



THE INTERIM

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LEGISLATIVE INFORMATION OFFICER HIRED

The Montana Legislative Services Division has hired Gayle Shirley to fill a newly created position as legislative information officer. Shirley has worked as a public information officer for the state of Montana for the past seven years, first for the Secretary of State's Office and then for the Department of Public Health and Human Services. She began working for the legislative branch Oct. 15.

"We're pleased to have someone with Gayle's experience to help us develop this new position," division director Susan Fox said. "With her help, we hope to expand our civic education efforts so that we can encourage better public understanding of and participation in the legislative process."

The legislative information officer is a nonpartisan position created at the request of the Legislative Council and authorized by the 2007 Legislature.

"The council recognized that there's a need for more resources for legislators," Fox said, "including information on media relations, staff services, research services, ethics, the legislative institution, and others. This position will be all about outreach and education, for legislators, media, and the general public."

Shirley will be responsible for developing resources for and coordinating training of legislators and will serve as a contact in the legislative branch for news media. She will also help to develop content for the legislative website, to enhance public access to the legislative process.

"I'm excited about the opportunity to help create this position and educate Montanans about the important work the Legislature does on their behalf," Shirley said. "The legislative process can be cumbersome, but it thrives on public participation and diverse ideas and opinions. It will be an honor to serve as a liaison between the legislative branch and the people of Montana, to help bring people closer to their government."

Shirley graduated from the University of Montana with a bachelor's degree in journalism. She has worked as a reporter and editor for newspapers in Missoula and Helena, an editor for a book publishing company, and a freelance writer. She is the author of a dozen nonfiction books for children and young adults.

Shirley can be contacted at (406) 406-444-2957 or gshirley@mt.gov.

WATER POLICY COMMITTEE

Committee adopts aggressive work schedule...The 2007 Legislature passed HB 304 which, for this interim, created a committee that will conduct a detailed analysis of water quantity, quality, and use in Montana.

Among other things, the committee is examining water policy related to surface and ground water in closed basins, including management practices such as mitigation

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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).

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and aquifer recharge. Water quality also will be analyzed.

The committee is charged with gathering information necessary to make sound and well-reasoned policy decisions to guide the management and use of Montana's ground water, including but not limited to identifying gaps in the data needed to determine appropriate locations to conduct artificial recharge of ground water and presenting long-term goals and policy proposals for ground water management.

The requirements of HB 304 are complex, scientific, and multi-faceted. In order to complete the detailed analysis required by the legislation, the committee has adopted an aggressive work plan that includes holding monthly meetings in various closed river basins in western Montana; HB 304 specifically directed the committee to study water policy associated with closed river basins.

Sen. Jim Elliott is the committee chair and Sen. Bill Tash is the vice chair. Other senate members of the committee are Larry Jent and Gary Perry. House members are Scott Boggio, Ed Hilbert, Jill Cohenour, and Bill McChesney.

August meeting sets the pace...In August, the Water Policy Committee met in Bozeman to review water quality information. Scientists and panelists discussed current ground water quality laws; water quality testing requirements for mitigation and aquifer recharge; nutrient and microbial trends in ground water in the Gallatin Valley; basic ground water chemistry; coordination of surface water and ground water quantity and quality permitting activities; appropriate level of water quality analysis associated with storage or introduction of surface water to ground water resources; cumulative impacts for water quality; alternative water quality standards; and economic development and growth with protection of senior appropriators and water quality.

The committee also toured several water-related facilities in the Gallatin Valley, including public and private water supply and sewage treatment systems, a facility that serves as an aquifer storage and recovery water supply system and provides water quality testing, and a gravel pit.

If it's September, it must be T-Falls...At its September meeting in Thompson Falls, the committee heard presentations on basic ground water modeling techniques and processes, monitoring to determine effectiveness of mitigation and aquifer recharge plans, and cumulative impact analysis for water quantity.

The committee also reviewed Montana sanitation and platting laws; water availability determinations in subdivision review; water right enforcement; wells that are exempt from the water right permitting process; measurement of exempt well water usage; and alternatives for water in highly appropriated areas. The committee learned about Milltown Dam water rights; the activities of the Clark Fork Task Force; and water rights compact negotiations with the Confederated Salish and Kootenai Tribes.

The Department of Natural Resources and Conservation discussed the implementation of HB 831 (legislation that revises water use laws in closed basins), and the Montana Bureau of Mines and Geology provided an update on the HB 831 case study.

Choteau in the fall...At the October meeting in Choteau, the committee considered a variety of topics related to the Teton River Basin, including information on a source water protection program and updates on the adjudication progress and on the application review process for subdivisions. The committee discussed the review process for water right permit applications and changes in appropriation rights.

Other topics included reserved water rights compact negotiations with the Blackfoot tribe; costs to develop and provide water in subdivisions (exempt wells vs. one large well); the necessity of providing an exemption from the water right permitting process; the water reasonably necessary for various beneficial uses associated with exempt wells; options and alternatives for enforcing statutory limitations with exempt wells or certificates; and hydrogeologic analysis necessary to determine consumptive use on a per-acre basis or per-use basis.

The DNRC and the Bureau of Mines and Geology provided updates on their HB 831 activities.

Information available electronically...The committee has received volumes of information. Copies of the minutes, PowerPoint presentations, committee work plan, and papers are available on the Water Policy Interim Committee website at http://leg.mt.gov/css/lepo/2007_2008/water_policy/default.asp.

Hamilton meeting scheduled for December...The next meeting is tentatively scheduled for Dec. 19 and 20 in Hamilton. The date and location may be subject to change. Stay tuned to the committee webpage for changes. For more information, contact Krista Lee Evans at (406) 444-1640, or kevans@mt.gov.

ENERGY AND TELECOMMUNICATIONS COMMITTEE

USB and coal-to-liquid on tap for November meeting...On the heels of a two-day meeting in Colstrip, the Energy and Telecommunications Interim Committee is gearing up to meet Thursday, Nov. 8 and discuss Montana's Universal System Benefits program and efforts to convert coal into liquid fuel.

