

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 10

The Montana Administrative Register (MAR), a twice-monthly publication, has three sections. The notice section contains state agencies' proposed new, amended or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted. The rule section indicates that the proposed rule action is adopted and lists any changes made since the proposed stage. The interpretation section contains the attorney general's opinions and state declaratory rulings. Special notices and tables are found at the back of each register.

Inquiries regarding the rulemaking process, including material found in the Montana Administrative Register and the Administrative Rules of Montana, may be made by calling the Administrative Rules Bureau at (406) 444-2055.

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BEFORE THE BOARD OF PUBLIC EDUCATION  
OF THE STATE OF MONTANA

In the matter of the	)	NOTICE OF PUBLIC HEARING
proposed amendment of	)	ON PROPOSED AMENDMENT
ARM 10.64.301 and the	)	AND REPEAL
repeal of ARM 10.64.101,	)	
10.64.341, 10.64.354,	)	
10.64.355, 10.64.356 and	)	
10.64.358 relating to	)	
bus standards	)	

TO: All Concerned Persons

1. On June 25, 2002 at 9:00 a.m. a public hearing will be held in the main floor conference room of the Office of the Commissioner of Higher Education building at 2500 Broadway, Helena, Montana, to consider the amendment and repeal of rules relating to bus standards.

2. The Board of Public Education will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Public Education no later than 5:00 p.m. on June 14, 2002 to advise us of the nature of the accommodation that you need. Please contact Steve Meloy, P.O. Box 200601, Helena, MT 59620-0601, telephone: (406) 444-6576, FAX: (406) 444-0847, e-mail smeloy@bpe.montana.edu.

3. The rule proposed to be amended provides as follows, stricken matter interlined, new matter underlined:

10.64.301 DEFINITIONS SCHOOL BUS REQUIREMENTS (1) ~~A school bus is defined in section 61-1-116, MCA, as "every motor vehicle owned by a public or governmental agency and operated for the transportation of children to or from school or privately owned and operated for compensation for the transportation of children to or from the school."~~

~~(a) A Type "A" school bus is a conversion or body constructed upon van-type compact truck or a front-section vehicle, with a gross weight rating of 10,000 pounds or less, designed for carrying more than 10 persons.~~

~~(b) A Type "B" school bus is a conversion or body constructed and installed upon a van or front-section vehicle chassis, or stripped chassis, with a gross vehicle weight rating of more than 10,000 pounds, designed for carrying more than 10 persons. Part of the engine is beneath and/or behind the windshield and beside the driver's seat. The entrance door is behind the front wheels.~~

~~(c) A Type "C" school bus is a body installed upon a blat back cowl chassis with a gross vehicle weight rating of more than 10,000 pounds, designed for carrying more than 10 persons. All of the engine is in front of the windshield and~~

~~the entrance door is behind the front wheels.~~

~~(d) A Type "D" school bus is a body installed upon a chassis, with the engine mounted in the front, midship, or rear, with a gross vehicle weight rating of more than 10,000 pounds, designed for carrying more than 10 persons. The engine may be behind the windshield and beside the driver's seat; it may be at the rear of the bus, behind the rear wheels, or midship between the front and rear axles. The entrance door is ahead of the front wheels.~~

(1) The board of public education adopts and incorporates herein the Standards for School Buses in Montana - 2002. A copy of this document is available from the Board of Public Education, P.O. Box 200601, Helena, Montana 59620-0601 or from the Office of Public Instruction, Pupil Transportation Division, P.O. Box 202501, Helena, Montana 59620-2501.

(2) The board of public education adopts standards for school buses in Montana in part from the 2000 National School Transportation Specifications and Procedures, as recommended by the national conference on school transportation (NCST). The interpretation committee of the NCST occasionally issues an interpretation on one or more of its recommended specifications and procedures. Any interpretation made by the NCST interpretations committee shall be the official interpretation of the corresponding Montana standards unless that interpretation is specifically redefined or preempted by a corresponding Montana standard, law or regulation.

AUTH: Sec. 20-2-121, MCA  
IMP: Sec. 20-10-111, MCA

4. ARM 10.64.101 which can be found on page 10-974.1 of the Administrative Rules of Montana, is proposed to be repealed because this language is contained in 20-10-104, MCA.

AUTH: Sec. 20-2-121, MCA  
IMP: Sec. 20-10-104, MCA

5. ARM 10.64.341 which can be found on page 10-980 of the Administrative Rules of Montana, is proposed to be repealed because this language has been incorporated in ARM 10.64.301.

AUTH: Sec. 20-2-121, MCA  
IMP: Sec. 20-10-104, MCA

6. ARM 10.64.354 which can be found on page 10-981 of the Administrative Rules of Montana, is proposed to be repealed because the provisions of this rule are contained in the Standards for School Buses in Montana - 2002 which is incorporated by reference in ARM 10.64.301.

AUTH: Sec. 20-2-121, MCA  
IMP: Sec. 20-10-104, MCA

7. ARM 10.64.355 which can be found on page 10-982 of the Administrative Rules of Montana, is proposed to be repealed because the provisions of this rule are contained in the Standards for School Buses in Montana - 2002 which is incorporated by reference in ARM 10.64.301.

AUTH: Sec. 20-2-121, MCA  
IMP: Sec. 20-10-104, MCA

8. ARM 10.64.356 which can be found on page 10-984 of the Administrative Rules of Montana, is proposed to be repealed because the provisions of this rule are contained in the Standards for School Buses in Montana - 2002 which is incorporated by reference in ARM 10.64.301.

AUTH: Sec. 20-2-121, MCA  
IMP: Sec. 20-10-104, MCA

9. ARM 10.64.358 which can be found on page 10-985 of the Administrative Rules of Montana, is proposed to be repealed because the provisions of this rule are contained in the Standards for School Buses in Montana - 2002 which is incorporated by reference in ARM 10.64.301.

AUTH: Sec. 20-2-121, MCA  
IMP: Sec. 20-10-104, MCA

10. Statement of Reasonable Necessity: The Board of Public Education recently adopted the Standards for School Buses in Montana - 2002. The amendment to ARM 10.64.301 and the repeal of the listed rules is necessary so that administrative rule reflects the board's current policy concerning school buses.

11. Concerned persons may present their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted by mail to the Board of Public Education, P.O. Box 200601, Helena, Montana 59620-0601, or by e-mail to smeloy@bpe.montana.edu and must be received no later than 5:00 p.m. on June 28, 2002.

12. Steve Meloy has been designated to preside over and conduct the hearing.

13. The Board of Public Education maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding school bus standards or other Board of Public Education rulemaking actions. Such written request may be mailed or delivered to the Board of Public Education,

P.O. Box 200601, Helena, Montana 59620-0601, faxed to the office at (406) 444-0847 or may be made by completing a request form at any rules hearing held by the Board of Public Education.

14. The bill sponsor requirements of 2-4-302, MCA, do not apply. The requirements of 20-1-501, MCA, have been fulfilled. Copies of these rules have been sent to all tribal governments in Montana.

/s/ Dr. Kirk Miller  
Dr. Kirk Miller, Chair  
Office of Public Instruction

/s/ Steve Meloy  
Steve Meloy, Executive Secretary  
Rule Reviewer  
Board of Public Education

Certified to the Secretary of State May 20, 2002.

BEFORE THE BOARD OF PUBLIC EDUCATION  
OF THE STATE OF MONTANA

In the matter of the ) NOTICE OF PUBLIC HEARING  
proposed amendment ) ON PROPOSED AMENDMENT  
of ARM 10.66.104 relating to )  
GED fees )

TO: All Concerned Persons

1. On June 25, 2002, at 9:00 a.m. a public hearing will be held in the main floor conference room of the Office of the Commissioner of Higher Education building at 2500 Broadway, Helena, Montana, to consider the amendment of the above rule.

2. The Board of Public Education will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Public Education no later than 5:00 p.m. on June 14, 2002 to advise us of the nature of the accommodation that you need. Please contact Steve Meloy, Executive Secretary, Board of Public Education, 2500 Broadway, P.O. Box 200601, Helena, MT 59620-0601, telephone: (406) 444-6576, FAX: (406) 444-0847, e-mail smeloy@bpe.montana.edu.

3. The rule proposed to be amended provides as follows, stricken matter interlined, new matter underlined:

10.66.104 FEES (1) ~~An \$18 charge is made by all Montana testing centers for administration of the GED test battery. Retest charges will be \$6 for test section 1 (includes essay component) and \$3 per section for test sections 2, 3, 4 or 5. Upon advice and consent of the board of public education, the superintendent of public instruction shall establish annually a schedule of fees that may be charged for the administration of the GED test battery. The schedule of fees shall be commensurate with the testing program centers' actual costs related to the GED test. The superintendent of public instruction shall report annually to the board of public education the status of all fees associated with the GED test.~~

AUTH: 20-2-114, MCA  
IMP: 20-2-121, MCA

Statement of Reasonable Necessity: The fees charged by the General Educational Development Testing Service and paid by Montana's GED testing centers have increased significantly in recent years. The Board of Public Education anticipates that the fees will continue to increase periodically in the future. Montana's GED testing centers provide a valuable public service and ought not be restricted in recovering their actual costs in administering the GED tests. Therefore, the Board



proposes to amend this rule to allow for the more efficient and fair adjustment of these fees. Rather than set the exact fee in rule and change the rule setting the exact fee each time the national costs change, the Board seeks to direct the Superintendent of Public Instruction to set the GED fees commensurate with the testing centers' actual GED costs, upon receiving the advice and consent of the Board of Public Education. There will be no additional cumulative revenue generated because the cost of the GED test will be the actual cost for the test and administration by the testing centers. The number of persons affected is approximately 3,046 based on an average of the persons taking the test during 2000 and 2001.

4. Concerned persons may present their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted by mail to the Board of Public Education, 2500 Broadway, P.O. Box 202501, Helena, Montana 59620-2501, by fax to (406) 444-0847, or by e-mail to smeloy@bpe.montana.edu and must be received no later than 5:00 p.m. on June 28, 2002.

5. Steve Meloy has been designated to preside over and conduct the hearing.

6. The Board of Public Education maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding GED or other school related rulemaking actions. Such written request may be mailed or delivered to the Board of Public Education, 2500 Broadway, P.O. Box 200601, Helena, Montana 59620-0601, faxed to the office at (406) 444-0847, e-mailed to smeloy@bpe.montana.edu or may be made by completing a request form at any rules hearing held by the Board of Public Education.

7. The bill sponsor requirements of 2-4-302, MCA, do not apply. The requirements of 20-1-501, MCA, have been fulfilled. Copies of these rules have been sent to all tribal governments in Montana.

