MONTANA BOARD MEMBER TRAINING MANUAL

DEPARTMENT OF LABOR AND INDUSTRY
BUSINESS STANDARDS DIVISION

CREATED September 15, 2004
Revised April 25, 2005
Revised June 2, 2006

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INTRODUCTION TO BOARD MEMBER TRAINING MANUAL

In this manual you will find a combination of information provided by the Department of Labor & Industry, Business Standards Division (DLI BSD) and the National Clearinghouse on Licensure, Enforcement and Regulation (CLEAR). The manual is an effort to provide accurate and quality information that will be used as a resource for Montana board members. Specific regulation issues and statutes and rules, as well as, material regarding policies, procedures, processes, and protocols have been included for reference by board members.

The DLI BSD would like to thank CLEAR for permission to use materials from their manual. The DLI BSD would like to take this opportunity to thank each board member for his/her dedication, commitment, and service to the public.

There are over 5,000 occupational and professional licensing board members in the United States. Some of them participate in state training programs; most do not have that opportunity. This Board Member Training Manual was written to support board members in carrying out their important regulatory duties, and to supplement other training programs which may be available to board members.

Some sections of this Manual were prepared and published by the National Clearinghouse on Licensure, Enforcement and Regulation (CLEAR) as one of a series of training manuals and educational materials for board members, administrators, investigators and enforcement officials. CLEAR was formed by state regulatory officials in 1980 to promote communication among states on sound regulatory policy and to support state officials in receiving the training and resources necessary to professionally administer occupational professional licensure.

Montana Department of Labor and Industry

Mission Statement

The purpose of the Department of Labor and Industry is to promote the well-being of Montana's workers, employers, and citizens, and to uphold their rights and responsibilities.

Vision Statement

The vision of the Department of Labor and Industry is to continually improve service to the public and job satisfaction for employees by focusing on:

- Customer needs and satisfaction
- Creating an environment for continual improvement
- Empowering staff individually and in teams to make decisions which affect them
- Increasing good teamwork and participation

Administrative Team Core Values

The administrative team commits to live, breathe, walk, and talk these values:

Customer Focus

- Making all decisions based on what is best for the customers - internal and external -within legal parameters of laws and regulations.
- Inviting customer participation to better identify their needs.

Individual Responsibility

- Taking responsibility for your job performance, your attitude, your professionalism, and your communication.
- Working effectively and productively in teams and partnerships, and taking responsibility for your role in developing and maintaining healthy relationships with business partners.
- Seeking out training, tools, and information needed to do your job.
- Always looking for new and innovative ways to improve customer satisfaction.
- Accepting responsibility and accountability before you act.

Individual Growth

- Freely sharing knowledge and opportunities for staff development.
- Committing resources (money, time, tools) for staff development.
- Recognizing individual strengths and valuing how they contribute to the whole.
- Looking creatively at solutions to enhance staff performance at all levels.

Ethics in the Workplace

- Trust and honesty.
- Mutual support.
- Respect for others.
- We do not tolerate mean-spirited behavior.

Continuous Improvement

- Continually questioning the "why" and "how" of performing your job duties.
- Including all stakeholders that may be affected by any change or improvement you are considering.
- When appropriate, using data and a structured method to make decisions.

Business Standards Division's Purpose, Goals, and Objectives

Building Codes Bureau

Protect the health and safety of the public, employees and prospective building owners in the state by adoption of appropriate minimum codes. Enforce those codes and building code statutes to effect construction of safe, energy efficient and accessible buildings and building components, including passenger elevators and boilers.

Provide prompt, courteous and efficient service to building owners, design professionals, contractors and trades persons in review and approval of plans; issuance of building, plumbing, mechanical and electrical permits; issuance of factory-built building insignias; and issuance of passenger elevator certificates and boiler certificates.

Provide prompt, courteous and efficient permit issuance and field inspections to determine compliance with codes and for investigation of complaints.

Provide field verification of compliance with plumbers' and electricians' licensing laws and rules on projects being inspected for compliance with plumbing, electrical and boiler operation codes.

Refer apparent observed license law violations to Board of Plumbers, State Electrical Board, and Boiler Operator Program for action.

Business and Occupational Licensing Bureau and
Health Care Licensing Bureau

Protect the health safety and welfare of the public by assisting and advising the boards to maintain high standards of excellence for the regulated professions and occupations within the state.

Advance optimal health outcomes for Montana residents by assisting and advising the boards in establishing rules and standards to address the practice of each health care professional.

Provide boards with sufficient administrative support to assure licensing qualified individuals in an efficient and cost effective manner.

Provide boards with sufficient administrative support to assure timely and efficient processing of license renewals.

Provide boards with administrative support to review and, as appropriate, investigate all allegations of licensee incompetence, negligence and unlicensed practice.

Provide assistance and guidance to boards to assure imposition of fair and appropriate sanctions, based upon consistent findings of facts, practices, or omissions that are not in compliance with the statutes and rules regulating the profession.

Provide qualified, competent office and field staff to fulfill the statutory duties and responsibilities of the board and provide excellent customer service to licensees and the public.

Weight & Measures Bureau

Maximize the testing, inspection, and certification of commercially-used scales in Montana and the testing, inspection, and certification of retail and wholesale petroleum pumps and meters and liquid petroleum gas (LPG) meters used throughout Montana.

Maximize the inspection and testing of pre-packaged consumer goods offered for sale in Montana. Maximize the testing for octane content of the various grades of gasoline that are offered for sale to the general public on an annual basis statewide.

BUSINESS STANDARDS DIVISION ORGANIZATIONAL CHART

DEPARTMENT OF LABOR & INDUSTRY
COMMISSIONER
KEITH KELLY

DEPUTY COMMISSIONER
DORE SCHWINDEN
444-1785

ACTING DIVISION ADMINISTRATOR
JOHN ANDREW
841-2042

HEALTH CARE LICENSING
BUREAU CHIEF
LISA ADDINGTON
841-2303

BOARD OF ALTERNATIVE HEALTH CARE
BOARD OF CHIROPRACTORS
BOARD OF CLINICAL LABORATORY SCIENCE PRACTITIONERS
BOARD OF DENTISTRY
BOARD OF FUNERAL SERVICES
BOARD OF HEARING AID DISPENSERS
BOARD OF MEDICAL EXAMINERS
BOARD OF NURSING
BOARD OF NURSING HOME ADMINISTRATORS
BOARD OF OCCUPATIONAL THERAPISTS
BOARD OF OPTOMETRY
BOARD OF PHARMACY
BOARD OF PHYSICAL THERAPY EXAMINERS
BOARD OF PSYCHOLOGISTS
BOARD OF RADIOLOGIC TECHNOLOGISTS
BOARD OF RESPIRATORY CARE PRACTITIONERS
BOARD OF SOCIAL WORK EXAMINERS & PROFESSIONAL COUNSELORS
BOARD OF SPEECH LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS
BOARD OF VETERINARY MEDICINE
LICENSED ADDICTION COUNSELORS PROGRAM
BOARD OF PRIVATE ALTERNATIVE ADOLESCENT RESIDENTIAL OR OUTDOOR PROGRAMS

WEIGHTS & MEASURES
BUREAU CHIEF
JACK KANE
841-2241

BUSINESS & OCCUPATIONAL
LICENSING BUREAU CHIEF
JILL CALDWELL
841-2302

BOARD OF ARCHITECTS
BOARD OF ATHLETICS
BOARD OF BARBERS & COSMETOLOGISTS
STATE ELECTRICAL BOARD
BOARD OF LANDSCAPE ARCHITECTS
BOARD OF OUTFITTERS
BOARD OF PLUMBERS
BOARD OF PRIVATE SECURITY PATROL OFFICERS & INVESTIGATORS
BOARD OF PROFESSIONAL ENGINEERS & PROFESSIONAL LAND SURVEYORS
BOARD OF PUBLIC ACCOUNTANTS
BOARD OF REAL ESTATE APPRAISERS
BOARD OF REALTY REGULATION
BOARD OF SANITARIANS
ATHLETIC AGENT PROGRAM
BOILER OPERATORS AND ENGINEERS PROGRAM
CONSTRUCTION BLASTERS PROGRAM
CRANE OPERATORS PROGRAM
ELEVATOR MECHANICS, INSPECTORS CONTRACTORS
FIRE PREVENTION SERVICES PROGRAM

BUILDING CODES
BUREAU CHIEF
TIM LLOYD
841-2058

BUILDING CODES COUNCIL

NOTE: Licensing boards are administratively attached

HISTORY AND PURPOSE OF OCCUPATIONAL AND PROFESSIONAL LICENSING

Occupational licensure has a long history. Modern day licensure has its roots in workers' guilds, which can be traced back to the tenth century in England. The first modern effort to regulate occupations and professions was Virginia's medical practice act in 1639. In the late 1800's, state licensure activity began in earnest, and by 1900, a majority of the states had licensed attorneys, dentists, pharmacists, physicians and teachers. Between 1900 and 1960, most states also licensed an additional twenty occupations and professions including accountants, nurses, real estate brokers, barbers, hairdressers, chiropractors and funeral directors. Today, over 800 occupations and professions are licensed by one or more states.

Occupational licensing is an exercise of the state's inherent police power to protect the health, safety and welfare of its citizens. Generally accepted criteria for granting licensure include: (1) unqualified practice poses a serious risk to a consumer's life, health, safety or economic well-being; (2) such risks are likely to occur; (3) the public cannot accurately judge a practitioner's qualifications; and (4) benefits to the public clearly outweigh potential harmful effects of licensure (such as a decrease in the supply of practitioners). Failure to meet these criteria, in general, indicates that licensure is not justified, or that some alternative form of regulation such as registration or certification may be appropriate.

Proponents of licensure argue that the purpose of licensure is to raise standards of practice, ensure quality service, and establish accepted codes of ethical behavior. In the last two decades there has been a growing awareness of licensure's concomitant responsibility to promote continuing professional education and competence, and to enforce licensure laws against fraudulent, incompetent and unethical behavior.

Critics of licensure argue that licensure restricts entry into the profession, decreases competition and innovation, and results in higher costs of services to consumers. Furthermore, while licensure and entry level training requirements may promote a minimum level of competency at the time of initial licensure, the critics would say licensing boards have done little to ensure that practitioners maintain competency, and have not aggressively stripped incompetent and fraudulent practitioners of their licenses.

In the 1970's several trends contributed to creating a small revolution in occupational and professional regulation which is not yet over.

- One factor has been increased legislative oversight through sunset reviews. In 1984, 38 states had adopted sunset laws and each state had included occupational and professional licensing boards in their sunset legislation. Under sunset, legislators evaluate the need for regulation since without positive action by the legislature; the board under review is terminated (or sunsetted).

- A second factor is the rise of the consumer movement in the 1970's. Issues once thought to be strictly in the purview of the professions now are considered to be public policy questions. For example, in most states, licensing boards traditionally comprised exclusively of members of the regulated profession now have one or more public or consumer members in recognition that total self-regulation by the professions may not produce the best public policy.

- A related trend includes the addition of board members who are specialists or auxiliaries in the profession regulated by the board, such as adding a dental hygienist to the board of dentistry.

- A third factor has been the trend to reorganize state governments by grouping agencies into broad functional areas under umbrella agencies thus eliminating administrative duties previously handled by each board or commission. In 1986, 36 states had central licensure agencies that performed or coordinated administrative functions for a group of licensure boards.

  Central agencies differ widely in their statutory mandate and their authority over board decisions. In a majority of states, the central agency is responsible for administrative functions such as processing applications, issuing licenses, record keeping, fee collection and routine correspondence, while the boards continue to exercise primary policy-making powers such as conducting examinations, exercising disciplinary authority and drafting administrative regulations. In other states, such as Illinois, New York, Michigan, Florida and Connecticut, the central agency's powers extend to authority over board personnel, budgets, investigations and examinations.

  Opponents of the trend toward centralization of licensure contend that it adds bureaucracy and red tape and reduces the responsiveness of the licensure authority to both licensee needs and citizen complaints. Further, they argue that individual licensure boards with professional members best understand the issues of examinations, professional practice and discipline.

LICENSING LAWS AN OVERVIEW OF STATUTES AND ADMINISTRATIVE REGULATIONS

Licensing statutes, an exercise of the state's police power, are classified as enabling acts. They include all the requirements for which the department or board has responsibility. Such statutes establish general guidelines for state regulation of occupations and professions while the administrative regulations provide details. Statutes are passed by state legislatures while executive branch boards and agencies write and promulgate administrative regulations. For example, the statute mandating the examination of all licensing candidates may require the board to develop an adequate examination. In such a case, the board is usually authorized to adopt specific regulations spelling out the type of exam to be given, the subject areas the exam will include, the frequency and location of exams, and the minimum

passing score the applicants must obtain. Some states require legislative review and/or approval of administrative regulations.

Most state boards and agencies are authorized to adopt administrative regulations that supplement the licensing statutes with specific details. All regulations must be consistent with the enabling statutes and should be adopted only when there is statutory language granting the board authority to promulgate regulations on the topic in question. Proposed regulations or changes in the regulations must be adopted in accordance with the state's administrative procedures act, and allow public notice and comment. For details on these provisions, see the section on your state's Administrative Procedures Act.

While each licensing law is unique, most licensing acts have many features in common such as:

Section	Purpose
Definitions	Defines key words such as board, director, permit
Board Structure	Outlines the number of board members, their duties, terms, compensation
Licensing Requirements	Sets out minimum qualifications for education, practice, etc.
Scope of Practice Definition	Lists the areas that licensees may lawfully perform functions
Administrative Provisions	Covers application procedures, fees, renewals, permits, etc.
Examinations	Defines exam topics, type of test
Reciprocity/Endorsement/Comity	Lists conditions under which persons from out-of state may be licensed
Continuing Education	Sets minimum number of hours for post-licensing training required for renewal
Grounds for Suspension or Revocation	Gives circumstances under which a licensee may be barred from practice, frequently includes: violation of licensing law requirements; conviction of a felony related to the applicant’s profession; unprofessional, unsafe or unethical conduct

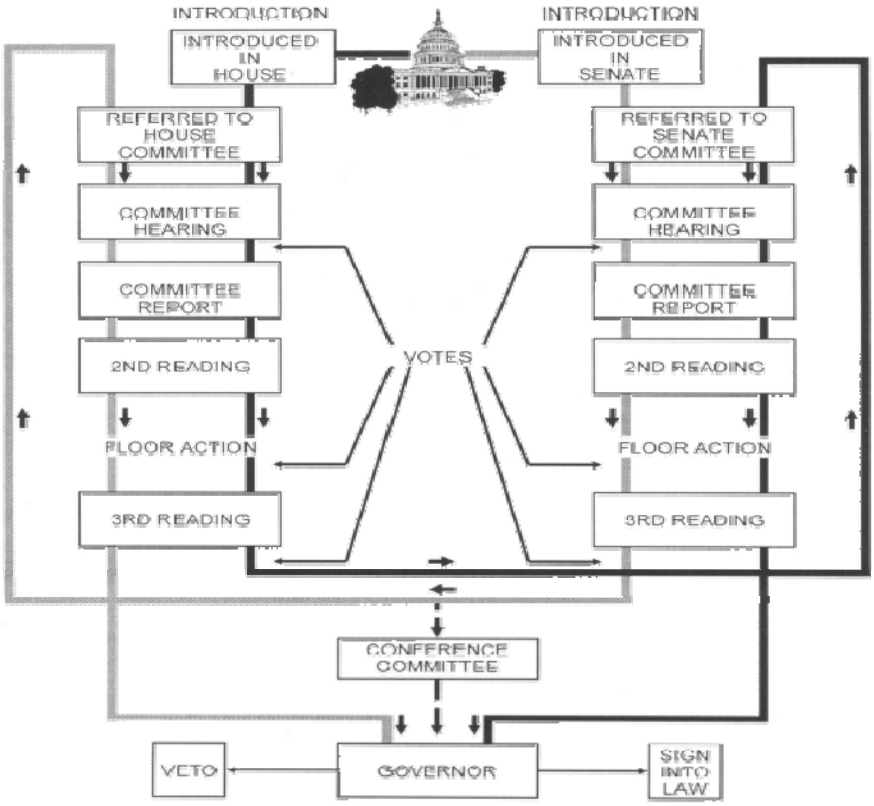
Penalties for Violating the Law	Sanctions in addition to suspension or revocation for violations may be civil or criminal.

Some licensing laws also require licensure of the business premise where the licensee is employed. Such laws, generally, include sections on the approval of business applications and usually provide for regular inspections. Some boards and commissions are also responsible for accreditation or licensure of professional schools and/or approval of their curriculum. Special provisions outlining approval standards for such programs are usually found in these laws.

While reading a statute, keep in mind the law's general purpose and the structure of the act. Generally, the statute must read as a whole rather than section by section to understand it. Also note important precise distinctions that occur in the law, such as whether a board "may" perform some act or "shall" perform it as required.

Familiarity with the formal interpretations of the licensing law where they are available will be helpful. These include: (1) formal and informal attorney general opinions; (2) pertinent court decisions, and (3) your law's legislative history. However, if vague or ambiguous language exists in your statute or regulations, consult with the board director and/or legal advisor.

How a Bill Becomes Law in Montana



The following 23-step description provides a narrative detail of how a bill becomes law in the Montana legislature.

Step 1. Introduction. Bill is filed for introduction with Secretary of Senate or Chief Clerk of House.

Step 2. First reading. Bill's title is posted, and bill is ordered printed on white paper.

Step 3. Committee reference. Bill is referred to proper committee by Senate President or House Speaker. Referral is posted.

Step 4. Committee consideration. Committee holds public hearing on bill, and then discusses it. May vote to amend bill.

Step 5. Committee report. Committee reports its recommendation that bill "do pass", "do pass as amended", or "do not pass".

Step 6. Placed on calendar. Simple "do pass" and "do not pass" reports are printed as such in journal. Text of amendments reported by committee is printed in full. Bills receiving favorable reports are printed on yellow paper in

first house (tan paper in second house), incorporating any reported amendments, and are placed on calendar for second reading. Bills with "do not pass" reports are not placed on second-reading calendar unless a motion is made to that effect and passed. If "do not pass" report is adopted, bill drops out of further consideration.

Step 7. Second reading. Entire body debates bill as "Committee of the Whole". Amendments may be offered and voted on. Bill defeated here drops out of further consideration.

Step 8. Placed on third-reading calendar. Bill approved by Committee of the Whole is ordered printed on blue paper in first house (salmon paper in second house), incorporating all amendments made up to that point. (This is known as an "engrossed" bill.)

Step 9. Third reading. Bill subjected to simple "yes" or "no" vote by entire body, in which (by constitutional requirement) each member's vote must be recorded and printed in journal. No amendments may be considered. Bill defeated here drops out of further consideration.

Step 10. Transmittal to other house. Same as Step 1 introduction, except other house works with blue copy.

Step 11. First reading. Summary of title and history is posted.

Step 12. Committee reference. See Step 3.

Step 13. Committee consideration. See Step 4.

Step 14. Committee report. Second-house committee phrases a favorable report as "be concurred in" or "be concurred in, as amended". Unfavorable report is "be not concurred in".

Step 15. Placed on calendar. Same as Step 6, except that instead of a yellow-paper copy, bill is prepared for second reading with committee amendments to blue copy included in bill and printed on tan paper. Bill with unfavorable report is not placed on calendar unless committee recommendation is reversed by full body.

Step 16. Second reading. Same as Step 7.

Step 17. Placed on third-reading calendar. Same as Step 8, except reference bill is reprinted on salmon-colored paper and includes all amendments made in second house.

Step 18. Third reading. Same as Step 9.

Step 19. Bill passed by both houses in identical form. Enrolled and sent to Governor.

Step 20. Bill passed by both houses in differing forms: Second house returns bill to house of origin approved with amendments, sent with message requesting concurrence in amendments. Question is voted in Committee of the Whole, e.g., "Shall the (Senate) amendments to (House) Bill No. be concurred in?" If vote in house of origin is in favor of concurrence, bill is enrolled.
If a motion is made and adopted that amendments not be concurred in, originating house will usually request a conference committee (or it may send a message to second house asking it to recede from its amendments). If a conference is sought, a motion is made to authorize Senate President or House Speaker to appoint a conference committee (regular or free) to meet with a like committee from other house to resolve differences. (Regular conference committees may consider only disputed amendments; free conference committees may revise any part of bill.) This action, if approved, is communicated to second house in a message, and second house then appoints a conference committee in same manner.

Step 21. Conference committee reports. If conferees settle differences, each contingent reports to its parent body that bill be further amended in some fashion or that one house recede from amendments and that bill then be approved. Amendments adopted by conference committees are printed on green (House) or pink (Senate) paper. Adoption of conference committee report means house approves bill as conferees recommend. If conferees cannot settle differences, they report their disagreement and either body may ask that a new conference committee be appointed.

Step 22. Enrolling. Bill is checked for accuracy and printed. Correctly enrolled bill is delivered to presiding officer of house in which bill originated. After being signed and recorded in journal, bill is transmitted to other house where same procedure is followed.

Step 23. Governor's desk. Governor either signs or vetoes bill or allows it to become law without his or her signature. Legislature may vote to override a veto if it has not adjourned. (Refer to Montana Constitution, Article VI, section 10.)

A GUIDE TO LEGISLATIVE TESTIMONY BY BOARDS

Montanans who serve on the many state government boards, commissions and advisory councils perform an invaluable service, making critical decisions on important issues. Their hard work and selfless dedication is essential and deeply appreciated. These Montanans are leaders in various endeavors with strong beliefs and values. As private citizens, they can and should feel free to express these beliefs and values openly in a free and democratic society.

However, all board members need to exercise great caution when providing legislative testimony to ensure that they make a clear distinction between testifying as a private citizen and testifying for or on behalf of a board, commission or

advisory council on which they serve. In order to ensure that this distinction is carefully observed, we offer the following guidance:

1. The Governor is the chief executive of the state, responsible for seeing that the laws of Montana are faithfully executed. Article VI, Sec. 4 of the Montana Constitution. The Governor is required to supervise the official conduct of all executive and ministerial officers. Section 2-15-201, MCA. The Governor is required to "formulate and administer the policies of the executive branch of state government. In the execution of these policies, the governor has full powers of supervision, approval, direction, and appointment over all departments and their units… Whenever a conflict arises as to the administration of the policies of the executive branch of state government, except for conflicts arising in the office of the lieutenant governor, secretary of state, attorney general, auditor, and superintendent of public instruction, the governor shall resolve the conflict, and the decision of the governor is final." Section 2-15-103, MCA.