The Nov. 8 meeting starts at 8 a.m. in Room 172 of the State Capitol. An agenda for the meeting and additional committee information can be found at http://leg.mt.gov/css/committees/interim/2007_2008/energy_telecom/default.asp.

A panel discussion on water usage at coal-to-liquids facilities is planned for Thursday morning. The panelists include Paul Cartwright, DEQ; Chuck Kerr, Great Northern Properties; and Chuck Magraw, Natural Resources Defense Council. The discussion is expected to be on water usage, rather than on particular plants proposed in Montana.

Committee members also will hear an update on the Universal System Benefits program in Montana. In 1997 SB 390 established the USB charge for all electric distribution utilities at 2.4 percent of 1995 electric utility revenues to begin January 1, 1999. The electric USB currently in law expires in December 2009.

Carbon sequestration still in the docket...The Oct. 4-5 meeting in Colstrip focused on a discussion about geological carbon sequestration. Committee members toured the Colstrip generation plants and visited the adjacent Rosebud Mine. PowerPoint presentations from the tours and the meeting are posted on the committee webpage.

In addition to taking on a few new topics, the committee is continuing its study of carbon sequestration. Department of Environmental Quality Director Richard Opper will update the committee on the Montana Climate Change Advisory Committee's preliminary recommendations related to greenhouse gas emissions and energy supply. The public, and those involved in the committee's efforts, will be invited to share their thoughts. To date, the CCAC has released draft recommendations that are subject to change. The draft is available at <http://www.mtclimatechange.us/CCAC.cfm>.

At the November meeting, Ted Dodge of the National Carbon Offset Coalition will discuss terrestrial carbon sequestration. Terrestrial sequestration is the application of carbon offsets from cropland, rangeland, and forests. The Idaho National Laboratory also is on the ETIC agenda to discuss carbon management.

On Oct. 11, the Environmental Protection Agency announced plans to develop regulatory changes to the Underground Injection Control program to allow for the safe injection of carbon into the subsurface. Agency officials have said they will offer regulations for public comment by next summer. The recent EPA announcement may circumvent state efforts in this arena.

Committee contact...For more information contact Sonja Nowakowski at snowakowski@mt.gov or (406) 444-3078.

CHILDREN, FAMILIES, HEALTH, AND HUMAN SERVICES COMMITTEE

A state and local take on EMS...In September, the Children, Families, Health and Human Services Committee started its interim work on the SJR 5 study of emergency medical services by hearing from speakers who provided an

overview of the state and local government roles in those services.

Board of Medical Examiners representatives provided information about that agency's role in certifying emergency medical technicians, including its training and oversight activities, establishment of performance protocols, and development of a Web-based system for renewing certification. Board representatives also mentioned legislation the board will pursue in the future, including creation of a state medical director position and removal of limitations on the locations in which an EMT can work.

Jim DeTienne, of the EMS and Trauma Systems Section of the Department of Health and Human Services, described the handling of a hypothetical emergency situation in a rural area, reviewing the types of emergency personnel who would respond and where the patient would be taken. DeTienne also discussed challenges facing the system in Montana, especially the difficulties of recruitment and retention, particularly in rural areas; training requirements and ways to help EMTs meet those requirements; and funding constraints.

Meagher County Commissioner Jamie Doggett and Kalispell Fire Chief Randy Brodehl both said that recruitment and retention are serious problems facing EMS providers of all types. They also noted that local governments are seeking ways to alleviate funding pressures, some of which stem from the reimbursements they receive from federal programs such as Medicare and Medicaid. Brodehl also proposed greater state oversight in determining which providers can serve an area and the levels of service they must provide.

The committee will hear from providers of emergency services at its Nov. 16 meeting.

SJR 15 study takes a consumer-oriented turn...The committee began its SJR 15 study of the health-care delivery system by hearing several presentations on key study areas during its September meeting. After reviewing the issues, including conflicting opinions between nonprofit hospitals and those physicians who receive payments as both an owner of a health care facility and as a physician, the committee asked staff to gather more information about health care services and the cost of those services in Montana. Staff will present early responses to surveys of health care providers at the Nov. 16 meeting, which also will include background information on how other states are trying to improve consumer-directed health care. Among these improvements is better information for consumers regarding pricing and quality outcomes for various types of health care providers.

Committee to take on mental health study...The Legislative Council in late September assigned a mental health study to the committee. At the same time, the council adopted a work plan that focuses on identifying mental health needs in Montana and determining whether Montana may be able to take better advantage of federal, state, and local funding sources. The 2007 Legislature budgeted

\$200,000 for the study, and this committee had requested that it be assigned the study. In November, the committee will review a draft Request for Proposals for the hiring of a contractor to carry out key elements of the study.

DPHHS update...DPHHS Director Joan Miles provided committee members with a handout highlighting the changes authorized by the 2007 Legislature and discussed some of the work being done this fall to put those changes into effect, including:

- hiring of a coordinator for the newly-approved suicide prevention program;
- appointment of an advisory committee for the new grant program for community health centers, along with development of rules for operation of the program;
- appointment of a work group that will help develop rules for behavioral health inpatient facilities for mental health treatment;
- increases in pay for direct-care workers in a number of areas;
- hiring of new Child and Family Services case-workers around Montana; and
- establishment of a work group that will discuss the idea of conducting background checks on direct-care workers and how information from those checks would be used.

Next meeting Nov. 16...The committee will meet on Friday, Nov. 16, in Room 137 of the Capitol. Stay tuned to the committee's webpage at www.leg.mt.gov/css/committees/interim/2007_2008/child_fam/default.asp for the latest news on schedules and activities and to obtain staff reports and other meeting materials as they become available.

Questions?...Please contact Sue O'Connell at (406) 444-3597 or soconnell@mt.gov for more information about committee activities.

LEGISLATIVE AUDIT COMMITTEE

The Legislative Audit Committee will hear audit reports Wednesday, Nov. 28, and Thursday, Nov. 29 in Room 152 of the Capitol. Although a final agenda has not yet been set, audit reports expected to be presented include:

Contract Audit:

- Legislative Branch, Consumer Counsel (07C-06)
- Flathead Valley Community College (07C-08)

- Legislative Branch, Excluding Consumer Counsel (07C-05)
- Miles Community College (07C-10)
- Montana State Lottery, Cash Drawings (07C-03)
- Montana State Lottery, Financial (07C-02)
- MUS Workers' Compensation (07C-07)

Information System Audits:

- Policy Holder System, Montana State Fund (07DP-14)
- Unemployment Insurance Tax System (07DP-03)

Financial-Compliance Audits:

- Department of Agriculture (07-21)
- Department of Commerce (07-16)
- Department of Fish, Wildlife & Parks (07-18)
- Department of Labor & Industry (07-15)
- Department of Livestock (07-22)
- Department of Public Health & Human Services (07-14)
- Department of Transportation (07-17)
- Montana Arts Council (07-24)
- Montana State Library Commission (07-23)
- Office of Public Instruction (07-19)
- Office of the Commissioner of Higher Education (07-20)

Financial-Related Audit:

- Montana State University (All Campuses) (07-13)
- The University of Montana (All Campuses) (07-12)

Performance Audits:

- Examination of Adult Inmate Treatment Programs at State-Operated Secure Facilities (07P-08)
- Examination of Montana's 9-1-1- Emergency Telephone System (07P-12)
- State Grain Lab (07P-10)

For more information about the committee, contact the Legislative Audit Division at (406) 444-3122.

EDUCATION AND LOCAL GOVERNMENT COMMITTEE

This month's issue of *The Interim* reports on two subcommittees of the Education and Local Government Interim Committee: the House Bill 49 Subcommittee and the Postsecondary Education and Policy Subcommittee.

The HB 49 game plan...The laws governing over 40 local special purpose districts await review by the members of the HB 49 Subcommittee, which met Oct. 2 to organize and to determine its strategy for tackling the study it was created to conduct.

The subcommittee is uniquely suited for its assignment. Four legislators appointed from the Education

and Local Government Committee join six city and county officials who encounter local special purpose districts--and their various and sundry governing provisions--every day.

One act to rule them all?...As provided in HB 49, the study must include "consideration of the appropriateness of consolidating the processes for numerous special purpose districts into one statute or set of statutes." To accomplish this, the subcommittee will develop a universal act that contains general provisions for formation (whether by petition or initiated by the governing body), protest, governance, finance, annexation, withdrawal, and dissolution. Each special district¹ will be compared to the universal act and the subcommittee will determine which processes can be subsumed by the general act and which should stay distinct to that district.

They ain't all broke...As a result of testimony provided at the meeting and by trading experiences from their respective jurisdictions, members are aware that some special districts are working very well, and the members do subscribe to the much-loved "if it ain't broke, don't fix it" chestnut.

Next meeting in December...Members will begin the methodical process of combing through the statutes in earnest at the subcommittee's next meeting, scheduled for Dec. 13. In addition, Greg Petesch will discuss how courts have interpreted the meaning of the antiquated term "freeholder" and the legal standing of corporations as entities with voting and protest rights where districts are concerned.

For more information about the HB 49 Subcommittee and to view a chart summarizing the statutory processes for Montana special purpose districts, visit its website at http://www.leg.mt.gov/css/committees/interim/2007_2008/edu_local_gov/sub_com/HB49/default.asp. Leanne Heisel is the subcommittee's staff and she may be reached at lheisel@mt.gov or by calling 444-3593.

PEPB Subcommittee appointed...Once again this interim, the Education and Local Government Interim Committee has appointed the Postsecondary Education Policy and Budget Subcommittee to deal with higher education. The subcommittee had its first meeting on Sept. 25.

Subcommittee members include Sen. Bob Hawks, chair, Sen. Jim Peterson, Rep. Robin Hamilton, and Rep. Bob Lake, together with Montana Board of Regents members Stephen Barrett and Clayton Christian. Jan Lombardi, appointed by the governor, and Commissioner of Higher Education Sheila Stearns are ex-officio members.

Subcommittee adopts interim work plan...At the first meeting, the subcommittee adopted its interim work plan. The subcommittee will take on the HJR 22 study of repayment programs and other incentives for dental students. The subcommittee will study and make recommendations on:

- initiatives to increase supply of dental care professionals, especially in rural/underserved areas;
- programs that require students who receive educational support to repay all or a portion of the state funds appropriated for their education; and
- a dental loan forgiveness program that would be administered by the commissioner of higher education. The program would provide an incentive for dentists to practice in Montana.

The subcommittee will review, renegotiate, and reaffirm the "shared policy goals" approved by PEPB, ELG, and the Board of Regents in 2006. The Legislature has used this document as the foundation for budget and other policy initiatives during the next legislative session.

The subcommittee will review and consider the accountability measures project from 2006, including a request for the following reports from the commissioner of higher education on:

- the transferability initiative (HB 2 funded \$1.5 million);
- distance learning (HB 2 funded \$900,000);
- student assistance programs (HB 2 expanded by \$4.0 million); and
- freezing resident tuition at FY 2007 level.

The subcommittee will review and consider the Bitterroot Valley Community College district proposal and process. On May 8, 2007, voters in the Bitterroot Valley approved, by a 52% to 48% margin, the creation of a community college district and elected seven members of a local board of trustees. The election results were certified by the Montana Board of Regents on July 11. Following an organizational meeting with the regents, the new community college trustees will hold bi-monthly meetings for the purpose of establishing a new community college. According to 20-15-209, MCA, subsequent to the election, "approval for the organization of a community college district shall be granted at the discretion of the legislature acting upon the recommendation of the regents." The state budget includes a general fund appropriation for community colleges.

- Other items in the work plan include the following: P-20 (pre-school through graduate school) Policy and Budget Issues Review for legislative and regent member education. Because of the complexities of

¹ The subcommittee opted to not include school districts or tax increment finance districts in the scope of its study.

both the funding and the policy issues related to both K-12 education and higher education, together with legislative term limits that may affect long-term institutional knowledge, PEPB may want to discuss this broad area and request specific staff reports that address some of these complexities. The purpose of these reports would be to build understanding and a knowledge base about education budget and policy pre-school to graduate school. Reports could be written only or include presentations and discussion at PEPB meetings, which may be held jointly with the K-12 Education Subcommittee.

- Monitor the 2011 biennium budget and consider accountability measures (based upon regent budget initiatives and executive planning process) and make recommendations to the 2009 Legislature.
- Discuss the strategic role of two-year education within the university system (e.g. colleges of technology, community colleges, and two-year degree programs). Since the reorganization of the university system that occurred in the 1990s, which included moving the vocational education centers into higher education as colleges of technology, the role of two-year education as part of higher education and as part of workforce development has changed dramatically. In the past decade, PEPB has conducted a number of studies about two-year education, both in the area of policy as well as funding and other budget matters.

Questions surrounding two-year education...In the past decade, there has been a dramatic increase in student enrollment at two-year colleges of technology in Montana (e.g. 51.5 percent in Billings, 69.7 percent in Great Falls, and 32.5 percent in Helena) while enrollment at the community colleges has remained relatively flat, despite some enrollment spikes in the past decade. There has also been a changing dynamic in two-year education between the dual missions of workforce training that meets employment needs and the two-year institutions as a starting point for transfer to a four-year institution in pursuit of a four-year degree.

In the past two years, legislators have asked a number of questions about two-year education, including the dual missions, transferability of credits from two-year to four-year programs, expanding distance learning as a way to assist place-bound and non-traditional students, meeting the workforce shortages in numerous communities in various fields, etc. Representatives in the Montana university system also have discussed the role of two-year education, including how the institutions are able to manage the demands of workforce needs and academics.

Legislative staff has prepared a report on the history of two-year higher education in Montana, including governance and funding, in an effort to systematically

respond to questions raised by legislators and to place these into the context of discussions going on within the university system and the Board of Regents.

The following topics are expected to include only a brief report that may not result in legislative action.

- review agriculture agencies overhead cost rates and plans to address these at MSU and in the university system budget process;
- monitor the equipment and program development appropriations that the commissioner of higher education grants to campuses, community colleges, and research agencies (\$6.5 million), and verify the legislative requirement for funding match;
- monitor the six-mill levy process for November 2008 general election (SB 16 from the 2007 session);
- monitor the statewide workforce development plan process that is required by federal funding (Perkins grant program);
- monitor any proposed legislation for 2009 session that relates to higher education and the Montana university system; and
- report on College Family Saving program (529 Investment Plan)

Mid-December meeting planned...The PEPB Subcommittee is scheduled to meet Dec. 13 at 9 a.m. in Room 102. For more information about the subcommittee, contact Alan Peura, subcommittee staff, in the Legislative Fiscal Division at (406) 444-5387 or apeura@mt.gov.

LEGISLATIVE FINANCE COMMITTEE

Study of the appropriation process for personal services--legislator involvement requested...The Legislative Finance Committee is studying the appropriations process for personal services. The study will review current practices and processes used to develop budget requests, present the requests to the Legislature, and determine appropriations. LFD staff conducting the study are asking legislators to contact them with their ideas and concerns about the personal services funding process. Staff contacts for the study are: Greg DeWitt (gdewitt@mt.gov or (406) 444-5392), Pat Gervais (pagervais@mt.gov or (406) 444-2986), or Kris Wilkinson (kwilkinson@mt.gov or (406) 444-5834). Responses to the personal services funding process are requested by Nov. 16, 2007.

Committee meets in October...The Legislative Finance Committee met on Oct. 9 and 10. The agenda and links to the various reports are available on the LFD website

at <http://www.leg.mt.gov/css/fiscal/default.asp>. For more information contact Clayton Schenck at cschenck@mt.gov or (406) 444-2986. The committee heard reports on various policy issues and fiscal concerns. Key reports and outcomes are described below.

Fiscal 2007 Fiscal Year End General Fund Status Report...The preliminary state general fund balance for FY 2007 was \$543.5 million, or \$84.6 million above the level expected by the 2007 Legislature. After the September 2007 special session adopted \$82.3 million of additional transfers and appropriations for the 2009 biennium, the projected general fund balance at the end of the 2009 biennium will be \$125 million provided there are no supplemental appropriations needed for other state services. For more information, contact Terry Johnson at tjohnson@mt.gov or at (406) 444-2952.

K-12 Facility Condition and Needs Assessment and Energy Audit Phase II...Cathy Duncan, committee staff, and Joe Triem of the Architecture and Engineering Division presented a report and recommendations for phase II of the K-12 Facility Condition and Needs Assessment and Energy Audit project. The project was mandated in HB 1 during the December 2005 special session and was funded with an appropriation of \$2.5 million. Triem presented the results of phase I of the project, which contained basic background data, including the identification of approximately 300 school systems occupying slightly over 30 million gross square feet of facilities.

The proposal for phase II of the project is to develop a facility condition assessment tool, which may be used for the current project and future facility analysis. The tool will be used to provide a point-in-time facility condition assessment, which will consist of the assessment of facility conditions and deficiencies and full documentation of the facility and its attributes. Finally, phase II will include an energy use assessment using two years of utility history, and/or other industry-recognized methodology to create energy benchmarks for the facilities, detect consumption trends, and identify those facilities that exhibit excessive energy consumption. For facilities that benchmark poorly, a higher level audit will be recommended. The LFC approved the design of phase II and requested that A&E present the results of the assessment upon completion.

For more information, contact Cathy Duncan at cduncan@mt.gov or at (406) 444-4580.

Capitol Complex Master Plan and Historical Society Museum Building Updates...Cathy Duncan and Tom O'Connell of A&E provided updates on two Long-Range Building program projects, the Capitol Complex Master Plan and New Historical Society Building. During the May special session, the Legislature appropriated funds (HB 4) to allow the Department of Administration to prepare a new Capitol Complex Master Plan. Section 2-17-805, MCA, requires that DOA establish and maintain a master plan for the orderly development of the Capitol complex. The statute also requires the Capitol Complex Advisory Council to provide

advice to DOA in the formulation of the plan. The plan has not been updated since 1972. The proposed plan was presented to the advisory council on Sept. 12, and the council took public comment on the plan through Oct. 12. The advisory council was expected to provide advice to DOA at their next meeting, scheduled for Oct. 17.

The new master plan recommends locating the new Historical Society Museum Building, now named the Heritage Center, on the corner of Roberts and 6th Ave. Funding for the new building was appropriated and authorized by the 2005 Legislature after the Historical Society presented testimony on its desire to enter into negotiations for the purchase of the Capital Hill Mall in Helena as the site for the Heritage Center. Subsequently, the project was included in both HB 5 (funding for long-range building projects), providing authority for the expenditure of \$30 million in donations, and HB 540 (bonding), which appropriated \$7.5 million in bond proceeds. The funds were provided to allow negotiations for the mall to proceed in earnest. The bond proceeds were made available for the new museum building and there is no requirement for the state to purchase the mall. After completing due diligence surveys and consulting with the administration, DOA decided not to purchase the mall. According to DOA, the mall is not suitable for the Heritage Center and the funding would not be sufficient to construct the new building, estimated at \$64.5 million for the purchase of the mall, demolition of the building, site preparation, and construction. For more information, contact Cathy Duncan.

Retirement Systems Unfunded Liability...The actuarial valuations as of June 30, 2007 for the retirement plans have been completed. The actuarial condition of the four plans that were, for a few years, "actuarially unsound" have improved significantly as a result of legislative action since the last valuation and due to significant gains in investment returns during FY 2007. The unfunded actuarial liability can be amortized within the required 30-year period and the contributions to these plans are sufficient to fund the full actuarial costs of each plan. In total, there are nine defined benefit plans that are reviewed annually and, as of June 30, 2007, all nine meet the statutory and constitutional requirement for actuarial soundness. For more information, contact Jon Moe at jonmoe@mt.gov or at (406) 444-4581.

2007 Wildfire Season/Costs Update...Staff reported the updated costs for the FY 2008 fire season. The total cost of fire season is estimated at \$107 million of which \$42.2 million is currently the responsibility of the state. The state expects collecting \$26.4 million from the Federal Emergency Management Agency and \$38.4 million from other federal entities such as the Bureau of Indian Affairs and the Forest Service. Fire costs are not considered final until all bills are paid due to the fluctuations that can occur as bills are audited. In addition, the Jocko Lakes, Ford Road, Black Cat and Chippy Creek fires are still under negotiation. The Fire Suppression Committee, created by HB 1 during the

September 2007 special session, is following those negotiations. Activities of that committee can be found at: http://leg.mt.gov/css/committees/interim/2007_2008/fire_suppression/default.asp. For more information, contact Barb Smith at basmith@mt.gov or at (406) 444-5347.

Department of Corrections Supplemental Reversion/Fiscal Impacts... LFD staffer Pat Gervais reported on the Department of Corrections supplemental appropriation, average daily population, and potential future budgetary impacts of the average daily population. Key points included:

- The department reverted about \$3.5 million of the \$28.2 million supplemental appropriation provided by the Legislature for FY 2007.
- The average daily population of all offenders for FY 2007 was 1.2 percent less than the department estimated in its January 2007 projection and rose 6.2 percent between fiscal years 2006 and 2007 rather than the 7.5 percent previously estimated by the department.
- This lower than expected FY 2007 average daily population may carry forward to the 2009 biennium since future populations are projected in part based upon trend analysis and the department's August 2007 preliminary draft population projection for the 2009 biennium indicates that the 2009 biennium average daily population may be about 300 offenders a year less than the population supported by the 2009 biennium budget.
- If the department's August 2007 preliminary draft population projections are realized, the funding needed to support the 2009 average daily population may be \$10 to \$15 million less than was appropriated to the department; however, in addition to average daily population, a number of factors may influence the actual costs incurred by the department.

For additional information, contact Pat Gervais at pagervais@mt.gov or at (406) 444-1795.

Project Scope of Study of Budget and Appropriations Process... A subcommittee of the LFC identified seven priority issues for this study:

- examination of existing institutional budget processes and practices, and when it is appropriate to deviate from established practices;
- inventory, analysis, and recommendations for changes to statutes, rules, and procedures of the budget process;
- review of current revenue estimating process;
- examination of improved ways to budget for

- statewide present law adjustments; legislative oversight authority and budget accountability as part of the biennial budget process;
- alternatives for personal services budgeting and presentation in the executive and legislative budgets; and
- single budget bill versus multiple budget bills, including recommended process/rules for multiple budget bills

Other items may be considered depending upon time and resources available. For more information, contact Clayton Schenck at cschenck@mt.gov or (406) 444-2986.

Performance Measurement Work Group Reports... The Legislative Finance Committee began the interim portion of the performance measurement initiative at the October meeting. Committee staff provided a brief overview of the philosophy and processes to implement the committee's project. The committee was split into five work groups corresponding with the five joint appropriation subcommittees. The work groups reviewed and commented on critical goals and initiatives developed by agency management. The work groups then adopted the critical goals and initiatives for further reporting. As reports become available, finance committee staff will also be notified to receive the information. Future reporting dates are December 2007, June 2008, and November 2008.

The Governor's Office of Economic Development and the Office of Indian Affairs did not provide goals and initiatives to the general government work group. These two programs are scheduled to appear before the full committee in December to provide information regarding the strategic plans for these programs.

A list of work group members and assignments can be found at <http://leg.mt.gov/css/fiscal/default.asp>. For more information, contact lead project staff Barbara Smith at (406) 444-5347 (basmith@mt.gov) or Kris Wilkinson at (406) 444-5384 (kwilkinson@mt.gov).

STATE-TRIBAL RELATIONS COMMITTEE

Government-to-government mission.... The State-Tribal Relations Committee traveled to Crow Agency Oct. 16 and 17 to meet with Crow Chairman Carl Venne and members of his administration. The committee also met with Crow legislators who were in the final days of their quarterly legislative session. The Crow Tribe is the only tribe in Montana to have a constitution that establishes three branches of government. Other tribes govern through a tribal council or a tribal executive board.

The committee and the Venne administration discussed tribal plans to develop limestone and coal resources and ways to reduce high unemployment rates and increase graduation rates of high school students. The committee toured the Little Big Horn College. The college provides business experiences to students as well as formal training in the Crow language, which is the first language of many residents of the reservation.

Compacts in the works.... At the committee's public meeting, representatives of the tribe and the state discussed their perspectives on a gaming compact for determining the number of video gaming machines and the payout allowed at the Crow Reservation. The current compact with the tribe allows 100 Class III gaming machines with a maximum \$1,000 payout. The number of machines and payouts vary among tribes, according to Andrew Huff from the governor's staff, who discussed a report on the current status of tribal compacts.

The Crow water compact approved by the Legislature in 1999, is awaiting approval by Congress then by the tribe. The water compact would govern the Big Horn River drainage. Congressional action hinges on, among other things, the type of federal financial settlement the tribe will receive in exchange for terms in the compact.

Taxation and the perception of taxes.... Del Laverdure, an attorney for the Venne administration, said that public perception is that Indians on reservations do not pay taxes in Montana "despite potentially five concurrent taxes in Indian country". Laverdure suggested that the state provide tax credits to businesses operating on tribal lands to offset double taxation.

Tribal history and legislative debate.... On Oct. 17 the committee met with Carlson Goes Ahead, speaker of the Crow Legislature, who provided a history of the tribal lands and discussed the 2001 change in the form government brought about by the tribe's adoption of a new constitution. The legislative agenda on the day the committee attended the Crow Legislature included bills ranging from a tribal employment rights ordinance to one outlining an owner's duties regarding control and management of livestock. These were either delayed until the January session or returned to committees for further discussion. The only bill to be debated was a dog control ordinance, which was returned to committee for amendment.

Tour of the women's prison.... Concerned about the programs and services available to Indian women incarcerated at the women's prison in Billings, the committee spent the afternoon of Oct. 17 at the women's prison reviewing training options and hearing from inmates. Several Indian women, representing about 32 percent of the inmate population at the women's prison who are Indian, talked with the committee. One young woman described the difficulties of obtaining parole if an Indian woman wants to return to a reservation. Jobs often are scarce on a reservation and, unless a tribal government has an agreement with state

authorities, state probation and parole officers lack jurisdiction.

Work plan, meeting schedule adopted...The committee approved its interim work plan and meeting schedule. The committee plans to meet Jan. 16-17 in Helena, April 25 in Great Falls, and Aug. 21 in Helena. The committee also wants to visit with the Confederated Salish and Kootenai Tribes in June.

The January meeting will include a review of water compacts with the tribes, additional discussion of gaming compacts, and discussion of how the state is implementing laws regarding racial profiling, Medicaid eligibility, and Indian Education for All.

For more information about the Crow Agency meeting, see the committee's website or contact Pat Murdo, committee staff, at (406) 444-3064 or pmurdo@mt.gov.

FIRE SUPPRESSION COMMITTEE

First meeting of fire committee...The Fire Suppression Committee, created by HB 1 during the September special session, met on Oct. 29 in Helena to organize, discuss its mandate, and plot its course for the next year.

Legislative staff offered background information on 2007 fire season costs and how cost reimbursement works, as well as information on previous fire-related legislative studies and the recommendations associated with those studies. Representatives of the Department of Natural Resources and Conservation, the Forest Service, and the Bureau of Land Management, as well as local agencies and interested members of the public provided their perspectives on the season and recommendations for study.

More details and opportunity to comment...Check the December issue of *The Interim* for details about the meeting, the committee's upcoming schedule, and study topics on which the committee plans to focus. The committee's webpage contains more information, the schedule, agendas, links to other wildfire-related websites, and an opportunity to provide comments online to the members.

Committee staff are Leanne Heisel (lheisel@mt.gov), Barbara Smith (basmith@mt.gov), and Todd Everts (teverts@mt.gov).

ECONOMIC AFFAIRS COMMITTEE

Committee meets on the road...The Economic Affairs Interim Committee is meeting in Miles City on Nov. 7 and 8 with the agenda including health care, value-added agriculture and economic development. The subcommittee for the HJR 48 study of health insurance and health care will

meet at the Holy Rosary Hospital from 2 p.m. to 5 p.m. on Nov. 7, and the full committee will meet from 8 a.m. to 4 p.m. on Nov. 8 at a location to be announced. The agenda is on the committee's website at http://leg.mt.gov/css/committees/interim/2007_2008/econ_affairs/default.asp.

HJR 48 Subcommittee...Health insurance and the interplay with health care financing reforms, including ways to expand coverage, will be the focus of the HJR 48 Subcommittee. Speakers and their topics at the Nov. 7 meeting are:

- Tanya Ask or Angela Huschka, New West Health Services, on how the Montana Comprehensive Health Association is working to reduce the number of hard-to-insure Montanans;
- Rep. Gary MacLaren, sponsor of HJR 48, on the Massachusetts reforms as they relate to Montana;
- Mark Burzynski, Blue Cross Blue Shield, on how the cost of premiums is affected by those without insurance and by payment policies of public insurance programs;
- Frank Cote, America's Health Insurance Plans, on how the cost of mandated benefits affects premium pricing;
- Susan Witte, Allegiance Benefit Management, Inc., and Allegiance Life & Health Insurance Co., on how self-funded insurance and third-party administration works and who self-funds insurance;
- Martell Hilderbrand, Montana Contractors' Association Trust, on the association's insurance pool and portability plan;
- Gordon Higgins, Montana State Auditor's Office, on the Insure Montana program; and
- Connie Welsh, administrator of Montana's Health Care and Benefits Division, on the state as an insurer in the face of prospective health care financing reforms.

The speakers will review what changes in Montana law might be needed or appropriate to expand private and public health insurance coverage or provide better portability of coverage, similar to what Massachusetts enacted in 2006. Future meetings will consider public insurance and consumer-directed health care initiatives.

Interactive videoconferencing will allow people in Helena and Billings to participate in the discussions. Partners in Health Care at St. Vincent Healthcare in Billings is providing videoconferencing services at Holy Rosary Hospital and the Mansfield Center at St. Vincent Healthcare in Billings. MHA, an Association of Montana Health Care Providers, is providing its videoconferencing facilities at 1720 9th Ave in Helena.

Eastern Montana's value-added agriculture...On Nov. 8, the Economic Affairs Committee will begin the SJR 13 study of value-added agriculture. Bruce Smith, the Glendive extension agent, will discuss Farm-to-Market initiatives in eastern Montana. Chrissie McMullan and Jessica Babcock from Grow Montana will present information on statewide Farm-to-Market and Farm-to-College initiatives. McMullan and Babcock also will review practices in other states that boost value-added agricultural production. Gene Buxcel of the Dawson County Economic Development Council will join a representative of the Anheuser-Busch plant or the sugar plant in Sidney to discuss governmental constraints and assistance for large-scale value-added agricultural production. Gene Buxcel of the Dawson County Economic Development Council and Bruce Bainbridge of Dawson Community College will discuss governmental constraints and assistance for large-scale value-added agricultural production.

Local economic development initiatives...The committee has invited a panel of local elected officials, economic development professionals, and members of the business committee to explain how the organizations involved in economic development work together, and how state initiatives are supporting in this effort. Invited speakers include Jim Atchison, executive director of the Southeastern MT Development Corp., Joe Whalen, mayor of Miles City, Custer County commissioners Jack Nesbit and Gary Matthews, Kent Williams, president of the Miles City Area Economic Development Council, and local business leader Butch Krutzfeldt.

LAW AND JUSTICE COMMITTEE

Committee learns about the diagnosis of mental disorders...The Oct. 1 meeting of the Law and Justice Interim Committee focused on identifying challenges and barriers to treatment of a person with a mental illness in the adult criminal justice system.

Committee members learned about terms and definitions used in the mental health field and about the aspects of mental illness that impairs a person's ability to function. Dr. Polly Peterson, a Ph.D. psychologist and former Director of Psychology for the Montana State Hospital explained that "mental illness" is a broad term often used to refer to all types of mental disorders and reflects the view that a mental disorder results from an organic brain disease. The term "mental disorder" is used to specifically describe a set of symptoms and a pattern of behavior caused by the disease.

Peterson also discussed diagnostic procedures to classify mental disorders. Mental disorders are organized into groups, such as cognitive, psychotic, sexual, disassociative, and personality disorders, among others. She also discussed the diagnosis of the disorder, which is based on the intensity, frequency, duration, and severity of observable symptoms and patterns of behavior of the

individual.

Representatives of law enforcement, county attorneys, public defenders, the courts, community corrections, the state prison, the Montana State Hospital, and probation and parole officers participated in panel discussions. Each panel represented a component of a sequential intercept model used to develop strategic plans for diverting mentally ill individuals from incarceration and into treatment. The components covered by the panels included:

- initial contact and emergency response;
- court proceedings;
- community corrections;
- prison and the state hospital; and
- re-entry into the community.

A panel of consumer advocates representing the National Alliance for the Mentally Ill in Montana, the Montana Mental Health Association, the Montana Advocacy Program, and the White Bison Group (a Native American program) provided insight into mental illness and critiqued mental health services relative to the criminal justice system.

Panel members were asked to describe their biggest challenges related to the mental health needs of mentally ill offenders. The following were the most commonly identified needs:

- better early intervention and access to mental health services before law enforcement becomes the "default" response;
- training for law enforcement, judicial officials, and corrections staff;
- secure crisis stabilization facilities at the community level (e.g., secure hospital beds or a secure care and treatment alternative to the Montana State Hospital);
- more mental health professionals;
- more alternatives at the court level (i.e., alternative programs that would allow a prosecutor to dismiss charges or a judge to defer a prison sentence pending the successful completion of the diversion program);
- better community support systems for mentally ill offenders, including access to medications, housing, employment, and transportation;
- a standard screening and evaluation process for Department of Corrections programs;
- better information sharing and record keeping within the system to assist in identifying a person's mental health history, status, and needs;
- a standard formulary for counties and the state to use in determining what medications can be provided to a detainee or inmate for a mental illness;
- smoother transitions between criminal programs and correctional facilities, including the transition from prison back to the community; and
- more program capacity to alleviate long waiting lists for mental health services.

Committee to meet twice in November...The next meeting of the Law and Justice Committee is Thursday and Friday, Nov. 8 and 9 at the Copper King Hotel in Butte. On Thursday morning, committee members may either visit community-based corrections programs, including a prerelease center and a chemical dependency treatment program, or the institutional facilities, including the mental health unit of the Montana State Prison and the forensic unit of the Montana State Hospital. On Thursday afternoon and Friday, the committee will work on the SJR 24 study of diversion alternatives for nonviolent drug offenders, the HJR 26 study of mental health in the adult criminal justice system, and the HJR 50 study of involuntary civil commitment to the Montana State Hospital.

On Nov. 30, the committee meets in Helena to begin examining the juvenile justice system and juvenile mental health issues identified in the SJR 6 and HJR 26 study resolutions.

For more information, please visit the committee's website, which is accessible from the legislative branch home page at <http://leg.mt.gov>, or contact Sheri Heffelfinger at (406) 444-3596 or sheffelfinger@mt.gov.

REVENUE AND TRANSPORTATION COMMITTEE

Committee meets in conjunction with Montana Taxpayers Association annual meeting...The Revenue and Transportation Committee is meeting Dec. 6 and 7 in Helena. The committee is studying the conformity of state individual and corporation income tax laws with federal tax laws (HJR 61). On Dec. 6, Harley Duncan, executive director of the Federation of Tax Administrators, will discuss the implications of state conformity with federal law. Tax practitioners and the Department of Revenue will also provide their insights.

Larry Swanson, director of the Center for the Rocky Mountain West, will discuss demographic trends in Montana. The committee wants to have an understanding of these trends as part of its SJR 31 study of school funding and property taxes. The discussion may also have pertinence for the HB 488 property reappraisal study.

The committee will recess before noon on Thursday to attend the Montana Taxpayers Association annual meeting.

Other agenda topics...The committee will reconvene Friday morning, Dec. 7. Although the agenda has not been set for Friday, the committee will consider a number of topics. Lee Heiman, staff attorney, will discuss a legal memo regarding the "trigger" language in House Bill 9 that provides an income tax credit for a portion of state school equalization property taxes paid by residential property owners. There is a dispute on whether the trigger has been met. The committee will also review background information on the SJR 31 study. The Department of Revenue will provide an update on the development of rules for tax increment finance districts and the Department of Transportation will report on the highway revenue account.

Want to be in the loop?...For more information about the committee, please contact Jeff Martin, committee staff, at (406) 444-3595 or jmartin@mt.gov, or Fong Hom, committee secretary, at (406) 444-0502 or fhom@mt.gov. Lee Heiman is the staff attorney and can be reached at (406) 444-4022 or lheiman@mt.gov.

STATE ADMINISTRATION AND VETERANS' AFFAIRS COMMITTEE

Committee reviews health reassessment program for veterans...The State Administration and Veterans' Affairs Interim Committee met on Oct. 19 and 20 in Helena.

Joe Foster, administrator, Veterans' Affairs Division, Department of Military Affairs, described the Post-Deployment Health Reassessment (PDHRA) Program established for National Guard and Reserve personnel who have served in, primarily, Afghanistan and Iraq. He also discussed the report and recommendations of the PDHRA Task Force. Gen. Randy Mosley, Adj. Gen., director, DMA, briefed the committee on the implementation of the task force's recommendations. The implementation measures are in the DMA's *Campaign Plan for Deployment Cycle Support*.

Several veterans of the Viet Nam, Afghanistan, or Iraq conflicts and family members of veterans talked about health services. Matt Kuntz, Mike Hankins, Tracy King, Brandi King, Jeremiah Thompson, and Larry Prinkki relayed their own experiences about the health-related services, particularly mental health services, that they or their family member received or didn't receive after returning to Montana from active duty. The testimony indicated that the post-deployment services each of the witnesses had received were generally inadequate. The witnesses also supported the recommendations contained in the PDHRA Task Force's report and Gen. Mosley's implementation plan. Committee members requested updates from Gen. Mosley on the implementation of the Campaign Plan and on policy and budget recommendations that should be considered by the next Legislature.

HJR 59 Retirement Study...On Oct. 20, the committee focused on the HJR 59 study of the state's public

employee retirement plans. Dave Bohyer, committee staff, presented reports on the history of Montana's public employee retirement systems, principles and guidelines for Montana's public retirement systems, and trends in public retirement systems.

Retirement administrators and other people who deal with or are affected by the state's retirement systems offered their insights and advice regarding the retirement systems, including: Roxanne Minnehan, executive director, Montana Public Employees' Retirement Administration; David Senn, executive director, Teachers' Retirement System; Carroll South, executive director, Montana Board of Investments; Tom Schneider, Montana Public Employees' Association; Judge Joseph Hegel, Montana Judges' Association; Mark Taylor, Montana Highway Patrol Officers; Jerry Williams, Montana Police Chiefs and Police Officers; Doug Neil, Montana State Firemen's Association; Kevin McRea, University System Optional Retirement Program; Tom Bilodeau, MEA-MFT; Jerry Pauli, Montana Association of School Superintendents; Charlotte Thomas, Retired Teachers Association; Sheryl Wood, MACo; Frank Cole, Missoula Retired Police Officers; and Leo Berry, Association of Retired Public Employees.

The good news is that the state's two largest systems, PERS and TRS, are actuarially sound as of June 30, 2007, due primarily to statutory changes made in the 2007 session and to especially good investment returns in calendar year 2006 and fiscal year 2007. Other comments and suggestions focused on recruiting and retaining highly qualified public employees, particularly teachers, professors, and school and university administrators. The concern of providing inflation protection to retirees was also voiced.

HJR 46 elections topics under review...The committee members will hear more about a number of election-related matters at their November and January meetings, after deciding in October to learn more about election funding and other topics considered by the HJR 46 work group. The work group has been reviewing Montana's election laws with an eye toward clarifying and updating them and reviewing whether the use of mail ballot elections should be expanded or required. The group also has identified four other, non-HJR 46 questions to which the committee should give consideration and offer guidance:

- Should county clerks and recorders be required to conduct school elections? Currently, a clerk and recorder may conduct the school election at the request of the school trustees, but is not required to do so.
- Should school and primary elections be consolidated and possibly held on a date different from the traditional dates for either school or primary elections, if county clerks conduct the elections? Currently, school elections are held in May and primaries in June.
- Is a long-term strategy for funding elections needed? (The current strategy is to make funding decisions

on an as needed, ad hoc basis.) Funding concerns are caused in part by state and federal requirements, by technology-related issues, and by limitations on local funding due to property tax limitations.

- Should elections be held on Saturdays to increase turnout and make it easier for people to work as election judges? Non-mail ballot elections are held on Tuesdays.

Committee members will consider these topics at the November meeting. Also at that meeting, the work group will present its recommendations on mail ballot elections and on changes to clarify other election laws. The committee expects to substantially complete its work on HJR 46 at the committee meeting scheduled for Jan. 7, 2008.

For more information about the study, contact Sue O'Connell at (406) 444-3597 or soconnell@mt.gov, or check the HJR 46 link on the SAVA web site.

November meeting...The State Administration and Veterans' Affairs Committee is scheduled to meet on Friday, Nov. 30 in Room 102 of the Capitol. The primary subject on the committee's agenda will be the HJR 46 study of election laws. The committee will also review an initial comparison of Montana's retirement systems with "best practices" in plan design and system administration.

An agenda for the November meeting will be posted on the committee's webpage after it is approved by the presiding officer. The agenda may be updated as the meeting date approaches. