

HOUSE BILL NO. 169
INTRODUCED BY M. LANGE

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING A UNIFORM PUBLIC COMPLAINT PROCESS FOR STATE AGENCIES; AND PROVIDING A UNIFORM COMPLAINT FORM AND FOLLOWUP FORM."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Short title.** [Sections 1 through 6] may be cited as the "State Agency Public Complaint Act".

NEW SECTION. **Section 2. Purpose.** The purpose of [sections 1 through 6] is to require state agencies to develop a uniform public complaint process to ensure that persons having complaints against state agencies are treated fairly and professionally, to facilitate the resolution of complaints against state agencies, to enable a state agency to investigate, resolve, and track complaints against it, and to create a record of complaints and their resolution at the administrative level.

NEW SECTION. **Section 3. Definitions.** As used in [sections 1 through 6], the following definitions apply:

- (1) (a) "Act" or "action" means an action taken or the refusal to take an action by a state agency.
- (b) The term does not mean:
 - (i) any action taken in litigation in which a government entity is a party;
 - (ii) an act for which a citation or warning is issued;
 - (iii) a legislative act by the state of Montana;
 - (iv) an action subject to the provisions of Title 39, chapter 2, part 9; or
 - (v) development, amendment, or repeal of a rule, as defined in 2-4-102, or any action taken in an administrative proceeding under Title 2, chapter 4.
- (2) "State agency" means any board, bureau, commission, or department of the legislative, executive, or judicial branch of state government except:
 - (a) the state board of pardons and parole;
 - (b) the department of corrections and any state penal institution with regard to the institutional

supervision, custody, control, care, or treatment of youths or prisoners;

(c) the board of regents and the Montana university system;

(d) the public service commission when conducting arbitration proceedings pursuant to 47 U.S.C. 252 and 69-3-837;

(e) the legislature, including the house of representatives and the senate, with regard to legislative acts;

(f) the supreme court and district courts of the state with regard to litigation before the court; and

(g) the Montana highway patrol.

(3) "Supervising authority" means:

(a) the governor or the governor's designated representative for executive branch agencies, except as provided in subsection (3)(b);

(b) the secretary of state, attorney general, auditor, and superintendent of public instruction for each elected official's respective office and agency and the public service commission with respect to the department of public service regulation;

(c) the chief justice of the supreme court or the chief justice's designated representative for judicial branch agencies;

(d) the speaker of the house of representatives;

(e) the president of the senate; or

(f) appropriate legislative committees, or a designated representative, for legislative branch agencies.

NEW SECTION. Section 4. Procedure -- nonapplicability. (1) Each state agency shall post information about the public complaint process in a prominent place in any office open to public access and make the uniform complaint form available upon request.

(2) The provisions of [sections 1 through 6] do not:

(a) preclude a state agency from resolving complaints informally; or

(b) apply to an act subject to a complaint resolution process provided for in law, contract, administrative rule, or written policy if the complaint resolution process is substantially similar to the process provided for in [sections 1 through 6].

(3) Except as provided in subsection (4), when informal resolution of a complaint is not possible, a person aggrieved by a state agency action may complete a complaint form and return the form to the supervising authority for the state agency. Within 10 working days of receiving the complaint form, the supervising authority or designee shall begin a followup form as documentation for each complaint.

(4) An allegation of a state agency action in violation of law must be made to the attorney general.

(5) A complaint must be reviewed by the supervising authority or designee. Resolution of the complaint may include informal mediation with the complaining party or any other method for resolving the complaint. The supervising authority may request an investigation of the complaint. Investigation of the complaint may involve the gathering of written materials, interviews, and other information-gathering techniques. The investigator shall make a recommendation to the supervising authority regarding the validity of the claim and a recommended resolution.

(6) An investigation or review of a complaint must be completed within 45 working days of receipt of the complaint form. This time may be extended for another 45 days to complete a more thorough review.

(7) Following the investigation or resolution of a complaint, the supervising authority or designee shall provide a written statement to the complaining party. The statement must describe the resolution of the complaint. The statement may not provide any confidential information protected by state law or any confidential information about employee discipline resulting from the complaint unless the person entitled to the confidentiality waives the privilege.

(8) All formal complaint forms, followup forms, and investigative materials and the written statement to the complaining party must be retained by the state agency for 3 years.

(9) A state agency may not retaliate or allow, condone, or encourage others to retaliate against any person for filing a complaint or participating in any other manner in a complaint proceeding.

NEW SECTION. Section 5. Uniform complaint form. The following is the uniform public complaint form for state agencies:

MONTANA STATE AGENCY
UNIFORM PUBLIC COMPLAINT FORM

Please attempt to resolve the matter informally by working with the state agency. If this is not possible, fully complete this form. Assistance with this form is available at your request.

Name of state agency.....
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Name of person making complaint.....
.....

Address.....
.....

.....
Phone number.....

.....
Date(s) of incident(s).....

.....
Describe incident about which you are complaining (provide specifics, including names, etc.).....

.....
Suggested resolution.....

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Signature..... Date.....

Submit this form to the (name and address of state agency's supervising authority).
Date complaint form received.....

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Reviewing party.....

..... (title)

(Review must start within 10 working days of receipt of complaint)

Resolution (attach copy of followup letter to complaining party -- details of any employee discipline resulting from an investigation must remain confidential)

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Completed by..... (title)

Date.....

Copy to supervising authority

NEW SECTION. Section 7. Codification instruction. [Sections 1 through 6] are intended to be codified as an integral part of Title 2, chapter 11, and the provisions of Title 2, chapter 11, apply to [sections 1 through 6].

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