2. The Governor does not intend to inappropriately interfere in Board responsibilities and duties or the exercise of any clear statutory powers of the Board. However, the Governor does need to ensure that the laws of the state and programs that boards oversee are taking appropriate positions on legislation and that boards are well informed on the Governor's policy and legislative goals. To the extent possible the Governor must coordinate all legislation that flows through the executive branch.

   Therefore it is appropriate for the Office of the Governor to require agencies, departments and their units to seek pre-approval before taking positions on legislation. Boards, commissions and advisory councils are defined as agencies in section 2-15-102(2), MCA.

3. Before a board decides to take a position on a bill, it must first provide proper public notice and, in taking a position, do so by passing a motion. See generally, Sections 2-3-203 and 2-15-124(8), MCA. Individual Board members should be clear on the position of the Board on legislative issues so that legislators and or the public do not receive conflicting messages.

4. Once a motion has been passed, the board must send the legislation to the Governor's Office for review and comment prior to taking the position of the Board before the legislation. This request should go through the head of the department, to which the board is attached, or the Board Chair or senior staff after consultation with the department head. Section 2-15-121(3), MCA.

5. When review and comment by the Governor's Office is complete and agreement on a position is clear, testimony may be given by a board member or through an agency staff person who is authorized to

appear before the legislature. Please remember that the time spent in an activity such as testifying as a proponent or opponent must comply with the Montana lobbying laws and rules. See, the Commission on Political Practices web site www.politicalpractices@mt.gov

6. There may be times when the Governor's Office does not agree with a Board member or Board's tentative position. Of course board members may appear on their own time to testify on their own behalf, however they cannot make representations as to the position of the board.

LAWS RELATING TO DUTIES OF BOARDS, DEPARTMENT, COMMISSIONER

2-15-121. Allocation for administrative purposes only.

(1) An agency allocated to a department for administrative purposes only in this chapter shall:

(a) exercise its quasi-judicial, quasi-legislative, licensing, and policymaking functions independently of the department and without approval or control of the department;

(b) submit its budgetary requests through the department;

(c) submit reports required of it by law or by the governor through the department.

(2) The department to which an agency is allocated for administrative purposes only in this title shall:

(a) direct and supervise the budgeting, recordkeeping, reporting, and related administrative and clerical functions of the agency;

(b) include the agency's budgetary requests in the departmental budget;

(c) collect all revenues for the agency and deposit them in the proper fund or account. Except as provided in 37-1-101, the department may not use or divert the revenues from the fund or account for purposes other than provided by law.

(d) provide staff for the agency. Unless otherwise indicated in this chapter, the agency may not hire its own personnel.

(e) print and disseminate for the agency any required notices, rules, or orders adopted, amended, or repealed by the agency.

(3) The department head of a department to which any agency is allocated for administrative purposes only in this chapter shall:

(a) represent the agency in communications with the governor;

(b) allocate office space to the agency as necessary, subject to the approval of the department of administration. **History:** En. 82A-108 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 8, Ch. 358, L. 1973; R.C.M. 1947, 82A-108.

37-1-101. Duties of department.

In addition to the provisions of 2-15-121, the department of labor and industry shall:

(1) establish and provide all the administrative, legal, and clerical services

needed by the boards within the department, including corresponding, receiving and processing routine applications for licenses as defined by a board, issuing and renewing routine licenses as defined by a board, disciplining licensees, setting administrative fees, preparing agendas and meeting notices, conducting mailings, taking minutes of board meetings and hearings, and filing;

(2) standardize policies and procedures and keep in Helena all official records of the boards;

(3) make arrangements and provide facilities in Helena for all meetings, hearings, and examinations of each board or elsewhere in the state if requested by the board;

(4) contract for or administer and grade examinations required by each board;

(5) investigate complaints received by the department of illegal or unethical conduct of a member of the profession or occupation under the jurisdiction of a board within the department;

(6) assess the costs of the department to the boards and programs on an equitable basis as determined by the department;

(7) adopt rules setting administrative fees and expiration, renewal, and termination dates for licenses;

(8) issue a notice to and pursue an action against a licensed individual, as a party, before the licensed individual's board after a finding of reasonable cause by a screening panel of the board pursuant to 37-1-307(1)(e);

(9) provide notice to the appropriate legislative interim committee when a board cannot operate in a cost-effective manner;

(10) monitor a board's cash balances to ensure that the balances do not exceed two times the board's annual appropriation level and adjust fees through administrative rules when necessary; and

(11) establish policies and procedures to set fees for administrative services, as provided in 37-1-134, commensurate with the cost of the services provided. Late penalty fees may be set without being commensurate with the cost of services provided. **History:** En. 82A-1603 by Sec. 1, Ch. 272, L. 1971; R.C.M. 1947, 82A-1603; amd. Sec. 1, Ch. 293, L. 1981; amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 1, Ch. 390, L. 1983; amd. Sec. 1, Ch. 307, L. 1985; amd. Sec. 42, Ch. 83, L. 1989; amd. Sec. 6, Ch. 413, L. 1989; amd. Sec. 21, Ch. 429, L. 1995; amd. Sec. 106, Ch. 483, L. 2001; amd. Sec. 6, Ch. 467, L. 2005.

37-1-121. Duties of commissioner.

In addition to the powers and duties under 2-15-112 and 2-15-121, the commissioner of labor and industry shall:

(1) at the request of a party, appoint an impartial hearings examiner to conduct hearings whenever any board or department program holds a contested case hearing. The hearings examiner shall conduct hearings in a proper and legal manner.

(2) establish the qualifications of and hire all personnel to perform the administrative, legal, and clerical functions of the department for the boards. Boards within the department do not have authority to establish the qualifications of, hire, or terminate personnel. The department shall consult with the boards regarding recommendations for qualifications for executive or executive director positions.

(3) approve all contracts and expenditures by boards within the department. A board within the department may not enter into a contract or expend funds without the approval of the commissioner. **History:** En. 82A-1604 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 14, Ch. 533, L. 1977; R.C.M. 1947, 82A-1604; amd. Sec. 3, Ch. 274, L. 1981; Sec. , MCA 1979; redes. by Code Commissioner, 1981; amd. Sec. 1, Ch. 165, L. 1985; amd. Sec. 22, Ch. 429, L. 1995; amd. Sec. 107, Ch. 483, L. 2001; amd. Sec. Ch. 467, L. 2005.

37-1-131. Duties of boards -- quorum required.

A quorum of each board within the department shall:

(1) set and enforce standards and rules governing the licensing, certification, registration, and conduct of the members of the particular profession or occupation within the board's jurisdiction;

(2) sit in judgment in hearings for the suspension, revocation, or denial of a license of an actual or potential member of the particular profession or occupation within the board's jurisdiction. The hearings must be conducted by a hearings examiner when required under 37-1-121.

(3) suspend, revoke, or deny a license of a person who the board determines, after a hearing as provided in subsection (2), is guilty of knowingly defrauding, abusing, or aiding in the defrauding or abusing of the workers' compensation system in violation of the provisions of Title 39, chapter 71;

(4) pay to the department the board's pro rata share of the assessed costs of the department under 37-1-101(6);

(5) consult with the department before the board initiates a program expansion, under existing legislation, to determine if the board has adequate money and appropriation authority to fully pay all costs associated with the proposed program expansion. The board may not expand a program if the board does not have adequate money and appropriation authority available.

(6) A board, board panel, or subcommittee convened to conduct board business must have a majority of its members, which constitutes a quorum, present to conduct business.

(7) The board or the department program may:

(a) establish the qualifications of applicants to take the licensure examination;

(b) determine the standards, content, type, and method of examination required for licensure or reinstatement of a license, the acceptable level of performance for each examination, and the standards and limitations for reexamination if an applicant fails an examination;

(c) examine applicants for licensure at reasonable places and times as determined by the board or enter into contracts with third-party testing agencies to administer examinations; and

(d) require continuing education for licensure as provided in 37-1-306. If the board or department requires continuing education for continued licensure, the board or department may not audit or verify continuing education requirements as a precondition for renewing the license, certification, or registration. The board or department may conduct random audits of up to 50% of all licensees with renewed licenses for documentary verification of the continuing education requirement after the renewal period closes.

(8) A board may, at the board's discretion, request the applicant to make a

personal appearance before the board for nonroutine license applications as defined by the board. **History:** En. 82A-1605 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 11, Ch. 250, L. 1973; R.C.M. 1947, 82A-1605(1) thru (3); amd. Sec. 3, Ch. 274, L. 1981; Sec. , MCA 1979; redes. by Code Commissioner, 1981; amd. Sec. 2, Ch. 165, L. 1985; amd. Sec. 1, Ch. 90, L. 1991; amd. Sec. 10, Ch. 619, L. 1993; amd. Sec. 23, Ch. 429, L. 1995; amd. Sec. 6, Ch. 492, L. 2001; amd. Sec. 8, Ch. 416, L. 2005; amd. Sec. 11, Ch. 467, L. 2005.

LAWS RELATING TO REVIEWS OF AGENCIES AND PROGRAMS

2-8-101. Purpose.

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

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

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

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

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

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

(e) There exists a systematic legislative review of the need for and public benefits derived from a program or function by a periodic review and termination, modification, or reestablishment of such programs and functions. **History:** En. 82-4601 by Sec. 1, Ch. 562, L. 1977; R.C.M. 1947, 82-4601; amd. Sec. 2, Ch. 321, L. 1983.

2-8-102. Definitions.

As used in this part, the following definitions apply:

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

(2) "Performance audit" means an examination of the effectiveness of administration and its efficiency and adequacy in terms of the program of a state agency authorized by law to be performed and the conformance of expenditures with legislative intent. Audits conducted shall include an analysis of the operation of the agency, with special regard to the duplication of efforts between the audited

agency or program and other agencies or programs and the quality of service being rendered.

(3) "Program" means any legislatively or administratively created function, project, or duty of an agency. **History:** En. 82-4602 by Sec. 2, Ch. 562, L. 1977; R.C.M. 1947, 82-4602; amd. Sec. 3, Ch. 321, L. 1983.

2-8-105. Determination of agencies and programs to be reviewed.

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

(2) The legislative audit committee shall review the list submitted by the governor, suggestions from legislators and legislative committees, staff recommendations, and any other relevant information and compile recommendations of agencies and programs to be terminated and subject to a performance audit. The committee shall submit its recommendations to the next legislature in the form of a bill terminating those designated agencies and programs at the times specified in the bill and requiring a performance audit of each agency and program under the provisions of Title 2, chapter 8, within the time specified and prior to termination. **History:** En. Sec. 1, Ch. 321, L. 1983.

2-8-111. Prereview responsibilities of agencies.

An agency designated for termination or whose program or programs are designated for termination shall, by 22 months preceding the date set for termination:

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

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

(3) furnish to the legislative auditor, upon request of the auditor, the information necessary to conduct a performance audit as required by this chapter. **History:** En. 82-4605 by Sec. 5, Ch. 562, L. 1977; R.C.M. 1947, 82-4605; amd. Sec. 4, Ch. 321, L. 1983.

2-8-112. Legislative audit committee review and report -- review criteria.

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

reestablish the agency or program.

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

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

(4) Upon completion of its review, the legislative audit committee shall, as provided in 5-11-210, make a report of its recommendations for continuation, modification, or termination and submit a proposed bill to the ensuing legislative session. If termination is recommended, the bill should repeal or otherwise deal with all statutes and parts of statutes relating to the agency's or program's activities. **History:** En. 82-4604 by Sec. 4, Ch. 562, L. 1977; R.C.M. 1947, 82-4604; amd. Sec. 5, Ch. 321, L. 1983; amd. Sec. 5, Ch. 112, L. 1991.

2-8-113. Hearings by standing committee -- criteria for termination.

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

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

(3) In determining whether to reestablish an agency or program, the legislature shall consider the performance audit and review conducted by the legislative audit committee, public testimony, and other matters considered relevant by the committee. **History:** En. 82-4606 by Sec. 6, Ch. 562, L. 1977; R.C.M. 1947, 82-4606; amd. Sec. 6, Ch. 321, L. 1983; amd. Sec. 8, Ch. 42, L. 1997

2-8-121. Effect of termination.

Unless otherwise provided, upon termination, each agency, program, or unit shall continue in existence until July 1 of the next succeeding year for the purpose of winding up its affairs. During the windup period, termination does not reduce or otherwise limit the powers or authority of each respective agency or program except that no action may be taken which would continue in effect beyond the 1-year windup period. Upon the expiration of the 1 year after termination, each agency or program not modified or reestablished shall be abolished and all unexpended balances of appropriations, allocations, or other funds shall revert to the fund from which they were appropriated or, if that fund is abolished, to the general fund. **History:** En. 82-4607 by Sec. 7, Ch. 562, L. 1977; R.C.M. 1947, 82-4607; amd. Sec. 2, Ch. 497, L. 1979; amd. Sec. 7, Ch. 321, L. 1983.

2-8-122. Reestablishment.

(1) Any agency or program scheduled for termination under this part or any subsequent act may be reestablished by the legislature.

(2) No more than one agency or program may be continued or reestablished in any bill for an act, and the agency or program shall be mentioned in the bill's title. **History:** En. 82-4608 by Sec. 8, Ch. 562, L. 1977; R.C.M. 1947, 82-4608; amd. Sec. 8, Ch. 321, L. 1983.

LAWS RELATING TO MEETINGS

2-3-201. Legislative intent -- liberal construction.

The legislature finds and declares that public boards, commissions, councils, and other public agencies in this state exist to aid in the conduct of the peoples' business. It is the intent of this part that actions and deliberations of all public agencies shall be conducted openly. The people of the state do not wish to abdicate their sovereignty to the agencies which serve them. Toward these ends, the provisions of the part shall be liberally construed. **History:** En. Sec. 1, Ch. 159, L. 1963; R.C.M. 1947, 82-3401.

2-3-202. Meeting defined.

As used in this part, "meeting" means the convening of a quorum of the constituent membership of a public agency or association described in 2-3-203, whether corporal or by means of electronic equipment, to hear, discuss, or act upon a matter over which the agency has supervision, control, jurisdiction, or advisory power. **History:** En. 82-3404 by Sec. 2, Ch. 567, L. 1977; R.C.M. 1947, 82-3404; amd. Sec. 2, Ch. 183, L. 1987.

2-3-203. Meetings of public agencies and certain associations of public agencies to be open to public -- exceptions.

(1) All meetings of public or governmental bodies, boards, bureaus, commissions, agencies of the state, or any political subdivision of the state or organizations or agencies supported in whole or in part by public funds or expending public funds, including the supreme court, must be open to the public.

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

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

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

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

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

(6) Any committee or subcommittee appointed by a public body or an association described in subsection (2) for the purpose of conducting business that is within the jurisdiction of that agency is subject to the requirements of this section. **History:** En. Sec. 2, Ch. 159, L. 1963; amd. Sec. 1, Ch. 474, L. 1975; amd. Sec. 1, Ch. 567, L. 1977; R.C.M. 1947, 82-3402; amd. Sec. 1, Ch. 380, L. 1979; amd. Sec. 1, Ch. 183, L. 1987; amd. Sec. 1, Ch. 123, L. 1993; amd. Sec. 1, Ch. 218, L. 2005.

2-3-212. Minutes of meetings -- public inspection.

(1) Appropriate minutes of all meetings required by 2-3-203 to be open shall be kept and shall be available for inspection by the public.

(2) Such minutes shall include without limitation:

(a) date, time, and place of meeting;

(b) a list of the individual members of the public body, agency, or organization in attendance;

(c) the substance of all matters proposed, discussed, or decided; and

(d) at the request of any member, a record by individual members of any votes taken. **History:** En. Sec. 3, Ch. 159, L. 1963; amd. Sec. 3, Ch. 567, L. 1977; R.C.M. 1947, 82-3403.

2-3-213. Voidability.

Any decision made in violation of 2-3-203 may be declared void by a district court having jurisdiction. A suit to void any such decision must be commenced within 30 days of the decision. **History:** En. 82-3406 by Sec. 5, Ch. 567, L. 1977; R.C.M. 1947, 82-3406.

PUBLIC PARTICIPATION IN AGENCY DECISIONS

TO: Department Directors
Mike McGrath, Attorney General
Linda McCullough, Superintendent of Public Instruction
John Morrison, State Auditor
Brad Johnson, Secretary of State
Sheila Stearns, Commissioner of Higher Education

FROM: Governor Brian Schweitzer

DATE: October 4, 2005

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

Enclosed is a memorandum concerning the public's right to participate in agency actions, as provided under the Montana Constitution and Montana statutes. It is my responsibility under MCA § 2-3-103(2) to ensure that the agencies subject to the public participation statutes comply.

The enclosed memorandum is addressed not only to each of you, but also to all executive branch agencies, including boards, bureaus, commissions, departments, authorities and officers of the executive branch of government, as defined in MCA § 2-3-102(1). I ask that you take responsibility for distributing it to the presiding officers of the boards, bureaus, commissions, authorities, and agencies within or attached to your organization. If you have further questions as to whom the memorandum should be distributed, I refer you to the definition of "agency," found at MCA § 2-3-102(1).

Thank you for your assistance and cooperation in distributing the attached memorandum. Do not hesitate to contact my office with any questions, or, as suggested in the memorandum, feel free to contact Dal Smilie, Chief Legal Counsel at the Department of Administration, with questions about implementation.

MEMORANDUM

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

FROM: Governor Brian Schweitzer

DATE: October 4, 2005

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

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

> The public has the right to expect governmental agencies to afford such reasonable opportunity for citizen participation in the operation of the agencies prior to the final decision as may be provided by law.

This important constitutional right is implemented by Montana statutes, which require every agency, as defined in MCA § 2-3-102(1), to "develop procedures for permitting and encouraging the public to participate in agency decisions that are of significant interest to the public." MCA § 2-3-103(1); see also MCA Title 2, chapter 3, part 1 in its entirety. The public participation statutes further empower the district courts to set aside agency decisions not in conformity with the public

participation laws where a person's rights have been prejudiced. MCA § 2-3-114. Model rules to implement these laws are found at ARM §§ 1.3.101 and 1.3.102.

Montana's public participation laws also require me, as Governor, "to ensure that each board, bureau, commission, department, authority, agency, or officer of the executive branch of the state" adopt rules, setting forth guidelines to facilitate public participation in agency programs and decisions. MCA § 2-3-103(2). I am writing you now to remind you of these statutory obligations for your agency.

I applaud your efforts to ensure public participation in the decisions of government. If you or your agency needs assistance in crafting appropriate guidelines and rules to conform with Montana's public participation laws, I suggest you contact Dal Smilie, Chief Legal Counsel for the Department of Administration, for assistance.

The "right to know" and the "right of privacy" are rights guaranteed by the Montana Constitution, Article II, which reads as follows:

Section 9. Right to know.
No person shall be deprived of the right to examine documents or to observe the deliberations of all public bodies or agencies of state government and its subdivisions, except in cases in which the demand of individual privacy clearly exceeds the merits of public disclosure.

Section 10. Right of privacy.
The right of individual privacy is essential to the well-being of a free society and shall not be infringed without the showing of a compelling state interest.

CLOSING THE MEETING FOR EXECUTIVE SESSION

Chairperson says:

"It is my determination that the following matter relates to a matter of individual privacy, and that the demands of privacy clearly exceed the merits of public disclosure. The law requires the individual(s) about whom the discussion pertains may waive the right of individual privacy. If the privacy rights are waived, the meeting will be open to the public."

- If the individual(s) is not present:

"Because the individual to whom the discussion pertains is not present, the right to privacy may not be waived. The meetings will be closed."

- If the individual(s) is present:

"Do you wish to waive your right to privacy?"

- If both parties indicate "yes": "The meeting will be open."

- If one or both indicates "no" or is/are not present: "The meeting will be closed."

PARLIAMENTARY PROCEDURE: ROBERT' S RULES OF ORDER

Based on Robert's Rules of Order (1977 edition)
Developed as a simplified guide for Board Meetings

The rules of parliamentary procedure are meant to help, not hinder. Applied with common sense, they should not frustrate the meeting or entangle it in red tape. Retain control at all times, give clear explanations, and keep things as simple as possible. Good advice from the chair as to the wording of motions and the best way to proceed will avoid needless complications. When in doubt, your rule should be: respect the wishes of the majority, protect the minority and do what seems fair and equitable.

RESPONSIBILITIES OF THE CHAIR

1. Recognize board members entitled to speak or propose motions. Note: some motions may be made while another member has the floor. Speaker must state the purpose of the interruption so the chair can rule on its validity.

2. Restate motions after they have been seconded, then open discussion.

3. Close discussion and put motions to vote. Votes on undebatable motions should be called immediately. If any member objects to closing discussion on a debatable motion, a 2/3 vote is required to order to close a debate. Restate the motion exactly as it was made or amended before calling for a vote.

4. Announce the result of a vote immediately. A tie vote defeats a motion requiring a majority of those voting. The chair may vote to make or break a tie.

5. Avoid entering into any controversy or interfering with legitimate motions.

6. Maintain order and proper procedure, making necessary rulings promptly and clearly.

7. Expedite board business in every way compatible with the rights of board members. You can allow brief remarks on undebatable motions, advise board members how to take action (proper motion or form of motion), or order proposed routing action without a formal vote ("If there is no objection, the minutes will stand approved as read. Hearing no objection so ordered").

8. Protect the board from frivolous motions whose purpose is to obstruct the board's business. You can refuse to entertain such motions. Never adopt such a course, however, merely to expedite business.

9. Guard the board's time by having them vote to adopt an agenda at the beginning of the meeting.

Follow the agenda faithfully. Do not permit unauthorized interruptions by spectators.

PRINCIPLES OF PARLIAMENTARY LAW

1. Parliamentary procedure requires that all board members have equal rights; there be mutual respect among board members; and the rights of the minority to initiate motions, debate, and have their votes counted be protected, while at the same time the will of the majority governs.

2. Only one item may be under consideration at a time.

3. The majority vote decides the questions.

4. Any question which limits board members' rights of discussion or changes the agreed order of business requires a 2/3 vote of the members present.

5. Any matter once decided cannot be brought up again at the same meeting, except by a motion to reconsider.

6. The simplest, clearest and most expeditious way is considered proper, as long as it does not violate the rights of board members.

