



THE INTERIM

A Monthly Newsletter of the Montana Legislative Branch

Volume XV, No. 19

Helena, Montana

December 2006

IN THIS ISSUE

LEGISLATIVE COUNCIL	1
TRACKING THE 2007 LEGISLATIVE SESSION ON LINE	2
ENVIRONMENTAL QUALITY COUNCIL	2
REVENUE AND TRANSPORTATION COMMITTEE	2
STATE ADMINISTRATION AND VETERANS' AFFAIRS COMMITTEE	3
LEGISLATIVE FINANCE COMMITTEE	3
LEGISLATIVE REFERENCE CENTER	4
LAST ISSUE OF THE INTERIM UNTIL JUNE 2007	6
THE BACK PAGE	7
A SLIGHT STINGING SENSATION	7
INTERIM CALENDAR	12

LEGISLATIVE COUNCIL

Public policy expert to offer insights to Legislature and the public...As the Montana Legislature suits up for its 60th regular session, the public is invited to hear a renowned political scientist's thoughts on just what Americans think of their legislators and legislatures.

Alan Rosenthal, professor of public policy and political science at Rutgers Eagleton Institute of Politics, will discuss the cynicism surrounding state politics during a free, public forum at 7 p.m., Wednesday, Jan. 3, in the Lower Commons of Carroll College.

Rosenthal is unique among America's leading academic experts because of his focus on state legislatures and state politics. He will discuss his experiences with state legislatures throughout the country, keying on the role legislators play in protecting the legislative institution and resolving the clash of values, interests and claims that exist in the nation's diverse and pluralistic system.

Rosenthal's discussion at Carroll College comes on the tail end of a visit to Helena where he also will address the Montana Legislature at 1 p.m. in the House chamber. As he speaks to the Legislature, Rosenthal intends to give legislators a bit of a warning about the climate of cynicism they will work in and to offer some explanation of public perceptions and the realities of representative democracy.

"By way of welcoming them to legislative life, I will suggest that they are going to face a number of frustrations," Rosenthal said. "One of the frustrations they will face is that the public doesn't put much trust or confidence in the Legislature. I'll try to explain why that is, and that it is almost natural given the nature of the Legislature and the process."

During the free, public forum at Carroll, Rosenthal also will discuss why Americans think as they do about state government, and why legislatures can't escape a bad image.

But it's not all grim news when it comes to state legislatures. Despite the negativity, legislators and legislatures are doing remarkably well, Rosenthal said.

He'll offer a few suggestions on how to encourage a better appreciation of state government in action, which deserves and needs all the appreciation it can get, he said.

"I'll also probably suggest what responsibilities the Legislature and the legislators have in basically closing the gap between what the public thinks and how the institution works," Rosenthal said. "It's an opportunity for people to get a different perspective."

Montana's Legislative Council is sponsoring Rosenthal's visit to the Capital City. Sen. Bob Keenan, chairman of the council, said the discussion about cynicism will be of particular interest.

THE INTERIM

Montana Legislative Services Division
Room 110, State Capitol
PO Box 201706
Helena, MT 59620-1706
Phone: (406) 444-3064
Fax: (406) 444-3036

THE INTERIM is a monthly newsletter that reports on the interim activities of legislative committees, including the Legislative Council, the Environmental Quality Council, the Legislative Finance Committee, the Legislative Audit Committee, and interim legislative committees and subcommittees staffed by the Legislative Services Division. Information about the committees, including meeting schedules, agendas, and reports, is found at <http://www.leg.mt.gov>. Follow the "Committees" link or the "Interims" link to the relevant committee. The newsletter is posted on the legislative branch website on the first of each month (follow the "Publications" link).

Some are cynical about public officials and raise concerns about the legislative system not being open to citizens. Rosenthal will offer a more positive perspective.

"In Montana we truly have a citizen legislature," said Keenan, R-Bigfork. "Legislators in Montana are the public. It's only for 90 days out of every 700 days that we aren't at home working right next to our neighbors. Montana's Legislature is accessible and represents Montana."

Sen. Vicki Cocchiarella, vice-chair of the council, said Rosenthal can help paint a more accurate picture of how policy is enacted.

"Democracy in action isn't neat and orderly, and while Legislatures must deal with conflict, the public doesn't always like the process they see," said Cocchiarella, D-Missoula. "Mr. Rosenthal can help bring a better understanding and appreciation of the process."

Rosenthal served as director of the Eagleton Institute of Politics from 1974-1994. He has collaborated on activities with the National Conference of State Legislatures, the Council of State Governments and the State Legislative Leaders Foundation. Rosenthal has written multiple books on state legislatures and state politics.

TRACKING THE 2007 LEGISLATIVE SESSION ON LINE

Training Offered to State Agencies and the Public... The 60th regular session of the Montana Legislature begins Wednesday, Jan. 3, 2007. The Legislative Services Division is offering demonstrations of the Legislative Automated Workflow System (LAWS) to help state agencies and the public track legislation during the session. LAWS provides Internet access to timely legislative information before, during, and after a session, including up-to-date bill status, bill text, hearing schedules, agendas, journals, information on legislators, and more.

The demonstrations are scheduled for Dec. 8 and 20 and will be held in Room 102 of the Capitol. The Dec. 8 demonstration will be from 10 a.m. to noon, and the Dec. 20 demonstration will be from 2 p.m. to 4 p.m. The demonstrations are identical, so you may attend either one.

The LAWS website address for the 2007 legislative session is <http://leg.mt.gov/laws.htm>.

ENVIRONMENTAL QUALITY COUNCIL

Brochure explains rights of land owners and mineral developers... A wealth of information is now available to landowners who may be dealing with oil and gas development.

A brochure produced by a legislative committee is a primer to split estates, the situation that arises when one party owns the land surface while another owns the mineral rights.

"A Guide to Split Estates in Oil and Gas

Development" offers a legal and historical perspective on split estates, but also explains current law and the rights of the surface owner and the mineral developer.

