

# **MONTANA CONSTITUTIONAL AND STATUTORY PROVISIONS SPECIFICALLY APPLICABLE TO THE LEGISLATURE**

## **Montana Constitution**

**\*Note that there are other provisions of the Montana Constitution that place limitations on the authority of the Legislature (i.e., fundamental right provisions, separation of powers, etc.).**

### **Article 5. 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.

### **Other Constitutional Provisions Specifically Applicable to the Legislature:**

**Article II, 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.

**Article II, 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.

**Article II, 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.

**Article II, 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.

**Article II, 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.

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

**Article III, 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.

**Article III, 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.

**Article III, 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.

**Article III, 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.

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

**Article III, 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, 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.

**Article IV, 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.

**Article IV, 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.

**Article IV, 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 VI, 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.

**Article VI, 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.

**Article VI, 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.

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

**Article VI. 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.

**Article VII, 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.

**Article VII, 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.

**Article VII, 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.

**Article VII, 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.

**Article VII, 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.

**Article VII, 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.

(4) The proceedings of the commission are confidential except as provided by statute.

**Article VII, 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.

**Article VIII, 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.

**Article VIII, 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.

**Article VIII, 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.

**Article VIII, Section 9. Balanced budget.** Appropriations by the LEGISLATURE shall not exceed anticipated revenue.

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

**Article VIII, 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.

**Article VIII, 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.

**Article IX, 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.

**Article IX, 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.

**Article IX, 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.

Convention Notes: (1) New provision guaranteeing all existing rights to the use of water. (2) No change except in grammar. (3) New provision recognizing state ownership of all water subject to use and appropriation by its people. (4) New provision requiring LEGISLATURE to pass laws establishing a central records system so that records of water rights may be found in a single location as well as locally.

**Article IX, 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.

**Article IX, 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.

**Article IX, 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.

**Article X, 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.

**Article X, 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.

**Article XI, 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.

**Article XI, 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.

**Article XI, 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.

**Article XI, 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, 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.

**Article XII, 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.

**Article XII, 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.

**Article XII, 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, 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.

**Article XIII, 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.

**Article XIII, 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.

**Article XIII, Section 5. Exemption laws.** The LEGISLATURE shall enact liberal homestead and exemption laws.

**Article XIV, 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.

**Article XIV, 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.

**Article XIV, 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.

**Article XIV, 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.

# STATUTORY PROVISIONS TITLE 1 AND TITLE 5, MCA

## TITLE 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.

**1-1-102. How expressed.** The will of the supreme power is expressed by:  
(1) the constitution;  
(2) statutes.

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

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

**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.

**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.

**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.

**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.

**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.

**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.

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

**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.

**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.

**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.

**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.

**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).

**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.

**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.

### **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.

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

**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.

**1-2-204. Amendment of repealed act void.** An act amending a section of an act repealed is void.

**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.

**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.

**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.

### **Montana Code Annotated:**

1-11-103. Effect of Montana Code Annotated -- official version. (1) The Montana Code Annotated is a reenactment of the Revised Codes of Montana, 1947, and the supplements thereto.

(2) The enactment of the Montana Code Annotated may not:

(a) revive a law repealed or superseded before the effective date of the Montana Code Annotated;

(b) affect an act done, right accrued, or obligation incurred or imposed by law prior to the effective date of the Montana Code Annotated;

(c) affect any action, suit, or proceeding pending on the effective date of the Montana Code Annotated;

(d) repeal statutes of a nongeneral, nonpermanent nature, such as severability, construction, validating, repealing, or similar statutes, omitted from the Montana Code Annotated.

(3) The Montana Code Annotated must be given effect as a continuation of the Revised Codes of Montana and not as a new enactment. A defect in title of any act set out in prior laws and reenacted by the Montana Code Annotated is cured by the enactment of the Montana Code Annotated.

(4) No implication or presumption of legislative construction is to be drawn from the classification or arrangement of the Montana Code Annotated.

(5) Unless specifically and expressly adopted as part of the law by the legislature, annotations, code commissioner notes, catchlines, or other editorial material included in the Montana Code Annotated may not be construed as part of the legislative text but are only for the purpose of convenience, orderly arrangement, and information.

(6) After enactment, the Montana Code Annotated, including all subsequent replacement volumes, is prima facie the official laws of Montana. In case of any inconsistency in meaning arising through omission or otherwise between the provisions of the Montana Code Annotated and the corresponding portion of the official enrolled bill on file with the secretary of state, effect must be given to the official enrolled bill.

(7) The Montana Code Annotated, prepared in accordance with part 3, is

the official version of the statutes of Montana. The official version of the statutes is the only publication of the statutes that may be used in public documents. This subsection is not intended to interfere with the supreme court's authority to adopt rules of evidence pursuant to Article VII, section 2, of the Montana constitution.

**1-11-201. Code commissioner.** There is within the legislative services division a code commissioner.

**1-11-202. Qualifications of code commissioner.** To be eligible to be code commissioner, a person must be licensed to practice law in Montana for at least 5 years and demonstrate a knowledge of code arranging and recodification procedures.

**1-11-203. Supervision by legislative council.** The code commissioner is subject to the general supervision and policy of the legislative council.

**1-11-204. Duties of code commissioner.** (1) Prior to November 1 immediately preceding each regular legislative session, the code commissioner shall prepare and submit to the legislative council a report, in tabular or other form, indicating the commissioner's recommendations for legislation that will:

- (a) eliminate archaic or outdated laws;
- (b) eliminate obsolete or redundant wording of laws;
- (c) eliminate duplications in law and any laws repealed directly or by implication;
- (d) clarify existing laws;
- (e) correct errors and inconsistencies within the laws.

(2) The commissioner shall cause to be prepared for publication with the Montana Code Annotated the following material:

- (a) the statutory history of each code section;
- (b) annotations of state and federal court decisions relating to the subject matter of the code;
- (c) editorial notes, cross-references, and other matter the commissioner considers desirable or advantageous;
- (d) the Declaration of Independence;
- (e) the Constitution of the United States of America and amendments to the constitution;
- (f) acts of congress relating to the authentication of laws and records;

- (g) the Organic Act of the Territory of Montana;
  - (h) The Enabling Act;
  - (i) The 1972 Constitution of the State of Montana and any amendments to the constitution;
  - (j) ordinances relating to federal relations and elections;
  - (k) rules of civil, criminal, and appellate procedure and other rules of procedure the Montana supreme court may adopt; and
  - (l) a complete subject index, a separate index for the constitution, a popular name index, and comparative disposition tables or cross-reference indexes relating sections of the Montana Code Annotated to prior compilations and session laws.
- (3) (a) After publication of the Montana Code Annotated, the code commissioner shall:
- (i) annotate, arrange, and prepare for publication all laws of a general and permanent nature enacted at each legislative session and assign catchlines and code section numbers to each new section;
  - (ii) continue to codify, index, arrange, rearrange, and generally update the Montana Code Annotated to maintain an orderly and logical arrangement of the laws in order to avoid future need for bulk revision;
  - (iii) prepare and publish a report entitled "Official Report of the Montana Code Commissioner--(year)" that indicates, in tabular or other form, all changes made during the continuous recodification, other than punctuation, spelling, and capitalization, to clearly indicate the character of each change made since the last report.
- (b) In carrying out the duty imposed by subsection (3)(a)(ii), the commissioner shall recodify the Montana Code Annotated on a title-by-title basis. The recodification is intended to be secondary to the completion of other interim duties.
- (4) From time to time, the commissioner shall confer with members of the judiciary and the state bar relative to recodification procedures.

**1-11-301. Publication and sale of Montana Code Annotated -- free distribution.** (1) The legislative council, with the advice of the code commissioner, shall decide on the quantity, quality, style, format, and grade of all publications prior to having the code commissioner call for bids for the printing and binding and contract for their publication. The code commissioner shall follow the requirements of state law relating to contracts and bids, except as provided in this section.

(2) The methods of sale to the public of the Montana Code Annotated and supplements or other subsequent and ancillary publications may be included as an alternative specification and bid and as a part of a contract to be let by bids by the code commissioner.

(3) The sales price to the public of all Montana Code Annotated material must be fixed by the legislative council but may not exceed the cost price plus 25%. All revenue generated from the sale of the Montana Code Annotated or ancillary publications must be deposited in the state special revenue fund. Appropriations from the fund may be made for the use of the office and facilities of the legislative council under this chapter.

(4) Sets of the Montana Code Annotated purchased by the state, Montana local governmental agencies that are supported by public funds, and nonprofit organizations may not exceed the cost price of the sets plus 5%.

(5) (a) One copy of the Montana Code Annotated and supplements, and other subsequent and ancillary publications except annotations, must be provided at no cost to each library designated as a depository library as defined in 22-1-211.

(b) The state law library in Helena must be provided with four copies of the Montana Code Annotated and supplements, including annotations and other subsequent and ancillary publications.

(c) The legislative council shall include in the cost price of the code the cost of providing the copies under this subsection.

## **TITLE 5, LEGISLATIVE BRANCH**

General provisions:

**5-2-101. Composition of legislature.** The legislature consists of senators and representatives elected from the several senatorial and representative districts of the state in the number specified by law.

**5-2-102. Term of office.** The term of office of a senator is 4 years or until a successor is elected and qualified, and the term of office of a representative is 2 years or until a successor is elected and qualified. The term of service begins on the first Monday of January following the election. If a senator is elected to fill a vacancy, the term of service begins on the day after the election.

**5-2-103. Time and place of meeting.** Each regular session of the legislature shall be convened at the seat of government at 12 noon on the first Monday of January of each odd-numbered year or, if January 1 is a Monday, on the first Wednesday. The legislature shall meet at other times when convened by the governor or by the written request of a majority of the legislators or, when the legislature is in session, by a recorded vote of a majority of the legislators.

**5-2-104. Appointment to or candidacy for other offices.** (1) A member of the legislature may not, during the term for which the member was elected, be appointed to any civil office under the state. A member of the legislature may become a candidate for public office during the legislator's term.

(2) A member of the legislature who is elected to another public office shall resign from the legislature prior to assuming the office to which the member is newly elected.

**5-2-105. Facsimile signatures authorized.** (1) As used in this section, "facsimile signature" means a reproduction of the manual signature of a legislator by engraving, imprinting, stamping, facsimile transmission, or other means.

(2) On state documents requiring a signature, a legislator may use a facsimile signature in lieu of a manual signature. Before using a facsimile signature, the legislator shall file a copy of the legislator's manual or facsimile signature, certified by the legislator under oath, with the presiding officer of the house of which the legislator is a member.

### **Organization of the Legislature:**

**5-2-201. Pre-session caucus.** Not later than December 1 of each year following an election when members of the legislature are elected, the parties of each house of the legislature shall hold a pre-session caucus for holdover senators, senators-elect, and representatives-elect. The purpose of the caucus of each party of each house is to nominate officers and establish the basis for additional pre-session activity, including hiring staff and appointing committees. The legislative council shall designate the time for holding the pre-session caucuses.

**5-2-202. Pre-session activity.** (1) Members of the legislature nominated to leadership positions during the pre-session caucus provided for in 5-2-201 and members nominated or appointed to the committee on committees and rules

committees may meet and perform necessary organizational tasks prior to the regular session, including but not limited to appointing committees, hiring staff, and assigning space and seating.

(2) Members of the house appropriations committee and of the senate finance and claims committee named prior to the regular session may begin reviewing requests for appropriations immediately and may visit state agencies and institutions to discuss requests.

**5-2-203. Compensation and expenses -- definition.** (1) Members of the legislature attending the pre-session caucus, provided for in 5-2-201, and legislative orientation and training are entitled to receive compensation and expenses as provided in 5-2-302. The legislative services division shall place the members on the payroll roster, provided for in 2-18-404, in order to pay the compensation and expenses.

(2) While engaged in pre-session business, members nominated to serve as officers of the legislature and members of the committees named in 5-2-202 are entitled to receive compensation and expenses as provided in 5-2-302.

(3) As used in this section:

(a) "holdover senator" means a senator who was not required to seek election at the general election held immediately prior to the pre-session caucus; and

(b) "member" means a holdover senator, senator-elect, or representative-elect who is eligible to serve in the ensuing legislative session.

**5-2-205. Authority for standing committees to meet during interim.** (1) Except as provided in 5-2-202 and subsection (2) of this section, a standing committee of the legislature, as provided for in legislative rules, may not meet during the interim between regular legislative sessions.

(2) Upon approval of the president of the senate or the speaker of the house of representatives, a standing committee may meet before a special session, as provided in 5-3-101, or during a special session.

**5-2-211. Certified rosters.** The secretary of state shall prepare certified rosters from the official election records on file in the secretary of state's office for use in the organization of the senate and house of representatives.

**5-2-212. Organization of senate.** At 12 noon on the day appointed for the

meeting of any regular session of the legislature, the senior member present must take the chair, call the senators and senators-elect to order, call over the senators from the certified roster prepared by the secretary of state, and then, from the certified roster prepared by the secretary of state, call over the senatorial districts and counties, in their order, from which members have been elected at the preceding election. After the same are called the members-elect must take the constitutional oath of office and assume their seats. The senate may thereupon, if a quorum is present, proceed to elect its officers.

**5-2-213. Organization of house of representatives.** At the time specified in 5-2-212, the secretary of state or, in case of the secretary of state's absence or inability, the senior member-elect present shall take the chair, call the members-elect of the house of representatives to order, and then, from the certified roster prepared by the secretary of state, call over the roll of counties and districts. After the names are called, the members-elect shall take the constitutional oath of office and assume their seats. The house of representatives may at that time, if a quorum is present, proceed to elect its officers.

**5-2-214.** Oath to be entered on journals. An entry of the oath taken by the members of the legislature must be made on the journals of the proper houses, respectively.

**5-2-215. Election of officers.** In all elections of officers of either branch of the legislature, a majority of all the votes given is necessary to a choice.

**5-2-216. Tie vote.** If there is a tie vote for the purposes of organizing the senate or the house of representatives then, for the purposes of organization, the political party's candidate for president of the senate or speaker of the house then having a member of that candidate's party as the governor of Montana is elected.

**5-2-221. Officers and employees of the senate and house of representatives.** (1) The officers of the senate include a president, a president pro tempore, a majority leader, a minority leader, a majority whip, and a minority whip.

(2) The officers of the house of representatives include a speaker, a speaker pro tempore, a majority leader, a minority leader, a majority whip, and a minority whip.

(3) The president and president pro tempore of the senate and the speaker and speaker pro tempore of the house must be elected by the house of which they are a member.

(4) The majority leader, minority leader, majority whip, and minority whip of the senate and house must be elected by their respective caucuses.

(5) A secretary of the senate, sergeant at arms, and chaplain must be appointed by the president subject to confirmation by the senate, and a chief clerk of the house, sergeant at arms, and chaplain must be appointed by the speaker subject to confirmation by the house.

**5-2-222. Powers and duties of officers.** The president and president pro tempore of the senate and the speaker and speaker pro tempore of the house of representatives may administer the oath of office to any senator or representative and to the officers and employees of their respective bodies. The officers and employees must perform such duties as are required by the rules or orders of the respective bodies which elect them.

### **Compensation and Expenses of Members and Officers:**

**5-2-203. Compensation and expenses -- definition.** (1) Members of the legislature attending the pre-session caucus, provided for in 5-2-201, and legislative orientation and training are entitled to receive compensation and expenses as provided in 5-2-302. The legislative services division shall place the members on the payroll roster, provided for in 2-18-404, in order to pay the compensation and expenses.

(2) While engaged in pre-session business, members nominated to serve as officers of the legislature and members of the committees named in 5-2-202 are entitled to receive compensation and expenses as provided in 5-2-302.

