



Education and Local Government Interim Committee

61st Montana Legislature

SENATE MEMBERS

KELLY GEBHARDT--Vice Chair
GARY BRANAE
KIM GILLAN
BOB HAWKS
DANIEL MCGEE
JIM PETERSON

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JOHN FLEMING
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EDITH MCCLAFFERTY

COMMITTEE STAFF

LEANNE KURTZ, Research Analyst
JEREMY GERSOVITZ, Staff Attorney
CLAUDIA (CJ) JOHNSON, Secretary

MINUTES

June 10, 2010
Rm 137

Capitol Bldg.
Helena, Montana

Please note: These minutes provide abbreviated information about committee discussion, public testimony, action taken, and other activities. The minutes are accompanied by an audio recording. For each action listed, the minutes indicate the approximate amount of time in hours, minutes, and seconds that has elapsed since the start of the meeting. This time may be used to locate the activity on the audio recording.

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To view the minutes, locate the meeting date and click on minutes. To hear the audio recording, click on the Real Player icon. Note: You must have Real Player to listen to the audio recording.

COMMITTEE MEMBERS PRESENT

REP. WANDA GRINDE, Chair
SEN. KELLY GEBHARDT, Vice Chair

SEN. GARY BRANAE
SEN. KIM GILLAN
SEN. BOB HAWKS
SEN. DANIEL MCGEE
SEN. JIM PETERSON

REP. ELSIE ARNTZEN
REP. RUSSELL BEAN
REP. JOHN FLEMING
REP. BOB LAKE

COMMITTEE MEMBER EXCUSED

REP. EDITH MCCLAFFERTY

STAFF PRESENT

LEANNE KURTZ, Research Analyst
JEREMY GERSOVITZ, Staff Attorney
CLAUDIA (CJ) JOHNSON, Secretary

Visitors/agenda

Visitors' list, Attachment #1.
Agenda, Attachment #2.

COMMITTEE ACTION

The ELG committee:

- approved the minutes of December 11, 2009 and March 12, 2010.
- failed to approve a motion to object to the Department of Labor and Industry(DLI) construction techniques rules.
- approved to send a letter asking DLI to postpone the rules until the next ELG meeting.
- directed staff to go forward with LC 9996, a draft bill amending county and school district budget timelines.
- directed staff to draft a bill requiring meetings of historic preservation agencies.
- approved drafting of OPI's proposed bills #2, #4 and #7 (Exhibit 13).
- directed staff to draft a bill on community college districts to be reviewed at the August ELG meeting.
- approved the shared policy goals for K-12, K-20, and the MUS.

CALL TO ORDER AND ROLL CALL

- 00:00:01 Rep. Grinde called the committee to order at 8:00 a.m. The secretary called the roll. Rep. McClafferty is excused. Attachment #3
- 00:01:14 A motion was made to approve the minutes from December 11, 2009, and March 12, 2010 . The motion **passed**.

AGENDA

- 00:01:24 Leanne Kurtz reviewed the agenda. (See attachment #2)
- Wildfire-resistant construction techniques rulemaking (Ch. 443, L. 2007; SB 51)**
- ▶ **Background - Leanne Kurtz**
 - ▶ **DLI 5/24 rules hearing - Helen Thigpen**
- 00:06:25 Ms. Kurtz distributed a handout showing the rulemaking authority of the Department of Labor and Industry (DLI). **(Exhibit 1)** She discussed a memo from Colleen White, Attorney for DLI written to Dave Cook, Bureau Chief, Building Codes, DLI, regarding the rulemaking authority. **(Exhibit 2)** She explained the rulemaking in the context of the Subdivision and Platting Act. A copy of the notice of public hearing for the adoption of the new rules was distributed and discussed. **(Exhibit 3)**

ELG comments and questions

- 00:11:22 Rep. Lake and the committee discussed Ms. White's memo (Exhibit 2), and how the rules were to be in place for the 2009 Legislature to address.

00:16:05 Sen. Hawks said the DLI rulemaking for the 2009 Legislature was delayed due to his request so it didn't overlap another bill that was already in place.

00:23:46 Ms. Kurtz said there is a procedure in place that allows the interim committee to object the rules. Ms. Thigpen said if the committee decides to object to the rules, there has to be a majority vote by the committee members to send a letter to the DLI outlining specific objections, which can delay the rules and make them inactive for 6 months.

00:28:14 Rep. Bean said these rules need to be delayed until the upcoming Legislature can look at them. Rep. Lake said the rules are premature and put the counties in a position where they are obligated to abide by these rules.

Motion

00:33:23 Rep. Lake made a motion to delay the rules.

Discussion

00:33:40 Sen. Peterson asked what the downside would be if it is delayed. Sen. Hawks responded that a bill in the 2007 Legislature went through four phases. He said there will always be reasons to delay it. The rules are not there to stop the subdivisions.

00:36:06 Ms. Kurtz asked that specific reasons be made in the motion to object the rules. Rep. Lake said that the motion to delay the rules is due to the fact that the counties have not had the opportunity to finalize the drawing of the WUI areas. He said it is premature to put this into place prior to maps being drawn. There has been no public hearing in his area, and the delay will give the counties the opportunity to deal with it until the maps are drawn. Sen. McGee said he is in favor of the motion.

00:41:57 Ms. Thigpen said the committee can write a letter asking the DLI not to go forward with the rules until the next ELG committee takes place in August.

00:42:23 Sen. Gillan asked what the status is of the WUI mapping. Ms. Kurtz responded that DNRC is in charge of the mapping, and DNRC reported on its progress at ELG's March meeting.

00:47:35 Sen. Hawks talked about having choices and guidelines to create a district. Ms. Kurtz said the fire statute requires input from local fire agencies and counties in creating WUI lines.

00:51:54 Ms. Kurtz talked about a memo discussed at ELG's March meeting regarding the WUI. SB 131 is a bill from the last Legislative session that required drawing the map for the WUI.

Motion

00:55:45 Rep. Grinde said the motion is to object to the DLI rules because the counties have not had the opportunity to finish drawing the WUI map. Roll call vote was

taken. **(Exhibit 4)** The motion **failed** 6-6. Rep. McClafferty voted no by proxy.

Motion

00:58:00 Sen. Gillan made a motion to ask DLI to delay the implementation of the rules until the ELG meeting takes place this August.

Discussion

00:59:32 Rep. Lake wanted to amend the motion by inserting "30-days" after the ELG meeting. Sen. Gillan and Ms. Kurtz discussed the DLI rules and the 30-days.

Motion/vote

01:02:00 The motion is to send a letter to DLI asking that it postpone adoption of the rules until 30 days after the next ELG meeting. The motion **Passed**. Rep. Lake voted no. Rep. McClafferty voted aye by proxy.

Public comment

01:03:08 Richard Van Auken, Fire Chief for Teton County, gave an overview of his definition of a WUI stating it isn't anything that is defined. He talked about the rules from DLI that are before the committee.

Local government and school district budget timelines bill drafts

- ▶ **Background - Harold Blattie, Montana Association of Counties (MACo)**
- ▶ **Department of Revenue (DoR) perspective - Alan Peura, Deputy Director, DoR**
- ▶ **Bill draft review and presentation of policy decisions - Jeremy Gersovitz**

01:04:53 Sen. Gebhardt distributed a handout **(Exhibit 5 - LC9996, LC 9997 and LC 9998)**, regarding school budgeting, district assessments, and tax values for local governments.

01:06:31 Mr. Blattie explained the three bill drafts (Exhibit 5), and how each one will affect the counties. He said that MACo endorses LC 9996 as a base bill.

01:16:08 Mr. Peura discussed the Department of Revenue (DoR) concerns regarding certified land values and the impact of the proposed bill drafts addressed in Exhibit 5. He explained how the DoR works with the counties and distributed a handout **(Exhibit 6)** that compares current law with the bill drafts.

01:35:09 Mr. Gersovitz talked about LC 9996. He addressed LC 9997 and LC 9998, in regards to whom supports the bill drafts, and the reasons why other people do not.

Public Comment

01:37:27 Lynda Brannon, Montana Association of School Business Officials, said that she does not support any of the three bill drafts. She said that LC 9996 could be tweaked, but it doesn't work either. She explained how the language "on or before" and "no later than" will affect the school districts. She said when one

date is changed it creates a domino affect.

ELG comments and questions

01:40:38 Sen. Gebhardt asked Ms. Brannon about the counties operating with a budget that isn't in place. He said this bill is an attempt to correct that problem. He wanted to know if Ms. Brannon would be willing to work with the department and those that work with these issues. She responded yes.

01:48:14 Rep. Grinde asked Sen. Gebhardt how he would like the committee to go forward. Sen. Gebhardt replied that he would like the committee to direct staff to go forward with LC 9996, and work on some of the dates and changes with DoR and the school district representatives. He also talked about a penalty being issued at the local level.

Motion

01:50:06 Sen. Gebhardt made the motion to direct staff to go forward with LC 9996 making necessary changes, and to present the bill to the committee for review in August.

Discussion

01:50:39 The committee discussed using the 45-days or the 3rd Monday of the month.

01:51:35 Sen. Gebhardt said the original date is in place because of audits.

Vote

01:53:30 The motion **passed**. Rep. McClafferty voted aye by proxy.

HJR 32 study of historic preservation

- ▶ **Review activity to date - Leanne Kurtz**
- ▶ **Heritage Parks - Chas Van Genderen, FWP Parks Division Administrator**
- ▶ **Presentation of findings, options, and potential recommendations - Chere Jiusto, Montana Preservation Alliance; Sen. Hawks**

01:54:15 Ms. Kurtz gave an overview and summarized the information on the historic preservation study that has been heard in previous committee meetings.

01:58:12 Mr. Van Genderen distributed a handout of his PowerPoint presentation on Montana State Parks. **(Exhibit 7)** He said they will be working with the Legislative Fiscal Division (LFD) to examine State Parks funding.

02:10:32 Ms. Jiusto distributed several handouts and gave an overview of each one:

- ▶ a booklet of the National Heritage-Based Rural Development. **(Exhibit 8)**
- ▶ a handout of HJR 32 interim study on historic preservation and summarizing the funding for historic preservation. **(Exhibit 9)**
- ▶ information regarding the preservation review board and its rulemaking. **(Exhibit 10)**
- ▶ how the coal severance tax is distributed. **(Exhibit 11)** She added language on page 6, section 3, line 5, to read "on tourism promotion

development".

02:32:27 Sen. Hawks talked about including language that will define historic preservation. He would like all agencies, entities, and interested parties that work with historic preservation to work together.

Motion

02:38:38 Sen. Hawks made a motion that the ELG staff prepare a draft bill requiring all agencies involved in historic preservation to meet and to report to the Legislature. He asked that the bill draft be prepared for ELG to review at its August meeting.

Discussion

02:40:10 Sen. McGee discussed communication between the agencies.

02:41:31 Ms. Kurtz said she will assist Sen. Hawks with language in the draft of a bill proposal.

Vote

02:45:56 Sen. Hawks motion **passed**. Sen. Gebhardt voted no. Rep. McClafferty voted aye by proxy.

02:46:40 **Break**

02:46:18 Rep. Grinde called the committee back to order.

Montana Historical Society

- ▶ **Update on new facility progress, plans, and potential legislative involvement - Richard Sims, MHS Director**

02:59:18 Mr. Sims gave a PowerPoint presentation showing a new model of the Montana Heritage Center, which will replace the Montana Historical Society. He explained the development of the new building, the funding, and the total costs. The handout also included a map summarizing where all the research centers are located and their resources. **(Exhibit 12)**

ELG review of agency legislation and authorization for drafting

- ▶ **Review of process - Leanne Kurtz**
- ▶ **Madalyn Quinlan, Office of Public Instruction (OPI)**

03:18:33 Ms. Kurtz gave an overview and update of the legislative proposals and how a committee bill draft can be requested.

03:22:20 Ms. Quinlan distributed and explained a handout showing OPI's bill draft requests. **(Exhibit 13)**

ELG comments and questions

03:28:40 The committee talked about how a high school education can be attained

through a GED. They discussed mill levies and why they are not being distributed to the schools. Mr. Blattie responded why the mill levy money is not given to the schools in lieu of federal funds. He said the counties has discretion how those payments are distributed.

Public Comment

- 03:32:51 Kevin Nelson, Billings, discussed base aid funding for schools.
- 03:36:55 Eric Feaver, Montana Teachers Association-Montana Federation of Teachers (MEA-MFT), commented on OPI's bill draft requests.
- 03:42:56 Ms. Kurtz explained how the bill draft process works. Ms. Kurtz explained the difference between a committee sponsored bill and a bill draft from an agency.
- 03:46:38 Sen. Hawks talked about early introduction of agency bills, and said the bills need to go before the Legislature to be discussed by all legislators.

Motion

- 03:47:45 Sen. Hawks made a motion to go forward with the OPI bill draft requests.

Discussion

- 03:48:27 Sen. Peterson said to let it be known that he does not agree with all of the OPI draft bills. He explained his reasons.
- 03:49:45 Sen. Branae commented that the process works well and to continue with the way it has been done in the past
- 03:50:17 Rep. Lake commented that as an uncontested legislator he cannot support the motion as a lump group.

Vote

- 03:52:47 Roll call vote was taken. **(Exhibit 14)** The motion **failed** 6 - 6. Rep. McClafferty voted aye by proxy.

Motion

- 03:55:53 Sen. Gebhardt made a motion to accept #2, #4 and #7 of OPI's bill draft requests.

Discussion

- 03:56:23 Rep. Arntzen requested information regarding the fiscal impact of the bill drafts.

Vote

- 04:01:50 The motion is to allow OPI's draft proposals request for #2, #4 and #7 to move forward. The motion **passed**. Sen. McGee voted no. Rep. McClafferty voted aye by proxy.

- 04:03:46 Dr. Mary Sheehy Moe, Deputy Commissioner of Two Year Higher Education, talked about the new community college in the Bitterroot Valley, Hamilton area. She introduced her legal staff, Cathy Swift, Chief Legal Counsel.

- 04:05:34 Ms. Swift distributed and explained the MUS initial bill draft of the proposed language for the community college districts. **(Exhibit 15)**
- 04:09:23 Dr. Moe talked about her involvement of proposed changes to the community college district creation laws. She discussed:
- ▶ school elections;
 - ▶ establishing school districts; and
 - ▶ working on the statutes.
- 04:13:53 Ms. Kurtz clarified that OCHE is not planning to pursue the bill draft as an agency with the Legislature. She said that ELG had asked OCHE to provide information by proposing language for a bill draft to amend the community college statutes.
- Motion**
- 04:15:10 Sen. McGee made a motion to direct staff to pursue a bill draft amending community college statutes to be reviewed at the August ELG meeting for a committee bill.
- Discussion**
- 04:15:46 Sen. Branae has a note from Rep. McClafferty regarding her concerns about new section 4 in Exhibit 14 about the word "perhaps", and she asked if there is any optional language about provision for a hearing transcript. Ms. Swift said that the word "perhaps" is only a suggestion.
- Vote**
- 04:20:03 The motion **passed**. Rep. McClafferty voted aye by proxy.
- 04:25:27 Dr. Moe discussed legislation to conform the Montana work study law with the federal work study law.
- 04:26:49 **Lunch**
- Motion**
- 04:52:12 Rep. Lake made a motion to authorize OCHE to draft a work study proposal. The motion **passed**. Rep. McClafferty voted aye by proxy.
- Preview of legislative initiatives; requests for ELG committee bills**
- ▶ **Montana Association of Counties - Harold Blattie**
 - ▶ **Montana League of Cities and Towns (MLCT) - Alec Hansen**
- 04:52:54 Mr. Blattie informed the committee that MACo does not have any requests for bill drafts.
- 04:53:51 Mr. Hansen said that MLCT does not have any requests for bill drafts.
- 05:07:06 Sen. Gebhardt and Sen. Peterson talked about bills being limited for agencies and legislators.

Update on HB 645 local government stimulus grants

- ▶ **Kelly Casillas, Administrator, Community Development Division, Department of Commerce**

05:09:19 Ms. Casillas distributed a handout giving an update of the progress for projects that application has been made for HB 645 funds. **(Exhibit 16)**

Local government/school district response to medical marijuana facilities

- ▶ **Legal options - Helen Thigpen**
- ▶ **June 9 CFHHS workgroup discussion - Leanne Kurtz**

05:16:29 Ms. Kurtz suggested that the ELG limit its work on the Medical Marijuana issue because of the Children, Families, Health and Human Services Interim Committee (CFHHS) has taken the lead, and has already done extensive work through a work shop and subcommittee. **(Exhibit 17)**

05:20:50 Rep. Arntzen asked if the recommendations will be available on the CFHHS website. Ms. Kurtz said yes.

05:22:30 Ms. Thigpen distributed a handout that explains options for local regulation of medical marijuana. **(Exhibit 18)**

Public Comment

05:40:36 Mr. Blattie distributed a handout about counties not having the authority to regulate the activities related to the passage of the Medical Marijuana Act. **(Exhibit 19)** He said currently that counties cannot control the location of the marijuana outlets.

05:44:33 Mr. Hansen gave his perspective on the use of marijuana in cities and towns. He said the marijuana issue should be subjected to state control.

Digital Academy update

- ▶ **Dr. Bruce Messinger, Chair, Digital Academy Board of Directors**

06:02:39 Dr. Messinger introduced Dr. Dennis Parman, Deputy Superintendent, Office of Public Instruction (OPI). Dr. Parman presented a PowerPoint of the Montana Digital Academy and explained how the academy will operate.

Shared Policy Goals and Accountability Measures subcommittee

- ▶ **Update and presentation of draft agreements - Rep. Lake;**

subcommittee participants; and staff

- 06:33:18 Rep. Lake gave an update and overview of the subcommittee's work.
- 06:37:34 Madalyn Quinlan distributed a handout and explained the shared policy goals and accountability measures for K-12. **(Exhibit 20)**
- 06:47:38 Mr. Trevor distributed and explained the shared policy goals and accountability measures for the Montana University System (MUS) - 2013 Biennium. **(Exhibit 21)** Mr. Trevor distributed a handout showing the MUS strategic plan for graduate education. **(Exhibit 22)**
- 06:54:17 Mr. Trevor distributed and explained the shared policy goals and accountability measures for the K-20 public education system - 2013 Biennium. **(Exhibit 23)**
- 06:59:11 Rep. Lake gave an overview of the ELG subcommittee's work regarding shared policy goals and accountability measures for K-12, K-20, and the MUS.
- 06:59:29 Mr. Barrs discussed the signatures on the agreement and what they mean. He pointed out several corrections of deleted and added language.
- 07:04:05 Rep. Lake discussed the "whereas" clauses.
- Motion**
- 07:06:02 Rep. Lake made a motion that the committee accept the shared policy goals and accountability measures for K-12, K-20, and the MUS.
- 07:06:36 The committee discussed the agreements.
- Vote**
- 07:11:43 The motion **passed**. Sen. McGee voted no. Sen. Peterson voted no by proxy. Rep. McClafferty voted aye by proxy.
- 07:22:25 Denise Bond, OPI, gave a PowerPoint presentation of the adequate yearly progress report for Montana based on 2009 statistics. It is a companion of the federal No Child Left Behind Act. **(Exhibit 24)**
- 07:46:03 Ms Casillas distributed and explained a handout on the quality schools grant program. **(Exhibit 25)**
- 07:52:42 Joan Anderson, OPI, distributed and explained a handout of the recipients for ARRA grants. **(Exhibit 26)**

- 08:01:12 Jim Standaert, Legislative Fiscal Division (LFD), provided a report regarding the actions of the 61st Legislature and its appropriation for K-12. **(Exhibit 27)**
- 08:14:00 Pam Joehler, LFD, distributed a handout explaining HB 645 funding for the MUS. **(Exhibit 28)**
- 08:20:51 Mick Robinson, Deputy Director, OCHE, talked about the goals and keeping tuition increases at an affordable level.

Public comment on any item within ELG's subject matter jurisdiction

- 08:26:43 Amy Carlson, Legislative Fiscal Analyst, said the Legislative Finance Committee (LFC) will be holding subcommittee meetings the next couple of months to work on reviewing agency budgets and ideas for reductions.
- 08:29:43 Sen. Hawks asked how the LFC can come up with a list of cuts when no one was involved. Ms. Carlson said the list is just "seeds for conversation", and is not an end product.
- 08:31:49 Rep. Lake talked about how the subcommittees will prioritize and start the process to collect information for the Legislature.
- 08:33:10 Ms. Carlson discussed cuts to K-12, and said that calculating funding cuts and actually thinking that they are good ideas and having that public process is two different issues.
- 08:33:42 Kevin Nelson distributed a handout showing the taxable value for the City of Billings for 2009. He explained what is happening with the schools and taxes. **(Exhibit 29)**

Directions to staff

- ▶ **Additional bill drafts for review in August; ELG member initiatives**
 - ▶ **Information requests for August meeting**
- 08:40:59 Rep. Lake requested a report on the authority of local governments to regulate medical marijuana.
- 08:42:10 Ms. Kurtz said the final meeting in August will be two days. She said the committee will be addressing the following issues:
- ▶ #1 - send a letter to DLI regarding concerns of the WUI.
 - ▶ #2 - budget timeline bills.
 - ▶ #3 - historic preservation requested by Sen. Hawks.
 - ▶ #4 - community colleges bill draft revisions.

- ▶ #5 - tax increment - finance districts.
- ▶ #6 - shared policy goals completed.
- ▶ #7 - outline of final report for committee approval at the August meeting.

08:45:02 Rep. Lake, Mr. Gersovitz, Rep. Grinde, and Mr. Barrs discussed language that was added after the subcommittee had voted on the agreement between the educational agencies. Rep. Grinde said the appropriate position will be to reconsider the action of the full committee and place it on the agenda for the August meeting.

08:53:38 Sen. Hawks commended the educational agencies for stepping up to the plate and accepting certain goals. He isn't offended by the documents that was approved today, and said "we are accepting our responsibility to accept the actions taken today."

Motion

08:55:11 Rep. Lake made the motion to reconsider the committee's approval of the three documents of the shared policy goals and accountability measures and place them on the agenda for the August meeting.

Discussion

08:56:15 Rep. Lake, Casey Barrs, and Mr. Gersovitz discussed how they would handle this. Mr. Barrs said the agreements would not need to go back to the subcommittee.

08:57:04 Sen. Branae stated his opposition to the motion.

08:58:03 Rep. Fleming suggested the committee discuss the issue today rather than wait until the August meeting.

Vote

08:58:46 Sen. McGee asked that a roll call vote be taken. The motion **failed** 6 - 6. Rep. McClafferty voted no by proxy. Sen. Peterson, Sen. Gebhardt, and Rep. Arntzen voted aye by proxy. **(Exhibit 30)**

Other issues

09:00:59 Sen. Gillan said that Eastern Montana College is having a conference on how to deal with MSU Eastern Campus.

09:02:00 Sen. Hawks announced that the Wheeler Foundation Education Conference will be held in September.

09:02:50 Sen. McGee asked for a list of total budgeted dollars distributed to the

University System. Pam Joehler said she has that information.

09:03:33 Rep. Grinde said the next meeting will be held on August 16 & 17, 2010.

09:04:17 Ms. Kurtz discussed an issue that has come up again about splitting the ELG committee into two committees for the next interim: one committee to deal with local government and the other committee to deal with education. The ELG committee agreed to look into the issue at the August meeting.

Adjourn

09:06:45 Rep. Grinde adjourned the ELG committee at 5:13 p.m.