

**Education and Local Government Interim Committee
2009-2010 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 for the next 14 months.

Shaded boxes indicate areas where committee discussion and direction to staff is warranted.

Included in this paper are:

1. ELG's statutory duties;
2. Required reports;
3. ELG's interim study assignments;
4. Additional topics within ELG's subject area jurisdiction;
5. Subcommittee options;
6. Administrative rule review options;
7. Summary of options; and
8. ELG's budget and proposed meeting schedule.

I. ELG'S STATUTORY DUTIES

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 proposed legislation of assigned agencies or entities as provided in the joint legislative rules;
5. 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
6. 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.

Duties specific to ELG

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
 - 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;
9. encourage cooperation between 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 II of this paper (Section 20-7-101, MCA, found beginning on p. 3).

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.

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.

II. STATUTORILY-REQUIRED REPORTS

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.

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

(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.

III. INTERIM STUDY ASSIGNMENTS -- HJR 32; SJR 2; SJR 9

In the poll to gauge legislator interest in interim study resolutions conducted shortly after the 2009 Legislature adjourned, HJR 32 ranked 10th out of 17 total studies and SJR 2 ranked last. On May 27, the Legislative Council assigned both studies to ELG.

SJR 9, which is also relevant to ELG's subject area jurisdiction, was not included in the poll because the resolution specifically requests the study be completed by the Legislative Finance Committee (LFC).

HJR 32

The resolution requests an interim study of the impact of and strategies for historic preservation. The following points are identified in the resolution or were expressed at the hearing:

- ▶ The State of Montana owns over 1,000 historic and cultural properties and is responsible for maintaining those properties on behalf of the state's citizens.
- ▶ Additional historic and cultural properties are owned by local, federal, and tribal entities and by private citizens who wish to restore and maintain them.
- ▶ Appropriately-maintained historic and cultural properties attract tourism and provide economic benefits to communities.
- ▶ A number of programs exist in which citizens and communities can participate to enhance their cultural properties but funding is spotty and sources of funding are not well known or understood.
- ▶ Many who own historic and cultural properties are not aware of the benefits of restoring and maintaining those properties and are not aware of the available funding assistance.
- ▶ State and local support for funding of historic and cultural property restoration and maintenance takes many forms, all of which should be evaluated--along with federal

funding sources--to determine whether changes or enhancements may be appropriate.

- ▶ Historic preservation programs and opportunities should be evaluated to determine their impacts on the state and local economies and on tourism.

The study should begin with an inventory of all of the historic and cultural preservation programs in the state (Montana Main Street, SHPO, FWP Parks, Heritage Preservation and Development Commission, local preservation programs, etc.) and their funding constructs.

According to those who testified at the hearing on the resolution, there is extensive information from the Brookings Institute on similar studies that have been conducted in other states, so that information will be procured.

Representatives of the historic preservation community will be enlisted to participate in the study, including staff from the State Historic Preservation Office, FWP Parks Division, the Montana Heritage Preservation and Development Commission, the Department of Commerce's Main Street Program and tourism promotion program, Montana Preservation Alliance, local preservation offices, and others.

Once the background information is in place, the study will focus on the items listed in the resolution, with an eye toward :

- ▶ determining if state-level funding needs to be changed or enhanced to promote historic and cultural preservation and provide match for federal funding opportunities;
- ▶ determining if any statutory changes are needed to facilitate historic and cultural preservation;
- ▶ development of a historic and cultural preservation guidebook that would be available to property owners providing information on the benefits of preservation as well as the available programs and funding sources. It was testified to in the hearing that there is no such comprehensive guide available to property owners, so they not only don't know what is available, but they aren't aware of the benefits of preservation.

HJR 32

The Legislative Council recommends that this study be conducted by staff, working with relevant agencies, and providing regular updates and decision points to the ELG. The study will not require significant time on the committee's agendas; however, any final products and recommendations will be presented to the committee for approval.

06/30/09 ELG Comment/Direction to Staff:

SJR 2

The community college establishment process provided for in Title 20, chapter 15, part 2, MCA, was used for the first time during the 2007-2008 interim. That first test of the process raised questions as to what entity is best suited to bear certain responsibilities and costs.

In completing the study, staff would consult with the Office of the Commissioner of Higher Education, the Montana Secretary of State, the participants in the Bitterroot Valley Community College establishment process, and others to:

- ▶ conduct a comprehensive review of the community college establishment process;
- ▶ identify the entities best suited to take responsibility for receiving voter petitions, ordering the election of trustees, calling for the nominations of trustee candidates, giving election notices, conducting elections, certifying election results, and taking statutory steps to create a new community college district; and
- ▶ identify the costs incurred in fulfilling these responsibilities and how those costs might be funded.

SJR 2

The Legislative Council recommends that this study be conducted by staff, working with relevant agencies, and providing regular updates and decision points to the ELG. The study will not require significant time on the committee's agendas; however, any final products and recommendations will be presented to the committee for approval.