/s/ Dr. Kirk Miller  
Dr. Kirk Miller, Chair  
Board of Public Education

/s/ Steve Meloy  
Steve Meloy, Executive Secretary  
Rule Reviewer  
Board of Public Education

Certified to the Secretary of State May 20, 2002.

BEFORE THE FISH, WILDLIFE AND PARKS COMMISSION  
AND THE DEPARTMENT OF FISH, WILDLIFE AND PARKS  
OF THE STATE OF MONTANA

In the matter of the proposed ) NOTICE OF PUBLIC  
adoption of new rules ) HEARINGS ON  
pertaining to contractual ) PROPOSED ADOPTION  
public elk hunting access )  
agreements )

TO: All Concerned Persons

1. The Fish, Wildlife and Parks Commission (commission) and the Department of Fish, Wildlife and Parks (department) will hold public hearings to consider the adoption of new rules I through V pertaining to contractual public elk hunting access agreements. The hearings dates and places are as follows:

June 20, 2002, 7:00 p.m.  
Fish, Wildlife and Parks  
Region 5 Headquarters  
2300 Lake Elmo Drive  
Billings, MT

June 25, 2002, 7:00 p.m.  
Fish, Wildlife and Parks  
Region 4 Headquarters  
4600 Giant Springs Road  
Great Falls, MT

June 27, 2002, 7:00 p.m.  
Fish, Wildlife and Parks  
Headquarters Commission Room  
1420 East Sixth Avenue  
Helena, MT

2. The commission and department will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m. on June 7, 2002, to advise us of the nature of the accommodation that you need. Please contact Shelley Juvan, Fish, Wildlife and Parks, 1420 East Sixth Ave., P.O. Box 200701, Helena, MT 59620-0701; telephone (406) 444-2602, fax (406) 444-3023.

3. The proposed new rules provide as follows:

NEW RULE I DEFINITIONS The following definitions apply to this subchapter:

(1) "Contractual public elk hunting access agreement" means a negotiated agreement between the department and a

landowner which defines how free public elk hunting may occur on land enrolled under the agreement.

(2) "Regular hunting season" means the general season established by the commission for hunting elk with firearms in a hunting district which contains land enrolled in a contractual public elk hunting access contractual agreement.

AUTH: 87-1-201, 87-1-301, 87-2-513, MCA  
IMP: 87-2-513, MCA

NEW RULE II ELIGIBILITY (1) In order to be eligible for a permit under 87-2-513, MCA, a landowner must own and enroll a minimum of 2500 acres experiencing sufficient elk use during the regular hunting season to provide hunting opportunity consistent with the terms of a contractual public elk hunting access agreement.

AUTH: 87-1-201, 87-1-301, 87-2-513, MCA  
IMP: 87-2-513, MCA

NEW RULE III CONTRACTUAL PUBLIC ELK HUNTING ACCESS AGREEMENTS (1) The department may enter into a contractual public elk hunting access agreement provided that the landowner and the department agree to terms. A contractual public hunting agreement must include but is not limited to the following terms:

- (a) area open to public elk hunting, including:
  - (i) specific land area with identified boundaries;
  - (ii) times and dates area is open;
  - (iii) methods for obtaining landowner permission;
  - (iv) area use rules which address travel methods, game retrieval, etc.;
- (b) number and distribution of public hunting days that will be allowed on property for the following categories:
  - (i) hunters with permits valid for the hunting district;
  - (ii) hunters with permits issued under 87-2-513, MCA;
  - (iii) landowners with permits issued under 87-2-513, MCA; and
- (c) methods for collecting evaluation data, including:
  - (i) hunter use data;
  - (ii) elk harvest data; and
  - (iii) hunter/landowner/department satisfaction data.

AUTH: 87-1-201, 87-1-301, 87-2-513, MCA  
IMP: 87-2-513, MCA

NEW RULE IV PROCESS FOR COMMISSION CONSIDERATION OF PERMITS (1) In order for the commission to determine the number of hunting permits to issue under 87-2-513, MCA, the department shall complete negotiations for contractual public elk hunting access agreements prior to the commission meeting at which the commission makes final permit quota decisions.

(2) The department shall place proposals to grant permits under 87-2-513, MCA, on the commission agenda as part of the commission meeting when final permit quota decisions are made.

AUTH: 87-1-201, 87-1-301, 87-2-513, MCA  
IMP: 87-2-513, MCA

NEW RULE V PROCESS FOR SELECTING PERMIT HOLDERS (1) The department shall randomly select hunters from the list of applicants who were unsuccessful in drawing permits valid in a hunting district affected by an approved contractual public elk hunting access agreement, and offer the selected hunters an opportunity to receive a permit issued under 87-2-513, MCA.

(2) If there were no unsuccessful permit applicants in an affected district, the department shall give public notice of the available permits and distribute them to hunters on a first-come, first-served basis.

AUTH: 87-1-201, 87-1-301, 87-2-513, MCA  
IMP: 87-2-513, MCA

4. New rules I through V are being proposed to implement legislation passed in the 2001 session. The Montana Legislature passed HB 454 to allow issuance of either-sex or antlerless elk permits to the public and certain landowners who make their private property available to the public for free public elk hunting throughout the hunting season.

Since HB 454 created new authority for the department to issue an either-sex or antlerless elk permit at no cost to a landowner who meets certain criteria, and created new authority for the department to issue elk permits to the public, at regular cost, for use only on designated properties and in numbers authorized by the new legislation, it is necessary for the department to adopt rules for issuing permits authorized under the new authority.

These rules are being proposed as joint department and commission rules as the legislature delegated to the department the majority of the responsibility in administering contractual public elk hunting access agreements under HB 454; but the legislature placed authority to issue the permits with the department, through the commission. Therefore, both the department and commission must coordinate their responsibilities in issuing permits and entering access agreements.

5. Concerned persons may present their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to Alan Charles, Field Services, Fish, Wildlife and Parks, 1420 East Sixth Ave., P.O. Box 200701, Helena, MT 59620-0701; telephone (406) 444-3798, fax (406) 444-3023, or email at [acharles@state.mt.us](mailto:acharles@state.mt.us) and must be received no later than June 28, 2002.

6. Rebecca Dockter Engstrom, 1420 East Sixth Avenue, P.O. Box 200701, Helena, MT 59620-0701 has been designated to preside over and conduct the hearings.

7. The department maintains a list of interested persons who wish to receive notice of rulemaking actions proposed by the department or commission. Persons who wish to have their name added to the list shall make written request which includes the name and mailing address of the person to receive the notice and specifies the subject or subjects about which the person wishes to receive notice. Such written request may be mailed or delivered to Fish, Wildlife and Parks, Legal Unit, P.O. Box 200701, 1420 East Sixth Avenue, Helena, MT 59620-0701, faxed to the office at (406) 444-7456, or may be made by completing the request form at any rules hearing held by the department.

8. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled.

By: /s/ Dan Walker  
Dan Walker, Chairman  
Fish, Wildlife and Parks  
Commission

By: /s/ M. Jeff Hagener  
M. Jeff Hagener, Director  
Department of Fish,  
Wildlife and Parks

By: /s/ Rebecca Dockter Engstrom  
Rebecca Dockter Engstrom  
Rule Reviewer

Certified to the Secretary of State May 20, 2002

BEFORE THE BOARD OF LAND COMMISSIONERS AND  
THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION  
OF THE STATE OF MONTANA

In the matter of amendment of ) NOTICE OF PUBLIC HEARING  
ARM 36.2.1005 amending the ) ON PROPOSED AMENDMENT  
minimum easement charge under )  
the jurisdiction of the State )  
Board of Land Commissioners )

TO: All Concerned Persons

1. On June 19, 2002, the Department of Natural Resources and Conservation will hold a public hearing at 2:00 p.m. at the Department of Health and Human Services Auditorium, 111 North Sanders at Helena, Montana, to consider the amendment of ARM 36.2.1005 relating to minimum easement charges.

2. The Department of Natural Resources and Conservation and the Board of Land Commissioners will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the agency no later than 5:00 p.m. on June 12, 2002, to advise us of the nature of the accommodation that you need. Please contact Jeanne Holmgren, Special Uses Management Bureau Chief, Department of Natural Resources and Conservation, P.O. Box 201601, Helena, MT 59620-1601; telephone (406) 444-2074; FAX (406) 444-2684; e-mail to jholmgren@state.mt.us.

3. The rule as proposed to be amended provides as follows: (stricken matter interlined, new matter underlined)

36.2.1005 MINIMUM EASEMENT CHARGES ~~(1) The minimum fees for right-of-way easements are as follows:~~

~~(a) The fees for pipelines shall not be less than \$440.00 per mile for grazing land, and \$935.00 per mile for irrigated land;~~

~~(b) The minimum fee for electric transmission lines shall be for double pole construction over 100 KVA per structure \$100.00 for each structure on grazing land, \$155.00 each structure on agriculture land that is within 6' of fence line, \$235.00 each structure that is not within 6' of fence line, and \$290.00 each structure on irrigated or potentially irrigated land. The minimum fee for single pole construction under 100 KVA per structure is \$50.00 each structure on grazing land, \$115.00 each structure on agriculture land, \$150.00 each structure on irrigated land. The minimum fee for anchors is \$30.00 each on grazing land, \$40.00 each on agricultural land and \$50.00 each on irrigated land. The minimum fee for distribution lines shall be appraised value, but not less than \$30.00 per acre on grazing land, \$65.00 per acre on agricultural land, and \$85.00 per acre on irrigated~~

land.

~~(c) The minimum fee for telephone and telegraph lines shall be for mail lines (buried) \$320.00 per mile for grazing land, \$480.00 per mile for agricultural land, and \$100.00 for each structure on irrigated land. The minimum fee for distribution lines shall be for appraised value but not less than \$30.00 per acre on grazing land, \$65.00 per acre on agricultural land, and \$85.00 per acre for irrigated land.~~

~~(d) The minimum fee for highways and other purposes is appraised value, but not less than those rates set for electric and telephone distribution lines.~~

(1) The minimum land value charge for a right-of-way easement is the market value of the area encumbered by the easement or \$100.00 per section, whichever is greater.

(2) The \$100.00 land charge minimum shall apply regardless of the amount of state ownership within a section. The state shall also collect the amount of the actual damages resulting to the remaining land or lands from the granting of an easement as nearly as the damages can be ascertained.