The brochure was produced by a subcommittee of the Environmental Quality Council, a bipartisan legislative panel. The subcommittee included, among others, landowners, mineral developers, and lawmakers. In 2005 and 2006, the subcommittee held public meetings in Havre, Sidney, and Sheridan, Wyo., in addition to several meetings in Helena.

Much public testimony centered on what some perceive to be a lack of informed communication between mineral developers and surface owners. Many of those commenting said that communication needs to be improved.

The brochure provides a step-by-step analysis of what happens with oil and gas development, starting with finding out who owns the minerals under a piece of land. It explains the exploration process and offers suggestions on how the surface owner and mineral developer may reach an agreement on access, damage payments, and other issues that may arise.

The brochure is designed to be printed on 8 ½ by 14 inch paper. It can be downloaded from <http://leg.mt.gov/content/publications/lepo/hb790brochure.pdf>

Besides the brochure, the subcommittee proposed legislation for the 2007 session and published a report on its work. The EQC approved both the report and the proposed legislation. Those can be found at <http://leg.mt.gov/css/publications/lepo/2007hb790/hb790tofcm.asp>

Sen. Mike Wheat of Bozeman chaired the subcommittee. Other EQC members were Sen. Dan McGee of Laurel, the vice chairman; Rep. Norma Bixby of Lame Deer; Rep. Jim Peterson of Buffalo; Brian Cebull, who works for Nance Petroleum Corp. of Billings; and Doug McRae, a Forsyth-area rancher.

The at-large members were Connie Iversen, a landowner in Culbertson; Joe Owen, a Billings landman; Jim Rogers, a Colstrip land owner and supervisor for the Rosebud Conservation District; Lila Taylor, a Busby rancher and former lawmaker; Bruce Williams, a vice president for Fidelity Exploration and Production Co., based in Sheridan, Wyo.; and David Woodgerd of Stevensville, a former attorney for the state.

Also appointed to work with the subcommittee, but were non-voting members were Rep. Rick Ripley of Wolf Creek and Sen. Glenn Roush of Cut Bank.

More information on oil and gas development can be found on the web sites of the state Department of Natural Resources and Conservation, the state Board of Oil and Gas Conservation and the federal Bureau of Land Management. The brochure contains web addresses and other contact information for these agencies.

REVENUE AND TRANSPORTATION COMMITTEE

And the Bottom Line Is...The Revenue and

Transportation Committee held its final meeting of the interim on Nov. 15 to adopt the initial revenue estimates for the 2007 legislative session. Section 5-5-227, MCA, provides, in part:

(2) The [revenue and transportation interim] committee must have prepared by December 1 for introduction during each regular session of the legislature in which a revenue bill is under consideration an estimate of the amount of revenue projected to be available for legislative appropriation.

(3) The committee's estimate, as introduced in the legislature, constitutes the legislature's current revenue estimate until amended or until final adoption of the estimate by both houses. It is intended that the legislature's estimates and the assumptions underlying the estimates will be used by all agencies with responsibilities for estimating revenue or costs, including the preparation of fiscal notes.

The committee's estimates will be contained in House Joint Resolution 2, the Legislature's revenue estimating resolution.

Paul Polzin, director, Bureau of Business and Economic Research, University of Montana, described global, national, and state economic trends that may have a bearing on state revenue estimates. Polzin told the committee that China and India are becoming important participants in the global economy. In particular, China has become a significant player in the world metal markets, and China's demand for natural resources could have positive effects for Montana. He pointed out that the current natural resource boom in Montana may be more lasting because it is demand-driven rather than a response to short-term supply disruptions that have occurred in the past.

Legislative Fiscal Division and the governor's budget office each develop biennium revenue estimates for the general fund and certain nongeneral fund revenue sources. Based on the recommendations presented by each agency at the meeting, the LFD general fund estimates for the remainder of fiscal year 2007 and for the 2009 biennium differs with the budget office estimates by about \$30 million out of an estimated \$5.4 billion, or by just over a half percent.

The Revenue and Transportation Committee typically makes a motion to adopt the LFD's recommendations, including recommendations on certain nongeneral fund revenue (e.g., motor fuels taxes) and considers amendments based on presentations and committee discussion. This time around, the committee did not make any changes to the LFD's recommendations.

Total general fund revenue for fiscal years 2007, 2008, and 2009 are estimated to be \$1,762.4 million, \$1,797.8 million, and \$1,875.2 million, respectively. As more information becomes available, these estimates are likely to change as the Legislature considers HJR 2 during the 2007 session.

Proposal on access to tax information gains committee approval...The committee voted to recommend to the 60th Legislature a proposal (LC0043) that would provide for access to all tax information by the Legislative Fiscal

Division and the Office of Budget and Program Planning for developing revenue estimates and for other analytical purposes.

STATE ADMINISTRATION AND VETERANS' AFFAIRS COMMITTEE

Committee finishes work on public retirement proposals...At its Nov. 28 meeting, the State Administration and Veterans' Affairs Committee considered draft legislation dealing with public employees' retirement systems.

During the December 2005 special session, the Legislature amended 5-5-228, MCA, by requiring the committee to review legislative proposals that deal with some aspect of public employee retirement. Based on the review, the committee will prepare a report on each of the proposals that are introduced for legislative consideration. The report will include an analysis of the proposal and the committee's recommendation to adopt or reject the proposal. The report must be attached to the bill as it proceeds through the legislative process. The bill drafts considered by the committee on Nov. 28 are listed on the SAVA webpage under the heading, "For Nov. 28-29, 2006, Committee Recommendation or Sponsor Assignment".

A list of all of the bill drafts requested by state agencies, legislators, and stakeholders is available on the LAWS database at <http://leg.mt.gov/laws.htm>. Click on "Bill Information" and then on the "Subject" search option; either type in "Retirement" or scroll down to "Retirement", click on it and then on "Find". button. A list of retirement-related bill draft requests will appear. (The same process works for other subjects as well, such as "Military Affairs" or "State Government".) The LAWS website provides a lot of information about each bill, including the current text of the bill, hearing dates, bill status, and much more.

The committee has decided to meet before the end of the regular session, probably sometime in mid- to late April 2007. Information about the meeting will be posted to the committee's webpage when it is available.

For more information, contact Dave Bohyer, committee state, at (406) 444-3064 or dbohyer@mt.gov.

LEGISLATIVE FINANCE COMMITTEE

LFC meets in November...The Legislative Finance Committee met on Nov. 28. The agenda and links to the reports presented at the meeting are available on the Legislative Fiscal Division website at <http://www.leg.mt.gov/css/fiscal/default.asp>, or for more information contact Clayton Schenck at cschenck@mt.gov or (406) 444-2986.

The focus of the meeting was on the 2007 session budget procedures, the final consideration of a few committee bills, and updates on some key fiscal areas, including general fund revenue and spending "pressure points". The results of the meeting were not available at press time, but recommendations on appropriations subcommittee

procedures will be presented to a joint meeting of the House Appropriations and Senate Finance and Claims Committees on the first or second day of the session. These recommendations are intended to provide guidance to the appropriation subcommittees on a wide range of budget components and activities.

Budget training for legislators...The staff of the Legislative Fiscal Division will offer training early in the legislative session on a variety of budget topics. Some of the training is aimed specifically at appropriations subcommittees while other training is for the entire Legislature. Training sessions will range from an overview of the budgeting process to more specific matters such as performance budgeting tools that are being incorporated into the budget analysis of the 2009 biennium that will be presented to the Legislature. Legislators should watch and listen for announcements on training sessions that might be of interest to them.

Fiscal and agency overviews...Over the years, the Legislative Fiscal Division has prepared "fiscal pocket guide" pamphlets that provide information on several fiscal topics important to legislators and interested parties. The LFD has recently developed a new series of pamphlets, called "agency profiles", that provide an overview of each state agency's structure and funding, primary functions, historical expenditures, and other pertinent statistics. Each agency profile also includes information on how decision makers can effect change in the agency's expenditures. The fiscal guides and agency profiles are useful learning and reference resources for new and veteran legislators and other interested persons. For more information on training and LFD publications, contact Taryn Purdy at tpurdy@mt.gov or (406) 444-5383.

The legislative budget analysis for the 2009 biennium...From early fall through much of December, the LFD conducts an analysis of the executive budget proposal in preparation for the upcoming session. The results of this year's analysis will be published in the *Legislative Budget Analysis for the 2009 Biennium*. Volume 1 of this publication provides a comprehensive overview of the proposed budget as well as other fiscal matters surrounding the budget deliberation process. Volume 2 contains extensive information on revenue estimates, while the remaining two volumes provide a detailed analysis of the proposed budgets of the various state agencies. The agency budgets are grouped into the following sections:

- A--General Government and Transportation
- B--Health and Human Services;
- C--Natural Resources and Commerce;
- D-- Corrections and Public Safety;
- E--Education; and
- F--Long-Range Planning.

These sections correspond to the appropriations subcommittees that hold the initial hearings on agency budgets. LFD analysts are well-prepared to assist the

appropriations subcommittees and the Legislature in their deliberation of the budget as they work toward the passage of the general appropriations act (HB 2) and other key appropriations legislation.

Volume 1 will be distributed to all legislators on the first day of the session while other volumes or sections from a particular volume are available upon request.

LEGISLATIVE REFERENCE CENTER

Reporting isn't just done by the press...The Montana Legislative Services Division, in accordance with 5-11-210, MCA, serves as a clearinghouse for reports that are required to be made to the Legislature. Many of these reports come from within our division and are simply referred to as "interim reports." Here is a list of interim reports produced by LSD during the 2005-06 Interim:

Environmental Quality Council, Legislative Environmental Policy Office

Financing the Administration of Montana's Trust Lands - A Review and Analysis of Federal Granting Legislation and Current Financing Methods (Study Subcommittee)

This report discusses the current funding for the administration of trust lands through the use of revenues received from the 10 different land trusts. Federal granting legislation is reviewed and administrative costs are discussed in depth. The study resulted in one bill draft request that would substitute the use of Morrill Act trust lands revenue with another revenue source for administrative costs associated with the act.

HJR 10 Study of Wildland Fire Policy and Statutes (Study Subcommittee)

The EQC Study Subcommittee tasked a work group made up of wildland fire professionals and representatives of associations with an interest in wildland fire policy to conduct this study. The group met monthly to review and update all of the fire-related statutes in the Montana Code Annotated, to develop a state fire policy, and to discuss ways to deal with residential development in the wildland-urban interface. This report describes how the study came about, how the group was formed, how the group conducted the study, and how changes reflected in the resulting bill drafts were determined. The report also contains the subcommittee's study findings and recommendations.

Improving the State Superfund Process (Agency Oversight Subcommittee)

Concerns that Superfund sites across Montana have serious impacts on communities and community infrastructure and that the lack of timely Superfund site cleanup exacerbates those community impacts led to an interim study conducted by the Environmental Quality Council (House Joint Resolution 34). This report documents the EQC's analysis of these issues, and it includes the EQC's findings

and recommendations to improve the state's Superfund process.

Split Estates: The Relationship Between Surface and Minerals (HB 790 Subcommittee)

As mandated by House Bill 790 of the 2005 Legislature, this report examines the relationship between surface land and mineral owners involved in oil and gas development as well as issues related to coal bed methane

production. The subcommittee studied surface use agreements, bonding, and reclamation.

Water Policy Issues in Montana (Study Subcommittee)

State law has assigned to the Environmental Quality Council multiple oversight responsibilities related to water policy. This report discusses the water policy issues that the Study Subcommittee considered during the interim. These issues include: water quality monitoring, assessment, and improvement (TMDLs); revision of *Water Rights in Montana*, a water rights handbook; surface water and ground water interaction; domestic well exemption for the filing of a water right; an update of the water adjudication chronology; and the St. Mary Canal project in northern Montana.

White Paper for HJR 33 -- Contract Timber Harvest (Study Subcommittee)

Some states, such as Washington, have shown that contract logging and direct marketing of forest products can expand the customer bidding pool for state timber and yield an additional 10% to 20% in revenue to the state compared to the traditional method of selling timber. This white paper discusses the various elements of contract timber harvesting. Overall, the individual reports in the white paper supported a limited contract timber harvesting program. The potential revenue benefits to the trusts and the discussions associated with the white paper led to a bill draft request to implement a limited contract timber harvesting program that would allow the direct sale of timber from state trust lands in an amount not to exceed 10 percent of the annual sustained yield.

Legislative Services Division

Balancing Act: Regulation from a Public Protection Standpoint (Economic Affairs Interim Committee)

Two studies assigned to the Economic Affairs Interim Committee during the 2005-06 interim focused on determining when public protection is sufficiently necessary for the state to regulate. The Senate Joint Resolution 35 study of professional and occupational licensing and the Senate Joint Resolution 38 study of identity theft involved weighing the costs and the benefits of certain types of business regulation and of actions to deter identity theft, respectively. This final report includes recommendations from both studies for regulation. The report also briefly discusses the state's role in equity capital development and coverage of uninsured motorists.

Bringing Balance to the Force: Criminal Prosecution, Access to Civil Justice, and Public Defender Funding (Law and Justice Interim Committee)

This report summarizes the activities and recommendations of the Law and Justice Interim Committee and provides information on each of the following: (1) a bill to stabilize state funding of county attorney salaries and improve state prosecution and crime lab services; (2) a bill to coordinate and maintain resources to assist people representing themselves in civil legal matters; and (3) a bill to adjust county funding for the statewide public defender system.

Defining and Funding a Basic System of Free Equality Public Elementary and Secondary Schools (Quality Schools Interim Committee)

The final report of the Quality Schools Interim Committee provides a history of school funding, including lawsuits that have resulted in legislative changes to funding formulas. The report details the work of the interim committee and its consultants on needs assessments, measures of financial adequacy, Indian education, staffing issues, and the components and new formulas for funding schools. The report also lists materials available from the meetings along with draft bills reviewed by the committee on school funding and school health insurance.

Distributed Energy Generation: Benefits, Barriers, and Best Practices (Energy and Telecommunications Committee)

Senate Joint Resolution 36 requested a study of any benefits, barriers, and best practices relating to the expansion of distributed energy generation in Montana. A white paper on the study request discussed existing policies and incentives for DEG and described the crossroads at which DEG now stands. The white paper also evaluated concerns of safety, market receptivity, and local utility prerogative. It also examined the nationwide development of "interconnection" standards ("best practices"), which lie at the heart of DEG's prospects, and looked at the experiences of other states with expanding DEG. The white paper made no explicit recommendations.

Don't Mess With Taxes: HJR 44 Study of the Taxation of Certain Oil and Natural Gas Property and Other Topics Considered by the Revenue and Transportation Interim Committee (Revenue and Transportation Interim Committee)

This report contains information presented to the Revenue and Transportation Committee during its study of the taxation of certain oil and natural gas property (House Joint Resolution 44). The report includes an overview of property taxation in general; profiles of oil and natural gas companies included in the study; a brief history of the regulation of natural gas; the valuation methods used in other states to assess certain oil and natural gas property; and options for revising the property taxation of oil and natural gas property.

The report also summarizes other topics considered

by the committee, including an overview of business income taxation; revenue estimating and access to tax information; rule review related to the taxation of final 1031 exchanges and to the taxation of little cigars; federal reauthorization of transportation funding; highway safety, and state-tribal gasoline tax agreements.

Economic Development and Other State-Tribal Issues in Indian Country (State Tribal Relations Interim Committee)

The final report of the State-Tribal Relations Interim Committee focuses on: the committee's liaison role with the tribes; efforts to encourage state-tribal cooperation; and a study on economic development in Indian country. As part of its liaison duties, the committee visits two reservations each interim. This interim the committee went to the Fort Peck and Blackfeet reservations. The committee heard from the Governor's American Indian Nations (GAIN) Council at every meeting. Other reports dealt with Indian Education for All and concerns about gambling and probation and parole follow-through on reservations. Economic development reports showed the opportunity and the need to expand economic development on reservations.

Final Report of the Education and Local Government Interim Committee (Education and Local Government Interim Committee)

This report summarizes the interim activities of the Education and Local Government Interim Committee. The committee formed two subcommittees to accomplish its assigned study and fulfill its statutory responsibilities. The Postsecondary Education Policy and Budget subcommittee acted as the Legislature's liaison with higher education, and the Local Government subcommittee worked primarily on land use issues and directed a working group in conducting the committee's assigned study, Senate Joint Resolution 11, which resulted in consensus-based legislation revising

zoning, annexation, and subdivision statutes. Following the dissolution of the Quality Schools Interim Committee during the interim, the full committee addressed K-12 education.

Resources Issues in Mental Health Crisis and Child Protection (Children, Families, Health, and Human Services Interim Committee)

The Children, Families, Health, and Human Services Interim Committee conducted two interim studies as directed by Senate Joint Resolution 37 (study of the child protection system) and Senate Joint Resolution 41 (study on mental health crisis services). This report includes information on the two studies, legislative proposals, and a summary of other matters considered by the committee during the interim.

Reports available on request. To obtain a copy of any of the reports, contact Kevin Hayes, publications coordinator, at (406) 444-3067 email khayes@mt.gov. If you are interested in a report, but don't want a copy, you can visit the Legislative Library, which has copies of all the interim reports, as well as other reports required to be delivered to the Legislature by executive agencies. Many reports are also available on the Internet. You can access state agency websites at <http://mt.gov/govt/agencylisting.asp> to see if reports are available online. If you have any questions, please contact library staff at (406) 444-3598 or leglib@mt.gov.

LAST ISSUE OF THE INTERIM UNTIL JUNE 2007

Interim off for the holidays and then some... This is the last issue of the legislative branch newsletter for the 2005-06 interim. Publication of the newsletter resumes June 2007.

THE BACK PAGE

A SLIGHT STINGING SENSATION Body Art Leaves Its Mark

By Lisa Mecklenberg Jackson
Legislative Staff Attorney

Many a dangerous temptation comes to us in gay, fine colours that are but skin deep." Matthew Henry (1662-1714)

THE DEED

Everyone told me it would hurt. Especially there.

So it was with some trepidation that I walked into the shop on that hot afternoon last July. But I figured that after surviving repeated pummelings from three older brothers growing up, numerous sports-related injuries, and the birthing of twins, I could take the pain. And I did have a pencil in my pocket to bite on just in case the discomfort was too extreme.

A short 45 minutes later, I walked out of the shop, mission completed. On the top of my right foot four miniature dog paw print tattoos glowed darkly amidst the red skin. My first tattoo! And it barely even hurt. I would classify it as more of a slight stinging sensation. After the design sketched on my foot met with my approval, I moved into the artist's chair where he filled in the ink on the artwork with his rapid-fire tattoo gun. As he worked, we kept up a running conversation regarding wild designs he had done, the necessity of proper care of the tattoo, and how he came to be a tattooist by trade. It was all very interesting; in fact, so fascinated was I that I decided to write this article on the subject of tattooing.²

HISTORY OF TATTOOING

The word tattoo comes from the Tahitian tatu meaning 'to mark something'.³ Although controversial, many believe

tattooing originated in Egypt, from the time of the Pharaohs and the construction of the Great Pyramids.⁴ The Mayans were known to have tattoos, as were the Aztecs and Incas. The ancient Polynesians are thought to be the most responsible for the distribution of tattooing.⁵ However, the first known tattooed man was Otzi the Iceman, a 5,000-year-old mummified man uncovered in the Australian Alps in 1991.⁶ He was believed to have 57 tattoos for treatment of arthritis in his ankles, knees, and lower back.⁷

Ritual and tradition have been common and constant factors in tattooing. In Borneo, for example, women bore a symbol on their arms to denote their specific skills, thus increasing their potential for marriage, while tattoos worn around the fingers and wrist were said to ward off illness.⁸ Clan or society membership have also often been symbolized by tattoos throughout history.⁹ It has also been believed that the wearer of an image calls the spirit of that image. For example, the ferocity of a tiger would belong to the person bearing this tattoo.

SPY, CRIMINAL, SOCIAL STATUS?

In ancient Greece, the tattoo was used to mark spies while the Romans used the tattoo to mark slaves and criminals.¹⁰ In western Asia, the Ainu people used tattoos to signify social status. The Ainu were said to have carried the art to Japan where it became a mark of religion. The Polynesians employed tattoos to denote status, tribal communities and rank. They carried this art to New Zealand where a facial tattoo, Moko, was developed.¹¹ The Danes, Saxons and Norse were often tattooed with their family crest.

In 787 AD, Pope Hadrian banned tattooing, although it was still practiced in Britain until the Norman invasion of 1066. It then vanished from Western culture until the 17th century. Tattooing, however, thrived in Japan, where it progressed from a method to mark criminals to an aesthetic form.

⁴ Ibid.

⁵ "The History of Tattooing." Retrieved November 23, 2006, from <http://library.thinkquest.org/CR0211623/historyt.html>.

⁶ "The History and Meaning of Body Art is Hardly Superficial." Retrieved November 27, 2006 from <http://www.signonsandiego.com/news/science/20060503-9999-lz1c03body.html>.

⁷ "History of Tattooing." Retrieved November 25, 2006, from <http://library.thinkquest.org/CR0211623/historyt.html>

⁸ "The History of Tattooing." Retrieved November 22, 2006, from <http://hobby.rin.ru/eng/articles/html/303.html>

⁹ Ibid.

¹⁰ Ibid.

¹¹ "Attitudes About Tattooing." Retrieved November 26, 2006, from <http://www.msu.edu/~krcmari1/individual/attitudes.html>.

¹ It is estimated that one in ten Americans has, or has had, at least one tattoo with almost five in ten between the ages of 18 and 29. "The History and Meaning of Body Art is Hardly Superficial." Retrieved November 27, 2006 from <http://www.signonsandiego.com/news/science/20060503-9999-lz1c03body.html>.

² My research for this article unearthed many other interesting tidbits of information. For instance, fashion has had a significant impact on tattooing over the years just as it has affected clothing styles. Tony Lawrence, "A Tattoo is for Life: A Sociological Study of the Changing Significance of Tattoos." Retrieved November 25, 2005, from <http://www.tattoo.co.uk/edumaterial.htm>. There has been a noticeable change in the designs people are getting now compared to 50 years ago. Tribal, Celtic, oriental and contemporary tattoos are now very popular compared to very simple designs such as skulls, roses, hearts, and animals done in the 1930s, 40s, 50, and 60s. This change in style has been mainly due to the introduction of better equipment and to the customer demands for particular new designs. Ibid.

³ "The History of Tattooing." Retrieved November 22, 2006, from <http://hobby.rin.ru/eng/articles/html/303.html>.

Around 1700, the Japanese body suit¹² originated, primarily among the middle classes.

Tattooing was re-introduced to Western culture by the sailor and explorer William Dampier. In 1691 he brought to London Prince Giolo, a heavily tattooed Polynesian. He was a profitable subject, being used mostly for exhibition, as tattoos had not been seen in Europe for 600 years.¹³

In the late 1700s, Captain James Cook brought to London another Polynesian, Omai. Due to the success of the art displayed by Omai, tattooing became popular with the upper classes on a small scale.

