or guardian to pay an amount based on the uniform child support guidelines adopted by the department of public health and human services pursuant to 40-5-209.

(3) (a) Except as provided in subsection (3)(b), contributions ordered under this section and each modification of an existing order are enforceable by immediate or delinquency income withholding, or both, under Title 40, chapter 5, part 4. An order for a contribution that is inconsistent with this section is nevertheless subject to withholding for the payment of the contribution without need for an amendment of the support order or for any further action by the court.

(b) A court-ordered exception from contributions under this section must be in writing and must be included in the order. An exception from the immediate income-withholding requirement may be granted if the court finds that there is:

(i) good cause not to require immediate income withholding; or

(ii) an alternative arrangement between the department and the person who is ordered to pay contributions.

(c) A finding of good cause not to require immediate income withholding must, at a minimum, be based upon:

(i) a written determination and explanation by the court of the reasons why the implementation of immediate income withholding is not in the best interests of the child; and

(ii) proof of timely payment of previously ordered support in cases involving modification of contributions ordered under this section.

(d) An alternative arrangement must:

(i) provide sufficient security to ensure compliance with the arrangement;

(ii) be in writing and be signed by a representative of the department and the person required to make contributions; and

(iii) if approved by the court, be entered into the record of the proceeding.

(4) Upon a showing of a change in the financial ability of the youth's parent or guardian to pay, the court may modify its order for the payment of contributions required under subsection (2).

(5) (a) If the court orders the payment of contributions under this section, the department shall apply to the department of public health and human services for support enforcement services pursuant to Title IV-D of the Social Security Act.

(b) The department of public health and human services may collect and enforce a contribution order under this section by any means available under law, including the remedies provided for in Title 40, chapter 5, parts 2 and 4.

**History:** En. Sec. 10, Ch. 516, L. 1997; amd. Sec. 12, Ch. 311, L. 2001; Sec. 41-3-411, MCA 1999; redes. 41-3-446 by Sec. 17(2), Ch. 281, L. 2001.

## **Part 6**

### **Parent-Child Legal Relationship Termination**

**41-3-601. Short title.** This part may be cited as the "Parent-Child Legal Relationship Termination Act of 1981".

**History:** En. Sec. 1, Ch. 420, L. 1981.

**41-3-602. Purpose.** This part provides procedures and criteria by which the parent-child legal relationship may be terminated by a court if the relationship is not in the best interest of the child. The termination of the parent-child legal relationship provided for in this part is to be used in those situations when there is a determination that a child is abused or neglected, as defined in 41-3-102.

**History:** En. Sec. 2, Ch. 420, L. 1981; amd. Sec. 17, Ch. 458, L. 1995.

**41-3-603. Repealed.** Sec. 17, Ch. 516, L. 1997.

**History:** En. Sec. 3, Ch. 420, L. 1981; amd. Sec. 1, Ch. 1, L. 1983; amd. Sec. 1, Ch. 388, L. 1985; amd. Sec. 18, Ch. 458, L. 1995.

**41-3-604. When petition to terminate parental rights required.** (1) If a child has been in foster care under the physical custody of the state for 15 months of the most recent 22 months, the best interests of the child must be presumed to be served by termination of parental rights. If a child has been in foster care for 15 months of the most recent 22 months or if the court has found that reasonable efforts to preserve or reunify a child with the child's parent or guardian are not required pursuant to 41-3-423, a petition to terminate parental rights must be filed unless:

(a) the child is being cared for by a relative;

(b) the department has not provided the services considered necessary for the safe return of the child to the child's home; or

(c) the department has documented a compelling reason, available for court review, for determining that filing a petition to terminate parental rights would not be in the best interests of the child.

(2) Compelling reasons for not filing a petition to terminate parental rights include but are not limited to the following:

(a) There are insufficient grounds for filing a petition.

(b) There is adequate documentation that termination of parental rights is not the appropriate plan and not in the best interests of the child.

(3) If a child has been in foster care for 15 months of the most recent 22 months and a petition to terminate parental rights regarding that child has not been filed with the court, the department shall file a report to the court or review panel at least 3 days prior to the next hearing or review detailing the reasons that the petition was not filed.

(4) If a hearing results in a finding of abandonment or that the parent has subjected the child to any of the circumstances listed in 41-3-423(2)(a) through (2)(e) and that reasonable efforts to provide preservation or reunification are not necessary, unless there is an exception

made pursuant to subsections (1)(a) through (1)(c) of this section, a petition to terminate parental rights must be filed within 60 days of the finding.

(5) If an exception in subsections (1)(a) through (1)(c) of this section applies, a petition for an extension of temporary legal custody pursuant to 41-3-438, a petition for long-term custody pursuant to 41-3-445, or a petition to dismiss must be filed.

(6) A hearing on a petition for termination of parental rights must be held no later than 45 days from the date the petition was served on the parent or parents, except for good cause shown.

**History:** En. Sec. 14, Ch. 566, L. 1999; amd. Sec. 16, Ch. 311, L. 2001; amd. Sec. 15, Ch. 504, L. 2003; amd. Sec. 2, Ch. 131, L. 2017.

**Compiler's Comments**

*2017 Amendment:* Chapter 131 inserted (6) providing a 45-day timeline for a hearing on a petition for termination of parental rights. Amendment effective October 1, 2017.

**41-3-605 and 41-3-606 reserved.**

**41-3-607. Petition for termination — separate hearing — no jury trial.** (1) Except as provided in Title 41, chapter 3, part 8, the termination of a parent-child legal relationship may be considered only after the filing of a petition pursuant to 41-3-422 alleging the factual grounds for termination pursuant to 41-3-609.

(2) If termination of a parent-child legal relationship is ordered, the court may:

(a) transfer permanent legal custody of the child, with the right to consent to the child's adoption, to:

(i) the department;

(ii) a licensed child-placing agency; or

(iii) another individual who has been approved by the department and has received consent for the transfer of custody from the department or agency that has custody of the child; or

(b) transfer permanent legal custody of the child to the department with the right to petition for appointment of a guardian pursuant to 41-3-444.

(3) If the court does not order termination of the parent-child legal relationship, the child's prior legal status remains in effect until further order of the court.

(4) A guardian ad litem must be appointed to represent the child's best interests in any hearing determining the involuntary termination of the parent-child legal relationship. The guardian ad litem shall continue to represent the child until the child is returned home or placed in an appropriate permanent placement. If a respondent parent is a minor, a guardian ad litem must be appointed to serve the minor parent in addition to any appointed or assigned counsel requested by the minor parent.

(5) There is no right to a jury trial at proceedings held to consider the termination of a parent-child legal relationship.

**History:** En. Sec. 4, Ch. 420, L. 1981; amd. Sec. 2, Ch. 388, L. 1985; amd. Sec. 19, Ch. 458, L. 1995; amd. Sec. 12, Ch. 516, L. 1997; amd. Sec. 5, Ch. 428, L. 1999; amd. Sec. 16, Ch. 566, L. 1999; amd. Sec. 16, Ch. 504, L. 2003; amd. Sec. 33, Ch. 449, L. 2005; amd. Sec. 4, Ch. 388, L. 2017.

**Compiler's Comments**

*2017 Amendment:* Chapter 388 in (1) at beginning inserted exception clause; and made minor changes in style. Amendment effective October 1, 2017.

**41-3-608. Notice.** Before a termination of the parent-child legal relationship may be ordered, the court shall determine whether the provisions of 41-3-428 and 41-3-429 relating to service of process have been followed.

**History:** En. Sec. 5, Ch. 420, L. 1981; amd. Sec. 6, Ch. 83, L. 2001.

**41-3-609. Criteria for termination.** (1) The court may order a termination of the parent-child legal relationship upon a finding established by clear and convincing evidence, except as provided in the federal Indian Child Welfare Act, if applicable, that any of the following circumstances exist:

(a) the parents have relinquished the child pursuant to 42-2-402 and 42-2-412;

(b) the child has been abandoned by the parents;

(c) the parent is convicted of a felony in which sexual intercourse occurred or is a minor adjudicated a delinquent youth because of an act that, if committed by an adult, would be a



felony in which sexual intercourse occurred and, as a result of the sexual intercourse, the child is born;

(d) the parent has subjected a child to any of the circumstances listed in 41-3-423(2)(a) through (2)(e);

(e) the putative father meets any of the criteria listed in 41-3-423(3)(a) through (3)(c); or

(f) the child is an adjudicated youth in need of care and both of the following exist:

(i) an appropriate treatment plan that has been approved by the court has not been complied with by the parents or has not been successful; and

(ii) the conduct or condition of the parents rendering them unfit is unlikely to change within a reasonable time.

(2) In determining whether the conduct or condition of the parents is unlikely to change within a reasonable time, the court shall enter a finding that continuation of the parent-child legal relationship will likely result in continued abuse or neglect or that the conduct or the condition of the parents renders the parents unfit, unable, or unwilling to give the child adequate parental care. In making the determinations, the court shall consider but is not limited to the following:

(a) emotional illness, mental illness, or mental deficiency of the parent of a duration or nature as to render the parent unlikely to care for the ongoing physical, mental, and emotional needs of the child within a reasonable time;

(b) a history of violent behavior by the parent;

(c) excessive use of intoxicating liquor or of a narcotic or dangerous drug that affects the parent's ability to care and provide for the child; and

(d) present judicially ordered long-term confinement of the parent.

(3) In considering any of the factors in subsection (2) in terminating the parent-child relationship, the court shall give primary consideration to the physical, mental, and emotional conditions and needs of the child.

(4) A treatment plan is not required under this part upon a finding by the court following hearing if:

(a) the parent meets the criteria of subsections (1)(a) through (1)(e);

(b) two medical doctors or clinical psychologists submit testimony that the parent cannot assume the role of parent within a reasonable time;

(c) the parent is or will be incarcerated for more than 1 year and reunification of the child with the parent is not in the best interests of the child because of the child's circumstances, including placement options, age, and developmental, cognitive, and psychological needs; or

(d) the death or serious bodily injury, as defined in 45-2-101, of a child caused by abuse or neglect by the parent has occurred.

(5) If a proceeding under this chapter involves an Indian child and is subject to the federal Indian Child Welfare Act, a qualified expert witness is required to testify that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

**History:** En. Sec. 6, Ch. 420, L. 1981; amd. Sec. 7, Ch. 15, L. 1985; amd. Sec. 3, Ch. 388, L. 1985; amd. Sec. 2, Ch. 599, L. 1991; amd. Sec. 3, Ch. 439, L. 1993; (5)En. Sec. 2, Ch. 369, L. 1995; amd. Sec. 20, Ch. 458, L. 1995; amd. Sec. 166, Ch. 480, L. 1997; amd. Sec. 8, Ch. 514, L. 1997; amd. Sec. 13, Ch. 516, L. 1997; amd. Sec. 1, Ch. 395, L. 1999; amd. Sec. 17, Ch. 566, L. 1999; amd. Sec. 1, Ch. 44, L. 2003; amd. Sec. 17, Ch. 504, L. 2003; amd. Sec. 5, Ch. 349, L. 2005.

**41-3-610. Repealed.** Sec. 33, Ch. 504, L. 2003.

**History:** En. Sec. 7, Ch. 420, L. 1981; amd. Sec. 4, Ch. 388, L. 1985.

**41-3-611. Effect of decree.** (1) An order for the termination of the parent-child legal relationship divests the child and the parents of all legal rights, powers, immunities, duties, and obligations with respect to each other as provided in Title 40, chapter 6, part 2, and Title 41, chapter 3, part 2, except the right of the child to inherit from the parent.

(2) An order or decree entered pursuant to this part may not disentitle a child to any benefit due the child from any third person, including but not limited to any Indian tribe, agency, state, or the United States.

(3) After the termination of a parent-child legal relationship, the former parent is neither entitled to any notice of proceedings for the adoption of the child nor has any right to object to the adoption or to participate in any permanent placement proceedings held pursuant to 41-3-445.

**History:** En. Sec. 8, Ch. 420, L. 1981; amd. Sec. 99, Ch. 370, L. 1987; amd. Sec. 21, Ch. 458, L. 1995; amd. Sec. 18, Ch. 504, L. 2003.

**41-3-612. Appeals.** Appeals of court orders or decrees made under this part shall be given precedence on the calendar of the supreme court over all other matters, unless otherwise provided by law.

**History:** En. Sec. 9, Ch. 420, L. 1981.

## **Part 10**

### **Citizen Review Board Program Act**

**41-3-1001. Short title.** This part may be cited as the “Citizen Review Board Program Act”.

**History:** En. Sec. 1, Ch. 610, L. 1993; amd. Sec. 2, Ch. 570, L. 2001.

**41-3-1002. Repealed.** Sec. 14, Ch. 570, L. 2001.

**History:** En. Sec. 2, Ch. 610, L. 1993; amd. Sec. 1, Ch. 386, L. 1995. amd. Sec. 63, Ch. 545, L. 1995.

**41-3-1003. Establishment of board — definition — membership.** (1) As used in this part, “board” means a citizen review board appointed as provided in this section.

(2) Subject to the availability of funds, a district court judge who has indicated in writing an interest in having a board shall establish at least one board in the judicial district to review the case of each child in the custody of the department and in foster care. A board may review a case of a child who remains in or returns to the child’s home and for whom the department retains legal custody.

(3) A board is composed of at least three and not more than five members appointed by the district court judges. Each member appointed must be sworn in by a judge of the judicial district to which the member is appointed to serve.

(4) The board must be appointed according to the following guidelines:

(a) Members of a board must be recruited from groups with special knowledge of or interest in foster care and child welfare.

(b) As far as practicable, members of a board shall represent the various socioeconomic and ethnic groups of the area served. Boards should include tribal representatives whenever possible.

(c) A person employed by the department who has a direct conflict of interest may not serve on a board.

(d) A member of a board must be a resident of one of the counties of the judicial district that the member is appointed to serve.

(5) The members of a board must be willing to serve without compensation.

**History:** En. Sec. 3, Ch. 610, L. 1993; amd. Sec. 2, Ch. 386, L. 1995; amd. Sec. 173, Ch. 546, L. 1995; amd. Sec. 3, Ch. 570, L. 2001.

**41-3-1004. Administration — training — oversight — procedures.** (1) The office of the court administrator, as provided for in 3-1-701, shall, in accordance with the direction of the supreme court, oversee the program established in this part and shall, at the time prescribed by 5-11-210, prepare a report to the governor, the legislature, and the public regarding:

(a) state laws, policies, and practices affecting permanence and appropriate care for children in the custody of the department and other agencies; and

(b) the effectiveness of the boards in bringing about permanence and appropriate care for children in the custody of the department and other agencies.

(2) The office of the court administrator shall:

(a) establish policies and procedures for adoption by the Montana supreme court for the operation of a board, including procedures for removing members;

(b) provide training programs for board members consisting of orientation training of at least 16 hours and a minimum of 8 hours of continuing education training annually;

(c) provide consultation services on request to a board; and

(d) employ staff and provide for support services for boards.

**History:** En. Sec. 4, Ch. 610, L. 1993; amd. Sec. 1, Ch. 21, Sp. L. November 1993; amd. Sec. 3, Ch. 386, L. 1995; amd. Sec. 174, Ch. 546, L. 1995; amd. Sec. 4, Ch. 570, L. 2001.

**41-3-1005. Removal of members — grounds.** Grounds for removal of a member of a board under 41-3-1004 may include but are not limited to the following:

- (1) nonparticipation by a board member;
- (2) a member establishing residence in a judicial district other than the judicial district in which the court the person was appointed to serve is located;
- (3) violation of the confidentiality of information established under 41-3-1007; or
- (4) other cause or grounds as necessary for the administration of the program.

**History:** En. Sec. 5, Ch. 610, L. 1993; amd. Sec. 5, Ch. 570, L. 2001.

**41-3-1006. Terms — officers.** (1) A board member shall serve at the pleasure of the appointing authority. However, if not otherwise released from service on a board, the following provisions apply:

- (a) A member shall serve a term of 2 years, except that if a vacancy occurs, a successor must be appointed to serve the unexpired term.
- (b) A member may be reappointed and continue to serve until a successor is appointed.
- (2) A board shall elect annually from its membership a presiding officer and vice presiding officer to serve in the absence of the presiding officer.

**History:** En. Sec. 6, Ch. 610, L. 1993; amd. Sec. 175, Ch. 546, L. 1995; amd. Sec. 6, Ch. 570, L. 2001.

**41-3-1007. Confidentiality of information — penalty.** (1) Before beginning to serve on a board, each member shall swear or affirm to the court that the member will keep confidential the information reviewed by the board and its actions and recommendations in individual cases.

(2) A member of a board who violates the duty imposed by subsection (1) is guilty of a misdemeanor punishable by a fine not to exceed \$1,000.

**History:** En. Sec. 7, Ch. 610, L. 1993; amd. Sec. 7, Ch. 570, L. 2001.

**41-3-1008. Access to records.** (1) Notwithstanding the provisions of 41-3-205, a board has access to:

- (a) any records of the district court that are pertinent to the case; and
- (b) pertinent electronic and paper records of the department or other agencies that would be admissible in a dispositional hearing conducted pursuant to 41-3-438, including school records and reports of private service providers contained in the records of the department or other agencies.

(2) All requested records not already before the board must be submitted by the department within 10 working days after receipt of a request.

(3) A board may retain a reference copy of case material used by the board to make its recommendation if:

- (a) the material is necessary for the ongoing work of the board with regard to the particular case or to work of the board; and
- (b) the confidentiality of the material is continued and protected in the same manner as other material received from the department. Material retained by the boards is not subject to disclosure under the public records law.

(4) If a board is denied access to requested records, it may request a hearing. The court may require the organization in possession of the records to show cause why the records should not be made available as provided by this section.

**History:** En. Sec. 8, Ch. 610, L. 1993; amd. Sec. 4, Ch. 386, L. 1995; amd. Sec. 176, Ch. 546, L. 1995; amd. Sec. 8, Ch. 570, L. 2001; amd. Sec. 19, Ch. 504, L. 2003.

**41-3-1009. Repealed.** Sec. 14, Ch. 570, L. 2001.

**History:** En. Sec. 9, Ch. 610, L. 1993; amd. Sec. 5, Ch. 386, L. 1995.

**41-3-1010. Review — scope — procedures — immunity.** (1) (a) The board shall review the case of each child in foster care focusing on issues that are germane to the goals of permanency and to accessing appropriate services for parents and children. In evaluating the accessibility, availability, and appropriateness of services, the board may consider:

- (i) the safety of the child;
- (ii) whether an involved agency has selected services specifically relevant to the problems and needs of the child and family;

- (iii) whether caseworkers have diligently provided services;
  - (iv) whether appropriate services have been available to the child and family on a timely basis; and
  - (v) the results of intervention.
- (b) The board may review the case of a child who remains in or returns to the child's home and for whom the department retains legal custody.
- (2) The review must be conducted within the time limit established under the Adoption and Safe Families Act of 1997, 42 U.S.C. 675(5).
- (3) The district court, by rule of the court or on an individual case basis, may relieve the board of its responsibility to review a case if a complete judicial review has taken place within 60 days prior to the next scheduled board review.
- (4) Notice of each review must be sent to the department, any agency directly responsible for the care or placement of the child, the parents and their attorneys, the foster parents, a relative caring for the child, the preadoptive parents, the surrogate parents, the child who is the subject of the review if 12 years of age or older, the child's attorney or the child's assigned attorney, the guardian ad litem, the court-appointed special advocate of the child, the county attorney or deputy attorney general actively involved in the case, the Indian child's tribe if the child is an Indian, and other interested persons who are authorized by the board to receive notice and who are subject to 41-3-205. The notice must include a statement that persons receiving a notice may participate in the hearing and be accompanied by a representative.
- (5) After reviewing each case, the board shall prepare written findings and recommendations with respect to:
- (a) whether reasonable efforts were made prior to the placement to prevent or to eliminate the need for removal of the child from the home and to make it possible for the child to be returned home;
  - (b) the continuing need for the placement and the appropriateness and safety of the placement;
  - (c) compliance with the case plan;
  - (d) the progress that has been made toward alleviating the need for placement;
  - (e) a likely date by which the child may be returned home or by which a permanent placement will be finalized;
  - (f) other problems, solutions, or alternatives that the board determines should be explored; and
  - (g) whether the district court should appoint an attorney or other person as special advocate to represent or appear on behalf of the child pursuant to 41-3-112.
- (6) Whenever a member of a board has a potential conflict of interest in a case being reviewed, the member shall declare to the board the nature of the potential conflict prior to participating in the case review. The following provisions apply:
- (a) The declaration of the member must be recorded in the official records of the board.
  - (b) If, in the judgment of the majority of the board, the potential conflict of interest may prevent the member from fairly and objectively reviewing the case, the board may remove the member from participation in the review.
- (7) The board shall keep accurate records and retain the records on file. The board shall send copies of its written findings and recommendations to the district court, the department, and other participants in the review unless prohibited by the confidentiality provisions of 41-3-205.
- (8) The board may hold joint or separate reviews for groups of siblings, but the court shall issue specific findings for each child.
- (9) The board may disclose to parents and their attorneys, foster parents, children who are 12 years of age or older, children's attorneys, and other persons authorized by the board to participate in the case review the records disclosed to the board pursuant to 41-3-1008. Before participating in a board case review, each participant, other than parents and children, shall swear or affirm to the board that the participant will keep confidential the information disclosed by the board in the case review and will disclose it only as authorized by law.
- (10) A person who serves on a board in a volunteer capacity, as provided in this part, is considered an agent of the judiciary and is entitled to immunity from suit as provided in 2-9-112.

(11) The board may, at the discretion of the court and absent an objection by a party to the proceeding, conduct permanency hearings as provided in 41-3-445.

**History:** En. Sec. 10, Ch. 610, L. 1993; amd. Sec. 6, Ch. 386, L. 1995; amd. Sec. 177, Ch. 546, L. 1995; amd. Sec. 9, Ch. 570, L. 2001; amd. Sec. 8, Ch. 382, L. 2005; amd. Sec. 34, Ch. 449, L. 2005.

**41-3-1011. Board recommendations concerning foster care services and policy considerations.** In addition to reviewing individual cases of children in foster care, a board may make recommendations to the district court and to the department concerning foster care services, policies, procedures, and laws. Recommendations must be in writing and must be provided to the department.

**History:** En. Sec. 11, Ch. 610, L. 1993; amd. Sec. 7, Ch. 386, L. 1995; amd. Sec. 178, Ch. 546, L. 1995; amd. Sec. 10, Ch. 570, L. 2001.

**41-3-1012. Presence of employees and participants at reviews and deliberations of board.** (1) Unless excused from doing so by the board, the department and any other agency directly responsible for the care and placement of the child shall require the presence of employees having knowledge of the case at board reviews.

(2) The board may require the presence of specific employees of the department or any other agency or other persons at board reviews. If an employee fails to be present at the review, the board may request a court order. The court may require the employee to be present and show cause why the employee should not be compelled to appear before the board.

(3) The persons who are allowed to be present at a review include representatives of the department or any agency directly responsible for the care or placement of the child, the parents and their attorneys, the foster parents, a relative caring for the child, the preadoptive parents, the surrogate parents, the child who is the subject of the review if 12 years of age or older, the child's attorney or the child's assigned attorney, the guardian ad litem, the court-appointed special advocate of the child, the county attorney or deputy attorney general actively involved in the case, a representative of the child's tribe if the child is an Indian, and other interested persons subject to 41-3-205 and authorized to be present by the board.

(4) Deliberations concerning the recommendations that will be made by the board must be open to all present at the review, except that the presiding officer may close all or part of a deliberation if there has been a threat of a reprisal made by someone who will attend the review or if confidentiality laws preclude open deliberations.

(5) For the purposes of bringing criminal charges against a person who threatens a board member or staff, the board members and board staff must be considered public servants as defined in 45-2-101.

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

(a) "Close", with regard to deliberations, means that only the board members and board staff may remain in attendance.

(b) "Open" means that review participants may remain in attendance during the deliberations to observe and be available for questions from the board.

(c) "Presence" includes telephone participation, except that a representative of the department knowledgeable about the case at the time of the review must be physically present if required.

**History:** En. Sec. 12, Ch. 610, L. 1993; amd. Sec. 179, Ch. 546, L. 1995; amd. Sec. 11, Ch. 570, L. 2001; amd. Sec. 35, Ch. 449, L. 2005.

**41-3-1013. Court review of findings and recommendations of board.** (1) Upon receipt of findings and recommendations from the board, the district court shall:

(a) review the findings and recommendations of the board within 20 days. If the district court finds it appropriate, the district court may on its own motion schedule a review hearing.

(b) cause the findings and recommendations of the board to become part of the district court file; and

(c) give the board written notice if the district court modifies, alters, or takes action on a case as a result of the board's recommendations or refuses to take action on the board's recommendations in any case.

(2) Upon receipt of findings and recommendations from the board, the department shall:



(a) review the findings and recommendations of the board within 10 days. The recommendations must be implemented and the case plan must be modified as the department considers appropriate and as resources permit.

(b) give the board written notice as soon as practicable, but in no case later than 17 days after receipt of the findings and recommendations, of any reasons why the department objects to or is not able to implement the recommendations; and

(c) include the findings and recommendations of the board as part of the case file of the department.

(3) The court may schedule a hearing on any recommendations that the department objects to or contends that it is unable to implement.

(4) Upon its own motion or upon the request of the department, the board, or any interested party, the district court may appoint an attorney or other person as special advocate to represent or appear on behalf of the child. Subject to the direction of the district court, the court-appointed special advocate shall:

(a) investigate all relevant information about the case;

(b) advocate for the child, ensuring that all relevant facts are brought before the court;

(c) facilitate and negotiate to ensure that the district court, the department, and the child's attorney fulfill their obligations to the child in a timely fashion; and

(d) monitor all district court orders to ensure compliance and to bring to the district court's attention any change in circumstance that may require modification of the district court's order.

**History:** En. Sec. 13, Ch. 610, L. 1993; amd. Sec. 8, Ch. 386, L. 1995; amd. Sec. 180, Ch. 546, L. 1995; amd. Sec. 12, Ch. 570, L. 2001.

**41-3-1014. Repealed.** Sec. 16, Ch. 281, L. 2001; sec. 33, Ch. 311, L. 2001; sec. 14, Ch. 570, L. 2001.

**History:** En. Sec. 14, Ch. 610, L. 1993; amd. Sec. 9, Ch. 386, L. 1995; amd. Sec. 181, Ch. 546, L. 1995.

## CHAPTER 4 INTERSTATE PLACEMENT OF CHILDREN

### Part 1 Text of Compact

**41-4-101. Enactment — provisions.** The Interstate Compact on the Placement of Children is hereby enacted into law and entered into with all other jurisdictions legally joining in the compact in the form substantially as follows:

#### Article I. Purpose and Policy

It is the purpose and policy of the party states to cooperate with each other in the interstate placement of children to the end that:

(1) each child requiring placement shall receive the maximum opportunity to be placed in a suitable environment and with persons or institutions having appropriate qualifications and facilities to provide a necessary and desirable degree and type of care;

(2) the appropriate authorities in a state where a child is to be placed may have full opportunity to ascertain the circumstances of the proposed placement, thereby promoting full compliance with applicable requirements for the protection of the child;

(3) the proper authorities of the state from which the placement is made may obtain the most complete information on the basis of which to evaluate a projected placement before it is made;

(4) appropriate jurisdictional arrangements for the care of children will be promoted.

#### Article II. Definitions

As used in this compact:

(1) "child" means a person who, by reason of minority, is legally subject to parental, guardianship, or similar control;

(2) "sending agency" means a party state, officer or employee thereof; a subdivision of a party state or officer or employee thereof; a court of a party state; a person, corporation, association,

charitable agency, or other entity which sends, brings, or causes to be sent or brought any child to another party state;

(3) “receiving state” means the state to which a child is sent, brought, or caused to be sent or brought, whether by public authorities or private persons or agencies and whether for placement with state or local public authorities or for placement with private agencies or persons;

(4) “placement” means the arrangement for the care of a child in a family free or boarding home or in a child-caring agency or institution but does not include any institution caring for the mentally ill, mentally defective, or epileptic or any institution primarily educational in character and any hospital or other medical facility.

### Article III. Conditions for Placement

(1) No sending agency shall send, bring, or cause to be sent or brought into any other party state any child for placement in foster care or as a preliminary to a possible adoption unless the sending agency shall comply with each and every requirement set forth in this article and with the applicable laws of the receiving state governing the placement of children therein.

(2) Prior to sending, bringing, or causing any child to be sent or brought into a receiving state for placement in foster care or as a preliminary to a possible adoption, the sending agency shall furnish the appropriate public authorities in the receiving state written notice of the intention to send, bring, or place the child in the receiving state. The notice shall contain:

- (a) the name, date, and place of birth of the child;
- (b) the identity and address or addresses of the parents or legal guardian;
- (c) the name and address of the person, agency, or institution to or with which the sending agency proposes to send, bring, or place the child;
- (d) a full statement of the reasons for such proposed action and evidence of the authority pursuant to which the placement is proposed to be made.

(3) Any public officer or agency in a receiving state which is in receipt of a notice pursuant to (2) of this article may request of the sending agency or any other appropriate officer or agency of or in the sending agency’s state and shall be entitled to receive therefrom such supporting or additional information as it may deem necessary under the circumstances to carry out the purpose and policy of this compact.

(4) The child shall not be sent, brought, or caused to be sent or brought into the receiving state until the appropriate public authorities in the receiving state shall notify the sending agency, in writing, to the effect that the proposed placement does not appear to be contrary to the interests of the child.

### Article IV. Penalty for Illegal Placement

The sending, bringing, or causing to be sent or brought into any receiving state of a child in violation of the terms of this compact shall constitute a violation of the laws respecting the placement of children of both the state in which the sending agency is located or from which it sends or brings the child and of the receiving state. Such violation may be punished or subjected to penalty in either jurisdiction in accordance with its laws. In addition to liability for any such punishment or penalty, any such violation shall constitute full and sufficient grounds for the suspension or revocation of any license, permit, or other legal authorization held by the sending agency which empowers or allows it to place or care for children.

### Article V. Retention of Jurisdiction

(1) The sending agency shall retain jurisdiction over the child sufficient to determine all matters in relation to the custody, supervision, care, treatment, and disposition of the child which it would have had if the child had remained in the sending agency’s state, until the child is adopted, reaches majority, becomes self-supporting, or is discharged with the concurrence of the appropriate authority in the receiving state. Such jurisdiction shall also include the power to effect or cause the return of the child or the child’s transfer to another location and custody pursuant to law. The sending agency shall continue to have financial responsibility for support and maintenance of the child during the period of the placement. Nothing contained herein shall defeat a claim of jurisdiction by receiving state sufficient to deal with an act of delinquency or crime committed therein.

(2) When the sending agency is a public agency, it may enter into an agreement with an authorized public or private agency in the receiving state providing for the performance of one or more services in respect of such case by the latter as agent for the sending agency.

(3) Nothing in this compact shall be construed to prevent a private charitable agency authorized to place children in the receiving state from performing services or acting as agent in that state for a private charitable agency of the sending state, nor to prevent the agency in the receiving state from discharging financial responsibility for the support and maintenance of a child who has been placed on behalf of the sending agency without relieving the responsibility set forth in (1) hereof.

#### Article VI. Institutional Care of Delinquent Children

A child adjudicated delinquent may be placed in an institution in another party jurisdiction pursuant to this compact, but no such placement shall be made unless the child is given a court hearing on notice to the parent or guardian with opportunity to be heard prior to the parent's or guardian's child being sent to such other party jurisdiction for institutional care and the court finds that:

(1) equivalent facilities for the child are not available in the sending agency's jurisdiction; and

(2) institutional care in the other jurisdiction is in the best interest of the child and will not produce undue hardship.

#### Article VII. Compact Administrator

The executive head of each jurisdiction party to this compact shall designate an officer who shall be general coordinator of activities under this compact in the officer's jurisdiction and who, acting jointly with like officers of other party jurisdictions, shall have power to promulgate rules to carry out more effectively the terms and provisions of this compact.

#### Article VIII. Limitations

This compact shall not apply to:

(1) the sending or bringing of a child into a receiving state by the child's parent, stepparent, grandparent, adult brother or sister, adult uncle or aunt, or his guardian and leaving the child with any such relative or nonagency guardian in the receiving state;

(2) any placement, sending, or bringing of a child into a receiving state pursuant to any other interstate compact to which both the state from which the child is sent or brought and the receiving state are party or to any other agreement between said states which has the force of law.

#### Article IX. Enactment and Withdrawal

This compact shall be open to joinder by any state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and with the consent of congress, the government of Canada or any province thereof. It shall become effective with respect to any such jurisdiction when such jurisdiction has enacted the same into law. Withdrawal from this compact shall be by the enactment of a statute repealing the same, but shall not take effect until 2 years after the effective date of such statute and until written notice of the withdrawal has been given by the withdrawing state to the governor of each other party jurisdiction. Withdrawal of a party state shall not affect the rights, duties, and obligations under this compact of any sending agency therein with respect to a placement made prior to the effective date of withdrawal.

#### Article X. Construction and Severability

The provisions of this compact shall be liberally construed to effectuate the purposes thereof. The provisions of this compact shall be severable, and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full

force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

**History:** En. 10-1401 by Sec. 1, Ch. 376, L. 1975; R.C.M. 1947, 10-1401; amd. Sec. 1596, Ch. 56, L. 2009.

**41-4-102. Financial responsibility.** Financial responsibility for any child placed pursuant to the provisions of the Interstate Compact on the Placement of Children must be determined in accordance with the provisions of Article V of that compact in the first instance. However, in the event of partial or complete default of performance under the compact, the provisions of Title 40, chapter 5, part 10 (Uniform Interstate Family Support Act), 41-3-446, and 52-2-611 also may be invoked.

**History:** En. 10-1402 by Sec. 1, Ch. 376, L. 1975; R.C.M. 1947, 10-1402; amd. Sec. 18, Ch. 543, L. 1979; amd. Sec. 31, Ch. 465, L. 1983; amd. Sec. 9, Ch. 696, L. 1991; amd. Sec. 190, Ch. 42, L. 1997; amd. Sec. 14, Ch. 516, L. 1997.

**41-4-103. Appropriate public authorities defined.** The “appropriate public authorities” as used in Article III of the Interstate Compact on the Placement of Children, with reference to this state, means the department of public health and human services, and the department shall receive and act with reference to notices required by Article III.

**History:** En. 10-1403 by Sec. 1, Ch. 376, L. 1975; R.C.M. 1947, 10-1403; amd. Sec. 11, Ch. 609, L. 1987; amd. Sec. 189, Ch. 546, L. 1995.

**41-4-104. Appropriate authority in the receiving state.** As used in Article V(1) of the Interstate Compact on the Placement of Children, the phrase “appropriate authority in the receiving state”, with reference to this state, means the department of public health and human services.

**History:** En. 10-1404 by Sec. 1, Ch. 376, L. 1975; R.C.M. 1947, 10-1404; amd. Sec. 11, Ch. 609, L. 1987; amd. Sec. 190, Ch. 546, L. 1995.

**41-4-105. Agreements.** The officers and agencies of this state and its subdivisions having authority to place children are hereby empowered to enter into agreements with appropriate officers or agencies of or in other party states pursuant to Article V(2) of the Interstate Compact on the Placement of Children. Any such agreement which contains a financial commitment or imposes a financial obligation on this state or subdivision or agency thereof shall not be binding unless it has the approval in writing of the state treasurer in the case of the state and of the chief local fiscal officer in the case of a subdivision of the state.

**History:** En. 10-1405 by Sec. 1, Ch. 376, L. 1975; R.C.M. 1947, 10-1405.

**41-4-106. Requirements for visitation, inspection, and supervision.** Any requirements for visitation, inspection, or supervision of children, homes, institutions, or other agencies in another party state which may apply under 52-2-113, 52-2-621, and 52-2-622 are considered to be met if performed pursuant to an agreement entered into by appropriate officers or agencies of this state or a subdivision thereof as contemplated by Article V(2) of the Interstate Compact on the Placement of Children.

**History:** En. 10-1406 by Sec. 1, Ch. 376, L. 1975; R.C.M. 1947, 10-1406; amd. Sec. 31, Ch. 465, L. 1983.

**41-4-107. Certain laws not applicable.** The provisions of 52-2-114 shall not apply to placements made pursuant to the Interstate Compact on the Placement of Children.

**History:** En. 10-1407 by Sec. 1, Ch. 376, L. 1975; R.C.M. 1947, 10-1407.

**41-4-108. Court jurisdiction retained.** Any court having jurisdiction to place delinquent children may place such a child in an institution of or in another state pursuant to Article VI of the Interstate Compact on the Placement of Children and shall retain jurisdiction as provided in Article V thereof.

**History:** En. 10-1408 by Sec. 1, Ch. 376, L. 1975; R.C.M. 1947, 10-1408.

**41-4-109. Executive head defined.** As used in Article VII of the Interstate Compact on the Placement of Children, the term “executive head” means the governor. The governor is hereby authorized to appoint a compact administrator in accordance with the terms of said Article VII.

**History:** En. 10-1409 by Sec. 1, Ch. 376, L. 1975; R.C.M. 1947, 10-1409.

## CHAPTER 5 YOUTH COURT ACT

### Part 1 General

**41-5-101. Short title.** This chapter may be cited as the “Montana Youth Court Act”.

**History:** En. 10-1201 by Sec. 1, Ch. 329, L. 1974; R.C.M. 1947, 10-1201.

**41-5-102. Declaration of purpose.** The Montana Youth Court Act must be interpreted and construed to effectuate the following express legislative purposes:

(1) to preserve the unity and welfare of the family whenever possible and to provide for the care, protection, and wholesome mental and physical development of a youth coming within the provisions of the Montana Youth Court Act;

(2) to prevent and reduce youth delinquency through a system that does not seek retribution but that provides:

(a) immediate, consistent, enforceable, and avoidable consequences of youths’ actions;

(b) a program of supervision, care, rehabilitation, detention, competency development, and community protection for youth before they become adult offenders;

(c) in appropriate cases, restitution as ordered by the youth court; and

(d) that, whenever removal from the home is necessary, the youth is entitled to maintain ethnic, cultural, or religious heritage whenever appropriate;

(3) to achieve the purposes of subsections (1) and (2) in a family environment whenever possible, separating the youth from the parents only when necessary for the welfare of the youth or for the safety and protection of the community;

(4) to provide judicial procedures in which the parties are ensured a fair, accurate hearing and recognition and enforcement of their constitutional and statutory rights.

**History:** En. 10-1202 by Sec. 2, Ch. 329, L. 1974; R.C.M. 1947, 10-1202; amd. Sec. 1, Ch. 246, L. 1979; amd. Sec. 3, Ch. 528, L. 1995; amd. Sec. 1, Ch. 537, L. 1999; amd. Sec. 1, Ch. 512, L. 2005.

**41-5-103. Definitions.** As used in the Montana Youth Court Act, unless the context requires otherwise, the following definitions apply:

(1) “Adult” means an individual who is 18 years of age or older.

(2) “Agency” means any entity of state or local government authorized by law to be responsible for the care or rehabilitation of youth.

(3) “Assessment officer” means a person who is authorized by the court to provide initial intake and evaluation for a youth who appears to be in need of intervention or an alleged delinquent youth.

(4) “Commit” means to transfer legal custody of a youth to the department or to the youth court.

(5) “Correctional facility” means a public or private, physically secure residential facility under contract with the department and operated solely for the purpose of housing adjudicated delinquent youth.

(6) “Cost containment pool” means an account from which funds are allocated by the office of court administrator under 41-5-132 to a judicial district that exceeds its annual allocation for juvenile out-of-home placements, programs, and services or to the department for costs incurred under 41-5-1504.

(7) “Cost containment review panel” means the panel established in 41-5-131.

(8) “Court”, when used without further qualification, means the youth court of the district court.

(9) “Criminally convicted youth” means a youth who has been convicted in a district court pursuant to 41-5-206.

(10) (a) “Custodian” means a person, other than a parent or guardian, to whom legal custody of the youth has been given.

(b) The term does not include a person who has only physical custody.

(11) “Delinquent youth” means a youth who is adjudicated under formal proceedings under the Montana Youth Court Act as a youth:



(a) who has committed an offense that, if committed by an adult, would constitute a criminal offense; or

(b) who has been placed on probation as a delinquent youth and who has violated any condition of probation.

(12) “Department” means the department of corrections provided for in 2-15-2301.

(13) (a) “Department records” means information or data, either in written or electronic form, maintained by the department pertaining to youth who are committed under 41-5-1513(1)(b) or who are under parole supervision.

(b) Department records do not include information provided by the department to the department of public health and human services’ management information system or information maintained by the youth court through the office of court administrator.

(14) “Detention” means the holding or temporary placement of a youth in the youth’s home under home arrest or in a facility other than the youth’s own home for:

(a) the purpose of ensuring the continued custody of the youth at any time after the youth is taken into custody and before final disposition of the youth’s case;

(b) contempt of court or violation of a valid court order; or

(c) violation of a youth parole agreement.

(15) “Detention facility” means a physically restricting facility designed to prevent a youth from departing at will. The term includes a youth detention facility, short-term detention center, and regional detention facility.

(16) “Emergency placement” means placement of a youth in a youth care facility for less than 45 days to protect the youth when there is no alternative placement available.

(17) “Family” means the parents, guardians, legal custodians, and siblings or other youth with whom a youth ordinarily lives.

(18) “Final disposition” means the implementation of a court order for the disposition or placement of a youth as provided in 41-5-1422, 41-5-1503, 41-5-1504, 41-5-1512, 41-5-1513, and 41-5-1522 through 41-5-1525.

(19) (a) “Formal youth court records” means information or data, either in written or electronic form, on file with the clerk of district court pertaining to a youth under the jurisdiction of the youth court and includes petitions, motions, other filed pleadings, court findings, verdicts, orders and decrees, and predispositional studies.

(b) The term does not include information provided by the youth court to the department of public health and human services’ management information system.

(20) “Foster home” means a private residence licensed by the department of public health and human services for placement of a youth.

(21) “Guardian” means an adult:

(a) who is responsible for a youth and has the reciprocal rights, duties, and responsibilities with the youth; and

(b) whose status is created and defined by law.

(22) “Habitual truancy” means recorded unexcused absences of 9 or more days or 54 or more parts of a day, whichever is less, in 1 school year.

(23) (a) “Holdover” means a room, office, building, or other place approved by the board of crime control for the temporary detention and supervision of youth in a physically unrestricting setting for a period not to exceed 24 hours while the youth is awaiting a probable cause hearing, release, or transfer to an appropriate detention or shelter care facility.

(b) The term does not include a jail.

(24) (a) “Informal youth court records” means information or data, either in written or electronic form, maintained by youth court probation offices pertaining to a youth under the jurisdiction of the youth court and includes reports of preliminary inquiries, youth assessment materials, medical records, school records, and supervision records of probationers.

(b) The term does not include information provided by the youth court to the department of public health and human services’ management information system.

(25) (a) “Jail” means a facility used for the confinement of adults accused or convicted of criminal offenses. The term includes a lockup or other facility used primarily for the temporary confinement of adults after arrest.

(b) The term does not include a colocated juvenile detention facility that complies with 28 CFR, part 31.

(26) “Judge”, when used without further qualification, means the judge of the youth court.

(27) “Juvenile home arrest officer” means a court-appointed officer administering or supervising juveniles in a program for home arrest, as provided for in Title 46, chapter 18, part 10.

(28) “Law enforcement records” means information or data, either in written or electronic form, maintained by a law enforcement agency, as defined in 7-32-201, pertaining to a youth covered by this chapter.

(29) (a) “Legal custody” means the legal status created by order of a court of competent jurisdiction that gives a person the right and duty to:

- (i) have physical custody of the youth;
- (ii) determine with whom the youth shall live and for what period;
- (iii) protect, train, and discipline the youth; and
- (iv) provide the youth with food, shelter, education, and ordinary medical care.

(b) An individual granted legal custody of a youth shall personally exercise the individual’s rights and duties as guardian unless otherwise authorized by the court entering the order.

(30) “Necessary parties” includes the youth and the youth’s parents, guardian, custodian, or spouse.

(31) (a) “Out-of-home placement” means placement of a youth in a program, facility, or home, other than a custodial parent’s home, for purposes other than preadjudicatory detention.

(b) The term does not include shelter care or emergency placement of less than 45 days.

(32) (a) “Parent” means the natural or adoptive parent.

(b) The term does not include:

- (i) a person whose parental rights have been judicially terminated; or
- (ii) the putative father of an illegitimate youth unless the putative father’s paternity is established by an adjudication or by other clear and convincing proof.

(33) “Probable cause hearing” means the hearing provided for in 41-5-332.

(34) “Regional detention facility” means a youth detention facility established and maintained by two or more counties, as authorized in 41-5-1804.

(35) “Restitution” means payments in cash to the victim or with services to the victim or the general community when these payments are made pursuant to a consent adjustment, consent decree, or other youth court order.

(36) “Running away from home” means that a youth has been reported to have run away from home without the consent of a parent or guardian or a custodian having legal custody of the youth.

(37) “Secure detention facility” means a public or private facility that:

(a) is used for the temporary placement of youth or individuals accused or convicted of criminal offenses or as a sanction for contempt of court, violation of a parole agreement, or violation of a valid court order; and

(b) is designed to physically restrict the movements and activities of youth or other individuals held in lawful custody of the facility.

(38) “Serious juvenile offender” means a youth who has committed an offense that would be considered a felony offense if committed by an adult and that is an offense against a person, an offense against property, or an offense involving dangerous drugs.

(39) “Shelter care” means the temporary substitute care of youth in physically unrestricting facilities.

(40) “Shelter care facility” means a facility used for the shelter care of youth. The term is limited to the facilities enumerated in 41-5-347.

(41) “Short-term detention center” means a detention facility licensed by the department for the temporary placement or care of youth, for a period not to exceed 10 days excluding weekends and legal holidays, pending a probable cause hearing, release, or transfer of the youth to an appropriate detention facility, youth assessment center, or shelter care facility.

(42) “State youth correctional facility” means the Pine Hills youth correctional facility in Miles City or the Riverside youth correctional facility in Boulder.

(43) “Substitute care” means full-time care of youth in a residential setting for the purpose of providing food, shelter, security and safety, guidance, direction, and, if necessary, treatment to youth who are removed from or are without the care and supervision of their parents or guardians.

(44) “Victim” means:

(a) a person who suffers property, physical, or emotional injury as a result of an offense committed by a youth that would be a criminal offense if committed by an adult;

(b) an adult relative of the victim, as defined in subsection (44)(a), if the victim is a minor; and

(c) an adult relative of a homicide victim.

(45) “Youth” means an individual who is less than 18 years of age without regard to sex or emancipation.

(46) “Youth assessment” means a multidisciplinary assessment of a youth as provided in 41-5-1203.

(47) “Youth assessment center” means a staff-secured location that is licensed by the department of public health and human services to hold a youth for up to 10 days for the purpose of providing an immediate and comprehensive community-based youth assessment to assist the youth and the youth’s family in addressing the youth’s behavior.

(48) “Youth care facility” has the meaning provided in 52-2-602.

(49) “Youth court” means the court established pursuant to this chapter to hear all proceedings in which a youth is alleged to be a delinquent youth or a youth in need of intervention and includes the youth court judge, juvenile probation officers, and assessment officers.

(50) “Youth detention facility” means a secure detention facility licensed by the department for the temporary substitute care of youth that is:

(a) (i) operated, administered, and staffed separately and independently of a jail; or

(ii) a colocated secure detention facility that complies with 28 CFR, part 31; and

(b) used exclusively for the lawful detention of alleged or adjudicated delinquent youth or as a sanction for contempt of court, violation of a parole agreement, or violation of a valid court order.

(51) “Youth in need of intervention” means a youth who is adjudicated as a youth and who:

(a) commits an offense prohibited by law that if committed by an adult would not constitute a criminal offense, including but not limited to a youth who:

(i) violates any Montana municipal or state law regarding alcoholic beverages; or

(ii) continues to exhibit behavior, including running away from home or habitual truancy, beyond the control of the youth’s parents, foster parents, physical custodian, or guardian despite the attempt of the youth’s parents, foster parents, physical custodian, or guardian to exert all reasonable efforts to mediate, resolve, or control the youth’s behavior; or

(b) has committed any of the acts of a delinquent youth but whom the youth court, in its discretion, chooses to regard as a youth in need of intervention.

**History:** Ap.p. Sec. 3, Ch. 329, L. 1974; amd. Sec. 1, Ch. 571, L. 1977; Sec. 10-1203, R.C.M. 1947; Ap.p. Sec. 2, Ch. 427, L. 1971; Sec. 10-1102, R.C.M. 1947; amd. and redes. 10-1243 by Sec. 43, Ch. 329, L. 1974; amd. Sec. 15, Ch. 571, L. 1977; Sec. 10-1243, R.C.M. 1947; R.C.M. 1947, 10-1203, 10-1243; amd. Sec. 2, Ch. 246, L. 1979; amd. Sec. 1, Ch. 233, L. 1983; amd. Sec. 2, Ch. 465, L. 1983; amd. Sec. 6, Ch. 475, L. 1987; amd. Sec. 1, Ch. 515, L. 1987; amd. Sec. 54, Ch. 609, L. 1987; amd. Sec. 1, Ch. 231, L. 1991; amd. Sec. 2, Ch. 547, L. 1991; amd. Sec. 2, Ch. 548, L. 1991; amd. Secs. 1, 29, Ch. 799, L. 1991; amd. Sec. 191, Ch. 546, L. 1995; amd. Sec. 191, Ch. 42, L. 1997; amd. Sec. 2, Ch. 189, L. 1997; amd. Sec. 3, Ch. 286, L. 1997; amd. Sec. 13, Ch. 550, L. 1997; amd. Sec. 1, Ch. 106, L. 1999; amd. Sec. 1, Ch. 326, L. 1999; amd. Sec. 1, Ch. 532, L. 1999; amd. Sec. 54, Ch. 7, L. 2001; amd. Sec. 2, Ch. 114, L. 2001; amd. Sec. 1, Ch. 576, L. 2001; amd. Sec. 1, Ch. 587, L. 2001; amd. Sec. 81, Ch. 114, L. 2003; amd. Sec. 1, Ch. 188, L. 2003; amd. Sec. 1, Ch. 423, L. 2005; amd. Sec. 2, Ch. 398, L. 2007; amd. Sec. 61, Ch. 2, L. 2009; amd. Sec. 4, Ch. 281, L. 2013; amd. Sec. 1, Ch. 143, L. 2015.

**41-5-104. Repealed.** Sec. 23, Ch. 398, L. 2007.

**History:** En. Sec. 30, Ch. 227, L. 1943; Sec. 10-631, R.C.M. 1947; redes. 10-1239 by Sec. 39, Ch. 329, L. 1974; R.C.M. 1947, 10-1239; amd. Sec. 1, Ch. 580, L. 1985.

**41-5-105. Youth court committee.** In every county of the state, the judge having jurisdiction may appoint a committee, willing to act without compensation, composed of not less than three or more than seven reputable citizens, including youth representatives. The committee must be designated as a youth court committee. This committee shall meet subject to the call of the judge to confer with the judge on all matters pertaining to the youth department

of the court, including the appointment of probation officers, and shall act as a supervisory committee of youth detention facilities.

**History:** En. Sec. 27, Ch. 227, L. 1943; amd. Sec. 1, Ch. 128, L. 1957; amd. Sec. 13, Ch. 262, L. 1969; Sec. 10-628, R.C.M. 1947; amd. and redes. 10-1240 by Sec. 40, Ch. 329, L. 1974; R.C.M. 1947, 10-1240; amd. Sec. 19, Ch. 799, L. 1991; amd. Sec. 1597, Ch. 56, L. 2009.

**41-5-106. Order of adjudication — noncriminal.** No placement of any youth in any state youth correctional facility under this chapter shall be deemed commitment to a penal institution. No adjudication upon the status of any youth in the jurisdiction of the court shall operate to impose any of the civil disability imposed on a person by reason of conviction of a criminal offense, nor shall such adjudication be deemed a criminal conviction, nor shall any youth be charged with or convicted of any crime in any court except as provided in this chapter. Neither the disposition of a youth under this chapter nor evidence given in youth court proceedings under this chapter shall be admissible in evidence except as otherwise provided in this chapter.

**History:** En. 10-1235 by Sec. 35, Ch. 329, L. 1974; amd. Sec. 11, Ch. 571, L. 1977; R.C.M. 1947, 10-1235; amd. Sec. 55, Ch. 609, L. 1987.

**41-5-107. Administration.** The provisions of Title 52, chapter 2, part 6, govern the administration of this chapter.

**History:** En. Sec. 30, Ch. 465, L. 1983.

**41-5-108 and 41-5-109 reserved.**

**41-5-110. Youth court hearings — priority.** All hearings and other court appearances required under Title 41, chapter 5, must be given priority by the court and must be scheduled to be heard as expeditiously as possible.

**History:** En. Sec. 15, Ch. 515, L. 1987.

**41-5-111. Court costs and expenses.** (1) Compensation for services and related expenses for counsel assigned for a party must be paid by the office of state public defender provided for in 2-15-1029.

(2) Expenses for service of summons, notices, subpoenas, fees, and traveling expenses of witnesses, and other witness-related expenses incurred in any proceeding under the Montana Youth Court Act must be paid as provided for in 26-2-506.

(3) Reasonable compensation of a guardian ad litem appointed by the court must be paid as provided for in 3-5-901.

(4) Costs for transcripts and printing briefs must be paid as provided for in 3-5-604.

**History:** En. 10-1226 by Sec. 26, Ch. 329, L. 1974; R.C.M. 1947, 10-1226; amd. Sec. 6, Ch. 363, L. 1983; amd. Sec. 1, Ch. 737, L. 1985; amd. Sec. 2, Ch. 11, Sp. L. June 1986; amd. Sec. 6, Ch. 14, Sp. L. June 1986; Sec. 41-5-207, MCA 1995; redes. 41-5-111 by Sec. 47, Ch. 286, L. 1997; amd. Sec. 5, Ch. 583, L. 2003; amd. Sec. 36, Ch. 449, L. 2005; amd. Sec. 10, Ch. 358, L. 2017.

#### **Compiler's Comments**

*2017 Amendment:* Chapter 358 in (1) substituted "2-15-1029" for "47-1-201". Amendment effective July 1, 2017.

**41-5-112. Parental contributions account — allocation of proceeds.** (1) There is a parental contributions account in the state special revenue fund.

(2) Contributions paid by the parents and guardians of youth under this chapter must be deposited in the account.

(3) Contributions in the account paid by a parent or guardian of a youth under the jurisdiction of the youth court, except any amount required to be returned to federal sources, are allocated to the office of court administrator to offset the cost of out-of-home placements, programs, and services for youth under the jurisdiction of the youth court.

(4) Contributions in the account paid by a parent or guardian of a youth under the jurisdiction of the department, except any amount required to be returned to federal sources, are allocated to the department to offset the cost of out-of-home placements, programs, and services for youth under the jurisdiction of the department.

**History:** En. Sec. 6, Ch. 696, L. 1991; amd. Sec. 196, Ch. 546, L. 1995; amd. Secs. 40, 49(3)(f), Ch. 286, L. 1997; amd. Sec. 15, Ch. 516, L. 1997; Sec. 41-5-530, MCA 1995; redes. 41-5-112 by Sec. 47, Ch. 286, L. 1997; amd. Sec. 3, Ch. 398, L. 2007; amd. Sec. 2, Ch. 143, L. 2015.

**41-5-113. Restrictions on use of funds.** (1) Funds available to a judicial district under 41-5-130, 41-5-132, or 41-5-2012 may not be used to:

(a) pay salary, benefits, or training costs of a federal, state, or county employee;

(b) purchase items for a federal, state, or county agency that the agency would normally provide for its employees;

(c) support a program or service previously paid for by another source, except as provided in subsection (2); or

(d) construct or remodel a physical structure.

(2) Available funds may be used to support a program providing direct services to youth that was previously funded through grant money if the program's demonstrated outcomes resulted in a reduction in out-of-home placements.

(3) A judicial district shall comply with state procurement laws when expending available funds.

**History:** En. Sec. 1, Ch. 398, L. 2007.

**41-5-114 through 41-5-120 reserved.**

**41-5-121. Youth placement committees — composition.** (1) In each judicial district, the youth court and the department shall establish a youth placement committee for the purposes of:

(a) recommending an appropriate placement of a youth committed to the youth court under 41-5-1512 or 41-5-1513 or committed to the department under 41-5-1513; or

(b) recommending available community services or alternative placements whenever a change is required in the placement of a youth who is currently in the legal custody of the youth court under 41-5-1512 or 41-5-1513 or the department under 41-5-1513. However, the committee may not substitute its judgment for that of the superintendent of a state youth correctional facility regarding the discharge of a youth from the facility or the placement of a youth on parole under the department's jurisdiction.

(2) (a) The committee consists of not less than five members and must include persons who are knowledgeable about the youth, treatment and placement options, and other resources appropriate to address the needs of the youth.

(b) The committee must include:

(i) a juvenile parole officer employed by the department;

(ii) a representative of the department of public health and human services;

(iii) the chief juvenile probation officer or the chief juvenile probation officer's designee. The officer or the officer's designee is the presiding officer of the committee.

(iv) a mental health professional; and

(v) if an Indian youth is involved, a person, preferably an Indian, knowledgeable about Indian culture and Indian family matters.

(c) The committee may include:

(i) a representative of a school district located within the boundaries of the judicial district who has knowledge of and experience with youth;

(ii) the youth's parent or guardian;

(iii) a youth services provider; and

(iv) the youth's juvenile probation officer.

(3) The youth court judge shall appoint all members of the youth placement committee except the juvenile parole officer. The director of the department shall appoint the juvenile parole officer and shall, when making the appointment, take into consideration:

(a) the juvenile parole officer's qualifications;

(b) the costs involved in the juvenile parole officer's attendance at youth placement committee meetings; and

(c) the location of the juvenile parole officer's home in relation to the location of the youth placement committee.

(4) Committee members serve without compensation.

(5) The committee may be convened by request of the department to the presiding officer or by the chief juvenile probation officer.

(6) If a representative of the school district within the boundaries of which the youth is recommended to be placed and will be attending school is not included on the committee, the person who convened the committee shall inform the school district of the final placement decision for the youth.



(7) The office of court administrator may not charge expenditures to the judicial district allocations established pursuant to 41-5-130 unless the youth court has established a youth placement committee as provided in this section.

**History:** En. Sec. 15, Ch. 609, L. 1987; amd. Sec. 2, Ch. 67, L. 1989; amd. Sec. 1, Ch. 403, L. 1995; amd. Sec. 38, Ch. 286, L. 1997; amd. Sec. 43, Ch. 550, L. 1997; Sec. 41-5-525, MCA 1995; redes. 41-5-121 by Sec. 47, Ch. 286, L. 1997; amd. Sec. 2, Ch. 532, L. 1999; amd. Sec. 2, Ch. 587, L. 2001; amd. Sec. 1, Ch. 266, L. 2003; amd. Sec. 4, Ch. 398, L. 2007; amd. Sec. 3, Ch. 143, L. 2015.

**41-5-122. Duties of youth placement committee.** A youth placement committee shall:

- (1) review all information relevant to the placement of a youth;
- (2) consider available resources appropriate to meet the needs of the youth;
- (3) consider the treatment recommendations of any professional person who has evaluated the youth;
- (4) consider options for the financial support of the youth;
- (5) recommend in writing to the youth court judge or the department an appropriate placement for the youth, considering the age and treatment needs of the youth and the relative costs of care in facilities considered appropriate for placement. A committee shall consider placement in a licensed facility, at a state youth correctional facility, or with a parent, other family member, or guardian.
- (6) review temporary and emergency placements as required under 41-5-124; and
- (7) conduct placement reviews at least every 6 months and at other times as requested by the youth court.

**History:** En. Sec. 16, Ch. 609, L. 1987; amd. Sec. 1, Ch. 399, L. 1989; amd. Sec. 2, Ch. 403, L. 1995; Sec. 41-5-526, MCA 1995; redes. 41-5-122 by Sec. 47, Ch. 286, L. 1997; amd. Sec. 3, Ch. 587, L. 2001.

**41-5-123. Repealed.** Sec. 23, Ch. 398, L. 2007.

**History:** En. Sec. 17, Ch. 609, L. 1987; amd. Sec. 2, Ch. 399, L. 1989; amd. Sec. 3, Ch. 403, L. 1995; amd. Sec. 39, Ch. 286, L. 1997; Sec. 41-5-527, MCA 1995; redes. 41-5-123 by Sec. 47, Ch. 286, L. 1997; amd. Sec. 4, Ch. 587, L. 2001.

**41-5-124. Temporary and emergency placements — limit.** A temporary placement of a youth in a shelter care facility for less than 45 days or an emergency placement of a youth in a youth care facility is exempt from review by the appropriate youth placement committee. If a temporary or emergency placement of a youth continues for 45 or more days, the youth court shall refer the placement of the youth to the appropriate youth placement committee for review. The committee shall make a recommendation for placement to the youth court.

**History:** En. Sec. 18, Ch. 609, L. 1987; Sec. 41-5-528, MCA 1995; redes. 41-5-124 by Sec. 47, Ch. 286, L. 1997; amd. Sec. 5, Ch. 587, L. 2001; amd. Sec. 5, Ch. 398, L. 2007.

**41-5-125. Confidentiality of youth placement committee meetings and records.**

(1) Meetings of a youth placement committee are closed to the public to protect a youth's right to individual privacy.

(2) Information presented to the committee about a youth and committee records are confidential and subject to confidentiality requirements established by rule by the department.

**History:** En. Sec. 19, Ch. 609, L. 1987; Sec. 41-5-529, MCA 1995; redes. 41-5-125 by Sec. 47, Ch. 286, L. 1997.

**41-5-126 through 41-5-129 reserved.**

**41-5-130. Office of court administrator to administer juvenile placement funds — allocations — deposit of unexpended funds.** (1) The office of court administrator shall administer juvenile placement funds appropriated to the judicial branch by the legislature in accordance with this chapter.

(2) For each fiscal year, the department shall administer appropriated juvenile placement funds for juvenile parole out-of-home placements, programs, and services.

(3) For each fiscal year, the office of court administrator shall allocate funds to the cost containment pool under 41-5-132 and allocate the remaining appropriated juvenile placement funds to each judicial district according to a formula recommended by the cost containment review panel provided for in 41-5-131 and adopted by the office of court administrator.

(4) A judicial district may expend funds from its annual allocation for out-of-home placements or for other programs or services intended to reduce or prevent juvenile delinquency subject to the provisions of subsection (5).

(5) (a) Except as provided in subsection (5)(b), a judicial district shall reserve at least 50% of its annual allocation for out-of-home placements and the remainder for programs or services.

(b) A judicial district may reserve more than 50% of its annual allocation for programs or services if:

(i) the programs or services have, based on demonstrated outcomes, reduced the number of placements in correctional facilities or higher-cost residential placements; and

(ii) the judicial district would not require funding from the cost containment pool, provided for in 41-5-132, in the same fiscal year in which the annual allocation is made under this subsection (5)(b).

(6) At the end of each fiscal year, after all valid obligations have been paid or encumbered for payment, the office of court administrator shall deposit any unexpended funds from the judicial districts' annual allocations provided for in this section into the youth court intervention and prevention account provided for in 41-5-2011.

**History:** En. Sec. 11, Ch. 587, L. 2001; amd. Sec. 3, Ch. 482, L. 2005; amd. Sec. 6, Ch. 398, L. 2007; amd. Sec. 4, Ch. 143, L. 2015.

**41-5-131. Cost containment review panel — duties.** (1) The supreme court shall establish a cost containment review panel to advise the office of court administrator in administering the cost containment pool and youth court intervention and prevention account.

(2) (a) The members of the cost containment review panel must be appointed as follows:

(i) three members appointed by the director of the department;

(ii) three members appointed by the chief justice of the supreme court; and

(iii) one member who is a professional working in the field of children's mental health appointed by the director of the department of public health and human services.

(b) Each appointing authority under subsection (2)(a) shall appoint one person to serve as the alternate for a member appointed by the authority who is unable to participate in a cost containment review panel meeting.

(3) Recommendations of the cost containment review panel must be made by majority vote of the members of the cost containment review panel or their alternates.

(4) The cost containment review panel shall:

(a) recommend a formula for the annual allocation to each judicial district as provided in 41-5-130;

(b) recommend an amount to be allocated to the cost containment pool as provided in 41-5-132;

(c) review requests by judicial districts for allocations from the cost containment pool and recommend to the office of court administrator whether each request should be approved as provided in 41-5-132;

(d) approve requests by the department for reimbursement from the cost containment pool as provided in 41-5-132;

(e) provide recommendations to the department regarding placement for youth as provided in 41-5-1504;

(f) provide recommendations on the evaluation of out-of-home placements, programs, and services as provided in 41-5-2003; and

(g) review plans submitted under 41-5-2012 and recommend to the office of court administrator whether each plan should be approved.

**History:** En. Sec. 17, Ch. 587, L. 2001; amd. Sec. 7, Ch. 398, L. 2007; amd. Sec. 5, Ch. 143, L. 2015.

**41-5-132. Cost containment pool — allocation of appropriated funds — allocation from pool — deposit of unexpended funds.** (1) (a) The office of court administrator shall establish a cost containment pool. After considering the cost containment review panel's recommendation as provided for in subsection (1)(b), the office of court administrator shall allocate to the cost containment pool at the beginning of each fiscal year not less than \$1 million from the funds appropriated for juvenile placements.

(b) The cost containment review panel shall submit to the office of court administrator a recommended amount to be allocated to the cost containment pool at least 1 month prior to the start of each fiscal year. The cost containment review panel shall establish a methodology for determining the recommended amount to be allocated to the cost containment pool.

(2) Before a judicial district exceeds its annual allocation under 41-5-130 for juvenile out-of-home placements, programs, and services, the judicial district shall submit to the cost containment review panel a request for an allocation from the cost containment pool. After reviewing the request, the cost containment review panel shall recommend to the office of court administrator whether an allocation from the cost containment pool should be made to the judicial district. After considering the cost containment review panel's recommendation, the office of court administrator may approve the judicial district's request and disburse funds from the pool for expenditure by the judicial district.

(3) (a) According to criteria and procedures established by the cost containment review panel, the cost containment review panel may authorize an allocation from the cost containment pool to the department for a request submitted under subsection (3)(b).

(b) The department may request at the end of the fiscal year that the cost containment review panel reimburse the department from the cost containment pool for costs incurred under 41-5-1504(3) for placing a youth found to be suffering from a mental disorder, including costs for transporting the youth. Before requesting reimbursement, the department shall expend its budgets for placements and services to youth and any parental contributions or federal funds, for which the department has spending authority, or private insurance payments received for treatment.

(4) In addition to any disbursement made by the office of court administrator under subsection (2) or (3), the office may expend funds from the cost containment pool to:

(a) reimburse cost containment review panel members or alternates for travel expenses, as provided in 2-18-501 through 2-18-503, and to pay the actual costs incurred in conducting a cost containment review panel meeting, excluding salary and benefits for employees providing support services to the cost containment review panel; and

(b) conduct an evaluation of out-of-home placements, programs, and services as provided in 41-5-2003. The office of court administrator may not expend more than \$50,000 each year from the cost containment pool to conduct the evaluation.

(5) The office of court administrator shall deposit any amount remaining in the cost containment pool at the end of each fiscal year into the youth court intervention and prevention account provided for in 41-5-2011.

**History:** En. Sec. 20, Ch. 587, L. 2001; amd. Sec. 8, Ch. 398, L. 2007; amd. Sec. 6, Ch. 143, L. 2015.

## **Part 2**

### **Youth Court — Jurisdiction — Records**

**41-5-201. Youth court judge — judges pro tempore — special masters.** (1) Each judicial district in the state must have at least one judge of the youth court whose duties are to:

(a) appoint and supervise qualified personnel to staff the youth division probation departments within the judicial district;

(b) conduct hearings on youth court proceedings under this chapter;

(c) perform any other functions consistent with the legislative purpose of this chapter.

(2) In each multijudge judicial district the judges shall, by court rule, designate one or more of their number to act as youth court judge in each county in the judicial district for a fixed period of time. Service as youth court judge may be rotated among the different judges of the judicial district and among the individual counties within the judicial district for given periods of time. Continuity of service of a given judge as youth court judge and continuity in the operation and policies of the youth court in the county having the largest population in the judicial district must be the principal consideration of the rule.

(3) (a) A youth court judge may appoint a judge pro tempore or a special master to conduct preliminary, nondispositive matters, including but not limited to hearings for probable cause or detention and taking of responses for petitions.

(b) A judge pro tempore or special master must be a member of the state bar of Montana.

**History:** En. 10-1233 by Sec. 33, Ch. 329, L. 1974; R.C.M. 1947, 10-1233(part); amd. Sec. 1, Ch. 60, L. 1985; amd. Sec. 14, Ch. 550, L. 1997.

**41-5-202. Renumbered 41-5-1405.** Sec. 47, Ch. 286, L. 1997.

**41-5-203. Jurisdiction of court.** (1) Except as provided in subsection (2) and for cases filed in the district court under 41-5-206, the court has exclusive original jurisdiction of all proceedings under the Montana Youth Court Act in which a youth is alleged to be a delinquent youth or a youth in need of intervention or concerning any person under 21 years of age charged with having violated any law of the state or any ordinance of a city or town other than a traffic or fish and game law prior to having become 18 years of age.

(2) Justices', municipal, and city courts have concurrent jurisdiction with the youth court over all alcoholic beverage, tobacco products, and gambling violations alleged to have been committed by a youth.

(3) The court has jurisdiction to:

- (a) transfer a youth court case to the district court after notice and hearing;
- (b) with respect to extended jurisdiction juvenile cases:
  - (i) designate a proceeding as an extended jurisdiction juvenile prosecution;
  - (ii) conduct a hearing, receive admissions, and impose upon a youth who is adjudicated as an extended jurisdiction juvenile a sentence that may extend beyond the youth's age of majority;
  - (iii) stay that portion of an extended jurisdiction sentence that is extended beyond a youth's majority, subject to the performance of the juvenile portion of the sentence;
  - (iv) continue, modify, or revoke the stay after notice and hearing;
  - (v) after revocation, transfer execution of the stayed sentence to the department;
  - (vi) transfer supervision of any juvenile sentence if, after notice and hearing, the court determines by a preponderance of the evidence that the juvenile has violated or failed to perform the juvenile portion of an extended jurisdiction sentence; and
  - (vii) transfer a juvenile case to district court after notice and hearing; and
- (c) impose criminal sanctions on a juvenile as authorized by the Extended Jurisdiction Prosecution Act, Title 41, chapter 5, part 16.

**History:** En. 10-1206 by Sec. 6, Ch. 329, L. 1974; amd. Sec. 3, Ch. 100, L. 1977; amd. Sec. 1, Ch. 446, L. 1977; R.C.M. 1947, 10-1206; amd. Sec. 1, Ch. 427, L. 1979; amd. Sec. 22, Ch. 626, L. 1993; amd. Sec. 2, Ch. 376, L. 1995; amd. Sec. 1, Ch. 498, L. 1997; amd. Secs. 15, 76, Ch. 550, L. 1997; amd. Sec. 3, Ch. 114, L. 2001; amd. Sec. 2, Ch. 576, L. 2001.

**41-5-204. Venue and transfer.** (1) The county where a youth is a resident or is alleged to have violated the law has initial jurisdiction over any youth alleged to be a delinquent youth. Except as provided in 41-5-206, the youth court shall assume the initial handling of the case.

(2) The county where a youth is a resident has initial jurisdiction over any youth alleged to be a youth in need of intervention. The youth court of that county shall assume the initial handling of the case. Transfers of venue may be made to any of the following counties in the state:

- (a) the county in which the youth is apprehended or found;
- (b) the county in which the youth is alleged to have violated the law; or
- (c) the county of residence of the youth's parents or guardian.

(3) In the case of a youth alleged to be a youth in need of intervention, a change of venue may be ordered at any time by the concurrence of the youth court judges of both counties in order to ensure a fair, impartial, and speedy hearing and final disposition of the case.

(4) In the case of a youth 16 years of age or older who is accused of one of the serious offenses listed in 41-5-206 and who is to be tried in district court, the charge must be filed and trial held in the district court of the county where the offense occurred.

**History:** En. 10-1207 by Sec. 7, Ch. 329, L. 1974; R.C.M. 1947, 10-1207; amd. Sec. 2, Ch. 60, L. 1985; amd. Sec. 16, Ch. 550, L. 1997; amd. Sec. 4, Ch. 114, L. 2001.

**41-5-205. Retention of jurisdiction — termination.** (1) The court may dismiss a petition or otherwise terminate jurisdiction on its own motion or on the motion or petition of any interested party at any time. Unless terminated by the court and except as provided in subsections (2) and (3), the jurisdiction of the court continues until the individual becomes 21 years of age.

(2) Court jurisdiction terminates when:

- (a) the proceedings are transferred to district court under 41-5-208 or an information is filed concerning the offense in district court pursuant to 41-5-206;
- (b) the youth is discharged by the department; or

(c) execution of a sentence is ordered under 41-5-1605(2)(b)(iii) and the supervisory responsibilities are transferred to the district court under 41-5-1605.

(3) The jurisdiction of the court over an extended jurisdiction juvenile, with respect to the offense for which the youth was convicted as an extended jurisdiction juvenile, extends until the offender becomes 25 years of age unless the court terminates jurisdiction before that date.

(4) The jurisdiction of the court is not terminated if the department issues a release from supervision due to the expiration of a commitment pursuant to 41-5-1522.

**History:** En. 10-1208 by Sec. 8, Ch. 329, L. 1974; R.C.M. 1947, 10-1208; amd. Sec. 56, Ch. 609, L. 1987; amd. Sec. 2, Ch. 498, L. 1997; amd. Sec. 6, Ch. 587, L. 2001.

**41-5-206. Filing in district court prior to formal proceedings in youth court.**

(1) The county attorney may, in the county attorney's discretion and in accordance with the procedure provided in 46-11-201, file with the district court a motion for leave to file an information in the district court if:

(a) the youth charged was 12 years of age or older at the time of the conduct alleged to be unlawful and the unlawful act would if it had been committed by an adult constitute:

- (i) sexual intercourse without consent as defined in 45-5-503;
- (ii) deliberate homicide as defined in 45-5-102;
- (iii) mitigated deliberate homicide as defined in 45-5-103;
- (iv) assault on a peace officer or judicial officer as defined in 45-5-210; or
- (v) the attempt, as defined in 45-4-103, of or accountability, as provided in 45-2-301, for either deliberate or mitigated deliberate homicide; or

(b) the youth charged was 16 years of age or older at the time of the conduct alleged to be unlawful and the unlawful act is one or more of the following:

- (i) negligent homicide as defined in 45-5-104;
- (ii) arson as defined in 45-6-103;
- (iii) aggravated assault as defined in 45-5-202;
- (iv) sexual assault as provided in 45-5-502(3);
- (v) assault with a weapon as defined in 45-5-213;
- (vi) robbery as defined in 45-5-401;
- (vii) burglary or aggravated burglary as defined in 45-6-204;
- (viii) aggravated kidnapping as defined in 45-5-303;
- (ix) possession of explosives as defined in 45-8-335;
- (x) criminal distribution of dangerous drugs as defined in 45-9-101;
- (xi) criminal possession of dangerous drugs as defined in 45-9-102(3);
- (xii) criminal possession with intent to distribute as defined in 45-9-103(1);
- (xiii) criminal production or manufacture of dangerous drugs as defined in 45-9-110;
- (xiv) use of threat to coerce criminal street gang membership or use of violence to coerce criminal street gang membership as defined in 45-8-403;
- (xv) escape as defined in 45-7-306;
- (xvi) attempt, as defined in 45-4-103, of or accountability, as provided in 45-2-301, for any of the acts enumerated in subsections (1)(b)(i) through (1)(b)(xv).

(2) The county attorney shall file with the district court a petition for leave to file an information in district court if the youth was 17 years of age at the time the youth committed an offense listed under subsection (1).

(3) The district court shall grant leave to file the information if it appears from the affidavit or other evidence supplied by the county attorney that there is probable cause to believe that the youth has committed the alleged offense. Within 30 days after leave to file the information is granted, the district court shall conduct a hearing to determine whether the matter must be transferred back to the youth court, unless the hearing is waived by the youth or by the youth's counsel in writing or on the record. The hearing may be continued on request of either party for good cause. The district court may not transfer the case back to the youth court unless the district court finds, by a preponderance of the evidence, that:

- (a) a youth court proceeding and disposition will serve the interests of community protection;
- (b) the nature of the offense does not warrant prosecution in district court; and
- (c) it would be in the best interests of the youth if the matter was prosecuted in youth court.



(4) The filing of an information in district court terminates the jurisdiction of the youth court over the youth with respect to the acts alleged in the information. A youth may not be prosecuted in the district court for a criminal offense originally subject to the jurisdiction of the youth court unless the case has been filed in the district court as provided in this section. A case may be transferred to district court after prosecution as provided in 41-5-208 or 41-5-1605.

(5) An offense not enumerated in subsection (1) that arises during the commission of a crime enumerated in subsection (1) may be:

(a) tried in youth court;

(b) transferred to district court with an offense enumerated in subsection (1) upon motion of the county attorney and order of the district court. The district court shall hold a hearing before deciding the motion.

(6) If a youth is found guilty in district court of an offense enumerated in subsection (1) and any offense that arose during the commission of a crime enumerated in subsection (1), the court shall sentence the youth pursuant to 41-5-2503 and Titles 45 and 46. If a youth is acquitted in district court of all offenses enumerated in subsection (1), the district court shall sentence the youth pursuant to Title 41 for any remaining offense for which the youth is found guilty. A youth who is sentenced to the department or a state prison must be evaluated and placed by the department in an appropriate juvenile or adult correctional facility. The department shall confine the youth in an institution that it considers proper, including a state youth correctional facility under the procedures of 52-5-111. However, a youth under 16 years of age may not be confined in a state prison facility. During the period of confinement, school-aged youth with disabilities must be provided an education consistent with the requirements of the federal Individuals With Disabilities Education Act, 20 U.S.C. 1400, et seq.

(7) If a youth's case is filed in the district court and remains in the district court after the transfer hearing, the youth may be detained in a jail or other adult detention facility pending final disposition of the youth's case if the youth is kept in an area that provides physical separation from adults accused or convicted of criminal offenses.

**History:** En. 10-1229 by Sec. 29, Ch. 329, L. 1974; amd. Sec. 9, Ch. 100, L. 1977; R.C.M. 1947, 10-1229; amd. Sec. 1, Ch. 484, L. 1981; amd. Sec. 3, Ch. 60, L. 1985; amd. Sec. 100, Ch. 370, L. 1987; amd. Sec. 3, Ch. 515, L. 1987; amd. Sec. 57, Ch. 609, L. 1987; amd. Sec. 4, Ch. 434, L. 1989; amd. Sec. 1, Ch. 262, L. 1991; amd. Sec. 6, Ch. 547, L. 1991; amd. Sec. 2, Ch. 448, L. 1993; amd. Sec. 7, Ch. 438, L. 1995; amd. Sec. 192, Ch. 546, L. 1995; amd. Sec. 9, Ch. 285, L. 1997; amd. Sec. 18, Ch. 550, L. 1997; amd. Sec. 2, Ch. 432, L. 1999; amd. Sec. 1, Ch. 523, L. 1999; amd. Sec. 3, Ch. 532, L. 1999; amd. Sec. 2, Ch. 537, L. 1999; amd. Sec. 55, Ch. 7, L. 2001; amd. Sec. 1, Ch. 243, L. 2001; amd. Sec. 3, Ch. 576, L. 2001; amd. Sec. 1, Ch. 277, L. 2005; amd. Sec. 1, Ch. 483, L. 2007; amd. Sec. 1, Ch. 87, L. 2011; amd. Sec. 1, Ch. 321, L. 2017.

#### **Compiler's Comments**

*2017 Amendment:* Chapter 321 in (1)(b)(xi) substituted "45-9-102(3)" for "45-9-102(4) through (6)". Amendment effective July 1, 2017.

*Applicability:* Section 44, Ch. 321, L. 2017, provided: "[This act] applies to offenses committed after June 30, 2017."

**41-5-207. Renumbered 41-5-111.** Sec. 47, Ch. 286, L. 1997.

**41-5-208. Transfer of supervisory responsibility to district court after juvenile disposition — nonextended jurisdiction and nontransferred cases.** (1) After adjudication by the court of a case that was not transferred to district court under 41-5-206 and that was not prosecuted as an extended jurisdiction juvenile prosecution under part 16 of this chapter, the court may, on the youth's motion or the motion of the county attorney, transfer jurisdiction to the district court and order the transfer of supervisory responsibility from juvenile probation services to adult probation services. A transfer under this section may be made to ensure continued compliance with the court's disposition under 41-5-1512 or 41-5-1513 and may be made at any time after a youth reaches 18 years of age but before the youth reaches 21 years of age.

(2) Before transfer, the court shall hold a hearing on whether the transfer should be made. The hearing must be held in conformity with the rules on a hearing on a petition alleging delinquency, except that the hearing must be conducted by the court without a jury. The court shall give the youth, the youth's counsel, and the youth's parents, guardian, or custodian notice in writing of the time, place, and purpose of the hearing at least 10 days before the hearing. At the hearing, the youth is entitled to receive:

(a) written notice of the motion to transfer;

- (b) an opportunity to be heard in person and to present witnesses and evidence;
  - (c) a written statement by the court of the evidence relied on and reasons for the transfer;
  - (d) the right to cross-examine witnesses, unless the court finds good cause for not allowing confrontation; and
  - (e) the right to counsel.
- (3) After the hearing, if the court finds by a preponderance of the evidence that transfer of continuing supervisory responsibility to the district court is appropriate, the court shall order the transfer.

(4) If a youth whose case has been transferred to district court under this section violates a disposition previously imposed under 41-5-1512 or 41-5-1513, the district court may, after hearing, impose conditions as provided under 46-18-201 through 46-18-203 but may not place a youth in a state adult correctional facility unless the youth was adjudicated for a felony offense.

(5) If, at the time of transfer, the youth is incarcerated in a state youth correctional facility, the district court may order that the youth, after reaching 18 years of age:

- (a) be incarcerated in a state adult correctional facility if the youth was adjudicated for a felony offense, boot camp, or prerelease center; or
- (b) be supervised by the department.

(6) The district court's jurisdiction over a case transferred under this section terminates when the youth reaches 25 years of age.

**History:** En. Sec. 6, Ch. 438, L. 1995; amd. Sec. 4, Ch. 286, L. 1997; amd. Sec. 4, Ch. 498, L. 1997; amd. Sec. 19, Ch. 550, L. 1997; amd. Sec. 3, Ch. 537, L. 1999; amd. Sec. 1, Ch. 51, L. 2015.

**41-5-209 through 41-5-214 reserved.**

**41-5-215. Youth court and department records — notification of school.** (1) Formal youth court records, including reports of preliminary inquiries, petitions, motions, other filed pleadings, court findings, verdicts, and orders and decrees on file with the clerk of court, are public records and are open to public inspection until the records are sealed under 41-5-216.

(2) Social, medical, and psychological records, youth assessment materials, predispositional studies, and supervision records of probationers are open only to the following:

- (a) the youth court and its professional staff;
- (b) representatives of any agency providing supervision and having legal custody of a youth;
- (c) any other person, by order of the court, having a legitimate interest in the case or in the work of the court;
- (d) any court and its probation and other professional staff or the attorney for a convicted party who had been a party to proceedings in the youth court when considering the sentence to be imposed upon the party;
- (e) the county attorney;
- (f) the youth who is the subject of the report or record, after emancipation or reaching the age of majority;

(g) a member of a county interdisciplinary child information and school safety team formed under 52-2-211 who is not listed in this subsection (2);

(h) members of a local interagency staffing group provided for in 52-2-203;

(i) persons allowed access under 42-3-203; and

(j) persons conducting evaluations as required in 41-5-2003.

(3) (a) Notwithstanding the requirements of 20-5-321(1)(d) or (1)(e), subject to the provisions of subsection (3)(b) of this section, and according to the guidelines in subsection (3)(f) of this section, the chief probation officer or other designee from the district that has jurisdiction over the matter or the department of corrections for youth under the supervision of the department shall notify the school district that the youth presently attends or the school district that the youth has applied to attend of a youth's past or current drug use or criminal activity if after an investigation has been completed:

(i) a petition has been filed with the youth court or charges are filed in district court alleging a violation of any section in Title 45, chapter 5; or

(ii) the youth has admitted the allegation and the acts involve any offense in which another youth was an alleged victim and the admitted activity has a bearing on the safety of children.

(b) Notification under subsection (3)(a) may not be given for status offenses.

(c) Notification under subsection (3)(a) terminates upon the end of the youth court's supervision or the discharge of the youth by the department of corrections.

(d) A school district may not refuse to accept the student if refusal violates the federal Individuals With Disabilities Education Act or the federal Americans With Disabilities Act of 1990.

(e) The administrative officials of the school district may enforce school disciplinary procedures that existed at the time of the admission or adjudication. The information may not be further disclosed and may not be made part of the student's permanent records.

(f) Notification to the school district under subsection (3)(a) must be provided to:

(i) the school district superintendent or the superintendent's designee in districts that employ a superintendent;

(ii) the building principal or the principal's designee in school districts where the building principal is the only administrator; or

(iii) the county superintendent in school districts that do not employ an administrator.

(4) In all cases, a victim is entitled to all information concerning the identity and disposition of the youth, as provided in 41-5-1416.

(5) The school district may disclose, without consent, personally identifiable information from an education record of a pupil to the youth court and law enforcement authorities pertaining to violations of the Montana Youth Court Act or criminal laws by the pupil. The youth court or law enforcement authorities receiving the information shall certify in writing to the school district that the information will not be disclosed to any other party except as provided under state law without the prior consent of the parent or guardian of the pupil.

(6) Any part of records information secured from records listed in subsection (2), when presented to and used by the court in a proceeding under this chapter, must also be made available to the counsel for the parties to the proceedings.

**History:** En. 10-1231 by Sec. 31, Ch. 329, L. 1974; R.C.M. 1947, 10-1231; amd. Sec. 1, Ch. 507, L. 1979; amd. Sec. 13, Ch. 515, L. 1987; amd. Sec. 64, Ch. 609, L. 1987; amd. Sec. 4, Ch. 510, L. 1991; amd. Sec. 7, Ch. 655, L. 1991; amd. Sec. 4, Ch. 466, L. 1995; amd. Sec. 4, Ch. 481, L. 1995; amd. Sec. 1, Ch. 450, L. 1997; amd. Sec. 167, Ch. 480, L. 1997; amd. Sec. 46, Ch. 550, L. 1997; Sec. 41-5-603, MCA 1995; red. 41-5-215 by Sec. 47, Ch. 286, L. 1997; amd. Sec. 2, Ch. 106, L. 1999; amd. Sec. 1, Ch. 564, L. 1999; amd. Sec. 82, Ch. 114, L. 2003; amd. Sec. 2, Ch. 423, L. 2005; amd. Sec. 1, Ch. 54, L. 2009; amd. Sec. 1, Ch. 373, L. 2009; amd. Sec. 6, Ch. 364, L. 2013; amd. Sec. 1, Ch. 45, L. 2017.

#### **Compiler's Comments**

*2017 Amendment:* Chapter 45 deleted former (2)(i) that read: "(i) persons allowed access to the reports referred to under 45-5-624(7)"; and made minor changes in style. Amendment effective October 1, 2017.

**41-5-216. Disposition of youth court, law enforcement, and department records — sharing and access to records.** (1) Formal and informal youth court records, law enforcement records, and department records that are not exempt from sealing under subsections (4) and (6) and that pertain to a youth covered by this chapter must be physically sealed on the youth's 18th birthday. In those cases in which jurisdiction of the court or any agency is extended beyond the youth's 18th birthday, the records must be physically sealed upon termination of the extended jurisdiction.

(2) Except as provided in subsection (6), when the records pertaining to a youth pursuant to this section are sealed, an agency, other than the department, that has in its possession copies of the sealed records shall destroy the copies of the records. Anyone violating the provisions of this subsection is subject to contempt of court.

(3) Except as provided in subsection (6), this section does not prohibit the destruction of records with the consent of the youth court judge or county attorney after 10 years from the date of sealing.

(4) The requirements for sealed records in this section do not apply to medical records, fingerprints, DNA records, photographs, youth traffic records, records in any case in which the youth did not fulfill all requirements of the court's judgment or disposition, records referred to in 42-3-203, or the information referred to in 46-23-508, in any instance in which the youth was required to register as a sexual offender pursuant to Title 46, chapter 23, part 5.

(5) After formal and informal youth court records, law enforcement records, and department records are sealed, they are not open to inspection except, upon order of the youth court, for good cause to:

(a) those persons and agencies listed in 41-5-215(2); and  
(b) adult probation and parole staff preparing a presentence report on an adult with an existing sealed youth court record.

(6) (a) When formal youth court records, law enforcement records, and department records are sealed under subsection (1), the electronic records of the management information system maintained by the office of court administrator and by the department relating to the youth whose records are being sealed must be preserved for the express purpose of research and program evaluation.

(b) The department of public health and human services, the office of court administrator, and the department shall disassociate the offense and disposition information from the name of the youth in the respective management information system. The offense and disposition information must be maintained separately and may be used only:

(i) for research and program evaluation authorized by the office of court administrator or by the department and subject to any applicable laws; and

(ii) as provided in Title 5, chapter 13.

(7) (a) Informal youth court records for a youth for whom formal proceedings have been filed must be physically sealed on the youth's 18th birthday or, in those cases in which jurisdiction of the court or any agency is extended beyond the youth's 18th birthday, upon termination of the extended jurisdiction and may be inspected only pursuant to subsection (5).

(b) The informal youth court records are confidential and may be shared only with those persons and agencies listed in 41-5-215(2).

(c) Except as provided in subsection (7)(a), when a youth becomes 18 years of age or when extended supervision ends and the youth was involved only in informal proceedings, informal youth court records that are in hard-copy form must be destroyed and any electronic records in the youth court management information system must disassociate the offense and disposition information from the name of the youth and may be used only for the following purposes:

(i) for research and program evaluation authorized by the office of the court administrator and subject to any applicable laws; and

(ii) as provided in Title 5, chapter 13.

(8) Nothing in this section prohibits the sharing of formal or informal youth court records within the juvenile probation management information system to a person or agency listed in 41-5-215(2).

(9) This section does not prohibit the sharing of formal or informal youth court records within the department's youth management information system. Electronic records of the department's youth management information system may not be shared except as provided in subsection (5). A person or agency receiving the youth court record shall destroy the record after it has fulfilled its purpose.

(10) This section does not prohibit the sharing of formal or informal youth court records with a short-term detention center, a youth care facility, a youth assessment center, or a youth detention facility upon placement of a youth within the facility.

(11) This section does not prohibit access to formal or informal youth court records, including electronic records, for purposes of conducting evaluations as required by 41-5-2003 and studies conducted between individuals and agencies listed in 41-5-215(2).

(12) This section does not prohibit the office of court administrator, upon written request from the department of public health and human services, from confirming whether a person applying for a registry identification card pursuant to 50-46-307 or a license pursuant to 50-46-308 is currently under youth court supervision.

**History:** En. 10-1232 by Sec. 32, Ch. 329, L. 1974; amd. Sec. 1, Ch. 59, L. 1975; R.C.M. 1947, 10-1232; amd. Sec. 2, Ch. 507, L. 1979; amd. Sec. 4, Ch. 469, L. 1981; amd. Sec. 14, Ch. 515, L. 1987; amd. Sec. 8, Ch. 251, L. 1995; amd. Sec. 10, Ch. 466, L. 1995; amd. Sec. 5, Ch. 481, L. 1995; amd. Sec. 9, Ch. 528, L. 1995; amd. Sec. 168, Ch. 480, L. 1997; Sec. 41-5-604, MCA 1995; redes. 41-5-216 by Sec. 47, Ch. 286, L. 1997; amd. Sec. 3, Ch. 106, L. 1999; amd. Sec. 83, Ch. 114, L. 2003; amd. Sec. 3, Ch. 423, L. 2005; amd. Sec. 1, Ch. 139, L. 2007; amd. Sec. 2, Ch. 483, L. 2007; amd. Sec. 2, Ch. 54, L. 2009; amd. Sec. 27, Ch. 419, L. 2011; amd. Sec. 2, Ch. 45, L. 2017; amd. Sec. 1, Ch. 56, L. 2017; amd. Sec. 1, Ch. 408, L. 2017.

**Compiler's Comments**

*2017 Amendments — Composite Section:* Chapter 45 in (4) after “records referred to in 42-3-203” deleted “reports referred to in 45-5-624(7)”; and made minor changes in style. Amendment effective October 1, 2017.



Chapter 56 in (1) after “Formal” inserted “and informal”; in (5) after “After formal” inserted “and informal” and after “for good cause” deleted “including when a youth commits a new offense”; in (5)(b) substituted “probation and parole staff” for “probation professional staff” and at end substituted “an adult with an existing sealed youth court record” for “a youth who has reached the age of majority”; in (6)(a) near middle substituted “office of court administrator” for “department of public health and human services” and at end after “research and program evaluation” deleted “as provided in subsection (6)(b)”; in (6)(b) after “department of public health and human services” inserted “the office of court administrator”; in (6)(b)(i) near middle substituted “office of court administrator” for “department of public health and human services”; in (7)(b) substituted “are confidential and may be shared only with those persons and agencies listed in 41-5-215(2)” for “may be maintained and inspected only by youth court personnel upon a new offense prior to the youth’s 18th birthday”; in (8) after “Nothing in this section prohibits the” deleted “intra-agency use or information”, after “juvenile probation management information system” inserted “to a person or agency listed in 41-5-215(2)”, and deleted last two sentences that read: “Electronic records of the youth court may not be shared except as provided in 41-5-1524. If a person authorized under 41-5-215 is in need of a copy of a record that is in electronic form, the juvenile probation officer shall make only a physical copy of the record that is authorized and the person receiving the record shall destroy the record after it has fulfilled its purpose or as provided in subsection (2) of this section”; in (9) after “This section does not prohibit the” deleted “intra-agency use or information” and at end substituted “A person or agency receiving the youth court record shall destroy the record after it has fulfilled its purpose” for “If a person authorized under 41-5-215 is in need of a copy of a record that is in electronic form, the department shall make only a physical copy of the record that is authorized and the person receiving the record shall destroy the record after it has fulfilled its purpose or as provided in subsection (2) of this section”; in (11) after “evaluations as required by 41-5-2003” inserted “and studies conducted between individuals and agencies listed in 41-5-215(2)”; and made minor changes in style. Amendment effective March 1, 2017.

Chapter 408 in (12) before “50-46-308” inserted “a license pursuant to”. Amendment effective May 19, 2017.

**41-5-217. Repealed.** Sec. 4, Ch. 106, L. 1999.

**History:** En. Sec. 1, Ch. 466, L. 1995; amd. Sec. 47, Ch. 550, L. 1997; Sec. 41-5-605, MCA 1995; redes. 41-5-217 by Sec. 47, Ch. 286, L. 1997.

**41-5-218 and 41-5-219 reserved.**

**41-5-220. Electronic records — formal policies and administrative rules required.**

(1) (a) The department and the youth court are required to adopt appropriate control methods to ensure adequate integrity, security, and confidentiality of any electronic records of a youth generated or maintained in any management information system.

(b) The office of the court administrator shall adopt formal policies, and the department shall adopt administrative rules to institute the requirements in subsection (1)(a).

(2) For the purposes of this part, any references to “sealing”, “physically sealed”, and “destroyed” must be interpreted to have the same meaning when applied to electronic records and must be applied to have the same force and effect. A sealed record must be made unavailable for access by any person unless upon court order as provided in 41-5-216. A destroyed record must be rendered inaccessible and unrecoverable and disposed of in a manner in which confidentiality is protected, which may include disassociating the offense and disposition information from the name of the youth.

**History:** En. Sec. 4, Ch. 423, L. 2005; amd. Sec. 2, Ch. 56, L. 2017.

#### **Compiler’s Comments**

**2017 Amendment:** Chapter 56 deleted former (3) that read: “(3) After October 1, 2005, any management information system that is developed and that contains formal or informal youth court records or department records must be maintained separately from any adult offender management information system in the criminal justice or corrections system.” Amendment effective March 1, 2017.

**41-5-221. Penalty for unauthorized disclosure of or access to records.** A person who discloses or accesses a formal youth court record, an informal youth court record, or a department record in violation of 41-5-215 or 41-5-216 is guilty of a misdemeanor and shall be fined \$500.

**History:** En. Sec. 5, Ch. 423, L. 2005.

## **Part 3 Custody and Detention**

**41-5-321. Taking into custody.** (1) A youth may be taken into custody under the following circumstances:

- (a) by a law enforcement officer pursuant to a lawful order or process of any court;
- (b) by a law enforcement officer pursuant to a lawful arrest for violation of the law;
- (c) by a juvenile home arrest officer or an officer listed in subsections (1)(a) and (1)(b) if a youth placed under a home arrest program has violated a condition of the placement and the home arrest officer or law enforcement officer has direct knowledge of the violation or a juvenile probation officer has provided the juvenile home arrest officer notice of a violation.



(2) The taking of a youth into custody is not an arrest except for the purpose of determining the validity of the taking under the constitution of Montana or the United States.

**History:** En. 10-1211 by Sec. 11, Ch. 329, L. 1974; R.C.M. 1947, 10-1211; MCA 1981, 41-5-302; reded. 41-3-1111 by Sec. 31(4), Ch. 465, L. 1983; Sec. 41-3-1111, MCA 1989; reded. 41-5-314 by Sec. 15, Ch. 547, L. 1991; Sec. 41-5-314, MCA 1995; reded. 41-5-321 by Sec. 47, Ch. 286, L. 1997; amd. Sec. 2, Ch. 326, L. 1999; amd. Sec. 5, Ch. 114, L. 2001.

**41-5-322. Release from custody — detention — shelter care.** (1) Whenever a peace officer believes, on reasonable grounds, that a youth can be released to a responsible person, the peace officer may release the youth to that person upon receiving a written promise from the person to bring the youth before the juvenile probation officer at a time and place specified in the written promise, or a peace officer may release the youth under any other reasonable circumstances.

(2) Whenever the peace officer believes, on reasonable grounds, that the youth must be detained, the peace officer shall notify the juvenile probation officer immediately and shall, as soon as practicable, provide the juvenile probation officer with a written report of the peace officer's reasons for holding the youth in detention. If it is necessary to hold the youth pending appearance before the youth court, then the youth must be held in a place of detention, as provided in 41-5-348, that is approved by the youth court.

(3) If the peace officer believes that the youth must be sheltered, the peace officer shall notify the juvenile probation officer immediately and shall provide a written report of the peace officer's reasons for placing the youth in shelter care. If the youth is then held, the youth must be placed in a shelter care facility approved by the youth court.

**History:** En. 10-1213 by Sec. 13, Ch. 329, L. 1974; amd. Sec. 1, Ch. 348, L. 1975; amd. Sec. 5, Ch. 571, L. 1977; R.C.M. 1947, 10-1213; amd. Sec. 7, Ch. 547, L. 1991; amd. Sec. 22, Ch. 286, L. 1997; Sec. 41-5-307, MCA 1995; reded. 41-5-322 by Sec. 47, Ch. 286, L. 1997; amd. Sec. 62, Ch. 2, L. 2009.

**41-5-323. Bail.** A youth placed in detention or shelter care may be released on bail. The court shall use the provisions of Title 46, chapter 9, as guidance. In determining the amount of bail, the court shall consider the financial ability of the youth and the parents or legal custodian of the youth.

**History:** En. Sec. 3, Ch. 475, L. 1987; amd. Sec. 8, Ch. 547, L. 1991; Sec. 41-5-309, MCA 1995; reded. 41-5-323 by Sec. 47, Ch. 286, L. 1997.

**41-5-324 through 41-5-330 reserved.**

**41-5-331. Rights of youth taken into custody — questioning — waiver of rights.**

(1) When a youth is taken into custody for questioning upon a matter that could result in a petition alleging that the youth is either a delinquent youth or a youth in need of intervention, the following requirements must be met:

(a) The youth must be advised of the youth's right against self-incrimination and the youth's right to counsel.

(b) The investigating officer, juvenile probation officer, or person assigned to give notice shall immediately notify the parents, guardian, or legal custodian of the youth that the youth has been taken into custody, the reasons for taking the youth into custody, and where the youth is being held. If the parents, guardian, or legal custodian cannot be found through diligent efforts, a close relative or friend chosen by the youth must be notified.

(2) A youth may waive the rights listed in subsection (1) under the following situations:

(a) when the youth is 16 years of age or older, the youth may make an effective waiver subject to the provisions of 41-5-333(2);

(b) when the youth is under 16 years of age and the youth and the youth's parent or guardian agree, they may make an effective waiver subject to the provisions of 41-5-333(2); or

(c) when the youth is under 16 years of age and the youth and the youth's parent or guardian do not agree, the youth may make an effective waiver only with advice of counsel.

**History:** En. 10-1218 by Sec. 18, Ch. 329, L. 1974; amd. Sec. 6, Ch. 100, L. 1977; amd. Sec. 9, Ch. 571, L. 1977; R.C.M. 1947, 10-1218(1)(a), (1)(b); amd. Sec. 1, Ch. 385, L. 1979; amd. Sec. 7, Ch. 475, L. 1987; amd. Sec. 5, Ch. 515, L. 1987; (2) thru (6) En. Sec. 1, Ch. 475, L. 1987; amd. Sec. 2, Ch. 271, L. 1989; amd. Sec. 3, Ch. 547, L. 1991; amd. Sec. 11, Ch. 286, L. 1997; amd. Sec. 76, Ch. 550, L. 1997; Sec. 41-5-303, MCA 1995; reded. 41-5-331 by Sec. 47, Ch. 286, L. 1997; amd. Sec. 63, Ch. 2, L. 2009; amd. Sec. 1, Ch. 37, L. 2009.

**41-5-332. Custody — hearing for probable cause.** (1) When a youth is taken into custody for questioning, a hearing to determine whether there is probable cause to believe the youth is a delinquent youth or a youth in need of intervention must be held within 24 hours, excluding weekends and legal holidays. A hearing is not required if the youth is released prior to the time of the required hearing.

(2) When a youth is taken into custody for a violation of placement under a home arrest program, a hearing to determine whether a violation occurred must be held within 24 hours, excluding weekends and holidays.

(3) The probable cause hearing required under subsection (1) may be held in person or by videoconference by the youth court, a justice of the peace, a municipal or city judge, or a magistrate having jurisdiction in the case as provided in 41-5-203. If the probable cause hearing is held by a justice of the peace, a municipal or city judge, or a magistrate, a record of the hearing must be made by a court reporter or by a tape recording of the hearing or by an audio-video tape if the hearing is held by videoconference.

(4) A probable cause hearing may be conducted by telephone if other means of conducting the hearing are impractical. All written orders and findings of the court in a hearing conducted by telephone must bear the name of the judge or magistrate presiding in the case and the hour and date the order or findings were issued.

(5) A hearing is not required for a youth placed in detention for an alleged parole violation.

**History:** En. Sec. 12, Ch. 286, L. 1997; amd. Sec. 76, Ch. 550, L. 1997; amd. Sec. 3, Ch. 326, L. 1999; amd. Sec. 4, Ch. 532, L. 1999; amd. Sec. 1, Ch. 159, L. 2001.

**41-5-333. Custody — hearing for probable cause — procedure.** (1) At a probable cause hearing held pursuant to 41-5-332, the youth must be informed of the youth's constitutional rights and the youth's rights under this chapter.

(2) A youth must be represented by counsel at a probable cause hearing unless the right to counsel is waived after consultation with an attorney prior to the hearing.

(3) A parent, guardian, or custodian of the youth may be held in contempt of court for failing to be present at or to participate in the probable cause hearing unless the parent, guardian, or custodian:

(a) cannot be located through diligent efforts of the investigating peace officer or peace officers; or

(b) is excused by the court for good cause.

(4) At the probable cause hearing, a guardian ad litem may be appointed as provided in 41-5-1411.

**History:** En. Sec. 13, Ch. 286, L. 1997; amd. Sec. 2, Ch. 37, L. 2009.

**41-5-334. Custody — hearing for probable cause — determinations — detention — release.** (1) If, at a probable cause hearing held pursuant to 41-5-332, it is determined that there is probable cause to believe that the youth is a delinquent youth or a youth in need of intervention, the court having jurisdiction in the case shall determine whether the youth should be retained in custody. If the court determines that continued custody of the youth is necessary and if the youth meets the criteria in 41-5-341 through 41-5-343, the youth may be placed in a detention facility, a youth assessment center, or a shelter care facility as provided in 41-5-345 through 41-5-348 but may not be placed in a jail or other facility used for the confinement of adults accused or convicted of criminal offenses.

(2) If probable cause is not found or if a probable cause hearing is not held within the time specified in 41-5-332, the youth must be immediately released from custody.

**History:** En. Secs. 14, 49(3)(f), Ch. 286, L. 1997.

**41-5-335 through 41-5-340 reserved.**

**41-5-341. Criteria for placement of youth in secure detention facilities.** A youth may be placed in a secure detention facility only if the youth:

(1) has allegedly committed an act that if committed by an adult would constitute a criminal offense and the alleged offense is one specified in 41-5-206;

(2) is alleged to be a delinquent youth and:

(a) has escaped from a correctional facility or secure detention facility;

(b) has violated a valid court order or a parole agreement;

- (c) the youth's detention is required to protect persons or property;
  - (d) the youth has pending court or administrative action or is awaiting a transfer to another jurisdiction and may abscond or be removed from the jurisdiction of the court;
  - (e) there are not adequate assurances that the youth will appear for court when required; or
  - (f) the youth meets additional criteria for secure detention established by the youth court in the judicial district that has current jurisdiction over the youth; or
- (3) has been adjudicated delinquent and is awaiting final disposition of the youth's case.

**History:** En. 10-1212 by Sec. 12, Ch. 329, L. 1974; amd. Sec. 4, Ch. 571, L. 1977; R.C.M. 1947, 10-1212; amd. Sec. 1, Ch. 689, L. 1985; amd. Sec. 8, Ch. 475, L. 1987; amd. Sec. 7, Ch. 515, L. 1987; amd. Sec. 1, Ch. 610, L. 1987; amd. Sec. 3, Ch. 548, L. 1991; amd. Secs. 15, 49(3)(i), Ch. 286, L. 1997; Sec. 41-5-305, MCA 1995; redes. 41-5-341 by Sec. 47, Ch. 286, L. 1997.

**41-5-342. Criteria for placement of youth in shelter care facilities.** A youth may be placed in a shelter care facility only if:

- (1) the youth and the youth's family need shelter care to address their problematic situation and it is not possible for the youth to remain at home;
- (2) the youth needs to be protected from physical or emotional harm;
- (3) the youth needs to be deterred or prevented from immediate repetition of troubling behavior;
- (4) shelter care is necessary to assess the youth and the youth's environment;
- (5) shelter care is necessary to provide adequate time for case planning and disposition; or
- (6) shelter care is necessary to intervene in a crisis situation and provide intensive services or attention that might alleviate the problem and reunite the family.

**History:** En. Sec. 16, Ch. 286, L. 1997.

**41-5-343. Criteria for placement of youth in youth assessment centers.** A youth may be placed in a youth assessment center only if:

- (1) the youth meets the requirements for placement in shelter care;
- (2) the youth has not committed an act that would be a felony offense if committed by an adult;
- (3) the youth needs an alternative, staff-secured site for evaluation and assessment of the youth's need for services;
- (4) the youth needs to be held accountable for the youth's actions with structured programming; and
- (5) the youth meets qualifications as outlined by the placement guidelines that are determined by the department and coordinated with the guidelines used by the youth placement committees.

**History:** En. Sec. 49(3)(h), Ch. 286, L. 1997.

**41-5-344. Repealed.** Sec. 8, Ch. 114, L. 2001.

**History:** En. 10-1214 by Sec. 14, Ch. 329, L. 1974; amd. Sec. 6, Ch. 571, L. 1977; R.C.M. 1947, 10-1214; amd. Sec. 3, Ch. 465, L. 1983; amd. Sec. 2, Ch. 737, L. 1985; amd. Sec. 1, Ch. 11, Sp. L. June 1986; amd. Sec. 9, Ch. 475, L. 1987; amd. Sec. 5, Ch. 434, L. 1989; amd. Sec. 7, Ch. 105, L. 1991; amd. Sec. 5, Ch. 547, L. 1991; amd. Secs. 4, 5, Ch. 548, L. 1991; amd. Secs. 20, 21, Ch. 799, L. 1991; amd. Sec. 62, Ch. 10, L. 1993; amd. Sec. 5, Ch. 528, L. 1995; amd. Secs. 17, 49(3)(f), Ch. 286, L. 1997; Sec. 41-5-306, MCA 1995; redes. 41-5-344 by Sec. 47, Ch. 286, L. 1997.

**41-5-345. Limitation on placement of youth in need of intervention.** (1) After a probable cause hearing provided for in 41-5-332, a youth alleged to be a youth in need of intervention may be placed only in shelter care, as provided in 41-5-347.

(2) A youth alleged or found to be a youth in need of intervention may not be placed in a jail, secure detention facility, or correctional facility.

**History:** En. Sec. 18, Ch. 286, L. 1997; amd. Sec. 76, Ch. 550, L. 1997.

**41-5-346. Limitation on placement of delinquent youth.** After a probable cause hearing provided for in 41-5-332, a youth alleged to be a delinquent youth may be placed only:

- (1) in shelter care, in the facilities described in 41-5-347;
- (2) under home arrest as provided in 41-5-347;
- (3) in detention, as provided in 41-5-348; or
- (4) in a community youth court program.

**History:** En. Sec. 19, Ch. 286, L. 1997.

**41-5-347. Place of shelter care.** Placement in shelter care means placement in one of the following:

- (1) in a licensed youth care facility as defined in 52-2-602; or
- (2) under home arrest, with or without a monitoring device, as provided in Title 46, chapter 18, part 10, either in the youth's own home or in a facility described in subsection (1).

**History:** En. Secs. 20, 49(3)(f), Ch. 286, L. 1997; amd. Sec. 76, Ch. 51, L. 1999.

**41-5-348. Place of detention.** Placement in detention means placement in one of the following facilities:

- (1) a short-term detention center;
- (2) a youth detention facility, including a regional detention facility; or
- (3) a secure detention facility outside the state or operated by an Indian tribe that is under contract to the state or a subdivision of the state and that is in substantial compliance with the licensing requirements contained in rules adopted by the department.

**History:** En. Sec. 21, Ch. 286, L. 1997; amd. Sec. 5, Ch. 532, L. 1999.

**41-5-349. Youth not to be detained in jail — exceptions — time limitations.** (1) A youth may not be detained or otherwise placed in a jail or other adult detention facility except as provided in 41-5-206 and this section.

(2) A youth who has allegedly committed an offense that if committed by an adult would constitute a criminal offense may be temporarily detained in a jail or other adult detention facility for a period not to exceed:

- (a) 6 hours, but in no case overnight, for the purpose of identification, processing, or transfer of the youth to an appropriate detention facility or shelter care facility; or
- (b) 24 hours, excluding weekends and legal holidays, if the youth is awaiting a probable cause hearing pursuant to 41-5-332.

(3) The exception provided for in subsection (2)(b) applies only if:

- (a) the court having jurisdiction over the youth is outside a metropolitan statistical area;
- (b) alternative facilities are not available or alternative facilities do not provide adequate security; and
- (c) the youth is kept in an area that provides physical as well as sight and sound separation from adults accused or convicted of criminal offenses.

(4) Whenever, despite all good faith efforts to comply with the time limitations specified in subsection (2), the limitations are exceeded, this circumstance does not serve as grounds for dismissal of the case nor does this circumstance constitute a defense in a subsequent delinquency or criminal proceeding.

**History:** En. Sec. 1, Ch. 547, L. 1991; amd. Sec. 49, Ch. 18, L. 1995; amd. Sec. 23, Ch. 286, L. 1997; Sec. 41-5-311, MCA 1995; redes. 41-5-349 by Sec. 47, Ch. 286, L. 1997.

**41-5-350. Permitted acts — detention of youth in law enforcement facilities — criteria.** (1) Nothing in this chapter precludes the detention of youth in a police station or other law enforcement facility that is attached to or part of a jail if:

(a) the area where the youth is held is an unlocked, multipurpose area, such as a lobby, office, interrogation room, or other area that is not designated or used as a secure detention area or that is not part of a secure detention area, or, if part of such an area, that is used only for the purpose of processing, such as a booking room;

(b) the youth is not secured to a cuffing rail or other stationary object during the period of detention;

(c) use of the area is limited to ensuring custody of the youth for the purpose of identification, processing, or transfer of the youth to an appropriate detention or shelter care facility;

(d) the area is not designed or intended to be used for residential purposes; and

(e) the youth is under continuous visual supervision by a law enforcement officer or by facility staff during the period of time that the youth is held in detention.