AUTH: 76-13-403, MCA

IMP: 77-2-106, MCA

REASON: The amendment of the rule is necessary in order to simplify and modernize the methodology for computing the minimum charge for easements on state trust land. Under existing ARM 36.2.1005 the minimum fee for easement valuation is computed using different methodologies for electrical transmission and distribution lines, telephone and telegraph lines, and for highways and other easements. The variance in these procedures has led to inequitable easement fees and needless complexity in easement valuation. Land valuation rates contained within the existing rule are dated and do not reflect current market value. The Department has implemented through policy a minimum easement fee of \$100.00 for the past eight years. The proposed rule would establish this policy in rule and remove the existing requirement to set minimum easement values by type of structure. This rule would only be implemented where the fair market value of the acreage encumbered by the easement is less than \$100.00 and where there is not market evidence to support a higher rate. The proposed rule is expected to be revenue neutral and is administratively efficient. The new amount of the minimum easement charge is estimated to affect approximately 200 applicants per year. Charges will depend on the size of the parcel of land.

4. Concerned persons may submit their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to Jeanne Holmgren, Special Uses Management Bureau Chief, Department of Natural Resources and Conservation, P.O. Box 201601, Helena, MT 59620-1601; telephone (406) 444-2074; FAX (406) 444-2684 or e-mailed to [jholmgren@state.mt.us](mailto:jholmgren@state.mt.us) and must be received no later

than 5:00 p.m. on June 28, 2001.

5. Jeanne Holmgren, Special Uses Management Bureau Chief, Department of Natural Resources and Conservation, P.O. Box 201601, Helena, MT 59620-1601 has been designated to preside over and conduct the hearing.

6. The agency maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specify that the person wishes to receive notices regarding conservation districts and resource development, forestry, oil and gas conservation, trust land management, water resources or combination thereof. Such written request may be mailed or delivered to Emily Cooper, Department of Natural Resources and Conservation, P.O. Box 201601, 1625 11th Avenue, Helena, MT 59620-1601, faxed to the office at (406) 444-2684, or may be made by completing a request form at any rules hearing held by the agency.

7. The bill sponsor notice requirements of 2-4-302, MCA apply and have been fulfilled.

BOARD OF LAND COMMISSIONERS

DEPARTMENT OF NATURAL RESOURCES  
AND CONSERVATION

By: /s/ Judy Martz  
JUDY MARTZ  
Chair

By: /s/ Arthur R. Clinch  
ARTHUR R. CLINCH  
Director

By: /s/ Donald D. MacIntyre  
DONALD D. MACINTYRE  
Rule Reviewer

Certified to the Secretary of State May 20, 2002.



BEFORE THE DEPARTMENT OF PUBLIC  
HEALTH AND HUMAN SERVICES OF THE  
STATE OF MONTANA

In the matter of the adoption	)	NOTICE OF EXTENSION OF
of new Rule I and the	)	COMMENT PERIOD
amendment of ARM 37.86.2801,	)	
37.86.2901, 37.86.2905,	)	
37.86.2910, 37.86.3001,	)	
37.86.3005, 38.86.3007,	)	
37.86.3016 and 37.86.3018	)	
pertaining to inpatient and	)	
outpatient hospitals	)	

TO: All Interested Persons

1. On April 25, 2002, the Department published notice at page 1289 of the 2002 Montana Administrative Register, issue number 8 of the proposed adoption and amendment of the above-stated rules.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice. If you need to request an accommodation, contact the department no later than 5:00 p.m. on June 4, 2002, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970; Email dphhslegal@state.mt.us.

2. The Department is extending the comment period to June 7, 2002. The Department is extending the comment period at the request of hospital providers so that they can simulate the effect of the proposed changes in the weights, thresholds and the elimination of catastrophic reimbursement policy. The final version of the DRG table of weights and thresholds is dated May, 2002. The purpose of extending the comment period is to allow hospitals sufficient time to submit detailed comments pertaining to the proposed changes.

3. Written data, views or arguments may be submitted to Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210, no later than 5:00 p.m. on June 7, 2002. Data, views or arguments may also be submitted by facsimile (406)444-1970 or by electronic mail via the Internet to dphhslegal@state.mt.us. The Department also maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. For placement on the mailing list, please write the person at the address above.

Dawn Sliva  
Rule Reviewer

/s/ Gail Gray  
Director, Public Health and  
Human Services

Certified to the Secretary of State May 30, 2002.

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

In the matter of the proposed ) NOTICE OF PUBLIC HEARING  
amendment of ARM 42.2.501 ) ON PROPOSED AMENDMENT  
relating to partial payments )  
for debts collected by the )  
department )

TO: All Concerned Persons

1. On June 24, 2002, at 9:00 a.m., a public hearing will be held in the Fourth Floor Conference Room of the Sam W. Mitchell Building, at Helena, Montana, to consider the amendment of ARM 42.2.501 relating to partial payments for debts collected by the department.

Individuals planning to attend the hearing shall enter the building through the east doors of the Sam W. Mitchell Building, 125 North Roberts, Helena, Montana.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Revenue not later than 5:00 p.m., June 10, 2002, to advise us of the nature of the accommodation that you need. Please contact Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 5805, Helena, Montana 59604-5805; telephone (406) 444-2855; fax (406) 444-3696; or e-mail canderson@state.mt.us.

3. The rule as proposed to be amended provides as follows, stricken matter interlined, new matter underlined:

42.2.501 APPLICATION OF PARTIAL PAYMENTS (1) Partial payments that are received by the department for payment of an administrative fee, tax, penalty, and interest must first be applied to the amount of administrative fee due, until it is satisfied. ~~Any amounts remaining will then be applied to the amount of interest, then to the amount of penalty and then to the tax due.~~

(2) Partial payments for a customer's tax liability shall be applied as directed by the customer as to account type, period, or order to apply.

(3) If customer direction is not provided, the payment will be applied in full to the oldest period first in the following order:

- (a) first to tax (dollar for dollar until satisfied);
- (b) then to penalty (if due); and
- (c) then to interest (if due).

~~(2)~~(4) Payments not directed by the customer will be applied prorata among the accounts being collected by the department. For example, if 30% of the total debt is unemployment insurance, 40% is withholding, and 30% is income tax, and a partial payment is

received, application of the payment will be applied prorata according to the schedule shown in (1) above until all debt is satisfied.

AUTH: Sec. 2-4-201, 15-1-201, 15-30-305, 15-31-501, 15-35-122, and 15-53-155, MCA

IMP: Sec. 2-4-201, 15-1-206, 15-1-216, 15-30-304, 15-30-321, 15-30-323, 15-31-111, 15-31-502, 15-31-506, 15-31-510, 15-31-522, 15-31-543, 15-31-545, 15-35-105, 15-35-121, 15-37-108, 15-38-107, 15-38-110, 15-53-145, and 15-59-106, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.2.501 to change the order in which payments are applied from penalty, interest, and then tax in order to align with the application used by the Internal Revenue Service and provide for consistent application of payments across all tax types.

4. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to:

Cleo Anderson  
Department of Revenue  
Director's Office  
P.O. Box 5805  
Helena, Montana 59604-5805

and must be received no later than June 28, 2002.

5. Cleo Anderson, Department of Revenue, Director's Office, has been designated to preside over and conduct the hearing.

6. An electronic copy of this Notice of Public Hearing is available through the Department's site on the World Wide Web at [http://www.state.mt.us/revenue/rules\\_home\\_page.htm](http://www.state.mt.us/revenue/rules_home_page.htm), under the Notice of Rulemaking section. The Department strives to make the electronic copy of this Notice of Public Hearing conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the Department strives to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems.

7. The Department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding particular subject matter or matters. Such written request may be mailed

or delivered to the person in 4 above or faxed to the office at (406) 444-3696, or may be made by completing a request form at any rules hearing held by the Department.

8. The bill sponsor notice requirements of 2-4-302, MCA, do not apply.

/s/ Cleo Anderson  
CLEO ANDERSON  
Rule Reviewer

/s/ Kurt G. Alme  
KURT G. ALME  
Director of Revenue

Certified to Secretary of State May 20, 2002

BEFORE THE DEPARTMENT OF AGRICULTURE  
OF THE STATE OF MONTANA

In the matter of the amendment) NOTICE OF AMENDMENT  
of ARM 4.13.1001A relating to )  
state grain laboratory fees )

TO: All Concerned Persons

1. On April 11, 2002, the Department of Agriculture published a notice of the proposed amendment of ARM 4.13.1001A concerning state grain laboratory fees at page 1008 of the 2002 Montana Administrative Register, Issue Number 7.

2. The agency has amended ARM 4.13.1001A exactly as proposed.

3. No comments or testimony were received.

/s/ W. Ralph Peck

Ralph Peck  
Director

/s/ Tim Meloy

Tim Meloy, Attorney  
Rule Reviewer

Certified to the Secretary of State May 20, 2002.

BEFORE THE BOARD OF PUBLIC EDUCATION  
OF THE STATE OF MONTANA

In the matter of the adoption ) NOTICE OF ADOPTION  
of new rule I relating to )  
substantial and material non- )  
performance of a contract of )  
employment )

TO: All Concerned Persons

1. On April 11, 2002, the Board of Public Education published notice of the proposed adoption of a rule concerning substantial and material non-performance of a contract of employment at page 1016 of the 2002 Montana Administrative Register, Issue Number 7.

2. After consideration of the comments received, the Board of Public Education has adopted NEW RULE I, ARM 10.57.801 SUBSTANTIAL AND MATERIAL NON-PERFORMANCE with the following changes, stricken matter interlined, new matter underlined:

NEW RULE I [10.57.801] SUBSTANTIAL AND MATERIAL NON-PERFORMANCE (1) and (2) remain as proposed.

(a) substantial hardship to the certified staff member's family due to ~~loss of~~ a change in employment by of the spouse of the certified staff member that necessitates a move ~~for financial reasons;~~

(b) through (5) remain as proposed.

COMMENT 1: A commenter stated that he generally supported the new rule, but felt that amendments should be made to (2)(a) to clarify that change in employment does not have to be precipitated by financial hardship.

COMMENT 2: A commenter stated that he supported the new rule in its entirety including the change shown above.

RESPONSE: The Board considered the comments and voted to adopt the rule as shown above.

/s/ Dr. Kirk Miller  
Dr. Kirk Miller, Chair  
Board of Public Education

/s/ Steve Meloy  
Steve Meloy, Executive Secretary  
Rule Reviewer  
Board of Public Education

Certified to the Secretary of State May 20, 2002.

BEFORE THE BOARD OF OPTOMETRY  
DEPARTMENT OF LABOR AND INDUSTRY  
STATE OF MONTANA

In the matter of the ) NOTICE OF AMENDMENT  
amendment of ARM 8.36.601, )  
pertaining to continuing )  
education )

TO: All Concerned Persons

1. On March 14, 2002, the Board of Optometry published a notice of proposed amendment of the above-stated rule at page 632, 2002 Montana Administrative Register, Issue Number 5.