In those days, tattooing was a slow and painful procedure, being completely done by hand. Based on Thomas Edison's earlier invention, Samuel O'Reilly patented the first electric tattoo machine in 1891.¹⁴ This increased the availability of tattooing and made it a much more affordable procedure. Since tattooing was now common, the upper classes turned away from it.

By the start of the 20th century, tattooing was beginning to be viewed as "sleazy".¹⁵ Heavily tattooed people, previously admired, were now appearing in circuses and freak shows, the most famous being Betty Broadbent of Ringling Brothers Circus.¹⁶ Tattooing was forced underground as it became socially unacceptable. Training was in short supply and magazines showing tattoos unheard of.

THE AMERICAN STYLE TATTOO

Chatham Square in New York City was the birthplace of the American style tattoo.¹⁷ O'Reilly opened a studio there, later

¹² The Japanese "body suit" of tattoos was created in the 18th century as a response to an edict permitting only the Imperial family and very wealthy to wear rich or elaborate clothing. Retrieved November 25, 2006 from <http://www.signonsandiego.com/news/science/20060503-9999-lz1c03body.html>.

¹³ "A Brief History of Tattoos." Retrieved November 25, 2006, from <http://www.powerverbs.com/tattooyou/history.htm>.

¹⁴ Samuel O'Reilly was the inventor of the modern rotary tattoo gun, which he patented in 1891. O'Reilly's machine was based on the rotary technology of Thomas Edison's autographic printer, the first practical application of an electric motor. Modern tattoo machines use electromagnetic coils. O'Reilly subsequently built up a business selling the machines. He was at the time a tattoo artist working in New York. Wikipedia. Retrieved November 27, 2006, from http://en.wikipedia.org/wiki/Samuel_O'Reilly.

¹⁵ Merriam Webster defines "sleazy" as marked by low character or quality.

¹⁶ "The History of Tattooing." Retrieved November 22, 2006, from <http://hobby.rin.ru/eng/articles/html/303.html>.

¹⁷ At the turn of the century Chatham Square was an entertainment center attracting working-class people with money. Husbands tattooed their wives with examples of their best work. They played the role of walking advertisements for their husbands' work. At this time, cosmetic tattooing became popular, blush for cheeks, coloured lips, and eyeliner. "A Brief

taking on Charlie Wagner as an apprentice. After O'Reilly's death, Wagner joined forces with Lew Alberts to begin supplying equipment. Alberts is known for his design of tattoo flash art.¹⁸ Chatham Square flourished while the art of tattooing declined in popularity across the rest of the country. With the onset of the World War I, images of bravery and wartime icons became the order of the day.

The arrival of prohibition and the depression of the 1930s caused Chatham Square to lose its appeal, with the focus shifting to Coney Island. Tattoo studios opened in towns with military bases, then the largest source of business. The primary tattoo subject: places the person had traveled.

World War II again caused the popularity of tattooing to decline as they were beginning to be seen as the mark of juvenile delinquents, bikers and the many other entities society attempted to cast out.¹⁹

In the 1960s, an outbreak of hepatitis, coupled with media horror stories of blood poisoning and disease, caused by the failure of most studios to properly sterilize equipment, prompted tattooing to fall into further disrepute. The previously booming businesses of Times Square and Coney Island were closed after violations of new health codes. For many years, tattoos were nearly impossible to get as the procedure was illegal in New York. Moreover, with the reputation now surrounding them, very few people wanted tattoos.

In the late 1960s, Lyle Tuttle²⁰ managed to change many of the negative views surrounding the art of tattooing. He tattooed celebrities, mostly female, and became a vocal media advocate for the art form. Now tattooing is very popular and considered mainstream.²¹ Even librarians are

History of Tattoos." Retrieved November 27, 2006, from <http://www.powerverbs.com/tattooyou/history.htm>.

¹⁸ The flash, or tattoo design, is simply a sketch or a piece of line art that can be used to create a tattoo. Flash may be shown in color or in black and white and they are displayed in the tattoo parlor either in books or along the walls. Retrieved November 30, 2006, from <http://www.answers.com/topic/tattoo>.

¹⁹ "The History of Tattooing." Retrieved November 22, 2006, from <http://hobby.rin.ru/eng/articles/html/303.html>.

²⁰ Lyle Tuttle was the subject of numerous documentaries on the tattooing and later was photographed by the world-renowned photographer Annie Leibowitz for *Rolling Stone* Magazine. With the popularizing of tattooing many celebrities came for his services that included Janis Joplin, Cher, and Peter Fonda. As tattooing emerged from an underground art form to the mainstream, Lyle worked with the San Francisco Department of Health to come up with modern and standardized techniques for the sterilization of tattooing equipment. Retrieved November 30, 2006 from <http://www.lyletuttleattooing.com>.

²¹ "Just like clothing, tattoos are a means of decorating nature's mass-produced plain human body." Tony Lawrence, "A Tattoo is for Life: A Sociological Study of the Changing Significance of Tattoos", Retrieved November 25, 2006, from <http://www.tattoo.co.uk/edumaterial.htm>.

doing it!²²

MARKED IN MONTANA

Tattooing is now legal in all 50 states.²³ In some fashion, Montana has been regulating tattoo establishments since 1995.²⁴ These regulations came under scrutiny in 2005 when Rep. Dave Lewis introduced legislation²⁵ that would require owners of tattoo and body piercing businesses to obtain an annual, renewable license²⁶ and subject the businesses to state inspections and regulations administered by the Montana Department of Public Health and Human Services (DPHHS).²⁷ Previously, the regulation of tattooing establishments was generally governed by administrative rules under DPHHS, which allowed the department to certify operators for compliance to the rules but gave no authority to collect fees. The state also only had vague authority to enforce the administrative rules, making compliance essentially voluntary.²⁸ In addition, these rules did not give

²² The Modified Librarian, Retrieved November 24, 2006, from <http://www.bmeworld.com/gailcat/>. A 2004 Harris poll found that 34 percent of Americans thought tattoos made them appear sexy and 29 percent thought they made them attractive. "The History and Meaning of Body Art is Hardly Superficial", Retrieved November 27, 2006 from <http://www.signonsandiego.com/news/science/20060503-9999-lz1c03body.html>.