(3) As used in this section:

(a) "holdover senator" means a senator who was not required to seek election at the general election held immediately prior to the pre-session caucus; and

(b) "member" means a holdover senator, senator-elect, or representative-elect who is eligible to serve in the ensuing legislative session.

**5-2-205. Authority for standing committees to meet during interim.** (1) Except as provided in 5-2-202 and subsection (2) of this section, a standing

committee of the legislature, as provided for in legislative rules, may not meet during the interim between regular legislative sessions.

(2) Upon approval of the president of the senate or the speaker of the house of representatives, a standing committee may meet before a special session, as provided in 5-3-101, or during a special session.

**5-2-301. Compensation and expenses for members while in session.** (1) Legislators are entitled to a salary commensurate to that of the daily rate for an employee earning \$10.33 an hour when the regular session of the legislature in which they serve is convened under 5-2-103 for those days during which the legislature is in session. The hourly rate must be adjusted by any statutorily required pay increase. The president of the senate and the speaker of the house must receive an additional \$5 a day in salary for those days during which the legislature is in session.

(2) Legislators may serve for no salary.

(3) Subject to subsection (4), legislators are entitled to a daily allowance, 7 days a week, during a legislative session, as reimbursement for expenses incurred in attending a session. Expense payments must stop when the legislature recesses for more than 3 days and resume when the legislature reconvenes.

(4) After November 15, and prior to December 15 of each even-numbered year, the department of administration shall conduct a survey of the allowance for daily expenses of legislators for the states of North Dakota, South Dakota, Wyoming, and Idaho. The department shall include the average daily expense allowance for Montana legislators in determining the average daily rate for legislators. The department shall include only states with specific daily allowances in the calculation of the average. If the average daily rate is greater than the daily rate for legislators in Montana, legislators are entitled to a new daily rate for those days during which the legislature is in session. The new daily rate is the daily rate for the prior legislative session, increased by the percentage rate increase as determined by the survey, a cost-of-living increase to reflect inflation that is calculated pursuant to 15-6-134, or 5%, whichever is less. The expense allowance is effective when the next regular session of the legislature in which the legislators serve is convened under 5-2-103.

(5) Legislators are entitled to a mileage allowance as provided in 2-18-503 for each mile of travel to the place of the holding of the session and to return to their place of residence at the conclusion of the session.

(6) In addition to the mileage allowance provided for in subsection (5),

legislators, upon submittal of an appropriate claim for mileage reimbursement to the legislative services division, are entitled to:

- (a) three additional round trips to their place of residence during each regular session; and
- (b) additional round trips as authorized by the legislature during special session.

(7) Legislators are not entitled to any additional mileage allowance under subsection (5) for a special session if it is convened within 7 days of a regular session.

**5-2-302. Compensation and expenses when legislature not in session.**

When the legislature is not in session, a member of the legislature, while engaged in legislative business with prior authorization of the appropriate funding authority, is entitled to:

- (1) a mileage allowance as provided in 2-18-503;
- (2) expenses as provided in 2-18-501 and 2-18-502; and
- (3) a salary equal to one full day's pay at the rate described in 5-2-301(1) for each 24-hour period of time (from midnight to midnight), or portion of a 24-hour period, spent on authorized interim or administrative committee legislative business or as otherwise provided by law. However, if time spent for business other than authorized legislative interim or administrative committee business or business related to 5-11-305 results in lengthening a legislator's stay away from home into an additional 24-hour period, the legislator may not be compensated for the additional day.

**5-2-303. Participation in state benefits group -- employer contribution made to other plan.** (1) Individual members of the senate and the house of representatives may enroll in the state employees benefits group during the terms to which they have been elected. The provider of benefits shall enroll and collect employee contributions directly from those legislators. The employer contribution must be paid from funds appropriated for that purpose.

(2) (a) If a member does not enroll or terminates enrollment under the state employees benefits group plan and is insured under a plan providing disability insurance as defined in 33-1-207, the department of administration, upon request of the member, shall pay to the member's insurer an amount equal to the premium required to be paid by the member for coverage of the member and any dependents under the disability insurance plan, subject to the limitation contained in

subsection (2)(b).

(b) A payment made under subsection (2)(a) may not exceed the amount of the employer contribution for group benefits for members of the legislature as provided for in 2-18-703.

(c) Unused employer contributions must be transferred to an account as provided in 2-18-703 for a legislator who is a state employee and who has contributions paid for by another agency when the legislature is not in session.

**5-2-304. Participation in public retirement systems.** (1) The purpose of this section is to allow a person who is elected or appointed to the Montana legislature and who is also a member of a retirement system provided for in Title 19, chapter 3, 5, 6, 7, 8, 9, 13, 20, or 21, by virtue of the person's nonlegislative employment to continue the person's participation in the public retirement system of which the person is a member.

(2) This section is not intended to provide duplicate credit for the same service in two retirement systems supported wholly or in part by public funds. This section does not affect contribution rates or benefit payments specifically provided for in the laws governing the operation of individual retirement systems.

(3) (a) A person who is an inactive or retired member of a retirement system provided for in Title 19, chapter 5, 6, 7, 8, 9, 13, 20, or 21, and who is elected or appointed to be a legislator may:

(i) return to active membership in the system of which the person is an inactive or retired member under the requirements of that system; or

(ii) remain an inactive or retired member of the retirement system and become an active member of the public employees' retirement system pursuant to 19-3-412.

(b) A person who is an inactive or retired member of the public employees' retirement system provided for in Title 19, chapter 3, and who is elected or appointed to the legislature may return to active membership in the public employees' retirement system but cannot simultaneously be an inactive or retired member of the system as a result of prior covered terminated employment and an active member of the retirement system under 19-3-412 or this section.

(4) (a) A person who is an active member of a public retirement system governed by state law and who is elected or appointed to be a legislator may, but is not required to, continue the person's participation in that public retirement system while engaged in official duties as a legislator.

(b) To continue participation as an active member in the public retirement

system, a legislator shall, within 90 days of taking office and in a manner prescribed by the appropriate board, file an irrevocable written election with the teachers' retirement board or the public employees' retirement board.

(5) A legislator who elects to continue participation as an active member as provided in subsection (4) shall continue the payments into the fund of the retirement system at the rate currently in effect in the system based on the legislator's monthly salary as a member of that system.

(6) The state contribution must be made by legislative appropriation. It must equal the appropriate employer contribution at the rate currently in effect in the system.

### **Vacancies in the Legislature:**

**5-2-401. Definitions.** (1) As used in 5-2-406, "term" means the 4-year period to which a senator is normally elected in the absence of a vacancy.

(2) For the purposes of this part, "vacancy" or "vacancies" has the same meaning as prescribed in 2-16-501.

**5-2-402. Appointment by board of county commissioners -- county central committee role -- timeframes.** (1) Except as provided in subsection (5) or as otherwise provided by law, whenever a vacancy occurs in the legislature, the vacancy must be filled by appointment by the board of county commissioners or, in the event of a multicounty district, the boards of county commissioners of the counties comprising the district sitting as one appointing board.

(2) (a) Whenever a vacancy is within a single county, the board of county commissioners shall make the appointment as described in 5-2-403, 5-2-404, or 5-2-406.

(b) Whenever a vacancy is within a multicounty district, the boards of county commissioners shall sit as one appointing board. The selection of an individual to fill the vacancy must be as follows:

(i) The presiding officer of the board of county commissioners of the county in which the person resided whose vacancy is to be filled shall call a meeting for the purpose of appointing the member of the legislature and shall preside at the meeting.

(ii) Each commissioner's vote is determined by the following formula: 100 multiplied by (A divided by B) multiplied by (1 divided by C), where:

(A) A is the total votes cast in the respective county for the person vacating

the legislative seat or, if the vacating person was not elected, the votes cast for the last person to be elected for the current term;

(B) B is the total votes cast for that person in the legislative district; and

(C) C is the number of authorized commissioners on the board of the commissioner whose vote is being determined.

(iii) The person selected to fill the vacancy is the one who receives the highest number above 50 that results from the calculation in subsection (2)(b)(ii). If none of the candidates receives a number higher than 50 from that calculation, the selection board shall cast its votes again in the same manner for the persons receiving the two highest numbers. If neither vote results in a candidate receiving a number higher than 50 from the calculation provided in subsection (2)(b)(ii), then 5-2-404 applies.

(c) If a vacancy occurs in a holdover senate seat after holdover senators have been assigned to new districts under each reapportionment, the formula in subsection (2)(b)(ii) must be applied using the votes cast for the senatorial candidates at the last election in which votes were cast for a senate candidate. Only the number of votes cast by electors residing in the new senate district for senate candidates of the party to which the person vacating the seat belonged may be counted. The secretary of state shall provide an estimate of the number of votes cast for each party by county or portion of a county. The selection process is the same as provided in subsection (2)(b)(iii).

(3) The appointment process to fill a vacant legislative seat under this section is as follows:

(a) Within 7 days of being notified of a vacancy as described in 2-16-501, the secretary of state shall notify the board of county commissioners and the state party that is responsible for notifying the county central committee of the county where the vacating legislator is a resident, if the legislative seat is within one county, or the boards of county commissioners and the corresponding county central committees if the legislative seat is in a multicounty district. If the legislator is an independent or belongs to a party for which there is no county central committee, the notification of county commissioners suffices.

(b) The county central committee or committees, upon receipt of notification of a vacancy, have 45 days to propose a list of prospective appointees, pursuant to 5-2-403(1). The county central committee or the county central committees, acting together, shall forward the list of names to the appointing board within the 45-day period.

(c) The appointing board shall make and confirm an appointment and notify

the secretary of state within 15 days:

(i) after receiving the list of prospective appointees from the county central committee or committees;

(ii) after 45 days have expired after the notification of vacancy if the county central committee or committees have not provided a list of prospective appointees; or

(iii) after notification of a vacancy if the legislator vacating the seat is an independent.

(4) If the legislature is in session, the notification process in subsection (3)(a) must be followed within 5 days. The process described in subsection (3)(b) must take place in 5 days. The process described in subsection (3)(c) must take place in 5 days.

(5) Notwithstanding subsection (6), if a vacancy occurs prior to a primary election, 13-10-326 applies. If a vacancy occurs after a primary and prior to a general election, 13-10-327 applies.

(6) If the legislature is called into special session within 85 days of a general election, a person must be appointed to fill a legislative vacancy pursuant to subsections (1) through (4).

**5-2-403. Appointee to be of same political party.** (1) Whenever an appointee's predecessor served as a member of a political party, the appointee named under 5-2-402 must be a member of the same political party and must be selected from a list of three individuals provided:

(a) by the county central committee in a district within a single county; or

(b) by the county central committees, acting together, in a multicounty district, as described in 5-2-402.

(2) Whenever the appointing board is unable to elect an appointee from the submitted list, the appointing board shall request a second list of three names from the county central committee or committees. The second list may not contain any of the names submitted on the first list. The appointing board shall then select an appointee from the individuals named on both lists.

(3) The provisions of this section do not apply if the predecessor served as an independent.

**5-2-404. Procedure upon failure of one candidate to receive majority vote.** In the event that a decision cannot be made by the appointing board because of failure of any candidate to receive a majority of the votes, the final decision

may be made by lot from the first and second lists of candidates as provided by 5-2-403 or from a list of three individuals if the predecessor served as an independent, in accordance with rules of selection adopted by the appointing board.

**5-2-406. Elections to fill vacancies in senate.** (1) Whenever a vacancy occurs 85 days or more before the general election held during the second year of the term, an individual must be appointed pursuant to 5-2-402. The appointment continues until a person is elected to complete the term at the upcoming general election and is sworn into office. The election procedure to be used to elect the successor is as follows:

(a) Whenever the vacancy occurs 85 days or more prior to the primary election during the second year, the same procedure as is used for senators who will be elected to full 4-year terms at that general election must be utilized.

(b) Whenever the vacancy occurs on or after the 85th day prior to the primary election, any political party desiring to enter a candidate in the general election shall select a candidate as provided in 13-10-327 and 13-38-204. A political party shall notify the secretary of state 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 secretary of state on or before the 85th day prior to the general election.

(2) Whenever a vacancy occurs on or after the 85th day prior to the general election held during the second year of the term, the person appointed by the board under 5-2-402 shall serve until the end of the term.

**5-2-407. Anticipated vacancy.** (1) Whenever it appears that a vacancy will exist in the legislature because of the inability of an elected legislator to take office at the commencement of the term to which the legislator was elected, an appointee may be selected in advance of the commencement of the term under the provisions of 5-2-402 through 5-2-406.

(2) For purposes of determining the term of office of the appointee, the term of office commences on the day on which the appointee takes the oath of office.

(3) An appointee under this section may take office only if the vacancy in fact exists at the commencement of the term of office.

## **Legislative Branch Consolidation:**

**5-2-501. Declaration of policy and purpose.** It is the public policy of this state and the purpose of this part:

(1) to create a structure of the legislative branch of state government that is efficient and responsive to the needs of the people of this state and is sufficiently flexible to meet changing conditions;

(2) to strengthen the legislative branch capacity to administer its affairs effectively and efficiently on behalf of the people of the state;

(3) to provide means for coordination of branch activities; and

(4) to eliminate unnecessary overlapping and duplication of effort within the legislative branch of state government.

**5-2-502. Structure of legislative branch.** The legislature established in Article V, section 1, of the Montana constitution and the committees established by law constitute the legislative branch. The functional organization of the legislative branch is governed by the joint rules of the legislature and the laws governing the several components of the branch. The administrative organization of the legislative branch is consolidated as provided in this part.

**5-2-503. Consolidation of legislative branch entities for specified purposes.** (1) An entity of the legislative branch that is consolidated as provided in 5-2-504 shall:

(a) exercise its substantive functions independently as provided by law;

(b) adhere to administrative policies, including personnel policies, adopted by the legislative council;

(c) submit its budget proposals through the legislative council; and

(d) submit reports required of it as provided in 5-11-210.

(2) The legislative services division shall:

(a) coordinate budgeting, recordkeeping, reporting, and related administrative and clerical functions as a consolidated entity, including acknowledgment of actions by the approving authority of the consolidated entity;

(b) include within legislative branch budgets the budget proposals for the legislature and the consolidated entities, separately identified;

(c) provide separate identification for appropriations and expenditures for

the legislature and for each of the consolidated entities;

(d) establish procedures for approval of expenditures by the legislature and by each of the consolidated entities; and

(e) provide personnel administration for the legislative branch. The senate and the house of representatives or a consolidated entity with statutory hiring authority may hire its own personnel, subject to administrative procedures established by the legislature and legislative council.

(3) The legislative council shall allocate office space occupied by the legislative branch for the use of a consolidated entity as necessary. Space occupied by the senate or the house of representatives may not be reallocated except as provided in 2-17-108. The location of the chambers of the house of representatives and the senate must be determined as provided by 2-17-101.

**5-2-504. Legislative branch consolidated.** The following legislative branch entities are consolidated, as provided in 5-2-503 and this section:

(1) the senate and the house of representatives provided for in Article V, section 1, of the Montana constitution;

(2) the legislative council established by 5-11-101;

(3) the legislative services division established by 5-11-111;

(4) the legislative finance committee established by 5-12-201;

(5) the legislative fiscal division established by 5-12-301;

(6) the legislative audit committee established by 5-13-201;

(7) the legislative audit division established by 5-13-301; and

(8) the environmental quality council established by 5-16-101.

### **Special Session Provisions:**

**5-3-101. Convening of special session -- limiting subjects -- committee meetings -- compensation.** (1) The legislature may be convened in special session by the governor or at the written request of a majority of the members. Subject to 5-5-227, the governor or the legislature may limit the special session to the subjects specified in the call.

(2) (a) A standing committee of the legislature may meet prior to a special session for the purpose of holding hearings and taking action on preintroduced legislation that has been referred to that committee.