(2) For purposes of this section, "secure detention" means the detention of youth or confinement of adults accused or convicted of criminal offenses in a physically restricting setting, including but not limited to a locked room or set of rooms or a cell designed to prevent a youth or adult from departing at will.

**History:** En. Sec. 7, Ch. 548, L. 1991; Sec. 41-5-313, MCA 1995; redes. 41-5-350 by Sec. 47, Ch. 286, L. 1997.

**41-5-351 through 41-5-354 reserved.**

**41-5-355. Excessive juvenile population — confinement of juveniles in alternate placements.** (1) The department shall determine the capacity for state youth correctional facilities. The department shall notify all district courts, sheriffs, and youth courts of the capacity for each state youth correctional facility by sending a report to each annually.

(2) If the population of a state youth correctional facility exceeds the capacity established by the department, the director of the department may declare that the capacity has been exceeded and temporarily stop admissions to the facility. The director shall notify each district court, sheriff, and youth court that delinquent or criminally convicted youth will not be accepted by the department for admission into the facility until the population is reduced to less than the capacity determined by the department in subsection (1).

(3) If the director of the department declares that the capacity has been exceeded, the department shall place delinquent youth committed to a state youth correctional facility or criminally convicted youth in alternate placements based on the needs of the delinquent youth or criminally convicted youth. If a youth is denied placement in a state youth correctional facility under this section, the department shall inform and seek approval of the district court of the intended alternative placement prior to placing the youth.

(4) The department may enter into contracts with the federal government, other states, local governments, public or private corporations, and other entities that have suitable facilities for confining delinquent youth or criminally convicted youth committed to the department, either because a state youth correctional facility has exceeded its capacity or because the department has no youth correctional facility that is adequate for certain delinquent youth or criminally convicted youth.

**History:** En. Sec. 16, Ch. 532, L. 1999.

## **Part 12**

### **Preliminary Investigation**

**41-5-1201. Preliminary inquiry — referral of youth in need of care.** (1) Whenever the court receives information from an agency or person, including a parent or guardian of a youth, based upon reasonable grounds, that a youth is or appears to be a delinquent youth or a youth in need of intervention or that the youth is subject to a court order or consent order and has violated the terms of an order, a juvenile probation officer or an assessment officer shall make a preliminary inquiry into the matter.

(2) If the juvenile probation officer or assessment officer determines that the facts indicate that the youth is a youth in need of care, as defined in 41-3-102, the matter must be immediately referred to the department of public health and human services.

**History:** En. 10-1209 by Sec. 9, Ch. 329, L. 1974; amd. Sec. 2, Ch. 571, L. 1977; R.C.M. 1947, 10-1209; amd. Sec. 4, Ch. 515, L. 1987; amd. Sec. 58, Ch. 609, L. 1987; amd. Sec. 1, Ch. 271, L. 1989; amd. Sec. 193, Ch. 546, L. 1995; amd. Sec. 1, Ch. 185, L. 1997; amd. Secs. 5, 49(3)(f), Ch. 286, L. 1997; Sec. 41-5-301, MCA 1995; redes. 41-5-1201 by Sec. 47, Ch. 286, L. 1997; amd. Sec. 6, Ch. 114, L. 2001; amd. Sec. 64, Ch. 2, L. 2009.

**41-5-1202. Preliminary inquiry — procedure — youth assessment.** (1) In conducting a preliminary inquiry under 41-5-1201, the juvenile probation officer or assessment officer shall:

- (a) advise the youth of the youth's rights under this chapter and the constitutions of the state of Montana and the United States;
- (b) determine whether the matter is within the jurisdiction of the court;
- (c) determine, if the youth is in detention, a youth assessment center, or shelter care, whether detention, placement in a youth assessment center, or shelter care should be continued or modified based upon criteria set forth in 41-5-341 through 41-5-343.

(2) In conducting a preliminary inquiry, the juvenile probation officer or assessment officer may:

- (a) require the presence of any person relevant to the inquiry;
- (b) request subpoenas from the judge to accomplish this purpose;
- (c) require investigation of the matter by any law enforcement agency or any other appropriate state or local agency;
- (d) perform a youth assessment pursuant to 41-5-1203.



**History:** En. Secs. 6, 49(3)(f), Ch. 286, L. 1997; amd. Sec. 78(5)(a), Ch. 550, L. 1997; amd. Sec. 65, Ch. 2, L. 2009.

**41-5-1203. Preliminary inquiry — youth assessment.** (1) The juvenile probation officer or assessment officer may perform a youth assessment if:

(a) a youth has been referred to the youth court as an alleged youth in need of intervention with a minimum of two misdemeanor offenses or three offenses in the past year that would not be offenses if the youth were an adult;

(b) the youth is alleged to be a youth in need of intervention or a delinquent youth and the youth or the youth's parents or guardian requests the youth assessment and both the youth and the parents or guardian are willing to cooperate with the assessment process; or

(c) the circumstances surrounding a youth who has committed an act that would be a felony if committed by an adult indicate the need for a youth assessment and the safety of the community has been considered in determining where the youth assessment is conducted.

(2) A youth assessment:

(a) must be a multidisciplinary effort that may include, but is not limited to a chemical dependency evaluation of the youth, an educational assessment of the youth, an evaluation to determine if the youth has mental health needs, or an assessment of the need for any family-based services or other services provided by the department of public health and human services or other state and local agencies. The education component of the youth assessment is intended to address attendance, behavior, and performance issues of the youth. The education component is not intended to interfere with the right to attend a nonpublic or home school that complies with 20-5-109.

(b) must include a summary of the family's strengths and needs as they relate to addressing the youth's behavior;

(c) may occur in a youth's home, with or without electronic monitoring, or pursuant to 41-5-343 in a youth assessment center licensed by the department of public health and human services or in any other entity licensed by the department of public health and human services. The county shall provide adequate security in other licensed entities through provision of additional staff or electronic monitoring. The staff provided by the county must meet licensing requirements applicable to the licensed entity in which the youth is being held.

(3) The assessment officer arranging the youth assessment shall work with the parent or guardian of the youth to coordinate the performance of the various parts of the assessment with any providers that may already be working with the family or providers that are chosen by the family to the extent possible to meet the goals of the Youth Court Act.

**History:** En. Sec. 49(3)(g), Ch. 286, L. 1997; amd. Sec. 78(5)(c), Ch. 550, L. 1997; amd. Sec. 66, Ch. 2, L. 2009.

**41-5-1204. Preliminary inquiry — determinations — release.** Once relevant information is secured after a preliminary inquiry under 41-5-1201, the juvenile probation officer or assessment officer shall:

(1) determine whether the interest of the public or the youth requires that further action be taken;

(2) terminate the inquiry upon the determination that no further action be taken; and

(3) release the youth immediately upon the determination that the filing of a petition is not authorized.

**History:** En. Secs. 7, 49(3)(f), Ch. 286, L. 1997; amd. Sec. 67, Ch. 2, L. 2009.

**41-5-1205. Preliminary inquiry — dispositions available to juvenile probation officer.** Upon determining that further action is required after a preliminary inquiry under 41-5-1201, the juvenile probation officer or assessment officer may:

(1) arrange informal disposition as provided in 41-5-1301; or

(2) refer the matter to the county attorney for filing a petition in youth court charging the youth to be a delinquent youth or a youth in need of intervention or for filing an information in the district court as provided in 41-5-206.

**History:** En. Secs. 8, 49(3)(f), Ch. 286, L. 1997; amd. Sec. 68, Ch. 2, L. 2009.

**41-5-1206. Investigation, fingerprints, and photographs.** (1) All law enforcement investigations relating to a delinquent youth or youth in need of intervention must be conducted in accordance with this chapter and Title 46.

(2) A youth may be fingerprinted or photographed for criminal identification purposes:

(a) if arrested for conduct alleged to be unlawful that would be a felony if committed by an adult;

(b) pursuant to a search warrant, supported by probable cause, issued by a judge, justice of the peace, or magistrate; or

(c) upon the order of the youth court judge, after a petition alleging delinquency has been filed.

(3) Fingerprint records and photographs may be used by the department of justice or any law enforcement agency in the judicial district for comparison and identification purposes in any other investigation.

**History:** En. 10-1218 by Sec. 18, Ch. 329, L. 1974; amd. Sec. 6, Ch. 100, L. 1977; amd. Sec. 9, Ch. 571, L. 1977; R.C.M. 1947, 10-1218(2); amd. Sec. 2, Ch. 484, L. 1981; amd. Sec. 6, Ch. 515, L. 1987; amd. Sec. 1, Ch. 346, L. 1991; amd. Sec. 1, Ch. 603, L. 1993; amd. Sec. 4, Ch. 528, L. 1995; amd. Sec. 22, Ch. 550, L. 1997; Sec. 41-5-304, MCA 1995; redes. 41-5-1206 by Sec. 47, Ch. 286, L. 1997.

**41-5-1207 through 41-5-1209 reserved.**

**41-5-1210. Information to be collected by juvenile probation officer or assessment officer.** The juvenile probation officer or assessment officer shall collect the following information regarding a youth:

(1) biographical data;

(2) a description of prior and current offenses, including criminal history;

(3) a listing of known or suspected associates;

(4) any gang or drug involvement;

(5) field investigation data;

(6) motor vehicle ownership and offense data, if any;

(7) whether the youth is a suspect in other criminal investigations;

(8) history of any victimization of others by the youth;

(9) the youth's status offense history;

(10) existence of active warrants;

(11) school, employment, and family histories;

(12) social and medical services histories; and

(13) prior conduct in a youth detention or correctional facility, if any.

**History:** En. Sec. 6, Ch. 532, L. 1999.

## **Part 13**

### **Informal Proceeding**

**41-5-1301. Informal disposition.** After a preliminary inquiry under 41-5-1201, the juvenile probation officer or assessment officer upon determining that further action is required and that referral to the county attorney is not required may:

(1) provide counseling, refer the youth and the youth's family to another agency providing appropriate services, or take any other action or make any informal adjustment that does not involve probation or detention; or

(2) provide for treatment or adjustment involving probation or other disposition authorized under 41-5-1302 through 41-5-1304 if the treatment or adjustment is voluntarily accepted by the youth's parents or guardian and the youth, if the matter is referred immediately to the county attorney for review, and if the juvenile probation officer or assessment officer proceeds no further unless authorized by the county attorney.

**History:** En. Sec. 9, Ch. 286, L. 1997, and Sec. 78(5)(b), Ch. 550, L. 1997; amd. Sec. 7, Ch. 532, L. 1999; amd. Sec. 69, Ch. 2, L. 2009.

**41-5-1302. Consent adjustment without petition.** (1) Before referring the matter to the county attorney and subject to the limitations in subsection (3), the juvenile probation officer or assessment officer may enter into a consent adjustment and give counsel and advice to the youth, the youth's family, and other interested parties if it appears that:

(a) the admitted facts bring the case within the jurisdiction of the court;

(b) counsel and advice without filing a petition would be in the best interests of the child, the family, and the public; and

(c) the youth may be a youth in need of intervention and the juvenile probation officer or assessment officer believes that the parents, foster parents, physical custodian, or guardian exerted all reasonable efforts to mediate, resolve, or control the youth's behavior and the youth continues to exhibit behavior beyond the control of the parents, foster parents, physical custodian, or guardian.

(2) Any probation or other disposition imposed under this section against a youth must conform to the following procedures:

(a) Every consent adjustment must be reduced to writing and signed by the youth and the youth's parents or the person having legal custody of the youth.

(b) If the juvenile probation officer or assessment officer believes that the youth is a youth in need of intervention, the juvenile probation officer or assessment officer shall determine that the parents, foster parents, physical custodian, or guardian exerted all reasonable efforts to mediate, resolve, or control the youth's behavior and that the youth continues to exhibit behavior beyond the control of the parents, foster parents, physical custodian, or guardian.

(c) Approval by the youth court judge is required if the complaint alleges commission of a felony or if the youth has been or will be in any way detained.

(3) A consent adjustment without petition under this section may not be used to dispose of a youth's alleged second or subsequent offense if:

(a) the youth has admitted commission of or has been adjudicated or sentenced for a prior offense that would be a felony if committed by an adult;

(b) the second or subsequent offense would be a felony if committed by an adult and was committed within 3 years of a prior offense; or

(c) the second or subsequent offense would be a misdemeanor if committed by an adult and was committed within 3 years of a prior offense, other than a felony, unless the juvenile probation officer notifies the youth court and obtains written approval from the county attorney and the youth court judge.

(4) For purposes of subsection (3), related offenses committed by a youth during the same 24-hour period must be considered a single offense.

**History:** En. 10-1210 by Sec. 10, Ch. 329, L. 1974; amd. Sec. 4, Ch. 100, L. 1977; amd. Sec. 3, Ch. 571, L. 1977; R.C.M. 1947, 10-1210(1), (2); amd. Sec. 2, Ch. 231, L. 1991; amd. Sec. 25, Ch. 550, L. 1997; Sec. 41-5-401, MCA 1995; redes. 41-5-1302 by Sec. 47, Ch. 286, L. 1997; amd. Sec. 8, Ch. 532, L. 1999; amd. Sec. 70, Ch. 2, L. 2009.

**41-5-1303. Communications privileged.** An incriminating statement relating to any act or omission constituting delinquency or need of intervention made by the participant to the person giving counsel or advice in the discussions or conferences incident thereto may not be used against the declarant in any proceeding under this chapter, nor may the incriminating statement be admissible in any criminal proceeding against the declarant. This section does not apply to the use of voluntary and reliable statements that are offered for impeachment purposes.

**History:** En. 10-1210 by Sec. 10, Ch. 329, L. 1974; amd. Sec. 4, Ch. 100, L. 1977; amd. Sec. 3, Ch. 571, L. 1977; R.C.M. 1947, 10-1210(3); amd. Sec. 8, Ch. 515, L. 1987; amd. Sec. 76, Ch. 550, L. 1997; Sec. 41-5-402, MCA 1995; redes. 41-5-1303 by Sec. 47, Ch. 286, L. 1997.

**41-5-1304. Disposition permitted under consent adjustment.** (1) The following dispositions may be imposed by consent adjustment:

(a) probation;

(b) placement of the youth in substitute care in a youth care facility, as defined in 52-2-602 and pursuant to a recommendation made under 41-5-121;

(c) placement of the youth with a private agency responsible for the care and rehabilitation of the youth pursuant to a recommendation made under 41-5-121;

(d) restitution, as provided in 41-5-1521, upon approval of the youth court judge;

(e) placement of the youth under home arrest as provided in Title 46, chapter 18, part 10;

(f) confiscation of the youth's driver's license, if the youth has one, by the juvenile probation officer for a specified period of time, not to exceed 90 days. The juvenile probation officer shall

notify the department of justice of the confiscation and its duration. The department of justice may not enter the confiscation on the youth's driving record. The juvenile probation officer shall notify the department of justice when the confiscated driver's license has been returned to the youth. A youth's driver's license may be confiscated under this subsection more than once. The juvenile probation officer may, in the juvenile probation officer's discretion and with the concurrence of a parent or guardian, return a youth's confiscated driver's license before the termination of the time period for which it had been confiscated. The confiscation may not be used by an insurer as a factor in determining the premium or part of a premium to be paid for motor vehicle insurance covering the youth or a vehicle or vehicles driven by the youth, nor may it be used as grounds for denying coverage for an accident or other occurrence under an existing policy.

- (g) a requirement that the youth receive counseling services;
- (h) placement in a youth assessment center for up to 10 days;
- (i) placement of the youth in detention for up to 3 days on a space-available basis at the county's expense, which is not reimbursable under part 19 of this chapter;
- (j) a requirement that the youth perform community service;
- (k) a requirement that the youth participate in victim-offender mediation;
- (l) an agreement that the youth pay a contribution covering all or a part of the costs for the adjudication, disposition, attorney fees for the costs of prosecuting or defending the youth, costs of detention, supervision, care, custody, and treatment of the youth, including the costs of counseling;
- (m) an agreement that the youth pay a contribution covering all or a part of the costs of a victim's counseling or restitution for damages that result from the offense for which the youth is disposed;
- (n) any other condition ordered by the court to accomplish the goals of the consent adjustment, including but not limited to mediation or youth assessment. Before ordering youth assessment, the court shall provide the family with an estimate of the cost of youth assessment, and the court shall take into consideration the financial resources of the family before ordering parental or guardian contribution for the costs of youth assessment.

(2) If the youth violates a parole agreement as provided for in 52-5-126, the youth must be returned to the court for further disposition. A youth may not be placed in a state youth correctional facility under a consent adjustment.

(3) If the youth is placed in substitute care, an assessment placement, or detention requiring payment by any state department or local government agency, the court shall examine the financial ability of the youth's parents or guardians to pay a contribution covering all or part of the costs for the adjudication, disposition, supervision, care, placement, and treatment of the youth, including the costs of necessary medical, dental, and other health care.

**History:** En. 10-1210 by Sec. 10, Ch. 329, L. 1974; amd. Sec. 4, Ch. 100, L. 1977; amd. Sec. 3, Ch. 571, L. 1977; R.C.M. 1947, 10-1210(4); amd. Sec. 3, Ch. 246, L. 1979; amd. Sec. 3, Ch. 484, L. 1981; amd. Sec. 1, Ch. 129, L. 1983; amd. Sec. 7, Ch. 363, L. 1983; amd. Sec. 4, Ch. 465, L. 1983; amd. Sec. 5, Ch. 531, L. 1985; amd. Sec. 7, Ch. 14, Sp. L. June 1986; amd. Sec. 59, Ch. 609, L. 1987; amd. Sec. 8, Ch. 105, L. 1991; amd. Sec. 3, Ch. 696, L. 1991; amd. Sec. 6, Ch. 528, L. 1995; amd. Sec. 194, Ch. 546, L. 1995; amd. Sec. 2, Ch. 185, L. 1997; amd. Sec. 26, Ch. 550, L. 1997; Sec. 41-5-403, MCA 1995; redes. 41-5-1304 by Sec. 47, Ch. 286, L. 1997; amd. Sec. 71, Ch. 2, L. 2009.

## Part 14

### Formal Proceeding — Procedure

#### **41-5-1401. Petition — county attorney — procedure — release from custody.**

(1) The county attorney may apply to the youth court for permission to file a petition charging a youth to be a delinquent youth or a youth in need of intervention. The application must be supported by evidence that the youth court may require. If it appears that there is probable cause to believe that the allegations of the petition are true, the youth court shall grant leave to file the petition.

(2) A petition charging a youth who is held in detention or a youth assessment center must be filed within 7 working days from the date the youth was first taken into custody or the petition must be dismissed and the youth released unless good cause is shown to further detain the youth.

(3) If a petition is not filed under this section, the complainant and victim, if any, must be informed by the juvenile probation officer or assessment officer of the action and the reasons for not filing and must be advised of the right to submit the matter to the county attorney for review. The county attorney, upon receiving a request for review, shall consider the facts, consult with the juvenile probation officer or assessment officer, and make the final decision as to whether a petition is filed.

**History:** En. Secs. 10, 49(3)(f), Ch. 286, L. 1997; amd. Sec. 72, Ch. 2, L. 2009.

**41-5-1402. Petition — form and content.** (1) A petition initiating proceedings under this chapter must be signed by the county attorney, must be entitled “In the Matter of..., a youth”, and must set forth with specificity:

(a) the facts necessary to invoke the jurisdiction of the court, together with a statement alleging the youth to be a delinquent youth or a youth in need of intervention;

(b) the charge of an offense, that must:

(i) state the name of the offense;

(ii) cite in customary form the statute, rule, or other provisions of law that the youth is alleged to have violated;

(iii) state the facts constituting the offense in ordinary and concise language and in a manner that enables a person of common understanding to know what is intended; and

(iv) state the time and place of the offense as definitely as possible;

(c) the name, birth date, and residence address of the youth;

(d) the names and residence addresses of the parents, guardian, or spouse of the youth and, if the parents, guardian, or spouse do not reside or cannot be found within the state or if there is none, the adult relative residing nearest to the court;

(e) whether the youth is in detention, a youth assessment center, or shelter care and, if so, the place of detention, assessment, or shelter care and the time that the youth was detained or sheltered;

(f) if any of the matters required to be set forth by this section are not known, a statement of those matters and the fact that they are not known; and

(g) a list of witnesses to be used in proving the commission of the offense or offenses charged in the petition, together with their residence addresses. The names and addresses of any witnesses discovered after the filing of the petition must be furnished to the youth upon request.

(2) When a county attorney files a delinquency petition alleging that a youth committed an offense that would be a felony if committed by an adult and that is transferable under 41-5-206 or in which a youth 12 years of age or older allegedly used a firearm, the county attorney shall indicate in the petition whether the county attorney designates the proceeding an extended jurisdiction juvenile prosecution. When the county attorney files a delinquency petition alleging that a youth committed any other offense that would be a felony if committed by an adult, the county attorney may request that the court designate the proceeding an extended jurisdiction juvenile prosecution.

**History:** En. 10-1215 by Sec. 15, Ch. 329, L. 1974; amd. Sec. 7, Ch. 571, L. 1977; R.C.M. 1947, 10-1215; amd. Sec. 5, Ch. 498, L. 1997; amd. Secs. 27, 76, Ch. 550, L. 1997; Sec. 41-5-501, MCA 1995; redes. 41-5-1402 by Sec. 47, Ch. 286, L. 1997.

**41-5-1403. Summons.** (1) After a petition has been filed, summons must be served directly to:

(a) the youth;

(b) the youth's parent or parents having actual custody of the youth or the youth's guardian or custodian, as the case may be; and

(c) other persons as the court may direct.

(2) The summons must:

(a) require the parties to whom it is directed to appear personally before the court at the time fixed by the summons to answer the allegations of the petition;

(b) advise the parties of their right to counsel under the Montana Youth Court Act; and

(c) have attached to it a copy of the petition.

(3) The court may endorse upon the summons an order directing the person or persons having the physical custody or control of the youth to bring the youth to the hearing.



(4) If it appears to the court that the youth needs to be placed in detention or shelter care, the judge may endorse on the summons an order directing the officer serving the summons to at once take the youth into custody and to take the youth to the place of detention or shelter care designated by the court, subject to the rights of the youth and parent or person having legal custody of the youth as set forth in the provisions of the Montana Youth Court Act relating to detention and shelter care criteria and postdetention proceedings.

(5) If a youth is placed in detention or shelter care under any provision of this chapter pending an adjudication, the court shall, as soon as practicable, conduct a probable cause hearing as provided in 41-5-332.

(6) The youth court judge may also admit the youth to bail in accordance with Title 46, chapter 9.

**History:** En. 10-1216 by Sec. 16, Ch. 329, L. 1974; amd. Sec. 8, Ch. 571, L. 1977; R.C.M. 1947, 10-1216; amd. Sec. 10, Ch. 475, L. 1987; amd. Sec. 9, Ch. 515, L. 1987; amd. Sec. 9, Ch. 547, L. 1991; amd. Sec. 25, Ch. 286, L. 1997; Sec. 41-5-502, MCA 1995; redes. 41-5-1403 by Sec. 47, Ch. 286, L. 1997.

**41-5-1404. Service of summons.** (1) A youth who is the subject of a proceeding under this chapter must be personally served with summons at least 5 days before the time stated for appearance.

(2) Service of summons on all other persons designated in 41-5-1403(1) must be made in accordance with Rule 4(c)(2)(C), (c)(2)(D), and (d) through (s) of the Montana Rules of Civil Procedure, except that in all cases, service must be completed at least 5 days before the time stated for appearance.

(3) If a party referred to in subsection (2) is not personally served before a hearing and has not been secluded in an attempt to delay or disrupt any proceeding, the party may appear within a reasonable time subsequent to the hearing and, on motion to the court, request a rehearing. The motion may be granted at the discretion of the judge if a rehearing would be in the best interest of the youth.

(4) The court may authorize payment from county funds of costs of service and necessary travel expenses incurred by persons summoned or otherwise required to appear at the hearing.

(5) An actual abandonment of a youth by the youth's parent or parents constitutes a waiver of summons and notice requirements by the parent or parents. A return endorsed upon the summons showing inability to serve summons constitutes prima facie evidence of actual abandonment.

(6) The youth court may, in the interests of justice, shorten the notice requirements contained in this section, and notice of shortened time must be endorsed on the summons.

(7) A party, other than the youth, may waive service of summons on that party by written stipulation or by voluntary appearance at the hearing. If the youth is present at the hearing, the youth's counsel may waive service of summons on behalf of the youth.

**History:** En. 10-1217 by Sec. 17, Ch. 329, L. 1974; amd. Sec. 5, Ch. 100, L. 1977; R.C.M. 1947, 10-1217; Sec. 41-5-503, MCA 1995; redes. 41-5-1404 by Sec. 47, Ch. 286, L. 1997; amd. Sec. 1598, Ch. 56, L. 2009.

**41-5-1405. Disqualification of judges.** The statutes of the state of Montana relating to disqualification of judges in criminal proceedings shall apply to all proceedings under this chapter.

**History:** En. 10-1223 by Sec. 23, Ch. 329, L. 1974; R.C.M. 1947, 10-1223; amd. Sec. 2, Ch. 515, L. 1987; Sec. 41-5-202, MCA 1995; redes. 41-5-1405 by Sec. 47, Ch. 286, L. 1997.

**41-5-1406 through 41-5-1410 reserved.**

**41-5-1411. Appointment of guardian ad litem.** The court at any stage of a proceeding on a petition under this chapter may appoint a guardian ad litem for a youth if the youth does not have a parent or guardian appearing on the youth's behalf or if the parent's or guardian's interests conflict with those of the youth. A party to the proceeding or an employee or representative of a party may not be appointed as guardian ad litem.

**History:** En. 10-1218 by Sec. 18, Ch. 329, L. 1974; amd. Sec. 6, Ch. 100, L. 1977; amd. Sec. 9, Ch. 571, L. 1977; R.C.M. 1947, 10-1218(4); Sec. 41-5-512, MCA 1995; redes. 41-5-1411 by Sec. 47, Ch. 286, L. 1997; amd. Sec. 1599, Ch. 56, L. 2009.

**41-5-1412. Rights and obligations — persons to be advised — contempt.** (1) A person afforded rights under this chapter must be advised of those rights and any other rights existing

under law at the time of the person's first appearance in a proceeding on a petition under the Montana Youth Court Act and at any other time specified in that act or other law.

(2) A person must be advised of obligations, including possible assessments and related costs, that may arise under this chapter, including the possibility that the person may be required to reimburse the state or local governments for costs attributable to the adjudication, disposition, attorney fees for the costs of prosecuting or defending the youth, costs of detention, supervision, care, custody, and treatment of the youth and may be required to participate in counseling, treatment, or other support services.

(3) A youth's parents or guardians are obligated to assist and support the youth court in implementing the court's orders concerning a youth under youth court jurisdiction, and the parents or guardians are subject to the court's contempt powers if they fail to do so. The youth court personnel shall assist the parents to the extent possible in implementing and enforcing interventions and consequences designed to modify the youth's behavior.

(4) A parent has a right to review the results of a youth assessment and to place a rebuttal, statement, or additional information in the youth's file in youth court.

**History:** En. 10-1218 by Sec. 18, Ch. 329, L. 1974; amd. Sec. 6, Ch. 100, L. 1977; amd. Sec. 9, Ch. 571, L. 1977; R.C.M. 1947, 10-1218(6); amd. Sec. 29, Ch. 550, L. 1997; Sec. 41-5-515, MCA 1995; red. 41-5-1412 by Sec. 47, Ch. 286, L. 1997.

**41-5-1413. Right to counsel — assignment of counsel.** In all proceedings following the filing of a petition alleging that a youth is a delinquent youth or youth in need of intervention, the youth and the parents or guardian of the youth must be advised by the court or, in the absence of the court, by its representative that the youth may be represented by counsel at all stages of the proceedings. If counsel is not retained or if it appears that counsel will not be retained for the youth, the court shall order the office of state public defender, provided for in 2-15-1029, to assign counsel for the youth pursuant to the Montana Public Defender Act, Title 47, chapter 1, unless the right to counsel is waived by the youth and the parents or guardian. Neither the youth nor the youth's parents or guardian may waive the right to counsel after a petition has been filed if commitment to the department for a period of more than 6 months may result from adjudication.

**History:** En. 10-1218 by Sec. 18, Ch. 329, L. 1974; amd. Sec. 6, Ch. 100, L. 1977; amd. Sec. 9, Ch. 571, L. 1977; R.C.M. 1947, 10-1218(3); amd. Sec. 1, Ch. 386, L. 1979; amd. Sec. 4, Ch. 484, L. 1981; amd. Sec. 60, Ch. 609, L. 1987; amd. Sec. 28, Ch. 550, L. 1997; Sec. 41-5-511, MCA 1995; red. 41-5-1413 by Sec. 47, Ch. 286, L. 1997; amd. Sec. 37, Ch. 449, L. 2005; amd. Sec. 11, Ch. 358, L. 2017.

**Compiler's Comments**

*2017 Amendment:* Chapter 358 in second sentence substituted "2-15-1029" for "47-1-201". Amendment effective July 1, 2017.

**41-5-1414. Right to confront witnesses.** In a proceeding on a petition, a party is entitled to:

- (1) the opportunity to introduce evidence and otherwise be heard on the party's own behalf;
- (2) confront and cross-examine witnesses testifying against the party; and
- (3) admit or deny the allegations against the party in the petition.

**History:** En. 10-1218 by Sec. 18, Ch. 329, L. 1974; amd. Sec. 6, Ch. 100, L. 1977; amd. Sec. 9, Ch. 571, L. 1977; R.C.M. 1947, 10-1218(5); Sec. 41-5-513, MCA 1995; red. 41-5-1414 by Sec. 47, Ch. 286, L. 1997.

**41-5-1415. Admissibility of confession or illegally seized evidence.** In a proceeding alleging a youth to be a delinquent youth:

- (1) an extrajudicial statement that would be constitutionally inadmissible in a criminal matter may not be received in evidence;
- (2) evidence illegally seized or obtained may not be received in evidence to establish the allegations of a petition against a youth; and
- (3) an extrajudicial admission or confession made by the youth out of court is insufficient to support a finding that the youth committed the acts alleged in the petition unless it is corroborated by other evidence.

**History:** En. 10-1218 by Sec. 18, Ch. 329, L. 1974; amd. Sec. 6, Ch. 100, L. 1977; amd. Sec. 9, Ch. 571, L. 1977; R.C.M. 1947, 10-1218(1)(c); amd. Sec. 7, Ch. 528, L. 1995; Sec. 41-5-514, MCA 1995; red. 41-5-1415 by Sec. 47, Ch. 286, L. 1997; amd. Sec. 9, Ch. 532, L. 1999.

**41-5-1416. Victims and witnesses of juvenile felony offenses — consultation — notification of proceedings.** (1) The attorney general shall ensure that the services and

assistance that must be provided under Title 46, chapter 24, to a victim or witness of a crime are also provided to the victim or witness of a juvenile felony offense.

(2) In a proceeding filed under this part, the county attorney or a designee shall consult with the victim of a juvenile felony offense regarding the disposition of the case, including:

(a) a dismissal of the petition filed under 41-5-1402;

(b) a reduction of the charge to misdemeanor;

(c) the release of the youth from detention or shelter care pending the adjudicatory hearing or pending a probable cause hearing. The consultation required by this subsection (2)(c) must take place prior to the youth's release, whether or not the county attorney or designee has received information from the victim under subsection (3)(a), unless the county attorney or designee is unable to contact the victim after making a good faith effort to contact the victim.

(d) the disposition of the youth.

(3) (a) Whenever possible, a person described in subsection (3)(b) who provides the appropriate agency with a current address and telephone number must receive prompt advance notification of youth court case proceedings, including:

(i) the filing of a petition under 41-5-1402;

(ii) the release of the youth from detention or shelter care; and

(iii) proceedings in the adjudication of the petition, including, when applicable, entry of a consent decree under 41-5-1501, the setting of a date for the adjudicatory hearing under 41-5-1502, the setting of a date for the dispositional hearing under 41-5-1511, the disposition made, and the release of the youth from a youth correctional facility.

(b) A person entitled to notification under this subsection (3) must be a victim, as defined in 41-5-103, of a juvenile felony offense.

(c) The county attorney or a designee who provides the consultation regarding the disposition of a case required in subsection (2) shall give the victim the opportunity to provide the victim's current telephone number and address and shall provide the victim with the name and address of the agency or agencies responsible for operation of youth detention, correctional, or shelter care facilities that are responsible for the custody of the youth.

(d) The appropriate official or agency shall provide the notification required by this subsection (3) in the same manner as required for offenses committed by adults.

(4) For purposes of this section, "juvenile felony offense" means an offense committed by a juvenile that, if committed by an adult, would constitute a felony offense. The term includes any offense for which a juvenile may be declared a serious juvenile offender, as defined in 41-5-103.

**History:** En. Sec. 1, Ch. 170, L. 1991; amd. Sec. 6, Ch. 466, L. 1995; amd. Sec. 43, Ch. 286, L. 1997; amd. Sec. 57, Ch. 550, L. 1997; Sec. 46-24-207, MCA 1995; reded. 41-5-1416 by Sec. 77, Ch. 550, L. 1997; amd. Sec. 1, Ch. 102, L. 2001.

#### **41-5-1417 through 41-5-1420 reserved.**

**41-5-1421. Posttrial motions.** All posttrial motions and other remedies available to an adult in a criminal proceeding under the Montana Code of Criminal Procedure are available to a youth proceeded against under this chapter.

**History:** En. 10-1218 by Sec. 18, Ch. 329, L. 1974; amd. Sec. 6, Ch. 100, L. 1977; amd. Sec. 9, Ch. 571, L. 1977; R.C.M. 1947, 10-1218(7); Sec. 41-5-531, MCA 1995; reded. 41-5-1421 by Sec. 47, Ch. 286, L. 1997.

**41-5-1422. Modification of court orders — notice to department — hearing.** (1) An order of the court may be modified at any time.

(2) In the case of a youth committed to the department, an order pertaining to the youth may be modified only upon notice to the department and a subsequent hearing.

**History:** En. Sec. 40, Ch. 550, L. 1997.

**41-5-1423. Appeals.** (1) Any party other than the state may appeal from a judgment of the court to the supreme court in the manner provided by law. The appeal shall be heard by the supreme court upon the files, records, and transcript of the evidence of the juvenile court.

(2) The appeal to the supreme court does not stay the judgment appealed from, but the supreme court may order a stay upon application and hearing consistent with the provisions of this chapter if suitable provision is made for the care and custody of the youth. If the order appealed from grants the legal custody of the youth to or withholds it from one or more of the parties to the appeal, the appeal shall be heard at the earliest practicable time.

**History:** En. 10-1225 by Sec. 25, Ch. 329, L. 1974; R.C.M. 1947, 10-1225; Sec. 41-5-532, MCA 1995; reded. 41-5-1423 by Sec. 47, Ch. 286, L. 1997.

**41-5-1424 through 41-5-1430 reserved.**

**41-5-1431. Probation revocation proceeding — petition — hearing — disposition.**

(1) A youth on probation incident to an adjudication that the youth is a delinquent youth or a youth in need of intervention and that the youth has violated a term of probation may be proceeded against in a probation revocation proceeding. A proceeding to revoke probation must be done by filing in the original proceeding a petition styled “petition to revoke probation”.

(2) Petitions to revoke probation must be screened, reviewed, and prepared in the same manner and must contain the same information as petitions alleging delinquency or need of intervention. Procedures of the Montana Youth Court Act regarding taking into custody and detention apply. The petition must state the terms of probation alleged to have been violated and the factual basis for the allegations.

(3) The standard of proof in probation revocation proceedings is the same standard used in probation revocation of an adult, and the hearing must be before the youth court without a jury. In all other respects, proceedings to revoke probation are governed by the procedures, rights, and duties applicable to proceedings on petitions alleging that the youth is delinquent or a youth in need of intervention. If a youth is found to have violated a term of probation, the youth court may make any judgment of disposition that could have been made in the original case.

**History:** En. 10-1228 by Sec. 28, Ch. 329, L. 1974; R.C.M. 1947, 10-1228; amd. Sec. 45, Ch. 550, L. 1997; Sec. 41-5-533, MCA 1995; reded. 41-5-1431 by Sec. 47, Ch. 286, L. 1997.

**41-5-1432. Enforcement of restitution orders.** If the court orders payment of restitution and the youth fails to pay the restitution in accordance with the payment schedule or structure established by the court or juvenile probation officer, the youth’s juvenile probation officer may, on the officer’s own motion or at the request of the victim, file a petition for violation of probation or ask the court to hold a hearing to determine whether the conditions of probation should be changed. The juvenile probation officer shall ask for a hearing if the restitution has not been paid prior to 60 days before the term of probation expires. The court shall schedule and hold the hearing before the youth’s term of probation expires.

**History:** En. Sec. 12, Ch. 498, L. 1997; amd. Sec. 73, Ch. 2, L. 2009.

## **Part 15**

### **Formal Proceeding — Hearing — Disposition**

**41-5-1501. Consent decree with petition.** (1) (a) Subject to the provisions of subsection (2), after the filing of a petition under 41-5-1402 and before the entry of a judgment, the court may, on motion of counsel for the youth or on the court’s own motion, suspend the proceedings and continue the youth under supervision under terms and conditions negotiated with probation services and agreed to by all necessary parties. The court’s order continuing the youth under supervision under this section is known as a “consent decree”. Except as provided in subsection (1)(b), the procedures used and dispositions permitted under this section must conform to the procedures and dispositions specified in 41-5-1302 through 41-5-1304 relating to consent adjustments without petition and the responsibility of the youth’s parents or guardians to pay a contribution for the costs of placement in substitute care.

(b) A youth may be placed in detention for up to 10 days on a space-available basis at the county’s expense, which is not reimbursable under part 19 of this chapter.

(2) A consent decree under this section may not be used by the court unless the youth admits guilt for a charge of an offense set forth in the petition and accepts responsibility for the youth’s actions.

(3) If the youth or the youth’s counsel objects to a consent decree, the court shall proceed to findings, adjudication, and disposition of the case.

(4) If, either prior to discharge by probation services or expiration of the consent decree, a new petition alleging that the youth is a delinquent youth or a youth in need of intervention is filed against the youth or if the youth fails to fulfill the expressed terms and conditions of the consent decree, the petition under which the youth was continued under supervision may be reinstated in the discretion of the county attorney in consultation with probation services. In the



event of reinstatement, the proceeding on the petition must be continued to conclusion as if the consent decree had never been entered.

(5) A youth who is discharged by probation services or who completes a period under supervision without reinstatement of the original petition may not again be proceeded against in any court for the same offense alleged in the petition, and the original petition must be dismissed with prejudice. This subsection does not preclude a civil suit against the youth for damages arising from the youth's conduct.

(6) If the terms of the consent decree extend for a period in excess of 6 months, the juvenile probation officer shall at the end of each 6-month period submit a report that must be reviewed by the court.

(7) A consent decree with petition under this section may not be used to dispose of a youth's alleged second or subsequent offense if that offense would be a felony if committed by an adult or third or subsequent offense if that offense would be a misdemeanor if committed by an adult unless it is recommended by the county attorney and accepted by the youth court judge.

**History:** En. 10-1224 by Sec. 24, Ch. 329, L. 1974; amd. Sec. 8, Ch. 100, L. 1977; R.C.M. 1947, 10-1224; amd. Sec. 5, Ch. 696, L. 1991; amd. Sec. 42, Ch. 550, L. 1997; Sec. 41-5-524, MCA 1995; redes. 41-5-1501 by Sec. 47, Ch. 286, L. 1997; amd. Sec. 2, Ch. 523, L. 1999; amd. Sec. 10, Ch. 532, L. 1999; amd. Sec. 74, Ch. 2, L. 2009.

**41-5-1502. Adjudicatory hearing.** (1) Prior to any adjudicatory hearing, the court shall determine whether the youth admits or denies the offenses alleged in the petition. If the youth denies all offenses alleged in the petition, the youth or the youth's parent, guardian, or attorney may demand a jury trial on the contested offenses. In the absence of a demand, a jury trial is waived. If the youth denies some offenses and admits others, the contested offenses may be dismissed in the discretion of the youth court judge. The adjudicatory hearing must be set immediately and accorded a preferential priority.

(2) An adjudicatory hearing must be held to determine whether the contested offenses are supported by proof beyond a reasonable doubt in cases involving a youth alleged to be delinquent or in need of intervention. If the hearing is before a jury, the jury's function is to determine whether the youth committed the contested offenses. If the hearing is before the youth court judge without a jury, the judge shall make and record findings on all issues. If the allegations of the petitions are not established at the hearing, the youth court shall dismiss the petition and discharge the youth from custody.

(3) Prior to an adjudicatory hearing before a jury, the court shall conduct an omnibus hearing in accordance with 46-13-110.

(4) The jury trial must be conducted in accordance with Title 46, chapter 16.

(5) An adjudicatory hearing must be recorded verbatim by whatever means the court considers appropriate.

(6) The youth charged in a petition must be present at the hearing and, if brought from detention to the hearing, may not appear clothed in institutional clothing.

(7) In a hearing on a petition under this section, the general public may not be excluded, except that in the court's discretion, the general public may be excluded if the petition alleges that the youth is in need of intervention.

(8) If, on the basis of a valid admission by a youth of the allegations of the petition or after the hearing required by this section, a youth is found to be a delinquent youth or a youth in need of intervention, the court shall schedule a dispositional hearing under this chapter.

(9) When a jury trial is required in a case, it may be held before a jury selected as provided in Title 25, chapter 7, part 2, and in Rule 47, M.R.Civ.P.

**History:** En. 10-1220 by Sec. 20, Ch. 329, L. 1974; amd. Sec. 7, Ch. 100, L. 1977; amd. Sec. 1, Ch. 344, L. 1977; R.C.M. 1947, 10-1220; amd. Sec. 1, Ch. 668, L. 1979; amd. Sec. 1, Ch. 469, L. 1981; amd. Sec. 3, Ch. 466, L. 1995; amd. Sec. 26, Ch. 286, L. 1997; amd. Secs. 30, 76, Ch. 550, L. 1997; Sec. 41-5-521, MCA 1995; redes. 41-5-1502 by Sec. 47, Ch. 286, L. 1997.

**41-5-1503. Medical or psychological evaluation of youth — urinalysis.** (1) The youth court may order a youth to receive a medical or psychological evaluation at any time prior to final disposition if the youth waives the youth's constitutional rights in the manner provided for in 41-5-331. Except as provided in subsection (2), the youth court shall pay for the cost of the evaluation from its judicial district's allocation provided for in 41-5-130 or 41-5-2012.



(2) The youth court shall determine the financial ability of the youth's parents or guardians to pay the cost of an evaluation ordered by the court under subsection (1). If they are financially able, the court shall order the youth's parents or guardians to pay all or part of the cost of the evaluation.

(3) Subject to 41-5-1512(1)(o)(i), the youth court may not order an evaluation or placement of a youth at a state youth correctional facility unless the youth is found to be a delinquent youth or is alleged to have committed an offense that is listed in 41-5-206.

(4) An evaluation of a youth may not be performed at the Montana state hospital.

(5) In a proceeding alleging a youth to be a delinquent youth, upon a finding of an offense related to use of alcohol or illegal drugs, the court may order the youth to undergo urinalysis for the purpose of determining whether the youth is using alcoholic beverages or illegal drugs.

**History:** En. Sec. 39, Ch. 550, L. 1997; amd. Sec. 11, Ch. 532, L. 1999; amd. Sec. 7, Ch. 587, L. 2001; amd. Sec. 9, Ch. 398, L. 2007.

**41-5-1504. Finding of suffering from mental disorder and meeting other criteria — rights — limitation on placement.** (1) A youth who is found to be suffering from a mental disorder, as defined in 53-21-102, and who meets the criteria in 53-21-126(1) is entitled to all rights provided by 53-21-114 through 53-21-119.

(2) A youth who, prior to placement or sentencing, is found to be suffering from a mental disorder, as defined in 53-21-102, and who meets the criteria in 53-21-126(1) may not be committed or sentenced to a state youth correctional facility.

(3) (a) A youth who is found to be suffering from a mental disorder, as defined in 53-21-102, and who meets the criteria in 53-21-126(1), after placement in or sentencing to a state youth correctional facility must be moved to a more appropriate placement in response to the youth's mental health needs and consistent with the disposition alternatives available in 53-21-127.

(b) (i) If before removing the youth from the facility the department determines that it will request funds for the youth's placement from the cost containment pool as provided for in 41-5-132, the department may ask the cost containment review panel to make recommendations to the department about the most appropriate placement for the youth. The department shall provide the cost containment review panel with sufficient information about the youth to allow the panel to make its recommendations, and the department shall consider the panel's recommendations before making its placement decision.

(ii) The department may request at any time from the cost containment review panel recommendations regarding the youth's placement.

(iii) The cost containment review panel shall establish protocols for making recommendations to the department under this section.

**History:** En. Secs. 36, 78(1)(c), Ch. 550, L. 1997; amd. Sec. 7, Ch. 143, L. 2015.

**41-5-1505 through 41-5-1510 reserved.**

**41-5-1511. Dispositional hearing — contributions by parents or guardians for expenses.** (1) As soon as practicable after a youth is found to be a delinquent youth or a youth in need of intervention, the court shall conduct a dispositional hearing. The dispositional hearing may involve a determination of the financial ability of the youth's parents or guardians to pay a contribution for the cost of the adjudication, disposition, supervision, care, commitment, and treatment of the youth as required in 41-5-1525, including the costs of necessary medical, dental, and other health care.

(2) Before conducting the dispositional hearing, the court shall direct that a youth assessment or predisposition report be made in writing by a juvenile probation officer or an assessment officer concerning the youth, the youth's family, the youth's environment, and other matters relevant to the need for care or rehabilitation or disposition of the case, including a statement by the victim or the victim's family. The youth court may have the youth examined, and the results of the examination must be made available to the court as part of the youth assessment or predisposition report. The court may order the examination of a parent or guardian whose ability to care for or supervise a youth is at issue before the court. The results of the examination must be included in the youth assessment or predisposition report. The youth or the youth's parents, guardian, or counsel has the right to subpoena all persons who have prepared any

portion of the youth assessment or predisposition report and has the right to cross-examine the parties at the dispositional hearing.

(3) Defense counsel must be furnished with a copy of the youth assessment or predisposition report and psychological report prior to the dispositional hearing.

(4) The dispositional hearing must be conducted in the manner set forth in 41-5-1502(5) through (7). The court shall hear all evidence relevant to a proper disposition of the case best serving the interests of the youth, the victim, and the public. The evidence must include but is not limited to the youth assessment and predisposition report provided for in subsection (2) of this section.

(5) If the court finds that it is in the best interest of the youth, the youth, the youth's parents or guardian, or the public may be temporarily excluded from the hearing during the taking of evidence on the issues of need for treatment and rehabilitation.

**History:** En. 10-1221 by Sec. 21, Ch. 329, L. 1974; R.C.M. 1947, 10-1221; amd. Sec. 4, Ch. 246, L. 1979; amd. Sec. 9, Ch. 567, L. 1979; amd. Sec. 5, Ch. 484, L. 1981; amd. Sec. 31, Ch. 465, L. 1983; amd. Sec. 10, Ch. 515, L. 1987; amd. Sec. 61, Ch. 609, L. 1987; amd. Sec. 10, Ch. 696, L. 1991; amd. Sec. 8, Ch. 528, L. 1995; amd. Sec. 27, Ch. 286, L. 1997; amd. Sec. 31, Ch. 550, L. 1997; Sec. 41-5-522, MCA 1995; redes. 41-5-1511 by Sec. 47, Ch. 286, L. 1997; amd. Sec. 75, Ch. 2, L. 2009.

**41-5-1512. Disposition of youth in need of intervention or youth who violate consent adjustments.** (1) If a youth is found to be a youth in need of intervention or to have violated a consent adjustment, the youth court may enter its judgment making one or more of the following dispositions:

(a) place the youth on probation. The youth court shall retain jurisdiction in a disposition under this subsection.

(b) place the youth in a residence that ensures that the youth is accountable, that provides for rehabilitation, and that protects the public. Before placement, the sentencing judge shall seek and consider placement recommendations from the youth placement committee.

(c) commit the youth to the youth court for the purposes of placement in a private, out-of-home facility subject to the conditions in 41-5-1522. In an order committing a youth to the youth court, the court shall determine whether continuation in the youth's own home would be contrary to the welfare of the youth and whether reasonable efforts have been made to prevent or eliminate the need for removal of the youth from the youth's home.

(d) order restitution for damages that result from the offense for which the youth is disposed by the youth or by the person who contributed to the delinquency of the youth;

(e) require the performance of community service;

(f) require the youth, the youth's parents or guardians, or the persons having legal custody of the youth to receive counseling services;

(g) require the medical and psychological evaluation of the youth, the youth's parents or guardians, or the persons having legal custody of the youth;

(h) require the parents, guardians, or other persons having legal custody of the youth to furnish services the court may designate;

(i) order further care, treatment, evaluation, or relief that the court considers beneficial to the youth and the community;

(j) subject to the provisions of 41-5-1504, commit the youth to a mental health facility if, based on the testimony of a professional person as defined in 53-21-102, the court finds that the youth is found to be suffering from a mental disorder, as defined in 53-21-102, and meets the criteria in 53-21-126(1);

(k) place the youth under home arrest as provided in Title 46, chapter 18, part 10;

(l) order confiscation of the youth's driver's license, if the youth has one, by the juvenile probation officer for a specified period of time, not to exceed 90 days. The juvenile probation officer shall notify the department of justice of the confiscation and its duration. The department of justice may not enter the confiscation on the youth's driving record. The juvenile probation officer shall notify the department of justice when the confiscated driver's license has been returned to the youth. A youth's driver's license may be confiscated under this subsection more than once. The juvenile probation officer may, in the juvenile probation officer's discretion and with the concurrence of a parent or guardian, return a youth's confiscated driver's license before the termination of the time period for which it had been confiscated. The confiscation may not be used by an insurer as a factor in determining the premium or part of a premium to be paid

for motor vehicle insurance covering the youth or a vehicle or vehicles driven by the youth and may not be used as grounds for denying coverage for an accident or other occurrence under an existing policy.

(m) order the youth to pay a contribution covering all or a part of the costs for adjudication, disposition, and attorney fees for the costs of prosecuting or defending the youth and costs of detention, supervision, care, custody, and treatment of the youth, including the costs of counseling;

(n) order the youth to pay a contribution covering all or a part of the costs of a victim's counseling;

(o) defer imposition of sentence for up to 45 days for a placement evaluation at a suitable program or facility with the following conditions:

(i) The court may not order placement for evaluation at a youth correctional facility of a youth who has committed an offense that would not be a criminal offense if committed by an adult or a youth who has violated a consent adjustment.

(ii) The placement for evaluation must be on a space-available basis. Except as provided in subsection (1)(o)(iii), the court shall pay the cost of the placement for evaluation from its judicial district's allocation provided for in 41-5-130 or 41-5-2012.

(iii) The court may require the youth's parents or guardians to pay a contribution covering all or a part of the costs of the evaluation if the court determines after an examination of financial ability that the parents or guardians are able to pay the contribution. Any remaining unpaid costs of evaluation are the financial responsibility of the judicial district of the court that ordered the evaluation.

(p) order placement of a youth in a youth assessment center for up to 10 days; or

(q) order the youth to participate in mediation that is appropriate for the offense committed.

(2) The court may not order a local government entity to pay for care, treatment, intervention, or placement. A court may not order a local government entity to pay for evaluation and in-state transportation of a youth.

(3) The court may not order a state government entity to pay for care, treatment, intervention, placement, or evaluation that results in a deficit in the annual allocation established for that district under 41-5-130 without approval from the office of court administrator.

**History:** En. 10-1222 by Sec. 22, Ch. 329, L. 1974; amd. Sec. 10, Ch. 571, L. 1977; R.C.M. 1947, 10-1222; amd. Sec. 2, Ch. 29, L. 1979; amd. Sec. 5, Ch. 246, L. 1979; amd. Sec. 2, Ch. 129, L. 1983; amd. Sec. 2, Ch. 233, L. 1983; amd. Sec. 27, Ch. 361, L. 1983; amd. Sec. 8, Ch. 363, L. 1983; amd. Sec. 5, Ch. 465, L. 1983; amd. Sec. 6, Ch. 531, L. 1985; amd. Sec. 1, Ch. 612, L. 1985; amd. Sec. 8, Ch. 14, Sp. L. June 1986; amd. Sec. 101, Ch. 370, L. 1987; amd. Sec. 11, Ch. 515, L. 1987; amd. Sec. 62, Ch. 609, L. 1987; amd. Sec. 1, Ch. 172, L. 1989; amd. Sec. 1, Ch. 210, L. 1989; amd. Sec. 7, Ch. 434, L. 1989; amd. Sec. 5, Ch. 616, L. 1989; amd. Sec. 9, Ch. 105, L. 1991; amd. Sec. 1, Ch. 201, L. 1991; amd. Sec. 1, Ch. 511, L. 1991; amd. Sec. 4, Ch. 696, L. 1991; amd. Sec. 1, Ch. 358, L. 1993; amd. Sec. 8, Ch. 438, L. 1995; amd. Sec. 195, Ch. 546, L. 1995; amd. Sec. 3, Ch. 185, L. 1997; amd. Sec. 1, Ch. 375, L. 1997; amd. Secs. 33, 78(1)(b), Ch. 550, L. 1997; Sec. 41-5-523, MCA 1995; reded. 41-5-1512 by Sec. 47, Ch. 286, L. 1997; amd. Sec. 8, Ch. 587, L. 2001; amd. Sec. 10, Ch. 398, L. 2007; amd. Sec. 76, Ch. 2, L. 2009; amd. Sec. 8, Ch. 143, L. 2015.

**41-5-1513. Disposition — delinquent youth — restrictions.** (1) If a youth is found to be a delinquent youth, the youth court may enter its judgment making one or more of the following dispositions:

(a) any one or more of the dispositions provided in 41-5-1512;

(b) subject to 41-5-1504, 41-5-1512(1)(o)(i), and 41-5-1522, commit the youth to the department for placement in a state youth correctional facility and recommend to the department that the youth not be released until the youth reaches 18 years of age. The provisions of 41-5-355 relating to alternative placements apply to placements under this subsection (1)(b). The court may not place a youth adjudicated to be a delinquent youth in a state youth correctional facility for an act that would be a misdemeanor if committed by an adult unless:

(i) the youth committed four or more misdemeanors in the prior 12 months;

(ii) a psychiatrist or a psychologist licensed by the state or a licensed clinical professional counselor or a licensed clinical social worker has evaluated the youth and recommends placement in a state youth correctional facility; and

(iii) the court finds that the youth will present a danger to the public if the youth is not placed in a state youth correctional facility.

(c) subject to the provisions of subsection (6), require a youth found to be a delinquent youth, as the result of the commission of an offense that would be a violent offense, as defined in 46-23-502, if committed by an adult, to register and remain registered as a violent offender pursuant to Title 46, chapter 23, part 5. The youth court shall retain jurisdiction in a disposition under this subsection to ensure registration compliance.

(d) in the case of a delinquent youth who has been adjudicated for a sexual offense, as defined in 46-23-502, the youth is exempt from the duty to register as a sexual offender pursuant to Title 46, chapter 23, part 5, unless the court finds that:

(i) the youth has previously been found to have committed or been adjudicated for a sexual offense, as defined in 46-23-502; or

(ii) registration is necessary for protection of the public and that registration is in the public's best interest;

(e) in the case of a delinquent youth who is determined by the court to be a serious juvenile offender, the judge may specify that the youth be placed in a state youth correctional facility, subject to the provisions of subsection (2), if the judge finds that the placement is necessary for the protection of the public. The court may order the department to notify the court within 5 working days before the proposed release of a youth from a youth correctional facility. Once a youth is committed to the department for placement in a state youth correctional facility, the department is responsible for determining an appropriate date of release or an alternative placement.

(f) impose a fine as authorized by law if the violation alleged would constitute a criminal offense if committed by an adult.

(2) If a youth has been adjudicated for a sexual offense, as defined in 46-23-502, the youth court shall:

(a) prior to disposition, order a psychosexual evaluation that must comply with the provisions of 46-18-111;

(b) designate the youth's risk level pursuant to 46-23-509;

(c) require completion of sexual offender treatment; and

(d) for a youth designated under this section and 46-23-509 as a level 3 offender, impose on the youth those restrictions required for adult offenders by 46-18-255(2) unless the youth is approved by the youth court or the department for placement in a home, program, or facility for delinquent youth. Restrictions imposed pursuant to this subsection (2)(d) terminate when the jurisdiction of the youth court terminates pursuant to 41-5-205 unless those restrictions are terminated sooner by an order of the court. However, if a youth's case is transferred to district court pursuant to 41-5-203, 41-5-206, 41-5-208, or 41-5-1605, any remaining part of the restriction imposed pursuant to this subsection (2)(d) is transferred to the jurisdiction of the district court and the supervision of the offender is transferred to the department.

(3) For a youth designated under this section and 46-23-509 as a level 3 offender, the youth court if the youth is under the youth court's jurisdiction or the department if the youth is under the department's jurisdiction shall notify in writing the superintendent of the school district in which the youth is enrolled of the adjudication, any terms of probation or parole, and the facts of the offense for which the youth was adjudicated, except the name of the victim, and provide a copy of the court's disposition order to the superintendent.

(4) The court may not order a local government entity to pay for care, treatment, intervention, or placement. A court may not order a local government entity to pay for evaluation and in-state transportation of a youth, except as provided in 52-5-109.

(5) The court may not order a state government entity to pay for care, treatment, intervention, placement, or evaluation that results in a deficit in the annual allocation established for that district under 41-5-130 without approval from the office of court administrator.

(6) The duration of registration for a youth who is required to register as a sexual or violent offender must be as provided in 46-23-506, except that the court may, based on specific findings of fact, order a lesser duration of registration.

**History:** En. Sec. 34, Ch. 550, L. 1997; amd. Sec. 12, Ch. 532, L. 1999; amd. Sec. 9, Ch. 587, L. 2001; amd. Sec. 1, Ch. 157, L. 2003; amd. Sec. 11, Ch. 398, L. 2007; amd. Sec. 3, Ch. 483, L. 2007; amd. Sec. 2, Ch. 373, L. 2009; amd. Sec. 9, Ch. 143, L. 2015; amd. Sec. 1, Ch. 208, L. 2017.



**Compiler's Comments**

*2017 Amendment:* Chapter 208 in (1)(d) substituted “the youth is exempt from the duty to register as a sexual offender pursuant to Title 46, chapter 23, part 5, unless the court” for “and is required to register as a sexual offender pursuant to Title 46, chapter 23, part 5, exempt the youth from the duty to register if the court”; in (1)(d)(i) after “the youth has” deleted “not” and at end substituted “or” for “and”; in (1)(d)(ii) after “registration is” deleted “not” and after “public and that” deleted “relief from”; and made minor changes in style. Amendment effective October 1, 2017.

*Applicability:* Section 2, Ch. 208, L. 2017, provided: “[This act] applies to offenses committed on or after [the effective date of this act].” Effective October 1, 2017.

**41-5-1514 through 41-5-1520 reserved.**

**41-5-1521. Restitution.** (1) In determining whether restitution, as authorized by 41-5-1304, 41-5-1512, or 41-5-1513, is appropriate in a particular case, the following factors may be considered in addition to any other evidence:

- (a) the age of the youth;
- (b) the ability of the youth to pay;
- (c) the ability of the parents, guardian, or those that contributed to the youth’s delinquency or need for intervention to pay;
- (d) the amount of damage to the victim; and
- (e) legal remedies of the victim. However, the ability of the victim or the victim’s insurer to stand any loss may not be considered.

(2) Restitution paid by a youth is subject to subrogation as provided in 46-18-248.

**History:** En. Sec. 32, Ch. 550, L. 1997; amd. Sec. 76, Ch. 550, L. 1997.

**41-5-1522. Commitment to department — restrictions on placement.** When a youth is committed to the department, the department shall determine the appropriate placement and rehabilitation program for the youth after considering the recommendations made by the youth placement committee. Placement is subject to the following limitations:

(1) A youth may not be held in a state youth correctional facility for a period of time in excess of the maximum period of imprisonment that could be imposed on an adult convicted of the offense or offenses that brought the youth under the jurisdiction of the youth court. This section does not limit the power of the department to enter into a parole agreement with the youth pursuant to 52-5-126.

(2) A youth may not be placed in or transferred to a state adult correctional facility or other facility used for the execution of sentences of adults convicted of crimes.

(3) The department may not place a youth in need of intervention, a youth adjudicated delinquent for commission of an act that would not be an offense if committed by an adult, or a youth who violates a consent adjustment in a state youth correctional facility.

**History:** En. Sec. 35, Ch. 550, L. 1997; amd. Sec. 12, Ch. 398, L. 2007.

**41-5-1523. Commitment to department or youth court — supervision.** (1) A youth placed in a state youth correctional facility or other facility or program operated by the department or who signs a parole agreement under 52-5-126 must be supervised by the department.

(2) A youth placed in any private, out-of-home facility by the youth court must be supervised by a juvenile probation officer of the youth court.

(3) Responsibilities of the juvenile probation officer relating to placement of the youth include but are not limited to:

- (a) submitting information and documentation necessary for the committee that is making the placement recommendation to determine an appropriate placement for the youth;
- (b) securing approval for payment of special education costs from the youth’s school district of residence or the office of public instruction, as required in Title 20, chapter 7, part 4;
- (c) submitting an application to a facility in which the youth may be placed; and
- (d) managing the youth’s case while in a private, out-of-home facility and upon release until supervision is terminated by the youth court.

**History:** En. Sec. 37, Ch. 550, L. 1997; amd. Sec. 13, Ch. 398, L. 2007.

**41-5-1524. Commitment to department — transfer of records.** (1) Whenever the court commits a youth to the department, it shall transmit with the dispositional judgment copies of formal and informal youth court records, including medical reports, social history material, youth assessment material, education records, and any other clinical, predisposition, or other reports and information pertinent to the care and treatment of the youth.



(2) The youth court may share informal youth court records with the department when a youth has been committed to the department of corrections for custody. On the youth's 18th birthday or upon discharge, whichever is earlier, the department shall seal the entire record and is subject to 41-5-216(5).

(3) If the department returns the youth back to youth court supervision on the youth's 18th birthday as required by the court order, the department shall transmit to the supervising juvenile probation office any medical reports, youth assessment material, education records, and other clinical or behavioral health information pertinent to the care and treatment of the youth.

**History:** En. Sec. 38, Ch. 550, L. 1997; amd. Sec. 6, Ch. 423, L. 2005; amd. Sec. 3, Ch. 56, L. 2017.

**Compiler's Comments**

*2017 Amendment:* Chapter 56 in (3) substituted "If the department returns the youth back to youth court supervision on the youth's 18th birthday as required by the court order, the department shall transmit to the supervising juvenile probation office any medical reports, youth assessment material, education records, and other clinical or behavioral health information pertinent to the care and treatment of the youth" for "The department shall maintain the records of a youth committed to the department in a separate management information system and may not include any youth records in an adult offender management information system unless the youth has been adjudicated under 41-5-206." Amendment effective March 1, 2017.

**41-5-1525. Contribution for costs — order for contribution — exceptions — collection.** (1) If a youth is placed in substitute care, a youth assessment center, or detention requiring payment by any state or local government agency or committed to the department, the court shall examine the financial ability of the youth's parents or guardians to pay a contribution covering all or part of the costs for the adjudication, disposition, attorney fees for the costs of prosecuting or defending the youth, costs of detention, supervision, care, custody, and treatment of the youth, including the costs of necessary medical, dental, and other health care.

(2) If the court determines that a youth's parents or guardians are financially able to pay a contribution for adjudication, disposition, attorney fees for the costs of prosecuting or defending the youth, costs of detention, or supervision as provided in subsection (1), the court shall order the youth's parents or guardians to pay a specified amount. The order must state to which state or local government agency all or a part of the contribution is due and in what order the payments must be made.

(3) If the court determines that the youth's parents or guardians are financially able to pay a contribution as provided in subsection (1), the court shall order the youth's parents or guardians to pay an amount attributable to care, custody, and treatment based on the uniform child support guidelines adopted by the department of public health and human services pursuant to 40-5-209.

(4) (a) Except as provided in subsection (4)(b), contributions ordered under subsection (3) and each modification of an existing order are enforceable by immediate or delinquency income withholding, or both, under Title 40, chapter 5, parts 3 and 4. An order for contribution that is inconsistent with this section is nevertheless subject to withholding for the payment of the contribution without need for an amendment of the support order or for any further action by the court.

(b) A court-ordered exception from contributions under this section must be in writing and must be included in the order. An exception from the immediate income-withholding requirement may be granted if the court finds that there is:

(i) good cause not to require immediate income withholding; or

(ii) an alternative arrangement between the department and the person who is ordered to pay contributions.

(c) A finding of good cause not to require immediate income withholding must, at a minimum, be based upon:

(i) a written determination and explanation by the court of the reasons why the implementation of immediate income withholding is not in the best interests of the youth; and

(ii) proof of timely payment of previously ordered support in cases involving modification of contributions ordered under this section.

(d) An alternative arrangement must:

(i) provide sufficient security to ensure compliance with the arrangement;

(ii) be in writing and be signed by a representative of the department and the person required to make contributions; and

(iii) if approved by the court, be entered into the record of the proceeding.

(5) Upon a showing of a change in the financial ability of the youth's parents or guardians to pay, the court may modify its order for the payment of contributions required under subsection (3).

(6) (a) If the court orders the payment of contributions under this section, the department may apply to the department of public health and human services for support enforcement services pursuant to Title IV-D of the Social Security Act.

(b) The department of public health and human services may collect and enforce a contribution order under this section by any means available under law, including the remedies provided for in Title 40, chapter 5, parts 2 and 4.

**History:** En. Sec. 41, Ch. 550, L. 1997; amd. Sec. 4, Ch. 223, L. 2009.

## **Part 16**

### **Extended Jurisdiction Prosecution Act**

**41-5-1601. Short title.** This part may be cited as the "Extended Jurisdiction Prosecution Act".

**History:** En. Sec. 1, Ch. 438, L. 1995; Sec. 41-5-1101, MCA 1995; redes. 41-5-1601 by Sec. 47, Ch. 286, L. 1997.

**41-5-1602. Extended jurisdiction juvenile prosecution — designation.** (1) A youth court case involving a youth alleged to have committed an offense that would be a felony if committed by an adult, except an offense punishable by death or life imprisonment or when a sentence of 100 years could be imposed, is an extended jurisdiction juvenile prosecution if:

(a) the youth was at least 14 years of age at the time of the alleged offense, the county attorney requests that the case be designated an extended jurisdiction juvenile prosecution, a hearing is held under 41-5-1603, and the court designates the case as an extended jurisdiction juvenile prosecution;

(b) the county attorney designates in the delinquency petition that the proceeding is an extended jurisdiction juvenile prosecution and the youth is alleged to have committed:

(i) an offense that is listed under 41-5-206, except an offense punishable by death or life imprisonment or when a sentence of 100 years could be imposed; or

(ii) any offense that would be a felony if committed by an adult, except an offense punishable by death or life imprisonment or when a sentence of 100 years could be imposed, in which the youth allegedly used a firearm, if the youth was at least 12 years of age at the time of the alleged offense; or

(c) after a hearing upon a motion for transfer of the matter of prosecution to the district court under 41-5-206, the court designates the case as an extended jurisdiction juvenile prosecution.

(2) To enforce the court's disposition in an extended jurisdiction juvenile prosecution, the court shall retain jurisdiction as provided in 41-5-205.

**History:** En. Sec. 2, Ch. 438, L. 1995; amd. Sec. 6, Ch. 498, L. 1997; Sec. 41-5-1102, MCA 1995; redes. 41-5-1602 by Sec. 47, Ch. 286, L. 1997; amd. Sec. 4, Ch. 537, L. 1999.

**41-5-1603. Hearing on request.** (1) When a county attorney requests that a case be designated as an extended jurisdiction juvenile prosecution under 41-5-1602(1)(a), the court shall hold a hearing to consider the request.

(2) The hearing must be held within 30 days of the filing of the request unless good cause is shown by the county attorney or the youth that the hearing should be held later, in which case the hearing must be held within 90 days of the request.

(3) If the county attorney shows by clear and convincing evidence that designating the case as an extended jurisdiction juvenile prosecution serves public safety, the court may, within 15 days after the hearing, designate the case as an extended jurisdiction juvenile prosecution. In determining whether public safety is served, the court shall consider the factors enumerated in 41-5-1606.

**History:** En. Sec. 3, Ch. 438, L. 1995; amd. Sec. 7, Ch. 498, L. 1997; Sec. 41-5-1103, MCA 1995; redes. 41-5-1603 by Sec. 47, Ch. 286, L. 1997.

**41-5-1604. Disposition in extended jurisdiction juvenile prosecutions.** (1) (a) After designation as an extended jurisdiction juvenile prosecution, the case must proceed with an adjudicatory hearing, as provided in 41-5-1502. If a youth in an extended jurisdiction juvenile

prosecution admits to or is adjudicated to have committed an offense that would be a felony if committed by an adult, except an offense punishable by death or life imprisonment or when a sentence of 100 years could be imposed, the court shall, subject to subsection (1)(b), impose a single judgment consisting of:

- (i) one or more juvenile dispositions under 41-5-1512 or 41-5-1513; and
- (ii) any sentence allowed by the statute that establishes the penalty for the offense of which the youth is convicted and that would be permissible if the offender were an adult. The execution of the sentence imposed under this subsection must be stayed on the condition that the youth not violate the provisions of the disposition order and not commit a new offense.

(b) The combined period of time of a juvenile disposition under subsection (1)(a)(i) plus an adult sentence under subsection (1)(a)(ii) may not exceed the maximum period of imprisonment that could be imposed on an adult convicted of the offense or offenses that brought the youth under the jurisdiction of the youth court. This subsection does not limit the power of the department to enter into a parole agreement with the youth pursuant to 52-5-126.

(2) If a youth prosecuted as an extended jurisdiction juvenile after designation by the county attorney in the delinquency petition under 41-5-1602(1)(b) admits to or is adjudicated to have committed an offense that would be a felony if committed by an adult that is not an offense described in 41-5-1602(1)(b), except an offense punishable by death or life imprisonment or when a sentence of 100 years could be imposed, the court shall adjudicate the youth delinquent and order a disposition under 41-5-1513.

(3) If a youth in an extended jurisdiction juvenile prosecution admits to or is adjudicated to have committed an offense that would not be a felony if committed by an adult, the court shall impose a disposition as provided under subsection (1)(a).

**History:** En. Sec. 4, Ch. 438, L. 1995; amd. Sec. 8, Ch. 498, L. 1997; amd. Sec. 52, Ch. 550, L. 1997; Sec. 41-5-1104, MCA 1995; redes. 41-5-1604 by Sec. 47, Ch. 286, L. 1997; amd. Sec. 5, Ch. 537, L. 1999.

**41-5-1605. Revocation of stay — disposition.** (1) If a court has imposed on a youth a sentence stayed under 41-5-1604(1)(a)(ii) and the youth violates the conditions of the stay or is alleged to have committed a new offense, the court may, without notice, direct that the youth be taken into immediate custody. The court shall notify the youth, the youth's counsel, and the youth's parents, guardian, or custodian in writing of the reasons alleged to exist for revocation of the stay of execution of the sentence.

(2) (a) The court shall hold a revocation hearing at which the youth is entitled to receive:

- (i) written notice of the alleged violation;
- (ii) evidence of the alleged violation;
- (iii) an opportunity to be heard in person and to present witnesses and evidence;
- (iv) the right to cross-examine witnesses, unless the court finds good cause for not allowing confrontation; and
- (v) the right to counsel.

(b) After the revocation hearing, if the court finds by a preponderance of the evidence presented that the conditions of the stay have been violated or that the youth has committed a new offense, the court shall provide the youth with a written statement of the evidence relied on and reasons for revocation and shall:

- (i) continue the stay and place the youth on probation;
- (ii) impose one or more dispositions under 41-5-1512 or 41-5-1513 if the youth is under 18 years of age; or
- (iii) subject to 41-5-206(6) and (7) and 41-5-1604(1)(b), order execution of the sentence imposed under 41-5-1604(1)(a)(ii). The court shall order credit for any time served prior to revocation under a disposition under 41-5-1604(1)(a)(i).

(3) Upon revocation and disposition under subsection (2)(b)(iii), the youth court shall transfer the case to the district court. Upon transfer, the offender's extended jurisdiction juvenile status is terminated and youth court jurisdiction is terminated. Ongoing supervision of the offender is with the department, rather than the youth court's juvenile probation services.

**History:** En. Sec. 5, Ch. 438, L. 1995; amd. Secs. 9, 13, Ch. 498, L. 1997; amd. Sec. 53, Ch. 550, L. 1997; Sec. 41-5-1105, MCA 1995; redes. 41-5-1605 by Sec. 47, Ch. 286, L. 1997; amd. Sec. 6, Ch. 537, L. 1999.

**41-5-1606. Public safety.** (1) In determining whether the public safety is served by designating a case an extended jurisdiction juvenile prosecution, the court shall consider the following factors:

- (a) the seriousness of the alleged offense in terms of community protection, including the existence of any aggravating factors, the use of a firearm, and the impact on the victim;
- (b) the culpability of the youth in committing the alleged offense, including the level of the youth's participation in planning and carrying out the offense and the existence of mitigating factors;
- (c) the youth's prior record of delinquency;
- (d) the youth's treatment history, including the youth's past willingness to participate meaningfully in available treatment;
- (e) the adequacy of the dispositions available in the juvenile justice system; and
- (f) the dispositional options available for the youth.

(2) In considering the factors listed in subsection (1), the court shall give greater weight to the seriousness of the alleged offense and the youth's prior record of delinquency than to the other listed factors.

**History:** En. Sec. 10, Ch. 498, L. 1997.

**41-5-1607. Proceedings — rights.** A youth who is the subject of an extended jurisdiction juvenile prosecution has the right to a trial by jury and to the effective assistance of counsel, as provided in 41-5-1413.

**History:** En. Sec. 11, Ch. 498, L. 1997.

## Part 17

### Juvenile Probation Officers

**41-5-1701. Employment of juvenile probation officers and youth court staff.** All juvenile probation officers and youth court staff are employees of the judicial branch of state government. The employees are subject to classification and compensation as determined by the judicial branch personnel plan adopted by the supreme court under 3-1-130 and must receive state employee benefits and expenses as provided in Title 2, chapter 18.

**History:** En. 10-1234 by Sec. 34, Ch. 329, L. 1974; amd. Sec. 1, Ch. 530, L. 1975; R.C.M. 1947, 10-1234(1); amd. Sec. 3, Ch. 29, L. 1979; Sec. 41-5-701, MCA 1995; redes. 41-5-1701 by Sec. 47, Ch. 286, L. 1997; amd. Sec. 34, Ch. 585, L. 2001; amd. Sec. 6, Ch. 152, L. 2003; amd. Sec. 77, Ch. 2, L. 2009.

**41-5-1702. Repealed.** Sec. 10, Ch. 152, L. 2003.

**History:** En. 10-1234 by Sec. 34, Ch. 329, L. 1974; amd. Sec. 1, Ch. 530, L. 1975; R.C.M. 1947, 10-1234(2); amd. Sec. 1, Ch. 544, L. 1987; amd. Sec. 2, Ch. 205, L. 1995; Sec. 41-5-702, MCA 1995; redes. 41-5-1702 by Sec. 47, Ch. 286, L. 1997; amd. Sec. 35, Ch. 585, L. 2001.

**41-5-1703. Powers and duties of juvenile probation officers.** (1) A juvenile probation officer shall:

- (a) perform the duties set out in 41-5-1302;
- (b) make predisposition studies and submit reports and recommendations to the court;
- (c) supervise, assist, and counsel youth placed on probation or under the juvenile probation officer's supervision, including enforcement of the terms of probation or intervention;
- (d) assist any public and private community and work projects engaged in by youth to pay fines, make restitution, and pay any other costs ordered by the court that are associated with youth delinquency or need for intervention;
- (e) perform any other functions designated by the court.

(2) A juvenile probation officer does not have power to make arrests or to perform any other law enforcement functions in carrying out the juvenile probation officer's duties except that a juvenile probation officer may take into custody any youth who violates either the youth's probation or a lawful order of the court.

(3) The duties of a full-time or part-time juvenile probation officer may not be performed by a person serving as a law enforcement officer.

**History:** En. 10-1234 by Sec. 34, Ch. 329, L. 1974; amd. Sec. 1, Ch. 530, L. 1975; R.C.M. 1947, 10-1234(4), (5); amd. Secs. 48, 76, Ch. 550, L. 1997; Sec. 41-5-703, MCA 1995; redes. 41-5-1703 by Sec. 47, Ch. 286, L. 1997; amd. Sec. 7, Ch. 152, L. 2003; amd. Sec. 78, Ch. 2, L. 2009.

**41-5-1704. Repealed.** Secs. 52(1), 63(3), Ch. 585, L. 2001.

**History:** En. 10-1234 by Sec. 34, Ch. 329, L. 1974; amd. Sec. 1, Ch. 530, L. 1975; R.C.M. 1947, 10-1234(part); amd. Sec. 1, Ch. 605, L. 1979; amd. Sec. 1, Ch. 534, L. 1981; amd. Sec. 1, Ch. 332, L. 1983; amd. Sec. 2, Ch. 580, L. 1985; amd. sec. 36, Ch. 308, L. 1995; amd. Sec. 1, Ch. 381, L. 1997; Sec. 41-5-704, MCA 1995; redes. 41-5-1704 by Sec. 47, Ch. 286, L. 1997; amd. Sec. 7, Ch. 507, L. 2001.

**41-5-1705. Repealed.** Secs. 52(1), 63(3), Ch. 585, L. 2001.

**History:** En. 10-1234 by Sec. 34, Ch. 329, L. 1974; amd. Sec. 1, Ch. 530, L. 1975; R.C.M. 1947, 10-1234(part); amd. Sec. 2, Ch. 605, L. 1979; amd. Sec. 2, Ch. 332, L. 1983; amd. Sec. 2, Ch. 381, L. 1997; Sec. 41-5-705, MCA 1995; redes. 41-5-1705 by Sec. 47, Ch. 286, L. 1997; amd. Sec. 8, Ch. 507, L. 2001.

**41-5-1706. Juvenile probation officer training.** (1) The office of court administrator may conduct a 40-hour juvenile probation officer basic training program and other training programs and courses for juvenile probation officers.

(2) A juvenile probation officer who successfully completes the 40-hour basic training program or another program or course must be issued a certificate by the office of court administrator.

(3) Each chief juvenile probation officer and deputy juvenile probation officer shall obtain 16 hours a year of training in subjects relating to the powers and duties of juvenile probation officers.

**History:** En. Sec. 1, Ch. 205, L. 1995; Sec. 41-5-706, MCA 1995; redes. 41-5-1706 by Sec. 47, Ch. 286, L. 1997; amd. Sec. 36, Ch. 585, L. 2001; amd. Sec. 8, Ch. 152, L. 2003; amd. Sec. 15, Ch. 506, L. 2007; amd. Sec. 79, Ch. 2, L. 2009.

**41-5-1707. Assessment officers — duties — access to records.** (1) An assessment officer employed by the state judicial branch shall perform the duties set out in 41-5-1201 and 41-5-1302.

(2) Proceedings under 41-5-1201 and 41-5-1302 that are held prior to adjudication satisfy the requirements of 20 U.S.C. 1232g(b)(1)(E)(ii)(I) of the Family Educational Rights and Privacy Act of 1974. Montana school districts may release education records to assessment officers. The assessment officer is responsible for ensuring that officials and authorities to whom that information is disclosed certify in writing to the school district that is releasing the education records that the education records or information from the education records will not be disclosed to any other party without the prior written consent of the parent of the student.

**History:** En. Sec. 72, Ch. 550, L. 1997; amd. Sec. 37, Ch. 585, L. 2001; amd. Sec. 9, Ch. 152, L. 2003.

## **Part 18 Custodial Care**

**41-5-1801. Shelter care facilities.** (1) Counties, cities, or nonprofit corporations may provide by purchase, lease, or otherwise, a shelter care facility.

(2) A shelter care facility must be physically separated from any facility housing adults accused or convicted of criminal offenses.

(3) State appropriations and federal funds may be received by counties, cities, or nonprofit corporations for establishment, maintenance, or operation of a shelter care facility.

(4) A shelter care facility must be furnished in a comfortable manner.

(5) A shelter care facility may be operated in conjunction with a youth detention facility.

(6) A shelter care facility may permit a school district to use the facility as an alternative education site provided that the school district provides the educational program and personnel necessary to instruct the youth. Public schools shall follow the requirements of the federal Individuals with Disabilities Education Act, 20 U.S.C. 1400, et seq., in making education placement decisions for youth with disabilities.

**History:** En. Sec. 26, Ch. 227, L. 1943; Sec. 10-627, R.C.M. 1947; amd. and redes. 10-1237 by Sec. 37, Ch. 329, L. 1974; amd. Sec. 13, Ch. 571, L. 1977; R.C.M. 1947, 10-1237; amd. Sec. 11, Ch. 475, L. 1987; amd. Sec. 8, Ch. 434, L. 1989; amd. Sec. 23, Ch. 799, L. 1991; amd. Sec. 10, Ch. 528, L. 1995; amd. Sec. 49, Ch. 550, L. 1997; Sec. 41-5-802, MCA 1995; redes. 41-5-1801 by Sec. 47, Ch. 286, L. 1997; amd. Sec. 7, Ch. 114, L. 2001; amd. Sec. 1, Ch. 61, L. 2003.

**41-5-1802. Rules.** The department shall adopt rules governing licensing procedures for regional and county detention facilities, including the requirement that a youth detention facility provide an educational program for youth in need of that service.



**History:** En. Sec. 5, Ch. 475, L. 1987; amd. Sec. 15, Ch. 475, L. 1987; amd. Sec. 10, Ch. 434, L. 1989; amd. Sec. 24, Ch. 799, L. 1991; Sec. 41-5-809, MCA 1995; redes. 41-5-1802 by Sec. 47, Ch. 286, L. 1997; amd. Sec. 3, Ch. 536, L. 1999.

**41-5-1803. County responsibility to provide youth detention services.** (1) Each county shall provide services for the detention of youth in facilities separate from adult jails. The term “services” includes an educational program for youth in need of that service.

(2) In order to fulfill its responsibility under subsection (1), a county may:

(a) establish, operate, and maintain a holdover, a short-term detention center, or a youth detention facility at county expense;

(b) provide shelter care facilities as authorized in 41-5-1801;

(c) contract with another county for the use of an available shelter care facility, holdover, short-term detention center, or youth detention facility;

(d) establish and operate a network of holdovers in cooperation with other counties;

(e) establish a regional detention facility;

(f) enter into an agreement with a private party under which the private party will own, operate, or lease a shelter care facility or youth detention facility for use by the county. The agreement may be made in substantially the same manner as provided for in 7-32-2232 and 7-32-2233.

(g) contract with another state, political subdivision of another state, or an Indian tribe for use of a secure detention facility. Secure detention facilities contracted with for the purposes of this subsection (2)(g) must be licensed or certified by a state or federal agency with applicable licensing or certifying authority, or the contracting county shall determine that the out-of-state or tribal detention facility substantially complies with the licensing requirements contained in rules adopted by the department.

(3) Each county or regional detention facility must be licensed by the department in accordance with rules adopted under 41-5-1802.

(4) A county youth detention facility or a regional detention facility may contract with a school district for the provision of an educational program at the facility. The school district may use the facility as an alternative education site for the district. A contract authorized under this subsection must be made pursuant to the Interlocal Cooperation Act, Title 7, chapter 11, part 1, and must specify:

(a) that the school district is responsible for providing for the education of students enrolled in the school district;

(b) that the youth detention facility is responsible for providing for the education of youth held in lawful custody in the facility;

(c) the educational program and personnel necessary to provide instruction at the facility. The district and the detention facility shall follow the requirements of the Individuals with Disabilities Education Act, 20 U.S.C. 1400, et seq., in making educational placement decisions for youth with disabilities.

(d) the amount of funding to be contributed by the facility and the school district toward payment of the cost of establishing, operating, and maintaining the educational program.

**History:** En. Sec. 2, Ch. 799, L. 1991; Sec. 41-5-810, MCA 1995; redes. 41-5-1803 by Sec. 47, Ch. 286, L. 1997; amd. Sec. 13, Ch. 532, L. 1999; amd. Sec. 4, Ch. 536, L. 1999.

**41-5-1804. Regional detention facilities.** (1) Two or more counties may, by contract, establish and maintain a regional detention facility.

(2) For the purpose of establishing and maintaining a regional detention facility, a county may:

(a) issue general obligation bonds for the acquisition, purchase, construction, renovation, and maintenance of a regional detention facility;

(b) subject to 15-10-420, levy and appropriate taxes, as permitted by law, to pay its share of the cost of equipping, operating, and maintaining the facility; and

(c) exercise all powers, under the limitations prescribed by law, necessary and convenient to carry out the purposes of 41-5-1803 and this section.

(3) Contracts authorized under subsection (1) must be made pursuant to the Interlocal Cooperation Act, Title 7, chapter 11, part 1.

(4) Contracts between counties participating in a regional detention facility must:

- (a) specify the responsibilities of each county participating in the agreement;
- (b) designate responsibility for operation of the regional detention facility;
- (c) specify the amount of funding to be contributed by each county toward payment of the cost of establishing, operating, and maintaining the regional detention facility, including the necessary expenditures for the transportation of youth to and from the facility but excluding the education costs funded by a school district pursuant to 41-5-1807;
- (d) include the applicable per diem charge for the detention of youth in the facility, as well as the basis for any adjustment in the charge;
- (e) specify the number of beds to be reserved for the use of each county participating in the regional detention facility; and
- (f) provide an educational program for youth held in the detention facility and in need of that service.

**History:** En. Sec. 3, Ch. 799, L. 1991; amd. Sec. 11, Ch. 528, L. 1995; Sec. 41-5-811, MCA 1995; reded. 41-5-1804 by Sec. 47, Ch. 286, L. 1997; amd. Sec. 5, Ch. 536, L. 1999; amd. Sec. 126, Ch. 584, L. 1999.

**41-5-1805. Creation of regions — requirements — limitation on number of regions.**

(1) Counties that wish to establish a regional detention facility shall form a youth detention region.

- (2) Each youth detention region must:
  - (a) be composed of contiguous counties participating in the regional detention facility; and
  - (b) include geographical areas of the state that contain a substantial percentage of the total youth population in need of detention services, as determined by the board of crime control.
- (3) There may be no more than five youth detention regions established in the state at any one time.

**History:** En. Sec. 4, Ch. 799, L. 1991; Sec. 41-5-812, MCA 1995; reded. 41-5-1805 by Sec. 47, Ch. 286, L. 1997.

**41-5-1806. Contracts with nonparticipating counties.** Counties participating in a regional detention facility may enter into agreements with nonparticipating counties to provide services for the detention of youth. The costs of services must be based upon a per diem charge for the detention of youth in the facility.

**History:** En. Sec. 5, Ch. 799, L. 1991; Sec. 41-5-813, MCA 1995; reded. 41-5-1806 by Sec. 47, Ch. 286, L. 1997.

**41-5-1807. Responsibility for payment of detention costs.** (1) Absent a contract or agreement between counties and except as provided in subsection (2), all costs for the detention of a youth in a county or regional detention facility, including medical costs incurred by the youth during detention, must be paid by the county at whose instance the youth is detained.

(2) A detention facility providing an educational program for youth held in lawful custody at the facility is eligible to receive education funding calculated as follows:

(a) Before the end of each fiscal year, the facility shall compile the following information by school district:

(i) the number of youth detained in the facility over 9 consecutive days during the prior year; and

(ii) the total number of days the youth in subsection (2)(a)(i) were detained.

(b) The facility shall calculate the school district's obligation for educational services by multiplying the number of youth detained and the total number of days detained as provided in subsection (2) by \$20 a day for each youth. The calculation must be sent to the school district no later than June 30. The school district shall transmit the amount calculated to the county treasurer of the county where the facility is located no later than July 15.

(c) The funds are to be used by the county for educational services provided by certified personnel in the detention facility located in the county and is subject to the requirements of Title 7, chapter 6, part 23.

**History:** En. Sec. 6, Ch. 799, L. 1991; Sec. 41-5-814, MCA 1995; reded. 41-5-1807 by Sec. 47, Ch. 286, L. 1997; amd. Sec. 6, Ch. 536, L. 1999.

**41-5-1808. Juvenile detention or juvenile corrections officer training.** A juvenile detention or juvenile corrections officer shall, in the first year of employment, complete a basic training course as required in 44-4-403. The training must be done under the auspices of the Montana law enforcement academy but does not have to occur at the academy.

**History:** En. Sec. 1, Ch. 316, L. 2003; amd. Sec. 17, Ch. 506, L. 2007; Sec. 44-4-305, MCA 2005; reded. 41-5-1808 by Sec. 23(3), Ch. 506, L. 2007.

## Part 19

### State Grants for Youth Detention Services

**41-5-1901. Definitions.** As used in this part, unless the context requires otherwise, the following definitions apply:

(1) “Attendant care” means the direct supervision of youth by a trained attendant in a physically unrestricting setting.

(2) “Board” means the board of crime control provided for in 2-15-2306.

(3) “County” means a county, city-county consolidated government, or a youth detention region created pursuant to 41-5-1805.

(4) “Home detention” means the use of a youth’s home for the purpose of ensuring the continued custody of the youth pending adjudication or final disposition of the youth’s case.

(5) “Plan” means a county plan for providing youth detention services as required in 41-5-1903.

(6) “Secure detention” means the detention of youth in a physically restricting facility designed to prevent a youth from departing at will.

(7) “Youth detention service” means service for the detention of youth in facilities separate from adult jails. The term includes the services described in 41-5-1902.

**History:** En. Sec. 7, Ch. 799, L. 1991; Sec. 41-5-1001, MCA 1995; redes. 41-5-1901 by Sec. 47, Ch. 286, L. 1997; amd. Sec. 1600, Ch. 56, L. 2009.

**41-5-1902. State grants to counties.** (1) Within the limits of available funds, the board shall provide grants in accordance with 41-5-1903 through 41-5-1905 to assist counties in establishing and operating youth detention services, including but not limited to youth detention facilities, short-term detention centers, holdovers, attendant care, home detention, and programs for the transportation of youth to regional detention facilities.

(2) Grants available under subsection (1) consist of state appropriations and federal funds received by the board for the purpose of administering 41-5-1901 through 41-5-1905.

**History:** En. Sec. 8, Ch. 799, L. 1991; Sec. 41-5-1002, MCA 1995; redes. 41-5-1902 by Sec. 47, Ch. 286, L. 1997.

**41-5-1903. Application for grants — county plans — obligation of counties receiving grants — review and monitoring.** (1) In order to receive funds under 41-5-1902, a county shall submit an application to the board in a manner and form prescribed by the board.

(2) The application must include a written plan for providing youth detention services in the county. Each plan must include:

- (a) an assessment of the need for services;
- (b) a description of services to be provided, including alternatives to secure detention;
- (c) the estimated number of youth who will receive services;
- (d) criteria for the placement of youth in secure detention; and
- (e) a budget describing proposed expenditures for youth detention services.

(3) If the application and plan are approved by the board, the county may receive a grant in the amount provided for in 41-5-1904.

(4) As a condition of receiving funds under 41-5-1902, each county shall, within a reasonable period of time, comply or substantially comply with state law and policies contained in the Montana Youth Court Act concerning the detention and placement of youth.

(5) The board shall periodically review and monitor counties receiving grants under 41-5-1902 to assure compliance or substantial compliance with the Montana Youth Court Act, as required under subsection (4). If, after notice and fair hearing, the board determines that a county is not in compliance or substantial compliance with the Montana Youth Court Act, the board shall terminate the grant to the county.

**History:** En. Sec. 9, Ch. 799, L. 1991; Sec. 41-5-1003, MCA 1995; redes. 41-5-1903 by Sec. 47, Ch. 286, L. 1997.

**41-5-1904. Distribution of grants — limitation of funding — restrictions on use.**

(1) The board shall award grants on an equitable basis, giving preference to services that are to be used on a regional basis.

(2) The board shall award grants to eligible counties:

(a) in a block grant in an amount not to exceed 50% of the approved, estimated cost of secure detention; or

(b) on a matching basis in an amount not to exceed:

(i) 75% of the approved cost of providing holdovers, attendant care, and other alternatives to secure detention, except for shelter care. Shelter care costs must be paid as provided by law.

(ii) 50% of the approved cost of programs for the transportation of youth to appropriate detention or shelter care facilities, including regional detention facilities.

(3) Based on funding available after the board has funded block grants under subsection (2), the board shall, in cases of extreme hardship in which the transfer of youth court cases to the adult system has placed considerable financial strain on a county's resources, award grants to eligible counties to fund up to 75% of the actual costs of secure detention of youth awaiting transfer. Hardship cases will be addressed at the end of the fiscal year and will be awarded by the board based upon a consideration of the applicant county's past 3 years' expenditures for youth detention and upon consideration of the particular case or cases that created the hardship expenditure for which the hardship grant is requested.

(4) Grants under 41-5-1902 may not be used to pay for the cost of youth evaluations. The cost of evaluations must be paid as provided for in 41-5-1503.

**History:** En. Sec. 10, Ch. 799, L. 1991; amd. Sec. 1, Ch. 8, L. 1995; amd. Sec. 50, Ch. 550, L. 1997; Sec. 41-5-1004, MCA 1995; redes. 41-5-1904 by Sec. 47, Ch. 286, L. 1997.

**41-5-1905. Allocation of grants.** (1) Each fiscal year, the board shall allocate grants under 41-5-1902 for distribution to eligible counties based upon:

(a) the relative population of youth residing in geographical areas of the state, as determined by the board; and

(b) the estimated cost of youth detention services in each county eligible for funding under 41-5-1902.

(2) A county is not automatically entitled to receive a grant from funds available under 41-5-1902.

**History:** En. Sec. 11, Ch. 799, L. 1991; Sec. 41-5-1005, MCA 1995; redes. 41-5-1905 by Sec. 47, Ch. 286, L. 1997.

**41-5-1906. Amendment of state plan.** The board shall amend the state plan required under section 223 of the federal Juvenile Justice and Delinquency Prevention Act of 1974, as amended (42 U.S.C. 5633), to reflect the contents of approved county plans for providing youth detention services.

**History:** En. Sec. 12, Ch. 799, L. 1991; Sec. 41-5-1006, MCA 1995; redes. 41-5-1906 by Sec. 47, Ch. 286, L. 1997.

**41-5-1907. Compliance with federal requirements.** The board shall administer federal funds available under section 222 of the federal Juvenile Justice and Delinquency Prevention Act of 1974, as amended (42 U.S.C. 5632), in compliance with the requirements of 42 U.S.C. 5633(a)(21) and 42 U.S.C. 5674.

**History:** En. Sec. 13, Ch. 799, L. 1991; Sec. 41-5-1007, MCA 1995; redes. 41-5-1907 by Sec. 47, Ch. 286, L. 1997.

**41-5-1908. Rulemaking authority.** The board may adopt rules necessary to implement the provisions of 41-5-1805 and 41-5-1901 through 41-5-1908 and to establish requirements for approved holdovers consistent with the definition of holdover provided in 41-5-103.

**History:** En. Sec. 14, Ch. 799, L. 1991; amd. Sec. 192, Ch. 42, L. 1997; amd. Sec. 51, Ch. 550, L. 1997; Sec. 41-5-1008, MCA 1995; redes. 41-5-1908 by Sec. 47, Ch. 286, L. 1997.

## Part 20 Juvenile Delinquency Intervention Act

**41-5-2001. Short title.** This part may be cited as the "Juvenile Delinquency Intervention Act".

**History:** En. Sec. 12, Ch. 587, L. 2001.

**41-5-2002. Purpose.** The purposes of this part are to:

(1) provide an alternate method of funding juvenile out-of-home placements, programs, and services;

- (2) increase the ability of youth courts to respond to juvenile delinquency through early intervention and expanded community alternatives;
- (3) enhance the ability of youth courts to control costs;
- (4) enhance community safety, hold youth accountable, and promote the competency development of youth;
- (5) use local resources for the placement of troubled youth, when appropriate and available;
- (6) reduce placements in out-of-state residential facilities and programs; and
- (7) use state youth correctional facilities when appropriate.

**History:** En. Sec. 13, Ch. 587, L. 2001; amd. Sec. 14, Ch. 398, L. 2007.

**41-5-2003. Establishment of program — office of court administrator duties.** (1) There is a juvenile delinquency intervention program. Each judicial district shall participate in the program.

(2) The office of court administrator and the judicial district shall monitor the judicial district's annual allocation provided for in 41-5-130 to ensure that the judicial district does not exceed its allocation.

(3) The office of court administrator shall provide technical assistance to each judicial district for the monitoring of its annual allocation.

(4) The office of court administrator shall assist each youth court in developing placement alternatives and community intervention and prevention programs and services.

(5) (a) Each fiscal year, the office of court administrator may select out-of-home placements, programs, and services to be evaluated for their effectiveness in achieving the purposes provided in 41-5-2002. The cost containment review panel shall provide recommendations to the office on out-of-home placements, programs, and services to be evaluated and on the scope of the evaluation. Before conducting any evaluation, the office shall obtain approval from the district court council established in 3-1-1602.

(b) The office shall report the results of any evaluation conducted under subsection (5)(a) to the department, cost containment review panel, district court council, and law and justice interim committee.

**History:** En. Sec. 14, Ch. 587, L. 2001; amd. Sec. 15, Ch. 398, L. 2007; amd. Sec. 1, Ch. 95, L. 2011; amd. Sec. 10, Ch. 143, L. 2015.

**41-5-2004. Youth court duties.** Each youth court shall:

- (1) use available resources to develop alternatives for the placement of youth;
- (2) use available resources for early intervention strategies for troubled youth;
- (3) use a validated risk assessment instrument approved by the office of court administrator for the measurement of risk and the effectiveness of treatment or intervention services for youth pursuant to 41-5-1512 or 41-5-1513; and
- (4) provide the legislative auditor with access to all records maintained by the youth court as otherwise permitted by law.

**History:** En. Sec. 15, Ch. 587, L. 2001; amd. Sec. 16, Ch. 398, L. 2007; amd. Sec. 11, Ch. 143, L. 2015.

**41-5-2005. Youth placement committee recommendation to youth court judge — acceptance or rejection.** (1) (a) Prior to commitment of a youth to the legal custody of the youth court under 41-5-1512 or 41-5-1513 or to the department under 41-5-1513, a youth placement committee must be convened. Except as provided in subsection (1)(b), the committee shall submit in writing to the youth court judge its primary and alternative recommendations for placement of the youth.

(b) An alternative recommendation is unnecessary if the committee's recommendation is placement in a youth correctional facility.

(2) The committee shall first consider placement of the youth in a community-based facility or program and shall give priority to placement of the youth in a facility or program located in the state of Montana.

(3) If in-state alternatives for placement of the youth are inappropriate, the committee may recommend an out-of-state placement. The committee shall state in its recommendation the reasons why in-state services are not appropriate.



(4) The primary and alternative recommendations of the youth placement committee must be for similar facilities or programs. The youth court may require a youth placement committee to reevaluate a youth if the recommended placements are dissimilar.

(5) If the youth court rejects both of the committee's recommendations, it shall promptly notify the committee in writing of the reasons for rejecting the recommendations and shall make an appropriate placement for the youth.

(6) The youth court may not order a placement or change of placement that results in a deficit in the annual allocation established for that district under 41-5-130 without approval from the office of court administrator.

(7) The youth court shall evaluate the cost of the placement or change of placement and ensure that the placement or change of placement will not overspend the annual allocation provided by the office of court administrator under 41-5-130.

**History:** En. Sec. 16, Ch. 587, L. 2001; amd. Sec. 17, Ch. 398, L. 2007; amd. Sec. 12, Ch. 143, L. 2015.

**41-5-2006. Judicial branch policies and procedures.** The district court council, established in 3-1-1602, shall adopt policies and procedures, subject to review by the supreme court, necessary for the youth courts, cost containment review panel, and office of court administrator to perform their duties under this chapter, including but not limited to policies and procedures for:

- (1) evaluating out-of-home placements, programs, and services as provided in 41-5-2003;
- (2) monitoring judicial districts' annual allocations provided for in 41-5-130;
- (3) processing payments for out-of-home placements, programs, and services on behalf of the youth court;
- (4) determining the amount to be allocated to the cost containment pool as provided for in 41-5-132;
- (5) submitting judicial district plans to the office of court administrator for expending allocations from the youth court intervention and prevention account provided for in 41-5-2011;
- (6) reviewing judicial district plans by the cost containment review panel and making recommendations to the office of court administrator on plan approval as provided for in 41-5-2012;
- (7) monitoring youth courts to promote consistency and uniformity in the placement of juveniles referred to the youth courts; and
- (8) providing one or more risk assessment tools to be used by the youth courts.

**History:** En. Sec. 18, Ch. 587, L. 2001; amd. Sec. 18, Ch. 398, L. 2007; amd. Sec. 13, Ch. 143, L. 2015.

**41-5-2007 through 41-5-2010 reserved.**

**41-5-2011. Youth court intervention and prevention account — statutory appropriation — administration.** (1) There is a youth court intervention and prevention account in the state special revenue fund. The office of court administrator shall deposit in the account the following funds:

- (a) unexpended funds from the judicial districts' annual allocations as provided for in 41-5-130; and
  - (b) unexpended funds from the cost containment pool as provided for in 41-5-132.
- (2) The youth court intervention and prevention account is statutorily appropriated, as provided in 17-7-502, to the supreme court. The office of court administrator shall administer the account in accordance with 41-5-2012.

**History:** En. Sec. 1, Ch. 482, L. 2005; amd. Sec. 19, Ch. 398, L. 2007; amd. Sec. 14, Ch. 143, L. 2015.

**41-5-2012. Allocation to judicial districts from youth court intervention and prevention account — judicial district plans — cost containment review and recommendation.** (1) (a) At the beginning of each fiscal year, the office of court administrator shall allocate from the youth court intervention and prevention account to each judicial district an amount equal to the unexpended funds from the judicial district's annual allocation for the previous fiscal year under 41-5-130.

(b) In addition to the amount allocated under subsection (1)(a), at the beginning of each fiscal year, the office of court administrator shall allocate from the youth court intervention and prevention account to all judicial districts the unexpended funds from the cost containment pool deposited from the previous fiscal year under 41-5-132. The office shall allocate the funds

according to the formula that was used to determine the judicial districts' annual allocations for the previous fiscal year under 41-5-130.

(2) Upon approval of the youth court judge, a judicial district may submit a plan to the office of court administrator for approval to expend the amounts allocated to the judicial district under subsection (1) for one or more of the following purposes:

- (a) to establish or expand community prevention and intervention programs and services for youth, including training for individuals to provide the programs and services to youth;
- (b) to provide an alternative method for funding out-of-home placements; and
- (c) to provide matching funds for federal money for intervention and prevention programs that provide direct services to youth.

(3) Two or more judicial districts may jointly submit a plan to combine any portion of the amounts allocated to the districts under subsection (1) to expend funds on a regional or statewide basis in accordance with subsection (2).

(4) The cost containment review panel provided for in 41-5-131 shall review each plan submitted to the office of court administrator and recommend to the office whether the plan should be approved. The office shall consider the cost containment review panel's recommendation before approving or disapproving a plan.

(5) The office of court administrator shall notify the judicial district and cost containment review panel in writing as to whether a plan has been approved or disapproved. If the office disapproves a plan, the judicial district may submit a revised plan.

(6) (a) A judicial district shall expend the amounts allocated to the district under subsection (1) in accordance with an approved plan by the end of the fiscal year following the fiscal year in which the amounts were allocated under subsection (1).

(b) The office of court administrator shall deposit in the general fund any portion of the amounts allocated under subsection (1) not expended within the time provided for in subsection (6)(a).

**History:** En. Sec. 20, Ch. 398, L. 2007; amd. Sec. 15, Ch. 143, L. 2015.

## **Part 25**

### **Criminally Convicted Youth Act**

**41-5-2501. Short title.** This part may be cited as the "Criminally Convicted Youth Act".

**History:** En. Sec. 17, Ch. 532, L. 1999.

**41-5-2502. Purpose.** The criminally convicted youth act must be interpreted and construed to effectuate the following express legislative purposes:

- (1) to protect the public;
- (2) to hold youth who commit offenses that may be filed directly in district court pursuant to 41-5-206 accountable for their actions;
- (3) to provide for the custody, assessment, care, supervision, treatment, education, rehabilitation, and work and skill development of youth convicted in district court; and
- (4) to comply with the legislative purposes set forth in 41-5-102.

**History:** En. Sec. 18, Ch. 532, L. 1999.

**41-5-2503. Disposition of criminally convicted youth.** (1) The district court, in sentencing a youth adjudicated in district court pursuant to 41-5-206, shall:

- (a) impose any sentence allowed by the statute that established the penalty for the offense of which the youth is convicted as if the youth were an adult and any conditions or restrictions allowed by statute;
- (b) retain jurisdiction over the case until the criminally convicted youth reaches the age of 21;
- (c) order the department to submit a status report to the court, county attorney, defense attorney, and juvenile probation officer every 6 months until the youth attains the age of 21. The report must include a recommendation from the department regarding the disposition of the criminally convicted youth.

(2) The district court shall review the criminally convicted youth's sentence pursuant to 41-5-2510 before the youth reaches the age of 21 if a hearing has not been requested under 41-5-2510.

**History:** En. Sec. 19, Ch. 532, L. 1999.

**41-5-2504 through 41-5-2509 reserved.**

**41-5-2510. Sentence review hearing.** (1) When a youth has been convicted as an adult pursuant to the provisions of 41-5-206, except for offenses punishable by death or life imprisonment or when a sentence of 100 years could be imposed, the county attorney, defense attorney, or youth may, at any time before the youth reaches the age of 21, request a hearing to review the sentence imposed on the youth. The department shall notify the court of the youth's impending birthday no later than 90 days before the youth's 21st birthday.

(2) After reviewing the status report and upon motion for a hearing, the court shall determine whether to hold a criminally convicted youth sentence review hearing. If the court, in its discretion, determines that a sentence review hearing is warranted or is required under 41-5-2503, the hearing must be held within 90 days after the filing of the request or determination. The sentencing court or county attorney shall notify the victim of the offense pursuant to Title 46, chapter 24.

(3) The sentencing court shall review the department's records, formal youth court records, victim statements, and any other pertinent information.

(4) The sentencing court, after considering the criminal, social, psychological, and any other records of the youth; any evidence presented at the hearing; and any statements by the victim and by the parent or parents or guardian of the youth and any other advocates for the youth shall determine whether the criminally convicted youth has been substantially rehabilitated based upon a preponderance of the evidence.

(5) In the event that the sentencing court determines that the youth has been substantially rehabilitated, the court shall determine whether to:

(a) suspend all or part of the remaining portion of the sentence, impose conditions and restrictions pursuant to 46-18-201, and place the youth on probation under the direction of the department, unless otherwise specified;

(b) impose all or part of the remaining sentence and make any additional recommendations to the department regarding the placement and treatment of the criminally convicted youth; or

(c) impose a combination of options allowed under subsections (5)(a) and (5)(b), not to exceed the total sentence remaining.

(6) The sentencing court may revoke a suspended sentence of a criminally convicted youth pursuant to 46-18-203.

**History:** En. Sec. 20, Ch. 532, L. 1999; amd. Sec. 7, Ch. 423, L. 2005.

## CHAPTER 7 MONTANA FAMILY POLICY ACT

### Part 1 Family Policy Act

**41-7-101. Short title.** Section 41-7-102 and this section may be cited as the "Montana Family Policy Act".

**History:** En. Sec. 1, Ch. 98, L. 1993.

**41-7-102. Policy and guiding principles.** (1) It is the policy of the state of Montana to support and preserve the family as the single most powerful influence for ensuring the healthy social development and mental and physical well-being of Montana's children.

(2) The following principles must guide the actions of state government, state agencies, and agents of the state that serve children and families:

(a) Family support and preservation must be guiding philosophies when the state, state agencies, or agents of the state plan or implement services for children or families. The state shall promote the establishment of a range of services to children and families, including the following components:

(i) supporting families toward healthy development by providing a community network that offers a range of family support services, activities, and programs designed to promote family well-being, with services that include prenatal care, parenting education, parent aides,

and visiting nurses; early childhood screening and developmental services; child care; and family recreation;

(ii) assisting vulnerable families before crises emerge by providing specialized services to strengthen and preserve families experiencing problems before they become acute and by providing early intervention and family support services, such as respite care, health and mental health services, and home-based rehabilitation services linked to services in subsection (2)(a)(i);

(iii) protecting and caring for children in crisis by providing intensive services to protect children who have suffered or are at risk of suffering serious harm from child abuse and neglect, by providing care for children at risk of out-of-home placement for emotional disturbances or behavior problems, and by providing family support services to ensure that reasonable efforts are made to safely maintain children in their own homes or to provide temporary or permanent care for children who are removed from their families. These services include family-based services to avoid removal from the home whenever possible and to provide out-of-home care, reunification services, adoption services, and long-term substitute care.

(b) To maximize resources and establish a range of services driven by the needs of families rather than by a predetermined array of categorical services, the state, state agencies, and agents of the state shall work toward a system of comprehensive and coordinated services to children and families through joint agency planning, joint financing, joint service delivery, common intake and assessment, and other arrangements that promote more effective support for families.

(c) Needed services to children and families should be provided as close as possible to the home community. The state, state agencies, and agents of the state shall encourage community planning and collaboration. State agencies shall cooperate to support collaborative programs.

(d) The state encourages all sectors of society to participate in building the community capacity to meet the needs of children and families.

(3) The family policy objectives described in this section are intended to guide the state's efforts to provide services to children and families. This section may not be construed to require a service or a particular level of service or to grant a right of action to enforce this section or other law.

**History:** En. Sec. 2, Ch. 98, L. 1993.

## TITLE 44

### LAW ENFORCEMENT

#### CHAPTER 2

#### INVESTIGATION, COMMUNICATION, AND IDENTIFICATION

##### Part 5

##### Missing Children

**44-2-501. Short title.** This part may be cited as the "Missing Children Act of 1985".

**History:** En. Sec. 1, Ch. 559, L. 1985.

**44-2-502. Definitions.** As used in this part, the following definitions apply:

(1) "Missing child" means any person who has been reported as missing to a law enforcement authority and:

(a) who is under 21 years of age;

(b) whose temporary or permanent residence is in Montana or is believed to be in Montana; and

(c) whose location has not been determined.

(2) “Missing child report” means a report prepared on a form designed by the department of justice for use by private citizens and law enforcement authorities to report information about missing children to the missing children information program provided for in 44-2-503.

**History:** En. Sec. 2, Ch. 559, L. 1985; amd. Sec. 1, Ch. 79, L. 2015.

**44-2-503. Missing children information program.** (1) The department of justice shall establish a missing children information program to create a central repository to aid in the location of missing children in Montana.

(2) The missing children information program shall:

(a) establish a system of intrastate communication of information relating to any child determined to be missing by the parent, guardian, or legal custodian of the child or by a law enforcement authority;

(b) provide a centralized file for the exchange of information on missing children within the state, including information obtained under the provisions of 44-2-401;

(c) interface with the national crime information center computer system for exchange of information on children suspected of interstate travel; and

(d) provide the superintendent of public instruction each month with a list of missing Montana school children for the purposes of 44-2-506.

**History:** En. Sec. 3, Ch. 559, L. 1985.

**44-2-504. Reports to missing children information program.** (1) All state, county, and municipal law enforcement authorities shall submit to the missing children information program provided for in 44-2-503 any missing child report and other information required by 44-2-401.

(2) Any parent, guardian, or legal custodian may submit a missing child report to the missing children information program on any child whose whereabouts is unknown, regardless of the circumstances, subsequent to making a report to the appropriate law enforcement authority within the county in which the child became missing.

(3) The parent, guardian, or legal custodian responsible for notifying the missing children information program or a law enforcement authority of a missing child shall immediately notify the authority and the program of any child whose location has been determined.

**History:** En. Sec. 4, Ch. 559, L. 1985.

**44-2-505. Duties of law enforcement authority.** Whenever a parent, guardian, or legal custodian of a child files a report with a law enforcement authority that the child is missing, the law enforcement authority shall within 2 hours of the report:

(1) inform all on-duty law enforcement officers of the existence of the missing child report;

(2) communicate the report to all other law enforcement authorities having jurisdiction in the county; and

(3) enter the missing child report into the national crime information center computer system.

