

**Education and Local Government Interim Committee
2013-2014 Interim
Summary of Statutory Duties and Proposed Work Plan**

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This document is an introduction to the Education and Local Government Interim Committee (ELG) and a proposed work plan which, as adopted by the committee with directions to staff, will help to guide its work through September 2014.

Included in this paper are:

- ELG's statutory duties
- ELG's interim study assignments
- Additional topics within ELG's subject area jurisdiction
- Subcommittee options
- Administrative rule review options
- ELG's budget and proposed meeting schedule
- A summary of committee work and staff comment

ELG'S STATUTORY DUTIES

I. Section 5-5-215, MCA: Duties Common to All Committees

A number of statutory duties are common to all interim committees. These are found in **Section 5-5-215, MCA**. Each interim committee shall:

1. review administrative rules within its jurisdiction;
2. conduct interim studies as assigned;
3. monitor the operation of assigned executive branch agencies with specific attention to the following:
 - a. identification of issues likely to require future legislative attention;
 - b. opportunities to improve existing law through the analysis of problems experienced with the application of the law by an agency; and
 - c. experiences of the state's citizens with the operation of an agency that may be amenable to improvement through legislative action;
4. review statutorily established advisory councils and required reports of assigned agencies to make recommendations to the next legislature on retention or elimination of any advisory council or required reports;
5. review proposed legislation of assigned agencies or entities as provided in the joint legislative rules;
6. accumulate, compile, analyze, and furnish information bearing upon its assignment and relevant to existing or prospective legislation as it determines, on its own initiative, to be pertinent to the adequate completion of its work; and
7. prepare bills and resolutions that, in its opinion, the welfare of the state may

require for presentation to the next regular session of the legislature.

Advisory councils relevant to ELG's subject area jurisdiction and the entities to which they are attached are as follows:

1. Fire Services Training Advisory Council (2-15-1519, MCA); *Board of Regents*
2. Certification Standards and Practices Advisory Council (2-15-1522, MCA); *Board of Public Education*
3. Governor's Postsecondary Scholarship Advisory Council (2-15-1524, MCA); *Office of the Commissioner of Higher Education*

In addition, section 2-15-122, MCA, allows the Governor or a department head to create advisory councils. Information about councils created under this authority must be filed with the Secretary of State's office.

Reports relevant to ELG that are required by statute and that will need to be reviewed to comply with Ch. 126, L. 2011 include the following:

1. Carl D. Perkins Career and Technical Education Improvement Act, 2006 -- Legislative Report (20-7-330, MCA); *Board of Regents*
2. Biennial Report to the Governor and the Legislature (22-3-107, MCA); *Montana Historical Society*
3. At-Risk Students Report (20-9-328, MCA); *Office of Public Instruction*
4. American Indian Achievement Gap Report (20-9-330, MCA); *Office of Public Instruction*
5. Education Commission of the States (20-2-501, MCA); *Education Commission of the States*
6. Biennial Report of the Superintendent of Public Instruction "if considered necessary" (20-3-105, MCA); *Office of Public Instruction*
7. Quality Schools Facilities Grant Program (90-6-810, MCA); *Department of Commerce*
8. Western Regional Higher Education Compact (20-25-801, MCA); *Western Interstate Commission for Higher Education*
9. State Agency Heritage Properties (22-3-423, MCA); *State Historic Preservation Office*

II. Section 5-5-224, MCA: ELG Enabling Statute

Section 5-5-224, MCA, provides ELG's specific statutory duties, which fall into three primary categories: local government relations; general state administration of education; and postsecondary education. The section requires the committee to:

1. act as a liaison with local governments;
2. execute administrative rule review, draft legislation review, program evaluation, and monitoring responsibilities for the following agencies and the entities attached to the agencies for administrative purposes:
 - a. State Board of Education (attached entities: Montana Arts Council, Montana Historical Society, Montana State Library)
 - b. Board of Public Education¹
 - c. Board of Regents of Higher Education,² and
 - d. Office of Public Instruction;
3. provide information to the Board of Regents in the following areas:
 - a. annual budget allocations;
 - b. annual goal statement development;
 - c. long-range planning;
 - d. outcome assessment programs; and
 - e. any other area that the committee considers to have significant educational or fiscal policy impact;
4. periodically review the success or failure of the university system in meeting its annual goals and long-range plans;
5. periodically review the results of outcome assessment programs;
6. develop mechanisms to ensure strict accountability of the revenue and expenditures of the university system;
7. study and report to the legislature on the advisability of adjustments to the mechanisms used to determine funding for the university system, including criteria for determining appropriate levels of funding;
8. act as a liaison between both the legislative and executive branches and the Board of Regents;

¹ In a 1992 decision, Judge Jeffrey Sherlock of the First Judicial District ruled that the Board of Public Education is vested with constitutional rulemaking authority that is independent of any power delegated to the Board by the Legislature. Any rules adopted by the Board of Public Education are not subject to legislative review. However, in the 2003-2004 interim, the Board requested that the committee review its rules. That may continue to be the case. In addition, SB 152, enacted by the 2005 Legislature, requires the Board of Public Education to submit proposed accreditation standards to the committee. That requirement is discussed in Part III of this paper (Section 20-7-101, MCA, found beginning on p. 5).

² The Board of Regents is exempt from the Montana Administrative Procedure Act (2-4-102(2), MCA), so any rules adopted by the Board of Regents are not subject to legislative review.

9. encourage cooperation between the legislative and executive branches and the Board of Regents;
10. promote and strengthen local government through recognition of the principle that strong communities, with effective, democratic governmental institutions, are one of the best assurances of a strong Montana;
11. bring together representatives of state and local government for consideration of common problems;
12. provide a forum for discussing state oversight of local functions, realistic local autonomy, and intergovernmental cooperation;
13. identify and promote the most desirable allocation of state and local government functions, responsibilities, and revenue;
14. promote concise, consistent, and uniform regulation for local government;
15. coordinate and simplify laws, rules, and administrative practices in order to achieve more orderly and less competitive fiscal and administrative relationships between and among state and local governments;
16. review state mandates to local governments that are subject to 1-2-112 and 1-2-114 through 1-2-116;³
17. make recommendations to the legislature, executive branch agencies, and local governing bodies concerning:
 - a. changes in statutes, rules, ordinances, and resolutions that will provide concise, consistent, and uniform guidance and regulations for local government;
 - b. changes in tax laws that will achieve more orderly and less competitive fiscal relationships between levels of government;
 - c. methods of coordinating and simplifying competitive practices to achieve more orderly administrative relationships among levels of government; and
 - d. training programs and technical assistance for local government officers and employees that will promote effectiveness and efficiency in local government; and
18. conduct interim studies as assigned.

³ These sections of the MCA govern the legislative imposition of unfunded mandates on local governments.

III. Section 20-7-101, MCA: Accreditation Standards Adopted by Board of Public Education

SB 152 (Ch. 208, L. 2005) amended section 20-7-101, MCA, to read:

20-7-101. Standards of accreditation. (1) Standards of accreditation for all schools must be adopted by the board of public education upon the recommendations of the superintendent of public instruction.

(2) Prior to adoption or amendment of any accreditation standard, the board shall submit each proposal to the **education and local government interim committee** for review. The interim committee shall request a fiscal analysis to be prepared by the legislative fiscal division. The legislative fiscal division shall provide its analysis to the interim committee and to the office of budget and program planning to be used in the preparation of the executive budget.

(3) If the fiscal analysis of the proposal is found by the legislative fiscal division to have a substantial fiscal impact, the board may not implement the standard until July 1 following the next regular legislative session and shall request that the same legislature fund implementation of the proposed standard. A substantial fiscal impact is an amount that cannot be readily absorbed in the budget of an existing school district program.

(4) Standards for the retention of school records must be as provided in 20-1-212.

During the 2009-2010 interim, ELG asked staff to work with the Board of Public Education (BPE) and the Office of Public Instruction (OPI) to establish a process for ELG review of accreditation standards and for development of a fiscal analysis by the Legislative Fiscal Division if warranted. The following table illustrates the process agreed to by the participants.

