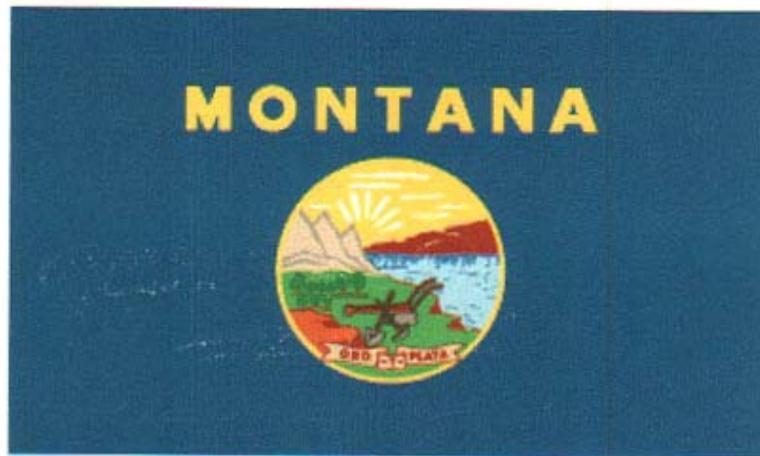


Schweitzer/Bohlinger
Administration



Department Directors, Boards,
Commissions, Advisory Councils'
Legislative Communications
Policy Handbook

61st Legislative Session

3. Guidance to Boards and Commissions Attached to Executive Branch Agencies Under the Governor

Each legislative session, board and commission members attached for administrative purposes to executive branch agencies under the Governor raise questions about the roles they may play, either as members of boards and commissions or as private citizens, in impacting legislative policy and specific legislation that is germane to the legitimate purposes of each board or commission. This guidance is provided to help streamline communication, coordinate legislative issues, and assist executive branch state board and commission members about legislative advocacy. (This guidance does not apply to advisory councils, which typically are established solely for the purpose of providing advice to the executive branch agency to which they are attached and not for the purpose of legislative advocacy. See Section 4 for guidance to advisory councils.)

The Governor is the Chief Executive Officer of Montana state government and is charged with formulating and administering the policies of the executive branch, including budget policies and priorities. The Governor's responsibility extends to positions taken by executive branch agencies before the Legislature. Like departments, boards and commissions are agencies of the executive branch. While an agency allocated to a department for administrative purposes exercises its quasi-judicial, licensing, and policymaking functions independent of the department to which it is attached, as part of the executive branch, boards and commissions are accountable to the Governor as Chief Executive Officer of the executive branch of government. Additionally, budgetary requests of boards and commissions are included within the budget of the department to which the board or commission is attached.

Coordination of legislation within the executive branch is important not only to guarantee consistency of policy within the executive branch, but to help prevent conflict in the laws and keep board and commission members informed of the Governor's policy, budget, and legislative goals. One way coordination works is to have boards and commissions, like departments, their units, and other agencies under the Governor obtain approval before taking positions on legislation.

Generally, boards or commissions become involved in supporting bills to correct program defects, fix statutory problems or ambiguities, resolve conflicts in the laws they administer, or generally make consensual improvements to services. Less frequently, boards or commissions become involved in bills of a more substantive or controversial nature. Less frequently, yet, a conflict may arise among executive branch agencies at a policy or priority level with regard to legislation involving programs within the executive branch of state government. On such occasions, the Governor is empowered to resolve the conflict and make a final decision.

Before a board or commission can take a position as an agency on a bill, it must provide proper public notice, allow opportunity for public participation, and take its position by passing a motion. See generally, Title 2, chapter 3, parts 1 and 2, MCA and § 2-15-124(8), MCA. Alternatively, members of a board or commission can vote to authorize positions

“in concept,” rather than positions on specific legislation, in recognition of the need for flexibility during the rapid legislative process. Always, but particularly in these latter cases where board members adopt conceptual positions, if individual members testify, they should be sure they understand the board’s position so that legislators and the public do not receive conflicting messages, and fellow board members are not caught by surprise.

Once the board or commission passes a motion, it should seek the Governor’s approval. This process is akin to the process used by departments when taking policy positions to the Legislature. The board or commission is requested to proceed through the head of the agency to which the board is attached (usually a department director), who, if the Governor’s position is not known, will convey the request to the Governor’s Office. Typically, the board chair or staff for the board will make the request. The request through the agency head can be made very informally, e.g., through staff at a board meeting, a telephone call, or an e-mail. The request should explain why the legislation is important and how it impacts the board or commission program.

Once the position of the board or commission has been approved as consistent with the Governor’s position, the board can decide which members, if any, should appear to testify on the legislation. Board members should give only testimony that is factual and technical and within the confines of what a majority of the board or commission members have approved. If testifying at the Legislature in the performance of board duties, a member of a quasi-judicial board is entitled to compensation and reimbursement for travel expenses. Section 2-15-124, MCA.

