



# Education and Local Government Interim Committee

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## 57th Montana Legislature

### SENATE MEMBERS

EDWARD B. "ED" BUTCHER  
ALVIN A. ELLIS JR.  
WM. E. "BILL" GLASER  
LINDA J. NELSON  
DON RYAN  
DEBBIE SHEA

### HOUSE MEMBERS

JOAN ANDERSEN  
GARY BRANAE  
TOM FACEY  
JEFF MANGAN  
GAY ANN MASOLO  
ART PETERSON

### COMMITTEE STAFF

CONNIE ERICKSON  
RESEARCH ANALYST  
EDDYE McCLURE  
STAFF ATTORNEY  
PAM JOEHLER  
FISCAL ANALYST

## MINUTES

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed. Committee tapes are on file in the offices of the Legislative Services Division. **Exhibits for this meeting are available upon request. Legislative Council policy requires a charge of 15 cents a page for copies of documents.**

Organizational Meeting  
Room 102, State Capitol  
August 1, 2001

### COMMITTEE MEMBERS PRESENT

Sen. L. Nelson, Chairperson  
Sen. William "Bill" Glaser  
Sen. Alvin A. Ellis, Jr.  
Sen. Edward Butcher  
Sen. Don Ryan  
Sen. Debbie Shea  
Rep. Joan Andersen, Vice Chairperson  
Rep. Tom Facey  
Rep. Jeff Mangan  
Rep. Gary Branae

### COMMITTEE MEMBER EXCUSED

Rep. Gay Ann Masolo  
Rep. Art Peterson

### STAFF PRESENT

Connie Erickson, Research Analyst  
Eddye McClure, Staff Attorney  
Lois O'Connor, Secretary

### VISITORS

Visitors' list (ATTACHMENT #1)

Agenda (ATTACHMENT #2)

**COMMITTEE ACTION**

- Elected Sen. Nelson Chairperson
- Elected Rep. Andersen Vice Chairperson
- Approved that the Committee, with the assistance of the agencies and the public, shall identify issues in need of legislative attention and allocate an appropriate amount of time to allow for staff analysis and agency presentations; that it reserve time at each meeting for public testimony specifically related to the operation of an agency and shall provide for appropriate followup by staff and by the agency; and that staff monitor agency rules, provide a brief summary of the proposed rules, and bring forth any controversial rule to the Committee for discussion
- Approved that the entire Committee review the issue of territory transfers keeping in mind the results of the other school funding studies
- Adopted the tentative meeting schedule with the caveat that it is subject to change.

**CALL TO ORDER, ROLL CALL, ELECTION OF OFFICERS**

The meeting was called to order by Senator Linda Nelson at 9:30 a.m. Roll call was noted; Representatives Masolo and Peterson were excused.

Sen. Ryan nominated Sen. Nelson and Rep. Anderson nominated Sen. Glaser as Chairperson.

Sen. Glaser said that the Committee was bipartisan and evenly distributed and he believed that tradition had great value. He felt that tradition need to be followed in selecting the Chair and Vice Chair. Last interim a Republican representative was the Chair and a Democratic senator was Vice Chair. He requested that his nomination be withdrawn. Rep. Anderson withdrew her nomination of Sen. Glaser. Sen. Nelson was elected unanimously.

Rep. Facey nominated Rep. Anderson as Vice Chairperson. Rep. Anderson was elected unanimously.

**REVIEW OF COMMITTEE'S INTERIM WORK PLAN**

**Connie Erickson, Research Analyst, Legislative Services Division**, provided an overview of the Committee's draft interim work plan. (EXHIBIT #1)

**Local Government Issue**

**Gordon Morris, Montana Association of Counties (MACo)**, requested that the Committee consider the following issues:

- to monitor HB 124 implementation, procedures, and processes;
- to address the loss of revenue associated with the full implementation of HB 540 regarding the flat fee on vehicles (could be recouped under the 40-mill property tax levies for cities, towns, and counties) ;

- to monitor state assumption of welfare in fiscal year 2002 (SB 339);
- to monitor the transition to state assumption of District Court funding (SB 176);
- to possibly examine health care costs and how health care services for county employees could be better delivered and whether county, city, and town employees could voluntarily be covered under the state health care program (SJR 22); and
- to monitor the increased costs associated with energy deregulation.

Rep. Mangan asked if the Commission created to work on the transition to state assumption of District Court funding was required to report to any legislative committee, would it be developing potential legislation, and was a legislator assigned to the Commission. Mr. Morris said the Commission is a stand alone committee charged to deal with the transition issues regarding the state assumption of District Court funding. It was also his estimation that there would be legislation required for the transition efforts. He said the implementation of SB 176 called for the assumption of the public defender costs. Public defender costs are now local government costs that will be reimbursed and the Commission may ask that they be state employees under contract with the state and the Supreme Court rather than independent contractors at the local level. Another area that may require legislation is the clarification of court reporters. Mr. Morris added that the Commission is made up of District Court Judges appointed by the Supreme Court, a Juvenile Probation Officer, a County Commissioner, a Court Reporter, a Clerk of District Court, and a County Commissioner. No legislator was appointed to the Commission. Mr. Morris will also request that the Economic Affairs Interim Committee monitor the issues related to health insurance for local governments and county employees.

**Jani McCall, City of Billings**, said that the City of Billings was doing well with the implementation of HB 124.

### **Statutory Responsibilities**

**Pam Joehler, Senior Fiscal Analyst, Legislative Fiscal Division**, provided written testimony and asked whether the Committee wanted to form a subcommittee to address postsecondary education issues. (EXHIBIT #2)

Sen. Shea asked that Ms. Joehler elaborate on her suggestion of developing statewide public policy goals. Ms. Joehler said that during the 2001 Session, discussions surrounded the accountability of the University System. She felt that the articulation of what the Legislature expected from the University System was the first step that needed to be done before it measures how the University System is doing. Former Representative Mercer, as a new Board of Regents member, believes that the University System needs to work much more closely with the Legislature to establish public policy.

Ms. Erickson reminded the Committee that if it chooses not to form a subcommittee, the statutory responsibilities relating to postsecondary education issues still remain. She suggested that Ms. Joehler could do some of the statutory work and bring it to the full Committee for its consideration.

Following a brief discussion the Committee agreed that some of the proposed postsecondary ideas could be addressed as a sidebar to the Committee's other activities and agreed to postpone the formation of a subcommittee until the Committee makes the decision as to how it wants to coordinate its efforts with the Governor's Task Force on HB 625.

### **State Agency Monitoring**

Ms. Erickson provided an overview of the Committee's responsibilities as they relate to state agency monitoring. (See p. 13, Exhibit #1)

### **Administrative Rule Review**

**Eddy McClure, Staff Attorney, Legislative Services Division**, provided an overview of the Committee's responsibilities as they relate to administrative rule review. (See p. 12, Exhibit #1)

The Committee decided that there should be some followup rule review to make sure that Legislative intent was followed because the majority of problems arise when state agencies put their own spin on legislation that was passed. It also decided that an in-depth review of the agency and all of the programs that it administers would consume much of the Committee's time and it allows the agencies to set the Committee's agenda.

Sen. Glaser **moved** that the Committee, with the assistance of the agencies and the public, shall identify issues in need of legislative attention and allocate an appropriate amount of time to allow for staff analysis and agency presentations; that it reserve time at each meeting for public testimony specifically related to the operation of an agency and shall provide for appropriate followup by staff and by the agency; and that staff monitor agency rules, provide a brief summary of the proposed rules, and bring forth any controversial rule to the Committee for discussion. Motion passed unanimously.

### **Review of Draft Legislation**

Ms. Erickson provided an overview of the Committee's responsibility to review draft legislation. (See p. 14, Exhibit #1)

Because state agencies could introduce legislation without Committee approval and because of the Committee's monitoring function of HB 124 and its involvement with HB 625, the Committee felt that it would not have time to formally review individual pieces of legislation proposed by the agencies. It approved that as the agencies begin developing legislation that Committee staff review it and provide a brief summary of the legislation. With the request of the Department and approval of the Committee, staff can work with each agency throughout the interim to prepare and develop specific legislative proposals. The Committee also requested that the legislation be forthcoming early enough so that it can pick the ones that it needed more information on because when the legislation is introduced in the Legislature, it carries more weight if it has gone through an interim committee.

### **Assigned Interim Study**

Ms. McClure provided an overview of HJR 41--study of the laws governing school boundary transfers and discussed the success of the "working group" approach taken by a previous interim committee to address tuition issues as one suggestion for dealing with the transfer issue. (EXHIBIT #3)

Rep. Anderson thought the idea of a working group, similar to the one formed to address out-of-district tuition, was a good idea to develop a consensus solution to the legal questions surrounding school district boundary transfers. However, Sen. Ellis was more skeptical because he felt that school district boundary transfers relate to economic issues rather than educational issues. For example, Sen. Ellis said the Superintendent of the Ennis school was absolutely opposed to SB 111, which he introduced in the 2001 Session, because it would allow him to lose 70% of his taxable jurisdiction which lies at the ski hill in his county but those students could not possibly attend the Ennis school district. He said that people care about where and how their children are educated. The school districts where the children reside say "they can attend outside our district, but we want their tax money", which means that the parents have no involvement in the school district where their children actually attend school. Sen. Ellis felt that the Legislature should "step up to the plate" and address the problem.

Sen. Ryan said that until the Committee knows the extent of Governor's HB 625 Task Force and how it will address school funding, it will not know what value is put on territories. If the Task Force makes sweeping changes and makes a real attempt to reform Montana's education structure or if it makes minor changes, it will affect what is done with territory transfers. If there is not a loss of value to a territory because of the funding formula, territory transfers will not become a big issue. However, if there is a huge loss of value, it will become an issue.

Sen. Glaser said territory transfers include (1) tax gerrymandering and (2) a student's relationship with a school. In his review of HB 124 and Stroebe v. Montana and if they come into play, he felt there would be a lot of territory transferring going on. He said that territory transfers is a huge issue across the state and he was unsure whether the narrow issue of territory transfers can be addressed with all of the other issues involved in HB 124 and Stroebe.

Sen. Nelson felt that the issue was big enough that the entire Committee may want to be involved.

Ms. Erickson said that unless legislation is passed in the next session to address territory transfers, territory transfers between school districts cannot occur in Montana because the current law is unconstitutional and cannot be used.

Sen. Ellis said that gerrymandering already exists because some students cannot, under any circumstance, make it to their district without traveling for miles. Eighty percent of school general funds and a good share of the other funds are already equalized, meaning that if Ennis, for example, loses property, it will get more state guaranteed tax base (GTB). Currently, they receive none. He felt that the issue was big enough that the whole Committee should address it.

Rep. Anderson **moved** that the entire Committee review the issue of territory transfers keeping in mind the results of the other school funding studies. Motion passed unanimously.

#### **Update From the Governor's Office on HB 625**

**Jeff Hindoién, Office of the Governor**, provided a copy of Governor Judy Martz' Executive Order to establish the K-12 Public School Funding Study Advisory Council proposed under HB 625. (EXHIBIT #4) He stated the following:

- The Council met for the first time on July 31, 2001.
- Baseline information was presented to the members for the purpose of getting an idea of the task that was in front of them.
- Presentations were given by Madalyn Quinlan, OPI, and Jim Gillette, Legislative Audit Division; and a report prepared by the Department of Revenue was given on the taxpayer equity component of HB 625.
- A broad overview was also given by Amy Carlson, OBPP, and the balance of the afternoon was spent prioritizing the 13 items enumerated in HB 625.
- Mr. Hindoién will provide copies of the reports to the Committee.
- The Council discussed conducting a joint meeting with the Education and Local Government Committee for the purposes of hearing presentations from NCSL and the Education Commission of the States, both of whom are experts on school funding.
- He requested the Committee's email addresses to keep them informed.

Sen. Shea asked about the makeup of the Council. Mr. Hindoien said that some of the members submitted applications and some submitted their names. The Governor's Office also tried to ensure that the makeup had equal representation from east to west, north to south, and from big and small communities.

Rep. Facey asked how many changes was the Council expected to make. Sen. Glaser said that the educational community was pleased with the dynamics of the Council. However, he observed during the meeting that the Council realized the awesomeness of the task and the resistance of the educational institution to change. He believed that the Council did not have a clue in which direction they will go at this time.

Sen. Ryan asked if Mr. Hindoien believed that the Council could have a meaningful reform plan established by Dec. 31, 2001. Mr. Hindoien was unsure but believed that the Council could do some positive things in that length of time.

Sen. Ellis said because the Council is requesting help from NCSL and the Education Commission of the States, the possible scope of change is larger. The Montana Constitution and the Supreme Court case history will set some limitation on what can be done. He said that HB 667 that set up the current school funding system was a dramatic change from the previous school funding schedules and it was formulated and passed during one legislative session. However, the problems are individual perceptions which cannot be solved because some people do not see problems whereas other people do see problems.

### **Report from the Education Commission of the States Meeting**

**Jim Standaert, Legislative Fiscal Division**, stated the following:

- The Education Commission of the States (ECS) is a national, nonprofit organization that helps Governors, legislators, and state education officials identify, develop, and implement policies to improve student learning at all levels.
- It was a bipartisan, interstate compact formed in 1965 and is located in Denver, CO.
- Its staff includes educators, policy analyst, communication technology experts, researchers, and support staff.
- Every state is a member of the ECS and is represented either by the governor and six other commissioners.
- The ECS receives its money from state fees, state contracts, and grants from foundations, corporations, and the federal government.
- Special reports on school finance were given by John Augenblick and John Myers who are members of a private consulting firm that conducts school financing studies across the states.
- He attended the meeting to ask the following questions:
  - What methodologies do other states use to analyze adjustments in their funding formulas when they have declining enrollment?

- What are the appropriate weights to put on funding elementary schools versus high schools versus middle schools? Is Montana near the appropriate weights in the state's current formula?
- What are the appropriate weights to fund the cost associated with large schools versus small schools?
- How can an adequate education be measured? Montana was envied by other states in terms of Montana's equalization efforts and many of the current lawsuits filed across the country have to do with whether or not the states were providing an adequate education.
- How have other states explored the cost of meeting the accreditation standards?
- How do other states adjust for inflation in their formulas and the geographical cost differences--large cities versus rural areas?

Sen. Butcher said that the Augenblick and Myers studies are very expensive, and yet, no solutions come out of them. Mr. Standaert was unsure whether there were any solutions but some states were satisfied with the product they received from Augenblick and Myers while other were not. A recent lawsuit in Wyoming (Campbell II) puts the state in total charge of its education system without any local control. The judges in that case say that the Wyoming's system was the best in the world. Sen. Butcher asked if the state followed the reasoning of the Judges in Campbell II, would it mean that Montana would turn its education system over to the national level and let them tell Montana how to run it. Mr. Standaert said he got the impression that many of the lawsuits are going in that direction when the lawsuits deal with adequacy in schools and the lawsuits are becoming more successful. Sen. Butcher asked if Montana would be better off to turn its education system back to local control without such rigid accreditation requirements from the Office of Public Instruction (OPI). Mr. Standaert said that some people would philosophically like to go back to more local control but the court cases are preventing it from happening.

### **House Joint Resolution No. 35**

Ms. Erickson provided a copy and overview of HJR 35--study of the feasibility of establishing a tuition prepayment program with the Montana University System. (EXHIBIT #5) Staff will prepare a "white paper" and present it to the Committee.

### **Potential Subcommittee Roles**

Ms. Erickson asked how the Committee wanted to interface with the Governor's Council prior to its role which begins in January. She said if the Council is able to put together a "flyover" by Augenblick and Myers, it may be an excellent opportunity for the two groups to meet sometime before December. She added that any reports provided to the Council will be reproduced for the Committee and staff will attend all Council meetings.



Ms. Erickson said that the full Committee would deal with HJR 41--territory transfers. The Committee postponed the appointment of a subcommittee on postsecondary education and the possibility exists for a local government subcommittee to be formed. The role of the Committee regarding local government issues will be a monitoring role rather than an in-depth study.

Rep. Mangan said that the large issues for Committee consideration are HB 625, HJR 41, and the impacts of HB 124. He suggested that the Committee have two subcommittees--local government and education--with the full Committee reviewing HB 625 and HJR 41. The local government subcommittee could review the issues surrounding HB 124, HB 176, SB 339, and HB 345 while the education subcommittee reviews the postsecondary education and other education issues that may arise. The two subcommittees would then report to the full Committee for full Committee involvement. Each subcommittee membership would be six.

Sen. Nelson questioned whether two subcommittees should be appointed at this time or whether the Committee should wait until problems arise that warrant subcommittees. If there are not so many problems, they could be addressed by the full Committee.

Sen. Glaser said that there are two elements under the umbrella of HB 124--local government excluding schools and the other schools as a whole. If HB 124 was exclusively reviewed by a subcommittee, the education subcommittee would still have to review HB 124 because the implications surrounding HB 124 will overlap the two subcommittees.

Sen. Nelson said that some of the meetings may have to become 2-day meetings and suggested hearing from local government entities in the morning and the education community in the afternoon so that the whole Committee is involved. The Committee agreed that the full Committee should be involved in all the issues.

Rep. Facey asked about the Committee's budget. Ms. Erickson said that the Committee has a separate appropriation to conduct the March and April statewide hearings on HB 625. Those hearings will not come out of the Committee's regular budget. The Legislative Services Division is appropriated a lump sum which is divided among the different interim committees based on membership and duties and the Education and Local Government Committee is one of the larger interim committees. There is also the possibility of shifting some money around. She said that the meetings could be 1-day meetings until January 2002, but once HB 625 responsibilities kick in in January 2002, the Committee may have to hold 2-day meetings.

## **PRESENTATIONS**

**Madalyn Quinlan, Chief of Staff, Office of Public Instruction (OPI)**, provided an overview of the Montana Statewide Education Profile--Second Edition. (EXHIBIT #6)

Sen. Shea asked about the decline in college preparatory classes and why more students preferred taking nothing more than the core curriculum. Ms. Quinlan said that Montana's graduation requirements are less stringent in the core areas than what the American College Testing (ACT) program defines as core curriculum. The way the data is collected is when the student takes the ACT test, they are asked a series of question about what courses they are taking or plan to take if they are not a senior yet. Overall, if the student is just looking to meet the state graduation requirements, they are not going to have taken the courses that the ACT says they should have. Sen. Shea asked if school systems were incorporating trade and skills programs into their curriculums. Ms. Quinlan said that the state's accreditation standards require the offering of vocational educations programs and many schools have arrangements with either the colleges of technology or the community colleges. OPI is not collecting the data about those arrangements. Sen. Shea asked about the status of standardized testing. Ms. Quinlan said last spring was the first year that all school districts tested using the Iowa Test of Basic Skills (ITBS) in Grades 4, 8, and 11. The Legislature provided funding for the first year but did not provide funding for this school year. OPI is struggling to maintain the contract with ITBS and still have all students in the state take the ITBS. The test results are to be back to the state by August 13 and the information will be presented to the Board of Public Education at its September 4 meeting.

Sen. Butcher asked if the state trend was to encourage vocational training programs in high schools for those students who are not interested in going into the University System. Ms. Quinlan was unsure because she could not speak to what programs encourage schools to provide resources to make that happen.

Rep. Anderson asked if the ITBS replaced the CTBS and was the ITBS more expensive. Ms. Quinlan said that the indication from the 1999 Legislature was that the state would take on the responsibility for paying for the ITBS and provided funding to do that. At that point, OPI signed a 3-year contract with the Riverside Publishing Company. However, the 2001 Legislature did not extend the funding for the contract. The funding responsibility may, in part or in whole, go back to the school districts. Rep. Anderson asked if the ITBS was a completely new test every time it is used. Ms. Quinlan said CTBS uses the same test booklet over a number of years. OPI is unable to add up what schools are spending for standardized testing; but it does know that if the state pays for all students, the funding level is much lower than if each school district had to pay for it. Rep. Anderson asked if special education students were included in the mix of students

who take the ITBS. Ms. Quinlan said that all students are tested and accommodations and alternate assessments are allowed for some students. Special education students are tested but are tested using a different format.

Sen. Butcher asked about the cost per student to take the ITBS. Ms. Quinlan said that the cost is approximately \$5.50 per student which does not include training costs for those administering the test.

Rep. Branae asked about the students who are eligible for school food programs and how it compares to national figures. Ms. Quinlan was unsure but would provide the information to the Committee.

Sen. Nelson asked what percentage of the students who are eligible for school food programs actually take advantage of the programs. Ms. Quinlan said that the 30.7% figure indicates those students whose parents have signed their children up to receive those services. However, there are probably more students who would be eligible.

Sen. Butcher said that Billings and Great Falls have a large number of Native American students but they are not reflected in the Profile. He suggested that future Profiles should include school districts that have large numbers of Native American students and how they are performing.

Rep. Facey said that the state does not mandate that schools report their Native American populations. Ms. Quinlan said that OPI asks school districts to report dropout information using racial/ethnic categories and gender. In that context, OPI only knows the total school population but it cannot distinguish between the ethnic populations within the total population.

Sen. Butcher asked at what ethnic percentage is a student considered to be Native American. Ms. Quinlan said that students self-identify themselves to be Native American. Sen. Butcher asked if that would skew the Native American information in the Profile. Ms. Quinlan said that she would have to rereview OPI's requirements for reporting ethnic background.

**Joyce Scott, Deputy Commissioner of Higher Education**, provided an overview of the Board of Regents Fact Book, information regarding associate degrees awarded through the University System and community colleges, information on the Montana Higher Education Student Assistance Corporation--benefit dollars delivered to Montana Students, a summary of the programs offered through the state college savings plans, and information on the Montana's Family Education Savings Program. (EXHIBITS #7, #8, #9, #10, and #11 respectively. Ms.

Scott also provided information on the Leadership College proposed by Regent Mercer and on several initiatives to address accountability and affordability in the University System.

In response to Sen. Butcher's previous question regarding the state's encouragement of vocational training programs in high schools, Ms. Joyce said that since bringing in vocational programs within the University System, there has been a steady increase in 2-year and certificate awards.

**Chris Tweeten, Deputy Attorney General, Department of Justice**, provided an update on the school funding lawsuit--Stroebe v. State. (EXHIBIT #12) He stated the following:

- Stroebe v. State challenges the system of funding public schools in Montana.
- Earlier school funding lawsuits covered the equality of expenditures with respect to school districts--disparities from district to district, and the amount of money being spent per student for public education.
- Stroebe v. State approaches public education from a taxpayer's viewpoint.
- The Stroebe's claim is that it is unconstitutional under the equal protection clause in the Montana Constitution to rely on a system of property taxes to fund public education under which the amount of tax effort expended per dollar of taxable value differs from county to county within the state.
- For example, a taxpayer who owns a \$100,000 in Billings may end up paying more property tax in support of the state obligations to fund public education than a taxpayer owning a \$100,000 home in Great Falls or Bozeman. The level of tax effort of those two taxpayers holding identical value properties will differ from county to county and district to district under Montana's current school funding system.
- The 1889 Constitution contained a provision that required that taxes be equitable among similarly situated taxpayers in the same taxing jurisdiction and that the state was that taxing jurisdiction.
- This provision in the 1889 Constitution was deleted in 1972 when Montana adopted its new constitution and the dates and proceedings of the 1972 Constitutional Convention strongly suggested that the provision was done intentionally by the delegates to remove the tax equity analysis and to require taxpayers to provide unequal protection instead.
- On the basis of that constitutional history, the Department does not believe that there is a tax equity requirement in the Montana Constitution.
- The tax equity issue is currently being litigated in Judge McKittrick's court and has been submitted for a decision. No decision on the argument has been made and which ever way the case goes, it will be appealed.
- The state will ultimately find out from the Supreme Court whether the tax equity theory is still a valid theory to pursue.
- There is no question that the Stroebe's can make their claims under the equal protection clause; and under that clause, the question then becomes whether there is a rational basis for adopting the system of taxation that Montana has adopted.
- The Department's arguments will be founded largely on the fact that the 1972 Montana Constitutional Convention delegates clearly intended that local property taxation bears some of the burden for public education in Montana and that it is, therefore, anomalous to argue on one hand that the Constitution recognizes local property taxation as one of the

basis for funding education while on the other hand claiming that other provision of the Constitution make it inequitable.

- To date, the complaint in the Stroebe case has not been served so the Department's obligation to file a response has not begun.
- There is a technical flaw in the complaint received which may or may not be fixed before it is served.
- In addition to Stroebe, there are several school districts in Montana that are considering filing another school funding lawsuit this fall. A Helena attorney is soliciting their support for the idea that another school funding lawsuit would be timely. From the reports he has received from the school districts, it is his understanding that rather than focusing on the allocation of money per student, the impending lawsuit will focus on quality--that the Constitution requires a free quality public education system in the state and that the overall level of state funding for public schools in Montana is not sufficient to meet the constitutional requirement of a quality system.

Sen. Shea asked about the timeframe for Stroebe v. State. Mr. Tweeten said that Stroebe will be a fairly quick case to litigate because the issues presented are question of law which the District Court can resolve on a motion. His hope would be that it would take a matter of months rather than years.

Sen. Butcher asked who defines what the level of a quality education is. Mr. Tweeten said that the obligation to interpret what the constitutional language means by a "quality education" falls upon the Courts. The District Court Judge must devise a rationale or set of criteria to be used in determining minimum levels of education quality. Sen. Butcher asked if this was heading in the direction of a criteria-based, statewide testing system to determine quality. Mr. Tweeten was reluctant to speculate but pointed out that in the litigation of the Helena school district cases 10 years ago, one of the suggestion to define a quality education was educational outcomes measured by testing. The Court rejected that argument in those particular challenges. If the impending case to be filed in the fall is as it appears to be, a challenge based on quality would bring testing measurements back in.

## **MEMBER ISSUES**

Ms. Erickson said that the proposed Committee work plan does not include the statewide public hearing dates. Most meetings are scheduled for one day but 2-day meetings may be required beginning in January 2002.

Sen. Ellis **moved** to adopt the tentative meeting schedule with the caveat that it is subject to change. Motion carried unanimously.

Other issues:

- to postpone appointing subcommittees unless required;

- to include on the October 3 meeting agenda a presentation from the Board of Regents regarding how it is addressing postsecondary education issues;
- to include time on the October 3 agenda for a presentation by Rep. Facey on a trip that he made to Japan to study Japanese education;
- study plans for HJR 41 and local government issues will be prepared by staff for Committee review;
- to include an update on the Governor's Council of School Funding on the October 3 meeting; and
- requested that staff review the appropriate date for a "fly by" meeting with Augenblick and Myers.

There being no further business, the meeting adjourned at 3:00 p.m.

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