**History:** En. Sec. 5, Ch. 559, L. 1985; amd. Sec. 2, Ch. 79, L. 2015.

**44-2-506. List of missing Montana school children.** (1) The superintendent of public instruction shall assist the missing children information program provided for in 44-2-503 in identifying and locating missing children who are enrolled in Montana public school districts in kindergarten through grade 12 by:

(a) collecting each month a list of missing Montana school children as provided by the missing children information program provided for in 44-2-503;

(b) distributing the list of missing school children on a monthly basis, unless the list has no change from the previous month’s information, to all school districts admitting children to kindergarten through grade 12;

(c) designing the list to include pertinent available information for identification of the missing school child, including if possible a recent photograph of the child; and

(d) notifying the appropriate law enforcement agency and the missing children information program as soon as any additional information is obtained or contact is made with respect to a missing school child.

(2) Each school district in Montana shall:



(a) distribute to each school building within the district the list of missing school children provided for in subsection (1); and

(b) notify the appropriate law enforcement agency at the earliest known contact with any child whose name appears on the list of missing school children.

**History:** En. Sec. 6, Ch. 559, L. 1985.

**44-2-507. Notice to parents of children absent from school.** The trustees of any elementary or high school district shall establish procedures to be followed by school personnel for attempting to contact by the end of a school day any parent, guardian, or legal custodian whose child is absent from school but who has not reported the child as absent for the school day to determine whether the parent, guardian, or legal custodian is aware of the child's absence from school.

**History:** En. Sec. 7, Ch. 559, L. 1985.

**44-2-508 through 44-2-510 reserved.**

**44-2-511. School enrollment procedures to aid identification of missing children.**

(1) When a child enrolls in a school district for the first time, the school district shall:

(a) require that the child's parent, guardian, or legal custodian present to the school, within 40 days of enrollment, proof of identity of the child; and

(b) request the appropriate school records of the child from the previous school attended by the child. The school enrolling the child shall make the request within 40 days of enrollment of the child.

(2) If a child's parent, guardian, or legal custodian does not present the proof of identity required in subsection (1) within 40 days of enrollment or if the school district does not receive the school records of the child within 60 days of enrollment, the school shall notify the missing children information program provided in 44-2-503 and a local law enforcement authority of the fact that no proof of identity has been presented for the child.

(3) A school district that receives a request for the school records of a child shall transfer the records to the requesting school as soon as possible.

(4) When a school district receives a notice from a law enforcement authority, parent, guardian, or legal custodian that a child who is or has been enrolled in that school has been reported as a missing child, the school district shall:

(a) flag in some manner the student records of the child; and

(b) notify the missing children information program and a local law enforcement authority if a request for the school records is received from another school district.

(5) If it is necessary for a local law enforcement authority to conduct an investigation on a missing child, school personnel may not inform the person claiming custody of the child of the investigation while it is being conducted.

(6) For the purposes of this section:

(a) "proof of identity" means a certified copy of a birth certificate, a certified transcript or similar student records from the previous school, or any documentary evidence that a school district considers to be satisfactory proof of identity; and

(b) "school district" means a school district as defined in 20-6-101 or a nonpublic elementary school or high school in the state.

**History:** En. Sec. 1, Ch. 407, L. 1987.

# TITLE 45

## CRIMES

### CHAPTER 5

#### OFFENSES AGAINST THE PERSON

##### Part 2

##### Assault and Related Offenses

**45-5-211. Assault upon sports official.** (1) A person commits the offense of assault upon a sports official if, while a sports official is acting as an official at an athletic contest in any sport at any level of amateur or professional competition, the person:

- (a) purposely or knowingly causes bodily injury to the sports official;
- (b) negligently causes bodily injury to the sports official with a weapon;
- (c) purposely or knowingly makes physical contact of an insulting or provoking nature with the sports official; or
- (d) purposely or knowingly causes reasonable apprehension of bodily injury in the sports official.

(2) A person convicted of assault upon a sports official shall be fined an amount not to exceed \$1,000 or be imprisoned in the county jail for any term not to exceed 6 months, or both.

**History:** En. Sec. 1, Ch. 408, L. 1993.

##### Part 5

##### Sexual Crimes

**45-5-513. Geographic restrictions applicable to high-risk sexual offenders.** (1) A high-risk sexual offender as provided in this section may not:

(a) establish a residence within 300 feet of a school, day-care center, playground, developed or improved park, athletic field or facility that primarily serves minors, or business or facility having a principal purpose of caring for, educating, or entertaining minors. This subsection (1)(a) does not apply if the residence was established on or before May 5, 2015.

(b) establish a residence or any other living accommodation in a place where a minor resides, except that the offender may reside with a minor if the offender is the parent, grandparent, or stepparent of the minor unless:

(i) the offender's parental rights were terminated or are in the process of being terminated as provided by law;

(ii) the offender was convicted of a sexual offense in which any of the offender's minor children, grandchildren, or stepchildren were the victim; or

(iii) the offender was convicted of a sexual offense in which a minor was the victim and the minor resided with the offender at the time of the offense;

(c) knowingly make any visual or audible sexually suggestive or obscene gesture, sound, or communication at or to a former victim or a member of the victim's immediate family;

(d) knowingly come within 300 feet of a former victim of the offender without the prior written permission of the victim or the victim's legal guardian;

(e) accept, maintain, or carry on regular employment at or within 300 feet of a school, day-care center, playground, developed or improved park, athletic field or facility that primarily serves minors, or business or facility having a principal purpose of caring for, educating, or entertaining minors.

(2) A high-risk sexual offender who knowingly violates a provision of this section is guilty of a felony and upon conviction shall be punished as provided in 46-18-213.

(3) For high-risk sexual offenders who are no longer under the supervision of the department of corrections, the residential and geographic restrictions provided in subsections (1)(a) and (1)(e) do not apply if the high-risk sexual offender possesses an approved safety plan from a sexual offender evaluator to mitigate the risk of reoffending and protect public safety. The safety

plan must be reevaluated annually by a sexual offender evaluator to ensure any conditions or requirements are adequate and protect public safety.

(4) This section does not apply to offenders who are placed in a facility in operation by the department of corrections, the department of public health and human services, or a contractor with either department before October 1, 2015. The department of corrections and the department of public health and human services shall adopt rules specifying the type of facility to which this section applies.

(5) The department of corrections and the department of public health and human services may also exempt from the requirements of this section offenders who are placed in a facility to be operated by either department or a contractor with either department beginning on or after October 1, 2015. The department of corrections and the department of public health and human services shall adopt rules specifying facilities to which this subsection applies. As part of the process of granting an exemption to a facility constructed or designated after October 1, 2015, the department of corrections and the department of public health and human services shall hold at least one public hearing in the community where the facility is to be located.

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

(a) "Day-care center" has the meaning provided in 52-2-703.

(b) "High-risk sexual offender" means a person 18 years of age or older who is designated as a sexually violent predator under 46-23-509 and has committed a sexual offense against a victim 12 years of age or younger.

(c) "Minor" means a person under 18 years of age.

(d) "Regular employment" means employment for which a sexual offender has a reasonable expectation of employment for longer than 90 days.

(e) "Sexual offense" has the meaning provided in 46-23-502.

**History:** En. Sec. 1, Ch. 412, L. 2015.

## **Part 6**

### **Offenses Against the Family**

**45-5-622. Endangering welfare of children.** (1) A parent, guardian, or other person supervising the welfare of a child less than 18 years old commits the offense of endangering the welfare of children if the parent, guardian, or other person knowingly endangers the child's welfare by violating a duty of care, protection, or support.

(2) Except as provided in 16-6-305, a parent or guardian or any person who is 18 years of age or older, whether or not the parent, guardian, or other person is supervising the welfare of the child, commits the offense of endangering the welfare of children if the parent, guardian, or other person knowingly contributes to the delinquency of a child less than:

(a) 18 years old by:

(i) supplying or encouraging the use of an intoxicating substance by the child; or

(ii) assisting, promoting, or encouraging the child to enter a place of prostitution; or

(b) 16 years old by assisting, promoting, or encouraging the child to:

(i) abandon the child's place of residence without the consent of the child's parents or guardian; or

(ii) engage in sexual conduct.

(3) A person, whether or not the person is supervising the welfare of a child less than 18 years of age, commits the offense of endangering the welfare of children if the person, in the residence of a child, in a building, structure, conveyance, or outdoor location where a child might reasonably be expected to be present, in a room offered to the public for overnight accommodation, or in any multiple-unit residential building, knowingly:

(a) produces or manufactures methamphetamine or attempts to produce or manufacture methamphetamine;

(b) possesses any material, compound, mixture, or preparation that contains any combination of the items listed in 45-9-107 with intent to manufacture methamphetamine; or

(c) causes or permits a child to inhale, be exposed to, have contact with, or ingest methamphetamine or be exposed to or have contact with methamphetamine paraphernalia.

(4) A parent, guardian, or other person supervising the welfare of a child less than 16 years of age may verbally or in writing request a person who is 18 years of age or older and who

has no legal right of supervision or control over the child to stop contacting the child if the requester believes that the contact is not in the child's best interests. If the person continues to contact the child, the parent, guardian, or other person supervising the welfare of the child may petition or the county attorney may upon the person's request petition for an order of protection under Title 40, chapter 15. To the extent that they are consistent with this subsection, the provisions of Title 40, chapter 15, apply. A person who purposely or knowingly violates an order of protection commits the offense of endangering the welfare of children and upon conviction shall be sentenced as provided in subsection (5)(a).

(5) (a) Except as provided in subsection (5)(b), a person convicted of endangering the welfare of children shall be fined an amount not to exceed \$500 or be imprisoned in the county jail for any term not to exceed 6 months, or both. A person convicted of a second offense of endangering the welfare of children shall be fined an amount not to exceed \$1,000 or be imprisoned in the county jail for any term not to exceed 6 months, or both.

(b) A person convicted under subsection (3) is guilty of a felony and shall be imprisoned in the state prison for a term not to exceed 5 years and may be fined an amount not to exceed \$10,000, or both. If a child suffers serious bodily injury, the offender shall be fined an amount not to exceed \$25,000 or be imprisoned for a term not to exceed 10 years, or both. Prosecution or conviction of a violation of subsection (3) does not bar prosecution or conviction for any other crime committed by the offender as part of the same conduct.

(6) On the issue of whether there has been a violation of the duty of care, protection, and support, the following, in addition to all other admissible evidence, is admissible: cruel treatment; abuse; infliction of unnecessary and cruel punishment; abandonment; neglect; lack of proper medical care, clothing, shelter, and food; and evidence of past bodily injury.

(7) The court may order, in its discretion, any fine levied or any bond forfeited upon a charge of endangering the welfare of children paid to or for the benefit of the person or persons whose welfare the defendant has endangered.

**History:** En. 94-5-607 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 1, Ch. 85, L. 1975; amd. Sec. 1, Ch. 218, L. 1977; amd. Sec. 18, Ch. 359, L. 1977; R.C.M. 1947, 94-5-607; amd. Sec. 1, Ch. 405, L. 1987; amd. Sec. 3, Ch. 448, L. 1989; amd. Sec. 1, Ch. 333, L. 1997; amd. Sec. 1, Ch. 75, L. 2007.

**45-5-623. Unlawful transactions with children.** (1) Except as provided for in 16-6-305, a person commits the offense of unlawful transactions with children if the person knowingly:

(a) sells or gives explosives to a child under the age of majority except as authorized under appropriate city ordinances;

(b) sells or gives intoxicating substances other than alcoholic beverages to a child under the age of majority;

(c) sells or gives an alcoholic beverage to a person under 21 years of age;

(d) being a junk dealer, pawnbroker, or secondhand dealer, receives or purchases goods from a child under the age of majority without authorization of the parent or guardian; or

(e) tattoos or provides a body piercing on a child under the age of majority without the explicit in-person consent of the child's parent or guardian. For purposes of this subsection, "tattoo" and "body piercing" have the meaning provided in 50-48-102. Failure to adequately verify the identity of a parent or guardian is not an excuse for violation of this subsection.

(2) A person convicted of the offense of unlawful transactions with children shall be fined an amount not to exceed \$500 or be imprisoned in the county jail for any term not to exceed 6 months, or both. A person convicted of a second offense of unlawful transactions with children shall be fined an amount not to exceed \$1,000 or be imprisoned in the county jail for any term not to exceed 6 months, or both. (*See compiler's comments for contingent termination of certain text.*)

**History:** En. 94-5-609 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-5-609; amd. Sec. 2, Ref. 74, app. Nov. 7, 1978; amd. Sec. 4, Ch. 217, L. 1987; amd. Sec. 4, Ch. 448, L. 1989; amd. Sec. 1, Ch. 155, L. 1997; amd. Sec. 2, Ch. 391, L. 2003; amd. Sec. 16, Ch. 386, L. 2005.

#### **Compiler's Comments**

*Contingent Termination Date:* Section 9(2), Ch. 217, L. 1987, read: "If the United States congress repeals or removes or a final judgment invalidates the provisions of federal law that require states to raise the legal age for purchasing and possessing alcoholic beverages to 21 as a condition of full receipt of federal highway funds, the governor of Montana shall immediately certify the fact of the repeal, removal, or invalidation to the secretary of state of Montana. This act terminates on the date of such certification."

**45-5-625. Sexual abuse of children.** (1) A person commits the offense of sexual abuse of children if the person:

(a) knowingly employs, uses, or permits the employment or use of a child in an exhibition of sexual conduct, actual or simulated;

(b) knowingly photographs, films, videotapes, develops or duplicates the photographs, films, or videotapes, or records a child engaging in sexual conduct, actual or simulated;

(c) knowingly, by any means of communication, including electronic communication or in person, persuades, entices, counsels, coerces, encourages, directs, or procures a child under 16 years of age or a person the offender believes to be a child under 16 years of age to engage in sexual conduct, actual or simulated, or to view sexually explicit material or acts for the purpose of inducing or persuading a child to participate in any sexual activity that is illegal;

(d) knowingly processes, develops, prints, publishes, transports, distributes, sells, exhibits, or advertises any visual or print medium, including a medium by use of electronic communication in which a child is engaged in sexual conduct, actual or simulated;

(e) knowingly possesses any visual or print medium, including a medium by use of electronic communication in which a child is engaged in sexual conduct, actual or simulated;

(f) finances any of the activities described in subsections (1)(a) through (1)(d) and (1)(g), knowing that the activity is of the nature described in those subsections;

(g) possesses with intent to sell any visual or print medium, including a medium by use of electronic communication in which a child is engaged in sexual conduct, actual or simulated;

(h) knowingly travels within, from, or to this state with the intention of meeting a child under 16 years of age or a person the offender believes to be a child under 16 years of age in order to engage in sexual conduct, actual or simulated; or

(i) knowingly coerces, entices, persuades, arranges for, or facilitates a child under 16 years of age or a person the offender believes to be a child under 16 years of age to travel within, from, or to this state with the intention of engaging in sexual conduct, actual or simulated.

(2) (a) Except as provided in subsection (2)(b), (2)(c), or (4), a person convicted of the offense of sexual abuse of children shall be punished by life imprisonment or by imprisonment in the state prison for a term not to exceed 100 years and may be fined not more than \$10,000.

(b) Except as provided in 46-18-219, if the victim is under 16 years of age, a person convicted of the offense of sexual abuse of children shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 4 years or more than 100 years and may be fined not more than \$10,000.

(c) Except as provided in 46-18-219, a person convicted of the offense of sexual abuse of children for the possession of material, as provided in subsection (1)(e), shall be fined not to exceed \$10,000 or be imprisoned in the state prison for a term not to exceed 10 years, or both.

(3) An offense is not committed under subsections (1)(d) through (1)(g) if the visual or print medium is processed, developed, printed, published, transported, distributed, sold, possessed, or possessed with intent to sell, or if the activity is financed, as part of a sexual offender information or treatment course or program conducted or approved by the department of corrections.

(4) (a) If the victim was 12 years of age or younger and the offender was 18 years of age or older at the time of the offense, the offender:

(i) shall be punished by imprisonment in a state prison for a term of 100 years. The court may not suspend execution or defer imposition of the first 10 years of a sentence of imprisonment imposed under this subsection (4)(a)(i) except as provided in 46-18-222(1) through (5), and during the first 10 years of imprisonment, the offender is not eligible for parole. The exception provided in 46-18-222(6) does not apply.

(ii) may be fined an amount not to exceed \$50,000; and

(iii) shall be ordered to enroll in and successfully complete the educational phase and the cognitive and behavioral phase of a sexual offender treatment program provided or approved by the department of corrections.

(b) If the offender is released after the mandatory minimum period of imprisonment, the offender is subject to supervision by the department of corrections for the remainder of the offender's life and shall participate in the program for continuous, satellite-based monitoring provided for in 46-23-1010.

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



(a) “Electronic communication” means a sign, signal, writing, image, sound, data, or intelligence of any nature transmitted or created in whole or in part by a wire, radio, electromagnetic, photoelectronic, or photo-optical system.

(b) “Sexual conduct” means:

(i) actual or simulated:

(A) sexual intercourse, whether between persons of the same or opposite sex;

(B) penetration of the vagina or rectum by any object, except when done as part of a recognized medical procedure;

(C) bestiality;

(D) masturbation;

(E) sadomasochistic abuse;

(F) lewd exhibition of the genitals, breasts, pubic or rectal area, or other intimate parts of any person; or

(G) defecation or urination for the purpose of the sexual stimulation of the viewer; or

(ii) depiction of a child in the nude or in a state of partial undress with the purpose to abuse, humiliate, harass, or degrade the child or to arouse or gratify the person’s own sexual response or desire or the sexual response or desire of any person.

(c) “Simulated” means any depicting of the genitals or pubic or rectal area that gives the appearance of sexual conduct or incipient sexual conduct.

(d) “Visual medium” means:

(i) any film, photograph, videotape, negative, slide, or photographic reproduction that contains or incorporates in any manner any film, photograph, videotape, negative, or slide; or

(ii) any disk, diskette, or other physical media that allows an image to be displayed on a computer or other video screen and any image transmitted to a computer or other video screen by telephone line, cable, satellite transmission, or other method.

**History:** En. Sec. 1, Ch. 505, L. 1979; amd. Sec. 1, Ch. 638, L. 1993; amd. Sec. 2, Ch. 187, L. 1995; amd. Sec. 9, Ch. 482, L. 1995; amd. Sec. 200, Ch. 546, L. 1995; amd. Sec. 5, Ch. 550, L. 1995; amd. Sec. 2, Ch. 344, L. 2003; amd. Sec. 2, Ch. 364, L. 2005; amd. Sec. 1, Ch. 29, L. 2007; amd. Sec. 11, Ch. 483, L. 2007; amd. Sec. 1, Ch. 198, L. 2009; amd. Sec. 1, Ch. 134, L. 2017; amd. Sec. 8, Ch. 321, L. 2017.

#### **Compiler’s Comments**

*2017 Amendments — Composite Section:* Chapter 134 in (1)(c) after “electronic communication” inserted “or in person”, after “counsels” inserted “coerces, encourages, directs”, and at end after “simulated” inserted “or to view sexually explicit material or acts for the purpose of inducing or persuading a child to participate in any sexual activity that is illegal”; and made minor changes in style. Amendment effective October 1, 2017.

Chapter 321 in (4)(a)(i) in two places substituted “10 years” for “25 years”, substituted “46-18-222(1) through (5)” for “46-18-222”, and inserted last sentence concerning exception. Amendment effective July 1, 2017.

*Applicability:* Section 2, Ch. 134, L. 2017, provided: “[This act] applies to all offenses committed on or after [the effective date of this act].” Effective October 1, 2017.

Section 44, Ch. 321, L. 2017, provided: “[This act] applies to offenses committed after June 30, 2017.”

**45-5-637. Possession or consumption of tobacco products, alternative nicotine products, or vapor products by persons under 18 years of age prohibited — unlawful attempt to purchase — penalties.** (1) A person under 18 years of age who knowingly possesses or consumes a tobacco product, alternative nicotine product, or vapor product, as defined in 16-11-302, commits the offense of possession or consumption of a tobacco product, alternative nicotine product, or vapor product.

(2) A person convicted of possession or consumption of a tobacco product, alternative nicotine product, or vapor product:

(a) shall be fined \$50 for a first offense, no less than \$75 or more than \$100 for a second offense, and no less than \$100 or more than \$250 for a third or subsequent offense; or

(b) may be adjudicated on a petition alleging the person to be a youth in need of intervention under the provisions of the Montana Youth Court Act provided for in Title 41, chapter 5.

(3) A person convicted of possession or consumption of a tobacco product, alternative nicotine product, or vapor product may also be required to perform community service or to attend a tobacco cessation program.

(4) A person under 18 years of age commits the offense of attempt to purchase a tobacco product, alternative nicotine product, or vapor product if the person knowingly attempts to purchase a tobacco product, alternative nicotine product, or vapor product, as defined in 16-11-302. A person convicted of attempt to purchase a tobacco product, alternative nicotine product, or vapor product:

(a) for a first offense, shall be fined \$50 and may be ordered to perform community service;  
(b) for a second or subsequent offense, shall be fined an amount not to exceed \$100 and may be ordered to perform community service.

(5) The fines collected under subsections (2) and (4) must be deposited to the credit of the general fund of the local government that employs the arresting officer, or if the arresting officer is an officer of the highway patrol, the fines must be credited to the county general fund in the county in which the arrest was made.

**History:** En. Sec. 1, Ch. 376, L. 1995; amd. Sec. 55, Ch. 550, L. 1997; amd. Sec. 4, Ch. 498, L. 2001; amd. Sec. 10, Ch. 337, L. 2015.

## CHAPTER 8 OFFENSES AGAINST PUBLIC ORDER

### Part 1 Conduct Disruptive of Public Order

**45-8-101. Disorderly conduct.** (1) A person commits the offense of disorderly conduct if the person knowingly disturbs the peace by:

- (a) quarreling, challenging to fight, or fighting;
- (b) making loud or unusual noises;
- (c) using threatening, profane, or abusive language;
- (d) rendering vehicular or pedestrian traffic impassable;
- (e) rendering the free ingress or egress to public or private places impassable;
- (f) disturbing or disrupting any lawful assembly or public meeting;
- (g) transmitting a false report or warning of a fire or other catastrophe in a place where its occurrence would endanger human life;
- (h) creating a hazardous or physically offensive condition by any act that serves no legitimate purpose; or
- (i) transmitting a false report or warning of an impending explosion in a place where its occurrence would endanger human life.

(2) (a) Except as provided in subsections (2)(b) and (3), a person convicted of the offense of disorderly conduct shall be fined an amount not to exceed \$100.

(b) A person convicted of a second or subsequent violation of subsections (1)(a) through (1)(f) within 1 year shall be fined an amount not to exceed \$100 or be imprisoned in the county jail for a term not to exceed 10 days.

(3) A person convicted of a violation of subsections (1)(g) through (1)(i) shall be fined an amount not to exceed \$1,000 or be imprisoned in the county jail for a term not to exceed 1 year, or both.

**History:** En. 94-8-101 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-8-101; amd. Sec. 1, Ch. 508, L. 1989; amd. Sec. 8, Ch. 415, L. 1991; amd. Sec. 1693, Ch. 56, L. 2009; amd. Sec. 1, Ch. 250, L. 2013; amd. Sec. 16, Ch. 321, L. 2017.

#### **Compiler's Comments**

*2017 Amendment:* Chapter 321 in (2)(a) near beginning substituted "subsections (2)(b) and (3)" for "subsection (3)" and at end deleted "or be imprisoned in the county jail for a term not to exceed 10 days, or both"; inserted (2)(b) concerning certain persons convicted of a second or subsequent violation; in (3) substituted "subsections (1)(g) through (1)(i)" for "subsection (1)(i)"; and made minor changes in style. Amendment effective July 1, 2017.

*Applicability:* Section 44, Ch. 321, L. 2017, provided: "[This act] applies to offenses committed after June 30, 2017."

### Part 2 Offensive, Indecent, and Inhumane Conduct

**45-8-206. Public display or dissemination of obscene material to minors.** (1) A person having custody, control, or supervision of any commercial establishment or newsstand may not knowingly or purposely:

- (a) display obscene material to minors in such a way that minors, as a part of the invited public, will be able to view the material. However, a person is considered not to have displayed obscene material to minors if the material is kept behind devices commonly known as blinder

racks so that the lower two-thirds of the material is not exposed to view or other reasonable efforts were made to prevent view of the material by a minor.

(b) sell, furnish, present, distribute, or otherwise disseminate to a minor or allow a minor to view, with or without consideration, any obscene material; or

(c) present to a minor or participate in presenting to a minor, with or without consideration, any performance that is obscene to minors.

(2) A person does not violate this section if:

(a) the person had reasonable cause to believe the minor was 18 years of age. "Reasonable cause" includes but is not limited to being shown a draft card, driver's license, marriage license, birth certificate, educational identification card, governmental identification card, tribal identification card, or other official or apparently official card or document purporting to establish that the person is 18 years of age;

(b) the person is, or is acting as, an employee of a bona fide public school, college, or university or a retail outlet affiliated with and serving the educational purposes of a school, college, or university and the material or performance was disseminated in accordance with policies approved by the governing body of the institution;

(c) the person is an officer, director, trustee, or employee of a public library or museum and the material or performance was acquired by the library or museum and disseminated in accordance with policies approved by the governing body of the library or museum;

(d) an exhibition in a state of nudity is for a bona fide scientific or medical purpose for a bona fide school, library, or museum; or

(e) the person is a retail sales clerk with no financial interest in the material or performance or in the establishment displaying or selling the material or performance.

**History:** En. Sec. 2, Ch. 571, L. 1989; amd. Sec. 6, Ch. 180, L. 2007.

### **Part 3 Weapons**

**45-8-328. Carrying concealed weapon in prohibited place — penalty.** (1) Except for legislative security officers authorized to carry a concealed weapon in the state capitol as provided in 45-8-317(1)(k), a person commits the offense of carrying a concealed weapon in a prohibited place if the person purposely or knowingly carries a concealed weapon in:

(a) portions of a building used for state or local government offices and related areas in the building that have been restricted;

(b) a bank, credit union, savings and loan institution, or similar institution during the institution's normal business hours. It is not an offense under this section to carry a concealed weapon while:

(i) using an institution's drive-up window, automatic teller machine, or unstaffed night depository; or

(ii) at or near a branch office of an institution in a mall, grocery store, or other place unless the person is inside the enclosure used for the institution's financial services or is using the institution's financial services.

(c) a room in which alcoholic beverages are sold, dispensed, and consumed under a license issued under Title 16 for the sale of alcoholic beverages for consumption on the premises.

(2) It is not a defense that the person had a valid permit to carry a concealed weapon. A person convicted of the offense shall be imprisoned in the county jail for a term not to exceed 6 months or fined an amount not to exceed \$500, or both.

**History:** En. Sec. 8, Ch. 759, L. 1991; amd. Sec. 1, Ch. 572, L. 1999; amd. Sec. 2, Ch. 384, L. 2011.

**45-8-331. Switchblade knives.** (1) A person who carries or bears upon the individual's person, who carries or bears within or on any motor vehicle or other means of conveyance owned or operated by the person, or who owns, possesses, uses, stores, gives away, sells, or offers for sale a switchblade knife shall be punished by a fine not exceeding \$500 or by imprisonment in the county jail for a period not exceeding 6 months, or both.

(2) A bona fide collector whose collection is registered with the sheriff of the county in which the collection is located is exempted from the provisions of this section.

(3) For the purpose of this section, a switchblade knife is defined as any knife that has a blade 1 ½ inches long or longer that opens automatically by hand pressure applied to a button, spring, or other device in the handle of the knife.

**History:** En. Sec. 1, Ch. 243, L. 1957; Sec. 94-35-273, R.C.M. 1947; redes. 94-8-226 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-226; amd. Sec. 1711, Ch. 56, L. 2009.

**45-8-344. Use of firearms by children under 14 years of age prohibited — exceptions.** It is unlawful for a parent, guardian, or other person having charge or custody of a minor child under the age of 14 years to permit the minor child to carry or use in public any firearms, except when the child is accompanied by a person having charge or custody of the child or under the supervision of a qualified firearms safety instructor or an adult who has been authorized by the parent or guardian.

**History:** En. Sec. 1, Ch. 111, L. 1907; Sec. 8879, Rev. C. 1907; re-en. Sec. 11565, R.C.M. 1921; re-en. Sec. 11565, R.C.M. 1935; Sec. 94-3579, R.C.M. 1947; amd. Sec. 1, Ch. 139, L. 1963; redes. 94-8-221 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 40, Ch. 359, L. 1977; R.C.M. 1947, 94-8-221; amd. Sec. 1, Ch. 600, L. 1993.

**45-8-345. Criminal liability of parent or guardian — prosecution.** (1) Any parent, guardian, or other person violating the provisions of 45-8-344 shall be guilty of a misdemeanor.

(2) The county attorney, on complaint of any person, must prosecute violations of 45-8-344.

**History:** En. Sec. 2, Ch. 111, L. 1907; Sec. 8880, Rev. C. 1907; re-en. Sec. 11566, R.C.M. 1921; re-en. Sec. 11566, R.C.M. 1935; Sec. 94-3580, R.C.M. 1947; redes. 94-8-222 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-222.

**45-8-351. Restriction on local government regulation of firearms.** (1) Except as provided in subsection (2), a county, city, town, consolidated local government, or other local government unit may not prohibit, register, tax, license, or regulate the purchase, sale or other transfer (including delay in purchase, sale, or other transfer), ownership, possession, transportation, use, or unconcealed carrying of any weapon, including a rifle, shotgun, handgun, or concealed handgun.

(2) (a) For public safety purposes, a city or town may regulate the discharge of rifles, shotguns, and handguns. A county, city, town, consolidated local government, or other local government unit has power to prevent and suppress the carrying of concealed or unconcealed weapons to a public assembly, publicly owned building, park under its jurisdiction, or school, and the possession of firearms by convicted felons, adjudicated mental incompetents, illegal aliens, and minors.

(b) Nothing contained in this section allows any government to prohibit the legitimate display of firearms at shows or other public occasions by collectors and others or to prohibit the legitimate transportation of firearms through any jurisdiction, whether in airports or otherwise.

(c) A local ordinance enacted pursuant to this section may not prohibit a legislative security officer who has been issued a concealed weapon permit from carrying a concealed weapon in the state capitol as provided in 45-8-317.

**History:** En. Sec. 1, Ch. 589, L. 1985; amd. Sec. 11, Ch. 759, L. 1991; amd. Sec. 3, Ch. 384, L. 2011.

**45-8-361. Possession or allowing possession of weapon in school building — exceptions — penalties — seizure and forfeiture or return authorized — definitions.**

(1) A person commits the offense of possession of a weapon in a school building if the person purposely and knowingly possesses, carries, or stores a weapon in a school building.

(2) A parent or guardian of a minor commits the offense of allowing possession of a weapon in a school building if the parent or guardian purposely and knowingly permits the minor to possess, carry, or store a weapon in a school building.

(3) (a) Subsection (1) does not apply to law enforcement personnel.

(b) The trustees of a district may grant persons and entities advance permission to possess, carry, or store a weapon in a school building.

(4) (a) A person convicted under this section shall be fined an amount not to exceed \$500, imprisoned in the county jail for a term not to exceed 6 months, or both. The court shall consider alternatives to incarceration that are available in the community.

(b) (i) A weapon in violation of this section may be seized and, upon conviction of the person possessing or permitting possession of the weapon, may be forfeited to the state or returned to the lawful owner.

(ii) If a weapon seized under the provisions of this section is subsequently determined to have been stolen or otherwise taken from the owner's possession without permission, the weapon must be returned to the lawful owner.

(5) As used in this section:

(a) "school building" means all buildings owned or leased by a local school district that are used for instruction or for student activities. The term does not include a home school provided for in 20-5-109.

(b) "weapon" means any type of firearm, a knife with a blade 4 or more inches in length, a sword, a straight razor, a throwing star, nun-chucks, or brass or other metal knuckles. The term also includes any other article or instrument possessed with the purpose to commit a criminal offense.

**History:** En. Sec. 1, Ch. 435, L. 1997; amd. Sec. 6, Ch. 581, L. 1999.

## CHAPTER 9 DANGEROUS DRUGS

### Part 1 Offenses Involving Dangerous Drugs

**45-9-109. Criminal distribution of dangerous drugs on or near school property — penalty — affirmative defense.** (1) A person commits the offense of criminal distribution of dangerous drugs on or near school property if the person violates 45-9-101 in, on, or within 1,000 feet of the real property comprising a public or private elementary or secondary school.

(2) Except as provided in 46-18-222, a person convicted of criminal distribution of dangerous drugs on or near school property:

(a) shall be imprisoned in the state prison for a term of not less than 3 years or more than life; and

(b) may be fined an amount of not more than \$50,000.

(3) It is not a defense to prosecution under subsection (1) that the person did not know the distance involved.

(4) It is an affirmative defense to prosecution for a violation of this section that:

(a) the prohibited conduct took place entirely within a private residence; and

(b) no person 17 years of age or younger was present in the private residence at any time during the commission of the offense.

**History:** En. Sec. 1, Ch. 519, L. 1991; amd. Sec. 13, Ch. 432, L. 1999.

## TITLE 49 HUMAN RIGHTS

### CHAPTER 1 BASIC RIGHTS

#### Part 1 Basic Personal Rights

**49-1-101. Right of protection from personal injury.** Besides the personal rights mentioned or recognized in other statutes and subject to the qualifications and restrictions provided by law, every person has the right of protection from bodily restraint or harm, personal insult, defamation, and injury to the person's personal relations.

**History:** En. Sec. 30, Civ. C. 1895; re-en. Sec. 3600, Rev. C. 1907; re-en. Sec. 5688, R.C.M. 1921; Cal. Civ. C. Sec. 43; Field Civ. C. Sec. 27; re-en. Sec. 5688, R.C.M. 1935; R.C.M. 1947, 64-201; amd. Sec. 1, Ch. 177, L. 1979; amd. Sec. 1796, Ch. 56, L. 2009.



**49-1-102. Freedom from discrimination.** (1) The right to be free from discrimination because of race, creed, religion, color, sex, physical or mental disability, age, or national origin is recognized as and declared to be a civil right. This right must include but not be limited to:

- (a) the right to obtain and hold employment without discrimination; and
- (b) the right to the full enjoyment of any of the accommodation facilities or privileges of any place of public resort, accommodation, assemblage, or amusement.

(2) This section does not prevent the nonarbitrary consideration in adoption proceedings of relevant information concerning the factors listed in subsection (1). Consideration of religious factors by a licensed child-placing agency that is affiliated with a particular religious faith is not arbitrary consideration of religion within the meaning of this section.

**History:** En. Sec. 1, Ch. 201, L. 1965; amd. Sec. 1, Ch. 39, L. 1971; amd. Sec. 1, Ch. 77, L. 1974; amd. Sec. 1, Ch. 524, L. 1975; amd. Sec. 6, Ch. 38, L. 1977; R.C.M. 1947, 64-301; amd. Sec. 2, Ch. 682, L. 1991; amd. Sec. 1, Ch. 407, L. 1993.

**49-1-103. Right to use force.** Any necessary force may be used to protect from wrongful injury the person or property of one's self, of a wife, husband, child, parent, or other relative or member of one's family, or of a ward, servant, master, or guest.

**History:** En. Sec. 36, Civ. C. 1895; re-en. Sec. 3606, Rev. C. 1907; re-en. Sec. 5694, R.C.M. 1921; Cal. Civ. C. Sec. 50; Based on Field Civil C. Sec. 33; re-en. Sec. 5694, R.C.M. 1935; R.C.M. 1947, 64-210.

## Part 2 Basic Political Rights

**49-1-201. Right to state's protection.** Every person while within the jurisdiction of this state is entitled to its protection.

**History:** En. Sec. 80, Pol. C. 1895; re-en. Sec. 33, Rev. C. 1907; re-en. Sec. 34, R.C.M. 1921; Cal. Pol. C. Sec. 54; re-en. Sec. 34, R.C.M. 1935; R.C.M. 1947, 83-401.

**49-1-202. Right to hold elected office.** Every elector is eligible to the office for which the elector is an elector except where otherwise specially provided.

**History:** En. Sec. 84, Pol. C. 1895; re-en. Sec. 37, Rev. C. 1907; re-en. Sec. 38, R.C.M. 1921; Cal. Pol. C. Sec. 58; re-en. Sec. 38, R.C.M. 1935; R.C.M. 1947, 83-405; amd. Sec. 1797, Ch. 56, L. 2009.

**49-1-203. Rights and duties of electors as compared to nonelectors.** An elector has no rights or duties beyond those of a citizen not an elector, except the right and duty of holding and electing to office.

**History:** En. Sec. 85, Pol. C. 1895; re-en. Sec. 38, Rev. C. 1907; re-en. Sec. 39, R.C.M. 1921; Cal. Pol. C. Sec. 59; re-en. Sec. 39, R.C.M. 1935; R.C.M. 1947, 83-406.

**49-1-204. Rights and duties of citizens of other states.** A citizen of the United States who is not a citizen of this state has the same rights and duties as a citizen of this state not an elector.

**History:** En. Sec. 86, Pol. C. 1895; re-en. Sec. 39, Rev. C. 1907; re-en. Sec. 40, R.C.M. 1921; Cal. Pol. C. Sec. 60; re-en. Sec. 40, R.C.M. 1935; R.C.M. 1947, 83-407.

## CHAPTER 2 ILLEGAL DISCRIMINATION

### Part 1 General Provisions

**49-2-101. Definitions.** As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Age" means number of years since birth. It does not mean level of maturity or ability to handle responsibility. These latter criteria may represent legitimate considerations as reasonable grounds for discrimination without reference to age.

(2) "Aggrieved party" means a person who can demonstrate a specific personal and legal interest, as distinguished from a general interest, and who has been or is likely to be specially and injuriously affected by a violation of this chapter.

(3) "Commission" means the commission for human rights provided for in 2-15-1706.

(4) "Commissioner" means the commissioner of labor and industry provided for in 2-15-1701.

(5) “Credit” means the right granted by a creditor to a person to defer payment of a debt, to incur debt and defer its payment, or to purchase property or services and defer payment. It includes without limitation the right to incur and defer debt that is secured by residential real property.

(6) “Credit transaction” means any invitation to apply for credit, application for credit, extension of credit, or credit sale.

(7) “Creditor” means a person who, regularly or as a part of the person’s business, arranges for the extension of credit for which the payment of a financial charge or interest is required, whether in connection with loans, sale of property or services, or otherwise.

(8) “Department” means the department of labor and industry provided for in 2-15-1701.

(9) “Educational institution” means a public or private institution and includes an academy; college; elementary or secondary school; extension course; kindergarten; nursery; school system; university; business, nursing, professional, secretarial, technical, or vocational school; or agent of an educational institution.

(10) (a) “Employee” means an individual employed by an employer.

(b) The term does not include an individual providing services for an employer if the individual has an independent contractor exemption certificate issued under 39-71-417 and is providing services under the terms of that certificate.

(11) “Employer” means an employer of one or more persons or an agent of the employer but does not include a fraternal, charitable, or religious association or corporation if the association or corporation is not organized either for private profit or to provide accommodations or services that are available on a nonmembership basis.

(12) “Employment agency” means a person undertaking to procure employees or opportunities to work.

(13) “Financial institution” means a commercial bank, trust company, savings bank, finance company, savings and loan association, credit union, investment company, or insurance company.

(14) “Housing accommodation” means a building or portion of a building, whether constructed or to be constructed, that is or will be used as the sleeping quarters of its occupants.

(15) “Labor organization” means an organization or an agent of an organization organized for the purpose, in whole or in part, of collective bargaining, of dealing with employers concerning grievances or terms or conditions of employment, or of other mutual aid and protection of employees.

(16) “National origin” means ancestry.

(17) (a) “Organization” means a corporation, association, or any other legal or commercial entity that engages in advocacy of, enforcement of, or compliance with legal interests affected by this chapter.

(b) The term does not include a labor organization.

(18) “Person” means one or more individuals, labor unions, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated employees’ associations, employers, employment agencies, organizations, or labor organizations.

(19) (a) “Physical or mental disability” means:

(i) a physical or mental impairment that substantially limits one or more of a person’s major life activities;

(ii) a record of such an impairment; or

(iii) a condition regarded as such an impairment.

(b) Discrimination based on, because of, on the basis of, or on the grounds of physical or mental disability includes the failure to make reasonable accommodations that are required by an otherwise qualified person who has a physical or mental disability. An accommodation that would require an undue hardship or that would endanger the health or safety of any person is not a reasonable accommodation.

(20) (a) “Public accommodation” means a place that caters or offers its services, goods, or facilities to the general public subject only to the conditions and limitations established by law and applicable to all persons. It includes without limitation a public inn, restaurant, eating house, hotel, roadhouse, place where food or alcoholic beverages or malt liquors are

sold for consumption, motel, soda fountain, soft drink parlor, tavern, nightclub, trailer park, resort, campground, barbering, barbering nonchemical, cosmetology, electrology, esthetics, or manicuring salon or shop, bathroom, resthouse, theater, swimming pool, skating rink, golf course, cafe, ice cream parlor, transportation company, or hospital and all other public amusement and business establishments.

(b) Public accommodation does not include an institution, club, or place of accommodation that proves that it is by its nature distinctly private. An institution, club, or place of accommodation may not be considered by its nature distinctly private if it has more than 100 members, provides regular meal service, and regularly receives payment for dues, fees, use of space, facilities, services, meals, or beverages, directly or indirectly, from or on behalf of nonmembers, for the furtherance of trade or business. For the purposes of this subsection (20), any lodge of a recognized national fraternal organization is considered by its nature distinctly private.

**History:** En. 64-305 by Sec. 1, Ch. 283, L. 1974; amd. Sec. 1, Ch. 121, L. 1975; amd. Sec. 2, Ch. 524, L. 1975; amd. Sec. 1, Ch. 35, L. 1977; R.C.M. 1947, 64-305; amd. Sec. 2, Ch. 177, L. 1979; amd. Sec. 1, Ch. 543, L. 1989; amd. Sec. 1, Ch. 241, L. 1991; amd. Sec. 1, Ch. 235, L. 1993; amd. Sec. 2, Ch. 407, L. 1993; amd. Sec. 4, Ch. 467, L. 1997; amd. Sec. 21, Ch. 243, L. 2003; amd. Sec. 1, Ch. 201, L. 2011; amd. Sec. 16, Ch. 15, L. 2015.

**49-2-102. Records to be kept.** The state, employers, labor organizations, and employment agencies shall maintain records on age, sex, and race that are required to administer the civil rights laws and regulations. These records are confidential and available only to federal and state personnel legally charged with administering civil rights laws and regulations. However, statistical information compiled from records on age, sex, and race shall be made available to the general public.

**History:** En. 64-306.1 by Sec. 4, Ch. 524, L. 1975; amd. Sec. 1, Ch. 27, L. 1977; R.C.M. 1947, 64-306.1(2).

## Part 2 Commission for Human Rights

**49-2-201. Repealed.** Sec. 18, Ch. 467, L. 1997.

**History:** (1)En. 64-311 by Sec. 8, Ch. 283, L. 1974; amd. Sec. 9, Ch. 524, L. 1975; Sec. 64-311, R.C.M. 1947;(2) En. 64-308 by Sec. 5, Ch. 283, L. 1974; amd. Sec. 6, Ch. 524, L. 1975; Sec. 64-308, R.C.M. 1947; R.C.M. 1947, 64-308(part), 64-311.

**49-2-202. Authority to require posted notice.** The commission may require any employer, employment agency, labor union, educational institution, or financial institution or the owner, lessee, manager, agent, or employee of any public accommodation or housing accommodation subject to this chapter to post, in a conspicuous place on the premises or in the accommodation, a notice to be prepared or approved by the commission containing relevant information that the commission considers necessary to explain this chapter. Any person or institution subject to this section who refuses to comply with an order of the commission respecting the posting of a notice is guilty of a misdemeanor and shall be punished by a fine of not more than \$50.

**History:** En. 64-314 by Sec. 12, Ch. 524, L. 1975; R.C.M. 1947, 64-314; amd. Sec. 3, Ch. 177, L. 1979; amd. Sec. 1798, Ch. 56, L. 2009.

**49-2-203. Subpoena power of department and commissioner.** (1) The department may issue subpoenas, take the testimony of any person under oath, administer oaths, and require for the purpose of examination the production of books, papers, or other tangible evidence relating to a complaint of discrimination filed under this chapter.

(2) The department's staff may request that a subpoena relating to a matter under investigation be issued by the commissioner or the commissioner's authorized representative. The authorized representative may not be involved in enforcement of human rights. The commissioner may subpoena witnesses, take testimony under oath, administer oaths, and require the production of books, papers, or other tangible evidence for examination relating to the matter under investigation.

(3) Subpoenas issued pursuant to this section may be enforced as provided in 2-4-104 of the Montana Administrative Procedure Act.

**History:** En. 64-313 by Sec. 11, Ch. 524, L. 1975; R.C.M. 1947, 64-313; amd. Sec. 5, Ch. 467, L. 1997; amd. Sec. 1, Ch. 205, L. 2011.

**49-2-204. Rules.** (1) The commission shall adopt procedural and substantive rules necessary to implement the commission's responsibilities under this chapter. Rulemaking

procedures must comply with the requirements of the Montana Administrative Procedure Act. At a minimum, the commission shall adopt as part of its procedural rules all applicable portions of the Montana Rules of Civil Procedure and the Montana Rules of Evidence. The commission may adopt the procedural provisions of Title 46 as it considers appropriate.

(2) The department shall adopt procedural and substantive rules necessary to implement the department's responsibilities under this chapter. Rules adopted under this chapter must comply with the Montana Administrative Procedure Act. For contested case hearings conducted pursuant to 49-2-505, the department shall adopt all applicable portions of the Montana Rules of Civil Procedure and the Montana Rules of Evidence.

**History:** En. 64-315 by Sec. 13, Ch. 524, L. 1975; R.C.M. 1947, 64-315; amd. Sec. 6, Ch. 467, L. 1997.

**49-2-205. Purpose.** It is the intent of the legislature that the commission sit in independent judgment of complaints of alleged discrimination in Montana and that the staff operate under the direction and control of the commissioner. The staff is not independent of the commissioner. It is the intent of the legislature that the commission and the department not favor, directly or indirectly, complainants or respondents with procedural or substantive matters of discrimination in Montana. The commission and the department shall maintain the highest standards of objectivity and impartiality when judging cases asserting alleged discrimination in Montana. It is not the intent of the legislature that the department be prohibited from dismissing matters, from referring matters to other agencies following an initial inquiry and interview, or from reaching a decision in an investigation or contested case hearing.

**History:** En. Sec. 1, Ch. 467, L. 1997.

**49-2-206 through 49-2-209 reserved.**

**49-2-210. Enforcement.** (1) When a possible violation of this chapter comes to the attention of the department, the commissioner may initiate a complaint on behalf of the department. The complaint must be signed by the commissioner.

(2) A person is not subject to penalties under this chapter if compliance with the provisions of this chapter would cause the person to violate the provisions of another state law.

**History:** En. Sec. 15, Ch. 467, L. 1997.

## **Part 3**

### **Prohibited Discriminatory Practices**

**49-2-301. Retaliation prohibited.** It is an unlawful discriminatory practice for a person, educational institution, financial institution, or governmental entity or agency to discharge, expel, blacklist, or otherwise discriminate against an individual because the individual has opposed any practices forbidden under this chapter or because the individual has filed a complaint, testified, assisted, or participated in any manner in an investigation or proceeding under this chapter.

**History:** App. Sec. 2, Ch. 283, L. 1974; amd. Sec. 2, Ch. 121, L. 1975; amd. Sec. 3, Ch. 524, L. 1975; amd. Sec. 7, Ch. 38, L. 1977; Sec. 64-306, R.C.M. 1947; App. Sec. 9, Ch. 283, L. 1974; amd. Sec. 10, Ch. 524, L. 1975; Sec. 64-312, R.C.M. 1947; R.C.M. 1947, 64-306(9), 64-312(2); amd. Sec. 4, Ch. 177, L. 1979; amd. Sec. 1799, Ch. 56, L. 2009.

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

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

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

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

(b) a labor organization or joint labor management committee controlling apprenticeship to exclude or expel any person from its membership or from an apprenticeship or training program

or to discriminate in any way against a member of or an applicant to the labor organization or an employer or employee because of race, creed, religion, color, or national origin or because of age, physical or mental disability, marital status, or sex when the reasonable demands of the program do not require an age, physical or mental disability, marital status, or sex distinction;

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

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

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

(3) Compliance with 2-2-302 and 2-2-303, which prohibit nepotism in public agencies, may not be construed as a violation of this section.

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

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

(a) for an employer or labor organization to provide greater or additional contributions to a bona fide group insurance plan for employees with dependents than to those employees without dependents or with fewer dependents; or

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

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

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

**49-2-304. Discrimination in public accommodations.** (1) Except when the distinction is based on reasonable grounds, it is an unlawful discriminatory practice for the owner, lessee, manager, agent, or employee of a public accommodation:

(a) to refuse, withhold from, or deny to a person any of its services, goods, facilities, advantages, or privileges because of sex, marital status, race, age, physical or mental disability, creed, religion, color, or national origin;

(b) to publish, circulate, issue, display, post, or mail a written or printed communication, notice, or advertisement which states or implies that any of the services, goods, facilities, advantages, or privileges of the public accommodation will be refused, withheld from, or denied to a person of a certain race, creed, religion, sex, marital status, age, physical or mental disability, color, or national origin.

(2) Except when the distinction is based on reasonable grounds, it is an unlawful discriminatory practice for a licensee under Title 16, chapter 4, to exclude from its membership or from its services, goods, facilities, advantages, privileges, or accommodations any individual on the grounds of race, color, religion, creed, sex, marital status, age, physical or mental disability, or national origin. This subsection does not apply to any lodge of a recognized national fraternal organization.

(3) Nothing in this section prohibits public accommodations from giving or providing special benefits, incentives, discounts, or promotions for the benefit of individuals based on age.

**History:** En. 64-306 by Sec. 2, Ch. 283, L. 1974; amd. Sec. 2, Ch. 121, L. 1975; amd. Sec. 3, Ch. 524, L. 1975; amd. Sec. 7, Ch. 38, L. 1977; R.C.M. 1947, 64-306(3); amd. Sec. 1, Ch. 3, L. 1989; amd. Sec. 2, Ch. 543, L. 1989; amd. Sec. 1, Ch. 454, L. 1991; amd. Sec. 4, Ch. 407, L. 1993.



**49-2-305. Discrimination in housing — exemptions.** (1) It is an unlawful discriminatory practice for the owner, lessor, or manager having the right to sell, lease, or rent a housing accommodation or improved or unimproved property or for any other person:

(a) to refuse to sell, lease, or rent the housing accommodation or property to a person because of sex, marital status, race, creed, religion, color, age, familial status, physical or mental disability, or national origin;

(b) to discriminate against a person because of sex, marital status, race, creed, religion, age, familial status, physical or mental disability, color, or national origin in a term, condition, or privilege relating to the use, sale, lease, or rental of the housing accommodation or property;

(c) to make an inquiry of the sex, marital status, race, creed, religion, age, familial status, physical or mental disability, color, or national origin of a person seeking to buy, lease, or rent a housing accommodation or property for the purpose of discriminating on the basis of sex, marital status, race, creed, religion, age, familial status, physical or mental disability, color, or national origin;

(d) to refuse to negotiate for a sale or to otherwise make unavailable or deny a housing accommodation or property because of sex, marital status, race, creed, religion, age, familial status, physical or mental disability, color, or national origin;

(e) to represent to a person that a housing accommodation or property is not available for inspection, sale, or rental because of that person's sex, marital status, race, creed, religion, age, familial status, physical or mental disability, color, or national origin when the housing accommodation or property is in fact available; or

(f) for profit, to induce or attempt to induce a person to sell or rent a housing accommodation or property by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular sex, marital status, race, creed, religion, age, familial status, physical or mental disability, color, or national origin.

(2) The rental of sleeping rooms in a private residence designed for single-family occupancy in which the owner also resides is excluded from the provisions of subsection (1), provided that the owner rents no more than three sleeping rooms within the residence.

(3) It is an unlawful discriminatory practice to make, print, or publish or cause to be made, printed, or published any notice, statement, or advertisement that indicates any preference, limitation, or discrimination that is prohibited by subsection (1) or any intention to make or have a prohibited preference, limitation, or discrimination.

(4) It is an unlawful discriminatory practice for a person to discriminate because of a physical or mental disability of a buyer, lessee, or renter; a person residing in or intending to reside in or on the housing accommodation or property after it is sold, leased, rented, or made available; or any person associated with that buyer, lessee, or renter:

(a) in the sale, rental, or availability of the housing accommodation or property;

(b) in the terms, conditions, or privileges of a sale or rental of the housing accommodation or property; or

(c) in the provision of services or facilities in connection with the housing accommodation or property.

(5) (a) For purposes of subsections (1) and (4), discrimination because of physical or mental disability includes:

(i) refusal to permit, at the expense of the person with a disability, reasonable modifications of existing premises occupied or to be occupied by the person with a disability if the modifications may be necessary to allow the person full enjoyment of the premises, except that in the case of a lease or rental, the landlord may, when it is reasonable to do so, condition permission for a modification on the lessee's or renter's agreement to restore the interior of the premises to the condition that existed before the modification, except for reasonable wear and tear;

(ii) refusal to make reasonable accommodations in rules, policies, practices, or services when the accommodations may be necessary to allow the person equal opportunity to use and enjoy a housing accommodation or property; or

(iii) except as provided in subsection (5)(b), in connection with the design and construction of a covered multifamily housing accommodation, a failure to design and construct the housing accommodation in a manner that:

(A) provides at least one accessible building entrance on an accessible route;

(B) makes the public use and common use portions of the housing accommodation readily accessible to and usable by a person with a disability;

(C) provides that all doors designed to allow passage into and within all premises within the housing accommodation are sufficiently wide to allow passage by a person with a disability who uses a wheelchair; and

(D) ensures that all premises within the housing accommodation contain the following features:

(I) an accessible route into and through the housing accommodation;

(II) light switches, electrical outlets, thermostats, and other environmental controls in accessible locations;

(III) reinforcements in bathroom walls to allow later installation of grab bars; and

(IV) usable kitchens and bathrooms that allow an individual who uses a wheelchair to maneuver about the space.

(b) A covered multifamily housing accommodation that does not have at least one building entrance on an accessible route because it is impractical to do so due to the terrain or unusual characteristics of the site is not required to comply with the requirements of subsection (5)(a)(iii).

(6) For purposes of subsection (5), the term “covered multifamily housing accommodation” means:

(a) a building consisting of four or more dwelling units if the building has one or more elevators; and

(b) ground floor units in a building consisting of four or more dwelling units.

(7) (a) It is an unlawful discriminatory practice for any person or other entity whose business includes engaging in residential real estate-related transactions to discriminate because of sex, marital status, race, creed, religion, age, familial status, physical or mental disability, color, or national origin against a person in making available a transaction or in the terms or conditions of a transaction.

(b) For purposes of this subsection (7), the term “residential real estate-related transaction” means any of the following:

(i) the making or purchasing of loans or providing other financial assistance:

(A) for purchasing, constructing, improving, repairing, or maintaining a housing accommodation or property; or

(B) secured by residential real estate; or

(ii) the selling, brokering, or appraising of residential real property.

(8) It is an unlawful discriminatory practice to deny a person access to or membership or participation in a multiple-listing service; real estate brokers’ organization; or other service, organization, or facility relating to the business of selling, leasing, or renting housing accommodations or property or to discriminate against the person in the terms or conditions of access, membership, or participation because of sex, marital status, race, creed, religion, age, familial status, physical or mental disability, color, or national origin.

(9) It is an unlawful discriminatory practice to coerce, intimidate, threaten, or interfere with a person in the exercise or enjoyment of or because of the person having exercised or enjoyed or having aided or encouraged any other person in the exercise or enjoyment of a right granted or protected by this section.

(10) The prohibitions of this section against discrimination because of age and familial status do not extend to housing for older persons. “Housing for older persons” means housing:

(a) provided under any state or federal program specifically designed and operated to assist elderly persons;

(b) intended for, and solely occupied by, persons 62 years of age or older; or

(c) intended and operated for occupancy by at least one person 55 years of age or older per unit in accordance with the provisions of 42 U.S.C. 3607(b)(2)(C) and (b)(3) through (b)(5), as those provisions read on March 31, 1996.

(11) The prohibitions of subsection (1) against discrimination because of age and familial status do not extend to rooms or units in dwellings containing living quarters occupied or intended to be occupied by no more than two families living independently of each other, if the owner actually maintains and occupies one of the living quarters as the owner’s residence.

(12) For purposes of this section, “familial status” means having a child or children who live or will live with a person. A distinction based on familial status includes one that is based on the age of a child or children who live or will live with a person.

**History:** En. 64-306 by Sec. 2, Ch. 283, L. 1974; amd. Sec. 2, Ch. 121, L. 1975; amd. Sec. 3, Ch. 524, L. 1975; amd. Sec. 7, Ch. 38, L. 1977; R.C.M. 1947, 64-306(4); amd. Sec. 6, Ch. 177, L. 1979; amd. Sec. 1, Ch. 335, L. 1981; amd. Sec. 1, Ch. 503, L. 1989; amd. Sec. 1, Ch. 328, L. 1991; amd. Sec. 2, Ch. 454, L. 1991; amd. Sec. 1, Ch. 801, L. 1991; amd. Sec. 5, Ch. 407, L. 1993; amd. Sec. 1, Ch. 194, L. 1997; amd. Sec. 3, Ch. 205, L. 2011.

**49-2-306. Discrimination in financing and credit transactions.** (1) It is an unlawful discriminatory practice for a financial institution, upon receiving an application for financial assistance, to permit an official or employee, during the execution of that person’s duties, to discriminate against the applicant because of sex, marital status, race, creed, religion, age, physical or mental disability, color, or national origin in a term, condition, or privilege relating to the obtainment or use of the institution’s financial assistance, unless based on reasonable grounds.

(2) It is an unlawful discriminatory practice for a creditor to discriminate on the basis of race, color, religion, creed, national origin, age, mental or physical disability, sex, or marital status against any person in any credit transaction that is subject to the jurisdiction of any state or federal court of record.

**History:** En. 64-306 by Sec. 2, Ch. 283, L. 1974; amd. Sec. 2, Ch. 121, L. 1975; amd. Sec. 3, Ch. 524, L. 1975; amd. Sec. 7, Ch. 38, L. 1977; R.C.M. 1947, 64-306(5), (8); amd. Sec. 6, Ch. 407, L. 1993.

**49-2-307. Discrimination in education.** It is an unlawful discriminatory practice for an educational institution:

(1) to exclude, expel, limit, or otherwise discriminate against an individual seeking admission as a student or an individual enrolled as a student in the terms, conditions, or privileges of the institution because of race, creed, religion, sex, marital status, color, age, physical disability, or national origin or because of mental disability, unless based on reasonable grounds;

(2) to make or use a written or oral inquiry or form of application for admission that elicits or attempts to elicit information or to make or keep a record concerning the race, color, sex, marital status, age, creed, religion, physical or mental disability, or national origin of an applicant for admission, except as permitted by regulations of the commission;

(3) to print, publish, or cause to be printed or published a catalog or other notice or advertisement indicating a limitation, specification, or discrimination based on the race, color, creed, religion, age, physical or mental disability, sex, marital status, or national origin of an applicant for admission; or

(4) to announce or follow a policy of denial or limitation of educational opportunities of a group or its members, through a quota or otherwise, because of race, color, sex, marital status, age, creed, religion, physical or mental disability, or national origin.

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

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

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

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

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

principal department provided for in Article VI, section 7, of the Montana constitution, or to the immediate staff of the majority and minority leadership of the Montana legislature.

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

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

**49-2-309. Discrimination in insurance and retirement plans.** (1) It is an unlawful discriminatory practice for a financial institution or person to discriminate solely on the basis of sex or marital status in the issuance or operation of any type of insurance policy, plan, or coverage or in any pension or retirement plan, program, or coverage, including discrimination in regard to rates or premiums and payments or benefits.

(2) This section does not apply to any insurance policy, plan, or coverage or to any pension or retirement plan, program, or coverage in effect prior to October 1, 1985.

(3) It is not a violation of the prohibition against marital status discrimination in this section for an employer to provide greater or additional contributions to a bona fide group insurance plan for employees with dependents than to those employees without dependents or with fewer dependents.

**History:** En. Secs. 1, 3, Ch. 531, L. 1983; amd. Sec. 4, Ch. 13, L. 1993.

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

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

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

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

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

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

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

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

## Part 4 Exceptions to Prohibitions

**49-2-401. Repealed.** Sec. 11, Ch. 801, L. 1991.

**History:** En. 64-306.1 by Sec. 4, Ch. 524, L. 1975; amd. Sec. 1, Ch. 27, L. 1977; R.C.M. 1947, 64-306.1(1); amd. Sec. 7, Ch. 177, L. 1979.

**49-2-402. "Reasonable" to be strictly construed.** Any grounds urged as a "reasonable" basis for an exemption under any section of this chapter shall be strictly construed.

**History:** En. 64-306 by Sec. 2, Ch. 283, L. 1974; amd. Sec. 2, Ch. 121, L. 1975; amd. Sec. 3, Ch. 524, L. 1975; amd. Sec. 7, Ch. 38, L. 1977; R.C.M. 1947, 64-306(10).

**49-2-403. Specific limits on justification.** (1) Except as permitted in 49-2-303(3) through (6) and 49-3-201(5), sex, marital status, age, physical or mental disability, race, creed, religion, color, or national origin may not comprise justification for discrimination except for the legally demonstrable purpose of correcting a previous discriminatory practice.

(2) Age or mental disability may represent a legitimate discriminatory criterion in credit transactions only as it relates to a person's capacity to make or be bound by contracts or other obligations.

**History:** En. 64-307 by Sec. 3, Ch. 283, L. 1974; amd. Sec. 3, Ch. 121, L. 1975; amd. Sec. 5, Ch. 524, L. 1975; amd. Sec. 8, Ch. 38, L. 1977; R.C.M. 1947, 64-307(1), (2); amd. Sec. 2, Ch. 342, L. 1985; amd. Sec. 4, Ch. 506, L. 1991; amd. Sec. 5, Ch. 13, L. 1993; amd. Sec. 9, Ch. 407, L. 1993; amd. Sec. 4, Ch. 205, L. 2011.

**49-2-404. Distinctions permitted for modesty or privacy.** Separate lavatory, bathing, or dressing facilities based on the distinction of sex may be maintained for the purpose of modesty or privacy.

**History:** En. 64-307 by Sec. 3, Ch. 283, L. 1974; amd. Sec. 3, Ch. 121, L. 1975; amd. Sec. 5, Ch. 524, L. 1975; amd. Sec. 8, Ch. 38, L. 1977; R.C.M. 1947, 64-307(3).

**49-2-405. Veterans' and persons with disabilities employment preference.** The application of an employment preference as provided for in Title 39, chapter 29 or 30, and 10-2-402 by a public employer as defined in 39-29-101 and 39-30-103 may not be construed to constitute a violation of this chapter.

**History:** En. Sec. 12, Ch. 1, Sp. L. 1983; amd. Sec. 15, Ch. 646, L. 1989.

## **Part 5 Enforcement**

**49-2-501. Filing complaints.** (1) A person claiming to be aggrieved by any discriminatory practice prohibited by this chapter may file a complaint with the department.

(2) A complaint may be filed on behalf of a person charging unlawful discrimination prohibited by this chapter if the person acting on behalf of the charging party is the charging party's guardian, attorney, or duly authorized representative or an advocacy group, labor organization, or other organization acting as an authorized representative.

(3) The complaint must be written and verified and must state the name and address of the party alleged to have engaged in the discriminatory practice and the particulars of the alleged discriminatory practice.

(4) (a) Except as provided in 49-2-510 and subsection (4)(b) of this section, a complaint under this chapter must be filed with the department within 180 days after the alleged unlawful discriminatory practice occurred or was discovered.

(b) If the charging party has initiated efforts to resolve the dispute underlying the complaint by filing a grievance in accordance with any grievance procedure established by a collective bargaining agreement, contract, or written rule or policy, the complaint may be filed within 180 days after the conclusion of the grievance procedure if the grievance procedure concludes within 120 days after the alleged unlawful discriminatory practice occurred or was discovered. If the grievance procedure does not conclude within 120 days, the complaint must be filed within 300 days after the alleged unlawful discriminatory practice occurred or was discovered.

(5) If the department determines that the complaint is untimely, it shall dismiss the complaint on a finding of no reasonable cause. A charging party may file objections to the dismissal with the commission pursuant to 49-2-511.

**History:** En. 64-308 by Sec. 5, Ch. 283, L. 1974; amd. Sec. 6, Ch. 524, L. 1975; R.C.M. 1947, 64-308(1); amd. Sec. 8, Ch. 177, L. 1979; amd. Sec. 1, Ch. 415, L. 1987; amd. Sec. 3, Ch. 801, L. 1991; amd. Sec. 7, Ch. 467, L. 1997; amd. Sec. 1, Ch. 28, L. 2007.

**49-2-502. Repealed.** Sec. 18, Ch. 467, L. 1997.

**History:** En. 64-308 by Sec. 5, Ch. 283, L. 1974; amd. Sec. 6, Ch. 524, L. 1975; R.C.M. 1947, 64-308(part).

**49-2-503. Temporary relief by court order.** At any time after a complaint is filed under this chapter, a district court may, upon the application of the commissioner, the department, or the charging party, enter a preliminary injunction against a respondent in the case. The procedure for granting the order is as provided by statute for preliminary injunctions in civil actions.

**History:** En. 64-308 by Sec. 5, Ch. 283, L. 1974; amd. Sec. 6, Ch. 524, L. 1975; R.C.M. 1947, 64-308(3); amd. Sec. 4, Ch. 801, L. 1991; amd. Sec. 8, Ch. 467, L. 1997; amd. Sec. 2, Ch. 28, L. 2007.

**49-2-504. Informal investigation — conciliation — findings.** (1) The department shall informally investigate the matters set out in the complaint promptly and impartially to



determine whether there is reasonable cause to believe that the allegations are supported by a preponderance of the evidence.

(2) (a) During the informal investigation process and before the department issues a finding under subsection (7), the department may attempt to resolve the complaint by mediation.

(b) If the parties to the complaint voluntarily agree to enter into the mediation process, the time period for the department to complete the informal investigation and issue a finding under subsection (7) may be extended up to 45 days. An agreement to enter into mediation serves to extend the time for hearing beyond 12 months as provided for in 49-2-505(2).

(c) If the department makes a finding under subsection (7)(c) that there is reasonable cause to believe that unlawful discrimination occurred, the department shall attempt to resolve the complaint by conciliation in a manner that, in addition to providing redress for the complaint, includes conditions that eliminate the discriminatory practice, if any, found in the investigation.

(3) The department shall, within 10 business days following receipt of a filed complaint, notify a respondent that the respondent is the subject of a filed complaint. The notification must be in writing and must include a copy of the filed complaint. If requested, the department shall also provide the parties with all other information related to the complaint in the possession of the department that is not currently in the possession of the parties or a party. The department shall make known to the parties the fact that information is available upon request. The department may not investigate a complaint until it has received notice that the respondent has received the department's notification of the complaint.

(4) If the department determines that the inclusion of documents or information obtained by the department would seriously impede the rights of a person or the proper investigation of the complaint, the information may be excluded from the notification by providing a written summary of the information. The written summary must include sufficient information to give maximum effect to the intent of this chapter.

(5) The respondent shall file an answer to a complaint filed with the department within 10 business days of the respondent's receipt of the complaint. An answer may be a response simply admitting or denying the allegations without further specificity or requesting additional information from the department. The time for filing an answer may be extended by a showing of good cause.

(6) The department shall commence proceedings within 30 days after receipt of a complaint.

(7) (a) After the informal investigation, the department shall issue a finding on whether there is reasonable cause to believe that a preponderance of the evidence supports the charging party's allegation of unlawful discrimination. Unless the time period is extended as provided in subsection (2)(b), the finding must be issued within 180 days after a complaint is filed, except that the department shall issue the finding within 120 days after a complaint is filed under 49-2-305.

(b) If the department finds that there is no reasonable cause to believe that unlawful discrimination occurred, it shall issue a notice of dismissal and dismiss the case from the department's administrative process. After receipt of a notice of dismissal, a charging party may:

(i) continue the administrative process by filing objections with the commission as provided in 49-2-511; or

(ii) discontinue the administrative process and commence proceedings in district court as provided in 49-2-511.

(c) If the department finds that there is reasonable cause to believe that unlawful discrimination occurred and conciliation efforts are unsuccessful, the department shall certify the complaint for hearing pursuant to 49-2-505.

**History:** En. 64-308 by Sec. 5, Ch. 283, L. 1974; amd. Sec. 6, Ch. 524, L. 1975; R.C.M. 1947, 64-308(4); amd. Sec. 9, Ch. 467, L. 1997; amd. Sec. 3, Ch. 28, L. 2007; amd. Sec. 5, Ch. 205, L. 2011.

**49-2-505. Contested case hearing — appeal to commission — final agency decision.**

(1) The department shall hold a contested case hearing on a complaint that is certified for hearing under 49-2-504 or that is remanded for hearing by the commission or by a reviewing court. The department shall serve notice of the hearing and a copy of the complaint on the parties.

(2) If the parties mutually agree to extend the time for hearing beyond 12 months after the complaint is filed, then the parties shall stipulate to a schedule for proceedings to be established by the department. The department shall, not later than 395 days after the complaint was filed,

set a date for an administrative hearing in the case in accordance with the stipulated schedule. After a hearing date is set, the department may, in its sole discretion, issue a continuance of the hearing date only upon a showing of good cause.

(3) (a) The hearing must be held by the department in the county where the unlawful conduct is alleged to have occurred unless a party requests and is granted a change of venue for good cause shown. The case in support of the complaint may be presented before the department by the charging party or an attorney representing the charging party. The hearing must be held in accordance with the applicable portions of the Montana Rules of Civil Procedure.

(b) Upon request of the hearings officer, the department may present evidence with regard to activity conducted. However, except in cases brought pursuant to 42 U.S.C. 3601, et seq., the department may not represent either party in a contested case hearing.

(c) If the case is not settled, fully decided on order or motion, or otherwise resolved, after a hearing, the hearings officer shall issue a decision. If the decision is not appealed to the commission within 14 days as provided in subsection (4), the decision becomes final and is not appealable to district court.

(4) A party may appeal a decision of the hearings officer by filing an appeal with the commission within 14 days after the issuance of the notice of decision of the administrative hearing.

(5) The commission shall hear all appeals within 120 days of receipt of an appeal. The commission may affirm, reject, or modify the decision in whole or in part. The commission shall render a final agency decision within 90 days of hearing the appeal.

(6) All hearings conducted under this section may, upon stipulation of the parties, be heard telephonically.

(7) The department or the commission may make provisions for defraying the expenses of an indigent party in a hearing held pursuant to this chapter.

(8) The prevailing party in a hearing under this section may bring an action in district court for attorney fees and costs. The court in its discretion may allow the prevailing party reasonable attorney fees and costs. An action under this section must comply with the Montana Rules of Civil Procedure.

(9) Within 30 days after the commission issues a final agency decision in writing under subsection (5), a party may petition a district court for judicial review of the final agency decision as provided in 2-4-702.

**History:** En. 64-308 by Sec. 5, Ch. 283, L. 1974; amd. Sec. 6, Ch. 524, L. 1975; R.C.M. 1947, 64-308(5), (6); amd. Sec. 9, Ch. 177, L. 1979; amd. Sec. 1, Ch. 709, L. 1979; amd. Sec. 10, Ch. 467, L. 1997; amd. Sec. 4, Ch. 28, L. 2007.

**49-2-506. Procedure upon decision finding discrimination.** (1) If the hearings officer finds that a party against whom a complaint was filed has engaged in the discriminatory practice alleged in the complaint, the department shall order the party to refrain from engaging in the discriminatory conduct. The order may:

(a) prescribe conditions on the accused's future conduct relevant to the type of discriminatory practice found;

(b) require any reasonable measure to correct the discriminatory practice and to rectify any harm, pecuniary or otherwise, to the person discriminated against;

(c) require a report on the manner of compliance.

(2) Except as provided in 49-2-510, the order may not require the payment of punitive damages.

(3) Whenever an order or conciliation agreement requires inspection by the department for a period of time to determine if the respondent is complying with that order or agreement, the period of time may not be more than 1 year.

**History:** En. 64-309 by Sec. 6, Ch. 283, L. 1974; amd. Sec. 7, Ch. 524, L. 1975; R.C.M. 1947, 64-309(1), (2), (4); amd. Sec. 10, Ch. 177, L. 1979; amd. Sec. 5, Ch. 801, L. 1991; amd. Sec. 11, Ch. 467, L. 1997; amd. Sec. 5, Ch. 28, L. 2007.

**49-2-507. Repealed.** Sec. 10, Ch. 28, L. 2007.

**History:** En. 64-309 by Sec. 6, Ch. 283, L. 1974; amd. Sec. 7, Ch. 524, L. 1975; R.C.M. 1947, 64-309(3); amd. Sec. 11, Ch. 177, L. 1979.

**49-2-508. Enforcement of commission or department order or conciliation agreement.** If the order issued under 49-2-506 is not obeyed, the commissioner, the department, or a party may petition the district court in the county where the discriminatory practice occurred or in which the respondent resides or transacts business to enforce the commissioner's or department's order by any appropriate order. The commissioner, the department, or a party may also commence a civil action in an appropriate district court for relief for a breach of a conciliation agreement.

**History:** En. 64-310 by Sec. 7, Ch. 283, L. 1974; amd. Sec. 8, Ch. 524, L. 1975; R.C.M. 1947, 64-310; amd. Sec. 1, Ch. 539, L. 1985; amd. Sec. 12, Ch. 467, L. 1997; amd. Sec. 7, Ch. 28, L. 2007.

**49-2-509. Repealed.** Sec. 10, Ch. 28, L. 2007.

**History:** En. Sec. 1, Ch. 505, L. 1983; amd. Sec. 1, Ch. 511, L. 1987; amd. Sec. 6, Ch. 801, L. 1991; amd. Sec. 13, Ch. 467, L. 1997.

**49-2-510. Procedures and remedies for enforcement of housing discrimination laws.** (1) A complaint may be filed with the department by or on behalf of a person claiming to be aggrieved by any discriminatory practice prohibited by 49-2-305. The complaint must be written and verified by the aggrieved person and must be filed with the department within 180 days after the alleged unlawful discriminatory practice occurred or was discovered.

(2) If in a hearing under 49-2-505 the department finds that a person against whom a complaint was filed under this part has engaged in a discriminatory practice in violation of 49-2-305, the department may, in addition to the remedies and injunctive and other equitable relief provided by 49-2-506, to vindicate the public interest, assess a civil penalty:

(a) in an amount not exceeding \$10,000 if the respondent has not been adjudged in any prior judicial or formal administrative proceeding to have committed any prior discriminatory housing practice in violation of 49-2-305; and

(b) in an amount not exceeding \$25,000 if the respondent has been adjudged in any prior judicial or formal administrative proceedings to have committed one or more similar discriminatory housing practices in repeated violation of 49-2-305 during the 5-year period ending on the date of the filing of the written complaint.

(3) In the case of a decision with respect to a discriminatory housing practice in violation of 49-2-305 that occurred in the course of a business subject to licensing or regulation by a governmental agency, the department shall, no later than 30 days after the date of the issuance of the order send a copy of the decision to the licensing or regulatory agency.

(4) (a) Following completion of the informal investigation of a complaint filed under 49-2-305, a charging party or a respondent may elect to have the claims decided in a civil action in lieu of a hearing under 49-2-505. The election must be made in writing no later than 30 days after the service of notice of hearing under 49-2-505 on the electing party. The election must give notice to the department and to all other parties named in the complaint. Within 30 days after the election is made, the charging party, the commissioner, or the aggrieved party may commence a civil action in an appropriate district court on behalf of the aggrieved party if the department has made a finding that the allegations of the complaint are supported by a preponderance of the evidence. If the department has made a finding that the allegations of the complaint are not supported by a preponderance of the evidence, the charging party may commence a civil action in an appropriate district court in accordance with subsection (5). An aggrieved party with respect to the issues to be determined in a civil action brought by the department may intervene in the action.

(b) The department may not continue administrative proceedings on a complaint after an election is made in accordance with subsection (4)(a). The charging party may commence a civil action in an appropriate district court in accordance with subsection (5). An aggrieved party with respect to issues to be determined in a civil action brought by the department may intervene in the action.

(5) (a) An aggrieved party may commence a civil action in an appropriate district court within 2 years after an alleged unlawful discriminatory practice under 49-2-305 occurred or was discovered or within 2 years of the breach of a conciliation agreement entered into under 49-2-504 in a case alleging a violation of 49-2-305. The computation of the 2-year period does not include any time during which an administrative proceeding under this title was pending with respect

to a complaint alleging a violation of 49-2-305. The tolling of the time limit for commencing a civil action does not apply to actions arising from breach of a conciliation agreement.

(b) An aggrieved party may commence a civil action under this subsection (5) for a violation of 49-2-305 whether or not a complaint has been filed under 49-2-501 and without regard to the status of a complaint filed with the department, except as provided in subsection (5)(d). If the department has obtained a conciliation agreement with the consent of the aggrieved party, an action may not be filed under this subsection (5) by the aggrieved party regarding the alleged violation of 49-2-305 that forms the basis for the complaint except for the purpose of enforcing the terms of the agreement.

(c) The commission or the department may not continue administrative proceedings on a complaint after the filing of a civil action commenced by the aggrieved party under this subsection (5) seeking relief with respect to the same alleged violation of 49-2-305.

(d) An aggrieved party may not commence a civil action under this subsection (5) with respect to an alleged violation of 49-2-305 if the commission or the department has commenced a hearing on the record under 49-2-505 regarding the same complaint.

(e) Upon application by a person alleging a violation of 49-2-305 in a civil action under this subsection (5) or by a person against whom the violation is alleged, the court may:

(i) appoint an attorney for the applicant and the respondent; or

(ii) authorize the commencement or continuation of a civil action without the payment of fees, costs, or security if, in the opinion of the court, the party is financially unable to bear the costs of the civil action. As in all actions brought in forma pauperis, the burden of showing lack of financial ability rests with the party claiming financial hardship.

(6) If the court finds that a party against whom a complaint was filed under this section has been adjudicated in a civil or formal administrative proceeding to have engaged in a similar discriminatory practice in violation of 49-2-305, the court may, consistent with the provisions of subsection (2) of this section, award punitive damages. The court may also award attorney fees and costs to the substantively prevailing party.

(7) All civil damages and penalties, monetary or otherwise, awarded under this section to an organization that is not an aggrieved party must be deposited in the state general fund.

**History:** En. Sec. 2, Ch. 801, L. 1991; amd. Sec. 41, Ch. 422, L. 1997; amd. Sec. 14, Ch. 467, L. 1997; amd. Sec. 9, Ch. 28, L. 2007.

**49-2-511. Dismissal after informal proceedings — filing of objections — procedures — action in district court.** (1) If the department, after the informal investigation, issues a notice of dismissal under 49-2-501(5) or 49-2-504(7)(b), a charging party may file objections to the dismissal with the commission. The objections must be filed with the commission within 14 days after the issuance of the notice of dismissal.

(2) (a) The commission shall consider the objection in an informal hearing and review the department's findings for an abuse of discretion.

(b) If the commission overrules the objection, it shall issue its order affirming the department's notice of dismissal.

(c) If the commission sustains the objection, it shall reopen the case by remanding it to the department.

(3) (a) Within 90 days after the department has issued a notice of dismissal pursuant to 49-2-501(5) or 49-2-504(7)(b) or within 90 days after the commission has issued an order affirming the department's notice of dismissal pursuant to subsection (2)(b) of this section, the charging party may commence a civil action for appropriate relief on the merits of the case in the district court in the district in which the alleged violation occurred. If the charging party fails to commence the civil action in the district court within 90 days after the final agency decision has been issued, the claim is barred. The court may provide the same relief as described in 49-2-506. In addition, the court may in its discretion allow the prevailing party reasonable attorney fees and costs.

(b) Within 30 days after the commission issues an order affirming the department's notice of dismissal pursuant to subsection (2)(b), a party may petition a district court for judicial review of the final agency decision as provided in 2-4-604.

**History:** En. Sec. 6, Ch. 28, L. 2007.



**49-2-512. Filing in district court — compliance with administrative procedures required.** (1) The provisions of this chapter establish the exclusive remedy for acts constituting an alleged violation of chapter 3 or this chapter, including acts that may otherwise also constitute a violation of the discrimination provisions of Article II, section 4, of the Montana constitution or 49-1-102. A claim or request for relief based upon the acts may not be entertained by a district court other than by the procedures specified in this chapter.

(2) In addition to dismissal under 49-2-501(5) or 49-2-504(7)(b), the department shall dismiss a complaint if:

(a) the charging party fails to keep the department advised of changes of address and the department finds that the failure has impeded the administrative proceedings; or

(b) a period of 12 months has elapsed from the filing of a complaint and neither the department nor the commission has held a hearing pursuant to 49-2-505 or an informal hearing pursuant to 49-2-511. However, the department or the commission may refuse to dismiss a complaint under this subsection (2)(b) if:

(i) more than 30 days have elapsed since service of notice of hearing under 49-2-505;

(ii) the parties have stipulated to a reasonable extension of the timeframes; or

(iii) through litigation a party has unsuccessfully sought to prevent the department or the commission from conducting administrative proceedings on the complaint.

(3) Within 90 days after the department has issued a notice of dismissal pursuant to subsection (2), the charging party may commence a civil action for appropriate relief on the merits of the case in the district court in the district in which the alleged violation occurred. If the charging party fails to commence a civil action within 90 days after the dismissal has been issued, the claim is barred. The court may provide the same relief as described in 49-2-506. In addition, the court may in its discretion allow the prevailing party reasonable attorney fees and costs.

**History:** En. Sec. 8, Ch. 28, L. 2007.

## Part 6 Penalties

**49-2-601. Criminal penalty.** A person, educational institution, or financial institution, either public or private, or a governmental entity or agency who or which willfully engages in an unlawful discriminatory practice prohibited by this chapter or willfully resists, prevents, impedes, or interferes with the commission, the department, or any of its authorized representatives in the performance of a duty under this chapter or who or which willfully violates an order of the commission or willfully violates this chapter in any other manner is guilty of a misdemeanor and is punishable by a fine of not more than \$500 or by imprisonment for not more than 6 months, or both.

**History:** En. 64-312 by Sec. 9, Ch. 283, L. 1974; amd. Sec. 10, Ch. 524, L. 1975; R.C.M. 1947, 64-312(3); amd. Sec. 12, Ch. 177, L. 1979.

**49-2-602. Intimidation or interference in right to be free from housing discrimination — penalties.** (1) It is unlawful for a person, whether or not acting under color of law, by force or threat of force to purposefully or knowingly injure, intimidate, or interfere with or attempt to injure, intimidate, or interfere with:

(a) a person because of sex, race, creed, religion, age, familial status, physical or mental disability, color, or national origin and because the person is or has been:

(i) selling, purchasing, renting, leasing, financing, or occupying or contracting or negotiating for the sale, purchase, lease, rental, financing, or occupation of any housing accommodation or property; or

(ii) applying for or participating in any service, organization, or facility relating to the business of selling, leasing, or renting housing accommodations or property;

(b) a person because that person is or has been:

(i) participating, without discrimination because of sex, race, creed, religion, age, familial status, physical or mental disability, color, or national origin in any of the activities, services, organizations, or facilities described in this subsection (1); or

(ii) affording another person or class of persons opportunity or protection to participate in those activities, services, organizations, or facilities; or



(c) a citizen because the citizen is or has been, or in order to discourage that citizen or any other citizen from, lawfully aiding or encouraging other persons to participate in any of the activities, services, organizations, or facilities described in this subsection (1) or because the citizen is or has been lawfully participating in speech or peaceful assembly opposing any denial of the opportunity to participate.

(2) A person who violates a provision of subsection (1):

(a) shall be fined not more than \$1,000 or imprisoned for not more than 1 year, or both;

(b) if bodily injury results, shall be fined not more than \$10,000 or imprisoned for not more than 10 years, or both; or

(c) if death results, shall be subject to imprisonment for any term of years or for life.

**History:** En. Sec. 9, Ch. 801, L. 1991; amd. Sec. 10, Ch. 407, L. 1993.

## CHAPTER 3 GOVERNMENTAL CODE OF FAIR PRACTICES

### Part 1 General Provisions

**49-3-101. Definitions.** As used in this chapter, the following definitions apply:

(1) “Age” means number of years since birth. It does not mean level of maturity or ability to handle responsibility, which may represent legitimate considerations as reasonable grounds for discrimination without reference to age.

(2) “Commission” means the commission for human rights provided for in 2-15-1706.

(3) (a) “Physical or mental disability” means:

(i) a physical or mental impairment that substantially limits one or more of a person’s major life activities;

(ii) a record of such an impairment; or

(iii) a condition regarded as such an impairment.

(b) Discrimination based upon, because of, on the basis of, on the grounds of, or with regard to physical or mental disability includes the failure to make reasonable accommodations that are required by an otherwise qualified person who has a physical or mental disability. Any accommodation that would require an undue hardship or that would endanger the health or safety of any person is not a reasonable accommodation.

(4) “State or local governmental agency” means:

(a) any branch, department, office, board, bureau, commission, agency, university unit, college, or other instrumentality of state government; or

(b) a county, city, town, school district, or other unit of local government and any instrumentality of local government.

(5) “Qualifications” means qualifications that are genuinely related to competent performance of the particular occupational task.

**History:** (1)En. 64-316 by Sec. 1, Ch. 487, L. 1975; Sec. 64-316, R.C.M. 1947; (2)En. 64-319 by Sec. 4, Ch. 487, L. 1975; amd. Sec. 11, Ch. 38, L. 1977; Sec. 64-319, R.C.M. 1947; R.C.M. 1947, 64-316, 64-319(part); amd. Sec. 13, Ch. 177, L. 1979; amd. Sec. 1, Ch. 540, L. 1983; amd. Sec. 2, Ch. 241, L. 1991; amd. Sec. 11, Ch. 407, L. 1993.

**49-3-102. What local governmental units affected.** Local governmental units affected by this chapter include all political subdivisions of the state, including school districts.

**History:** En. 64-327 by Sec. 12, Ch. 487, L. 1975; R.C.M. 1947, 64-327.

**49-3-103. Permitted distinctions.** (1) Nothing in this chapter prohibits any public employer:

(a) from enforcing a differentiation based on marital status, age, or physical or mental disability when based on a bona fide occupational qualification reasonably necessary to the normal operation of the particular business or where the differentiation is based on reasonable factors other than age;

(b) from observing the terms of a bona fide seniority system or any bona fide employee benefit plan, such as a retirement, pension, or insurance plan, that is not a subterfuge to evade the purposes of this chapter, except that an employee benefit plan may not excuse the failure to hire any individual;

(c) from discharging or otherwise disciplining an individual for good cause; or

(d) from providing greater or additional contributions to a bona fide group insurance plan for employees with dependents than to those employees without dependents or with fewer dependents.

(2) The application of an employment preference as provided for in 2-18-111, 10-2-402, 18-1-110, and Title 39, chapter 29 or 30, by a public employer as defined in 39-29-101 and 39-30-103 may not be construed to constitute a violation of this chapter.

**History:** En. 64-328 by Sec. 13, Ch. 487, L. 1975; R.C.M. 1947, 64-328; amd. Sec. 2, Ch. 279, L. 1983; (2) En. Sec. 13, Ch. 1, Sp. L. 1983; amd. Sec. 16, Ch. 646, L. 1989; amd. Sec. 5, Ch. 506, L. 1991; amd. Sec. 6, Ch. 13, L. 1993; amd. Sec. 12, Ch. 407, L. 1993.

**49-3-104. Quotas not required.** Nothing in this chapter shall be construed as requiring the institution of a system of quotas for representation of any sex, age, religious, racial, ethnic, or other group affected by this chapter.

**History:** En. 64-330 by Sec. 15, Ch. 487, L. 1975; R.C.M. 1947, 64-330.

**49-3-105. Repealed.** Sec. 11, Ch. 801, L. 1991.

**History:** En. Sec. 4, Ch. 540, L. 1983.

**49-3-106. Rulemaking authority.** The commission may adopt rules necessary for the implementation of this chapter, in accordance with the Montana Administrative Procedure Act. The rules may include but are not limited to procedural rules for:

- (1) filing of complaints;
- (2) conducting investigations of complaints;
- (3) petitioning for a declaratory ruling; and
- (4) conduct of hearings.

**History:** En. Sec. 2, Ch. 540, L. 1983; amd. Sec. 7, Ch. 801, L. 1991.

## Part 2

### Duties of Governmental Agencies and Officials

**49-3-201. Employment of state and local government personnel.** (1) State and local government officials and supervisory personnel shall recruit, appoint, assign, train, evaluate, and promote personnel on the basis of merit and qualifications without regard to race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin.

(2) All state and local governmental agencies shall:

(a) promulgate written directives to carry out this policy and to guarantee equal employment opportunities at all levels of state and local government;

(b) regularly review their personnel practices to ensure compliance; and

(c) conduct continuing orientation and training programs with emphasis on human relations and fair employment practices.

(3) The department of administration shall ensure that the entire examination process, including appraisal of qualifications, is free from bias.

(4) Appointing authorities shall exercise care to ensure utilization of minority group persons.

(5) Compliance with 2-2-302 and 2-2-303, which prohibit nepotism in public agencies, may not be construed as a violation of this section.

(6) For the purposes of this section, employment does not refer to or include services provided by an individual working under an independent contractor exemption certificate issued under 39-71-417.

**History:** En. 64-317 by Sec. 2, Ch. 487, L. 1975; amd. Sec. 9, Ch. 38, L. 1977; R.C.M. 1947, 64-317; amd. Sec. 14, Ch. 177, L. 1979; amd. Sec. 3, Ch. 342, L. 1985; amd. Sec. 13, Ch. 407, L. 1993; amd. Sec. 2, Ch. 201, L. 2011.

**49-3-202. Employment referrals and placement services.** (1) All state and local governmental agencies, including educational institutions, that provide employment referrals or placement services to public or private employers shall accept job orders on a fair practice basis. A job request indicating an intention to exclude a person because of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin must be rejected.

(2) All state and local governmental agencies shall cooperate in programs developed by the commission for human rights for the purpose of broadening the base of job recruitment and shall further cooperate with employers and unions providing the programs.

(3) The department of labor and industry shall cooperate with the commission for human rights in encouraging and enforcing compliance by employers and labor unions with the policy of this chapter and promotion of equal employment opportunities.

**History:** En. 64-320 by Sec. 5, Ch. 487, L. 1975; amd. Sec. 12, Ch. 38, L. 1977; R.C.M. 1947, 64-320; amd. Sec. 14, Ch. 407, L. 1993.

**49-3-203. Educational, counseling, and training programs.** All educational, counseling, and vocational guidance programs and all apprenticeship and on-the-job training programs of state and local governmental agencies or in which state and local governmental agencies participate must be open to all persons, who must be accepted on the basis of merit and qualifications without regard to race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin. The programs must be conducted to encourage the full development of the interests, aptitudes, skills, and capacities of all students and trainees, with special attention to the problems of persons who are culturally deprived or who are educationally or economically disadvantaged. Expansion of training opportunities under these programs must be encouraged to involve larger numbers of participants from those segments of the labor force in which the need for upgrading levels of skill is greatest.

**History:** En. 64-323 by Sec. 8, Ch. 487, L. 1975; amd. Sec. 14, Ch. 38, L. 1977; R.C.M. 1947, 64-323; amd. Sec. 15, Ch. 177, L. 1979; amd. Sec. 15, Ch. 407, L. 1993.

**49-3-204. Licensing.** (1) A state or local governmental agency may not grant, deny, or revoke the license or charter of a person on the grounds of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin. Each state or local governmental agency shall take appropriate action in the exercise of its licensing or regulatory power as will assure equal treatment of all persons, eliminate discrimination, and enforce compliance with the policy of this chapter. This subsection does not prevent the department of public health and human services from licensing a child-placing agency that gives nonarbitrary consideration in adoption proceedings to relevant information concerning the factors listed in this subsection. Consideration of religious factors by a licensed child-placing agency that is affiliated with a particular religious faith is not arbitrary consideration of religion within the meaning of this section.

(2) The state may not issue or renew a license under Title 16, chapter 4, to an applicant or licensee that excludes from its membership or from its goods, services, facilities, privileges, or advantages any individual on the grounds of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin. This subsection does not apply to any lodge of a recognized national fraternal organization.

**History:** En. 64-321 by Sec. 6, Ch. 487, L. 1975; amd. Sec. 13, Ch. 38, L. 1977; R.C.M. 1947, 64-321; amd. Sec. 16, Ch. 177, L. 1979; amd. Sec. 3, Ch. 543, L. 1989; amd. Sec. 4, Ch. 682, L. 1991; amd. Sec. 16, Ch. 407, L. 1993; amd. Sec. 235, Ch. 546, L. 1995.

**49-3-205. Governmental services.** (1) All services of every state or local governmental agency must be performed without discrimination based upon race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin.

(2) A state or local facility may not be used in the furtherance of any discriminatory practice, nor may a state or local governmental agency become a party to an agreement, arrangement, or plan that has the effect of sanctioning discriminatory practices.

(3) Each state or local governmental agency shall analyze all of its operations to ascertain possible instances of noncompliance with the policy of this chapter and shall initiate comprehensive programs to remedy any defect found to exist.

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

**History:** En. 64-318 by Sec. 3, Ch. 487, L. 1975; amd. Sec. 10, Ch. 38, L. 1977; R.C.M. 1947, 64-318; amd. Sec. 17, Ch. 177, L. 1979; amd. Sec. 5, Ch. 682, L. 1991; amd. Sec. 17, Ch. 407, L. 1993.

**49-3-206. Distribution of governmental funds.** Race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin may not be considered as limiting factors with regard to applicants' qualifications for benefits authorized

by law in state or locally administered programs involving the distribution of funds; nor may state agencies provide grants, loans, or other financial assistance to public agencies, private institutions, or organizations which engage in discriminatory practices.

**History:** En. 64-324 by Sec. 9, Ch. 487, L. 1975; amd. Sec. 15, Ch. 38, L. 1977; R.C.M. 1947, 64-324; amd. Sec. 18, Ch. 407, L. 1993.

**49-3-207. Nondiscrimination provision in all public contracts.** Every state or local contract or subcontract for construction of public buildings or for other public work or for goods or services must contain a provision that all hiring must be on the basis of merit and qualifications and a provision that there may not be discrimination on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by the persons performing the contract.

**History:** En. 64-319 by Sec. 4, Ch. 487, L. 1975; amd. Sec. 11, Ch. 38, L. 1977; R.C.M. 1947, 64-319(part); amd. Sec. 18, Ch. 177, L. 1979; amd. Sec. 19, Ch. 407, L. 1993.

**49-3-208. Public accommodations laws.** No state or local governmental agency may permit any violation of the public accommodations provisions of 49-2-304.

**History:** En. 64-322 by Sec. 7, Ch. 487, L. 1975; R.C.M. 1947, 64-322; amd. Sec. 19, Ch. 177, L. 1979.

**49-3-209. Retaliation prohibited.** It is an unlawful discriminatory practice for a state or local governmental agency to discharge, expel, blacklist, or otherwise discriminate against an individual because the individual has opposed any practices forbidden under this chapter or because the individual has filed a complaint, testified, assisted, or participated in any manner in an investigation or proceeding under this chapter.

**History:** En. Sec. 3, Ch. 540, L. 1983; amd. Sec. 1802, Ch. 56, L. 2009.

### **Part 3 Enforcement and Remedies**

**49-3-301. Cooperation with commission for human rights.** All state and local governmental agencies shall cooperate with the commission for human rights in the commission's enforcement and educational programs. They shall comply with the commission's requests for information concerning practices inconsistent with the state policy against discrimination and shall consider its recommendations for effectuating and implementing that policy. The commission shall continue to augment its enforcement and educational programs which seek to eliminate all discrimination.

**History:** En. 64-325 by Sec. 10, Ch. 487, L. 1975; R.C.M. 1947, 64-325; amd. Sec. 20, Ch. 177, L. 1979.

**49-3-315. Enforcement and remedies.** The procedures set forth in chapter 2, part 5, apply to complaints alleging a violation of this chapter.

**History:** En. Sec. 16, Ch. 467, L. 1997.

## **CHAPTER 4 RIGHTS OF PERSONS WITH DISABILITIES**

### **Part 1 Discrimination in Employment**

**49-4-101. Discrimination prohibited.** It is unlawful to discriminate, in hiring or employment, against a person because of the person's physical disability. There is no discrimination when the nature or extent of the disability reasonably precludes the performance of the particular employment or when the particular employment may subject the person with a disability or that person's fellow employees to physical harm.

**History:** En. Sec. 3, Ch. 77, L. 1974; R.C.M. 1947, 64-304(part); amd. Sec. 20, Ch. 407, L. 1993.

**49-4-102. Penalty and civil remedy.** A person who practices discrimination in violation of 49-4-101 commits a misdemeanor and is also liable in a district court action for civil damages and attorney fees by the person discriminated against. If the person who allegedly practiced discrimination prevails in the civil action, the person is entitled to recover reasonable attorney fees from the person who alleged the discrimination.

**History:** En. Sec. 3, Ch. 77, L. 1974; R.C.M. 1947, 64-304(part); amd. Sec. 1803, Ch. 56, L. 2009.

## Part 2

### Rights of the Physically Disabled

**49-4-201. Repealed.** Sec. 11, Ch. 239, L. 1983.

**History:** En. Sec. 1, Ch. 181, L. 1971; R.C.M. 1947, 71-1303.

**49-4-202. Policy of the state.** It is the policy of the state to encourage and enable the blind, the visually impaired, the deaf, and the otherwise physically disabled to participate fully in the social and economic life of the state and to engage in remunerative employment. The blind, the visually impaired, the deaf, and the otherwise physically disabled must be employed in the state service, the service of the political subdivisions of the state, the public schools, and all other employment supported in whole or in part by public funds on the same terms and conditions as the able-bodied, unless it is shown that the particular disability prevents the performance of the work involved.

**History:** En. Sec. 2, Ch. 181, L. 1971; R.C.M. 1947, 71-1304; amd. Sec. 1, Ch. 176, L. 1981; amd. Sec. 21, Ch. 407, L. 1993.

**49-4-203. Definitions.** (1) "Housing accommodation" means any real property or portion of real property that is used or occupied or is intended, arranged, or designed to be used or occupied as the home, residence, or sleeping place of one or more human beings. The term does not include any single-family residence the occupants of which furnish for compensation not more than one room within the residence.

(2) "Service animal" means a dog or other animal individually trained to provide assistance to an individual with a disability.

**History:** En. 71-1305.1 by Sec. 5, Ch. 266, L. 1975; amd. Sec. 2, Ch. 35, L. 1977; R.C.M. 1947, 71-1305.1(2); amd. Sec. 1, Ch. 394, L. 1997.

**49-4-204 through 49-4-210 reserved.**

**49-4-211. Right to use public places and accommodations.** (1) The blind, the visually impaired, and the deaf have the same right as the able-bodied to the full and free use of the streets, highways, sidewalks, walkways, public buildings, public facilities, and other public places.

(2) The blind, the visually impaired, and the deaf are entitled to full and equal accommodations, advantages, facilities, and privileges of all common carriers, as defined in 69-11-101, and all public accommodations, as defined in 49-2-101, subject only to the conditions and limitations established by law and applicable alike to all persons.

**History:** En. Sec. 3, Ch. 181, L. 1971; amd. Sec. 1, Ch. 266, L. 1975; R.C.M. 1947, 71-1305(2), (3); amd. Sec. 22, Ch. 177, L. 1979; amd. Sec. 2, Ch. 176, L. 1981; amd. Sec. 22, Ch. 407, L. 1993.

**49-4-212. Access to housing accommodations.** Blind, visually impaired, and deaf persons are entitled to as full and equal access as other members of the general public to any housing accommodation offered for compensation in this state.

**History:** En. 71-1305.1 by Sec. 5, Ch. 266, L. 1975; amd. Sec. 2, Ch. 35, L. 1977; R.C.M. 1947, 71-1305.1(1), (3); amd. Sec. 3, Ch. 176, L. 1981; amd. Sec. 10, Ch. 801, L. 1991; amd. Sec. 23, Ch. 407, L. 1993.

**49-4-213. Use of white or metallic-colored canes restricted to the blind.** No person, except those wholly or partially blind, shall carry or use on any street or highway or in any other public place a cane or walking stick which is white or metallic in color or white or metallic tipped with red.

**History:** En. Sec. 3, Ch. 181, L. 1971; amd. Sec. 1, Ch. 266, L. 1975; R.C.M. 1947, 71-1305(1).

**49-4-214. Right to be accompanied by service animal — identification for service animals in training.** (1) A person with a disability has the right to be accompanied by a service animal or a service animal in training with identification complying with subsection (4) in any of the places mentioned in 49-4-211(2) without being charged extra for the service animal. The person with a disability is liable for any damage done to the property by the animal.

(2) A person with a disability who has a service animal or who obtains a service animal is entitled to full and equal access to all housing accommodations as provided in 49-2-305 and 49-4-212. The person with a disability may not be required to pay extra compensation for the service animal but is liable for any damage done to the premises by the service animal.



(3) A person who is training a service animal is entitled to the same rights and assumes the same responsibilities granted to a person with a disability in this section.

(4) For the purposes of this section, a service animal in training that is a dog shall wear a leash, collar, cape, harness, or backpack that identifies in writing that the dog is a service animal in training. Other service animals in training must also be identifiable by written identification as a service animal in training. The written identification for service animals in training must be visible and legible from a distance of at least 20 feet.

**History:** En. Sec. 4, Ch. 181, L. 1971; amd. Sec. 2, Ch. 266, L. 1975; R.C.M. 1947, 71-1306; amd. Sec. 23, Ch. 177, L. 1979; amd. Sec. 4, Ch. 176, L. 1981; amd. Sec. 2, Ch. 394, L. 1997.

**49-4-215. Penalty for violating rights.** Any person, firm, or corporation or the agent of any person, firm, or corporation who denies or interferes with admittance to or enjoyment of the public facilities enumerated in 49-4-211 or otherwise interferes with the rights of a totally or partially blind, deaf, or otherwise disabled person under 49-4-211 is guilty of a misdemeanor.

**History:** En. Sec. 4, Ch. 266, L. 1975; R.C.M. 1947, 71-1309; amd. Sec. 5, Ch. 176, L. 1981.

**49-4-216. Duty and civil liability of pedestrian or driver approaching blind person.** (1) A pedestrian who is not totally or partially blind or a driver of a vehicle who approaches or comes in contact with a person who is totally or partially blind and is carrying a cane or walking stick predominantly white or metallic in color or white tipped with red or is being led by a trained guide dog wearing a harness and walking on either side of or slightly in front of such blind person shall immediately come to a full stop and take such precautions before proceeding as may be necessary to avoid accident or injury to such blind person.

(2) A driver or pedestrian who fails to take such precautions is liable in damages for any injury caused the totally or partially blind person. A totally or partially blind pedestrian who is not carrying such a cane or using a guide dog in any of the places listed in 49-4-211 has all of the rights and privileges conferred by law upon other persons, and the failure of such a pedestrian to carry such a cane or to use a guide dog in any such place may not be held to constitute or be evidence of contributory negligence.

**History:** En. Sec. 5, Ch. 181, L. 1971; amd. Sec. 3, Ch. 266, L. 1975; R.C.M. 1947, 71-1307; amd. Sec. 24, Ch. 177, L. 1979.

**49-4-217. Penalty for violation of duty or unauthorized use of cane.** Any person other than a person wholly or partially blind who shall carry a cane or walking stick such as is described in this part, contrary to the provisions of this part, or who shall fail to heed the approach of a person carrying such a cane as is described by this part or who shall fail to come to a full stop when approaching or coming in contact with a person so carrying such a cane or walking stick or being led by a trained guide dog or who shall fail to take precaution against accidents or injury to such person after coming to a stop, as provided for herein, is guilty of a misdemeanor punishable by a fine not to exceed \$25.

**History:** En. Sec. 6, Ch. 181, L. 1971; R.C.M. 1947, 71-1308.

### **Part 3**

### **Special Parking Permits**

### **Motorized Wheelchairs**

**49-4-301. Eligibility for special parking permit.** (1) The department of justice shall issue a special parking permit to a person who has a disability that limits or impairs the person's mobility and for whom a licensed physician, a licensed chiropractor, or a licensed advanced practice registered nurse, as provided in 37-8-202, submits a certification to the department, by electronic or other means prescribed by the department, that the person meets one of the following criteria:

- (a) cannot walk 200 feet without stopping to rest;
- (b) is severely limited in ability to walk because of an arthritic, neurological, or orthopedic condition;
- (c) is so severely disabled that the person cannot walk without the use of or assistance from a brace, cane, another person, prosthetic device, wheelchair, or other assistive device;
- (d) uses portable oxygen;

(e) is restricted by lung disease to the extent that forced expiratory respiratory volume, when measured by spirometry, is less than 1 liter per second or the arterial oxygen tension is less than 60 mm/hg on room air at rest;

(f) has impairment because of cardiovascular disease or a cardiac condition to the extent that the person's functional limitations are classified as class III or IV under standards accepted by the American heart association; or

(g) has a disability resulting from an acute sensitivity to automobile emissions or from another disease or physical condition that limits or impairs the person's mobility and that is documented by the licensed physician, the licensed chiropractor, or the licensed advanced practice registered nurse as being comparable in severity to the other conditions listed in this subsection (1).

(2) (a) A person who has a condition expected to improve within 6 months may be issued a temporary placard for a period not to exceed 6 months but may not be issued a special license plate under 61-3-332(9). If the condition exists after 6 months, a new temporary placard must be issued for the time period prescribed by the applicant's physician, chiropractor, or advanced practice registered nurse, not to exceed 24 months, upon receipt of a later paper or electronic certification from the disabled person's physician, chiropractor, or advanced practice registered nurse that the conditions specified in subsection (1) continue to exist and are expected to continue for the time specified.

(b) A person who meets one of the criteria in subsection (1) for what is considered to be a permanent condition, as determined by a licensed physician, a licensed chiropractor, or a licensed advanced practice registered nurse, may, by application to the department, by electronic or other means prescribed by the department, be issued a special license plate under 61-3-332(9) and is not required to reapply for the special license plate when the vehicle is reregistered.

(3) The department of justice may issue special parking permits to an agency or business that provides transportation as a service for persons with a disability. The permits must be used only to load and unload persons with a disability in the special parking place provided for in 49-4-302. As used in this subsection, "disability" means a physical impairment that severely limits a person's ability to walk.

(4) Except as provided in subsection (3), an applicant may not receive more than one permit.

**History:** En. 53-106.12 by Sec. 1, Ch. 31, L. 1977; R.C.M. 1947, 53-106.12(1), (6); amd. Sec. 1, Ch. 614, L. 1983; amd. Sec. 24, Ch. 407, L. 1993; amd. Sec. 1, Ch. 202, L. 1995; amd. Sec. 1, Ch. 392, L. 1995; amd. Sec. 1, Ch. 280, L. 1997; amd. Sec. 1, Ch. 156, L. 1999; amd. Sec. 7, Ch. 399, L. 2003; amd. Secs. 1, 3, Ch. 507, L. 2005; amd. Sec. 28, Ch. 596, L. 2005.

**49-4-302. Privileges of permitholder—privilege for disabled veteran—exemptions from time limits—requirements for special parking spaces.** (1) The parking permit issued under this part, when displayed, entitles a person to park a motor vehicle in a special parking space reserved for a person with a disability, whether on public property or on private property available for public use, when the person for whom the permit was issued is using the special parking space to enter or exit the vehicle.

(2) A vehicle may not be parked in a parking space on public or private property that is clearly identified by an official sign as being reserved for use by a person with a disability unless:

(a) the vehicle is lawfully displaying a parking permit issued under this part, a distinguishing license plate or placard for a person with a disability that was issued by a foreign jurisdiction conferring parking privileges similar to those conferred in subsection (1), or a specially inscribed license plate displaying the letters "DV" issued under 61-3-458(4)(b) or (4)(i) or displaying a wheelchair as provided in 61-3-332(9); and

(b) the reserved parking space is being used by the person for whom the permit, plate, or placard was issued to enter or exit the vehicle.

(3) The governing body of a city, town, or county may exempt vehicles lawfully displaying parking permits issued under this part and vehicles lawfully displaying specially inscribed license plates displaying the letters "DV" issued under 61-3-458(4)(b) or (4)(i) or displaying a wheelchair as provided in 61-3-332(9) and parked in public places along public streets from any time limitation imposed upon parking, except in areas where:

(a) stopping, standing, or parking of all vehicles is prohibited;

(b) only special vehicles may be parked; or

(c) parking is not allowed during specific periods of the day in order to accommodate heavy traffic.

(4) In accordance with subsection (2), the governing body of a city, town, or county or appropriate state agency may impose all, but not less than all, of the following requirements with respect to any special parking space constructed after September 30, 1985, and reserved for a person with a disability or a permitholder on ways of this state open to the public, as defined in 61-8-101:

(a) The space must be located on a smooth, level surface as near as practicable to building entrances or walkways that have curb cuts and appropriately designed ramps and access lanes to accommodate wheelchairs.

(b) If parallel to curbside, the parking space must be separated from an adjacent space, either in the front or the rear, by at least 5 feet of striped no-parking area.

(c) If at an angle to curbside, the parking space must be at least 8 feet wide and free of obstruction if located at the end of a line of angle parking spaces, and each other angle parking space designated for a person with a disability must be at least 13 feet wide.

(d) A parking space reserved for a person with a disability must be designated by a sign showing the international symbol of accessibility, indicating that a permit is required, and stating the penalty for a violation. In order to meet the penalty statement requirement, signs existing on October 1, 1993, must have attached a decal stating the penalty for a violation. The sign must be attached to a wall or post in a way that it is not obscured by a vehicle parked in the space.

**History:** En. 53-106.12 by Sec. 1, Ch. 31, L. 1977; R.C.M. 1947, 53-106.12(2); amd. Sec. 2, Ch. 614, L. 1983; amd. Sec. 2, Ch. 71, L. 1985; amd. Sec. 1, Ch. 203, L. 1985; amd. Sec. 1, Ch. 616, L. 1985; amd. Sec. 1, Ch. 187, L. 1987; amd. Sec. 17, Ch. 724, L. 1991; amd. Sec. 1, Ch. 209, L. 1993; amd. Sec. 3, Ch. 406, L. 1993; amd. Sec. 25, Ch. 407, L. 1993; amd. Sec. 2, Ch. 392, L. 1995; amd. Sec. 2, Ch. 489, L. 1995; amd. Sec. 1, Ch. 539, L. 2001; amd. Sec. 8, Ch. 399, L. 2003; amd. Sec. 29, Ch. 596, L. 2005; amd. Sec. 1, Ch. 59, L. 2007; amd. Sec. 1, Ch. 233, L. 2009.

**49-4-303. Issuance of interim special parking permit.** A licensed physician, a licensed chiropractor, or a licensed advanced practice registered nurse, as provided in 37-8-202, may issue an interim special parking permit, in a form authorized by the department, to a person who has a disability that limits or impairs the person's mobility and upon whose behalf the physician, chiropractor, or advanced practice registered nurse has submitted a request for a special parking permit under 49-4-301. The interim special parking permit is valid only in Montana, may not be renewed or extended, and expires 5 days from the date of issuance.

**History:** En. 53-106.12 by Sec. 1, Ch. 31, L. 1977; R.C.M. 1947, 53-106.12(4), (5); amd. Sec. 2, Ch. 280, L. 1997; amd. Sec. 2, Ch. 156, L. 1999; amd. Sec. 30, Ch. 596, L. 2005.

**49-4-304. Special license plate or placard to be provided and displayed — additional placards allowed — rulemaking required.** (1) Except as authorized in 49-4-303, unless the department of justice issued a special license plate under 61-3-332(9) or 61-3-458(4)(b) or (4)(i) indicating a special parking privilege, the department shall provide a placard to be displayed on or in a motor vehicle to indicate a parking privilege granted under this part. The special license plate must be affixed to the vehicle according to 61-3-301, or the placard must be prominently displayed in the windshield of a vehicle when the parking privilege is being used by the person with a disability in a vehicle other than the one to which a special license plate is affixed.

(2) Subject to the provisions of 49-4-301 through 49-4-305, a person who is eligible to receive a special parking permit may apply to the department for one or more placards.

(3) The department shall issue up to two placards to eligible individuals and may issue additional placards. The department shall adopt rules to determine the process for an individual to request additional placards.

(4) Upon application under 49-4-301, a person with a disability who does not hold a driver's license or does not own a vehicle may receive a placard to be displayed in a vehicle in which the person with a disability is being conveyed when the parking privilege is being used.

(5) The placard must bear a representation of a wheelchair as the symbol of a person with a disability.