Process for Fiscal Analysis of Proposed Accreditation Standards Board of Public Education Meetings			
	BPE Meeting 1	BPE Meeting 2	BPE Meeting 3
	<i>Information</i>	<i>Notice of Proposed Rulemaking</i>	<i>Adoption of Rule</i>
Prior to meeting:	BPE sends letter to the ELG to communicate the planned process and timeline for adoption of the content and performance standard.		BPE holds public hearing to receive input on the proposed standards.
At Meeting:	OPI presents cost assumptions to BPE along with draft version of standards.	Any revisions of proposed standards and cost assumptions are presented to BPE. BPE approves notice of proposed rulemaking, which begins the formal rulemaking process.	LFD fiscal analysis is presented to BPE.
Meeting Follow-up:	BPE sends letter to ELG with draft cost assumptions. ELG requests LFD analysis.	LFD prepares its fiscal analysis of the proposed rule.	If the proposed standard is substantially changed from the version in the Notice of Proposed Rulemaking, the LFD will revise its analysis and present its conclusions to BPE in a conference call prior to the next scheduled BPE meeting.

IV. Section 22-3-423, MCA: Duties of Historic Preservation Officer

In the 2009-2010 interim as a result of HJR 32, a study on historic preservation, ELG requested legislation requiring state agencies to regularly report to the Preservation Review Board on the status and stewardship of the agencies' heritage properties. The State Historic Preservation Officer (SHPO) is required to provide the information presented to the Preservation Review Board, along with any recommendations, to "an appropriate interim committee". The Preservation Review Board is part of the Montana Historical Society, which is an agency allocated to the State Board of Education for administrative purposes (2-15-1511. MCA). Because ELG is statutorily required to monitor the activities of the State Board of Education, it is the appropriate interim committee to receive the SHPO's report.

V. Section 82-2-701, MCA: Sand and Gravel Deposit Program

The Bureau of Mines and Geology is required to establish a Sand and Gravel Deposit Program

to investigate, if funding allows, sand and gravel deposits in areas where there are conflicts between development and sand and gravel operations. In prioritizing areas for investigation, the Bureau must consider the largest counties (based on census data) and the counties with the most opencut mining permits and subdivision applications. Within 1 year of starting an investigation the Bureau is required to report the results to the county in which the investigation occurred, the Environmental Quality Council, and ELG.

VI. Chapter 321, Laws of 2013 (SB 203): Enter into Interstate Compact on Educational Opportunity for Military Children

SB 203 adopts the Interstate Compact on Educational Opportunity for Military Children for the purpose of "[removing] barriers to educational success imposed on children in military families because of frequent moves and deployment of their parents". Section 2 of SB 203 requires representatives of the Great Falls and Helena school districts and a member of the military designated by the Adjutant General to report to ELG by July 1, 2014, regarding the state's participation in the Compact.

**INTERIM STUDY ASSIGNMENTS AND DUTIES ASSIGNED BY RESOLUTION
HJR 2**

The Legislative Council has assigned one interim study to ELG: HJR 2--Investigate state and local government electronic records management.

HJR 2

Rank in post-session poll: 11 of 17

The 2011-2012 Select Committee on Efficiency in Government requested this resolution in order to address the following:

- Montana state government lacks enterprisewide policy, planning, and resources to properly archive, maintain, and access state and local government electronic records.
- The lack of framework impedes state and local governments' ability to provide evidence to support government accountability, detail interactions between citizens and the government, and properly document Montana's history and culture.

A basic approach to this study would include a review of the work related to this topic by the 2011-2012 Select Committee on Efficiency in Government, a panel discussion from representatives of local governments and the Office of the Secretary of State, and a review of statutes and rules related to electronic records management. Diving deeper into the study, the committee might direct staff to research strategies for electronic records management utilized by other states and the private sector.

The study resolution requests the interim committee to:

- identify and examine strategies for identifying, classifying, managing, and preserving electronic records that have value;
- examine the costs and benefits associated with the strategies;
- identify funding sources or mechanisms to evaluate long-term governance structures for governing electronic records management;

- identify and evaluate the methods and means for improving access to state government electronic records, including alternative formats specifically addressing retention of state e-mail records;
- examine public-private partnerships that increase awareness of public records management and access; and
- develop educational strategies to provide awareness of electronic records management processes inside and outside of government.

Deliverables would include a final report and recommendations to the 64th Legislature and, if warranted, proposed legislation.

Entities that should be involved in the study include the Montana Association of Counties, the Montana League of Cities and Towns, and local Clerks and Recorders. The committee will also need to consult with and seek assistance from the Department of Administration's Information Technology Services Division.

