

OFFICE OF THE GOVERNOR
STATE OF MONTANA

BRIAN SCHWEITZER
GOVERNOR



JOHN BOHLINGER
LT. GOVERNOR

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

FROM: Governor  Brian Schweitzer

DATE: October 20, 2009

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

Montana's public participation laws require me, as Governor, "to ensure that each board, bureau, commission, department, authority, agency, or officer of the executive branch of the state" adopts rules, setting forth policies and procedures to facilitate public participation in agency programs and decisions. MCA § 2-3-103(2). I have written you each year to remind you of these statutory obligations for your agency, and I again take this opportunity to remind you of these requirements.

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 statutes require agencies to provide adequate notice to the public and assist public participation. Meeting agendas must include an item allowing public comment on any public matter not on the agenda but within the agency's jurisdiction. The agency may not act on any matter that was not included on the agenda and for which public comment on the matter was not allowed. Public comments must be incorporated into the official minutes of the meeting. The district courts may set aside agency decisions not in

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conformity with the public participation laws where a person's rights have been prejudiced. Model rules to implement these laws are found at ARM §§ 1.3.101 and 1.3.102.

As you know, this Administration takes very seriously the public's right to participate in the decisions of government, and I applaud your efforts to ensure this public right. If you or your agency needs assistance in crafting appropriate guidelines and rules to conform to Montana's public participation laws, feel free to contact my chief legal counsel, Ann Brodsky, for assistance (direct line, 444-3558).