**History:** En. 53-106.12 by Sec. 1, Ch. 31, L. 1977; R.C.M. 1947, 53-106.12(3); amd. Sec. 3, Ch. 614, L. 1983; amd. Sec. 4, Ch. 159, L. 1985; amd. Sec. 1, Ch. 456, L. 1991; amd. Sec. 17, Ch. 724, L. 1991; amd. Sec. 26, Ch. 407, L. 1993; amd. Sec. 3, Ch. 489, L. 1995; amd. Sec. 9, Ch. 399, L. 2003; amd. Sec. 31, Ch. 596, L. 2005; amd. Sec. 2, Ch. 59, L. 2007; amd. Sec. 2, Ch. 233, L. 2009; amd. Sec. 1, Ch. 323, L. 2017.

**Compiler's Comments**

*2017 Amendment:* Chapter 323 throughout section substituted “placard” for “card”; in (2) at end substituted “may apply to the department for one or more placards” for “and who owns more than one motor vehicle may request and the department of justice shall provide additional cards described in subsection (1) to equal the number of motor vehicles, other than commercial vehicles, owned by the person”; inserted (3) concerning issuance by department of up to two placards; and made minor changes in style. Amendment effective May 4, 2017.

**49-4-305. Expiration of permit.** (1) Except as provided in 49-4-303 and subsection (2) of this section, a special parking permit expires on the occurrence of either of the following:

(a) 3 years from the date of issuance, unless the permit was issued to a person who has a condition expected to improve within 6 months. A person may renew a permit if a licensed physician, a licensed chiropractor, or a licensed advanced practice registered nurse, as provided in 37-8-202, certifies that the person’s mobility disability still exists and that one of the criteria specified in 49-4-301 continues to be met.

(b) certification by a licensed physician, a licensed chiropractor, or a licensed advanced practice registered nurse that the person’s mobility disability no longer exists or that the criteria specified in 49-4-301 can no longer be met.

(2) A permit issued before October 1, 1993, expires on:

(a) the death of the permittee; or

(b) certification by a licensed physician, a licensed chiropractor, or a licensed advanced practice registered nurse that the person’s mobility disability no longer exists or that the criteria specified in 49-4-301 can no longer be met.

**History:** En. 53-106.12 by Sec. 1, Ch. 31, L. 1977; R.C.M. 1947, 53-106.12(7); amd. Sec. 4, Ch. 614, L. 1983; amd. Sec. 4, Ch. 406, L. 1993; amd. Sec. 27, Ch. 407, L. 1993; amd. Sec. 3, Ch. 392, L. 1995; amd. Sec. 3, Ch. 280, L. 1997; amd. Sec. 3, Ch. 156, L. 1999; amd. Sec. 32, Ch. 596, L. 2005.

**49-4-306. Department of justice to publicize permit.** (1) The department of justice shall publicize the provisions of 49-4-301 through 49-4-305 in a manner designed to inform those eligible for a special parking permit.

(2) The department of justice shall budget sufficient funds to accomplish the requirements of subsection (1).

**History:** En. Sec. 1, Ch. 32, L. 1981.

**49-4-307. Penalty.** A person who parks a motor vehicle in violation of 49-4-302(2) is guilty of a misdemeanor and is punishable by a fine of \$100. However, a person charged with violating 49-4-302(2) may not be convicted if within 24 hours the person produces in court or the office of the arresting officer a special parking permit that was previously issued to the person and that is valid at the time of arrest.

**History:** En. Sec. 6, Ch. 614, L. 1983; amd. Sec. 2, Ch. 187, L. 1987; amd. Sec. 5, Ch. 406, L. 1993.

**49-4-308 and 49-4-309 reserved.**

**49-4-310. Special parking permit for long-term care facility.** A long-term care facility, as defined in 37-9-101, may apply for a permit issued for special parking spaces under 49-4-302. If granted, the permit entitles the facility to the privileges granted in 49-4-302.

**History:** En. Sec. 3, Ch. 187, L. 1987.

## Part 5 Interpreters for the Deaf in Official Proceedings

**49-4-501. Policy.** It is the policy of this state to secure the constitutional rights of deaf persons who, because of impairment of hearing or speech, are unable to readily understand or communicate spoken language and who consequently cannot be fully protected in legal proceedings unless qualified interpreters are available to assist them.

**History:** En. Sec. 1, Ch. 245, L. 1979.

**49-4-502. Definitions.** As used in this part, the following definitions apply:

(1) “Appointing authority” means the presiding judge or justice of any court, the presiding officer of any board, commission, or authority, the director or commissioner of any department or agency, or any other person presiding at any hearing or other proceeding in which a qualified interpreter is required pursuant to this part.



(2) “Deaf person” means a person whose hearing is totally impaired or whose hearing is so seriously impaired as to prohibit the person from understanding oral communications. The term further includes but is not limited to a person who, because of loss of hearing, cannot communicate spoken language.

(3) “Intermediary interpreter” means a knowledgeable deaf person who, because of the person’s intimate acquaintance with deaf persons who use mainly natural gestures for communicating, can be used as an intermediary between the deaf person and a qualified interpreter.

(4) “Principal party in interest” means a person who is a named party in any proceeding or who will be directly affected by the decision or action that may be made or taken.

(5) “Qualified interpreter” means an interpreter listed by the department of public health and human services as provided in 49-4-507.

**History:** En. Sec. 2, Ch. 245, L. 1979; amd. Sec. 236, Ch. 546, L. 1995; amd. Sec. 1804, Ch. 56, L. 2009.

**49-4-503. Deaf person as participant in judicial or administrative proceeding — interpreter to be used.** A qualified interpreter must be appointed as follows:

(1) In any case before any court or a grand jury in which a deaf person is a party, either as a complainant, defendant, or witness, the court shall appoint a qualified interpreter to interpret the proceedings to the deaf person and interpret the deaf person’s testimony or statements and to assist in preparation with counsel.

(2) At all stages in any proceeding of a judicial or quasi-judicial nature before any agency of the state or governing body or agency of a local government in which a deaf person is a principal party in interest, either as a complainant, defendant, witness, or supplicant, the agency or governing body shall appoint a qualified interpreter to interpret the proceedings to the deaf person and to interpret the deaf person’s testimony or statements.

(3) (a) In any proceedings in which a deaf person may be subjected to confinement or criminal sanction or in any proceeding preliminary, including a coroner’s inquest, grand jury proceedings, and proceedings relating to mental health commitments, the presiding judicial officer shall appoint a qualified interpreter to assist the deaf person throughout the proceedings.

(b) Upon arresting a deaf person for an alleged violation of a criminal law and prior to interrogating or taking a statement of the deaf person, the arresting law enforcement official shall make available to the person, at the earliest possible time, a qualified interpreter to assist the person throughout the interrogation or taking of a statement.

(c) A statement, written or oral, made by a person who is deaf in reply to a question of a law enforcement officer or any other person having a prosecutorial function in any criminal or quasi-criminal proceeding may not be used against that deaf person unless either the statement was made or elicited through a qualified interpreter and was made knowingly, voluntarily, and intelligently or, in the case of waiver, the court makes a special finding that any statement made by the deaf person was made knowingly, voluntarily, and intelligently.

(d) This subsection (3) does not apply to apprehensions, arrests, or statements involving a violation of the traffic laws of Montana.

**History:** En. Sec. 3, Ch. 245, L. 1979; amd. Sec. 1805, Ch. 56, L. 2009.

**49-4-504. Preliminary determination.** The appointing authority may not appoint a qualified interpreter in any case until the appointing authority makes a preliminary determination that the qualified interpreter is able to accurately communicate with and translate information to and from the deaf person in the case.

**History:** En. Sec. 4, Ch. 245, L. 1979; amd. Sec. 1806, Ch. 56, L. 2009.

**49-4-505. Intermediary interpreter to be used.** If a qualified interpreter states that the interpreter is unable to render a satisfactory interpretation and that an intermediary interpreter will improve the quality of interpretation, the appointing authority shall appoint an intermediary interpreter to assist the qualified interpreter subject to the same provisions that govern a qualified interpreter under this part.

**History:** En. Sec. 5, Ch. 245, L. 1979; amd. Sec. 1807, Ch. 56, L. 2009.

**49-4-506. Interpreter in full view.** In any action or proceeding in which an interpreter is required to be appointed, the court or administrative authority may not commence proceedings



until the appointed interpreter is in full view of and spatially situated to assure proper communication with the deaf person or persons involved as participants.

**History:** En. Sec. 6, Ch. 245, L. 1979.

**49-4-507. Coordination of interpreter requests.** (1) Whenever an appointing authority is required to appoint an interpreter, the authority shall request the department of public health and human services to furnish the authority with a list of qualified interpreters. If the choice of qualified interpreters does not meet the needs or wishes of the deaf person, the appointing authority shall appoint another qualified interpreter.

(2) The Montana association of the deaf and the Montana registry of interpreters for the deaf shall provide the department of public health and human services with a list of qualified and available interpreters.

(3) The only function of the department of public health and human services is to maintain the list referred to in subsection (2).

**History:** En. Sec. 7, Ch. 245, L. 1979; amd. Sec. 237, Ch. 546, L. 1995.

**49-4-508. Oath of interpreter.** An interpreter appointed to interpret for a deaf person, before entering upon the interpreter's duties, shall take an oath that the interpreter will make a true interpretation in an understandable manner to the person for whom the interpreter is appointed and that the interpreter will repeat the statements of the person in the English language to the best of the interpreter's skill and judgment.

**History:** En. Sec. 8, Ch. 245, L. 1979; amd. Sec. 1808, Ch. 56, L. 2009.

**49-4-509. Compensation.** An interpreter appointed to interpret for the deaf is entitled to receive a reasonable fee for the interpreter's services, together with actual expenses for travel and transportation. The appointing authority shall set the fee. When the interpreter is appointed in a criminal proceeding in a district court, the fee must be paid by the office of court administrator in accordance with judicial branch policy, and when the interpreter is otherwise appointed, the fees must be paid out of funds available to the appointing authority.

**History:** En. Sec. 9, Ch. 245, L. 1979; amd. Sec. 1809, Ch. 56, L. 2009; amd. Sec. 1, Ch. 30, L. 2011.

**49-4-510. Waiver.** The right of a deaf person to an interpreter may not be waived except by a deaf person who requests a waiver in writing. Such waiver is subject to the approval of counsel to the deaf person, if existent, and is subject to the approval of the appointing authority.

**History:** En. Sec. 10, Ch. 245, L. 1979.

**49-4-511. Privileged communications.** Any information that the interpreter gathers from the deaf person pertaining to any proceeding then pending shall at all times remain confidential and privileged, on an equal basis with the attorney-client privilege, unless such deaf person desires that such information be communicated to other persons.

**History:** En. Sec. 11, Ch. 245, L. 1979.

## TITLE 50

### HEALTH AND SAFETY

#### CHAPTER 1

#### ADMINISTRATION OF PUBLIC HEALTH LAWS

##### Part 2

##### Department

**50-1-201. Repealed.** Sec. 20, Ch. 378, L. 1995.

**History:** En. 69-4110.1 by Sec. 1, Ch. 184, L. 1969; amd. Sec. 109, Ch. 349, L. 1974; R.C.M. 1947, 69-4110.1; amd. Sec. 21, Ch. 606, L. 1993.

**50-1-202. General powers and duties.** (1) In order to carry out the purposes of the public health system to protect and promote the public health, the department, in collaboration with federal, state, and local partners, shall:

(a) make inspections for conditions of public health importance and issue written orders for correction, destruction, or removal of the condition;

(b) disseminate information and make recommendations for control of diseases and other conditions of public health importance;

(c) at the request of the governor, accept funds for and administer any federal health program for which responsibilities are delegated to states;

(d) identify, assess, prevent, and mitigate conditions of public health importance through:

(i) epidemiological tracking and investigation;

(ii) screening and testing programs;

(iii) isolation and quarantine measures;

(iv) treatment;

(v) abatement of public health nuisances;

(vi) inspections;

(vii) collecting and maintaining health information; or

(viii) other public health measures as allowed by law;

(e) promote efforts among public and private sector entities to develop and fund programs or initiatives that identify and ameliorate health problems;

(f) develop and promote training for members of the public health workforce;

(g) bring and pursue actions necessary to abate, restrain, or prosecute the violation of public health laws and rules;

(h) advise state agencies on the following as they relate to public buildings and facilities:

(i) location, drainage, water supply, water quality, heating, plumbing, sewer systems, and ventilation; and

(ii) the disposal of infectious or hazardous wastes;

(i) develop, administer, and promote activities for the protection and improvement of oral health;

(j) develop, adopt, and administer rules setting standards for the operation of programs to protect the health of mothers and children, including programs for nutrition, family planning services, improved pregnancy outcome, and programs authorized by Title X of the federal Public Health Service Act, 42 U.S.C. 300a, et seq., and Title V of the federal Social Security Act, 42 U.S.C. 501 through 510;

(k) conduct health education programs;

(l) provide consultation to school and local public health personnel and consult with the superintendent of public instruction on conditions of public health importance for schools;

(m) develop, adopt, and administer rules setting standards for a program to provide services to children with special health care needs, including standards for:

(i) diagnosis;

(ii) medical, surgical, and corrective treatment;

(iii) aftercare and related services; and

(iv) eligibility;

(n) provide consultation to local boards of health;

(o) promote cooperation and formal collaborative agreements between the state and tribes, tribal organizations, and the Indian health service regarding public health planning, priority setting, information and data sharing, reporting, resource allocation, funding, service delivery, jurisdiction, and other public health matters addressed in this title;

(p) adopt and enforce rules regarding:

(i) the reporting and control of communicable diseases and other conditions of public health importance;

(ii) the imposition of fees for testing, screening, and other services performed by the state laboratory;

(iii) the transportation of dead human bodies;

(iv) the issuance of licenses to laboratories that conduct analysis of public water supply systems; and

(v) public health requirements for school sites, including water supply and quality, sewage and waste disposal, and any other matters pertinent to the health and physical well-being of pupils, teachers, and others; and

(q) take measures to prevent and alleviate threats to the public health from the release of biological, chemical, or radiological agents capable of causing imminent infection, disability, or death.

(2) The department:

(a) has the power to use personnel of local public health agencies to assist in the administration of laws relating to public health services and functions; and

(b) may provide, implement, facilitate, or encourage other public health services and functions as considered reasonable and necessary.

**History:** En. Sec. 10, Ch. 197, L. 1967; amd. Sec. 31, Ch. 349, L. 1974; amd. Sec. 1, Ch. 288, L. 1977; R.C.M. 1947, 69-4110; amd. Sec. 7, Ch. 200, L. 1979; amd. Sec. 1, Ch. 219, L. 1979; amd. Sec. 1, Ch. 230, L. 1983; amd. Sec. 48, Ch. 281, L. 1983; amd. Sec. 1, Ch. 660, L. 1983; amd. Sec. 1, Ch. 197, L. 1989; amd. Sec. 1, Ch. 262, L. 1991; amd. Sec. 1, Ch. 324, L. 1995; amd. Secs. 242, 568, Ch. 546, L. 1995; amd. Sec. 5, Ch. 73, L. 1997; amd. Sec. 46, Ch. 472, L. 1997; amd. Sec. 4, Ch. 391, L. 2003; amd. Sec. 17, Ch. 386, L. 2005; amd. Sec. 4, Ch. 150, L. 2007.

**50-1-203. Public health inspections.** (1) The department may make public health inspections of schoolhouses, churches, theaters, jails, and other buildings or facilities where persons assemble. If public health deficiencies are found in the facility, the department may direct that conditions be corrected within a reasonable time.

(2) Either the department or a local board of health may bring an action, including an action for injunctive relief, to correct the public health deficiencies.

**History:** En. Sec. 18, Ch. 197, L. 1967; amd. Sec. 1, Ch. 336, L. 1971; amd. Sec. 108, Ch. 349, L. 1974; R.C.M. 1947, 69-4118; amd. Sec. 1, Ch. 383, L. 1995.

**50-1-204. Quarantine and isolation measures.** The department may adopt and enforce quarantine or isolation measures to prevent the spread of communicable disease. A person who does not comply with quarantine measures shall, on conviction, be fined not less than \$10 or more than \$100. Receipts from fines, except justice's court fines, must be deposited in the state general fund.

**History:** En. Sec. 12, Ch. 197, L. 1967; amd. Sec. 33, Ch. 349, L. 1974; R.C.M. 1947, 69-4112; amd. Sec. 33, Ch. 557, L. 1987; amd. Sec. 5, Ch. 391, L. 2003.

**50-1-205. Repealed.** Sec. 2, Ch. 219, L. 1979.

**History:** En. Sec. 92, Ch. 197, L. 1967; R.C.M. 1947, 69-4515.

**50-1-206. Regulation of schools in matters of health.** (1) The department shall adopt regulations prescribing the requirements for school sites, water supply, sewage and waste disposal, and any other matters pertinent to the health and physical well-being of the pupils, teachers, and others who frequent schools.

(2) The department shall furnish to the districts copies of such regulations.

**History:** En. 75-8207 by Sec. 479, Ch. 5, L. 1971; amd. Sec. 12, Ch. 504, L. 1977; R.C.M. 1947, 75-8207.

**50-1-207 through 50-1-209 reserved.**

**50-1-210. Licensing of laboratories.** (1) To authorize a laboratory to submit analyses and reports to the department of environmental quality under Title 75, chapter 6, part 1, the department shall issue a license to any laboratory that intends to conduct analysis of public water supply systems and that files a license application, on a form furnished by the department, demonstrating that it meets the criteria for licensing established by department rules.

(2) A person aggrieved by a decision of the department to grant, deny, or revoke a license may appeal the decision under the contested case provisions of the Montana Administrative Procedure Act.

**History:** En. Sec. 12, Ch. 73, L. 1997.

**50-1-211. Terminated.** Sec. 2, Ch. 473, L. 2007.

**History:** En. Sec. 1, Ch. 404, L. 2005; amd. Sec. 1, Ch. 473, L. 2007.

## CHAPTER 2 LOCAL BOARDS OF HEALTH

### Part 1 General Provisions

**50-2-116. Powers and duties of local boards of health.** (1) In order to carry out the purposes of the public health system, in collaboration with federal, state, and local partners, each local board of health shall:

- (a) appoint and fix the salary of a local health officer who is:
  - (i) a physician;
  - (ii) a person with a master's degree in public health; or
  - (iii) a person with equivalent education and experience, as determined by the department;
- (b) elect a presiding officer and other necessary officers;
- (c) employ qualified staff;
- (d) adopt bylaws to govern meetings;
- (e) hold regular meetings at least quarterly and hold special meetings as necessary;
- (f) identify, assess, prevent, and ameliorate conditions of public health importance through:
  - (i) epidemiological tracking and investigation;
  - (ii) screening and testing;
  - (iii) isolation and quarantine measures;
  - (iv) diagnosis, treatment, and case management;
  - (v) abatement of public health nuisances;
  - (vi) inspections;
  - (vii) collecting and maintaining health information;
  - (viii) education and training of health professionals; or
  - (ix) other public health measures as allowed by law;
- (g) protect the public from the introduction and spread of communicable disease or other conditions of public health importance, including through actions to ensure the removal of filth or other contaminants that might cause disease or adversely affect public health;
- (h) supervise or make inspections for conditions of public health importance and issue written orders for compliance or for correction, destruction, or removal of the conditions;
- (i) bring and pursue actions and issue orders necessary to abate, restrain, or prosecute the violation of public health laws, rules, and local regulations;
- (j) identify to the department an administrative liaison for public health. The liaison must be the local health officer in jurisdictions that employ a full-time local health officer. In jurisdictions that do not employ a full-time local health officer, the liaison must be the highest ranking public health professional employed by the jurisdiction.
- (k) subject to the provisions of 50-2-130, adopt necessary regulations that are not less stringent than state standards for the control and disposal of sewage from private and public buildings and facilities that are not regulated by Title 75, chapter 6, or Title 76, chapter 4. The regulations must describe standards for granting variances from the minimum requirements that are identical to standards promulgated by the board of environmental review and must provide for appeal of variance decisions to the department as required by 75-5-305. If the local board of health regulates or permits water well drilling, the regulations must prohibit the drilling of a well if the well isolation zone, as defined in 76-4-102, encroaches onto adjacent private property without the authorization of the private property owner.

(2) Local boards of health may:

- (a) accept and spend funds received from a federal agency, the state, a school district, or other persons or entities;
- (b) adopt necessary fees to administer regulations for the control and disposal of sewage from private and public buildings and facilities;
- (c) adopt regulations that do not conflict with 50-50-126 or rules adopted by the department:
  - (i) for the control of communicable diseases;
  - (ii) for the removal of filth that might cause disease or adversely affect public health;

(iii) subject to the provisions of 50-2-130, for sanitation in public and private buildings and facilities that affects public health and for the maintenance of sewage treatment systems that do not discharge effluent directly into state water and that are not required to have an operating permit as required by rules adopted under 75-5-401;

(iv) subject to the provisions of 50-2-130 and Title 50, chapter 48, for tattooing and body-piercing establishments and that are not less stringent than state standards for tattooing and body-piercing establishments;

(v) for the establishment of institutional controls that have been selected or approved by the:

(A) United States environmental protection agency as part of a remedy for a facility under the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601, et seq.; or

(B) department of environmental quality as part of a remedy for a facility under the Montana Comprehensive Environmental Cleanup and Responsibility Act, Title 75, chapter 10, part 7; and

(vi) to implement the public health laws; and

(d) promote cooperation and formal collaborative agreements between the local board of health and tribes, tribal organizations, and the Indian health service regarding public health planning, priority setting, information and data sharing, reporting, resource allocation, service delivery, jurisdiction, and other matters addressed in this title.

(3) A local board of health may provide, implement, facilitate, or encourage other public health services and functions as considered reasonable and necessary.

**History:** En. Sec. 86, Ch. 197, L. 1967; amd. Sec. 4, Ch. 216, L. 1969; amd. Sec. 1, Ch. 196, L. 1971; amd. Secs. 108, 111, Ch. 349, L. 1974; amd. Sec. 2, Ch. 273, L. 1975; R.C.M. 1947, 69-4509; amd. Sec. 1, Ch. 709, L. 1985; amd. Sec. 2, Ch. 479, L. 1991; amd. Sec. 2, Ch. 324, L. 1995; amd. Sec. 88, Ch. 418, L. 1995; amd. Sec. 6, Ch. 471, L. 1995; amd. Sec. 2, Ch. 137, L. 1999; amd. Sec. 7, Ch. 391, L. 2003; amd. Sec. 18, Ch. 386, L. 2005; amd. Sec. 5, Ch. 150, L. 2007; amd. Sec. 1, Ch. 195, L. 2013; amd. Sec. 3, Ch. 28, L. 2017.

**Compiler's Comments**

*2017 Amendment:* Chapter 28 in (2)(c) inserted reference to 50-50-126; and made minor changes in style. Amendment effective February 17, 2017.

**50-2-118. Powers and duties of local health officers.** In order to carry out the purpose of the public health system, in collaboration with federal, state, and local partners, local health officers or their authorized representatives shall:

(1) make inspections for conditions of public health importance and issue written orders for compliance or for correction, destruction, or removal of the condition;

(2) take steps to limit contact between people in order to protect the public health from imminent threats, including but not limited to ordering the closure of buildings or facilities where people congregate and canceling events;

(3) report communicable diseases to the department as required by rule;

(4) establish and maintain quarantine and isolation measures as adopted by the local board of health; and

(5) pursue action with the appropriate court if this chapter or rules adopted by the local board or department under this chapter are violated.

**History:** En. Sec. 87, Ch. 197, L. 1967; amd. Sec. 2, Ch. 196, L. 1971; amd. Sec. 56, Ch. 349, L. 1974; R.C.M. 1947, 69-4510; amd. Sec. 1, Ch. 200, L. 1979; amd. Sec. 18, Ch. 708, L. 1991; amd. Sec. 8, Ch. 391, L. 2003; amd. Sec. 27, Ch. 474, L. 2003; amd. Sec. 6, Ch. 150, L. 2007.

## CHAPTER 3

### STATE FIRE PREVENTION AND INVESTIGATION PROGRAM

#### Part 1

#### General Provisions

**50-3-102. Powers and duties of department regarding state fire prevention and investigation — rules.** (1) For the purpose of reducing the state's fire loss, the department shall:



(a) inspect each unit of the Montana university system and other state buildings, including state institutions, as often as duties allow, but no more frequently than once each year unless requested by the commissioner of higher education for buildings in the university system, by the department of corrections or the department of public health and human services for state institutions, or by the department of administration for all other state buildings. A copy of the inspection report for units of the university system must be given to the commissioner of higher education, a copy of the inspection report for state institutions must be given to the department of corrections and the department of public health and human services, and a copy of the inspection report for all other state buildings must be given to the department of administration. The department of justice shall advise the commissioner of higher education and the directors of the departments of corrections, public health and human services, and administration concerning fire prevention, fire protection, and public safety when it distributes the reports.

(b) inspect public, business, or industrial buildings, as provided in chapter 61, and require conformance to law and rules promulgated under the provisions of this chapter;

(c) assist local governmental fire agencies organized under Title 7, chapter 33, in fire investigations and may initiate or supervise these investigations when, in its judgment, the initiation or supervision is necessary;

(d) provide fire prevention and fire protection information to public officials and the general public;

(e) serve as the state entity primarily responsible for promoting fire safety at the state level;

(f) encourage coordination of all services and agencies in fire prevention matters to reduce duplication and fill voids in services; and

(g) establish rules concerning responsibilities and procedures to be followed when there is a threat of explosive material in a building housing state offices.

(2) The department may adopt rules necessary for safeguarding life and property from the hazards of fire and carrying into effect the fire prevention laws of this state if the rules do not conflict with building regulations adopted by the department of labor and industry.

(3) The department shall adopt rules based on nationally recognized standards necessary for safeguarding life and property from the hazards associated with the manufacture, transportation, storage, sale, and use of explosive materials.

(4) If necessary to safeguard life and property under rules promulgated pursuant to this section, the department may maintain an action to enjoin the use of all or a portion of an existing building or restrain a specific activity until there is compliance with the rules.

(5) Except for statements of witnesses given during an investigation, information that may be held in confidence under 50-63-403, and criminal justice information subject to restrictions on dissemination in accordance with Title 44, chapter 5, all records maintained by the department must be open at all times to public inspection.

**History:** Ap. p. Sec. 1, Ch. 124, L. 1929; re-en. Sec. 2737.1, R.C.M. 1935; amd. Sec. 1, Ch. 18, L. 1943; amd. Sec. 1, Ch. 278, L. 1947; amd. Sec. 93, Ch. 199, L. 1965; amd. Sec. 2, Ch. 229, L. 1967; amd. Sec. 24, Ch. 366, L. 1969; amd. Sec. 12, Ch. 226, L. 1974; amd. Sec. 1, Ch. 169, L. 1975; amd. Sec. 34, Ch. 187, L. 1977; amd. Sec. 2, Ch. 519, L. 1977; Sec. 82-1202, R.C.M. 1947; (1)(k), (1)(l) En. Secs. 19, 22, Ch. 148, L. 1911; re-en. Secs. 2756, 2759, R.C.M. 1921; re-en. Secs. 2756, 2759, R.C.M. 1935; amd. Secs. 36, 37, Ch. 187, L. 1977; Secs. 82-1226, 82-1229, R.C.M. 1947; R.C.M. 1947, 82-1202(1), (2), 82-1226, 82-1229; amd. Sec. 6, Ch. 145, L. 1979; amd. Sec. 2, Ch. 187, L. 1985; amd. Sec. 1, Ch. 262, L. 1991; amd. Sec. 6, Ch. 706, L. 1991; amd. Sec. 244, Ch. 546, L. 1995; amd. Sec. 2, Ch. 387, L. 2003; amd. Sec. 13, Ch. 449, L. 2007.

## CHAPTER 40 SMOKING IN PUBLIC PLACES

### Part 1 Montana Clean Indoor Air Act

**50-40-101. Short title.** This part may be cited as the “Montana Clean Indoor Air Act of 1979”.

**History:** En. Sec. 1, Ch. 368, L. 1979.

**50-40-102. Intent — purpose.** The legislature finds and declares that the purposes of this part are as follows:

- (1) to protect the public health and welfare by prohibiting smoking in public places and places of employment;
  - (2) to recognize the right of nonsmokers to breathe smoke-free air; and
  - (3) to recognize that the need to breathe smoke-free air has priority over the desire to smoke.
- History:** En. Sec. 2, Ch. 368, L. 1979; amd. Sec. 4, Ch. 361, L. 2003; amd. Sec. 2, Ch. 268, L. 2005.

**50-40-103. Definitions.** As used in this part, the following definitions apply:

- (1) “Bar” means an establishment with a license issued pursuant to Title 16, chapter 4, that is devoted to serving alcoholic beverages for consumption by guests or patrons on the premises and in which the serving of food is only incidental to the service of alcoholic beverages or gambling operations. The term includes but is not limited to taverns, night clubs, cocktail lounges, and casinos.
- (2) “Department” means the department of public health and human services provided for in 2-15-2201.
- (3) “Enclosed public place” means an indoor area, room, or vehicle that the general public is allowed to enter or that serves as a place of work, including but not limited to the following:
  - (a) restaurants;
  - (b) stores;
  - (c) public and private office buildings and offices, including all office buildings and offices of political subdivisions, as provided for in 50-40-201, and state government;
  - (d) trains, buses, and other forms of public transportation;
  - (e) health care facilities;
  - (f) auditoriums, arenas, and assembly facilities;
  - (g) meeting rooms open to the public;
  - (h) bars;
  - (i) community college facilities;
  - (j) facilities of the Montana university system; and
  - (k) public schools, as provided for in 20-1-220 and 50-40-104.
- (4) “Establishment” means an enterprise under one roof that serves the public and for which a single person, agency, corporation, or legal entity is responsible.
- (5) “Incidental to the service of alcoholic beverages or gambling operations” means that at least 60% of the business’s annual gross income comes from the sale of alcoholic beverages or gambling receipts, or both.
- (6) “Person” means an individual, partnership, corporation, association, political subdivision, or other entity.
- (7) “Place of work” means an enclosed room where one or more individuals work.
- (8) “Smoking” or “to smoke” includes the act of lighting, smoking, or carrying a lighted cigar, cigarette, pipe, or any smokable product and includes the use of marijuana for a debilitating medical condition as provided for in Title 50, chapter 46.

**History:** En. Sec. 3, Ch. 368, L. 1979; amd. Sec. 1, Ch. 460, L. 1981; amd. Sec. 133, Ch. 418, L. 1995; amd. Sec. 312, Ch. 546, L. 1995; amd. Sec. 3, Ch. 268, L. 2005; amd. Sec. 1, Ch. 7, L. 2011; amd. Sec. 21, Ch. 123, L. 2013.

**50-40-104. Smoking in enclosed public places prohibited — notice to public — places where prohibition inapplicable.** (1) Except as otherwise provided in this section, smoking in an enclosed public place is prohibited.

(2) The proprietor or manager of an establishment containing enclosed public places shall post a sign in a conspicuous place at all public entrances to the establishment stating, in a manner that can be easily read and understood, that smoking in the enclosed public place is prohibited.

(3) The proprietor or manager of an intrastate bus that is not chartered shall prohibit smoking in all parts of the bus.

(4) The prohibition in subsection (1) does not apply to the following places, whether or not the public is allowed access to those places:

(a) a private residence unless it is used for any of the following purposes, in which case the prohibition in subsection (1) applies:

(i) a family day-care home or group day-care home, as defined in 52-2-703 and licensed pursuant to Title 52, chapter 2, part 7;

- (ii) an adult foster care home, as defined in 50-5-101 and licensed pursuant to Title 50, chapter 5; or
- (iii) a health care facility, as defined in 50-5-101 and licensed pursuant to Title 50, chapter 5;
- (b) a private motor vehicle;
- (c) school property in which smoking is allowed pursuant to the exception in 20-1-220;
- (d) a hotel or motel room designated as a smoking room and rented to a guest; however, not more than 35% of the rooms available to rent to guests may be designated as smoking rooms; and
- (e) a site that is being used in connection with the practice of cultural activities by American Indians that is in accordance with the American Indian Religious Freedom Act, 42 U.S.C. 1996 and 1996a.

**History:** En. Sec. 4, Ch. 368, L. 1979; amd. Sec. 2, Ch. 460, L. 1981; amd. Sec. 2, Ch. 505, L. 1985; amd. Sec. 1, Ch. 458, L. 1989; (4)En. Sec. 2, Ch. 281, L. 1991; amd. Sec. 4, Ch. 268, L. 2005; amd. Sec. 28, Ch. 19, L. 2011.

**50-40-108. Enforcement.** The provisions of this part must be supervised and enforced by the department and the department's designees, local boards of health, and the boards' designees under the direction of the department.

**History:** En. Sec. 8, Ch. 368, L. 1979; amd. Sec. 5, Ch. 268, L. 2005.

**50-40-110. Rulemaking required.** The department shall adopt rules to implement this part.

**History:** En. Sec. 9, Ch. 268, L. 2005.

**50-40-115. Penalties.** (1) It is unlawful for a person to smoke in any area where smoking is prohibited under 20-1-220 or 50-40-104. A person who violates 20-1-220 or 50-40-104 is guilty of a misdemeanor and shall be subject to a fine of not less than \$25 or more than \$100.

(2) A person who owns, manages, operates, or otherwise controls a public place or place of employment and who fails to comply with the provisions of Title 50, chapter 40, is guilty of a misdemeanor after a third violation within a 3-year period and shall be warned, reprimanded, or punished as follows:

- (a) a warning for the first violation;
- (b) a written reprimand for a second violation; and
- (c) within any 3-year period, a fine of:
  - (i) \$100 for a third violation;
  - (ii) \$200 for a fourth violation; and
  - (iii) \$500 for a fifth or subsequent violation.

(3) Penalties imposed under this section may not be considered by the department of revenue for the purposes of 16-4-401 or by the department of justice for the purposes of 23-5-119, 23-5-177, or 23-5-611(1)(a) or (1)(c).

**History:** En. Sec. 8, Ch. 268, L. 2005.

## Part 2 Government Offices and Work Areas

**50-40-201. Local government buildings — smoking prohibited.** (1) In all parts of buildings maintained by a political subdivision, smoking is prohibited as provided in this section.

(2) Buildings owned and occupied by a political subdivision only and buildings leased and occupied by a political subdivision only must be smoke-free. In a building leased and occupied by a political subdivision and another entity, the on-the-scene manager of the political subdivision activity located in the building shall make the portions of the building occupied by the political subdivision activity smoke-free and is encouraged to work with the building owner or other tenants to make the building smoke-free.

(3) Restrictions contained in this section and imposed by the governing body apply uniformly to the employees of the political subdivision and the public.

**History:** En. Sec. 1, Ch. 505, L. 1985; amd. Sec. 1, Ch. 466, L. 1989; amd. Sec. 6, Ch. 539, L. 1991; amd. Sec. 1, Ch. 274, L. 1999; amd. Sec. 6, Ch. 268, L. 2005; amd. Sec. 29, Ch. 19, L. 2011.

## CHAPTER 61 FIRE SAFETY IN PUBLIC BUILDINGS

### Part 1 General Provisions

**50-61-101. Purpose of chapter.** The purpose and intent of this chapter are to provide for the public safety in case of fire in those occupancies specified in 50-61-103 and to allow for inspection of the buildings and premises by specified officers.

**History:** En. Sec. 1, Ch. 279, L. 1947; amd. Sec. 9, Ch. 229, L. 1967; R.C.M. 1947, 69-1801; amd. Sec. 14, Ch. 706, L. 1991; amd. Sec. 5, Ch. 387, L. 2003.

**50-61-102. Department of justice to administer chapter.** (1) The department of justice has general charge and supervision of the enforcement of this chapter, and the officers enumerated in 50-61-114 shall act under its general charge and supervision, shall assist the department in giving effect to this chapter, and are subject to its direction and the rules adopted under 50-3-102 and 50-3-103 for the enforcement of 50-61-120, 50-61-121, and this chapter.

(2) Upon its approval of a fire code and a plan for enforcement of the code filed by a municipality or other governmental fire agency organized under Title 7, chapter 33, the department may approve a municipal or governmental fire agency fire inspection program for local enforcement.

**History:** En. Sec. 8, Ch. 279, L. 1947; amd. Sec. 11, Ch. 229, L. 1967; amd. Sec. 13, Ch. 187, L. 1977; R.C.M. 1947, 69-1808(6); amd. Sec. 5, Ch. 506, L. 1989; amd. Sec. 15, Ch. 706, L. 1991; amd. Sec. 2, Ch. 212, L. 1995; amd. Sec. 21, Ch. 449, L. 2007.

**50-61-103. Application of chapter—definitions.** This chapter applies to the occupancies defined below:

(1) “Assembly occupancy” means the occupancy or use of a building or a structure or any portion of a building or a structure by a gathering of 50 or more persons for purposes such as civic, political, religious, or social functions, recreation, education, instruction, food or drink consumption, or awaiting transportation.

(2) “Business occupancy” means the occupancy or use of a building or a structure or any portion of a building or a structure for office, professional, or service transactions. A business occupancy includes the use of a structure for the storage of records and accounts or for an eating or drinking business establishment with an occupant load of less than 50 persons.

(3) “Educational occupancy” means the occupancy or use of a building or a structure or any portion of a building or a structure by persons assembled for the purpose of learning or receiving educational instruction. An educational occupancy includes but is not limited to any building used for:

(a) educational purposes through the 12th grade for more than 12 hours a week or 4 hours in any 1 day; or

(b) day-care purposes for more than 12 persons.

(4) “Industrial occupancy” means the occupancy or use of a building or a structure or any portion of a building or a structure for assembling, disassembling, fabricating, finishing, manufacturing, packaging, repairing, or processing operations.

(5) “Institutional occupancy” means the occupancy or use of a building or a structure or any portion of a building or a structure by more than five persons harbored or detained to receive medical, charitable, or other care or treatment or by persons involuntarily detained. An institutional occupancy includes but is not limited to:

(a) nurseries for the full-time care of children under the age of 6;

(b) hospitals, sanitariums, or nursing homes; and

(c) mental hospitals, mental sanitariums, jails, prisons, reformatories, or buildings where personal liberties of those harbored or detained are similarly restrained.

(6) “Residential occupancy” means the occupancy or use of a building or a structure or any portion of a building or a structure by persons for whom sleeping accommodations are provided and who are not harbored or detained to receive medical, charitable, or other care or treatment and who are not involuntarily detained. A residential occupancy includes but is not limited to

hotels, motels, apartment houses, dwellings, and lodging houses. A residential occupancy does not include a building used only for private residential purposes for a family.

**History:** En. Sec. 2, Ch. 279, L. 1947; amd. Sec. 10, Ch. 229, L. 1967; amd. Sec. 12, Ch. 187, L. 1977; R.C.M. 1947, 69-1802; amd. Sec. 6, Ch. 387, L. 2003.

**50-61-106. Unlawful to obstruct fire exit.** It is unlawful to obstruct in any manner any fire exit, or any hallway, corridor, or entranceway leading to a fire exit, required by rules adopted by the department of justice.

**History:** En. Sec. 5, Ch. 279, L. 1947; R.C.M. 1947, 69-1805(part); amd. Sec. 16, Ch. 706, L. 1991.

**50-61-114. Fire chief and fire inspector to make inspections.** For the purpose of examining the premises for violations of this chapter and rules adopted under 50-3-103 for the enforcement of this chapter, the chief or fire inspector of the governmental fire agency organized under Title 7, chapter 33, when a fire inspection program is established, or a fire inspector of the department of justice, when a fire inspection program does not exist:

(1) shall enter into school buildings at least once each 18 months; and

(2) may enter into all other buildings and upon all other premises within the jurisdiction, according to priority schedules established by the department for conducting inspections of buildings and premises.

**History:** En. Sec. 8, Ch. 279, L. 1947; amd. Sec. 11, Ch. 229, L. 1967; amd. Sec. 13, Ch. 187, L. 1977; R.C.M. 1947, 69-1808(4); amd. Sec. 1, Ch. 323, L. 1985; amd. Sec. 17, Ch. 706, L. 1991; amd. Sec. 3, Ch. 212, L. 1995; amd. Sec. 7, Ch. 387, L. 2003; amd. Sec. 22, Ch. 449, L. 2007.

**50-61-115. Notice of violations.** (1) When a building is found that is not in compliance with fire safety rules promulgated by the department of justice, the person making the inspection or the department shall serve a written notice upon the party whose duty it is to maintain the safety of the building.

(2) The notice must specify the time within which the defective conditions must be remedied.

(3) The notice is served if delivered to the person to be notified, if left with any adult person at the usual residence or place of business of the person to be notified, or if deposited in the post office directed to the last-known address of the person to be notified. Whenever buildings are managed and controlled by a board of trustees, board of commissioners, or other governing body, the notice is served if delivered to the president, secretary, or treasurer of the board of trustees, board of commissioners, or other governing body.

**History:** En. Sec. 8, Ch. 279, L. 1947; amd. Sec. 11, Ch. 229, L. 1967; amd. Sec. 13, Ch. 187, L. 1977; R.C.M. 1947, 69-1808(part); amd. Sec. 18, Ch. 706, L. 1991; amd. Sec. 23, Ch. 449, L. 2007.

**50-61-116. Lessee who corrects violations entitled to reimbursement.** The occupant or lessee of any building who is required to erect fire escapes under the provisions of this chapter is entitled to reimbursement for the cost and expense of erecting the fire escapes out of the rent or lease money of the premises, and the reimbursement is not a breach of any existing lease, contract, or covenant or grounds for any action or damage ouster.

**History:** En. Sec. 8, Ch. 279, L. 1947; amd. Sec. 11, Ch. 229, L. 1967; amd. Sec. 13, Ch. 187, L. 1977; R.C.M. 1947, 69-1808(part); amd. Sec. 1863, Ch. 56, L. 2009.

**50-61-117. Prosecution of violations.** It is the duty of the department of justice or other authorized officer to furnish the county attorney with all evidence of violations of rules adopted by the department within the county where said violations occur, and, if the evidence discloses the fact that a violation has occurred, it is the duty of the county attorney of the county to prosecute the person committing the violation in the same manner as in other cases.

**History:** En. Sec. 10, Ch. 279, L. 1947; R.C.M. 1947, 69-1809(part); amd. Sec. 19, Ch. 706, L. 1991.

**50-61-118. Injunction authorized.** In addition to the other remedies and penalties provided in this chapter, upon the failure of any of the parties charged with the duty to maintain the safety of the building premises in accordance with rules adopted by the department of justice, the attorney general of the state or the county attorney of the county where the building is located shall bring an action against the owner, lessee, and occupants of the building for an injunction enjoining the further occupancy of it until it is in compliance with this chapter. The action may be brought in the county where the building is located.

**History:** En. Sec. 11, Ch. 279, L. 1947; R.C.M. 1947, 69-1810; amd. Sec. 20, Ch. 37, L. 1979; amd. Sec. 20, Ch. 706, L. 1991.



**50-61-119. Violation of chapter a misdemeanor.** (1) Any person failing, neglecting, or refusing to comply with any of the provisions of this chapter shall be deemed guilty of a misdemeanor and shall be punished by a fine of not less than \$50.

(2) Each day's failure to comply with any of the provisions of this chapter, after the expiration of the time stipulated in the written notice provided for herein, shall constitute a separate offense.

**History:** En. Sec. 10, Ch. 279, L. 1947; R.C.M. 1947, 69-1809(part).

**50-61-120. Exceeding fire code limits for storage of smokeless powder and small arms primers.** (1) A retail establishment may exceed the limits prescribed by an adopted fire or safety code or a local government ordinance or resolution for the storage of smokeless powder and small arms primers if the storage conforms to the provisions contained in 50-61-121.

(2) Nothing in this section may be construed to allow repackaging of smokeless powder from larger to smaller containers on the retail premises.

**History:** En. Sec. 1, Ch. 506, L. 1989.

**50-61-121. Restrictions on storage of smokeless powder and small arms primers.**

(1) A retail establishment may stock up to 400 pounds of smokeless powder on the premises of a building with a sprinkler system or 200 pounds on the premises of a building without a sprinkler system if storage of this stock conforms to the following conditions:

- (a) no more than 20 pounds are on display in a customer service area;
- (b) the storage area is clearly posted as off limits to customers;
- (c) the storage area is clearly posted prohibiting smoking or any open flame or sparks; and
- (d) the storage area is a room designed and constructed to restrict smoke travel that is separate from the customer service area, that has a self-closing entrance door, and that conforms to one of the following:

(i) It is constructed of material sufficient to achieve a 1-hour fire resistant-rated barrier between the storage area and the customer service area. The smokeless powder must be stored in cabinets made of wood or equivalent material that is at least 1 inch thick, and each cabinet must contain no more than 200 pounds of smokeless powder. Cabinets must be separated by 25 feet.

(ii) It is protected by a fire suppression sprinkler system approved by the state fire prevention and investigation section of the department of justice or a chief of a governmental fire agency organized under Title 7, chapter 33, or the chief's designee, and the storage area has cabinets as provided for in subsection (1)(d)(i).

(iii) Smokeless powder stock is contained in a cabinet with casters and constructed of wood at least 1 inch thick that is covered on all sides with 5/8-inch sheetrock.

(2) A retail establishment may stock up to 250,000 small arms primers if storage of this stock conforms to the following conditions:

(a) no more than 20,000 primers in a building with a sprinkler system or 10,000 primers in a building without a sprinkler system are on display in a customer service area;

(b) the storage area must conform to the conditions imposed in subsections (1)(a) through (1)(d), except that no more than 125,000 small arms primers may be stored in one cabinet, and the minimum required separation between cabinets is 15 feet; and

(c) small arms primers are retained in packaging approved by the U.S. department of transportation.

**History:** En. Sec. 2, Ch. 506, L. 1989; amd. Sec. 21, Ch. 706, L. 1991; amd. Sec. 24, Ch. 449, L. 2007.

## CHAPTER 78

### EMPLOYEE AND COMMUNITY HAZARDOUS CHEMICAL INFORMATION ACT

#### Part 1 General

**50-78-101. Short title.** This chapter may be known and cited as the "Employee and Community Hazardous Chemical Information Act".

**History:** En. Sec. 1, Ch. 641, L. 1985.

**50-78-102. Definitions.** As used in this chapter, the following definitions apply:

(1) “Chemical manufacturer” means an employer in codes 31 through 33, as defined in the North American Industry Classification System Manual, with a workplace where chemicals are produced for use or distribution.

(2) “Chemical name” means the scientific designation of a chemical in accordance with the nomenclature system developed by the international union of pure and applied chemistry or the chemical abstracts service rules of nomenclature or a name that will clearly identify the chemical for the purpose of conducting a hazard evaluation.

(3) “Common name” means any designation or identification, such as code name, code number, trade name, brand name, or generic name, used to identify a chemical other than by its chemical name.

(4) “Department” means the department of environmental quality provided for in Title 2, chapter 15, part 35.

(5) “Designated representative” means:

(a) the individual or organization to whom an employee gives written authorization to exercise the employee’s rights under this chapter; or

(b) a recognized or certified collective bargaining agent who is automatically a designated representative without regard to written employee authorization.

(6) “Distributor” means a business, other than a chemical manufacturer, that supplies hazardous chemicals to other distributors or to employers.

(7) “Employee” means a person who may be exposed to hazardous chemicals in the workplace under normal operating conditions or possible emergencies.

(8) “Employer” means a person, firm, corporation, partnership, association, governmental agency, or other entity that is engaged in business or providing services and that employs workers.

(9) “Exposure” means ingestion, inhalation, absorption, or other contact in the workplace with a hazardous chemical and includes potential, accidental, or possible exposure.

(10) “Hazardous chemical” means, except as provided in 50-78-103:

(a) any element, chemical compound, or mixture of elements or compounds that is a physical hazard or health hazard, as defined by subsection (c) of the OSHA standard, and that has been identified as such by the federal occupational safety and health administration or the manufacturer and has been filed with the federal occupational safety and health administration;

(b) any hazardous chemical, as defined by subsection (d)(3) of the OSHA standard; or

(c) any emitter of ionizing radiation.

(11) “Label” means any written, printed, or graphic material displayed on or affixed to containers of hazardous chemicals.

(12) “Local fire chief” means the chief of a governmental fire agency organized under Title 7, chapter 33, or the chief’s designee.

(13) “Manufacturing employer” means an employer with a workplace classified in codes 31 through 33 of the North American Industry Classification System who manufactures, uses, or stores a hazardous chemical.

(14) “Material safety data sheet” means a document prepared in accordance with the requirements of the OSHA standard and containing chemical hazard and safe handling information.

(15) “Nonmanufacturing employer” means an employer with a workplace classified in a North American Industry Classification System code other than 31 through 33.

(16) “OSHA standard” means the hazard communication standard issued by the federal occupational safety and health administration, codified under 29 CFR 1910.1200.

(17) “Trade secret” means a confidential formula, pattern, process, device, or information, including chemical name or other unique chemical identifier, that is used in an employer’s business and that gives the employer an opportunity to obtain an advantage over competitors.

(18) “Work area” means a room or defined space in a workplace where hazardous chemicals are produced, used, or stored and where employees are present.

(19) “Workplace” means an establishment at one geographical location containing one or more work areas.

(20) “Workplace chemical list” means the list of hazardous chemicals developed under subsection (e)(1)(i) of the OSHA standard or under this chapter.

**History:** En. Sec. 2, Ch. 641, L. 1985; amd. Sec. 145, Ch. 418, L. 1995; amd. Sec. 332, Ch. 546, L. 1995; amd. Sec. 80, Ch. 51, L. 1999; amd. Sec. 36, Ch. 449, L. 2007.

**50-78-103. Applicability — exemptions.** (1) The provisions of this chapter do not apply to:

- (a) any consumer product intended for personal consumption or use by an employee;
- (b) any retail food sale establishment or other retail trade establishment, exclusive of processing and repair areas;
- (c) a food, drug, or cosmetic as defined in the Montana Food, Drug, and Cosmetic Act, Title 50, chapter 31;
- (d) a source of ionizing radiation that is an exempt or generally licensed material or device, as defined and described in rules adopted under 50-79-202 and implementing 50-79-104 and 50-79-202;
- (e) the radiological properties of any source, byproduct, or special nuclear material as defined in sections 11(z), 11(aa), and 11(e)(1) of the federal Atomic Energy Act of 1954; or
- (f) sealed containers of hazardous chemicals:
- (i) during transportation or while in storage at transportation terminals, so long as existing labels are not removed or defaced and the employer complies with state and federal regulations relating to the transportation of hazardous chemicals; or
- (ii) at a facility of a distributor, as long as existing labels are not removed or defaced and the employer distributes material safety data sheets as required under 50-78-203(1).

(2) Employers operating the following workplaces are in compliance with this chapter if they retain and make accessible to employees and, when applicable, to students, all material safety data sheets received or, if no material safety data sheet is received for a hazardous chemical, any other information received on its hazards and safe handling and if the provisions of 50-78-206, 50-78-301(2) through (4), and 50-78-305 are met:

- (a) a teaching, research, or testing laboratory, including any associated storeroom;
- (b) a clinical laboratory or health care facility as defined in 50-5-101;
- (c) a pharmacy as defined in 37-7-101;
- (d) a public health center as defined in 7-34-2102; or
- (e) an office of a physician, dentist, osteopath, podiatrist, optometrist, or veterinarian licensed under Title 37.

(3) The provisions of this chapter do not apply to any hazardous chemical subject to the packaging and labeling requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136, et seq., except that a chemical manufacturer producing the hazardous chemicals must comply with all provisions of this chapter.

**History:** En. Sec. 3, Ch. 641, L. 1985; amd. Sec. 1, Ch. 536, L. 1987; amd. Sec. 16, Ch. 93, L. 1997.

**50-78-104. Relationship to OSHA standard.** Any employer complying with the provisions of the OSHA standard, whether or not that employer is regulated by the OSHA standard, is exempt from the provisions of this chapter, except for 50-78-204 and 50-78-301.

**History:** En. Sec. 4, Ch. 641, L. 1985; amd. Sec. 2, Ch. 536, L. 1987.

## Part 2 Notice Required

**50-78-201. Notice to employees.** Employers shall post adequate notice at locations where notices are normally posted informing employees about their rights under this chapter.

**History:** En. Sec. 5, Ch. 641, L. 1985.

**50-78-202. Workplace chemical list.** (1) Each employer shall compile and maintain a workplace chemical list. Except as provided in 50-78-205, the workplace chemical list must contain the chemical name of each hazardous chemical in the workplace, cross-referenced to any generally used common name. For chemical mixtures, the chemical name of each hazardous constituent indicated on the material safety data sheet must be provided in parentheses along with the chemical name. The chemical abstracts service registry number, if available from the material safety data sheet, must accompany all chemical names on the workplace chemical list.

(2) The workplace chemical list must indicate the work area in which each hazardous chemical is normally stored or used.

(3) The workplace chemical list may be prepared for the workplace as a whole or for each work area, provided the list is readily available to employees and their designated representatives.

(4) New or newly assigned employees must be made aware of the workplace chemical list before working with or in a work area containing hazardous chemicals.

(5) The workplace chemical list must be updated as necessary but not less than annually.

**History:** En. Sec. 6, Ch. 641, L. 1985; amd. Sec. 1, Ch. 15, Sp. L. June 1986.

**50-78-203. Material safety data sheets.** (1) Each chemical manufacturer or distributor shall provide a manufacturing or nonmanufacturing employer with the appropriate material safety data sheet upon delivery of a hazardous chemical.

(2) Each employer shall maintain the most current material safety data sheet for each hazardous chemical in the workplace. If a material safety data sheet has not been provided by the chemical manufacturer or distributor at the time a hazardous chemical is delivered to the employer, the employer shall request one in writing within 5 working days. Each employer shall maintain a copy of any correspondence sent or received by the employer in an effort to obtain a material safety data sheet for a hazardous chemical when none was provided by the chemical manufacturer or distributor.

(3) Material safety data sheets must be provided by the employer to any employee or designated representative upon request for review or copying.

**History:** En. Sec. 7, Ch. 641, L. 1985.

**50-78-204. Employee rights.** (1) An employee who may be exposed to hazardous chemicals must be informed of the potential or actual exposure and must be provided access to the workplace chemical list and to the material safety data sheet for each hazardous chemical. An employer who does not provide an employee with information on a hazardous chemical within 5 working days of the request for information, as required by this chapter, may not require the employee to work with the hazardous chemical until the information is made available.

(2) Each employee must receive training from the employer, as provided in 50-78-305 or in the OSHA standard, on the hazards of workplace chemicals and on protective measures for handling those chemicals.

(3) Each employee required to work with a hazardous chemical must be provided with appropriate personal protective equipment.

(4) An employer may not discharge, cause to be discharged, discipline, discriminate against, or initiate any adverse personnel action against any employee who exercises the employee's rights, testifies, or assists others in exercising their rights or duties under this chapter.

(5) A waiver by an employee of the benefits, rights, or requirements of this chapter is against public policy and is void. An employer's request or requirement that an employee waive any rights under this chapter as a condition of employment is a violation of this chapter.

(6) A designated representative may act on behalf of an employee in pursuing any right or enforcement remedy under this chapter.

**History:** En. Sec. 10, Ch. 641, L. 1985; amd. Sec. 1895, Ch. 56, L. 2009.

**50-78-205. Trade secret confidentiality.** (1) An employer who believes that the name of a hazardous chemical is a trade secret may withhold the chemical name from the material safety data sheet and workplace chemical list only if:

(a) a material safety data sheet, coded to an identifying notation on each container of the hazardous chemical, is available in the work area where the hazardous chemical is present;

(b) the material safety data sheet discloses the properties and effects of the hazardous chemical;

(c) the specific chemical identity is provided to a treating physician or nurse in the event of a medical emergency, as provided for in subsection (i)(2) of the OSHA standard;

(d) the specific chemical identity is provided in nonemergency situations to a health professional providing medical or other occupational health services to an exposed employee, as provided for in subsections (i)(3) through (5) of the OSHA standard; and

(e) the employer claims that the information is a trade secret and that claim can be supported.

(2) If a person believes that disclosing certain trade information on a material safety data sheet will reveal a trade secret, a trade secret claim may be filed with the department, which shall use this procedure to determine the validity of the trade secret claim:

(a) The department shall give notice by certified mail to the person making the claim to submit trade secret substantiation information within 30 days after receipt of such notice. Failure to supply the substantiation information constitutes a waiver of the trade secret claim.

(b) The department has the responsibility to determine the validity of the trade secret claim and shall consider the trade secret substantiation information as confidential.

(c) If the department determines the trade secret claim is not valid, the department shall so notify by certified mail the person making the claim for trade secret protection, stating the basis for the decision. The person making the claim has 30 days after notification by the department to initiate judicial review in the district court of Lewis and Clark County and obtain a preliminary injunction or other court order to prevent disclosure of the trade secret.

(d) The unauthorized use or disclosure of trade secret information submitted under this section is a misdemeanor.

**History:** En. Sec. 11, Ch. 641, L. 1985.

**50-78-206. Labels.** (1) An employer or distributor may not remove or deface any existing label on a container of a hazardous chemical, except that the chemical name may be concealed under trade secret protection as provided in 50-78-205.

(2) Any portable container intended for an immediate transfer of a hazardous chemical is not required to be labeled.

**History:** En. Sec. 8, Ch. 641, L. 1985.

## **Part 3**

### **Information and Education**

**50-78-301. Emergency and community information.** (1) An employer shall comply with the provisions of the federal Emergency Planning and Community Right-to-Know Act of 1986 or be subject to the enforcement provisions thereof.

(2) The local fire chief must be permitted onsite inspection of hazardous chemicals in any workplace, including workplaces under the control of a state agency, for the purposes of planning fire department activities in case of an emergency and reviewing compliance with this chapter. For a workplace that employs fire safety personnel, the local fire chief shall consult with the responsible fire safety official to clarify respective roles and response procedures in the event of an emergency.

(3) As a result of an inspection, the local fire chief may note and report for possible action by the county attorney or other appropriate law enforcement official any violation by an employer of a provision of this chapter or any other law pertaining to hazardous chemicals or fire safety.

(4) The local fire chief shall consult at least annually on safety and emergency considerations with each person responsible for the operation of any research, educational, or testing laboratory workplace. The consultation may result in recommendations or, under the provisions of 50-62-102, orders by the fire chief to be implemented by the laboratory operator to enhance public safety, to reduce the likelihood of emergency incidents, or to improve emergency response in the event of an accident. The person responsible for the operation of the laboratory shall contact the local fire chief at any time there is a significant change in the location or nature of the hazardous chemicals in the workplace, initiation of any new and potentially dangerous method of processing or reacting hazardous chemicals, or any other operational change affecting emergency response considerations.

**History:** En. Sec. 9, Ch. 641, L. 1985; amd. Sec. 2, Ch. 15, Sp. L. June 1986; amd. Sec. 3, Ch. 536, L. 1987; amd. Sec. 36, Ch. 706, L. 1991.

**50-78-302 through 50-78-304 reserved.**

**50-78-305. Employee education program.** (1) Each employer shall provide, at least annually, an education and training program for all of the employer's employees using or handling hazardous chemicals. Additional instruction must be provided whenever the potential for exposure to hazardous chemicals is altered or whenever new and significant information is received by the employer concerning the hazards of a chemical. New or newly assigned



employees must be provided training before working with or in a work area containing a hazardous chemical.

(2) The programs must provide instruction in:

(a) interpreting labels and material safety data sheets and the relationship between these two methods of hazard communication;

(b) the location and acute and chronic effects of hazardous chemicals used by the employees; and

(c) the safe handling, protective equipment, first-aid treatment, and cleanup and disposal procedures for hazardous chemicals.

(3) The employer shall keep a record of the dates of training sessions given to employees and the names of the employees attending.

**History:** En. Sec. 12, Ch. 641, L. 1985; amd. Sec. 1896, Ch. 56, L. 2009.

**50-78-306. Departmental information program.** (1) The department may develop and provide to any employer a suitable form of notice to inform employees of their rights under this chapter.

(2) The department may develop an education and training program to assist employers in complying with the provisions of 50-78-204.

(3) The department may develop and distribute a supply of informational leaflets on employer duties, employee rights, the effects of hazardous chemicals, and any other topic related to hazardous chemicals in the workplace.

(4) The department may contract with the Montana university system or any other public or private organization to develop and implement an information program on hazardous chemicals in the workplace.

**History:** En. Sec. 13, Ch. 641, L. 1985.

## Part 4 Enforcement and Penalties

**50-78-401. No effect on other duties or liabilities.** The provision of information to an employee does not in any way affect the liability of an employer with regard to the health and safety of an employee or other person exposed to hazardous chemicals, nor does it affect the employer's responsibility to take any action to prevent the occurrence of occupational disease or accident as required under any other provision of law. The provision of information to an employee does not affect any other duty of a manufacturer, producer, or formulator to warn ultimate users of a hazardous chemical under any other provision of law.

**History:** En. Sec. 14, Ch. 641, L. 1985.

**50-78-402. Complaints, investigation, and penalties.** (1) An employee in a workplace covered by the OSHA standard who believes the employer is not complying with the provisions of the OSHA standard may report the alleged violation to the federal occupational safety and health administration.

(2) An employee who believes an employer is not complying with the provisions of this chapter may submit a written complaint to the local health officer, as defined and described in Title 50, chapter 2, part 1.

(3) If the local health officer chooses to act on the complaint, the officer shall:

(a) within 5 working days of receipt of the complaint, investigate the complaint and, in the event of an apparent violation, seek a corrective response from the employer;

(b) within 10 working days of receipt of a complaint, complete a report that details the findings of the investigation and the response of the employer;

(c) upon completion of the report, submit copies to the employee requesting the investigation, the county attorney, and the employer; and

(d) if the evidence suggests that the employer has violated the provisions of this chapter and the health officer does not receive a corrective response within 10 days of notifying the employer of the violation, file a complaint in the appropriate court or request appropriate action by the county attorney to prosecute the alleged violation.

(4) An employee may submit a written complaint to the county attorney.

(5) The county attorney shall investigate any complaint received and, if a violation appears to have occurred and the county attorney does not receive a corrective response within 10 days of notifying the employer of the violation, initiate appropriate court proceedings to prosecute the violation.

(6) A person found to be knowingly in violation of this chapter is guilty of a misdemeanor. Each day of violation is a separate offense.

**History:** En. Sec. 15, Ch. 641, L. 1985; amd. Sec. 1897, Ch. 56, L. 2009.

## TITLE 52

### FAMILY SERVICES

#### CHAPTER 1 ADMINISTRATION

##### Part 1 General

**52-1-101. Purpose.** It is the public policy of the legislature to reduce duplication and fragmentation of services to youth, families, and senior citizens by creating a department that shall develop and maintain consolidated programs and services, except youth correctional services, within available resources, and a planned continuum of services to:

- (1) provide protective services to ensure the health, welfare, and safety of children and adults who are in danger of abuse, neglect, or exploitation within communities; and
- (2) provide supportive services to enable senior citizens to maintain their independence.

**History:** En. Sec. 3, Ch. 609, L. 1987; amd. Sec. 333, Ch. 546, L. 1995.

**52-1-102. Definitions.** Unless the context requires otherwise, in this title, the following definitions apply:

(1) "Department" means the department of public health and human services provided for in 2-15-2201.

(2) "Director" means the director of public health and human services provided for in 2-15-2201.

**History:** En. Sec. 4, Ch. 609, L. 1987; amd. Sec. 334, Ch. 546, L. 1995.

**52-1-103. Powers and duties of department.** The department shall:

- (1) administer and supervise all forms of child and adult protective services;
- (2) act as the lead agency in coordinating and planning services to children with multiagency service needs;
- (3) establish a system of councils at the state and local levels to make recommendations and to advise the department on issues, including children's issues;
- (4) provide the following functions, as necessary, for youth in need of care:
  - (a) intake, investigation, case management, and client supervision;
  - (b) placement in youth care facilities;
  - (c) contracting for necessary services;
  - (d) protective services day care; and
  - (e) adoption;
- (5) register or license youth care facilities, child-placing agencies, day-care facilities, community homes for persons with developmental disabilities, community homes for severely disabled persons, and adult foster care facilities;
- (6) act as lead agency in implementing and coordinating child-care programs and services under the Montana Child Care Act;
- (7) administer the Interstate Compact for the Placement of Children;
- (8) (a) administer child abuse prevention services funded through child abuse grants and the Montana children's trust fund provided for in Title 52, chapter 7, part 1; and

- (b) administer elder abuse prevention services;
- (9) develop a statewide youth services and resources plan that takes into consideration local needs;
- (10) administer services to the aged;
- (11) provide consultant services to:
  - (a) facilities providing care for adults who are needy, indigent, or dependent or who have disabilities; and
  - (b) youth care facilities;
- (12) use the staff and services of other state agencies and units of the Montana university system, within their respective statutory functions, to carry out its functions under this title;
- (13) contract, as necessary, for administration of child and adult protection services for each county; and
- (14) adopt rules necessary to carry out the purposes of 52-2-612 and this chapter.

**History:** En. Sec. 5, Ch. 609, L. 1987; amd. Sec. 61, Ch. 83, L. 1989; amd. Sec. 7, Ch. 692, L. 1989; amd. Sec. 8, Ch. 655, L. 1991; amd. Sec. 1, Ch. 91, L. 1993; amd. Sec. 21, Ch. 255, L. 1995; amd. Sec. 22, Ch. 458, L. 1995; amd. Sec. 335, Ch. 546, L. 1995; amd. Sec. 11, Ch. 171, L. 1997; amd. Sec. 49, Ch. 472, L. 1997; amd. Sec. 10, Ch. 571, L. 2001; amd. Sec. 102, Ch. 114, L. 2003.

## CHAPTER 2 CHILDREN'S SERVICES

### Part 1 Child Welfare Services

**52-2-101. Definitions.** As used in this part, the following definitions apply:

- (1) "Child welfare services" means the establishing, extending, and strengthening of child welfare services, especially in predominantly rural areas, for the protection and care of abused or neglected children.
- (2) "Department" means the department of public health and human services provided for in 2-15-2201.

**History:** (1), (2)En. Sec. 2, Part 6, Ch. 82, L. 1937; amd. Sec. 25, Ch. 264, L. 1955; amd. Sec. 49, Ch. 121, L. 1974; Sec. 71-706, R.C.M. 1947; (3), (4)En. 71-201.1 by Sec. 19, Ch. 121, L. 1974; Sec. 71-201.1, R.C.M. 1947; R.C.M. 1947, 71-201.1, 71-706; amd. Sec. 2, Ch. 447, L. 1987; amd. Sec. 87, Ch. 609, L. 1987; Sec. 53-4-101, MCA 1989; red. 52-2-101 by Code Commissioner, 1991; amd. Sec. 9, Ch. 249, L. 1991; amd. Sec. 6, Ch. 356, L. 1993; amd. Sec. 56, Ch. 18, L. 1995; amd. Sec. 23, Ch. 458, L. 1995; amd. Sec. 337, Ch. 546, L. 1995.

### Part 2 Multiagency Children's Services

**52-2-211. County interdisciplinary child information and school safety team.**

(1) The following persons and agencies operating within a county shall by written agreement form a county interdisciplinary child information and school safety team:

- (a) the youth court;
- (b) the county attorney;
- (c) the department of public health and human services;
- (d) the county superintendent of schools;
- (e) the sheriff;
- (f) the chief of any police force;
- (g) the superintendents of public school districts; and
- (h) the department of corrections.

(2) The persons and agencies signing a written agreement under subsection (1) may by majority vote allow the following persons to sign the written agreement and join the team:

- (a) physicians, psychologists, psychiatrists, nurses, and other providers of medical and mental health care;
- (b) entities operating private elementary and secondary schools;
- (c) attorneys; and
- (d) a person or entity that has or may have a legitimate interest in one or more children that the team will serve.

(3) (a) The members of the team or their designees may form one or more auxiliary teams for the purpose of providing service to a single child, a group of children, or children with a particular type of problem or for any other purpose. Auxiliary teams are subject to the written agreement.

(b) A member of an auxiliary team must be a person who has personal knowledge of or experience with the child or children in the member's respective field.

(4) The purpose of the team and written agreement is to facilitate the exchange and sharing of information that one or more team members may be able to use in serving a child in the course of their professions and occupations, including but not limited to abused or neglected children, delinquent youth, and youth in need of intervention, and of information relating to issues of school safety. Information regarding a child that a team member supplies to other team members or that is disseminated to a team member under 41-3-205 or 41-5-215(2) and (3) may not be disseminated beyond the organizations or departments that have an authorized member on the team under subsection (1) or (2).

(5) The terms of the written agreement must provide for the rules under which the team will operate, the method by which information will be shared, distributed, and managed, and any other matters necessary to the purpose and functions of the team.

(6) The terms of the written agreement must state how the team will coordinate its efforts with interdisciplinary child protective teams as provided in 41-3-108 and youth placement committees as provided for in 41-5-121.

(7) To the extent that the county interdisciplinary child information and school safety team is involved in a proceeding that is held prior to adjudication of a youth in youth court, the team satisfies the requirements of 20 U.S.C. 1232g(b)(1)(E)(ii)(I) of the Family Educational Rights and Privacy Act of 1974. Montana school districts may release education records to the team. The terms of the written agreement described in subsection (5) must include a requirement that the officials and authorities to whom the information is disclosed certify in writing to the school district that is releasing the education records that the education records or information from the education records will not be disclosed to any other party without the prior written consent of the parent or guardian of the student.

**History:** En. Sec. 1, Ch. 510, L. 1991; amd. Sec. 26, Ch. 458, L. 1995; amd. Sec. 7, Ch. 466, L. 1995; amd. Sec. 341, Ch. 546, L. 1995; amd. Sec. 58, Ch. 550, L. 1997; amd. Sec. 2, Ch. 564, L. 1999; amd. Sec. 7, Ch. 364, L. 2013.

### **Part 3**

#### **Multiagency Service Placement Plan**

**52-2-301. State policy.** The legislature declares that it is the policy of this state:

(1) to provide for and encourage the development of a stable system of care, including quality education, treatment, and services for the high-risk children of this state with multiagency service needs, to the extent that funds are available;

(2) to serve high-risk children with multiagency service needs either in their homes or in the least restrictive and most appropriate setting for their needs in order to preserve the unity and welfare of the family, whenever possible, and to provide for their care and protection and mental, social, and physical development;

(3) to serve high-risk children with multiagency service needs within their home, community, region, and state, whenever possible, and to use out-of-state providers as a last resort;

(4) to provide integrated services to high-risk children with multiagency service needs;

(5) to contain costs and reduce the use of high-cost, highly restrictive, out-of-home placements;

(6) to increase the capacity of communities to serve high-risk children with multiagency service needs in the least restrictive and most appropriate setting for their needs by promoting collaboration and cooperation among the agencies that provide services to children;

(7) to prioritize available resources for meeting the essential needs of high-risk children with multiagency service needs; and

(8) to reduce out-of-home and out-of-community placements through a children's system of care account to fund in-state and community-based services that meet the needs of high-risk children with multiagency service needs in the least restrictive and most appropriate setting possible.

**History:** En. Sec. 2, Ch. 324, L. 1993; amd. Sec. 1, Ch. 118, L. 2003; amd. Sec. 2, Ch. 123, L. 2007.

**52-2-302. Definitions.** The following definitions apply to this part:

(1) (a) “High-risk child with multiagency service needs” means a child under 18 years of age who is seriously emotionally disturbed, who is placed or who imminently may be placed in an out-of-home setting, and who has a need for collaboration from more than one state agency in order to address the child’s needs.

(b) The term does not include a child incarcerated in a state youth correctional facility.

(2) “Least restrictive and most appropriate setting” means a setting in which a high-risk child with multiagency service needs is served:

(a) within the child’s family or community; or

(b) outside the child’s family or community where the needed services are not available within the child’s family or community and where the setting is determined to be the most appropriate alternative setting based on:

(i) the safety of the child and others;

(ii) ethnic and cultural norms;

(iii) preservation of the family;

(iv) services needed by the child and the family;

(v) the geographic proximity to the child’s family and community if proximity is important to the child’s treatment.

(3) “Provider” means an agency of state or local government, a person, or a program authorized to provide treatment or services to a high-risk child with multiagency service needs who is suffering from mental, behavioral, or emotional disorders.

(4) “Services” has the meaning as defined in 52-2-202.

(5) “System of care” means an integrated service support system that:

(a) emphasizes the strengths of the child and the child’s family;

(b) is comprehensive and individualized; and

(c) provides for:

(i) culturally competent and developmentally appropriate services in the least restrictive and most appropriate setting;

(ii) full involvement of families and providers as partners;

(iii) interagency collaboration; and

(iv) unified care and treatment planning at the individual child level.

(6) “Wraparound philosophy of care” means a planning process that is designed to address the needs of a child and the child’s family and that:

(a) empowers the family to take the lead in making decisions affecting the planning for support systems and services;

(b) reflects the family’s values, preferences, culture, strengths, and needs;

(c) emphasizes community-based natural and informal support systems;

(d) involves collaboration among members of a team that is developed with involvement of the family and that includes agencies, providers, and others who offer support to the child and family;

(e) provides services in the least restrictive and most accessible setting possible; and

(f) contains measurable outcomes that are regularly reviewed by the team and adjusted as necessary.

**History:** En. Sec. 1, Ch. 324, L. 1993; amd. Sec. 2, Ch. 118, L. 2003; amd. Sec. 3, Ch. 430, L. 2009.

**52-2-303. Children’s system of care planning committee — membership — administration.** (1) There is a children’s system of care planning committee.

(2) The committee is composed of the following members:

(a) an appointee of the director of the department of public health and human services representing the mental health program;

(b) an appointee of the director of the department of public health and human services representing child protective services;

(c) an appointee of the director of the department of public health and human services representing the developmental disability program;

(d) an appointee of the director of the department of public health and human services representing the chemical dependency treatment program;



(e) other appointees considered appropriate by the director of the department of public health and human services who may be representatives of families of high-risk children with multiagency service needs, service providers, or other interested persons or governmental agencies;

(f) an appointee of the superintendent of public instruction representing education;

(g) an appointee of the director of the department of corrections;

(h) an appointee of the youth justice council of the board of crime control; and

(i) an appointee of the supreme court representing the youth courts.

(3) The committee is attached to the department of public health and human services for administrative purposes only as provided in 2-15-121.

(4) Except as provided in this section, the committee must be administered in accordance with 2-15-122.

**History:** En. Sec. 3, Ch. 324, L. 1993; amd. Sec. 148, Ch. 418, L. 1995; amd. Sec. 342, Ch. 546, L. 1995; amd. Sec. 3, Ch. 118, L. 2003.

**52-2-304. Committee duties.** (1) The committee established in 52-2-303 shall, to the extent possible within existing resources:

(a) develop policies aimed at eliminating or reducing barriers to the implementation of a system of care;

(b) promote the development of an in-state quality array of core services in order to assist in returning high-risk children with multiagency service needs from out-of-state placements, limiting and preventing the placement of high-risk children with multiagency service needs out of state, and maintaining high-risk children with multiagency service needs within the least restrictive and most appropriate setting;

(c) advise local agencies to ensure that the agencies comply with applicable statutes, administrative rules, and department policy in committing funds and resources for the implementation of unified plans of care for high-risk children with multiagency service needs and in making any determination that a high-risk child with multiagency service needs cannot be served by an in-state provider;

(d) encourage the development of local interagency teams with participation from representatives from child serving agencies who are authorized to commit resources and make decisions on behalf of the agency represented;

(e) specify outcome indicators and measures to evaluate the effectiveness of the system of care;

(f) develop mechanisms to elicit meaningful participation from parents, family members, and youth who are currently being served or who have been served in the children's system of care; and

(g) take into consideration the policies, plans, and budget developed by any service area authority provided for in 53-21-1006.

(2) The committee shall coordinate responsibility for the development of a stable system of care for high-risk children with multiagency service needs that may include, as appropriate within existing resources:

(a) pooling funding from federal, state, and local sources to maximize the most cost-effective use of funds to provide services in the least restrictive and most appropriate setting to high-risk children with multiagency service needs;

(b) applying for federal waivers and grants to improve the delivery of integrated services to high-risk children with multiagency service needs;

(c) providing for multiagency data collection and for analysis relevant to the creation of an accurate profile of the state's high-risk children with multiagency service needs in order to provide for the use of services based on client needs and outcomes and use of the analysis in the decisionmaking process;

(d) developing mechanisms for the pooling of human and fiscal resources; and

(e) providing training and technical assistance, as funds permit, at the local level regarding governance, development of a system of care, and delivery of integrated multiagency children's services.

(3) (a) In order to maximize integration and minimize duplication, the local interagency team, provided for in subsection (1)(d), may be facilitated in conjunction with an existing statutory team for providing youth services, including:

- (i) a child protective team as provided for in 41-3-108;
- (ii) a youth placement committee as provided for in 41-5-121 and 41-5-122;
- (iii) a county interdisciplinary child information and school safety team or an auxiliary team as provided for in 52-2-211;
- (iv) a foster care review committee as provided for in 41-3-115;
- (v) a local citizen review board as provided for in 41-3-1003; and
- (vi) a local advisory council as provided for in 53-21-702.

(b) If the local interagency team decides to coordinate and consolidate statutory teams, it shall ensure that all state and federal rules, laws, and policies required of the individual statutory teams are fulfilled.

**History:** En. Sec. 4, Ch. 324, L. 1993; amd. Sec. 4, Ch. 118, L. 2003; amd. Sec. 63, Ch. 130, L. 2005; amd. Sec. 1, Ch. 200, L. 2005; amd. Sec. 8, Ch. 364, L. 2013.

**52-2-305. Repealed.** Sec. 6, Ch. 118, L. 2003.

**History:** En. Sec. 5, Ch. 324, L. 1993.

**52-2-306. Repealed.** Sec. 6, Ch. 118, L. 2003.

**History:** En. Sec. 6, Ch. 324, L. 1993.

**52-2-307. Repealed.** Sec. 6, Ch. 118, L. 2003.

**History:** En. Sec. 7, Ch. 324, L. 1993.

**52-2-308. Rulemaking.** The department shall adopt rules necessary to implement this part. The rules must be adopted in cooperation with the committee established in 52-2-303.

**History:** En. Sec. 8, Ch. 324, L. 1993; amd. Sec. 5, Ch. 118, L. 2003; amd. Sec. 3, Ch. 123, L. 2007; amd. Sec. 1, Ch. 377, L. 2011.

**52-2-309. Children's system of care account.** (1) There is a children's system of care account in the state special revenue fund to the credit of the department. The fund must be used for the purpose of administering and delivering services to high-risk children with multiagency service needs and to provide for the children's care, protection, and mental, social, and physical development.

(2) The children's system of care account must consist of funds:

- (a) transferred, to the extent possible within existing resources, by the agencies named in 52-2-303 from their agency appropriation;
- (b) designated by the legislature; or
- (c) received for the account from any other source.

(3) The department shall use funds from the children's system of care account to reimburse in-state or community-based providers of services for services that allow high-risk children with multiagency service needs to be placed or to remain in the least restrictive and most appropriate setting, to the extent that the services are not eligible for reimbursement from another source.

**History:** En. Sec. 1, Ch. 123, L. 2007.

**52-2-310. Development and use of qualified provider pools.** (1) In order to accomplish the goals of 52-2-301, the department shall establish a pool of qualified in-state providers identified as willing and able to meet the significant needs of high-risk children with multiagency service needs who are currently placed or may be placed out of state. Using existing staff resources, the department shall design and implement a process in which licensed providers qualify for a pool by demonstrating their ability to provide mental health services for children:

- (a) through use of available federal and state special revenue and state general fund money;
- (b) in the least restrictive setting available;
- (c) in accordance with the state's goal of using a wraparound philosophy of care and planning process; and
- (d) using criteria established by the department to address the specialized needs of high-risk children with multiagency service needs.

(2) (a) The department shall allow any willing and qualified in-state provider to review a case involving a high-risk child with multiagency service needs and to propose a plan of care for providing in-state services to the child.

(b) Prior to contracting with a provider for the delivery of in-state services, the department shall determine that the plan of care submitted by the in-state provider is both cost-effective and in the best interests of the child.

(c) If a qualified in-state provider proposes a plan of care for providing in-state services to the child, the department may not certify a child for placement with an out-of-state provider unless it denies the plan of care proposed by the in-state provider.

**History:** En. Sec. 1, Ch. 430, L. 2009; amd. Sec. 2, Ch. 377, L. 2011.

**52-2-311. Out-of-state placement monitoring and reporting.** (1) The department shall collect the following information regarding high-risk children with multiagency service needs:

- (a) the number of children placed out of state;
- (b) the reasons each child was placed out of state;
- (c) the costs for each child placed out of state;
- (d) the process used to avoid out-of-state placements; and
- (e) the number of in-state providers participating in the pool.

(2) For children whose placement is funded in whole or in part by medicaid, the report must include information indicating other department programs with which the child is involved.

(3) On an ongoing basis, the department shall attempt to reduce out-of-state placements.

(4) The department shall report biannually to the children, families, health, and human services interim committee concerning the information it has collected under this section and the results of the efforts it has made to reduce out-of-state placements.

**History:** En. Sec. 2, Ch. 430, L. 2009; amd. Sec. 3, Ch. 377, L. 2011.

## Part 6 Youth Residential Services

**52-2-601. Establishment of substitute care for youth.** The legislature, in recognition of the wide and varied needs of youth in need of care, delinquent youth, and youth in need of intervention of this state and of the desirability of meeting these needs on a community level to the fullest extent possible, establishes by this part a system of substitute care to provide facilities and services for youth placed out of their homes and establishes a program to provide those facilities and services through local nonprofit corporations, counties, and the department of public health and human services.

**History:** En. Sec. 6, Ch. 465, L. 1983; amd. Sec. 11, Ch. 609, L. 1987; amd. Sec. 2, Ch. 434, L. 1989; amd. Sec. 182, Ch. 546, L. 1995; amd. Sec. 6, Ch. 550, L. 1997; Sec. 41-3-1101, MCA 1999; redes. 52-2-601 by Sec. 17(3)(d), Ch. 281, L. 2001.

**52-2-617. Governmental contracts with nonprofit organizations.** (1) The department of public health and human services and the department of corrections may contract with nonprofit corporations or associations to provide facilities and services for youth in need of care, youth in need of intervention, and delinquent youth in youth care facilities and are authorized to expend money that is appropriated or available for those purposes. The contracts must be based on the following considerations:

- (a) budgets submitted by the nonprofit corporation or association identifying fixed and variable costs;
  - (b) reasonable costs of service;
  - (c) appropriation level; and
  - (d) availability of funds.
- (2) Governmental units, including but not limited to counties, municipalities, school districts, or state institutions of higher learning, are authorized to provide funds, materials, facilities, and services for community-based services at their own expense.

**History:** En. Sec. 19, Ch. 465, L. 1983; amd. Sec. 188, Ch. 546, L. 1995; amd. Sec. 12, Ch. 550, L. 1997; Sec. 41-3-1132, MCA 1999; redes. 52-2-617 by Sec. 17(3)(d), Ch. 281, L. 2001.

# TITLE 53

## SOCIAL SERVICES AND INSTITUTIONS

### CHAPTER 21

#### MENTALLY ILL

#### Part 11

##### Suicide Prevention Program

**53-21-1101. Suicide prevention officer — duties.** (1) The department of public health and human services shall implement a suicide prevention program administered by a suicide prevention officer attached to the office of the director of the department.

(2) The suicide prevention officer shall:

(a) coordinate all suicide prevention activities being conducted by the department, including activities in the addictive and mental disorders division, the health resources division, and the public health and safety division, and coordinate with any suicide prevention activities that are conducted by other state agencies, including the office of the superintendent of public instruction, the department of corrections, the department of military affairs, and the university system;

(b) develop a biennial suicide reduction plan that addresses reducing suicides by Montanans of all ages, ethnic groups, and occupations;

(c) direct a statewide suicide prevention program with evidence-based activities that include but are not limited to:

(i) conducting statewide public awareness campaigns aimed at normalizing the need for all Montanans to address mental health problems and utilizing both paid and free media, including digital and social media, and including input from government agencies, school representatives from elementary schools through higher education, mental health advocacy groups, veteran groups, and other relevant nonprofit organizations;

(ii) initiating, in partnership with Montana's tribes and tribal organizations, a public awareness program that is culturally appropriate and that utilizes the modalities best suited for Indian country;

(iii) seeking opportunities for research that will improve understanding of suicide in Montana and provide increased suicide-related services;

(iv) training for medical professionals, military personnel, school personnel, social service providers, and the general public on recognizing the early warning signs of suicidality, depression, and other mental illnesses; and

(v) providing grants to entities, including but not limited to tribes, tribal and urban health organizations, local governments, schools, health care providers, professional associations, and other nonprofit and community organizations, for development or expansion of evidence-based suicide prevention programs in accordance with the requirements of 53-21-1111.

**History:** En. Sec. 1, Ch. 471, L. 2007; amd. Sec. 1, Ch. 233, L. 2017.

#### Compiler's Comments

**2017 Amendment:** Chapter 233 in (1) after "suicide prevention program" deleted "by January 1, 2008. The program must be"; in (2)(b) inserted "ethnic groups, and occupations"; in (2)(c) inserted "evidence-based"; in (2)(c)(i) inserted "aimed at normalizing the need for all Montanans to address mental health problems", after "free media" inserted "including digital and social media", and after "mental health advocacy groups" inserted "veteran groups"; in (2)(c)(v) substituted current text relating to providing grants to entities for "providing grants to communities or other government, nonprofit, or tribal entities to start new or sustain existing suicide prevention activities"; and made minor changes in style. Amendment effective July 1, 2017.

**53-21-1102. Suicide reduction plan.** (1) The department of public health and human services shall produce a biennial suicide reduction plan that must be submitted to the legislature as provided in 5-11-210.

(2) The plan must include:

(a) an assessment of both risk and protective factors impacting Montana's suicide rate;

(b) specific activities to reduce suicide;

(c) concrete targets for suicide reduction among various demographic populations, including but not limited to American Indians, veterans, and youth;

(d) measurable outcomes for all activities; and  
(e) information on all existing state suicide reduction activities for all state agencies, as well as any known local or tribal suicide reduction activities.

(3) Upon the development of a suicide reduction plan draft, the department shall initiate a public comment period of not less than 21 days during which members of mental health advocacy groups and other interested parties may submit comments on and suggestions for the plan. The department shall produce a final plan, which takes public comment into account, no later than 60 days after the close of the comment period. The plan must be published on the department's website and submitted to the appropriate interim committee of the legislature, the director of the department, and the governor.

**History:** En. Sec. 2, Ch. 471, L. 2007; amd. Sec. 11, Ch. 353, L. 2013.

**53-21-1103. Suicide hotline.** (1) The department of public health and human services is required to have a suicide crisis hotline available, staffed by paid, trained employees 24 hours a day and 365 days a year.

(2) The hotline may be operated by the department or by a qualified Montana-based, nonprofit organization.

(3) The department shall conduct an annual review of hotline utilization and operator performance.

**History:** En. Sec. 3, Ch. 471, L. 2007.

**53-21-1104 reserved.**

**53-21-1105. Terminated.** Sec. 16, Ch. 353, L. 2013.

**History:** En. Sec. 1, Ch. 353, L. 2013.

**53-21-1106. Terminated.** Sec. 16, Ch. 353, L. 2013.

**History:** En. Sec. 2, Ch. 353, L. 2013.

**53-21-1107. Terminated.** Sec. 16, Ch. 353, L. 2013.

**History:** En. Sec. 3, Ch. 353, L. 2013.

**53-21-1108. Terminated.** Sec. 16, Ch. 353, L. 2013.

**History:** En. Sec. 4, Ch. 353, L. 2013; amd. Sec. 55, Ch. 348, L. 2015.

**53-21-1109. Terminated.** Sec. 16, Ch. 353, L. 2013.

**History:** En. Sec. 5, Ch. 353, L. 2013.

**53-21-1110. Terminated.** Sec. 16, ch. 353, L. 2013.

**History:** En. Sec. 6, Ch. 353, L. 2013.

**53-21-1111. Suicide prevention grants.** (1) The department of public health and human services shall administer a grant program from funds appropriated by the legislature for suicide prevention activities pursuant to this section.

(2) (a) To be eligible for a grant under this section, an entity shall demonstrate credible evidence to the department that the activity to be funded is effective in preventing suicide.

(b) An activity must be considered effective if it meets one or more of the following criteria:

(i) it has been cited as effective by peer-reviewed research or literature;

(ii) it was a formally adopted recommendation of the Montana suicide review team established in section 3, Chapter 353, Laws of 2013; or

(iii) it increases knowledge of and response to adverse childhood experiences.

**History:** En. Sec. 2, Ch. 233, L. 2017.



# TITLE 61

## MOTOR VEHICLES

### CHAPTER 2

#### HIGHWAY SAFETY

#### Part 1

##### Traffic Safety Program

**61-2-101. Purpose.** To promote public safety, health, and welfare and to reduce traffic deaths, injuries, and property losses resulting from traffic accidents, it is in the public interest to establish a highway traffic safety program and provide for its administration. It is in the public interest to implement, modernize, and improve the following traffic safety activities: driver performance, including but not limited to driver education, driver testing to determine proficiency to operate motor vehicles; driver examinations, both physical and mental; driver licensing; pedestrian performance; establish an effective accident record system, including traffic accident investigation to determine the probable cause of accidents, injuries, and deaths; improve and establish a system of vehicle registration, vehicle operation, and vehicle inspection; assist in the improving of highway design and maintenance, including lighting, markings, and surface treatment to improve safety; establish an effective traffic control system; promote the adoption of uniform vehicle laws; provide for surveillance of traffic for detection and correction of high or potentially high accident locations; establish emergency services, including but not limited to communications, medical or mechanical assistance, and ambulance service for injured persons; and establish an effective compilation and storage program of reports and records through electronic data processing.

**History:** En. Sec. 1, Ch. 177, L. 1967; amd. Sec. 74, Ch. 348, L. 1974; R.C.M. 1947, 32-4601.

**61-2-102. Definitions.** Unless the context requires otherwise, in this part, the following definitions apply:

(1) “Department” means the department of transportation.

(2) “Highway traffic safety program” means a program designed to reduce traffic accidents, deaths, injuries to persons, and damage to property. The program must be in accordance with uniform guidelines established pursuant to 23 U.S.C. 402, as amended, and may include defensive driving programs administered by the entity designated by the governor in 61-2-103. Nothing in this part restricts or prohibits the establishment of standards that enlarge or implement the federal standards.

(3) “Political subdivisions” means each county, incorporated city or town, and school district within the boundaries of the state.

**History:** En. Sec. 2, Ch. 177, L. 1967; amd. Sec. 75, Ch. 348, L. 1974; amd. Sec. 34, Ch. 213, L. 1975; R.C.M. 1947, 32-4602; amd. Sec. 8, Ch. 274, L. 1981; amd. Sec. 2, Ch. 538, L. 1995; amd. Sec. 3, Ch. 576, L. 2005.

**61-2-103. Duties.** (1) The governor is responsible for the administration of the highway traffic safety program. The governor may contract and do all other things necessary to secure the full benefits available to this state under the federal Highway Safety Act, 23 U.S.C. 401 through 403, and, in so doing, may cooperate with federal and state agencies, private and public organizations, and individuals to effectuate the purposes of that enactment and all amendments to it. The governor may appoint an administrator of the highway traffic safety program to carry out the governor’s responsibilities under this part. For purposes of participation in the federal Highway Safety Act, 23 U.S.C. 401 through 403, the governor shall designate the superintendent of public instruction as the state agency responsible for all aspects of federally assisted driver education and safety programs in the public schools, including the approval of the programs, certification of teachers, and the acceptance, allocation, and expenditure of funds for driver education in accordance with applicable federal laws and regulations. Nothing in this part interferes with the provisions of Title 20, chapter 7, part 5, or 20-9-603.

(2) The department shall:

(a) advise and assist the governor in all matters of highway safety;

(b) establish a continuing and adequate research program designed to determine the causes of accidents and effect a program of prevention; and

(c) cooperate with the office of public instruction to provide support and maintenance of driver training facilities that comply with the federal Highway Safety Act, 23 U.S.C. 401 through 403.

(3) The department of justice shall:

(a) establish a uniform system of driver licensing, including mental and physical standards; and

(b) prescribe and establish safety regulations for motor vehicles and operators.

**History:** En. Sec. 5, Ch. 177, L. 1967; amd. Sec. 76, Ch. 348, L. 1974; amd. Sec. 35, Ch. 213, L. 1975; R.C.M. 1947, 32-4605; amd. Sec. 8, Ch. 274, L. 1981; amd. Sec. 1, Ch. 126, L. 1991; amd. Sec. 3, Ch. 538, L. 1995; amd. Sec. 1, Ch. 8, L. 2007.

**61-2-104. Funds.** The governor and the department may enter into contracts with the federal government to secure maximum federal appropriation. At least 40% of all federal funds received by the state shall be spent by the political subdivisions of the state in carrying out local approved highway traffic safety programs. Except as provided in this part, the governor may accept all gifts, money, and funds to implement the purposes of this part. The expenditure of funds, exclusive of the federal appropriation, shall be maintained at a level which shall not fall below the average level of the expenditures for the last 2 full fiscal years preceding July 1, 1966, as determined by the expenditures of state and political subdivisions.

**History:** En. Sec. 6, Ch. 177, L. 1967; amd. Sec. 77, Ch. 348, L. 1974; R.C.M. 1947, 32-4606.

**61-2-105. Local programs.** Except as provided in this part, all highway traffic safety programs of political subdivisions must be approved by the governor and funds may not be spent unless the governor's approval is obtained. All local and state officials shall cooperate with the governor and department to accomplish the purposes of this part. The governor shall administer the highway traffic safety programs of this state and its political subdivisions in accordance with this part and federal rules.

**History:** En. Sec. 7, Ch. 177, L. 1967; amd. Sec. 78, Ch. 348, L. 1974; R.C.M. 1947, 32-4607; amd. Sec. 1935, Ch. 56, L. 2009.

**61-2-106. County drinking and driving prevention program.** (1) The governing body of a county may appoint a task force to study the problem of alcohol-related traffic accidents and recommend a program designed to:

(a) prevent driving while under the influence of alcohol;

(b) reduce alcohol-related traffic accidents; and

(c) educate the public on the dangers of driving after consuming alcoholic beverages or other chemical substances that impair judgment or motor functions.

(2) A task force appointed under subsection (1) shall conduct its study and submit its recommendations within 6 months from the date it was appointed. Task force meetings are open to the public. The task force shall give notice by publication in the community meeting announcement section of a newspaper of general circulation in the county.

(3) The county governing body may by resolution adopt the recommendations of the task force appointed under subsection (1). The proposed program must be approved by the governor as provided in 61-2-105.

(4) The presiding officer of the task force shall submit to the county governing body:

(a) a budget and a financial report for each fiscal year; and

(b) an annual report containing but not limited to:

(i) an evaluation of the effectiveness of the program;

(ii) the number of arrests and convictions in the county for driving under the influence of alcohol and the sentences imposed for these convictions;

(iii) the number of alcohol-related traffic accidents in the county; and

(iv) any other information requested by the county governing body or considered appropriate by the task force.

(5) A copy of the annual report may be submitted to the department.

**History:** En. Sec. 1, Ch. 643, L. 1987; amd. Sec. 2, Ch. 751, L. 1991; amd. Sec. 1, Ch. 436, L. 1993; amd. Sec. 1936, Ch. 56, L. 2009.

**61-2-107. License reinstatement fee to fund county drinking and driving prevention programs.** (1) Notwithstanding the provisions of any other law of the state, a driver's license that has been suspended or revoked under 61-5-205 or 61-8-402 must remain suspended or revoked until the driver has paid to the department a fee of \$200 in addition to any other fines, forfeitures, and penalties assessed as a result of conviction for a violation of the traffic laws of the state.

(2) The department shall deposit one-half of the fees collected under subsection (1) in the general fund and the other half in an account in the state special revenue fund to be used for funding county drinking and driving prevention programs as provided in 61-2-108.

**History:** En. Sec. 2, Ch. 643, L. 1987; amd. Sec. 1, Ch. 55, L. 1989; amd. Sec. 1, Ch. 751, L. 1991; amd. Sec. 1, Ch. 5, Sp. L. January 1992; amd. Sec. 1, Ch. 492, L. 1993; amd. Sec. 1, Ch. 2, Sp. L. November 1993; amd. Sec. 63, Ch. 18, L. 1995; amd. Sec. 53, Ch. 509, L. 1995; amd. Sec. 1, Ch. 442, L. 2003.

**61-2-108. Funding allocation for programs to prevent or reduce drinking and driving.** (1) If the county in which the violation or violations occurred has initiated and maintained a drinking and driving prevention program as provided in 61-2-106, the department shall transmit the county portion of the proceeds of the license reinstatement fees collected in that county to the county treasurer, as provided in 61-2-107(2), at the end of each quarter.

(2) Funds deposited in the state special revenue fund pursuant to 61-2-107(2) for violations occurring in a county that has not initiated and maintained a drinking and driving prevention program as provided in 61-2-106 must be distributed July 1 of each year, on an equal basis, to those counties that have an approved program under 61-2-106.

**History:** En. Sec. 3, Ch. 643, L. 1987; amd. Sec. 3, Ch. 751, L. 1991; amd. Sec. 2, Ch. 5, Sp. L. January 1992; amd. Sec. 245, Ch. 42, L. 1997; amd. Sec. 1, Ch. 141, L. 2015.

**61-2-109. Emergency medical services grants.** The department of transportation shall report to the governor and the legislative fiscal analyst not later than November 1 of the year preceding a regular session of the legislature regarding emergency medical services grants that are awarded during each biennium. The report must be provided in an electronic format and include a listing of all grant requests and a listing of grants awarded, including a summary of the use of grant funds.

**History:** En. Sec. 25, Ch. 486, L. 2009; amd. Sec. 17, Ch. 120, L. 2013.

## CHAPTER 5 DRIVER'S LICENSES

### Part 1 Licensing Provisions

**61-5-101. Driver licensing responsibilities of department.** (1) The department shall maintain a permanent place of business at the state capital and shall provide the necessary staff, facilities, and equipment for the purpose of providing driver's license services as required by this part.

(2) The department shall provide an examiner to administer a commercial driver's license or motor vehicle driver's license examination in any county of the state if the examination is previously scheduled through the department.

**History:** En. Sec. 1, Ch. 267, L. 1947; amd. Sec. 1, Ch. 141, L. 1951; amd. Sec. 1, Ch. 101, L. 1957; amd. Sec. 1, Ch. 42, L. 1969; R.C.M. 1947, 31-117; amd. Sec. 53, Ch. 421, L. 1979; amd. Sec. 1, Ch. 451, L. 1979; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 1, Ch. 164, L. 1997; amd. Sec. 1, Ch. 358, L. 2005.

**61-5-102. Drivers to be licensed — penalty.** (1) (a) Except as provided in 61-5-104, a person may not drive a motor vehicle upon a highway in this state unless the person has a valid Montana driver's license. A person may not receive a Montana driver's license until the person surrenders to the department all valid driver's licenses issued by any other jurisdiction. A person may not have in the person's possession or under the person's control more than one valid Montana driver's license at any time.

(b) Except as provided in subsection (1)(c), the penalty for a violation of this section is a fine of not more than \$500.

(c) A person who is eligible to hold a driver's license and has obtained a valid driver's license but has not renewed the license as provided in 61-5-111(3)(c) is not subject to the penalty in subsection (1)(b).

(2) (a) (i) Except as provided in subsection (2)(a)(ii), a license is not valid for the operation of a motorcycle unless the holder of the license has completed the requirements of 61-5-110 and the license has been clearly marked with the words "motorcycle endorsement".

(ii) A motorcycle endorsement is not required for the operation of a low-speed electric vehicle or a motorcycle that is propelled by an electric motor or other device that transforms stored electrical energy into the motion of the vehicle, has a fully enclosed cab, is equipped with three wheels in contact with the ground, and is equipped with a seat and seatbelts.

(b) A license is not valid for the operation of a commercial motor vehicle unless the holder of the license has completed the requirements of 61-5-110, the license has been clearly marked with the words "commercial driver's license", and the license bears the proper endorsement for:

(i) the specific vehicle type or types being operated; or

(ii) the passengers or type or types of cargo being transported.

(3) A low-speed restricted driver's license is not valid for the operation of a motor vehicle other than a low-speed electric vehicle or a golf cart.

(4) When a city or town requires a licensed driver to obtain a local driving license or permit, a license or permit may not be issued unless the applicant presents a state driver's license valid under the provisions of this chapter.

**History:** En. Sec. 9, Ch. 267, L. 1947; amd. Sec. 1, Ch. 37, L. 1951; amd. Sec. 1, Ch. 79, L. 1957; amd. Sec. 1, Ch. 51, L. 1959; amd. Sec. 1, Ch. 211, L. 1961; R.C.M. 1947, 31-125(a) thru (c); (4)En. Sec. 9, Ch. 508, L. 1979; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 5, Ch. 443, L. 1987; amd. Sec. 3, Ch. 309, L. 1999; amd. Sec. 1, Ch. 415, L. 2001; amd. Sec. 6, Ch. 428, L. 2003; amd. Sec. 1, Ch. 79, L. 2005; amd. Sec. 4, Ch. 233, L. 2007; amd. Sec. 1, Ch. 462, L. 2007; amd. Sec. 11, Ch. 209, L. 2011; amd. Sec. 31, Ch. 321, L. 2017.

**Compiler's Comments**

*2017 Amendment:* Chapter 321 in (1)(b) near beginning after "penalty for a" deleted "first", and at end deleted "imprisonment for not more than 6 months, or both a fine and imprisonment. The penalty for second and subsequent violations of this section is a fine of not more than \$500 and imprisonment for not less than 2 days or more than 6 months"; and made minor changes in style. Amendment effective July 1, 2017.

*Applicability:* Section 44, Ch. 321, L. 2017, provided: "[This act] applies to offenses committed after June 30, 2017."

**61-5-103. Residency requirement.** (1) A person who has resided in Montana for more than 60 consecutive days is considered to be a resident for the purpose of being licensed to operate a motor vehicle and must be licensed under the laws of Montana before operating a motor vehicle.

(2) A person who has resided in Montana for more than 30 consecutive days:

(a) is considered to be a resident for the purpose of being licensed to operate a commercial motor vehicle; and

(b) must be licensed under the laws of Montana before operating any commercial motor vehicle.

(3) The department may issue a commercial driver's license to a person who is not a resident of Montana or domiciled in Montana only if:

(a) the person is domiciled in a foreign country with commercial driver's license standards, as determined by the federal motor carrier safety administration of the department of transportation, that are not similar to the testing and licensing standards provided in 49 CFR, part 383, subparts F, G, and H; or

(b) the person is domiciled in a state that is prohibited by the federal motor carrier safety administration from issuing commercial driver's licenses under 49 CFR 384.405.

**History:** En. Sec. 9, Ch. 267, L. 1947; amd. Sec. 1, Ch. 37, L. 1951; amd. Sec. 1, Ch. 79, L. 1957; amd. Sec. 1, Ch. 51, L. 1959; amd. Sec. 1, Ch. 211, L. 1961; R.C.M. 1947, 31-125(d); amd. Sec. 54, Ch. 421, L. 1979; amd. Sec. 9, Ch. 378, L. 1989; amd. Sec. 4, Ch. 309, L. 1999; amd. Sec. 13, Ch. 428, L. 2005; amd. Sec. 110, Ch. 596, L. 2005.

**61-5-104. Exemptions.** (1) The following persons are exempt from licensure under this chapter:

(a) a person who is a member of the armed forces of the United States while operating a motor vehicle owned by or leased to the United States government and being operated on official business;

(b) a person who is a member of the armed forces of the United States on active duty in Montana who holds a valid license issued by another state and the spouse of the person who holds a valid license issued by another state and who is not employed in Montana, except as a member of the armed forces. If a spouse of a member of the armed forces becomes gainfully employed in Montana, the spouse must be licensed, as required by 61-5-102, within 90 days of becoming employed.

(c) a person on active duty in the armed forces of the United States and in immediate possession of a valid license issued to that person in a foreign country by the armed forces of the United States, for a period of 45 days from the date of the person's return to the United States;

(d) a person who temporarily drives, operates, or moves a road machine, farm tractor, as defined in 61-9-102, or implement of husbandry for use in intrastate commerce on a highway;

(e) a person who is a locomotive engineer, assistant engineer, conductor, brake tender, railroad utility person, or other member of the crew of a railroad locomotive or train being operated upon rails, including operation on a railroad crossing a public street, road, or highway. A person employed as described in this subsection is not required to display a driver's license to a law enforcement officer in connection with the operation of a railroad train within Montana.

(f) a person who temporarily drives, operates, or moves an off-highway vehicle on a forest development road in this state, as defined in 61-8-110, that has been designated and approved for off-highway vehicle use by the United States forest service if the person:

(i) is under 16 years of age but at least 12 years of age; and

(ii) at the time of driving, operating, or moving the off-highway vehicle, has in the person's possession a certificate showing the successful completion of an off-highway vehicle safety education course approved by the department of fish, wildlife, and parks and is in the physical presence of a person who possesses a license issued under this chapter.

(2) A nonresident who is at least 15 years of age and who is in immediate possession of a valid operator's license issued to the nonresident by the nonresident's home state or country may operate a motor vehicle, except a commercial motor vehicle, in this state.

(3) (a) A nonresident who is in immediate possession of a valid commercial driver's license issued to the nonresident by the nonresident's home jurisdiction, in accordance with the licensing and testing standards of 49 CFR, part 383, may operate a commercial motor vehicle in this state.

(b) For the purpose of this chapter, "jurisdiction" means a state, territory, or possession of the United States, the District of Columbia, a province or territory of Canada, or the federal district of Mexico.

(4) A nonresident who is at least 18 years of age, whose home state or country does not require the licensing of operators, may operate a motor vehicle as an operator only, for a period of not more than 90 days in any calendar year, if the motor vehicle is registered in the home state or country of the nonresident.

(5) (a) A driver's license issued under this chapter to a person who enters the United States armed forces, if valid and in effect at the time that the person enters the service, continues in effect so long as the service continues, unless the license is suspended, revoked, or canceled for a cause as provided by law, and for up to 90 days following the date on which the licensee is honorably separated from the service.

(b) A person serving in the United States armed forces may renew the person's driver's license at any point of the person's service, and any renewed license continues in effect as long as the service continues, unless the license is suspended, revoked, or canceled for a cause as provided by law.

(c) A person serving in the United States armed forces may apply for a Montana driver's license upon meeting the requirements in 61-5-103, and this license continues in effect as long as the service continues, unless the license is suspended, revoked, or canceled for a cause as provided by law, and for up to 90 days following the date on which the licensee is honorably separated from the service.

**History:** En. Sec. 10, Ch. 267, L. 1947; amd. Sec. 1, Ch. 95, L. 1955; amd. Sec. 1, Ch. 137, L. 1961; amd. Sec. 1, Ch. 133, L. 1969; R.C.M. 1947, 31-126; amd. Sec. 1, Ch. 454, L. 1985; amd. Sec. 6, Ch. 443, L. 1987; amd. Sec. 1, Ch. 536, L. 1991; amd. Sec. 3, Ch. 53, L. 1995; amd. Sec. 3, Ch. 105, L. 1997; amd. Sec. 2, Ch. 95, L. 1999; amd. Sec. 4, Ch. 207, L. 2001; amd. Sec. 14, Ch. 428, L. 2005; amd. Sec. 188, Ch. 542, L. 2005; amd. Sec. 1, Ch. 144, L. 2007; amd. Sec. 1, Ch. 330, L. 2017.



**Compiler's Comments**

*2017 Amendment:* Chapter 330 in (5)(a) and (5)(c) near end substituted "90 days" for "30 days"; in (5)(b) at end deleted "and for up to 30 days following the date on which the licensee is honorably separated from the service"; and made minor changes in style. Amendment effective October 1, 2017.

**61-5-105. Who may not be licensed.** The department may not issue a license under this chapter to a person:

- (1) who is under 16 years of age unless:
  - (a) the person is at least 15 years of age and has passed a driver's education course approved by the department and the superintendent of public instruction; or
  - (b) the person is at least 13 years of age and, because of individual hardship, to be determined by the department, needs a restricted license;
- (2) whose license or driving privilege is currently suspended, revoked, or canceled, except as provided in 61-5-232, or who is disqualified from operating a commercial motor vehicle in this or any state, as evidenced by an ineligible status report from the national driver register, established under 49 U.S.C. 30302, or from the commercial driver's license information system, established under 49 U.S.C. 31309;
- (3) who is addicted to the use of alcohol or narcotic drugs;
- (4) who has previously been adjudged to be afflicted with or suffering from any mental disability or disease and who, at the time of application, has not been restored to competency by the methods provided by law;
- (5) who is required by this chapter to take an examination;
- (6) who has not deposited proof of financial responsibility when required under the provisions of chapter 6 of this title;
- (7) who has any condition characterized by lapse of consciousness or control, either temporary or prolonged, that is or may become chronic. However, the department may, in its discretion, issue a license to an otherwise qualified person suffering from a condition if the afflicted person's attending physician, licensed physician assistant, or advanced practice registered nurse, as defined in 37-8-102, attests in writing that the person's condition has stabilized and would not be likely to interfere with that person's ability to operate a motor vehicle safely and, if a commercial driver's license is involved, the person is physically qualified to operate a commercial motor vehicle under applicable state or federal regulations.
- (8) who lacks the functional ability, due to a physical or mental disability or limitation, to safely operate a motor vehicle on the highway;
- (9) who is not a resident of or domiciled in Montana except as provided in 61-5-103(3); or
- (10) whose presence in the United States is not authorized under federal law. When an applicant who is not a citizen of the United States applies for a driver's license, the department shall verify that the applicant is lawfully present in the United States by using the federal systematic alien verification for entitlements program. The department may not accept a driver's license issued by another state as proof that an applicant is lawfully present in the United States under federal law.

**History:** En. Sec. 11, Ch. 267, L. 1947; amd. Sec. 1, Ch. 60, L. 1955; amd. Sec. 1, Ch. 227, L. 1965; amd. Sec. 14, Ch. 94, L. 1973; amd. Sec. 1, Ch. 178, L. 1973; R.C.M. 1947, 31-127; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 7, Ch. 443, L. 1987; amd. Sec. 1, Ch. 364, L. 1995; amd. Sec. 5, Ch. 309, L. 1999; amd. Sec. 5, Ch. 207, L. 2001; amd. Sec. 15, Ch. 428, L. 2005; amd. Sec. 1, Ch. 478, L. 2005; amd. Sec. 1, Ch. 242, L. 2007; amd. Sec. 1, Ch. 207, L. 2011; amd. Sec. 2, Ch. 358, L. 2015.

**61-5-106. Instruction permits — temporary driver's permits.** (1) (a) The department may issue a learner license, which is valid for 1 year from the date of issuance, to a person satisfying the age requirements specified in 61-5-105(1) after the applicant has successfully passed the knowledge test and the vision examination, as provided in 61-5-110. Except as provided in subsections (1)(b) and (1)(c), a learner license entitles the licensee, while in immediate possession of the license and accompanied by a licensed driver seated beside the licensee, to drive a motor vehicle other than a motorcycle upon the public highways.

(b) If the licensee is under 18 years of age, the driver supervising the licensee must be a parent or a legal guardian of the licensee or, with the permission of the licensee's parent or legal guardian, a licensed driver 18 years of age or older. Each occupant of a motor vehicle driven by a licensee who is under 18 years of age shall wear a properly adjusted and fastened seatbelt or, if 61-9-420 applies, must be properly restrained in a child safety restraint.

(c) A person holding a learner license for a motorcycle may drive a motorcycle upon a public highway if the person is not carrying a passenger, has immediate possession of the license, and is under the immediate and proximate visual supervision of one of the following persons, who must be at least 18 years of age if the licensee is under 18 years of age:

(i) a motorcycle-endorsed licensed driver who is riding with the licensee and who is operating a separate motorcycle or other motor vehicle; or

(ii) a licensed driver who is operating a separate motor vehicle if the licensee has successfully completed a motorcycle safety training course through a cooperative driver testing program certified under 61-5-110.

(2) The department may issue a learner license, which is valid for 1 year from the date of issuance, to any person who is at least 14½ years of age and who has successfully completed or is successfully participating in a traffic education course approved by the department and the superintendent of public instruction and that is available to all who meet the age requirements specified in 20-7-503 and reside within the geographical boundaries of or attend a school in the school district that offers the course. A learner license entitles the licensee to operate a motor vehicle when accompanied by an approved instructor, a licensed parent or guardian, or other driver as provided in subsection (1)(b) and may be restricted to specific times or areas.

(3) (a) An instructor of a traffic education program approved by the department and by the superintendent of public instruction may issue a traffic education permit that is effective for a school year or more restricted period to an applicant who is enrolled in a traffic education program approved by the department and who meets the age requirements specified in 20-7-503.

(b) When in immediate possession of the traffic education permit, the permittee may operate on a designated highway or within a designated area:

(i) a motor vehicle when an approved instructor is seated beside the permittee; or

(ii) a motorcycle or quadricycle when under the immediate and proximate supervision of an approved instructor.

(4) The department may in its discretion issue a temporary driver's permit to an applicant for a driver's license permitting the applicant to operate a motor vehicle while the department is completing its investigation and determination of all facts relative to the applicant's right to receive a driver's license. The temporary driver's permit must be in the permittee's immediate possession while operating a motor vehicle, and it is invalid when the applicant's license has been issued or for good cause has been refused.

(5) The department may in its discretion issue a temporary commercial driver's license to an applicant permitting the applicant to operate a commercial motor vehicle while the department is completing its investigation and determination of all facts relative to the applicant's right to receive a commercial driver's license. The temporary license must be in the applicant's immediate possession while operating a commercial motor vehicle and is invalid when the applicant's license has been issued or for good cause has been refused.

(6) The department may in its discretion issue a temporary medical assessment and rehabilitation driving permit, as provided in 61-5-120.

**History:** En. Sec. 13, Ch. 267, L. 1947; amd. Sec. 1, Ch. 120, L. 1961; amd. Sec. 1, Ch. 55, L. 1969; amd. Sec. 1, Ch. 271, L. 1973; amd. Sec. 1, Ch. 19, L. 1974; R.C.M. 1947, 31-129; amd. Sec. 1, Ch. 173, L. 1979; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 30, Ch. 516, L. 1985; amd. Sec. 8, Ch. 443, L. 1987; amd. Sec. 7, Ch. 195, L. 1993; amd. Sec. 2, Ch. 364, L. 1995; amd. Sec. 6, Ch. 309, L. 1999; amd. Sec. 6, Ch. 297, L. 2005; amd. Sec. 14, Ch. 323, L. 2017.

#### **Compiler's Comments**

*2017 Amendment:* Chapter 323 throughout (1) and (2) substituted "learner license" for "instruction permit", substituted "license" for "permit", and substituted references to licensee for references to permittholder; in (2) in two places before "learner license" deleted "traffic education" and near end inserted "or other driver as provided in subsection (1)(b)"; and made minor changes in style. Amendment effective May 4, 2017.

**61-5-107. Application for license or motorcycle endorsement.** (1) Each application for a learner license, driver's license, commercial driver's license, or motorcycle endorsement must be made on a form furnished by the department. Each application must be accompanied by the proper fee, and payment of the fee entitles the applicant to not more than three attempts to pass the examination within a period of 6 months from the date of application. A voter registration form for mail registration as prescribed by the secretary of state must be attached to each driver's license application. If the applicant wishes to register to vote, the department shall accept the registration and forward the form to the election administrator.

(2) Each application must include the full legal name, date of birth, sex, residence address of the applicant [and the applicant's social security number], must include a brief description of the applicant, and must provide the following additional information:

(a) the name of each jurisdiction in which the applicant has previously been licensed to drive any type of motor vehicle during the 10-year period immediately preceding the date of the application;

(b) a certification from the applicant that the applicant is not currently subject to a suspension, revocation, cancellation, disqualification, or withdrawal of a previously issued driver's license or any driving privileges in another jurisdiction and that the applicant does not have a driver's license from another jurisdiction;

(c) a brief description of any physical or mental disability, limitation, or condition that impairs or may impair the applicant's ability to exercise ordinary and reasonable control in the safe operation of a motor vehicle on the highway;

(d) a brief description of any adaptive equipment or operational restrictions that the applicant relies upon or intends to rely upon to attain the ability to exercise ordinary and reasonable control in the safe operation of a motor vehicle on the highway, including the nature of the equipment or restrictions; and

(e) if the applicant is a foreign national whose presence in the United States is temporarily authorized under federal law, the expiration date of the official document issued to the applicant by the bureau of citizenship and immigration services of the department of homeland security authorizing the applicant's presence in the United States.

[(3) The department shall keep the applicant's social security number from this source confidential, except that the number may be used for purposes of subtitle VI of Title 49 of the U.S.C. or as otherwise permitted by state law administered by the department and may be provided to the department of public health and human services for use in administering Title IV-D of the Social Security Act.]

(4) (a) When an application is received from an applicant who is not ineligible for licensure under 61-5-105 and who was previously licensed by another jurisdiction, the department shall request a copy of the applicant's driving record from each jurisdiction in which the applicant was licensed in the preceding 10-year period. The driving record may be transmitted manually or by electronic medium.

(b) When received, the driving records must be appended to the driver's record created and maintained in this state. The department may rely on information contained in driving records received under this section to determine the appropriate action to be taken against the applicant upon subsequent receipt of a report of a conviction or other conduct requiring suspension or revocation of a driver's license under state law.

(5) An individual who is under 26 years of age but at least 15 years of age and who is required to register in compliance with the federal Military Selective Service Act, 50 App. U.S.C. 453, must be provided an opportunity to fulfill those registration requirements in conjunction with an application for a learner license, driver's license, commercial driver's license, or state identification card. If under 18 years of age but at least 15 years of age, an individual must be provided an opportunity to be registered by the selective service system upon attaining 18 years of age. Any registration information supplied on the application must be transmitted by the department to the selective service system. (*Bracketed language terminates on occurrence of contingency—sec. 1, Ch. 27, L. 1999.*)

**History:** En. Sec. 14, Ch. 267, L. 1947; amd. Sec. 1, Ch. 28, L. 1969; R.C.M. 1947, 31-130; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 31, Ch. 516, L. 1985; amd. Sec. 9, Ch. 443, L. 1987; amd. Sec. 1, Ch. 406, L. 1991; amd. Sec. 8, Ch. 195, L. 1993; amd. Sec. 3, Ch. 364, L. 1995; amd. Sec. 95, Ch. 552, L. 1997; amd. Sec. 2, Ch. 29, L. 1999; amd. Sec. 7, Ch. 309, L. 1999; amd. Sec. 7, Ch. 428, L. 2003; amd. Secs. 2, 15(3), Ch. 556, L. 2003; amd. Sec. 1, Ch. 180, L. 2005; amd. Sec. 16, Ch. 428, L. 2005; amd. Sec. 2, Ch. 478, L. 2005; amd. Sec. 15, Ch. 323, L. 2017.

#### **Compiler's Comments**

*2017 Amendment:* Chapter 323 in (1) and (5) substituted "a learner license" for "an instruction permit"; and made minor changes in style. Amendment effective May 4, 2017.

*Contingent Termination — Request for Federal Exemptions:* Section 1, Ch. 27, L. 1999, revised sec. 104, Ch. 552, L. 1997, to contain the following contingent termination provisions and order that the department of public health and human services seek federal exemptions: "(1) [Sections 9, 11, 22 through 24, and 95] [37-1-307, 40-1-107, 40-4-105, 40-5-922, 40-5-924, and 61-5-107] and the bracketed language in [sections 1 through 3, 10, 25, 45, and 89] [40-4-204, 40-5-226, 40-5-901, 40-5-906, 40-5-907, 40-5-923, and 40-6-116] terminate on the date of the suspension if the federal government suspends federal payments to this state for this state's child support enforcement program

and for this state's program relating to temporary assistance to needy families because of this state's failure to enact law as required by the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

(2) [Sections 9, 11, 22 through 24, and 95] [37-1-307, 40-1-107, 40-4-105, 40-5-922, 40-5-924, and 61-5-107] and the bracketed language in [sections 1 through 3, 10, 25, 45, and 89] [40-4-204, 40-5-226, 40-5-901, 40-5-906, 40-5-907, 40-5-923, and 40-6-116] terminate on the date that a final decision is rendered in federal court invalidating the child support provisions of the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

(3) If the director of the department of public health and human services certifies to the governor and the secretary of state in writing that one of the following provisions is no longer required by federal law because of repeal of or amendment to federal statutes that require that provision, the provision terminates on the date the certification takes effect:

- (a) [section 9] [40-5-922];
- (b) [section 11] [40-5-924];
- (c) [sections 22 through 24] [37-1-307, 40-1-107, and 40-4-105];
- (d) [section 95] [61-5-107];
- (e) the bracketed provisions in [sections 1 through 3, 10, 25, 45, and 89] [40-4-204, 40-5-226, 40-5-901, 40-5-906, 40-5-907, 40-5-923, and 40-6-116].

(4) If the bracketed language in [sections 1 through 3, 10, 25, 45, and 89] [40-4-204, 40-5-226, 40-5-901, 40-5-906, 40-5-907, 40-5-923, and 40-6-116] terminates, the code commissioner is instructed to renumber subsections, adjust internal references, and correct grammar and arrangement." Amendment effective February 18, 1999.

**61-5-108. Application of minors — imputed liability.** (1) The application of a person who is under 18 years of age for a learner license, driver's license, or medical assessment and rehabilitation driving permit must be signed and verified before a person authorized to administer oaths or an employee of the department by a parent of the applicant or, if none is available, by some other responsible adult who is willing to assume the obligation imposed under this chapter upon a person signing the application of a minor.

(2) Any negligence or willful misconduct of a minor who is under 18 years of age when driving a motor vehicle upon a highway must be imputed to a person who has signed the application of the minor for a learner license, driver's license, or medical and rehabilitation driving permit. The person who signs the application is jointly and severally liable with the minor for any damages caused by the negligence or willful misconduct unless a motor vehicle liability policy, as provided for in chapter 6 of this title, covering the minor is in effect, in which case there is no imputed liability as described in this section.

**History:** En. Sec. 15, Ch. 267, L. 1947; amd. Sec. 1, Ch. 140, L. 1961; R.C.M. 1947, 31-131; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 10, Ch. 443, L. 1987; amd. Sec. 2, Ch. 419, L. 1991; amd. Sec. 8, Ch. 309, L. 1999; amd. Sec. 16, Ch. 323, L. 2017.

**Compiler's Comments**

*2017 Amendment:* Chapter 323 in (1) and (2) substituted "a learner license" for "an instruction permit". Amendment effective May 4, 2017.

**61-5-109. Release from liability.** Any person who has signed the application of a minor for a license may thereafter file with the department a verified written request that the license of said minor so granted be canceled. Thereupon the department shall cancel the license of said minor and the person who signed the application of such minor shall be relieved from the liability imposed under this chapter by reason of having signed such application on account of any subsequent negligence or willful misconduct of such minor in operating a motor vehicle.

**History:** En. Sec. 16, Ch. 267, L. 1947; R.C.M. 1947, 31-132; amd. Sec. 1, Ch. 503, L. 1985.

**61-5-110. Records check of applicants — examination of applicants — cooperative driver testing programs — reciprocal agreement with foreign country.** (1) Prior to examining an applicant for a driver's license, the department shall conduct a check of the applicant's driving record by querying the national driver register, established under 49 U.S.C. 30302, and the commercial driver's license information system, established under 49 U.S.C. 31309.

(2) (a) The department shall examine each applicant for a driver's license or motorcycle endorsement, except as otherwise provided in this section. The examination must include a test of the applicant's eyesight, a knowledge test examining the applicant's ability to read and understand highway signs and the applicant's knowledge of the traffic laws of this state, and, except as provided in 61-5-118, a road test or a skills test demonstrating the applicant's ability to exercise ordinary and reasonable control in the safe operation of a motor vehicle or motorcycle. The road test or skills test must be performed by the applicant in a motor vehicle that the applicant certifies is representative of the class and type of motor vehicle for which the applicant is seeking a license or endorsement.



- (b) The knowledge test, road test, or skills test may be waived by the department:
- (i) upon certification of the applicant's successful completion of the test by a certified cooperative driver testing program as provided in subsection (3) or by a certified third-party commercial driver testing program as provided in 61-5-118; or
- (ii) in accordance with a driver's license reciprocity agreement between the department and a foreign country.
- (c) The skills test may be waived by the department upon the applicant's completion of the requirements of 61-5-123.
- (3) The department is authorized to certify as a cooperative driver testing program any state-approved high school traffic education course offered by or in cooperation with a school district that employs an approved instructor who has current endorsement from the superintendent of public instruction as a teacher of traffic education or any motorcycle safety training course approved by the board of regents and that employs an approved instructor of motorcycle safety training and who agrees to:
  - (a) administer standardized knowledge and road tests or skills tests required by the department to students participating in the district's high school traffic education courses or motorcycle safety training courses approved by the board of regents;
  - (b) certify the test results to the department; and
  - (c) comply with regulations of the department, the superintendent of public instruction, and the board of regents.
- (4) (a) Except as otherwise provided by law, an applicant who has a valid driver's license issued by another jurisdiction may surrender that license for a Montana license of the same class, type, and endorsement upon payment of the required fees and successful completion of a vision examination. In addition, an applicant surrendering a commercial driver's license issued by another jurisdiction shall successfully complete any examination required by federal regulations before being issued a commercial driver's license by the department.
- (b) The department may require an applicant who surrenders a valid driver's license issued by another jurisdiction to submit to a knowledge and road or skills test if:
  - (i) the applicant has a physical or mental disability, limitation, or condition that impairs, or may impair, the applicant's ability to exercise ordinary and reasonable control in the safe operation of a motor vehicle on the highway; and
  - (ii) the surrendered license does not include readily discernible adaptive equipment or operational restrictions appropriate to the applicant's functional abilities; or
  - (iii) the applicant wants to remove or modify a restriction imposed on the surrendered license.
- (c) When a license from another jurisdiction is surrendered, the department shall notify the issuing agency from the other jurisdiction that the applicant has surrendered the license. If the applicant wants to retain the license from another jurisdiction for identification or other nondriving purposes, the department shall place a distinctive mark on the license, indicating that the license may be used for nondriving purposes only, and return the marked license to the applicant.
- (5) The department may enter into a reciprocity agreement with a foreign country to provide for the mutual recognition and exchange of a valid driver's license issued by this state or the foreign country if the department determines that the licensing standards of the foreign country are comparable to those of this state. The agreement may not include the reciprocal exchange of a commercial driver's license.

**History:** En. Sec. 18, Ch. 267, L. 1947; amd. Sec. 1, Ch. 408, L. 1975; R.C.M. 1947, 31-134(a); amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 32, Ch. 516, L. 1985; amd. Sec. 11, Ch. 443, L. 1987; amd. Sec. 1, Ch. 297, L. 1991; amd. Sec. 9, Ch. 195, L. 1993; amd. Secs. 4, 5, Ch. 53, L. 1995; amd. Secs. 4, 9, Ch. 364, L. 1995; amd. Sec. 11, Ch. 181, L. 1999; amd. Sec. 9, Ch. 309, L. 1999; amd. Sec. 6, Ch. 207, L. 2001; amd. Sec. 8, Ch. 428, L. 2003; amd. Sec. 2, Ch. 79, L. 2005; amd. Sec. 17, Ch. 428, L. 2005; amd. Sec. 1, Ch. 194, L. 2013; amd. Sec. 2, Ch. 254, L. 2013.

**61-5-111. Contents of driver's license, renewal, license expirations, grace period, and fees for licenses, permits, and endorsements — notice of expiration.** (1) (a) The department may appoint county treasurers and other qualified officers to act as its agents for the sale of driver's license receipts. The department shall adopt necessary rules governing sales. In areas in which the department provides driver licensing services 3 days or more a week, the department is responsible for sale of receipts and may appoint an agent to sell receipts.



(b) The department may enter into an authorized agent agreement with the county treasurer of any county in which the department no longer maintains a driver examination station for the purpose of providing driver's license renewal services.

(2) (a) The department, upon receipt of payment of the fees specified in this section, shall issue a driver's license to each qualifying applicant. The license must contain:

- (i) a full-face photograph of the licensee in the size and form prescribed by the department;
- (ii) a distinguishing number issued to the licensee;
- (iii) the full legal name, date of birth, Montana residence address unless the licensee requests use of the mailing address, and a brief description of the licensee;
- (iv) either the licensee's customary manual signature or a reproduction of the licensee's customary manual signature; and
- (v) if the applicant qualifies under subsection (7), indication of the applicant's status as a veteran.

(b) The department may not use the licensee's social security number as the distinguishing number. A license is not valid until it is signed by the licensee.

(3) (a) When a person applies for renewal of a driver's license, the department shall conduct a records check in accordance with 61-5-110(1) to determine the applicant's eligibility status and shall test the applicant's eyesight. The department may also require the applicant to submit to a knowledge and road or skills test if:

- (i) the renewal applicant has a physical or mental disability, limitation, or condition that impairs, or may impair, the applicant's ability to exercise ordinary and reasonable control in the safe operation of a motor vehicle on the highway; and
- (ii) the expired or expiring license does not include adaptive equipment or operational restrictions appropriate to the applicant's functional abilities; or
- (iii) the applicant wants to remove or modify the restrictions stated on the expired or expiring license.

(b) In the case of a commercial driver's license, the department shall, if the information was not provided in a prior licensing cycle, require the renewal applicant to provide the name of each jurisdiction in which the applicant was previously licensed to drive any type of motor vehicle during the 10-year period immediately preceding the date of the renewal application and may also require that the applicant successfully complete a written examination as required by federal regulations.

(c) A person is considered to have applied for renewal of a Montana driver's license if the application is made within 6 months before or 3 months after the expiration of the person's license. Except as provided in subsection (3)(d), a person seeking to renew a driver's license shall appear in person at a Montana driver's examination station.

(d) (i) Except as provided in subsections (3)(d)(iii) through (3)(d)(vi), a person may renew a driver's license by mail or online.

(ii) An applicant who renews a driver's license by mail or online shall submit to the department an approved vision examination and a medical evaluation from a licensed physician, licensed physician assistant, or advanced practice registered nurse, as defined in 37-8-102, in addition to the fees required for renewal.

(iii) If the department does not have a digitized photograph and signature record of the renewal applicant from the expiring license, then the renewal applicant shall apply in person.

(iv) Except as provided in subsections (4)(b) and (4)(c), the term of a license renewed by mail or online is 8 years.

(v) The department may not renew a license by mail or online if:

- (A) the records check conducted in accordance with 61-5-110(1) shows an ineligible license status for the applicant;
- (B) the applicant holds a commercial driver's license with a hazardous materials endorsement, the retention of which requires additional testing and a security threat assessment under 49 CFR, part 1572;
- (C) the applicant seeks a change of address or a name change; or
- (D) the applicant's license:
- (I) has been expired for 3 months or longer; or

(II) except as provided in subsection (3)(e), was renewed by mail or online at the time of the applicant's previous renewal.

(vi) If a license was issued to a foreign national whose presence in the United States is temporarily authorized under federal law, the license may not be renewed by mail or online.

(e) The spouse or a dependent of a renewal applicant who is stationed outside Montana on active military duty may renew the applicant's license by mail or online for one additional consecutive term following a renewal by mail or online.

(f) The department shall mail a driver's license renewal notice no earlier than 90 days and no later than 30 days prior to the expiration date of a driver's license. Except as provided in 61-3-119 and 61-5-115, the department shall mail the notice to the Montana mailing address shown on the driver's license.

(4) (a) Except as provided in subsections (4)(b) through (4)(e), a license expires on the anniversary of the licensee's birthday 8 years or less after the date of issue or on the licensee's 75th birthday, whichever occurs first.

(b) A license issued to a person who is 75 years of age or older expires on the anniversary of the licensee's birthday 4 years or less after the date of issue.

(c) A license issued to a person who is under 21 years of age expires on the licensee's 21st birthday.

(d) (i) Except as provided in subsection (4)(d)(ii), a commercial driver's license expires on the anniversary of the licensee's birthday 5 years or less after the date of issue.

(ii) When a person obtains a Montana commercial driver's license with a hazardous materials endorsement after surrendering a comparable commercial driver's license with a hazardous materials endorsement from another licensing jurisdiction, the license expires on the anniversary of the licensee's birthday 5 years or less after the date of the issue of the surrendered license if, as reported in the commercial driver's license information system, a security threat assessment was performed on the person as a condition of issuance of the surrendered license.

(e) A license issued to a person who is a foreign national whose presence in the United States is temporarily authorized under federal law expires, as determined by the department, no later than the expiration date of the official document issued to the person by the bureau of citizenship and immigration services of the department of homeland security authorizing the person's presence in the United States.

(f) The department may adopt rules to implement online driver's license renewal.

(5) When the department issues a driver's license to a person under 18 years of age, the license must be clearly marked with a notation that conveys the restrictions imposed under 61-5-133.

(6) (a) Upon application for a driver's license or commercial driver's license and any combination of the specified endorsements, the following fees must be paid:

(i) driver's license, except a commercial driver's license — \$5 a year or fraction of a year;

(ii) motorcycle endorsement — 50 cents a year or fraction of a year;

(iii) commercial driver's license:

(A) interstate — \$10 a year or fraction of a year; or

(B) intrastate — \$8.50 a year or fraction of a year.

(b) A renewal notice for either a driver's license or a commercial driver's license is 50 cents.

(7) (a) Upon receiving a request from a person whose status as a veteran has been verified by the department of military affairs pursuant to 10-2-1301 and upon receiving the information and fees required in this part, the department shall include the word "veteran" on the face of the license.

(b) After a person's status as a veteran is denoted on a driver's license, the department may not require further documentation of that status from the holder of the license upon subsequent renewal or replacement.

**History:** (1) thru (6)En. Sec. 19, Ch. 267, L. 1947; amd. Sec. 1, Ch. 135, L. 1951; amd. Sec. 1, Ch. 130, L. 1953; amd. Sec. 1, Ch. 249, L. 1961; amd. Sec. 1, Ch. 228, L. 1963; amd. Sec. 1, Ch. 23, L. 1967; amd. Sec. 1, Ch. 288, L. 1971; amd. Sec. 4, Ch. 423, L. 1971; amd. Sec. 1, Ch. 409, L. 1975; Sec. 31-135, R.C.M. 1947; (7)En. Sec. 13, Ch. 199, L. 1943; Sec. 31-113, R.C.M. 1947; R.C.M. 1947, 31-113, 31-135(part); amd. Sec. 1, Ch. 361, L. 1979; amd. Sec. 55, Ch. 421, L. 1979; amd. Secs. 1, 2, Ch. 276, L. 1985; amd. Sec. 1, Ch. 277, L. 1985; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 33, Ch. 516, L. 1985; amd. Sec. 12, Ch. 443, L. 1987; amd. Sec. 10, Ch. 378, L. 1989; amd. Sec. 1, Ch. 726, L. 1991; amd. Sec. 10, Ch. 195, L. 1993; amd. Sec. 1, Ch. 26, Sp. L. November 1993; amd. Sec. 5, Ch. 364, L. 1995; amd. Sec. 3, Ch. 29, L. 1999; amd. Sec. 10, Ch. 309, L. 1999; amd. Sec. 7, Ch. 207, L. 2001;

amd. Sec. 1, Ch. 251, L. 2003; amd. Sec. 9, Ch. 428, L. 2003; amd. Sec. 1, Ch. 558, L. 2003; amd. Sec. 1, Ch. 104, L. 2005; amd. Sec. 7, Ch. 297, L. 2005; amd. Sec. 18, Ch. 428, L. 2005; amd. Sec. 3, Ch. 478, L. 2005; amd. Sec. 111, Ch. 596, L. 2005; amd. Sec. 2, Ch. 242, L. 2007; amd. Sec. 1, Ch. 181, L. 2011; amd. Sec. 2, Ch. 322, L. 2013; amd. Sec. 5, Ch. 398, L. 2015.

**61-5-112. Types and classes of commercial driver's licenses — classification — rulemaking — reciprocity agreements.** (1) The department shall adopt rules that it considers necessary for the safety and welfare of the traveling public governing the classification of commercial driver's licenses and related endorsements and the examination of commercial driver's license applicants and renewal applicants. The rules must:

(a) subject to the exceptions provided in this section, comport with the licensing standards and requirements of 49 CFR, part 383, the medical qualifications of 49 CFR, part 391, and the security threat assessment provisions of 49 CFR, part 1572;

(b) allow for the issuance of a type 2 (intrastate only) commercial driver's license in accordance with medical qualification and visual acuity standards prescribed by the department;

(c) allow for the issuance of a type 2 commercial driver's license to a person who is 18 years of age or older;

(d) allow for issuance of a seasonal commercial driver's license based on standards established by the department for the waiver of the knowledge and road or skills test for a qualified person employed in farm-related service industries who has a good driving record and sufficient prior driving experience;

(e) prescribe the operational and seasonal restrictions for a seasonal commercial driver's license;

(f) prescribe the requirements for the medical statement that must be submitted in order for a person to be qualified for a type 2 commercial driver's license;

(g) prescribe the minimum standards for certification of a third-party commercial driver testing program and any test waiver under 61-5-118; and

(h) allow for the issuance of a commercial learner's permit.

(2) The department is authorized to enter into reciprocal agreements with adjacent states that would allow certain drivers of vehicles transporting farm products, farm machinery, or farm supplies within 150 miles of a farm to operate without a commercial driver's license because the vehicles are not considered commercial motor vehicles as provided in 61-1-101(9)(b)(ii).

**History:** En. Sec. 12, Ch. 267, L. 1947; amd. Sec. 1, Ch. 26, L. 1969; amd. Sec. 15, Ch. 94, L. 1973; R.C.M. 1947, 31-128; amd. Sec. 56, Ch. 421, L. 1979; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 13, Ch. 443, L. 1987; amd. Sec. 11, Ch. 195, L. 1993; amd. Sec. 11, Ch. 309, L. 1999; amd. Sec. 10, Ch. 428, L. 2003; amd. Sec. 19, Ch. 428, L. 2005; amd. Sec. 189, Ch. 542, L. 2005; amd. Sec. 55, Ch. 329, L. 2007; amd. Sec. 3, Ch. 296, L. 2011; amd. Sec. 1, Ch. 302, L. 2017.

#### **Compiler's Comments**

*2017 Amendment:* Chapter 302 inserted (1)(h) concerning issuance of commercial learner's permit; and made minor changes in style. Amendment effective October 1, 2017.

**61-5-113. Restricted licenses.** (1) If, upon an applicant's completion of the vision, knowledge, and skills tests required under 61-5-110, 61-5-111, and 61-5-207, the department determines that an applicant's ability to exercise ordinary and reasonable control in the safe operation of a motor vehicle on the highway depends on the use of adaptive equipment or operational restrictions, then the department shall include the appropriate restrictions on a license issued to the applicant. Once imposed, the restrictions may not be removed unless the department determines that the adaptive equipment or operational restrictions are no longer essential to the licensee's ability to exercise ordinary and reasonable control in the safe operation of a motor vehicle on the highway.

(2) The department may either issue a special restricted license or may include the restrictions on the usual license form.

(3) The department may upon receiving satisfactory evidence of a violation of the restrictions of a license or endorsement suspend or revoke the license. The licensee is entitled to a hearing as upon suspension or revocation under this chapter.

(4) It is a misdemeanor for a person to operate a motor vehicle in a manner in violation of the restrictions imposed in a restricted license.

**History:** En. Sec. 21, Ch. 267, L. 1947; R.C.M. 1947, 31-137; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 14, Ch. 443, L. 1987; amd. Sec. 12, Ch. 309, L. 1999.

**61-5-114. Replacement license — veteran designation.** (1) If a learner license or a driver's license issued under the provisions of this chapter is lost or destroyed or a person wants to update personal information contained on a learner license or a driver's license issued to the person, the person to whom the license was issued may, upon the payment of a fee of \$10, obtain a replacement license, upon furnishing proof satisfactory to the department that the license has been lost or destroyed or that personal information has changed.

(2) If the hazardous materials endorsement on a commercial driver's license issued under the provisions of this chapter is revoked or removed pursuant to the authority provided in 61-5-147, the person to whom the license was issued shall surrender to the department the person's commercial driver's license with the hazardous materials endorsement and may obtain, upon making application and paying a \$10 fee, a replacement license that does not include a hazardous materials endorsement.

(3) The department shall include the word "veteran" on the face of a driver's license if the requirements of 61-5-111(7) are met by the person applying for the driver's license.

**History:** En. Sec. 22, Ch. 267, L. 1947; amd. Sec. 1, Ch. 36, L. 1953; amd. Sec. 16, Ch. 121, L. 1965; R.C.M. 1947, 31-138; amd. Sec. 2, Ch. 277, L. 1985; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 15, Ch. 443, L. 1987; amd. Sec. 2, Ch. 558, L. 2003; amd. Sec. 20, Ch. 428, L. 2005; amd. Secs. 112, 163, Ch. 596, L. 2005; amd. Sec. 3, Ch. 322, L. 2013; amd. Sec. 17, Ch. 323, L. 2017.

**Compiler's Comments**

*2017 Amendment:* Chapter 323 in (1) in two places substituted "a learner license" for "an instruction permit" and in three places before "license" deleted "permit or"; and made minor changes in style. Amendment effective May 4, 2017.

**61-5-115. Notice of change of address.** Whenever any person after applying for or receiving a driver's license moves from the address named in the application or in the issued license, the person shall within 10 days notify the department in writing or electronically by an approved automated interface of the old and new addresses and of the number of any license then held by the person.

**History:** En. Sec. 24, Ch. 267, L. 1947; R.C.M. 1947, 31-140; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 16, Ch. 443, L. 1987; amd. Sec. 113, Ch. 596, L. 2005.

**61-5-116. License to be carried and exhibited on demand.** A licensee must have the licensee's driver's license in the licensee's immediate possession at all times when operating a motor vehicle and shall display the license upon demand of a justice of the peace, a city or municipal judge, a peace officer, a highway patrol officer, or a field deputy or inspector of the department. However, a person charged with violating this section may not be convicted if the person produces in court or the office of the arresting officer a driver's license issued to the person and valid at the time of the person's arrest.

**History:** En. Sec. 20, Ch. 267, L. 1947; R.C.M. 1947, 31-136; amd. Sec. 4, Ch. 348, L. 1985; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 17, Ch. 443, L. 1987; amd. Sec. 1, Ch. 217, L. 1989; amd. Sec. 1944, Ch. 56, L. 2009.

**61-5-117. Repealed.** Sec. 20, Ch. 428, L. 2003.

**History:** En. Sec. 40, Ch. 443, L. 1987; amd. Sec. 75, Ch. 10, L. 1993; amd. Sec. 12, Ch. 195, L. 1993; amd. Sec. 7, Ch. 53, L. 1995.

**61-5-118. Third-party commercial driver testing program — certification of testing programs and examiners — rulemaking — fees — test waiver.** (1) The department may contract with and certify the following as a third-party commercial driver testing program to administer the approved commercial driver skills test to a Montana commercial driver's license applicant:

(a) any person, employer of commercial drivers, private driver training facility, or other private company;

(b) a postsecondary institution as defined in 20-26-603;

(c) a department, agency, or instrumentality of a local government of the state; or

(d) a department, agency, or instrumentality of a tribal government of the state.

(2) A certified third-party driver testing program shall administer the same skills test as would otherwise be administered by the department.

(3) The department shall adopt rules governing the certification, operation, and monitoring of third-party testing programs. The rules must:

(a) substantially comply with the licensing standards and requirements in 49 CFR, part 383, and the state compliance standards in 49 CFR, part 384, including:



(i) issuance of a commercial driver's license skills testing certificate to a certified program upon execution of a third-party skills testing agreement;

(ii) requiring that all third-party skills test examiners meet minimum qualifications, including passing background checks paid for by the third-party testing program and successfully completing a formal skills test examiner training course;

(iii) providing examiner test limitations, minimum testing standards, and refresher training requirements; and

(iv) requiring recordkeeping and a detailed audit program that includes overt and covert test monitoring and onsite audits by state and federal personnel;

(b) specifically address the requirements for certifying third-party commercial driver testing programs, including place of business, appropriate bond and liability insurance, and facilities requirements; and

(c) specify minimum technology requirements for recordkeeping, scheduling applicants for the skills test, conducting the skills test, and electronically transferring skills test results to the department.

(4) The department may decertify a third-party commercial driver testing program for failure to comply with the department rules or federal regulations.

(5) The department may collect the following fees:

(a) a fee of \$5,000 to certify a third-party commercial driver testing program and a fee of \$2,500 for certification renewal;

(b) a fee of \$500 to certify each third-party commercial driver examiner and a fee of \$100 for certification renewal; and

(c) a fee of \$25 for each successfully completed skills test to be paid by the applicant.

(6) (a) A commercial driver's license applicant who is tested under the third-party commercial driver testing program must have passed the knowledge test required by 61-5-110 and complied with commercial driver's license department rules and federal regulations and must possess a valid Montana commercial learner's permit issued under 61-5-112.

(b) The road test or the skills test required by 61-5-110 may be waived by the department for a commercial driver's license applicant upon certification of the applicant's successful completion of the road test or the skills test by:

(i) a third-party commercial driver testing program certified under this section; or

(ii) a third-party commercial driver examiner from a jurisdiction that has a comparable third-party commercial driver testing program, as determined by the department.

**History:** En. Sec. 6, Ch. 53, L. 1995; amd. Sec. 1, Ch. 292, L. 1999; amd. Sec. 11, Ch. 428, L. 2003; amd. Sec. 2, Ch. 302, L. 2017.

#### **Compiler's Comments**

*2017 Amendment:* Chapter 302 in (1) substituted current text concerning who may be certified as third-party commercial driver testing program for former text that read: "(1) The department may certify as a third-party commercial driver testing program any company that:

(a) in the course of its commercial enterprise, customarily transports or hauls any goods, including agricultural commodities, in company-owned class A commercial motor vehicles as prescribed by federal regulations;

(b) regularly and continuously employs a minimum number of drivers. The department shall determine the minimum number of drivers and whether they are regularly and continuously employed by the company.

(c) has a permanent Montana mailing address and maintains a place of business in this state that includes at least one permanent, regularly occupied structure with facilities and equipment to conduct offstreet skills testing;

(d) employs at least one examiner with qualifications required by rules of the department; and

(e) complies with rules adopted by the department under 61-5-112"; inserted (2) requiring administration of same skills test; inserted (3) requiring department to adopt rules governing third-party testing programs; deleted former (3) that read: "(3) An examiner for a certified third-party commercial driver testing program may administer a road test or a skills test only to a company employee who has applied to the department for a commercial driver's license and who has passed the knowledge test required by 61-5-110 and by department or federal rules"; inserted (4) concerning decertification of third-party testing program; inserted (5) concerning collection of fees; inserted (6)(a) concerning requirements for commercial driver's license applicant tested under third-party testing program; and made minor changes in style. Amendment effective October 1, 2017.

**61-5-119. Definitions.** (1) For the purposes of 61-5-120, "driver rehabilitation specialist" means a person who:

(a) possesses current certification from the association of driver educators for the disabled as a driver rehabilitation specialist; or

(b) (i) provides comprehensive services in the clinical evaluation of the abilities of a person with a disability to safely operate a motor vehicle, utilizing, among other things, wheelchair and seating assessment, motor vehicle modification prescription, and driver education;



(ii) (A) possesses a bachelor's degree in rehabilitation, education, or health and safety, in physical, occupational, or recreational therapy, or in a related profession; or  
(B) has an equivalent of 8 years of experience in driver rehabilitation and education; and  
(iii) has at least 1 year of experience in the area of driver evaluation and training for individuals with disabilities.

(2) For the purposes of this chapter, unless the context requires otherwise, "cancellation" means that a driver's license is annulled and terminated because of some error or defect or because the licensee is no longer entitled to the license. Except as provided in 61-5-201(3), the cancellation of a license is without prejudice and application for a new license may be made at any time after cancellation.

**History:** En. Sec. 1, Ch. 309, L. 1999; amd. Secs. 21, 36, Ch. 428, L. 2005; amd. Sec. 190, Ch. 542, L. 2005.

**61-5-120. Medical assessment and rehabilitation driving permit.** (1) Upon the written request of a licensed physician, licensed physician assistant, or advanced practice registered nurse, as defined in 37-8-102, on a form prescribed by the department, the department may authorize a driver rehabilitation specialist to issue a temporary medical assessment and rehabilitation driving permit to a person who is not licensed to drive or whose license has expired under the provisions of this chapter for the purpose of driver assessment, rehabilitation, and training.

(2) The temporary permit may be issued only to a person who is 16 years of age or older.

(3) The permit is valid for up to 6 weeks, beginning with the date of the first evaluation of the permitholder by the driver rehabilitation specialist. The driver rehabilitation specialist shall sign and date the permit at the time of the first evaluation.

(4) The permit is valid only when the permitholder is operating a motor vehicle under the immediate supervision of the driver rehabilitation specialist during the permitholder's participation in an actual in-vehicle evaluation process.

(5) The department may extend the duration of a medical assessment and rehabilitation permit for an additional 6-week period if the driver rehabilitation specialist, licensed physician, licensed physician assistant, or advanced practice registered nurse certifies that the permitholder needs additional time to complete the driver assessment, rehabilitation, and training process.

**History:** En. Sec. 2, Ch. 309, L. 1999; amd. Sec. 3, Ch. 242, L. 2007.

**61-5-121. Disposition of fees.** (1) Except as provided in subsection (3), the disposition of the fees from driver's licenses, motorcycle endorsements, commercial driver's licenses, and replacement driver's licenses provided for in 61-5-114 is as follows:

(a) (i) If the fees are collected by a county treasurer or other agent of the department, the amount of 2.5% of each driver's license fee, 2.5% of each commercial driver's license fee, and 3.75% of each replacement driver's license fee must be deposited into the county general fund.

(ii) If the fees are collected by the department, the amount provided for in subsection (1)(a)(i) must be deposited into the state general fund.

(b) (i) If the fee is collected by a county treasurer or other agent of the department, the amount of 3.34% of each motorcycle endorsement must be deposited into the county general fund.

(ii) If the fee is collected by the department, the amount provided for in subsection (1)(b)(i) must be deposited into the state general fund.

(c) The amount of 20.7% of each driver's license fee, 16.94% of each commercial driver's license fee, and 8.75% of each replacement driver's license fee must be deposited into the state traffic education account.

(d) In addition to the amounts deposited pursuant to subsections (1)(a)(ii) and (1)(b)(ii), the remainder of each driver's license fee, each commercial driver's license fee, and each replacement driver's license fee must be deposited into the state general fund.

(e) The amount of 63.46% of each motorcycle endorsement fee must be deposited into the state motorcycle safety account in the state special revenue fund, and the amount of 33.2% of each motorcycle endorsement fee must be deposited into the state general fund.

(2) (a) If fees from driver's licenses, commercial driver's licenses, motorcycle endorsements, and replacement driver's licenses are collected by a county treasurer or other agent of the department, the county treasurer or agent shall deposit the amounts provided for in subsections

(1)(a)(i) and (1)(b)(i) into the county general fund. The county treasurer or agent shall then remit all remaining fees to the state for deposit as provided in subsections (1)(c) through (1)(e).

(b) If fees from driver's licenses, commercial driver's licenses, motorcycle endorsements, and replacement driver's licenses are collected by the department, it shall deposit the fees as provided in subsections (1)(a)(ii), (1)(b)(ii), and (1)(c) through (1)(e).

(3) The fee for a renewal notice, whether collected by a county treasurer, an authorized agent, or the department, must be remitted to the department for deposit in the state general fund.

**History:** En. Sec. 3, Ch. 277, L. 1985; amd. Sec. 13, Ch. 503, L. 1985; amd. Sec. 115, Ch. 370, L. 1987; amd. Sec. 18, Ch. 443, L. 1987; amd. Sec. 4, Ch. 62, L. 1989; amd. Sec. 1, Ch. 217, L. 1989; amd. Sec. 1, Ch. 275, L. 1989; amd. Sec. 12, Ch. 398, L. 1989; amd. Sec. 2, Ch. 584, L. 1991; amd. Sec. 9, Ch. 701, L. 1991; amd. Sec. 2, Ch. 726, L. 1991; amd. Secs. 3, 5, Ch. 5, Sp. L. January 1992; amd. Sec. 5, Ch. 11, Sp. L. July 1992; amd. Sec. 13, Ch. 195, L. 1993; amd. Sec. 2, Ch. 39, Sp. L. November 1993; amd. Sec. 56, Ch. 509, L. 1995; amd. Sec. 250, Ch. 42, L. 1997; amd. Sec. 52, Ch. 422, L. 1997; amd. Sec. 12, Ch. 181, L. 1999; amd. Sec. 30, Ch. 257, L. 2001; amd. Sec. 3, Ch. 558, L. 2003; amd. Sec. 10, Ch. 464, L. 2005; amd. Sec. 164, Ch. 596, L. 2005; amd. Sec. 1, Ch. 6, L. 2007; amd. Sec. 63, Ch. 44, L. 2007.

**61-5-122. Low-speed restricted driver's license.** (1) The department may issue a low-speed restricted driver's license to a person who is physically or otherwise impaired in a manner and degree that prevent the person from safely operating a motor vehicle across the range of speeds permitted or required on a public highway.

(2) (a) To qualify for a low-speed restricted driver's license, an applicant shall submit to the department a medical evaluation or statement from a treating physician that attests to the person's impairment and resulting inability to safely operate a motor vehicle across the range of speeds permitted or required on a public highway.

(b) The applicant must be otherwise qualified for a driver's license under this chapter and shall apply for a driver's license under 61-5-107, pay the fees required in 61-5-111, and pass the vision test, the knowledge test, and the road test required under 61-5-110. The road test must be modified to conform to the operational limitations of the vehicle.

(3) The department may issue a low-speed restricted learner license, valid for 30 days from the date of issuance, to a person who qualifies for a low-speed restricted driver's license under this section and who passes the vision test and knowledge test required in 61-5-110. A licensee may operate a low-speed electric vehicle or golf cart pursuant to 61-8-378 while in the immediate possession of the license and accompanied by a licensed driver seated beside the licensee.

**History:** En. Sec. 2, Ch. 209, L. 2011; amd. Sec. 18, Ch. 323, L. 2017.

**Compiler's Comments**

*2017 Amendment:* Chapter 323 in (3) in first sentence substituted "learner license" for "instruction permit" and in second sentence substituted "license" for "permit" and in two places substituted "licensee" for "permitholder". Amendment effective May 4, 2017.

**61-5-123. Waiver of skills test related to military commercial motor vehicles experience — rulemaking.** (1) The department may waive the skills test required for a commercial driver's license if an applicant meets the conditions in subsection (2) and is:

- (a) a veteran of the armed forces of the United States who was honorably discharged;
- (b) currently serving in the armed forces of the United States;
- (c) serving full-time in a reserve component, as defined in 37-1-138; or
- (d) honorably discharged from the reserve component after serving full-time in the reserve component.

(2) An applicant shall:

- (a) certify that, during the 2-year period immediately prior to application, the applicant:
  - (i) did not have more than one license except for a military license;
  - (ii) did not have a license suspended, revoked, or canceled;
  - (iii) was not convicted of a disqualifying offense as provided in 49 CFR 383.51(b);
  - (iv) did not have more than one conviction for a serious traffic violation as provided in 49 CFR 383.51(c); and

(v) did not have any conviction for a violation of military, state, or local law relating to motor vehicle traffic control other than a parking violation arising in connection with any traffic accident and has no record of an accident in which the applicant was at fault;

- (b) provide evidence and certify that:

(i) the military position in which the applicant served required regular operation over at least a 2-year period immediately prior to either discharge or application, as applicable, of a commercial motor vehicle representative of the class of motor vehicle for which the applicant is seeking a commercial driver's license; and

(ii) the applicant was exempted under 49 CFR 383.3(c) from the requirements of this part when operating a commercial motor vehicle in the military.

(3) The department shall adopt rules necessary for the administration of this section.

**History:** En. Sec. 1, Ch. 254, L. 2013; amd. Sec. 1, Ch. 432, L. 2017.

**Compiler's Comments**

*2017 Amendment:* Chapter 432 in (1) after "if an applicant" substituted "meets the conditions in subsection (2) and" for "who"; in (1)(a) inserted "who was honorably discharged"; inserted (1)(b), (1)(c), and (1)(d) regarding currently serving in the armed forces or a reserve component or being honorably discharged; in (2) at beginning inserted "An applicant shall"; in (2)(b)(i) substituted current text for former text that read: "the applicant is regularly employed, or within the last 90 days was regularly employed, in a position requiring operation of a commercial motor vehicle"; deleted former (2)(b)(iii) that read: "(iii) for at least 2 years immediately preceding the applicant's honorable separation from military service as evidenced by the applicant's certificate of release or discharge from active duty, the applicant was operating a motor vehicle representative of the class of motor vehicle for which the applicant is seeking a commercial driver's license"; and made minor changes in style. Amendment effective May 22, 2017.

**61-5-124 reserved.**

**61-5-125. Authority of department — rulemaking authority.** (1) The department shall administer and enforce the provisions of this chapter.

(2) The department shall adopt rules setting standards to govern driver's license examinations and reexaminations. The rules:

(a) must specifically address the functional abilities and skills required for a person to exercise ordinary and reasonable control in the safe operation of a motor vehicle on a highway;

(b) must include minimum uncorrected or corrected visual acuity requirements for both unrestricted and restricted licensure and may include minimum field of vision and depth perception requirements and hearing requirements for unrestricted and restricted licensure;

(c) may direct the design of one or more types of skills tests to assess an applicant's or licensee's ability to exercise ordinary and reasonable control in the safe operation of a motor vehicle on the highway. A skills test may consist of:

(i) a comprehensive assessment of a person's functional abilities by means of an actual demonstration of the applicant's ability to exercise ordinary and reasonable control in the safe operation of a motor vehicle; or

(ii) a more limited assessment of a person's functional abilities, conducted at the discretion of the department, as related to a specific physical or mental condition or conditions or a request for reexamination;

(d) must include operational restrictions based upon the visual acuity of an applicant or licensee;

(e) may take into consideration any nationally recognized standards or recommended practices for assessment of a person's ability to exercise ordinary and reasonable control in the safe operation of a motor vehicle on the highway;

(f) must include appropriate licensing criteria relating to the use of adaptive equipment or operational limits that can be readily discerned by law enforcement or a licensing agency in another jurisdiction;

(g) may be derived from medical guidelines and information compiled by driver licensing medical advisory or review boards from other jurisdictions, as well as information received from advocacy groups for persons with disabilities and senior citizens; and

(h) except as provided in 61-5-105, may not use a person's age or physical or mental disability, limitation, or condition as a justification for denial of a license.

(3) The department shall adopt rules governing the issuance of a hardship license to an underage applicant, including but not limited to an applicant who is 14 years of age or older who holds a valid learner license under 61-5-106. The rules must consider whether a hardship license is needed because the applicant's licensed parent or guardian is not available to accompany the licensee due to employment or circumstances related to the operation of a farm or ranch and the licensee is required to drive more than 7 miles from the licensee's residence to the licensee's school bus stop.

(4) The department may adopt additional rules governing:

(a) acceptable methods of proof of identification that must be supplied by a person upon application for or renewal of a driver's license;

(b) the cancellation of a driver's license upon receipt of an insufficient funds check in payment of license fees;

(c) circumstances under which the department may issue a probationary license to a person whose license has been suspended or revoked or a person whose license is subject to a discretionary suspension or revocation;

(d) restrictions to be imposed upon a probationary license;

(e) renewal of a driver's license by a person in the military assigned to active duty who had a valid Montana driver's license at the time of entering active duty;

(f) issuance of a replacement driver's license; and

(g) a determination of the driver's license expiration date, minimum and maximum license terms, and license renewal requirements for a driver's license issued to a person who is a foreign national whose presence in the United States is temporarily authorized under federal law.

**History:** En. Sec. 1, Ch. 74, L. 1987; amd. Sec. 13, Ch. 309, L. 1999; amd. Sec. 23, Ch. 428, L. 2005; amd. Sec. 4, Ch. 478, L. 2005; amd. Sec. 1, Ch. 246, L. 2011; amd. Sec. 19, Ch. 323, L. 2017.

**Compiler's Comments**

*2017 Amendment:* Chapter 323 in (3) in first sentence before "learner license" deleted "instruction permit or a traffic education" and in second sentence in four places substituted references to licensee for references to permitholder. Amendment effective May 4, 2017.

**61-5-126. Providing information to selective service system.** At the request of the director of the selective service system, provided for in 50 App. U.S.C. 460, the department shall provide a list of persons born in specified years who are holders of driver's licenses for the exclusive purpose of ensuring compliance with the military draft registration requirements of the federal Military Selective Service Act (50 App. U.S.C. 451, et seq.). The department shall notify the persons that information regarding them was released to the selective service system. The department may not provide the selective service system with the social security or driver's license numbers of persons on the list for any purpose.

**History:** En. Sec. 2, Ch. 663, L. 1989; amd. Sec. 251, Ch. 42, L. 1997.

**61-5-127. Providing list of licensed drivers and holders of Montana identification cards for jury selection purposes.** (1) On the second Monday of April of each year, the department shall submit to the office of court administrator a list, prepared from the department's databases of licensed drivers and holders of Montana identification cards, showing the name, address, and date of birth of all licensed drivers and holders of Montana identification cards, authorized by 61-12-501, who are 18 years of age or older. The list must be compiled on a county-by-county basis and be further divided by the city of residence of the persons named on the list to enable the drawing of lists for city courts that are composed of only those residents living within a city's jurisdiction. The list must be provided for the exclusive purpose of making a list of persons to serve as trial jurors for the ensuing year.

(2) The list submitted by the department under subsection (1) must be certified by the attorney general or the attorney general's designee.

(3) The department may not provide the social security or driver's license numbers of persons on the list for any purpose.

**History:** En. Sec. 1, Ch. 441, L. 2003; amd. Sec. 5, Ch. 133, L. 2007; amd. Sec. 3, Ch. 24, L. 2017.

**Compiler's Comments**

*2017 Amendment:* Chapter 24 in (1) near beginning substituted "office of court administrator" for "secretary of state" and near middle after "18 years of age or older" deleted "and whose address is in that county". Amendment effective October 1, 2017.

**61-5-128. (Temporary — effective January 1, 2018, or on occurrence of contingency) Legislative direction to state agency to implement REAL ID Act.** The state of Montana shall participate in the implementation of the REAL ID Act of 2005, Public Law 109-13. The department, including the motor vehicle division of the department, is directed to implement the provisions of the REAL ID Act of 2005. (*Void or effective date delayed on occurrence of contingency—secs. 8, 9, Ch. 443, L. 2017.*)

**61-5-128. (Effective on occurrence of contingency) Legislative finding and direction to state agency not to implement REAL ID Act.** (1) The legislature finds that the enactment



into law by the U.S. congress of the REAL ID Act of 2005, as part of Public Law 109-13, is inimical to the security and well-being of the people of Montana, will cause unneeded expense and inconvenience to those people, and was adopted by the U.S. congress in violation of the principles of federalism contained in the 10th amendment to the U.S. constitution.

(2) The state of Montana will not participate in the implementation of the REAL ID Act of 2005. The department, including the motor vehicle division of the department, is directed not to implement the provisions of the REAL ID Act of 2005 and to report to the governor any attempt by agencies or agents of the U.S. department of homeland security to secure the implementation of the REAL ID Act of 2005 through the operations of that division and department.

**History:** En. Sec. 1, Ch. 198, L. 2007; amd. Sec. 3, Ch. 443, L. 2017.

**Compiler's Comments**

**2017 Amendment:** Chapter 443 deleted former (1) that read: "(1) The legislature finds that the enactment into law by the U.S. congress of the REAL ID Act of 2005, as part of Public Law 109-13, is inimical to the security and well-being of the people of Montana, will cause unneeded expense and inconvenience to those people, and was adopted by the U.S. congress in violation of the principles of federalism contained in the 10th amendment to the U.S. constitution"; after "The state of Montana" substituted "shall" for "will not", after "REAL ID Act of 2005" inserted "Public Law 109-13", before "to implement the provisions" deleted "not", and at end deleted "and to report to the governor any attempt by agencies or agents of the U.S. department of homeland security to secure the implementation of the REAL ID Act of 2005 through the operations of that division and department"; and made minor changes in style. Amendment effective January 1, 2018, or on occurrence of contingency, and void on occurrence of contingency.

**Contingent Voidness:** Section 8, Ch. 443, L. 2017, provided: "If the REAL ID Act of 2005, Public Law 109-13, is repealed or if the federal government notifies the state of Montana that compliance with the REAL ID Act is not required, then [this act] is void."

**Effective Date — Contingency:** Section 9, Ch. 443, L. 2017, provided: "(1) Except as provided in subsection (2), [this act] is effective January 1, 2018.

(2) If before January 1, 2018, the state of Montana receives an extension from compliance with the REAL ID Act of 2005, Public Law 109-13, from the department of homeland security, [this act] is effective January 1, 2019. Notification of the extension must be sent to the Montana department of justice and the code commissioner." On June 21, 2017, the Department of Homeland Security notified the Attorney General that Montana was granted an extension through October 10, 2017, to meet REAL ID requirements.

**61-5-129. (Temporary — effective January 1, 2018, or on occurrence of contingency) REAL ID-compliant driver's license or identification card — voluntary application.** (1) The department shall issue a Montana driver's license or identification card that complies with the requirements of the federal REAL ID Act of 2005, Public Law 109-13, to each qualifying applicant.

(2) (a) When required to obtain a Montana driver's license or identification card, a person may choose to apply for either a standard driver's license or identification card, or for a REAL ID-compliant driver's license or REAL ID-compliant identification card.

(b) A person may not hold a valid standard driver's license or identification card and a valid REAL ID-compliant driver's license or identification card at the same time.

(3) (a) A REAL ID-compliant driver's license issued pursuant to this section is subject to the other requirements of obtaining, renewing, and using a standard driver's license issued pursuant to this chapter.

(b) A REAL ID-compliant identification card issued pursuant to this section is subject to the other requirements of obtaining, renewing, and using a standard identification card issued pursuant to Title 61, chapter 12, part 5, and this chapter.

(4) (a) In addition to the fees charged to apply for or renew a standard driver's license under 61-5-111(6) and the fees charged to apply for a standard identification card under 61-12-504, the department may charge the following additional fees:

(i) for a person who is applying for a REAL ID-compliant driver's license or identification card during a renewal period specified in 61-5-111(3)(c), the additional fee is \$25;

(ii) for a person who is applying for a REAL ID-compliant driver's license or identification card prior to the renewal period specified in 61-5-111(3)(c), the additional fee is \$50; and

(iii) for a person who renews a standard driver's license or a standard identification card under 61-5-111(3)(c) between June 1, 2017, through December 31, 2017, and is applying for a REAL ID-compliant driver's license or identification card between January 1, 2018, and June 30, 2018, the additional fee is \$25.



(b) The fees collected under this subsection (4) must be deposited in the state special revenue fund to be used to fund the equipment and staffing necessary to provide REAL ID-compliant driver's licenses and identification cards. (*Void or effective date delayed on occurrence of contingency—secs. 8, 9, Ch. 443, L. 2017.*)

**History:** En. Sec. 1, Ch. 443, L. 2017.

**Compiler's Comments**

*Contingent Voidness:* Section 8, Ch. 443, L. 2017, provided: "If the REAL ID Act of 2005, Public Law 109-13, is repealed or if the federal government notifies the state of Montana that compliance with the REAL ID Act is not required, then [this act] is void."

*Effective Date — Contingency:* Section 9, Ch. 443, L. 2017, provided: "(1) Except as provided in subsection (2), [this act] is effective January 1, 2018.

(2) If before January 1, 2018, the state of Montana receives an extension from compliance with the REAL ID Act of 2005, Public Law 109-13, from the department of homeland security, [this act] is effective January 1, 2019. Notification of the extension must be sent to the Montana department of justice and the code commissioner." On June 21, 2017, the Department of Homeland Security notified the Attorney General that Montana was granted an extension through October 10, 2017, to meet REAL ID requirements.

**61-5-130 reserved.**

**61-5-131. Purpose.** The purpose of 61-5-131 through 61-5-135 is to create a graduated driver's licensing program that will allow persons under 18 years of age to progressively develop and improve their driving skills in the safest possible environment and that will improve highway safety by reducing the disproportionately high incidence of motor vehicle accidents involving minors.

**History:** En. Sec. 1, Ch. 297, L. 2005.

**61-5-132. Prerequisites for issuance of driver's license to minor.** (1) The department may issue a driver's license, subject to the restrictions of 61-5-133, to a person under 18 years of age if the person:

(a) has held a learner license or traffic education permit for a period of not less than 6 months;

(b) has passed a road test or a skills test, as provided in 61-5-110;

(c) presents written certification from the person's parent or legal guardian that states that the person has had at least 50 hours of driving experience, 10 of which were at night, during which the person was supervised by a parent, a legal guardian, or a person at least 18 years of age, with the consent of the parent or legal guardian, who had a valid driver's license; and

(d) presents written certification from the person's parent or legal guardian that states that, during the 6-month period immediately preceding application for a driver's license, the person has not been convicted of a traffic violation or convicted of or adjudicated for an offense involving the use of alcohol or drugs and the person has no pending traffic, alcohol, or drug citations.

(2) If a parent or a legal guardian for a person under 18 years of age cannot certify that the person has a 6-month conviction-free record for traffic, alcohol, and drug violations and no pending traffic, alcohol, or drug citations, the department may extend the person's learner license for an additional 1-year period or until the person's 18th birthday, whichever occurs first.

(3) (a) The requirements of subsections (1)(a) through (1)(c) do not apply to a person under 18 years of age who has been licensed in another state for at least 6 months and surrenders a valid driver's license from that state.

(b) The requirements of subsection (1)(c) do not apply to a person under 18 years of age who, at the time of application for a driver's license, is an enrollee of a job corps program located in Montana. The department may require the applicant to provide current documentation of the applicant's job corps program enrollment status.

**History:** En. Sec. 2, Ch. 297, L. 2005; amd. Sec. 20, Ch. 323, L. 2017.

**Compiler's Comments**

*2017 Amendment:* Chapter 323 in (1)(a) "substituted "a learner license or traffic education permit" for "an instruction permit or traffic education learner's license"; in (2) near end substituted "learner license" for "instruction permit or traffic education learner's license". Amendment effective May 4, 2017.

**61-5-133. First year restrictions on driver's license issued to minor.** (1) A driver's license issued to a person who is under 18 years of age is subject to the following restrictions for 1 year from the date of issuance of the license or until the person is 18 years of age, whichever occurs first:

(a) A restricted licensee may not operate a motor vehicle, required by 61-9-409 to be equipped with seatbelts, unless each occupant of the motor vehicle is wearing a seatbelt, as defined in 61-13-102, or is properly restrained, as required under 61-9-420. The number of motor vehicle occupants may not exceed the number of seatbelts with which the motor vehicle is equipped.

(b) A restricted licensee may not operate a motor vehicle between the hours of 11 p.m. and 5 a.m. unless the restricted licensee is:

(i) accompanied by a licensed driver who is 18 years of age or older or, if the restricted licensee is operating a motorcycle, the restricted licensee is under the immediate and proximate visual supervision of a licensed driver who is 18 years of age or older and who is riding with the licensee and is operating a separate motorcycle or other motor vehicle;

(ii) driving to the restricted licensee's place of employment from the restricted licensee's residence, is returning to the restricted licensee's residence from the restricted licensee's place of employment, or is driving in the course and scope of employment;

(iii) driving from the restricted licensee's residence to a school-sponsored event at a school attended by the restricted licensee, including any site for school-provided transportation to and from the event, or is returning from the event or site to the restricted licensee's residence;

(iv) driving from the restricted licensee's residence to an event sponsored by a religious organization or is returning from the event to the restricted licensee's residence;

(v) driving for a purpose related to a medical emergency, fire emergency, or law enforcement-related emergency;

(vi) driving for the sole purpose of transporting farm or ranch products, machinery, or supplies within 150 miles of a farm or ranch headquarters;

(vii) an emancipated minor; or

(viii) driving under a specific authorization for a specific purpose from the restricted licensee's parent or legal guardian. A peace officer may verify the authorization by contacting the parent or legal guardian.

(c) (i) For the first 6 months of the 1-year restriction period, a restricted licensee may not operate a motor vehicle with more than one passenger who is under 18 years of age unless:

(A) the restricted licensee is supervised by a licensed driver who is at least 18 years of age; or

(B) the additional passengers under 18 years of age are members of the restricted licensee's family.

(ii) For the second 6 months of the 1-year restriction period, a restricted licensee may not operate a motor vehicle with more than three passengers who are under 18 years of age unless:

(A) the restricted licensee is supervised by a licensed driver who is at least 18 years of age; or

(B) the additional passengers under 18 years of age are members of the licensee's family.

(iii) For the first 6 months of the 1-year restriction period, a restricted licensee may not operate a motorcycle with a passenger who is under 18 years of age.

(2) For purposes of this section, the term "restricted licensee" includes a person under 18 years of age who holds a motorcycle-only endorsement issued by the department and the term "motor vehicle" includes a motorcycle, except when otherwise noted.

**History:** En. Sec. 3, Ch. 297, L. 2005.

**61-5-134. Operation of motor vehicle by minor in violation of restricted first-year license — penalty.** (1) A person whose driver's license is restricted under 61-5-133 may not operate a motor vehicle, including a motorcycle, in violation of a restriction imposed under that section.

(2) A person convicted under this section shall be ordered to perform not less than 20 hours or more than 60 hours of community service.

(3) Upon receipt of a report of a second or subsequent conviction under this section, the department shall suspend the person's driver's license for 6 months. A probationary driver's license may not be issued during the period of suspension.

**History:** En. Sec. 4, Ch. 297, L. 2005.

**61-5-135. Education on distracted driving.** (1) The department, in consultation with the superintendent of public instruction, shall encourage schools providing traffic education to

include in their traffic education curriculum information regarding the dangers of physical and cognitive distractions while driving.

(2) To reduce the risks for novice drivers, the department shall include in its publications intended for novice drivers information concerning the dangers of physical and cognitive distractions while driving, including but not limited to mental inattentiveness because of stress, fatigue, heightened emotion, conversation with passengers, stereo or climate control adjustment, food and drink, use of electronic devices, and personal grooming.

**History:** En. Sec. 5, Ch. 297, L. 2005.

**61-5-136 through 61-5-140 reserved.**

**61-5-141. Self-certification of operation status — medical certificate submission and tracking — notice of expiration — downgrade of license.** (1) The department may not issue or renew a commercial driver's license unless the person applying for the license:

(a) certifies to the department the status of operation or expected operation of the commercial motor vehicle as being either nonexcepted interstate commerce or excepted interstate commerce, as those terms are described in 49 CFR 383.71, or intrastate commerce; and

(b) when nonexcepted interstate commerce is certified, submits to the department a current medical examiner's certificate as prescribed in 49 CFR, part 391, or when intrastate commerce is certified, submits to the department a current medical examiner's certificate as prescribed in 49 CFR, part 391, or a medical statement as prescribed by department rule.

(2) The department may not issue a commercial driver's license to a person seeking to transfer a valid commercial driver's license issued by another state driver licensing authority unless the requirements of subsection (1)(a) are met, and if the driver certifies to nonexcepted interstate commerce operation, the department shall check the person's CDLIS driver record to verify that the person's medical certification status is "certified".

(3) The department shall mail to the holder of a commercial driver's license certified for nonexcepted interstate commerce a notice of pending medical certificate expiration no earlier than 60 days and no later than 30 days prior to the expiration date of the current medical certificate. The department shall mail the notice to the Montana mailing address shown on the commercial driver's license or, if more recent, the mailing address updated pursuant to 61-3-119 and 61-5-115.

(4) On or before the expiration date of the current medical certificate, the holder of a commercial driver's license certified for nonexcepted interstate commerce shall submit a new medical certificate to the department.

(5) If a new medical certificate is not submitted as required in subsection (4), the department shall, within 10 days of expiration of the current medical certificate:

(a) update the CDLIS driver record to a status of "not certified";

(b) downgrade the person's commercial driver's license; and

(c) notify the person of the status change and the license downgrade on the CDLIS driver record.

(6) The department may reinstate a commercial driver's license that was downgraded under subsection (5) if, within the original term of the downgraded license, the person:

(a) submits a current medical certificate to the department;

(b) certifies to a change in operation status to excepted interstate; or

(c) certifies to a change in operation status to intrastate and submits either a current medical examiner's certificate as prescribed in 49 CFR, part 391, or a medical statement as prescribed by department rule.

(7) Within 10 days of issuance, transfer, renewal, downgrade, or upgrade of a commercial driver's license, the department shall update the CDLIS driver record for the license holder in accordance with the requirements of 49 CFR, part 383.

(8) A downgrade or subsequent upgrade of a CDLIS driver record pursuant to this section is an electronic transaction. The department may not require the surrender or replacement of a commercial driver's license under this section unless the license is expired.

(9) Unless the commercial driver's license is expired, the department may not require a license holder to take the knowledge and road or skills tests required under 61-5-110 or 61-5-111 to reinstate the commercial driver's license pursuant to subsection (6) of this section.

**History:** En. Sec. 1, Ch. 296, L. 2011.

**61-5-142 through 61-5-145 reserved.**

**61-5-146. Limitations on issuance of hazardous materials endorsement to commercial driver's license — security threat assessment.** (1) The department may not issue, transfer, or renew a hazardous materials endorsement for a person who holds a commercial driver's license unless it receives notice from the transportation security administration of the department of homeland security that:

(a) the person does not pose a security threat warranting denial of a hazardous materials endorsement;

(b) the person has been granted a waiver from the transportation security administration; or

(c) less than 4 years have elapsed since a favorable security threat assessment was performed in a former licensing jurisdiction.

(2) In addition to any requirements under this chapter and in accordance with the security threat assessment standards provided in 49 CFR, part 1572, an applicant who is seeking a hazardous materials endorsement shall:

(a) complete a separate application as prescribed by the transportation security administration;

(b) submit, as directed by the department, to a fingerprint-based background check by the transportation security administration; and

(c) pay to the agent of the transportation security administration the fees imposed under 49 CFR, part 1572, for collection and transmission of fingerprints and applicant information, processing of fingerprint identification records, and the security threat assessment and adjudication.

**History:** En. Sec. 1, Ch. 428, L. 2005; Sec. 61-5-220, MCA 2009; redes. 61-5-146 by Sec. 12, Ch. 296, L. 2011.

**61-5-147. Authority to revoke or remove hazardous materials endorsement.**

(1) If the transportation security administration of the department of homeland security informs the department that a person does not meet the standards for the security threat assessment provided in 49 CFR, part 1572, the department shall revoke the person's hazardous materials endorsement to a commercial driver's license. Revocation of the hazardous materials endorsement results in immediate withdrawal of the person's authority to transport hazardous material in commerce, but does not otherwise affect the person's commercial driver's license or any unrelated endorsements.

(2) A person whose hazardous materials endorsement has been revoked or removed under this section shall surrender the person's commercial driver's license to the department and apply for a replacement license, as provided in 61-5-114, that does not include the hazardous materials endorsement.

(3) Upon surrender of a hazardous materials endorsement by a person who is disqualified from holding a hazardous materials endorsement under 49 CFR, part 1572, the department shall note the removal of the hazardous materials endorsement on its records and on the commercial driver's license information system.

**History:** En. Sec. 2, Ch. 428, L. 2005; amd. Sec. 37, Ch. 428, L. 2005; amd. Sec. 4, Ch. 296, L. 2011; Sec. 61-5-221, MCA 2009; redes. 61-5-147 by Sec. 12, Ch. 296, L. 2011.

## **Part 2**

### **Revocation, Suspension, or Cancellation of Licenses**

**61-5-201. Authority of department to cancel license.** (1) The department may cancel a driver's license if it has reasonable grounds to believe that:

(a) the licensee was not entitled to the issuance;

(b) since the issuance, the licensee has become ineligible as determined pursuant to the provisions of 61-5-105; or

(c) the licensee failed to give the required or correct information in the licensee's application or committed any fraud in making the application.

(2) Upon cancellation, the licensee shall surrender the canceled license to the department.

(3) A person whose driver's license is canceled because the person failed to give the required or correct information on the application or committed any fraud in making the application is disqualified from operating a commercial motor vehicle for a period of 60 days from the date of the cancellation.

**History:** En. Sec. 26, Ch. 267, L. 1947; amd. Sec. 1, Ch. 219, L. 1973; R.C.M. 1947, 31-142; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 19, Ch. 443, L. 1987; amd. Sec. 14, Ch. 195, L. 1993; amd. Sec. 24, Ch. 428, L. 2005.

**61-5-202. Cancellation of license upon death of person signing minor's application.** The department upon receipt of satisfactory evidence of the death of the persons who signed the application of a minor for a license shall cancel such license and shall not issue a new license until such time as a new application, duly signed and verified, is made as required by this chapter. This provision shall not apply in the event the minor has attained the age of 18 years.

**History:** En. Sec. 17, Ch. 267, L. 1947; R.C.M. 1947, 31-133; amd. Sec. 1, Ch. 503, L. 1985.

**61-5-203. Suspending privileges of nonresidents and unlicensed persons.**

(1) The privilege of driving a motor vehicle on the highways of this state given to a nonresident pursuant to 61-5-104(2) through (4) is subject to suspension or revocation by the department in like manner and for like causes as a driver's license issued under this chapter.

(2) An unlicensed person's privilege to apply for and be issued a driver's license in this state is subject to suspension or revocation by the department in like manner and for like causes as a driver's license issued under this chapter.

**History:** En. Sec. 27, Ch. 267, L. 1947; R.C.M. 1947, 31-143(a); amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 20, Ch. 443, L. 1987; amd. Sec. 15, Ch. 195, L. 1993; amd. Sec. 2, Ch. 83, L. 2007.

**61-5-204. Suspending resident's license upon conviction in another state.** The department may suspend or revoke the driver's license of any resident of this state or the privilege of a nonresident to drive a motor vehicle in this state upon receiving notice of the conviction of the person in another jurisdiction of an offense in that jurisdiction which, if committed in this state, would be grounds for the suspension or revocation of the driver's license.

**History:** En. Sec. 28, Ch. 267, L. 1947; R.C.M. 1947, 31-144; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 21, Ch. 443, L. 1987; amd. Sec. 12, Ch. 378, L. 1989; amd. Sec. 16, Ch. 195, L. 1993.

**61-5-205. Mandatory revocation or suspension of license upon certain convictions — duration of action — exceptions.** (1) The department shall revoke an individual's driver's license or driving privilege if the department receives notice from a court or another licensing jurisdiction that the individual has been convicted of any of the following offenses:

- (a) negligent homicide resulting from the operation of a motor vehicle;
- (b) any felony in the commission of which a motor vehicle is used;
- (c) failure to stop and render aid as required under the laws of this state in the event of a motor vehicle accident resulting in the death or personal injury of another;
- (d) perjury or the making of a false affidavit or statement under oath to the department under this chapter or under any other law relating to the ownership or operation of motor vehicles;
- (e) fleeing from or eluding a peace officer; or
- (f) negligent vehicular assault as defined in 45-5-205 involving a motor vehicle.

(2) The department shall suspend an individual's driver's license or driving privilege if the department receives notice from a court or another licensing jurisdiction that the individual has been convicted of any of the following offenses:

- (a) a driving offense under 61-8-401, 61-8-406, or 61-8-411;
- (b) three reckless driving offenses committed within a period of 12 months; or
- (c) a theft offense under 45-6-301 if the theft consisted of theft of motor vehicle fuel and a motor vehicle was used in the commission of the offense.

(3) A revocation under subsections (1)(a), (1)(b), and (1)(d) through (1)(f) must be for a period of 1 year. A revocation under subsection (1)(c) must be for a period of 2 years if the offender received a felony conviction under 61-7-103.

(4) (a) Except as provided in subsections (4)(b) and (4)(c), a suspension under subsection (2) must be for a period of 1 year.

(b) A suspension under subsection (2)(a) must be for the period set forth in 61-5-208.



(c) A suspension under subsection (2)(c) must be for one of the following periods:

- (i) 30 days for a first offense;
- (ii) 6 months for a second offense; and
- (iii) 1 year for a third or subsequent offense.

**History:** En. Sec. 30, Ch. 267, L. 1947; amd. Sec. 1, Ch. 192, L. 1957; amd. Sec. 1, Ch. 125, L. 1961; amd. Sec. 2, Ch. 155, L. 1969; amd. Sec. 47, Ch. 359, L. 1977; amd. Sec. 2, Ch. 430, L. 1977; R.C.M. 1947, 31-146; amd. Sec. 1, Ch. 698, L. 1983; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 22, Ch. 443, L. 1987; amd. Sec. 2, Ch. 612, L. 1987; amd. Sec. 1, Ch. 335, L. 1989; amd. Sec. 17, Ch. 195, L. 1993; amd. Sec. 1, Ch. 224, L. 2001; amd. Sec. 3, Ch. 563, L. 2001; amd. Sec. 2, Ch. 379, L. 2003; amd. Secs. 3, 15(1), Ch. 556, L. 2003; amd. Sec. 1, Ch. 145, L. 2007; amd. Sec. 3, Ch. 149, L. 2011; amd. Sec. 8, Ch. 153, L. 2013.

**61-5-206. Authority of department to suspend or revoke license or driving privilege — right to hearing.** (1) The department may suspend or revoke the driver's license or driving privilege of a driver without preliminary hearing upon a showing by its records or other sufficient evidence that the licensee:

(a) has committed or permitted an unlawful or fraudulent use of the license as specified in 61-5-302;

(b) has falsified the licensee's date of birth on the application for a driver's license;

(c) is under 21 years of age and has altered the licensee's or another's driver's license, identification card, or tribal identification card to obtain alcohol; or

(d) has authorized another to use the licensee's driver's license, identification card, or tribal identification card to obtain alcohol.

(2) If the department suspends or revokes a driver's license under 61-5-207 or this section or reinstates a license suspension or revocation upon conviction or forfeiture of bail not vacated of any traffic violation by a person who holds a probationary driver's license under 61-2-302, the department shall immediately notify the licensee in writing and upon the licensee's request shall afford the licensee an opportunity for a hearing as early as practical, within 20 days after receipt of the request, in the county in which the licensee resides unless the department and the licensee agree that the hearing may be held in some other county. At the hearing, the department through its authorized agent may administer oaths and may issue subpoenas for the attendance of witnesses and the production of relevant books and papers and may require a reexamination of the licensee. At the hearing, the department shall either rescind its order of suspension or revocation or, for good cause, may affirm, reduce, or extend the period of suspension or revocation of the license.

**History:** En. Sec. 31, Ch. 267, L. 1947; amd. Sec. 1, Ch. 101, L. 1961; amd. Sec. 1, Ch. 137, L. 1969; R.C.M. 1947, 31-147; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 1, Ch. 244, L. 1987; amd. Sec. 23, Ch. 443, L. 1987; amd. Sec. 1, Ch. 471, L. 1991; amd. Sec. 18, Ch. 195, L. 1993; amd. Sec. 2, Ch. 218, L. 2001; amd. Sec. 4, Ch. 556, L. 2003; amd. Sec. 115, Ch. 596, L. 2005; amd. Sec. 10, Ch. 180, L. 2007; amd. Sec. 21, Ch. 323, L. 2017.

**Compiler's Comments**

*2017 Amendment:* Chapter 323 in (1) near beginning inserted "or revoke"; and in (2) in first sentence near beginning inserted "or revokes" and in last sentence in two places inserted "or revocation". Amendment effective October 1, 2017.

**61-5-207. Reexamination or medical evaluation — when required.** (1) If the department receives reliable evidence that a licensed driver lacks the ability to exercise ordinary and reasonable control in the safe operation of a motor vehicle on the highway, the department may, upon written notice of at least 5 days to the licensee, require the licensee to obtain a medical evaluation from a licensed physician, licensed physician assistant, or advanced practice registered nurse, as defined in 37-8-102, or submit to one or more tests customarily conducted by the department for licensure under 61-5-110.

(2) Upon the review of a medical evaluation, the conclusion of testing, or both, the department may:

(a) impose restrictions on the license, as provided in 61-5-113, that are appropriate to the licensee's acknowledged or demonstrated functional abilities;

(b) suspend the license indefinitely based upon a licensee's inability to exercise ordinary and reasonable control in the safe operation of a motor vehicle on the highway; or

(c) take no action modifying the license or placing restrictions on the licensee.

(3) The age of a licensee, by itself, does not constitute evidence of a condition requiring a reexamination or a medical evaluation.

(4) A suspension under this section continues in effect until evidence satisfactory to the department establishes that the licensee has regained the ability to exercise ordinary and reasonable control in the safe operation of a motor vehicle on a highway.

(5) Refusal or neglect of the licensee to obtain a medical evaluation from a licensed physician, licensed physician assistant, or advanced practice registered nurse or submit to testing as required by the department is grounds for suspension of the person's license.

**History:** En. Sec. 32, Ch. 267, L. 1947; R.C.M. 1947, 31-148; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 24, Ch. 443, L. 1987; amd. Sec. 3, Ch. 419, L. 1991; amd. Sec. 19, Ch. 195, L. 1993; amd. Sec. 14, Ch. 309, L. 1999; amd. Sec. 4, Ch. 242, L. 2007.

**61-5-208. Period of suspension or revocation — limitation on issuance of probationary license — notation on driver's license.** (1) The department may not suspend or revoke a driver's license or privilege to drive a motor vehicle on the public highways, except as permitted by law.

(2) (a) Except as provided in 44-4-1205 and 61-2-302 and except as otherwise provided in this section, a person whose license or privilege to drive a motor vehicle on the public highways has been suspended or revoked may not have the license, endorsement, or privilege renewed or restored until the revocation or suspension period has been completed.

(b) Subject to 61-5-231 and except as provided in subsection (4) of this section:

(i) upon receiving a report of a person's conviction or forfeiture of bail or collateral not vacated for a first offense of violating 61-8-401, 61-8-406, 61-8-411, or 61-8-465, the department shall suspend the driver's license or driving privilege of the person for a period of 6 months;

(ii) upon receiving a report of a person's conviction or forfeiture of bail or collateral not vacated for a second offense of violating 61-8-401, 61-8-406, 61-8-411, or 61-8-465 within the time period specified in 61-8-734, the department shall suspend the driver's license or driving privilege of the person for a period of 1 year and may not issue a probationary license during the period of suspension unless the person completes at least 45 days of the 1-year suspension and the report of conviction includes a recommendation from the court that a probationary driver's license be issued subject to the requirements of 61-8-442. If the 1-year suspension period passes and the person has not completed chemical dependency treatment, as required under 61-8-732, the license suspension remains in effect until treatment is completed.

(iii) upon receiving a report of a person's conviction or forfeiture of bail or collateral not vacated for a third or subsequent offense of violating 61-8-401, 61-8-406, 61-8-411, or 61-8-465 within the time period specified in 61-8-734, the department shall suspend the driver's license or driving privilege of the person for a period of 1 year and may not issue a probationary license during the period of suspension unless the person completes at least 90 days of the 1-year suspension and the report of conviction includes a recommendation from the court that a probationary driver's license be issued subject to the requirements of 61-8-442. If the 1-year suspension period passes and the person has not completed chemical dependency treatment, as required under 61-8-732, the license suspension remains in effect until treatment is completed.

(3) (a) Except as provided in subsection (3)(b), the period of suspension or revocation for a person convicted of any offense that makes mandatory the suspension or revocation of the person's driver's license commences from the date of conviction or forfeiture of bail.

(b) A suspension commences from the last day of the prior suspension or revocation period if the suspension is for a conviction of driving with a suspended or revoked license.

(4) If a person is convicted of a violation of 61-8-401, 61-8-406, 61-8-411, or 61-8-465 while operating a commercial motor vehicle, the department shall suspend the person's driver's license as provided in 61-8-802.

(5) (a) A driver's license that is issued after a license revocation to a person described in subsection (5)(b) must be clearly marked with a notation that conveys the term of the person's probation restrictions.

(b) The provisions of subsection (5)(a) apply to a license issued to a person for whom a court has reported a felony conviction under 61-8-731, the judgment for which has as a condition of probation that the person may not operate a motor vehicle unless:

(i) operation is authorized by the person's probation officer; or

(ii) a motor vehicle operated by the person is equipped with an ignition interlock device.

**History:** (1) thru (3) En. Sec. 33, Ch. 267, L. 1947; amd. Sec. 1, Ch. 126, L. 1957; amd. Sec. 1, Ch. 161, L. 1961; amd. Sec. 1, Ch. 339, L. 1969; amd. Sec. 4, Ch. 430, L. 1977; Sec. 31-149, R.C.M. 1947; (4) En. Sec. 29, Ch. 267, L. 1947; amd. Sec. 1, Ch. 165, L. 1957; amd. Sec. 1, Ch. 27, L. 1961; amd. Sec. 1, Ch. 386, L. 1973; amd. Sec. 3, Ch. 430, L. 1977; Sec. 31-145, R.C.M. 1947; R.C.M. 1947, 31-145(d), 31-149; amd. Sec. 57, Ch. 421, L. 1979; amd. Sec. 2, Ch. 698, L. 1983; amd. Sec. 1, Ch. 314, L. 1985; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 25, Ch. 443, L. 1987; amd. Sec. 3, Ch. 612, L. 1987; amd. Sec. 13, Ch. 378, L. 1989; amd. Sec. 1, Ch. 476, L. 1989; amd. Sec. 2, Ch. 563, L. 1991; amd. Sec. 20, Ch. 195, L. 1993; amd. Sec. 5, Ch. 107, L. 1997; amd. Sec. 2, Ch. 258, L. 1999; amd. Sec. 15, Ch. 309, L. 1999; amd. Sec. 1, Ch. 455, L. 1999; amd. Sec. 8, Ch. 207, L. 2001; amd. Sec. 2, Ch. 300, L. 2003; amd. Sec. 2, Ch. 329, L. 2003; amd. Secs. 5, 15(8), Ch. 556, L. 2003; amd. Sec. 1, Ch. 547, L. 2005; amd. Sec. 116, Ch. 596, L. 2005; amd. Sec. 7, Ch. 41, L. 2009; amd. Sec. 1, Ch. 448, L. 2009; amd. Sec. 4, Ch. 149, L. 2011; amd. Sec. 9, Ch. 318, L. 2011; amd. Sec. 9, Ch. 153, L. 2013; amd. Sec. 3, Ch. 424, L. 2015; amd. Sec. 32, Ch. 321, L. 2017.

#### **Compiler's Comments**

*2017 Amendment:* Chapter 321 in (2)(b)(ii) and (2)(b)(iii) near end substituted "chemical dependency treatment" for "a chemical dependence education course, treatment, or both", and after "remains in effect until" substituted "treatment is completed" for "the course or treatment, or both, are completed"; and made minor changes in style. Amendment effective July 1, 2017.

*Applicability:* Section 44, Ch. 321, L. 2017, provided: "[This act] applies to offenses committed after June 30, 2017."

**61-5-209. Surrender and return of license upon suspension or revocation.** When the department suspends or revokes a license, it shall require that the license be surrendered to and be retained by the department except that at the end of the period of suspension, the surrendered license must be returned to the licensee.

**History:** En. Sec. 34, Ch. 267, L. 1947; R.C.M. 1947, 31-150; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 26, Ch. 443, L. 1987; amd. Sec. 21, Ch. 195, L. 1993.

**61-5-210. No operation under foreign license during suspension or revocation in this state.** A resident or nonresident whose license or right or privilege to operate a motor vehicle or commercial motor vehicle in this state has been suspended or revoked as provided in this chapter may not operate a motor vehicle or commercial motor vehicle in this state under a license, permit, or registration certificate issued by any other jurisdiction or otherwise during the suspension or after the revocation until a new license is obtained under this chapter.

**History:** En. Sec. 35, Ch. 267, L. 1947; R.C.M. 1947, 31-151; amd. Sec. 27, Ch. 443, L. 1987; amd. Sec. 22, Ch. 195, L. 1993.

**61-5-211. Right of appeal to court.** A person denied a driver's license or whose license has been canceled, suspended, or revoked by the department except when the cancellation or revocation is mandatory under the provisions of this chapter may file a petition within 30 days after the denial, cancellation, suspension, or revocation for a hearing in the matter in the district court in the county in which the person resides. The court has jurisdiction and it shall set the matter for hearing upon 30 days' written notice to the department, and shall take testimony and examine the facts of the case and determine whether the petitioner is entitled to a driver's license or is subject to suspension, cancellation, or revocation of the license under the provisions of this chapter.

**History:** En. Sec. 36, Ch. 267, L. 1947; R.C.M. 1947, 31-152; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 28, Ch. 443, L. 1987; amd. Sec. 23, Ch. 195, L. 1993.

**61-5-212. Driving while license suspended or revoked — penalty — second offense of driving without licensing exemption.** (1) (a) A person commits the offense of driving a motor vehicle without statutory exemption or during a suspension or revocation period if the person drives:

(i) a motor vehicle on any public highway of this state at a time when the person's privilege to drive or apply for and be issued a driver's license is suspended or revoked in this state or any other state unless the person has obtained a restricted-use driving permit under 61-5-232;

(ii) a commercial motor vehicle while the person's commercial driver's license is revoked, suspended, or canceled in this state or any other state or the person is disqualified from operating a commercial motor vehicle or from obtaining a commercial driver's license; or

(iii) a motor vehicle on any public highway of this state without proof of a statutory exemption, as provided in 61-5-104.

(b) (i) A person convicted of the offense of driving a motor vehicle without proof of a statutory exemption for the second time shall be punished by imprisonment for not less than 2 days or more than 6 months and may be fined not more than \$500.

(ii) Except as provided in subsection (1)(b)(iii), a person convicted of the offense of driving during a suspension or revocation period shall be fined an amount not to exceed \$500 or be imprisoned for a term of not more than 6 months, or both.

(iii) If the reason for the suspension or revocation was that the person was convicted of a violation of 61-8-401, 61-8-406, or 61-8-411 or a similar offense under the laws of any other state or the suspension was under 61-8-402 or 61-8-409 or a similar law of any other state for refusal to take a test for alcohol or drugs requested by a peace officer who believed that the person might be driving under the influence, the person shall be imprisoned for a term of not less than 2 days or more than 6 months or be fined an amount not to exceed \$2,000, or both, and in addition, the court may order the person to perform up to 40 hours of community service.

(2) (a) Upon receiving a record of the conviction of any person under this section upon a charge of driving a noncommercial vehicle while the person's driver's license, privilege to drive, or privilege to apply for and be issued a driver's license was suspended or revoked, the department shall extend the period of suspension or revocation for an additional 1-year period.

(b) Upon receiving a record of the conviction of any person under this section upon a charge of driving a commercial motor vehicle while the person's commercial driver's license was revoked, suspended, or canceled or the person was disqualified from operating a commercial motor vehicle under federal regulations, the department shall suspend the person's commercial driver's license in accordance with 61-8-802.

**History:** En. Sec. 39, Ch. 267, L. 1947; amd. Sec. 1, Ch. 84, L. 1959; R.C.M. 1947, 31-155; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 29, Ch. 443, L. 1987; amd. Sec. 1, Ch. 30, L. 1989; amd. Sec. 24, Ch. 195, L. 1993; amd. Sec. 5, Ch. 447, L. 1995; amd. Sec. 1, Ch. 88, L. 1997; amd. Sec. 12, Ch. 428, L. 2003; amd. Sec. 6, Ch. 556, L. 2003; amd. Sec. 1, Ch. 583, L. 2005; amd. Sec. 3, Ch. 83, L. 2007; amd. Sec. 2, Ch. 462, L. 2007; amd. Sec. 10, Ch. 153, L. 2013; amd. Sec. 3, Ch. 358, L. 2015; amd. Sec. 33, Ch. 321, L. 2017.

#### Compiler's Comments

*2017 Amendment:* Chapter 321 in (1)(a) in first sentence near beginning after "driving a motor vehicle" deleted "without a valid license or"; in (1)(a)(iii) after "public highway of this state" deleted "without possessing a valid driver's license, as provided in 61-5-102, or"; deleted former (1)(b)(i) that read: "(i) Except as provided in subsection (1)(b)(ii), a person convicted of the offense of driving a motor vehicle without a valid driver's license or without proof of a statutory exemption for the second time or driving during a suspension or revocation period shall be punished by imprisonment for not less than 2 days or more than 6 months and may be fined not more than \$500"; inserted (1)(b)(i) and (1)(b)(ii) concerning second conviction without proof of a statutory exemption and conviction during a suspension or revocation period; deleted former (3), (4), (5), and (6) that read: "(3) The vehicle owned and operated at the time of an offense under this section by a person whose driver's license is suspended for violating the provisions of 61-8-401, 61-8-402, 61-8-406, 61-8-409, 61-8-410, or 61-8-411 must, upon a person's first conviction, be seized or rendered inoperable by the county sheriff of the convicted person's county of residence for a period of 30 days.

(4) The sentencing court shall order the action provided for under subsection (3) and shall specify the date on which the vehicle is to be returned or again rendered operable. The vehicle must be seized or rendered inoperable by the sheriff within 10 days after the conviction.

(5) A convicted person is responsible for all costs associated with actions taken under subsection (3). Joint ownership of the vehicle with another person does not prohibit the actions required by subsection (3) unless the sentencing court determines that those actions would constitute an extreme hardship on a joint owner who is determined to be without fault.

(6) A court may not suspend or defer imposition of penalties provided by this section"; and made minor changes in style. Amendment effective July 1, 2017.

The amendments made to this section by sec. 1, Ch. 415, L. 2017, were rendered void by sec. 2, Ch. 415, L. 2017, a coordination section.

*Applicability:* Section 44, Ch. 321, L. 2017, provided: "[This act] applies to offenses committed after June 30, 2017."

**61-5-213. Conviction defined.** For the purposes of parts 1 through 3 of this chapter, part 8 of chapter 8, chapter 11, and as it relates to any state or local law regulating the operation of a motor vehicle on highways or mandating the revocation or suspension of a driver's license or driving privilege, the term "conviction" means:

- (1) a plea of guilty or nolo contendere accepted by the court;
- (2) an adjudication of guilt that has not been vacated by the appropriate court;
- (3) a determination that a person has violated or failed to comply with the law in a court of original jurisdiction or by an authorized administrative tribunal;
- (4) a forfeiture of bail or collateral deposited to secure the person's appearance in court that has not been vacated;
- (5) the payment of a fine or court cost, regardless of whether it is suspended or rebated; or
- (6) the violation of a condition of release without bail, regardless of whether the condition is imposed as part of probation.



**History:** En. Sec. 29, Ch. 267, L. 1947; amd. Sec. 1, Ch. 165, L. 1957; amd. Sec. 1, Ch. 27, L. 1961; amd. Sec. 1, Ch. 386, L. 1973; amd. Sec. 3, Ch. 430, L. 1977; R.C.M. 1947, 31-145(c); amd. Sec. 1, Ch. 369, L. 1991; amd. Sec. 25, Ch. 428, L. 2005.

**61-5-214. Mandatory suspension for failure to appear or comply with criminal sentence — administrative fee — notice.** (1) The department shall suspend the driver's license or driving privilege of a person upon receipt of a report from the court, certified under penalty of law and in a form prescribed by the department, that the person:

(a) failed to appear upon an issued complaint, summons, or court order after being charged with a misdemeanor violation under Title 45 or Title 61, chapters 3 through 10, or after posting a driver's license in lieu of bail as provided in 46-9-401(1)(e); or

(b) failed to comply with a sentence imposed pursuant to 46-18-201, including but not limited to the payment of a fine, costs, or restitution as provided in 46-18-201(6).

(2) The suspension continues in effect until the court notifies the department that:

(a) the person has either appeared in court or complied with the sentence imposed pursuant to 46-18-201, including the payment of any assessed fines, costs, or restitution; and

(b) the person has paid the court an administrative fee of \$25 if the court was holding the offender's driver's license in lieu of bail under 44-1-1102, 46-9-302, or 46-9-401.

(3) (a) Before a report is submitted under this section, a person must be given written notice that the failure to appear on a criminal charge or comply with a criminal sentence may result in the suspension of the person's driver's license or driving privilege. Initial notice of the possibility of a license suspension must either be included on the summons or complaint and notice to appear form given to the person when charges are initially filed or be contained in a court order, either hand-delivered to the person while in court or sent by certified mail, postage prepaid, to the most current address for that person received by or on record with the court.

(b) The initial notice must be followed by a written warning from the court, sent by first-class mail, advising the person that a license suspension is imminent unless, by a specified date, the failure to appear or comply is remedied or the person appears before the court to contest the impending license suspension.

(4) The court shall deposit any administrative fee received under subsection (2)(b) in the appropriate county or city general fund.

**History:** En. Sec. 1, Ch. 442, L. 1987; amd. Sec. 68, Ch. 83, L. 1989; amd. Sec. 1, Ch. 263, L. 1989; amd. Sec. 1, Ch. 441, L. 1995; amd. Sec. 2, Ch. 437, L. 2003; amd. Sec. 5, Ch. 465, L. 2003; amd. Sec. 3, Ch. 360, L. 2009.

**61-5-215. Provisional licenses prohibited.** A provisional, restricted, or probationary license may not be issued upon a suspension under 61-5-214.

**History:** En. Sec. 2, Ch. 442, L. 1987; amd. Sec. 2, Ch. 133, L. 2003; amd. Sec. 6, Ch. 465, L. 2003.

**61-5-216. Reinstatement of license.** Upon receipt of notification from the court that the operator has appeared, posted the bond, or paid the fine, costs, or restitution amounts and has paid the administrative fee required under 61-5-214 and, if the reinstatement fee required under 61-2-107 or 61-5-218 has been paid, the department shall reinstate the license, unless the operator otherwise is not entitled to reinstatement.

**History:** En. Sec. 3, Ch. 442, L. 1987; amd. Sec. 69, Ch. 83, L. 1989; amd. Sec. 3, Ch. 133, L. 2003; amd. Secs. 7, 8, Ch. 465, L. 2003.

**61-5-217. Suspending privileges of persons under 18 years of age.** The privilege of driving a motor vehicle on the highways of this state given to a person under the age of 18 is subject to suspension or revocation by the department in like manner and for like causes as an adult.

**History:** En. Sec. 2, Ch. 484, L. 1987.

**61-5-218. License reinstatement fee following license suspension or revocation.**

(1) Except as provided in subsection (2), a person whose driver's license, other than a commercial driver's license, or driving privilege has been suspended or revoked shall pay a reinstatement fee of \$100 to the department to have the driver's license or driving privilege reinstated.

(2) (a) A person whose driver's license or driving privilege was suspended or revoked under 61-5-205 or 61-8-402 shall pay a reinstatement fee as required by 61-2-107.

(b) A driver's license or driving privilege that was suspended or revoked under 61-5-207 must be reinstated without payment of a reinstatement fee.



(c) The reinstatement fee required under subsection (1) must be waived by the department when a court notifies the department that the person has satisfied the requirements of 61-5-214(2) and the court has determined that the person is indigent under the standards set forth in 47-1-111.

(3) The department shall deposit the fees collected under subsection (1) in the general fund.

**History:** En. Sec. 1, Ch. 133, L. 2003; amd. Sec. 4, Ch. 360, L. 2009.

**61-5-219. Discount on license reinstatement fee — completion of driver rehabilitation program.** (1) A person who submits a certificate of completion from a department-approved driver rehabilitation program must receive a 50% reduction on the license reinstatement fee due under 61-2-107 or 61-5-218.

(2) For purposes of this section, a driver rehabilitation program may be approved by the department if the program provider annually certifies to the department that the provider's program:

(a) provides a participant with a minimum of 4 hours of instruction on Montana driving laws, the importance of positive driving attitudes and habits, defensive driving techniques, and the responsible use of drugs and alcohol;

(b) includes preinstruction and postinstruction testing of each participant;

(c) provides a certificate of completion to each person who successfully completes the program; and

(d) reports to the department, in a timely manner, the name, date of birth, and driver's license number of each person to whom the provider has issued a certificate of completion.

**History:** En. Sec. 14, Ch. 556, L. 2003.

**61-5-220. Renumbered 61-5-146.** Sec. 12, Ch. 296, L. 2011.

**61-5-221. Renumbered 61-5-147.** Sec. 12, Ch. 296, L. 2011.

**61-5-222 through 61-5-230 reserved.**

**61-5-231. Authorization of probationary license by DUI court — definition.** (1) If a person convicted of a second or subsequent misdemeanor offense of driving under the influence of alcohol or drugs under 61-8-401 or 61-8-411, driving with excessive alcohol concentration under 61-8-406, or aggravated driving under the influence under 61-8-465 is participating in a DUI court, the court may, in the court's discretion, authorize a probationary driver's license for the participant subject to 61-8-442 and any other conditions imposed within the scope of the court's authority.

(2) If the participant fails to comply with the court's conditions, the court may revoke the probationary driver's license and impose a driver's license suspension for the time period established pursuant to 61-5-208 commencing from the date of the court's revocation of the probationary license.

(3) For purposes of this section, "DUI court" means any court that has established a special docket for handling cases involving persons charged with violations under 61-8-401, 61-8-406, 61-8-411, or 61-8-465 and that implements a program of incentives and sanctions intended to assist a participant in completing treatment ordered pursuant to 61-8-732 and ending the participant's criminal behavior associated with driving under the influence of alcohol or drugs or with excessive alcohol concentration.

**History:** En. Sec. 1, Ch. 149, L. 2011; amd. Sec. 11, Ch. 153, L. 2013; amd. Sec. 4, Ch. 424, L. 2015.

**61-5-232. Restricted-use driving permit — conditions — definitions.** (1) A person who, pursuant to 61-5-105(2), may not be issued a driver's license due to an ineligible status reported by another state to the national driver register may petition the district court of the county in which the person resides for a restricted-use driving permit for use only within the state of Montana if:

(a) the person has maintained continuous residence in Montana for at least 5 years and is not otherwise ineligible for a license under 61-5-105;

(b) the person submits a certified driving record from the licensing agency of each state that has reported the person's status as ineligible to the national driver register that shows that at least 5 years have elapsed from the effective date of the most recent withdrawal of the person's driver's license or driving privileges by the other state or states;

(c) for the 5-year period immediately preceding application for a restricted-use driving permit, the person has not been convicted in any jurisdiction of a felony or misdemeanor offense;

(d) the person certifies that no traffic citations or alcohol-related or drug-related criminal charges are currently pending against the person;

(e) the person certifies that a good faith effort was made to resolve the person's ineligible status through the licensing agency of each state or states that reported the person's status as ineligible to the national driver register, including the payment of any pending fees or fines; and

(f) the person provides any other information required by department rule.

(2) The department may adopt rules to determine the process for issuance, withdrawal, and monitoring of a restricted-use driving permit. The department may issue a restricted-use driving permit only to a person who satisfies all of the requirements of this section as determined by a district court pursuant to subsection (1). A person who is issued a restricted-use driving permit may use it only for an essential driving purpose as defined by the department.

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

(a) "Most recent withdrawal" means the suspension, revocation, or denial of a driver's license or driving privilege underlying a current ineligible status report made by another state's licensing agency to the national driver register.

(b) "National driver register" means the registry established under 49 U.S.C. 30302.

(c) "Restricted-use driving permit" means a paper document authorizing a person to drive within this state for essential driving purposes only and that is issued by the department to a person whose status on the national driver register is reported as ineligible to operate a motor vehicle other than a commercial motor vehicle.

**History:** En. Sec. 1, Ch. 358, L. 2015.

### **Part 3**

#### **Miscellaneous Provisions**

**61-5-301. Indication on driver's license or identification card of intent to make anatomical gift or of living will declaration.** (1) An application furnished by the department for the issuance or renewal of a driver's license under this chapter or for the issuance of an identification card under Title 61, chapter 12, part 5, must include spaces for indicating when the licensee has:

(a) executed a document under 72-17-201 of intent to make a gift of all or part of the driver's body under the Uniform Anatomical Gift Act; or

(b) executed a declaration under 50-9-103 relating to the use of life-sustaining treatment.

(2) The department shall provide each applicant, when applying for or renewing a driver's license or when applying for an identification card, printed information calling the applicant's attention to the provisions of this section. Each applicant must be asked orally if the applicant wishes to make an anatomical gift and if the applicant has executed the declaration under 50-9-103 relating to the use of life-sustaining treatment.

(3) Each applicant must be given an opportunity to indicate in the spaces provided under subsection (1) the applicant's intent to make an anatomical gift or that the applicant has executed the declaration under 50-9-103 relating to the use of life-sustaining treatment.

(4) The department shall issue to each applicant who indicates an intent to make an anatomical gift a statement that, when signed by the licensee in the manner prescribed in 72-17-201, constitutes a document of anatomical gift. If an applicant signs a statement under this subsection, a symbol indicating that the donor has made an anatomical gift must be imprinted on the face of the donor's driver's license or identification card.

(5) The department shall electronically transfer the information of all persons who volunteer, upon application for a driver's license or an identification card, to donate organs or tissue to the organ and tissue donation registry created in 72-17-105 and 72-17-106 and any subsequent changes to the applicant's donor status.

**History:** En. 31-135.1 by Sec. 1, Ch. 28, L. 1977; R.C.M. 1947, 31-135.1; amd. Sec. 2, Ch. 459, L. 1985; amd. Sec. 1, Ch. 204, L. 1987; amd. Sec. 30, Ch. 443, L. 1987; amd. Sec. 2, Ch. 540, L. 1989; amd. Sec. 3, Ch. 230, L. 2003; amd. Sec. 1, Ch. 296, L. 2005; amd. Sec. 2, Ch. 194, L. 2013.

**61-5-302. Unlawful use of license or identification card.** It is a misdemeanor for a person to:

(1) display or cause or permit to be displayed or have in the person's possession a canceled, revoked, suspended, fictitious, or altered driver's license, identification card, or tribal identification card;

(2) lend the person's driver's license, identification card, or tribal identification card to any other person or knowingly permit its use by another;

(3) display or represent as one's own any driver's license, identification card, or tribal identification card not issued to the person;

(4) fail or refuse to surrender to the department upon its lawful demand a driver's license or identification card that has been suspended, revoked, or canceled;

(5) use a false or fictitious name in an application for a driver's license or identification card or knowingly make a false statement or knowingly conceal a material fact or otherwise commit a fraud in an application; or

(6) permit any unlawful use of a driver's license, identification card, or tribal identification card issued to the person.

**History:** En. Sec. 37, Ch. 267, L. 1947; amd. Sec. 1, Ch. 70, L. 1961; R.C.M. 1947, 31-153; amd. Sec. 58, Ch. 421, L. 1979; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 31, Ch. 443, L. 1987; amd. Sec. 2, Ch. 471, L. 1991; amd. Sec. 25, Ch. 195, L. 1993; amd. Sec. 11, Ch. 180, L. 2007.

**61-5-303. Making false affidavit — penalty.** Any person who makes any false affidavit or knowingly swears or affirms falsely to any matter or thing required by the terms of parts 1 through 3 of this chapter to be sworn to or affirmed is guilty of false swearing and upon conviction shall be punishable as provided by 45-7-202.

**History:** En. Sec. 38, Ch. 267, L. 1947; R.C.M. 1947, 31-154; amd. Sec. 59, Ch. 421, L. 1979.

**61-5-304. Permitting unauthorized minor to drive.** A person may not cause or knowingly permit the person's child or ward under 18 years of age to drive a motor vehicle upon any highway when the minor is not authorized to drive or in violation of any of the provisions of parts 1 through 3 of this chapter.

**History:** En. Sec. 40, Ch. 267, L. 1947; R.C.M. 1947, 31-156; amd. Sec. 1945, Ch. 56, L. 2009.

**61-5-305. Employing driver without license.** No person shall employ as a commercial vehicle operator any person not then licensed as provided by this chapter.

**History:** En. Sec. 41, Ch. 267, L. 1947; R.C.M. 1947, 31-157; amd. Sec. 32, Ch. 443, L. 1987.

**61-5-306. Renting motor vehicle to another.** (1) A person may not rent a motor vehicle to any other person unless the latter person is licensed under this chapter or, in the case of a nonresident, licensed under the laws of the state or country of the person's residence except a nonresident whose home state or country does not require that an operator be licensed.

(2) A person may not rent a motor vehicle to another until the person has inspected the driver's license of the proposed renter and compared and verified the signature on the license with the signature of the proposed renter written in the person's presence.

(3) A person may not rent a commercial motor vehicle to another until the person has inspected the driver's license of the proposed renter and determined that the proposed renter has a commercial driver's license.

(4) Every person renting a motor vehicle to another shall keep a record of the registration number of the motor vehicle rented, the name and address of the person to whom the vehicle is rented, and the number and expiration date of the license of the renter. The record is open to inspection by any police officer or officer or employee of the department.

**History:** En. Sec. 42, Ch. 267, L. 1947; R.C.M. 1947, 31-158; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 33, Ch. 443, L. 1987; amd. Sec. 26, Ch. 195, L. 1993.

**61-5-307. Penalty for misdemeanor.** (1) It is a misdemeanor for any person to violate any of the provisions of parts 1 through 3 of this chapter and 61-11-101 unless such violation is by this chapter or other law of this state declared to be a felony.

(2) Unless another penalty is in this chapter or by the laws of this state provided, every person convicted of a misdemeanor for the violation of any provision of parts 1 through 3 of this chapter and 61-11-101 shall be punished by a fine of not more than \$500 or by imprisonment for not more than 6 months or by both such fine and imprisonment.

**History:** En. Sec. 43, Ch. 267, L. 1947; R.C.M. 1947, 31-159.

**61-5-308. Uniformity of interpretation.** Parts 1 through 3 of this chapter and 61-11-101 and 61-11-102 shall be so interpreted and construed as to effectuate their general purpose to make uniform the law of those states which enact them.

**History:** En. Sec. 44, Ch. 267, L. 1947; R.C.M. 1947, 31-160.

**61-5-309. Unlawful issuance of license or identification card.** No person may create, publish, or otherwise manufacture a Montana driver's license or a Montana identification card authorized by 61-12-501 or color facsimile thereof or create, manufacture, or possess an engraved plate or other such device for the printing of a Montana driver's license or Montana identification card authorized by 61-12-501 or color facsimile thereof, except as authorized by the department.

**History:** En. Sec. 1, Ch. 248, L. 1985; amd. Sec. 13, Ch. 503, L. 1985.

## Part 4 Driver License Compact

**61-5-401. Driver License Compact.** This part shall be known and may be cited as the "Driver License Compact".

### Article I. Findings and Declaration of Policy

(1) The party states find that:

(a) the safety of their streets and highways is materially affected by the degree of compliance with state laws and local ordinances relating to the operation of motor vehicles;

(b) violation of such a law or ordinance is evidence that the violator engages in conduct which is likely to endanger the safety of persons and property;

(c) the continuance in force of a license to drive is predicated upon compliance with laws and ordinances relating to the operation of motor vehicles in whichever jurisdiction the vehicle is operated.

(2) It is the policy of each of the party states to:

(a) promote compliance with the laws, ordinances, and administrative rules relating to the operation of motor vehicles by their operators in each of the jurisdictions where such operators drive motor vehicles;

(b) make the reciprocal recognition of licenses to drive and eligibility therefor more just and equitable by considering the overall compliance with motor vehicle laws, ordinances, and administrative rules as a condition precedent to the continuance or issuance of any license by reason of which the licensee is authorized or permitted to operate a motor vehicle in any of the party states.

### Article II. Definitions

As used in this compact:

(1) "state" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico;

(2) "home state" means the state which has issued and has the power to suspend or revoke the use of the license or permit to operate a motor vehicle;

(3) "conviction" means a conviction of any offense related to the use or operation of a motor vehicle which is prohibited by state law, municipal ordinance, or administrative rule, or a forfeiture of bail, bond, or other security deposited to secure appearance by a person charged with having committed any such offense, and which conviction or forfeiture is required to be reported to the licensing authority.

### Article III. Reports of Conviction

The licensing authority of a party state shall report each conviction of a person from another party state occurring within its jurisdiction to the licensing authority of the home state of the licensee. Such report shall clearly identify the person convicted; describe the violation specifying the section of the statute, code, or ordinance violated; identify the court in which action was taken; indicate whether a plea of guilty or not guilty was entered or the conviction was a result of the forfeiture of bail, bond, or other security; and include any special findings made in connection therewith.

### Article IV. Effect of Conviction

(1) The licensing authority in the home state, for the purposes of suspension, revocation, or limitation of the license to operate a motor vehicle, shall give the same effect to the conduct reported, pursuant to Article III of this compact, as it would if such conduct had occurred in the home state, in the case of convictions for:

- (a) manslaughter or negligent homicide resulting from the operation of a motor vehicle;
- (b) driving a motor vehicle while under the influence of intoxicating liquor or a narcotic drug, or under the influence of any other drug to a degree which renders the driver incapable of safely driving a motor vehicle;
- (c) any felony in the commission of which a motor vehicle is used;
- (d) failure to stop and render aid in the event of a motor vehicle accident resulting in the death or personal injury of another.

(2) As to other convictions, reported pursuant to Article III, the licensing authority in the home state shall give such effect to the conduct as is provided by the laws of the home state.

(3) If the laws of a party state do not provide for offenses or violations denominated or described in precisely the words employed in subdivision (1) of this article, such party state shall construe the denominations and descriptions appearing in subdivision (1) hereof as being applicable to and identifying those offenses or violations of a substantially similar nature, and the laws of such party state shall contain such provisions as may be necessary to ensure that full force and effect is given to this article.

#### Article V. Applications for New Licenses

Upon application for a license to drive, the licensing authority in a party state shall ascertain whether the applicant has ever held, or is the holder of a license to drive issued by any other party state. The licensing authority in the state where application is made shall not issue a license to drive to the applicant if:

- (1) the applicant has held such a license, but the same has been suspended by reason, in whole or in part, of a violation and if such suspension period has not terminated;
- (2) the applicant has held such a license, but the same has been revoked by reason, in whole or in part, of a violation and if such revocation has not terminated, except that after the expiration of 1 year from the date the license was revoked, such person may make application for a new license if permitted by law. The licensing authority may refuse to issue a license to any such applicant if, after investigation, the licensing authority determines that it will not be safe to grant to such person the privilege of driving a motor vehicle on the public highways.
- (3) the applicant is the holder of a license to drive issued by another party state and currently in force unless the applicant surrenders such license.

#### Article VI. Applicability of Other Laws

Except as expressly required by provisions of this compact, nothing contained herein shall be construed to affect the right of any party state to apply any of its other laws relating to licenses to drive to any person or circumstance or to invalidate or prevent any driver license agreement or other cooperative arrangement between a party state and a nonparty state.

#### Article VII. Compact Administrator and Interchange of Information

(1) The head of the licensing authority of each party state shall be the administrator of this compact for the administrator's state. The administrators, acting jointly, shall have the power to formulate all necessary and proper procedures for the exchange of information under this compact.

(2) The administrator of each party state shall furnish to the administrator of each other party state any information or documents reasonably necessary to facilitate the administration of this compact.

#### Article VIII. Entry Into Force and Withdrawal

(1) This compact shall enter into force and become effective as to any state when it has enacted the same into law.

(2) Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until 6 months after the executive head of the withdrawing state has given notice of the withdrawal to the executive heads of all other party



states. No withdrawal shall affect the validity or applicability by the licensing authorities of states remaining party to the compact of any report of conviction occurring prior to the withdrawal.

#### Article IX. Construction and Severability

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

**History:** En. Sec. 1, Ch. 154, L. 1963; R.C.M. 1947, 31-163; amd. Sec. 1946, Ch. 56, L. 2009.

**61-5-402. Department as licensing authority — information and documents to be furnished.** As used in the compact, the term “licensing authority” with reference to this state shall mean the department of justice. The department shall furnish to the appropriate authorities of any other party state any information or documents reasonably necessary to facilitate the administration of Articles III, IV, and V of the compact.

**History:** En. Sec. 2, Ch. 154, L. 1963; R.C.M. 1947, 31-164; amd. Sec. 1, Ch. 503, L. 1985.

**61-5-403. Reimbursement of compact administrator.** The compact administrator provided for in Article VII of the compact is not entitled to any additional compensation on account of the service as administrator but is entitled to expenses incurred in connection with duties and responsibilities as administrator in the same manner as for expenses incurred in connection with any other duties or responsibilities of the administrator’s office or employment.

**History:** En. Sec. 3, Ch. 154, L. 1963; R.C.M. 1947, 31-165; amd. Sec. 1947, Ch. 56, L. 2009.

**61-5-404. Governor as executive head.** As used in the compact, with reference to this state, the term “executive head” shall mean the governor.

**History:** En. Sec. 4, Ch. 154, L. 1963; R.C.M. 1947, 31-166.

**61-5-405. Offenses furnishing ground for suspension or revocation of license — return to licensing jurisdiction of abstracts of court records and reports of conviction.** (1) Items enumerated in Article IV(1), subsections (a), (b), (c), and (d), of 61-5-401 refer specifically to 45-5-103, 45-5-104, 61-8-401, the definition of felony as provided in 45-2-101, and 61-7-105, respectively.

(2) In addition to convictions mentioned in subsection (1), the department, for the purpose of suspension, revocation, or limitation of the license to operate a motor vehicle, shall give the same effect to the conduct reported as it would if the conduct had occurred in this state for:

(a) convictions of perjury or the making of a false affidavit relating to the ownership or operation of a motor vehicle (61-5-303);

(b) three convictions of reckless driving committed within a period of 12 months (61-8-301); or

(c) convictions of careless driving resulting in death or reckless driving resulting in death.

(3) Court abstracts or reports of conviction received by the department that name an individual licensed in another jurisdiction must be forwarded to the jurisdiction of licensure. The department may not take action against the driver’s license or driving privilege of the individual as may be required elsewhere in this title.

**History:** En. Sec. 6, Ch. 154, L. 1963; R.C.M. 1947, 31-168; amd. Sec. 98, Ch. 421, L. 1979; amd. Sec. 8, Ch. 485, L. 1981; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 4, Ch. 419, L. 1991; amd. Sec. 16, Ch. 354, L. 1995; amd. Sec. 2, Ch. 348, L. 2009; amd. Sec. 1, Ch. 235, L. 2011.

