

**MONTANA COAL BOARD
INTERNAL MANAGEMENT PROCEDURES**

<http://comdev.mt.gov/Boards/Coal>

A. NAME: MONTANA COAL BOARD; the Board is administratively attached to the Department of Commerce, Helena, MT.

B. PURPOSE: Receive and consider applications for grants from the Board and award grants to assist local governmental units that have been required to expand the provision of public services as a consequence of large-scale development or decline of coal mines and coal-using energy complexes.

C. COMPOSITION: The Board consists of seven members appointed by the Governor; officers include a Chair and Vice Chair.

D. ELECTION OF OFFICERS: The Chair and the Vice Chair is are appointed by the Governor Board. ~~The Vice Chair shall be elected annually by the Board during the first meeting of the calendar year. Board elections of the Chair and Vice Chair will take place at the first quarterly meeting of the Biennium. In the absence of the Chair, the Vice Chair shall perform the duties of the Chair. If the Chair resigns or is incapacitated, the Vice Chair shall perform the duties of the Chair. In the event of resignation or incapacitation of the Chair or Vice Chair, the Board will elect officer(s) at the next regularly scheduled Board meeting.~~ The Chair shall preside at all Board meetings and hearings, call special meetings, and perform the duties normally conferred by parliamentary usage on such presiding officer and other such duties as may be properly prescribed. ~~In the absence of the Chair, the Vice Chair shall perform the duties of the Chair.~~

E. MEETINGS: Meetings will be held at a minimum in each calendar quarter as determined by the Board. The Board shall determine the location of the meetings. Special meetings may be called by the Chair and shall be called upon the written request of three members of the Board.

F. NOTIFICATION: All meetings of the Board and its committees shall comply with Montana law as it applies to open public meetings.

G. QUORUM AND PROCEDURE: A quorum shall consist of four members present at the meeting, in-person or by teleconference. The affirmative vote of the majority of the member's present is sufficient for any action taken by the Board, in-person or by teleconference. The Chair may make and second motions and participate in all votes. The rules contained in the most current edition of Robert's Rules of Order shall generally be adhered to in the conduct of all meetings unless these procedures or state law provides otherwise. Only those items

included on the agenda and that are part of the materials mailed to the Board members may be acted upon at that particular meeting. New business may be introduced without prior notice only for the purpose either of Board action at a future meeting or referral to a committee or Board staff for study or consideration.

H. AUDIT PROCEDURES: The Coal Board Program will be audited as part of the biennial audit of the Department of Commerce by the Legislative Auditor.

I. VOTING: Coal Board meetings follow Robert's Rules of Order. All members will be asked to vote through roll call.

J. COMMITTEES: Such committees, standing or special, shall be appointed from the members by the Chair as the Board shall from time to time deem necessary to carry on the work of the Board. The board has not used committees in the recent past.

K. MAINTENANCE OF RECORDS: The Administrative Officer and staff shall be responsible for the maintenance of any and all records of the Board. Records shall be kept at the Coal Board Office at the Department of Commerce, and shall be available for inspection during normal business hours. Each pre-application or full-application form submitted to the Board shall be entered in a docket. Each form docketed since the preceding Board meeting shall be reported to the Board at its next meeting, and this shall be reflected in the minutes of the meeting, together with such comments or recommendations as the Department or Board staff may submit. The Board may, but will not necessarily, take final action on an application at the meeting when the application is received. All meeting records are permanent records.

M. AMENDMENT OF PROCEDURES: Amendments to these procedures may be initiated by any member of the Board. Proposed amendments must be considered at a regular Board meeting and approved by a majority vote of the members present. All members of the Board shall be informed of any proposed amendments in writing at least seven (7) days prior to a vote being taken.

N. CONFLICT OF INTEREST: No member of the Board shall participate in any decision relating to contracts that affect his/her personal interests or the interests of any corporation, partnership, or association in which he/she is, directly or indirectly interested, or has any personal or pecuniary interest, direct or indirect, in the contract or the proceeds thereof. As applied here, the term "participate" prohibits making motions, seconding motions, and voting.

Department of Commerce ARM Rules for Citizen Participation

8.2.201 POLICIES AND OBJECTIVES IN PROVIDING CITIZEN PARTICIPATION IN THE OPERATION OF THE DEPARTMENT OF COMMERCE

(1) Participation of the public is to be provided for, encouraged and assisted to the fullest extent practicable consistent with other requirements of state law and the rights and requirements of personal privacy. The major objectives of such participation include greater responsiveness of governmental actions to public concerns and priorities, and improved public understanding of official programs and actions. Prior to the granting or denying of certain licenses, the Department of Commerce shall, where the decision is of significant public interest, give adequate notice that the decision is to be made and provide an opportunity for public participation in the making of the decision.

