



Montana Legislative Services Division

Legal Services Office

PO BOX 201706  
Helena, MT 59620-1706  
(406) 444-3064  
FAX (406) 444-3036

**TO:** State Administration and Veterans' Affairs Interim Committee

**FROM:** Andria Hardin, Legislative Attorney

**DATE:** May 10, 2024

**RE:** Legislative Administrative Rule Review Report

Pursuant to 5-5-228, MCA, the State Administration and Veterans' Affairs Interim Committee has prepared this report for informational purposes only. This report does not represent any action or opinion of the State Administration and Veterans' Affairs Interim Committee and does not preclude additional action that may be taken by the State Administration and Veterans' Affairs Interim Committee pursuant to its authority under the Montana Administrative Procedure Act (Title 2, chapter 4, MCA).

**Department of Administration (and administratively attached entities, including public employee retirement plans\*):**

Proposal and Adoption Notices are available at: <https://doa.mt.gov/administrativerules>.

\*SAVA reviews rules for the Department of Administration except for (1) the State Compensation Insurance Fund provided for in 39-71-2313, MCA; (2) the Office of the State Public Defender; (3) the Montana Tax Appeal Board; and (4) the Division of Banking and Financial Institutions. Oversight for those entities is statutorily delegated to other interim committees.

**MAR NOTICE NUMBER:** 2-5-643

**AGENCY/BOARD:** Department of Administration

**RULE CLASSIFICATION** (e.g., substantive/interpretive/emergency/temporary): Substantive

**SUBJECT:** State Agency Procurement

**NOTICE DESCRIPTION** (e.g., proposal notice/adoption notice): Notice of Public Hearing on Proposed Adoption, Amendment, and Repeal

**SUMMARY OF RULE(S):** The Department of Administration proposes one new rule, the appeal of five rules, and the amendment of six rules pertaining to state agency procurement.

New Rule I implements [SB 51](#) (2023), which amended 18-4-303, 18-4-304, and 18-4-307, MCA requiring notice to the public of an intent to award a contract for no less than seven days and the receipt, and possible consideration, of public comment.

The Department proposes to amend ARM 2.5.503 to remove language requiring 72-hour notice of public meetings conducted to evaluate requests for proposals. This language is duplicative of

ARM 2.2.102. Additionally, section 2-3-103, MCA already requires state agencies develop procedures for permitting and encouraging public participation, including adequate notice.

Currently, ARM 2.5.601 applies to competitive sealed bids and ARM 2.5.602 applies to competitive sealed proposals. The Department proposes to amend ARM 2.5.601 to clarify which requirements generally apply to both competitive sealed bids and proposals and which only apply to competitive sealed bids. Language from ARM 2.5.602 (6) will be moved to ARM 2.5.601(6) to clarify that a roster of contractors can be created by an invitation for bids or request for proposals. Also, both rules will remove outdated language related to internal procedures. The Department further proposes amendments to ARM 2.5.601 to provide the process by which claims of trade secrets by offerors will be handled.

The Department proposes to amend ARM 2.5.604 to require an agency that requests sole source procurement of a contract value of \$100,000 or more to provide notice to the public for at least ten days to allow for public review and comment. The amendment also clarifies when software or hardware maintenance agreements require sole source justification and requires that sole source justification and approval processes must be followed even when renewing such contracts.

The Department proposes to amend ARM 2.5.605 providing examples that do not fall under the definition of exigency.

The Department proposes to amend ARM 2.5.609 to allow a one-time delegation of authority to a requesting agency to conduct an alternative procurement method.

The Department proposes to repeal ARM 2.5.302, 2.5.303, 2.5.304, 2.5.305, and 2.5.502 as the Department avers these rules pertain to the internal management of government and will be transferred to MOM policy.

**NOTES:** A public hearing will be held on May 21, 2024, at 3:00 p.m. on Zoom and in Room 161 of the Mitchell Building at 125 North Roberts Street, Helena, Montana. The public comment period ends on May 24, 2024 at 5:00 p.m.

**STAFF COMMENT:** None.

**FULL TEXT OF NOTICE:** The full text of the proposal notice may be found online at [https://rules.mt.gov/gateway/Cycle\\_Home.asp?CID=3843](https://rules.mt.gov/gateway/Cycle_Home.asp?CID=3843).