06/30/09 ELG Comment/Direction to Staff:

IV. ADDITIONAL TOPICS WITHIN ELG'S SUBJECT AREA JURISDICTION

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, MCA, 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.

The following items have been mentioned for possible ELG review during the interim in consultation with the Montana Association of Counties and the Montana League of Cities and Towns as well as individual committee members. Members may have additional suggestions to discuss at the June 30 meeting.

1. *Tax Increment Financing and Urban Renewal*
Rep. Arntzen sponsored HB 484, "limiting the duration of a tax increment finance provision; providing that property that was within an urban renewal area within the prior 10 years may not be included in a proposed urban renewal area; establishing that after July 1, 2009, tax increment financing may not extend beyond 21 years even if tax increment revenue has been pledged to service bonds...". HB 484 was tabled in the House Taxation Committee.

Rep. Arntzen also sponsored HJR 37, requesting a study of urban renewal statutes, policies, and practices, including an assessment of the property tax implications of using tax increment financing for urban renewal area projects. HJR 37 passed the House but failed to reach the Senate floor.

Tax Increment Financing/Urban Renewal
06/30/09 ELG Comment/Direction to Staff:

2. *School District and County Budgeting Timelines (SB 165)*
The Montana Association of Counties will propose that ELG revisit budgeting timelines for counties and schools.

SB 165, sponsored by Sen. Lewis, proposed to change most of the dates related to budgeting for schools. However, according to MACo, the bill would have resulted in the schools telling the county commissioners how many mills to levy after the date county commissioners are to set all levies.

Budgeting Timelines
06/30/09 ELG Comment/Direction to Staff:

3. *American Recovery and Reinvestment Act (ARRA) grants to local governments*
The LFC will be overseeing activities with regard to implementation of ARRA funding

contained in HB 645. It is consistent with ELG's statutorily-mandated role as the legislature's liaison with local governments to engage at some level regarding ARRA-funded local government projects, but care must be taken to avoid duplication of effort and potential conflicts with the work of the LFC.

If the committee is interested in pursuing review of any ARRA-related projects and the implementation of HB 645, ELG staff will ensure proper coordination with LFD staff.

ARRA-related Reports

06/30/09 ELG Comment/Direction to Staff:

4. *Other local government-related issues discussed at ELG's June 30 meeting*

Other Local Government-related Projects

06/30/09 ELG Comment/Direction to Staff:

Education

Shared Policy Goals and Accountability Measures

1. *HJR 6*

HJR 6 urges the Superintendent of Public Instruction and the Board of Public Education to work with ELG on developing K-12 shared policy goals and accountability measures that can be used by legislators, the education community, and the public to evaluate progress toward the goals and used by the legislature to guide its funding decisions.

This item, in addition to SJR 8, may constitute a significant portion of ELG's interim work if it is given a high priority by committee members.

HJR 6

06/30/09 ELG Comment/Direction to Staff:

2. *SJR 8*
SJR 8 urges the Board of Regents, the Commissioner of Higher Education, the Superintendent of Public Instruction, and Board of Public Education to work with ELG on developing K-20 shared policy goals and accountability measures that can be used by legislators, the education community, and the public to evaluate progress toward the goals and by the Montana Legislature to guide its funding decisions.

This item, in addition to HJR 6, may constitute a significant portion of ELG's interim work if it is given a high priority by committee members.

SJR 8

06/30/09 ELG Comment/Direction to Staff:

3. *SJR 9*
SJR 9 requests a study of the state student loan system. The resolution specifies that

the study be conducted by the LFC. LFC deferred a decision on the scope of the study at its June 15 meeting because the study's sponsor, Sen. Wanzenried, was not present.

It would be appropriate for ELG, if members are interested, to request regular updates as this study progresses.

SJR 9

06/30/09 ELG Comment/Direction to Staff:

4. *Other Education-related issues discussed at ELG's June 30 meeting*

Other Education-related Issues

06/30/09 ELG Comment/Direction to Staff:

V. SUBCOMMITTEES

Last interim, ELG divided into three subcommittees: Postsecondary Education Policy and Budget (PEPB), HB 49 (local special purpose districts), and K-12 Education. Staff from the Legislative Fiscal Division was dedicated to PEPB and additional personnel from the Legislative Services Division staffed the HB 49 subcommittee.

Since 1999, ELG has approached its work in various ways through the establishment of subcommittees. The committee has had as many as three subcommittees and as few as one. 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 ELG has chosen to establish it each interim since 1999, and include two representatives of

the Board of Regents and one member designated by the Governor's office as nonvoting members.