**61-5-406. Review of administrative actions.** Any act or omission of any official or employee of this state done or omitted pursuant to, or in enforcing, the provisions of the Driver License Compact shall be subject to review pursuant to the provisions of 61-5-211, but any review of the validity of any conviction reported pursuant to the compact shall be limited to establishing the identity of the person so convicted.

**History:** En. Sec. 8, Ch. 154, L. 1963; R.C.M. 1947, 31-169.

## CHAPTER 8 TRAFFIC REGULATION

### Part 3 Vehicle Operating Requirements

**61-8-310. When local authorities may and shall alter limits or establish or alter area of school zone.** (1) If a local authority in its jurisdiction determines on the basis of an engineering and traffic investigation that the speed permitted under 61-8-303 and 61-8-309 through 61-8-313 is greater or less than is reasonable and safe under the conditions found to exist upon a highway or part of a highway, the local authority may set a reasonable and safe limit that:

- (a) decreases the limit at an intersection;
- (b) increases the limit within an urban district, but not to more than 65 miles an hour during the nighttime;
- (c) decreases the limit outside an urban district, but not to less than 35 miles an hour on a paved road or less than 25 miles an hour on an unpaved road; or
- (d) decreases the limit in a school zone or in an area near a senior citizen center, as defined in 23-5-112, or a designated crosswalk that is close to a school or a senior citizen center to not less than 80%, rounded down to the nearest whole number evenly divisible by 5, of the limit that would be set on the basis of an engineering and traffic investigation, but not less than 15 miles an hour. If warranted by an engineering and traffic investigation, a local authority may adopt variable speed limits to adapt to traffic conditions by time of day, provided that the variable limits comply with the provisions of 61-8-206.

(2) A board of county commissioners may set limits, as provided in subsection (1)(c), without an engineering and traffic investigation on a county road.

(3) A local authority in its jurisdiction may determine the proper speed for all arterial streets and shall set a reasonable and safe limit on arterial streets that may be greater or less than the speed permitted under 61-8-303 for an urban district.

(4) (a) An altered limit established as authorized under this section is effective at all times or at other times determined by the authority when appropriate signs giving notice of the altered limit are erected upon the highway.

(b) If a local authority decreases a speed limit in a school zone, the local authority shall erect signs conforming with the manual adopted by the department of transportation under 61-8-202 giving notice that the school zone has been entered, of the altered speed limit and the penalty provided in 61-8-726, and that the school zone has ended.

(5) Except as provided in subsection (1)(d), the commission has exclusive jurisdiction to set special speed limits on all federal-aid highways or extensions of federal-aid highways in all municipalities or urban areas. The commission shall set these limits in accordance with 61-8-309.

(6) A local authority establishing or altering the area of a school zone shall consult with the department of transportation and the commission if the school zone includes a state highway or a federal-aid highway or extension of a federal-aid highway.

(7) A local authority shall consult with district officials for a school when:

- (a) establishing or altering the area of a school zone near the school; or
- (b) setting a speed limit pursuant to subsection (1)(d) in a school zone near the school.

(8) A speed limit set on an unpaved road under subsection (1)(c) must be the same for all types of motor vehicles that may be operated on the road.

(9) The violation of a speed limit established under subsections (1)(a) through (1)(c) is a misdemeanor offense and is punishable as provided in 61-8-711. The violation of a speed limit established under subsection (1)(d) is a misdemeanor offense and is punishable as provided in 61-8-726.

**History:** En. Sec. 43, Ch. 263, L. 1955; amd. Sec. 1, Ch. 89, L. 1971; amd. Sec. 57, Ch. 316, L. 1974; R.C.M. 1947, 32-2146; amd. Sec. 2, Ch. 614, L. 1985; amd. Sec. 1, Ch. 686, L. 1991; amd. Sec. 1, Ch. 213, L. 1993; amd. Sec. 3, Ch. 287, L. 1995; amd. Sec. 5, Ch. 43, L. 1999; amd. Sec. 198, Ch. 542, L. 2005; amd. Sec. 2, Ch. 83, L. 2009; amd. Sec. 1, Ch. 204, L. 2011; amd. Sec. 7, Ch. 393, L. 2013.

**61-8-349. Certain vehicles to stop at all railroad grade crossings.** (1) (a) Except as provided in subsection (1)(b), the driver of a motor vehicle carrying seven or more passengers for hire, a school bus with or without passengers, or a vehicle carrying explosive substances or flammable liquids as a cargo or part of a cargo, before crossing at grade any track or tracks of a railroad, shall stop the vehicle as close as practicable but not less than 15 feet from the nearest rail of the railroad and while stopped shall open the door, in the case of a school bus, and shall listen and look in both directions along the track for an approaching train or other on-track equipment and for signals indicating the approach of a train or other on-track equipment and may not proceed until the driver can do so safely. After stopping as required in this section and upon proceeding when it is safe to do so, the operator of a vehicle may cross only in a gear of the vehicle that requires no changing gears while traversing the crossing. The operator may not shift gears while crossing the track or tracks.

(b) A stop is not required at a crossing where a police officer, highway patrol officer, or official traffic control device directs traffic to proceed.

(2) As used in this section, "official traffic control device" does not include a railroad grade crossing signal.

**History:** (1)En. Sec. 1, Ch. 151, L. 1919; re-en. Sec. 3842, R.C.M. 1921; re-en. Sec. 3842, R.C.M. 1935; amd. Sec. 1, Ch. 115, L. 1957; amd. Sec. 20, Ch. 315, L. 1974; Sec. 72-164, R.C.M. 1947; (2) thru (4)Ap p. Sec. 90, Ch. 263, L. 1955; amd. Sec. 1, Ch. 244, L. 1977; Sec. 32-2193, R.C.M. 1947; Ap. p. Sec. 284, Ch. 5, L. 1971; Sec. 75-7007, R.C.M. 1947; R.C.M. 1947, 32-2193, 72-164(part), 75-7007(part); amd. Sec. 1, Ch. 217, L. 1989; amd. Sec. 1, Ch. 449, L. 1991; amd. Sec. 31, Ch. 352, L. 2003; amd. Sec. 3, Ch. 256, L. 2009.

**61-8-351. Meeting or passing school bus — vehicle operator liability for violation — penalty.** (1) Upon overtaking from either direction a school bus that has stopped on the highway or street to receive or discharge school children, a driver of a motor vehicle:

(a) shall stop the motor vehicle not less than approximately 30 feet before reaching the school bus when there is in operation on the bus a visual flashing red signal as specified in 61-9-402; and

(b) may not proceed until the children have entered the school bus or have alighted and reached the side of the highway or street and until the school bus ceases operation of its visual flashing red signal.

(2) The driver of a motor vehicle shall slow to a rate of speed that is reasonable under the conditions existing at the point of operation and must be prepared to stop when meeting or overtaking from either direction a school bus that is preparing to stop on the highway or street to receive or discharge school children as indicated by flashing amber lights as specified in 61-9-402.

(3) Each bus used for the transportation of school children must bear upon the front and rear plainly visible signs containing the words "SCHOOL BUS" in letters not less than 8 inches in height and, in addition, must be equipped with visual signals meeting the requirements of 61-9-402. Amber flashing lights must be actuated by the driver approximately 150 feet in cities and approximately 500 feet in other areas before the bus is stopped to receive or discharge school children on the highway or street. Red lights must be actuated by the driver of the school bus whenever but only whenever the school bus is stopped on the highway or street whether inside or outside the corporate limits of any city or town to receive or discharge school children. However, a school district board of trustees may, in its discretion, adopt a policy prohibiting the operation of amber or red lights when a school bus is stopped at the school site to receive or discharge school children and the receipt or discharge does not involve street crossing by the children. The lights may not be operated in violation of that policy.

(4) The requirements that a driver of a motor vehicle shall stop when a school bus receives or discharges school children under subsection (1) and the requirements that amber and red lights must be actuated by a school bus driver under subsection (3) do not apply when a school bus receives or discharges school children in a designated school bus pullout on a state highway. A designated school bus pullout must meet the following requirements:

(a) The pullout must be located on a roadway separated by a physical barrier, such as a guardrail, raised median, drainage ditch, or irrigation ditch.

(b) The separate roadway must be designed, constructed, and signed specifically for use by school buses, with sufficient space for safe ingress and egress from the main traveled way.

(c) The pullout must be approved by the local affected school district, by a resolution of the district trustees, and by the district superintendent as a mandatory school bus stop for receiving and discharging school children.

(5) When a school bus is being operated upon a highway for purposes other than the actual transportation of children either to or from school or for school functions, all markings on the bus indicating "SCHOOL BUS" must be covered or concealed.

(6) The driver of a motor vehicle upon a highway with separate roadways need not stop upon meeting or passing a school bus that is on a different roadway or when upon a controlled-access highway and the school bus is stopped in a loading zone that is a part of or adjacent to the highway and where pedestrians are not permitted to cross the roadway.

(7) (a) A person who observes a violation of this section may prepare a written, in addition to an oral, report indicating that a violation has occurred. The report may contain information concerning the violation, including:

(i) the time and approximate location at which the violation occurred;

(ii) the license plate number and color of the motor vehicle involved in the violation;

(iii) identification of the motor vehicle as a passenger car, truck, bus, motorcycle, or other type of motor vehicle; and

(iv) a description of the person operating the motor vehicle when the violation occurred.

(b) A report under subsection (7)(a) constitutes particularized suspicion under 46-5-401(1) that an operator of the vehicle committed a violation of this section.

(8) Violation of subsection (1) is punishable upon conviction by a fine of not more than \$500.

**History:** Ap. p. Sec. 94, Ch. 263, L. 1955; amd. Sec. 1, Ch. 100, L. 1961; amd. Sec. 2, Ch. 250, L. 1965; amd. Sec. 1, Ch. 45, L. 1971; amd. Sec. 2, Ch. 244, L. 1977; Sec. 32-2197, R.C.M. 1947; Ap. p. Sec. 284, Ch. 5, L. 1971; Sec. 75-7007, R.C.M. 1947; R.C.M. 1947, 32-2197, 75-7007(part); amd. Sec. 1, Ch. 305, L. 1979; amd. Sec. 2, Ch. 221, L. 1985; amd. Sec. 1, Ch. 366, L. 1985; amd. Sec. 1, Ch. 132, L. 1993; amd. Sec. 2, Ch. 46, L. 2003; amd. Sec. 1, Ch. 417, L. 2005; amd. Sec. 1, Ch. 58, L. 2013.

**61-8-352. Prohibited operation of special lighting equipment on school buses.** It shall be unlawful to operate any flashing prewarning or warning signal light on any school bus except when the school bus is preparing to stop or is stopped on a highway for the purpose of permitting school children to board or alight from said school bus.

**History:** Ap. p. Sec. 95, Ch. 263, L. 1955; amd. Sec. 3, Ch. 250, L. 1965; Sec. 32-2198, R.C.M. 1947; Ap. p. Sec. 284, Ch. 5, L. 1971; Sec. 32-2198, R.C.M. 1947; R.C.M. 1947, 32-2198, 75-7007(part).

## Part 5 Pedestrian Traffic

**61-8-502. Pedestrians' right-of-way in crosswalk — school children.** (1) (a) Except as provided in subsection (1)(b), when traffic control signals are not in place or not in operation, the operator of a vehicle shall yield the right-of-way, slowing down or stopping if necessary, to a pedestrian crossing the roadway within a marked crosswalk or within an unmarked crosswalk at an intersection, but a pedestrian may not suddenly leave a curb or other place of safety and walk or run into the path of a vehicle that is so close that it is impossible for the operator to yield. This provision does not apply under the conditions provided in 61-8-503(2).

(b) When a vehicle is stopped at a marked crosswalk or at an unmarked crosswalk at an intersection, the operator of a vehicle may make a right-hand turn if the pedestrian is in the opposite half of the roadway and is not in danger.

(2) When a vehicle is stopped at a marked crosswalk or at an unmarked crosswalk at an intersection to permit a pedestrian to cross the roadway, the operator of any other vehicle approaching from the rear may not overtake and pass the stopped vehicle.

(3) A person may not operate a vehicle through a column of school children crossing a roadway or past a school crossing guard while the crossing guard is directing the movement of children across a roadway and while the crossing guard is holding an official sign in the stop position.

**History:** En. Sec. 74, Ch. 263, L. 1955; amd. Sec. 1, Ch. 54, L. 1965; R.C.M. 1947, 32-2177; amd. Sec. 1, Ch. 484, L. 1993; amd. Sec. 3, Ch. 374, L. 2003.

## CHAPTER 9 VEHICLE EQUIPMENT

### Part 4 Miscellaneous Regulations

**61-9-402. Audible and visual signals on police, emergency vehicles, and on-scene command vehicles — immunity.** (1) A police vehicle must be equipped with a siren capable of giving an audible signal and may be equipped with alternately flashing or rotating red or blue lights as specified in this section.

(2) An authorized emergency vehicle must be equipped:

(a) with a siren and an alternately flashing or rotating red light as specified in this section; and

(b) with signal lamps mounted as high and as widely spaced laterally as practicable that are capable of displaying to the front two alternately flashing red lights located at the same level and to the rear two alternately flashing red lights located at the same level. These lights must have sufficient intensity to be visible at 500 feet in normal sunlight.

(3) A bus used for the transportation of school children must be equipped with signal lamps mounted as high and as widely spaced laterally as practicable, displaying to the front two red and two amber alternating flashing lights and to the rear two red and two amber alternating flashing lights. These lights must have sufficient intensity to be visible at 500 feet in normal sunlight. The warning lights must be as prescribed by the board of public education and approved by the department.

(4) A police vehicle and an authorized emergency vehicle may, and an emergency service vehicle must, be equipped with alternately flashing or rotating amber lights as specified in this section.

(5) The use of signal equipment as described in this section imposes upon the operators of other vehicles the obligation to yield right-of-way or to stop and to proceed past the signal or light as provided in 61-8-346 and subject to the provisions of 61-8-209 and 61-8-303.

(6) An employee, agent, or representative of the state or a political subdivision of the state or of a governmental fire agency organized under Title 7, chapter 33, who is operating a police vehicle, an authorized emergency vehicle, or an emergency service vehicle and using signal equipment in rendering assistance at a highway crash scene or in response to any other hazard on the roadway that presents an immediate hazard or an emergency or life-threatening situation is not liable, except for willful misconduct, bad faith, or gross negligence, for injuries, costs, damages, expenses, or other liabilities resulting from a motorist operating a vehicle in violation of subsection (5).

(7) Blue, red, and amber lights required in this section must be mounted as high as and as widely spaced laterally as practicable and be capable of displaying to the front two alternately flashing lights of the specified color located at the same level and to the rear two alternately flashing lights of the specified color located at the same level or one rotating light of the specified color, mounted as high as is practicable and visible from both the front and the rear. These lights must have sufficient intensity to be visible at 500 feet in normal sunlight. Except as provided in 61-9-204(6), only police vehicles, as defined in 61-8-102, may display blue lights, lenses, or globes.

(8) A police vehicle and authorized emergency vehicle may be equipped with a flashing signal lamp that is green in color, visible from 360 degrees, and attached to the exterior roof of the vehicle for purposes of designation as the on-scene command and control vehicle in an emergency or disaster. The green light must have sufficient intensity to be visible at 500 feet in normal sunlight. Only the on-scene command and control vehicle may display green lights, lenses, or globes.

(9) Only a police vehicle or an authorized emergency vehicle may be equipped with the means to flash or alternate its headlamps or its backup lights.

(10) A violation of subsection (5) is considered reckless endangerment of a highway worker, as provided in 61-8-301(4), and is punishable as provided in 61-8-715.

**History:** En. Sec. 129, Ch. 263, L. 1955; amd. Sec. 1, Ch. 40, L. 1959; amd. Sec. 1, Ch. 250, L. 1965; amd. Sec. 4, Ch. 153, L. 1975; R.C.M. 1947, 32-21-132; amd. Sec. 1, Ch. 361, L. 1985; amd. Sec. 1, Ch. 503, L. 1985; amd.



Sec. 116, Ch. 370, L. 1987; amd. Sec. 27, Ch. 431, L. 1997; amd. Sec. 5, Ch. 520, L. 1999; amd. Sec. 46, Ch. 352, L. 2003; amd. Sec. 5, Ch. 379, L. 2003; amd. Sec. 218, Ch. 542, L. 2005; amd. Sec. 43, Ch. 449, L. 2007; amd. Sec. 2, Ch. 520, L. 2007.

## **Part 5**

### **Enforcement — Penalties**

**61-9-502. Semiannual inspection of school buses.** (1) The department shall perform the semiannual inspection of school buses, one of which shall be at least 30 days prior to the beginning of the school term, and reinspect the buses, if necessary, before the beginning of the school term.

(2) The department's inspection shall determine if the school buses meet the minimum standards for school buses as adopted by the board of public education.

**History:** En. 32-21-155.1 by Sec. 2, Ch. 179, L. 1969; amd. Sec. 1, Ch. 141, L. 1973; R.C.M. 1947, 32-21-155.1; amd. Sec. 1, Ch. 503, L. 1985.

# **TITLE 69**

## **PUBLIC UTILITIES AND CARRIERS**

### **CHAPTER 3**

#### **REGULATION OF UTILITIES**

### **Part 8**

#### **Montana Telecommunications Act**

**69-3-846. Discounts for schools, libraries, and health care providers.** The commission is authorized to establish intrastate discounts to schools, libraries, and health care providers and to perform administrative functions necessary as a condition of federal universal service support if the discounts are recovered through the federal universal service fund.

**History:** En. Sec. 16, Ch. 349, L. 1997.

# **TITLE 72**

## **ESTATES, TRUSTS, AND FIDUCIARY RELATIONSHIPS**

### **CHAPTER 5**

#### **UPC — PERSONS UNDER DISABILITY GUARDIANSHIP AND CONSERVATORSHIP**

### **Part 2**

#### **Guardians of Minors**

**72-5-201. Status of guardian of minor — how acquired generally — letters to indicate means of appointment.** (1) A person becomes a guardian of a minor by acceptance of a testamentary appointment or upon appointment by the court.

(2) Letters of guardianship must indicate whether the guardian was appointed by will or by court order.

(3) The guardianship status continues until terminated, without regard to the location from time to time of the guardian and minor ward.

**History:** En. 91A-5-201, 91A-5-208 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-201, 91A-5-208(part).

**72-5-202. Consent to jurisdiction by acceptance of appointment.** (1) By accepting a testamentary or court appointment as guardian, a guardian submits personally to the jurisdiction of the court in any proceeding relating to the guardianship that may be instituted by any interested person.

(2) Notice of any proceeding must be delivered to the guardian or mailed to the guardian by ordinary mail at the guardian's address as listed in the court records and to the guardian's address as then known to the petitioner.

**History:** En. 91A-5-208 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-208(part); amd. Sec. 2398, Ch. 56, L. 2009.

**72-5-203 through 72-5-210 reserved.**

**72-5-211. Testamentary appointment of guardian of minor — when effective — priorities — notice of appointment.** (1) The parent of a minor may appoint by will a guardian of an unmarried minor. Subject to the right of the minor under 72-5-213, a testamentary appointment becomes effective upon filing the guardian's acceptance in the court in which the will is probated if before acceptance both parents are dead or the surviving parent is adjudged incapacitated. If both parents are dead, an effective appointment by the parent who died later has priority.

(2) Upon acceptance of an appointment, written notice of acceptance must be given by the guardian to the minor and to the person having the minor's care or to the minor's nearest adult relations.

**History:** En. 91A-5-202 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-202(part); amd. Sec. 2399, Ch. 56, L. 2009.

**72-5-212. Recognition of appointment of guardian by foreign will.** This state recognizes a testamentary appointment effected by filing the guardian's acceptance under a will probated in another state which is the testator's domicile.

**History:** En. 91A-5-202 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-202(part).

**72-5-213. Objection by minor 14 years of age or older to testamentary appointment.** A minor 14 years of age or older may prevent an appointment of the minor's testamentary guardian from becoming effective or may cause a previously accepted appointment to terminate by filing with the court in which the will is probated a written objection to the appointment before it is accepted or within 30 days after notice of its acceptance. An objection may be withdrawn. An objection does not preclude appointment by the court in a proper proceeding of the testamentary nominee or any other suitable person.

**History:** En. 91A-5-203 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-203; amd. Sec. 2400, Ch. 56, L. 2009.

**72-5-214 through 72-5-220 reserved.**

**72-5-221. Venue for proceedings for court appointment of guardian of minor.** The venue for guardianship proceedings for a minor is in the place where the minor resides or is present.

**History:** En. 91A-5-205 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-205.

**72-5-222. Court appointment of guardian of minor — when allowed — priority of testamentary appointment.** (1) The court may appoint a guardian for an unmarried minor if all parental rights of custody have been terminated or if parental rights have been suspended or limited by circumstances or prior court order.

(2) A guardian appointed by will as provided in 72-5-211 and 72-5-212 whose appointment has not been prevented or nullified under 72-5-213 has priority over any guardian who may be appointed by the court, but the court may proceed with an appointment upon a finding that the testamentary guardian has failed to accept the testamentary appointment within 30 days after notice of the guardianship proceeding.

**History:** En. 91A-5-204 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-204; amd. Sec. 6, Ch. 290, L. 1999.

**72-5-223. Guardian of minor by court appointment — qualifications — nominee of minor preferred.** The court may appoint as guardian any person whose appointment would be in the best interests of the minor, including the minor's interest in continuity of care. The court shall appoint a person nominated by the minor if the minor is 14 years of age or older unless the court finds the appointment contrary to the best interests of the minor.

**History:** En. 91A-5-206 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-206; amd. Sec. 7, Ch. 210, L. 2009.

**72-5-224. Temporary guardian of minor.** If necessary, the court may appoint a temporary guardian with the status of an ordinary guardian of a minor, but the authority of a temporary guardian shall not last longer than 6 months.

**History:** En. 91A-5-207 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-207(3).

**72-5-225. Procedure for court appointment of guardian of minor — notice — hearing — representation by attorney.** (1) Notice of the time and place of hearing of a petition for the appointment of a guardian of a minor must be given by the petitioner in the manner prescribed by 72-1-301 to:

(a) the minor, if the minor is 14 years of age or older;  
(b) the person who has had the principal care and custody of the minor during the 60 days preceding the date of the petition; and

(c) any living parent of the minor.

(2) Upon hearing, the court shall make the appointment if the court finds that a qualified person seeks appointment, venue is proper, the required notices have been given, the requirements of 72-5-222 have been met, and the welfare and best interests of the minor, including the need for continuity of care, will be served by the requested appointment. In other cases, the court may dismiss the proceedings or make any other disposition of the matter that will best serve the interests of the minor.

(3) If, at any time in the proceeding, the court determines that the interests of the minor are or may be inadequately represented, the court may order the office of state public defender, provided for in 2-15-1029, to assign counsel pursuant to the Montana Public Defender Act, Title 47, chapter 1, to represent the minor.

**History:** En. 91A-5-207 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-207(1), (2), (4); amd. Sec. 2, Ch. 93, L. 1979; amd. Sec. 63, Ch. 449, L. 2005; amd. Sec. 8, Ch. 210, L. 2009; amd. Sec. 41, Ch. 358, L. 2017.

**Compiler's Comments**

*2017 Amendment:* Chapter 358 in (3) substituted “2-15-1029” for “47-1-201”. Amendment effective July 1, 2017.

**72-5-226 through 72-5-230 reserved.**

**72-5-231. Powers and duties of guardian of minor.** Unless otherwise limited by the court, a guardian of a minor has the powers and responsibilities of a parent who has not been deprived of custody of the parent's minor and unemancipated child, except that a guardian is not legally obligated to provide from the guardian's own funds for the ward and is not liable to third persons by reason of the parental relationship for acts of the ward. In particular and without qualifying the foregoing, a guardian has the following powers and duties:

(1) The guardian shall take reasonable care of the ward's personal effects and commence protective proceedings if necessary to protect other property of the ward.

(2) The guardian may receive money payable for the support of the ward to the ward's parent, guardian, or custodian under the terms of any statutory benefit or insurance system or any private contract, devise, trust, conservatorship, or custodianship. The guardian also may receive money or property of the ward paid or delivered by virtue of 72-5-104. Any sums received must be applied to the ward's current needs for support, care, and education. The guardian shall exercise due care to conserve any excess for the ward's future needs unless a conservator has been appointed for the estate of the ward, in which case the excess must be paid at least annually to the conservator. Sums received by the guardian may not be used for compensation for the guardian's services except as approved by an order of the court or as determined by a duly appointed conservator other than the guardian. A guardian may institute proceedings to compel the performance by any person of a duty to support the ward or to pay sums for the welfare of the ward.

(3) The guardian is empowered to facilitate the ward's education, social, or other activities and to authorize medical or other professional care, treatment, or advice. A guardian is not liable by reason of this consent for injury to the ward resulting from the negligence or acts of third persons unless it would have been illegal for a parent to have consented. A guardian may consent to the marriage or adoption of the ward.

(4) A guardian shall report the condition of the ward and of the ward's estate that has been subject to the guardian's possession or control, as ordered by the court on petition of any person interested in the minor's welfare or as required by court rule.

(5) Upon the death of a guardian's ward, the guardian, upon an order of the court and if there is no personal representative authorized to do so, may make necessary arrangements for the removal, transportation, and final disposition, including burial, entombment, or cremation, of the ward's physical remains and for the receipt and disposition of the ward's clothing, furniture, and other personal effects that may be in the possession of the person in charge of the ward's care, comfort, and maintenance at the time of the ward's death.

**History:** En. 91A-5-209 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-209; amd. Sec. 2, Ch. 279, L. 1997; amd. Sec. 1, Ch. 238, L. 2003.

**72-5-232. Repealed.** Sec. 26, Ch. 236, L. 2009.

**History:** En. 91A-5-211 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-211.

**72-5-233. Termination of appointment — how effected — certain liabilities and obligations not affected.** (1) A guardian's authority and responsibility terminates upon the death, resignation, or removal of the guardian or upon the minor's death, except as provided in subsection (2), adoption, marriage, or attainment of majority, but termination does not affect a guardian's liability for prior acts or a guardian's obligation to account for funds and assets of the guardian's ward. Resignation of a guardian does not terminate the guardianship until it has been approved by the court. A testamentary appointment under an informally probated will terminates if the will is later denied probate in a formal proceeding.

(2) The guardian's authority and responsibility for a minor who dies while the minor is a ward of the guardian terminates when the guardian has completed arrangements for the final disposition of the ward's physical remains and personal effects as provided in 72-5-231(5).

**History:** En. 91A-5-210 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-210; amd. Sec. 2, Ch. 238, L. 2003.

**72-5-234. Procedure for resignation or removal — petition, notice, and hearing — representation by attorney.** (1) Any person interested in the welfare of a ward or the ward, if 14 years of age or older, may petition for removal of a guardian on the ground that removal would be in the best interests of the ward. A guardian may petition for permission to resign. A petition for removal or for permission to resign may but need not include a request for appointment of a successor guardian.

(2) After notice and hearing on a petition for removal or for permission to resign, the court may terminate the guardianship and make any further order that may be appropriate.

(3) If at any time in the proceeding the court determines that the interests of the ward are or may be inadequately represented, it may order the office of state public defender, provided for in 2-15-1029, to assign counsel under the provisions of the Montana Public Defender Act, Title 47, chapter 1, to represent the minor.

**History:** En. 91A-5-212 by Sec. 1, Ch. 365, L. 1974; R.C.M. 1947, 91A-5-212; amd. Sec. 64, Ch. 449, L. 2005; amd. Sec. 42, Ch. 358, L. 2017.

**Compiler's Comments**

*2017 Amendment:* Chapter 358 in (3) substituted "2-15-1029" for "47-1-201". Amendment effective July 1, 2017.

# TITLE 80

## AGRICULTURE

### CHAPTER 8

### PESTICIDES

#### Part 4

#### Model School Integrated Pest and Pesticide Management Safety Program

**80-8-401. Short title.** This part may be cited as the “Model Integrated Pest and Pesticide Management Safety Program Act”.

**History:** En. Sec. 1, Ch. 177, L. 1993; amd. Sec. 11, Ch. 244, L. 2017.

**Compiler’s Comments**

*2017 Amendment:* Chapter 244 after “Model” deleted “School”. Amendment effective May 3, 2017.

**80-8-402. Statement of policy.** The legislature finds and declares that:

- (1) the exposure of children to pesticides applied in and around schools can pose a potentially acute or chronic toxicological hazard to their health;
- (2) infants and children can be especially vulnerable to pesticides, especially if pesticides are not properly applied or used;
- (3) schools need to adopt pest management programs that minimize exposure of school children to pesticides and provide for alternative pest control methods; and
- (4) the department shall prepare and distribute to each Montana school district a model integrated pest and pesticide management safety program that satisfies the provisions of this section.

**History:** En. Sec. 2, Ch. 177, L. 1993.

**80-8-403. Definitions.** As used in this part, the following definitions apply:

- (1) “Department” means the department of agriculture as provided for in 2-15-3001.
- (2) “Director” means the director of agriculture as provided for in 2-15-3001.
- (3) “School district” means a school district established according to Title 20, chapter 6.

**History:** En. Sec. 3, Ch. 177, L. 1993.

**80-8-404. Model integrated pest and pesticide management safety program.**

(1) The department may develop a model integrated pest and pesticide management safety program for facilities under supervision, including but not limited to schools, day-care facilities, nursing homes, hospitals, and other education and health care facilities. The model programs must provide guidance and recommendations on management of pests and pesticides and on alternatives within a facility and on facility grounds.

(2) The model program guidelines and recommendations must include information on pests, alternative and pesticide control methods and their integration, environmental concerns, and protection of public health. Special information and recommendations for protecting the affected populations from exposure to pesticides and from the acute or chronic potential adverse health effects of pesticides must be emphasized. The department may periodically revise the model program guidelines, policies, and recommendations as new integrated pest, pesticide, or alternative management techniques and methods are developed and as new information on protecting the affected populations from pesticides is developed.

(3) The director may consult and obtain advice from pest and pesticide specialists, facility personnel, and the public on any aspect of the model integrated pest and pesticide management safety program.

**History:** En. Sec. 4, Ch. 177, L. 1993; amd. Sec. 12, Ch. 244, L. 2017.

**Compiler’s Comments**

*2017 Amendment:* Chapter 244 in (1) substituted first sentence regarding development of a model program for “The department shall develop a model school integrated pest and pesticide management safety program and distribute the program to school districts by July 1, 1994”, in second sentence near middle after “recommendations” deleted “to school districts”, and at end substituted “a facility and on facility grounds” for “schools and on school grounds”; in (2) near beginning of second sentence and near end of third sentence substituted “the affected



populations” for “school children”; in (3) near middle substituted “facility personnel” for “school personnel” and after “aspect of the model” deleted “school”; and made minor changes in style. Amendment effective May 3, 2017.

**80-8-405. Policymaking authority.** The department may adopt policies and guidelines to implement this part.

**History:** En. Sec. 5, Ch. 177, L. 1993.

## TITLE 87

### FISH AND WILDLIFE

#### CHAPTER 1 ORGANIZATION AND OPERATION

##### Part 2 Department of Fish, Wildlife, and Parks

**87-1-226. Disposition of meat of animals damaging property.** (1) The meat of all animals killed or destroyed pursuant to 87-1-225 by the department or the authorized landholder shall be conserved and given to state institutions, school lunch programs, the department of public health and human services, or charitable institutions. The department shall provide transportation and distribution of the meat.

(2) Any meat not accepted by state institutions, school lunch programs, the department of public health and human services, or charitable institutions shall be sold as provided in 87-1-511.

**History:** En. Sec. 2, Ch. 60, L. 1957; amd. Sec. 22, Ch. 511, L. 1973; R.C.M. 1947, 26-136; amd. Sec. 1, Ch. 120, L. 1985; amd. Sec. 559, Ch. 546, L. 1995.

##### Part 6 Finance

**87-1-603. Payments to counties for department-owned land — exceptions.** (1) Except as provided in subsection (3), before November 30 of each year, the treasurer of each county in which the department owns any land shall describe the land, state the number of acres in each parcel, and request the drawing of a warrant to the county in a sum equal to the amount of taxes that would be payable on county assessment of the property if it was taxable to a private citizen. The director shall approve or disapprove the request. The director may disapprove a request only if the director finds it to be inconsistent with this section. If the director disapproves a request, the director shall return it with an explanation detailing the reasons for the disapproval to the appropriate county treasurer for correction. If the director approves a request, the director shall transmit it to the department of administration, which shall draw a warrant payable to the county in the amount shown on the request and shall send the warrant to the county treasurer. The warrant is payable out of any funds to the credit of the department of fish, wildlife, and parks. A payment may not be made to a county in which the department owns less than 100 acres. A payment may not be made to a county for lands owned by the department for game or bird farms or for fish hatchery purposes or lands acquired and managed for the purposes of Title 23, chapter 1.

(2) After May 10, 2009, for every department purchase of land, the department shall notify the treasurer in the county where land was purchased.

(3) (a) After May 10, 2009, and before November 30 of each subsequent year, the treasurer of each county in which the department owns land purchased after May 10, 2009, shall describe the land, state the number of acres in each parcel, and request the drawing of a warrant to the county in a sum equal to the amount of taxes that would be payable on county assessment of the property if it was taxable to a private citizen.

(b) The director shall approve or disapprove the request. The director may disapprove a request only if the director finds it to be inconsistent with this subsection (3). If the director disapproves a request, the director shall return it with an explanation detailing the reasons for

the disapproval to the appropriate county treasurer for correction. If the director approves a request, the director shall transmit it to the department of administration, which shall draw a warrant payable to the county in the amount shown on the request and shall send the warrant to the county treasurer. The warrant is payable out of any funds to the credit of the department of fish, wildlife, and parks.

(c) All land purchased by the department after May 10, 2009, is subject to this subsection (3).

(4) The amount to be paid to each county pursuant to this section is statutorily appropriated, as provided in 17-7-502.

**History:** En. Sec. 1, Ch. 1, L. 1951; amd. Sec. 1, Ch. 188, L. 1953; amd. Sec. 21, Ch. 511, L. 1973; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-133; amd. Sec. 2, Ch. 218, L. 1979; amd. Sec. 1, Ch. 486, L. 1987; amd. Sec. 34, Ch. 325, L. 1995; amd. Sec. 8, Ch. 485, L. 2009.

**87-1-604. Authorization for allocation of funds to school districts.** The county commissioners of any county receiving funds as provided in 87-1-603 may allocate, in such amounts as they determine, any portion of the funds to any school district in the county whenever the school district contains any department lands. Any balance remaining after allocations have been made to school districts shall be credited to the general fund of the county.

**History:** En. Sec. 2, Ch. 1, L. 1951; amd. Sec. 3, Ch. 9, L. 1977; R.C.M. 1947, 26-134.

## TITLE 90

### PLANNING, RESEARCH, AND DEVELOPMENT

#### CHAPTER 4

#### ENERGY DEVELOPMENT AND CONSERVATION

##### Part 11

##### Local Government and State Agency Energy Performance Contracts

**90-4-1101. Legislative findings and policy.** (1) The legislature finds that:

(a) conserving energy in public buildings and vehicles will have a beneficial effect on the overall supply of energy and can result in cost savings for taxpayers;

(b) conserving water can result in cost savings for taxpayers; and

(c) energy performance contracts are a means by which governmental entities can economically and expeditiously achieve energy and water conservation.

(2) It is the policy of the state of Montana to promote efficient use of energy and water resources in public buildings and energy conservation in vehicles by authorizing governmental entities to enter into energy performance contracts.

**History:** En. Sec. 1, Ch. 162, L. 2005; amd. Sec. 4, Ch. 439, L. 2009; amd. Sec. 8, Ch. 344, L. 2015.

**90-4-1102. Definitions.** As used in this part, the following definitions apply: (1) “Cost-effective” or “cost-effectiveness” means that the sum of guaranteed cost savings and, if and to the extent allowed by rules adopted pursuant to 90-4-1110(3)(d), unguaranteed energy cost savings attributable to utility unit price escalation are equal to or exceed any financing repayment obligation each year of a finance term.

(2) “Cost-saving measure” means a cost-effective facility improvement, repair, or alteration or equipment, fixtures, or furnishings added to or used in a facility and designed to reduce energy or water consumption or operation and maintenance costs. The term also includes vehicle acquisitions, changes to utility rate or tariff schedules, or fuel source changes that result in cost savings.

(3) “Department” means the department of environmental quality provided for in 2-15-3501.

(4) “Energy performance contract” means a contract between a governmental entity and a qualified energy service provider for evaluation, recommendation, and implementation of one or more cost-saving measures, evaluation of cost-effectiveness, and guaranteed cost savings.

(5) “Finance term” means the length of time for repayment of funds borrowed for an energy performance contract.

(6) “Governmental entity” means:

- (a) a department, board, commission, institution, or branch of state government;
- (b) a county, consolidated city-county government, city, town, or school district;
- (c) a special district, as defined in 2-2-102;
- (d) the university system or a unit of the university system; or
- (e) a community college district.

(7) “Guarantee period” means the period of time from the effective date of the contract until guaranteed cost savings are achieved in accordance with 90-4-1114(5).

(8) “Guaranteed cost savings” means a guaranteed annual measurable monetary reduction in utility and operating and maintenance costs for each year of a guarantee period resulting from cost-saving measures. Guaranteed cost savings for utility cost savings must be calculated using mutually agreed on baseline utility rates in use at the time of an investment-grade energy audit. Guaranteed cost savings for operation and maintenance cost savings must be calculated using mutually agreed on baseline operation and maintenance costs at the time of an investment-grade energy audit.

(9) “Investment-grade energy audit” means a study of energy or water usage of a public building performed by a qualified energy service provider utilizing a professional engineer licensed in the state of Montana. It includes detailed descriptions of the improvements recommended for the project, the estimated costs of the improvements, and the operation and maintenance cost savings and utility cost savings projected to result from the recommended improvements. The study must contain all information required pursuant to 90-4-1113(2).

(10) “Measurement and verification” means the methodology, measurements, inspections, and mathematical calculations to determine utility consumption before and after an energy performance contract is implemented. The measurement and verification report may be for an individual cost-saving measure or an entire project.

(11) “Operation and maintenance cost savings” means a measurable decrease in operation and maintenance costs as a direct result of cost-saving measures calculated using baseline operation and maintenance costs. The term does not include the shifting of personnel costs or similar short-term cost savings that cannot be definitively measured.

(12) “Person” means an individual, corporation, partnership, firm, association, cooperative, limited liability company, limited liability partnership, or any other similar entity.

(13) “Qualified energy service provider” means a person included on the department’s list of qualified energy service providers.

(14) “Utility cost savings” means expenses for utilities that are eliminated or avoided on a long-term basis as a result of equipment installed or modified or services performed by a qualified energy service provider. Utility cost savings include expenses for natural gas, propane or similar fuels, electricity, water, wastewater, and waste disposal.

**History:** En. Sec. 2, Ch. 162, L. 2005; amd. Sec. 5, Ch. 439, L. 2009; amd. Sec. 9, Ch. 344, L. 2015.

**90-4-1103. Authority to enter into energy performance contracts.** (1) A governmental entity may enter into an energy performance contract. A governmental entity that enters into an energy performance contract shall do so in accordance with this part.

(2) Nothing in this part prevents a governmental entity from entering into a contract that is not an energy performance contract for conservation measures under any other legal authority.

**History:** En. Sec. 3, Ch. 162, L. 2005; amd. Sec. 6, Ch. 439, L. 2009; amd. Sec. 10, Ch. 344, L. 2015.

**90-4-1104. Repealed.** Sec. 12, Ch. 344, L. 2015.

**History:** En. Sec. 4, Ch. 162, L. 2005; amd. Sec. 7, Ch. 439, L. 2009.

**90-4-1105. Repealed.** Sec. 12, Ch. 344, L. 2015.

**History:** En. Sec. 5, Ch. 162, L. 2005; amd. Sec. 8, Ch. 439, L. 2009.

**90-4-1106. Repealed.** Sec. 12, Ch. 344, L. 2015.

**History:** En. Sec. 6, Ch. 162, L. 2005; amd. Sec. 9, Ch. 439, L. 2009.

**90-4-1107. Repealed.** Sec. 12, Ch. 344, L. 2015.

**History:** En. Sec. 7, Ch. 162, L. 2005; amd. Sec. 10, Ch. 439, L. 2009.

**90-4-1108. Repealed.** Sec. 12, Ch. 344, L. 2015.

**History:** En. Sec. 8, Ch. 162, L. 2005; amd. Sec. 11, Ch. 439, L. 2009.

**90-4-1109. Contracts and agreements not general obligation of governmental entity.** Except as provided in 90-4-1114(1), payment obligations of a governmental entity pursuant to an energy performance contract are not general obligations of the governmental entity and are collectible only from guaranteed cost savings provided in the energy performance contract and other revenue, if any, pledged in the energy performance contract.

**History:** En. Sec. 9, Ch. 162, L. 2005; amd. Sec. 12, Ch. 439, L. 2009; amd. Sec. 11, Ch. 344, L. 2015.

**90-4-1110. Duties of department — rulemaking.** (1) The department shall establish an energy performance contract program for governmental entities. The department shall:

- (a) solicit, evaluate, and maintain a list of qualified energy service providers;
- (b) pursuant to rules adopted by the department, disqualify and remove from the list energy service providers who do not comply with qualifications established;
- (c) enter into agreements with qualified energy service providers and require qualified energy service providers to contract and provide services in accordance with this part;
- (d) establish guidelines for awarding energy performance contracts;
- (e) develop a standardized energy performance contract process and documents;
- (f) assist governmental entities interested in pursuing energy performance contracts by providing technical assistance and educational programs and by maintaining a website;
- (g) establish a process for measuring and verifying guaranteed cost savings and cost-effectiveness; and
- (h) establish reporting requirements for qualified energy service providers.

(2) The department may adopt rules for:

- (a) the review of investment-grade energy audits; and
- (b) implementation of this part.

(3) The department may adopt rules establishing criteria for:

- (a) the amount of project costs covered by guaranteed cost savings;
- (b) guaranteed cost savings;
- (c) measurement of energy cost savings and verification; and
- (d) use in determining cost-saving measure cost-effectiveness of an unguaranteed utility unit price escalation rate determined in the rules.

**History:** En. Sec. 1, Ch. 344, L. 2015.

**90-4-1111. List of qualified energy service providers eligible for energy performance contracts.** (1) At least every 5 years, the department shall issue a request for qualifications for energy service providers interested in entering into energy performance contracts with governmental entities. An energy service provider may submit qualifications to the department at any time, and the department shall review the submission for potential inclusion on its list of qualified energy service providers.

(2) The department shall evaluate qualifications for qualified energy service providers on the basis of:

- (a) knowledge and experience with:
  - (i) design, engineering, installation, maintenance, and repairs associated with energy performance contracts;
  - (ii) conversion to a different fuel source associated with a comprehensive energy efficiency retrofit;
  - (iii) postinstallation project monitoring, data collection, and reporting of guaranteed cost savings;
  - (iv) overall project management; and
  - (v) projects of similar size and scope;
- (b) ability to guarantee cost-effectiveness and to access long-term financing;
- (c) financial stability; and
- (d) other factors determined by the department.

(3) The department shall maintain a list of qualified energy service providers who meet the requirements of subsection (2).

(4) The department shall notify energy service providers who submitted qualifications in accordance with subsection (1) whether they meet the requirements of this part and are qualified energy service providers.

**History:** En. Sec. 2, Ch. 344, L. 2015.

**90-4-1112. Selection of qualified energy service providers.** (1) Before entering into an energy performance contract, a governmental entity shall solicit a request for proposals from a minimum of three qualified energy service providers. The governmental entity may award the performance contract to the qualified energy service provider determined by the governmental entity to best meet the needs of the governmental entity. The qualified energy service provider selected is not required to have submitted the proposal with the lowest cost.

(2) In selecting a qualified energy service provider, a governmental entity shall consider:

- (a) experience with:
  - (i) design, engineering, and installation of cost-saving measures;
  - (ii) overall project management;
  - (iii) projects of similar size and scope;
  - (iv) postinstallation measurement and verification of guaranteed cost savings;
  - (v) in-state projects and Montana-based subcontractors;
  - (vi) commissioning of projects;
  - (vii) training of building operators; and
  - (viii) conversions to a different fuel source; and
- (b) quality of technical approach.

**History:** En. Sec. 3, Ch. 344, L. 2015.

**90-4-1113. Investment-grade energy audits.** (1) An energy performance contractor selected by a governmental entity in accordance with 90-4-1112 shall prepare an investment-grade energy audit. The audit must be incorporated into an energy performance contract.

(2) An investment-grade energy audit must include estimates of all costs and guaranteed cost savings for the proposed energy performance contract including:

- (a) design;
- (b) engineering;
- (c) equipment;
- (d) materials;
- (e) installation;
- (f) maintenance;
- (g) repairs;
- (h) monitoring and verification;
- (i) commissioning;
- (j) training; and
- (k) debt service.

(3) (a) A qualified energy service provider and the governmental entity shall agree on the cost of an investment-grade energy audit before it is conducted.

(b) If an investment-grade energy audit is completed and the governmental entity does not execute an energy performance contract, the governmental entity shall pay the full cost of the investment-grade energy audit.

(c) If the governmental entity executes the energy performance contract, the cost of the investment-grade energy audit may be included in the costs of an energy performance contract or, at the discretion of the governmental entity, be paid for by the governmental entity.

**History:** En. Sec. 4, Ch. 344, L. 2015.

**90-4-1114. Energy performance contracts.** (1) A governmental entity may pay for an energy performance contract with:

- (a) funds designated for operating costs, capital expenditures, utility costs, or lease payments;
- (b) installment payment contracts or lease purchase agreements;
- (c) bonds issued in accordance with other bonding provisions as provided by law; or
- (d) other financing through a third party, including tax-exempt financing.



(2) Utility incentives, grants, operating costs, capital budgets, or other permissible sources may be used to reduce the amount of financing.

(3) (a) An energy performance contract may extend beyond the fiscal year for which the contract is effective.

(b) An energy performance contract may not exceed 20 years, the cost-weighted average useful life of the cost-saving measure, or the term of financing, whichever is shortest.

(4) During the guarantee period, a qualified energy service provider shall:

(a) measure and verify reductions in energy consumption and costs attributable to cost-saving measures implemented pursuant to an energy performance contract; and

(b) not less than annually, prepare and provide a measurement and verification report to the governmental entity and to the department documenting the performance of cost-saving measures.

(5) (a) Costs for measurement and verification must be included in an energy performance contract and paid by the governmental entity during an initial monitoring period that is not less than 3 years.

(b) The energy performance contract must provide that, if guaranteed cost savings are not achieved during any year in the initial monitoring period, the qualified energy service provider shall pay the costs for measurement and verification reports until guaranteed cost savings are achieved for all years in a term of consecutive years equal to the initial monitoring period.

(6) (a) Except as provided in subsection (6)(b), the qualified energy service provider shall pay the governmental entity the amount of any verified annual guaranteed cost savings shortfall each year until guaranteed cost savings are achieved for all years in an initial monitoring period established in accordance with subsection (5). The amount of cost savings achieved during a year must be determined using the mutually agreed on baseline rates referenced in guaranteed cost savings and any unguaranteed energy cost savings attributable to utility unit price escalation rates allowed pursuant to rules adopted by the department pursuant to 90-4-1110(3)(d).

(b) In the case of a shortfall, the governmental entity and qualified energy service provider may negotiate the terms of measurement and verification reports and the shortfall payment for the remainder of the energy performance contract finance term.

(c) If an excess in guaranteed cost savings in any year of the guarantee period is revealed in a measurement and verification report, the guaranteed cost savings remain with the governmental entity. Guaranteed cost savings may not be used to cover potential shortfalls in subsequent years or actual guaranteed cost savings shortages in previous years of a guarantee period.

**History:** En. Sec. 5, Ch. 344, L. 2015.

## CHAPTER 6 COMMUNITY IMPACT — PLANNING AND ABATEMENT

### Part 8 Quality Schools Facility Grant Program (Repealed)

**90-6-801. Repealed.** Sec. 9, Ch. 404, L. 2017.

**History:** En. Sec. 1, Ch. 377, L. 2009.

**90-6-802. Repealed.** Sec. 9, Ch. 404, L. 2017.

**History:** En. Sec. 2, Ch. 377, L. 2009; amd. Sec. 4, Ch. 325, L. 2013.

**90-6-803. Repealed.** Sec. 9, Ch. 404, L. 2017.

**History:** En. Sec. 3, Ch. 377, L. 2009.

**90-6-804 through 90-6-808 reserved.**

**90-6-809. Repealed.** Sec. 9, Ch. 404, L. 2017.

**History:** En. Sec. 4, Ch. 377, L. 2009.

**90-6-810. Repealed.** Sec. 9, Ch. 404, L. 2017.

**History:** En. Sec. 5, Ch. 377, L. 2009.

**90-6-811. Repealed.** Sec. 9, Ch. 404, L. 2017.

**History:** En. Sec. 6, Ch. 377, L. 2009; amd. Sec. 10, Ch. 325, L. 2013.

**90-6-812. Repealed.** Sec. 10, Ch. 404, L. 2017.

**History:** En. Sec. 7, Ch. 377, L. 2009.

**90-6-813 through 90-6-817 reserved.**

**90-6-818. Repealed.** Sec. 10, Ch. 404, L. 2017.

**History:** En. Sec. 8, Ch. 377, L. 2009.

**90-6-819. Repealed.** Sec. 9, Ch. 404, L. 2017.

**History:** En. Sec. 9, Ch. 377, L. 2009.



## GENERAL INDEX

References are to Montana Code Annotated Title, Chapter, and Part numbers

You may access the entire Montana Code Annotated online at:  
<http://leg.mt.gov/bills/mca/index.html>

You may access the Administrative Rules of Montana online at:  
<http://sos.mt.gov/arm>

### A

**ABANDONMENT OF DISTRICTS**, 20-3-205, 20-3-312, 20-6-209, 20-6-307, 20-9-604

**ACCREDITATION OF SCHOOLS**, 20-7-102

Failure to maintain, 20-9-344

Instructional programs set forth in, 20-7-111

Lack of, effect, 20-9-311

Libraries, requirements, 20-7-202

Negotiated rulemaking, Title 2, chapter 5

Out-of-district attendance agreements, effect, 20-5-321

Standards, 20-2-121, 20-3-106, 20-6-503, 20-7-101

### ADMINISTRATIVE PROCEDURE

Contested cases Montana Administrative Procedure Act, 2-4-102 — 2-4-711

appeal of, 2-4-711

decisions

final, 2-4-621, 2-4-623

hearing examiner, effect of unavailability, 2-4-622

judicial review, 2-4-702, 2-4-704

modification, 2-4-621, 2-4-703, 2-4-711

notification, 2-4-623

proposal for, 2-4-621

reversal, 2-4-704, 2-4-711

staying, 2-4-702, 2-4-711

discovery, 2-4-602

evidence, 2-4-604, 2-4-611, 2-4-612, 2-4-614, 2-4-623

ex parte consultations, 2-4-604, 2-4-613

hearing examiners, 2-4-611

decision, participation in or unavailability for, 2-4-621, 2-4-622

informal proceedings, 2-4-604

record of decisions and data, 2-4-614

hearings, 2-4-611, 2-4-612

informal proceedings, 2-4-603, 2-4-604

notice requirements, 2-4-601, 2-4-613, 2-4-702

informal proceedings, 2-4-603, 2-4-604

judicial notice, 2-4-612

judicial review, 2-4-702; Const., VII, 4

evidence, additional, 2-4-703

immediate, 2-4-701

petition, 2-4-603, 2-4-604, 2-4-702

service of process, 2-4-106

standards of review, 2-4-704

licensing provisions, applicability, 2-4-603, 2-4-631

notice requirements, 2-4-601, 2-4-613, 2-4-623, 2-4-702

record and transcription, 2-4-604, 2-4-614, 2-4-702, 2-4-704

waiver of proceedings when, 2-4-603

Counsel, representation by, 2-4-105

Definitions, 2-4-102

Evidence, production, 2-4-104

Licenses and licensing, 2-4-102, 2-4-603, 2-4-631

Parties to proceedings, 2-4-102, 2-4-104, 2-4-105, 2-4-506, See also Contested cases

becoming party, effect on public participation provisions, 2-3-112

witness fees and mileage, payment, 2-4-104

**ADMINISTRATIVE PROCEDURE** (continued)

- Public employees, collective bargaining — applicability, 39-31-105
- Public participation in government
  - compliance with notice provisions, 2-3-104
  - electronic mail, dissemination/receipt of comment, 2-3-301
- School districts
  - hearings concerning withholding of equalization or BASE aid, 20-9-344
- Service of process, 2-4-106
- Statements of policy, public availability, 2-4-103
- Subpoenas, issuance and enforcement, 2-4-104, 2-4-611
- Witnesses for, 2-4-104

**ADMISSION TO SCHOOLS**, 20-5-101; Const., X, 7

- Immunization requirements, 20-5-403, 20-5-404

**ADULT EDUCATION**

- Budget, 20-7-705, 20-7-713
- Definitions, 20-7-701
- Fund, adult basic education, 20-7-712
- Fund, adult education, 20-7-704, 20-7-705, 20-7-713
- Levy for, 20-7-705
- Literacy programs, 20-7-714
- Operating Reserve, 20-7-713
- Policies, 20-7-703, 20-7-711
- Programs, establishment, 20-7-702
- Tuition and fees, 20-7-704

**ADULT LITERACY PROGRAM**, 20-7-714**AGE REQUIREMENTS**

- Admittance, for, 20-1-101, 20-5-101
- Adult education and adult basic education, 20-7-701
- Compulsory attendance and enrollment, 20-5-102, 20-5-103
- Deaf and Blind, Montana School for the, 20-8-104, 20-8-106
- Disabilities, child with
  - “eligible child” defined, 20-7-436
- Five-year-old schooling, 20-7-117
- Immunization requirements, 20-5-403, 20-5-404
- Kindergarten, 20-7-117
- Literacy programs, county funding requirement, 20-7-714
- Preschool programs, 20-7-117
- “Pupil” defined, 20-1-101
- Special education, 20-7-411, 20-7-436, 20-7-443
- State superintendent, 20-3-101
- Traffic education course, eligibility, 20-7-503
- Transportation
  - bus drivers, 20-10-103
  - eligible transportees, 20-10-101

**AGRICULTURE LITERACY IN MONTANA SCHOOLS PROGRAM**, 15-30-2388, 15-30-2389**ALTERNATIVE EDUCATION SITE**, 41-5-1801**ALTERNATIVE ADOLESCENT RESIDENTIAL PROGRAMS**

- Definitions, 37-48-102
- Private, 37-48-101 — 37-48-118

**ANNEXATION OF DISTRICTS**

- Bonded indebtedness, 20-6-411
- Conditions for, 20-6-421
- Definitions, 20-6-422
- Hiring preference for employees, 20-6-410
- Procedures, 20-6-205
- Tenure protection, 20-6-410
- Tuition debt, assumption, 20-6-413

**ARBITRATION, COLLECTIVE BARGAINING AGREEMENTS**, 39-31-306



**ARCHITECTURAL SERVICES AND ARCHITECTS**, 18-2-113, 18-2-114, 20-6-631, 20-6-633, 20-6-636

**ASSESSMENT**

Funding, 20-9-543  
 Gifted and Talented, 20-7-902  
 Placement, 20-5-110  
 Release by District, 20-3-324(26)  
 Release by OPI, 20-3-106  
 Rules 20-2-121  
 Student, 20-1-101, 20-2-121(11), 20-3-106, 20-3-324

**ATHLETIC TRAINERS**, 2-15-1771, 37-36-101 — 37-36-205

**ATTENDANCE**

Absences, notice to parents when, 44-2-507  
 Administration of provisions, 20-3-324  
 Aggregate hours, 20-1-301  
 Average number belonging (ANB), calculation, 20-9-311, See also AVERAGE NUMBER  
     BELONGING (ANB)  
 Boundaries, See DISTRICTS AND TRUSTEES, Boundaries, generally; Elementary districts;  
     High school districts  
 Compulsory, 20-4-402, 20-5-103, 20-5-105, 20-5-106, 20-5-108  
 Enforcement, 20-5-105, 20-5-106  
 Enrollment, See ENROLLMENT  
 Excuses, 20-5-102, 20-5-103  
 Home schools, 20-5-109, 20-5-111  
 Immunization requirements, Title 20, chapter 5, part 4, See IMMUNIZATION REQUIREMENTS  
 Incapacitated children, 20-5-107  
 Indian children, 20-5-108  
 Indigent children, 20-5-107  
 Nonpublic schools, records, 20-5-109  
 Nonresidents, See TUITION  
 Out-of-district attendance agreements, 20-5-314, 20-5-320 — 20-5-324, See also SPECIAL  
     EDUCATION; TUITION  
 Reciprocal attendance agreements, 20-5-314  
 Religious instruction released time programs, effect, 20-1-308  
 Reports, 20-4-301, 20-4-402, 20-9-311  
 Special education, See SPECIAL EDUCATION  
 Transportation contract payments, use of records, 20-10-125  
 Truancy, 20-4-302, 20-5-106  
 Tuition, See SPECIAL EDUCATION; TUITION  
 Violation, 20-5-106

**ATTENDANCE AGREEMENTS**, 20-5-320 — 20-5-324

**ATTENDANCE OFFICERS**, 20-3-206, 20-5-104 — 20-5-107

**AUDIOLOGICAL SERVICES**, 20-7-403, 26-1-806

**AUDIOLOGIST**, 37-15-101, 37-15-301

**AUDITS**

County superintendent of schools, travel expenses, 20-3-203  
 Local government entities, audits and financial review  
     accounting methods, 2-7-504, 2-7-509, 2-7-513  
     citation of state of Montana single audit act, 2-7-502  
     definitions, 2-7-501  
     examination of books and papers, 2-7-508  
     exit review conference, 2-7-512  
     fees, 2-7-516  
         deposit, 2-7-518  
         filing, 2-7-514  
         nonpayment or late payment, 2-7-517  
         special audit, 2-7-503  
         withholding when, 2-7-522

**AUDITS** (continued)

Local government entities, audits and financial review (continued)

financial reports, 2-7-501, 2-7-503, 2-7-513, 2-7-514

general provisions, 2-7-503

independent auditor, 2-7-501, 2-7-506, 2-7-511

compensation, 2-7-516

compliance with provisions, 2-7-522

examination powers, 2-7-508, 2-7-511

exit review conference, 2-7-512

officers and employees of entity, assistance by, 2-7-507

reports, 2-7-513, 2-7-514

summary of significant findings, preparation, 2-7-521

officers and employees

accounts of officer, examination, 2-7-511

assistance by, 2-7-507

suspension of officer when, 2-7-511

violations or nonperformance of duty, 2-7-515

penalty, 2-7-517

publication, 2-7-521

purpose, 2-7-502

reports, 2-7-511, 2-7-513 — 2-7-515, 2-7-517, 2-7-521, 2-7-522

school districts or associated cooperatives, 2-7-503, 2-7-513, 2-7-514, 2-7-515, 20-9-213

school-related organizations, 2-7-509

scope, 2-7-505

special audit, 2-7-503

standards, 2-7-505

School districts or associated cooperatives, 2-7-503, 2-7-513, 2-7-514, 2-7-515, 20-9-213

School finance, 20-3-205, 20-9-203, 20-9-213, 20-10-202

School-related organizations, 2-7-509

Yearly audit, when required, 2-7-503

**AVERAGE NUMBER BELONGING (ANB)**, 20-1-101, 20-3-324, 20-9-311, 20-9-314

Basic entitlement, 20-9-306, 20-9-314, 20-9-326

Calculation, 20-1-101, 20-6-702, 20-9-311

Elementary schools with ANB of 9 or fewer pupils, 20-9-303

Equivalent ANB, 20-9-311

Five-year-old schooling, calculation for, 20-7-117, 20-9-311, 20-9-313

General fund per-ANB budget, 20-9-308

Guaranteed tax base aid provisions, 20-9-366 — 20-9-369, See FINANCE, Guaranteed tax base aid

Increases, 20-3-106, 20-3-205, 20-9-313, 20-9-314, 20-9-407

Isolated school classification, 20-9-302, 20-9-303

Joint districts, 20-9-305, 20-9-501, 20-10-144

K-12 districts, 20-6-702

Kindergartens, calculation for, 20-7-117, 20-9-311, 20-9-313

Opening or reopening schools, 20-3-205, 20-6-502, 20-6-507, 20-9-313

Retirement fund levy, proration, 20-9-501

School facility entitlement, 20-9-370, 20-9-371

Special education, 20-9-321

Total per-ANB entitlements, 20-6-702, 20-9-306, 20-9-314, 20-9-326, 20-9-366 — 20-9-368

Transfer, requests for, 20-3-205

Transportation fund budget, county revenue requirement proration, 20-10-144

**B****BASE FUNDING PROGRAM**

See also FINANCE

BASE aid, 20-9-306

deficiency, funding, 20-9-351

distribution and administration, 20-2-121, 20-3-106, 20-9-344, 20-9-346, 20-9-347

state equalization aid, 20-9-343

**BASE FUNDING PROGRAM** (continued)

- BASE budget, 20-9-141, 20-9-303, 20-9-306, 20-9-308, See also BUDGETS AND BUDGET SYSTEM
  - guaranteed tax base aid, 20-9-366 — 20-9-369
  - levy, 20-3-324, 20-6-702, 20-9-104, 20-9-141, 20-9-306, 20-9-308
  - over-BASE budget amount or levy, 20-3-324, 20-9-104, 20-9-141, 20-9-306, 20-9-308, 20-9-353
  - over-BASE budget, exception, 20-9-308
- BASE funding program, 20-9-306, 20-9-307, 20-9-347
  - average number belonging (ANB) used to establish, 20-9-314
  - budget amendments, aid for, 20-9-166
  - elementary districts, county equalization, 20-9-331, See County equalization aid
  - elementary schools with ANB of 9 or fewer pupils, 20-9-141, 20-9-303
  - high school districts, county equalization, 20-9-333, See County equalization aid
  - joint districts, 20-9-305
  - junior high schools, proration of amount when, 20-6-506
  - K-12 districts, 20-6-702
  - nonaccredited schools, 20-9-311
  - opening or reopening schools, 20-6-502 — 20-6-504, 20-6-507
  - out-of-district attendance agreements, reimbursements, 20-5-324
  - state equalization aid, 20-9-343, 20-9-348
- Basic entitlement, 20-9-306, 20-9-311, 20-9-314, 20-9-326, 20-9-367, 20-9-368

**BASIC SYSTEM OF FREE QUALITY PUBLIC SCHOOLS**

- Definition, 20-9-309

**BOARD OF CANVASSERS**, 13-15-501, 13-15-502, 13-15-504 — 13-15-507**BOARD OF PUBLIC EDUCATION**

- Appointments to and composition, 2-15-1507, 2-15-1508; Const., X, 9
- Certification Standards and Practices Advisory Council, 2-15-1522, 20-4-109, 20-4-131 — 20-4-133
- Chairman, 20-2-111
- Cooperatives, full service education - contracts, approval policy, 20-7-454
- Deaf and Blind, Montana School for the - duties, Title 20, chapter 8, part 1, See DEAF AND BLIND, MONTANA SCHOOL FOR THE
- Defined, 20-1-101
- Education, State Board of - composition, 20-2-101; Const., X, 9
- Expenses of members, 20-2-113
- Gifted and talented children programs, policies, 20-2-121, 20-7-903, 20-7-904
- Interstate Agreement on Qualification of Educational Personnel, contract approval, 20-4-122
- Library of visual, aural, and other educational media — selections for, 20-2-121
- Meetings, 20-2-112
- Oath of office, 2-15-1508
- Powers and duties, 20-2-121; Const., X, 9
- Quorum, 20-2-111
- Records, 20-2-114
- Recreation programs, authority, 20-7-804
- Reports required by, 20-9-344
- Rules, 20-2-114, 20-2-121, 20-7-101
- School districts and trustees
  - financial reports by trustees, 20-9-213
  - policies of board, enforcement, 20-3-323, 20-3-324
  - rules with fiscal impact, 20-7-101
- School elections ordered by, 20-20-201
- School finance
  - BASE aid - administration, distribution, or withholding, 20-2-121, 20-9-344, 20-9-346
  - county equalization aid responsibilities, 20-9-344
- Schools generally
  - accreditation, 20-2-121, 20-3-106, 20-7-101, 20-7-102, 20-7-111, 20-7-202
  - food services, reports, 20-10-201
  - instructional programs specified by, 20-7-111
  - library information reports requested by, 20-7-205

**BOARD OF PUBLIC EDUCATION** (continued)

## Schools generally (continued)

pupil instruction on Saturday, policies for, 20-1-303, 20-2-121

pupil-instruction-related days, policies for, 20-1-304, 20-2-121

School transportation, duties, 20-2-121, 20-10-103, 20-10-104, 20-10-111

bus standards, 20-2-121, 20-10-111

Seal, 20-2-114

Secondary education, equivalency of completion, 20-2-121, 20-7-131

Secretary, 20-2-111, 20-2-112, 20-2-122

Special education policies and standards, 20-2-121, 20-7-402, 20-7-403, 20-7-414, 20-7-431

Student assessment, 20-2-121

## Superintendent of public instruction

accreditation standards, recommendation, 20-3-106, 20-7-101

duties prescribed by, 20-3-106

fiscal notes, submission, 20-7-101

liaison, 20-2-111

## Teachers or specialists

appeals by, 20-2-121, 20-4-110

certificate fees, 20-4-109

certification policies, 20-2-121, 20-4-102, 20-4-103, 20-4-106, 20-4-110, 20-7-403

education programs, approval, 20-4-131

emergency authorization of employment, 20-2-121, 20-4-111

Teachers' Retirement System, membership, 19-20-302, See **TEACHERS' RETIREMENT SYSTEM**

Term of office and vacancies, 2-15-1508

**BONDS AND BOND ISSUES**

Affidavit, 20-9-423

Amortization bond, 20-9-408

Amount, limitations, 7-7-107, 20-9-406, 20-9-471

Applicable provisions, 20-6-101, 20-9-401

Bid requirements, 20-9-430, 20-9-432

Building fund, 20-9-435, 20-9-508

Building reserve, issue made for purpose of, 20-9-502

Challenge to local government bond elections, 7-7-105

City-county consolidated units, limitation on amount, 7-7-107

Consolidation, See **Municipal finance consolidation**

Conflict of laws, 20-9-401

## County high school bonds

definition of county high school, 20-6-101

election, See **Elections for bond issues**

purposes, 20-9-435

unification of schools, effect, 20-6-313

Debt service fund, See **FINANCE**, Debt service fund

Districts and trustees, authority, 20-3-324, 20-6-101

bond payment funds, liability, 20-9-444 — 20-9-446

judgments, to pay, 2-9-316

official bonds, sureties on, 2-9-507

petitions, receipt and consideration, 20-9-424, 20-9-425

## Elections for bond issues

absentee ballots available, 20-9-426, 20-20-204, 20-20-401

authorization, 20-9-421

ballots, preparation and form, 20-9-426

canvassing of votes, 20-9-428

determination of approval or rejection, 20-9-428

industrial facility agreements, approval for issues in excess of maximum, 20-9-407

introduction, methods, 20-9-421

local government elections, challenges to, 7-7-105, 7-7-106

notice, requirements and form, 20-9-427

petition for, 20-9-421 — 20-9-425

resolution for, 20-9-421, 20-9-422

state advance for school facilities, 20-9-422

**BONDS AND BOND ISSUES (continued)**

## Elections for bond issues (continued)

- school district property, loans for replacement, 20-6-640

- Endowment fund money invested in, 20-9-604

- Execution, 20-9-433

- Forms, 20-9-408, 20-9-433

- Impact aid reserve bonds, 20-9-472

- Industrial facility agreements, 20-9-407

## Interest and principal

- accrued interest, refund or deduction, 20-9-411

- amortization bonds, 20-9-408

- fund for, See FINANCE, Debt service fund

- industrial facilities, paid by - when, 20-9-407

- obligations, on, 20-9-471

## payments

- budget for, 20-9-438

- county high school unification, effect, 20-6-313

- entries and notification, 20-9-442

- made when, 20-9-440

- state treasurer, to - when, 20-9-440

- tax levy for, 20-9-401, 20-9-439

- serial bonds, 20-9-408

- termination of interest, when, 20-9-440

- Interstate school agreements, joint, 20-9-705

## Issuance

- applicable provisions, 20-9-401

- authorization, 20-9-421, 20-9-428

- date, 20-9-411

- form, 20-9-433

- limitations, 20-9-406

- obligations, 20-9-471

- purpose, 20-9-403

- refunding bonds, 20-9-412

- term, limitation and commencement, 20-9-410

- trustees, by, 20-3-324

- Joint facility, 7-11-104, 20-9-404, 20-9-405

- Judgment liability, payment, 2-9-316

- Liability, 20-9-437, 20-9-444 — 20-9-446

## Local government

- elections, challenges to, 7-7-105, 7-7-106

- Marketability, provisions to improve, 20-9-464, 20-9-465

- Maximum amount, 20-9-406, 20-9-407

- Notes, sale in anticipation of federal or state revenue, 7-7-109

- Obligations, issuance, 20-9-471

- Official bonds, See PUBLIC OFFICERS OR EMPLOYEES

- Outstanding, 20-9-406, 20-9-441

## Payment

- amortization bonds, 20-9-408

- date for, 20-9-411

- fund for, liability, 20-9-444 — 20-9-446, See also FINANCE, Debt service fund

- industrial facilities, by - when, 20-9-407

- obligations, 20-9-471

- refunding bonds, 20-9-406

- serial bonds, 20-9-408

- tax levy for, 20-9-439

- Preservation, copies for, 20-9-434

## Proceedings

- transcripts, 20-9-436

- Purchaser, delivery to, 20-9-435

- Purposes, 2-9-316, 20-9-403, 20-9-435

- Redemption, 20-9-401, 20-9-441

- advance refunding bonds, 20-9-412



**BONDS AND BOND ISSUES (continued)**

## Redemption (continued)

- applicable provisions, 20-9-401
- county high school unification, effect, 20-6-313
- funding for, 20-9-403, 20-9-508
- issuance, 20-3-324, 20-9-412
- payment, 20-9-406
- repurchase agreements, 7-6-213
- sale, 20-9-412
- term, limitation and commencement, 20-9-410
- trustees, by, 20-3-324

## Registration, 20-9-434

## Resolution to issue bonds, 20-9-429

## Restrain, action to time limitation, 7-7-105, 20-9-465

## Retirement and interest, 20-9-121, 20-9-438

## Sale, 20-9-401

- bids, 20-9-412, 20-9-430, 20-9-432
- high school districts, money from - use restricted, 20-9-403
- investments from, interest, 20-9-213
- money, disposition, 20-9-435, 20-9-508
- negotiation and preparation, 20-9-432
- notice, 20-9-430, 20-9-431
- obligations, 20-9-471
- purchaser, delivery to, 20-9-435
- trustees, by, 20-3-324

## School districts, authority and liability, 20-9-401, 20-9-402, 20-9-437

## Self-insurance reserve fund, to fund, 2-9-211

## Serial bonds, 20-9-408

## Surety bonds, See SURETY BONDS

## Tax protests lost, for repayment, 20-9-403, 20-9-406

## Tort claims, payment of judgment liability, 2-9-316

## Validity, 20-9-411, 20-9-464

**BREASTFEEDING IN WORKPLACE, 39-2-215 — 39-2-217****BUDGETS AND BUDGET SYSTEM**

## Administrative rules with financial impact, 20-7-101

## Adult basic education fund, 20-7-112

## Adult education fund, 20-7-705, 20-7-713

## Applicability of provisions, 20-9-101

## Appropriations, See APPROPRIATIONS

## BASE budget, 20-9-141, 20-9-303, 20-9-306, 20-9-308

## guaranteed tax base aid, 20-9-366 - 20-9-369

## levy, 20-3-324, 20-6-702, 20-9-104, 20-9-141, 20-9-306, 20-9-308

## over-BASE budget amount or levy, 20-3-324, 20-9-104, 20-9-141, 20-9-306, 20-9-308, 20-9-353

## Budget amendments, 20-3-106, 20-9-161 — 20-9-168

## budgeted funds, transfer among appropriated items, 20-9-208

## direct state aid for, 20-3-106

## emergency tax levy to finance, 20-9-168

## filing, 20-3-205

## final budget, 20-9-208

## lapse of appropriations, 20-9-209

## state aid, 20-9-166

## transportation fund budget, 20-9-165, 20-9-166, 20-10-143

## “Budgeted fund” defined, 20-9-201, See FINANCE, Funds generally

## Building reserve fund, 20-9-502, 20-9-503

## Bus depreciation reserve fund, 20-10-147

## Claims, unpaid - effect, 20-9-209

## Cooperatives, full service education, 20-7-451

## County superintendent of schools, general duties, 20-3-205

## Debt service fund, 20-9-133, 20-9-438

## state and county equalization aid entitlement, basis, 20-9-346

**BUDGETS AND BUDGET SYSTEM** (continued)

- Expenditures, See FINANCE, Expenditures
- Failure to submit, 20-9-344
- Final budgets
  - adjustment procedures, 20-9-132
  - adoption, 20-9-131, 20-9-133
  - adult education fund, inclusion, 20-7-705
  - appropriations, See APPROPRIATIONS
  - budget amendments, 20-9-165, 20-9-208
  - budgeted funds, See FINANCE, Funds generally
  - building reserve fund, 20-9-503
  - completion, 20-3-205, 20-3-209, 20-9-134
  - debt service fund, 20-9-133, 20-9-438, 20-9-439
  - deficit spending, 20-9-133
  - expenditures, See FINANCE, Expenditures
  - filing, 20-3-205, 20-9-134, 20-9-344
  - interlocal cooperative fund, transfers to - applicability, 20-9-703
  - joint districts, 20-9-151, 20-9-152
  - lease requirements, provision for, 20-6-625
  - levy to finance, 20-9-142
  - meetings, 20-3-205, 20-9-115, 20-9-131
  - nonoperating fund, 20-9-506
  - retirement fund budget, 20-9-501
- Form of budget, 20-3-106, 20-9-103
- General fund budget, 20-9-308
  - additional funding and levy, 20-3-324, 20-6-603, 20-9-104, 20-9-353
  - BASE aid, 20-9-306, See FINANCE, BASE aid
  - BASE budget, 20-9-306, See BASE budget
  - controversy appeal costs paid from, 20-3-210
  - estimation of revenues, 20-3-205, 20-9-348
  - guaranteed tax base aid, 20-9-367, 20-9-368
  - insurance coverage, costs - inclusion, 20-3-331, 20-6-608
  - junior high school, ANB applied to prorate amount when, 20-6-506
  - K-12 districts, 20-6-703
  - maximum, 20-6-603, 20-9-141, 20-9-163, 20-9-306, 20-9-308, 20-9-353
  - over-BASE budget levy, 20-3-324, 20-9-104, 20-9-141, 20-9-306, 20-9-308, 20-9-353
  - property insurance, cost of coverage - inclusion, 20-6-608
  - state and county equalization aid entitlement, basis, 20-9-346
  - tuition, unanticipated receipts - credit to, 20-5-324
- General fund per-ANB budget, 20-9-308
- Guaranteed tax base aid, 20-9-369
- Interlocal cooperative agreement expenditures, 20-9-704
- Joint districts, 20-9-151
- Junior high school operated by elementary and high school districts, 20-6-506
- K-12 districts, 20-6-702
- "Nonbudgeted fund" defined, 20-9-201, See FINANCE, Funds generally
- Nonoperating fund budget, 20-9-506
- Obligations, issuance, 20-9-471
- Opening or reopening schools, 20-6-502 - 20-6-504, 20-6-507
- Property tax increase, vote required on over-BASE budget, 20-9-353
- Property tax revenue increase, 15-10-203
- Public employees' retirement, state's costs, 19-3-317
- Retirement fund budget, 20-9-501
  - guaranteed tax base aid, 20-9-367, 20-9-368, 20-9-501
  - K-12 districts, 20-6-702
  - state and county equalization aid entitlement, basis, 20-9-346
- Rules with financial impact, 20-7-101
- Special education, 20-7-435, 20-7-443, 20-9-303, 20-9-501
- State Board of Education, budget requests, 2-15-1511
- Statutes with financial impact, 1-2-113
- Supervision, 20-3-106, 20-9-102
- Traffic education fund, nonapplicability of budget laws, 20-7-507

**BUDGETS AND BUDGET SYSTEM** (continued)

- Transportation fund budget, 20-10-143
  - budget amendments, 20-9-165, 20-9-166, 20-10-143
  - contingency amounts, 20-10-124, 20-10-143
  - emergency, 20-10-124
  - levy requirements, 20-10-144, 20-10-146
  - reimbursement, 20-10-141, 20-10-142, 20-10-145, 20-10-146
  - revenues for, computation, 20-10-144, 20-10-146
- Trustees' duties generally, 20-3-324
- Vocational technical education, secondary, 20-7-305, 20-7-306

**BUILDING FUND**, See FINANCE

**BUILDING RESERVE FUND**, See FINANCE

**BULLY FREE MONTANA ACT**, 20-5-207 - 20-5-210

**BUSES**, See TRANSPORTATION

## C

**CAREER**, Vocational-technical education, Title 20, chapter 7, part 3

**CARETAKER RELATIVE**

- Definitions, 40-6-501, 40-6-601
- Enrollment by, 40-6-601
- Medical authorization affidavit, 40-6-502
- Medical care, 40-6-501

**CERTIFICATION**

- Certificates, 20-4-101
  - class 1 professional, 20-4-106
  - class 2 standard, 20-4-106, 20-4-107
  - class 3 administrative and supervisory, 20-4-106
  - class 4 vocational, recreational, or adult education, 20-4-106
  - class 5 provisional, 20-4-106
  - classification, 20-4-106
  - endorsements, 20-4-106, 20-4-111
  - fees, 20-4-109
  - issuance, 20-4-103, 20-4-106
  - letter of reprimand, 20-4-110
  - outstanding, validity, 20-4-107
  - registration, 20-3-205, 20-4-202
  - renewal, 20-4-102, 20-4-107, 20-4-108
  - reprimand, revocation, suspension, or denial, 2-4-631, 20-2-121, 20-4-102, 20-4-110, 20-4-111
    - 20-4-114, 20-4-133
  - term and period of validity, 20-4-108
- Certification, 20-4-101, See also Certificates
  - county superintendent of schools, qualifications, 20-3-201
  - emergency authorization of employment, 20-4-111
  - policies, 20-2-121, 20-3-106, 20-4-102, 20-4-106
  - special education, 20-7-403
  - standards, 20-4-133
- Certification Standards and Practices Advisory Council, 2-15-1522, 20-4-109, 20-4-131 — 20-4-133

**CHILD ABUSE AND NEGLECT**

- Definitions, 41-3-102
- Foster care, 41-3-115
- Guardianship of youth in need of care, petitions for, 41-3-422, 41-3-444
- Interview of child, participation of school employee, 41-3-202
- Policy of state, 41-3-101
- Public health and human services, Department of - powers and duties, 52-1-103
- Records, disclosure to school employees, 41-3-205
- Reporting of, 41-3-201 — 41-3-208

**CHILD LABOR**, Child Labor Standards Act, 41-2-102 — 41-2-118

**CIGARETTES AND OTHER TOBACCO PRODUCTS**, see also **SMOKING IN PUBLIC PLACES**

Penalties for possession, 45-5-637

Possession or consumption by person under 18 years of age a crime, 45-5-637

Use in public school building or on property prohibited, 20-1-220

**COLLECTIVE BARGAINING**

Administrative Procedure Act, applicability, 39-31-105

Agreement, 39-31-306

disputes, See Disputes

duty to bargain collectively and in good faith, 39-31-305

preexisting, effect on, 39-31-109

Appeals, 39-31-105

Appropriate bargaining unit, 39-31-103, 39-31-202

Arbitration, 39-31-306, 39-31-310, 39-31-311

Coercion of employees, 39-31-201, 39-31-401, 39-31-402

Confidentiality of negotiations, 39-31-302

Contempt, failure to produce evidence or testify, 39-31-106

Definitions, 39-31-103

Discrimination prohibited

complaints, filing, 49-2-501

employer, in hiring, 39-31-401

labor organization, by, 39-31-205

Disputes, 39-31-306 — 39-31-311

Dues, 39-31-203

political contributions, use for prohibited, 39-31-402

religious exception, 39-31-204

Duties to bargain collectively and in good faith, 39-31-305, 39-31-401, 39-31-402

Elections, 39-31-206, 39-31-208 — 39-31-210

Evidence

good faith, failure to negotiate in, 39-31-305

production, 39-31-106

rules of evidence inapplicable, 39-31-207, 39-31-406

unfair labor practices, 39-31-406, 39-31-409

Exclusive representative, 39-31-103

certification or recognition, 39-31-206 — 39-31-208, 39-31-211, 39-31-308

discrimination by, prohibited, 39-31-205

dues, certification, 39-31-203

election, See Elections

fact-finding proceedings, party to, 39-31-308, 39-31-309

good faith duty, 39-31-305, 39-31-402

petition for, 39-31-207

rights and safeguards to be guaranteed, 39-31-206

unaffiliated, to be, 39-31-211

unfair labor practices by, 39-31-402

Fees and assessments in lieu of dues, 39-31-204, 39-31-401

Group insurance, See **PUBLIC OFFICERS OR EMPLOYEES**, Group benefits

Hearings

administrative procedure act, applicability, 39-31-105

agreement, disputes, 39-31-309

notice of, 39-31-107

representation

consent election, waiver for, 39-31-209

disputes concerning rights and safeguards, 39-31-206

petition for, 39-31-207

telephone or videoconference, 39-31-105

unfair labor practices, 39-31-404 — 39-31-406, 39-31-409

Hours subject to, 39-4-107, 39-31-305

Interference with right to bargain collectively, 39-31-201, 39-31-401

Investigatory authority, 39-31-106, 39-31-207, 39-31-405

Items subject to, 39-31-304, 39-31-305

Labor organizations, 39-31-103, See also Exclusive representative

**COLLECTIVE BARGAINING** (continued)

## Labor organizations (continued)

- nonassociation with, right of, 39-31-204
- right of self-organization, 39-31-201
- unfair labor practices, 39-31-402

## Legislature

- authority not limited, 39-31-102
- state employees' agreement, submission to, 39-31-305

## Mailing list provision, nonapplicability, 2-6-109

## Management rights, 39-31-303

## Mediation, 39-31-307, 39-31-309

## Notices

- hearings, 39-31-107
- unfair labor practices, 39-31-404, 39-31-405, 39-31-408

## Oaths, administration, 39-31-106

## Open meeting provisions, applicability, 2-3-203

## Policy of state, 39-31-101

## Prisoners, collective bargaining agreements may not prohibit labor by, 39-31-312

## Public employer, 39-31-103

- good faith duty, 39-31-305, 39-31-401
- management rights, 39-31-303
- representation
  - bargaining, 39-31-301, 39-31-402
  - legal, 39-31-108
- student observer, 39-31-302
- unfair labor practices by, 39-31-401

## Religious convictions against, 39-31-204

## Representation

- board of personnel appeals, 39-31-108
- public employees, 39-31-201, See Exclusive representative
- public employer, 39-31-108, 39-31-301, 39-31-402

## Restraint of right of organization, 39-31-201, 39-31-401, 39-31-402

## Rules, 39-31-104, 39-31-207 — 39-31-209, 39-31-401

## School districts, 39-31-304 — 39-31-306

## Self-organization, employees' right, 39-31-201

## Service of process, 39-31-107, 39-31-405

## Student observers, 39-31-302

## Subpoenas, 39-31-106, 39-31-107, 39-31-309

## Unfair labor practices, 39-31-103

- amendment of complaint, 39-31-407
- complaint, 39-31-404 — 39-31-407
- court enforcement, 39-31-409
- hearing, 39-31-404 — 39-31-406
- investigation, 39-31-405
- labor organization, of, 39-31-402
- modification of findings or order, 39-31-408, 39-31-409
- notice, 39-31-404 — 39-31-406, 39-31-408
- order, 39-31-406, 39-31-408, 39-31-409
- public employer, of, 39-31-401
- remedies, 39-31-403

## Wages subject to, 39-31-305

## Witnesses, 39-31-106, 39-31-401

**COLLEGES**

## Federal student aid, Title 20, chapter 26

## Montana university system, Title 20, chapter 25

**COMMEMORATIVE DAYS**, 20-1-306**CONCEALED WEAPONS**

## Carrying in prohibited place, 45-8-328, 45-8-351, 45-8-361

## School Building, 45-8-361

## Suspension and expulsion, 20-5-202



**CONSOLIDATION OF DISTRICTS**

See also ANNEXATION OF DISTRICTS

Elementary districts

- bonded indebtedness, 20-6-411, 20-6-414, 20-6-423
- cash disposition following, 20-6-414
- hiring preference for employees, 20-6-410
- interim governance, 20-6-424
- procedures, 20-6-423
- tenure protection, 20-6-410
- tuition debt, assumption, 20-6-413

High school districts, 20-6-314, 20-6-423

- cash disposition following, 20-6-414
- interim governance, 20-6-424
- order for, 20-6-423
- procedures, 20-6-410, 20-6-423
- tuition debt, assumption, 20-6-413
- two or more counties, districts in, 20-6-423

**CONTRACTS**

Awarding

- districts, 20-9-204
- impartiality, 18-1-111
- lowest bidder, to - when, 18-1-102
- notice, 7-1-2121
- state construction contracts, 18-1-110, 18-2-103-114, 18-2-409

Bids and bidding

- advertisement, 18-1-202, 18-2-301
- conflict of interest, 20-9-204
- construction of buildings, 18-2-103, 18-2-403, 18-2-409
- exceptions, 20-9-204
- lowest bidder, award to, 18-1-102, 18-2-103
- nonresidents, 18-1-101, 18-1-102, 18-1-111
- prevailing wage rate, inclusion, 18-2-422
- “residence” defined, 18-1-103
- resident bidder, 18-1-101, 18-1-102
- security
  - advertisement specifications, 18-1-202
  - compliance, 18-1-206
  - forfeiture, 18-1-204
  - form, 18-1-203
  - requirement, 18-1-201
  - return, 18-1-205

Breach, 20-6-636

Conflict of interest, 2-2-201 — 2-2-203, 20-9-204

Construction of buildings

- advertising required, 18-2-301
- architects, 18-2-113, 18-2-114, 18-2-122, 20-6-633
- authorization, 18-2-102
- bids and bidding, 18-2-103
  - preference to Montana labor, 18-2-403, 18-2-409
- contractors, See Bonding requirements for contractors; Contractors
- contracts, 18-2-103
  - approval and amount withheld, 18-2-404
  - discrimination, 18-2-403, 49-3-207
  - federal funds, involving, 18-2-313, 18-2-403
  - preference to Montana labor, 18-2-403, 18-2-409
- definitions, 18-2-101, 18-2-401
- delays, 18-2-312
- engineers, consulting, 18-2-103
- engineers or land surveyors, 18-2-121, 18-2-122
- federal funding, 18-2-101, 18-2-102
  - contracts involving, 18-2-313, 18-2-403

**CONTRACTS (continued)**

## Construction of buildings (continued)

- injunction, 18-2-432
- inspection, 18-2-103
- nonconstruction services classification, exemption, 18-2-401
- supervision, 18-2-103, 18-2-121
- violations and penalty, 18-2-432

## Contractors

- bids, See Bids and bidding
- bonding requirements, See Bonding requirements for contractors; Surety bonds
- delays in construction, 18-2-312
- discrimination, 18-2-403, 49-3-207
- injunction to restrain, 18-2-432
- notice of acceptance and completion date of projects, 18-2-421
- payroll records, 18-2-423, 18-2-424, See also Wages paid by contractors
- penalties, 18-2-432
- residence, 18-1-103, 18-1-106
- subcontractors, 18-2-202, 18-2-204 — 18-2-206, 18-2-208, 18-2-407, 18-2-424
- subpoena, 18-2-424
- violations, 18-2-432, 20-6-624
- wages paid by, See Wages paid by contractors

## Definitions, 18-1-101

- construction of building provisions, 18-2-101, 18-2-103, 18-2-401
- public authority or obligee, 18-1-201
- residence, 18-1-103

## Educational personnel, qualification — interstate agreements, 20-4-121 — 20-4-123

## Energy performance contracting, 90-4-1101 - 1114

## Federal funds, contracts involving

- construction of buildings, 18-2-101 — 18-2-103, 18-2-313, 18-2-403
- preference
  - federal laws, 18-2-403
  - Indian reservation residents, 18-1-110
  - Montanans, to, 18-1-102, 18-2-409

## Federal surplus property, 18-5-201 — 18-5-205

## Indians

- construction contracts, hiring preference, 18-1-110
- cooperative agreements, Title 18, chapter 11, part 1

## Interlocal cooperation agreements, Title 7, chapter 11, part 1, See INTERLOCAL COOPERATION

## Nondiscrimination provision, inclusion, 49-3-207

## Preferences

- affidavit, 18-1-113
- Indian reservation residents, 18-1-110
- Montana-made goods, for, 18-1-102, 18-1-103
- Montanans, to
  - bids and bidding, 18-1-102, 18-1-103, 18-1-111
  - employment, 18-2-403, 18-2-409
  - residency, determination 18-1-106

## Prevailing wage, 18-2-401 — 18-2-403, 18-2-421 — 18-2-424, 18-2-432

- nonconstruction services classification, exemption, 18-2-401

## Public funds, repurchase agreements, 7-6-213

## Publication of legal notices, 18-7-201 — 18-7-205

## School districts, authority, 20-6-101, See also this heading generally; SITES AND FACILITIES; TRANSPORTATION, Contracts; Individual transportation; Private party contracts

## Security requirements for contractors, See also Surety bonds

- bid security - waiver, 18-1-202, 18-2-302
- performance, labor, and materials bonds
  - action on, 18-2-204 — 18-2-207
  - amount and terms, 18-2-203
  - deposits in lieu of, 18-2-201, 18-2-202
  - exceptions, 18-2-208
  - liability for waiver or failure to require, 18-2-202

**CONTRACTS** (continued)

## Security requirements for contractors (continued)

## performance, labor, and materials bonds (continued)

notice of right of action, 18-2-204, 18-2-206 — 18-2-208

requirements generally, 18-2-201, 18-2-202, 18-2-208

subcontractors, 18-2-201, 18-2-202, 18-2-204 — 18-2-206, 18-2-208

waiver, 18-2-201, 18-2-202, 18-2-302

State printing, 18-7-101 — 18-7-107, 18-7-301 — 18-7-307

Subcontractors, 18-2-201, 18-2-202, 18-2-204 — 18-2-206, 18-2-208, 18-2-407, 18-2-422, 18-2-424,

See also Contractors

Surety bonds, 18-1-202 — 18-1-204; Title 18, chapter 2, part 2

Surplus property, 18-5-201 — 18-5-205

Teachers, See TEACHERS

## Violations

construction of buildings, 18-2-432

contractors, by, 18-2-409, 18-2-432, 20-6-624

fines, 20-6-624, 20-6-636

investigation, 18-2-409

wages paid by contractor, 18-2-423, 18-2-432

## Wages paid by contractors, See also Prevailing wage

collective bargaining agreements, applicability and effect, 18-2-401, 18-2-402, 18-2-411

definitions, 18-2-401

districts, prevailing wage rate, 18-2-401, 18-2-403, 18-2-411

heavy highway construction wage rates, 18-2-401, 18-2-403

payroll records, 18-2-423, 18-2-424

rulemaking authority, 18-2-411, 18-2-431

scale to be posted when, 18-2-406

standard prevailing rate, 18-2-401, 18-2-402

bid specification and contract to contain, 18-2-403, 18-2-422

failure to pay, actions for, 18-2-407

payment, method, 18-2-412

violation and penalty, 18-2-423, 18-2-432

**COOPERATIVES, FULL SERVICE EDUCATION**

Audits, Title 2, chapter 7, part 5, See AUDITS, Local government entities

Contracts, 20-7-451, 20-7-452, 20-7-454

Creation, authorization, 20-7-451

Expenditures, 20-7-451

Funding, 20-7-452, 20-7-455, 20-7-457

Funds, establishment, 20-7-457

Management board, 20-7-452, 20-7-455

Property, 20-7-452

Special education purposes, for, 20-4-202, 20-7-452, 20-7-457

Teachers employed by, tenure, 20-7-456

**CORPORAL PUNISHMENT OR PHYSICAL RESTRAINT OF PUPILS, 20-4-302****COUNSELORS**

Gifted and talented children programs, 20-7-901

K-12 specialist, 20-4-131

Privileged communications, 26-1-801, 26-1-809

Professional counselors, 37-23-201

Special education, allowable costs, 20-7-431

**COUNTIES, See LOCAL GOVERNMENT****COUNTY ATTORNEY**

See also COUNTY OFFICERS

## Bonds

district proceedings, advice and assistance, 20-9-436

County superintendent of schools, legal adviser, 20-1-204, 20-1-205

## Fire safety violations

injunction, 50-61-118

prosecution, 50-61-117

**COUNTY ATTORNEY** (continued)

## Trustees

- legal adviser, 20-1-204, 20-1-205
- proceedings against, 20-3-332

**COUNTY CLERK AND RECORDER**, See **COUNTY OFFICERS****COUNTY COMMISSIONERS, BOARD OF**

Adult education programs, levy authority, 20-7-705

Adult literacy programs, 20-7-714

## Boundaries of districts

- record and reports, 20-6-103
- review, copies, 20-6-215

Budget amendment resolution, copy to, 20-9-162

Consolidation of districts, copy of order for, 20-6-423

County adult literacy board, 20-7-714

County high schools, unification, duties, 20-6-313

## County superintendent of schools

- appointment, 20-3-202, 20-3-203
- expenses, audit, 20-3-203
- office space, supplies, and staff, 20-3-203
- part-time office, establishment, 20-3-201, 20-3-213
- vacancy in office, 20-3-202

County Transportation Committee, membership, 20-10-131, See also **TRANSPORTATION**

Deaf and Blind, Montana School for the - payments to, 20-8-108

Elections ordered by, 20-20-201, See also **ELECTIONS**

Endowment fund reports, 20-9-604

K-12 districts, attachment of elementary to high school district, copy of order for, 20-6-701

## Levy requirements

- adult education programs, 20-7-705
- BASE funding program, for, 20-9-331
- basic tax for BASE funding program, 20-9-331, 20-9-333
- bonds, failure to make levy for, 20-9-439
- building reserve fund, 20-9-503
- bus depreciation reserve fund, 20-10-147
- county basic special tax, 20-9-333
- county basic tax, 20-9-331
- debt service fund, 20-9-439, 20-9-506
- failure to set, 20-9-439
- general fund, 20-9-141, 20-9-142, 20-9-353
- joint districts, 20-9-151, 20-9-152
- nonoperating fund, 20-9-506
- retirement fund, 20-9-501
- state equalization aid, 20-9-360
- transportation fund, 20-10-144, 20-10-146

Metal mines license tax, allocation, 15-37-117

## Property, districts

- sale to, 7-8-2216
- valuation statements delivered to, 20-9-122

Property tax levy, fixing, See also **Levy**

Teachers' Retirement System, employer contributions, 19-20-605

Trustees, suspension when, 20-3-310

## Warrants, county

- authority of agent returned to, 7-6-2602
- examination and cancellation, 7-6-2607
- investments in, 7-6-2701
- signing, 7-6-2601
- unpaid, order for payment, 7-6-2605

**COUNTY HIGH SCHOOLS**, 20-6-101

Bonding authority, 20-6-101, See also **BONDS AND BOND ISSUES**

High school district, as, 20-6-101

Principals, See **PRINCIPALS**

**COUNTY HIGH SCHOOLS** (continued)

Tuition, See TUITION

Unification, 20-6-312, 20-6-313

**COUNTY OFFICERS**

See also specific officer; PUBLIC OFFICERS OR EMPLOYEES

Enumeration, 7-4-2203

Oath, filing, 7-4-101

**COUNTY SUPERINTENDENT OF SCHOOLS**

Agents, acting as - prohibited, 20-1-201

Appeals, See Controversy appeals

Appointment, 7-4-2203

Assistants, 20-3-203

Association of County School Superintendents, membership, 7-5-2146

Attendance officer, when, 20-3-206, 20-5-104

Attorneys employed by, when, 20-3-210, 20-4-204

Bond, official, See PUBLIC OFFICERS OR EMPLOYEES

Consolidation of office, 20-3-201; Const., XI, 3

Contract for performance of duties when, 20-3-201

Controversy appeals, 20-3-210

disabilities, children with - appeals pertaining to, disqualification, 20-3-211

disqualification of county superintendent when, 20-3-211, 20-3-212

out-of-district attendance agreements, 20-3-210, 20-5-320 — 20-5-322

teachers, 20-3-210, 20-4-204

transfer of territory between districts, 20-6-105

Correspondence study, supervision, 20-7-116

County high schools, duties, 20-6-312, 20-6-313

County transportation committee, chairman of and duties, 20-3-206, 20-10-131

Defined, 20-1-101

Deputy, 20-3-203

District superintendents, reports from, 20-4-402

Duties generally, 20-3-201, 20-3-205; Const., XI, 3

Election of, 7-4-2203, 20-3-201; Const., XI, 3

Expenses, 20-3-203, 20-3-212

Facility siting, education impact statements, 20-1-208

Fines for violations, 20-1-201, 20-1-203

Hearings conducted by, 20-3-107, 20-3-210, 20-6-105

Home schools, availability of records and notification of student's attendance, 20-5-109

Hours, office, 20-3-204

Indigent children, federal funds for, 20-3-205, 20-10-205

Instructional assistance requested by, 20-7-114

K-12 dissolution, 20-6-704

Legal adviser, 20-1-204, 20-1-205

Levies, 20-3-205

adult education, report, 20-7-705

building reserve fund, establishment, 20-9-503

bus depreciation reserve fund requirements, 20-10-147

debt service fund requirement, 20-9-439, 20-9-506

general fund requirements, 20-9-141

nonoperating fund requirements, 20-9-506

retirement fund, 20-9-501

school transportation, 20-10-144, 20-10-146

Library books, recommendations, 20-3-205, 20-7-204

Meetings, 7-5-2146, 20-3-105

Nonpublic schools, availability of records, 20-5-109

Oath of office, 20-1-202, 20-3-201, 20-3-202

Oaths administered by, 20-3-205, 20-3-210

Office, 20-3-203, 20-3-204

Part-time office, 20-3-201, 20-3-204, 20-3-213

Positions, additional, 20-3-206

Preservation of documents, 20-3-205

Property valuation statements delivered to, 20-9-122



**COUNTY SUPERINTENDENT OF SCHOOLS** (continued)

Public Education, Board of - policies, 20-3-205

Qualifications, 7-4-2203, 20-3-201; Const., XI, 3

Records, 20-3-205

Regents of Higher Education, Board of - policies, 20-3-205

Removal from office, 20-7-608

Reports

annual financial, 20-3-205, 20-3-209, 20-9-211

preservation, 20-3-205

public education, board of - to, 20-9-344

required by, 20-3-324

superintendent of public instruction, to, 20-3-106, 20-3-209

tuition, 20-5-324

Retirement system, membership, 19-20-302, Title 19, chapter 20, See RETIREMENT, Teachers'

Retirement System

Salary; Const., XI, 3

School districts, elementary

abandonment, 20-3-205, 20-6-209

annexation procedures, 20-6-422

attachment to high school district, 20-6-701

boundaries, 20-6-105, 20-6-215

classification, 20-3-205, 20-6-201

consolidation procedures, 20-6-423

county high school unification, 20-3-205, 20-6-312, 20-6-313

transfer of territory, 20-6-105

School districts generally

alteration, 20-3-205

audit reports, filing, 20-3-205, 20-9-203

boundary records and reports, 20-3-205, 20-6-103

cessation, 20-6-413, 20-6-418

levies, See Levies

organization, 20-3-205

out-of-district attendance agreements, 20-5-320 — 20-5-322, 20-5-324

reciprocal attendance agreements, 20-5-314

School districts, high school

abandonment, 20-3-205, 20-6-307

annexation, procedures, 20-6-422

boundary changes, 20-6-105, 20-6-322

classification, 20-3-205

consolidation, 20-6-423

county high school unification, 20-3-205, 20-6-312, 20-6-313

transfer of territory, 20-6-105, 20-6-322

School districts, K-12 — attachment of elementary to high school district, 20-6-701

School elections

ordered by, 20-20-201

rescheduling, 20-20-108

trustee nominating districts, 20-3-205, 20-3-352 — 20-3-354

School finance

apportionment of money, 20-3-205, 20-9-212

audit reports filed with, 20-3-205, 20-9-203

average number belonging (ANB), 20-3-205, 20-6-502 — 20-6-504, 20-6-506, 20-6-507, 20-9-313

BASE aid, report of payments, 20-9-347

BASE funding program, estimations, 20-9-348

budgets, 20-3-205

budget amendments, 20-3-205, 20-9-162, 20-9-164, 20-9-165

final budget, 20-9-134, 20-9-142

form, 20-9-353

joint districts, procedures, 20-9-151

county equalization

apportionment of money, 20-3-205

federal forest reserve money, apportionment, 20-9-331, 20-9-333

**COUNTY SUPERINTENDENT OF SCHOOLS (continued)**

## School finance (continued)

## county equalization (continued)

- finances and penalties proceeds for, reports, 20-9-332
- debt service fund, duties, 20-9-438, 20-9-439, 20-9-506
- federal forest reserve money, apportionment, 20-9-331, 20-9-333, 20-10-146
- food services fund, allocation of federal funds, 20-3-205, 20-10-205
- funds, duties, 20-3-205, 20-3-208
- general fund, duties, 20-3-205, 20-9-141, 20-9-348
- guaranteed tax base aid, reports, 20-9-369
- isolation applications, procedures, 20-3-205, 20-9-302
- joint districts, annual reports, 20-9-213
- levies, See Levies
- money, authority, 20-3-208
- reports, annual, 20-3-205, 20-3-209, 20-9-211
- state equalization, apportionment, 20-3-205

## School transportation

- apportionment of money, 20-3-205, 20-10-145, 20-10-146
- budget, 20-10-143, 20-10-144, 20-10-146
- bus depreciation reserve fund levy requirements, 20-10-147
- bus driver certificates, filing, 20-3-205, 20-10-103
- committee, county, 20-3-206, 20-10-131
- contracts, copies to, 20-3-205, 20-10-124, 20-10-143
- individual transportation contracts, 20-10-112
- reimbursements, 20-3-205, 20-10-104, 20-10-145, 20-10-146
- reports and information, 20-3-205
- revenues, computation, 20-10-144, 20-10-146
- routing, 20-10-112

## School trustees

- additional positions, determination, 20-3-352, 20-3-354
- alternative method of election, petition and order for, 20-3-352
- appointment, 20-3-309, 20-6-203, 20-6-301, 20-6-313
- assistance, 20-3-207
- election certificate, issuance, 20-20-416
- joint boards, clerk, 20-3-206
- meetings, 20-3-205
- nominating districts, 20-3-205, 20-3-353, 20-3-354, 20-3-356, 20-6-313
- oaths, administering and filing, 20-3-205, 20-3-307, 20-3-309
- reports from, 20-3-209, 20-3-324, 20-5-324, 20-9-213
- single-member trustee districts, adoption of plan — notification, 20-3-337
- vacancies, filling, 20-3-309

## Schools generally

- indigent children, federal funds for, 20-3-205, 20-10-205
- libraries, 20-3-205, 20-7-204, 20-7-205
- opening or reopening, procedures, 20-3-205, 20-6-502 — 20-6-507
- supervision, 20-3-205
- textbooks, recommendations for selection, 20-3-205, 20-7-602
- tuition, See Tuition
- visitations, 20-3-207

## Solicitors, acting as — prohibited, 20-1-201

## Special education allowable costs, report of payments, 20-9-347

## Staff, 20-3-203

## Successor, delivering materials to, 20-1-203, 20-3-205

## Superintendent of public instruction, duties, 20-3-105, 20-3-205

## Supervision of schools, 20-3-205, 20-3-207

## Teachers

- appeals, 20-3-210, 20-4-204, 20-4-207
- assistance, 20-3-207
- certificates, registration, 20-3-205, 20-4-202
- dismissal prior to contract expiration, recommendation for and appeal from, 20-4-207
- emergency authorization, registration, 20-3-205
- nontenure, termination — hearing, 20-3-210, 20-4-206

**COUNTY SUPERINTENDENT OF SCHOOLS (continued)**

## Teachers (continued)

- pupil's truancy, incorrigibility, or suspension — reports, 20-4-302
- reports, submission, 20-4-301
- tenured, 20-4-204, 20-4-208

Term of office, 20-3-202; Const., XI, 3

Territory transfers, 20-6-105

Textbook dealers, duties, 20-3-205, 20-7-602, 20-7-605, 20-7-608

Textbooks, recommendations for selections when, 20-3-205, 20-7-602

## Tuition

- discontinued district, debt obligation, 20-6-413
- out-of-district attendance agreements, 20-5-322, 20-5-324
- payments, 20-3-205, 20-5-324
- reciprocal attendance agreements, 20-5-314
- reports, 20-3-205

Vacancy in office, 20-3-202

Violations, 20-1-201, 20-1-203, 20-7-608

Voting program for youth, participation, 13-22-103

**COUNTY TRANSPORTATION COMMITTEE, 20-10-131, 20-10-132**

Chairman, 20-3-206, 20-10-131

Decisions, appeals from, 20-3-107, 20-10-132

Hearings, 20-3-107, 20-10-132

Mileage distances, controversy, 20-10-106

Reimbursement rates, approval for increase, 20-10-132, 20-10-142

Residence of transportee, controversy, 20-10-105

Routing responsibilities, 20-10-112, 20-10-132, 20-10-141

Service areas, establishment, 20-10-111, 20-10-126, 20-10-132

Special education payments, approval, 20-7-424

Transportation, direction for, 20-10-121

**COUNTY TREASURER**

Apportionment of money, 20-3-205, 20-9-212

BASE aid, 20-9-344, 20-9-346, 20-9-347

Bonds and bond issues, duties, 20-9-432, 20-9-434, 20-9-435, 20-9-441, 20-9-442, 20-9-443

Budgets, duties, 20-9-438

Cessation of district, procedures, 20-6-413

County high schools, unification, duties, 20-6-313

Districts, duties generally, 20-9-212

Drinking and driving prevention programs, license reinstatement fees — duties, 61-2-107, 61-2-108

Fish, wildlife, and parks — departmental funds allocated to district when, 87-1-603, 87-1-604

Flood Control Act, federal — money from, 20-9-331

Forest reserve money, federal, 20-9-331, 20-9-333

## Funds

- cash balance statements, 20-9-121
- common school fund, federal money, 20-9-331
- debt service fund, 20-9-440 — 20-9-443
- endowment fund, liability, 20-9-604
- federal and private money, fund for, 20-3-208
- federal forest reserve money, allocation, 20-9-331, 20-9-333, 20-10-146
- food services fund, allocation of federal funds, 20-10-205
- remittance, 20-9-331
- reports, 20-9-212
- traffic education fund, 20-7-507

Impact aid fund, 20-9-514

Investment of money, 20-9-212, 20-9-213

Joint districts, duties, 20-9-202, 20-9-212

K-12 district, transitions after formation, 20-6-703

Lease and rental money deposited with, 20-9-509

Management of school funds, 7-6-2801

Notes, tax and revenue anticipation — issuance and sale, 20-9-212

Out-of-district attendance, tuition and transportation payments, 20-5-324

**COUNTY TREASURER (continued)**

- Property tax, personal property tax revenue reduction, reimbursement, distribution, 15-1-111
- Public funds, deposit in financial institution, 7-6-201
  - liability, 7-6-212
  - report by financial institution, 7-6-211
  - security, 7-6-207
- Records, 20-9-212, 20-9-215, 20-9-331, 20-9-333
- Reports, 20-9-212, 20-9-344
- School funds, management, 7-6-2801
- Special education allowable costs, report of payments, 20-9-347
- State money, remittance to state treasurer, 15-1-504
- Transportation
  - bus depreciation reserve cash balance transfers, 20-10-147
  - reimbursements, 20-10-145, 20-10-146
- Vocational-technical programs, receipts for taxes — remittance, 20-9-212
- Warrants, county
  - cancellation, return for, 7-6-2607
  - investments in, purchase by county, 7-6-2701
  - payment, 7-6-2602
  - redemption, order of, 7-6-2606
  - registration, 7-6-2603
  - unpaid, 7-6-2604, 7-6-2605
- Warrants, school
  - issued, listing provided to, 20-9-221
  - K-12 districts, transition after formation, 20-6-703
  - payment, 20-9-212, 20-9-347
  - registration, 20-9-212
  - unpaid, interest, 7-6-2604

**CRIMES**

- Assault on a sports official, 45-5-211
- Disorderly conduct, 45-8-101
- Endangering welfare of children, 45-5-622
- Firearms by children under 14, 45-8-344, 45-8-345
- Obscene material to a minor, 45-8-206
- Sexual abuse of children, 45-5-625
- Switchblade knife possession, 45-8-331
- Tobacco possession by a minor, 45-5-637
- Unlawful transactions with children, 45-5-623
- Weapon in a school building, 45-8-361

**CURRICULUM**

- Assistance with, 20-3-106, 20-7-113, 20-7-114
- Correspondence study, 20-5-102, 20-7-116, 20-10-121, 20-10-125, 20-10-142, 20-10-144
- Cultural heritage of Indians, 20-1-501 — 20-1-503
- Establishment and maintenance, 20-3-324
- Guides, file and publication, 20-3-106, 20-7-113
- Home schools, 20-5-109, 20-5-111
- Instructional programs, 20-4-402, 20-7-111
- Music instruction, private, 20-7-115
- Nonpublic schools, 20-5-109
- Secondary education, equivalency of completion, 20-2-121, 20-7-131

**D**

**D.A.R.E. PROGRAM**, 44-2-701 — 44-2-705

**DATA SYSTEMS SECURITY**, 2-6-501 — 2-6-504

**DEAF AND BLIND, MONTANA SCHOOL FOR THE**

- Admission to, 20-8-103, 20-8-107, 20-8-108
- Assistance to programs, 20-8-102
- Attendance, duration, 20-8-106
- Continuing education programs, 20-8-116

**DEAF AND BLIND, MONTANA SCHOOL FOR THE** (continued)

- Designation, 20-8-101
- Employees, communications skills — requirement and exception, 20-8-120
- Employment placement, 20-8-116
- Gifts, donations, or grants, 20-8-101, 20-8-111
- Independent institution, as, 20-8-101
- Indian children, admittance, 20-8-107
- Indigent children, 20-8-108
- Money, expenditure, 20-8-112
- Nonresidents, admittance, 20-8-104, 20-8-107
- Objectives, 20-8-102
- Property, 20-8-110, 20-8-111
- Purposes, 20-8-102
- Retirement system for employees, Title 19, chapter 20, See RETIREMENT, Teachers' Retirement System
- Rules, 20-8-106, 20-8-121
- School term, 20-8-109
- Staff, compensation and qualifications, 20-8-103
- Superintendent, 20-8-103, 20-8-106, 20-8-108, 20-8-113, 20-8-116, 20-8-120, 20-8-121
- Superintendent of public instruction, cooperation with, 20-7-404
- Supervision, 20-8-101
- Suspension, expulsion, or transfer of students, 20-8-106
- Transportation expenses of students, 20-8-121

**DEBT SERVICE FUND**, See FINANCE**DEFERRED COMPENSATION**

- Administration of program, 19-50-202
- Administrator, 19-50-101, 19-50-102, 19-50-202
- Contracts with political subdivisions, 19-50-201, 19-50-202
- Definitions, 19-50-101
- Eligible plans, 19-50-101, 19-50-102, 19-50-202 — 19-50-204
- Fund, 19-50-101, 19-50-102, 19-50-202
- Liability of public entity, 19-50-204
- Payments authorized, 19-50-203
- Payroll deductions, 19-50-202
- Retirement programs or pension plans, effect on, 19-50-102, 19-50-103
- Rules, 19-50-102, 19-50-201, 19-50-202
- Tax deferments, 19-50-103

**DETENTION CENTERS**, Obligation for payment, 20-9-130**DIPLOMAS**

- Honorary, 20-3-109

**DISABILITIES**, see SPECIAL EDUCATION**DISASTER DRILLS**, 20-1-401 — 20-1-407**DISCIPLINE OF PUPILS**, 20-4-302, 20-5-201**DISCRIMINATION**

- Aiding, coercing, or attempting — unlawful, 49-2-302
- Complaints
  - contested case hearings, 49-2-505
  - dismissal, 49-2-501, 49-2-504, 49-2-511, 49-2-512
  - enforcement, 49-2-508
  - filing, 49-2-501, 49-2-504, 49-2-510
  - findings of discrimination, 49-2-504
  - hearing officer decision, 49-2-506
  - informal settlement, 49-2-504
  - injunction, preliminary, 49-2-503
  - investigation, 49-2-203, 49-2-504
  - mediation, 49-2-504
  - objection to dismissal, 49-2-511
  - retaliation prohibited, 49-2-301, 49-3-209
- Constitutional prohibitions, Const., II, 4; X, 7