(b) Public notice of a hearing to be held by a standing committee prior to a

special session must be given at least 7 days before the hearing.

(3) Members of the legislature engaged in pre-session business for a special session are entitled to receive compensation and expenses as provided in 5-2-302. Members of the legislature are entitled to receive compensation and expenses, as provided in 5-2-301, for the day prior to the convening of a special session.

**5-3-102. Calling of a future special session when legislature is in session.** When the legislature is in session, a majority of the members may by a written request call a special session to meet at a specified time.

**5-3-105. Request by 10 members to poll legislators.** (1) When the legislature is not in session, any 10 members may in writing request the secretary of state to poll the legislators to determine if a majority are in favor of a special session.

(2) The request must state:

(a) the conditions warranting the call of a special session;

(b) the purposes of the special session; and

(c) the proposed convening date and time of the special session.

**5-3-106. Procedure for polling legislators.** Within 5 days after receiving a request, the secretary of state shall send to all legislators by certified mail a ballot that contains:

(1) the names of the legislators making the request;

(2) the reasons for calling the special session;

(3) the purposes of the special session;

(4) the requested convening date and time of the special session;

(5) the date by which legislators shall return the ballot, which may not be more than 30 days after the date of the mailing of the ballots; and

(6) a stamped return envelope.

**5-3-107. Notice of time of approved special session.** If a majority of the legislators reply affirmatively to the poll, the secretary of state shall notify each legislator of the time and day on which the special session shall convene.

**5-3-108. Failure to approve special session -- ballots void.** If a majority of the legislators fail to approve the call for a special session within 30 days after the secretary of state mails the ballots or notifies each legislator, all ballots are

void and may not be used again. The entire process must be repeated to call the legislature into special session.

### **General Legislative Bill Provisions:**

**5-4-101. Form of enacting clause.** The enacting clause of every law shall be as follows: "Be it enacted by the Legislature of the State of Montana:".

**5-4-102. Limitation on title of referred legislation.** All bills referred by the legislature to a vote of the people shall have a title of no more than 100 words.

**5-4-103. Rulemaking authority.** A statute delegating rulemaking authority to an agency must contain specific guidelines describing for the agency and the public what the rules may and may not contain.

**5-4-104. Tax expenditure criteria -- legislation.** (1) The legislature recognizes the value of relevant information when making determinations regarding tax policy and tax expenditures. The legislature also recognizes the need to reevaluate tax expenditures after enactment. In consideration of these policy goals, the legislature encourages a policy of providing an explicit purpose of a tax expenditure and termination dates of no more than 6 years in any legislation creating, expanding, or continuing a tax expenditure.

(2) As used in this section, the term "tax expenditures" means those revenue losses attributable to provisions of Montana tax laws that allow a special exclusion, exemption, or deduction from gross income or that provide a special credit, a preferential rate of tax, or a deferral of tax liability including:

- (a) personal income and corporate income tax exemptions;
- (b) property tax exemptions for which application to the department is necessary;
- (c) deferral of income;
- (d) credits allowed against Montana personal income tax or Montana corporate income tax;
- (e) deductions from income; and
- (f) any other identifiable preferential treatment of income or property.

### **Fiscal Notes in Legislative Bills:**

**5-4-201. Requirement of fiscal notes with committee reports.** All bills reported out of a committee of the legislature having an effect on the revenues, expenditures, or fiscal liability of the state or of a county or municipality, except appropriation measures carrying specific dollar amounts, shall include a fiscal note incorporating an estimate of such effect. Fiscal notes shall be requested by the presiding officer of either house, who shall determine the need for the note at the time of introduction.

**5-4-203. Budget director to prepare note.** The budget director, in cooperation with the state or local agencies or officials or organizations representing local agencies or officials affected by the bill, is responsible for the preparation of the fiscal note and shall return same within 6 days. The director may request additional time to complete a note, which extension must be submitted to the presiding officer or committee requesting the note for approval.

**5-4-204. Submission of fiscal note -- sponsor's fiscal note rebuttal -- distribution to legislators.** (1) A completed fiscal note must be submitted by the budget director to the presiding officer who requested it. Upon receipt of the completed fiscal note, the presiding officer shall notify the sponsor of the bill for which the fiscal note was prepared that the fiscal note has been completed and is available for review. Within 24 hours following notification, the sponsor shall:

(a) notify the presiding officer that the sponsor concurs with the completed fiscal note;

(b) request additional time, not to exceed 24 hours, to consult with the budget director on the fiscal note; or

(c) elect to prepare a sponsor's fiscal note rebuttal as provided in subsection (4).

(2) (a) If the sponsor concurs with the completed fiscal note prepared by the budget director or elects to prepare a sponsor's fiscal note rebuttal, the presiding officer shall refer the completed fiscal note prepared by the budget director to the committee considering the bill. If the bill is printed, the note must be reproduced and placed on the members' desks.

(b) If the sponsor requests additional time to consult with the budget director, the presiding officer shall notify the sponsor and the budget director of the time, not to extend beyond the time limitation specified in subsection (1)(b), by which:

(i) the budget director shall submit a revised completed fiscal note to the

presiding officer;

(ii) the sponsor shall notify the presiding officer that the sponsor concurs with the original completed fiscal note; or

(iii) the sponsor shall elect to prepare a sponsor's fiscal note rebuttal as provided in subsection (4).

(3) At the time specified as provided in subsection (2)(b), the presiding officer shall refer the original or, if revised, the revised fiscal note to the committee considering the bill. If the bill is printed, the note must be reproduced and placed on the members' desks.

(4) (a) If a sponsor elects to prepare a sponsor's fiscal note rebuttal, the sponsor shall prepare the fiscal note rebuttal on a form provided by the legislative services division and return the completed sponsor's fiscal note rebuttal form to the presiding officer within 4 days of the election to prepare a sponsor's fiscal note rebuttal. The form must identify the bill number, the sponsor of the bill, the date prepared, the version of the fiscal note being rebutted, the reasons the sponsor disagrees with the fiscal note, the items or assumptions in the fiscal note that the sponsor believes are incorrect, and the sponsor's estimate of the fiscal impact, if an estimate is available.

(b) The presiding officer may grant additional time to the sponsor to prepare the sponsor's fiscal note rebuttal.

(c) Upon receipt of the completed sponsor's fiscal note rebuttal form, the presiding officer shall refer it to the committee hearing the bill. If the bill is printed, the form must be identified as a sponsor's fiscal note rebuttal, reproduced, and placed on the members' desks.

**5-4-205. Contents of notes.** (1) Fiscal notes must, when possible, show in dollar amounts the estimated increase or decrease in revenue or expenditures, costs that may be absorbed without additional funds, and long-range financial implications. A comment or opinion relative to the merits of the bill may not be included in the fiscal note. However, technical or mechanical defects may be noted.

(2) It is the legislature's intent that a fiscal note be prepared as an objective analysis of the fiscal impact of legislation. The fiscal note should represent only the estimate of the revenue and expenditures that would result from the implementation of the legislation, if enacted, and may not in any way reflect the views or opinions of the preparing agencies, the sponsor, or other interested parties. Changes in revenue must be estimated for each reported year based upon

appropriate revenue estimating methodologies for the source of revenue described and should reflect a change from the official revenue estimate provided for in 5-5-227. Expenditures must be estimated as the amount required for implementing the legislation, if enacted, in excess of or as a reduction to the present law base level of expenditures in each reported year regardless of whether or not the preparing agency determines that it can absorb the costs in its proposed budget.

(3) The fiscal note must clearly differentiate between facts and assumptions made in the preparation of the fiscal note while maintaining a logical flow of both fact and assumption in presenting how the fiscal impact is determined.

**5-4-206. Background information to legislators on request.** The budget director shall make available on request to any member of the legislature all background information used in developing a fiscal note.

**5-4-210. Estimate of fiscal impact on local government required.** (1) A bill that, if enacted, may 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 must be accompanied, at the time that the bill is presented for introduction to the chief clerk of the house of representatives or the secretary of the senate, by an estimate of all direct and indirect fiscal impacts on a local government unit. The estimate of fiscal impacts must be prepared by the budget director in cooperation with a local government unit affected by the bill. The budget director has 10 days to prepare the estimate.

(2) The estimate must show in dollar amounts the increase in expenditures that may be required by the bill. Comment or opinion relative to the merits of the bill may not be included in the estimate. However, technical or mechanical defects may be noted. Upon completion of the estimate, the budget director shall submit the estimate to the requestor of the bill.

### **Actions by the Governor on Bills:**

**5-4-301. Bills received by governor -- how endorsed.** 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, must be submitted to the governor for the governor's signature. Each bill must, as soon as it is delivered to the governor, be

endorsed as follows: "This bill was received by the governor this .... day of ....., 20...". The endorsement must be signed by the governor or by an assistant authorized by the governor.

**5-4-302. Approval of bills.** When the governor approves a bill, the governor shall sign the bill with the date of approval and deposit the bill in the office of the secretary of state.

**5-4-303. Line item veto.** If a bill presented to the governor contains several distinct items of appropriation of money, the governor may disapprove one or more items while approving other portions of the bill. If an item is disapproved, the governor shall append to the bill, at the time of signing it, a statement of the items objected to and the reasons for the objection. The governor shall transmit to the house in which the bill originated, or to the secretary of state if the legislature is not in session, a copy of the statement, and the items objected to must be separately reconsidered in the same manner as bills that have been disapproved by the governor.

**5-4-304. Amendatory veto.** The governor may return any bill to the originating house with the governor's recommendations for amendment. The originating house shall reconsider the bill under its rules relating to an amendment offered in committee of the whole. The bill is then subject to the following procedures:

(1) The originating house shall transmit to the second house, for consideration under its rules relating to amendments in committee of the whole, the bill and the originating house's approval or disapproval of the governor's recommendations.

(2) If both houses approve the governor's recommendations, the bill must be returned to the governor for reconsideration.

(3) If both houses disapprove the governor's recommendations, the bill must be returned to the governor for reconsideration.

(4) If one house disapproves the governor's recommendations and the other house approves, then either house may request a conference committee, which may be a free conference committee:

(a) If both houses adopt a conference committee report, the bill, in accordance with the report, must be returned to the governor for reconsideration.

(b) If a conference committee fails to reach agreement or if its report is not

adopted by both houses, the governor's recommendations are considered not approved and the bill must be returned to the governor for further consideration.

(5) The governor may not return the bill for amendment a second time.

**5-4-305. Bills returned without approval.** (1) A bill or item or items of an appropriations bill become law whenever:

(a) the bill passes both houses of the legislature;

(b) the bill is returned by the governor without signature and with objections to the bill or, if it is a bill containing several items of appropriation of money, with objections to one or more items; and

(c) upon reconsideration the bill or item or items pass both houses by the constitutional majority.

(2) The bill or item or items must be authenticated by a certificate endorsed on or attached to the bill or the copy of the statement of objections. The form of the certificate must be: "This bill having been returned by the governor with objections and, after reconsideration, having passed both houses by the constitutional majority has become a law this .... day of ....., A.D. ...." or "The following items in the within statement (naming them) having, after reconsideration, passed both houses by the constitutional majority have become a law this .... day of ....., A.D. ...". The endorsement, signed by the president of the senate and the speaker of the house, is sufficient authentication of the bill or item or items.

(3) The authenticated bill or statement must be delivered to the governor, who shall deposit it with the laws in the office of the secretary of state.

**5-4-306. Return when legislature not in session.** (1) If, on the day the governor desires to return a bill without approval and with objections to the bill to the house in which it originated, that house has adjourned for the day, but not for the session, the governor may deliver the bill with the message to the presiding officer, secretary, clerk, or any member of that house. The delivery is as effectual as though returned in open session if the governor, on the first day the house is again in session, by message, notifies it of the delivery and of the time when and the person to whom the delivery was made.

(2) If the legislature is not in session when the governor vetoes a bill, the governor shall return the bill with the reasons for the veto to the secretary of state. If the bill was not approved by two-thirds of the members voting on the final vote on the bill, the secretary of state shall within 5 working days of receipt of the bill

and veto message mail a copy of the title of the bill and the veto message to each member of the legislature. If the bill was approved by two-thirds of the members voting on the final vote on the bill, the secretary of state shall poll the members of the legislature. The secretary of state shall within 5 working days of receipt of the bill and veto message send by certified mail to each legislator, at an address provided by the legislator, a copy of the bill and the veto message, a ballot, a return envelope, instructions for casting a vote, and notice of the date by which each legislator shall return a vote. The date for return must be within 30 days after the date on which the bill, veto message, and voting instructions are sent. A legislator may cast and return a vote by delivering the ballot and return envelope in person or by mailing the ballot in the return envelope by regular mail, postage paid, or by sending the ballot by facsimile transmission to the office of the secretary of state. A legislator may not change the legislator's vote after the ballot is received by the secretary of state. The secretary of state shall tally the votes within 1 working day after the date for return of the votes. If two-thirds or more of the members of each house vote to override the veto, the bill becomes law.

(3) The legislature may reconvene to reconsider any bill vetoed by the governor when the legislature is not in session by using the statutory procedure provided for convening in special session.

**5-4-307. Bills remaining with governor.** (1) A bill that has passed both houses of the legislature and has not been returned by the governor within 10 days after its delivery to the governor becomes law.

(2) The governor shall deliver the bill to the secretary of state and direct the secretary of state to authenticate it by a certificate endorsed on or attached to the bill. The form of the certificate must be: "This bill having remained with the governor 10 days, it has become a law this .... day of ...., ....". The certificate must be signed by the secretary of state and deposited with the laws in the secretary of state's office.

**5-4-308. Transmittal of veto messages to legislative services division.** The governor shall transmit one copy of each veto message to the legislative services division.

**Witnesses Before Legislature:**

**5-5-101. Subpoenas.** (1) A subpoena requiring the attendance of any witness before either house of the legislature or a committee of either house may be issued by the president of the senate, the speaker of the house, or the presiding officer of any committee before whom the attendance of the witness is desired.

(2) A subpoena is sufficient if:

(a) it states whether the proceeding is before the house of representatives, the senate, or a committee;

(b) it is addressed to the witness;

(c) it requires the attendance of the witness at a time and place certain;

(d) it is signed by the president of the senate, speaker of the house, or presiding officer of a committee.

**5-5-102. Service of subpoenas.** The subpoena may be served by any elector of the state, and the elector's affidavit that the elector delivered a copy to the witness is evidence of service.

**5-5-103. Contempt.** If a witness neglects or refuses to obey a subpoena or, appearing, neglects or refuses to testify, the senate or house may, by resolution entered on the journal, commit the witness for contempt.

**5-5-104. Compelling attendance.** Any witness neglecting or refusing to attend in obedience to a subpoena may be arrested by the sergeant at arms and brought before the senate or house. The only warrant of authority necessary to authorize the arrest is a copy of a resolution of the senate or house, signed by the president of the senate or speaker of the house and countersigned by the secretary or clerk.

**5-5-105. Immunity of witness.** (1) A person sworn and examined before either house of the legislature or any committee of the legislature may not be held to answer criminally or be subject to any penalty or forfeiture for any fact or act relating to the required testimony. A statement made or paper produced by the witness is not competent evidence in any criminal proceeding against the witness.

(2) A witness cannot refuse to testify to any fact or to produce any paper concerning which the witness is examined for the reason that the witness's testimony or the production of the paper tends to disgrace the witness or render the witness infamous.

(3) This section does not exempt a witness from prosecution and

punishment for perjury committed by the witness during the examination.

### **Appointments by the Governor:**

#### **5-5-301. Governor to transmit list of appointments to legislature.**

Within 10 days after the convening of the legislature, the governor shall transmit to the legislature a list of all appointments made by the governor under the provisions of 2-16-506 during the recess of the legislature.

**5-5-302. Nominations to senate to be in writing.** Nominations made by the governor to the senate must be in writing, designating the residence of the nominee and the office for which the person is nominated.

**5-5-303. Resolution of concurrence.** Whenever the senate concurs in a nomination, its secretary must immediately deliver a copy of the resolution of concurrence, certified by the president and secretary, to the secretary of state and another copy, certified by the secretary, to the governor.

### **Impeachment:**

**5-5-401. Officers liable to impeachment.** The governor, executive officers, heads of state departments, and judicial officers are liable to impeachment for felonies and misdemeanors or malfeasance in office.

**5-5-402. Sole power of impeachment.** The sole power of impeachment vests in the house of representatives, the concurrence of two-thirds of all the members being necessary to the exercise thereof.

**5-5-403. Trial of impeachments.** (1) Impeachment shall be tried by the senate, the court of impeachment, sitting for that purpose. The senators shall be upon oath or affirmation to do justice according to law and evidence.

(2) The court has jurisdiction to try impeachments presented by the house of representatives.

**5-5-404. Officers of the court.** (1) The officers of the senate are officers of the court.

(2) When the governor or lieutenant governor is on trial, the chief justice of the supreme court shall preside.

**5-5-411. Articles of impeachment.** (1) All impeachments must be by resolution originated in and adopted by the house of representatives. The resolution shall be conducted through the house by managers elected by the house.

(2) The managers shall prepare articles of impeachment, present them at the bar of the senate, and prosecute them.

**5-5-412. Delivery of articles to senate.** When an officer is impeached by the house of representatives, the articles of impeachment must be delivered to the president of the senate.

**5-5-413. Suspension pending trial -- filling vacancy.** (1) Whenever articles of impeachment against any officer subject to impeachment are presented to the senate, the officer is temporarily suspended from office and cannot act in an official capacity until the officer is acquitted.

(2) Upon suspension of any officer other than the governor, the office must be at once temporarily filled by an appointment made by the governor, with the advice and consent of the senate. The term of the appointment is until the acquittal of the party impeached or, in case of the party's removal, until the vacancy is filled at the next election as required by law.

**5-5-414. Time of hearing -- service of defendant.** (1) The senate must assign a day for the hearing of the impeachment and inform the house of representatives thereof.

(2) The president of the senate must cause a copy of the articles of impeachment, with a notice to appear and answer the same at the time and place appointed, to be served on the defendant not less than 10 days before the day fixed for the hearing.

**5-5-416. Senate to be sworn.** (1) At the time and place appointed and before the senate proceeds to act on the impeachment, the secretary must administer to the president of the senate, and the president of the senate to each of the members of the senate then present, an oath truly and impartially to hear, try, and determine the impeachment.

(2) No member of the senate can act or vote upon the impeachment or upon

any question arising thereon without having taken such oath.

**5-5-417. Proceedings on failure to appear.** If the defendant does not appear, the senate, upon proof of service or publication as provided in 5-5-414 and 5-5-415, may of its own motion or for cause shown assign another day for hearing the impeachment or may proceed in the absence of the defendant to trial and judgment.

**5-5-418. Counsel may be appointed.** (1) If the defendant appears and is unable to procure the assistance of counsel, it is the duty of the president of the senate to appoint some suitable person to assist the defendant in a defense.

(2) If the defendant is served by publication and fails to appear, it is the duty of the president of the senate to appoint some person or counsel to appear in behalf of the defendant and to make a defense.

**5-5-419. Defendant's objection or answer.** When the defendant appears, the defendant may object, in writing, to the sufficiency of the articles of impeachment or may answer the articles by an oral plea of not guilty. The plea must be entered upon the journal and must put in issue every material allegation of the articles of impeachment.

**5-5-420. Overrule of objection -- defendant's plea.** If the objection to the sufficiency of the articles of impeachment is not sustained by a majority of the members of the senate, the defendant must be ordered to immediately answer the articles of impeachment. If the defendant pleads guilty, the senate shall render judgment of conviction against the defendant. If the defendant pleads not guilty or refuses to plead, the senate shall, at the time that it designates, proceed to try the impeachment.

**5-5-421. Two-thirds vote necessary to conviction.** The defendant cannot be convicted on impeachment without the concurrence of two-thirds of the members elected, voting by ayes and noes. If two-thirds of the members elected do not concur in a conviction, the defendant must be acquitted.

**5-5-422. Judgment on conviction -- how pronounced.** After conviction the senate must, at such time as it may appoint, pronounce judgment in the form of a resolution entered upon the journals of the senate.

**5-5-423. Judgment on conviction -- how finalized.** On the adoption of the resolution by a majority of the members present who voted on the question of acquittal or conviction, it becomes the judgment of the senate.

**5-5-431. Nature of judgment.** The judgment in the impeachment may be that the defendant be suspended or that the defendant be removed from office and disqualified to hold any office of honor, trust, or profit under the state.

**5-5-432. Effect of judgment of suspension.** If judgment of suspension is given, the defendant, during the continuance thereof, is disqualified from receiving the salary, fees, or emoluments of the office.

**5-5-433. Criminal prosecution not barred.** If the offense for which the defendant is convicted on impeachment is also the subject of an indictment or information, the indictment or information is not barred thereby.

## **Lobbying:**

**5-7-101. Purposes of chapter -- applicability.** (1) The purposes of this chapter are to promote a high standard of ethics in the practice of lobbying, to prevent unfair and unethical lobbying practices, to provide for the licensing of lobbyists and the suspension or revocation of the licenses, to require elected officials to make public their business, financial, and occupational interests, and to require disclosure of the amounts of money spent for lobbying.

(2) This chapter does not subject an individual lobbying on the individual's own behalf to any reporting requirements or deprive an individual of the constitutional right to communicate with public officials.

**5-7-102. Definitions.** The following definitions apply in this chapter:

(1) "Appointed state official" means an individual who is appointed:

(a) to public office in state government by the governor or the chief justice of the Montana supreme court and who is subject to confirmation by the Montana senate;

(b) by the board of regents of higher education to serve either as the commissioner of higher education or as the chief executive officer of a campus of the Montana university system; or

(c) by the board of trustees of a community college to serve as president.

(2) "Business" means:

(a) a holding or interest whose fair market value is greater than \$1,000 in a corporation, partnership, sole proprietorship, firm, enterprise, franchise, association, self-employed person, holding company, joint-stock company, receivership, trust, or other entity or property held in anticipation of profit, but does not include nonprofit organizations; and

(b) present or past employment from which benefits, including retirement allowances, are received.

(3) "Commissioner" means the commissioner of political practices.

(4) "Docket" means the register of lobbyists and principals maintained by the commissioner pursuant to 5-7-201.

(5) "Elected federal official" means a person elected to a federal office, including but not limited to a member of the United States senate or house of representatives. The term includes an individual appointed to fill the unexpired term of an elected federal official and an individual who has been elected to a federal office but who has not yet been sworn in.

(6) "Elected local official" means an elected officer of a county, a consolidated government, an incorporated city or town, a school district, or a special district. The term includes an individual appointed to fill the unexpired term of an elected local official and an individual who has been elected to a local office but who has not yet been sworn in.

(7) (a) "Elected state official" means an individual holding a state office filled by a statewide vote of all the electors of Montana or a state district office, including but not limited to public service commissioners and district court judges. The term includes an individual appointed to fill the unexpired term of an elected state official and an individual who has been elected to a statewide office but who has not yet been sworn in.

(b) The term does not include a legislator.

(8) "Elected tribal official" means an elected member of a tribal council or other elected office filled by a vote of tribal members. The term includes an individual appointed to fill the unexpired term of an elected tribal official and an individual who has been elected to a tribal office but who has not yet been sworn in.

(9) "Individual" means a human being.

(10) "Legislator" means an individual holding public office as a representative or a senator in the Montana legislature. The term includes an individual who has been elected to the legislature but who has not yet been sworn

in.

(11) (a) "Lobbying" means:

(i) the practice of promoting or opposing the introduction or enactment of legislation before the legislature or legislators; and

(ii) the practice of promoting or opposing official action of any public official or the legislature.

(b) The term does not include actions described in subsections (11)(a)(i) and (11)(a)(ii) when performed by a public official, an elected local official, an elected federal official, or an elected tribal official while acting in an official governmental capacity.

(12) (a) "Lobbyist" means a person who engages in the practice of lobbying.

(b) Lobbyist does not include:

(i) an individual acting solely on the individual's own behalf;

(ii) an individual working for the same principal as a licensed lobbyist if the individual does not have personal contact involving lobbying with a public official or the legislature on behalf of the lobbyist's principal; or

(iii) an individual who receives payments from one or more persons that total less than the amount specified under 5-7-112 in a calendar year.

(c) Nothing in this chapter deprives an individual who is not a lobbyist of the constitutional right to communicate with public officials or the legislature.

(13) (a) "Payment" means distribution, transfer, loan, advance, deposit, gift, or other rendering made or to be made of money, property, or anything of value:

(i) to a lobbyist to influence legislation or official action by an elected local official, a public official, or the legislature;

(ii) directly or indirectly to a lobbyist by a principal, such as salary, fee, compensation, or reimbursement for lobbying expenses; or

(iii) in support of or for assistance to a lobbyist or a lobbying activity, including but not limited to the direct payment of expenses incurred at the request or suggestion of the lobbyist.

(b) The term does not include payments or reimbursements for:

(i) personal and necessary living expenses; or

(ii) travel expenses, unless a principal is otherwise required to report expenses pursuant to 5-7-208.

(14) "Person" means an individual, corporation, association, firm, partnership, state or local government or subdivision of state or local government, or other organization or group of persons.

(15) "Principal" means a person who employs a lobbyist or a person required to report pursuant to 5-7-208.

(16) (a) "Public official" means an elected state official or an appointed state official acting in an official capacity for state government or a legislator.

(b) The term does not include those acting in a judicial or quasi-judicial capacity or performing ministerial acts.

(17) "Unprofessional conduct" means:

(a) violating any of the provisions of this chapter;

(b) instigating action by a public official or the legislature for the purpose of obtaining employment;

(c) attempting to influence the action of a public official or the legislature on a measure pending or to be proposed by:

(i) promising financial support; or

(ii) making public any unsubstantiated charges of improper conduct on the part of a lobbyist, a principal, or a legislator; or

(d) attempting to knowingly deceive a public official or the legislature with regard to the pertinent facts of an official matter or attempting to knowingly misrepresent pertinent facts of an official matter to a public official or the legislature.

**5-7-103. Licenses -- fees -- eligibility -- waiver.** (1) Any adult of good moral character who is otherwise qualified under this chapter may be licensed as a lobbyist. The commissioner shall provide a license application form. The application form may be obtained from and must be filed in the office of the commissioner. Upon approval of the application and receipt of the license fee by the commissioner, a license must be issued that entitles the licensee to practice lobbying on behalf of one or more enumerated principals. The license fee is \$150 for each lobbyist except as provided in subsection (5) or unless the fee is waived for hardship reasons under this subsection. Each license expires on December 31 of each even-numbered year or may be terminated at the request of the lobbyist. A lobbyist who believes that payment of the license fee may constitute a hardship may apply to the commissioner for a waiver of the fee required by this section. The commissioner may waive all or a portion of the license fee upon proof by the lobbyist that payment of the fee constitutes a hardship.

(2) (a) Except as provided in subsection (2)(b), an application may not be disapproved without affording the applicant a hearing. The hearing must be held and the decision entered within 10 business days of the date of the filing of the

application, excluding the date on which the application is filed.

(b) An application may not be approved if a principal has failed to file reports required under 5-7-208.

(3) The fines collected under this chapter must be deposited in the state treasury.

(4) The commissioner shall deposit the license fee provided for in subsection (1) as follows:

(a) \$50 in the general fund; and

(b) \$100 in the state special revenue account provided for in 5-11-1112.

(5) A lobbyist who receives payments from one or more principals that total less than the amount specified under 5-7-112 in a calendar year is not required to pay the license fee or file an application form as provided for in subsection (1).

(6) The commissioner may adopt rules to implement the waiver provisions of subsections (1) and (5).

**5-7-105. Suspension of lobbying privileges.** A lobbyist whose license has been suspended and a person who has been adjudged guilty of a violation of any provision of this chapter may not engage in lobbying until that person has been reinstated to the practice and duly licensed.

**5-7-108. Inspection of applications and reports -- order of noncompliance -- notification.** (1) Each application and report filed with the commissioner must be inspected within 10 days after it is filed. If a person has not satisfied the provisions of this chapter, the commissioner shall immediately notify the person of the noncompliance.

(2) An order of noncompliance may be issued when:

(a) it is determined that an application or report filed with the commissioner does not conform to the requirements of this chapter; or

(b) a person has failed to file an application or report required by law.

(3) The person notified of noncompliance shall submit the necessary information within 5 days after receiving the notice of noncompliance. If the person notified of noncompliance fails to submit the required information within 5 days, the commissioner may initiate a civil action pursuant to the procedures contained in 5-7-305.

**5-7-111. Commissioner to make rules.** (1) The commissioner shall promulgate and publish rules necessary to carry out the provisions of this chapter

in conformance with the Montana Administrative Procedure Act and, in particular, shall provide rules necessary to allocate salary, expenses, and any other payments between lobbying activities and other activities not connected with lobbying for any person whose activities are not solely limited to lobbying.

(2) Such rules shall be designed to effect and promote the purposes of this chapter, express or implied. Such rules shall be as simple and easily complied with as possible.

**5-7-112. Payment threshold -- inflation adjustment.** For calendar year 2004, the payment threshold referred to in 5-7-102, 5-7-103, and 5-7-208 is \$2,150. The commissioner shall adjust the threshold amount following a general election by multiplying the threshold amount valid for the year in which the general election was held by an inflation factor, adopted by the commissioner by rule. The rule must be written to reflect the annual average change in the consumer price index from the prior year to the year in which the general election is held. The resulting figure must be rounded up or down to the nearest \$50 increment. The commissioner shall adopt the adjusted amount by rule.

**5-7-201. Docket -- contents.** The commissioner shall make available to the public the information required by this chapter, including but not limited to the name and business address of each lobbyist, the name and business address of the lobbyist's principal, and the subject or subjects to which the employment relates or a statement that the employment relates to all matters in which the principal has an interest. The docket entry for each principal must also indicate the date of receipt of the principal's lobbying reports as required by 5-7-208.

**5-7-202. Docket -- public record.** Such docket shall be a public record and open to the inspection of any individual upon demand at any time during the regular business hours of the office of the commissioner.

**5-7-203. Principal -- name of lobbyist on docket.** Each principal who employs a lobbyist shall within 1 week after the employment cause the name of the lobbyist to be entered upon the docket. It is also the duty of the lobbyist to enter the lobbyist's name upon the docket. Upon the termination of employment, that fact may be entered opposite the name of the lobbyist either by the lobbyist or by the principal.

**5-7-204. Updating docket.** Any principal employing any lobbyist shall, when further subjects of legislation are introduced or arise which such lobbyist is to promote or oppose, make or cause to be made additional entries in the docket stating such employment so that the docket will show at all times all subjects of legislation in relation to which the lobbyist is employed or the general statement provided in 5-7-201.

**5-7-207. Report to legislature.** Beginning with the first Tuesday following the beginning of any regular or special session of the legislature and on the first Tuesday of every month thereafter during which the legislature is in session, the commissioner shall make available from the commissioner's records a report to each member of each house of the legislature containing the names of lobbyists registered under this chapter, not previously reported, the names of the principals whom they represent as lobbyists, and the subjects of legislation in which each principal is interested.

**5-7-208. Principals to file report.** (1) A principal subject to this chapter shall file with the commissioner a report of payments made for the purpose of lobbying. A principal is subject to the reporting requirements of this section only if the principal makes total payments for the purpose of lobbying that exceed the amount specified under 5-7-112 during a calendar year.

(2) If payments are made solely to influence legislative action, a report must be made:

(a) by February 15th of any year the legislature is in session and must include all payments made in that calendar year prior to February 1;

(b) by the 15th day of the calendar month following a calendar month in which the principal spent \$5,000 or more and must include all payments made during the prior calendar month; and

(c) no later than 30 days following adjournment of a legislative session and must include all payments made during the session, except as previously reported.

(3) If payments are made to influence any other official action by a public official or made to influence other action and legislative action, a report must be made:

(a) by February 15th of the calendar year following the payments and must include all payments made during the prior calendar year; and

(b) by the 15th day of the calendar month following a calendar month in which the principal spent \$5,000 or more and must include all payments made

during the prior calendar month.

(4) If payments are not made during the reporting periods provided in subsections (2)(a), (2)(c), and (3)(a), the principal shall file a report stating that fact.

(5) Each report filed under this section must:

(a) list all payments for lobbying in each of the following categories:

(i) printing;

(ii) advertising, including production costs;

(iii) postage;

(iv) travel expenses;

(v) salaries and fees, including allowances, rewards, and contingency fees;

(vi) entertainment, including all foods and refreshments;

(vii) telephone and telegraph; and

(viii) other office expenses;

(b) itemize, identifying the payee and the beneficiary:

(i) each separate payment conferring \$25 or more benefit to any public official when the payment was made for the purpose of lobbying; and

(ii) each separate payment conferring \$100 or more benefit to more than one public official, regardless of individual benefit when the payment was made for the purpose of lobbying, except that in regard to a dinner or other function to which all senators or all representatives have been invited, the beneficiary may be listed as all members of that group without listing separately each person who attended;

(c) list each contribution and membership fee that amounts to \$250 or more when aggregated over the period of 1 calendar year paid to the principal for the purpose of lobbying, with the full address of each payer and the issue area, if any, for which the payment was earmarked;

(d) list each official action on which the principal or the principal's agents exerted a major effort to support, oppose, or modify, together with a statement of the principal's position for or against the action; and

(e) be kept by the commissioner for a period of 10 years.

**5-7-209. Payments prohibited unless reported -- penalty for late filing, failure to report, or false statement.** A principal may not make payments to influence official action by any public official or the legislature unless that principal files the reports required under this chapter. A principal who fails to file a required report within the time required by this chapter is subject to the penalties

provided in 5-7-305 and 5-7-306(1). A principal who knowingly files a false, erroneous, or incomplete statement commits the offense of unsworn falsification to authorities.

**5-7-210. Reimbursement.** Whenever a lobbyist invites a public official to attend a function that the lobbyist or the lobbyist's principal has fully or partially funded or sponsored or whenever a lobbyist offers a public official a gift, the lobbyist shall, upon request, supply the recipient public official with the benefit's true or estimated cost and allow the public official to reimburse. The expenditures must be itemized in the principal's reports with a notation "reimbursed by benefactee".

**5-7-211. Governmental responses not lobbying payments.** Budget preparation or response to requests of a house or committee of the legislature by any governmental entity shall not be considered lobbying payments for the purposes of this chapter.

**5-7-212. Audit of lobbying reports.** (1) The commissioner may audit the reports filed under 5-7-208 and shall investigate any irregularities and report any apparent violations of this chapter to the attorneys having authority to prosecute. The lobbyist is required to provide and the principal is required to obtain and keep for a period of 3 years from the date of filing all records supporting the reports filed under 5-7-208.

(2) All records under subsection (1) must be open to inspection on request of the commissioner or an attorney having authority to prosecute violations of this chapter. The commissioner and the attorneys are given the power to:

- (a) subpoena and compel attendance;
- (b) issue enforceable civil investigative demands;
- (c) take evidence; and
- (d) require the production of any books, correspondence, memoranda, bank account statements, or other records which are relevant or material for the purpose of conducting any investigation pursuant to the provisions of this chapter.

**5-7-301. Prohibition of practice without license and registration.** (1) An individual may not practice as a lobbyist unless that individual has been licensed under 5-7-103 and listed on the docket as employed in respect to all the matters

that the individual is promoting or opposing.

(2) A principal may not directly or indirectly authorize or permit any lobbyist employed by that principal to practice lobbying until the lobbyist is licensed and the names of the lobbyist and the principal are entered on the docket.

**5-7-302. Unprofessional conduct.** No lobbyist or principal shall engage in or directly or indirectly authorize any unprofessional conduct.

**5-7-305. Penalties and enforcement.** (1) A person who violates any of the provisions of this chapter is subject to civil penalties of not less than \$250 and not more than \$7,500 according to the discretion of the district court, as court of original jurisdiction. A lobbyist who violates any of the provisions of this chapter must have the lobbyist's license suspended or revoked according to the discretion of the court. Any public official holding elective office adjudged in violation of the provisions of this chapter is additionally subject to recall under the Montana Recall Act, Title 2, chapter 16, part 6, and the violation constitutes an additional basis for recall to those mentioned in 2-16-603(3).

(2) The attorney general, the commissioner, or the county attorney of the county in which the violation takes place may bring a civil action in the name of the state for any appropriate civil remedy.

(3) If a civil penalty action is undertaken by the attorney general or the commissioner, all costs associated with the prosecution must be paid by the state of Montana.

(4) (a) Any individual who has notified the attorney general, the commissioner, and the appropriate county attorney in writing that there is reason to believe that some portion of this chapter is being violated may bring in the name of the state an action (referred to as a citizen's action) authorized under this chapter if:

(i) the attorney general, the commissioner, or the appropriate county attorney has failed to commence an action within 90 days after notice; and

(ii) the attorney general, the commissioner, or the county attorney fails to commence an action within 10 days after receiving a written notice that a citizen's action will be brought if the attorney general, the commissioner, or the county attorney does not bring an action.

(b) Each notification tolls the applicable statute of limitations until the expiration of the waiting period.

(c) If the individual who brings the citizen's action prevails, the individual

is entitled to be reimbursed by the state of Montana for costs and attorney fees incurred. However, in the case of a citizen's action that is dismissed and that the court also finds was brought without reasonable cause, the court may order the individual commencing the action to pay all costs of trial and reasonable attorney fees incurred by the defendant.

(5) A civil action may not be brought under this section more than 3 years after the occurrence of the facts that give rise to the action.

(6) All civil penalties imposed pursuant to this section must be deposited in the state general fund.

(7) A hearing under this chapter must be held by the court unless the defendant-licensee demands a jury trial. The trial must be held as soon as possible but at least 20 days after the filing of the charges and must take precedence over all other matters pending before the court.

(8) If the court finds for the plaintiff, judgment must be rendered revoking or suspending the license and the clerk of court shall file a certified copy of the judgment with the commissioner.

**5-7-306. Civil penalties for delays in filing -- option for hearing -- suspension of penalty.** (1) In addition to any other penalties or remedies established by this chapter, a person who fails to file a report within the time required by this chapter is subject to a civil penalty of \$50 for each working day that the report is late until the report is filed or until the penalties reach a maximum of \$2,500 for each late report.

(2) The penalty imposed in subsection (1) is not subject to the procedural requirements of 5-7-305 and must be applied if a person fails to meet the requirements of 5-7-108(3).

(3) A person against whom a civil penalty is imposed pursuant to subsection (1) may request, within 10 days of receiving a notice of imposition of a civil penalty, a hearing before the commissioner. Upon receipt of a timely request, the commissioner shall hold an informal contested case hearing as provided in Title 2, chapter 4, part 6. Upon the filing of a timely request for a hearing, the imposition of the daily civil penalty provided for in this section must be suspended until the commissioner issues a decision. At the hearing, the commissioner shall consider any factors or circumstances in mitigation and may reduce or waive the civil penalty.

(4) All civil penalties imposed pursuant to this section must be deposited in the state general fund.

**5-7-310. Prohibition of lobbying by former government personnel. (1)**

An individual may not be licensed as a lobbyist and a principal may not directly authorize or permit lobbying by an individual if during the 24 months prior to applying for a license that individual served as a state legislator, elected state official, department director, appointed state official, or member of a certain personal staff, as defined by 2-18-101.

(2) The prohibition in subsection (1) does not apply to an individual who seeks a license to serve as a lobbyist as part of the individual's responsibilities as an employee of state or local government.

**Legislative Services Division:**

**5-11-112. Functional organization and responsibilities. (1)** The legislative council may establish a functional organization within the legislative services division in order to effectively and efficiently carry out all of the responsibilities delegated to the division by law or legislative rule. The responsibilities of the legislative services division include the following:

(a) document services:

- (i) bill drafting and preparation for introduction;
- (ii) engrossing and enrolling;
- (iii) distribution of legislative bills and information;
- (iv) coordination of legislative printing; and
- (v) publication of legislative records;

(b) research and reference services:

- (i) general and specialized legislative research; and
- (ii) legislative reference and information;

(c) legal services:

- (i) legal review of draft bills;
- (ii) legal counseling on legislative matters;
- (iii) legal support for consolidated entities; and
- (iv) support for the functions of the code commissioner provided in

1-11-201;

(d) committee services:

(i) research, legal, and administrative staff support for consolidated committees as assigned, including support for interim committees organized under Title 5, chapter 5, part 2; and

- (ii) research and legal support for legislative standing and select

committees;

- (e) broadcasting services, in accordance with Title 5, chapter 11, part 11;
- (f) management and business services:
  - (i) financial records;
  - (ii) claims and payrolls;
  - (iii) coordination of procurement of printing, supplies, and equipment; and
  - (iv) maintenance of property inventories;
- (g) personnel and administrative services:
  - (i) rules for classification and pay; and
  - (ii) personnel and administrative policies; and
- (h) information technology services:
  - (i) legislative branch network support services;
  - (ii) application support and development;
  - (iii) communications support and coordination; and
  - (iv) information technology planning.

(2) The responsibilities of the legislative services division must be fulfilled collaboratively with consolidated entities whenever the efficient operation of the legislative branch is served.

### **Dissemination of Laws and Proceedings:**

**5-11-201. Journals -- how authenticated -- filing.** The journal of the senate must be authenticated by the signature of the president and the journal of the house of representatives by the signature of the speaker. Each authenticated journal must be filed with the secretary of state. A copy of each authenticated journal must be filed with the legislative services division.

**5-11-202. Printing of session laws.** The legislative services division shall deliver to the appropriate printer, at the earliest practicable day after the final adjournment of each session of the legislature, copies of all laws and resolutions passed or adopted during the session. The session laws must be delivered to the appropriate printer in the form provided for in 5-11-205 and 5-11-206.

**5-11-203. Distribution of session laws -- inspection of journals.** (1) Immediately after the session laws are published, the legislative services division shall distribute them.

(2) The legislative services division shall make the house and senate

journals available for inspection or copying by the public as provided in Title 2, chapter 6, part 1. The legislative services division may publish the journals in an electronic format.

(3) The following entities may receive the number of copies of session laws listed at no cost:

- (a) to the library of congress, eight copies;
- (b) to the state library, two copies;
- (c) to the state historical library, two copies;
- (d) to the state law librarian, four copies for the use of the library and additional copies as may be required for exchange with libraries and institutions maintained by other states and territories and public libraries;
- (e) to the library of each custodial institution, one copy;
- (f) to each Montana member of congress, each United States district judge in Montana, each of the judges of the state supreme and district courts, and each of the state officers as defined in 2-2-102, one copy;
- (g) to any agency, board, commission, or office of the state, other than a state officer, and to any other subdivision of the state upon request and approval by the legislative council, one copy;
- (h) to each member of the legislature, the secretary of the senate, and the chief clerk of the house of representatives from the session at which the laws were adopted, one copy;
- (i) to each of the community college districts of the state, as defined in 20-15-101, and each unit of the Montana university system, one copy;
- (j) to each county clerk, one copy for the use of the county; and
- (k) to each county attorney and to each clerk of a district court, one copy.

**5-11-204. Secretary of state to assign chapter numbers to new laws.** The secretary of state shall, when bills passed by any legislature are filed in the secretary's office as directed in 5-4-302 and 5-4-305, note on the bill the date of filing and number the bills, except resolutions, in the order of their reception, chapter 1 and upwards, using Arabic numerals.

**5-11-205. Publication of laws -- format.** (1) The legislative services division shall publish all laws and resolutions passed or adopted by each session of the legislature in a publication to be known as the Laws of Montana.

(2) Laws of each session must be printed in the Laws of Montana in the order that they have been filed in the office of the secretary of state with the

chapter number assigned by the secretary of state as the heading. The chapter number must also appear as part of each page heading. In all laws containing amendments to an existing law, the new parts designated in the act by underlining must be printed in italics in the Laws of Montana and deleted provisions must be shown as stricken. The senate or house bill number may be omitted from each act.

(3) Reference to the laws of a legislative session may be made as follows: "Chapter.... (giving number), Laws of.... (giving the year enacted)".

(4) Resolutions adopted by each session of the legislature must be printed in a separate section of the Laws of Montana with the type of resolution and its number as a heading.

(5) The legislative services division shall also publish in the Laws of Montana the indexes required by 5-11-206.

**5-11-206. Index -- list.** (1) The legislative services division shall prepare a suitable index of all the laws and resolutions passed or adopted at each session of the legislature. The index must be a thorough index of the laws and resolutions and of each subject contained in or covered by the laws and resolutions, together with a cross-index to assist in readily finding any subject contained in each volume. A separate index must be prepared for appropriation bills passed by each session of the legislature.

(2) For the purpose of uniformity in indexes, the index of each succeeding publication of the session laws must conform as nearly as practicable with those of the volumes preceding it.

(3) There must also be prepared for each publication of the session laws a "code sections affected list" showing what sections of the Montana Code Annotated have been amended or repealed by any laws enacted by that session of the legislature.

**5-11-207. Description of county boundaries included in session laws.** The legislative services division shall include in the published session laws a description of the county boundaries of any new counties of the state created by petition and election, commencing with counties created after January 1, 1921, by inserting in each set of session laws new counties that have been created since the publication of the laws of the previous session.

**5-11-208. Expenses.** The expenses incurred by the legislative services division in carrying into effect 5-11-202, 5-11-203, and 5-11-205 through

5-11-207 must be paid out of money appropriated for that purpose.

**5-11-209. Codes -- availability to legislators -- reserved for use by legislative committees.** (1) When it becomes available after each regular legislative session, each legislator is entitled to purchase for \$10 each one set of the printed and bound Montana Code Annotated statute text and histories and one Montana Code Annotated that is produced for sale to the public on computer-readable media, such as CD-ROM.

(2) The legislative services division shall reserve 50 sets of the printed versions of Montana Code Annotated statute text and histories for the use of the standing and select committees of the legislature.

(3) Costs associated with providing code sets as required by this section must be paid out of the state special revenue fund account established under 1-11-301.

**5-11-210. Clearinghouse for reports to legislature.** (1) For the purposes of this section, "report" means a written report required by law to be given to or filed with the legislature.

(2) On or before September 1 of each year preceding the convening of a regular session of the legislature, an entity required to report to the legislature shall provide, in writing, to the appropriate interim or statutory committee:

- (a) the final title of the report;
- (b) an abstract or description of the contents of the report, not to exceed 100 words;
- (c) if the report is available electronically, its location on the internet; and
- (d) a recommendation on how many paper copies of the report, if any, should be provided to the legislature.

(3) After considering all of the information available about the report, including the number of legislators requesting copies of the report pursuant to subsection (7), the appropriate interim or statutory committee shall, in writing, direct the reporting entity to provide a specific number of paper copies. The number of copies required is at the sole discretion of the appropriate interim or statutory committee. The appropriate interim or statutory committee may require the reporting entity to mail the copies of the report.

(4) The appropriate interim or statutory committee may require that the report be submitted in an electronic format that is usable on the legislature's current computer hardware or in a digital form.