PROPOSING AND DISPOSING OF A MOTION

1. Gain floor by being recognized by chair and state motion: "I move that. . ."
2. Motion is seconded by any member without gaining floor.
3. Chair states motion (if proper) and opens it for discussion (if debatable).
4. During discussion the motion may be amended or disposed of by postponement (to a time certain or indefinitely), referral to a committee, or tabling.

5. The chair puts the motion to a vote when there is no further discussion.
6. The chair announces the outcome of the vote.

MOTIONS

1. MOTION TO TAKE FROM TABLE

Requires second	Majority vote	Not debatable Not amendable

Purpose: To bring up for consideration an issue that has been laid on the table.

Effect of adoption: Puts motion before board again in exactly the same condition as when laid on table.

2. MOTION TO RECONSIDER

Requires second	Majority vote	Debatable Not amendable

Purpose: To set aside a previous vote and reconsider the question for adoption or rejection.

Restrictions: Used only if vote cannot be reversed with more simple procedures.

Motion must be made by member who voted on the prevailing side.

May not be made later than the next meeting after the vote to which it applies.

If action has already been taken, vote cannot be reversed.

Motion may be made when another member has the floor, but its consideration is the same for a main motion.

Effect of motion: Stops any action authorized by the original vote.

Effect of adoption: Sets aside original vote, puts matter back to where it was just before that vote was taken.

3. MAIN MOTION

Requires second	Majority vote	Debatable Amendable

Purpose: To bring an issue up for consideration or action.

4. MOTION TO POSTPONE INDEFINITELY

Requires second	Majority vote	Debatable Not amendable

Purpose: To kill main motion without a formal vote; trial vote to test strength.

Requires second	Majority vote	Debatable Amendable

5. MOTION TO AMEND A MOTION

Purpose: To put motion in most acceptable form before voting on it, by striking out or inserting words or substituting one paragraph or motion for another.

Restrictions: An amendment to a pending amendment may be proposed, but not an amendment to the third degree.

No idea already inserted by an amendment may be changed by a later amendment.

Any germane amendment is in order as long as it is not identical in effect to a no vote on the main motion.

*Not debatable if motion to which it applies is not debatable.
Effect of adoption: Changes the wording of the pending motion.

6. MOTION TO REFER TO A COMMITTEE

Requires second	Majority vote	Debatable Amendable

Purpose: To have a matter studied by a committee.

Form: Motion may include membership of committee and instructions to it, and may be amended with respect to these matter.

Effect of adoption: Disposes of motion until committee reports back or is discharged by the board.

7. MOTION TO POSTPONE DEFINITELY

Requires second	Majority vote	Debatable Amendable

Purpose: To put off action on a motion until a later time.

Form: Motion must specify time at which matter will be taken up again and may be amended in this regard.

Effect of adoption: Disposes of matter until time set.

8. MOTION TO LIMIT DEBATE OR EXTEND LIMITS

Requires second	2/3 vote	Not debatable Amendable

Purpose: To regulate length of time a question may be discussed or length of time allotted to each speaker.

Form: Motion states limits and may be amended in this regard.

9. MOTION ON PREVIOUS QUESTION

Requires second	2/3 vote	Not debatable Not amendable

Purpose: To have discussion ended immediately and a vote taken.

Form: May specify only the immediately pending question, of all pending questions.

Effect of adoption: Chair must immediately put question to a vote and allow no further discussion.

NOTE: This motion should not be confused with the call for the "question" which is only a suggestion that the board members are ready to vote, and may not be used to deprive any board member of the right to continue the discussion if desired.

10. MOTION TO LAY ON THE TABLE

Requires second	Majority vote	Not debatable Not amendable

Purpose: To set a matter aside temporarily. May be moved even after the previous question has been ordered.

Effect of adoption: Matter on table may be brought up again, but not later than the next meeting, by adoption of a main motion to take it off the table.

11. MOTION RELATING TO VOTING

Requires second	Majority vote	Not debatable Amendable

Purpose: To provide for manner of voting (i.e., by ballot, voice, show of hands) order in which questions will be voted upon, appointment of tellers, etc.

12. QUESTION OF ORDER

No second	Decision of chair	Not debatable Not amendable

Purpose: To ask that a rule that is being violated by observed.

Form: Floor is gained, even while another is talking, by stating, "Chairperson, I rise to a point of order". Chair asks member to state point, then rules whether point is well taken. If point accepted: Chair makes ruling. If not accepted: Chair overrules point of order.

13. DIVISION OF BOARD

No second	No vote necessary	Not debatable Not amendable

Purpose: To secure a recount of a vote by a more accurate method than originally.
Form: Board member, without recognition, says, "I call for a division."

Effect of motion: Chair must retake vote by show of hands or written vote which can be counted.

14. APPEAL CHAIR'S DECISION

Requires second	Majority vote	Debatable Not amendable

Purpose: To overrule a decision made by the chair.

Form: "Chairperson, I appeal from the decision of the chair."

Restrictions: Must be made as soon as the decision is announced.

Debatable if pending question is debatable. Can be laid on the table, which takes the pending question with it.

Effect of adoption: If less than majority sustain chair, decision is reserved.

15. MOTION TO RECESS

Requires second	Majority vote	Not debatable Not amendable*

Purpose: To provide a short interruption of the meeting.

*Amendable: As to length of recess.

Restrictions: Treated as a main motion if no other matter pending or if proposed recess is not to be taken immediately.

16. MOTION TO ADJOURN

Requires second	Majority	Not debatable Not amendable

Purpose: To end the meeting immediately.

Restrictions: Treated as a main motion if qualified in any way.

Effect of adoption: Chair must adjourn meeting immediately, although necessary announcements may be made and a motion to fix a time for the next meeting may be entertained.

17. MOTION TO FIX TIME FOR NEXT MEETING

Requires second	Majority vote	Not debatable Amendable

Purpose: To set time for next meeting (either regular or special).

Restrictions: Treated as main motion if no other question pending, or if provision has already been made for another meeting on this day or the next.

ROLE OF A BOARD MEMBER

QUESTION: What are my responsibilities as a board member?

ANSWER: You have a responsibility to several groups.

1. To the general public. Consumers expect that licensees will be qualified to perform properly and safely. They expect a fair method of settling disputes that may arise with a licensed practitioner. They have a right to know what's going on within the board.

2. To potential licensees. A person who wishes to earn his/her living in an occupation should not be kept out unreasonably. That person should have easy access to all information about entering the profession, including testing and/or transferring a license to or from another state.

3. To other board members. You have a responsibility to listen to them and to consider their views and contributions. You are responsible for helping to determine good policy and helpful procedures, for contributing to fair determination of problems and for helping the board to operate most effectively and efficiently.

QUESTION: What does it mean to "serve in the interest of consumers?"

ANSWER: A good starting point is to turn to the "Consumer Bill of Rights," as stated by President Kennedy in 1960. He named four rights:

1. The right to safety--to be protected against the marketing of products and services that are hazardous to health or to life.

2. The right to be informed--to be protected against fraudulent, deceitful, or grossly misleading information, advertising, labeling, or other practices, and to be given the facts needed to make informed choices.

3. The right to choose--to have available a variety of products and services at competitive prices.

4. The right to be heard--to be assured that consumer interests will receive full and sympathetic consideration in making government policy, both through laws passed by legislatures and through regulations passed by administrative agencies.

And, in 1975, President Ford added a fifth consumer right:

1. The right to education. This means the right to programs and information that help consumers make better marketplace decisions. Many consumer leaders add a sixth right to this list: The right to redress--to work with established mechanisms to have problems corrected, and to receive compensation for poor service or for products which do not function properly.

Board members should keep these consumer rights in mind when making board decisions. Working in the public interest means looking at the issues before the board from the point of view of their impact on the consumers of the service, rather than from the point of view of the profession licensed.

This means examining the board's procedures and decisions to ensure that they encourage openness and accountability, increase the public's safety, and do not restrict choices available to consumers. It also means being aware of the dangers of over-regulating a profession, and the impact of licensing on the practitioners' fees. Useful consumer information about the profession and how consumers can lodge complaints and seek restitutions should be published in brochures and in other state publications, as appropriate.

Revoking a license is insufficient resolution to a consumer's problem; an aggrieved consumer needs and deserves more assistance from the board, such as a suggestion of alternative avenues that might provide satisfactory resolution. Some specific suggestions are: the Consumer Protection Division or county offices of consumer affairs, Action Line in the newspaper, Legal Aid (for consumers with low income), or legal action through Small Claims Court or other means.

QUESTION: What is "the public interest?"

ANSWER: People often equate "the consumer interest" with the public interest. But there is a difference. Every board has its reason for being: "To protect the health, safety, and well-being of the public." Therefore all board members have as their primary goal the public's interest. A public member has in addition the responsibility of being especially sensitive to consumer welfare. Just as practitioner groups are a special interest, the consumer perspective is a special interest that must be considered along with other factors when a board makes decisions.

QUESTION: What are the requirements for service on licensing boards?

ANSWER:

1. A demonstrated interest in public service. Common sense and a willingness to ask questions like do the policies, procedures, and decisions of the board seem sensible? If not, say so and ask for clarification. You are responsible for what goes on with your board. If you are not sure about something, and you do not ask, you are not being responsible.

2. A commitment to attendance. Consistent attendance is essential to keeping informed about what is going on and to providing direction and support. An individual who accepts an appointment to a board, then does not regularly attend and actively participate, does a disservice to the board and to the public he/she is there to represent.

3. Assertiveness. Respect your own rights and needs as well as those of others.

4. A willingness to become informed about the board structure and resources. Find out how the Department and the Attorney General's Office works in relation to your board and investigate other available resources.

QUESTION: How can a board member effectively participate in board work?

ANSWER: Effective board members have these characteristics in common:

- They are able to work with a group to make decisions.
- They understand and follow democratic processes.
- They are willing to devote time and effort to the work of the board.
- They work to find alternative solutions to problems whenever necessary.
- They have good communication skills.
- They recognize that the goal of the board is the service and protection of the public.
- They are aware that statute grants authority to the board as a whole, not to any member individually, and can only be used in open meeting or executive session by vote of the majority of board members.
- They avoid becoming involved in the daily functions of staff.
- They delay making judgments until adequate evidence is in and has been fully discussed.
- They don't let personal feelings toward others affect their decisions.

QUESTION: What is the purpose of appointing public members to licensing boards?

ANSWER: Nearly every state's law mandating public members on boards states that a public member shall have no association or relationship with the profession or with a member of the regulated profession. The public members on a licensing board are expected to express and be watchful of the public interest -- not the interest of the profession or occupation. Public members are not expected to be, indeed are not supposed to be, technically expert or experienced in the licensed occupation.

QUESTION: What are the possible advantages and disadvantages of public members on boards?

ANSWER: Some possible advantages:

1. Reduces the potential for board decisions which favor the industry over

the public.

2. Reduces the potential for decisions which illegitimately favor one faction of an industry over another.

3. Institutional public participation in government decision-making.

4. Decreases public suspicion and thereby augments public confidence and trust in government.

5. Expands the range of skills, talent, training, and perspectives available for higher quality and more creative board action.

6. Raises the level of board discussion to include reexamination of the unscrutinized "givens" in any industry.

7. Reduces the barriers for "the average citizen" to address the board.

8. Lends credibility to board decisions and advocacy.

Some possible disadvantages:

1. Public members may be intimidated by industry members' experience in the field.

2. Public members may impede board activity if technical issues are not understood by lay members.

3. Split public/profession votes or conflict may be viewed by the licensees as board weakness, which could reduce deterrence.

4. There may be fewer motives for board participation because professional self-interest motives may be lacking.

QUESTION: What are the board members' responsibilities about serving as a representative of the board?

ANSWER:

1. All inquiries regarding matters within the board's jurisdiction should be directed to the board office so that they can be brought to the attention of the board at a duly-constituted meeting.

2. No details of board activity should be released by a board member unless and until they become part of the public record. Any disclosure of such information should be made only after consultation with legal counsel.

3. Board members are prohibited from conducting private meetings outside of full board meetings. This means they cannot participate as other

parties in the dispute. Board members cannot discuss the details of a disciplinary action with the subject of the complaint or with any other members of the public other than board members, except at a board meeting in the presence of legal counsel.

4. Board members should remember that they are seen as representatives of the board when they appear at industry or professional gatherings. They must not appear to speak for the board unless specifically authorized by the department or board to do so.

CREDIT
The "Role of the Board Member" was adapted from Effective Consumer Representation: An Orientation Manual for Board Members published by the Maryland Consumer Council, and from the Handbook for Board Members published by the Montana Dept. of Commerce and the Board Orientation Training Manual published by the Washington Dept. of Licensing.

PRINCIPLES FOR EFFECTIVE BOARD MEMBERS

- READ: Please read all Board meeting materials before the meeting.
- CONFIDENTIALITY: Treat applications & complaint files as confidential.
- BECOME FAMILIAR WITH THE LAWS & RULES: Read & become familiar with the laws and rules for your Board's profession or occupation.
- ASK QUESTIONS: Board staff, attorneys and Division bureau chiefs will be glad to answer any questions on procedures, budgets, laws, precedents — everything that is not subject to an individual right to privacy.
- ATTEND ALL BOARD FUNCTIONS: Attend all meetings except for emergencies. Please schedule vacations and other events for days that do not conflict with Board business. Please let staff know ASAP when you will not be able to attend a scheduled meeting.
- CONTACT WITH PRESS, LICENSEES, APPLICANTS, OR COMPLAINANT: Advise Board staff immediately when you have been contacted by a licensee or a reporter on an item of Board business.
- TRAVEL CLAIMS: Turn in travel and expense vouchers, and all supportive receipts quickly so you are paid as soon as possible and Department staff can balance the Board's budget monthly. Please remember to submit original receipts with your signed voucher.
- CONFLICTS: If you have a personal, business, financial or family relationship with a licensee, applicant, complainant, or other person with business before the Board, please notify the attorney handling the matter. The attorney will advise you on what action you should take to avoid any perception of conflict of interest.

CONDUCT BOARD MEMBERS SHOULD AVOID

- Do not discuss Board business with friends or family.

- Do not take a private phone call from a licensee, applicant, or complainant who is involved in a matter before the Board. Immediately report all such attempted contacts to the board attorney, department attorney, or compliance specialist handling the matter.

- Do not discuss a pending investigation or disciplinary proceeding with a reporter. Immediately report all such attempted contacts to the department attorney handling the case.

- Do not investigate a complaint or other matter yourself. If you have some information on a pending matter, give your information to the attorney handling the case, and he or she will ensure the appropriate work is completed.

- Do not take a position on a board issue until all the facts, laws, and arguments have been presented and the matter is discussed thoroughly with the full Board in a meeting.

- Do not dispose of Board meeting materials in your household or business garbage can. Return all materials to the Board staff after a meeting so that confidential materials can be shredded before recycling.

- Do not write or mark on original materials in a Board file which you may have been given for review. Original materials may need to be “offered in evidence” at some point, and must not be altered. You can make notes on a photocopy, removable notepaper, or on a separate sheet of paper to use when reporting on the file to the Board, or when calling something to the attention of the attorney handling the matter.

- Do not meet or confer with other Board members about Board business, except at noticed Board or Committee meetings. Doing so violates the open meeting laws. This includes lunches or dinners. Board staff must give the public an opportunity to attend the public portions of all meetings. This is accomplished by publicly noticing the meeting.

A BOARD'S SELF-ASSESSMENT CHECKLIST

Is your board protecting, promoting, and responding to the public interest? Here's a checklist of some important indicators that can help with your assessment.

1. Is there a need for regulation?

    a. When did regulation of the profession or occupation begin? Why? Does the need still exist?
    b. Are the rules and regulations promulgated by the board consistent with

the statute?

c. Is the implementation--guidelines, procedures, etc. -- consistent with the rules and regulations?

2. Does my board promote and protect the public interest?

a. Are there contacts with consumer groups?
b. Are there mechanisms to provide consumer input into decision-making?
c. Are due process protections provided to applicants, licensees, and the public?
d. Is my board making itself known to, and open to, the public? Do any non-board members attend meetings? Who are they?
e. How are board meetings, activities, and decisions publicized?
f. Is there an annual report? What is it like? Is it something the average citizen could read and understand? Does the report summarize board activities in a way that would permit the reader to judge how well the board is doing its job, or where it is placing its emphasis?
g. Are there minutes of all meetings? How are they circulated or made available outside the board? When are they circulated?

3. Is the board involved in consumer education?

a. Are consumers informed of their rights?
b. Are consumers informed of where they can go for help when their rights have been violated?

4. Does my board provide protection against deceptive practices, negligence, and incompetence?

a. Are consumers informed of the types of deceptive practices that can occur?
b. Are records of complaints kept to indicate patterns of abuse?
c. What actions does my board take to discipline licensees, e.g., ordering work redone, revoking licenses?

5. Does my board engage in practices that limit competition?

a. Does the licensing process restrict entry into the profession or occupation?
b. Is there a ban on advertising which may prohibit sellers of service from competing?
c. Are minimum or suggested fee schedules established?
d. Are there any other unnecessary or unjustified restrictions?

6. How effective are the program functions of any board?

a. Are these functions desirable or necessary (testing, licensing, complaint handling, holding hearings, rulemaking)?
b. Is the board working to maintain high standards within the licensed occupation?

c. Is the board able to show what it has done about complaints received from the public?

7. Is my board operating efficiently?

- Is the interaction and sharing of responsibilities between the board and the appropriate agencies optimally divided and carried out?
- Are activities of the board itself being run in the most efficient manner?
- Do meetings start on time?
- Do members consistently get to meetings on time?
- Do members consistently attend and notify the chairman if they are not coming or will be late?
- What is an operating quorum?
- Are minutes of the previous meeting mailed promptly?
- Is much time spent in routine administrative items that should be taken care of by staff?
- Is correspondence summarized, or read word for word?
- Are responses to applicant letters (including the standard reply explaining the procedure for licensing) helpful, relevant, and written in simple language that really gives the needed information and guidance?
- Do meetings operate on an agenda, and do all members know what the agenda is?
- Do people leave before the meeting is over?
- Do meetings run too long?
- Could there be time limits set for items?
- Is the board meeting at a time most convenient for the members?
- Could the meeting time be changed?
- Does the board need to meet more often or less often?

Credit This checklist is reprinted in part from Effective Consumer Representation: An Orientation Manual for Board Members published for the Consumer Council of Maryland. The checklist was adapted from the Orientation Manual for Members of Boards, Commissions and Committees published by the California Dept. of Consumer Affairs.

LAWS RELATING TO BOARD MEMBERS

2-2-101. Statement of purpose.

The purpose of this part is to set forth a code of ethics prohibiting conflict between public duty and private interest as required by the constitution of Montana. This code recognizes distinctions between legislators, other officers and employees of state government, and officers and employees of local government and prescribes some standards of conduct common to all categories and some standards of conduct adapted to each category. The provisions of this part recognize that some actions are conflicts per se between public duty and private interest while other actions may or may not pose such conflicts depending upon the surrounding circumstances. **History:** En. 59-1701 by Sec. 1, Ch. 569, L. 1977; R.C.M. 1947, 59-1701.

2-2-102. Definitions.

As used in this part, the following definitions apply:

(1) "Business" includes a corporation, partnership, sole proprietorship, trust or foundation, or any other individual or organization carrying on a business, whether or not operated for profit.

(2) "Compensation" means any money or economic benefit conferred on or received by any person in return for services rendered or to be rendered by the person or another.

(3) (a) "Gift of substantial value" means a gift with a value of $50 or more for an individual.

(b) The term does not include:

(i) a gift that is not used and that, within 30 days after receipt, is returned to the donor or delivered to a charitable organization or the state and that is not claimed as a charitable contribution for federal income tax purposes;

(ii) food and beverages consumed on the occasion when participation in a charitable, civic, or community event bears a relationship to the public officer's or public employee's office or employment or when the officer or employee is in attendance in an official capacity;

(iii) educational material directly related to official governmental duties;

(iv) an award publicly presented in recognition of public service; or

(v) educational activity that:

(A) does not place or appear to place the recipient under obligation;

(B) clearly serves the public good; and

(C) is not lavish or extravagant.

(4) "Local government" means a county, a consolidated government, an incorporated city or town, a school district, or a special district.

(5) "Official act" or "official action" means a vote, decision, recommendation, approval, disapproval, or other action, including inaction, that involves the use of discretionary authority.

(6) "Private interest" means an interest held by an individual that is:

(a) an ownership interest in a business;

(b) a creditor interest in an insolvent business;

(c) an employment or prospective employment for which negotiations have begun;

(d) an ownership interest in real property;

(e) a loan or other debtor interest; or

(f) a directorship or officership in a business.

(7) "Public employee" means:

(a) any temporary or permanent employee of the state;

(b) any temporary or permanent employee of a local government;

(c) a member of a quasi-judicial board or commission or of a board, commission, or committee with rulemaking authority; and

(d) a person under contract to the state.

(8) "Public officer" includes any state officer and any elected officer of a local government.

(9) "Special district" means a unit of local government, authorized by law to perform a single function or a limited number of functions. The term includes but is not limited to conservation districts, water districts, weed management districts,

irrigation districts, fire districts, community college districts, hospital districts, sewer districts, and transportation districts. The term also includes any district or other entity formed by interlocal agreement.

(10) (a) "State agency" includes:

(i) the state;

(ii) the legislature and its committees;

(iii) all executive departments, boards, commissions, committees, bureaus, and offices;

(iv) the university system; and

(v) all independent commissions and other establishments of the state government.

(b) The term does not include the judicial branch.

(11) "State officer" includes all elected officers and directors of the executive branch of state government as defined in 2-15-102. **History:** En. 59-1702 by Sec. 2, Ch. 569, L. 1977; R.C.M. 1947, 59-1702; amd. Sec. 3, Ch. 18, L. 1995; amd. Sec. 1, Ch. 562, L. 1995; amd. Sec. 1, Ch. 122, L. 2001.

2-2-103. Public trust -- public duty.

(1) The holding of public office or employment is a public trust, created by the confidence that the electorate reposes in the integrity of public officers, legislators, and public employees. A public officer, legislator, or public employee shall carry out the individual's duties for the benefit of the people of the state.

(2) A public officer, legislator, or public employee whose conduct departs from the person's public duty is liable to the people of the state and is subject to the penalties provided in this part for abuse of the public's trust.

