

BEFORE THE BOARD OF PERSONNEL APPEALS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 24.26.254 and 24.26.1002, and) PROPOSED AMENDMENT AND
the repeal of ARM 24.26.301,) REPEAL
24.26.302, 24.26.303, 24.26.304,)
24.26.401, 24.26.402, 24.26.403, and)
24.26.404 pertaining to the practices,)
procedures, and grievances before)
the Board of Personnel Appeals)

TO: All Concerned Persons

1. On October 5, 2021, at 10:00 a.m., the Department of Labor and Industry (department) will hold a public hearing via remote conferencing to consider the proposed amendment and repeal of the above-stated rules. Interested parties may access the remote conferencing platform in the following ways:

- a. Join Zoom Meeting, <https://mt-gov.zoom.us/j/81954694002>, Meeting ID: 819 5469 4002; or
- b. Dial by Telephone, +1 406 444 9999 or +1 646 558 8656, Meeting ID: 819 5469 4002

The hearing will begin with a brief introduction by department staff to explain the use of the videoconference and telephonic platform. All participants will be muted except when it is their time to speak.

2. The board will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Personnel Appeals no later than September 28, 2021, at 5:00 p.m., to advise us of the nature of the accommodation that you need. Please contact Theresa McGowan-Sroczyk, Board of Personnel Appeals, P.O. Box 201503, Helena MT 59620-1503; telephone (406) 444-1389; Montana TTY (406) 444-0532; facsimile (406) 444-4140; or dliedbopa@mt.gov.

3. The board proposes the amendment of the following rules, new matter underlined, deleted matter interlined:

24.26.254 BOARD REVIEW OF HEARING OFFICER'S RECOMMENDED ORDER (1) through (6) remain the same.

(7) The board shall review the recommended order to determine if the recommended order's findings of fact are supported by a ~~preponderance of the~~ competent substantial evidence and whether the conclusions of law are correct.

(8) and (9) remain the same.

AUTH: 39-31-104, 39-32-103, MCA

IMP: 2-18-1011, 2-18-1012, 39-31-406, 39-32-112, 39-32-113, MCA

REASON: The rule is amended to comply with the statutory requirements of the Montana Administrative Procedure Act that governs an agency (or board) review of a contested case proceeding. The agency or board "may not reject or modify the findings of fact unless the agency first determines from a review of the complete record and states with particularity in the order that the findings of fact were not based upon competent substantial evidence[.]" 2-4-621(3), MCA.

24.26.1002 REQUIREMENTS FOR PROOF OF INTEREST

AUTHORIZATION DOCUMENTS – CONFIDENTIALITY (1) remains the same.

(2) The proof of interest submitted with any petition shall not be furnished to any of the parties. The board agent shall consider the adequacy of the showing of interest and such decision shall not be subject to challenge.

AUTH: 39-31-104, 39-32-103, MCA

IMP: 39-31-207, 39-32-113, MCA

REASON: The rule amendment is to clarify that a board agent, and not the full board, shall consider the adequacy of the showing of interest in proceedings before the board. The amendment clarifies board procedure and emphasizes the importance of the confidentiality of the authorization cards by limiting the review to only a board agent.

4. GENERAL STATEMENT OF REASONABLE NECESSITY FOR

REPEALS: There is a reasonable necessity to repeal the rules related to the grievance procedures for the employees of the Montana Department of Transportation (MDT) and the Montana Department of Fish, Wildlife and Parks (FWP) to comply with Chapter 56, Laws of 2021 (Senate Bill 56) signed into law on March 8, 2021. The bill makes the grievance procedures for MDT and FWP employees consistent with all other state employees by removing the grievance process from the board and placing the grievance process within the respective state agencies.

5. The board proposes to repeal the following rules:

24.26.301 PURPOSE, AUTH: 2-18-1011, MCA; IMP: 2-18-1002, MCA

REASON: The proposed repeal of ARM Title 24, chapter 26, subchapter 3, Department of Transportation Grievances (ARM 24.26.301 through 24.26.304) is to comply with the requirements of Senate Bill 56. The removal of the grievance process from the board to an internal MDT process will make the grievance process for MDT employees consistent with all other state employees.

24.26.302 DEFINITIONS, AUTH: 2-18-1001, MCA; IMP: 2-18-1002, MCA

24.26.303 GRIEVANCE PROCEDURE, AUTH: 2-18-1001, MCA; IMP: 2-18-1002, MCA

24.26.304 FREEDOM FROM INTERFERENCE, RESTRAINT, COERCION, OR RETALIATION, AUTH: 2-18-1001, MCA; IMP: 2-18-1001(2), MCA

24.26.401 PURPOSE, AUTH: 87-1-205, MCA; IMP: 87-1-205, MCA

REASON: The proposed repeal of ARM Title 24, chapter 26, subchapter 4, Department of Fish, Wildlife and Parks Grievances (ARM 24.26.401 through 24.26.404) is to comply with the requirements of Senate Bill 56. The removal of the grievance process from the board to an internal FWP process will make the grievance process for FWP employees consistent with all other state employees.

24.26.402 DEFINITIONS, AUTH: 87-1-205, MCA; IMP: 87-1-205, MCA

24.26.403 GRIEVANCE PROCEDURE, AUTH: 87-1-205, MCA; IMP: 87-1-205, MCA

24.26.404 FREEDOM FROM INTERFERENCE, RESTRAINT, COERCION, OR RETALIATION, AUTH: 87-1-205, MCA; IMP: 87-1-205, MCA

6. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Theresa McGowan-Sroczyk, Board of Personnel Appeals, P.O. Box 201503, Helena MT 59620-1503; facsimile (406) 444-4140; or dlierdbopa@mt.gov, and must be received no later than 5:00 p.m., October 12, 2021.
7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and e-mail or mailing address of the person to receive notices and specifies the particular subject matter or matters regarding which the person wishes to receive notices. Such written request may be mailed or delivered to the contact person in paragraph 2 above or may be made by completing a request form at any rules hearing held by the agency.
8. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted by e-mail on July 6, 2021.
9. With regard to the requirements of 2-4-111, MCA, the department, on behalf of the board, has determined that the amendment and repeal of the above-referenced rules will not significantly and directly impact small businesses.
10. Department staff has been designated to preside over and conduct this hearing.

/s/ BRIAN HOPKINS
BOARD OF PERSONNEL APPEALS
BRIAN HOPKINS
PRESIDING OFFICER

/s/ QUINLAN L. O'CONNOR
Quinlan L. O'Connor
Alternate Rule Reviewer

/s/ LAURIE ESAU
Laurie Esau, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State August 31, 2021.