2. The Board met on May 1, 2002. The Board has amended ARM 8.36.601 exactly as proposed.

3. No comments or testimony were received.

BOARD OF OPTOMETRY  
LARRY OBIE, PRESIDENT

By: /s/ WENDY J. KEATING  
Wendy J. Keating, Commissioner  
DEPARTMENT OF LABOR & INDUSTRY

By: /s/ KEVIN BRAUN  
Kevin Braun,  
Rule Reviewer

Certified to the Secretary of State, May 20, 2002.



BEFORE THE BOARD OF OPTOMETRY  
DEPARTMENT OF LABOR AND INDUSTRY  
STATE OF MONTANA

In the matter of the amendment ) NOTICE OF AMENDMENT  
of ARM 8.36.801, pertaining )  
to therapeutic pharmaceutical )  
agents )

TO: All Concerned Persons

1. On March 28, 2002, the Board of Optometry published a notice of proposed amendment of the above-stated rule at page 884, 2002 Montana Administrative Register, Issue Number 6.

2. The Board met on May 1, 2002. The Board has amended ARM 8.36.801 exactly as proposed.

3. No comments or testimony were received.

BOARD OF OPTOMETRY  
LARRY OBIE, PRESIDENT

By: /s/ WENDY J. KEATING  
Wendy J. Keating, Commissioner  
DEPARTMENT OF LABOR & INDUSTRY

By: /s/ KEVIN BRAUN  
Kevin Braun,  
Rule Reviewer

Certified to the Secretary of State, May 20, 2002.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY  
OF THE STATE OF MONTANA

In the matter of the amendment ) NOTICE OF AMENDMENT  
of ARM 24.30.102, related to )  
occupational safety and health )  
standards for public sector )  
employment )

TO: All Concerned Persons

1. On March 28, 2002, the Department of Labor and Industry published notice of the proposed amendment of ARM 24.30.102, at page 887 of the 2002 Montana Administrative Register, Issue Number 6.

2. The agency has amended ARM 24.30.102 exactly as proposed.

3. No comments or testimony were received.

/s/ KEVIN BRAUN  
Kevin Braun  
Rule Reviewer

/s/ WENDY J. KEATING  
Wendy J. Keating, Commissioner  
DEPARTMENT OF LABOR & INDUSTRY

Certified to the Secretary of State: May 20, 2002.

BEFORE THE DEPARTMENT OF PUBLIC  
HEALTH AND HUMAN SERVICES OF THE  
STATE OF MONTANA

In the matter of the adoption	)	NOTICE OF ADOPTION AND
of new Rules I through VI and	)	AMENDMENT
the amendment of ARM	)	
37.5.304, 37.5.307, 37.5.331,	)	
37.80.101 through 37.80.103,	)	
37.80.201 and 37.80.202,	)	
37.80.205, 37.80.206,	)	
37.80.301, 37.80.306,	)	
37.80.315, 37.80.316,	)	
37.80.501, 37.80.502 and	)	
37.97.118 pertaining to child	)	
care assistance and hearing	)	
appeal rights	)	

TO: All Interested Persons

1. On March 14, 2002, the Department of Public Health and Human Services published notice of the proposed adoption and amendment of the above-stated rules at page 727 of the 2002 Montana Administrative Register, issue number 5.

2. The Department has adopted the rules I [37.80.104], II [37.80.203], III [37.80.601], IV [37.80.602], V [37.80.603] and VI [37.80.204] and amended ARM 37.5.304, 37.5.307, 37.5.331, 37.80.101, 37.80.102, 37.80.103, 37.80.202, 37.80.205, 37.80.206, 37.80.301, 37.80.306, 37.80.315, 37.80.316, 37.80.501, 37.80.502 and 37.97.118 as proposed.

3. The Department has amended the following rule as proposed with the following changes from the original proposal. Matter to be added is underlined. Matter to be deleted is interlined.

37.80.201 NON-FINANCIAL REQUIREMENTS FOR ELIGIBILITY AND PRIORITY FOR ASSISTANCE (1) In addition to the income requirements of ARM 37.80.202, the following non-financial requirements must be met in order for payments under this chapter to be made:

(a) through (a)(ii)(B) remain as proposed.

(b) the monthly minimum hourly work requirement does not apply to:

(i) remains as proposed.

(ii) households in which the parent is a teen parent, or both parents in a two-parent household are teen parents, attending high school or an equivalency program;

(iii) through (10) remain as proposed.

AUTH: Sec. 40-4-234, 52-2-704 and 53-4-212, MCA

IMP: Sec. 52-2-704, 52-2-713, 52-2-721, 52-2-722, 52-2-723, 52-2-731, 53-2-201, 53-4-211, 53-4-601 and

53-4-611, MCA

4. The Department has thoroughly considered all commentary received. The comments received and the department's response to each follow:

COMMENT #1: One commentor wrote to generally support the At-Home Infant Care Program (AHIC) and to urge the department to amend the policy that will be adopted and incorporated by this rule process at Rule VI [37.80.204]. The policy in question is the clause that states that in order to qualify for the program, "families must have a demonstrated need for child care." The commentor asserted that this policy acts as an access barrier for many families because many families have not had the need for child care prior to enrolling in AHIC.

In addition, the commentor requested that income received as part of the AHIC program be counted as "earned income" versus "unearned income" for the purposes of the food stamp program and subsidized housing. This would enable families to qualify for income disregards, and not reduce a family's other benefits.

RESPONSE: The AHIC program is part of a limited demonstration project. The project is funded for the period of time from November 2001 through June of 2003. There is no guarantee that this program will continue or there will be funds available beyond June 30, 2003. The program was created to achieve three primary goals:

1. to increase the number of infant care slots available;
2. to support working families with infants during the critical first two years of development; and
3. to find out if cost savings to the child care scholarship program can be achieved.

In light of the goals and limitations of the At-Home Infant Care program, the Department believes that assessing the need for child care is necessary to maintain the focus of the program as support for working families. This policy allows the department to maximize the very limited dollars associated with this pilot project. It is the Department's intent to conduct an evaluation of the AHIC program to determine its success and impact in meeting the goals outlined above. The Department is not averse to reassessing this policy once the evaluation is completed and a determination regarding the continuation of this program has been made.

This rule does not affect food stamp or subsidized housing policy or eligibility requirements with regard to how those programs assess a family's income from the AHIC program. This comment has been forwarded to the appropriate administrative entities for their consideration.

COMMENT #2: Commentor wrote to express concern about a change to the policy concerning cooperation with Child Support

Enforcement as cited at ARM 37.80.201(4). One commentor wanted to know why a written legal agreement was no longer acceptable.

RESPONSE: Child Care Scholarship funds are intended to support low-income working families and families receiving TANF cash assistance as they work toward self-sufficiency. The funding for this program is limited by the Child Care Development Fund block grant. In order to maximize the impact of these funds the Department under the advisement of the Montana Early Childhood Advisory Council, has adopted a philosophy that obligates families receiving public child care assistance funds, to also maximize the funds available for the care of their children by seeking and receiving child support.

The change in policy only affects those who have "informal child support arrangements". The new policy acknowledges a family in cooperation with DPHHS Child Support Enforcement Division or a formal support agreement such as a parenting plan put in place by a district court. This change is necessary to simplify eligibility determination, and to clarify for workers and families what is needed for participation in the child care scholarship program.

COMMENT #3: There was a comment from the Quality Committee of the Montana Early Childhood Advisory Council regarding the ratio for group child care home practitioner participation on the Early Childhood Practitioner Registry, if they wanted to participate in the Star-Quality Tiered Reimbursement program referenced at ARM 37.80.205(5)(a).

The policy reads that 75% of the primary care-giving staff in group child care homes must be on the registry at a level 3, in order to qualify as a one-star facility. The MECAC wanted this percentage changed to 50%. The reason is that most group homes employ two primary care givers. The 75% ratio would require all caregivers to be on the registry at a level 3. This created an undue barrier for providers seeking to achieve this level of quality, and is counter productive to the goals of the Star Program.

RESPONSE: The Department concurs and will make the change to the policy manual, which was incorporated by reference.

COMMENT #4: ARM 37.80.201(1)(b)(ii) is unclear. Was it the Department's intent to exclude all persons attending high school or an equivalency program from the work requirement, or just teen parents?

RESPONSE: The Department intended to exclude only teen parents attending high school or an equivalency program from the work requirement. The rule is clarified pursuant to the comment.

Dawn Sliva  
Rule Reviewer

/s/ Gail Gray  
Director, Public Health and  
Human Services

Certified to the Secretary of State May 20, 2002.

BEFORE THE DEPARTMENT OF PUBLIC  
HEALTH AND HUMAN SERVICES OF THE  
STATE OF MONTANA

In the matter of the ) NOTICE OF AMENDMENT  
amendment of ARM 37.50.315 )  
pertaining to the foster care )  
classification model )

TO: All Interested Persons

1. On March 14, 2002, the Department of Public Health and Human Services published notice of the proposed amendment of the above-stated rule at page 774 of the 2002 Montana Administrative Register, issue number 5.

2. The Department has amended the following rule as proposed with the following changes from the original proposal. Matter to be added is underlined. Matter to be deleted is interlined.

37.50.315 FOSTER CARE CLASSIFICATION MODEL (1) through (6) remain as proposed.

AUTH: Sec. 41-3-1103 and 52-1-103 and 52-2-603, MCA  
IMP: Sec. 41-3-1103, 41-3-1122 and 52-1-103 and 52-2-611,  
MCA

3. In the proposal notice, the department deleted 41-3-1103 and 41-3-1122, MCA in the authority and implementation section as they had been renumbered. This was an error. It is this department's policy to leave all cites in the authority and implementation section for historical purposes, therefore the department is leaving the cites in the rule history.

4. The Department has thoroughly considered all commentary received. The comments received and the department's response to each follow:

COMMENT #1: The Administrative Rule should allow contractors "to reduce staffing patterns if the census is 3 or less due to home visits such as during holiday time or during school holidays, on the weekday, or weekend shifts," or "if the census itself is 3 or less and clinically" it is deemed appropriate to reduce staff during the shifts.

RESPONSE: The rule change proposed by the department allows for the reduction of direct care staff during school hours. The department does not agree to the ability to expand the time frames that direct care staff may be reduced.

Comment is inconsistent with the department's intent for the addition of Supervision Level VII to the Model Rate Matrix. The established ratio of direct care staff to youth for the proposed

Supervision Level VII is 2:8, and the services purchased for youth at facilities with this classification will be based on this ratio. The proposal to reduce direct care staff during school hours was based on the expectation that a professional administrative staff would be on-site and available to work as a direct care staff if needed. This proposal is appropriate because of the limited time-frame for the arrangement. In addition, this reduction would not impact the primary delivery of services to the youth, e.g., group activities, outings, teaching baby care techniques, and other services which would be more likely to be provided when the youth would typically be at the facility. Comment would impact the primary delivery of services to the youth.

A contractor who provides Supervision Level VII services would also be responsible for providing services to the infants and children of the youth at the facility. The reduction of direct care staff during school hours generally would not directly impact the level of care and safety of these young children as they are typically in day care. At times when the youth are out of school, the infants and young children may not be in day care. Therefore, the direct care staff have a greater amount of responsibility in caring for both the youth and the young children/infants at a facility when the youth are not in school, including assisting the youth to improve parenting and child care techniques and ensuring the safety of the young children/infants. The department is concerned that the proposed reduction of direct care staff during non-school hours would increase the staff responsibility to the extent that it would potentially compromise the care and safety of this vulnerable group of young children. The department does not wish to purchase a reduced level of services for these children.

Therefore, the department believes that the care of the youth, infants, and young children placed with a contractor would be compromised if the reduction in staff were allowed to occur on a more broad basis than strictly during school hours.

Dawn Sliva  
Rule Reviewer

/s/ Gail Gray  
Director, Public Health and  
Human Services

Certified to the Secretary of State May 20, 2002.



BEFORE THE BOARD OF REVIEW  
DEPARTMENT OF REVENUE  
STATE OF MONTANA

In the matter of the adoption ) NOTICE OF ADOPTION  
of New Rule I (42.8.101), II )  
(42.8.102), III (42.8.103), )  
IV (42.8.104), and V (42.8.105))  
relating to the one-stop )  
licensing program administered )  
by the department of revenue on) )  
behalf of the board of review )

TO: All Concerned Persons

1. On April 11, 2002, the board published notice of proposed adoption of the above-stated rules relating to the one-stop licensing program administered by the department of revenue on behalf of the board of review at page 1056 of the 2002 Montana Administrative Register, issue no. 7.

2. A public hearing was held on May 1, 2002, to consider the proposed adoption. No one appeared to testify and no written comments were received.

3. The board has adopted the rules as proposed.

4. An electronic copy of this Adoption Notice is available through the Department of Revenue's site on the World Wide Web at [http://www.state.mt.us/revenue/rules\\_home\\_page.htm](http://www.state.mt.us/revenue/rules_home_page.htm), under the Notice of Rulemaking section. The Department strives to make the electronic copy of this Adoption Notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the Department strives to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems.

/s/ Cleo Anderson  
CLEO ANDERSON  
Rule Reviewer

/s/ Kurt G. Alme  
KURT G. ALME  
Director of Revenue

Certified to Secretary of State May 20, 2002

VOLUME NO. 49

OPINION NO. 18

CITIES AND TOWNS - Municipal court judge authorized to grant time-pay bail bonds;  
CONSTITUTIONS - Municipal court judge authorized to grant time-pay bail bonds;  
COURTS, CITY - Municipal court judge authorized to grant time-pay bail bonds;  
JUDGES - Municipal court judge authorized to grant time-pay bail bonds;  
PRISONERS - Municipal court judge authorized to grant time-pay bail bonds;  
STATUTES - Municipal court judge authorized by law to grant time-pay bail bonds;  
STATUTORY CONSTRUCTION - Construing plain meaning of words of statute;  
SURETY - Municipal court judge authorized to grant time-pay bail bonds;  
MONTANA CODE ANNOTATED - Sections 46-9-102(1), -106, -108, -111, -301, -301(4), (6), -302, -401, -401(1)(a), (2);  
MONTANA CONSTITUTION - Article II, Section 21;  
OPINIONS OF THE ATTORNEY GENERAL - 41 Op. Att'y Gen. No. 59 (1986).

HELD: The Montana Constitution and Montana law authorize a municipal court judge to release a defendant on a time-pay bail bond, defined as a bond in an amount set by the judge to be paid in installments.

May 16, 2002

Mr. Paul J. Luwe  
Bozeman City Attorney  
P.O. Box 1230  
Bozeman, MT 59771-1230

Dear Mr. Luwe:

You have requested my opinion concerning the following issue:

Whether the Montana Constitution and Montana law authorize a municipal court judge to release a defendant on a time-pay bail bond, defined as a bond in an amount set by the judge to be paid in installments?

As I understand the time-pay bail bond system used by the municipal court in Bozeman, the court sets the amount of the bail and allows the defendant to make payments in monthly or weekly installments. The court sets the frequency and amount of the installment payments to correspond with the court's requirement that the defendant pay the full bail amount before the date of the defendant's trial.

Montana Administrative Register

10-5/30/02

The Montana Constitution provides that all persons "shall be bailable for sufficient sureties," except for those persons who face charges where death is a possible punishment. Art. II, § 21. See also Mont. Code Ann. § 46-9-102(1) (same). The Bozeman municipal court's system of granting time-pay bail bonds to criminal defendants promotes the constitutional policy of providing bail, except in capital cases. State v. Rodriguez, 192 Mont. 411, 628 P.2d 280 (1981) (announcing policy of closely scrutinizing a cash bail requirement).

Thus, except in capital cases, the court must release a defendant upon reasonable conditions that ensure the appearance of the defendant and protect the safety of the community and any person. Mont. Code Ann. § 46-9-106. These same themes of ensuring the appearance of the defendant and protecting the safety of the community appear throughout chapter 9 of Title 46. For example, the court may impose any reasonable conditions that will ensure the defendant's appearance or ensure the safety of the community. Id., § 46-9-108. In fact, these conditions may include release of the defendant upon the defendant's personal recognizance "subject to conditions as the court may reasonably prescribe to ensure his appearance when required." Id., § 46-9-111.

If the court finds some form of bail necessary, however, Mont. Code Ann. § 46-9-301, provides more specific factors for a court to consider. These factors include, among other matters not related to the safety of the victim and the community, that the amount shall be "not oppressive," and that the amount shall be "considerate of the financial ability of the accused." Id., §§ 46-9-301(4) and (6). The time-pay bail bonds system comports with these requirements.

The sole question appears to be, therefore, whether such a time-pay bail bonds system conflicts with the forms of bail specifically authorized under Mont. Code Ann. § 46-9-401. Mont. Code Ann. § 46-9-401 authorizes a party to furnish bail in the form of (1) cash, (2) real estate, (3) a written undertaking, and (4) a commercial surety bond. Siroky v. Richland County, 271 Mont. 67, 894 P.2d 309 (1995). Regardless of the form of bail, the amount of bond must ensure the defendant's appearance at all times through the court proceedings. Id., § 46-9-401(2).

The time-pay bail bond system would have to fall within "cash," as used in Mont. Code Ann. § 46-9-401(1)(a). Specifically, this subsection states, in pertinent part, that bail may be furnished "by a deposit with the court of an amount equal to the required bail of cash . . . ." Id. This same subsection affords the court discretion to accept some forms of personal property as bond in lieu of cash. Id. The time-pay bail bond system requires the defendant to pay "cash" for the bond, albeit in installments paid over a period of time.

Nowhere does the statute state, however, the precise amount of cash that must be posted as bond for a particular offense or the time period within which it must be paid. Indeed, the court has the authority, pursuant to Mont. Code Ann. § 46-9-302, to set a bail schedule for offenses over which it has original jurisdiction. 41 Mont. Op. Atty. Gen. No. 59, April 17, 1986. The fact that the court has discretion to set appropriate bail amounts and the discretion to accept personal property in lieu of cash, leads me to believe that the court has discretion to set the timing on the payment of any cash bond. This discretion includes the use of a time-pay bail bond system of the type used by the municipal court in Bozeman.

In sum, the time-pay bail bond system used by the municipal court in Bozeman promotes the constitutional and statutory policies of providing bail, except in capital cases. The time-pay bail bond system further complies with the court's obligation under Mont. Code Ann. § 46-9-106, to release a defendant upon reasonable conditions that would ensure the appearance of the defendant and protect the safety of the community and any person. The time-pay bail bond system stands consistent with the law's mandate that the amount of bail shall be "not oppressive," and that the amount shall be "considerate of the financial ability of the accused." Mont. Code Ann. §§ 46-9-301(4) and (6). And finally, the time-pay bail bond system falls within the discretion allotted to the court to accept cash or some other personal property in lieu of cash.

THEREFORE, IT IS MY OPINION:

The Montana Constitution and Montana law authorize a municipal court judge to release a defendant on a time-pay bail bond, defined as a bond in an amount set by the judge to be paid in installments.

Very truly yours,

/s/ Mike McGrath

MIKE McGRATH  
Attorney General

mm/bmm/jym

NOTICE OF FUNCTION OF ADMINISTRATIVE RULE REVIEW COMMITTEE

Interim Committees and the Environmental Quality Council

Administrative rule review is a function of interim committees and the Environmental Quality Council (EQC). These interim committees and the EQC have administrative rule review, program evaluation, and monitoring functions for the following executive branch agencies and the entities attached to agencies for administrative purposes.

Economic Affairs Interim Committee:

- ▶ Department of Agriculture;
- ▶ Department of Commerce;
- ▶ Department of Labor and Industry;
- ▶ Department of Livestock;
- ▶ Department of Public Service Regulation; and
- ▶ Office of the State Auditor and Insurance Commissioner.

Education and Local Government Interim Committee:

- ▶ State Board of Education;
- ▶ Board of Public Education;
- ▶ Board of Regents of Higher Education; and
- ▶ Office of Public Instruction.

Children, Families, Health, and Human Services Interim Committee:

- ▶ Department of Public Health and Human Services.

Law and Justice Interim Committee:

- ▶ Department of Corrections; and
- ▶ Department of Justice.

Revenue and Transportation Interim Committee:

- ▶ Department of Revenue; and
- ▶ Department of Transportation.

State Administration, and Veterans' Affairs Interim Committee:

- ▶ Department of Administration;
- ▶ Department of Military Affairs; and
- ▶ Office of the Secretary of State.

Environmental Quality Council:

- ▶ Department of Environmental Quality;
- ▶ Department of Fish, Wildlife, and Parks; and
- ▶ Department of Natural Resources and Conservation.

These interim committees and the EQC have the authority to make recommendations to an agency regarding the adoption, amendment, or repeal of a rule or to request that the agency prepare a statement of the estimated economic impact of a proposal. They also may poll the members of the Legislature to determine if a proposed rule is consistent with the intent of the Legislature or, during a legislative session, introduce a bill repealing a rule, or directing an agency to adopt or amend a rule, or a Joint Resolution recommending that an agency adopt, amend, or repeal a rule.