²³ Oklahoma was the last state to legalize tattooing which it just did on November 1, 2006. "Tattooing to Become Legal in Oklahoma", Retrieved October 30, 2006, from <http://news/findlaw.com>. Requirements for a license in Oklahoma include professional experience in tattooing or completion of an approved apprentice program. There is also a standardized test and requirements for certificates in CPR, first-aid, and in dealing with blood-borne pathogens. *Ibid*.

²⁴ Montana Code Annotated 50-1-202, 50-2-116 (1995) and Montana Administrative Rule Title 37, Chapter 112 (1998)

²⁵ SB 137, text available at <http://data.opi.mt.gov/bills/2005/billhtml/SB0137.htm>. The key provisions of SB137 include required licensure of tattooist and body piercers; authorization for DPHHS to set standards, safety, licensure, enforcement, and fee structure for tattooists and body piercers; allowance of local jurisdictions to establish and run local programs (with certain restrictions); and the funding of the program through the collection of license fees.

²⁶ Businesses performing both tattooing and body piercing will need two licenses; the second for a reduced fee.

²⁷ According to Ruth Piccone, body art program manager with DPHHS, the main problems with the previous tattoo regulations were no provision for a licensing program, enforcement was difficult, and the regulations lacked training requirements. Carollynn Bright, "Piercing and Tattoo Guidelines", *Independent Record*, Oct. 24, 2006.

²⁸ According to testimony submitted by Bill Woolsey, Master Tattoo Artist, in a hearing before the Montana Senate Public Health, Welfare and Safety Committee on January 17, 2005, "Montana also has a real problem with non-certified non-professional people tattooing and piercing out of their homes and/or garages. Many of which have learned primitive tattooing in prison and turn to it on the outside as a quick way to make a buck. Without the knowledge of blood born diseases, the proper professional training or equipment they are a high risk for anyone who may receive a tattoo or piercing. At present, there are no rules or regulations to prevent or stop this type of practice". Minutes available from the Montana Legislative Website,

the department the authority to develop rules for body piercing and branding, relatively new techniques of permanent body marking.

With the passage of SB 137 in April 2005,²⁹ DPHHS officials went to work, meeting with body art and piercing professionals, as well as health officials, to develop rules implementing the principles embodied in SB 137.³⁰ The proposed rules cover such topics as appropriate sanitation measures,³¹ training requirements for tattoo and body piercing operators and artists, and inspection and licensing requirements. Under certain circumstances, the rules would allow modified requirements for establishments that pierce only ear lobes.³² Also under the proposed rules, businesses will be required to purchase licenses for \$135 and renew those annually.³³ In order to qualify for those licenses, tattoo artists and body piercing professionals must, among other things, attend annual training on subjects such as the control of blood-borne pathogens and pass regular health inspections.

Under the proposed rules, DPHHS representatives must conduct yearly inspections of licensed businesses. The department could impose a fee of \$150 for a third or subsequent follow-up inspection if a violation is identified during the first inspection and it is not remedied by the second visit. Ultimately, the department can refuse to issue licenses to businesses that don't comply with the requirements and they can cancel them.

Retrieved November 30, 2006, from <http://leg.mt.gov/css/sessions/59th/default.asp>. Go under Committees, then Public Health, and then pick by hearing date.

²⁹ Montana Code Annotated 50-48-101 through 50-48-209 (2005).

³⁰ A copy of the proposed rules are available on the DPHHS website, <http://dphhs.mt.gov/legalresources/ruleproposals/37392.pdf>.

³¹ New sections regarding sterilization of equipment have been added to the regulations.

³² Those establishments, however, must comply with jewelry and equipment sterilization requirements, as well as regulations regarding hand hygiene. Care should also be taken to identify a reputable tattoo parlor that follows the guidelines set forth by the Association of Professional Tattooists (APT). According to the APT, the tattooists should follow these precautionary measures: have the client fill out consent forms before beginning the procedure; wash and dry their hands immediately before and after working on the customer; wear latex gloves at all times; only use instruments that have been sterilized in an autoclave; clean all surfaces with a disinfectant or biocidal cleanser; and dispose of used tissues and other waste material in a special leak-proof container to limit the transmittal of blood-borne diseases. Retrieved November 30, 2006, from <http://www.answers.com/topic/tattoo>.

³³ The fees collected for licensing and follow-up inspections will be directed back into the body-art program to help pay for increased inspections, etc. The Fiscal Note for SB137 estimates annual revenue generated for licensing and registration fees to be \$17,375. You can access the Fiscal Note at [http://laws.leg.mt.gov/pls/laws05/law0203w\\$.startup](http://laws.leg.mt.gov/pls/laws05/law0203w$.startup) by searching for SB137.

The public was invited to comment on these proposed rule changes to Montana's tattoo and body piercing laws at a DPHHS-sponsored hearing on October 25, 2006. Approximately a dozen interested parties commented at the DPHHS meeting. And a quite, literally, colorful group they were! The majority testified in favor of increased regulation of tattooing and body piercing and asked to see stronger enforcement of the regulations.³⁴ They also wanted to see the rules include provisions to prevent those allowed to do ear piercing from also being able to pierce other parts and penalties for doing so. There was, however, some concern with the department's proposed annual license fee of \$135. According to one commenter, of the approximately 1,100 salons in Montana, 350 of them do ear piercing, and these were not included in the count when the department set the fee.³⁵ The commenter stated the fee needs to be revised to a lower amount based on the inclusion of these businesses. She also felt that these businesses doing only ear piercing should be charged a lower license fee than tattoo artists based on the minor piercing they do.³⁶

KIDDIE SEE, KIDDIE DO?

