

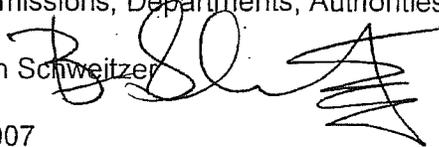
OFFICE OF THE GOVERNOR
STATE OF MONTANA

BRIAN SCHWEITZER
GOVERNOR



JOHN BOHLINGER
LT. GOVERNOR

TO: Executive Branch Officers
Department Directors
Chairs and other Presiding Officers of All Executive Branch Boards,
Bureaus, Commissions, Departments, Authorities, and Agencies

FROM: Governor Brian Schweitzer 

DATE: October 23, 2007

RE: Public participation in agency decisions pursuant to MCA § 2-3-103

Montana's public participation laws require me, as Governor, "to ensure that each board, bureau, commission, department, authority, agency, or officer of the executive branch of the state" adopts rules, setting forth policies and procedures to facilitate public participation in agency programs and decisions. MCA § 2-3-103(2). I wrote you in 2005 and 2006 to remind you of these statutory obligations for your agency, and I again take this opportunity to remind you of these requirements.

Montanans have a constitutional right to participate in the activities of their government. The "Right of Participation" is found at Article II, section 8 of the Montana Constitution, which provides:

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.

This important constitutional right is implemented by Montana statutes, which require every agency, as defined in MCA § 2-3-102(1), to "develop procedures for permitting and encouraging the public to participate in agency decisions that are of significant interest to the public." MCA § 2-3-103(1); see also MCA Title 2, chapter 3, part 1 in its entirety. The statutes require agencies to provide adequate notice to the public and assist public participation. Meeting agendas must include an item allowing public comment on any public matter not on the agenda but within the agency's jurisdiction. The agency may not act on any matter that was not included on the agenda and for which public comment on the matter was not allowed. Public comments must be incorporated into the official minutes of the meeting. The district courts may set aside agency decisions not in

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conformity with the public participation laws where a person's rights have been prejudiced. Model rules to implement these laws are found at ARM §§ 1.3.101 and 1.3.102.

As you know, this Administration takes very seriously the public's right to participate in the decisions of government, and I applaud your efforts to ensure this public right. If you or your agency needs assistance in crafting appropriate guidelines and rules to conform to Montana's public participation laws, feel free to contact my legal counsel, Ann Brodsky, for assistance (direct line, 444-3558).

DEPARTMENT OF ADMINISTRATION

Title: Public Participation Guidelines Effective Date: October 28, 2005

Approved: Janet R. Kelly

I. Policy Purpose

These guidelines are intended to insure that the public has a reasonable opportunity to participate in the department's deliberations and decisions that are of significant public interest. Montana's Constitution and Statutes guarantee this right. Matters of significant public interest include but are not limited to:

- A. the adoption or amendment of any rule, regulation, guideline or policy, including those that affect only this agency or state government, even when the subject is purely technical;
- B. the decision to procure goods or services, competitively

II. Requirements

- A. post the meeting or hearing notice a week or more ahead of time, but never less than 72 hours;
- B. post the meeting or hearing notice on the state's electronic calendar, on other appropriate places on the agency's website and personally to those who have previously shown an interest in the matter;
- C. include adequate details of the proposed action
- D. include a full agenda for any meeting or hearing with a time allotted for public comment;
- E. provide a contact name, address, phone number, mailing and emailing addresses, including where to seek special needs or for ADA accommodation.

III. Closing

This policy shall be followed unless it conflicts with specific statutes, which shall take precedence to the extent applicable.

Contact your immediate supervisor, administrator, Legal Unit, or Human Resource Officer at 406-444-0588 if you have any questions about this policy.

IV. Cross-Reference Guide

The following laws, rules or policies may contain provisions that might modify a decision relating to this policy. The list should not be considered exhaustive; other policies may apply.

Art. II, Sec.8, MT Constitution
MCA 2-3-101, et seq.
ARM 1.3.101 & ARM 2.2.101, et. Seq

Department Policies:
Media Policy