The interim committees and the EQC welcome comments and invite members of the public to appear before them or to send written statements in order to bring to their attention any difficulties with the existing or proposed rules. The mailing address is PO Box 201706, Helena, MT 59620-1706.

HOW TO USE THE ADMINISTRATIVE RULES OF MONTANA  
AND THE MONTANA ADMINISTRATIVE REGISTER

Definitions: Administrative Rules of Montana (ARM) is a looseleaf compilation by department of all rules of state departments and attached boards presently in effect, except rules adopted up to three months previously.

Montana Administrative Register (MAR) is a soft back, bound publication, issued twice-monthly, containing notices of rules proposed by agencies, notices of rules adopted by agencies, and interpretations of statutes and rules by the attorney general (Attorney General's Opinions) and agencies (Declaratory Rulings) issued since publication of the preceding register.

Use of the Administrative Rules of Montana (ARM):

- |                                     |   |
|-------------------------------------|---|
| Known<br>Subject                    | 1. Consult ARM topical index.<br>Update the rule by checking the accumulative table and the table of contents in the last Montana Administrative Register issued. |
| Statute<br>Number and<br>Department | 2. Go to cross reference table at end of each title which lists MCA section numbers and corresponding ARM rule numbers.   |

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through December 31, 2001. This table includes those rules adopted during the period January 1, 2002 through March 31, 2002 and any proposed rule action that was pending during the past 6-month period. (A notice of adoption must be published within 6 months of the published notice of the proposed rule.) This table does not, however, include the contents of this issue of the Montana Administrative Register (MAR).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through December 31, 2001, this table and the table of contents of this issue of the MAR.

This table indicates the department name, title number, rule numbers in ascending order, catchphrase or the subject matter of the rule and the page number at which the action is published in the 2001 and 2002 Montana Administrative Registers.

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## BOARD APPOINTEES AND VACANCIES

Section 2-15-108, MCA, passed by the 1991 Legislature, directed that all appointing authorities of all appointive boards, commissions, committees and councils of state government take positive action to attain gender balance and proportional representation of minority residents to the greatest extent possible.

One directive of 2-15-108, MCA, is that the Secretary of State publish monthly in the *Montana Administrative Register* a list of appointees and upcoming or current vacancies on those boards and councils.

In this issue, appointments effective in April 2002, appear. Vacancies scheduled to appear from June 1, 2002, through August 31, 2002, are listed, as are current vacancies due to resignations or other reasons. Individuals interested in serving on a board should refer to the bill that created the board for details about the number of members to be appointed and necessary qualifications.

Each month, the previous month's appointees are printed, and current and upcoming vacancies for the next three months are published.

### IMPORTANT

Membership on boards and commissions changes constantly. The following lists are current as of May 6, 2002.

For the most up-to-date information of the status of membership, or for more detailed information on the qualifications and requirements to serve on a board, contact the appointing authority.

BOARD AND COUNCIL APPOINTEES FROM APRIL 2002

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Board of Athletics (Labor and Industry) Mr. John Kinna Fairfield Qualifications (if required): public member	Governor	not listed	4/8/2002 4/25/2005
Board of Hail Insurance (Agriculture) Ms. Lillian Ostendorf Powderville Qualifications (if required): public member	Governor	McCabe	4/23/2002 4/18/2005
Board of Investments (Commerce) Ms. Karen Fagg Billings Qualifications (if required): businessperson	Governor	Robinson	4/18/2002 1/1/2003
Commission on Community Service (Labor and Industry) Ms. Wendy Keating Helena Qualifications (if required): representative of the Department of Labor and Industry	Governor	Simoneau	4/5/2002 7/1/2004
Flathead Reservation Fish and Wildlife Board (Fish, Wildlife, and Parks) Mr. Sid Rundell Big Arm Qualifications (if required): public member	Governor	Lucas	4/11/2002 0/0/0
Great Falls College of Technology-MSU (University System) Mr. Jack King Great Falls Qualifications (if required): public member	Governor	reappointed	4/30/2002 4/15/2005

BOARD AND COUNCIL APPOINTEES FROM APRIL 2002

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Helena College of Technology-UM (University System)			
Mr. Eric Schindler	Governor	Robson	4/30/2002
East Helena			4/15/2005
Qualifications (if required): public member			
MSU-Billings (University System)			
Mr. Jeffrey J. Oven	Governor	Sites	4/30/2002
Billings			4/15/2005
Qualifications (if required): public member			
MSU-Northern (University System)			
Mr. David C. Henry	Governor	Rice	4/30/2002
Havre			4/15/2005
Qualifications (if required): public member			
Montana State University (University System)			
Mr. Lee Oldenburger	Governor	reappointed	4/30/2002
Manhattan			4/15/2005
Qualifications (if required): public member			
Montana Tech of the University of Montana (University System)			
Mr. Dan Berube	Governor	reappointed	4/30/2002
Anaconda			4/15/2005
Qualifications (if required): public member			
Organ and Tissue Donor Awareness Task Force (Public Health and Human Services)			
Mr. John Pipe	Governor	Meyer	4/19/2002
Wolf Point			3/25/2004
Qualifications (if required): organ donor recipient and a Native American			

BOARD AND COUNCIL APPOINTEES FROM APRIL 2002

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Organ and Tissue Donor Awareness Task Force (Public Health and Human Services) cont.			
Mr. Tim Reardon	Governor	not listed	4/19/2002
Helena			3/25/2004
Qualifications (if required): organ donor recipient			
Ms. Rose Wolter	Governor	not listed	4/19/2002
Billings			3/25/2004
Qualifications (if required): family donor and businessperson			
Public Employees' Retirement Board (Administration)			
Ms. Carole Carey	Governor	not listed	4/24/2002
Ekalaka			4/1/2007
Qualifications (if required): public employee			
Risk Management Advisory Council (Administration)			
Mr. Joe DeFilippis	Governor	Hess	4/8/2002
Helena			2/21/2003
Qualifications (if required): representative of the Secretary of State's Office			
Mr. Larry Delaney	Governor	Bailey	4/8/2002
Helena			2/21/2003
Qualifications (if required): representative of the office of Higher Education			
Ms. Beth McLaughlin	Governor	Smith	4/8/2002
Helena			2/21/2003
Qualifications (if required): representative of the Judiciary			
Ms. Donna Wrubel	Governor	Revious	4/8/2002
Helena			2/21/2003
Qualifications (if required): representative of the Department of Military Affairs			



BOARD AND COUNCIL APPOINTEES FROM APRIL 2002

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
University of Montana (University System) Colonel Sam A. Roberts Missoula Qualifications (if required): public member	Governor	reappointed	4/30/2002 4/15/2005
University of Montana-Western (University System) Ms. Mary Ellen Wilkerson Dillon Qualifications (if required): public member	Governor	reappointed	4/30/2002 4/15/2005
Upper Clark Fork River Remediation and Restoration Education Advisory Council (Environmental Quality) Mr. Haley Beaudry Butte Qualifications (if required): engineer	Governor	not listed	4/1/2002 4/1/2004
Mr. Matt Clifford Missoula Qualifications (if required): representative of a non-profit organization	Governor	not listed	4/1/2002 4/1/2004
Mr. Larry Curran Butte Qualifications (if required): member of the public active in conservation or recreation	Governor	not listed	4/1/2002 4/1/2004
Mr. Jim Flynn Anaconda Qualifications (if required): businessman	Governor	not listed	4/1/2002 4/1/2004
Ms. Carol Fox Helena Qualifications (if required): chief of the Natural Resource Damage Program	Governor	not listed	4/1/2002 4/1/2004

BOARD AND COUNCIL APPOINTEES FROM APRIL 2002

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Upper Clark Fork River Remediation and Restoration Education Advisory Council (Environmental Quality) cont.			
Mr. M. Jeff Hagener Helena	Governor	not listed	4/1/2002 4/1/2004
Qualifications (if required): director of the Department of Fish, Wildlife, and Parks and a non-voting member			
Mr. Jerry Harrington Butte	Governor	not listed	4/1/2002 4/1/2004
Qualifications (if required): natural resource scientist			
Mr. John Hollenback Gold Creek	Governor	not listed	4/1/2002 4/1/2004
Qualifications (if required): conservation district representative			
Mayor Judy H. Jacobson Butte	Governor	not listed	4/1/2002 4/1/2004
Qualifications (if required): representative of local government			
Ms. Sally Johnson Missoula	Governor	not listed	4/1/2002 4/1/2004
Qualifications (if required): representative of the public			
Ms. Jan Sensibaugh Helena	Governor	not listed	4/1/2002 4/1/2004
Qualifications (if required): director of the Department of Environmental Quality and a non-voting member			
Mr. Gene Vuckovich Anaconda	Governor	not listed	4/1/2002 4/1/2004
Qualifications (if required): local development specialist			

BOARD AND COUNCIL APPOINTEES FROM APRIL 2002

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Upper Clark Fork River Remediation and Restoration Education Advisory Council (Environmental Quality) cont.			
Mr. Jules Waber Deer Lodge	Governor	not listed	4/1/2002 4/1/2004
Qualifications (if required): representative of local government			
Youth Justice Council (Justice)			
Mr. Joe Johnson Butte	Governor	Crane	4/29/2002 6/15/2003
Qualifications (if required): youth representative			
Mr. Don Munro Browning	Governor	Cooper	4/29/2002 6/15/2003
Qualifications (if required): youth representative			
Mr. Tony Wagner Browning	Governor	Sullivan	4/29/2002 6/15/2003
Qualifications (if required): representative of a nonprofit organization concerned with prevention			

VACANCIES ON BOARDS AND COUNCILS -- JUNE 1, 2002 through AUGUST 31, 2002

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Aging Advisory Council (Public Health and Human Services) Ms. Mary Alice Rehbein, Lambert Qualifications (if required): public member	Governor	7/18/2002
Ms. Pauline Nikolaisen, Kalispell Qualifications (if required): public member	Governor	7/18/2002
Ms. Dorothea C. Neath, Helena Qualifications (if required): public member	Governor	7/18/2002
Mr. Wilbur Swenson, Havre Qualifications (if required): public member	Governor	7/18/2002
Agriculture Development Council (Agriculture) Mr. Everett Snortland, Conrad Qualifications (if required): actively engaged in agriculture	Governor	7/1/2002
Mr. Robert Hanson, White Sulphur Springs Qualifications (if required): actively engaged in agriculture	Governor	7/1/2002
Ms. Susan Lake, Ronan Qualifications (if required): actively engaged in agriculture	Governor	7/1/2002
Board of Barbers (Commerce) Ms. Delores Lund, Reserve Qualifications (if required): public member	Governor	7/1/2002
Mr. Edward Dutton, Kalispell Qualifications (if required): licensed barber	Governor	7/1/2002
Board of Funeral Service (Commerce) Ms. Jean Ruppert, Butte Qualifications (if required): public member	Governor	7/1/2002