There may be times when a member of a board or commission does not agree with a position on legislation taken by a majority of the members. In such instances, a board or commission member can appear on his or her own time to testify on his or her own behalf. When testifying as a private citizen, the board member is not entitled to compensation or travel reimbursement from the state.

In all cases, when testifying, a board member should expressly state whether he or she is appearing as a private citizen or on behalf of the board or commission.

Members of boards and commissions appointed by the Governor and confirmed by the senate are exempt from the lobbyist disclosure laws. See § 5-7-102(11)(b), which exempts from the definition of the term “lobbying” the promotion of or opposition to legislation or official actions when performed by a “public official,” which term includes an “appointed state official acting in an official capacity.” Section 5-7-102(16)(a). The term “appointed state official” is defined in subsection (1) of the same section. However, board and commission staff (like other state employees) are subject to the lobbyist reporting requirements when they are engaging in activities in support of or in opposition to legislation. See Title 5, chapter 7, MCA; ARM 44.12.101; and the website for the Commission on Political Practices, <http://politicalpractices.mt.gov/4lobbying/default.mcp.x>.

The volunteer service given by each board and commission member is invaluable in making critical decisions on important issues effecting Montanans. The hard work and dedication of these board and commission members is essential and greatly appreciated.

4. Guidance for Members Appointed to Advisory Councils Within the Executive Branch of Montana State Government

Each legislative session, advisory council members raise questions about the roles they may play, either as council members or as private citizens, in impacting legislative policy and specific legislation that is germane to the legitimate purposes of their council. Unlike boards and commissions, which are charged with enforcing laws and establishing policy, advisory councils, by their nature, generally are charged with gathering information and providing advice to a governmental entity or officer. The purpose and functions of advisory councils, therefore, generally are not that of legislative advocacy. A limited number of advisory councils, by statute or executive order, have the additional duty of reporting and conveying recommendations to the legislature on their council subject area.

Whether an advisory council is established by statute or by executive order, advisory councils that are attached to departments are part of the executive branch of government. The Governor is the Chief Executive Officer of the executive branch of state government and is charged with formulating and administering the policies of the branch, including budget policies and priorities. This guidance applies to members of advisory councils attached to departments under the supervision of the Governor.

Before an advisory council can develop and approve reports and recommendations – whether to the Governor, to the agency to which the council is attached, or to the legislature – the council should give proper public notice of its meetings and agendas and allow opportunity for public participation. See generally, Title 2, chapter 3, parts 1 and 2, MCA. An advisory council acts (e.g., approves a report or recommendation) by passing a motion of one of its members.

If an advisory council is charged with presenting a report and recommendations to the Legislature, the advisory council is requested to coordinate its work within the executive branch. Advisory councils are requested to provide the head of the agency to which the council is attached (usually the department director) with the council's report and recommendations to the Legislature. The agency head will be responsible for informing the Governor's Office of the council's report and recommendations and for assisting the council in conveying the information to the legislature. Because advisory councils generally have limited budgets, the agency to which the council is attached will assist the council in preparing the report and recommendations in a cost-effective manner.

Because advisory councils generally are not charged with advocating for or against legislation, an advisory council member desiring to advocate for or against legislation generally must do so as a private citizen on the member's own time on his or her own behalf. When advocating (testifying or lobbying) as a private citizen, the council member is not entitled to compensation or travel reimbursement from the state.

On occasion, with approval of the Governor's Office, advisory council members may be authorized to testify for or against legislation that is within the advisory council's subject area. A request to the Governor's Office for approval of an advisory council member to

testify in support of or against legislation on behalf of the council requires a motion passed by the council. The request should be made through the head of the agency to which the council is attached. The request for approval to testify can be made informally (e.g., agency staff can convey request by telephone or e-mail to the department head, who in turn will communicate with the Governor's Office) and should explain why the legislation is important to the council, the substance of the testimony, and how it impacts the advisory council's subject area.

When authorized to testify on behalf of the advisory council, the member is acting in the performance of advisory council duties and is entitled to compensation and reimbursement for travel. Please refer any questions in this area to the agency head or agency legal counsel.

Always remember that when an advisory council member testifies before a legislative committee, the member should expressly state whether he or she is appearing as a private citizen or on behalf of the advisory council.

Also please remember that the time spent in lobbying at the legislature, including providing testimony on bills, must comply with Montana's lobbying laws and rules. See Title 5, chapter 7, MCA; ARM 44.12.101; and the Commission on Political Practices website, <http://politicalpractices.mt.gov/4lobbying/default.mcp.x>.

Finally, the Administration recognizes that the volunteer service given by each advisory council member is invaluable in making critical decisions on important issues effecting Montanans. The hard work and dedication of all advisory council members is valued and greatly appreciated.