



Education and Local Government Interim Committee

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58th Montana Legislature

SENATE MEMBERS

GREGORY BARKUS
WILLIAM GLASER
RICK LAIBLE
JEFF MANGAN
DON RYAN
DEBBIE SHEA

HOUSE MEMBERS

JOAN ANDERSEN
NORMAN BALLANTYNE
SUE DICKENSON
TOM FACEY
VERDELL JACKSON
LARRY LEHMAN

COMMITTEE STAFF

CONNIE ERICKSON, Research Analyst
EDDYE MCCLURE, Staff Attorney
REBECCA SATTTLER, Secretary
PAMELA JOEHLER

MINUTES

August 21, 2003

Room 137, State Capitol
Helena, Montana

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 the document.

COMMITTEE MEMBERS PRESENT

SEN. GREGORY BARKUS
SEN. WILLIAM GLASER
SEN. RICK LAIBLE
SEN. JEFF MANGAN
SEN. DON RYAN
SEN. DEBBIE SHEA

REP. JOAN ANDERSEN
REP. NORMAN BALLANTYNE
REP. SUE DICKENSON
REP. TOM FACEY
REP. VERDELL JACKSON
REP. LARRY LEHMAN

STAFF PRESENT

CONNIE ERICKSON, Research Analyst
EDDYE MCCLURE, Staff Attorney
REBECCA SATTTLER, Secretary

AGENDA & VISITORS

Agenda, ATTACHMENT #1
Visitors' list, ATTACHMENT #2

COMMITTEE ACTION

- Elected REP. JOAN ANDERSEN as Chairperson
- Elected SEN. DON RYAN as Vice Chairperson
- Determined for Administrative Rule Review, that the Committee's attorney shall prepare a brief report on all proposed rule notices for each Committee meeting.
- Determined for State Agency Monitoring, that as the Committee or individual members become aware of issues associated with the performance of an agency, the Committee shall request information from the agencies.
- Adopted the proposed meeting schedule for the interim.

CALL TO ORDER AND ROLL CALL

The meeting was called to order at 9:35 a.m. by Senior SEN. BILL GLASER. Committee members and staff introduced themselves and attendance was noted (ATTACHMENT #3). SEN. GLASER then opened the floor for nomination of officers.

SEN. RYAN nominated REP. ANDERSEN as Chairperson. There were no further nominations. REP. ANDERSEN was elected by unanimous vote.

REP. ANDERSEN nominated SEN. RYAN as Vice Chairperson. REP. JACKSON then nominated SEN. SHEA as Vice Chairperson. SEN. SHEA withdrew herself from the nomination and lent her support to SEN. RYAN, explaining that she will be termed out this session. SEN. BARKUS moved to close the nominations and SEN. RYAN was elected as Vice Chairperson by unanimous vote.

KEY LOCAL GOVERNMENT ISSUES FOR THE INTERIM

Alec Hansen, Montana League of Cities and Towns (MLCT), presented the Committee with information regarding the main areas of interest to MLCT:

- *HB 124 program*: provides for a transfer of gambling, wine, liquor taxes to the State for an entitlement program. He explained that the idea is to connect transfers to performance of the local economy, thus setting up a fair partnership between the State and local governments.
- *municipal health insurance*: Mr. Hansen explained that a big cost item for municipalities is health insurance. He stated that they are interested in organizing a city/county health insurance pool to stabilize costs.
- *Main Street Program*: This is a program sponsored by the National Trust for Historic Preservation and has been very successful. The purpose is to provide assistance for small towns' central business districts by restoring historic downtown areas. This program was presented in the 2003 Legislative Session, but was tied to a bill that did not pass. Now MLCT is looking for grants to fund the program.
- *power supply*: MLCT had a 5-year contract with Northwestern Energy to provide energy to local governments and school districts at a rate less than the default rate. Northwestern Energy breached that contract and MLCT hopes to recover the \$5 million lost for local governments and school districts.
- *emergency powers*: cities need sufficient powers to quickly handle emergencies. The specific cases mentioned were: ordinances in a fire emergency, purchase of equipment needed during the emergency, and the ability to amend the budget to cover the costs

- during the emergency.
- *land use*: MLCT expressed interest in working with developers and others to reconcile differences over land-use and impact fee issues.

SEN. SHEA asked if Helena realized a decline in tax revenue during the smoke-free period. Mr. Hansen replied that it had not, explaining that the system now operates under an entitlement program through a set formula. He said that it is more predictable and stable than the old system, where it was always a guess what the revenue would be. SEN. SHEA said that she had seen the paperwork and the numbers were down for gambling during that period. Mr. Hansen explained that the state-wide gambling revenue was not affected. SEN. SHEA wondered if the rest of the state should have to pick up the low areas and be averaged in with the rest. Mr. Hansen stated that is no longer an issue since a bill has been passed to nullify the smoking ban. He added that MLCT did not support the bill, but supports local control instead.

SEN. RYAN had a question regarding HB 124. He asked if a tax was levied by a local government to offset court costs, was it included in the reappropriation. Mr. Hansen answered that the courts are a county issue and Mr. Morris of the Montana Association of Counties would be better qualified to answer that question. SEN. RYAN continued, explaining that it was not a court issue, but a local tax issue that could have been raised or eliminated by a local government. Mr. Hansen stated that a local tax is a state tax that is collected locally.

SEN. LAIBLE wondered if it is MLCT's intent is to alleviate the concerns of contractors and developers, and if there is anything to streamline subdivision submittals. Mr. Hansen answered that an interim study of subdivisions could be conducted in this committee.

REP. JACKSON stated that the recent audit recommended that local health departments do sanitation inspections and that the Department of Environmental Quality provide technical assistance. He asked if MLCT has a position regarding that separation. Mr. Hansen replied that is an issue for the counties' consideration.

SEN. RYAN asked if other cities are looking into a municipal utilities system like that of Great Falls. Mr. Hansen responded that Helena and Missoula are also looking for a competitive source of power. He added that Northwestern Energy has serious financial problems, with possible bankruptcy imminent. Mr. Hansen said if that were to happen, local co-ops might try to acquire the assets, in a move toward public power.

SEN. RYAN added that with the PPL-Montana tax protests across the state, MLCT might have to look at a protest law. Mr. Hansen agreed that is a serious issue and may be something to address.

KEY EDUCATION ISSUES FOR THE INTERIM

Linda McCulloch, State Superintendent of Public Instruction, addressed the Committee regarding the No Child Left Behind (NCLB) Act and its impact on the education system in Montana. Ms. McCulloch distributed a folder of information for the Committee members' review. (Individual material is listed as a separate exhibit as referred to in the conversation.) Ms. McCulloch explained the challenges in the following requirements according to that act:

- *Adequate yearly progress (AYP)*: Ms. McCulloch referred to the news release entitled

- “First ‘Adequate Yearly Progress’ Report Released on Montana Schools” (EXHIBIT 1) and the corresponding summary table included. She said that areas measured include reading, math, and attendance for elementary schools/graduation rate for high schools. “A Guide to Montana Adequate Yearly Progress” (EXHIBIT 2) was sent to every school to further explain the system. Ms. McCulloch provided the Committee with an example of the AYP Status Report for Broadwater School (EXHIBIT 3) and explained the results.
- *Highly qualified teachers:* Ms. McCulloch explained that this is the greatest problem in a rural state. She said that the requirement is that a teacher must have a degree in the specific topic they are teaching, which is not practical in many cases. In Montana, teachers receive a broad endorsement to teach many subjects instead of an endorsement for a specific major. Ms. McCulloch referred to the New York Times article titled, “‘No Child Left Behind’ education legislation is causing unique problems” (EXHIBIT 4). She added that Governor Martz is aware of the difficulty in complying with the requirements and has openly challenged them as well.
 - *Paraprofessionals:* Ms. McCulloch explained that this is also a challenge. In order to help in the classroom (be a paraprofessional), a person must have an associate’s degree or pass an equivalency test. It is difficult for a person in rural Montana to travel and take college courses, as well as very expensive. She encouraged the Committee to contact Washington, DC regarding these issues. She said that the NCLB bill was designed for more urban areas and parts of it are actually contrary to the Montana state constitution.
 - *“Reading First” Program:* Ms. McCulloch stated that Montana received a \$20 million 6-year grant and referred to the press release entitled “Montana receives \$2.9 million Reading First grant” (EXHIBIT 5). She also discussed the letter from the Office of the Governor written to Sen. Baucus, Sen. Burns and Rep. Rehberg (EXHIBIT 6) explaining the difficulty Montana is having in complying with the Act.

REP. LEHMAN asked if other rural states are speaking out about their difficulties as well. Ms. McCulloch said that a rural group convened in Washington, DC that included eastern states such as Kentucky and Tennessee as well, to voice their concerns.

SEN. BARKUS voiced his concern about reducing the quality of education by reducing the requirements, in order to fit Montana’s rural atmosphere into the NCLB Act. Ms. McCulloch explained that Montana has always been concerned with kids being left behind in the school system. The philosophy of the Act is good and she is trying to not have the program be a detriment to education. She added that this is a good example of a law passed in one place without applicability in all places. SEN. BARKUS inquired what the Office of Public Instruction (OPI) is doing to work from “the bottom-up” in complying to the Act requirements. Ms. McCulloch said that is open to discussion. REP. JACKSON asked if OPI is working with the University System to solve these issues. Ms. McCulloch answered that they worked very closely with the University System in the Reading First program to educate the future teachers coming out of the system. She explained that there is a regional summit planned to address those issues that will take place in Billings on November 14-15.

REP. JACKSON asked whether additional aid is being received from the Northwestern Educational Lab in Portland, Oregon. Ms. McCulloch assured him that all of the labs have taken a huge part in NCLB.

REP. FACEY gave a personal example to further explain the teaching requirements. SEN. RYAN wondered if the Office of Public Instruction could sort out and submit a report showing the subgroups that didn't pass in each school, allowing the Committee to address individual school issues more closely. Ms. McCulloch said that is a possibility and cautioned the Committee that simply because a school doesn't meet AYP, they are not a "failing" school; they simply have one area to work on.

REP. DICKENSON said that Montana has a significant number of students in private/home schools and wondered about their role with NCLB. Ms. McCulloch explained that only the schools that participate in Title I are included in NCLB. REP. DICKENSON asked if there are any other guidelines for those schools. Ms. McCulloch responded that there are, but only if they are Montana-accredited schools. REP. DICKENSON inquired about the percentage of accredited private/home schools. Ms. McCulloch replied that 8-10% are accredited high schools, but there are no accredited home schools or charter schools.

SEN. LAIBLE asked if Montana has submitted their "plan" for implementing NCLB. Ms. McCulloch explained that they have been submitting small plans along the way; it is a process. SEN. LAIBLE wondered that, if the plans are still being worked out in their infancy, if the problems are being prematurely over-stressed. Ms. McCulloch responded that they are not over-stressing issues, but are concerned with potential issues. SEN. LAIBLE inquired if the accreditation manual will have to be drastically changed as a result of NCLB. Ms. McCulloch answered that it would not; the changes deal more with teacher licensing.

SEN. GLASER noted that the programs with grants are distributed based on a competitive process, and wondered what criteria are used. Ms. McCulloch explained that with federal programs such as the Reading First grant, the criteria come from the United States Department of Education. The districts that are low-performing in reading are targeted for the Reading First grant, but there are different criteria for each grant. SEN. GLASER added that the Montana constitution guarantees equality and wondered what the Office of Public Instruction is doing to ensure that a child doesn't receive "less" than another. Ms. McCulloch replied that they will look into that issue. SEN. GLASER noted that there is a significant difference in the amount of money going to schools, and it is not always based on need. CHAIRPERSON ANDERSEN inserted that Montana is not asking Washington, DC to reduce the qualifications, but to give flexibility in meeting those requirements.

Dr. Kirk Miller, Chairman, Board of Public Education (BPE), presented a Power Point presentation to the Committee. A copy of the presentation is included as EXHIBIT 7. The presentation was divided into three categories: Montana Accreditation Standards, Teacher Licensure, and BPE's Involvement with the School Renewal Commission.

SEN. RYAN inquired why Montana has not adopted state-wide standards for accreditation. Dr. Miller responded that the American Federation of Teachers (AFT) on the east coast gives Montana low marks because it believes a curriculum should be set at the state level. The Montana BPE believes in keeping the immediate control within the local districts to best suit the needs of their students. Dr. Miller continued that the only solution is to publicize the Montana accreditation framework, so that the AFT can see that there are definite standards set.

OVERVIEW OF RESPONSIBILITIES AND GUIDELINES

Interim study assignment: HJR 37

Connie Erickson, Legislative Analyst, Legislative Services Division, explained that **Leanne Kurtz, Legislative Analyst, Legislative Services Division**, will conduct the study as explained on page 1 of the Proposed Work Plan (EXHIBIT 8). A copy of House Joint Resolution 37 is included as EXHIBIT 9. Ms. Kurtz will make a presentation on the study at the October 2003 meeting after consulting with all interested parties.

Peggy Trenk, Montana Association of Realtors, commented that the Association has convened a task force to focus on problems with the subdivision process and to assess what is currently working in the system.

SEN. GLASER shared a personal story in dealing with dividing his land and getting financing on the plots. He said that the bottom line is that the system is harming our communities and worth the Committee's time to assess the process.

The Committee then discussed the options of creating subcommittees to address the issues mentioned in the meeting, or to study them as a whole Committee. They also debated which issues were of greatest importance and impact. Connie Erickson added that the Committee can make the study as broad or narrow as they wish. CHAIRPERSON ANDERSEN asked if Leanne Kurtz would like the Committee members' input before the October meeting. Ms. Kurtz agreed that would be helpful. She added that there is a distinction between the Subdivision and Platting Act and the Subdivision and Sanitation Act. She encouraged the Committee members to focus their study plan to the issues specified in HJR 37. SEN. GLASER inserted that he has spoken with the sponsors of the Resolution and they would like to be involved in the study as well.

Rules, Procedures and Guidelines

Connie Erickson referred to the handout entitled "Rules, Procedures, and Guidelines For Interim Committees" (EXHIBIT 10), instructing the Committee to read the contents. She briefly addressed page 3 regarding proxy votes, stating that the interim committee would not have a need for proxy votes until later in the interim, but page 3 contains the guidelines. Ms. Erickson also covered page 4 regarding staff research responsibilities.

Ms. Erickson addressed "Legislator Claims for Reimbursement of Interim Activities" (EXHIBIT 11) and encouraged the Committee to read that document as well.

House Bill No. 94

Connie Erickson explained the bill to the Committee, stating that it provides for the following:

1. Allows for public participation in Committee meetings on any topic within the jurisdiction of the Committee; topics aren't required to be on the agenda to be addressed.
2. States that the Committee can take no action on an item unless previously posted on the agenda for public notice.

Staff responsibilities

Connie Erickson said that it is the staff's responsibility to ensure that all information is distributed in a timely manner to the Committee members as well as any interested persons. She sent around a sign-up sheet for each legislator's preference to be e-mailed material or whether they preferred to receive material by hard copy mail.

The Committee took a lunch break on their own from 12:05 p.m. until 1:10 p.m.

Committee Statutory Duties: Administrative rule review

Eddy McClure, Staff Attorney, Legal Services Office, Legislative Services Division, explained the issues and options for consideration as explained in the appendix of Exhibit 8. The Committee discussed the manner in which they would like to be informed of new rules being adopted by the agencies. Ms. McClure briefed the Committee regarding the Sherlock decision as explained on pages 2-3 of Exhibit 8, and how it affects the Committee's jurisdiction regarding the Board of Public Education. SEN. MANGAN ***moved*** to have the staff attorney send a brief synopsis of the new rules to each Committee member (Option 1 in appendix of Exhibit 8). If a member wants more information, the rule will be placed on a meeting agenda. The motion was ***seconded*** by SEN. BARKUS and passed by a unanimous vote.

Committee Statutory Duties: State agency monitoring

Connie Erickson explained the options for agency monitoring in the appendix of Exhibit 8. SEN. MANGAN added that the Committee had operated under Option 4 in the past and was satisfied with that system. SEN. MANGAN ***moved*** to adopt Option 4: As the Committee or individual members become aware of issues associated with the performance of an agency, the Committee shall request information from the agencies. The motion was ***seconded*** by SEN. SHEA and passed by a unanimous vote.

Review of legislation

Connie Erickson informed the Committee that no action was needed on this item until the end of the interim, when the review process will be explained in further detail.

Higher education responsibilities

Connie Erickson briefly explained the Postsecondary Education section on page 3 of Exhibit 8. She addressed the option to form a Postsecondary Education Policy and Budget Subcommittee, following last interim's organization. Ms. Erickson added that Sheila Stearns has been appointed as the new Commissioner of Higher Education. She also informed the Committee that Pam Joehler, Fiscal Analyst, Legislative Fiscal Division, will handle this area of study, but is unable to attend until the October meeting. CHAIRPERSON ANDERSEN wondered what higher education responsibilities were handled last interim. Ms. Erickson explained that an agreement addressing accountability had been made last session with the Board of Regents, but that there are no specific post-secondary studies for this interim. CHAIRPERSON ANDERSON asked if that agreement could be obtained for the Committee members' review, to which Ms. Erickson replied in the affirmative.

REP. DICKENSON had a question regarding the Legislature's jurisdiction over budget issues with the University System. Eddy McClure explained that the Legislature is authorized to inquire about funding received and spent, but it cannot direct the agency how to spend it. REP. DICKENSON asked if the Legislature has any input with the Board beyond financial issues.

Ms. McClure answered that the Legislature has the constitutional responsibility to account for all money coming in and out of the State, but the Legislature cannot condition money in an area of the Board's domain. The Committee addressed the possibility of the Finance Committee being involved and whether this Committee would like to divide into subcommittees to handle the issue. The Committee decided to leave the decision until the next meeting.

Local government responsibilities

Connie Erickson referred the Committee to the duties described on page 4 of Exhibit 8. She said that the government franchise law is a local government issue that could be addressed by the Committee. EXHIBIT 12 is a copy of the court case. Eddy McClure further explained the issue, found on page 5 of Exhibit 8. She referred to the e-mail by Geoff Feiss, General Manager, Montana Telecommunications Association (EXHIBIT 13), to show the support of the industry in an examination of the issue.

The Committee further discussed the option to form subcommittees, and which topics to assign to a subcommittee. SEN. GLASER expressed concern over budgeting available to support subcommittees, and Connie Erickson explained the budget. She said the Committee has been allotted \$32,000 for the interim, which provides for five one-day meetings and two two-day meetings, with one extra meeting available for an organizational meeting after next session. REP. FACEY interjected that he would like the Committee or a subcommittee to address the issue of health insurance for teachers. SEN. RYAN added that he would like the Committee to look at PPL-Montana's tax protest. It was decided that the Committee would be divided into three subcommittees to address each issue.

INTERIM WORK PLAN

K-12 Public School Renewal Commission

Connie Erickson reminded the Committee of the importance of monitoring the Commission. She said that in regard to the NCLB issue, the staff could do a series of briefs regarding the components and requirements for the education of the Committee. Ms. Erickson also stated that the federal law is straightforward and states cannot opt-out of participation. SEN. SHEA wondered if there is any legal recourse if the state is being penalized by participation. Eddy McClure said that options available are being researched. SEN. SHEA asked if it is the legislature's responsibility to research that issue, and Ms. Erickson assured her that the Office of Public Education will do a lot in that area. SEN. RYAN added that many school districts are changing their set-up to adjust to NCLB. SEN. SHEA asked if any federal revisions are being made to NCLB. Eddy McClure added that there have been many meetings to decide the role of the state versus the federal government and the states' responsibilities under their constitutions; it's still in the process.

REP. BALLANTYNE suggested that the titles of the three subcommittees be sent out to the Committee members, who could then choose with which subcommittee they would like to work. CHAIRPERSON ANDERSEN agreed and suggested that each member list their first choice and second choice of a subcommittee.

Approve interim work plan

The Committee decided to defer any action until the October 30 meeting, when subcommittees will be officially organized and the work divided.

Committee budget/meeting schedule

Connie Erickson directed the Committee to the schedule listed on page 6 of Exhibit 8. Due to a scheduling conflict, the October 23, 2003 meeting was moved to Thursday, October 30, 2003. The August 18-19, 2004 meeting was also moved to Sept. 14-15, 2004 to allow the Commission time to conduct their study and be able to report to the Committee. Being no objection to the changes, CHAIRPERSON ANDERSEN considered it a unanimous vote.

Adopt interim meeting schedule

SEN. MANGAN *moved* that the Committee approve the meeting schedule as stated. REP. DICKENSON *seconded* the motion, which was approved by a unanimous vote.

WRAP-UP

The Committee confirmed the date of next meeting: Thursday, October 30, 2003. It was decided that identifying agenda items for next meeting was inapplicable until subcommittee divisions have been made.

ADJOURNMENT

The meeting adjourned at 2:45 p.m. The next meeting is scheduled for Thursday, October 30, 2003.

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