(3) This part sets forth various rules of conduct, the transgression of any of which is a violation of public duty, and various ethical principles, the transgression of any of which must be avoided.

(4) (a) The enforcement of this part for:

(i) state officers, legislators, and state employees is provided for in 2-2-136;

(ii) legislators, involving legislative acts, is provided for in 2-2-135 and for all other acts is provided for in 2-2-136;

(iii) local government officers and employees is provided for in 2-2-144.

(b) Any money collected in the civil actions that is not reimbursement for the cost of the action must be deposited in the general fund of the unit of government. **History:** En. 59-1703 by Sec. 3, Ch. 569, L. 1977; R.C.M. 1947, 59-1703; amd. Sec. 216, Ch. 685, L. 1989; amd. Sec. 2, Ch. 562, L. 1995; amd. Sec. 2, Ch. 122, L. 2001.

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) In order to determine compliance with this subsection (3), a public officer, legislator, or public employee subject to this subsection (3) shall disclose the amounts received from the two separate public employment positions to the commissioner of political practices. **History:** En. 59-1704 by Sec. 4, Ch. 569, L. 1977; R.C.M. 1947, 59-1704; amd. Sec. 3, Ch. 562, L. 1995; amd. Sec. 1, Ch. 243, L. 1997.

2-2-105. Ethical requirements for public officers and public employees.

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

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

(3) A public officer or public employee may not, within 12 months following the

voluntary termination of office or employment, obtain employment in which the officer or employee will take direct advantage, unavailable to others, of matters with which the officer or employee was directly involved during a term of office or during employment. These matters are rules, other than rules of general application, that the officer or employee actively helped to formulate and applications, claims, or contested cases in the consideration of which the officer or employee was an active participant.

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

(5) A public officer or public employee may not perform an official act directly and substantially affecting a business or other undertaking to its economic detriment when the officer or employee has a substantial personal interest in a competing firm or undertaking. **History:** En. 59-1709 by Sec. 9, Ch. 569, L. 1977; R.C.M. 1947, 59-1709; amd. Sec. 4, Ch. 562, L. 1995.

2-2-121. Rules of conduct for public officers and public employees.

(1) Proof of commission of any act enumerated in subsection (2) is proof that the actor has breached a public duty.

(2) A public officer or a public employee may not:

(a) subject to subsection (7), use public time, facilities, equipment, supplies, personnel, or funds for the officer's or employee's private business purposes;

(b) engage in a substantial financial transaction for the officer's or employee's private business purposes with a person whom the officer or employee inspects or supervises in the course of official duties;

(c) assist any person for a fee or other compensation in obtaining a contract, claim, license, or other economic benefit from the officer's or employee's agency;

(d) assist any person for a contingent fee in obtaining a contract, claim, license, or other economic benefit from any agency;

(e) perform an official act directly and substantially affecting to its economic benefit a business or other undertaking in which the officer or employee either has a substantial financial interest or is engaged as counsel, consultant, representative, or agent; or

(f) solicit or accept employment, or engage in negotiations or meetings to consider employment, with a person whom the officer or employee regulates in the course of official duties without first giving written notification to the officer's or employee's supervisor and department director.

(3) (a) Except as provided in subsection (3)(b), a public officer or public employee may not use public time, facilities, equipment, supplies, personnel, or funds to solicit support for or opposition to any political committee, the nomination or election of any person to public office, or the passage of a ballot issue unless the use is:

(i) authorized by law; or

(ii) properly incidental to another activity required or authorized by law, such as

the function of an elected public officer, the officer's staff, or the legislative staff in the normal course of duties.

(b) As used in this subsection (3), "properly incidental to another activity required or authorized by law" does not include any activities related to solicitation of support for or opposition to the nomination or election of a person to public office or political committees organized to support or oppose a candidate or candidates for public office. With respect to ballot issues, properly incidental activities are restricted to:

(i) the activities of a public officer, the public officer's staff, or legislative staff related to determining the impact of passage or failure of a ballot issue on state or local government operations;

(ii) in the case of a school district, as defined in Title 20, chapter 6, compliance with the requirements of law governing public meetings of the local board of trustees, including the resulting dissemination of information by a board of trustees or a school superintendent or a designated employee in a district with no superintendent in support of or opposition to a bond issue or levy submitted to the electors. Public funds may not be expended for any form of commercial advertising in support of or opposition to a bond issue or levy submitted to the electors.

(c) This subsection (3) is not intended to restrict the right of a public officer or public employee to express personal political views.

(4) A candidate, as defined in 13-1-101(6)(a), may not use or permit the use of state funds for any advertisement or public service announcement in a newspaper, on radio, or on television that contains the candidate's name, picture, or voice except in the case of a state or national emergency and then only if the announcement is reasonably necessary to the candidate's official functions.

(5) A public officer or public employee may not participate in a proceeding when an organization, other than an organization or association of local government officials, of which the public officer or public employee is an officer or director is:

(a) involved in a proceeding before the employing agency that is within the scope of the public officer's or public employee's job duties; or

(b) attempting to influence a local, state, or federal proceeding in which the public officer or public employee represents the state or local government.

(6) A public officer or public employee may not engage in any activity, including lobbying, as defined in 5-7-102, on behalf of an organization, other than an organization or association of local government officials, of which the public officer or public employee is a member while performing the public officer's or public employee's job duties. The provisions of this subsection do not prohibit a public officer or public employee from performing charitable fundraising activities if approved by the public officer's or public employee's supervisor or authorized by law.

(7) A listing by a public officer or a public employee in the electronic directory provided for in 30-17-101 of any product created outside of work in a public agency is not in violation of subsection (2)(a) of this section. The public officer or public employee may not make arrangements for the listing in the electronic directory during work hours.

(8) A department head or a member of a quasi-judicial or rulemaking board may perform an official act notwithstanding the provisions of subsection (2)(e) if participation is necessary to the administration of a statute and if the person complies with the disclosure procedures under 2-2-131.

(9) Subsection (2)(d) does not apply to a member of a board, commission, council, or committee unless the member is also a full-time public employee.

(10) Subsections (2)(b) and (2)(e) do not prevent a member of the governing body of a local government from performing an official act when the member's participation is necessary to obtain a quorum or to otherwise enable the body to act. The member shall disclose the interest creating the appearance of impropriety prior to performing the official act. **History:** En. 59-1706 by Sec. 6, Ch. 569, L. 1977; R.C.M. 1947, 59-1706; amd. Sec. 1, Ch. 59, L. 1991; amd. Sec. 7, Ch. 562, L. 1995; amd. Sec. 3, Ch. 42, L. 1997; amd. Sec. 3, Ch. 122, L. 2001; amd. Sec. 1, Ch. 58, L. 2003; amd. Sec. 1, Ch. 145, L. 2005; amd. Sec. 3, Ch. 173, L. 2005; amd. Sec. 1, Ch. 437, L. 2005.

2-2-131. Disclosure.

A public officer or public employee shall, prior to acting in a manner that may impinge on public duty, including the award of a permit, contract, or license, disclose the nature of the private interest that creates the conflict. The public officer or public employee shall make the disclosure in writing to the commissioner of political practices, listing the amount of private interest, if any, the purpose and duration of the person's services rendered, if any, and the compensation received for the services or other information that is necessary to describe the interest. If the public officer or public employee then performs the official act involved, the officer or employee shall state for the record the fact and summary nature of the interest disclosed at the time of performing the act. **History:** En. 59-1710 by Sec. 10, Ch. 569, L. 1977; R.C.M. 1947, 59-1710; amd. Sec. 9, Ch. 562, L. 1995; amd. Sec. 1, Ch. 65, L. 2005.

THE STATE OF MONTANA

COMMISSIONER OF POLITICAL PRACTICES
1205 Eighth Avenue
Post Office Box 202401
Helena, MT 59620-2401
TELEPHONE: 406-444-2942
FAX NUMBER: 406-444-1643
WEBSITE: www.politicalpractices.mt.gov

INSTRUCTIONS (Revised 06/03)
FORM E-1
MULTIPLE PUBLIC EMPLOYMENT DISCLOSURE STATEMENT

WHO IS REQUIRED TO FILE A FORM E-1?
All public officers, legislators, and public employees who are employed by more than one public employer for overlapping periods of time are required to file a Form E-1. (Montana Code Annotated § 2-2-104.)

A "public officer" includes any state officer and any elected officer of a local government.

A "state officer" includes all elected officers and directors of the executive branch.

A " public employee" means any temporary or permanent employee of the state; any temporary or permanent employee of a local government; a member of a quasi-judicial board or commission or of a board, commission, or committee with rulemaking authority; and a person under contract to the state. (Montana Code Annotated § 2-2-102.)

WHAT INFORMATION IS TO BE REPORTED?
In accordance with Administrative Rules of Montana 44.10.601, the Multiple Employment Disclosure form will contain the following information:

(a) name, address, and telephone number of the public officer, legislator, or public employee;
(b) name, address, and telephone number of each public employer;
(c) date(s) of multiple employment;
(d) title(s) or description(s) of each overlapping position;
(e) amount(s) paid by each public employer and method(s) of payment.

In addition, an explanation should be provided describing how the filer will comply with the provisions of Montana Code Annotated § 2-2-104(3).

WHEN MUST A FORM E-1 BE FILED?
If multiple public employment is ongoing, a Multiple Public Employment Disclosure Statement must be filed within 15 days of initial employment and annually thereafter prior to December 15 of the current and succeeding years.

If multiple public employment is occasional, a Multiple Public Employment Disclosure Statement must be filed within 15 days of each occurrence, contract agreement, or receipt of payment.

WHERE MUST A FORM E-1 BE FILED?
Form E-1 is to be filed with the Commissioner of Political Practices at the above address.

Please detach these instructions before filing Form E-1

THE STATE OF MONTANA

COMMISSIONER OF POLITICAL PRACTICES
1205 Eighth Avenue
Post Office Box 202401
Helena, MT 59620-2401
TELEPHONE: 406-444-2942
FAX NUMBER: 406-444-1643
WEBSITE: www.politicalpractices.mt.gov

FOR OFFICE USE ONLY
Date Received and Postmark Date

FORM E-1 (Revised 06/03)
MULTIPLE PUBLIC EMPLOYMENT DISCLOSURE STATEMENT

TO BE FILED by PUBLIC OFFICERS, LEGISLATORS and PUBLIC EMPLOYEES

TYPE OR PRINT IN INK ALL INFORMATION ON THIS FORM EXCEPT FOR CERTIFICATION SIGNATURE

FULL NAME OF PUBLIC OFFICER, LEGISLATOR, OR PUBLIC EMPLOYEE

Last First M.I.

E-MAIL ADDRESS (Please Print)

Complete Mailing Address

City, State, Zip Code

Telephone Numbers: Work _____ Home _____

MULTIPLE PUBLIC EMPLOYMENT IS (check one) ☐ **ON-GOING** ☐ **OCCASIONAL**

PUBLIC EMPLOYER NUMBER ONE

Name

E-MAIL ADDRESS (Please Print)

Complete Mailing Address

City,State, Zip Code

Contact Numbers: Telephone _____ Facsimile _____

DATE(S) EMPLOYED: From _____ **To** _____

TITLE OR DESCRIPTION OF POSITION: _____

AMOUNT(S) AND METHOD(S) OF PAYMENT: _____

FORM E-1 MULTIPLE PUBLIC EMPLOYMENT DISCLOSURE STATEMENT, PAGE 2

PUBLIC EMPLOYER NUMBER TWO

_____
Name

_____
E-MAIL ADDRESS (Please Print)

_____
Complete Mailing Address

_____
City,State, Zip Code

Contact Numbers: Telephone _____ Facsimile _____

DATE(S) EMPLOYED: From _____ **To** _____

TITLE OR DESCRIPTION OF POSITION: _____

AMOUNT(S) AND METHOD(S) OF PAYMENT: _____

Describe how compliance with the provisions of Montana Code Annotated § 2-2-104(3) will be achieved:

_____

_____

_____

_____

_____

_____

_____

CERTIFICATION

I hereby certify that the foregoing statements are true and correct to the best of my knowledge.

_____ _____
Signature **Date**

FORM MAY RE REPRODUCED

EXAMINATIONS

Examinations measure components of a specific profession to ensure the health, safety and welfare of the public that the licensee will be serving. Professional examinations serve as a qualifier to determine if individuals are minimally competent for a license in their profession of choice.

Each profession has many and varied forms of examinations and each profession will determine the type of examination appropriate for licensure. National examinations are gaining popularity with many professions. Some exams are given prior to graduation, while others require graduation status in order to qualify for the examination. National examinations are usually written examinations, but the format for examinations is determined and developed by the profession and the examination provider.

Clinical/practical examinations are used by some professionals and require the testing of the candidate in a clinical/practical environment, using clinical or hands-on skills.

Oral examinations are used by professions and usually require the candidate to answer developed questions orally before a specified panel of professionals. These examinations may be required even when a national or clinical/practical examination has been taken.

State examinations are generally administered by the state or state agency for a particular profession. The examination tests the professional in the appropriate areas determined by the department, board and profession. State examinations are not always recognized by other states for licensure. A state examination may be required instead of a clinical examination in some states.

Jurisprudence examinations are examinations given to candidates for licensure regarding the laws and rules of that profession in that state. Jurisprudence examinations can be oral or written. Jurisprudence examinations are specific to the state of licensure and do not apply to any other state.

In conclusion, examinations have various formats for different professions. Some professions require a national examination, a clinical/practical examination, and a jurisprudence examination. Regardless of the examination requirements for a particular state, the examinations provide an additional tool for the profession to help evaluate licensure of candidate who will be providing services to the public of that state.

OVERVIEW OF CONTINUING EDUCATION

INTRODUCTION

For centuries, civilizations have been concerned with competent delivery of professional services. Nearly 4,000 years ago, laws were written establishing

regulatory mechanisms to protect the public by means of examination, education, and experience requirements. The maintenance of professional competency continues to be major concern for regulators today.

With the rapid advances in technology and knowledge, professionals may find themselves falling behind in their chosen field of practice soon after they leave school unless they continue professional development activities. Many states have established mandatory continuing education (MCE) as a prerequisite to renewal of licensure. This section will cover: A. the options available in the effort to maintain competency; B. the availability of continuing education opportunities; C. enforcement of continuing education requirements; and D. a brief discussion of the controversy over the benefits of MCE.

A. Options Considered

Maintenance of professional competency is crucial and difficult to measure. Periodic reexamination as a condition for relicensure is the topic of strong debate and opposition within professions and, to a lesser degree, by state regulators. Currently, continuing education is the most widely accepted tool in the effort to insure public protection. Generally, to demonstrate continuing competency, a minimum number of hours in continuing education programs is required. Topics and training conditions are frequently specified by law or board rule.

Private certifying agencies and professional associations have taken the lead in developing other methods for assessing continuing competency. These methods include self-assessment materials with follow-up readings for deficient skills or knowledge areas; peer review; periodic examination for proficiency; simulation exercises; on-site job performance assessments; and practice audits.

B. Availability of Continuing Education Programs

Continuing education has become a multi-million dollar industry. Consequently, programs are available through a wide variety of sources. Providers include, but are not limited to:

- national, state, regional and local professional associations and societies
- federal and state agencies
- publishing houses
- universities
- employers
- private consultants
- peer groups
- trade associations
- manufacturers/suppliers
- national corporations
- research organizations
- private educational entrepreneurs

Availability of CE programs is directly affected by the criteria for approval of programs and providers. These criteria vary from state to state and board to board.

With advances in audiovisual technology, alternatives to personal attendance at seminars and training sessions have been accepted. Correspondence courses with examinations to verify completion have been accepted by some boards.

C. Enforcement of MCE (Mandatory Continuing Education)

The fundamental purpose of MCE is to enhance the professional's level of competence. To accomplish this, specific criteria are needed to identify quality programs. These guidelines should prescribe:

1) the qualifications of instructors
2) the instructor/participant ratio
3) the educational level of material
4) the program objective
5) the content of the program
6) a method for evaluating the program
7) standards for verification of participation
8) for self-study programs, and correspondence courses, an acceptable method of verification of completion

Mandatory continuing education for relicensure will only be as effective as the mechanism established to verify compliance. Participant rosters and certificates of completion provide verification of attendance at group sessions. Open-book examinations help to insure completion of self-study courses.

Verifying compliance with MCE at renewal time can create a backlog in the relicensure process; however, one successful approach to reducing this problem has been to require reporting of MCE six months prior to expiration of the license. Verification can be completed in advance, expediting the issuance of the new license without delay. A second approach utilizes a sampling mechanism, which occurs after renewal is completed. With this method, the regulated professional submits an affidavit of compliance along with relicensure fees. A random sample group must then provided evidence to support the affidavit upon request of the board. This approach could be an effective way to deal with large numbers of licensees.

D. Controversy over Benefits of MCE

Although continuing education is a mandatory provision for many professions, the debate continues over the effectiveness of MCE. Legislators disagree on the need for MCE in all professions. In fact, within any state, MCE may be added to relicensure requirements for one profession while being deleted at the same time from another profession. Some states have made a decision to eliminate MCE from all relicensure requirements, with mixed results. The general trend, though, seems to be the retention of MCE for most professions.

Resources 1. Power and Conflict in Continuing Professional Education, Milton R. Stern, et al. (Wadsworth Publishing Company/Continuing Education; Belmont, California) 1983

THE ROLE OF A BOARD IN RULEMAKING

Boards and Board members play a vital role in the efficient operation of conducting business associated with the licensing of various occupations and professions. A board administratively attached to the Department of Labor and Industry is charged with the authority to establish regulatory requirements over the occupations and professions within its jurisdiction.

A board accomplishes establishing regulatory requirements through the promulgation of administrative rules that have the force and effect of law. The actual promulgation of administrative rules is a three-step process:

- publication of a proposal notice in the Montana Administrative Register
- publication of an adoption notice in the Montana Administrative Register
- publication of replacement pages in the Administrative Rules of Montana

However, board involvement in the rulemaking process occurs prior to publication.

Boards are granted statutory rulemaking authority by the Legislature. This authority gives the board the power to promulgate rules to implement the statutes applicable to their occupation or profession. The most common rule topics deal with licensing requirements, fees, unprofessional conduct and rules specific to their licensees.

Statutory authority may be general and currently in statute or may be specific to a newly created jurisdiction of the governing board. In either case, the fundamental process for creating the rules is the same.

- rule concept and guidance is given by the board to board staff
- staff develop the rules within board, legal and format parameters
    - changes in rule text are designated by the text being removed stricken and new text underlined
- proposed rules are brought before the board for formal board approval
- once approved by the board:

    - the rules are put into proposal notice format
    - the proposal notice is reviewed by the department rule reviewer and signed by the Commissioner
    - the proposal notice is submitted to the Secretary of State's office for publication in the Montana Administrative Register

Once the proposal notice has been published in the Montana Administrative Register, several things commonly happen.

- interested persons receive a copy of the proposal notice
- a public hearing is held to gather comments from the public
- written comments can be submitted to the board within a specified timeframe

- board staff prepare draft rule changes, if necessary, and responses to comments received
- draft rule changes and responses are presented to the board for formal approval
- once approved by the board:

    - the rules are put into adoption notice format
    - the adoption notice is reviewed by the department rule reviewer and signed by the Commissioner
    - the adoption notice is submitted to the Secretary of State's office for publication in the Montana Administrative Register

Once the adoption notice is published in the Montana Administrative Register, the rule change becomes effective on the day after this publication. Once a quarter, replacement pages are created to update the Administrative Rules of Montana.

Rulemaking is governed by the Montana Administrative Procedure Act as found in Title 2, Chapter 4, Montana Code Annotated (MCA), the Attorney General's Model Rules and the Secretary of State's General Provisions, which are all found in Title 1 of the Administrative Rules of Montana. A board has discretion on the rule content, but the structure and format of the rules is governed by the laws and rules stated.

There are three common actions a board can take on rules including:

- adopting new rules
- amending existing rules
- repealing existing rules

A new rule is adopted when that topic is not currently addressed within the existing rules.

A rule is amended when the existing content of the rule needs to be modified. Modifications include removing obsolete information or adding additional requirements or language to clarify the intent of the rule.

A rule is repealed when the board no longer has authority to have the rule, or the rule is deemed no longer necessary.

Rulemaking serves to interpret and clarify the authority of a board. Rules govern what a licensee may or may not do in a manner that is consistent with the purpose of the statute. Promulgation of rules is a necessary function and a serious undertaking of a board and serves to carry out the board's primary purpose to ensure the protection of public health, safety and welfare.

WHAT ARE DECLARATORY RULINGS?

Declaratory Rulings are issued by an agency (or administratively attached board) to state whether a statute, rules, or order of an agency is applicable to a specific situation or activity. An individual or group of individuals may petition an agency

regarding the applicability of a statute, rule, or order, to the activity or proposed activity.

The Declaratory Ruling process is as follows:

- Petitioner files petition for Declaratory Ruling with the agency or administratively attached board
- Petition is published in the Interpretation Section of the Montana Administrative Register
- Agency or Board takes action to address petition by issuing a ruling or refusing to issue a ruling
- Declaratory Ruling is published in the Interpretation Section of the Montana Administrative Register

If a petition for Declaratory Ruling is denied, a copy of the order denying the petition must be mailed to all persons named in the petition and must include a statement of the grounds for denial.

If a Declaratory Ruling is issued, this ruling is binding between the agency and petitioner.

LAWS RELATING TO THE RULE MAKING PROCESS

2-4-101. Short title.

This chapter shall be known and may be cited as the "Montana Administrative Procedure Act". **History:** En. Sec. 1, Ch. 2, Ex. L. 1971; amd. Sec. 1, Ch. 285, L. 1977; R.C.M. 1947, 82-4201.

2-4-102. Definitions.

For purposes of this chapter, the following definitions apply:

(1) "Administrative rule review committee" or "committee" means the appropriate committee assigned subject matter jurisdiction in Title 5, chapter 5, part 2.

(2) (a) "Agency" means an agency, as defined in 2-3-102, of the state government, except that the provisions of this chapter do not apply to the following:

(i) the state board of pardons and parole, except that the board is subject to the requirements of 2-4-103, 2-4-201, 2-4-202, and 2-4-306 and its rules must be published in the ARM and the register;

(ii) the supervision and administration of a penal institution with regard to the institutional supervision, custody, control, care, or treatment of youths or prisoners;

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

(iv) the financing, construction, and maintenance of public works;

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

(b) Agency does not include a school district, unit of local government, or any

other political subdivision of the state.