The war surrounding tattoos and body piercings is typically fought between parents and their children, but the same debate has entered state legislatures in recent years. Advocates of prohibiting minors from getting tattoos or piercings want state laws to reflect that parents or guardians have the last word on whether adolescents can alter their appearance in this way.

A number of states have laws prohibiting these practices by minors without written parental consent. As of January 2006, 37 states have laws prohibiting adolescents from getting tattoos, and 29 states have laws against body piercing.³⁷ Twenty-six states have laws that prohibit both. Many of the laws across the country establish financial penalties, prison time, or both for violators.³⁸

In Montana, section 45-5-623, MCA, prohibits anyone from knowingly tattooing a child under the age of majority without the explicit in-person consent of the child's parent or guardian.³⁹ Upon conviction, violators will be either fined a

maximum of \$500, imprisoned for up to six months, or both. Those convicted of a second offense will either be fined a maximum of \$1,000, imprisoned for up to six months, or both.⁴⁰

The new rules proposed by DPHHS address body piercing of minors. Some of those at the Oct. 25 hearing were concerned, however, that the rules were not stringent enough. One commenter noted that the rules need to specify an age limit for body piercing and tattooing.⁴¹ Read into the record at the hearing was a letter from a Great Falls elementary school principal concerned with the facial and tongue piercings of young children. He stated that it is an issue from a personal hygiene perspective as he often sees students with infected noses or lips from improper care.

Perhaps these concerns could be best alleviated by following a statute such as Idaho's.⁴² Idaho Statute 18-1523 prohibits the tattooing, branding, or body piercing of minors under the age of 14. Period. Idaho also prohibits the tattooing, branding, or body piercing on anyone between the ages of 14 and 18 without the written informed consent of the minor's parent or legal guardian. Written informed consent must be executed in the presence of the person performing the act or an employee or agent of that person.⁴³

As for DPHHS and their proposed rules, the department will evaluate all comments received at the hearing and then decide whether to make any changes to the proposed rules based on those comments. The department is hoping for an implementation date of January 1, 2007.⁴⁴

There is, thus far, one bill request submitted which address tattooing in the 2007 session.⁴⁵ I suspect there may be more.

As for me, I still remain fascinated by tattoos. Will I ever get another? Probably not. But it's reassuring to know that I will be in safe, highly-regulated hands if I do. And by the way, when the tattoo guy was done with my foot, he told me I was very tough and must have a high pain threshold as I barely even flinched as he worked on the sensitive area on the top

³⁴ "The public trusts shops to be safe and automatically assumes that they are legal, safe and meet state requirements, and do not understand that not all procedures are being regulated by the state. The Department needs to enforce the regulations and enforce compliance and shut down illegal operations." DPHHS Presiding Officer's Report, Nov. 17, 2006, page 2.

³⁵ DPHHS Presiding Officer's Report, Nov. 17, 2006, page 3.

³⁶ Ibid. "In some small towns the local salon is the only place to get an ear piercing. A high fee would increase the amount of such piercing which would encourage many to try to do their own piercings at home with a needle." Ibid.

³⁷ National Conference of State Legislatures, 2006.

³⁸ Ibid.

³⁹ Montana Code Annotated 45-5-623 (2005).

⁴⁰ Ibid.

⁴¹ DPHHS Presiding Officer's Report, Nov. 17, 2006, page 2.

⁴² Idaho Statute 18-1523 (2006). Retrieved November 28, 2006, from <http://www3.state.id.us/cgi-bin/newidst?scid=180150023.K>.

⁴³ Similarly, Wyoming Statute 14-3-107 prohibits anyone from tattooing or performing body art on a person under the age of majority, except with the consent of the person's parent or legal guardian who is present at the time the procedure is performed.

⁴⁴Carolynn Bright, "Piercing and Tattoo Guidelines", Independent Record, Oct. 24, 2006.

⁴⁵ LC0481. Available at [http://laws.leg.mt.gov/pls/laws07/law0203w\\$.startup](http://laws.leg.mt.gov/pls/laws07/law0203w$.startup).

of my foot. Ha! Guess those big brother pummelings were good for something after all!

SIDEBAR

Ebb and Flow of the Colors

Throughout human history, body art has waxed and waned, affected by almost every conceivable influence:

- The Catholic Church suppressed tattooing for centuries in medieval Europe as a defilement of the human body.
 - The Japanese “body suit” of tattoos was created in the 18th century as a response to an edict permitting only the Imperial family and very wealthy to wear rich or elaborate clothing.
 - Victorian England frowned upon tattoos. But in 1771, Captain James Cook returned from his epic exploration of the South Seas with a heavily tattooed Polynesian prince named Omai, who quickly became an illustrated sensation.
 - British aristocracy embraced tattoos as a colorful way of differentiating themselves from the lower classes until electric tattoo machines made the practice easy and cheap.
 - A hepatitis scare in the 1960s, fueled by cases of tattoo clinics using unsterilized needles, significantly quashed the popularity of tattoos in the United States for several decades.
 - These days, of course, tattoos are again very popular and highly visible, as are body piercings from head to toe. These practices may--and probably will--change or fade, but body art will always leave its mark.
-



INTERIM CALENDAR

UNLESS OTHERWISE SPECIFIED, ALL ROOM DESIGNATIONS ARE IN THE CAPITOL

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
December 2006						2
3	4	5	6	7	8 LAWS demonstra- tion, Room 102, 10 a.m. to noon	9
10	11 Legislative rules committees, morning Committee chair training, morning Legislative Audit Committee, Room 172	12 Legislative Audit Committee, Room 172	13	14	15	16
17	18	19	20 LAWS demonstra- tion, Room 102, 2 p.m. to 4 p.m.	21	22	23
24	25	26	27	28	29	30
31						

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
<h1>January 2007</h1>						
	1	2	3 60th Legislature convenes, noon Alan Rosenthal address to the Legislature, afternoon Legislative rules workshop, afternoon	4 Law school for legislators, morning	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

LEGISLATIVE SERVICES DIVISION
PO BOX 201706
HELENA MT 59620-1706