History: [2-3-103](#), MCA; [IMP](#), [2-3-103](#), MCA; Eff. 5/6/76.

8.2.202 GUIDELINES FOR DETERMINATION OF SIGNIFICANT PUBLIC INTEREST

(1) The following will be deemed of a significant public interest to require notice and the availability of an opportunity for public participation in the decision-making process:

(a) the adoption, amendment or repeal of any regulation, standard, or statement of general applicability that implements, interprets, or prescribes law or policy or procedures or practice requirements of the Department of Commerce; or

(b) the granting or denying of a license for which a hearing is required under provisions of Montana law.

(2) In all other cases, whether or not the decision is one of significant public interest will be determined by the person within the department who is proposing the decision, according to the following considerations:

(a) whether the decision regards a matter which is controversial;

(b) the number of persons who will be affected by the decision;

(c) the fiscal impact the decision will have;

(d) whether a high level of citizen interest has been witnessed by the department.

History: [2-3-103](#), MCA; [IMP](#), [2-3-103](#), MCA; Eff. 5/6/76.

8.2.203 GUIDELINES FOR DEPARTMENT PROGRAMS

(1) A continuing departmental program for public participation shall include methods of implementing each of the functions listed in this rule. The exact method may vary in relation to resources available, public response, or the nature of issues involved:

(a) Informational materials - each division of the department shall provide continuing policy, program and technical information at the earliest practicable times and at places easily accessible to interested or affected persons and organizations so that they can make informal and constructive contributions to department decision-making. New releases and other publications may be used for this purpose as well as informational discussions and meetings with interested citizens' groups. Special efforts shall be made to summarize complex technical materials for public and media use.

(b) Assistance to public - each division shall have a procedure for providing technical and information assistance to concerned groups and individuals. Requests for information shall be promptly handled.

(c) Notification - each division shall maintain, for its appropriate areas of responsibility, a current list of interested persons and organizations including any who have requested inclusion on such list for the distribution of information such as that listed in paragraph (a) of this rule. This shall be in addition to the lists now maintained as required by the Montana Administrative Procedure Act. The department shall, in addition, notify any interested persons of any public hearing or other decision-making proceedings prior to decision-making and wherever possible shall supplement this notification with informal notice to all interested persons or groups having requested such notice in advance.

(d) Access to information - the department files, other than personnel files and those files required by law or requirements of personal privacy to remain confidential, are open to public inspection in accordance with established Department of Commerce policy. These files are located at the department office in Helena. Copies of specific documents are available either free or for a reasonable copying charge plus employee time.

(e) Rulemaking - in addition to any other requirements, the department shall comply with the requirements of the Montana Administrative Procedure Act.

(f) Other measures - the listing of specific measures in this section shall not preclude additional methods for obtaining, encouraging or assisting public participation.

History: [2-3-103](#), MCA; [IMP](#), [2-3-103](#), MCA; Eff. 5/6/76.

8.2.204 NOTICE AND MEANS FOR PUBLIC PARTICIPATION

(1) If it is determined that significant public interest is involved, one or more of the following steps, as applicable, shall be taken to assist public participation in decision-making;

(a) a proceeding or hearing shall be held in compliance with the provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, MCA;

(b) a public hearing, after appropriate notice is given, shall be held pursuant to any other provision or state law or a local ordinance or regulation;

(c) a news release, legal advertisement, or other method of publication shall be given to news media within the area to be affected which shall include the name of the department, the name of a person within the department most familiar with the proposed action, the address, and phone number where interested persons may submit their data, views or arguments, orally or in written form, concerning the proposed action.

History: [2-3-103](#), MCA; [IMP](#), [2-3-103](#), MCA; Eff. 5/6/76.

8.2.205 CONFERENCES WITH DIRECTOR OR DIVISION ADMINISTRATORS

(1) Any individual or group of individuals may make appointments to confer with the director or division administrators regarding any matter of concern to those individuals and which is subject to the jurisdiction of the Department of Commerce. Such appointments may be made by contacting the director's office in Helena, (406) 841-2700.

History: [2-3-103](#), MCA; IMP, [2-3-103](#), MCA; Eff. 5/6/76.

8.2.206 OPEN MEETINGS

(1) All meetings of the department shall be open to the public subject to the provisions of [2-3-203](#) , MCA.

History: [2-3-103](#), MCA; IMP, [2-3-103](#), MCA; Eff. 5/6/76.

8.2.207 GENERAL

(1) Citizens desiring information about anything contained in these rules or about anything concerning the Department of Commerce and public participation should contact the department.

History: [2-3-103](#), MCA; IMP, [2-3-103](#), MCA; AMD, Eff. 5/5/77; AMD, Eff. 6/30/86; AMD, 1995 MAR p. 2794, Eff. 12/22/95.