(3) "ARM" means the Administrative Rules of Montana.

(4) "Contested case" means a proceeding before an agency in which a determination of legal rights, duties, or privileges of a party is required by law to be made after an opportunity for hearing. The term includes but is not restricted to ratemaking, price fixing, and licensing.

(5) (a) "Interested person" means a person who has expressed to the agency an interest concerning agency actions under this chapter and has requested to be placed on the agency's list of interested persons as to matters of which the person desires to be given notice.

(b) The term does not extend to contested cases.

(6) "License" includes the whole or part of an agency permit, certificate, approval, registration, charter, or other form of permission required by law but does not include a license required solely for revenue purposes.

(7) "Licensing" includes an agency process respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal, limitation, transfer, or amendment of a license.

(8) "Party" means a person named or admitted as a party or properly seeking and entitled as of right to be admitted as a party, but this chapter may not be construed to prevent an agency from admitting any person as a party for limited purposes.

(9) "Person" means an individual, partnership, corporation, association, governmental subdivision, agency, or public organization of any character.

(10) "Register" means the Montana Administrative Register.

(11) (a) "Rule" means each agency regulation, standard, or statement of general applicability that implements, interprets, or prescribes law or policy or describes the organization, procedures, or practice requirements of an agency. The term includes the amendment or repeal of a prior rule.

(b) The term does not include:

(i) statements concerning only the internal management of an agency or state government and not affecting private rights or procedures available to the public, including rules implementing the state personnel classification plan, the state wage and salary plan, or the statewide budgeting and accounting system;

(ii) formal opinions of the attorney general and declaratory rulings issued pursuant to 2-4-501;

(iii) rules relating to the use of public works, facilities, streets, and highways when the substance of the rules is indicated to the public by means of signs or signals;

(iv) seasonal rules adopted annually or biennially relating to hunting, fishing, and trapping when there is a statutory requirement for the publication of the rules and rules adopted annually or biennially relating to the seasonal recreational use of lands and waters owned or controlled by the state when the substance of the rules is indicated to the public by means of signs or signals; or

(v) uniform rules adopted pursuant to interstate compact, except that the rules must be filed in accordance with 2-4-306 and must be published in the ARM.

(12) (a) "Significant interest to the public" means agency actions under this chapter regarding matters that the agency knows to be of widespread citizen interest. These matters include issues involving a substantial fiscal impact to or controversy involving a particular class or group of individuals.

(b) The term does not extend to contested cases.

(13) "Substantive rules" are either:

(a) legislative rules, which if adopted in accordance with this chapter and under expressly delegated authority to promulgate rules to implement a statute have the force of law and when not so adopted are invalid; or

(b) adjective or interpretive rules, which may be adopted in accordance with this chapter and under express or implied authority to codify an interpretation of a statute. The interpretation lacks the force of law. **History:** (1), (3), (9)En. by Code Commissioner, 1979; (2), (4) thru (8), (10), (11)En. Sec. 2, Ch. 2, Ex. L. 1971; amd. Sec. 2, Ch. 285, L. 1977; Sec. 82-4202, R.C.M. 1947; R.C.M. 1947, 82-4202; amd. Sec. 4, Ch. 184, L. 1979; amd. Sec. 2, Ch. 243, L. 1979; amd. Sec. 1, Ch. 671, L. 1985; amd. Sec. 1, Ch. 340, L. 1991; amd. Sec. 6, Ch. 546, L. 1995; amd. Sec. 28, Ch. 349, L. 1997; amd. Sec. 1, Ch. 489, L. 1997; amd. Sec. 1, Ch. 19, L. 1999; amd. Sec. 1, Ch. 181, L. 2003.

2-4-103. Rules and statements to be made available to public.

(1) Each agency shall:

(a) make available for public inspection all rules and all other written statements of policy or interpretations formulated, adopted, or used by the agency in the discharge of its functions;

(b) upon request of any person, provide a copy of any rule.

(2) Unless otherwise provided by statute, an agency may require the payment of the cost of providing such copies.

(3) No agency rule is valid or effective against any person or party whose rights have been substantially prejudiced by an agency's failure to comply with the public inspection requirement herein. **History:** En. Sec. 3, Ch. 2, Ex. L. 1971; amd. Sec. 1, Ch. 240, L. 1974; amd. Sec. 3, Ch. 285, L. 1977; R.C.M. 1947, 82-4203(1)(c), (1)(d), (2); amd. Sec. 3, Ch. 243, L. 1979.

2-4-110. Departmental review of rule notices.

(1) The head of each department of the executive branch shall appoint an existing attorney, paralegal, or other qualified person from that department to review each departmental rule proposal notice, adoption notice, or other notice relating to administrative rulemaking. Notice of the name of the person appointed under this subsection and of any successor must be given to the secretary of state and the appropriate administrative rule review committee within 10 days of the appointment.

(2) The person appointed under subsection (1) shall review each notice by any division, bureau, or other unit of the department, including units attached to the department for administrative purposes only under 2-15-121, for compliance with this chapter before the notice is filed with the secretary of state. The reviewer shall pay particular attention to 2-4-302 and 2-4-305. The review must include but is not limited to consideration of:

(a) the adequacy of the statement of reasonable necessity for the intended action and whether the intended action is reasonably necessary to effectuate the purpose of the code section or sections implemented;

(b) whether the proper statutory authority for the rule is cited;

(c) whether the citation of the code section or sections implemented is correct; and

(d) whether the intended action is contrary to the code section or sections implemented or to other law.

(3) The person appointed under subsection (1) shall sign each notice for which this section requires a review. The act of signing is an affirmation that the review required by this section has been performed to the best of the reviewer's ability. The secretary of state may not accept for filing a notice that does not have the signature required by this section. **History:** En. Sec. 1, Ch. 8, L. 1987; amd. Sec. 1, Ch. 3, L. 1991; amd. Sec. 2, Ch. 19, L. 1999; amd. Sec. 1, Ch. 210, L. 2001.

2-4-201. Rules describing agency organization and procedures.

In addition to other rulemaking requirements imposed by law, each agency shall:

(1) adopt as a rule a description of its organization, stating the general course and method of its operations and the methods whereby the public may obtain information or make submissions or requests. The notice and hearing requirements contained in 2-4-302 do not apply to adoption of a rule relating to a description of its organization.

(2) adopt rules of practice, not inconsistent with statutory provisions, setting forth the nature and requirements of all formal and informal procedures available, including a description of all forms and instructions used by the agency. **History:** En. Sec. 3, Ch. 2, Ex. L. 1971; amd. Sec. 1, Ch. 240, L. 1974; amd. Sec. 3, Ch. 285, L. 1977; R.C.M. 1947, 82-4203(1)(a), (1)(b).

2-4-202. Model rules.

(1) The attorney general shall prepare a model form for a rule describing the organization of agencies and model rules of practice for agencies to use as a guide in fulfilling the requirements of 2-4-201. The attorney general shall add to, amend, or revise the model rules from time to time as he considers necessary for the proper guidance of agencies.

(2) The model rules and additions, amendments, or revisions thereto shall be appropriate for the use of as many agencies as is practicable and shall be filed with the secretary of state and provided to any agency upon request. The adoption by an agency of all or part of the model rules does not relieve the agency from following the rulemaking procedures required by this chapter. **History:** En. Sec. 3, Ch. 2, Ex. L. 1971; amd. Sec. 1, Ch. 240, L. 1974; amd. Sec. 3, Ch. 285, L. 1977; R.C.M. 1947, 82-4203(3).

2-4-301. Authority to adopt not conferred.

Except as provided in part 2, nothing in this chapter confers authority upon or augments the authority of any state agency to adopt, administer, or enforce any rule. **History:** En. 82-4204.1 by Sec. 9, Ch. 285, L. 1977; R.C.M. 1947, 82-4204.1(part).

2-4-302. Notice, hearing, and submission of views.

(1) Prior to the adoption, amendment, or repeal of any rule, the agency shall give written notice of its intended action. The notice must include a statement of either the terms or substance of the intended action or a description of the subjects and issues involved, the reasonable necessity for the intended action, and the time when, place where, and manner in which interested persons may present their views on the intended action. The reasonable necessity must be written in plain, easily understood language. If the agency proposes to adopt, increase, or decrease a monetary amount that a person shall pay or will receive, such as a fee, cost, or benefit, the notice must include an estimate, if known, of:

(a) the cumulative amount for all persons of the proposed increase, decrease, or new amount; and

(b) the number of persons affected.

(2) (a) The notice must be filed with the secretary of state for publication in the register, as provided in 2-4-312, and mailed within 3 days of publication to the sponsor of the legislative bill that enacted the section that is cited as implemented in the notice if the notice is the initial proposal to implement the section, to interested persons who have made timely requests to the agency to be informed of its rulemaking proceedings, and to the office of any professional, trade, or industrial society or organization or member of those entities who has filed a request with the appropriate administrative rule review committee when the request has been forwarded to the agency as provided in subsection (2)(b). Each agency shall create and maintain a list of interested persons and the subject or subjects in which each person on the list is interested. A person who submits a written comment or attends a hearing in regard to proposed agency action under this part must be informed of the list by the agency. An agency complies with this subsection if it includes in the notice an advisement explaining how persons may be placed on the list of interested persons and if it complies with subsection (7).

(b) The appropriate administrative rule review committee shall forward a list of all organizations or persons who have submitted a request to be informed of agency actions to the agencies that the committee oversees that publish rulemaking notices in the register. The list must be amended by the agency upon request of any person requesting to be added to or deleted from the list.

(c) The notice required by subsections (1) and (2)(a) must be published and mailed at least 30 days in advance of the agency's intended action. In addition to publishing and mailing the notice under subsection (2)(a), the agency shall post the notice on a state electronic access system or other electronic communications system available to the public.

(d) The agency shall also, at the time that its personnel begin to work on the substantive content and the wording of the initial rule proposal to implement one or more statutes, notify the sponsor of the legislative bill that enacted the section.

(3) If a statute provides for a method of publication different from that provided in subsection (2), the affected agency shall comply with the statute in addition to the requirements contained in this section. However, the notice period may not be less than 30 days or more than 6 months.

(4) Prior to the adoption, amendment, or repeal of any rule, the agency shall afford interested persons at least 20 days' notice of a hearing and at least 28 days from the day of the original notice to submit data, views, or arguments, orally or in writing. If an amended or supplemental notice is filed, additional time may be allowed for oral or written submissions. In the case of substantive rules, the notice

of proposed rulemaking must state that opportunity for oral hearing must be granted if requested by either 10% or 25, whichever is less, of the persons who will be directly affected by the proposed rule, by a governmental subdivision or agency, by the appropriate administrative rule review committee, or by an association having not less than 25 members who will be directly affected. If the proposed rulemaking involves matters of significant interest to the public, the agency shall schedule an oral hearing.

(5) An agency may continue a hearing date for cause. In the discretion of the agency, contested case procedures need not be followed in hearings held pursuant to this section. If a hearing is otherwise required by statute, nothing in this section alters that requirement.

(6) If an agency fails to publish a notice of adoption within the time required by 2-4-305(7) and the agency again proposes the same rule for adoption, amendment, or repeal, the proposal must be considered a new proposal for purposes of compliance with this chapter.

(7) At the commencement of a hearing on the intended action, the person designated by the agency to preside at the hearing shall:

(a) read aloud the "Notice of Function of Administrative Rule Review Committee" appearing in the register; and

(b) inform the persons at the hearing of the provisions of subsection (2)(a) and provide them an opportunity to place their names on the list.

(8) For purposes of notifying sponsors under subsections (2)(a) and (2)(d) who are no longer members of the legislature, a former legislator who wishes to receive notice may keep the former legislator's name, address, and telephone number on file with the secretary of state. An agency proposing rules shall consult the register when providing sponsor notice. **History:** En. Sec. 4, Ch. 2, Ex. L. 1971; amd. Sec. 5, Ch. 410, L. 1975; amd. Sec. 1, Ch. 482, L. 1975; amd. Sec. 8, Ch. 285, L. 1977; R.C.M. 1947, 82-4204(part); amd. Sec. 4, Ch. 243, L. 1979; amd. Sec. 1, Ch. 381, L. 1981; amd. Sec. 1, Ch. 429, L. 1983; amd. Sec. 1, Ch. 152, L. 1997; amd. Sec. 1, Ch. 340, L. 1997; amd. Sec. 2, Ch. 489, L. 1997; amd. Sec. 3, Ch. 19, L. 1999; amd. Sec. 1, Ch. 41, L. 1999; amd. Sec. 2, Ch. 210, L. 2001.

2-4-304. Informal conferences and committees.

(1) An agency may use informal conferences and consultations as a means of obtaining the viewpoints and advice of interested persons with respect to contemplated rulemaking.

(2) An agency may also appoint committees of experts or interested persons or representatives of the general public to advise it with respect to any contemplated rulemaking. The powers of the committees shall be advisory only.

(3) Nothing herein shall relieve the agency from following rulemaking procedures required by this chapter. **History:** En. Sec. 4, Ch. 2, Ex. L. 1971; amd. Sec. 5, Ch. 410, L. 1975; amd. Sec. 1, Ch. 482, L. 1975; amd. Sec. 8, Ch. 285, L. 1977; R.C.M. 1947, 82-4204(4).

2-4-305. Requisites for validity -- authority and statement of reasons.

(1) The agency shall fully consider written and oral submissions respecting the proposed rule. Upon adoption of a rule, an agency shall issue a concise statement of the principal reasons for and against its adoption, incorporating in the statement the reasons for overruling the considerations urged against its adoption. If substantial differences exist between the rule as proposed and as adopted and the differences have not been described or set forth in the adopted rule as that rule is printed in the register, the differences must be described in the statement of reasons for and against agency action. When written or oral submissions have not been received, an agency may omit the statement of reasons.

(2) Rules may not unnecessarily repeat statutory language. Whenever it is necessary to refer to statutory language in order to convey the meaning of a rule interpreting the language, the reference must clearly indicate the portion of the language that is statutory and the portion that is an amplification of the language.

(3) Each proposed and adopted rule must include a citation to the specific grant of rulemaking authority pursuant to which the rule or any part of the rule is adopted. In addition, each proposed and adopted rule must include a citation to the specific section or sections in the Montana Code Annotated that the rule purports to implement. A substantive rule may not be proposed or adopted unless:

(a) a statute granting the agency authority to adopt rules clearly and specifically lists the subject matter of the rule as a subject upon which the agency shall or may adopt rules; or

(b) the rule implements and relates to a subject matter or an agency function that is clearly and specifically included in a statute to which the grant of rulemaking authority extends.

(4) Each rule that is proposed and adopted by an agency and that implements a policy of a governing board or commission must include a citation to and description of the policy implemented. Each agency rule implementing a policy and the policy itself must be based on legal authority and otherwise comply with the requisites for validity of rules established by this chapter.

(5) To be effective, each substantive rule adopted must be within the scope of authority conferred and in accordance with standards prescribed by other provisions of law.

(6) Whenever by the express or implied terms of any statute a state agency has authority to adopt rules to implement, interpret, make specific, or otherwise carry out the provisions of the statute, an adoption, amendment, or repeal of a rule is not valid or effective unless it is:

(a) consistent and not in conflict with the statute; and

(b) reasonably necessary to effectuate the purpose of the statute. A statute mandating that the agency adopt rules establishes the necessity for rules but does not, standing alone, constitute reasonable necessity for a rule. The agency shall also address the reasonableness component of the reasonable necessity requirement by, as indicated in 2-4-302(1) and subsection (1) of this section, stating the principal reasons and the rationale for its intended action and for the particular approach that it takes in complying with the mandate to adopt rules. Subject to the provisions of subsection (8), reasonable necessity must be clearly and thoroughly demonstrated for each adoption, amendment, or repeal of a rule in the agency's notice of proposed rulemaking and in the written and oral data, views,

comments, or testimony submitted by the public or the agency and considered by the agency. A statement that merely explains what the rule provides is not a statement of the reasonable necessity for the rule.

(7) A rule is not valid unless notice of it is given and it is adopted in substantial compliance with 2-4-302, 2-4-303, or 2-4-306 and this section and unless notice of adoption of the rule is published within 6 months of the publishing of notice of the proposed rule. If an amended or supplemental notice of either proposed or final rulemaking, or both, is published concerning the same rule, the 6-month limit must be determined with reference to the latest notice in all cases.

(8) An agency may use an amended proposal notice or the adoption notice to correct deficiencies in citations of authority for rules and in citations of sections implemented by rules. An agency may use an amended proposal notice but, except for clerical corrections, may not use the adoption notice to correct deficiencies in a statement of reasonable necessity.

(9) If a majority of the members of the appropriate administrative rule review committee notify the committee presiding officer that those members object to a notice of proposed rulemaking, the committee shall notify the agency in writing that the committee objects to the proposal notice and will address the objections at the next committee meeting. Following notice by the committee to the agency, the proposal notice may not be adopted until publication of the last issue of the register that is published before expiration of the 6-month period during which the adoption notice must be published, unless prior to that time, the committee meets and does not make the same objection. A copy of the committee's notification to the agency must be included in the committee's records. **History:** Ap.p. Sec. 4, Ch. 2, Ex. L. 1971; amd. Sec. 5, Ch. 410, L. 1975; amd. Sec. 1, Ch. 482, L. 1975; amd. Sec. 8, Ch. 285, L. 1977; Sec. 82-4204, R.C.M. 1947; Ap.p. 82-4204.1 by Sec. 9, Ch. 285, L. 1977; Sec. 82-4204.1, R.C.M. 1947; R.C.M. 1947, 82-4204(part), 82-4204.1(part); amd. Sec. 6, Ch. 243, L. 1979; amd. Sec. 2, Ch. 381, L. 1981; amd. Sec. 1, Ch. 78, L. 1983; amd. Sec. 1, Ch. 466, L. 1983; amd. Sec. 1, Ch. 420, L. 1989; amd. Sec. 1, Ch. 3, L. 1995; amd. Sec. 2, Ch. 152, L. 1997; amd. Sec. 1, Ch. 335, L. 1997; amd. Sec. 4, Ch. 489, L. 1997; amd. Sec. 4, Ch. 19, L. 1999; amd. Sec. 3, Ch. 210, L. 2001.

2-4-306. Filing, format, and adoption and effective dates -- dissemination of emergency rules.

(1) Each agency shall file with the secretary of state a copy of each rule adopted by it or a reference to the rule as contained in the proposal notice. A rule is adopted on the date that the adoption notice is filed with the secretary of state and is effective on the date referred to in subsection (4), except that if the secretary of state requests corrections to the adoption notice, the rule is adopted on the date that the revised notice is filed with the secretary of state.

(2) Pursuant to 2-15-401, the secretary of state may prescribe rules to effectively administer this chapter, including rules regarding the format, style, and arrangement for notices and rules that are filed pursuant to this chapter, and may refuse to accept the filing of any notice or rule that is not in compliance with this chapter. The secretary of state shall keep and maintain a permanent register of all notices and rules filed, including superseded and repealed rules, that must be open to public inspection and shall provide copies of any notice or rule upon request of

any person. Unless otherwise provided by statute, the secretary of state may require the payment of the cost of providing copies.

(3) If the appropriate administrative rule review committee has conducted a poll of the legislature in accordance with 2-4-403, the results of the poll must be published with the rule.

(4) Each rule is effective after publication in the register, as provided in 2-4-312, except that:

(a) if a later date is required by statute or specified in the rule, the later date is the effective date;

(b) subject to applicable constitutional or statutory provisions:

(i) a temporary rule is effective immediately upon filing with the secretary of state or at a stated date following publication in the register; and

(ii) an emergency rule is effective at a stated date following publication in the register or immediately upon filing with the secretary of state if the agency finds that this effective date is necessary because of imminent peril to the public health, safety, or welfare. The agency's finding and a brief statement of reasons for the finding must be filed with the rule. The agency shall, in addition to the required publication in the register, take appropriate and extraordinary measures to make emergency rules known to each person who may be affected by them.

(c) if, following written administrative rule review committee notification to an agency under 2-4-305(9), the committee meets and under 2-4-406(1) objects to all or some portion of a proposed rule before the rule is adopted, the rule or portion of the rule objected to is not effective until the day after final adjournment of the regular session of the legislature that begins after the notice proposing the rule was published by the secretary of state, unless, following the committee's objection under 2-4-406(1):

(i) the committee withdraws its objection under 2-4-406 before the rule is adopted; or

(ii) the rule or portion of a rule objected to is adopted with changes that in the opinion of a majority of the committee members, as communicated in writing to the committee presiding officer and staff, make it comply with the committee's objection and concerns. **History:** En. Sec. 5, Ch. 2, Ex. L. 1971; amd. Sec. 10, Ch. 285, L. 1977; amd. Sec. 2, Ch. 561, L. 1977; R.C.M. 1947, 82-4205(part); amd. Sec. 7, Ch. 243, L. 1979; amd. Sec. 12, Ch. 268, L. 1979; amd. Sec. 2, Ch. 261, L. 1987; amd. Sec. 2, Ch. 335, L. 1997; amd. Sec. 5, Ch. 489, L. 1997; amd. Sec. 5, Ch. 19, L. 1999; amd. Sec. 4, Ch. 210, L. 2001; amd. Sec. 1, Ch. 370, L. 2005.

2-4-307. Omissions from ARM or register.

(1) An agency may adopt by reference any model code, federal agency rule, rule of any agency of this state, or other similar publication if the publication of the model code, rule, or other publication would be unduly cumbersome, expensive, or otherwise inexpedient.

(2) The model code, rule, or other publication must be adopted by reference in a rule adopted under the rulemaking procedure required by this chapter. The rule must contain a citation to the material adopted by reference and a statement of the general subject matter of the omitted rule and must state where a copy of the omitted material may be obtained. Upon request of the secretary of state, a copy of

the omitted material must be filed with the secretary of state.

(3) A rule originally adopting by reference any model code or rule provided for in subsection (1) may not adopt any later amendments or editions of the material adopted. Except as provided in subsection (5), each later amendment or edition may be adopted by reference only by following the rulemaking procedure required by this chapter.

(4) If requested by a three-fourths vote of the appropriate administrative rule review committee, an agency shall immediately publish the full or partial text of any pertinent material adopted by reference under this section. The committee may not require the publication of copyrighted material. Publication of the text of a rule previously adopted does not affect the date of adoption of the rule, but publication of the text of a rule before publication of the notice of final adoption must be in the form of and is considered to be a new notice of proposed rulemaking.

(5) Whenever later amendments of federal regulations must be adopted to comply with federal law or to qualify for federal funding, only a notice of incorporation by reference of the later amendments must be filed in the register. This notice must contain the information required by subsection (2) and must state the effective date of the incorporation. The effective date may be no sooner than 30 days after the date upon which the notice is published unless the 30 days causes a delay that jeopardizes compliance with federal law or qualification for federal funding, in which event the effective date may be no sooner than the date of publication. A hearing is not required unless requested under 2-4-315 by either 10% or 25, whichever is less, of the persons who will be directly affected by the incorporation, by a governmental subdivision or agency, or by an association having not less than 25 members who will be directly affected. Further notice of adoption or preparation of a replacement page for the ARM is not required.

(6) If a hearing is requested under subsection (5), the petition for hearing must contain a request for an amendment and may contain suggested language, reasons for an amendment, and any other information pertinent to the subject of the rule. **History:** En. Sec. 6, Ch. 2, Ex. L. 1971; amd. Sec. 11, Ch. 285, L. 1977; R.C.M. 1947, 82-4206(3); amd. Sec. 8, Ch. 243, L. 1979; amd. Sec. 1, Ch. 591, L. 1981; amd. Sec. 6, Ch. 19, L. 1999.

2-4-308. Adjective or interpretive rule -- statement of implied authority and legal effect.

(1) Each adjective or interpretive rule or portion of an adjective or interpretive rule to be adopted under implied rulemaking authority must contain a statement in the historical notations of the rule that the rule is advisory only but may be a correct interpretation of the law. The statement must be placed in the ARM when the rule in question is scheduled for reprinting.

(2) The appropriate administrative rule review committee may file with the secretary of state, for publication with any rule or portion of a rule that it considers to be adjective or interpretive, a statement indicating that it is the opinion of the appropriate administrative rule review committee that the rule or portion of a rule is adjective or interpretive and therefore advisory only. If the committee requests the statement to be published for an adopted rule not scheduled for reprinting in the ARM, the cost of publishing the statement in the ARM must be paid by the committee. **History:** En. Sec. 1, Ch. 637, L. 1983; amd. Sec. 7, Ch. 19, L. 1999.

2-4-309. Rulemaking authority for laws not yet effective -- rule not effective until law effective.

Unless otherwise provided in the statute, an agency may proceed with rulemaking under this chapter after the enactment of a statute to be implemented by rule, but a rule may not become effective prior to the effective date of the statute. **History:** En. Sec. 1, Ch. 185, L. 2001.

2-4-311. Publication and arrangement of ARM.

(1) The secretary of state shall compile, index, arrange, rearrange, correct errors or inconsistencies without changing the meaning, intent, or effect of any rule, and publish in the appropriate format all rules filed pursuant to this chapter in the ARM. The secretary of state shall supplement, revise, and publish the ARM or any part of the ARM as often as the secretary of state considers necessary. The secretary of state may include editorial notes, cross-references, and other matter that the secretary of state considers desirable or advantageous. The secretary of state shall publish supplements to the ARM at the times and in the form that the secretary of state considers appropriate.

(2) The ARM must be arranged, indexed, and printed or duplicated in a manner that permits separate publication of portions relating to individual agencies. An agency may make arrangements with the secretary of state for the printing of as many copies of the separate publications as it may require. The secretary of state may charge a fee for any separate publications. The fee must be set and deposited in accordance with 2-15-405 and must be paid by the agency. **History:** En. Sec. 6, Ch. 2, Ex. L. 1971; amd. Sec. 11, Ch. 285, L. 1977; R.C.M. 1947, 82-4206(part); amd. Sec. 9, Ch. 243, L. 1979; amd. Sec. 8, Ch. 19, L. 1999; amd. Sec. 3, Ch. 396, L. 2001.

2-4-312. Publication and arrangement of register.

(1) The secretary of state shall publish in the register all notices, rules, and interpretations filed with the secretary of state at least once a month but not more often than twice a month.

(2) The secretary of state shall send the register without charge to each person listed in 2-4-313(1) and to each member of the legislature requesting the register. The secretary of state shall send the register to any other person who pays a subscription fee, which must be established and deposited in accordance with 2-15-405.

(3) The register must contain three sections, a rules section, a notice section, and an interpretation section, as follows:

(a) The rules section of the register must contain all rules filed since the compilation and publication of the preceding issue of the register, together with the concise statement of reasons required under 2-4-305(1).

(b) The notice section of the register must contain all rulemaking notices filed with the secretary of state pursuant to 2-4-302 since the compilation and publication of the preceding register.

(c) The interpretation section of the register must contain all opinions of the attorney general and all declaratory rulings of agencies issued since the publication

of the preceding register.

(4) Each issue of the register must contain the issue number and date of the register and a table of contents. Each page of the register must contain the issue number and date of the register of which it is a part. The secretary of state may include with the register information to help the user in relating the register to the ARM. **History:** En. Sec. 6, Ch. 2, Ex. L. 1971; amd. Sec. 11, Ch. 285, L. 1977; R.C.M. 1947, 82-4206(2), (9); amd. Sec. 10, Ch. 243, L. 1979; amd. Sec. 3, Ch. 277, L. 1983; amd. Sec. 1, Ch. 580, L. 1987; amd. Sec. 9, Ch. 19, L. 1999; amd. Sec. 4, Ch. 396, L. 2001.

2-4-313. Distribution, costs, and maintenance.

(1) The secretary of state shall distribute copies of the ARM and supplements or revisions to the ARM to the following:

(a) attorney general, one copy;

(b) clerk of United States district court for the district of Montana, one copy;

(c) clerk of United States court of appeals for the ninth circuit, one copy;

(d) county commissioners or governing body of each county of this state, for use of county officials and the public, at least one but not more than two copies, which may be maintained in a public library in the county seat or in the county offices as the county commissioners or governing body of the county may determine;

(e) state law library, one copy;

(f) state historical society, one copy;

(g) each unit of the Montana university system, one copy;

(h) law library of the university of Montana-Missoula, one copy;

(i) legislative services division, two copies;

(j) library of congress, one copy;

(k) state library, one copy.

(2) The secretary of state, each county in the state, and the librarians for the state law library and the university of Montana-Missoula law library shall maintain a complete, current set of the ARM, including supplements or revisions to the ARM. The designated persons shall also maintain the register issues published during the preceding 2 years. The secretary of state shall maintain a permanent set of the registers.

(3) The secretary of state shall make copies of and subscriptions to the ARM and supplements or revisions to the ARM and the register available to any person for a fee set in accordance with subsection (5). Fees are not refundable.

(4) The secretary of state may charge agencies a filing fee for all material to be published in the ARM or the register.

(5) The secretary of state shall set and deposit the fees authorized in this section in accordance with 2-15-405. **History:** En. Sec. 6, Ch. 2, Ex. L. 1971; amd. Sec. 11, Ch. 285, L. 1977; R.C.M. 1947, 82-4206(5) thru (8), (10), (11); amd. Sec. 11, Ch. 243, L. 1979; amd. Sec. 1, Ch. 163, L. 1983; amd. Sec. 3, Ch. 277, L. 1983; amd. Sec. 1, Ch. 397, L. 1985; amd. Sec. 2, Ch. 580, L. 1987; amd. Sec. 1, Ch. 6, Sp. L. January 1992; amd. Sec. 1, Ch. 411, L. 1993; amd. sec. 36, Ch. 308, L. 1995; amd. Sec. 5, Ch. 42, L. 1997; amd. Sec. 10, Ch. 19, L. 1999; amd. Sec. 5, Ch. 396, L. 2001.

2-4-314. Biennial review by agencies -- recommendations by committee.

(1) Each agency shall at least biennially review its rules to determine if any new rule should be adopted or any existing rule should be modified or repealed.

(2) The committee may recommend to the legislature those modifications, additions, or deletions of agency rulemaking authority which the committee considers necessary. **History:** En. Sec. 4, Ch. 2, Ex. L. 1971; amd. Sec. 5, Ch. 410, L. 1975; amd. Sec. 1, Ch. 482, L. 1975; amd. Sec. 8, Ch. 285, L. 1977; R.C.M. 1947, 82-4204(6); amd. Sec. 4, Ch. 600, L. 1979; amd. Sec. 3, Ch. 381, L. 1981; amd. Sec. 1, Ch. 63, L. 1983.

2-4-315. Petition for adoption, amendment, or repeal of rules.

An interested person or, when the legislature is not in session, a member of the legislature on behalf of an interested person may petition an agency requesting the promulgation, amendment, or repeal of a rule. Each agency shall determine and prescribe by rule the form for petitions and the procedure for their submission, consideration, and disposition. Within 60 days after submission of a petition, the agency either shall deny the petition in writing or shall initiate rulemaking proceedings in accordance with 2-4-302 through 2-4-305. A decision to deny a petition or to initiate rulemaking proceedings must be in writing and based on record evidence. The written decision must include the reasons for the decision. Record evidence must include any evidence submitted by the petitioner on behalf of the petition and by the agency and interested persons in response to the petition. An agency may, but is not required to, conduct a hearing or oral presentation on the petition in order to develop a record and record evidence and to allow the petitioner and interested persons to present their views. **History:** En. Sec. 7, Ch. 2, Ex. L. 1971; amd. Sec. 2, Ch. 236, L. 1974; amd. Sec. 12, Ch. 285, L. 1977; R.C.M. 1947, 82-4207; amd. Sec. 1, Ch. 110, L. 1997.

2-4-402. Powers of committees -- duty to review rules.

(1) The administrative rules review committees shall review all proposed rules filed with the secretary of state.

(2) The appropriate administrative rule review committee may:

(a) request and obtain an agency's rulemaking records for the purpose of reviewing compliance with 2-4-305;

(b) prepare written recommendations for the adoption, amendment, or rejection of a rule and submit those recommendations to the department proposing the rule and submit oral or written testimony at a rulemaking hearing;

(c) require that a rulemaking hearing be held in accordance with the provisions of 2-4-302 through 2-4-305;

(d) institute, intervene in, or otherwise participate in proceedings involving this chapter in the state and federal courts and administrative agencies;

(e) review the incidence and conduct of administrative proceedings under this chapter. **History:** En. 82-4203.5 by Sec. 4, Ch. 410, L. 1975; amd. Sec. 7, Ch. 285, L. 1977; amd. Sec. 1, Ch. 561, L. 1977; R.C.M. 1947, 82-4203.5(1)(a) thru (1)(c); amd. Sec. 12, Ch. 243, L. 1979; amd. Sec. 11, Ch. 268, L. 1979; amd. Sec.

4, Ch. 381, L. 1981; amd. Sec. 2, Ch. 78, L. 1983; amd. Sec. 1, Ch. 572, L. 1989; amd. Sec. 11, Ch. 19, L. 1999.

2-4-403. Legislative intent -- poll.

(1) If the legislature is not in session, the committee may poll all members of the legislature by mail to determine whether a proposed rule is consistent with the intent of the legislature.

(2) Should 20 or more legislators object to any rule, the committee shall poll the members of the legislature.

(3) The poll shall include an opportunity for the agency to present a written justification for the rule to the members of the legislature. **History:** En. 82-4203.5 by Sec. 4, Ch. 410, L. 1975; amd. Sec. 7, Ch. 285, L. 1977; amd. Sec. 1, Ch. 561, L. 1977; R.C.M. 1947, 82-4203.5(1)(d), (1)(e).

2-4-404. Evidentiary value of legislative poll.

In the event that the appropriate administrative rule review committee has conducted a poll of the legislature in accordance with 2-4-403, the results of the poll must be admissible in any court proceeding involving the validity of the rule. In the event that the poll determines that a majority of the members of both houses find that the proposed rule is contrary to the intent of the legislature, the rule must be conclusively presumed to be contrary to the legislative intent in any court proceeding involving its validity. **History:** En. Sec. 2, Ch. 561, L. 1977; R.C.M. 1947, 82-4205(3); amd. Sec. 12, Ch. 19, L. 1999.

2-4-405. Economic impact statement.

(1) Upon written request of the appropriate administrative rule review committee based upon the affirmative request of a majority of the members of the committee at an open meeting, an agency shall prepare a statement of the economic impact of the adoption, amendment, or repeal of a rule as proposed. The agency shall also prepare a statement upon receipt by the agency or the committee of a written request for a statement made by at least 15 legislators. If the request is received by the committee, the committee shall give the agency a copy of the request, and if the request is received by the agency, the agency shall give the committee a copy of the request. As an alternative, the committee may, by contract, prepare the estimate. Except to the extent that the request expressly waives any one or more of the following, the requested statement must include and the statement prepared by the committee may include:

(a) a description of the classes of persons who will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule;

(b) a description of the probable economic impact of the proposed rule upon affected classes of persons and quantifying, to the extent practicable, that impact;

(c) the probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenue;

(d) an analysis comparing the costs and benefits of the proposed rule to the

costs and benefits of inaction;

(e) an analysis that determines whether there are less costly or less intrusive methods for achieving the purpose of the proposed rule;

(f) an analysis of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule;

(g) a determination as to whether the proposed rule represents an efficient allocation of public and private resources; and

(h) a quantification or description of the data upon which subsections (1)(a) through (1)(g) are based and an explanation of how the data was gathered.

(2) A request to an agency for a statement or a decision to contract for the preparation of a statement must be made prior to the final agency action on the rule. The statement must be filed with the appropriate administrative rule review committee within 3 months of the request or decision. A request or decision for an economic impact statement may be withdrawn at any time.

(3) Upon receipt of an impact statement, the committee shall determine the sufficiency of the statement. If the committee determines that the statement is insufficient, the committee may return it to the agency or other person who prepared the statement and request that corrections or amendments be made. If the committee determines that the statement is sufficient, a notice, including a summary of the statement and indicating where a copy of the statement may be obtained, must be filed with the secretary of state for publication in the register by the agency preparing the statement or by the committee, if the statement is prepared under contract by the committee, and must be mailed to persons who have registered advance notice of the agency's rulemaking proceedings.

(4) This section does not apply to rulemaking pursuant to 2-4-303.

(5) The final adoption, amendment, or repeal of a rule is not subject to challenge in any court as a result of the inaccuracy or inadequacy of a statement required under this section.

(6) An environmental impact statement prepared pursuant to 75-1-201 that includes an analysis of the factors listed in this section satisfies the provisions of this section. **History:** En. Sec. 1, Ch. 480, L. 1979; amd. Sec. 1, Ch. 665, L. 1983; (6)En. Sec. 2, Ch. 665, L. 1983; amd. Sec. 13, Ch. 19, L. 1999; amd. Sec. 1, Ch. 46, L. 1999; amd. Sec. 6, Ch. 339, L. 1999.

2-4-406. Committee objection to violation of authority for rule -- effect.

(1) If the appropriate administrative rule review committee objects to all or some portion of a proposed or adopted rule because the committee considers it not to have been proposed or adopted in substantial compliance with 2-4-302, 2-4-303, and 2-4-305, the committee shall send a written objection to the agency that promulgated the rule. The objection must contain a concise statement of the committee's reasons for its action.

(2) Within 14 days after the mailing of a committee objection to a rule, the agency promulgating the rule shall respond in writing to the committee. After receipt of the response, the committee may withdraw or modify its objection.

(3) If the committee fails to withdraw or substantially modify its objection to a rule, it may vote to send the objection to the secretary of state, who shall, upon

receipt of the objection, publish the objection in the register adjacent to any notice of adoption of the rule and in the ARM adjacent to the rule, provided an agency response must also be published if requested by the agency. Costs of publication of the objection and the agency response must be paid by the committee.

(4) If an objection to all or a portion of a rule has been published pursuant to subsection (3), the agency bears the burden, in any action challenging the legality of the rule or portion of a rule objected to by the committee, of proving that the rule or portion of the rule objected to was adopted in substantial compliance with 2-4-302, 2-4-303, and 2-4-305. If a rule is invalidated by court judgment because the agency failed to meet its burden of proof imposed by this subsection and the court finds that the rule was adopted in arbitrary and capricious disregard for the purposes of the authorizing statute, the court may award costs and reasonable attorney fees against the agency. **History:** En. Sec. 1, Ch. 589, L. 1983; amd. Sec. 14, Ch. 19, L. 1999.

2-4-410. Report of litigation.

Each agency shall report to the appropriate administrative rule review committee any judicial proceedings in which the construction or interpretation of any provision of this chapter is in issue and may report to the committee any proceeding in which the construction or interpretation of any rule of the agency is in issue. Upon request of the committee, copies of documents filed in any proceeding in which the construction or interpretation of either this chapter or an agency rule is in issue must be made available to the committee by the agency involved. **History:** En. Sec. 6, Ch. 381, L. 1981; amd. Sec. 15, Ch. 19, L. 1999.

2-4-411. Report.

The committee may recommend amendments to the Montana Administrative Procedure Act or the repeal, amendment, or adoption of a rule as provided in 2-4-412 and make other recommendations and reports as it considers advisable. **History:** En. 82-4203.5 by Sec. 4, Ch. 410, L. 1975; amd. Sec. 7, Ch. 285, L. 1977; amd. Sec. 1, Ch. 561, L. 1977; R.C.M. 1947, 82-4203.5(2); amd. Sec. 3, Ch. 112, L. 1991; amd. Sec. 3, Ch. 349, L. 1993.

2-4-412. Legislative review of rules -- effect of failure to object.

(1) The legislature may, by bill, repeal any rule in the ARM. If a rule is repealed, the legislature shall in the bill state its objections to the repealed rule. If an agency adopts a new rule to replace the repealed rule, the agency shall adopt the new rule in accordance with the objections stated by the legislature in the bill. If the legislature does not repeal a rule filed with it before the adjournment of that regular session, the rule remains valid.

(2) The legislature may also by joint resolution request or advise or by bill direct the adoption, amendment, or repeal of any rule. If a change in a rule or the adoption of an additional rule is advised, requested, or directed to be made, the legislature shall in the joint resolution or bill state the nature of the change or the additional rule to be made and its reasons for the change or addition. The agency shall, in the manner provided in the Montana Administrative Procedure Act, adopt a

new rule in accordance with the legislative direction in a bill.

(3) Rules and changes in rules made by agencies under subsection (2) must conform and be pursuant to statutory authority.

(4) Failure of the legislature or the appropriate administrative rule review committee to object in any manner to the adoption, amendment, or repeal of a rule is inadmissible in the courts of this state to prove the validity of any rule. **History:** En. 82-4203.1 by Sec. 1, Ch. 239, L. 1973; amd. Sec. 1, Ch. 236, L. 1974; amd. Sec. 4, Ch. 285, L. 1977; R.C.M. 1947, 82-4203.1; amd. Sec. 5, Ch. 381, L. 1981; amd. Sec. 1, Ch. 164, L. 1983; amd. Sec. 16, Ch. 19, L. 1999.

2-4-501. Declaratory rulings by agencies.

Each agency shall provide by rule for the filing and prompt disposition of petitions for declaratory rulings as to the applicability of any statutory provision or of any rule or order of the agency. A copy of a declaratory ruling must be filed with the secretary of state for publication in the register. A declaratory ruling or the refusal to issue such a ruling shall be subject to judicial review in the same manner as decisions or orders in contested cases. **History:** En. Sec. 18, Ch. 2, Ex. L. 1971; R.C.M. 1947, 82-4218; amd. Sec. 13, Ch. 243, L. 1979.

2-4-505. Judicial notice of rules.

The courts shall take judicial notice of any rule filed and published under the provisions of this chapter. **History:** En. Sec. 8, Ch. 2, Ex. L. 1971; amd. Sec. 13, Ch. 285, L. 1977; R.C.M. 1947, 82-4208.

2-4-506. Declaratory judgments on validity or application of rules.

(1) A rule may be declared invalid or inapplicable in an action for declaratory judgment if it is found that the rule or its threatened application interferes with or impairs or threatens to interfere with or impair the legal rights or privileges of the plaintiff.

(2) A rule may also be declared invalid in such an action on the grounds that the rule was adopted with an arbitrary or capricious disregard for the purpose of the authorizing statute as evidenced by documented legislative intent.

(3) A declaratory judgment may be rendered whether or not the plaintiff has requested the agency to pass upon the validity or applicability of the rule in question.

(4) The action may be brought in the district court for the county in which the plaintiff resides or has his principal place of business or in which the agency maintains its principal office. The agency shall be made a party to the action. **History:** En. Sec. 19, Ch. 2, Ex. L. 1971; amd. Sec. 5, Ch. 560, L. 1977; R.C.M. 1947, 82-4219; amd. Sec. 14, Ch. 243, L. 1979; amd. Sec. 2, Ch. 589, L. 1983.

THE ENFORCEMENT PROCESS

INTRODUCTION

Strengthening enforcement is a top priority in occupational and professional regulation today. Since regulation is enacted to protect the public's health, safety and welfare, boards are obligated to aggressively find and discipline incompetent and fraudulent practitioners.

Many procedural details of the enforcement process are specific to one state or even one board. In most states, the details of the process are found in the administrative procedures act. This section will cover four topics: A. Steps in the Enforcement Process; B. Characteristics of Strong Enforcement Process; C. Receiving and Sharing Information; and D. Types of Disciplinary Sanctions.

A. Steps in the Enforcement Process

The enforcement process consists of seven (7) steps:

1. Intake-	Receiving and acknowledging complaints, setting up files and initiating complaint tracking.
2. Assessment-	Screening complaints; determining the type of response appropriate for the complaint; determining jurisdiction.
3. Investigation-	Assigning an investigator or investigative teams for determining the details of the case and producing a final report.
4. Review-	Determining the disposition of investigated complaints: those without merit, closed; those with merit, a determination of the level of action to be taken.
5. Formal and Informal-	(1) Informal resolution by stipulated agreement; formal hearings or (2) formal resolution by hearings before the board or administrative law judge.
6. Final Orders-	Determining facts, legal conclusions and sanctions in appropriate cases.
7. Compliance-	Following up on all final orders to assure the orders are being obeyed.

Each state uses a somewhat different investigative and hearing process. Across the states, investigations are conducted by investigators working for single or multi-boards, investigators working for multi-boards by geographic districts, or assistant attorneys general.

Some states always use administrative law judges to conduct hearings and refer their findings to the boards for sanctioning. In other states, a special committee of the board conducts hearings and refers its findings to the rest of the board for final determination of guilt and sanctioning.

B. Characteristics of a Strong Enforcement Process

Although structural diversity exists among the states, five common points can be made about a strong enforcement process. State boards should:

1. Publicize their existence and role in handling consumer complaints.

   Options include:

   - Toll-free complaint lines;
   - Information brochure with wide distribution;
   - Notices about where and how to file complaints posted in all licensed professionals offices;
   - Public service TV and radio ads;
   - Speeches by board members to community associations;
   - Coordination of publicity/consumer information with in-state consumer groups,
   - Including complaint filing information in statute and/or rules

2. Develop a well-organized complaint handling process with clear guidelines on how to log complaints, who receives notification of the complaint, and within what period of time.

3. Establish appropriate periods of time for notice and for investigation review. These time periods should be specified in either the state's administrative procedures act, the board's practice act or both.

4. Observe due process by separating (a) investigations, (b) prosecution, and (c) hearings and final decision-making. No board member should participate in more than one of these three steps in the enforcement process.

5. Specify the reasons for which boards can take disciplinary actions, such as Unprofessional conduct and unethical behavior in the practice act. To the extent possible, define each of these terms in the board's regulations in terms of concrete behavior.

6. Establish guidelines for charges and sanctions which include both maximums and minimums for charging and sanction decisions. Such

guidelines should always allow for deviations as long as a written explanation is made of aggravating or mitigating circumstances.

C. Receiving and Sharing Information

1. The board should make provisions through the practice act to receive information from professional associations, professional review organizations (PROs), hospitals, clinics or other institutions in which a licensee performs professional services, on possible chemical abuse, or incompetent or unethical behavior. These organizations should report to the board within a specified time: (a) any disciplinary action taken by it or its staff which significantly limits the practice privileges or leads to suspension or expulsion from the organization; and (b) any finding by it or its staff of a violation of reasonable standards of the profession. Boards should consider requiring: (a) insurance companies to report to the board all settlements involving professional services which exceed some sum, for example $10,000; and (b) all licensed professions within the board's jurisdiction to report knowledge of any unprofessional conduct of a licensee to the board within a specified time.

2. Circulate notice of sanctions taken by the board to all the states. CLEAR's National Disciplinary Information System was operated for this very reason: to ensure that state boards and enforcement authorities regularly receive the names of licensees disciplined in other states.

D. Types of Disciplinary Sanctions

A wide range of disciplinary sanctions is available to boards, although many state statutes still include only a limited number of options such as suspension, revocation and probation.

Twelve of the available sanctions and brief generic definition of each are as follows:

- Administrative Fine: A monetary penalty imposed by an administrative agency for violation of administrative rules.
- Censure/Public Reprimand: An expression of displeasure. The mildest form of administrative action.
- Deny the Renewal: A refusal to reinstate or renew the license.
- Injunction: A court action prohibiting or compelling conduct by a licensee.
- Probation: A period of time where certain restrictions or conditions are imposed on a licensee.
- Restricted License: A specified reduction in the scope of practice allowed a licensee.
- Revocation: An involuntary termination of a license.
- Suspension: A condition of probation.
- Surrender: Voluntary relinquishment of a license.
- Direction of fees collected from a consumer by a practitioner limited restitution).
- Restitution: Payment made to the party "injured" by the licensee's actions or inactions.

• Cease and Desist or Fine using the state consumer protection act.

Resources

1. Antitrust, Competition Policy and State Professional Regulation: A Manual for Regulators, Kim Zeitlin, et. Al. (CLEAR/Council of State Governments; Lexington, KY.) 1985. This manual describes the basic principles of antitrust law and policy in non-technical terms including immunity by action of the state and immunity for petitioning the government. Appendices include state antitrust statutes, antitrust actions taken by the U.S. Department of Justice and the Federal Trade Commission, and a sample state board antitrust review.
2. The Law of Professional Licensing and Certification, Randolph Reaves (Publications for Professionals; Charlotte, N.C.) 1984. This book has chapters on grounds for and defenses to disciplinary actions, evidence and decision-making, examination issues, antitrust problems and the enforcement process. Written by a lawyer, the book heavily documents past court cases and is addressed to both the board member and the accused professional.
3. Occupational Licensing Enforcement: Guidelines for the Investigator (CLEAR/Council of State Governments; Lexington, KY.) 1982. Written for investigators, this manual's ten chapters cover communications, case planning, interviewing, report writing, evidence, legal tools available, witness statements and personnel management.

BUSINESS STANDARDS DIVISION COMPLAINT PROCESS
COMPLAINTS AGAINST LICENSEES

NOW THAT A COMPLAINT IS FILED . . . .

•The Respondent and Complainant are notified by letter of the date and time of the Screening Panel meeting in which his or her case will be discussed. If you wish to attend that portion of the meeting, please inform the Board office prior to the meeting.
•At the beginning of each case, the Screening Panel Board members may take a few minutes to review the information before them and any additional materials presented. The Screening Panel meetings are open until the Chairperson of the panel determines whether each individual's right to privacy outweighs the public's right to know. If so, the meeting is closed to the public. Adjudication Panel meetings are open to the public.

•**Open Meeting -** A public meeting in which any member of the public may attend. Open Meeting minutes are public documents. Attendees may observe, but may not participate unless asked a question by a Board member.

•**Closed Meeting -** A meeting closed to the public means only the Respondent, Complainant, and his or her Attorney may attend. Closed Meeting minutes are not public documents. Attendees may observe, but may not participate unless asked a question by a Board member.

•Generally, the Screening and Adjudication Panels consider the cases of those in attendance first to minimize the wait.
•A complaint against a Respondent is confidential. If a Notice of Proposed Board Action is issued, the information is made public.

•A letter of acknowledgment is sent to the person who filed the complaint (**Complainant**).

•A copy of the complaint and letter requesting a response is sent to the person against whom the complaint is filed (**Respondent**).

•The Respondent may submit a letter of response to the complaint. If a letter of response is not submitted, the complaint process continues without the response.

•The complainant and respondent are sent letters regarding the date and time of the **Screening Panel** meeting where the case will be discussed.

SOME DEFINITIONS . . .

•**Screening Panel -** Made up of Board members **NOT** on the Adjudication Panel. The panel determines the preliminary actions taken on a complaint case.

•**Adjudication Panel -** Made up of Board members **NOT** on the Screening Panel. The panel determines the final outcome of a contested case.

•**Complainant -** The person who filed the complaint.

•**Respondent –** The licensee against whom a complaint has been filed.

AND THEN . . . .

•The complaint and the response (if one was filed) proceed to the **Screening Panel** for review and consideration This is not a hearing, but a committee meeting, set up to review and consider the complaint and response.

Both the complainant and the respondent may attend the screening panel meeting. The parties' participation is at the discretion of the Panel chair, but frequently, the panel will ask questions of the complainant and respondent if they are present. If you cannot physically attend the meeting, you may ask to be present via telephone. This is an opportunity for both parties to hear the Panel's deliberations and its reasons for taking action or dismissing the case.

•After the Screening Panel has considered the complaint, the Screening Panel has the option of 1) requesting an **investigation** into the complaint, 2) determining whether **reasonable cause** exists for issuance of a Notice of Proposed Board Action, 3) tabling the complaint until more information is gathered or 4) dismissing the complaint **with or without prejudice.** Again, this is not a hearing, but a committee meeting.

•If an investigation is requested, the complaint will be assigned to a Board Investigator who, during the course of obtaining further information, may request an interview with the Respondent and Complainant and possible witnesses.

•An investigative report is prepared after the completion of the investigation. The report will be presented to the Screening Panel for consideration during the next scheduled meeting.

•Following the Screening Panel's review of the written investigative report, the Panel determines if the complaint will be dismissed or if there is reasonable cause to proceed with disciplinary action against the Respondent.

NOW . . . .

•The Screening Panel may dismiss the complaint with or without prejudice. However, at the same time, the Panel may request a private **letter of warning** be sent to the Respondent.

•If the Screening Panel finds reasonable cause to believe a violation of board laws and/or rules has occurred, the Department prosecuting attorney serves a **Notice** of Proposed Board Action and Opportunity for Hearing upon the Respondent. A **Proposed Stipulation** may be included with the Notice. Once a Notice is issued to the Respondent, the Notice becomes public information, and will be disclosed to the public.

•Once the Respondent receives the Notice, he or she has twenty (20) days in which to contest the proposed action. This is accomplished by requesting, in writing, an administrative **hearing**.

•If the Respondent is offered a Stipulation for settlement along with the Notice, he or she has twenty (20) days from the receipt of the Notice to 1) sign, date and return the Stipulation, 2) to request a hearing, or 3) work with the Department prosecuting attorney for a possible settlement.

•A signed Proposed Stipulation proceeds to the **Adjudication Panel** for approval or rejection. If approved, it becomes part of the **Final Order**.

•If the Respondent does not respond within the 20 days, the Department prosecuting attorney will prepare a Request for Entry of Default for the Adjudication Panel to consider. If the request is granted, a **Final Order of Default** will be issued and sent to the Respondent.

MORE DEFINITIONS . . .

•**Dismiss with prejudice -** The complaint is dismissed and may not be considered by the Board in the future.

•**Dismiss without prejudice -** The complaint is dismissed but may be considered by the Board in the future if another complaint of a similar nature is filed against the Respondent.

•**Investigation -** The gathering of facts and information surrounding the allegations listed in a complaint. (An investigation could take several months to complete).

•**Letter of warning -** A private letter (not disclosed to the public) informing the Respondent that continued conduct similar to that in the complaint may lead to disciplinary action by the Board.

•**Reasonable Cause -** A finding by the Screening Panel that enough evidence to believe that a violation(s) of the statutes and rules governing the practice has occurred (authorizing issuance of a Notice of Proposed Board Action).

•**Notice -** A legal document setting forth factual assertions, conclusions of law and notification of the Respondent of the right to request a hearing.

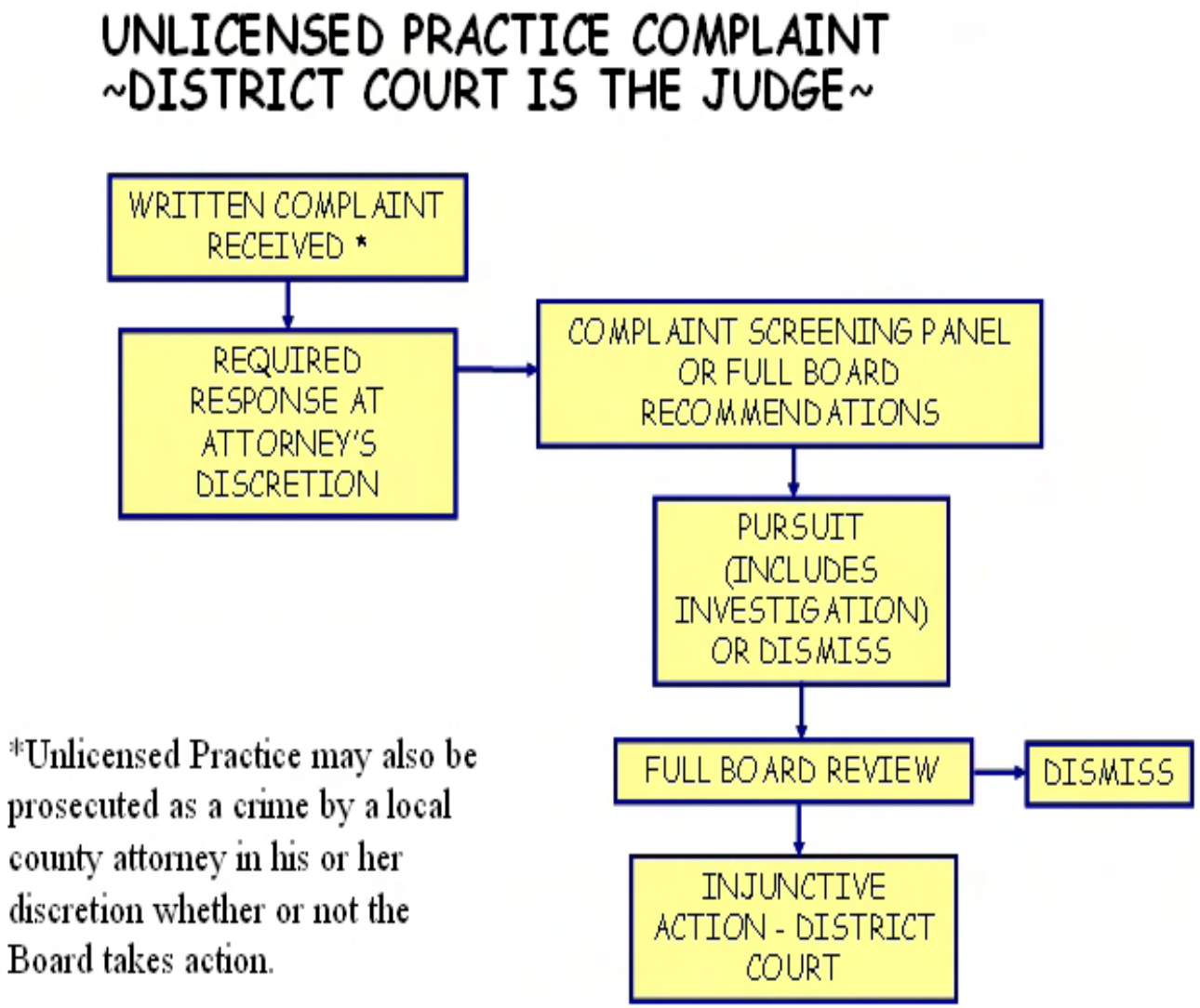
•**Proposed Stipulation -** A tentative settlement agreement between the Department and the Respondent that is presented to the Adjudication Panel for consideration.

•**Hearing-** A legal proceeding (outside the judicial process) before an appointed Hearing Examiner (similar to a judge).

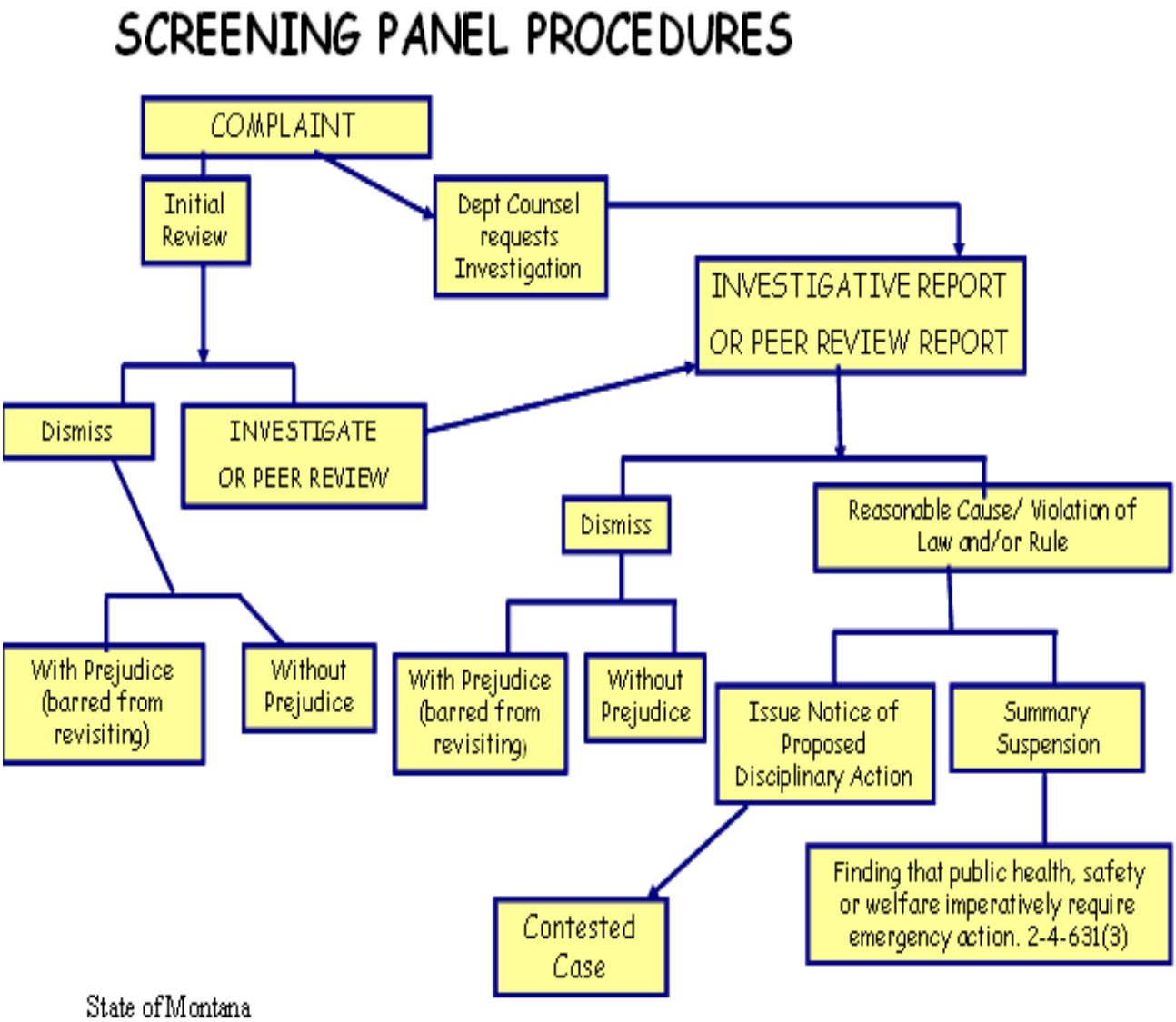
•**Final Order -** A legal document signed by the Chairperson of the Adjudication Panel indicating that the panel has accepted the Stipulation to settle the case, or has adopted the Proposed Order of the Hearing Examiner.

•**Final Order of Default** - a legal document issued by the Adjudication Panel to a Respondent for failure to respond to the Notice or request a hearing. This order may be entered with or without prior notification to the Respondent.

UNLICENSED PRACTICE COMPLAINT FLOW CHART



SCREENING PANEL FLOW CHART



State of Montana
Complaint Process

BUDGET/FINANCIAL INFORMATION
BUSINESS AND OCCUPATIONAL LICENSING BUREAU (BOLB)
HEALTH CARE LICENSING BUREAU (HCLB)

Term	Definition/Explanation
BOLB	Business and Occupational Licensing Bureau
Board-direct charge	The costs which are attributed directly to a specific board or program.
Board Compensation	The amount ($50/day) allowed by 37-1-133 for board members when they are engaged in board business. Also called per diem.
Cash	The amount of money in a board/program's state special revenue account used to pay the board/program's expenses.
Direct Costs	The costs that are directly related to a board/program's activities, such as contracted services for examinations, travel, dues, postage, etc.
Full Time Equivalent	Full-time equivalent position or the equivalent of one person working full time for the entire year.
House Bill 2 (HB2)	The General Appropriations Act in which the legislature authorizes the funding for state government for the upcoming biennium. Each session, House Bill 2 is reserved for this purpose.
House Bill 576 (HB 576)	The HB 576 is a proprietary fund. The term "HB 576" comes from the original bill (HB 576) in the 1995 session, which distinguished HB 2 funds from the proprietary funds. The fund is distributed to boards equitably as directed by 37-1-131(4). Synonyms are proprietary fund or internal service fund. Other terms we use for this are recharge and pro rata share.
HCLB	Health Care Licensing Bureau
Personal Services	Expenditures for salaries, benefits, per diem and other additions, such as overtime.
Pool	A group of bureau employees that perform similar functions for many boards/programs.
Pro Rata Share	The amount required by 37-1-131(4) to support the Division's Internal Service Fund. This amount is paid to the Dept. to cover the board/program's pro rata share of assessed costs as described in 37-1-101(6). The pro rata shares are calculated based on time distribution tracking performed by employees of the Division. Also referred to as recharge.

Proprietary Fund	The proprietary fund refers to an internal service fund for the financing of goods and services provided by the department to the boards/programs on a cost reimbursement basis.
Recharge	The amount required by 37-1-131(4) to support the Division's Internal Service Fund. This amount is paid to the Dept. to cover the board/program's pro rata share of assessed costs as described in 37-1-101(6). The pro rata shares are calculated based on time distribution tracking performed by employees of the Division. The Recharge covers: I. Bureau expenses A. Personal Services for: 1. Bureau Chief 2. Administrative Officer 3. Application Specialists not paid for by board-direct funding (HB 2) 4. Compliance Specialists/Tech Writers 5. Investigators not paid by board-direct funding (HB 2) 6. Unit Supervisors B. Operational expenditures for the employees above C. General operational expenditures of the Bureau (e.g. insurance, SABHRS costs, rent, messenger services, etc. II. Division expenses A. Personal Services for: 1. Division Administrator 2. Division Administrative Staff 3. Division Information Technology Staff B. Operational expenditures for the employees above C. General operational expenditures of the Division (e.g. insurance, SABHRS costs, rent, messenger services, etc. III. Legal Unit expenses A. Personal Services for: 1. Attorneys not paid for by board-direct funding (HB 2) 2. Paralegal 3. Administrative Support B. Operational expenses for the employees above General operational expenditures of the Legal Unit (e.g. insurance, SABHRS costs, rent, messenger services, etc.
Revenue	The money a board/program collects from authorized fees or fines. All monies from authorized fees are deposited into the individual board/program state special revenue account.

	Money collected for fines is deposited in the General Fund.
SABHRS	State Accounting, Budgeting and Human Resources System.
Time Distribution	The tracking of time by employee, by board/program, and by task, which determines the percentage of an expense a board/program is assessed.

The professional and occupational licensing boards are allocated to the Department of Labor and Industry for administrative purposes only. Section 2-15-121(1)(b), MCA (Montana Code Annotated) requires boards to submit their budgetary requests through the Department. The same statute requires the Department to: direct and supervise the budgeting, recordkeeping, reporting, and related professional, administrative and clerical functions of the agency; include the agency's budgetary requests in the Departmental budget; and collect all revenues for the agency and deposit them in the proper board fund or account. The Department submits the boards' budgets to the Office of Budget and Program Planning (OBPP) for approval during the biennial budget approval process. The Budget is often referred to as "appropriation", which is defined as the amount of spending authority the legislature approves for each agency, board or program.

