

HOUSE BILL NO. 724

INTRODUCED BY B. BARKER, J. ETCHART, R. MINER, J. KASSMIER

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING PUBLIC NOTICE REQUIREMENTS; ALLOWING AGENCIES TO PUBLISH MEETING AGENDAS ON THE AGENCY WEBSITE OR SOCIAL MEDIA PAGE IF THEY HAVE ONE; REQUIRING LOCAL GOVERNMENTS AND SCHOOL BOARDS TO PUBLISH MEETING AGENDAS PRIOR TO THE MEETING; AND AMENDING SECTIONS 2-3-103, 7-1-2121, 7-1-4127, 7-3-304, 7-3-503, 7-3-606, 20-3-322, 20-9-204, AND 20-20-105, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 2-3-103, MCA, is amended to read:

"2-3-103. Public participation -- governor to ensure guidelines adopted. (1) (a) Each agency shall develop procedures for permitting and encouraging the public to participate in agency decisions that are of significant interest to the public. The procedures must ensure adequate notice and assist public participation before a final agency action is taken that is of significant interest to the public.

(b) The agency shall publish an agenda for a meeting, as defined in 2-3-202, as follows:

(i) if a newspaper of general circulation in the county where the agency is located publishes electronic notices free of charge to the agency on the newspaper's website, the agency shall publish a notice and include a link to the agenda for the meeting on the newspaper's website;

(ii) if the agency does not have an option to publish an electronic notice free of charge, the agency shall publish the notice and a link to the agenda for the meeting on at least one of the following:

(A) the agency's website; or

(B) the agency's social media page.

(c) ~~The agenda for a meeting, as defined in 2-3-202,~~ must include an item allowing public comment on any public matter that is not on the agenda of the meeting and that is within the jurisdiction of the agency conducting the meeting. However, the agency may not take action on any matter discussed unless specific notice of that matter is included on an agenda and public comment has been allowed on that matter.

1 (d) Public comment received at a meeting must be incorporated into the official minutes of the
2 meeting, as provided in 2-3-212.

3 ~~(b)~~(e) For purposes of this section, "public matter" does not include contested case and other
4 adjudicative proceedings.

5 (2) The governor shall ensure that each board, bureau, commission, department, authority,
6 agency, or officer of the executive branch of the state adopts coordinated rules for its programs. The guidelines
7 must provide policies and procedures to facilitate public participation in those programs, consistent with
8 subsection (1). These guidelines must be adopted as rules and published in a manner so that the rules may be
9 provided to a member of the public upon request."
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11 **Section 2.** Section 7-1-2121, MCA, is amended to read:

12 **"7-1-2121. Publication and content of notice -- proof of publication.** (1) Unless otherwise
13 specifically provided by law and except as provided in 13-1-108, whenever a local government unit other than a
14 municipality is required to give notice by publication, this section applies.

15 (2) A local government unit shall comply with the notice requirements of 2-3-103, including
16 publication of an agenda prior to a meeting.

17 ~~(2)~~(3) Publication must be in a newspaper meeting the qualifications of subsections ~~(3) and (4)~~ and
18 (5), except that in a county where a newspaper does not meet these qualifications, publication must be made in
19 a qualified newspaper in an adjacent county. If there is no qualified newspaper in an adjacent county,
20 publication must be made by posting the notice in three public places in the county, designated by resolution of
21 the governing body.

22 ~~(3)~~(4) (a) The newspaper must:

23 (i) be of general circulation;

24 (ii) be published at least once a week;

25 (iii) be published in the county where the hearing or other action will take place; and

26 (iv) have, prior to July 1 of each year, submitted to the clerk and recorder a sworn statement that
27 includes:

28 (A) circulation for the prior 12 months;

1 (B) a statement of net distribution;

2 (C) itemization of the circulation that is paid and that is free; and

3 (D) the method of distribution.