ADDITIONAL TOPICS WITHIN ELG'S SUBJECT AREA JURISDICTION

Education

- As part of the Committee's agency monitoring duties, the Committee might determine to focus attention on the implementation of Senate Bill No. 175. This bill has been described as a major overhaul of school funding in Montana, and its implementation will impact every school district in the state in myriad ways.
- A subcommittee of the 2009-2010 ELG joined with representatives of the Office of Public Instruction, the Office of the Commissioner of Higher Education, the Board of Public Education, and other education-related agencies to develop Shared Policy Goals and Accountability Measures (SPGs) for the Montana University System, K-20 education systems, and K-12 education systems. The 2011-2012 ELG reviewed and reaffirmed these agreements, but recommended an in-depth review of the SPGs early in the 2013-2014 Interim, involving all of the stakeholders who developed the original documents.
- Senate Joint Resolution No. 13 requested that the Montana University System work in conjunction with the Governor to study and adopt a universal set of goals and performance measures directed at increasing college completion rates. MUS has established a Performance Funding Taskforce and the Committee might decide to request either a final report or a series of updates on this effort.

Local Government

- The committee is charged with a number of broad statutory duties with respect to local governments. Rather than focus time and energy on each provision in section 5-5-224, it may be advisable to simply focus on the overarching requirement that the committee "act as a liaison with local governments"--following up on committee member-initiated suggestions for research and legislative attention, as well as soliciting input from city and county

representatives and providing an opportunity for public comment at each meeting.

- Senate Bill No. 324 revised subdivision laws related to lease or rent. The Committee could consider tracking the implementation of these changes at different levels of intensity.

Monitoring Work by Other Committees

- SJR 14--Study local government election procedures was assigned to SAVA

SUBCOMMITTEES

Since its creation in 1999, ELG has established various subcommittees, depending on the committee's assigned studies and other work. The committee has had as many as three subcommittees and as few as none.

Prior to 1999, the Postsecondary Education Policy and Budget Subcommittee (PEPB) was a statutorily-required entity staffed by the Legislative Fiscal Division. PEPB is no longer required, but some elements of the statute that mandated PEPB remain in ELG's enabling statute, and the committee has chosen to establish it each interim except 2009-10 and 2011-12. The subcommittee has traditionally included two representatives of the Board of Regents and one member designated by the Governor's office as nonvoting members.

As the committee deliberates subcommittee creation, members are encouraged to consider that each subcommittee must have staff and secretarial support, provide notices and agendas for each meeting, and generate minutes, as is required for the full committee.

ADMINISTRATIVE RULE REVIEW OPTIONS

As is noted in the discussion of ELG's specific statutory duties and related footnotes (see page 2), the committee has full or limited administrative rule review responsibilities for the State Board of Education, the Board of Public Education, the Board of Regents, and the Office of Public Instruction. The committee determines the extent to which it will exercise that authority. The options range from detailed committee examination of all proposed rules to a summary of proposed rules by ELG's legal staff to ELG's legal staff providing members notice of any particularly significant or unusual proposed rules.

Title 2, chapter 4, part 4 of the Montana Code Annotated provides for legislative review of administrative rules. In summary, interim committees may:

- ▶ request and obtain an agency's rulemaking records;
- ▶ submit to an agency written recommendations for the adoption, amendment, or rejection of a proposed rule;
- ▶ require that a rulemaking hearing be held;
- ▶ poll the legislature to determine whether a proposed rule is consistent with legislative intent; and
- ▶ request an economic impact statement for a proposed rule.

COMMITTEE BUDGET AND PROPOSED MEETING SCHEDULE

ELG has \$47,690 in its budget for the 2013-2014 interim. This amount was budgeted to accommodate three 1-day meetings and four 2-day meetings of the full committee. If a subcommittee is formed this schedule may need to be modified to ensure staying on budget. The following is a proposed meeting schedule for the full committee. Scheduling needs to take into account members and staff who serve other interim committees.

1. Monday, June 24, 2013
2. Thursday-Friday, September 26-27, 2013
3. Monday, November 18, 2013
4. Thursday-Friday, January 30-31, 2014
5. Friday, April 4, 2014
6. Monday-Tuesday, June 16-17, 2014
7. Monday-Tuesday, September 15-16, 2014

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