**DISCRIMINATION** (continued)

- Definitions, 49-2-101, 49-2-305, 49-3-101, 49-4-203
- Disabilities, persons with, 49-4-101
  - access to polling places, 13-3-207
  - canes, white or metallic-colored — use restricted to blind persons, 49-4-213, 49-4-216
  - definitions, 49-3-101, 49-4-203
  - dogs, guide or hearing — right to be accompanied by, 49-4-214, 49-4-216
  - driver or pedestrian approaching blind person, duty and liability, 49-4-216
  - employment, 49-4-101
  - fair practices, code of, Title 49, chapter 3, See Government, state and local
  - interpreters for the deaf in official proceedings, Title 49, chapter 4, part 5
  - penalties, 49-4-102, 49-4-215
  - public places and accommodations, 49-4-211
  - remedy, civil, 49-4-102
  - state policy, 49-4-202
- Employment, 49-2-303
  - governmental, See Government, state and local
  - maternity leave, 49-2-310, 49-2-311
  - preference given when, 49-2-303, 49-2-405, 49-3-103; Const., II, 35
- Equality of individuals, Const., II, 4
- Equality of opportunity
  - goal of people, Const., Preamble
- Exceptions
  - limits, specific, 49-2-403
  - modesty or privacy, provided for, 49-2-404
  - “reasonable” basis, strict construction, 49-2-402
- Fair Practices, Code of, Title 49, chapter 3, See Government, state and local
- Freedom from, declared a civil right, 49-1-102
- Government, state and local
  - complaints, procedures, See Complaints
  - definitions, 49-3-101
  - educational or counseling programs, 49-3-202, 49-3-203, 49-3-301
  - employment of personnel, 49-3-201
    - placement and referral services, 49-3-202
    - preference, 49-2-303, 49-2-405, 49-3-103; Title 39, chapter 29
  - enforcement, 49-3-301
  - funding programs, 49-3-206
  - licenses and charters
    - businesses subject to, discriminatory housing practices, 49-2-510, 49-2-602
    - issuance, discrimination prohibited, 49-3-204
  - local government units affected, 49-3-102
  - permitted distinctions, 49-3-103
  - public accommodations, 49-3-208
  - public contracts, 18-1-110, 18-1-111, 18-2-403, 49-3-207
  - quota system, 49-3-104
  - retaliation prohibited, 49-3-209
  - rules, 49-3-106
  - services and goods, 49-2-308, 49-3-205, 49-3-207
  - training programs, 49-3-201, 49-3-203
- Human Rights, Commission for, 49-2-101, 49-2-205
- Insurance plans, group insurance, contribution provisions, 49-2-303, 49-2-309, 49-3-103
- Investigations, 49-2-203, 49-2-504, 49-3-106
  - retaliation prohibited, 49-2-301, 49-3-209
- Maternity leave, 49-2-310, 49-2-311
- Nepotism, exemption when provisions conflict, 49-2-303, 49-3-201
- Penalties, criminal, 49-2-601
- Public accommodations, 49-2-304, 49-3-208, 49-4-211
- Records, 49-2-102
- Remedies, 49-2-501 — 49-2-506, 49-2-508, 49-2-510, 49-4-102
- Retaliation prohibited, 49-2-301, 49-3-209
- Retirement systems, prohibited, 19-2-403, 19-20-302, 49-2-309
- State, by, 49-2-308, See Government, state and local

**DISTRICT SUPERINTENDENT, 20-1-101**

- Appointment, 20-3-362, 20-4-401
- Certification, See TEACHERS, Certification
- Conflict of interest, 20-4-401
- Contract, 20-4-401
- Correspondence study, supervision, 20-7-116
- County superintendent of schools, reports to, 20-4-402
- Dismissal, 20-4-401
- Duties, 20-4-402
- Instructional assistance requested by, 20-7-114
- Library books, selection, 20-7-204
- Misappropriation of funds, 20-1-203
- Prayer to open school day, 20-7-112
- Pupils, duties, 20-4-302, 20-5-201
- Report requirements, 20-4-402
- Retirement, Title 19, chapter 20, See RETIREMENT, Teachers' Retirement System
- Special education assistance, 20-7-403
- Successor, delivering materials to, 20-1-203
- Teachers, duties, 20-4-204, 20-4-207, 20-4-301
- Textbook dealers, complaints against, 20-7-605
- Textbooks selected by, 20-7-602

**DISTRICTS AND TRUSTEES**

- Abandonment of districts, 20-6-209, 20-6-307, 20-9-604
- Absence from district, trustees — effect, 20-3-308
- Actions, trustees
  - collective, to be, 20-3-301, 20-3-322, 20-3-362
  - immunity from, when, 20-4-110
- Administrative rules with financial impact, 20-7-101
- Adult basic education, funding, 20-7-712
- Adult education, duties, 20-3-324, 20-7-702 — 20-7-705, 20-7-713
- Agents, trustees acting as — prohibited, 20-1-201
- ANB, amounts established for, See AVERAGE NUMBER BELONGING (ANB)
- Annexation
  - bonded indebtedness, 20-6-411
  - conditions for, 20-6-421, 20-6-422
  - hiring preference for employees, 20-6-410
  - procedures, 20-6-422
  - tenure protection, 20-6-410
  - tuition debt, assumption, 20-6-413
- Appeals, See Controversy appeals
- Appeals by pupil or pupil's parent or guardian, 20-5-201
- Appeals by trustees, 20-3-210
- Appointment of relative, 2-2-302
- Appointment of trustees, 20-3-307, 20-3-309
  - additional positions, 20-3-353, 20-3-354
  - county high school unification, 20-6-313
  - districts
    - consolidation, 20-6-423
    - high school, classification changes, 20-6-301
    - new districts, creation, 20-3-312
- Attachment of elementary to high school district, See K-12 districts
- Attorneys employed by, when, 20-1-204, 20-9-436
- Audits, 20-9-203, 20-9-213; Title 2, chapter 7, part 5, See AUDITS
- Average number belonging, amounts established for, See AVERAGE NUMBER BELONGING (ANB)
- Bequests, acceptance, 20-6-601
- Bids, See SITES AND FACILITIES, Contracts
- Board of Public Education — enforcement and reports, 20-3-323, 20-3-324
- Bonds and bond issues, See BONDS AND BOND ISSUES
- Boundaries, generally, See also Elementary districts; High school districts
  - adjustments, 20-6-103, 20-6-214, 20-6-322

**DISTRICTS AND TRUSTEES** (continued)

## Boundaries, generally (continued)

## changes

- actions concerning, 20-3-324
- bonded indebtedness, how affected, 20-6-411
- effect, 20-3-312
- property disposition, 20-6-417
- property tax valuation after, 20-6-412
- transfer of territory, 20-6-105

existing, confirmation, 20-6-102

legal descriptions, 20-6-103

record, permanent, 20-3-205, 20-6-103

Budgets, 20-3-324, See BUDGETS AND BUDGET SYSTEM

Buildings, See SITES AND FACILITIES

Buses, prohibition of operation of amber or red lights when, 61-8-351, See also

## TRANSPORTATION

Career and vocational/technical programs, funding, 20-7-305, 20-7-306

Certification Standards and Practices Advisory Council, representation on, 2-15-1522

Cessation of district, 20-6-413, 20-6-418

## Chairman of trustees

- bonds, execution, 20-9-433
- budget amendment, signing, 20-9-165
- budget form, signing, 20-9-133
- county high school principal, execution of contract, 20-4-401
- district superintendent, execution of contract, 20-4-401
- joint board, 20-3-361
- selection, 20-3-321
- teacher contracts, execution, 20-4-201
- transportation contracts, signing, 20-10-124
- warrants, countersignature, 20-9-221

Classification of districts, 20-3-205, 20-6-201, 20-6-301, 20-6-702

## Clerk of the district

- appointment, 20-3-321, 20-3-325
- ballots, preparation, 20-20-401
- bonds, duties, 20-9-433, 20-9-434, 20-9-442
- budget amendment, signing, 20-9-165
- budget, duties, 20-9-115, 20-9-133
- collective bargaining exclusion, 39-31-103
- county high school principal, execution of contract, 20-4-401
- district superintendent, execution of contract, 20-4-401
- duties, 20-3-325
- election administrator, as, 13-1-101
- finances for violations, 20-1-203
- misappropriation of funds, 20-1-203
- resignation of trustee, 2-16-502
- successor, delivering materials to, 20-1-203
- teacher contracts, execution, 20-4-201
- trustees
  - nominations for candidacy, submission to, 20-3-305, 20-3-344
  - positions, publication of notice for increase, 20-3-341
  - warrants, countersignature, 20-9-221

Closure of schools, 20-3-324, 20-6-505, 20-6-509

Collective bargaining of employees, 20-4-203, 39-31-103, 39-31-304 —39-31-306, See also

## COLLECTIVE BARGAINING

Conflict of interest, trustees, 20-9-204

## Consolidation

- bonded indebtedness, 20-6-411, 20-6-414, 20-6-422, 20-6-423
- cash disposition following, 20-6-414
- hiring preference for employees, 20-6-410
- order for, 20-6-423
- procedures, 20-6-410, 20-6-423
- tenure protection, 20-6-410

**DISTRICTS AND TRUSTEES** (continued)

## Consolidation (continued)

- tuition debt, assumption, 20-6-413
- two or more counties, districts in, 20-6-423

## Contracts

- bid security, 18-1-201 — 18-1-206
- execution, 20-9-213
- materials, supplies, or equipment, See, generally; SITES AND FACILITIES
- overdue accounts, interest assessment, 20-9-225 — 20-9-227
- teachers, See TEACHERS
- transportation, See TRANSPORTATION, Contracts; Individual transportation; Private party contracts

## Controversy appeals

- joint boards, proration of expenses, 20-3-362
- teachers
  - nontenure, termination, 20-4-206
  - tenured, 20-4-204, 20-4-208

## Cooperative agreements, financial administration, See FINANCE, Interlocal cooperative agreements

## Cooperatives, full service education, Title 20, chapter 7, part 4, See COOPERATIVES, FULL SERVICE EDUCATION

## Corporate powers, 20-6-101, 20-9-437

## Correspondence study provided when, 20-7-116

## County high schools

- definition, 20-6-101
- high school districts, as, 20-6-101, See also High school districts
- principals, appointment or dismissal, 20-4-401
- unification, 20-3-205, 20-6-312, 20-6-313

## County superintendent of schools

- assistance, 20-3-207
- money, approval regarding, 20-3-208
- reports to, 20-3-106, 20-3-324

## County transportation committee, membership, 20-10-131

## Creation of district, See Elementary districts; High school districts

## Curriculum for schools, establishment and maintenance, 20-3-324

## Deaf and Blind, Montana School for the — liaison, 20-8-113

## Definitions, 20-1-101, 20-3-336, 20-6-101, 20-6-701, 20-7-401, 20-7-305, 20-9-402, 20-9-512, 44-2-511

## Devises, acceptance, 20-3-324, 20-6-601, 20-9-604

## Disabilities, persons with — employment, Title 49, chapter 3

## Discriminatory practices, See DISCRIMINATION

## District superintendent, See DISTRICT SUPERINTENDENT

## Donations to, 20-6-601

## Driver education, establishment of nonbudgeted fund, 20-3-324, 20-7-507, See also TRAFFIC EDUCATION

## Drug Abuse Resistance Education (D.A.R.E) Program, 44-2-701 — 44-2-705

## Educational associations, membership, 20-1-211

## Election of trustees, 20-3-301, See also ELECTIONS

## Elections, duties, See School elections; See also ELECTIONS

## Electronic voting systems, 20-20-421, 13-17-101 to 13-17-306

## Elementary districts, 20-6-101

- abandonment, 20-3-205, 20-6-209, 20-9-604
- annexation, See ANNEXATION OF DISTRICTS
- attachment to high school district, 20-6-101, 20-6-701, 20-6-703
- boundaries, 20-6-214, 20-6-215
- boundary changes, 20-6-105, 20-6-202, 20-6-215
- classification, 20-3-205, 20-6-201, 20-6-702
- consolidation, See CONSOLIDATION OF DISTRICTS
- county high school unification, 20-6-312, 20-6-313
- creation, moratorium, 20-6-104
- high school districts
  - abandonment, effect, 20-6-307

**DISTRICTS AND TRUSTEES (continued)**

## Elementary districts (continued)

## high school districts (continued)

as, when, 20-6-101

attachment of elementary district, 20-6-101, 20-6-701, 20-6-703

inactive when, 20-6-101, 20-6-701

joint

transfer of territory, creation by, 20-6-105

relocation of school within, 20-6-218

transfer of territory, 20-6-105

trustee positions, See Positions of trustees; ELECTIONS, Trustees

tuition, See TUITION

Eligibility for office of trustee, 20-3-305

## Emergency, unforeseen

bid requirements, exception, 20-9-204

meetings, 20-3-322

## Employees and officers, See also PUBLIC OFFICERS OR EMPLOYEES

agents or solicitors, acting as — prohibited, 20-1-201

bond payment funds, liability, 20-9-444 — 20-9-446

budget expenditures, liability, 20-9-133

collective bargaining, 39-31-103, 39-31-304, See also COLLECTIVE BARGAINING

convention expenses allowed when, 20-1-211

corporal punishment or physical restraint of pupils, 20-4-302

county transportation committee, membership, 20-10-131

employment or dismissal generally, 20-3-324, 20-6-711

expenditures, liability, 20-9-133

fines for violations, 20-1-201

group insurance, 20-3-331, See PUBLIC OFFICERS OR EMPLOYEES, Group benefits

hiring preference when, 20-6-410, 20-6-711

hours of employment, 39-4-107

K-12 districts, tenure and hiring provisions, 20-6-711

missing child investigations, confidentiality when, 44-2-511

post-retirement health care account, 2-18-1311

records, destruction allowed when, 20-9-215

retirement, Title 19, chapters 2, 3 and 20, See RETIREMENT

sick leave, fund for payment upon termination of employment, 20-9-512

textbook dealers' emoluments or inducements, acceptance prohibited, 20-7-608

travel expenses, 20-1-211

vacation leave, fund for payment upon termination of employment, 20-9-512

## Enrollment in schools

excused when, 20-5-102

nonpublic nonaccredited school, from — assessment policy, 20-3-324, 20-5-110

## Executive officer of trustees, 20-4-402

## Existing districts, confirmation, 20-6-102

## Expenses of trustees, 20-1-211, 20-3-311

## Facilities, See SITES AND FACILITIES

## Fair Practices, Code of, Title 49, chapter 3, See DISCRIMINATION, Government, state and local

## Financial administration of schools, See FINANCE

## Financial reports, Title 2, chapter 7, part 5, See AUDITS

## Fines for trustees' violations, 20-1-201, 20-1-203, 20-6-624, 20-9-435

## Fish, wildlife, and parks, departmental funds allocated to, when, 87-1-603, 87-1-604

## Five-year-old schooling, establishment, 20-7-117

## Flag, American, procurement and display, 20-3-324

## Food services, 20-3-324, 20-10-204, See also FOOD SERVICES

## Forms distributed to, 20-3-105

## Foster Care Review Committee

child abuse and neglect records, disclosure, 41-3-205

representation on, 41-3-115

## Funds, 20-3-324, See also FINANCE, Funds generally

adult education, establishment, 20-7-705

investment, 20-9-213

misappropriation, 20-1-203, 20-3-332



**DISTRICTS AND TRUSTEES** (continued)

## Funds (continued)

- traffic education, establishment, 20-7-507

Gifted and talented children programs, See GIFTED AND TALENTED CHILDREN PROGRAMS

Gifts, acceptance, 20-3-324, 20-6-601, 20-7-803, 20-9-604, 20-10-204

Governance by trustees, 20-3-323

Grade assignments, designation, 20-6-501

Grants, acceptance, 20-6-601

## Health and safety

- local boards of health, powers and duties, 50-2-116

- local health offices, powers and duties, 50-2-118

Health regulations, copies to, 50-1-206

Hearings, 20-3-337, 20-4-204, 20-4-207, 20-5-110

## High school districts, 20-6-101

- abandonment, 20-3-205, 20-6-307, 20-9-604

- annexation, see ANNEXATION OF DISTRICTS

- attachment of elementary district, 20-6-101, 20-6-701, 20-6-703

- boundary changes, 20-6-308, 20-6-314, 20-6-322, 20-6-422, 20-6-423

- classification, 20-3-205, 20-6-301

- consolidation, See CONSOLIDATION OF DISTRICTS

- county high schools as, 20-6-101, See also County high schools

- county transportation committee, representation on, 20-10-131

- creation, 20-6-314

- moratorium, 20-6-104

- elementary districts

- attachment, 20-6-101, 20-6-701, 20-6-703

- joint

- annexation, 20-6-314

- creation, 20-6-308

- organization, 20-6-308, 20-6-422, 20-6-423

- transfer of territory, 20-6-105, 20-6-308, 20-6-322, 20-6-416

- trustee positions, See Positions of trustees; ELECTIONS, Trustees

Highway traffic safety program, 61-2-101 — 61-2-105, See also TRAFFIC SAFETY PROGRAM

## Immunity from liability

- districts, 2-9-105

- trustees, 2-9-111, 20-3-332, 20-4-110

Instructional programs, recommendations for, 20-4-402

Instructional services, establishment, 20-3-324

## Insurance, See also INSURANCE

- employees' group insurance, 20-3-331, See PUBLIC OFFICERS OR EMPLOYEES, Group benefits

- liability, requirements, 20-3-331, 20-10-109, 20-10-124

- property, requirements, 20-6-608

- school buses, 20-3-331, 20-10-107, 20-10-109, 20-10-124, 20-10-143

- school transportation requirements, 20-10-107, 20-10-109, 20-10-124, 20-10-143

- self-insurance plan, 2-9-211, 20-3-331

- special education, proration, 20-7-435

Interest assessment on overdue accounts, 20-9-225 — 20-9-227

Interlocal cooperative agreements, 20-3-324; Title 7, chapter 11, part 1, See FINANCE;

## INTERLOCAL COOPERATION

Interstate school agreements, joint, 20-9-705

Isolated schools, 20-3-106, 20-3-205, 20-3-324, 20-9-302, 20-9-303

## Joint boards of trustees

- budget procedures, See FINANCE, Joint districts

- clerk, 20-3-206

- dissolution when, 20-3-361

- district superintendent, appointment, 20-3-362, 20-4-401

- existence, period of, 20-3-361

- junior high schools, opening or closing, 20-3-362, 20-6-505, 20-6-509

- organization and officers, 20-3-361

- powers, 20-3-362

**DISTRICTS AND TRUSTEES** (continued)

## Joint boards of trustees (continued)

- secretary, compensation, 20-3-311
- special education services, 20-3-362, 20-7-457
- teachers or specialists, employment, 20-3-362, 20-4-201
- voting membership, 20-3-361

Judgments against, funding, 2-9-316, 20-9-161, 20-9-403, 20-9-435, 20-9-471

K-12 districts, see K-12 DISTRICTS

Kindergartens, establishment, 20-7-117

Kindergarten through grade 12 system, establishment, 20-6-508

Lease-purchase agreements, 20-6-609

Legacies for school purposes, 20-9-604

Legal adviser, 20-1-204, 20-1-205

Levies, 20-3-324, 20-7-705, See PROPERTY TAX, Levies

## Liability

- bond payment funds, 20-9-444 — 20-9-446
- bonds, for, 20-9-437
- budget, expenditures, 20-9-133
- insurance, requirements, 20-3-331, 20-10-109, 20-10-124, 20-10-143
- legislative acts, immunity from, 2-9-111
- personal, 20-3-332

Loans, long-term - replacement of property, 20-6-640

## Meetings of trustees, 20-3-322

- bond issue petitions, consideration, 20-9-425
- budget, 20-3-322, 20-9-115, 20-9-131
- budget amendment, 20-9-163, 20-9-165
- county superintendent of schools, called by, 20-3-205, 20-3-311
- elections, to call, 20-20-203
- failure to attend, 20-3-308
- minutes, 2-3-212, 20-3-323, 20-6-703
- organization, 20-3-321, 20-3-322
- teachers, tenured - termination hearings, 20-4-204
- transportation contracts, for, 20-10-125
- travel expenses, 20-3-311

Merger, See CONSOLIDATION OF DISTRICTS

Minorities, voting rights - protection, 20-3-336, 20-3-337

Misappropriation of funds, 20-1-203, 20-3-332

Missing children, duties, 44-2-506, 44-2-507, 44-2-511

Name of district, 20-6-101

Neglect of duty by trustees, 20-9-444

Nepotism provisions, nonapplicability when, 2-2-302

New duties, financing, 1-2-113

Nonoperating districts, See Elementary districts, abandonment; High school districts, abandonment

Nonpublic nonaccredited school placement of child in public school, assessment policy, 20-3-324, 20-5-110

Nurses, employment or dismissal, 20-3-324

Oath of office, trustees, 20-1-202, 20-3-205, 20-3-307, 20-3-309

Officers, See Employees and officers

## Opening or reopening schools, 20-3-324

- elementary schools, 20-6-502
- high schools, 20-3-106, 20-6-503
- junior high schools, 20-3-106, 20-6-504, 20-6-505
- middle schools, 20-6-507

Out-of-district attendance agreements, 20-5-320 — 20-5-324

Overdue accounts, interest assessment, 20-9-225 — 20-9-227

Personnel, See Employees and officers

Physicians retained by, when, 20-3-324

Playgrounds, See Public recreation programs

Policies, prescription and enforcement, 20-3-323

## Positions of trustees

- additional, 20-3-302, 20-3-341, 20-3-343, 20-3-352, 20-6-201, 20-6-301

**DISTRICTS AND TRUSTEES** (continued)

## Positions of trustees (continued)

- redetermination, 20-3-205, 20-3-354
- boundary changes, effect, 20-3-312
- elementary districts, 20-3-302, 20-3-341, 20-3-352, 20-6-201
- high school districts, 20-3-302, 20-3-351
  - additional, request and determination, 20-3-205, 20-3-352, 20-6-301, 20-6-313
  - alternative method of election, 20-3-352
  - county high school, operating, 20-3-356
  - nominating districts, establishment and purpose, 20-3-205, 20-3-353, 20-3-354, 20-3-356, 20-6-313
  - nonvoting, establishment when, 20-3-352
- number prescribed, 20-3-301, 20-3-341, 20-3-351, 20-6-702
- reduction, 20-3-341
- term, See Term of office of trustee
- vacated, See Vacancy in office of trustee
- variance in number, 20-3-301, 20-3-341, 20-3-351
- Powers and duties of trustees, 20-3-324, 20-6-101
  - actions to be collective, 20-3-301, 20-3-322, 20-3-362
  - boundary changes, effect, 20-3-312
  - joint boards, 20-3-362
- Preschool programs, establishment, 20-7-117, 20-7-411
- Principals, employment or dismissal, 20-3-324
- Property, authority, 20-3-324, 20-6-417, 20-6-602, 20-6-604, 20-6-609, 20-6-703, See also

**PROPERTY**

## Public recreation programs

- activities, conduct, 20-7-802, 20-7-803
- authorization, 20-7-801
- board of recreation, creation, 20-7-802
- directors and instructors, 20-7-803, 20-7-804
- funding, 7-16-4107, 20-7-801
- gifts, acceptance, 20-7-803
- operation, 7-16-4108, 20-7-802
- school property, 20-7-804, 20-7-805
- Pupil instruction days, 20-1-301
- Pupils, See STUDENTS
- Qualifications of trustees, 20-3-305, 20-3-307 — 20-3-309

## Records, 20-3-323

- accounting, 20-9-213
- cessation of district, surrender, 20-6-418
- K-12 districts, transitions after formation, 20-6-703
- old, destruction when, 2-6-403, 2-6-404, 20-1-212, 20-9-215
- retention, 2-6-401 — 2-6-404, 20-1-212, 20-9-215
- school records transfer, 20-1-213

## Recreation, Board of — creation, 20-7-802

## Recreation programs, See Public recreation programs

## Relatives, appointment, 2-2-302

## Religious instruction released time program provisions, 20-1-308

## Removal of trustees from office, 20-3-308, 20-3-310, 20-3-332, 20-7-608

## Reorganization of district generally

- bonded indebtedness, effect of boundary changes, 20-6-411
- cash disposition, 20-6-413 — 20-6-416
- K-12 districts, formation, See K-12 districts
- property disposition, 20-6-417, 20-6-703
- property tax valuation, effect of boundary changes, 20-6-412
- tuition debt, levy for - when, 20-6-413

## Reports

- distribution to, 20-3-105
- failure to make, 20-9-344
- fiscal, 20-3-106, 20-7-306, 20-9-213
- preparation, 20-3-325
- required when, 20-3-324, 20-5-324, 20-9-344

**DISTRICTS AND TRUSTEES** (continued)

## Reports (continued)

special education expenditures, 20-7-431

Residence of trustee changed, effect, 20-3-308

Resignation of trustee, 2-16-502, 20-3-308

Rules with fiscal impact, 20-7-101

## School elections

canvass of votes, 20-20-415

certificate of, issuance, 20-20-416

county election administrator requested to conduct, 20-20-401, 20-20-417

duties generally, 20-3-324, 20-20-401

electronic voting systems, 20-20-421; see also Title 13, chapter 17

judges, 20-20-107, 20-20-203

notice, 20-20-204

poll hours, 13-1-106, 20-20-106, 20-20-203

polling places, 13-1-106, 20-20-106, 20-20-203

resolutions for, 20-20-201, 20-20-203

voting machines, 20-20-421; See also Title 13, chapter 17

School finance, duties generally, 20-3-324, See FINANCE

School lunch programs, See FOOD SERVICES

## School transportation

bus drivers, certification, 20-10-103

buses, 20-10-109, 20-10-110

contracts, 20-10-104, 20-10-107

county transportation committee, 20-10-131

duties generally, 20-3-324, 20-10-107, 20-10-121

mileage distances, controversy, 20-10-106

out-of-district attendance agreements, 20-5-320 — 20-5-324

policies or rules, 20-10-104

residence of transportee, controversy, 20-10-105

Secretary of trustees, 20-3-311, 20-3-321, 20-3-361

Single-member trustee districts, 20-3-336 — 20-3-338

Sites and facilities, 20-3-324, See SITES AND FACILITIES

Social security provisions, Title 19, chapter 1, See SOCIAL SECURITY

Special education, See also SPECIAL EDUCATION

allowable costs, reimbursement - application for, 20-9-321

assistance, 20-7-403

attendance, 20-7-421, 20-7-422

cooperative contracts, See SPECIAL EDUCATION, Cooperatives

determination of children in need, 20-7-414

establishment of programs, 20-3-324, 20-7-411

expenditures, accounting, 20-7-431

surrogate parent, 20-7-461 — 20-7-463

Specialist certification, See TEACHERS, generally

State mandates to districts, 1-2-113

State-Tribal Cooperative Agreements Act, Title 18, chapter 11, part 1

Statutes imposing new duties, means of financing, 1-2-113

Student Assessment, 20-3-324

Successor trustees, delivering materials to, 20-1-203

Superintendent, district, See DISTRICT SUPERINTENDENT

Superintendent of public instruction, reports and rules, 20-3-323, 20-3-324

Supervision, 20-3-106, 20-3-207; Const., X, 8

Suspension of trustees, 20-3-310

Teacher aides, employment or dismissal, 20-3-324

Teachers, See also TEACHERS

administrative positions, transfer from - hearing and appeal, 20-4-208

certificate reprimand suspension or revocation, 20-4-110, 20-4-113, 20-4-114

dismissal, 20-3-324, 20-4-207

employment, 20-3-324, 20-4-110, 20-4-201

in-service training, 20-4-304

K-12 districts, 20-6-711

nontenure, duties, See TEACHERS

**DISTRICTS AND TRUSTEES (continued)**

## Teachers (continued)

- pupil's truancy, incorrigibility, or suspension - notification, 20-4-302
- salary withheld when, 20-4-301
- tenure provisions, See TEACHERS
- termination, 20-3-210, 20-4-110, 20-4-204, 20-4-206, 20-4-207

Teachers' retirement system, participation, 20-3-324

Telecommunications network (METNET), 20-32-101 — 20-32-104

## Term of office of trustee

- additional positions, 20-3-355
- elementary districts
  - classification changed, determination, 20-3-343
  - creation and consolidation, determination, 20-3-342
- expiration, legislative intent, 20-3-302
- generally, 20-3-301
- lot, drawn by — when, 20-3-342, 20-3-343, 20-3-352, 20-3-355
- vacated position, election or appointment to fill, 20-3-303, 20-3-309

Textbook dealers' emoluments or inducements, acceptance prohibited, 20-7-608

Textbooks, 20-3-324, 20-4-402, 20-7-601, 20-7-602, See also TEXTBOOKS

Tobacco-free areas, designation, 50-40-201, See also SMOKING IN PUBLIC PLACES

Traffic education, establishment of nonbudgeted fund, 20-3-324, 20-7-507, See also TRAFFIC

**EDUCATION**

Traffic safety program, 61-2-101 — 61-2-105, See TRAFFIC SAFETY PROGRAM

Transfer of territory, See Elementary districts; High school districts

Transportation service areas, 20-10-126, See TRANSPORTATION

Tuition, duties, 20-3-324, 20-5-320 — 20-5-324

Vacancy in office of trustee, 20-3-308, 20-3-309

- election to fill, See ELECTIONS, Trustees
- term after election or appointment, 20-3-303, 20-3-309
- unfilled when, 20-6-301

Veterans' employment preference, Title 39, chapter 29, See VETERANS

## Violations by trustees

- agents or solicitors, acting as, 20-1-201
- bonds, nonpayment of sale money to county treasurer - penalty, 20-9-435
- building plans and specifications, violations concerning, 20-6-624
- contracts, pecuniary interest, 20-9-204
- district, employment by, 20-9-204
- misappropriation of funds, 20-1-203, 20-3-332
- successor, nondelivery of materials to, 20-1-203
- supplies, association with furnishing to schools, 20-9-204
- teachers, employment relationship - report of termination or nonrenewal, failure to make, 20-4-114
- textbook dealers' emoluments or inducements, acceptance, 20-7-608

Visitation of schools, 20-3-324

Vocational education, 20-3-324, 20-7-303, 20-7-305, 20-7-306, 20-7-308

Voting machines, 20-20-421; See also Title 13, chapter 17

Voting rights of minorities, protection, 20-3-336, 20-3-337

Warrants, See WARRANTS

Youth detention facilities, obligation for payment, 20-9-130

Youth Placement Committee, representation on and duties, 41-5-121, 41-5-122

**DONATIONS TO SCHOOLS, 20-9-601****DRIVER EDUCATION, See TRAFFIC EDUCATION****DRUG ABUSE RESISTANCE EDUCATION (D.A.R.E.) PROGRAM, 44-2-701 — 44-2-705****DRUGS, DANGEROUS**

- Criminal sale on or near school property, 45-9-109
- Drug use/criminal activity, disclosure, 41-5-215
- Health education, drug and alcohol instruction, 20-25-601 — 20-25-604



**E****ELECTIONS**

- Acclamation, 20-3-313
- Annual, to be, 20-3-304, 20-20-105
  - once each calendar year, 20-20-105
- Administrators, 13-1-301
  - duties of, 13-2-112, 13-2-115 — 13-2-117, 13-12-212
- Ballots
  - absence or incapacity, prospective - voting before election day, 13-13-222
  - absentee ballots, 13-13-201
    - application for, 13-13-211 — 13-13-213
    - availability, 13-13-205, 20-9-426, 20-20-204, 20-20-401
    - certificate, 13-13-233
    - death of absentee elector, effect, 13-13-204, 13-15-108
    - delivery to election judges, 13-13-232, 13-13-233
    - deposit, 13-13-241, 13-13-244
    - destroyed or not received, 13-13-204
    - disposition, 13-1-303
    - examination of envelopes and affirmations, 13-13-241
    - facsimile transmission, voting by, 13-21-104, 13-21-207
    - federal write-in absentee ballots, 13-21-205, 13-21-206
    - issue, 13-13-233
    - mailing to elector, 13-13-214
    - marking and affirming, 13-13-231, 13-13-241
    - opening of envelope after deposit, 13-13-244
    - pollbooks, 13-13-234
    - printing errors, 13-12-204, 13-13-204
    - qualification for voting by, 13-13-201, 13-13-211
    - receipt by election administrator, disposition upon, 13-13-231, 13-13-232
    - record, 13-13-233
    - rejection, 13-13-232, 13-13-241, 13-15-108
    - special absentee election board, voting before, 13-13-225, 13-13-229, 13-15-108
  - absentee election boards, special, 13-13-213, 13-13-225 — 13-13-230
  - certification, 20-20-401
  - counting, 13-15-101 — 13-15-105, 13-15-111, 13-15-201, 13-15-204, 13-15-205
  - disabled electors, 13-13-118, 13-13-119, 13-13-211, 13-13-212
  - disposition of materials, 13-1-303, 13-13-231, 13-13-241
  - election by, 20-20-103
  - form, 13-12-201 — 13-12-205, 13-12-207, 13-12-210, 13-12-212, 13-12-214
    - annexation of district, 20-6-422
    - bond issues, 20-9-426, 20-9-427
    - building reserve proposition, 20-9-502
    - consolidation of district, 20-6-423
    - county high school unification, 20-6-312
    - general fund budget, additional financing, 20-9-353
    - interstate school agreements, joint, 20-9-705
    - trustee elections, 20-3-306
  - instructions for electors, 13-13-112, 13-13-214
  - mail ballot election, 13-19-106, 13-19-206, 13-19-311
  - one ballot to elector, 13-13-116
  - pollbooks, 13-13-115, 13-13-234
  - secret, to be, 13-1-102
  - stamped, to be, 13-13-116
  - voting, method of, 13-13-117, 13-13-229; See also Title 13, chapter 17
  - youth voting program, Title 13, chapter 22, See Youth voting program
- Bond issues, See BONDS AND BOND ISSUES
- Building reserve proposition, 20-9-502
- Buildings, See Sites and facilities
- Bus depreciation reserve cash balance transfers, for, 20-10-147
- Calling of
  - bus depreciation reserve cash balance transfers, 20-10-147

**ELECTIONS** (continued)

## Calling of (continued)

- county high school unification, 20-6-312
- districts
  - annexation, 20-6-422
  - consolidation, 20-6-423
- general fund budget, additional financing, 20-9-308, 20-9-353, 20-20-105
- generally, 20-3-324
- junior high schools, opening, 20-6-505
- over-BASE budget, amount exceeding limitations, 20-9-308, 20-9-353
- resolution for, 20-20-201
- school sites and facilities, 20-6-603, 20-6-621
- trustee elections, 20-3-306, 20-3-352

Cancellation when, 13-1-304, 13-2-402, 20-20-108

Canvassers, Board of, 13-15-501, 13-15-502, 13-15-504 — 13-15-507

Canvassing of votes, 13-15-101, 13-15-201, 13-15-204, 13-15-205; 13-15-401 — 13-15-406

- annexation election, 20-6-422
- bond issues, 20-9-428
- consolidation election, 20-6-423
- county canvass, 13-15-401 — 13-15-406
- generally, 20-20-415

Certificate of election, 13-15-204, 20-3-324, 20-20-416

- bond issues, 20-9-428
- county high school unification, 20-6-312
- districts
  - annexation, 20-6-422
  - consolidation, 20-6-423
- trustees, 20-3-307

Challenges, See Electors

Clerk, 20-20-402

Closure of school for, 20-1-305

Conduct of, 20-3-324, 20-20-411

- bond issues, 20-9-427
- building reserve election, 20-9-502
- bus depreciation reserve cash balance transfers, 20-10-147
- county election administrator, by, 20-20-401, 20-20-417
- county high school unification, 20-6-312
- districts
  - annexation, 20-6-422
  - consolidation, 20-6-423
- general fund budget, additional financing, 20-9-353, 20-20-105
- interstate school agreements, joint - election for, 20-9-705
- junior high schools, opening, 20-6-505
- school sites and facilities, 20-6-603, 20-6-621
- time limitation, 20-20-202
- trustee elections, 20-3-306, 20-3-313, 20-3-352

Contests, Title 13, chapter 36

County government, 13-2-117

- bond issues, See BONDS AND BOND ISSUES

Date, 13-1-104, 20-3-304, 20-20-105

Definitions, 13-1-101, 20-20-101

Disaster, declaration of - cancellation of election, 20-20-108

Districts, 13-3-104

Election administrator, 13-1-101, 13-2-112, 13-2-115, 13-2-116, 13-2-122, 13-2-123, 20-20-401, 20-20-417, and See this heading generally

Electors, 13-1-101

- absentee ballots, See Ballots
- age, 13-1-111, 13-1-114
- arrest, privilege from, 13-1-115
- bond issues, special - petitions, 20-9-421, 20-9-423
- challenges, 13-13-301, 20-20-303

**ELECTIONS** (continued)

## Electors (continued)

## challenges (continued)

- affidavits and information, 13-13-301, 13-15-107
- ballots, handling and counting, 13-13-603, 13-15-107
- grounds, 13-13-301
- list of challenges to be kept, 13-15-205
- right to vote, 13-13-301
  - disability, voter with — of, 13-13-118

change of address, 13-2-512

confirmation of registration, 13-2-207

contests, Title 13, chapter 36

disabled electors, 13-3-201, 13-3-202, 13-3-205 — 13-3-207, 13-3-211 — 13-3-213, 13-13-118, 13-13-119, 13-13-201, 13-13-211, 13-13-212, 13-13-222, 13-13-234, See also Ballots, absentee ballots

## elementary districts

- annexation petitions, 20-6-422
- consolidation petitions, 20-6-423
- transfer of territory, 20-6-105

instructions for, 13-13-112, 13-13-214

list of electors, 13-2-122, 13-2-123

nominating districts, high school - requirements, 20-3-353

poll watchers, announcement of name, 13-13-120

qualifications, 13-1-111, 20-3-338, 20-20-301, 20-20-303

registered, lists of, 13-2-112, 13-2-115, 13-13-114, 20-20-201, 20-20-312, 20-20-313

registration, closure, 20-20-311

residence, 13-1-111 — 13-1-114

trustees, alternative method of election - petition requesting, 20-3-352

Electronic voting systems, 20-20-421; Title 13, chapter 17

## Elementary districts

- annexation, 20-6-422
- consolidation, 20-6-423

## Emergency

- declaration of - cancellation of election, 20-20-108
- unforeseen - rescheduled, 20-20-105

Expenses, 20-20-107, 20-20-313

Facsimile transmission, registration and voting by, 13-21-104, 13-21-207

Federal write-in absentee ballots, 13-21-204 — 13-21-206

Forms, 20-20-104

General election, 13-1-101

- holding, time for, 13-1-104

- holiday, general election day, 1-1-216, 20-1-305

General fund budget, additional financing, 20-9-353

Held when, 13-1-104, 13-1-107, 20-3-304, 20-20-105

## High school districts

- annexation, 20-6-422
- consolidation, 20-6-423

Instruction of election judges, 13-4-203

Interstate school agreements, joint, 20-9-705

Judges, 13-13-101

- absentee, appointment for, 20-20-402
- appointment, 13-4-101 — 13-4-107, 20-20-203
- ballots, duties, See Ballots, generally
- challenges, duties, See Electors, challenges
- disabled electors, 13-13-118, 13-13-119
- duties of chief, 13-4-201
- emergencies, 13-4-207
- instructions, 13-4-203
- lists of registered electors, delivery, 20-20-313
- oath, 13-4-105, 13-13-101, 20-20-410
- payment, 13-4-106, 20-20-107

**ELECTIONS** (continued)

## Judges (continued)

training, 13-1-203

Junior high schools, opening, 20-6-505

Mill levy election, 15-10-425

Minorities, voting rights - protection, 20-3-336, 20-3-337

Nonpartisan, 13-14-111 — 13-14-118

Notice for, 20-20-204

bond elections, 20-9-427

canceled election, 20-20-108

special elections, 13-1-108

Obstructions, preventing, 13-13-122

Over-BASE budget, amount exceeding limitations, 20-9-353

## Petitions for

bond issues, See BONDS AND BOND ISSUES

county high schools, unification, 20-6-312

## districts

annexation, 20-6-422

consolidation, 20-6-423

trustees, alternative method of election, 20-3-352

Pollbooks, 13-13-115, 13-13-234

Poll hours, 13-1-106, 20-20-106, 20-20-203, 20-20-204

## Polling places, 20-20-203

accessibility, 13-3-201, 13-3-202, 13-3-205 — 13-3-207, 13-3-211 — 13-3-213

booths, voting machines, or voting devices, 13-1-101, 13-13-111, 13-13-112, 13-17-101 — 13-17-103, 20-20-421

definitions, 13-3-202

designation of, 13-3-105

general election held with school election, 13-1-106

instructions for electors, 13-13-112

notice specifying, 20-20-204

obstructions, preventing, 13-13-122

precinct boundaries, 13-3-101 — 13-3-103

school buildings used as, school holiday when, 20-1-305

supplies, 13-13-101, 20-20-401

warning notices, posting, 13-13-113

youth voting program, Title 13, chapter 22, See Youth voting program

Poll watchers, 13-13-120, 13-13-121

Precedence of provisions, 20-20-102

## Precinct

boundaries, 13-3-101 — 13-3-103

register book, 13-2-116, 13-13-114, 13-13-118, 13-13-119, 20-20-312

Preparation generally, Title 20, chapter 20, part 2

## Primary elections

time for holding, 13-1-107

Procedures, Title 13, chapter 13; Title 20, chapter 20, part 4

Reactivation of elector, 13-2-222

Records open to public, 13-1-109, 13-1-204

Recount boards, 20-20-420

## Registration

absentee ballots, comparison, 13-13-213

closure 13-2-301, 20-20-311

facsimile transmission, by, 13-21-104, 13-21-207

records, 13-2-112, 13-2-115

residence, determination, 13-1-112

youth voting program, Title 13, chapter 22

Rescheduling when, 20-20-108

## Residence

determination, rules for, 13-1-112

only one residence, 13-1-113

qualification of voter, 13-1-111

**ELECTIONS** (continued)

Residence (continued)

term of, computation, 13-1-114

Resolutions for

bond issues, 20-9-421, 20-9-422

building reserve, 20-9-502

calling of election generally, 20-20-201

poll hours, polling places, and judges for, 20-20-203

Results, publication, 20-20-416

School elections, 20-20-101 — 20-20-421

Secret ballot, 13-1-102

Secretary of State, duties, 13-1-201 — 13-1-204, 13-12-201

Sites and facilities

acquisition or disposal, 20-6-603

approval of site, 20-6-621

land use, cessation, 20-6-605

leases, for, 20-6-625

Special, 13-1-101, 20-20-105

notice, 13-1-108

Supervision, 20-20-401

Supplies, 20-20-401

Transfer registration, 13-2-511

Trustees, election of

alternative method of election, 20-3-352

annual, to be, 20-3-304

appointments subject to election, 20-3-353, 20-3-354, 20-6-301, 20-6-313

ballot, form, 20-3-306

call for election, 20-3-306, 20-3-352

certificate of election, 20-3-307, 20-20-416

conduct of election, 20-3-306

district's classification changed, 20-3-302

elected by acclamation, 20-3-313

elementary districts, 20-3-302

additional positions when, 20-3-302, 20-3-341

consolidation, 20-3-302

first-class, nomination by petition, 20-3-344

new, creation, 20-3-302

held when, 20-3-304, 20-3-306, 20-3-352

high school districts, 20-3-302

additional positions when, 20-3-302, 20-3-353, 20-3-354, 20-6-313

alternative method of election, 20-3-352

county high school, operating, 20-3-356

nominating districts, 20-3-205, 20-3-353, 20-3-354, 20-3-356, 20-6-313

majority, legislative intent to elect less than, 20-3-302

nominating districts, establishment and purpose, 20-3-205, 20-3-353, 20-3-354, 20-3-356, 20-6-313

nomination for candidacy, 20-3-305, 20-3-338, 20-3-344, 20-3-356

petition, nomination by - when, 20-3-344

qualification, 20-3-307, 20-3-308, 20-3-338

single-member trustee districts, 20-3-336 — 20-3-338

vacancies, filling, 20-3-302, 20-3-308

Voters, See Electors

Voting machines, 13-1-101, 13-13-111, 13-13-112, 13-13-115, 13-13-203; Title 13, chapter 17; 20-20-421

Voting rights of minorities, protection, 20-3-336, 20-3-337

Winner, determination, 13-1-103

Write-in candidates, declaration of intent — filing, 13-10-211, 13-15-111

Youth voting program, 13-22-101 — 13-22-108

**ELECTRONIC RECORDS AND SIGNATURES**

Acceptance and use, 2-20-105

Confidentiality, 2-20-105



**ELECTRONIC RECORDS AND SIGNATURES** (continued)

- Construction of provisions, 2-20-104
- Contracts, 2-20-104, 2-20-108
- Definitions, 2-20-103
- Exceptions, 2-20-104
- Management, 2-20-111
- Rule of law, 2-20-103
- Rules, 2-20-105, 2-20-109, 2-20-110
- Security procedure, 2-20-103, 2-20-107

**ELEMENTARY SCHOOLS**, 20-6-501

- Accreditation, 20-7-102, See Also ACCREDITATION
- Opening or reopening, 20-6-502
- Relocation within district, 20-6-218

**EMERGENCIES**

- Bids for sites, facilities, or supplies - requirements waived, 20-9-204
- Closure of schools, See EMERGENCY SCHOOL CLOSURE
- Hours in school week, reduction, 20-1-302
- Saturday, pupil instruction on, 20-1-303, 20-3-324
- School trustee meetings, effect on, 20-3-322
- Teachers, authorization to teach, See TEACHERS, Emergency authorization to teach
- Unforeseen emergency, 20-3-322, 20-9-802

**EMERGENCY SCHOOL CLOSURE**, 20-9-801, 20-9-802, 20-9-805, 20-9-806**EMOTIONALLY DISTURBED CHILDREN**

- Defined, 20-7-401
- Eligible child defined, 20-7-436
- Inpatient treatment, 20-7-420

**ENROLLMENT**

- Caretaker relative, by, 20-5-501, 20-5-502
- Compulsory, 20-5-102

**EQUALIZATION AID, COUNTY**

- See also, FINANCE
- Apportionment, 20-3-205, 20-9-335
- BASE funding program, 20-9-306, 20-9-307
- County basic tax, 20-5-324, 20-6-702, 20-9-212, 20-9-331, 20-9-333, 20-9-347, 20-10-144
- Direct state aid, 20-9-306
- Distribution, 20-9-346
- Elementary districts, 20-9-331, 20-9-332, 20-9-335
- Federal or state money in lieu of property tax, 20-9-331, 20-9-333
- General fund budget, 20-9-308
- High school districts, 20-9-333, 20-9-335
- Reduction when, 20-1-301
- Retirement systems, high school obligations — county tax, 20-9-212
- Revenues for, 20-9-331, 20-9-333, 20-9-361
- State advance, 20-9-212, 20-9-331, 20-9-333, 20-9-344, 20-9-346, 20-9-347
- Taylor grazing act money, allocation, 20-9-331
- Transportation, high school — county tax, 20-9-212
- Withheld when, 20-9-344

**EQUALIZATION AID, STATE**

- See also FINANCE; BASE FUNDING PROGRAM; BUDGETS AND BUDGET SYSTEM;  
GUARANTEED TAX BASE AID
- Definition, 20-9-343
- Interest and income money, 20-9-341 — 20-9-343

**EQUAL OPPORTUNITY IN EDUCATION**, Const., X, 1; X, 7**ETHICS, CODE OF**, Const., XIII, 4

- Definitions, 2-2-102
- Enforcement, 2-2-144
- Ethical requirements, 2-2-105
- Local government officers and employees, 2-2-144

**ETHICS, CODE OF** (continued)

- Public officers and employees, 2-2-102 — 2-2-105, 2-2-121, 2-2-131
- Public trust, 2-2-103
- Purpose, 2-2-101
- Rules of conduct, 2-2-104, 2-2-121
- Secretary of state, duties, 2-2-131

**EXPULSION OF PUPILS**, 20-5-201, 20-5-202**F****FINANCE**

- Accountability of school district, 20-9-213
- Accounting
  - adult basic education funds, 20-7-712
  - apportionment of money, 20-9-212
  - budget form, format, 20-9-103
  - building fund, 20-9-508
  - county basic special tax revenue, 20-9-333
  - county basic tax revenue, 20-9-331
  - county equalization aid, 20-9-361
  - extracurricular fund, 20-9-504
  - funds generally, 20-9-212, 20-9-213
  - guaranteed tax base aid, 20-9-368, 20-9-369
  - miscellaneous programs fund, 20-9-507
  - receipts and expenditures, 20-3-208, 20-3-325, 20-7-431, 20-9-201, 20-9-212, 20-9-213, 20-9-504
  - records, 20-9-203, 20-9-213; Title 2, chapter 7, part 5
  - school facilities, 20-9-369
  - special education expenditures, 20-7-431, 20-9-303
  - state equalization aid, 20-9-360
  - technology acquisition fund, 20-9-533
  - vocational education, secondary, 20-7-305
- Accounts
  - clearing accounts, 20-9-220
  - end-of-year balances, disposition, 20-9-331, 20-9-333
  - extracurricular fund, bank account, 20-9-504
  - overdue, interest assessment, 20-9-225 — 20-9-227
  - transactions, recording, 20-9-213
- Accreditation, lack of - effect, 20-9-311
- Acts of God
  - budget amendments, 20-9-161
  - closure of school, 20-9-802
- Administration
  - application of provisions, 20-9-201
  - joint districts, 20-9-202
  - supervision, 20-3-106, 20-9-201
  - trustees, by, 20-3-324
- Administrative rules with fiscal impact, 20-7-101
- Adult basic education, 20-7-711, 20-7-712
- Adult education
  - budget, 20-7-705, 20-7-713
  - fund, 20-3-324, 20-7-705, 20-7-713, 20-9-201, See also Funds generally
  - levy requirements, 20-7-705
  - tuition and fees, 20-7-704
- Agency fund, nonbudgeted fund, 20-9-201, See also Funds generally
- American Indian achievement gap payment, 20-9-330
- ANB, See AVERAGE NUMBER BELONGING (ANB)
- Annexation of districts, 20-6-422
- Apportionment of money
  - accounting, 20-9-212
  - county equalization, 20-3-205, 20-9-335

**FINANCE** (continued)

## Apportionment of money (continued)

- county superintendent of schools, by, 20-3-205
- county treasurer, 20-3-205, 20-9-121, 20-9-212
- emergency school closure, effect, 20-9-801, 20-9-806
- state equalization aid, 20-3-106, 20-3-205
- superintendent of public instruction, by, 20-3-106, 20-9-212, 20-9-335, 20-9-346
- transportation reimbursements, 20-10-145, 20-10-146
- vocational education - basis for, 20-7-301

## At-risk student payment, 20-9-328

## Attachment of elementary to high school districts, 20-6-702, 20-6-703

## Audits, 20-3-205, 20-9-203, 20-9-213, 20-10-202; Title 2, chapter 7, part 5, See AUDITS

## Average number belonging (ANB), See AVERAGE NUMBER BELONGING (ANB)

## BASE aid, 20-9-306

- county taxes to support, 20-9-212
- deficiency, funding, 20-9-351
- distribution and administration, 20-2-121, 20-3-106, 20-9-346, 20-9-347
- state equalization aid, 20-9-343

## BASE budget, 20-9-141, 20-9-303, 20-9-306, 20-9-308, See also BUDGETS AND BUDGET SYSTEM

- guaranteed tax base aid, 20-9-366 — 20-9-369
- levy, 20-3-324, 20-6-702, 20-9-104, 20-9-141, 20-9-306, 20-9-308
- over-BASE budget amount or levy, 20-3-324, 20-9-104, 20-9-141, 20-9-306, 20-9-308, 20-9-353
- over-BASE budget, exceptions, 20-9-308
- school facilities, 20-9-369

## BASE funding program, 20-9-306, 20-9-347

- administrative rules with fiscal impact, funding, 20-7-101
- average number belonging (ANB) used to establish, 20-9-314
- budget amendments, aid for, 20-9-166
- elementary districts, county equalization, 20-9-331, See County equalization aid
- elementary schools with ANB of 9 or fewer pupils, 20-9-141, 20-9-303
- high school districts, county equalization, 20-9-333, See County equalization aid
- joint districts, 20-9-305
- junior high schools, proration of amount when, 20-6-506
- K-12 districts, 20-6-702
- nonaccredited schools, 20-9-311
- opening or reopening schools, 20-6-502 — 20-6-504, 20-6-507
- out-of-district attendance agreements, reimbursements, 20-5-324
- state equalization aid, 20-9-343, 20-9-348

## Basic entitlement, 20-9-306, 20-9-311, 20-9-314, 20-9-367, 20-9-368

## Basic system of free quality public schools, definition, 20-9-309

## Bequests, 20-6-601, 20-8-111, 20-9-601

## Bids, See SITES AND FACILITIES, Contracts

## Block grants

- retirement, 20-9-631
- transportation, 20-9-632

## Bonded indebtedness

- boundary changes, effect, 20-6-411
- budget adoption, payment after, 20-9-133
- cessation of district, payment, 20-6-413
- consolidation of districts, effect, 20-6-414
- elementary district consolidation or annexation, 20-6-411, 20-6-414, 20-6-422, 20-6-423
- high school district consolidation or annexation, 20-6-422, 20-6-423
- limitations, 20-9-406, 20-9-471
- school facilities, state reimbursement, 20-9-370, 20-9-371

## Bonds and bond issues, See BONDS AND BOND ISSUES

## Budget amendments, budget board, and budget system, See BUDGETS AND BUDGET SYSTEM

## Budgeted funds, See Funds generally

## Building fund, 20-9-508

- bonds, sale money, 20-9-435, 20-9-508
- establishment and administration, 20-3-324

**FINANCE (continued)****Building fund (continued)**

- interest credited to, when, 20-9-213, 20-9-508
- nonbudgeted fund, as, 20-9-201, 20-9-508, See also Funds generally
- property sale or disposal proceeds, deposit, 20-6-604
- vocational-technical secondary schools, money from sale or lease of district's interest, 20-9-405
- voluntary rural residential impact payments, 20-9-615

**Building reserve fund**

- budgeted fund, as, 20-9-201, See also Funds generally
- budgeting, tax levy, and use, 20-3-324, 20-9-503
- establishment and administration, 20-3-324
- investment of money from, 20-9-503
- purpose, authorization, and limitations, 20-9-502

**Bus depreciation fund, 20-10-147**

- budgeted fund, as, 20-9-201, See also Funds generally
- transfer to another fund only if bus is sold, 20-10-147

**Business incubators, tax exemption - applicability, 15-24-1802****Cessation of district, cash disposition and tuition debt, 20-6-413****Claims, 20-9-209, 20-9-225 — 20-9-227****Clearing accounts, 20-9-220****Common school fund, See County school funds****Compensated absence liability fund, 20-9-512****Consolidation of districts, 20-6-423****Contracts, See SITES AND FACILITIES; TRANSPORTATION, Contracts; Individual transportation; Private party contracts****Cooperatives, full service education, 20-7-451, 20-7-452, 20-7-455, 20-7-457****Cost sharing, junior high school operated by elementary and high school districts, 20-6-506****County equalization aid**

- administration, 20-9-346
- aircraft fee in lieu of tax, 20-9-331, 20-9-333
- apportionment, 20-3-205, 20-9-335
- BASE funding program, 20-9-306
- boat fees in lieu of tax, 20-9-331, 20-9-333
- camper fee in lieu of tax, 20-9-331, 20-9-333
- coal gross proceeds tax, 20-9-331, 20-9-333
- county basic tax, 15-24-1402, 15-24-1501, 15-24-1802, 15-24-1902, 15-24-2002, 20-6-702, 20-5-324, 20-6-702, 20-9-212, 20-9-331, 20-9-333, 20-9-347, 20-10-144
- direct state aid, 20-9-306
- distribution, 20-9-346
- elementary districts, 20-9-331, 20-9-332, 20-9-335
- federal or state money in lieu of property tax, 20-9-331, 20-9-333
- finances and penalties paid to county, revenue from, 20-9-331, 20-9-332
- flood control act, federal — allocation of money from, 20-9-331
- forest reserve money, federal apportionment, 20-9-331, 20-9-333
- general fund budget, 20-9-308
- high school districts, 20-9-333 — 20-9-335
- motorcycle fee in lieu of tax, 20-9-331, 20-9-333
- motor home fee in lieu of tax, 20-9-331, 20-9-333
- motor vehicle taxes, 20-9-331, 20-9-333
- off-highway vehicle fee in lieu of tax, 20-9-331, 20-9-333
- oil and natural gas production taxes, consideration in levy requirement, 20-9-331, 20-9-333
- retirement systems, high school obligations - county tax, 20-9-212
- revenues for, 20-9-331, 20-9-333, 20-9-361
- state advance, 20-9-212, 20-9-331, 20-9-333, 20-9-344, 20-9-347
- Taylor grazing act money, allocation, 20-9-331
- transportation, high school county tax, 20-9-212
- travel trailer fee in lieu of tax, 20-9-331, 20-9-333
- withheld when, 20-9-344

**County high school bonds, See BONDS AND BOND ISSUES****County high school unification, transactions following, 20-6-313**

**FINANCE** (continued)

## County school funds

- accounting, 20-9-212
- basic county tax account, 20-5-324
- cash balance statements, 20-9-121
- common school fund
  - flood control act, federal — money from, 20-9-331
  - Taylor grazing act, money from, 20-9-331

## Debt service

- bonds secured by state loans, 20-9-466
- cash, investment, 20-9-439
- obligations, payment, 20-9-440, 20-9-471, See also Debt service fund
- state equalization aid, 20-9-346

## Debt service fund

- bonds, sale money, 20-9-435, 20-9-508
- boundary changes, use of fund, 20-6-411
- budget, 20-9-133, 20-9-438, See also BUDGETS AND BUDGET SYSTEM
- budgeted fund, as, 20-9-201, See also Funds, generally
- cessation of district, use of fund, 20-6-413
- consolidated districts, 20-6-414
- county high school bonds outstanding at time of unification, effect, 20-6-313
- end-of-the-year balance, reappropriation, 20-9-438
- grant or loan proceeds, 7-7-109
- interest credited to, when, 20-9-213, 20-9-503
- investment of money from, 20-9-441
- lease and rental money, deposit, 20-9-509
- legal bonded debt payments after budget adoption, 20-9-133
- levy requirements, 20-9-439, 20-9-440, 20-9-466, 20-9-506
- nonoperating budget, inclusion, 20-9-506
- nonoperating fund, balance not transferred to, 20-9-505
- operating reserve, limited, 20-9-438
- payments from, 20-9-406, 20-9-440
- property sale or disposal proceeds, deposit, 20-6-604
- purpose, 20-9-440
- refunding bonds, payments, 20-9-406, 20-9-412
- remaining, disposition, 20-9-443
- school facilities, state reimbursement or advance 20-9-367, 20-9-370, 20-9-371
- special improvement district assessments, 20-9-438, 20-9-440
- state equalization aid, 20-9-346
- tuition rates, determination, 20-5-323
- vocational-technical secondary school, money from sale or lease of district's interest, 20-9-405

## Definitions

- administrative school district employee, 20-9-512
- BASE funding program, 20-9-306
- bonds, forms, 20-9-408
- budget amendment, 20-9-161
- emergency school closure provisions, 20-9-802
- fund, budgeted fund, or nonbudgeted fund, 20-9-201
- guaranteed tax base aid provisions, 20-9-366
- interest and income money, 20-9-341
- interest assessment provisions, 20-9-225
- interlocal cooperative agreement provisions, 20-9-701
- school district, 20-7-305, 20-9-402
- school facility entitlement, 20-9-370
- state equalization aid, 20-9-343

## Devises, 20-9-604

## Direct state aid, See State aid, direct

## Disbursements, See Expenditures

## Donations to schools, 20-9-601

## Educational impact statements, 20-1-208, 20-1-209, 20-9-407

## Emergency school closure, Title 20, chapter 9, part 8, See also EMERGENCIES



**FINANCE (continued)**

Endowment fund, 20-9-604

nonbudgeted fund, as, 20-9-201, See also Funds generally

Enterprise fund, nonbudgeted fund, 20-9-201, See also Funds generally

Entitlements

BASE aid, 20-9-344, 20-9-346

basic, 20-9-306, 20-9-311, 20-9-314, 20-9-367, 20-9-368

guaranteed tax base aid, 20-9-369

industrial arts, 20-7-306

school facility, 20-9-366, 20-9-369, 20-9-370, 20-9-371

state equalization aid, 20-9-801, 20-9-805

total per-ANB, 20-6-702, 20-9-306, 20-9-314, 20-9-366 —20-9-368

vocational education, secondary, 20-7-306

Equalization aid, Title 20, chapter 9, part 3

average number belonging, See AVERAGE NUMBER BELONGING (ANB)

BASE funding program, See BASE funding program

county, See County equalization aid

general fund, See General fund

general fund budget, See BUDGETS AND BUDGET SYSTEM

guaranteed tax base aid, See Guaranteed tax base aid

interest and income money, 20-9-341 — 20-9-343

sustainable yield calculation, 20-9-343

Equitable funding of education required, Const., X, 1

Expenditures

accounting, 20-3-325, 20-7-431, 20-9-201, 20-9-212, 20-9-213, 20-9-504

adult education fund, 20-7-705

annual report, 20-3-205

authority, 20-9-213

budget amendment, 20-9-163, 20-9-165

building reserve fund, 20-9-503

bus depreciation reserve fund, 20-10-147

clerk of the district, 20-3-325

county superintendent of schools, 20-3-208

debt service fund final budget expenditure amounts, 20-9-438

documentation, 20-3-323, 20-9-207

extracurricular fund, 20-9-504

federal money, 20-3-106, 20-3-208, 20-9-331, 20-9-603, 20-10-201, 20-10-204

flood control act, federal - funds, 20-9-331

food services money, 20-10-201, 20-10-204

industrial arts programs, 20-7-306

interlocal cooperative agreements, 20-9-703, 20-9-704

lease or rental agreement fund, 20-9-509

limitations, 20-9-133

metal mines tax reserve fund, 20-9-231

miscellaneous programs fund, 20-9-507

nonbudgeted funds, 20-9-201, 20-9-210

nonoperating fund, 20-9-505

obligations, issuance for payment, 20-9-471

retirement fund final budget expenditure amounts, 20-9-501

social security contributions, priority, 19-1-814

special education, accounting, 20-7-431, 20-9-303

traffic education fund, 20-7-507

transportation, 20-5-323, 20-10-143 —20-10-145

vocational education, secondary - programs, 20-7-306

Extracurricular fund, 20-9-504

audit of, Title 2, chapter 7, part 5, See AUDITS

nonbudgeted fund, as, 20-9-201, See also Funds generally

Federal money

acceptance, 20-3-106, 20-3-208, 20-9-603

adult education, for, 20-7-705, 20-7-711

debt service fund levy requirements, 20-9-439

expenditure, 20-3-106, 20-3-208, 20-9-331, 20-9-603, 20-10-201, 20-10-204

**FINANCE** (continued)

## Federal money (continued)

- flood control, 20-9-331
- forest reserve, apportionment, 20-9-331, 20-9-333, 20-10-146
- funds for, See Building fund; Miscellaneous programs fund
- indigent children, for, 20-3-205, 20-10-205
- interlocal cooperative agreements, 20-9-703
- property tax, in lieu of, 20-9-143, 20-9-331, 20-9-333, 20-10-204, 20-10-205
- property tax reduction, availability for, 20-10-144
- school food services, for, 20-3-106, 20-3-205, 20-10-201, 20-10-204, 20-10-205

Taylor grazing act, 20-9-331

Title I money, 20-9-143, 20-9-507, 20-9-514, 20-10-144

- vocational education, 20-7-301, 20-7-303, 20-7-321

Fees, pupils, 20-9-214

Final budgets, See BUDGETS AND BUDGET SYSTEM

Fines and penalties, 20-9-331, 20-9-332, 20-9-435

Fiscal year, 20-1-301

Fish, wildlife, and parks - departmental funds allocated to district when, 87-1-603, 87-1-604

Flexibility fund, 20-9-542, 20-9-543

Flood Control Act, Federal - money from, 17-3-231, 17-3-232, 20-9-331

Forest reserve money, federal - apportionment, 17-3-213, 20-9-331, 20-9-333, 20-10-146

Funds generally, See also specific fund

- accounting, 20-9-212, 20-9-213

appropriations, See APPROPRIATIONS

budget amendments for, See BUDGETS AND BUDGET SYSTEM

budgeted funds, 20-9-201

- accounting, 20-9-212

adult education fund, 20-7-705, 20-9-201

coal gross proceeds taxes, reallocation when, 15-23-703

enrollment increase, budget amendments, 20-9-161, 20-9-162, 20-9-165, 20-9-166

flexibility fund, 20-9-542, 20-9-543

K-12 districts, 20-6-702

lapse of appropriations, 20-9-209

nonoperating fund, 20-9-201, 20-9-505

transfer among appropriated items, 20-9-208

tuition, calculation, 20-5-323

warrants, 20-9-212, 20-9-213, 20-9-221

budgeting for, See BUDGETS AND BUDGET SYSTEMS

cash balances, 20-3-205, 20-6-702, 20-9-121, 20-9-201

classification, 20-9-201

clearing accounts, 20-9-220

closing, 20-9-201

compensated absence liability fund, 20-9-512

county, See County school funds

definitions, 20-9-201

end-of-the year balance, reappropriation, 20-9-438

inactive, 20-9-201

interlocal cooperative agreements, support for, 20-9-703, 20-9-704

investment by state, Const., VIII, 13

levy requirements, See specific fund; PROPERTY TAX, Levies

nonbudgeted funds, 20-9-201

- accounting, 20-9-212

building fund, 20-9-201, 20-9-508

expenditure, limitation, 20-9-210

fees, pupil — deposit, 20-9-214

impact aid fund, 20-3-324, 20-9-143, 20-9-201, 20-9-514

interlocal cooperative agreement fund, 20-9-201, 20-9-511

lease or rental agreement fund, 20-9-201, 20-9-509

litigation reserve, 20-9-201, 20-9-515

metal mines tax reserve fund, 20-9-201, 20-9-231

miscellaneous programs fund, 20-9-201, 20-9-507

school food services fund, 20-9-201, 20-10-207

**FINANCE (continued)**

## Funds generally (continued)

## nonbudgeted funds (continued)

- technology acquisition fund, 20-9-533, 20-9-534
- traffic education fund, 20-7-507, 20-9-201, 20-9-510
- tuition “add on”, 20-5-324, 20-9-141
- warrants, 20-9-221

- outstanding obligations, statement of amount, 20-9-121
- property sale or disposal proceeds, deposit, 20-6-604
- records, See Records

revenue estimates, 20-3-205

special purpose funds, Title 20, chapter 9, part 5, See also specific fund

transfers between, when, 20-9-133, 20-9-208

## General fund

average number belonging (ANB) established for, 20-3-324

BASE budget levy requirement, 20-9-141

budget, See BUDGETS AND BUDGET SYSTEM

budget amendments, state aid, 20-9-166

budgeted fund, as, 20-9-201, See also Funds generally

debt service fund money transferred to, when, 20-9-443

end-of-the-year balance, 20-9-104

fees, pupil — deposit, 20-9-214

funds, cash balances - transfer to, 20-9-201

investment of general fund cash, interest earnings, 20-9-141

joint districts, calculation, 20-9-305

judgments, payment, 2-9-316

lease and rental money, deposit, 20-9-509

levy requirement, 20-3-205, 20-9-141, 20-9-142

oil and natural gas production tax, consideration in levy requirement, 20-9-141

operating reserve, 20-3-324, 20-9-104, 20-9-505

property sale or disposal proceeds, deposit, 20-6-604

reappropriation of balance, 20-9-104, 20-9-141

sick leave, accumulated - fund for payment, 20-9-512

special education expenditures, accounting, 20-7-431

trustees' duties generally, 20-3-324

tuition, 20-5-323, 20-5-324

vacation leave, accumulated - fund for payment, 20-9-512

vocational-technical secondary schools, money from sale or lease of district's interest,  
20-9-405

warrants, 20-9-104

youth detention centers, district obligation for students, 20-9-130, 41-5-1807

Gifted and talented children programs, 20-7-903

Gifts, 20-9-604

Grants, 7-7-109, 20-6-601, 20-9-507, 20-9-508, 20-9-603, 20-9-703, See also Federal money; Public  
school fund

Group health and life insurance, 20-3-331

Guaranteed tax base aid

amount, 20-9-368

BASE aid, 20-9-306

BASE funding program, 20-6-702

calculation, 20-9-368, 20-9-369

deficiency in BASE aid, 20-9-351

definitions, 20-9-366

distribution, 20-3-106, 20-9-344, 20-9-347, 20-9-369

eligibility, 20-9-346, 20-9-367

general fund budget, 20-9-308

general fund levy requirement, calculation, 20-9-141

records and reports, 20-9-369

retirement fund budget, 20-6-702, 20-9-367, 20-9-368, 20-9-501

return of excess or reversion, 20-9-368

state equalization aid, 20-9-343

taxable value determinations, 20-9-369

**FINANCE** (continued)

- Impact aid fund, 20-3-324, 20-9-143, 20-9-201, 20-9-514
  - obligation for students in youth detention facilities, 20-9-130
- Impact aid reserve bonds, 20-9-472
- Impact statements, 20-1-208, 20-1-209, 20-9-407
- Indian Education for All payment, 20-9-329
- Industrial arts programs, 20-7-305, 20-7-306
- Industrial facility agreement for bond issues, 20-9-407
- Insurance fund, restrictions, 2-9-211
- Insurance settlement, 20-6-608
- Interest and income money, 20-9-341 — 20-9-343
- Interest assessment on overdue accounts, 20-9-225 — 20-9-227
- Interlocal cooperative agreements, See also INTERLOCAL COOPERATION
  - cooperating agency, 20-9-701, 20-9-704
  - definitions, 20-9-701
  - federal money, 20-3-106, 20-9-703, 20-9-704
  - financial administration, 20-3-324, 20-9-702
  - fund, 20-3-324, 20-9-201, 20-9-511, 20-9-703, 20-9-704, See also Funds generally
  - prime agency, 20-9-701, 20-9-703
  - self-insurance reserve fund, for, 2-9-211
- Internal service fund, 20-3-331
  - nonbudgeted fund, as, 20-9-201, See also Funds generally
- Interstate school agreements, joint, 20-3-106, 20-9-705
- Investments, Const., VIII, 13, See also LOCAL GOVERNMENT, Public funds
  - accounts, investment, 20-9-235
  - bond proceeds, 20-9-435, 20-9-439
  - building fund money, 20-9-508
  - building reserve fund money, 20-9-503
  - contracts made by trustees, provisions concerning, 20-9-204
  - county high school money, 7-6-2701
  - debt service cash, 20-9-439
  - debt service fund money, 20-9-441
  - deposit in financial institutions, 7-6-201
  - district money, 7-6-2701, 20-9-212, 20-9-213
  - endowment fund money, 20-9-604
  - general fund cash, interest earnings, 20-9-141
  - land commissioners, board of - funds held by, 20-9-341
  - metal mines tax reserve fund, 20-9-231
  - permissible investments
    - duties of trustees, 20-9-213
    - eligible securities, 7-6-202
    - interest, crediting, 7-6-204, 20-9-213
    - repurchase agreements - limitations, 7-6-202, 7-6-205, 7-6-213
  - public school fund, 20-9-341; Const., VIII, 13
  - state, by, Const., VIII, 13
  - tax and revenue anticipation note proceeds, 7-6-1102
  - transportation fund cash, 20-10-144
- Isolated schools, 20-3-106, 20-3-205, 20-3-324, 20-9-302, 20-9-303
- Joint districts
  - administration, 20-9-202
  - annual reports, 20-9-213
  - budget procedures, 20-9-151
  - direct state aid, proration and calculation, 20-9-305
  - levy requirements, 20-3-106, 20-9-151, 20-9-152
  - property valuation statements, 20-9-122
  - retirement fund levy requirements, 20-9-501
  - revenue received for, accounting, 20-9-212
- Joint interstate school agreements, 20-9-705
- Judgments, payment, 2-9-316, 20-9-161, 20-9-403, 20-9-435, 20-9-471
- K-12 districts required, exception, 20-6-701
- Lease or rental agreement fund, 20-9-509
  - establishment and administration, 20-3-324

**FINANCE** (continued)

- Lease or rental agreement fund (continued)
  - nonbudgeted fund, as, 20-9-201, 20-9-509, See also Funds generally
- Legacies, 20-9-604
- Levies, See PROPERTY TAX
- Liability insurance, 20-3-331
- Litigation reserve fund, 20-9-515
  - general fund limits, 20-9-515
  - nonbudgeted fund, as, 20-9-201
- Loans
  - long-term, replacement of property, 20-6-640
- Maximum general fund budget, 20-6-603, 20-9-141, 20-9-163, 20-9-306, 20-9-308, 20-9-353, See also General fund budget
- Metal mines license tax revenue, 15-37-117, 20-9-231
- Metal mines tax reserve fund, 15-37-117, 20-9-231
  - nonbudgeted fund, as, 20-9-201, 20-9-231, See also Funds generally
- Mineral impact account, 17-3-241
- Miscellaneous federal programs fund, 20-3-324, 20-9-703, 20-9-704
- Miscellaneous programs fund, 20-9-507
  - adult education program money, deposit, 20-7-705
  - cooperatives, full service education - establishment, 20-7-457
  - industrial arts programs, deposit for, 20-7-306
  - nonbudgeted fund, as, 20-9-201, 20-9-507, See also Funds generally
  - nonoperating fund balance not transferred to, 20-9-505
  - special education, 20-7-435
  - tuition, unanticipated receipts - deposit, 20-5-324, 20-9-141
  - vocational education, secondary - deposit for, 20-7-306
- New duties, financing, 1-2-113, 20-7-101
- Nonbudgeted funds, See Funds generally
- Nonoperating fund
  - budgeted fund, as, 20-9-201, See also Funds generally
  - budgeting and levy requirement, 20-3-324, 20-9-506
  - establishment and administration, 20-3-324
  - operating reserve, 20-9-505
  - purpose and establishment, 20-9-505
- Notes
  - self-insurance reserve fund, to fund, 2-9-211
  - tax and revenue anticipation, issuance and sale, 7-7-109, 20-9-212; Title 7, chapter 6, part 11
- Obligations - sale, issuance, and limitation, 20-9-471; Title 7, chapter 6, part 11
- Operating reserve
  - adult education fund, 20-7-713
  - budget amendment, calculation, 20-9-165
  - debt service fund, 20-9-438, 20-9-439
  - general fund, 20-3-324, 20-9-104, 20-9-505
  - nonoperating fund, 20-9-505
  - retirement fund, 20-9-501
  - transportation fund, 20-10-144, 20-10-146
- Overdue accounts, interest assessment, 20-9-225 — 20-9-227
- Personal property
  - ordered but not paid for, recording, 20-9-209
  - tax revenue reduction, reimbursement, 15-1-111
- Private schools, public money to prohibited, Const., V, 11; X, 6
- Property, disposal proceeds, 20-6-604
- Property tax, See PROPERTY TAX
- Public Employees' Retirement System
  - retirement fund to pay employer's contributions, 20-9-501
  - special education allowable costs, 20-7-431, 20-7-435
- Public school fund, 20-9-601; Const., X, 2
  - escheated property proceeds, deposit to, Const., X, 2
  - farm mortgage lands, title vested in, 20-9-602
  - income allocation, Const., X, 5



**FINANCE** (continued)

## Public school fund (continued)

- investment, 20-9-341; Const., VIII, 13
- inviolate, Const., X, 3
- revenue credited to, 20-9-341
- unclaimed property, proceeds from sale, Const., X, 2

## Quality educator payment, 20-9-327

## Reappropriation

- debt service fund balance, 20-9-438
- general fund balance, 20-9-104, 20-9-141
- retirement fund balance, 20-9-501
- transportation fund balance, 20-10-144, 20-10-146

## Receipts

- accounting, 20-3-325, 20-9-201, 20-9-212, 20-9-213, 20-9-504
- clerk of the district, 20-3-325
- county superintendent of schools, 20-3-208

## Records

- accounting, 20-3-325, 20-9-203, 20-9-213, 20-9-221; Title 2, chapter 7, part 5
- appropriation items, entries of transfers among, 20-9-208
- audits, 20-3-205, 20-9-203, 20-9-213, 20-10-202; Title 2, chapter 7, part 5, See also AUDITS
- bond registration, 20-9-442
- clearing accounts, 20-9-220
- destruction allowed when, 20-9-215
- food service commodity, 20-10-202
- guaranteed tax base aid, 20-9-369
- public availability, 20-9-213
- state equalization aid, 20-9-346

## Reports

- annual, 20-3-205, 20-3-209, 20-9-211, 20-9-213
- audit, filing, 20-3-205, 20-9-203; Title 2, chapter 7, part 5, See also AUDITS
- BASE aid payments, 20-9-347
- bond issues, validity, 20-9-462, 20-9-463
- bus depreciation reserve fund revenue requirement, 20-10-147
- cash balances and bond information, 20-9-121
- county treasurer, by, 20-9-212
- endowment fund, 20-9-604
- failure to make, 20-9-344
- final budget, 20-9-133
- financial, Title 2, chapter 7, part 5, See AUDITS
- finances imposed and collected, concerning, 20-9-332
- fiscal activities, 20-9-213
- fund, 20-9-212, 20-9-213
- guaranteed tax base aid, 20-9-369
- levy requirements
  - adult education, 20-7-705
  - building reserve fund, 20-9-503
  - debt service fund, 20-9-439
  - general fund, 20-9-141
  - nonoperating fund, 20-9-506
  - retirement fund, 20-9-501
  - transportation fund, 20-10-144
- public education, board of - required by, 20-9-344
- school food services, 20-10-201, 20-10-202
- school trustees, by 20-3-106, 20-7-306, 20-9-213
- special education allowable cost payments, 20-9-347
- state equalization aid, 20-9-346
- transportation fund, 20-10-143, 20-10-144

## Retirement fund

- aircraft fee in lieu of tax, consideration in levy requirement, 20-9-501
- block grants, 20-9-631
- boat fees in lieu of tax, consideration in levy computation, 20-9-501
- budget, See BUDGETS AND BUDGET SYSTEM

**FINANCE (continued)**

## Retirement fund (continued)

- budgeted fund, as, 20-9-201, See also Funds generally
- camper fee in lieu of tax, consideration in levy requirement, 20-9-501
- coal gross proceeds tax, consideration, 20-9-501
- cooperatives, full service education - establishment, 20-7-457
- general provisions, 20-3-324, 20-9-501
- levy requirements, 20-9-501
- motor home fee in lieu of tax, consideration in levy requirement, 20-9-501
- motor vehicle taxes, consideration in levy requirement, 20-9-501
- off-highway vehicle fee in lieu of tax, consideration in levy computation, 20-9-501
- oil and natural gas production tax, consideration in levy requirement, 20-9-501
- operating reserve, 20-9-501
- reappropriation, 20-9-501
- social security, Title 19, chapter 1, See SOCIAL SECURITY
- system funding, 19-2-409
- teachers' retirement, Title 19, chapter 20, See RETIREMENT, Teachers' Retirement
- System
  - travel trailer fee in lieu of tax, consideration in levy requirement, 20-9-501
  - tuition rates, determination, 20-5-323
  - warrants, 20-9-501
- Revenue and tax anticipation notes, issuance and sale, 7-7-109, 20-9-212; Title 7, chapter 6, part 11
- Rules with fiscal impact, 20-7-101
- School facility entitlement, 20-9-366, 20-9-369, 20-9-370, 20-9-371
  - state advance or reimbursement, 20-9-343, 20-9-346, 20-9-439, 20-9-370, 20-9-371
- School food services fund
  - administration, 20-3-324, 20-10-207
  - establishment, 20-3-324, 20-10-204, 20-10-207
  - federal funds allocated to, when, 20-10-201, 20-10-205
  - nonbudgeted fund, as, 20-9-201, 20-10-207, See also Funds generally
- School lands, See PROPERTY; SCHOOL LANDS
- Sectarian schools, public funds prohibited, Const., V, 11; X, 6
- Self-insurance plan, 20-3-331
- Self-insurance reserve fund, funding, restrictions, 2-9-211
- Short-term obligations, Title 7, chapter 6, part 11
- Sick leave, accumulated - fund for payment, 20-9-512
- Social security
  - contributions, 19-1-814, 20-9-501
  - special education allowable costs, 20-7-431, 20-7-435
- Special education, See SPECIAL EDUCATION
- Special improvement district assessments, 20-9-406, 20-9-438, 20-9-440
- Special purpose funds, Title 20, chapter 9, part 5, See also specific fund
- State aid, direct, 20-9-306
  - budget amendments, for, 20-3-106
  - building maintenance, 20-9-375
  - county equalization money, apportionment, 20-9-335
  - distribution, 20-9-344
  - elementary schools with ANB of 9 or fewer pupils, 20-9-303
  - general fund levy, computation, 20-9-141
  - guaranteed tax base aid, 20-9-366 — 20-9-369
  - joint districts, proration and calculation, 20-9-305
  - school facilities, 20-9-369
  - technology, 20-9-375
  - vocational education, secondary — ANB calculation, 20-7-306
- State aid generally
  - budget amendments, 20-9-166
- State equalization aid, 20-9-343
  - administration, 20-9-346
  - apportionment, 20-3-106, 20-3-205
    - emergency school closure, effect, 20-9-805
  - appropriations, 20-9-361

**FINANCE** (continued)

## State equalization aid (continued)

- BASE funding program, 20-9-306
- direct state aid, 20-9-306
- distribution, 20-3-106, 20-9-346
- entitlement, 20-9-346
- estimation, 20-9-348
- general fund budget, 20-9-308
- payments, 20-9-347
- preschool programs, nonapplicability, 20-7-117
- purpose, 20-9-344
- records, 20-9-346
- reduction when, 20-1-301
- reports pertaining to, 20-9-346
- school facilities, state advance or reimbursement, 20-9-370
- telecommunications network (METNET), 20-9-343

## State equalization aid levy, 20-9-360

## State funds, remission, 1-2-113

## State mandates to districts, 1-2-113

## Statutes imposing new duties, means of financing, 1-2-113

## Systemic initiative for Montana mathematics and science grant, 20-9-343

## Tax and revenue anticipation notes, issuance and sale, 7-7-109, 20-9-212; Title 7, chapter 6, part 11

## Taxation, See PROPERTY TAX

## Tax increment financing, 20-9-360, 20-9-361

## Tax protests

- general fund operating reserve limitations, effect of unused balance of settlements, 20-9-104
- lost, bond issues for repayment, 2-9-316, 20-9-403, 20-9-406, 20-9-421, 20-9-435
- settlements, budget amendments for expenditure, 20-9-161

## Tax receipts from audits or delinquent taxes, budget amendment for expenditure, 20-9-161

## Taylor Grazing Act, money from, 17-3-222, 20-9-331

## Teachers' Retirement System

- retirement fund to pay employer's contributions, 20-9-501
- special education allowable costs, 20-7-431, 20-7-435

## Technology acquisition fund, 20-9-375

- establishment, 20-9-533
- state superintendent allocation, 20-9-534

## Tort claims, judgment liability, 2-9-316

## Traffic education fund, 20-9-510, 61-2-103

- establishment and administration, 20-3-324
- nonbudgeted fund, as, 20-7-507, 20-9-201, 20-9-510, See also Funds generally

## Transportation fund

- aircraft fee in lieu of tax, consideration in levy requirement, 20-10-144, 20-10-146
- block grants, 20-9-632
- boat fees in lieu of tax, consideration in levy requirement, 20-10-144, 20-10-146
- budget, See BUDGETS AND BUDGET SYSTEM
- budget amendments, state aid, 20-9-166
- budgeted fund, as, 20-9-201, See also Funds generally
- camper fee in lieu of tax, consideration in levy requirement, 20-10-144, 20-10-146
- cash, reappropriation and reserve, 20-10-144
- coal gross proceeds tax, consideration, 20-10-144, 20-10-146
- cooperatives, full service education - establishment, 20-7-457
- end-of-the-year balance, 20-10-144, 20-10-146
- federal forest reserve money, apportionment, 20-10-146
- federal money, consideration in levy requirement, 20-10-144
- ineligible transportees' payments, deposit, 20-10-122
- levy requirements, 20-10-144, 20-10-146
- motor home fee in lieu of tax, consideration in levy requirement, 20-10-144, 20-10-146
- motor vehicle taxes, consideration in levy requirement, 20-10-144, 20-10-146
- nonpublic school children's payments, deposit, 20-10-123
- off-highway vehicle fee in lieu of tax, consideration in levy requirement, 20-10-144, 20-10-146
- oil and natural gas production tax, consideration in levy requirement, 20-10-144, 20-10-146

**FINANCE (continued)**

## Transportation fund (continued)

- operating reserve, 20-10-144
- out-of-district attendance obligations, 20-5-323, 20-5-324
- reappropriation of fund balance, 20-10-144, 20-10-146
- transportation payments from other districts and parents, consideration in levy requirements, 20-10-144
- travel trailer fee in lieu of tax, consideration in levy requirement, 20-10-144, 20-10-146
- warrants, 20-10-144, 20-10-146

Trustees, duties generally, 20-3-324, 20-9-213

Tuition, See TUITION

## Unemployment insurance

- retirement fund to pay employer's contributions, 20-9-501
- special education allowable costs, 20-7-431, 20-7-435

Urban renewal tax increment financing, 20-9-360, 20-9-361

Vacation leave, accumulated - fund for payment, 20-9-512

## Vocational education

- federal funds, 20-7-301, 20-7-303, 20-7-321
- state money, 20-7-305, 20-7-306

Vocational-technical secondary schools, 20-9-404, 20-9-405

Warrants, See WARRANTS

Youth, community-based services - funding and services, 41-3-1132

Youth detention centers, 20-9-130, 41-5-1807

Youth detention facilities obligation for payment, 20-9-130

**FIRE DRILLS, see DISASTER DRILLS****FIRE PROCEDURES, 20-1-405****FIRE SAFETY IN PUBLIC BUILDINGS**

- Administration of provisions, 50-61-102
- Applicability of provisions, 50-61-103
- Enforcement, 50-61-102, 50-61-114
- Fire exits - obstruction unlawful, 50-61-106
- Inspections, 50-61-101, 50-61-114
  - local enforcement, program for, 50-61-102
  - university system buildings, 50-3-102
- Purpose of provisions, 50-61-101
- Smokeless powder and small arms primers, storage restrictions, 50-61-120, 50-61-121
- Violations, 50-61-115 — 50-61-119

**FIREARMS**

- Carrying in prohibited place, 45-8-328, 45-8-351, 45-8-361
- Use by children under age 14 prohibited, 45-8-344, 45-8-345
- Safety education, 20-7-132
- Suspension or expulsion, 20-5-202

**FISCAL YEAR**

- Public employees' retirement, 19-2-303
- School, 20-1-301

**FIVE-YEAR-OLD SCHOOLING, 20-1-101, 20-7-117, 20-7-411****FLAG, AMERICAN**

- Display, 20-3-324
- Pledge Requirement, 20-7-133

**FOOD SERVICES, 20-10-201**

- Administrative review, audits and inspections, 20-3-106, 20-10-202
- Commodities, 20-3-106, 20-10-202 — 20-10-204
- Establishment, operation, and expansion, 20-10-201, 20-10-204
- Federal funds, 20-3-106, 20-10-201, 20-10-205
- Fund, See FINANCE, School food services fund
- Gifts for, 20-10-201, 20-10-204
- Indigent children, 20-3-205, 20-10-205
- Institutional schools, inclusion, 20-10-206
- Personnel, 20-3-324

**FOOD SERVICES** (continued)

Records and reports, 20-3-106, 20-10-202

Wild animal meat donated to, when, 87-1-226

**FREE EDUCATION**, Const., X, 1**G****GENERAL EDUCATION DEVELOPMENT (GED)**, 20-7-131**GIFTED AND TALENTED CHILDREN**, 20-2-121, 20-7-901, 20-7-903**GOVERNMENT ACCOUNTABILITY ACT**, 2-11-101 — 2-11-104**GOVERNMENTAL INTERNET INFORMATION PRIVACY ACT**, 2-17-550 — 2-17-553**GUARANTEED TAX BASE AID (GTBA)**

See FINANCE; SCHOOL FACILITIES ADVANCES AND REIMBURSEMENTS

Amount, 20-9-368

BASE aid, 20-9-306

BASE funding program, 20-6-702

Calculation, 20-9-368, 20-9-369

Deficiency in BASE aid, 20-9-351

Definitions, 20-9-366

Distribution, 20-3-106, 20-9-344, 20-9-347, 20-9-369

Eligibility, 20-9-346, 20-9-367

General fund budget, 20-9-308

General fund levy requirement, calculation, 20-9-141

Records and reports, 20-9-369

Retirement fund budget, 20-6-702, 20-9-367, 20-9-368, 20-9-501

Return of excess or reversion, 20-9-368

School facilities, state advance or reimbursement, 20-9-370

State equalization aid, 20-9-343

Taxable value determinations, 20-9-369

**GUARDIANSHIP OF MINORS**, Title 72, chapter 5, part 2**H****HAZARDOUS CHEMICAL INFORMATION**

Applicability and exemptions, 50-78-103

Citation of Employee and Community Hazardous Chemical Information Act, 50-78-101

Definitions, 50-78-102

Employee rights, 50-78-204, 50-78-306

Information program, 50-78-306

OSHA standard, 50-78-102, 50-78-204

relationship to, 50-78-104

**HEALTH**

Education, drug and alcohol instruction, 20-25-601 — 20-25-604

Immunization, Title 20, chapter 5, part 4, See IMMUNIZATION REQUIREMENTS

Inspections, 50-1-202, 50-1-203

Local boards of health, powers and duties, 50-2-116

Local health offices, powers and duties, 50-2-118

Programs, 50-1-202

Pupils, conditions and records, 20-3-324

Quarantine measures, 50-1-204

Regulations, 50-1-206

State health plan, 50-1-201

**HEARINGS**, See ADMINISTRATIVE PROCEDURE, Contested cases**HIGH SCHOOLS**, 20-6-501

See also COUNTY HIGH SCHOOLS; JUNIOR HIGH SCHOOLS

Accreditation, 20-7-102, See ACCREDITATION

Opening or reopening, 20-6-503



**HISTORICAL SOCIETY, 2-15-1511****HOLIDAYS**

Enumeration, 1-1-216, 20-1-305, 20-1-307  
 Teachers or specialists, teaching on, 20-4-201

**HOME SCHOOLS, 20-5-102, 20-5-109, 20-5-111**

See also PRIVATE SCHOOLS

**HOME STUDY, Supervised, 20-5-102, 20-7-116, 20-10-121, 20-10-125, 20-10-142, 20-10-144****HOMELESS CHILDREN, Admittance, 20-5-101****I****IMMUNIZATION REQUIREMENTS, 20-5-403**

Affidavit, 20-5-405  
 Attendance, commencement, 20-5-403, 20-5-404, 20-5-408  
 Definitions, 20-5-402  
 Enforcement, 20-5-408, 20-5-410  
 Evidence, 20-5-403, 20-5-406, 20-5-409  
 Exemptions, 20-5-403, 20-5-405, 20-5-409, 52-2-735  
 Failure to comply, 20-5-405, 20-5-409, 20-5-410  
 Forms, 20-5-405, 20-5-406, 20-5-408  
 Home schools, 20-5-109, 20-5-111  
 Immunizing agents, approval, 20-5-403, 20-5-409  
 Injunction, 20-5-409  
 Noncompliance, 20-5-409, 20-5-410  
 Nonpublic schools, records, 20-5-109  
 Penalty, 20-5-410  
 Postsecondary schools, 20-5-402, 20-5-403, 20-5-408  
 Records, 20-5-109, 20-5-403, 20-5-405, 20-5-406  
 Reports, 20-5-408  
 Rulemaking, 20-5-407  
 Transfer students, records, 20-5-403

**INDIAN EDUCATION FOR ALL, Act, 20-1-501 — 20-1-503**

Funding, 20-9-306, 20-9-329

**INDIANS**

Children, attendance, 20-5-108  
 Commemorative days, 20-1-306  
 Culture, preservation, Const., X, 1, See TEACHERS, Indian studies  
 Deaf and Blind, Montana School for - admission, 20-8-107  
 Educational goals, cooperation when implementing, 20-1-501  
 Jurisdiction of state, 2-1-301 - 2-1-303, 2-1-306, 2-1-307  
 State-tribal cooperative agreements  
   accounts, 18-11-112  
   authorization, 18-11-103  
   citation of state-tribal cooperative agreements act, 18-11-101  
   contents, 18-11-103, 18-11-104  
   definitions, 18-11-102  
   filing, 18-11-107  
   funds, materials, personnel, and services, 18-11-109  
   limitations, 18-11-110  
   revenue, distribution, 18-11-112  
   revocation, 18-11-108  
   submission to attorney general, 18-11-105

**INDIGENT CHILDREN, 20-3-205, 20-5-101, 20-5-107, 20-10-205****INDUSTRIAL ARTS PROGRAMS, Funding, 20-7-305, 20-7-306****INSURANCE**

Buses, 20-3-331, 20-10-107, 20-10-109, 20-10-124, 20-10-143  
 District employees' group insurance, 20-3-331, See also Group benefits

**INSURANCE** (continued)

## Government

- judgments, payment, 2-9-316
- legislative acts and omissions, immunity — purchase does not waive, 2-9-111
- policy conditions, construction, 2-9-306
- political subdivisions, 2-9-211, 2-9-212
- reserve funds, 2-9-202, 2-9-211, 2-9-212
  - claims paid from, 2-9-303, 2-9-304
- self-insurance, 2-9-111, 2-9-202, 2-9-211
- state plan, 2-9-201, 2-9-202
- tax levy for premiums, 2-9-212

## Group benefits for public officers and employees

- advisory council, 19-50-101
- retirement benefits, premiums withheld, 19-2-904

## Insurance fund, 2-9-211

## Liability, requirements, 20-3-331, 20-10-109, 20-10-124

## Property, requirements, 20-6-608

## Self-insurance plan, 2-9-111, 2-9-202, 2-9-211, 20-3-331

## Special education, proration, 20-7-435

## Transportation requirements, 20-10-107, 20-10-109, 20-10-124, 20-10-143

## Unemployment insurance

- retirement fund to pay employer's contributions, 20-9-501
- special education allowable costs, 20-7-431, 20-7-435

**INTERAGENCY COORDINATING COUNCIL FOR STATE PREVENTION PROGRAMS,**  
2-15-225**INTERIM COMMITTEE, EDUCATION,** 5-5-224**INTERLOCAL COOPERATION,** Const., XI, 7

## Agreements

- contents, 7-11-105
- creation, authorization, 7-11-104
- filing, 7-11-107
- funding, 7-11-108
- self-insurance reserve fund, for, 2-9-211

## Bonds to construct joint facility, 7-11-104, 20-9-404, 20-9-405

## Citation of Interlocal Cooperation Act, 7-11-101

## Definition, 7-11-103

## Education cooperatives, 20-7-451, 20-7-452, 20-7-454

## Purpose of provisions, 7-11-102

## State-tribal cooperative agreements, Title 18, chapter 11, part 1, See INDIANS

**INTERNET**

- Government competition with private providers prohibited 2-17-601 — 2-17-604
- Privacy, See GOVERNMENTAL INTERNET INFORMATION PRIVACY ACT

**INTERSTATE COMPACT ON EDUCATIONAL OPPORTUNITY FOR MILITARY**  
**CHILDREN,** 20-1-230, 20-1-231**ISOLATED SCHOOLS,** 20-3-106, 20-3-205, 20-3-324, 20-9-302, 20-9-303**J****JUNIOR HIGH SCHOOLS,** 20-6-501

## See also COUNTY HIGH SCHOOLS; HIGH SCHOOLS

## Accreditation, 20-7-102, See ACCREDITATION

## Closure, 20-6-505, 20-6-509

## Opening, 20-6-504 - 20-6-506

**K****K-12 SCHOOL DISTRICTS, 20-6-701**

- ANB, 20-6-702
- Attachment of elementary to high school district, 20-6-101, 20-6-701, 20-6-703
- Bonded indebtedness, 20-9-406
- Dissolution, 20-6-701, 20-6-704
- Funding and funds, 20-6-702, 20-6-703
- Hiring preference, 20-6-711
- Number of trustees, 20-6-702
- Property, 20-6-703
- Records, 20-6-703
- Tenure protection, 20-6-711
- Transitions after formation, 20-6-703
- Trustees, 20-6-702
- When Required, 20-6-701

**KINDERGARTENS, 20-7-117**

- See also PRESCHOOL PROGRAMS
- Hours of instruction, 20-1-301, 20-1-302
- Immunization requirements, Title 20, chapter 5, part 4, See IMMUNIZATION REQUIREMENTS
- Out-of-district attendance agreements, 20-5-320, 20-5-321

**L****LEASE OF BUILDINGS OR LAND**

- See PROPERTY; SITES AND FACILITIES

**LEASE-PURCHASE AGREEMENTS, 20-6-609****LIBRARIANS, 20-4-131****LIBRARIES**

- Bible or other religious material, inclusion, 20-7-112
- Books, selection, 20-3-205, 20-4-402, 20-7-204
- Establishment and maintenance, 20-7-202
- Interlibrary loan reimbursement, 22-1-328
- Montana State Library
  - natural resource information system, representation on ground water assessment steering committee, 2-15-1523
- Operational policies, 20-7-203
- Policies regarding, 20-7-203
- Records confidentiality, 22-1-1101 — 22-1-1103, 22-1-1111
- Reports concerning, 20-7-205
- Requirements, 20-7-202
- Services, contracts and cooperation for, 22-1-312
- State Library Commission
  - allocation, 2-15-1511
  - board of trustees, 2-15-1511
  - budget requests, 2-15-1511
  - composition, appointment, terms, and compensation, 2-15-1514
  - interlibrary loan reimbursements, rules for, 22-1-328
- State visual, aural, and other educational media library, 20-2-121, 20-3-106, 20-7-201
- Use policies, 20-7-203

**LOCAL GOVERNMENT**

- Bonds and bond issues, See BONDS AND BOND ISSUES
- Contracts, 52-2-617
- Drinking and driving prevention programs, 61-2-106 — 61-2-108
- Firearms, restriction on regulation, 45-8-351, 45-8-361
- Interlocal cooperation, Title 7, chapter 11, part 1, See INTERLOCAL COOPERATION
- Notes, tax and revenue anticipation
  - authorization, 7-6-1102, 7-6-1116
  - debt limitations, nonapplicability, 7-6-1115

**LOCAL GOVERNMENT** (continued)

Notes, tax and revenue anticipation (continued)

definitions, 7-6-1101

issuance and sale, 7-6-1102, 7-6-1103, 7-7-109

principal and interest, 7-6-1102, 7-6-1112

refunding and renewal, 7-6-1105

security, 7-6-1111

Property

transfer between governmental entities, 7-8-101

Public funds

deposit in financial institutions, 7-6-201, 7-6-203 — 7-6-208, 7-6-211, 7-6-212

investment, 7-6-202, , 7-6-204, 7-6-206, 20-9-213

repurchase agreements - limitations, 7-6-202, 7-6-205, 7-6-213

Recreation programs, See RECREATION PROGRAMS

Retirement, contracting employer, Title 19, chapter 3, See RETIREMENT, Public Employees'

Retirement System

**M****MEDIATION**, 26-1-813**MIDDLE SCHOOLS**, 20-6-501

See also ELEMENTARY SCHOOLS

Accreditation, 20-7-102, See ACCREDITATION

Opening, 20-6-507

**MILITARY**

Military service employment rights, 10-1-1001 — 10-1-1027

Recruiters, access to records, 20-7-134

**MINIMUM AGGREGATE HOURS**, 20-1-301**MINORS**

Civil actions, 41-1-201, 41-1-202

Consent for health services, 41-1-401 — 41-1-407

Guardianship, Title 72, chapter 5, part 2

Limited emancipation, 41-1-501 — 41-1-503

Minority, 41-1-101 — 41-1-103

Montana Family Policy Act, 41-7-101, 41-7-102

Power to contract, 41-1-301 — 41-1-306

Protective care, 41-3-301, 41-3-302

**MISSING CHILDREN**, 44-2-501 — 44-1-511

Absence from school, notice to parents, 44-2-507

Enrollment procedures to aid identification, 44-2-511

List of missing school children, 44-2-503, 44-2-506

**MONTANA DIGITAL ACADEMY**, 20-7-1201**MONTANA EDUCATIONAL TELECOMMUNICATIONS NETWORK**, 20-32-101 — 20-32-104**MONTANA RECALL ACT**, 2-16-601 — 2-16-635**MONTANA SUMMER YOUTH EMPLOYMENT PROGRAM**, 39-10-201 — 39-10-206**MOTOR VEHICLES**

Buses, See TRANSPORTATION

Crossing guards, 20-3-106, 61-8-502

Driver education, See TRAFFIC EDUCATION

School children, driving through - unlawful, 61-8-502

Speed limits near schools, alteration, 61-8-310

Traffic education, Title 20, chapter 7, part 5, See TRAFFIC EDUCATION

Traffic safety program, Title 61, chapter 2, part 1, See TRAFFIC SAFETY PROGRAM

**MULTIJURISDICTIONAL SERVICE DISTRICTS**, Title 7, chapter 1, part 11**MUSIC INSTRUCTION**, Private, 20-7-115

## N

**NATIONAL GUARD YOUTH CHALLENGE PROGRAM**, 10-1-1401 — 10-1-1403

**NATIVE AMERICANS**, SEE INDIANS

**NEGOTIATED RULEMAKING**, Title 2, chapter 5

**NEPOTISM**

Affinity, relationship by, 1-1-219

Appointment of relatives, 2-2-302, 2-2-303

Defined, 2-2-301

Discrimination laws, exemption when provisions conflict, 49-2-303, 49-2-403, 49-3-201

Penalty for violations, 2-2-304

**NONPUBLIC NONACCREDITED SCHOOL**, Placement of child in public school, assessment policy, 20-3-324, 20-5-110

**NOTICE**

Mail notice, Local Government, 7-1-2122

Publication and content, Local Government, 7-1-2121

**NURSES**

Child abuse and neglect, reporting, 41-3-201

Employment, 20-3-324

Privileged communications, 26-1-801, 26-1-809, 41-3-201

Special education, allowable costs, 20-7-431

Teachers' Retirement System, membership, 19-20-302, See RETIREMENT, Teachers' Retirement System

**NURSING**, 37-8-101 — 37-8-103

Definitions, 37-8-102

Exemptions, 37-8-103

**NUTRITIONISTS**, 37-25-302

## O

**OATHS**, 2-16-211, 2-16-212; Const., III, 3

Deputies, 2-16-302

Failure to file, 2-16-501

Violation, 2-16-603

**OCCUPATIONAL THERAPISTS**, 37-24-301

**OPENING OR REOPENING SCHOOLS**, 20-3-324

Elementary schools, 20-3-106, 20-3-205, 20-6-218, 20-6-502

High schools, 20-3-106, 20-3-205, 20-6-503

Junior high schools, 20-3-106, 20-3-205, 20-3-362, 20-6-504 — 20-6-506

Middle schools, 20-6-507

**OPEN MEETINGS**, Const., II, 9

See also PUBLIC PARTICIPATION IN GOVERNMENT

Assembly, freedom of, Const., II, 6

Committees or subcommittees, requirements, 2-3-203

Constitutional provision, enforcement — costs to plaintiff, 2-3-221

Construction of provisions, 2-3-201

Exceptions, 2-3-203

Legislative intent, 2-3-201

"Meeting" defined, 2-3-202

Minutes, public availability, 2-3-212

Press representatives, 2-3-211

Public agencies and associations of agencies, requirements, 2-3-203

Recording, 2-3-211

Right to know, Const., II, 9

School district architectural services, tentative and final proposals, 20-6-634

School meetings, disturbing or disrupting, 20-1-206

School trustees, 20-3-322, 20-9-165, 20-10-125



**OPEN MEETINGS** (continued)

Voidability of decisions made in violation of law, 2-3-213

Youth Placement Committee meetings, nonapplicability, 41-5-125

**P****PARENT-CHILD LEGAL RELATIONSHIP TERMINATION**, Title 41, chapter 3, part 6

See CHILD ABUSE AND NEGLECT

**PARENT-TEACHER CONFERENCES**, 20-1-304**PAROCHIAL SCHOOLS**, See PRIVATE SCHOOLS**PEST AND PESTICIDE MANAGEMENT SAFETY PROGRAM**, 80-8-404

Citation of Model School Integrated Pest and Pesticide Management Safety Program Act, 80-8-401

Definitions, 80-8-403

Policymaking authority, 80-8-405

Policy, statement of, 80-8-402

**PHYSICAL THERAPISTS**, 37-11-301**P.I.R. DAYS**, 20-1-304, 20-2-121**PLAYGROUNDS**, See DISTRICTS AND TRUSTEES, Public recreation programs**PLEDGE OF ALLEGIANCE**, 20-7-133**PRESCHOOL PROGRAMS**, 20-7-117, 20-7-411

See also KINDERGARTENS

Elementary schools, inclusion, 20-6-501, 20-7-117

Hours of instruction, 20-1-301

Immunization requirements, Title 20, chapter 5, part 4, See IMMUNIZATION REQUIREMENTS

Special education, 20-7-411

**PREVAILING WAGE RATES**, 18-2-401 — 18-2-404, 18-2-422**PRINCIPALS**, 20-1-101

See also TEACHERS, generally

Certification, See TEACHERS, Certification

County high schools, 20-3-324, 20-4-401, 20-4-402

District superintendent, duties as through when, 20-4-403

Employment or dismissal, 20-3-324, 20-6-410

Fines for violations, 20-1-203

K-12 districts, 20-6-711

Library books, selection, 20-7-204

Misappropriation of funds, 20-1-203

Prayer to open school day, 20-7-112

Pupils

authority, 20-4-302, 20-5-201

suspension, 20-4-302, 20-4-403, 20-5-202

truancy or incorrigibility, 20-4-302

Retirement, Title 19, chapter 20, See RETIREMENT, Teachers' Retirement System

Special education assistance, 20-7-403

Successor, delivering materials to, 20-1-203

Teachers, duties, 20-3-324, 20-4-204, 20-4-207, 20-4-301

Textbooks selected by, 20-7-602

**PRIVATE SCHOOLS**

Accreditation, 20-7-102

Coaches, nonfaculty, 20-1-210

Community service corps and volunteer projects, Title 90, chapter 14, part 1, See COMMUNITY SERVICE

Compulsory enrollment exemption, 20-5-102, 20-5-109, 20-5-111

Federal money, distribution, 20-9-603

Interscholastic competition, 20-1-210

New students, school records and proof of identity — requirements, 44-2-511

Nonaccredited, placement of child in public school - district assessment, 20-3-324, 20-5-110

**PRIVATE SCHOOLS** (continued)

- Retirement for employees, Title 19, chapter 20, See RETIREMENT, Teachers' Retirement System
- School bus transportation, public, 20-10-123
- School food commodities, distribution contracts, 20-10-203
- State aid prohibited, Const., V, 11; X, 6

**PROCUREMENT**, 18-4-121 — 18-4-123, 18-4-132

- Competition, 18-4-234
- Cooperative purchasing, 18-4-401 — 18-4-407
- Donate property to a school district, authority to, 20-6-101
- Exceptions to bidding requirements, 20-9-204
- Exemptions, 18-4-133
- Local government, 18-4-124
- Procedure, 18-4-301 — 18-4-314
- Records, 18-4-125 — 18-4-126
- Specification, 18-4-231 — 18-4-234
- Unlawful solicitation, 18-4-242
- Vendors, 18-4-141, 18-4-241

**PROPERTY**

See also SITES AND FACILITIES; SCHOOL LANDS

- Appeals concerning sale or disposal, 20-6-604
- Boundary changes, disposition, 20-6-417
- Cooperatives, full service education, 20-7-452
- Deed, conditional - acquired by, repossession, 20-6-605
- Destruction
  - loans, long-term - for replacement, 20-6-640
  - minors, by parental liability, 20-5-201, 40-6-237
  - unexpected, budgeting for, See BUDGETS AND BUDGET SYSTEM, Budget amendments
- Drugs, dangerous - criminal sale on or near, 45-9-109
- Gifts or grants, acceptance, 20-6-601, 20-9-604
- Historical writings - display, 1-1-520
- Income, disposition, Const., X, 5
- Insurance requirements, 20-6-608
- Insurance settlement, 20-6-608
- K-12 districts, transition after formation, 20-6-703
- Land Commissioners, Board of - authority, Const., X, 4
- Lease-purchase agreements, 20-6-609
- Local government, transfer between governmental entities, 7-8-101
- Notice of intent to sell or otherwise dispose, 20-6-604
- Personal property ordered but not paid for, recording, 20-9-209
- Power of districts and trustees, 20-3-324, 20-6-101, 20-6-601, 20-6-602, 20-6-703
- Protests concerning sale or disposal, 20-6-604
- Public school fund, comprises, Const., X, 2; X, 5
- Recreation programs, public - use, 20-7-804
- Renting, 20-6-607
- Repossession of land when, 20-6-605
- Sale or disposal procedures, 20-6-604
- Smoking not allowed in, 50-40-201
- Surplus, 18-5-201 — 18-5-205
- Will or sufferance, acquired by - repossession, 20-6-605

**PROPERTY TAX**

- Assessment of property, centrally assessed property, 15-23-101, 15-23-105, 15-23-106
- Budget increase
  - approval, 20-9-353
  - notice, 15-10-203
- Coal gross proceeds tax, revenue from, 15-23-703, 15-23-705 — 15-23-707, 20-9-141, 20-9-331, 20-9-333, 20-9-501, 20-10-144, 20-10-146
- County basic tax, 15-24-1501, 15-24-1802, 15-24-1902, 15-24-2002, 20-6-702, 20-9-331, 20-9-333
- Debt service fund reappropriation for reduction in, 20-9-438
- Definitions, 15-1-101

**PROPERTY TAX** (continued)

- Delinquent, 20-9-212, 20-9-443
- Election, vote required for increase in over-BASE budget, 20-9-353
- Elementary schools with ANB of 9 or fewer pupils, 20-9-303
- Equalization of valuations, 15-7-112
- Federal funds in lieu of, 20-9-143, 20-9-331, 20-9-333, 20-10-204, 20-10-205
- Federal money, revenue available for reduction, 20-10-144
- General fund balance reappropriation for reduction in, 20-9-104, 20-9-141
- General fund operating reserve for reduction in, prohibited, 20-9-104
- Hard-rock mining, large-scale mineral development, 15-37-117
- Levies
  - accounting, 20-9-212
  - additional funding and levy, 20-3-324, 20-6-603, 20-6-621, 20-9-104, 20-9-353
  - adult educational programs, requirements, 20-7-705
  - BASE budget levy, 20-3-324, 20-6-702, 20-9-104, 20-9-141, 20-9-306, 20-9-308
  - bonds
    - action to restrain, 20-9-465
    - payment of principal and interest, for, 20-9-401, 20-9-410, 20-9-439, 20-9-444, 20-9-466
    - school facilities, state reimbursement - use, 20-9-370
  - boundary changes, effect, 20-6-411
  - budget amendment, emergency, 20-9-168
  - budget, final — to finance, 20-9-131, 20-9-142
  - building reserve fund requirements, 20-9-502, 20-9-503
  - bus depreciation reserve fund requirements, 20-10-147
  - business incubators, tax exemption - applicability, 15-24-1802
  - challenges, 20-9-466
  - coal
    - coal severance tax revenues, 15-35-108
    - gross proceeds tax, revenue from, 15-23-703, 15-23-705 - 15-23-707, 20-9-141, 20-9-501, 20-10-144, 20-10-146
  - computation, 15-10-321, 20-3-205
  - county basic tax, 15-24-1402, 15-24-1502, 15-24-1802, 15-24-1902, 15-24-2002, 20-5-324, 20-6-702, 20-7-437, 20-9-331, 20-9-333, 20-10-146
  - county commissioners, board of - fixing of tax levy, 15-10-201
  - debt service fund requirements, 20-9-439, 20-9-440, 20-9-466, 20-9-506
  - elections
    - special absentee election board program - funding, 13-13-230
    - property tax increase, notification required, 20-9-353
  - elementary schools with ANB of 9 or fewer pupils, 20-9-141, 20-9-303
  - federal money, consideration, 20-10-144
  - forest reserve money, federal - apportionment, 20-9-331, 20-9-333, 20-10-146
  - general fund levy requirements, 20-3-205, 20-9-141, 20-9-142
  - guaranteed tax base aid, determination, 20-9-367 — 20-9-369
  - industrial park tax exemption, applicability, 15-24-1902
  - industries, new or expanding - tax benefit not applicable, 15-24-1401, 15-24-1402
  - interstate school agreements, joint, 20-9-705
  - joint district requirements, 20-3-106, 20-9-151, 20-9-152
  - judgments, payment, 2-9-316
  - limitation on amount of taxes levied, 15-10-321, 15-10-401, 15-10-402, 15-10-406, 15-10-420, 15-24-1501
  - local economic development organization, building and land tax exemption - applicability, 15-24-2002
  - mills, to be made in, 15-10-201
    - certification of millage rates, 15-10-202
  - nonoperating fund requirements, 20-9-505, 20-9-506
  - over-BASE budget levy, 20-3-324, 20-9-104, 20-9-141, 20-9-306, 20-9-308
  - personal property tax revenue reduction, reimbursement, 15-1-111
  - remodeling of existing buildings or structures, tax benefit, 15-24-1501
  - retirement fund requirements, 20-9-501
  - state equalization aid levy, 20-9-360
  - state mandates, effect, 1-2-113