4 (b) A newspaper of general circulation does not include a newsletter or other document produced
5 or published by the local government unit.

6 ~~(4)~~(5) In the case of a contract award, the newspaper must have been published continuously in the
7 county for the 12 months preceding the awarding of the contract.

8 ~~(5)~~(6) If a person is required by law or ordinance to pay for publication, the payment must be received
9 before the publication may be made.

10 ~~(6)~~(7) The notice must be published twice, with at least 6 days separating each publication.

11 ~~(7)~~(8) The published notice must contain:

12 (a) the date, time, and place of the hearing or other action;

13 (b) a brief statement of the action to be taken;

14 (c) the address and telephone number of the person who may be contacted for further information
15 on the action to be taken; and

16 (d) any other information required by the specific section requiring notice by publication.

17 ~~(8)~~(9) A published notice required by law may be supplemented by a radio or television broadcast of
18 the notice in the manner prescribed in 2-3-105 through 2-3-107.

19 ~~(9)~~(10) Proof of the publication or posting of any notice may be made by affidavit of the owner,
20 publisher, printer, or clerk of the newspaper or of the person posting the notice.

21 ~~(10)~~(11) If the newspaper fails to publish a second notice, the local government unit must be
22 considered to have met the requirements of this section as long as the local government unit submitted the
23 required information prior to the submission deadline and the notice was posted in three public places in the
24 county that were designated by resolution and, if the county has an active website, was posted on the county's
25 website at least 6 days prior to the hearing or other action for which notice was required."
26

27 **Section 3.** Section 7-1-4127, MCA, is amended to read:

28 **"7-1-4127. Publication of notice -- content -- proof.** (1) A municipality shall comply with the notice

1 requirements of 2-3-103, including publication of an agenda prior to a meeting.

2 (2) When a municipality is required to publish notice, publication must be in a newspaper, except
3 that in a municipality with a population of 500 or less or in which a newspaper is not published, publication may
4 be made by posting in three public places in the municipality that have been designated by ordinance.

5 ~~(2)~~(3) The newspaper must:

6 (a) be of general circulation;

7 (b) be published at least once a week;

8 (c) be published in the county where the municipality is located; and

9 (d) have, prior to July 1 of each year, submitted to the city clerk a sworn statement that includes:

10 (i) circulation for the prior 12 months;

11 (ii) a statement of net distribution;

12 (iii) itemization of paid circulation and circulation that is free; and

13 (iv) the method of distribution.

14 ~~(3)~~(4) A newspaper of general circulation does not include a newsletter or other document produced
15 or published by the municipality.

16 ~~(4)~~(5) In the case of a contract award, the newspaper must have been published continuously in the
17 county for the 12 months preceding the awarding of the contract.

18 ~~(5)~~(6) In a county where a newspaper does not meet the qualifications in subsection ~~(2)~~ (3),
19 publication must be made in a qualified newspaper in an adjacent county.

20 ~~(6)~~(7) If a person is required by law or ordinance to pay for publication, the payment must be received
21 before the publication may be made.

22 ~~(7)~~(8) The notice must be published twice, with at least 6 days separating each publication.

23 ~~(8)~~(9) The published notice must contain:

24 (a) the date, time, and place of the hearing or other action;

25 (b) a brief statement of the action to be taken;

26 (c) the address and telephone number of the person who may be contacted for further information
27 on the action to be taken; and

28 (d) any other information required by the specific section requiring notice by publication.

1 ~~(9)~~(10) A published notice required by law may be supplemented by a radio or television broadcast of
2 the notice in the manner prescribed in 2-3-105 through 2-3-107.

3 ~~(10)~~(11) Proof of the publication or posting of any notice may be made by affidavit of the owner,
4 publisher, printer, or clerk of the newspaper or of the person posting the notice.

5 ~~(11)~~(12) If the newspaper fails to publish a second notice, the municipality must be considered to have
6 met the requirements of this section as long as the municipality submitted the required information prior to the
7 submission deadline and the notice was posted in three public places in the municipality that were designated
8 by ordinance and, if the municipality has an active website, was posted on the municipality's website at least 6
9 days prior to the hearing or other action for which notice was required."
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11 **Section 4.** Section 7-3-304, MCA, is amended to read:

12 **"7-3-304. Duties of manager.** The manager shall:

- 13 (1) enforce laws, ordinances, and resolutions;
- 14 (2) perform the duties required by law, ordinance, or resolution;
- 15 (3) administer the affairs of the local government;
- 16 (4) direct, supervise, and administer all departments, agencies, and offices of the local government
17 unit except as otherwise provided by law or ordinance;
- 18 (5) carry out policies established by the commission;
- 19 (6) prepare and publish the commission agenda pursuant to 2-3-103;
- 20 (7) recommend measures to the commission;
- 21 (8) report to the commission on the affairs and financial condition of the local government;
- 22 (9) execute bonds, notes, contracts, and written obligations of the commission, subject to the
23 approval of the commission;
- 24 (10) report to the commission as the commission may require;
- 25 (11) attend commission meetings and may take part in the discussion but may not vote;
- 26 (12) prepare and present the budget to the commission for its approval and execute the budget
27 adopted by the commission;
- 28 (13) appoint, suspend, and remove all employees of the local government except as otherwise

1 provided by law or ordinance;

2 (14) appoint members of temporary advisory committees established by the manager."

3

4 **Section 5.** Section 7-3-503, MCA, is amended to read:

5 **"7-3-503. Role and duties of presiding officer.** The commission presiding officer:

6 (1) must be recognized as the head of the local government unit, must have the power to vote as
7 other members of the commission, and must be the chief executive officer of the local government;

8 (2) shall enforce laws, ordinances, and resolutions;

9 (3) shall perform duties required by law, ordinance, or resolution;

10 (4) shall administer the affairs of the local government;

11 (5) shall direct, supervise, and administer all departments, agencies, and offices of the local
12 government except as otherwise provided by law or ordinance;

13 (6) shall carry out policies established by the commission;

14 (7) shall prepare and publish the commission agenda pursuant to 2-3-103;

15 (8) shall recommend measures to the commission;

16 (9) shall report to the commission on the affairs and financial condition of the local government;

17 (10) shall execute bonds, notes, contracts, and written obligations of the commission, subject to the
18 approval of the commission;

19 (11) shall report to the commission as the commission may require;

20 (12) shall attend commission meetings and may take part in discussions;

21 (13) shall execute the budget adopted by the commission;

22 (14) shall appoint, with the consent of the commission, all members of boards and committees.

23 However, the presiding officer may appoint without the consent of the commission temporary advisory
24 committees.

25 (15) shall appoint, with the consent of a majority of the commission, all department heads, and the
26 presiding officer may remove department heads and may appoint and remove all other employees;

27 (16) shall prepare the budget and present it to the commission for adoption; and

28 (17) shall exercise control and supervision over the administration of departments and boards."

1

2 **Section 6.** Section 7-3-606, MCA, is amended to read:

3 **"7-3-606. Selection, role, and duties of town presiding officer.** (1) The town meeting shall elect a
4 town presiding officer for a term of not less than 1 year or more than 2 years. An unexpired term of a town
5 presiding officer must be filled at the next annual or special town meeting.

6 (2) The town presiding officer is the chief executive officer of the town and shall:

7 (a) enforce laws, ordinances, and resolutions;

8 (b) perform duties required by law, ordinance, or resolution;

9 (c) administer the affairs of the town;

10 (d) prepare and publish the town meeting agenda pursuant to 2-3-103;

11 (e) attend all annual and special town meetings;

12 (f) recommend measures to the town meeting;

13 (g) report to the town on the affairs and financial condition of the town;

14 (h) execute bonds, notes, contracts, and written obligations of the town, subject to the approval of
15 the town;

16 (i) appoint, with the consent of the town meeting, members of all boards and appoint and remove
17 all employees of the town;

18 (j) prepare the budget and present it to the town meeting for adoption;

19 (k) exercise control and supervision of the administration of all departments and boards; and

20 (l) carry out policies established by the town meeting.

21 (3) Compensation of the town presiding officer must be established by ordinance but may not be
22 reduced during the current term of the town presiding officer."

23

24 **Section 7.** Section 20-3-322, MCA, is amended to read:

25 **"20-3-322. Meetings and quorum.** (1) The trustees of a district shall hold at least the following
26 number of regular meetings:

27 (a) an organization meeting, as prescribed by 20-3-321;

28 (b) a final budget meeting, as prescribed by 20-9-131; and

1 (c) (i) in first-class elementary districts, not less than one regular meeting each month; or

2 (ii) in any other district, regular meetings at least quarterly.

3 ~~(2)~~ The trustees shall provide advance notice for the meeting in compliance with 2-3-103 and shall
4 provide an agenda to the public in advance of the meeting.

5 ~~(2)(3)~~ (a) The trustees of the district shall adopt a policy setting the day and time for the minimum
6 number of regular school meetings prescribed in subsection (1)(c)(i) or (1)(c)(ii) and, in addition, any other
7 regular meeting days the trustees wish to establish. Except for an unforeseen emergency or as provided in
8 subsection ~~(2)(b)~~ (3)(b), meetings must be conducted in school buildings or, upon the unanimous vote of the
9 trustees, in a publicly accessible building located within the district.

10 (b) This section does not prohibit the trustees from meeting outside the boundaries of the school
11 district for collaboration or cooperation on educational issues with other school boards, educational agencies, or
12 cooperatives. ~~Adequate notice of the meeting as well as an agenda must be provided to the public in advance.~~
13 Decisionmaking may occur only at a properly noticed meeting held within the school district's boundaries.

14 ~~(3)(4)~~ Special meetings of the trustees may be called by the presiding officer or any two members of
15 the trustees by giving each member a 48-hour written notice of the meeting, except that the 48-hour notice is
16 waived in an unforeseen emergency or to consider a violation of the student code of conduct, as defined in
17 accordance with district policy, within a week of graduation.

18 ~~(4)(5)~~ Business may not be transacted by the trustees of a district unless it is transacted at a regular
19 meeting or a properly called special meeting. A quorum for any meeting is a majority of the trustees'
20 membership. All trustee meetings must be public meetings, as prescribed by 2-3-201, except that the trustees
21 may recess to an executive session under the provisions of 2-3-203.

22 ~~(5)(6)~~ For the purposes of this section, "unforeseen emergency" means a storm, fire, explosion,
23 community disaster, insurrection, act of God, or other unforeseen destruction or impairment of school district
24 property that affects the health and safety of the trustees, students, or district employees or the educational
25 functions of the district."

26

27 **Section 8.** Section 20-9-204, MCA, is amended to read:

28 **"20-9-204. Conflicts of interests, letting contracts, and calling for bids -- exceptions.** (1) It is

1 unlawful for a trustee to:

2 (a) have any pecuniary interest, either directly or indirectly, in any contract made by the trustee
3 while acting in that official capacity or by the board of trustees of which the trustee is a member; or

4 (b) be employed in any capacity by the trustee's own school district, with the exception of
5 officiating at athletic competitions under the auspices of the Montana officials association.

6 (2) For the purposes of subsection (1):

7 (a) "contract" does not include:

8 (i) merchandise sold to the highest bidder at public auctions;

9 (ii) investments or deposits in financial institutions that are in the business of loaning or receiving
10 money when the investments or deposits are made on a rotating or ratable basis among financial institutions in
11 the community or when there is only one financial institution in the community; or

12 (iii) contracts for professional services, other than salaried services, or for maintenance or repair
13 services or supplies when the services or supplies are not reasonably available from other sources if the
14 interest of any board member and a determination of the lack of availability are entered in the minutes of the
15 board meeting at which the contract is considered; and

16 (b) "pecuniary interest" does not include holding an interest of 10% or less in a corporation.

17 (3) (a) Except for district needs that must be met because of an unforeseen emergency, as defined
18 in 20-3-322(5)(6), or as provided in subsections (4) and (6) of this section, whenever any building, furnishing,
19 repairing, or other work for the benefit of the district or purchasing of supplies for the district is necessary, the
20 work done or the purchase made must be by contract if the sum exceeds \$80,000.

21 (b) Except as provided in Title 18, chapter 2, part 5, each contract must be let to the lowest
22 responsible bidder after advertisement for bids. The advertisement for bids under this subsection (3)(b) must be
23 published in the newspaper that will give notice to the largest number of people of the district as determined by
24 the trustees. The advertisement must be made once each week for 2 consecutive weeks, and the second
25 publication must be made not less than 5 days or more than 12 days before consideration of bids. A contract
26 not let pursuant to this section is void. The bidding requirements applicable to services performed for the benefit
27 of the district under this section do not apply to:

28 (i) a registered professional engineer, surveyor, real estate appraiser, or registered architect;

- 1 (ii) a physician, dentist, pharmacist, or other medical, dental, or health care provider;
 2 (iii) an attorney;
 3 (iv) a consulting actuary;
 4 (v) a private investigator licensed by any jurisdiction;
 5 (vi) a claims adjuster;
 6 (vii) an accountant licensed under Title 37, chapter 50; or
 7 (viii) a project, as defined in 18-2-501, for which a governing body, as defined in 18-2-501, enters
 8 into an alternative project delivery contract pursuant to Title 18, chapter 2, part 5.

9 (4) A district may enter into a cooperative purchasing contract for the procurement of supplies or
 10 services with one or more districts. A district participating in a cooperative purchasing group may purchase
 11 supplies and services through the group without complying with the provisions of subsection (3) if the
 12 cooperative purchasing group has a publicly available master list of items available with pricing included and
 13 provides an opportunity at least twice yearly for any vendor, including a Montana vendor, to compete, based on
 14 a lowest responsible bidder standard, for inclusion of the vendor's supplies and services on the cooperative
 15 purchasing group's master list.

16 (5) This section may not require the board of trustees to let a contract for any routine and regularly
 17 performed maintenance or repair project or service that can be accomplished by district staff whose regular
 18 employment with the school district is related to the routine performance of maintenance for the district.

19 (6) Subsection (3) does not apply to the solicitation or award of a contract for an investment grade
 20 energy audit or an energy performance contract pursuant to Title 90, chapter 4, part 11, including construction
 21 and installation of conservation measures pursuant to the energy performance contract."
 22

23 **Section 9.** Section 20-20-105, MCA, is amended to read:

24 **"20-20-105. Regular school election day and special school elections -- limitation -- exception.**

25 (1) Except as provided in subsection (5), the first Tuesday after the first Monday in May of each year is the
 26 regular school election day.

27 (2) Except as provided in subsections (4) and (5), a proposition requesting additional funding
 28 under 20-9-353 may be submitted to the electors only once each calendar year on the regular school election

1 day.

2 (3) Subject to the provisions of subsection (2), other school elections may be conducted at times
3 determined by the trustees.

4 (4) In the event of an unforeseen emergency occurring on the date scheduled for the funding
5 election pursuant to subsection (2), the district will be allowed to reschedule the election for a different day of
6 the calendar year. As used in this section, "unforeseen emergency" has the meaning provided in 20-3-
7 322~~(5)~~(6).

8 (5) In years when the legislature meets in regular session or in a special session that affects
9 school funding, the trustees may order an election on a date other than the regular school election day in order
10 for the electors to consider a proposition requesting additional funding under 20-9-353."

11 - END -