(5) Costs of preparing and distributing a report to the legislature, including writing, printing, postage, distribution, and all other costs, accrue to the reporting agency. Costs incurred in meeting the requirements of this section may not accrue to the legislative services division.

(6) The executive director of the legislative services division shall cause to be prepared a list of all reports required to be presented to the legislature from the list of titles received under subsection (2).

(7) The executive director shall, as soon as possible following a general election, provide to each holdover senator, senator-elect, and representative-elect a list of the titles of the reports, along with the abstracts prepared pursuant to subsection (2)(b), and the location of electronic copies.

(8) The executive director of the legislative services division shall provide copies of reports requested pursuant to subsection (7) to those members or members-elect by either requiring that copies be mailed pursuant to subsection (3) or by delivering copies of the reports during the first week of the legislative session.

(9) The executive director of the legislative services division may keep as many copies of a report as are necessary and discard the rest or return them to the agency.

(10) The procedure outlined in this section may also be used for a report required to be made to the legislature under the Multistate Tax Compact contained in 15-1-601, the Vehicle Equipment Safety Compact contained in 61-2-201, the Multistate Highway Transportation Agreement contained in 61-10-1101, or the Western Interstate Nuclear Compact contained in 90-5-201.

(11) Each report to the legislature required under 17-6-230, 19-2-405, 19-2-407, and 19-20-201 must be provided to the legislative services division as soon as the report is published. The legislative services division shall ensure that legislators are notified pursuant to this section of the report's availability. During the interim, the legislative services division shall ensure that members of the state administration and veterans' affairs interim committee and the legislative finance committee receive copies of the reports.

**5-11-211. Definitions.** For the purposes of this part, the following definitions apply:

(1) "One complete set" means one copy of each item of the proceedings of a session, regular or special, of the legislature.

(2) "Person" means any person, firm, corporation, or association.

(3) "Proceedings of the legislature" means status sheets, daily journals, reproduced bills, reproduced resolutions, printed bills, printed resolutions, and amendments thereto, together with such other related documents as the legislative council may choose to include.

(4) "Session Laws" for a particular year means the laws and resolutions passed or adopted by that year's session of the legislature.

5-11-212. Fees for proceedings. (1) A complete set of the proceedings of a regular or special session of the legislature may be purchased from the legislative services division for the amount prescribed by the legislative council. Upon receipt of payment, the executive director of the legislative services division shall supply the purchaser with a complete set of the proceedings.

(2) A purchaser who requests that a set of the proceedings be mailed shall pay an additional fee as prescribed by the council for each complete set that is mailed.

(3) Single copies of bills, resolutions, or amendments to bills or resolutions may be purchased from the legislative services division for a price varying with the length of the document as prescribed by the legislative council.

(4) Single copies of status sheets or status of proceedings may be purchased from the legislative services division for a price per copy as prescribed by the legislative council. A person may subscribe to receive daily copies of the status sheets or status of proceedings by mail for a fee set by the legislative council to cover the costs of the service.

(5) The executive director of the legislative services division shall account for all funds collected under this section and shall transmit the funds to the treasurer of the state of Montana, who shall credit them to the general fund.

**5-11-213. Exclusions.** Each general circulation newspaper published in Montana and each radio or television station broadcasting in Montana that has registered with the executive director of the legislative services division is exempt from 5-11-212 and shall receive one complete set of the proceedings of the legislature for the ensuing biennium without charge.

**5-11-214. Exemptions from fees.** All elected state officials, state department heads, the state law library, and county clerk and recorders shall be exempted from 5-11-212.

## **Legislative Fiscal Analyst:**

### **5-12-302. Fiscal analyst's duties.** The legislative fiscal analyst shall:

(1) provide for fiscal analysis of state government and accumulate, compile, analyze, and furnish information bearing upon the financial matters of the state that is relevant to issues of policy and questions of statewide importance, including but not limited to investigation and study of the possibilities of effecting economy and efficiency in state government;

(2) estimate revenue from existing and proposed taxes;

(3) analyze the executive budget and budget requests of selected state agencies and institutions, including proposals for the construction of capital improvements;

(4) make the reports and recommendations that the legislative fiscal analyst considers desirable to the legislature and make reports and recommendations as requested by the legislative finance committee and the legislature;

(5) assist committees of the legislature and individual legislators in compiling and analyzing financial information;

(6) assist the revenue and transportation interim committee in performing its revenue estimating duties; and

(7) review all reports submitted to the legislative fiscal analyst and notify the legislative finance committee of any concerns the fiscal analyst identifies in a report.

**5-12-401. Submission of budget amendments to committee.** All budget amendments for state agencies must be submitted through the budget director to the legislative finance committee as soon as received by the budget director. No state agency shall expend in excess of its legislative appropriation, which includes a lawfully approved and valid budget amendment.

## **Legislative Auditor:**

### **5-13-304. Powers and duties.** The legislative auditor shall:

(1) conduct a financial and compliance audit of every state agency every 2 years covering the 2-year period since the last audit, unless otherwise required by state law;

(2) conduct an audit to meet the standards and accomplish the objectives

required in 5-13-308 whenever the legislative auditor determines it necessary and shall advise the members of the legislative audit committee;

(3) make a complete written report of each audit. A copy of each report must be furnished to the department of administration, the state agency that was audited, each member of the committee, and the legislative services division.

(4) report immediately in writing to the attorney general and the governor any apparent violation of penal statutes disclosed by the audit of a state agency and furnish the attorney general with all information available relative to the violation;

(5) report immediately in writing to the governor any instances of misfeasance, malfeasance, or nonfeasance by a state officer or employee disclosed by the audit of a state agency;

(6) report immediately to the commissioner of political practices any instances of apparent violations of the state code of ethics provided for in Title 2, chapter 2, part 1;

(7) report immediately to the surety upon the bond of an official or employee when an audit discloses a shortage in the accounts of the official or employee. Failure to notify the surety does not release the surety from any obligation under the bond.

(8) have the authority to audit records of organizations and individuals receiving grants from or on behalf of the state to determine that the grants are administered in accordance with the grant terms and conditions. Whenever a state agency enters into an agreement to grant resources under its control to others, the agency shall obtain the written consent of the grantee to the audit provided for in this subsection.

**5-13-306. Legislative auditor to assist legislature during sessions.**

During sessions of the legislature, the legislative auditor and the audit staff, when requested, shall assist the legislature, its committees, and its members by gathering and analyzing information relating to the fiscal affairs of state government.

**Interim Committees:**

**5-5-201. Power to administer oaths.** The members of any committee may administer oaths to witnesses in any matter under examination.

**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, water policy committee, and state-tribal relations 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 and local government committee;
- (c) children, families, health, and human services committee;
- (d) law and justice committee;
- (e) energy and telecommunications committee;
- (f) revenue and transportation committee; and
- (g) state administration and veterans' affairs committee.

(3) An interim 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.

**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 subsection (5)(b) 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.

(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.

**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.

**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.

**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.

**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 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.

**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.

**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.

**5-5-223. Economic affairs interim committee.** The economic affairs 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:

- (1) department of agriculture;
- (2) department of commerce;
- (3) department of labor and industry;
- (4) department of livestock;
- (5) office of the state auditor and insurance commissioner;
- (6) office of economic development;
- (7) the state compensation insurance fund provided for in 39-71-2313, including the board of directors of the state compensation insurance fund established in 2-15-1019; and
- (8) the division of banking and financial institutions provided for in 32-1-211.

**5-5-224. Education and local government interim committee.** (1) The education and local government interim committee shall act as a liaison with local

governments. The education and local government 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;
  - (g) encourage cooperation between the legislative and executive branches and the board of regents;
  - (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.

**5-5-225. Children, families, health, and human services interim committee.**

The children, families, health, and human services interim committee has administrative rule review, draft legislation review, program evaluation, and monitoring functions for the department of public health and human services and the entities attached to the department for administrative purposes.

**5-5-226. Law and justice interim committee.** The law and justice interim committee has administrative rule review, draft legislation review, program evaluation, and monitoring functions for the office of state public defender, the department of corrections, and the department of justice and the entities attached to the departments for administrative purposes. The committee shall act as a liaison with the judiciary.

**5-5-227. Revenue and transportation interim committee -- powers and duties -- revenue estimating and use of estimates.** (1) The revenue and transportation

interim committee has administrative rule review, draft legislation review, program evaluation, and monitoring functions for the department of revenue and the department of transportation and the entities attached to the departments for administrative purposes.

(2) (a) The committee must have prepared by December 1 for introduction during each regular session of the legislature in which a revenue bill is under consideration an estimate of the amount of revenue projected to be available for legislative appropriation.

(b) The committee may prepare for introduction during a special session of the legislature in which a revenue bill or an appropriation bill is under consideration an estimate of the amount of projected revenue. The revenue estimate is considered a subject specified in the call of a special session under 5-3-101.

(3) The committee's estimate, as introduced in the legislature, constitutes the legislature's current revenue estimate until amended or until final adoption of the estimate by both houses. It is intended that the legislature's estimates and the assumptions underlying the estimates will be used by all agencies with responsibilities for estimating revenue or costs, including the preparation of fiscal notes.

(4) The legislative services division shall provide staff assistance to the committee. The committee may request the assistance of the staffs of the office of the legislative fiscal analyst, the legislative auditor, the department of revenue, and any other agency that has information regarding any of the tax or revenue bases of the state.

**5-5-228. State administration and veterans' affairs interim committee.** (1) The state administration and veterans' affairs interim committee has administrative rule review, draft legislation review, program evaluation, and monitoring functions for the public employee retirement plans and for the following executive branch agencies and, unless otherwise assigned by law, the entities attached to the agencies for administrative purposes:

(a) department of administration, except:

(i) the state compensation insurance fund provided for in 39-71-2313, including the board of directors of the state compensation insurance fund established in 2-15-1019;

(ii) the office of state public defender; and

(iii) the division of banking and financial institutions;

- (b) department of military affairs; and
- (c) office of the secretary of state.
- (2) The committee shall:
  - (a) consider the actuarial and fiscal soundness of the state's public employee retirement systems, based on reports from the teachers' retirement board, the public employees' retirement board, and the board of investments, and study and evaluate the equity and benefit structure of the state's public employee retirement systems;
  - (b) establish principles of sound fiscal and public policy as guidelines;
  - (c) as necessary, develop legislation to keep the retirement systems consistent with sound policy principles; and
  - (d) publish, for legislators' use, information on the public employee retirement systems that the committee considers will be valuable to legislators when considering retirement legislation.
- (3) The committee may:
  - (a) specify the date by which retirement board proposals affecting a retirement system must be submitted to the committee for the review pursuant to subsection (1); and
  - (b) request personnel from state agencies, including boards, political subdivisions, and the state public employee retirement systems, to furnish any information and render any assistance that the committee may request.

**5-5-229. State-tribal relations committee.** There is a state-tribal relations committee. The committee is treated as an interim committee for the purposes of 5-5-211 through 5-5-214. The committee shall:

- (1) act as a liaison with tribal governments;
- (2) encourage state-tribal and local government-tribal cooperation;
- (3) conduct interim studies as assigned pursuant to 5-5-217; and
- (4) report its activities, findings, recommendations, and any proposed legislation as provided in 5-11-210.

**5-5-230. Energy and telecommunications interim committee.** The energy and telecommunications interim committee has administrative rule review, draft legislation review, program evaluation, and monitoring functions for the department of public service regulation and the public service commission.

**5-5-231. Water policy committee.** (1) There is a water policy committee. Except

as provided in subsection (2), the committee is treated as an interim committee for the purposes of 5-5-211 through 5-5-214. The committee shall:

- (a) determine which water policy issues it examines;
- (b) conduct interim studies as assigned pursuant to 5-5-217;
- (c) subject to the provisions of 5-5-202(4), coordinate with the environmental quality council and other interim committees to avoid duplication of efforts; and
- (d) report its activities, findings, recommendations, and any proposed legislation as provided in 5-11-210.

(2) At least two members of the committee must possess experience in agriculture.

**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.

### **Legislative Consumer Committee:**

#### **5-15-101. Legislative consumer committee -- appointment and composition.**

(1) There is a legislative consumer committee consisting of two members of the senate and two members of the house of representatives.

(2) Members shall be appointed in the same manner as standing committees of the respective houses before the 60th legislative day of the legislative session following the expiration of the terms of the members of the committee. No more than one of the appointees of each house may be members of the same political party.

**5-15-102. Ineligibility for appointment.** A person who is an employee, agent, officer, partner, or director of a regulated company or who has served a regulated company in any capacity within the 3 years previous to the person's appointment may not be a member of the committee.

**5-15-105. Officers.** The committee shall elect one of its members as presiding officer and other officers that it determines necessary.

**5-15-201. Consumer counsel -- appointment and qualifications.** The committee shall appoint a consumer counsel and set the consumer counsel's salary. The consumer counsel must have the following minimum qualifications and additional qualifications that the committee determines appropriate:

(1) a bachelor's degree or equivalent from an accredited college or university with a major or minor in accounting or allied fields;

(2) be admitted to practice law in Montana courts and in the United States district court for the state of Montana.

### **Environmental Quality Council:**

5-16-101. Appointment and composition. The environmental quality council consists of 17 members as follows:

(1) the governor or the governor's designated representative is an ex officio member of the council and shall participate in council meetings as a nonvoting member;

(2) six members of the senate and six members of the house of representatives appointed before the 50th legislative day in the same manner as standing committees of the respective houses are appointed. Subject to 5-5-234, three of the appointees of each house must be members of the majority party and three appointees of each house must be members of the minority party.

(3) four members of the general public. Two public members must be appointed by the speaker of the house with the consent of the house minority leader, and two must be appointed by the president of the senate with the consent of the senate minority leader.

**5-16-102. Qualifications.** (1) In considering the appointments under 5-16-101(2) and (3), consideration must be given to the appointees' qualifications to:

(a) analyze and interpret environmental trends and information of all kinds;

(b) appraise programs and activities of the state government in the light of the policy set forth in 75-1-103;

(c) be conscious of and responsive to the scientific, economic, social, aesthetic, and cultural needs and interests of the state; and

(d) formulate and recommend state policies to promote the improvement of the quality of the environment.

(2) At least 50% of the members appointed pursuant to 5-16-101(2) must be selected from the standing committees that consider issues within the jurisdiction of the environmental quality council.

**5-16-103. Term of office.** The terms of office of all council members shall be 2 years and shall terminate upon appointment of a new council before the 50th legislative day. Council members may be reappointed. However, in no case shall a

member serve more than 6 years.

**5-16-104. Vacancies.** (1) A vacancy on the council of a member appointed under 5-16-101(2) occurring when the legislature is not in session shall be filled by the selection of a member of the legislature by the same method as the original appointment. If there is a vacancy on the committee at the beginning of a legislative session because a member's term of office as a legislator has ended, a member of the same political party must be appointed in the same manner as the original appointment, no later than the 10th legislative day, to serve until a successor is appointed under 5-16-101.

(2) (a) When a vacancy on the council of a member appointed under 5-16-101(3) has occurred or is expected to occur, the appointing authority shall have posted in a conspicuous place in the state capitol a notice announcing the actual or anticipated vacancy and describing the procedure for applying for appointment.

(b) A copy of the notice required under subsection (2)(a) must be sent to the lieutenant governor, who may publish the notice in an appropriate publication.

**5-16-105. Officers.** The council shall elect one of its members as presiding officer and other officers that it determines necessary. An officer is elected for a term of 2 years.

75-1-302. Meetings. The council may determine the time and place of its meetings but shall meet at least once each quarter. Each member of the council is entitled to receive compensation and expenses as provided in 5-2-302. Members who are full-time salaried officers or employees of this state may not be compensated for their service as members but shall be reimbursed for their expenses.

**75-1-312. Hearings -- council subpoena power -- contempt proceedings.** In the discharge of its duties, the council may hold hearings, administer oaths, issue subpoenas, compel the attendance of witnesses and the production of any papers, books, accounts, documents, and testimony, and cause depositions of witnesses to be taken in the manner prescribed by law for taking depositions in civil actions in the district court. In case of disobedience on the part of a person to comply with a subpoena issued on behalf of the council or a committee of the council or of the refusal of a witness to testify on any matters regarding which the witness may be lawfully interrogated, it is the duty of the district court of any county or the judge

of the district court, on application of the council, to compel obedience by proceedings for contempt as in the case of disobedience of the requirements of a subpoena issued from the court on a refusal to testify in the court.

**75-1-313. Consultation with other groups -- utilization of services.** In exercising its powers, functions, and duties under parts 1 through 3, the council shall:

(1) consult with such representatives of science, industry, agriculture, labor, conservation organizations, educational institutions, local governments, and other groups as it deems advisable; and

(2) utilize, to the fullest extent possible, the services, facilities, and information (including statistical information) of public and private agencies and organizations and individuals in order that duplication of effort and expense may be avoided, thus assuring that the council's activities will not unnecessarily overlap or conflict with similar activities authorized by law and performed by established agencies.

**75-1-314. Reporting requirements.** (1) The departments of environmental quality, agriculture, and natural resources and conservation shall biennially report to the council the following natural resource and environmental compliance and enforcement information:

(a) the activities and efforts taking place to promote compliance assistance and education;

(b) the size and description of the regulated community and the estimated proportion of that community that is in compliance;

(c) the number, description, method of discovery, and significance of noncompliances, including those noncompliances that are pending; and

(d) a description of how the department has addressed the noncompliances identified in subsection (1)(c) and a list of the noncompliances left unresolved.

(2) When practical, reporting required in subsection (1) should include quantitative trend information.

**75-1-323. Staff for environmental quality council.** The legislative services division shall provide sufficient and appropriate support to the environmental quality council in order that it may carry out its statutory duties, within the limitations of legislative appropriations. The environmental quality

council staff is a principal subdivision within the legislative services division. There is within the legislative services division a legislative environmental analyst. The legislative environmental analyst is the primary staff person for the environmental quality council and shall supervise staff assigned to the environmental quality council. The environmental quality council shall select the legislative environmental analyst with the concurrence of the legislative council.

**75-1-324. Duties of environmental quality council.** The environmental quality council shall:

(1) gather timely and authoritative information concerning the conditions and trends in the quality of the environment, both current and prospective, analyze and interpret the information for the purpose of determining whether the conditions and trends are interfering or are likely to interfere with the achievement of the policy set forth in 75-1-103, and compile and submit to the governor and the legislature studies relating to the conditions and trends;

(2) review and appraise the various programs and activities of the state agencies, in the light of the policy set forth in 75-1-103, for the purpose of determining the extent to which the programs and activities are contributing to the achievement of the policy and make recommendations to the governor and the legislature with respect to the policy;

(3) develop and recommend to the governor and the legislature state policies to foster and promote the improvement of environmental quality to meet the conservation, social, economic, health, and other requirements and goals of the state;

(4) conduct investigations, studies, surveys, research, and analyses relating to ecological systems and environmental quality;

(5) document and define changes in the natural environment, including the plant and animal systems, and accumulate necessary data and other information for a continuing analysis of these changes or trends and an interpretation of their underlying causes;

(6) make and furnish studies, reports on studies, and recommendations with respect to matters of policy and legislation as the legislature requests;

(7) analyze legislative proposals in clearly environmental areas and in other fields in which legislation might have environmental consequences and assist in preparation of reports for use by legislative committees, administrative agencies, and the public;

(8) consult with and assist legislators who are preparing environmental

legislation to clarify any deficiencies or potential conflicts with an overall ecologic plan;

(9) review and evaluate operating programs in the environmental field in the several agencies to identify actual or potential conflicts, both among the activities and with a general ecologic perspective, and suggest legislation to remedy the situations; and

(10) perform the administrative rule review, draft legislation review, program evaluation, and monitoring functions of an interim committee for the following executive branch agencies and the entities attached to the agencies for administrative purposes:

- (a) department of environmental quality;
- (b) department of fish, wildlife, and parks; and
- (c) department of natural resources and conservation.

## **TITLE 2, General Government**

### **Code of Ethics:**

**2-2-101. Statement of purpose.** The purpose of this part is to set forth a code of ethics prohibiting conflict between public duty and private interest as required by the constitution of Montana. This code recognizes distinctions between 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.

**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.

**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.

**2-2-104. Rules of conduct for public officers, legislators, and public**

**employees.** (1) Proof of commission of any act enumerated in this section is proof that the actor has breached the actor's public duty. A public officer, legislator, or public employee may not:

(a) disclose or use confidential information acquired in the course of official duties in order to further substantially the individual's personal economic interests; or

(b) accept a gift of substantial value or a substantial economic benefit tantamount to a gift:

(i) that would tend improperly to influence a reasonable person in the person's position to depart from the faithful and impartial discharge of the person's public duties; or

(ii) that the person knows or that a reasonable person in that position should know under the circumstances is primarily for the purpose of rewarding the person for official action taken.

(2) An economic benefit tantamount to a gift includes without limitation a loan at a rate of interest substantially lower than the commercial rate then currently prevalent for similar loans and compensation received for private services rendered at a rate substantially exceeding the fair market value of the services. Campaign contributions reported as required by statute are not gifts or economic benefits tantamount to gifts.

(3) (a) Except as provided in subsection (3)(b), a public officer, legislator, or public employee may not receive salaries from two separate public employment positions that overlap for the hours being compensated, unless:

(i) the public officer, legislator, or public employee reimburses the public entity from which the employee is absent for the salary paid for performing the function from which the officer, legislator, or employee is absent; or

(ii) the public officer's, legislator's, or public employee's salary from one employer is reduced by the amount of salary received from the other public employer in order to avoid duplicate compensation for the overlapping hours.

(b) Subsection (3)(a) does not prohibit:

(i) a public officer, legislator, or public employee from receiving income from the use of accrued leave or compensatory time during the period of overlapping employment; or

(ii) a public school teacher from receiving payment from a college or university for the supervision of student teachers who are enrolled in a teacher education program at the college or university if the supervision is performed

concurrently with the school teacher's duties for a public school district.

(c) In order to determine compliance with this subsection (3), a public officer, legislator, or public employee subject to this subsection (3) shall disclose the amounts received from the two separate public employment positions to the commissioner of political practices.

**2-2-105. Ethical requirements for public officers and public employees.** (1)

The requirements in this section are intended as rules of conduct, and violations constitute a breach of the public trust and public duty of office or employment in state or local government.

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

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

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

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

**2-2-106. Disclosure.** (1) (a) Prior to December 15 of each even-numbered year, each state officer or holdover senator 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) 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) The commissioner of political practices shall make the business disclosure statements available to any individual upon request.

**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.

**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.

**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.

**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.

**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.

**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.

**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.

**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.

**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.

**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.

**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.

**2-2-301. Nepotism defined.** Nepotism is the bestowal of political patronage by

reason of relationship rather than of merit.

2-2-302. Appointment of relative to office of trust or emolument unlawful -- exceptions -- publication of notice. (1) Except as provided in subsection (2), it is unlawful for a person or member of any board, bureau, or commission or employee at the head of a department of this state or any political subdivision of this state to appoint to any position of trust or emolument any person related or connected by consanguinity within the fourth degree or by affinity within the second degree.

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

(a) a sheriff in the appointment of a person as a cook or an attendant;

(b) school district trustees if all the trustees, with the exception of any trustee who is related to the person being appointed and who must abstain from voting for the appointment, approve the appointment of a person related to a trustee;

(c) a school district in the employment of a person as a substitute teacher who is not employed as a substitute teacher for more than 30 consecutive school days as defined by the trustees in 20-1-302;

(d) the renewal of an employment contract of a person who was initially hired before the member of the board, bureau, or commission or the department head to whom the person is related assumed the duties of the office;

(e) the employment of election judges;

(f) the employment of pages or temporary session staff by the legislature; or

(g) county commissioners of a county with a population of less than 10,000 if all the commissioners, with the exception of any commissioner who is related to the person being appointed and who must abstain from voting for the appointment, approve the appointment of a person related to a commissioner.

(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.

**2-2-303. Agreements to appoint relative to office unlawful.** It shall further be unlawful for any person or any member of any board, bureau, or commission or employee of any department of this state or any political subdivision thereof to enter into any agreement or any promise with other persons or any members of any

boards, bureaus, or commissions or employees of any department of this state or any of its political subdivisions thereof to appoint to any position of trust or emolument any person or persons related to them or connected with them by consanguinity within the fourth degree or by affinity within the second degree.

**2-2-304. Penalty for violation of nepotism law.** A public officer or employee or a member of any board, bureau, or commission of this state or any political subdivision who, by virtue of the person's office, has the right to make or appoint any person to render services to this state or any subdivision of this state and who makes or appoints a person to the services or enters into any agreement or promise with any other person or employee or any member of any board, bureau, or commission of any other department of this state or any of its subdivisions to appoint to any position any person or persons related to the person making the appointment or connected with the person making the appointment by consanguinity within the fourth degree or by affinity within the second degree is guilty of a misdemeanor and upon conviction shall be punished by a fine not less than \$50 or more than \$1,000, by imprisonment in the county jail for not more than 6 months, or both.

#### **Applicable Criminal Laws:**

**45-7-101. Bribery in official and political matters.** (1) A person commits the offense of bribery if the person purposely or knowingly offers, confers, or agrees to confer upon another or solicits, accepts, or agrees to accept from another:

(a) any pecuniary benefit as a consideration for the recipient's decision, opinion, recommendation, vote, or other exercise of discretion as a public servant, party official, or voter;

(b) any benefit as consideration for the recipient's decision, vote, recommendation, or other exercise of official discretion in a judicial or administrative proceeding; or

(c) any benefit as consideration for a violation of a known duty as a public servant or party official.

(2) It is no defense to prosecution under this section that a person whom the offender sought to influence was not qualified to act in the desired way whether because the person had not yet assumed office or lacked jurisdiction or for any other reason.

(3) A person convicted of the offense of bribery shall be imprisoned in the

state prison for any term not to exceed 10 years or be fined an amount not to exceed \$50,000, or both, and shall forever be disqualified from holding any public office in this state.

**45-7-102. Threats and other improper influence in official and political matters.** (1) A person commits an offense under this section if the person purposely or knowingly:

(a) (i) threatens harm to any person, the person's spouse, child, parent, or sibling, or the person's property with the purpose to influence the person's decision, opinion, recommendation, vote, or other exercise of discretion as a public servant, party official, or voter;

(ii) threatens harm to any public servant, to the public servant's spouse, child, parent, or sibling, or to the public servant's property with the purpose to influence the public servant's decision, opinion, recommendation, vote, or other exercise of discretion in a judicial or administrative proceeding;

(iii) threatens harm to any public servant or party official, the person's spouse, child, parent, or sibling, or the person's property with the purpose to influence the person to violate the person's duty or to prevent the public servant or party official from accepting or holding any public office;

(iv) privately addresses to any public servant who has or will have official discretion in a judicial or administrative proceeding any representation, entreaty, argument, or other communication designed to influence the outcome on the basis of considerations other than those authorized by law;

(v) as a juror or officer in charge of a jury receives or permits to be received any communication relating to any matter pending before the jury, except according to the regular course of proceedings; or

(b) injures the person or property of a public servant or injures the servant's spouse, child, parent, or sibling because of the public servant's lawful discharge of the duties of the office or to prevent the public servant from discharging the public servant's official duties.

(2) It is no defense to prosecution under subsections (1)(a)(i) through (1)(a)(iv) and (1)(b) that a person whom the offender sought to influence was not qualified to act in the desired way, whether because the person had not yet assumed office or lacked jurisdiction or for any other reason.

(3) A person convicted under this section shall be fined not to exceed \$50,000 or be imprisoned in the state prison for a term not to exceed 10 years, or both.

**45-7-103. Criminal use of office or position.** (1) An elected official or other public servant commits the offense of criminal use of office or position if the person knowingly solicits, accepts, or agrees to accept any pecuniary benefit accruing to the person, the person's political campaign, or the person's political party for giving or offering to give a decision, opinion, recommendation, or vote favorable to another, for exercising or offering to exercise a discretion in another's favor, or for violating or offering to violate the person's duty. A person commits an offense under this section if the person knowingly offers, confers, or agrees to confer compensation that is prohibited by this section.

(2) A person convicted under this section shall be fined an amount not to exceed \$500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

**45-7-104. Gifts to public servants by persons subject to their jurisdiction.** (1) A public servant in any department or agency exercising regulatory function, conducting inspections or investigations, carrying on a civil or criminal litigation on behalf of the government, or having custody of prisoners may not solicit, accept, or agree to accept any pecuniary benefit from a person known to be subject to the regulation, inspection, investigation, or custody or against whom litigation is known to be pending or contemplated.

(2) A public servant having any discretionary function to perform in connection with contracts, purchases, payments, claims, or other pecuniary transactions of the government may not solicit, accept, or agree to accept any pecuniary benefit from any person known to be interested in or likely to become interested in any contract, purchase, payment, claim, or transaction.

(3) A public servant having judicial or administrative authority and a public servant employed by or in a court or other tribunal having judicial or administrative authority or participating in the enforcement of its decision may not solicit, accept, or agree to accept any pecuniary benefit from a person known to be interested in or likely to become interested in any matter before the public servant or tribunal with which the public servant or tribunal is associated.

(4) A legislator or public servant employed by the legislature or by any committee or agency of the legislature may not solicit, accept, or agree to accept any pecuniary benefit from a person known to be interested in or likely to become interested in any matter before the legislature or any committee or agency of the legislature.

(5) This section does not apply to:

(a) fees prescribed by law to be received by a public servant or any other benefit for which the recipient gives legitimate consideration or to which the public servant is otherwise entitled; or

(b) trivial benefits incidental to personal, professional, or business contacts and involving no substantial risk of undermining official impartiality.

(6) A person may not knowingly confer or offer or agree to confer any benefit prohibited by subsections (1) through (5).

(7) A person convicted of an offense under 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.

**45-7-401. Official misconduct.** (1) A public servant commits the offense of official misconduct when in an official capacity the public servant commits any of the following acts:

(a) purposely or negligently fails to perform any mandatory duty as required by law or by a court of competent jurisdiction;

(b) knowingly performs an act in an official capacity that the public servant knows is forbidden by law;

(c) with the purpose to obtain a personal advantage or an advantage for another, performs an act in excess of the public servant's lawful authority;

(d) solicits or knowingly accepts for the performance of any act a fee or reward that the public servant knows is not authorized by law; or

(e) knowingly conducts a meeting of a public agency in violation of 2-3-203.

(2) A public servant convicted of the offense of official misconduct shall be fined not to exceed \$500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

(3) The district court has exclusive jurisdiction in prosecutions under this section. Any action for official misconduct must be commenced by an information filed after leave to file has been granted by the district court or after a grand jury indictment has been found.

(4) A public servant who has been charged as provided in subsection (3) may be suspended from office without pay pending final judgment. Upon final judgment of conviction, the public servant shall permanently forfeit the public servant's office. Upon acquittal, the public servant must be reinstated in office and must receive all backpay.

(5) This section does not affect any power conferred by law to impeach or

remove any public servant or any proceeding authorized by law to carry into effect an impeachment or removal.

## **Public Participation in Governmental Operations:**

### **Notice and Opportunity to Be Heard**

\* Note that the Legislature is not defined as an "agency" under Title 2, Chapter 3, part 1, but the Montana Supreme Court has held that notice of meetings is applicable to public bodies.

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

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

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

- (a) the legislature and any branch, committee, or officer thereof;
- (b) the judicial branches and any committee or officer thereof;
- (c) the governor, except that an agency is not exempt because the governor has been designated as a member thereof; or
- (d) the state military establishment and agencies concerned with civil defense and recovery from hostile attack.

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

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

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

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

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

**2-3-104. 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.

**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.

## **Open Meetings**

**2-3-202. Meeting defined.** As used in this part, "meeting" means the convening

of a quorum of the constituent membership of a public agency or association described in 2-3-203, whether corporal or by means of electronic equipment, to hear, discuss, or act upon a matter over which the agency has supervision, control, jurisdiction, or advisory power.

**2-3-203. Meetings of public agencies and certain associations of public agencies to be open to public -- exceptions.** (1) All meetings of public or governmental bodies, boards, bureaus, commissions, agencies of the state, or any political subdivision of the state or organizations or agencies supported in whole or in part by public funds or expending public funds, including the supreme court, must be open to the public.

(2) All meetings of associations that are composed of public or governmental bodies referred to in subsection (1) and that regulate the rights, duties, or privileges of any individual must be open to the public.

(3) The presiding officer of any meeting may close the meeting during the time the discussion relates to a matter of individual privacy and then if and only if the presiding officer determines that the demands of individual privacy clearly exceed the merits of public disclosure. The right of individual privacy may be waived by the individual about whom the discussion pertains and, in that event, the meeting must be open.

(4) (a) Except as provided in subsection (4)(b), a meeting may be closed to discuss a strategy to be followed with respect to litigation when an open meeting would have a detrimental effect on the litigating position of the public agency.

(b) A meeting may not be closed to discuss strategy to be followed in litigation in which the only parties are public bodies or associations described in subsections (1) and (2).

(5) The supreme court may close a meeting that involves judicial deliberations in an adversarial proceeding.

(6) Any committee or subcommittee appointed by a public body or an association described in subsection (2) for the purpose of conducting business that is within the jurisdiction of that agency is subject to the requirements of this section.

**2-3-211. Recording.** Accredited press representatives may not be excluded from any open meeting under this part and may not be prohibited from taking photographs, televising, or recording such meetings. The presiding officer may assure that such activities do not interfere with the conduct of the meeting.

**2-3-212. Minutes of meetings -- public inspection.** (1) Appropriate minutes of all meetings required by 2-3-203 to be open must be kept and must be available for inspection by the public. If an audio recording of a meeting is made and designated as official, the recording constitutes the official record of the meeting. If an official recording is made, a written record of the meeting must also be made and must include the information specified in subsection (2).

(2) Minutes must include without limitation:

- (a) the date, time, and place of the meeting;
- (b) a list of the individual members of the public body, agency, or organization who were in attendance;
- (c) the substance of all matters proposed, discussed, or decided; and
- (d) at the request of any member, a record of votes by individual members for any votes taken.

(3) If the minutes are recorded and designated as the official record, a log or time stamp for each main agenda item is required for the purpose of providing assistance to the public in accessing that portion of the meeting.

**2-3-213. Voidability.** Any decision made in violation of 2-3-203 may be declared void by a district court having jurisdiction. A suit to void a decision must be commenced within 30 days of the date on which the plaintiff or petitioner learns, or reasonably should have learned, of the agency's decision.

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

### **Public Records:**

**2-6-101. Definitions.** (1) Writings are of two kinds:

- (a) public; and
- (b) private.

(2) Public writings are:

(a) the written acts or records of the acts of the sovereign authority, of official bodies and tribunals, and of public officers, legislative, judicial, and executive, whether of this state, of the United States, of a sister state, or of a foreign country, except records that are constitutionally protected from disclosure;

(b) public records, kept in this state, of private writings, including electronic mail, except as provided in 22-1-1103 and 22-3-807 and except for records that are constitutionally protected from disclosure.

(3) Public writings are divided into four classes:

(a) laws;

(b) judicial records;

(c) other official documents;

(d) public records, kept in this state, of private writings, including electronic mail.

(4) All other writings are private.

**2-6-102. Citizens entitled to inspect and copy public writings.** (1) Every citizen has a right to inspect and take a copy of any public writings of this state, except as provided in 22-1-1103, 22-3-807, or subsection (3) of this section and as otherwise expressly provided by statute.

(2) Every public officer having the custody of a public writing that a citizen has a right to inspect is bound to give the citizen on demand a certified copy of it, on payment of the legal fees for the copy, and the copy is admissible as evidence in like cases and with like effect as the original writing. The certified copy provision of this subsection does not apply to the public record of electronic mail provided in an electronic format.

(3) Records and materials that are constitutionally protected from disclosure are not subject to the provisions of this section. Information that is constitutionally protected from disclosure is information in which there is an individual privacy interest that clearly exceeds the merits of public disclosure, including legitimate trade secrets, as defined in 30-14-402, and matters related to individual or public safety.

(4) A public officer may withhold from public scrutiny information relating to individual privacy or individual or public safety or security of public facilities, including public schools, jails, correctional facilities, private correctional facilities, and prisons, if release of the information may jeopardize the safety of facility personnel, the public, students in a public school, or inmates of a facility. Security features that may be protected under this section include but are not limited to architectural floor plans, blueprints, designs, drawings, building materials, alarms system plans, surveillance techniques, and facility staffing plans, including staff numbers and locations. A public officer may not withhold from public scrutiny any more information than is required to protect an individual

privacy interest or safety or security interest.

**2-6-103. Filing and copying fees.** (1) The secretary of state shall charge and collect fees for filing and copying services.

(2) A member of the legislature or state or county officer may not be charged for any search relative to matters appertaining 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.

(3) The secretary of state may not charge a fee, other than the fees authorized in 2-6-110, for providing electronic information.

(4) Fees must be collected in advance and, when collected by the secretary of state, are not refundable.

(5) Fees authorized by this section must be set and deposited in accordance with 2-15-405.

**2-6-104. Records of officers open to public inspection.** Except as provided in 27-18-111 and 42-6-101, the public records and other matters, except records that are constitutionally protected from disclosure, in the office of any officer are at all times during office hours open to the inspection of any person.

**2-6-105. Removal of public records.** Any record, a transcript of which is admissible in evidence, must not be removed from the office where it is kept, except upon the order of a court or judge in cases where the inspection of the record is shown to be essential to the just determination of the cause or proceeding pending or where the court is held in the same building with such office.

**2-6-107. Proceedings to compel delivery of records.** If any person, whether a former incumbent or another person, refuses or neglects to deliver to the actual incumbent any such books or papers, such actual incumbent may apply, by complaint, to any district court or judge of the county where the person so refusing or neglecting resides and the court or judge must proceed in a summary way, after notice to the adverse party, to hear the allegations and proofs of the parties and to order any such books and papers to be delivered to the petitioners.

**2-6-108. Attachment and warrant to enforce.** The execution of the order and delivery of the books and papers may be enforced by attachment as for a witness and also, at the request of the plaintiff, by a warrant directed to the sheriff or a

constable of the county, commanding the sheriff or constable to search for the books and papers and to take and deliver them to the plaintiff.

**2-6-109. Prohibition on distribution or sale of mailing lists -- exceptions --**

**penalty.** (1) Except as provided in subsections (3) through (9), in order to protect the privacy of those who deal with state and local government:

(a) an agency may not distribute or sell for use as a mailing list any list of persons without first securing the permission of those on the list; and

(b) a list of persons prepared by the agency may not be used as a mailing list except by the agency or another agency without first securing the permission of those on the list.

(2) As used in this section, "agency" means any board, bureau, commission, department, division, authority, or officer of the state or a local government.

(3) This section does not prevent an individual from compiling a mailing 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 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 educational 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 a corporate information list developed by the secretary of state containing the name, address, registered agent, officers, and directors of business, nonprofit, religious, professional, and close corporations authorized to do business in this state.

(8) This section does not apply to the use by the public employees' retirement board of a mailing 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 mailing list is not released to the organization.

(9) 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.

(10) A person violating the provisions of subsection (1)(b) is guilty of a misdemeanor.

**2-6-110. Electronic information and nonprint records -- public access -- fees.**

(1) (a) Except as provided by law, each person is entitled to a copy of public information compiled, created, or otherwise in the custody of public agencies that is in electronic format or other nonprint media, including but not limited to videotapes, photographs, microfilm, film, or computer disk, subject to the same restrictions applicable to the information in printed form. All restrictions relating to confidentiality, privacy, business secrets, and copyright are applicable to the electronic or nonprint information.

(b) The provisions of subsection (1)(a) do not apply to collections of the Montana historical society established pursuant to 22-3-101.

(2) Except as provided by law and subject to subsection (3), an agency may charge a fee, not to exceed:

(a) the agency's actual cost of purchasing the electronic media used for transferring data, if the person requesting the information does not provide the media;

(b) expenses incurred by the agency as a result of mainframe and midtier processing charges;

(c) expenses incurred by the agency for providing online computer access to the person requesting access;

(d) other out-of-pocket expenses directly associated with the request for information, including the retrieval or production of electronic mail; and

(e) the hourly market rate for an administrative assistant in pay band 3 of the broadband pay plan, as provided for in 2-18-301, in the current fiscal year for each hour, or fraction of an hour, after one-half hour of copying service has been provided.

(3) (a) In addition to the allowable fees in subsection (2), 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 agency or committee.

(b) 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.

(c) All fees received by the department of revenue under subsection (2) and this subsection (3) must be deposited in a state special revenue fund as provided in 15-1-521.

(d) Fees charged by the secretary of state pursuant to this section must be set and deposited in accordance with 2-15-405.

(4) For the purposes of this section, the term "agency" has the meaning provided in 2-3-102 but includes legislative, judicial, and state military agencies.

(5) An agency may not charge more than the amount provided under subsection (2) for providing a copy of an existing nonprint record.

(6) Subject to 15-1-103, an agency shall ensure that a copy of information provided to a requester is of a quality that reflects the condition of the original if requested by the requester.

(7) This section does not authorize the release of electronic security codes giving access to private information.

### **Administrative Rule Review:**

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.

**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.

**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.

**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.

**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.

**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.

**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.

**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.

**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.

**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.

**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.

### **Legislative Review of Agencies:**

**2-8-101. Purpose.** (1) The legislature finds state government actions have produced a substantial increase in numbers of agencies, growth of programs, and proliferation of rules. The legislature questions whether conditions causing the establishment of these agencies, programs, and rules have not changed to such an extent as to remove the need for some or all of the agencies, programs, and rules.

(2) It is the intent of the legislature, by establishing a system of periodic evaluation of the need for and the performance of agencies or programs preparatory to termination, modification, or reestablishment, to be in a better position to ensure as follows:

(a) The executive department is responsive to the needs of all of the people of the state.

(b) No agency, program, or rule exists which is not responsive to those needs.

(c) No profession, occupation, business, industry, or other endeavor is subject to the state's regulatory power unless the exercise of such power is necessary to protect the public health, safety, or welfare from significant and discernible harm or damage. The exercise of the state's police power shall be done only to the extent necessary for that purpose.

(d) The state may not regulate a profession, occupation, industry, business, or other endeavor in a manner which will unreasonably adversely affect the competitive market.

(e) There exists a systematic legislative review of the need for and public benefits derived from a program or function by a periodic review and termination, modification, or reestablishment of such programs and functions.

**2-8-102. Definitions.** As used in this part, the following definitions apply:

(1) "Agency" means an office, position, commission, committee, board, department, council, division, bureau, section, or any other entity or instrumentality of the executive department of state government.

(2) "Performance audit" means an examination of the effectiveness of administration and its efficiency and adequacy in terms of the program of a state

agency authorized by law to be performed and the conformance of expenditures with legislative intent. Audits conducted shall include an analysis of the operation of the agency, with special regard to the duplication of efforts between the audited agency or program and other agencies or programs and the quality of service being rendered.

(3) "Program" means any legislatively or administratively created function, project, or duty of an agency.

**2-8-105. Determination of agencies and programs to be reviewed.** (1) Before September 1 of each even-numbered year, the governor may furnish the legislative audit committee with a list of recommendations for agencies and programs to be terminated and subject to a performance audit during the next biennium pursuant to the provisions of this chapter. The list must be prioritized and must set forth the governor's reasons for recommending each agency or program for review.

(2) The legislative audit committee shall review the list submitted by the governor, suggestions from legislators and legislative committees, staff recommendations, and any other relevant information and compile recommendations of agencies and programs to be terminated and subject to a performance audit. The committee shall submit its recommendations to the next legislature in the form of a bill terminating those designated agencies and programs at the times specified in the bill and requiring a performance audit of each agency and program under the provisions of Title 2, chapter 8, within the time specified and prior to termination.

**2-8-111. Prereview responsibilities of agencies.** An agency designated for termination or whose program or programs are designated for termination shall, by 22 months preceding the date set for termination:

(1) delineate the goals of the programs, which goals reflect the state's constitution, statutes, and authoritative judicial, legislative, and executive decisions or pronouncements;

(2) delineate the objectives of the programs and lay out, clearly enough to be tested, the logic in the assumptions linking expenditures to outcome anticipated, outcome anticipated to objectives, and objectives to impact on problems addressed in goals;

(3) furnish to the legislative auditor, upon request of the auditor, the information necessary to conduct a performance audit as required by this chapter.

**2-8-112. Legislative audit committee review and report -- review criteria.** (1)

The legislative audit committee is responsible for conducting a review of each agency or program scheduled for termination. The review shall be completed at least 6 months prior to the date set for termination. If for any reason a review of an agency or program cannot be completed as required by this chapter, the legislative audit committee shall submit a proposed bill for the ensuing legislative session to reestablish the agency or program.

(2) The review conducted shall include a performance audit of the agency or program, with emphasis on its effect on the public health, safety, and welfare.

(3) The legislative audit committee shall assist in the implementation of the provisions of this part and shall establish administrative procedures which facilitate the review and evaluation as required in this part.

(4) Upon completion of its review, the legislative audit committee shall, as provided in 5-11-210, make a report of its recommendations for continuation, modification, or termination and submit a proposed bill to the ensuing legislative session. If termination is recommended, the bill should repeal or otherwise deal with all statutes and parts of statutes relating to the agency's or program's activities.

**2-8-113. Hearings by standing committee -- criteria for termination.** (1) Prior to termination of an agency or program, the appropriate standing committee in each house of the legislature or a joint committee of both houses composed of members of the standing committee assigned to conduct the hearing shall hold a public hearing, receiving testimony from the public and the head of the department to which the agency or program involved is attached, the head of the agency involved, and persons who conducted the review.

(2) In the event termination of an agency or program is recommended by the legislative audit committee, the agency involved in the termination has the burden of demonstrating a public need for the agency's or program's continued existence and the extent to which a change in the composition, structure, and operation of the agency or program would improve public health, safety, or welfare.

(3) In determining whether to reestablish an agency or program, the legislature shall consider the performance audit and review conducted by the legislative audit committee, public testimony, and other matters considered relevant by the committee.

**2-8-121. Effect of termination.** Unless otherwise provided, upon termination,

each agency, program, or unit shall continue in existence until July 1 of the next succeeding year for the purpose of winding up its affairs. During the windup period, termination does not reduce or otherwise limit the powers or authority of each respective agency or program except that no action may be taken which would continue in effect beyond the 1-year windup period. Upon the expiration of the 1 year after termination, each agency or program not modified or reestablished shall be abolished and all unexpended balances of appropriations, allocations, or other funds shall revert to the fund from which they were appropriated or, if that fund is abolished, to the general fund.

**2-8-122. Reestablishment.** (1) Any agency or program scheduled for termination under this part or any subsequent act may be reestablished by the legislature.

(2) No more than one agency or program may be continued or reestablished in any bill for an act, and the agency or program shall be mentioned in the bill's title.