**MAR NOTICE NUMBER:** 2-12-646

**AGENCY/BOARD:** Department of Administration

**RULE CLASSIFICATION** (e.g., substantive/interpretive/emergency/temporary): Substantive

**SUBJECT:** Local Government Public Meeting Recordings

**NOTICE DESCRIPTION** (e.g., proposal notice/adoption notice): Notice of Public Hearing on Proposed Adoption

**SUMMARY OF RULE(S):** The Department of Administration proposes a new rule to implement [HB 890](#) (2023), providing nonbinding guidance on how to best create, store, and publish recordings of local government meetings.

**NOTES:** A public hearing will be held on May 21, 2024, at 9:00 a.m. on Zoom and in Room 161 of the Mitchell Building at 125 North Roberts Street, Helena, Montana. The public comment period ends on May 24, 2024 at 5:00 p.m.

**STAFF COMMENT:** None.

**FULL TEXT OF NOTICE:** The full text of the proposal notice may be found online at [https://rules.mt.gov/gateway/Cycle\\_Home.asp?CID=3844](https://rules.mt.gov/gateway/Cycle_Home.asp?CID=3844).

**MAR NOTICE NUMBER:** 2-43-647

**AGENCY/BOARD:** Public Employee's Retirement Board

**RULE CLASSIFICATION** (e.g., substantive/interpretive/emergency/temporary): Substantive

**SUBJECT:** Defined Contribution Retirement Plan Investment Policy Statement and the Montana Fixed Fund Investment Policy Statement - 457(b) Deferred Compensation Plan Investment Policy Statement and the Montana Fixed Fund Investment Policy Statement.

**NOTICE DESCRIPTION** (e.g., proposal notice/adoption notice): Notice of Proposed Amendment

**SUMMARY OF RULE(S):** The Board made changes to the Defined Contribution Plan and Deferred Compensations Plan, which were adopted recently. These investment policy statements are incorporated by reference in ARM 2.43.3502 and 2.43.5102. Accordingly, the amendments proposed by the Board update the dates of these investment policy statements in the rules, so that the documents are properly incorporated by reference.

**NOTES:** A public hearing is not contemplated, and the public comment period ends on May 24, 2024 at 5:00 p.m.

**STAFF COMMENT:** None.

**FULL TEXT OF NOTICE:** The full text of the proposal notice may be found online at [https://rules.mt.gov/gateway/Cycle\\_Home.asp?CID=3832](https://rules.mt.gov/gateway/Cycle_Home.asp?CID=3832).

**MAR NOTICE NUMBER:** 2-43-648

**AGENCY/BOARD:** Public Employee's Retirement Board

**RULE CLASSIFICATION** (e.g., substantive/interpretive/emergency/temporary): Substantive

**SUBJECT:** Basic Period of Service - Receipt of Service Credit on or After Termination of Employment - Calculation of Highest Average Compensation or Final Average Compensation.

**NOTICE DESCRIPTION** (e.g., proposal notice/adoption notice): Notice of Proposed Amendment

**SUMMARY OF RULE(S):** The Board proposes to amend three rules.

The proposed amendment to ARM 2.43.2105 will clarify that employees paid bi-weekly will only receive one month of service credit during the two months each year that contain three pay periods.

The proposed amendment to ARM 2.43.2109 brings the language in line with the statutory definition of service credit (section [19-2-303\(47\)](#), MCA), specifically that required contributions must be made to receive service credit for lump-sum payments after termination of employment. It also clarifies that the prohibition against receiving both a service credit and retirement benefit in the same month only applies to lump-sum payments.

The proposed amendment to ARM 2.43.2110 specifies that required employee/employer contributions must have been made for lump-sum payments paid upon termination of employment in order for that lump-sum payment to be used to calculate the employee's highest average compensation.

The Board provides the example of retiring members rolling their unused sick and annual leave into a voluntary employees' beneficiary association health reimbursement account (VEBA) as necessitating the proposed amendments to ARM 2.43.2109 and 2.43.2110. VEBA accounts are exempt from retirement contributions and other payroll taxes, and accordingly, should not be awarded service credit nor be used to calculate highest average compensation.

**NOTES:** A public hearing is not contemplated, and the public comment period ends on May 24, 2024 at 5:00 p.m.

**STAFF COMMENT:** None.

**FULL TEXT OF NOTICE:** The full text of the proposal notice may be found online at [https://rules.mt.gov/gateway/Cycle\\_Home.asp?CID=3833](https://rules.mt.gov/gateway/Cycle_Home.asp?CID=3833).