VACANCIES ON BOARDS AND COUNCILS -- JUNE 1, 2002 through AUGUST 31, 2002

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Board of Funeral Service (Commerce) cont. Mr. Niles Nelson, Libby Qualifications (if required): licensed mortician	Governor	7/1/2002
Mr. Jered Scherer, Billings Qualifications (if required): representative of a cemetery company	Governor	7/1/2002
Board of Hearing Aid Dispensers (Commerce) Mr. John Delano, Helena Qualifications (if required): public member who uses a hearing aid	Governor	7/1/2002
Ms. Stacia Moore, Kalispell Qualifications (if required): national certified hearing aid dispenser with a masters degree	Governor	7/1/2002
Board of Landscape Architects (Commerce) Mr. Robert Broughton, Hamilton Qualifications (if required): licensed landscape architect	Governor	7/1/2002
Board of Nursing (Commerce) Reverend Steve Rice, Miles City Qualifications (if required): public member	Governor	7/1/2002
Ms. Rita Harding, Billings Qualifications (if required): registered professional nurse	Governor	7/1/2002
Ms. Jeanine Thomas, Ronan Qualifications (if required): licensed practical nurse	Governor	7/1/2002
Ms. Lorena Erickson, Corvallis Qualifications (if required): public member	Governor	7/1/2002

VACANCIES ON BOARDS AND COUNCILS -- JUNE 1, 2002 through AUGUST 31, 2002

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Board of Pharmacy (Commerce) Ms. Sherry Lersbak, Troy Qualifications (if required): public member	Governor	7/1/2002
Board of Physical Therapy Examiners (Commerce) Mr. Jeff Swift, Great Falls Qualifications (if required): licensed physical therapist	Governor	7/1/2002
Board of Private Security Patrol Officers and Investigators (Commerce) Ms. Francine Britton, Billings Qualifications (if required): representative of the Peace Officers' Standards and Training Advisory Council	Governor	8/1/2002
Mr. Donald R. Houghton, Bozeman Qualifications (if required): representative of the Peace Officers' Standards and Training Advisory Council	Governor	8/1/2002
Board of Private Security Patrol Officers and Investigators (Labor and Industry) Dr. Raymond C. Murray, Missoula Qualifications (if required): representing the Peace Officers Standards and Training Advisory Council	Governor	8/1/2002
Board of Professional Engineers and Land Surveyors (Commerce) Ms. Janet Markle, Glasgow Qualifications (if required): public member	Governor	7/1/2002
Mr. Richard Ainsworth, Missoula Qualifications (if required): professional land surveyor	Governor	7/1/2002
Mr. Steve Wright, Columbia Falls Qualifications (if required): professional engineer	Governor	7/1/2002

VACANCIES ON BOARDS AND COUNCILS -- JUNE 1, 2002 through AUGUST 31, 2002

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Board of Public Accountants (Commerce) Ms. Irma Paul, Helena Qualifications (if required): public member	Governor	7/1/2002
Board of Radiologic Technologists (Commerce) Ms. Debbie Sanford, Lewistown Qualifications (if required): permit holder	Governor	7/1/2002
Ms. Cynthia L. Smith-Finch, Billings Qualifications (if required): radiologic technologist	Governor	7/1/2002
Mr. Alan Sevier, Glendive Qualifications (if required): public member	Governor	7/1/2002
Dr. Dennis Palmer, Helena Qualifications (if required): radiologist	Governor	7/1/2002
Board of Research and Commercialization Technology (Commerce) Mr. Leonard J. Smith, Jr., Poplar Qualifications (if required): Native American	Governor	7/1/2002
Board of Sanitarians (Commerce) Mr. John Shea, Missoula Qualifications (if required): public member	Governor	7/1/2002
Board of Veterans' Affairs (Military Affairs) Mr. George G. Hageman, Jordan Qualifications (if required): veteran	Governor	8/1/2002
Burial Preservation Board (Governor) Mr. Mickey Nelson, Helena Qualifications (if required): representative of the Montana Coroner's Association	Governor	8/22/2002

VACANCIES ON BOARDS AND COUNCILS -- JUNE 1, 2002 through AUGUST 31, 2002

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Burial Preservation Board (Governor) cont. Mr. Duncan Standing Rock, Sr., Box Elder Qualifications (if required): representative of the Chippewa-Cree Tribe	Governor	8/22/2002
Mrs. Germaine White, St. Ignatius Qualifications (if required): representative of the Little Shell Tribe	Governor	8/22/2002
Mr. George Reed, Sr., Crow Agency Qualifications (if required): representative of the Crow Tribe	Governor	8/22/2002
Ms. Sherri Deaver, Billings Qualifications (if required): representative of the Archeological Society	Governor	8/22/2002
Mr. Ben Speak Thunder, Harlem Qualifications (if required): representative of the Fort Belknap Tribe	Governor	8/22/2002
Commission on Community Service (Governor) Ms. Wanda Raining Bird, Harlem Qualifications (if required): representing tribal government	Governor	7/1/2002
Community Services Advisory Council (Governor) Ms. Sherry Stevens Wulf, Kalispell Qualifications (if required): representative of non-profit organizations	Governor	7/1/2002
Mr. Bob Maffit, Helena Qualifications (if required): representative of the disabled community	Governor	7/1/2002
Ms. Bea Ann Malichar, Billings Qualifications (if required): representative of aging human services	Governor	7/1/2002
Mr. Jeffrey Shapiro, Great Falls Qualifications (if required): representative of the private sector	Governor	7/1/2002



VACANCIES ON BOARDS AND COUNCILS -- JUNE 1, 2002 through AUGUST 31, 2002

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Community Services Advisory Council (Governor) cont. Mr. John Allen, Helena Qualifications (if required): representative of the Corporation for National Service	Governor	7/1/2002
Ms. Nan LeFebvre, Helena Qualifications (if required): representative of the director of Department of Public Health and Human Services	Governor	7/1/2002
District Court Council (Supreme Court) Judge Diana G. Barz, Billings Qualifications (if required): none specified	elected	6/30/2002
Judge John Warner, Havre Qualifications (if required): none specified	elected	6/30/2002
Mr. Mike Hutchin, Polson Qualifications (if required): nonvoting member	Supreme Court	6/30/2002
Mr. Tim Smith Qualifications (if required): nonvoting member	Supreme Court	6/30/2002
Eastern Montana State Veterans Cemetery Advisory Council (Military Affairs) Mr. Tony Harbaugh, Miles City Qualifications (if required): Custer County Sheriff/Coroner	Director	6/1/2002
Mr. James F. Jacobsen, Helena Qualifications (if required): Montana Veterans Affairs Division	Director	6/1/2002
Mr. Henry "Bill" Hopkins, Ismay Qualifications (if required): Disabled American Veterans	Director	6/1/2002
Ms. Betty Hopkins, Ismay Qualifications (if required): Disabled American Veterans Auxiliary	Director	6/1/2002

VACANCIES ON BOARDS AND COUNCILS -- JUNE 1, 2002 through AUGUST 31, 2002

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Eastern Montana State Veterans Cemetery Advisory Council Jess Erickson, Miles City Qualifications (if required): Veterans of Foreign Wars	(Military Affairs) cont. Director	6/1/2002
Mr. Bob Beals, Forsyth Qualifications (if required): American Legion	Director	6/1/2002
Ms. Linda Dolatta, Terry Qualifications (if required): American Legion Auxiliary	Director	6/1/2002
Mr. Bill Dolatta, Terry Qualifications (if required): Vietnam Veterans of America	Director	6/1/2002
Mr. Jim Bertrand, Miles City Qualifications (if required): Military Order of the Cooties	Director	6/1/2002
Mr. Stanley Watson, Forsyth Qualifications (if required): Marine Corp League	Director	6/1/2002
Mr. Victor Leikam, Billings Qualifications (if required): 40 & 8	Director	6/1/2002
Mr. Frank Stoltz, Miles City Qualifications (if required): Prisoners of War	Director	6/1/2002
Mr. Ralph Dukart, Miles City Qualifications (if required): Department of Military Affairs	Director	6/1/2002
Mr. Joe Stevenson, Miles City Qualifications (if required): Custer County commissioner	Director	6/1/2002
Ms. Edith Pawlowski, Circle Qualifications (if required): Veterans of Foreign Wars Auxiliary	Director	6/1/2002

VACANCIES ON BOARDS AND COUNCILS -- JUNE 1, 2002 through AUGUST 31, 2002

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Eastern Montana State Veterans Cemetery Advisory Council (Military Affairs) cont. Mr. Wayne Kleppelid, Circle Qualifications (if required): Military Order of the Purple Heart	Director	6/1/2002
Electrical Board (Commerce) Ms. Louise Glimm, Conrad Qualifications (if required): public member	Governor	7/1/2002
Family Education Savings Program Oversight Committee (Education) Mr. Gerry Meyer, Great Falls Qualifications (if required): public member	Governor	7/1/2002
Independent Living Council (Public Health and Human Services) Mr. Robert D. Liston, Missoula Qualifications (if required): representing advocates and consumers	Director	8/7/2002
Ms. Carol LaRocque, Great Falls Qualifications (if required): representative from state agencies who provide service to the disabled	Director	8/7/2002
Mental Disabilities Board of Visitors (Governor) Ms. Joan-Nell Macfadden, Great Falls Qualifications (if required): experience dealing with treatment and welfare of children with emotional disturbance	Governor	7/1/2002
Mr. Graydon Davies Moll, Polson Qualifications (if required): having experience with developmentally disabled adults	Governor	7/1/2002
Mr. Steve Cahill, Clancy Qualifications (if required): experience with the treatment and welfare of adults with mental illnesses	Governor	7/1/2002

VACANCIES ON BOARDS AND COUNCILS -- JUNE 1, 2002 through AUGUST 31, 2002

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Montana Agricultural Heritage Commission (Agriculture) Mr. Bob Dompier, Great Falls Qualifications (if required): representative of a tourism industry organization	Governor	6/30/2002
Ms. Cece Reiner, Bozeman Qualifications (if required): representative of real estate or building industry organization	Governor	6/30/2002
Montana Historical Society Board of Trustees (Historical Society) Mr. Steve Browning, Helena Qualifications (if required): public member	Governor	7/1/2002
Ms. Mary Murphy, Bozeman Qualifications (if required): historian	Governor	7/1/2002
Montana Mint Committee (Agriculture) Mr. John Ficken, Kalispell Qualifications (if required): mint grower	Governor	7/1/2002
Mr. Clyde Fisher, Columbia Falls Qualifications (if required): representative of the mint industry council	Governor	7/2/2002
Montana Special Education Advisory Panel (Office of Public Instruction) Ms. Cecilia C. Cowie, Helena Qualifications (if required): state agency	Superintendent	6/30/2002
Mr. Hugh Smith, Great Falls Qualifications (if required): private school representative	Superintendent	6/30/2002
Ms. Gwen Beyer, Missoula Qualifications (if required): Part C/IDEA representative	Superintendent	6/30/2002