Board budgets are divided into revenue and expense sections. A board's revenue, sometimes referred to as "cash", is the money (fees) it collects except for any fines. Fines are deposited into the State General Fund according to statute. Generally, the bulk of a board's revenue is generated by license applications and renewals. Section 37-1-101, MCA requires the Department to assess the Department's costs to the Boards in an equitable fashion, except as provided in Section 37-1-101, MCA, the Department may not use or divert the revenues from the fund or account for purposes other than provided by law. Each board has an individual state special revenue account where all money received for that board is deposited. Boards are required by law to generate the revenue needed to support the program costs.

A board's expenses are divided into two main categories. The first of these two categories is personal services, which include board member per diem and salaries and benefits for board direct allocated employees.

The second category of board expenses is operating expenses. These expenses are the charges for the goods and services used by the board. Subcategories of the operating expenses are: Professional and Consultant Services; Supplies and Materials; Communications; Travel; Repair and Maintenance; Dues, Subscriptions and Training; Recharges; and Indirect. In order to track these expenses, the state has an identification number for each revenue and expenditure category. You can cross reference this numbering system with all financial documents provided to the Board, such as individual board budget reports, the legislative budget request, SABHRS (State Accounting, Budget, and Human Resource System) and deposit documents, etc.

Professional and Consultant Services (62100) includes services such as contracted examination services, expert witnesses, peer reviews, temporary services,

consultants, court reporters, legal and court fees, database maintenance (Oracle), data ports for network connections etc. Supplies and Materials (62200) include office supplies, paper, envelopes, software, food at board meetings, books and reference materials, photocopying, computers and minor office equipment. Communications (62300) includes telephone equipment, conference calls, long distance, postage, board member calling cards, etc. Travel (62400) includes any board or staff member's travel necessary for a board's business, which includes lodging, meals, mileage, airline tickets, etc., for both in-state and out-of-state travel. Rent (62500) includes storage charges for licensee files and board records, meeting room rent for meetings not held in the board or state facilities. This does not include office space expenses charged through recharges. Repair and Maintenance (62700) includes any repair or improvements necessary to the office or equipment not covered by contracts. Other Expenses (62800) includes training and education, national association dues, subscriptions, conference registration fees, indirect and recharges, etc.

Recharges are fees assessed to the board associated with the costs incurred by the Department to administer the programs. Section 37-1-101(6), MCA requires the Department to "assess the costs of the Department to the Boards on an equitable basis as determined by the Department." Section 37-1-131(4), MCA requires the Boards to "pay to the Department its pro rata share of the assessed costs of the Department under 37-1-101(6)." The recharge is actually the sum of three separate entities. These entities are the Bureau, the Division and the Legal Unit. Their costs are assessed and then combined to total one amount labeled recharge on your financial documents.

First, the Bureau calculates a recharge based on the board or program's share of the Bureau's general expenses. The Bureau recharge covers the personal services and operating expenses of the employees that provide essential clerical, administrative and professional support to a number of boards and programs. These are the application specialists, the compliance/tech writer specialists, investigators, the Bureau Chief and Administrative Officer or Unit Supervisor. These assessed charges are based on time distribution. Employees track the time they spend performing administrative, clerical or professional duties for each board on a daily basis. This report is then compiled and used to assess an equitable charge based on the portion of time the employee has worked in a given year for each board.

The second part of the Recharge is the Bureau's share of the Division's services to the Bureau. The Division has four Bureaus: Business and Occupational Licensing, Health Care Licensing, Building Codes, and Weights and Measures. Each shares in the total cost. The charge includes personal services for the Division Administrator, the Division's Administrative Officer and the Information Technology Staff. The charge also includes the bureau's share of the operating expenses of the Division. The portion allocated to each Bureau is redistributed to Boards using the percentages of board direct allocated FTE (full-time employee).

The third part of the recharge is the Bureau's portion of the Legal Unit. Again, each of the four bureaus pays its share of the Legal Unit's costs minus any board direct

allocated attorney services. This includes personal services for the attorneys, a paralegal and an administrative support position. The bureaus also pay their share of the Legal Unit's operating expenses. The portion allocated to each bureau is charged to boards using the percentages of board direct allocated FTE.

Another charge you will notice on your financial documents is Indirect. Each board and program in the Bureaus pays an indirect charge that is a percentage of total personal services minus per diem costs. The assigned percentage for fiscal year 2006 was 6.85%. The charge includes the Bureau's use of resources from the Commissioner's Office, the Centralized Services Division, which includes services such as payroll, accounting and budgeting, and the Human Resources Bureau.
****

Budget Information

A. 61000 - Board Personal Services – salaries and benefits

I. 61100 - Board direct employee salary

II. 61300 – Board member per diem

III. 61400- Board direct allocated employee benefits - when an employee performs services

for more than one board, personal services are calculated using a percentage of an FTE based on time distribution.

B. 62000 - Board Operating Expenses - board direct costs for the goods and services

used by the Board directly

I. 62100 - Professional and Consultant Services – includes contracted services, temporary secretarial services, consultants, court reporters, legal, database maintenance, etc.

II. 62200 - Supplies and Materials – includes paper, envelopes, office supplies, software, books, reference materials, photocopying, computers, minor office equipment, etc.

III. 62300 - Communications – includes telephone equipment, conference calls, postage, board member calling cards, etc.

IV. 62400 - Travel – board and staff travel, inspection travel, lodging, meals, etc.

V. 62500 – Rent - costs for meeting rooms out of the office complex, storage for licensee files and board records,

VI. 62700- Repair and Maintenance repair of office equipment etc.

VII. 62800 – Other Expenses - dues, subscriptions, training, conference registration, recharges, indirect, etc.

Recharges breakdown (consists of three separate entities)

A. Bureau

1. Personal Services – calculated using time distribution for employees including the Bureau Chief
2. Operating Expenses for the Bureau – associated with the above FTE

B. Division

1. Each Licensing Bureau is assessed its share of the Division's services to the Bureau.
2. Each licensing bureau, Building Codes Bureau and Weights and Measures Bureau share in the total cost. The portion allocated to each licensing bureau is redistributed to Boards using the percentages of board direct FTE.
    1. Personal Services
        (a) Division Administrator
        (b) Administrative Officer
        (c) Information Technology Staff
    2. Operating Expenses associated with those FTE

C. Legal - The total legal budget is divided among the four bureaus in the Division minus any board direct attorney services. The portion allocated to each bureau is redistributed to boards using the percentages of board direct allocated FTE.

1. Personal Services
    (a) Attorneys
    (b) Paralegal
    (c) Administrative Support
2. Operating Expenses associated with those FTE

VIII. Indirect – This charge covers the bureau's share of the general overhead expenses of the Department. The indirect is an assigned percentage personal services costs based on the board direct allocated FTE.

A. Commissioner's Office
B. Centralized Services Division - Accounting, Budgeting, and Payroll
C. Human Resources Bureau

GLOSSARY

Adjudication - a judgment by a court or authorized body, based on evidence presented, which decides a controversy.

Administrative law judge - an independent judicial officer who is given the authority to hear cases and make recommendations on them to the board.

Administrative agency - any official entity that carries out the law; includes all agencies within the executive branch of government.

Administrative rule or regulation - a statement issued by an administrative agency to implement a statute; it in some way controls the activities of a specified group; it has the force of law.

Annotated Code - all the laws of the state brought together in on unit, with comments and explanatory notes added to each statutory section.

Administrative Code - all the rules and regulations made by administrative agencies of the state, brought together in one unit.

Certification - the process by which a non-government agency or association grants recognition of competence to an individual who has met predetermined qualifications specified by that agency or association.

Consent order - a formal agreement of the parties, made under the sanction of the court or an administrative agency, that some step (such as ceasing an activity, correcting a practice, or paying a fine) will be taken to resolve a complaint.

Consumer member - a public member on a board who represents the interest of those who are actual or possible purchasers, leasees, or recipients of consumer goods, consumer services, consumer realty, or consumer credit.

Continuing competence - maintained knowledge and skills, and demonstrated current competence.

Continuing education - educational opportunities beyond formal education and initial entry level into a profession to enable practitioners to maintain competence, to become aware of new developments and to provide responsible, quality services.

Hearing - a proceeding in which evidence is taken in order to determine an issue of fact. Boards may hold either formal or informal hearings. An informal hearing is a screening process, an investigative question-and answer period, with no "action" resulting. A formal hearing airs both sides of a complaint in a contested case; it is a formal, trial-type proceeding that results in "action" for or against the subject of the complaint.

Indemnification - the act of securing a party who acts for the benefit or at the request of another party against future hurt, loss, or damage; the second party promises to compensate the first in such event.

Law - statutes, rules and regulations pursuant to statutes, decisions of a court.

License - a personal right granted to the holder by an authorized body. If allows the licensee to do something which he could not legally do without such permission. Applicants for a license must conform to criteria and fulfill other requirements (such as a qualifying examination) before being able to practice that profession or occupation.

Licensing -

> Of establishments - a right to operate an establishment conforming to certain standards set down by the board; the person in charge of that establishment is then responsible for the work of others there.

Of individuals - a right conferred in order to practice a specific profession or engage in a listed occupation; the practitioner must qualify according to criteria (such as testing) established by the board governing that profession.

Oversight - the periodic review of agencies (boards) by a legislative committee or by an internal audit by the division in charge of the agency. Many states have oversight laws called " sunset" laws, where periodic agency review is built into the legislation creating the board.

Petition - a formal request for action from an individual, a group, or a board.

Practitioner - a person who practice a specific occupation or profession.
Promulgate - to issue and publicize the terms of a law; used especially with reference to rules and regulations.

Public comment - comments concerning an issue which are gathered by holding hearings, and/or inviting written public response.

Public record - any documents which are required by law to be made, maintained, or kept on file by any branch of government. Agency or board documents which pertain to an investigation in progress not part of the public record; access to them may be denied or allowed (unless allowing access is otherwise prohibited by law).

Quasi-judicial - "like a court"; the kind of activity in which an agency (board) acts like a court, making judgments on a contested mater and issuing decisions that affect the right and obligations of the parties.

Quorum - the number of members of a body that, when assembled, is legally competent to conduct business.

Registration - a formal listing; a legal procedure which involves sending to a designated agency an applicants name, address, and a set fee in order to practice a profession.

Regulatory board - a government body which has authority to make rules.

Reliability - the consistence of results of an assessment device across different administrations.

Recertification - a subsystem of credentialing designed to provide assurance that the skills and knowledge of the practitioner are sufficiently up-to-date.

Restitution - the act of making good, or of giving the equivalent for any loss, damage, or injury.

Rule - a statement that defines how a law will be implemented; it has the force of law; it is written by an administrative agency and adopted after publication for public comment.

Self-assessment - voluntary measurement of one's knowledge, skills or attitudes in a given area.

Statute - a law that governs conduct within its scope; a bill passed by the legislature becomes a statute.

Statutory authority - boundaries of a board's lawful responsibility as laid out by the statute which created it.

Stem - the component of a multiple choice question which states the problem and sets the frame of reference (focus) for an individual to select a correct response.

Stipulation - a condition, requirement, or item of an agreement, specified in an instrument.

Subpoena - literally, "under penalty." It is a legally enforceable writ commanding the appearance of a witness at a judicial or other proceeding; the witness may be subjected to penalties if
he fails to attend or to produce documents, if so directed.

"Sunset" - laws passed by some 36 states which require periodic review of boards and agencies and force the legislature to take positive action to reauthorize the board's existence; otherwise, it terminates.

Unfair or deceptive trade practice - any practice used by merchants or trades people which misleads or cheats consumers.

Validity - the degree to which an examination measures what it is intended to measure.

Construct validity - the extent to which a test measures some relatively abstract psychological trait or "construct."

Content validity - the degree to which a test is deemed to measure the competency of an individual; where the "content" of the test represents a balanced and adequate sampling of the outcome of the course it is intended to cover.

WEB SITE ADDRESSES

NATIONAL ORGANIZATIONS IN OCCUPATIONAL AND PROFESSIONAL REGULATION
The web site of the Council on Licensure, Enforcement and Regulation (CLEAR) can be found at http://www.clearhq.org. It provides links to national organizations involved in occupational and professional regulation in the following categories:

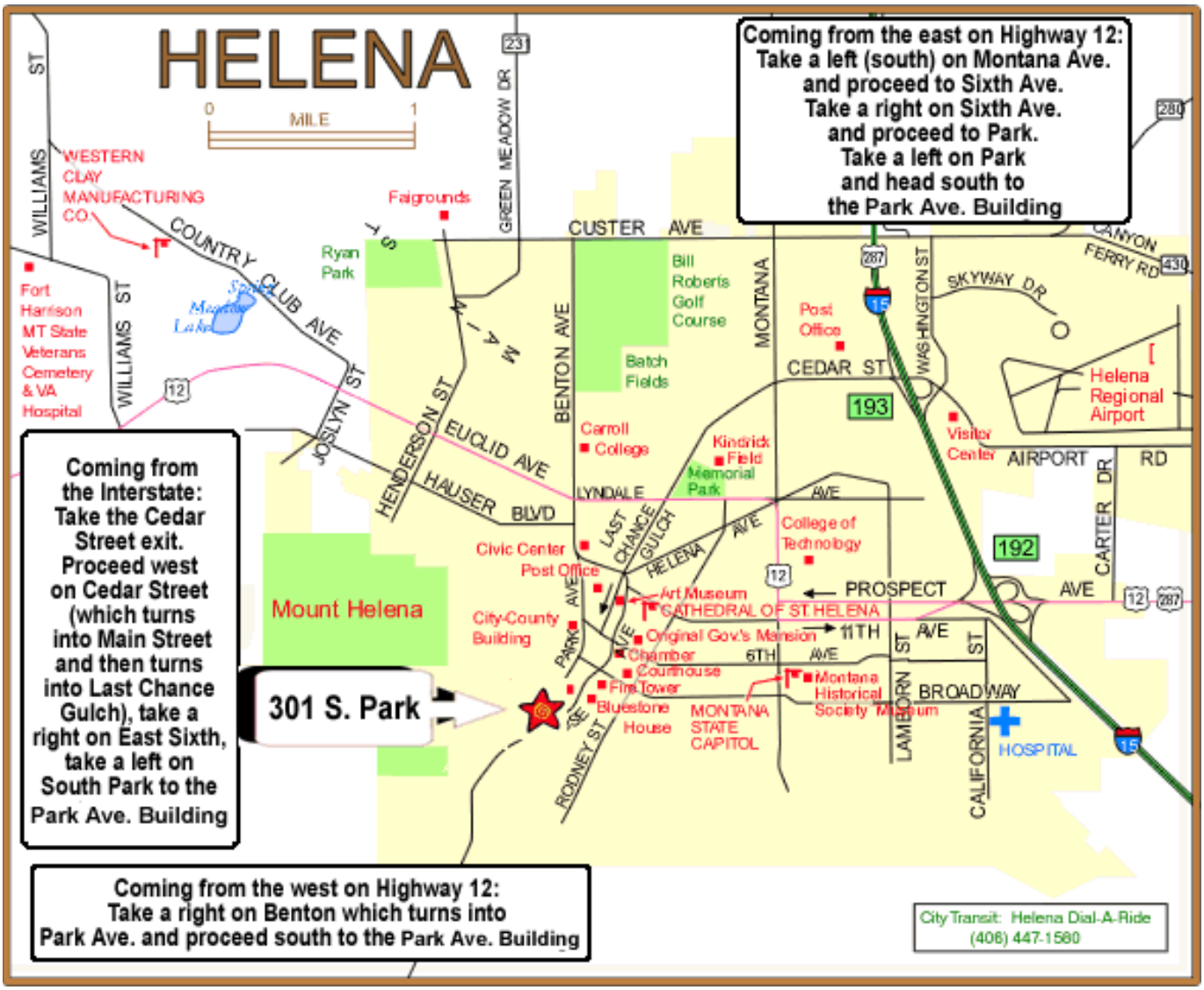
- Professional Associations - http://www.clearhq.org/associations.htm
- Associations of Regulatory Boards - http://www.clearhq.org/regboards.htm
- Testing and Certification Organizations (and other useful links) - http://www.clearhq.org/resources.htm

• Regulatory Boards and Colleges in North America - http://www.clearhq.org/boards.htm
• Regulatory Boards and Colleges outside North America - http://www.clearhq.org/international.html

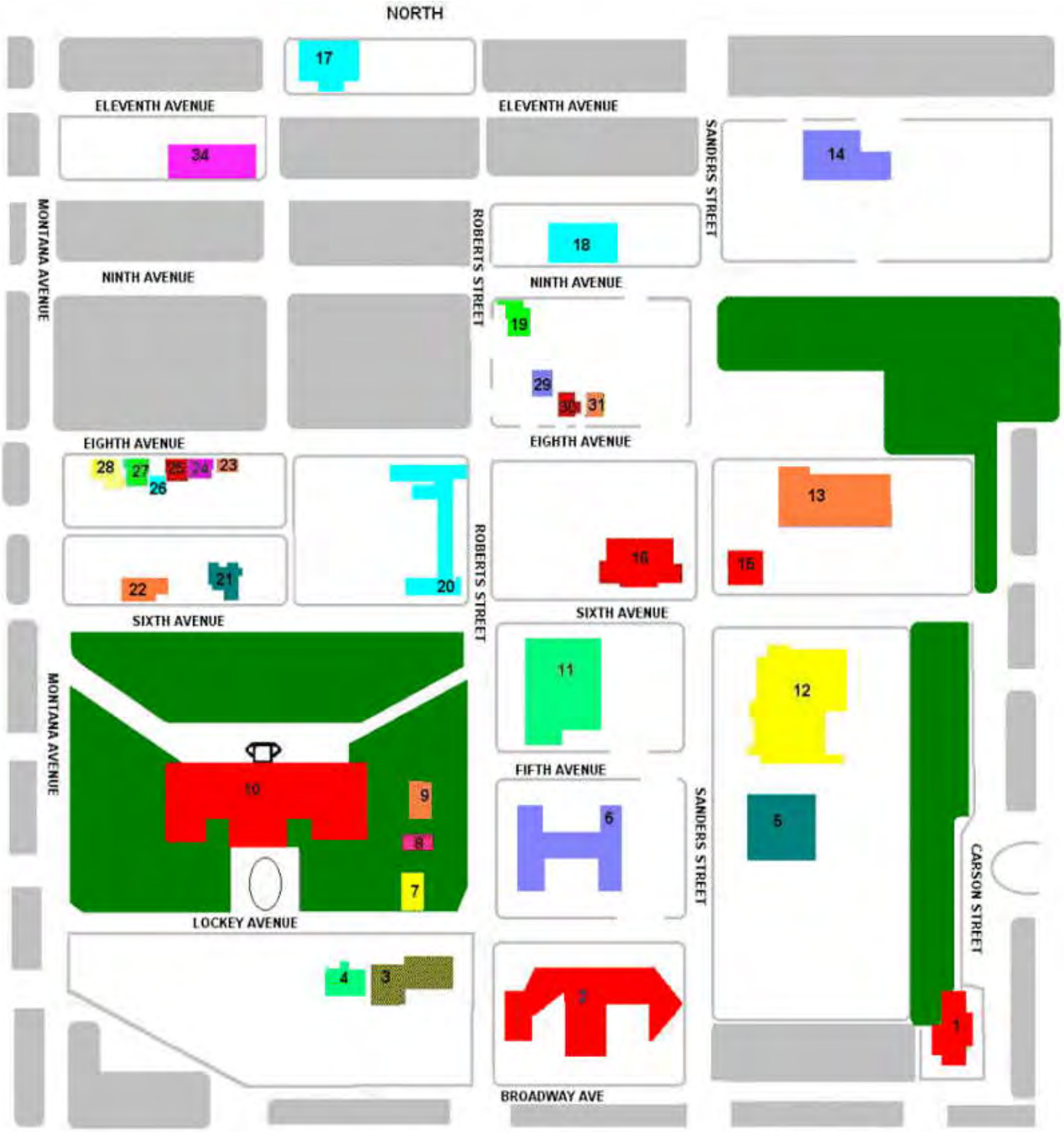
BUSINESS STANDARDS LOCATION MAP

The Business Standards Division is located at 301 S. Park, Helena, MT. 59602.

Building Codes, Business and Occupational Licensing, Health Care Licensing and Weights and Measures
are on the fourth floor in room 430.



CAPITOL COMPLEX OFFICE MAP



CAPITOL COMPLEX REFERENCE GUIDE

1. EXECUTIVE RESIDENCE	2 CARSON STREET
2. COGSWELL	1401 E LOCKEY AVE
3. WALT SULLIVAN BLDG	1315 E LOCKEY AVE
4. OLD BOARD OF HEALTH	1301 E LOCKEY
5. DPHHS	111 N SANDERS
6. MITCHELL	125 N ROBERTS
7. OLD LIVESTOCK	1310 E LOCKEY AVE
8. CAPITOL ANNEX	118 N ROBERTS ST
9. BOILER PLANT	120 N ROBERTS ST
10.CAPITOL	1301 6th AVE
11.HISTORICAL SOCIETY & MUSEUM	222 N ROBERTS
12.JUSTICE BLDG & STATE LIBRARY	215 N SANDERS
13.METCALF	1520 E 6th AVE
14.CORRECTIONS	1539 11th AVE
15.TEACHERS RETIREMENT	1500 E 6TH AVE
16.FISH WILDLIFE & PARKS	1420 E 6th AVE
17.PUBLIC INSTRUCTION	1300 11TH AVE
18.NATURAL RESOURCES	1429 9TH AVE
19.MAINTENANCE SHOP	425 N ROBERTS ST
20.SCOTT HART	302 N ROBERTS ST
21.SECRETARY OF STATE ANNEX	1236 E 6th AVE
22.OFFICE BUILDING	1218 E 6th AVE
23.OFFICE BUILDING	326 WASHINGTON DRIVE
24.OFFICE BUILDING	1225 8th AVE
25.OFFICE BUILDING	1219 8th AVE
26.OFFICE BUILDING	1215 8th AVE
27.TAX APPEALS BOARD	1209 8th AVE
28.POLITICAL PRACTICES	1205 8th AVE
29.FISH WILDLIFE & PARKS	1400 8th AVE
30.FISH WILDLIFE & PARKS	1404 8th AVE
31.OFFICE BUILDING	1410/1412 8th AVE