STAFF MEMO

Below are the items requested for Commerce staff and legal review following the September 12th Coal Board meeting in reference to internal procedures. Comments and questions are included from staff.

- Does the board need to have three meetings to review and approve the internal procedures document?
 - The Coal Board Internal Procedures document sets out the process for amending these procedures (see below). In addition to this provision, the board must also follow open public meeting and public participation laws (notice and opportunity to participate).
 - **“M. AMENDMENT OF PROCEDURES:** Amendments to these procedures may be initiated by any member of the Board. Proposed amendments must be considered at a regular Board meeting and approved by a majority vote of the members present. All members of the Board shall be informed of any proposed amendments in writing at least seven (7) days prior to a vote being taken.”
- The Board requested that the internal procedures document be amended to state that if the Chair resigns or is incapacitated, the Vice-Chair becomes the Chair.
 - How does the board determine if the Chair is incapacitated? Will the board vote to make this determination?
- Coal Board Public Participation procedures
 - The Board may adopt the Commerce internal procedures process. These are included in the Internal Procedures tab of this binder. Or the Board may adopt their own.
 - Following the September 12th Board meeting, Bighorn County provided a public participation process for the Board as an example. Commerce’s staff attorney for the Board reviewed the document and provided the comments below.
 - The public participation rules are very similar to Commerce’s.
 - Rule 2(2) provides that the Coal Board will appoint a person from Commerce to make the decision on whether a decision is one of significant public interest. What happens if that person no longer works at Commerce? Staff recommends that the Coal Board should make this determination or the Board Chair.
 - Rule 3(1)(b) provides that the board will have a procedure for providing technical assistance and information. Will the Board make a procedure for this concurrent with adoption of these rules?
 - Rule 3(1)(c) discusses interested persons lists. The staff at the Community Development Division currently manages this list. Commerce legal staff manages the interested persons lists for ARMs (MT Administrative Procedure Act).
 - Rule 4(1)(a) should be rephrased. Roberts Rules of Order control in the absence of Coal Board rules. Staff recommends using the word meeting instead of proceeding here.
 - Rule 5 – The phone number for the Community Development Division is correct.

DRAFT RECEIVED FROM BIG HORN COUNTY
MONTANA COAL BOARD POLICIES AND RULES REGARDING CITIZEN
PARTICIPATION

1 POLICIES AND OBJECTIVES IN PROVIDING CITIZEN PARTICIPATION IN THE OPERATION OF THE MONTANA COAL BOARD

(1) Participation of the public is to be provided for, encouraged and assisted to the fullest extent practicable consistent with other requirements of state law and the rights and requirements of personal privacy. The major objectives of such participation include greater responsiveness of governmental actions to public concerns and priorities, and improved public understanding of official programs and actions. Prior to the granting or denying of certain applications for grants, the Montana Coal Board shall, where the decision is of significant public interest, give adequate notice that the decision is to be made and provide an opportunity for public participation in the making of the decision.

2 GUIDELINES FOR DETERMINATION OF SIGNIFICANT PUBLIC INTEREST

(1) The following will be deemed of a significant public interest to require notice and the availability of an opportunity for public participation in the decision-making process:

(a) the adoption, amendment or repeal of any regulation, standard, or statement of general applicability that implements, interprets, or prescribes law or policy or procedures or practice requirements of the Montana Coal Board; or

(b) the granting or denying of applications for grants.

(2) In all other cases, whether or not the decision is one of significant public interest will be determined by a person within the Department of Commerce of the State of Montana who is appointed pursuant to a majority vote of the Members of the Montana Coal Board and who shall serve and provide this function at the pleasure of the majority of the Members of the Montana Coal Board, according to the following:

(a) whether the decision regards a matter which is controversial;

(b) the number of persons who will be affected by the decision;

(c) the fiscal impact the decision will have;

(d) whether a high level of citizen interest has been witnessed by the Montana Coal Board.

3 GUIDELINES FOR MONTANA COAL BOARD PROGRAMS

(1) A continuing Montana Coal Board program for public participation shall include methods of implementing each of the functions listed in this rule. The exact method may vary in relation to resources available, public response, or the nature of issues involved:

(a) Informational materials - the Montana Coal Board shall provide continuing policy, program and technical information at the earliest practicable times and at places easily accessible to interested or affected persons and organizations so that they can make informal and constructive contributions to Montana Coal Board decision-making. New releases and other publications may be used for this purpose as well as informational discussions and meetings with interested citizens' groups. Special efforts shall be made to summarize complex technical materials for public and media use.

(b) Assistance to public - the Montana Coal Board shall have a procedure for providing technical and information assistance to concerned groups and individuals. Requests for information shall be promptly handled.