**PROPERTY TAX** (continued)

## Levies (continued)

- taxable values
  - building reserve, limitation, 20-9-502
  - certification, 15-10-202
  - elementary districts, 20-6-210, 20-6-213
  - high school districts, 20-6-308
  - industrial facility agreement for bond issues in excess of maximum, 20-9-407
  - opening or reopening of high school, 20-6-503
  - trustee positions, additional requested - determination, 20-3-352, 20-3-354
- transportation fund requirements, 20-10-144, 20-10-146
- tuition debt, discontinued districts, 20-6-413
- tuition payments, consideration when, 20-9-141
- valuation, See Valuation
- value-added manufacturing, expanding industry taxable value decrease - applicability, 15-24-2403
- vocational-technical secondary schools, 20-9-404
- Metal mines license tax, allocation, 15-37-117
- Nonoperating fund operating reserve for reduction in, 20-9-505
- Oil and natural gas production taxes, 15-36-331, 15-36-332
- Over-BASE budget levy, 20-9-308
- Personal property tax revenue reduction, reimbursement, 15-1-111
- Protests lost, bond issue for repayment, 2-9-316, 20-9-403, 20-9-406, 20-9-421, 20-9-435
- Reduction, revenue available for, 20-9-104, 20-9-141, 20-9-346, 20-9-438, 20-9-439, 20-9-501, 20-9-505, 20-10-144, 20-10-146
- Refunds, 15-16-602 — 15-16-604
- Retirement fund reappropriation for reduction in, 20-9-501
- Revaluation of taxable property, 15-7-111, 15-7-113
  - supplemental, provisions are, 15-7-114
- State money, remittance by county treasurer to state treasurer, 15-1-504
- Taxable values, See Levies
  - reduction in assessment, 15-24-2101 — 2103
- Tuition payments, reduction when, 20-9-141
- Urban renewal tax increment financing, state equalization aid levy distribution, 20-9-360, 20-9-361
- Valuation, 20-6-412, 20-9-122, 20-9-366 — 20-9-369
- Vote required for increase on over-BASE budget, 20-9-353

**PSYCHOLOGISTS**

- Gifted and talented children programs, 20-7-901
- Privileged communications, 26-1-801, 26-1-807, 26-1-809
- Psychology teachers, privileged communications, 26-1-801, 26-1-808
- Special education, allowable costs, 20-7-431
- “Specialist” defined, 20-4-131
- Teachers’ Retirement System, membership, 19-20-302, See RETIREMENT, Teachers’ Retirement System

**PUBLIC EMPLOYEES’ RETIREMENT ADMINISTRATION**, Title 19, chapter 2

See RETIREMENT

**PUBLIC EMPLOYEES’ RETIREMENT SYSTEM**, Title 19, chapter 3

See RETIREMENT

**PUBLIC MEETINGS**, See OPEN MEETINGS**PUBLIC OFFICERS OR EMPLOYEES**

See also specific office

- Absence from state, 2-16-112
- Affidavits, warrants and other claims
  - auditing officers, requirements, 2-2-205
  - settlements withheld when, 2-2-207
- Appointment void, effect, 2-16-501
- Assistants, 2-16-301 — 2-16-303

**PUBLIC OFFICERS OR EMPLOYEES** (continued)

## Audits

- local government entities, audits and financial reports, 2-7-504, 2-7-507, 2-7-511, 2-7-515
- responsibilities generally, 2-2-205, 2-2-207

Bond payment funds, liability, 20-9-445, 20-9-446

## Bonds, official

- action on, 2-9-527, 2-9-528
- applicability of provisions, 2-7-501
- appointees, for, 2-7-503
- approval, filing, record, and custody, 2-7-506
- conditions, form, and signatures, 2-7-504
- defects, 2-9-512
- deputies, for, 2-7-502
- failure to file, 2-16-501
- judgments, 2-9-516, 2-9-527, 2-9-528
- liability of principal or sureties, 2-9-511, 2-9-512, 2-9-514, 2-9-515, 2-9-521 — 2-9-525
- new or additional bond, 2-9-521, 2-9-524, 2-9-525
- security, additional, 2-9-513 — 2-9-515
- sureties, 2-9-507, 2-9-513, 2-9-517, 2-9-522 — 2-9-526
- trustees, receivers, or assignees - of, 2-7-505

Candidacy for office, eligibility, 49-1-202, 49-1-203; Const., IV, 4

Collective bargaining, See COLLECTIVE BARGAINING

Confidential communications to, 26-1-810

## Contracts

- conflict of interest provisions, 2-2-201 — 2-2-203, 20-6-636, 20-9-204
- public, liability for bonding requirements, 18-2-202
- school district architectural service, contingent fees prohibited, 20-6-636

Criminal conviction, 2-16-501, 2-16-603

Death, 2-16-501, 2-16-513; Const., VI, 6; VI, 14

Deferred compensation plans, Title 19, chapter 50, part 1, See DEFERRED COMPENSATION

Definitions, 2-2-102, 2-18-502, 13-1-101

Deputies, 2-16-301 — 2-16-303

Disability, Const., VI, 6, See Vacancy in office

Disabled persons, state policy, 49-4-202

Discriminatory practices, See DISCRIMINATION, generally

Elections, void - effect, 2-16-501

Ethics, Code of, Title 2, chapter 2; Const., XIII, 4, See ETHICS

Fair Practices, Code of, Title 49, chapter 3, See DISCRIMINATION, Government, state and local

Financial disclosure statements, 2-2-131, 2-2-106

## Group benefits

- advisory council, 19-50-101
- retirement benefits, premiums withheld, 19-2-904
- legal, enumeration, 1-1-216

Holidays, 2-18-601, 2-18-603

Immunity from suit, Title 2, chapter 9, part 1

Impeachment, officers subject to, Const., V, 13

Inability to perform duties, 2-16-501, 2-16-603; Const., VI, 6

Incompetence, 2-16-603

Indian reservations, state jobs — hiring preference for residents, 18-1-110, 49-2-303, 49-2-403

Insurance, See Group benefits

Jury duty, 2-18-604, 2-18-619

Leave of absence, 2-18-601, 2-18-606, 2-18-612, 2-18-620

## Leave time

- definitions, 2-18-601
- jury duty, 2-18-604
- mandatory leave of absence, 2-18-620
- military, 2-18-604, 2-18-614, 2-18-621
- parental leave, 2-18-606
- rules, 2-18-603, 2-18-604
- sick leave, 2-18-601, 2-18-618
- unlawful termination of employee, 2-18-621
- vacation leave, 2-18-601, 2-18-611



**PUBLIC OFFICERS OR EMPLOYEES** (continued)

- Leave time (continued)
  - witness, service as, 2-18-619
- Mental illness, 2-16-501, 2-16-603; Const., VI, 14
- Military service, 39-31-404
- Nepotism, Title 2, chapter 2, part 3, See NEPOTISM
- Office hours, 2-16-117
- Other public office, may not hold, Const., VI, 5
- Political activity
  - discrimination, 49-2-308, 49-3-201 — 49-3-207, 49-3-209
  - justifiable when, 49-2-308
- Privileged communications to, 26-1-810
- Qualifications generally, 2-16-102; Const., VI, 3
- Removal from office, 2-16-501; Const., VI, 14, See also RECALL
- Residence, 2-16-111, 2-16-501; Const., VI, 1; VI, 3; VII, 9
- Resignations, 2-16-501, 2-16-502, 2-16-622, 2-16-635; Const., VI, 6; VI, 14, See also Vacancy in office
- Retirement, Title 19, chapters 2 and 3, See RETIREMENT, Public Employees' Retirement Administration; Public Employees' Retirement System
- School district architectural service contracts, contingent fees prohibited, 20-6-636
- Signatures
  - ex officio officers, 2-16-115
  - facsimile, 2-16-114
- Social security system, Title 19, chapter 1, See SOCIAL SECURITY
- Subordinate officers, 2-16-301
- Surety bonds, See Bonds, official
- Surplus property transfers by, 18-5-205
- Termination
  - contracts, interest in — allowed when, 2-2-201
- Term of office, 2-16-213; Const., VI, 1; VI, 6
- Travel expenses, 2-18-501 — 2-18-504, 2-18-511, 2-18-512
- Vacancy in office, 2-16-501, 2-16-502, 2-9-513, 2-16-622, 2-9-524, 2-16-635
- Violation of official duties, 2-16-501, 2-16-603

**PUBLIC PARTICIPATION IN GOVERNMENT**

- See also OPEN MEETINGS
- Declaratory rulings, publication and judicial review, 2-3-113
- Definitions, 2-3-102
- Electronic mail, dissemination/receipt of comment, 2-3-301
- Enforcement, 2-3-114
- Exceptions, 2-3-112
- Guidelines, 2-3-103
- Legislative intent, 2-3-101
- Notice provisions, 2-3-103 — 2-3-107, 7-1-2121
- Opportunity to submit views, 2-3-111
- Right, Const., II, 8; II, 9
- Rules, guidelines adopted as, 2-3-103

**PUBLIC RECORDS**

- See also RECORDS
- Civil rights laws, administration - requirements, 49-2-102
- Collective bargaining dispute, fact finder's report, 39-31-309
- Constitutional officer records, 2-6-1113
- Copies, 2-6-1008
- Definitions, 2-6-1002
- Disposal and destruction, 2-6-1012
- Essential records, 2-6-1014
- Fees, copying and filing, 2-6-1006, 2-6-1007
- Inspection, open to
  - administrative proceedings, contested case decisions and orders, 2-4-623
  - audit and financial reports of local government entities, 2-7-514, 2-7-521
  - bonds, performance - notice of claim against, 18-2-204
  - child abuse and neglect records when, 41-3-205

**PUBLIC RECORDS** (continued)

## Inspection, open to (continued)

citizens' rights, 2-6-1003, 2-6-1006, 2-6-1009

election records, 13-1-109

governmental entities, claims against - compromise or settlement agreements, 2-9-303, 2-9-304

notice of denial, 2-6-1009

open meetings, minutes or records, 2-3-212

school funds, accounting records, 20-9-213

teachers' retirement board records, 19-20-201

Library records confidentiality, 22-1-1103

Local government records committee, 2-6-1201, 2-6-1202

Local government records, retention and disposition, 20-1-212

Mailing lists, distribution or sale, 2-6-1017

Permanent records, 2-6-1114

Possession, 2-6-1013

Preservation, 2-6-1013

Public hazards concealment prohibited, 2-6-1020

Reproduction, 2-6-1006

Right to know, Const., II, 9

Tort actions, attorneys' fees, 2-9-314

Youth court records and proceedings, confidentiality, 41-5-601

**PUPIL INSTRUCTION DAYS and MINIMUM AGGREGATE HOURS**

Average number belonging (ANB), calculation, 20-9-311, See AVERAGE NUMBER BELONGING (ANB)

Commemorative exercises held when, 20-1-306

Emergencies, closures by effect, 20-9-806

Failure to provide minimum number, 20-1-301, 20-1-302

Flexible school day, 20-1-301, 20-1-302, 20-1-304

Graduating seniors, requirement, 20-1-301

Holidays, 20-1-305, 20-1-307

Home schools, number required, 20-5-109, 20-5-111

Hours required, daily and weekly, 20-1-301, 20-1-302, 20-2-121

Minimum number, 20-1-301, 20-1-304, 20-5-109, See also EMERGENCIES, Closure of schools

Nonpublic schools, number required, 20-5-109

Saturday, on — when, 20-1-303, 20-2-121, 20-3-324, 20-7-503

Transportation reimbursements, state — computation, 20-10-145

Year, number required, 20-1-301, 20-1-302

**PUPIL-INSTRUCTION-RELATED DAYS**, 20-1-304, 20-2-121, 20-9-311**PUPILS**, See STUDENTS**PURCHASING**, See PROCUREMENT**Q****QUALITY SCHOOLS FACILITY GRANT PROGRAM**, 90-6-801 — 90-6-819**QUARANTINE MEASURES**, 50-1-204**R****RECALL**

Circulation sheets, 2-16-612, 2-16-614, 2-16-617 — 2-16-620

Citation of Montana Recall Act, 2-16-601

Definitions, 2-16-602

Elections, 13-1-101, 2-16-613, 2-16-621, 2-16-622, 2-16-631 — 2-16-635

Grounds for, 2-16-603

Method of removal cumulative, 2-16-611

Officers, 2-16-603, 2-16-613, 2-16-621, 2-16-622, 2-16-633, 2-16-635

Petitions, 2-16-612 — 2-16-618, See also Circulation sheets

**RECORDS**

See also PUBLIC RECORDS

Child abuse and neglect, disclosure to school employees, 41-3-205

Districts

cessation, surrender, 20-6-418

K-12, transitions after formation, 20-6-703

Drug and intoxicating substance violations, information not part of, 41-5-601

Drug use/criminal activity, disclosure to school, 41-5-215

Finance

accounting, 20-3-325, 20-9-203, 20-9-213, 20-9-221; Title 2, chapter 7, part 5

appropriation items, entries of transfers among, 20-9-208

audits, 20-3-205, 20-9-203, 20-9-213, 20-10-202; Title 2, chapter 7, part 5, See also AUDITS

bond registration, 20-9-442

clearing accounts, 20-9-220

destruction allowed when, 20-9-215

food service commodity, 20-10-202

guaranteed tax base aid, 20-9-369

public availability, 20-9-213

state equalization aid, 20-9-346

Immunization, 20-5-109, 20-5-403, 20-5-405, 20-5-406

Libraries, confidentiality, 22-1-1101 — 22-1-1103, 22-1-1111

Local government records committee, 2-6-402 — 2-6-404

New students, enrollment — requirements, 44-2-511

Noncustodial parent in parenting plan, access to, 40-4-225

Notification to schools by youth court, 41-5-215

Old records, destruction when, 2-6-401 — 2-6-404, 20-1-212, 20-9-215

Public Education, Board of, 20-2-114

Regents of Higher Education, Board of, 20-2-114

Retention, 2-6-401 — 2-6-404, 20-1-212, 20-7-101, 20-9-215

Transfer of, 20-1-213

to youth court, 41-5-1707

Trustees, 20-3-323

Vocational education, K-12, 20-7-302.1

Youth court and law enforcement, disclosure of record, 41-5-215

Youth court, confidentiality, 41-5-125, 41-5-215

**RECREATION**

Activities, conduct, 20-7-803

Authorization, 20-7-801

Board of recreation, creation, 20-7-802

Directors and instructors, 20-7-803, 20-7-804

Funding, 7-16-4107, 20-7-801

Gifts, acceptance, 20-7-803

Interlocal Cooperation Act, Title 7, chapter 11

Operation, 7-16-4108, 20-7-802

School property, 20-7-804, 20-7-805

**RELIGION, Const., X, 7**

Bible or other religious material, inclusion in libraries, 20-7-112

Discrimination based on, prohibited, Const., X, 7, See also DISCRIMINATION, generally

Enrollment, 20-5-102

Immunization requirements, exemption when, 20-5-405

Prayer in schools, 20-7-112

Religious instruction, release time, 20-1-308; Const., X, 7

Sectarian publications prohibited, 20-7-112

**RESIDENCE**

Deaf and Blind, Montana School for the — transportation expenses of students, 20-8-121

Determination, rules for, 1-1-215, 20-7-420

Elections

absentee ballot, 13-13-212; 13-13-271 — 13-13-273

absentee election board members, 13-13-225

school election requirements, 20-3-338, 20-20-301

**RESIDENCE** (continued)

Electors, qualification and determination, 13-1-111 — 13-1-114; Const., IV, 2  
 Governmental participation by residents, Title 2, chapter 3, part 1; Const., II, 8, See PUBLIC

**PARTICIPATION IN GOVERNMENT**

Indians, schools, admittance, 20-5-108  
 Political rights and duties of residents, Title 49, chapter 1, part 2  
 Public officers, 2-16-501; Const., VI, 1; VI, 3; VII, 9  
 Public records, citizens' rights, 2-6-102, 22-1-1103  
 Resident bidder for purpose of contracts, 18-1-106, 18-2-409  
 Schools  
   admittance, 1-1-215, 20-1-101, 20-5-101, 20-5-102, 20-5-108, 20-7-420  
   correspondence study, 20-7-116  
   libraries, use, 20-7-203  
   out-of-district attendance agreements, 20-5-322, See also TUITION  
   special education  
     financial responsibility requirements, 20-7-420  
     transportation tuition, 20-7-441  
     tuition for child attending state institution, 20-7-424

**RETIREMENT****Public Employees' Retirement Administration**

accounts, 19-2-403  
 actuarial tables, 19-2-403, 19-2-405  
 actuary, 19-2-303, 19-2-405, 19-2-407  
 administrative expenses, 19-2-408, 19-2-502, 19-2-505  
 applicability of chapter, 19-2-302  
 assets and liabilities of systems, 19-2-405, 19-2-407, 19-2-505  
 beneficiaries, 19-2-303  
   death of member caused by, limitations on payment of benefits, 19-2-804  
   designation, 19-2-801  
     no designation, effect, 19-2-802  
   distributions to, 19-2-1007  
   estate of member, as, 19-2-802  
   minor, as, 19-2-802  
   reinstatement of member, effect, 19-2-603  
   survivorship benefits, 19-2-303, 19-2-702, 19-2-902, 19-2-906, 19-2-907  
 benefits, 19-2-303  
   calculation, 19-2-701  
   commencement of benefits, 19-2-908  
   death benefits, 19-2-401, 19-2-802, 19-2-804  
   determination, 19-2-403  
   distribution, 19-2-1007  
   duplication prohibited, 19-2-703  
   estimates when, 19-2-901  
   exemption from taxation and legal process, 19-2-1004  
   family law orders, effect, 19-2-907  
   fixing of, 19-2-401  
   forfeitures, use, 19-2-1006  
   group insurance premiums, withholding, 19-2-904  
   maximum, limitation, 19-2-1001  
   military service, 19-2-707  
   modification, 19-2-403  
   payments, 19-2-502, 19-2-902, 19-2-903  
   service retirement, 19-2-702, 19-2-907  
   survivorship benefits, 19-2-303, 19-2-701, 19-2-702, 19-2-902, 19-2-906, 19-2-907  
   vesting upon termination of system, 19-2-1002  
   withholding for support obligation, 19-2-909  
 budget act superseded, 19-2-1008  
 budget amendment required when, 19-2-408  
 citation of the public employees' retirement act, 19-2-301  
 contributions, See employee contributions; employer contributions

**RETIREMENT** (continued)

## Public Employees' Retirement Administration (continued)

- death benefits, See also benefits
  - claims, approval, 19-2-401
  - inheritance, order of, 19-2-802, 19-2-804
  - survivorship benefits, 19-2-303, 19-2-701, 19-2-702, 19-2-902, 19-2-906, 19-2-907
- definitions, 19-2-303, 19-2-907
- disability retirement benefits
  - determination, 19-2-403
  - determination of disability, 19-2-406
  - disability, 19-2-303
  - eligibility, 19-2-702
  - family law orders, alternate payees, 19-2-907
  - limitations, 19-2-906
- discrimination prohibited, 19-2-403, 49-2-309
- employee contributions, See also employees; membership
  - accumulated contributions, 19-2-303
  - dormant, nonvested — transfer, 19-2-1003
  - discontinuance, effect, 19-2-1002
  - installment payments, 19-2-602
  - maximum contribution, benefit limitation, 19-2-1001
  - military service, 19-2-707
  - normal cost contribution rate, funding, 19-2-303, 19-2-405
  - refund, 19-2-502, 19-2-601 — 19-2-603, 19-2-1003, 19-2-1004
  - reinstatement following, 19-2-603
  - rollover, 19-2-708
  - withdrawal, 19-2-602, 19-2-907
- employees, 19-2-303, See also employee contributions; membership
  - determination, 19-2-403
  - termination of service, 19-2-602, 19-2-706
- employer contributions, 19-2-303, See also employers
  - normal cost contribution rate, funding, 19-2-303, 19-2-405
  - payments, 19-2-506
  - unfunded liability contribution rate, funding, 19-2-405
- employers, 19-2-303, See also employer contributions
  - terminating member, employment-related claim, 19-2-602
- enforcement of provisions, 19-2-403
- family law orders, alternate payees, 19-2-907
- fraud, 19-2-903, 19-2-1009
- funds
  - dormant savings account, transfer, 19-2-1003
  - pension trust fund, See pension trust funds
- investment expenses, 19-2-502
- membership, See also employee contributions; employees
  - compensation of members, limit, 19-2-1005
  - definitions, 19-2-303
  - membership service, 19-2-702
  - reinstatement, 19-2-603
  - termination, 19-2-601 — 19-2-603, 19-2-706, 19-2-1002
- pension trust funds, 19-2-303
  - administration, 19-2-408
  - assets, 19-2-502
  - employee's accumulated contributions, 19-2-602, 19-2-1003
  - establishment, 19-2-501
  - exemption from taxation and legal process, 19-2-1004
  - investment, 19-2-504
  - management, 19-2-503
  - report concerning, 19-2-407
  - transfer between, 19-2-507
  - use, restrictions, 19-2-505
- public employees' retirement board, 2-15-1009, 19-2-303
  - actuary, employment, 19-2-405



**RETIREMENT** (continued)

## Public Employees' Retirement Administration (continued)

## public employees' retirement board (continued)

- administrative staff, 19-2-404
- benefit payments, duties, Title 19, chapter 2, part 9
- compensation, 19-2-402
- contributions, duties, See employee contributions; employer contributions
- death benefits, duties, 19-2-401
- disability, determination, 19-2-406
- disability retirement, duties concerning, See disability retirement
- family law orders, rules, 19-2-907
- funding, 19-2-409
- legal counsel, 19-2-401
- location, 19-2-401
- officers and employees, 19-2-401
- pension trust funds, trustee, 19-2-503
- powers and duties generally, 19-2-403
- quorum, 19-2-401
- rules by, 19-2-401, 19-2-403, 19-2-506, 19-2-701, 19-2-702, 19-2-907
- service credits, 19-2-701, 19-2-704
- social security, administration, Title 19, chapter 1, See SOCIAL SECURITY
- third party mailings, 19-2-403
- unfunded liabilities, amortization, 19-2-405
- records, 19-2-401, 19-2-403, 19-2-406, 19-2-903, 19-2-1009
- rule making authority, 19-2-1010
- service credit, 19-2-303, 19-2-701
  - eligibility, 19-2-403
  - purchase allowed, 19-2-704
  - reinstatement, 19-2-603
  - rules, 19-2-403
  - transfer, 19-2-704
- service retirement
  - eligibility, 19-2-702
  - family law orders, alternate payees, 19-2-907
- short title, 19-3-101
- survivorship benefits, See beneficiaries
- termination of system, 19-2-1002
- transfer of service and contributions, 19-2-709
- unfunded liabilities, 19-2-303
  - contribution rate, 19-2-405
- workers' compensation payments, effect, 19-2-905

## Public Employees' Retirement System

## beneficiaries

- accumulated contributions paid to, when, 19-3-1210, 19-3-1211
- contracting employer, action for tax levy by, 19-3-204
- death payments to, 19-3-1210
- minor, as, 19-3-1204
- survivorship benefit, 19-3-1204, 19-3-1205, 19-3-1501, 19-3-1604
- teachers' retirement board, transfer for — when, 19-3-511

## benefits, See also death payments

- commencement, 19-2-908
- discrimination prohibited, 19-2-309
- early retirement, 19-3-902, 19-3-908
- federally subsidized employees, 19-3-402
- guaranteed annual benefit adjustment, 19-3-1605
- nonapplication to defined contribution plan, 19-2-1102
- optional, forms, 19-3-1501
- survivorship benefit, See beneficiaries
- withholding for support obligation, 19-2-909
- citation of the public employees' retirement system act, 19-3-101
- contracting employer, 19-3-108
  - contract provisions, 19-3-201, 19-3-411

**RETIREMENT** (continued)

## Public Employees' Retirement System (continued)

- contracting employer (continued)
  - conversion of existing plan, 19-3-203
  - disability benefit cancellation, notice, 19-3-1015
  - employee request for employer participation, 19-3-202
  - incentive program, 19-3-908
  - tax levy, authority for, 19-3-204
- contributions, See employee contributions; employer contributions
- cost of living increase, 19-3-1604
- creation, 19-3-103
- death payments, 19-3-1201 — 19-3-1203, See also benefits
- defined benefit plan, 19-3-108
  - administrative expense, 19-2-408
  - member contribution, 19-3-315
- defined contribution plan, 19-3-2102 — 19-3-2134
- definitions, 19-3-108
- disability retirement benefits
  - amount, 19-3-1007, 19-3-1008
  - application, 19-3-1005
  - cancellation, 19-3-1015, 19-3-1104
  - cost-of-living increase, 19-3-1604
  - death payments, applicability, 19-3-1201
  - duty-related disability, 19-3-1007, 19-3-1008
  - eligibility, 19-3-1002
  - medical examination requirements, 19-3-1015
  - reduction, 19-3-1103
  - reemployment of retiree, 19-3-1103, 19-3-1104
  - reinstatement to duty, 19-3-1015, 19-3-1104
- discrimination prohibited, 49-2-309
- education fund, 19-3-112
- employee contributions, See also membership
  - accumulated contributions, 19-3-315, 19-3-511
  - additional service, purchase, 19-3-513
  - beneficiary, payment to — when, 19-3-1210, 19-3-1211
  - death payments, 19-3-1202, 19-3-1210
  - employer, pick up and payment, 19-3-315
  - federal employment, 19-3-510
  - federally subsidized employees, 19-3-402
  - illness or injury, absence due to, 19-3-504
  - installment payments, 19-3-504, 19-3-505, 19-3-512, 19-3-513
  - military service, 19-3-503, 19-3-511
  - other retirement systems, 19-3-512
  - previous employment with employer, 19-3-505
  - public service employment, 19-3-509
  - rate, 19-3-315
  - refund, 19-3-401, 19-3-504, 19-3-512, 19-3-1211
  - teachers' retirement board, transfers from, 19-3-511
- employees, See employee contributions; membership
- employer contributions, 19-3-108, 19-3-112
  - illness or injury, absence due to, 19-3-504
  - incentive program, 19-3-908
  - payments, 20-9-501
  - previous employment with employer, 19-3-505
  - public service employment, 19-3-509
  - rate, 19-3-316
  - refund, 19-3-318
  - state employer, budget — inclusion, 19-3-317
  - teachers' retirement board, transfers from, 19-3-511
- employers, 19-3-108, See also contracting employer; employer contributions
  - employee contributions, pick up and payment, 19-3-315
  - incentive program, 19-3-908

**RETIREMENT** (continued)

## Public Employees' Retirement System (continued)

funds, See pension trust fund

governance, 19-3-103

membership, See also employee contributions

contracts for, See contracting employer

effective date, 19-3-401

eligibility, 19-3-402, 19-3-411

exclusions, 19-3-403

exemption from, 19-3-111, 19-3-401

federally subsidized employees, eligibility, 19-3-402

inactive vested or nonvested members, 19-3-401

legislative members, 19-3-521

optional, 19-3-412

termination, 19-3-318, 19-3-401

pension trust fund, 19-3-108, 19-2-408

school districts

employees, eligibility, 19-3-401

employer contributions, payment, 20-9-501

special education, allowable costs, 20-7-431, 20-7-435

service credit

absence from service, 19-3-401, 19-3-501, 19-3-504

additional, purchase, 19-3-513, 19-3-908

death payments, 19-3-1202

federal employment, 19-3-510

illness or injury, absence due to, 19-3-504

legislative members, 19-3-521

military service, 19-3-503, 19-3-511

other retirement systems, 19-3-512

previous employment with employer, 19-3-505

public service employment, 19-3-509

purchase, 19-3-401, 19-3-513, 19-3-908

second retirement, requirements, 19-3-1105

teachers' retirement system, transfer to or from, 19-3-511, 19-20-401, 19-20-409,  
19-20-804, 19-20-902

service retirement

additional service, purchase — effect, 19-3-513

adjustment for certain members, 19-3-905

amount, 19-3-904

cost-of-living increase, 19-3-1604

disability retirement status, change from, 19-3-1103

early retirement, 19-3-902, 19-3-908

eligibility, 19-3-401, 19-3-901, 19-3-902

inactive members, 19-3-401

incentive program, 19-3-908

short title, 19-3-101

social security system, separateness, 19-1-101, 19-1-104, 19-1-304

## Teachers' Retirement System

actuary, designation and duties, 19-20-203

administration, Title 19, chapter 20, part 2

expenses, 19-20-605

annuities, See benefits

assets and liabilities, 19-20-201, 19-20-502, 19-20-601

benefits, 19-20-206, 19-20-701

additional service, purchase, 19-20-404

annuity, 19-20-101

compensation limit, 19-20-715

disability, See disability retirement

duplication prohibited, 19-20-407

early retirement, 19-20-802

exemption from taxation and legal process, 19-20-706

family law court order, 19-20-305

**RETIREMENT** (continued)

## Teachers' Retirement System (continued)

## benefits (continued)

- group insurance premiums withheld from, 19-20-1101
- guarantee by state, 19-20-104
- guaranteed annual benefit adjustment, 19-20-719
- increase in, 19-20-719
- maximum, limitation, 19-20-710
- members, 19-20-1001
- minimum monthly allowance, 19-20-720
- optional, 19-20-702
- payments, 19-20-703, 19-20-705
- postretirement adjustment, 19-20-702
- public employees' retirement service credits, death of member prior to qualification, 19-20-409
- retirees, 19-20-1002
- superannuation, 19-20-804
- survivorship, 19-20-720, 19-20-717
- vesting upon termination of system, 19-20-504
- withholding for support obligation, 19-20-306

## community college districts

- pension accumulation fund, employer contribution, 19-20-605

## contributions, employer

- cooperative extension service, employment with, 19-20-410
- injury, employment-related — following absence due to, 19-20-411
- leave, employment while on, 19-20-403
- military service, 19-20-404
- out-of-state employment, 19-20-402
- payment, 19-20-208, 19-20-411, 20-9-501
- pension accumulation fund, 19-20-605
- private schools, employment in, 19-20-408
- public employees' retirement board, transfers from, 19-20-409
- state contributions, termination, 19-20-604
- substitute teachers, 19-20-302

## contributions, member, See also creditable service

- annuity savings fund, 19-20-602
- cooperative extension service, employment with, 19-20-410
- court order, family law 19-20-305
- death benefits, 19-20-1001 — 19-20-1003
- discontinuance, 19-20-504
- employers to pick up, 19-20-208, 19-20-602
- injury, employment-related — following absence due to, 19-20-411
- installment payments, 19-20-402 — 19-20-404, 19-20-408, 19-20-410, 19-20-411
- internal revenue service qualification rules, 19-20-212
- leave, employment while on, 19-20-403
- maximum contribution limitation, 19-20-718
- military service, 19-20-404
- out-of-state employment, 19-20-402
- pension accumulation fund, 19-20-605
- private schools, employment in, 19-20-408
- rollover, 19-20-414
- service credit, purchase, 19-20-415, 19-20-417
- substitute teachers, 19-20-302
- supplemental contribution, 19-20-621
- transmittal, 19-20-208
- withdrawal, 19-20-304, 19-20-401, 19-20-602, 19-20-603, 19-20-706
- withholding, implied consent, 19-20-103

## corporate powers, 19-20-102

## court order, 19-20-305

## creation, 19-20-102

## creditable service, 19-20-401

- absence due to employment-related injury, 19-20-401, 19-20-411

**RETIREMENT** (continued)

## Teachers' Retirement System (continued)

## creditable service (continued)

additional, purchase, 19-20-404

cooperative extension service, employment with, 19-20-401, 19-20-410

death benefits, 19-20-1001, 19-20-1002

disability retirement, 19-20-901

early retirement, 19-20-802

inactive membership, 19-20-303

leave, employment while on, 19-20-401, 19-20-403

limitations, 19-20-405

maximum contribution limitation, 19-20-708

membership termination, 19-20-304

military service, 19-20-401, 19-20-404

minimum monthly benefit allowance, qualification, 19-20-720, 19-20-709

multiple periods of service, effect, 19-20-407

out-of-state employment, 19-20-401, 19-20-402

part-time service, 19-20-401

policies governing, 19-20-204

prior service, 19-20-101, 19-20-401, 19-20-406

private schools, employment in, 19-20-402, 19-20-408

public employees' retirement system, transfer to or from, 19-3-511, 19-20-401, 19-20-409, 19-20-804, 19-20-902

service credit, purchase, 19-20-415, 19-20-417

substitute teachers, 19-20-302

superannuation retirement, 19-20-801

death benefits, 19-20-1001, 19-20-1003

membership, termination, 19-20-304

optional allowances, effect on, 19-20-702

public employees' retirement service credits, prior to qualification, 19-20-409

definitions, 19-20-101

disability retirement

additional service, purchase — effect, 19-20-902

adjustment, 19-20-904

benefits, 19-20-206, 19-20-701, 19-20-902, 19-20-1003

cancellation, 19-20-905

conversion from optional allowance when, 19-20-702

discontinuance and revocation, 19-20-903

eligibility, 19-20-901

medical examination requirements, 19-20-901, 19-20-903

minimum monthly allowance, 19-20-720, 19-20-709

reduction when, 19-20-904

restoration to active service, 19-20-905

discrimination prohibited, 19-20-302, 19-2-309

earned compensation, 19-20-805

employer, 19-20-101, See also contributions, employer

duties, 19-20-208, 19-20-302

establishment, 19-20-102

estate of member, payment of contributions to, 19-20-602, 19-20-1001

expenditures, 19-20-201

false statements and falsification of records, penalty, 19-20-105

fraud, 19-20-105, 19-20-401

funds

actuarial valuation, 19-20-201

administration, 19-20-501

annuity reserve fund reserves, guarantee by state, 19-20-104

annuity savings fund, 19-20-503, 19-20-602, 19-20-605

custodian, 19-20-501

dormant savings account, transfer, 19-20-503

establishment and maintenance, 19-20-201, 19-20-601

expense fund, 19-20-202

financing, method, 19-20-601



**RETIREMENT** (continued)

## Teachers' Retirement System (continued)

## funds (continued)

- interest, 19-20-201, 19-20-501, 19-20-605
- investment, 19-20-501
- pension accumulation fund, 19-20-503, 19-20-602, 19-20-605
- reserves, 19-20-501, 19-20-605, 19-20-104
- trustees for, 19-20-501
- use, restrictions, 19-20-502

## guarantee by state, 19-20-104

## membership

- active, 19-20-302 — 19-20-304, 19-20-402, 19-20-404, 19-20-905
- applications, 19-20-201, 19-20-208, 19-20-301
- certification, 19-20-208
- compulsory, 19-20-103, 19-20-302
- consent implied, 19-20-103
- eligibility, 19-20-208, 19-20-205, 19-20-302, 19-20-303
- inactive, 19-20-303, 19-20-304, 19-20-603
- rights and obligations, 19-20-208
- termination, 19-20-304, 19-20-504, 19-20-603

## name, 19-20-102

public employees' retirement system, service credits transferred to or from, 19-3-511,  
19-20-401, 19-20-409, 19-20-804, 19-20-902

## records, 19-20-105, 19-20-201, 19-20-208

## reports, financial, 19-20-201

## retirement allowances, See benefits

## rollover of accumulated contributions, 19-20-414

## school districts

- employer's contribution, payment, 20-9-501
- special education, allowable costs, 20-7-431, 20-7-435
- trustees, participation, 20-3-324

## social security system, separateness, 19-1-821

## state contribution, 19-3-319, 19-20-604

## substitute teachers, membership eligibility, 19-20-302, 19-20-417, 19-20-804

## superannuation retirement

- additional service, purchase — effect, 19-20-804
- benefits, 19-20-804
- early retirement, benefits, 19-20-802
- eligibility, 19-20-801

## tax-deferred annuity program, 19-20-603

## teachers' retirement board, 2-15-1010, 19-20-101, 20-3-106

- actuary, designation by, 19-20-203
- administration of system, 19-20-201, 19-20-206, 19-20-702, 19-20-705
- creditable service, policy, 19-20-204, See also creditable service
- death benefits, 19-20-1001
- disability retirement, duties, Title 19, chapter 20, part 9, See disability retirement
- early retirement, duties, 19-20-802
- employers, information furnished by, 19-20-208
- funds, management, Title 19, chapter 20, part 5, See funds
- membership, 19-20-201, 19-20-205, 19-20-301, 19-20-302
- officers and employees, 19-20-203
- per diem and expenses of members, 19-20-202
- public employees' retirement system, contributions transferred to, 19-3-511
- service credits, qualification, 19-20-409
- records and reports, 19-20-201
- rulemaking authority, 19-20-106
- subpoenas, 19-20-901
- superannuation retirement, duties, 19-20-801, 19-20-804

## termination, 19-20-504, 19-20-603, 19-20-716

## university system optional retirement program, participation in, 19-20-208, 19-20-302

**RETIREMENT FUND**, See FINANCE

**RURAL RESIDENTIAL IMPACT PAYMENTS**, 20-9-104, 20-9-508, 20-9-615

## S

**SAFETY CULTURE ACT**, 39-71-1501, et seq.

**SANITARY CONDITIONS**, Inspection, 20-3-324

**SCHOOL DAY**, See PUPIL INSTRUCTION DAYS

### SCHOOL FACILITIES ADVANCES AND REIMBURSEMENTS

See also FINANCE

Calculation, 20-9-371

Definition, 20-9-370

Duties of state superintendent, 20-9-346, 20-9-369

Eligibility, 20-9-367

Limitation on bond issue, 20-9-406

Permissible uses, 20-9-371

Requirements for trustees' resolution calling bond election, 20-9-422

### SCHOOL LANDS

See also STATE LANDS

Income from and for, 20-9-341

Land Commissioners, Board of — authority, Const., X, 4

Leases, 20-9-341; Const., X, 5

Public school fund, 20-9-341, 20-9-601, 20-9-602; Const., VIII, 13; X, 2; X, 3; X, 5

Sale, 20-9-601

State lands held in trust for education, Const., X, 11

### SCHOOL-RELATED ORGANIZATIONS, AUDITS OF, 2-7-509

### SCHOOLS

Abuse of pupil or teacher, 20-4-302, 20-4-303

Accreditation, 20-7-102

failure to maintain, 20-9-344

instructional programs set forth in, 20-7-111

lack of, effect, 20-9-311

libraries, requirements, 20-7-202

out-of-district attendance agreements, effect, 20-5-321

standards, 20-2-121, 20-3-106, 20-6-503, 20-7-101

Admittance of children, 20-5-101, 20-5-403, 20-5-404; Const., X, 7

Adult education

budget, 20-7-705, 20-7-713

curriculum, 20-7-701

definitions, 20-7-701

fund, adult basic education, 20-7-712

fund, adult education, 20-7-704, 20-7-705, 20-7-713

levy for, 20-7-705

literacy programs, 20-7-714

policies, 20-7-703, 20-7-711

programs, establishment, 20-3-106, 20-7-702

tuition and fees, 20-7-704

Age requirements, See also AGE REQUIREMENTS

admittance, for, 20-1-101, 20-5-101

disabilities, child with, 20-7-436

Aggregate hours, 20-1-301

failure to provide minimum number, 20-1-301

Attendance

absences, notice to parents when, 44-2-507

administration of provisions, 20-3-324

average number belonging (ANB), calculation, 20-9-311, See AVERAGE NUMBER

BELONGING (ANB)

boundaries, See DISTRICTS AND TRUSTEES, Boundaries, generally; Elementary districts;

High school districts

**SCHOOLS** (continued)

## Attendance (continued)

- compulsory, 20-4-402, 20-5-103, 20-5-105, 20-5-106, 20-5-108
- enforcement, 20-5-105, 20-5-106
- excuses, 20-5-102, 20-5-103, 20-5-106, 44-2-507
- home schools, 20-5-109, 20-5-111
- immunization requirements, Title 20, chapter 5, part 4, See IMMUNIZATION REQUIREMENTS
- incapacitated children, 20-5-107
- Indian children, 20-5-108
- indigent children, 20-5-107
- nonpublic schools, records, 20-5-109
- out-of-district attendance agreements, 20-3-210, 20-5-314, 20-5-320 —20-5-324, See also SPECIAL EDUCATION; TUITION
- reciprocal attendance agreements, 20-5-314
- records, 20-1-213
- religious instruction released time programs, effect, 20-1-308
- reports, 20-4-301, 20-4-402, 20-9-311
- special education, See SPECIAL EDUCATION
- transportation contract payments, use of records, 20-10-125
- truancy, 20-4-302, 20-5-106
- tuition, See SPECIAL EDUCATION; TUITION
- violation, 20-5-106
- Attendance officers, 20-3-206, 20-5-104 — 20-5-107
- Audiological services, 20-7-403, 26-1-801, 26-1-806
- Breastfeeding in, 39-2-215 — 39-2-217
- Bullying
- Bully Free Montana Act, 20-5-207 - 210
- Closure, 20-3-324, 20-6-505, 20-6-509
  - emergency, 20-9-801, 20-9-802, 20-9-805, 20-9-806
- Commemorative exercises held when, 20-1-306
- Cooperatives, full service education
  - audits, Title 2, chapter 7, part 5, See AUDITS, Local government entities
  - contracts, 20-7-451, 20-7-452, 20-7-454
  - creation, authorization, 20-7-451
  - expenditures, 20-7-451
  - funding, 20-7-452, 20-7-455, 20-7-457
  - funds, establishment, 20-7-457
  - management board, 20-7-452, 20-7-455
  - property, 20-7-452
  - special education purposes, for, 20-4-202, 20-7-452, 20-7-457
  - teachers employed by, tenure, 20-7-456
- Corporal punishment or physical restraint of pupils, 20-4-302
- Correspondence
  - schools, Title 20, chapter 30, See POSTSECONDARY EDUCATIONAL INSTITUTIONS
  - study, supervised, 20-5-102, 20-7-116, 20-10-121, 20-10-142, 20-10-144
- Counselors
  - gifted and talented children programs, 20-7-901
  - K-12 specialist, 20-4-131
  - privileged communications, 26-1-809
  - special education, allowable costs, 20-7-431
- County high schools, 20-6-101, See also High schools; Junior high schools
  - high school district, as, 20-6-101
  - principals, See PRINCIPALS
  - tuition, See TUITION
  - unification, 20-3-205, 20-6-312, 20-6-313
- Crossing guards, 20-1-214, 20-3-106, 61-8-502
- Curriculum
  - adult education, 20-7-701
  - assistance with, 20-3-106, 20-7-114
  - correspondence study, 20-5-102, 20-7-116, 20-10-121, 20-10-142, 20-10-144
  - establishment and maintenance, 20-3-324

**SCHOOLS** (continued)

## Curriculum (continued)

guides, file and publication, 20-3-106, 20-7-113

home schools, 20-5-109, 20-5-111

instructional programs, 20-4-402, 20-7-111

music instruction, private, 20-7-115

nonpublic schools, 20-5-109

secondary education, equivalency of completion, 20-2-121, 20-7-131

Deaf and Blind, School for, Title 20, chapter 8, part 1, See DEAF AND BLIND, MONTANA SCHOOL FOR THE

Definitions, 20-1-101, 20-3-322, 20-4-302, 20-5-320, 20-5-402, 20-6-501, 20-6-701, 20-7-401, 20-7-436, 20-7-501, 20-7-701, 20-7-901

Disabilities, persons with, See SPECIAL EDUCATION

Disaster Drills, 20-1-401 — 20-1-407

Discriminatory practices, See DISCRIMINATION

Disturbance, willful - penalty, 20-1-206

Donations to, 20-9-601

Driver education, See TRAFFIC EDUCATION

Drug Abuse Resistance Education (D.A.R.E.) Program, Title 44, chapter 2, part 7

Drugs, dangerous — criminal sale on or near school property, 45-9-109

Elections, See ELECTIONS

Elementary schools, 20-6-501, See also Kindergartens; Preschool programs; Tuition

accreditation, 20-7-102, See Accreditation

opening or reopening, 20-6-502

relocation within district, 20-6-218

## Emergencies

bids for sites, facilities, or supplies - requirements waived, 20-9-204

closure of schools, Title 20, chapter 9, part 8

disaster drills, 20-1-401 — 20-1-407

hours in school week, reduction, 20-1-301, 20-1-302

Saturday, pupil instruction on, 20-1-303, 20-3-324

school trustee meetings, effect on, 20-3-322

trustees power to reschedule, 20-9-806

unforeseen emergency, definition, 20-3-322

## Enrollment

compulsory, 20-5-102

increases, See AVERAGE NUMBER BELONGING (ANB); BUDGETS AND BUDGET SYSTEM, Budget amendments

new students, school records and proof of identity required, 44-2-511

nonenrollment, 20-5-106

nonpublic nonaccredited school, from - assessment policy, 20-3-324, 20-5-110

Equal opportunity in education, Const., X, 1; X, 7

External diploma, 20-7-131

Extracurricular functions, money from, See FINANCE, Extracurricular fund

Facilities, See SITES AND FACILITIES

Financial administration, See FINANCE

## Fines

abuse of pupils or teachers, 20-4-302, 20-4-303

attendance violations, 20-5-106

corporal punishment or physical restraint of pupils, 20-4-302

disposition, 20-9-331, 20-9-332

disturbance of school, 20-1-206

fraternities, participation in, 20-5-203

principals, for violations, 20-1-203

school law violations generally, 20-1-207

secret organizations, participation in, 20-5-203

sites and facilities, 20-6-624, 20-6-636

textbook dealers, lack of license, 20-7-606

## Firearms

carrying in prohibited place, 45-8-328, 45-8-351, 45-8-361

safety education, 20-7-132

use by children under age 14 prohibited, 45-8-344, 45-8-345

**SCHOOLS** (continued)

- Fire drills, 20-1-401 - 20-1-402, 20-1-404
- Fire procedures, 20-1-405
- Fire protection and safety regulations, See FIRE SAFETY IN PUBLIC BUILDINGS
- Fire services training school, Title 20, chapter 31
- Five-year-old schooling, See Kindergartens
- Flag, American - display, 20-3-324
- Food services, 20-1-101
  - administrative review, 20-3-106, 20-10-202
  - audits, 20-3-106, 20-10-202
  - commodities, 20-3-106, 20-10-202 — 20-10-204
  - establishment, operation, and expansion, 20-10-201, 20-10-204
  - federal funds, 20-3-106, 20-10-201, 20-10-205
  - fund, See FINANCE, School food services fund
  - gifts for, 20-10-201, 20-10-204
  - indigent children, 20-3-205, 20-10-205
  - inspections, 20-3-106, 20-10-202
  - institutional schools, inclusion, 20-10-206
  - personnel, 20-3-324
  - records and reports, 20-3-106, 20-10-202
  - wild animal meat donated to, when, 87-1-226
- Forms distributed to, 20-3-105
- Fraternalities prohibited, 20-5-203
- Free education, Const., X, 1
- General education development (GED), 20-7-131
- Gifted and talented children programs, 20-2-121, 20-7-901 — 20-7-904
- Goal of education, Const., X, 1
- Governance generally, 20-3-324
- Health
  - immunization, Title 20, chapter 5, part 4, IMMUNIZATION REQUIREMENTS
  - inspections, 50-1-203
  - programs, 50-1-202
  - pupils, conditions and records, 20-3-324
  - quarantine measures, 50-1-204
  - regulations, 50-1-206
- High schools, 20-6-501, See also County high schools; Junior high schools
  - accreditation, 20-7-102, See Accreditation
  - opening or reopening, 20-6-503
- Holidays, 20-1-305 — 20-1-307, 20-4-201, See also HOLIDAYS
- Homeless children, admittance, 20-5-101
- Home schools, 20-5-102, 20-5-109, 20-5-111, See also PRIVATE SCHOOLS
- Home study, supervised, 20-5-102, 20-7-116, 20-10-121, 20-10-142, 20-10-144
- Immunization requirements, 20-5-403
  - affidavit, 20-5-405
  - attendance, commencement, 20-5-403, 20-5-404, 20-5-408
  - definitions, 20-5-402
  - enforcement, 20-5-408, 20-5-410
  - evidence, 20-5-403, 20-5-406, 20-5-409
  - exemptions, 20-5-403, 20-5-405, 20-5-409
  - failure to comply, 20-5-405, 20-5-409, 20-5-410
  - forms, 20-5-405, 20-5-406, 20-5-408
  - home schools, 20-5-109, 20-5-111
  - immunizing agents, approval, 20-5-403, 20-5-409
  - injunction, 20-5-409
  - noncompliance, 20-5-409, 20-5-410
  - nonpublic schools, records, 20-5-109
  - penalty, 20-5-410
  - postsecondary schools, 20-5-402, 20-5-403, 20-5-408
  - records, 20-5-109, 20-5-403, 20-5-405, 20-5-406
  - reports, 20-5-408
  - rulemaking, 20-5-407
  - transfer students, records, 20-5-403



**SCHOOLS** (continued)

## Indians

- children, attendance, 20-5-108

- culture, preservation, Const., X, 1, See TEACHERS, Indian studies

- Indigent children, 20-3-205, 20-5-107, 20-10-205

- Industrial arts programs, funding, 20-7-305, 20-7-306

- Insurance, See INSURANCE

- Interstate school agreements, joint, 20-9-705

- Isolation, 20-3-106, 20-3-205, 20-3-324, 20-9-302, 20-9-303

- Junior high schools, 20-6-501, See also County high schools; High schools

- accreditation, 20-7-102, See Accreditation

- closure, 20-6-505, 20-6-509

- opening, 20-6-504 — 20-6-506

- Kindergartens, 20-7-117, See also Preschool programs

- elementary schools, inclusion, 20-6-501, 20-7-117

- hours of instruction, 20-1-302

- immunization requirements, Title 20, chapter 5, part 4

- out-of-district attendance agreements, 20-5-320

- Kindergarten through grade 12 system, 20-6-508

- Laboratory fees charged when, 20-9-214

- Lease-purchase agreements, 20-6-609

- Librarians, 20-4-131

- Literacy programs, adult, 20-7-714

- Meetings, penalty for willful disturbance, 20-1-206

- Middle schools, 20-6-501, See also Elementary schools

- accreditation, 20-7-102, See Accreditation

- opening, 20-6-507

- Miscellaneous provisions, Title 20, chapter 1, part 2

- Motor vehicle traffic laws, See TRAFFIC EDUCATION

- Music instruction, private, 20-7-115

- Nonpublic nonaccredited school, placement of child in public school — assessment policy, 20-3-324, 20-5-110

- Nonsmoking areas, designation, 50-40-201, See SMOKING IN PUBLIC PLACES

- Nurses, 19-20-302, 20-3-324, 20-7-431, 26-1-801, 26-1-809, 41-3-201, 50-1-202

- Obscene material, public display or dissemination to minors — nonapplicability of provisions when, 45-8-206

- Opening or reopening, 20-3-324

- elementary schools, 20-3-106, 20-3-205, 20-6-218, 20-6-502

- high schools, 20-3-106, 20-3-205, 20-6-503

- junior high schools, 20-3-106, 20-3-205, 20-3-362, 20-6-504 — 20-6-506

- middle schools, 20-6-507

- Operation generally, 20-3-324

- Parent-teacher conferences, 20-1-304

- Parochial, See PRIVATE SCHOOLS

- P.I.R. days, 20-1-304, 20-2-121, 20-3-106

- Pledge of Allegiance, 20-7-133

- Prayer in, 20-7-112

- Preschool programs, 20-7-117, 20-7-411, See also Kindergartens

- elementary schools, inclusion, 20-6-501, 20-7-117

- hours of instruction, 20-1-301, 20-1-302

- immunization requirements, Title 20, chapter 5, part 4, See IMMUNIZATION REQUIREMENTS

- special education, 20-7-411

- Principals, 20-1-101, See also TEACHERS, generally

- certification, See TEACHERS, Certification

- county high schools, 20-3-324, 20-4-401, 20-4-402

- district superintendent, duties as — when, 20-4-403

- employment or dismissal, 20-3-324, 20-6-410

- finances for violations, 20-1-203

- K-12 districts, 20-6-711

- library books, selection, 20-7-204

- misappropriation of funds, 20-1-203

**SCHOOLS** (continued)

## Principals (continued)

- prayer to open school day, 20-7-112
- pupils, 20-4-302, 20-5-201
- pupils - suspension, 20-4-302, 20-4-403, 20-5-202
- retirement, Title 19, chapter 20, See RETIREMENT, Teachers' Retirement System
- special education assistance, 20-7-403
- successor, delivering materials to, 20-1-203
- teachers, duties, 20-3-324, 20-4-204, 20-4-207, 20-4-301
- textbooks selected by, 20-7-602

## Psychologists

- gifted and talented children programs, 20-7-901
- privileged communications, 26-1-801, 26-1-807, 26-1-809
- psychology teachers, privileged communications, 26-1-801, 26-1-808
- special education, allowable costs, 20-7-431
- "specialist" defined, 20-4-131
- teachers' retirement system, membership required, 19-20-302, See RETIREMENT, Teachers' Retirement System

## Public school fund, See FINANCE, Public school fund

## Pupil instruction days

- average number belonging (ANB), calculation, 20-9-311, See AVERAGE NUMBER BELONGING (ANB)
- commemorative exercises held when, 20-1-306
- disaster drills, 20-1-401 — 20-1-407
- emergencies, closures by — effect, 20-9-806
- graduating seniors, requirement, 20-1-301
- holidays, 20-1-305, 20-1-307
- home schools, number required, 20-5-109, 20-5-111
- hours required, daily, weekly and yearly, 20-1-301, 20-1-302, 20-2-121
- minimum number, 20-1-304, 20-5-109, See also EMERGENCIES, Closure of schools
- nonpublic schools, number required, 20-5-109
- religious instruction released time programs, 20-1-308
- Saturday, on - when, 20-1-303, 20-2-121, 20-3-324, 20-7-503
- transportation reimbursements, state — computation, 20-10-145
- trustees to set, 20-1-301

## Pupil-instruction-related days, 20-1-304, 20-2-121, 20-9-311

## Religion, Const., X, 7

- Bible or other religious material, inclusion in libraries, 20-7-112
- enrollment, 20-5-102
- immunization requirements, exemption when, 20-5-405
- prayer in schools, 20-7-112
- religious instruction, 20-1-308; Const., X, 7
- sectarian publications prohibited, 20-7-112

## Reports distributed to, 20-3-105

## Safety plan, 20-1-401

## Sanitary conditions, inspection, 20-3-324

## School laws, 20-1-207, 20-3-105

## Secondary education, equivalency of completion, 20-2-121, 20-7-131

## Secret organizations prohibited, 20-5-203

## Sectarian publications prohibited, 20-7-112

## Sex offenders, geographic restrictions, 45-5-513

## Smoking, prohibited, 20-1-220

## Speed limits near, alteration - authority, 61-8-310

## Sports officials - assault upon, criminal offense, 45-5-211

## Suicide, prevention training, 20-7-1310

## Supervision, Const., X, 9

- county high school principal, 20-4-402
- county superintendent of schools, 20-3-205, 20-3-207
- district superintendent, 20-4-402
- principals, 20-4-403
- school trustees, 20-3-207; Const., X, 8
- superintendent of public instruction, 20-3-106

**SCHOOLS** (continued)

- Telecommunications network (METNET), 20-9-343
- Textbook dealers, 20-1-101, 20-3-106, 20-7-604 — 20-7-608, 49-3-204
  - complaints against, 20-3-205, 20-7-605
- Textbooks, 20-1-101, 20-3-324, 20-7-601
  - damage policy, 20-7-601
  - free to pupils, to be, 20-7-601
  - home schools, 20-5-111
  - purchase, 20-7-601, 20-7-603
  - selection and adoption, 20-3-205, 20-4-402, 20-7-602, 20-7-603
  - sold to pupils when, 20-7-601
  - special education budget, allowable costs, 20-7-431
- Tobacco-free areas, designation, 50-40-201
- Types, enumeration, 20-6-501
- Violations, 20-1-207, 41-3-207
- Visitations, 20-3-207, 20-3-324
- Vocational education, K-12, Title 20, chapter 7, part 3
- Voting program for youth, Title 13, chapter 22, part 1

**SECONDARY EDUCATION**, Equivalency of completion, 20-2-121, 20-7-131**SECRET ORGANIZATIONS PROHIBITED**, 20-5-203**SECTARIAN PUBLICATIONS PROHIBITED**, 20-7-112**SITES AND FACILITIES**

- See also PROPERTY
- Acquisition, 20-3-324, 20-6-603
- Alternative education, 41-5-1801
- Approval, 20-6-603, 20-6-621
- Architectural services, 18-2-113
  - contracts, 20-6-631, 20-6-635, 20-6-636
  - fees, 20-6-633, 20-6-636
  - proposals, tentative and final, 20-6-634
- City or county, approval and review of plans and specifications, 20-6-622
- Construction, 18-2-103, 18-2-201, 18-2-313, 18-2-401, 18-2-403, 18-2-432, 20-9-225 — 20-9-227
- Contractors, bonding requirements - waiver when, 18-2-201
- Contracts
  - amount withheld when, 18-2-404
  - approval, 18-2-404
  - architectural services, 20-6-631, 20-6-635, 20-6-636
  - bid requirements, conflict of interest, 20-9-204
  - bids, preference to Montana labor, 18-2-403
  - bids, requirements, 20-9-204, 20-9-205
  - breach, 20-6-636
  - discrimination, 18-2-403, 49-3-207
  - division to circumvent bid requirements prohibited, 20-9-205
  - federal funds, involving, 18-2-313, 18-2-403
  - interest assessment on overdue accounts, 20-9-225 — 20-9-227
  - letting, 20-6-606, 20-9-204
  - payments, 20-6-624
  - preference to Montana labor, 18-2-403
  - required when, 20-9-204
- Cooperatives, full service education - contracts, use, 20-7-451
- Disposal, 20-3-324, 20-6-603, 20-6-604
- Elections, signature gathering for initiative petitions, 13-13-122
- Firearms, carrying in prohibited place, 45-8-328, 45-8-351, 45-8-361
- Health regulations, 50-1-206
- Historical writings - display, 1-1-520
- Home schools, 20-5-109, 20-5-111
- Interest assessment on overdue accounts, 20-9-225 — 20-9-227
- Interstate agreements for, 20-9-705
- Leases, 20-6-607
  - authority for, 20-6-625

**SCHOOLS (continued)**

## Leases (continued)

- cooperatives, full service education - contracts, 20-7-455
- interest assessment on overdue accounts, 20-9-225 — 20-9-227
- school lands, income from, 20-9-341
- state lands, 20-6-621, 20-9-341

## Maintenance, 20-9-204

## Nonpublic schools, 20-5-109

## Obligations, issuance for, 20-9-471

## Plans and specifications, 20-3-106, 20-6-622, 20-6-624

## Recreation programs, public - use, 20-7-805

## Relocation of elementary school within district, 20-6-218

## Renting, 20-6-607

## Repair, 20-9-204

## Requirements, 20-6-621

## Sanitary inspections, 50-1-203

## Selection, 20-6-621

## State lands, 20-6-621

## Tobacco-free areas, designation, 50-40-201

## Trustees' authority generally, 20-3-324, 20-6-603, 20-9-204

**SMOKING IN PUBLIC PLACES — PROHIBITION**

## Definitions, 50-40-103

## Enclosed public places, 50-40-104

## Enforcement, 50-40-108

## Local government buildings, 50-40-201

## Montana Clean Indoor Air Act of 1979, 50-40-101

## Penalties, 50-40-115

## Purpose of provisions, 50-40-102

## Schools, 20-1-220

**SOCIAL SECURITY**

## Administration, 19-1-201, 19-1-202

## Contribution account

- establishment, 19-1-601
- interest and income from, 19-1-202, 19-1-602, 19-1-701
- management, 19-1-602
- payments from, 19-1-603, 19-1-604
- payments to, See Contributions
- sources of funds, 19-1-503, 19-1-701
- teachers' contributions, 19-1-813
- use, limitations, 19-1-603

## Contributions, 19-1-701

- delinquent payments, collection, 19-1-706
- federal-state agreement provisions, 19-1-402
- higher education, institutions of — budget requirements, 19-1-825
- legislative appropriations, 19-1-701, 19-1-825
- payroll deductions for, 19-1-702, 19-1-705, 19-1-813, 19-1-825
- political subdivisions, 19-1-704 — 19-1-706
- refunds, 19-1-603, 19-1-702
- school districts, 19-1-813, 19-1-814, 20-9-501
- state departments, budget requirements, 19-1-703
- state employees, 19-1-702
- teachers, 19-1-813, 19-1-825

## Definitions, 19-1-102

## Exclusions, 19-1-103

## Federal-state agreements

- authority for, 19-1-401, 19-1-824
- contents, 19-1-402
- payments concerning, 19-1-603, 19-1-604
- plans for political subdivision employees, conformity, 19-1-503

## Higher education, institutions of, See Teachers' participation in

## Medicare, group benefit provisions

**SOCIAL SECURITY** (continued)

- Numbers, protection of, 2-6-501 — 2-6-504
- Policy, declaration, 19-1-101
- Political subdivision employees, plans for
  - approval, 19-1-502
  - contributions, 19-1-704 — 19-1-706
  - delinquent payments, collection, 19-1-706
  - requirements, 19-1-503
  - submission, 19-1-501
- Public Employees' Retirement Board
  - contribution account, powers, 19-1-602
  - contributions, adjustment or refunds, 19-1-702
  - federal-state agreements, 19-1-401, 19-1-402
  - political subdivision employees' plans, 19-1-501 — 19-1-503
  - rulemaking authority, 19-1-201
  - "state agency" defined, 19-1-102
- Public Employees' Retirement Division, administration costs, 19-1-202
- Referendums
  - authorization, 19-1-301
  - certification, 19-1-304, 19-1-811, 19-1-823
  - conduct, 19-1-302
  - higher education, institutions of, 19-1-822, 19-1-823
  - notice, 19-1-303
  - school districts, by, 19-1-811
- Retirement systems, separateness, 19-1-101, 19-1-104, 19-1-802, 19-1-821
- Special education, allowable costs, 20-7-431, 20-7-435, See also Teachers' participation in
- Teachers' participation in
  - conflict of laws, 19-1-801
  - contributions, collection, 19-1-813, 19-1-814, 19-1-825, 20-9-501
  - eligibility, 19-1-812
  - federal laws, effect of changes in, 19-1-826
  - federal-state agreement, 19-1-824
  - multiple systems, participation in, 19-1-802
  - purpose of provisions, 19-1-801
  - referendum for, 19-1-811, 19-1-815, 19-1-822, 19-1-823
  - reporting entities, merger, 19-1-815
  - retirement system, separateness, 19-1-802, 19-1-821
  - rights under other laws, effect, 19-1-802

**SPECIAL EDUCATION**

- Accounting, 20-7-431
- Agency contracts for, 20-7-412
- Allowable cost payments, 20-3-106, 20-7-414, 20-7-431, 20-7-435, 20-7-457, 20-9-141, 20-9-303, 20-9-306, 20-9-321, 20-9-347, 20-9-366 — 20-9-368
- Allowable costs, 20-7-419, 20-7-431, 20-7-435, 20-7-443, 20-9-321
- Alternative education site, 41-5-1801
- Appropriations, 20-7-431, 20-7-435, 20-9-303, 20-9-307
- Approval requirement, 20-7-414
- Attendance, 20-7-403, 20-7-420 — 20-7-422, 20-7-424, 20-7-435
- Audiological services, 20-7-403
- Average number belonging (ANB), 20-9-311, 20-9-321
- Block grants, 20-9-321
- Budget, 20-7-435, 20-7-443, 20-9-303, 20-9-501
- Classes, 20-7-403, 20-7-411, 20-7-414, 20-7-443
- Controversy appeals, 20-3-211
- Cooperatives, 20-7-431, 20-7-452, 20-7-457, 20-9-321
  - audits or financial reports, Title 2, chapter 7, part 5, See AUDITS
  - retirement fund budget and levy, 20-9-501
  - teachers employed by, tenure, 20-4-202
  - teachers' retirement system, employees' membership, 19-20-302, See RETIREMENT, Teachers' Retirement System
- Definitions, 20-7-401, 20-7-436



**SPECIAL EDUCATION** (continued)

- Determination of children in need, 20-7-403, 20-7-414
- Expenditures, accounting, 20-7-431, 20-9-303
- Financial responsibility, residency requirements, 20-7-420, 20-7-421
- General fund budget, 20-9-308
- Individual programs, 20-7-412
- In-state children's psychiatric hospitals or residential facilities, 20-7-403, 20-7-419, 20-7-420, 20-7-435, 20-7-436
- Interlocal cooperative agreements, Title 7, chapter 11, part 1, See INTERLOCAL COOPERATION
- Joint boards, 20-3-362, 20-7-431, 20-7-457, 20-9-321
- Out-of-district attendance, 20-5-321, 20-5-323, 20-5-324, 20-7-421
- Out-of-state schools or residential facilities, 20-7-403, 20-7-419, 20-7-420, 20-7-422
- Parents, 20-7-403
- Policies, 20-2-121, 20-7-402, 20-7-403
- Preschool children, 20-7-411, 20-10-101
- Programs, 20-7-403
  - approval, 20-7-414
  - cooperative, 20-7-411
  - establishment, 20-3-324, 20-7-411, 20-7-412, 20-7-415
  - funding, 20-7-414, 20-7-415
  - individual, 20-7-412
  - supervision, 20-3-106, 20-7-403
  - under-6-years-old, for, 20-7-411, 20-7-443
- Regional services, 20-7-411
- Residency requirements for financial responsibility, 20-7-420, 20-7-421
- Retirement fund budget and levy, 20-9-501
- Rules, 20-7-419, 20-9-321
- State agencies, cooperation and responsibilities, 20-7-404, 20-7-420, 20-7-422
- Supervision, 20-3-106, 20-7-403
- Supervisor for, 20-3-103
- Surrogate parent, 20-7-401 — 20-7-403, 20-7-461 — 20-7-463
- Teachers, 20-4-202, 20-7-403, 20-7-431
- Transportation, 20-7-419 — 20-7-421, 20-7-424, 20-7-431, 20-7-441 — 20-7-443, 20-10-144, 20-10-146
- Tuition, 20-7-419 — 20-7-421, 20-7-424, 20-7-441
  - out-of-district attendance agreements, 20-5-321, 20-5-323, 20-5-324
  - out-of-state, state agency placement, 20-5-321, 20-5-323, 20-5-324, 20-7-403, 20-7-420, 20-7-422
- Type of, determination, 20-7-403, 20-7-414
- Under-6-years-old, programs or classes, 20-7-443

**SPEECH-LANGUAGE PATHOLOGISTS OR AUDIOLOGISTS**, 37-15-101 — 37-15-103, 37-15-301

- Privileged communications, 26-1-801, 26-1-806

**SPEED LIMITS NEAR SCHOOLS**, Alteration, authority, 61-8-310**SPORTS OFFICIALS**, Assault upon, criminal offense, 45-5-211**STATE BOARD OF EDUCATION**, Const., X, 9**STATE EMPLOYEE PROTECTION ACT**, 2-18-1201 — 2-18-1206**STATE LIBRARY COMMISSION**, See LIBRARIES**STATE SYMBOLS**, 1-1-501 — 1-1-530**STUDENT ASSESSMENT**, 20-2-121, 20-3-106, 20-3-324, 20-5-110**STUDENT FINANCIAL INSTITUTIONS**, 20-3-324, 32-1-115**STUDENT TEACHERS**, 2-2-104, 20-4-101, See also TEACHERS**STUDENTS**

- Absences, 20-4-301, 20-4-402, 20-5-103, 44-2-507
- Abuse of, 20-4-302
- Age requirements, 20-1-101, 20-5-101, 20-7-411

**STUDENTS** (continued)

Assessment, 20-2-121, 20-3-106, 20-3-324, 20-5-110  
 Bully Free Montana Act, 20-5-207 - 210  
 Caretaker relative, 40-6-501, 40-6-502, 40-6-601, 40-6-602  
 Concussion, 20-7-1301 — 20-7-1304  
 Confidential communications, 26-1-801, 26-1-808, 26-1-809, 44-2-511  
 Corporal punishment or physical restraint, 20-4-302  
 Data systems, protection, 2-6-501 — 2-6-504  
 Definition, pupil, 20-1-101  
 Discipline, 20-4-302, 20-5-201  
 Discrimination prohibited, Const., X, 7  
 Dual credit, 20-9-706  
 Duties, 20-5-201  
 Enrollment by caretaker relative, 20-5-501 — 20-5-503  
 Expulsion, 20-5-201, 20-5-202  
 Fees, 20-9-214  
 Financial aid for college, Title 20, chapter 26  
 Fraternities prohibited, 20-5-203  
 Governance generally, 20-3-324  
 Grades, diploma, or transcript withheld when, 20-5-201  
 Graduation, participation denied when, 20-5-201  
 Guardianship of minors, Title 72, chapter 5, part 2  
 Gun-free school policy, 20-5-202  
 Health conditions and records, 20-3-324  
 Homeless children, 20-5-101  
 Identity, proof of — required when, 44-2-511  
 Immunization requirements, Title 20, chapter 5, part 4, See IMMUNIZATION REQUIREMENTS  
 Incapacitated, 20-5-107  
 Indigent, 20-5-107; See also INDIGENT CHILDREN  
 Job Corps Programs, 20-9-707  
 Kindergarten, 20-7-117  
 Medical authorization affidavit by caretaker relative, 40-6-501  
 Medication, diabetes, 20-5-412, 20-5-413  
 Medication, epinephrine, 20-5-420, 20-5-421  
 Military children, 20-1-230  
 Minors, 41-1-101  
 Missing children, list of - provided to, 44-2-506  
 New students, school records and proof of identity required, 20-1-213, 44-2-511  
 Nonpublic nonaccredited school, from — assessment policy, 20-3-324, 20-5-110  
 Parental authority ceases, 40-6-234  
 Physical restraint, 20-4-302  
 Placement, 20-5-110  
 Privileged communications, 26-1-801, 26-1-808, 26-1-809  
 Property, defacing or damaging — liability, 20-5-201  
 Public Employees' Retirement System, applicability, 19-3-403  
 Punishment, 20-4-302, 20-5-201  
 Qualifications, 20-5-101  
 Records, 20-1-213, 44-2-511  
 Religious tests for admission prohibited, Const., X, 7  
 Running Start Program, 20-9-707  
 Sanctions, 20-5-201  
 School activities, participation denied when, 20-5-201  
 Secret organizations prohibited, 20-5-203  
 Suicide prevention, 53-21-1101 — 53-21-1103  
     training, 20-7-1310  
 Supervision, 20-4-402  
 Suspension, 20-4-302, 20-4-402, 20-5-103, 20-5-201, 20-5-202  
 Teachers' duty to, 20-4-301  
 Transportation, See TRANSPORTATION  
 Truancy or incorrigibility, 20-4-302, 20-5-106  
 Vehicles driving through groups of, 61-8-502

**SUICIDE PREVENTION PROGRAM**, 20-7-1310, 53-21-1101 — 53-21-1103

**SUMMER YOUTH EMPLOYMENT PROGRAM**, See MONTANA SUMMER YOUTH EMPLOYMENT PROGRAM

**SUPERINTENDENT OF PUBLIC INSTRUCTION**

See also generally PUBLIC OFFICERS OR EMPLOYEES

Absence, 20-3-103

Administrative powers and duties, 20-3-105

Adult basic education programs, distribution of funds, 20-7-712

Adult education programs, duties, 20-3-106, 20-7-705

Affidavit required by, when, 20-3-107

Age, 20-3-101; Const., VI, 3

Agents, acting as — prohibited, 20-1-201

Appeals, See Controversy appeals

Appointment by governor, when, Const., VI, 6

Audiovisual and media library account, 20-7-201

Audit reports issued to, 20-9-203

Candidacy for other office, Const., VI, 5

Canvassers, Board of, 13-15-502

Career and vocational/technical education programs, funding, 20-7-305, 20-7-306

Citizenship, Const., VI, 3

Controversy appeals

    county superintendent of schools, decisions by, 20-3-107, 20-3-210, 20-4-208

    county transportation committee decisions, 20-3-107, 20-10-132

    joint boards of trustees, proration of expenses, 20-3-362

    out-of-district attendance agreements, 20-5-322

Deaf and Blind, Montana School for the - liaison, 20-8-113

Death, Const., VI, 6

Defined, 20-1-101

Deputy, 20-3-103

Disability, Const., VI, 6, See also PUBLIC OFFICERS OR EMPLOYEES, Vacancy in office

Disclose assessment data, 20-3-106

Division of Resources and Assessment, 20-3-108

Educational media

    division of resources and assessment, 20-3-108

    library, 20-2-121, 20-3-106, 20-7-201

    supervisor, 20-3-104

Education, State Board of - duties, 20-2-101

Election of, 20-3-101; Const., VI, 1; VI, 2; VI, 3; VI, 6

Executive branch officer, Const., VI, 1

Federal money, acceptance and expenditure, 20-3-106, 20-9-507, 20-9-603, 20-9-703, 20-9-704, 20-10-201

Fine for violations, 20-1-201

Fiscal notes, preparation when, 1-2-113, 20-7-101

Gifted and talented children programs, duties, 20-7-903, 20-7-904

Gifts, acceptance, 2-2-104, 20-10-201

Health programs, 50-1-202

Highway traffic safety program, responsibility, 61-2-103

Immunity from suit when, 20-4-110

Impeachment, subject to, Const., V, 13, See PUBLIC OFFICERS OR EMPLOYEES, Vacancy in office

Interagency Coordinating Council for State Prevention Programs, 2-15-225

Interlocal cooperative agreements, authorization, 20-3-106, 20-9-703, 20-9-704

Interstate Agreement on Qualification of Educational Personnel, designated official for and duties, 20-4-122, 20-4-123

Land Commissioners, Board of - member or presiding officer, Const., X, 4

Library of visual, aural, and other educational media - establishment and maintenance, 20-2-121, 20-3-106, 20-7-201

Missing children, list of - provided to and distribution, 44-2-503, 44-2-506

Office, creation or location, 2-15-701; Const., VI, 1

Powers and duties, 20-3-105, 20-3-106; Const., VI, 1; VI, 4

Prohibited practices, 20-1-201

**SUPERINTENDENT OF PUBLIC INSTRUCTION** (continued)

- Public Education, Board of member of and duties, 2-15-1507, 20-2-111, 20-2-115, 20-9-346, 20-10-201; Const., X, 9
- Public office, may not hold other public office, Const., VI, 5
- Qualifications, 20-3-101; Const., VI, 3
- Records, 20-7-431, 20-9-346, 20-9-369
  - official, 20-3-105
- Regents of Higher Education, Board of - member of and duties, 2-15-1505
- Report forms supplied by, 20-3-106
- Reports, 20-3-105
  - budget and program planning, office of - to, 20-9-346
  - county treasurer and county superintendent of schools - to, 20-9-347
  - guaranteed tax base aid, 20-9-369
  - public education, board of to, 20-9-346, 20-10-201
  - required by, 20-3-324
  - state advance or reimbursement for school facilities, 20-9-369, 20-9-422
- Residence, Const., VI, 1; VI, 3
- Resignation, Const., VI, 6, See also PUBLIC OFFICERS OR EMPLOYEES, Vacancy in office
- Retirement, Title 19, chapter 20, See RETIREMENT, Teachers' Retirement System
- Salary, Const., VI, 5
- School districts and trustees
  - audits and financial review, 2-7-503, 2-7-513 — 2-7-515, 20-9-203, See also AUDITS, Local government entities, 20-6-215
  - budget amendment provisions, 20-3-106
  - elementary, transfer of territory, 20-6-105
  - financial reports by trustees, 20-9-213
  - high school, 20-3-106, 20-6-320, 20-6-322
  - joint boards of trustees, proration of costs, 20-3-106, 20-3-362
  - joint districts, 20-3-106, 20-9-151
  - K-12, attachment of elementary to high school district — copy of order for, 20-6-701
  - out-of-district attendance agreements, 20-5-320, 20-5-322 — 20-5-324
  - policies, enforcement by trustees, 20-3-323, 20-3-324
  - reciprocal attendance agreements, 20-5-314
  - report forms furnished to, 20-3-106, 20-9-213
  - reports by trustees, 20-3-324
  - single-member trustee districts, plan for, 20-3-337
  - supervision, 20-3-106
- School elections, duties, 20-20-102, 20-20-104, 20-20-108
- School finance
  - administration, supervision, 20-3-106, 20-9-201
  - annual reports, 20-9-211
  - apportionment of money, 20-3-106, 20-9-212, 20-9-335, 20-9-346, 20-9-347
  - average number belonging, 20-3-106, 20-6-502, 20-9-311, 20-9-313, 20-9-314
  - BASE aid, 20-3-106, 20-5-324, 20-9-344, 20-9-346, 20-9-347, 20-9-351
  - budgets, 20-3-106, 20-9-102, 20-9-103
  - budget amendments, 20-3-106, 20-9-162, 20-9-163, 20-9-165, 20-9-166
    - final, filed with, 20-9-134, 20-9-344
  - joint districts, 20-3-106, 20-9-151
  - clearing accounts, rules for use, 20-9-220
  - county equalization aid, 20-1-301, 20-9-331, 20-9-333, 20-9-346, 20-9-361
  - county money, reports, 20-9-212
  - extracurricular fund, accounting system for, 20-9-504
  - federal money, acceptance and expenditure, 20-3-106, 20-9-507, 20-9-603, 20-9-703, 20-9-704, 20-10-201
  - funds, 20-9-201, 20-9-213
  - guaranteed tax base aid, 20-3-106, 20-9-351, 20-9-369
  - isolated schools, applications, 20-3-106, 20-9-302
  - joint districts, administration responsibilities, 20-9-202
  - nonoperating budget form, promulgation and distribution, 20-9-506
  - personal property ordered but not paid for, forms for recording, 20-9-209
  - state equalization aid, 20-1-301, 20-9-343, 20-9-346, 20-9-361, 20-9-805
  - statement on fund cash balances and bond information, format, 20-9-121

**SUPERINTENDENT OF PUBLIC INSTRUCTION** (continued)

## Schools generally

accreditation standards, recommendations and evaluations, 20-3-106, 20-7-101, 20-7-102  
 building plans and specifications, review, 20-3-106, 20-6-622  
 curriculum, 20-3-106, 20-7-113, 20-7-114  
 food services, duties, 20-3-106, 20-10-201 — 20-10-204, 20-10-206  
 instructional assistance, 20-3-106, 20-7-114  
 laws, publication and supplements, 20-3-105  
 library information reports requested by, 20-7-205  
 opening or reopening, 20-3-106, 20-6-502 — 20-6-505, 20-6-507  
 personal property ordered but not paid for, forms for recording, 20-9-209  
 pupil instruction days, duties, 20-1-301 — 20-1-303  
 supervision, 20-3-106  
 tuition, 20-3-106, 20-5-314, 20-5-323

## School transportation

buses, policies regarding, 20-10-111  
 contracts, copies to and forms for, 20-10-124, 20-10-143  
 controversies, 20-10-112, 20-10-132  
 direction for, 20-10-121  
 mileage distances, controversy, 20-10-106  
 reimbursements, 20-10-112, 20-10-142, 20-10-145  
 residence of transportee, controversy, 20-10-105  
 rules prescribed by, 20-3-106, 20-10-104, 20-10-112  
 supervision of program, 20-3-104

## Seal, 20-3-105

Secondary education, equivalency of completion - issuance of documentation for, 20-7-131

Solicitors, acting as - prohibited, 20-1-201

## Special education

allowable cost payments, 20-7-457, 20-9-321, 20-9-347  
 allowable costs, 20-7-431  
 approval of classes or programs, 20-7-414  
 attendance
 

- in-state residential facilities or children's psychiatric hospitals, 20-7-403, 20-7-420, 20-7-435
- out-of-state, 20-7-403, 20-7-420, 20-7-422

 block grants, 20-9-321  
 cooperatives, 20-7-457  
 determination of children in need, 20-7-414  
 expenditures, forms and rules for accounting, 20-7-431  
 individual programs, 20-7-412  
 policy recommendations and rules, 20-7-402, 20-7-403  
 requirements, 20-7-401, 20-7-403  
 rules, 20-7-419, 20-9-321  
 state agencies, cooperation, 20-7-404  
 supervision, 20-3-106, 20-7-403  
 surrogate parent, 20-7-403, 20-7-463  
 transportation, 20-7-420, 20-7-424, 20-7-441 — 20-7-443  
 tuition, 20-5-323, 20-7-420

## Staff, 20-3-103, 20-3-104

Student assessment, responsibilities, 20-3-106

Succession in office, Const., VI, 6

Successor, materials delivered to, 20-3-105

Supervisors employed by, 20-3-103, 20-3-104

## Teachers or specialists

certificates, 20-4-103, 20-4-106, 20-4-109, 20-4-110  
 certification, 20-3-106, 20-4-102  
 emergency authorization, 20-4-111  
 employment relationship, termination or nonrenewal - report and investigation, 20-4-110,  
 20-4-112, 20-4-113  
 pupil information report forms, 20-4-301, 20-4-402  
 register, forms for, 20-4-301  
 reports, semester - forms for, 20-4-301  
 tenured, appeals from decisions, 20-4-204, 20-4-208



**SUPERINTENDENT OF PUBLIC INSTRUCTION** (continued)

- Teachers' Retirement Board, member, 2-15-1010, 20-3-106
- Term of office, 20-3-102; Const., VI, 1; VI, 6
- Textbook dealers, duties, 20-3-106, 20-3-205, 20-7-604, 20-7-605, 49-3-204
- Traffic education, duties, 20-3-106, 20-7-501, 20-7-502, 20-7-506, 61-2-103
- Traffic safety program, responsibility, 61-2-103
- Vacancy in office, 20-3-102; Const., VI, 6, See also PUBLIC OFFICERS OR EMPLOYEES
- Violations, 20-1-201
- Vocational education, K-12, 20-1-101, 20-3-106, 20-7-301
  - courses and programs, approval, 20-7-303
  - money, disbursement, 20-7-305, 20-7-306
  - policies, 20-3-106, 20-7-301, 20-7-308
  - reports, 20-7-308
  - secondary, funding, 20-7-305, 20-7-306
  - staff, 20-3-103, 20-3-104, 20-7-308
  - state director, appointment, 20-7-308
- Voting program for youth, 13-22-103, 13-22-104, 13-22-106

**SURETY BONDS**

- Official bonds, See PUBLIC OFFICERS OR EMPLOYEES, Bonds, official
- Public contracts and contractors, 18-1-202 — 18-1-204; Title 18, chapter 2, part 2
- School enrollment, persons convicted of noncompliance, 20-5-106
- Textbook dealers, 20-7-604

**SURPLUS PROPERTY**, 18-5-201 — 18-5-205

- Donate property to a school district, authority to, 20-6-601

**SURROGATE PARENT**, 20-7-461 — 20-7-463**SUSPENSION OF PUPILS**, 20-4-302, 20-4-402, 20-5-103, 20-5-201, 20-5-202**T****TAX CREDITS FOR CONTRIBUTIONS TO PUBLIC AND PRIVATE SCHOOLS**, Title 15,  
15-30-2334 - 2335, 15-31-158 - 159, 15-31-511**TEACHERS**

- Abuse of, penalty, 20-4-303
- Administrative positions, transfer from or to, 20-4-208
- Aides, 20-3-324
- Annuity programs, Title 19, chapter 20, See RETIREMENT, Teachers' Retirement System
- Approved teacher education programs, 2-15-1522, 20-4-131, 20-4-133
- Certificates, 20-4-101, See also Certification
  - class 1 professional, 20-3-201, 20-4-106
  - class 2 standard, 20-3-201, 20-4-106, 20-4-107
  - class 3 administrative and supervisory, 20-3-201, 20-4-106
  - class 4 vocational, recreational, or adult education, 20-4-106
  - class 5 provisional, 20-4-106 — 20-4-108
  - classification, 20-4-102, 20-4-106
  - endorsements, 20-4-106, 20-4-111
  - fees, 20-4-109
  - issuance, 20-4-103, 20-4-106
  - letter of reprimand, 20-4-110
  - outstanding, validity, 20-4-107
  - registration, 20-3-205, 20-4-202
  - renewal, 20-4-102, 20-4-107, 20-4-108
  - revocation, suspension, or denial, 20-2-121, 20-4-102, 20-4-110, 20-4-111 — 20-4-114, 20-4-133
  - term and period of validity, 20-4-108
- Certification, 20-4-101, See also Certificates
  - county superintendent of schools, qualifications, 20-3-201
  - emergency, See Emergency authorization
  - policies, 20-2-121, 20-3-106, 20-4-102, 20-4-106
  - qualifications, 20-4-104

**TEACHERS** (continued)

- Certification (continued)
  - special education, 20-7-403
  - standards, 20-4-133
- Certification Standards and Practices Advisory Council, 2-15-1522, 20-4-109, 20-4-131 — 20-4-133
- Child abuse and neglect, reporting, See CHILD ABUSE AND NEGLECT
- Collective bargaining, 20-4-203, 39-31-304, 39-31-305
- Contracts, 20-4-110, 20-4-201, 20-4-206, 20-4-207
  - tenure, 20-4-203, 20-4-205, 20-6-410
- Corporal punishment, 20-4-302
- Counselor, K-12 specialist, 20-4-131, See COUNSELORS
- County superintendent of schools, qualifications for office, 20-3-201
- Criminal offenses, effect, 20-4-110
- Definitions, 20-1-101, 20-4-101, 20-4-131, 20-4-208
- Discipline by, 20-4-302, 20-5-201
- Dismissal, 20-3-210, 20-3-324, 20-4-110, 20-4-207
- Driver education, 20-7-501, 20-7-502
- Duties generally, 20-4-301
- Emergency authorization, 20-2-121, 20-4-111, See also Employment certification, in lieu of, 20-4-101
  - fees, 20-4-109, 20-4-111
  - issuance, 20-3-106, 20-4-102
  - registration, 20-3-205, 20-4-202
- Employment
  - collective bargaining, 20-4-203, 39-31-101
  - contracts, 20-4-110, 20-4-201, 20-4-206, 20-4-207
  - emergency authorization, See Emergency authorization
- Indian studies requirements, Const., X, 1
  - religious or partisan test as prerequisite, prohibited, Const., X, 7
  - tenure, 20-4-203, 20-4-205, 20-6-410, 20-6-711
  - termination or nonrenewal, 20-4-110, 20-4-203 — 20-4-207
  - trustees, by, 20-3-324, 20-3-362, 20-4-201
  - validation, 20-4-202
- Indian studies, Const., X, 1
- In-service training, 20-1-304, 20-4-304, 20-7-114
- Interstate Agreement on Qualification of Educational Personnel, 20-4-121 — 20-4-123
- Labor organizations, 39-31-103
- Librarians, 20-4-131
- Military leave, 10-1-1009
- National Board for Professional Teaching Standards, 20-4-134
- Neglect of duty, 20-4-110
- Nepotism provisions, nonapplicability when, 2-2-302
- Nontenure teachers
  - cooperatives, full service education through employment by, 20-7-456
  - reelection, acceptance, or termination, 20-3-210, 20-4-206
- Parent-teacher conferences, 20-1-304
- Physical restraint, use, 20-4-302
- Pledge of allegiance, 20-4-301, 20-7-133
- Prayer to open school day, 20-7-112
- Principals, See this subject heading generally; See also PRINCIPALS
- Professional development meetings, 20-1-304, 20-4-304
- Psychology teachers, privileged communications, 26-1-801, 26-1-808
- Public employees' retirement system, service credits transferred to or from, 19-3-511, 19-20-401, 19-20-409, 19-20-804, 19-20-902
- Pupil instruction, See PUPIL INSTRUCTION DAYS
- Pupil-instruction-related days, 20-1-304, 20-2-121
- Pupils
  - abuse of, penalty, 20-4-302
  - discipline, 20-4-302, 20-5-201
  - duty to, 20-4-301
  - privileged communications, 26-1-801, 26-1-808, 26-1-809

**TEACHERS** (continued)

## Pupils (continued)

suspension, 20-4-302, 20-5-202

truancy or incorrigibility, 20-4-302

Qualifications, 20-4-104; Const., X, 1; X, 7

Retirement, Title 19, chapters 2, 3 and 20, See PUBLIC EMPLOYEES' RETIREMENT ADMINISTRATION; PUBLIC EMPLOYEES' RETIREMENT SYSTEM; TEACHERS' RETIREMENT SYSTEM

Salary, 20-4-202, 20-4-208, 20-4-301, 20-4-304

Semester report, 20-4-301

Social security provisions, Title 19, chapter 1, See SOCIAL SECURITY

Special education, 20-4-202, 20-7-403, 20-7-431

Specialists, certification, 20-4-101, 20-4-131, See also Certificates; Certification

Standards, 20-4-133

Student teachers, 20-4-101

Substitute teachers, 2-2-302, 19-20-302, 19-20-804

Suspension, 20-4-207

Teachers' Retirement Board, membership on, 2-15-1010

Tenure, 20-4-203, 20-4-205, 20-6-410, 20-6-711

## Tenure teachers

administrative positions, transfer from or to, 20-4-208

appeals, 20-3-210, 20-4-204, 20-4-208

cooperatives, full service education - employment by, 20-7-456

district consolidation or annexation, protection, 20-6-410

K-12 districts, protection, 20-6-711

reelection and acceptance, 20-4-205

termination of services, 20-3-210, 20-4-203, 20-4-204

## Termination, 20-4-204

appeals from, 20-3-210, 20-4-206

nontenure teachers, 20-3-210, 20-4-206

tenure teachers, 20-3-210, 20-4-203, 20-4-204

trustees, by, 20-3-324, 20-4-110, 20-4-204

Traffic education, 20-7-501, 20-7-502

Union organizations, See Labor Organizations, 39-31-103

**TEACHERS' RETIREMENT SYSTEM**, See RETIREMENT**TECHNOLOGY, AID FOR ACQUISITION**, 20-9-375**TELECOMMUNICATIONS NETWORK (METNET)**, 20-9-343**TELECOMMUNICATIONS RATE DISCOUNT**, PSC, 69-3-846, 69-3-856, 69-3-857**TENURE**, See TEACHERS**TESTING**, See Assessment**TEXTBOOK DEALERS**, 20-1-101

Competition, restricting penalty, 20-7-607

Complaints against, 20-3-106, 20-3-205, 20-7-605

Emoluments or other inducements, penalty for offering, 20-7-608

Licenses, 20-3-106, 20-7-604, 20-7-606, 20-7-607, 49-3-204

Samples, 20-7-608

Surety bond, 20-7-604, 20-7-605, 20-7-607

**TEXTBOOKS**, 20-1-101, 20-3-324, 20-7-601

Damage policy, 20-7-601

Free to pupils, to be, 20-7-601

Home schools, 20-5-111

Purchase, 20-7-601, 20-7-603

Selection and adoption, 20-3-205, 20-4-402, 20-7-602, 20-7-603

Sold to pupils when, 20-7-601

Special education budget, allowable costs, 20-7-431

**TOBACCO**, See CIGARETTES; SMOKING IN PUBLIC PLACES

**TRAFFIC EDUCATION**

- Administration of program, 20-3-106
- Course, 20-7-501 — 20-7-503, 61-2-103
- Definitions, 20-7-501
- Duties of State Superintendent, 20-7-502
- Fund, 20-9-510, 61-2-103
  - establishment and administration, 20-3-324
  - nonbudgeted, 20-7-507, 20-9-201, 20-9-510
- Justice, department of duties, 61-2-103
- License or permit to drive, issued when, 61-5-105, 61-5-106
- State administration, 20-7-506
- State traffic education account, 20-7-501, 20-7-502, 20-7-504 — 20-7-506; Const., VIII, 6
- Teachers, 20-7-501, 20-7-502, 61-2-103

**TRAFFIC PATROLS**, 20-1-408, 20-3-106, 61-8-502**TRAFFIC SAFETY PROGRAM**, 61-2-101 to 61-2-108

- County drinking and driving prevention programs, 61-2-106 — 61-2-108

**TRANSFER OF SCHOOL DISTRICT TERRITORY**

- Elementary, 20-6-105
  - time limits, 20-6-202
  - transfer between districts by agreement, 20-6-214
- Hearing, 20-6-105
  - petition, requirements, 20-6-105
- High school, 20-6-105
  - time limits, 20-6-314
  - transfer between districts by agreement, 20-6-322

**TRANSPORTATION**

- Bid requirements, 20-10-110, 20-10-125
- Block grants, 20-9-632
- Budgeting for, See FINANCE, Transportation fund
- Bus depreciation reserve fund and fund budget, 20-9-201, 20-10-147
- Bus drivers
  - certification, 20-3-205, 20-10-103
  - driver's license requirements, 20-10-103
  - employment or dismissal, 20-3-324
  - qualifications, 20-10-103, 20-10-111, 20-10-124
- Buses, 20-10-101
  - bids not required when, 20-10-110
  - bond issues for purchase of, See BONDS AND BOND ISSUES, generally
  - budgeting for, See FINANCE, Transportation fund
  - commercial driver's license, 61-5-102, 61-5-112
  - contracts for purchase, 20-10-110, 20-10-125
  - depreciation reserve fund and fund budget, 20-10-147
  - design and construction standards, 20-2-121, 20-10-111
  - inspections, 61-9-502
  - insurance, 20-10-107, 20-10-109
  - lighting equipment, 20-10-111
    - flashing lights and signal lamps, 20-10-111, 61-8-351, 61-9-402
    - special, prohibited operation, 61-8-352
  - meeting and passing, 61-8-351
  - operation suspended when, 20-10-104
  - passing, 61-8-351
  - purchase or rental, 20-10-107, 20-10-110
  - radios, two-way, 20-10-107, 20-10-108
  - railroad grade crossings, stopping at, 61-8-349
  - rated capacity, 20-10-111, 20-10-141
  - requirements, 20-10-102
  - riding time limitations, 20-10-121
  - seating capacity, 20-10-111, 20-10-141
  - standards and regulations, 20-2-121, 20-10-111

**TRANSPORTATION** (continued)

## Buses (continued)

- time on, limitations, 20-10-121
- traffic laws and safety, See **TRAFFIC EDUCATION**

Bus route, definition, 20-10-101

Closure of schools, 20-6-509

Contracts, 20-3-205, 20-10-104, 20-10-110, 20-10-124, 20-10-125, 20-10-143, See also Individual transportation; Private party contracts  
 budget amendment, attachment, 20-9-165, 20-10-145  
 budgeting for, See **FINANCE**, Transportation fund

Controversies, 20-3-107, 20-10-112, 20-10-132

County Transportation Committee, See also **COUNTY TRANSPORTATION COMMITTEE**  
 duties, 20-10-132  
 membership, 20-10-131

Deaf and Blind, Montana School for the, 20-8-121

Definitions, 20-10-101, 20-10-111

Discretionary provisions, 20-10-122

Elections, See **ELECTIONS**

Fuel tax refund, 15-70-356

Home study as, 20-10-121, 20-10-125, 20-10-142

Individual transportation, See also Contracts; Private party contracts  
 contracts, 20-10-112, 20-10-121, 20-10-124, 20-10-125, 20-10-142  
 reimbursements, See **Reimbursements**

Insurance, 20-10-107, 20-10-109

Isolation, schedule rates, 20-10-112

Levy requirements, 20-10-144

Liability insurance, 20-10-109

Mileage, 20-10-106, 20-10-141, 20-10-142, See also **Routing**

Nonpublic school children, 20-10-123

Out-of-district attendance agreements, 20-5-320 — 20-5-324, 20-10-105, 20-10-144, 20-10-146

Passenger points, 20-10-127

Policies, 20-10-104, 20-10-111, 20-10-112

Private party contracts, 20-10-107, 20-10-124, 20-10-125, See also Contracts; Individual transportation

Private school children, 20-10-123

Rate schedules, 20-10-141, 20-10-142

**Reimbursements**

- county, 20-3-205, 20-10-144, 20-10-146
- denied, when, 20-10-104
- disbursement, 20-10-112
- forfeiture when, 20-10-104
- home study, 20-10-125, 20-10-142
- increased, 20-10-132, 20-10-142
- legislature, authority and appropriation, 20-10-142, 20-10-145
- maximum, 20-10-141, 20-10-142
- nonbus mileage, 20-10-141
- nonoperating fund budget, subtracted from, 20-9-506
- room and board, 20-10-142
- special education children, 20-7-442, 20-7-443, 20-10-144, 20-10-146
- state, 20-3-205, 20-10-144, 20-10-145

Revenues for, computation, 20-10-144

Routing, 20-10-101, 20-10-112, 20-10-132, 20-10-141, See also **Mileage**

Rules, 20-3-106, 20-10-104, 20-10-112

Service areas, 20-10-111, 20-10-126, 20-10-132, 20-10-141  
 boundary, 20-10-126

Special education children, 20-7-419 — 20-7-421, 20-7-424, 20-7-431, 20-7-441 — 20-7-443,  
 20-10-144, 20-10-146

Supervisor for, 20-3-104

Transportation fund, See **FINANCE**

**Transportees**

- eligible, 20-10-101, 20-10-105, 20-10-111, 20-10-121
- ineligible, 20-10-122



**TRANSPORTATION** (continued)

Types provided, 20-10-121

Violations, 20-10-104

**TRANSPORTATION FUND**, See FINANCE**TREASURER**, See COUNTY TREASURER**TRUANCY**, 20-4-302, 20-5-106**TRUSTEES**, See also DISTRICTS AND TRUSTEES

Absence from district, trustees — effect, 20-3-308

## Actions

collective, to be, 20-3-301, 20-3-322, 20-3-362

immunity from, when, 20-4-110

Agents, trustees acting as — prohibited, 20-1-201

Appeals by pupil or pupil's parent or guardian, 20-5-201

Appeals by trustees, 20-3-210, 20-4-208

Appointment of relative, 2-2-302

Appointment of trustees, 20-3-307, 20-3-309

additional positions, 20-3-353, 20-3-354

county high school unification, 20-6-313

## districts

annexation, 20-6-422

consolidation, 20-6-423

new districts, creation, 20-3-312

high school, classification changes, 20-6-301

## Chairman of trustees

bonds, execution, 20-9-433

budget amendment, signing, 20-9-165

budget form, signing, 20-9-133

county high school principal, execution of contract, 20-4-401

district superintendent, execution of contract, 20-4-401

joint board, 20-3-361

selection, 20-3-321

teacher contracts, execution, 20-4-201

transportation contracts, signing, 20-10-124

warrants, countersignature, 20-9-221

## Clerk of the district

appointment, 20-3-321, 20-3-325

election administrator, as, 13-1-101

resignation of trustee, 2-16-502

successor, delivering materials to, 20-1-203

## trustees

nominations for candidacy, submission to, 20-3-305, 20-3-344

positions, publication of notice for increase, 20-3-341

Conduct school on Saturday, 20-3-324

Conflict of interest, trustees, 20-9-204

Contracts, 20-6-101

## Controversy appeals

joint boards, proration of expenses, 20-3-106, 20-3-362

teachers, 20-4-204, 20-4-206, 20-4-208

Curriculum for schools, establishment and maintenance, 20-3-324

Death of trustee, 20-3-308

Declaration of emergency by, 20-9-806

Disclose assessment data, 20-3-324

Election of trustees, 20-3-301, See also ELECTIONS

by acclamation, 20-3-313

Elections, duties, See School elections; See also ELECTIONS

Eligibility for office of trustee, 20-3-305

## Emergency, unforeseen

bid requirements, exception, 20-9-204

meetings, 20-3-322

Executive officer of trustees, 20-4-402

**TRUSTEES** (continued)

- Fair Practices, Code of, Title 49, chapter 3, See DISCRIMINATION, Government, state and local
- Financial reports, Title 2, chapter 7, part 5, See AUDITS
- Fines for trustees' violations, 20-1-201, 20-1-203, 20-6-624, 20-9-435
- Flag, American — procurement and display, 20-3-324, 20-7-133
- Governance by trustees, 20-3-323
- Hearings, 20-3-337, 20-4-204, 20-4-207, 20-4-208, 20-5-110
- Immunity from liability
  - trustees, 2-9-111, 20-3-332, 20-4-110
- Investment, See Public funds
- Joint boards of trustees
  - budget procedures, See FINANCE, Joint districts
  - clerk, 20-3-206
  - dissolution when, 20-3-361
  - district superintendent, appointment, 20-3-362, 20-4-401
  - existence, period of, 20-3-361
  - junior high schools, opening or closing, 20-3-362, 20-6-505, 20-6-509
  - organization and officers, 20-3-361
  - powers, 20-3-362
  - secretary, compensation, 20-3-311, 20-3-361
  - special education services, 20-3-362, 20-7-457
  - teachers or specialists, employment, 20-3-362, 20-4-201
  - voting membership, 20-3-361
- K-12 districts, 20-6-701 — 20-6-703
- Legal adviser, 20-1-204, 20-1-205, 20-9-204, 20-9-436
- Liability, 2-9-111, 20-3-332
- Meetings of trustees, 20-3-322
  - bond issue petitions, consideration, 20-9-425
  - budget, 20-3-322, 20-9-115, 20-9-131
  - budget amendment, 20-9-163, 20-9-165
  - county superintendent of schools, called by, 20-3-205, 20-3-311
  - elections, to call, 20-20-203
  - failure to attend, 20-3-308
  - minutes, 2-3-212, 20-3-323, 20-6-703
  - notice, 20-3-322
  - organization, 20-3-321, 20-3-322
  - teachers, tenured — termination hearings, 20-4-204
  - transportation contracts, for, 20-10-125
  - travel expenses, 20-3-311
- Neglect of duty by trustees, 20-9-444
- Nepotism provisions, nonapplicability when, 2-2-302
- Notice of intent to dispose of property, 20-6-604
- Oath of office, trustees, 20-1-202, 20-3-205, 20-3-307, 20-3-309
- Out-of-district attendance agreements, 20-5-320 — 20-5-324
- Policies, prescription and enforcement, 20-3-323
- Positions of trustees
  - additional, 20-3-302, 20-3-341, 20-3-343, 20-3-352, 20-6-201, 20-6-301
    - redetermination, 20-3-205, 20-3-354
  - boundary changes, effect, 20-3-312
  - elementary districts, 20-3-302, 20-3-341, 20-3-352, 20-6-201
  - high school districts, 20-3-302, 20-3-351
    - additional, request and determination, 20-3-205, 20-3-352, 20-6-301, 20-6-313
    - alternative method of election, 20-3-352
    - county high school, operating, 20-3-356
    - nominating districts, establishment and purpose, 20-3-205, 20-3-353, 20-3-354, 20-3-356, 20-6-313
    - nonvoting, establishment when, 20-3-352
  - K-12 districts, 20-6-702
  - number prescribed, 20-3-301, 20-3-341, 20-3-351, 20-6-702
  - reduction, 20-3-341
  - term, See Term of office of trustee

**TRUSTEES** (continued)

## Positions of trustees (continued)

vacated, See Vacancy in office of trustee  
 variance in number, 20-3-301, 20-3-341, 20-3-351

## Powers and duties of trustees, 20-3-324, 20-6-101

actions to be collective, 20-3-301, 20-3-322, 20-3-362  
 boundary changes, effect, 20-3-312  
 joint boards, 20-3-362

Property, authority, 20-3-324, 20-6-417, 20-6-602, 20-6-604, 20-6-609, 20-6-703, See also  
**PROPERTY**

Public funds, See also **LOCAL GOVERNMENT**, Public funds

deposit in financial institutions, 7-6-201  
 investment, 7-6-202, 7-6-204, 7-6-206  
 repurchase agreements - limitations, 7-6-202, 7-6-205, 7-6-213

## Records transfer policy, 20-1-213

Removal of trustees from office, 20-3-308, 20-3-310, 20-3-332, 20-7-608

Residence of trustee changed, effect, 20-3-308

Resignation of trustee, 2-16-502, 20-3-308

## School elections

canvass of votes, 20-20-415  
 certificate of, issuance, 20-20-416  
 county election administrator requested to conduct, 20-20-401, 20-20-417  
 duties generally, 20-3-324, 20-20-401  
 electronic voting systems, 20-20-421  
 judges, 20-20-107, 20-20-203  
 notice, 20-20-204  
 poll hours, places, 13-1-106, 20-20-106, 20-20-203  
 resolutions for, 20-20-201, 20-20-203  
 voting machines, 20-20-421; Title 13, chapter 17

School finance, duties generally, 20-3-324, See **FINANCE**

Single-member trustee districts, 20-3-336 — 20-3-338

State-Tribal Cooperative Agreements Act, Title 18, chapter 11, part 1

Student financial institution, establish, 20-3-324, 32-1-115

## Term of office of trustee

additional positions, 20-3-355  
 elementary districts, 20-3-342, 20-3-343  
 expiration, legislative intent, 20-3-302  
 generally, 20-3-301  
 lot, drawn by — when, 20-3-342, 20-3-343, 20-3-352, 20-3-355  
 vacated position, election or appointment to fill, 20-3-303, 20-3-309

Transportation, duties generally, See **TRANSPORTATION**

Vacancy in office of trustee, 20-3-308, 20-3-309

election to fill, See **ELECTIONS**, Trustees  
 term after election or appointment, 20-3-303, 20-3-309  
 unfilled when, 20-6-301

## Violations by trustees

agents or solicitors, acting as, 20-1-201  
 bonds, nonpayment of sale money to county treasurer — penalty, 20-9-435  
 building plans and specifications, violations concerning, 20-6-624  
 contracts, pecuniary interest, 20-9-204  
 district, employment by, 20-9-204  
 misappropriation of funds, 20-1-203, 20-3-332  
 successor, nondeliverance of materials to, 20-1-203  
 supplies, association with furnishing to schools, 20-9-204  
 teachers, employment relationship — report of termination or nonrenewal, failure to make,  
 20-4-114  
 textbook dealers' emoluments or inducements, acceptance, 20-7-608

**TUITION**

Administration of provisions, 20-3-324

Admittance of child to school, generally, 20-5-101

Adult education, 20-7-704

**TUITION** (continued)

- Annexing district, assumption, 20-6-413
- Appeals, 20-3-210
- Closure of schools, 20-6-509
- Consolidated district, assumption, 20-6-413
- County basic special tax revenue, county retention — determination, 20-9-333
- Discontinued district, debt obligation, 20-6-413
- Enrollment, compulsory — nonapplicability, 20-5-102
- Fund, 20-3-324
  - budget and levy requirements, 20-3-324
  - budgeted fund, as, 20-9-201, See also FINANCE, Funds generally
  - out-of-district attendance obligations, 20-5-324
- Generally, 20-5-314 — 20-5-324
- Homeless children, 20-5-101
- K-12 districts, 20-6-702
- Levy requirement, 20-6-413
- Nonoperating fund, purpose, 20-9-505
- Nonresident children, 20-5-101
- Notification, 20-3-205
- Obligation for students in youth detention facility, 20-9-130
- Out-of-district attendance agreements, 20-5-320 — 20-5-324, 20-10-105
- Payments, state agency placement, 20-5-316, 20-5-321, 20-5-323, 20-5-324, 20-9-334, 20-7-403, 20-7-420, 20-7-422
- Property tax reduction, certain payments available for, 20-9-141
- Rates, 20-5-314, 20-5-320, 20-5-321, 20-5-324
- Reciprocal attendance agreements, 20-3-106, 20-5-314
- Report requirements, 20-3-205
- Special education, 20-7-419 — 20-7-421, 20-7-424, 20-7-441
  - out-of-district attendance agreements, 20-5-321, 20-5-323, 20-5-324
- Waiver, 20-5-320, 20-5-321

**U****UNEMPLOYMENT INSURANCE**

- Retirement fund to pay employer's contributions, 20-9-501
- Special education allowable costs, 20-7-431, 20-7-435

**UNIVERSITY SYSTEM**, Title 20, chapter 25**V****VETERANS**

- Diplomas, honorary, 20-3-109
- Employment preference, 39-29-101 to 39-29-104, 39-29-111, 39-29-112

**VISITATION OF SCHOOLS**, 20-3-207, 20-3-324**VISUALLY DISABLED PERSONS**, See DISABILITIES, SPECIAL EDUCATION**VOCATIONAL EDUCATION, K-12**

- Administration, 20-7-301, 20-7-308
- Adult education, Title 20, chapter 7, part 7
- Appropriations, 20-7-301, 20-7-305
- Congressional acts, acceptance, 20-7-321
- Courses and programs, 20-3-324, 20-7-301, 20-7-303, 20-7-305
- Curriculum guides, 20-7-308
- Definitions, 20-1-101, 20-7-305
- Eligible agency, 20-7-329
- Evaluation, policies for, 20-7-301
- Executive officer for, 20-3-106, 20-7-301
- Governing agent, 20-3-106, 20-7-301
- Instructor qualifications, policies for, 20-7-301
- Intent, 20-7-328

**VOCATIONAL EDUCATION, K-12 (continued)**

## Money

- apportionment, basis for — policies, 20-7-301, 20-7-306
- career and vocational/technical education programs, 20-7-305, 20-7-306
- federal, 20-7-301, 20-7-321
- secondary vocational education, 20-7-305, 20-7-306
- Policies, 20-3-106, 20-7-301, 20-7-308
- Records and reports, 20-7-308
- School districts, assistance to, 20-7-308
- State director, appointment and duties, 20-7-308
- State plan, development, 20-7-301, 20-7-330
- Superintendent, assistant, 20-3-104
- Supervision, staff for, 20-3-103, 20-3-104, 20-7-308

**VOLUNTEERS**

- Voluntary Employees' Beneficiary Association Act, 2-18-1301 — 2-18-1313

**VOTING PROGRAM FOR YOUTH, 13-22-101 — 13-22-108, See also ELECTIONS****W****WAGES**

- Collective bargaining, subject to, 39-31-305
- Social security provisions, Title 19, chapter 1, See SOCIAL SECURITY
- Standard prevailing wages, public contracts, 18-2-401 — 18-2-404, 18-2-422, 18-2-432

**WARRANTS**

- Adult education, 20-7-713
- Bond issue limitations, 20-9-406
- Cancellation when, 20-9-223
- Clearing account funds, disbursement, 20-9-220
- Countersignatures, 20-9-221
- County warrants, 7-6-2601 — 7-6-2607, 7-6-2701
- Debt service fund, 20-9-438, 20-9-439
- Destruction when, 20-9-215
- Duplicate, 20-9-223
- Facsimile signatures, 20-9-221
- General fund warrants, 20-9-104
- Interest assessment on overdue accounts, 20-9-225 — 20-9-227
- Interlocal cooperating agencies, financial support transferred by, 20-9-704
- Investments in, 7-6-2701, 20-9-604
- Issuance, 20-9-133, 20-9-213, 20-9-221, 20-9-223
- K-12 districts, transition after formation, 20-6-703
- Outstanding, 20-6-313, 20-9-223
- Payment, 20-9-212
- Registration, 7-6-2701, 20-6-313, 20-9-212, 20-9-347, 20-9-406
- Retirement fund warrants, 20-9-501
- Salary warrants, withholding, 20-4-301
- Transportation fund, 20-10-144
- Unpaid, interest, 7-6-2604

**WEB SITES**

- See Preface

**Y****YOUTH CARE FACILITIES**

- Provision of services, 52-2-601, 52-2-617

**YOUTH CHALLENGE PROGRAM, 10-1-1401 — 10-1-1403****YOUTH COURT**

- Citation of Youth Court Act, 41-5-101
- Confidentiality, 41-5-125
- County interdisciplinary child information team, 52-2-211



**YOUTH COURT** (continued)

- Definitions, 41-5-103
- Disposition, 41-5-1301, 41-5-1302
- Drug use/criminal activity, required to notify school, 41-5-215
- Education records release, 41-5-215
- Habitual Truancy, 41-5-103
- Jurisdiction, 41-5-203
- Notification of school, 41-5-215
- Purpose, 41-5-102
- Records, 41-5-215, 41-5-1524
- School records release, FERPA requirements, 20-1-213, 41-5-1707
- Shelter care criteria, 41-5-342
  - school use, 41-5-1801
- Youth assessment, 41-5-103, 41-5-343, 41-5-1202, 41-5-1203
- Youth detention centers
  - requirement to provide education services, 41-5-1802 — 41-5-1805
  - payment of education costs, responsibility for, 20-9-130, 41-5-1807