VACANCIES ON BOARDS AND COUNCILS -- JUNE 1, 2002 through AUGUST 31, 2002

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Montana Special Education Advisory Panel (Office of Public Instruction) cont. Rep. Holly Raser, Missoula Qualifications (if required): legislator	Superintendent	6/30/2002
Ms. Patrice MacDonald, Wolf Point Qualifications (if required): regular classroom teacher	Superintendent	6/30/2002
Ms. Kathleen Mudd, Bridger Qualifications (if required): parent of a child with disabilities	Superintendent	6/30/2002
Ms. LaDonna Fowler, Missoula Qualifications (if required): higher education	Superintendent	6/30/2002
Ms. Sarah Eyer, Boulder Qualifications (if required): teacher of children with disabilities	Superintendent	6/30/2002
Ms. Karla Wohlwend, Havre Qualifications (if required): special education program administrator	Superintendent	6/30/2002
Mr. Ellis Parry, Rudyard Qualifications (if required): state/local administrator	Superintendent	6/30/2002
Ms. Judith Herzog, Billings Qualifications (if required): business concerned with transitions	Superintendent	6/30/2002
Mr. Tim Ferriter, Boulder Qualifications (if required): representative from juvenile and adult corrections	Superintendent	6/30/2002
Mr. Jeff Handelin, Helena Qualifications (if required): student representative	Superintendent	6/30/2002

VACANCIES ON BOARDS AND COUNCILS -- JUNE 1, 2002 through AUGUST 31, 2002

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Montana Wheat and Barley Committee (Agriculture) Mr. Leonard Schock, Vida Qualifications (if required): representative of District VII and a Republican	Governor	8/20/2002
Mr. Daniel Kidd, Big Sandy Qualifications (if required): representative of District IV and a Republican	Governor	8/20/2002
Native American Advisory Council (Public Health and Human Services) Ms. Clara Spotted Elk, Colstrip Qualifications (if required): none specified	Director	6/2/2002
Mr. Ernie Bighorn, Miles City Qualifications (if required): none specified	Director	6/2/2002
Ms. Arlene Templer, St. Ignatius Qualifications (if required): none specified	Director	6/2/2002
Mr. Tim Zimmerman, Billings Qualifications (if required): none specified	Director	6/2/2002
Mr. Duncan Standing Rock, Sr., Box Elder Qualifications (if required): none specified	Director	6/2/2002
Mr. Myron Littlebird, Lame Deer Qualifications (if required): none specified	Director	6/2/2002
Ms. Toni Plummer, Kalispell Qualifications (if required): none specified	Director	6/2/2002
Ms. Deborah Wetsit, Billings Qualifications (if required): none specified	Director	6/2/2002

VACANCIES ON BOARDS AND COUNCILS -- JUNE 1, 2002 through AUGUST 31, 2002

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Native American Advisory Council (Public Health and Human Services) cont. Mr. Tommy Billing, Jordan Qualifications (if required): none specified	Director	6/2/2002
Mr. Gordon Belcourt, Billings Qualifications (if required): none specified	Director	6/2/2002
Mr. William Snell, Billings Qualifications (if required): none specified	Director	6/2/2002
Ms. Carole Lankford, Pablo Qualifications (if required): none specified	Director	6/2/2002
Ms. Evelyn Werk, Harlem Qualifications (if required): none specified	Director	6/2/2002
Ms. Rosemary Lincoln, Crow Agency Qualifications (if required): none specified	Director	6/2/2002
Ms. Loretta Rex, Browning Qualifications (if required): none specified	Director	6/2/2002
Ms. Carol Myers, Missoula Qualifications (if required): none specified	Director	6/2/2002
Ms. Jackie Tang, Lame Deer Qualifications (if required): none specified	Director	6/2/2002
Mr. Jim Baker, Cut Bank Qualifications (if required): none specified	Director	6/2/2002
Ms. Jo Ann Birdshead, Billings Qualifications (if required): none specified	Director	6/2/2002

VACANCIES ON BOARDS AND COUNCILS -- JUNE 1, 2002 through AUGUST 31, 2002

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Native American Advisory Council (Public Health and Human Services) cont. Ms. Louise Zokan-delos Reyes, Billings Qualifications (if required): none specified	Director	6/2/2002
Mr. Garfield Little Light, Billings Qualifications (if required): none specified	Director	6/2/2002
Mr. Walter Denny, Box Elder Qualifications (if required): none specified	Director	6/2/2002
Ms. Roberta Spotted Horse, Billings Qualifications (if required): none specified	Director	6/2/2002
Ms. Teresa Wall McDonald, Pablo Qualifications (if required): none specified	Director	6/2/2002
Mr. Arnie Bighorn, Kalispell Qualifications (if required): none specified	Director	6/2/2002
Ms. Patricia McGeshick, Wolf Point Qualifications (if required): none specified	Director	6/2/2002
Petroleum Tank Release Compensation Board (Environmental Quality) Ms. Linda Cockhill, Helena Qualifications (if required): representing the financial or banking industry	Governor	6/30/2002
Mr. Lee Bruner, Butte Qualifications (if required): attorney	Governor	6/30/2002
Mr. Daniel Manson, Butte Qualifications (if required): attorney	Governor	6/30/2002



VACANCIES ON BOARDS AND COUNCILS -- JUNE 1, 2002 through AUGUST 31, 2002

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Private Land/Public Wildlife Advisory Council (Fish, Wildlife, and Parks) Rep. Paul Clark, Trout Creek Qualifications (if required): legislator	Governor	6/30/2002
Mr. Verle L. Rademacher, White Sulphur Springs Qualifications (if required): sportsperson	Governor	6/30/2002
Mr. Dan Walker, Billings Qualifications (if required): Fish, Wildlife, and Parks Commissioner	Governor	6/30/2002
Mr. Tom Hougen, Melstone Qualifications (if required): landowner	Governor	6/30/2002
Sen. Walter L. McNutt, Sidney Qualifications (if required): legislator	Governor	6/30/2002
Mr. Cecil Noble, Kalispell Qualifications (if required): outfitter	Governor	6/30/2002
Mr. Lee Gustafson, Billings Qualifications (if required): sportsperson	Governor	6/30/2002
Mr. Ray Marxer, Dillon Qualifications (if required): landowner	Governor	6/30/2002
Mr. John Wilkinson, Miles City Qualifications (if required): outfitter	Governor	6/30/2002
Mr. Tommy Billing, Jordan Qualifications (if required): landowner	Governor	6/30/2002
Mr. Leland Blatter, Nashua Qualifications (if required): landowner	Governor	6/30/2002

VACANCIES ON BOARDS AND COUNCILS -- JUNE 1, 2002 through AUGUST 31, 2002

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Private Land/Public Wildlife Advisory Council (Fish, Wildlife, and Parks) cont. Mr. Daniel Dart, Laurel Qualifications (if required): sportsperson	Governor	6/30/2002
Ms. Mavis M. Lorenz, Missoula Qualifications (if required): sportsperson	Governor	6/30/2002
Mr. Bryan Dunn, Great Falls Qualifications (if required): sportsperson	Governor	6/30/2002
Mr. Paul Roos, Ovando Qualifications (if required): outfitter	Governor	6/30/2002
Mr. Mike Nathe, Redstone Qualifications (if required): landowner	Governor	6/30/2002
State Banking Board (Commerce) Mr. Max Agather, Kalispell Qualifications (if required): public member	Governor	7/1/2002
Mr. Wayne Edwards, Denton Qualifications (if required): state bank officer in a smaller bank	Governor	7/1/2002
State-Tribal Economic Development Commission (Governor) Mr. Lloyd Irvine, Pablo Qualifications (if required): representing the Salish and Kootenai tribes	Governor	6/30/2002
Mr. Jake Parker, Box Elder Qualifications (if required): representing the Rocky Boy Tribe	Governor	6/30/2002
Mr. John Woodenlegs, Lame Deer Qualifications (if required): representing the Northern Cheyenne Tribe	Governor	6/30/2002

VACANCIES ON BOARDS AND COUNCILS -- JUNE 1, 2002 through AUGUST 31, 2002

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Teachers' Retirement Board (Administration) Ms. Emily Hall Bogut, Kalispell Qualifications (if required): teacher and a member of the retirement system	Governor	7/1/2002
Telecommunications Access Services/Persons with Disabilities (Public Health and Human Services) Mr. Thomas P. McGree, Helena Qualifications (if required): representative of interLATA interexchange carrier	Governor	7/1/2002
Mr. Edward Van Tighem, Great Falls Qualifications (if required): deaf	Governor	7/1/2002
Ms. Flo Ellen Hippe, Great Falls Qualifications (if required): person with a disability	Governor	7/1/2002
Mr. Jack Sterling, Billings Qualifications (if required): representative of an independent local exchange company	Governor	7/1/2002
Tourism Advisory Council (Commerce) Mr. Carl Kochman, Great Falls Qualifications (if required): representing Russell Country	Governor	7/1/2002
Mr. Kelly Flynn, Townsend Qualifications (if required): representing Gold West Country and outfitters	Governor	7/1/2002
Mr. Bob Dompier, Great Falls Qualifications (if required): representing Russell Country	Governor	7/1/2002
Ms. Lynda Bourque, Billings Qualifications (if required): representative of Custer Country	Governor	7/1/2002
Ms. A. Ramona Holt, Lolo Qualifications (if required): representing Glacier Country	Governor	7/1/2002

VACANCIES ON BOARDS AND COUNCILS -- JUNE 1, 2002 through AUGUST 31, 2002

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Tourism Advisory Council (Commerce) cont. Ms. Michele Reese, Whitefish Qualifications (if required): representing Glacier Country	Governor	7/1/2002
Mr. Rick McCamley, Whitefish Qualifications (if required): representing the Montana Innkeepers	Governor	7/1/2002
Vocational Rehabilitation Center (Public Health and Human Services) Ms. Bonnie Rollins, Glendive Qualifications (if required): none specified	Director	8/7/2002
Mr. Jim Daily, Butte Qualifications (if required): none specified	Director	8/7/2002
Western Interstate Commission on Higher Education (Education) Sen. Emily Stonington, Bozeman Qualifications (if required): legislator	Governor	6/19/2002