(c) Notification - the Montana Coal Board shall maintain, for its areas of responsibility, a current list of interested persons and organizations including any who have requested inclusion on such list for the distribution of information such as that listed in paragraph (a) of this rule. This shall be in addition to the lists now maintained as required by the Montana Administrative Procedure Act. The Montana Coal Board shall, in addition, notify any interested persons of any public hearing or other decision-making proceedings prior to decision-making and wherever possible shall supplement this notification with informal notice to all interested persons or groups having requested such notice in advance.

(d) Access to information - the Montana Coal Board files, other than personnel files and those files required by law or requirements of personal privacy to remain confidential, are open to public inspection in accordance with established Department of Commerce policy. These files are located at the Montana Coal Board's office in Helena. Copies of specific documents are available either free or for a reasonable copying charge plus employee time.

(e) Rulemaking - in addition to any other requirements, the Montana Coal Board shall comply with the requirements of the Montana Administrative Procedure Act.

(f) Other measures - the listing of specific measures in this section shall not preclude additional methods for obtaining, encouraging or assisting public participation.

4 NOTICE AND MEANS FOR PUBLIC PARTICIPATION

(1) If it is determined that significant public interest is involved, one or more of the following steps, as applicable, shall be taken to assist public participation in decision-making;

(a) a proceeding or hearing shall be held in compliance with the provisions of the of the most current version of Robert's Rules of Order, provided however, if the Montana Coal Board institutes any rules such rules shall take precedence over Robert's Rules of Order;

(b) a public hearing, after appropriate notice is given, shall be held pursuant to any other provision or state law or a local ordinance or regulation;

(c) a news release, legal advertisement, or other method of publication shall be given to news media within the area to be affected which shall include the name of the Montana Coal Board, the address, and phone number where interested persons may submit their data, views or arguments, orally or in written form, concerning the proposed action.

5 CONFERENCES WITH MEMBERS OF THE COAL BOARD OR ITS STAFF

(1) Any individual or group of individuals may make appointments to confer with any member of the Montana Coal Board or its staff regarding any matter of concern to those individuals and which is subject to the jurisdiction of the Montana Coal Board. Such appointments may be made by contacting the Montana Coal Board office in Helena, (406) 841-2770.

6 OPEN MEETINGS

(1) All meetings of the Montana Coal Board shall be open to the public subject to the provisions of [2-3-203](#), MCA.

7 GENERAL

(1) Citizens desiring information about anything contained in these rules or about anything concerning the Montana Coal Board and public participation should contact the Montana Coal Board.

MCA Contents / TITLE 90 / CHAPTER 6 / Part 2 / 90-6-204 Presiding offic...

Montana Code Annotated 2017

TITLE 90. PLANNING, RESEARCH, AND DEVELOPMENT

CHAPTER 6. COMMUNITY IMPACT -- PLANNING AND ABATEMENT

Part 2. Coal Impacts -- Evaluation and Abatement Funding

Presiding Officer, Meetings, Compensation, And Facilities

90-6-204. Presiding officer, meetings, compensation, and facilities. (1) The board shall elect a presiding officer from among its members.

(2) The board shall meet quarterly and may meet at other times as called by the presiding officer or a majority of the members.

(3) Members are entitled to compensation as provided for in 2-15-124(7).

(4) The department of commerce shall provide suitable office facilities and the necessary staff for the coal board.

History: En. 50-1705, 50-1708 by Secs. 6, 9, Ch. 502, L. 1975; R.C.M. 1947, 50-1805, 50-1808; amd. Sec. 6, Ch. 274, L. 1981; amd. Sec. 2874, Ch. 56, L. 2009.

OFFICE OF THE GOVERNOR
STATE OF MONTANA

STEVE BULLOCK
GOVERNOR



MIKE COONEY
LT. GOVERNOR

MEMORANDUM

To: Chief Legal Counsels
From: Raph Graybill
Date: March 14, 2019
Re: Public participation in agency decisions pursuant to § 2-3-103, MCA

Montanans have a right to participate in the operation of state agencies. 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 § 2-3-102(1), MCA, to "develop procedures for permitting and encouraging the public to participate in agency decisions that are of significant interest to the public." Section 2-3-103(1), MCA. 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. Section 2-3-114, MCA. Model rules to implement these laws are found at ARM §§ 1.3.101-102.

Montana's public participation laws require that the Governor "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. Section 2-3-103(2), MCA. With this memo, I ask that each of you ensure that your respective agencies and attached boards, bureaus and commissions, have adopted rules implementing the public participation statutes.

If you or your agency needs assistance in crafting appropriate guidelines or rules to conform with Montana's public participation laws, feel free to contact me. Thank you.