In the view of the Legislative Services Division (LSD), ELG's creation of three subcommittees during previous interims resulted in redundancies that consumed the committee's valuable meeting time and outweighed benefits experienced by dividing in that manner. Moreover, the compartmentalization represented by having two education subcommittees appeared to run counter to the ELG's ongoing expressed emphasis on a seamless spectrum of K-20 education. LSD staff seeks to provide the most effective and efficient committee support possible and it has been the staff's experience that subcommittee proliferation increases the need for resources that may be stretched or unavailable.

The Legislative Environmental Policy Office, which staffs the Environmental Quality Council, has developed criteria for establishment of subcommittees or working groups. The criteria may be useful as ELG deliberates its organizational structure.

Criteria for Establishment of Subcommittees or Working Groups (produced by the Legislative Environmental Policy Office)

Appointment of subcommittee may be necessary if:

- ⌘ An assigned study is so detailed that it would limit the work that the full EQC wants to accomplish in an interim if a subcommittee was not assigned.
- ⌘ Extensive policy issues and options exist that require extensive discussion, debate, and public input that is not feasible for the full EQC to accomplish based on work load and time restrictions.
- ⌘ The EQC is willing to delegate policy formulation or option review and recommendation to a subcommittee.
- ⌘ Due to the assignment of more than one study or EQC interest in more than one complex area, a division of staff and committee resources is necessary to achieve desired results such as recommendations for legislation, etc.

A subcommittee should not be appointed if:

- ⌘ Interest in the issue or workload would require that a subcommittee be composed of 3 EQC members or less.
- ⌘ The full EQC wants to be included in discussions and decisions on an issue.
- ⌘ The full EQC wishes to be included in or take an active role in each subcommittee activity or presentation.
- ⌘ An issue can be researched or a problem resolved with the appointment of a subcommittee or group that meets on an as needed/ad hoc basis for a limited period of time.

Appointment of Working Group may be necessary if:

- ⌘ Area of concern is specific to one or two issues that could be addressed by 2-3 EQC members.
- ⌘ Issue is extremely technical and the EQC would benefit from the assistance of specialists or scientists knowledgeable in that specific area serving on the working group.
- ⌘ A defined solution is requested by the EQC to a defined problem that would be more efficiently

addressed with 1-2 meetings of a small group.

- ⌘ Resolution of an issue depends on the concurrence of a limited number of known participants who are willing to participate in a working group.

Subcommittees

06/30/09 ELG Decision/Direction to Staff:

VI. 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.

The committee's approach to administrative rule review will be discussed at the June 30 organizational meeting.

Administrative Rule Review
 06/30/09 ELG Decision/Direction to Staff:

VII. SUMMARY OF POTENTIAL PROJECTS

Following is a summary of the potential projects and activities that are discussed in this document. It may be useful for the committee in prioritizing its agenda time and staff resources.

Activity	Staff Comment	ELG Priority
HJR 32 - Study Historic Preservation	Assigned to ELG by Legislative Council; will involve independent staff research time; likely not significant committee time.	
SJR 2 - Study Community College Establishment	Assigned to ELG by legislative Council; will involve independent staff research time; likely not significant committee time.	
Tax Increment Finance/Urban Renewal	Could involve significant staff and committee time if given a high priority; would need specific study direction and identification of expected outcomes.	
School District and County Budgeting Timelines	Likely to be straightforward but will require staff time and Legislative Fiscal Division (LFD) staff resources to develop legislation if given a high priority.	
ARRA/HB 645 Monitoring	This work is being done by LFD staff for the Legislative Finance Committee; ELG may wish to identify specific projects or to receive specific reports, which ELG staff would coordinate with LFD staff.	
Other Local Government-related Issues		
HJR 6 - K-12 Shared Policy Goals and Accountability Measures	Could be significant portion of interim committee work if given high priority.	

Activity	Staff Comment	ELG Priority
SJR 8 - K-20 Shared Policy Goals and Accountability Measures	Could be significant portion of interim committee work if given high priority.	
SJR 9 - Study of Student Loan System	Assigned to the Legislative Finance Committee, per language in the resolution; updates would be appropriate.	
Other Education-related Issues		
Subcommittee Organization	<p>Each subcommittee will require staff and secretarial services, agendas, public notices, and minutes.</p> <p>The level of LFD staff resources that would be available for staffing a PEPB committee is unknown at this time.</p>	
Administrative Rules		

VIII. COMMITTEE BUDGET AND PROPOSED MEETING SCHEDULE

ELG has \$42,479 in its budget for the 2009-2010 interim. This will easily accommodate six meetings of the full committee (one or two of which may be 2-day meetings) and subcommittees, if any are appointed. If subcommittees are appointed, they may meet on the day before the full committee. The following is a proposed meeting schedule for the full committee. Fridays have generally been committee members' preferred meeting days, but adjustments can be made if members prefer other days of the week.

1. Tuesday, June 30, 2009
2. Friday, October 2, 2009
3. Friday, December 11, 2009
4. Friday, March 12, 2010
5. Friday, June 4, 2010
6. Thursday and Friday, September 2-3, 2010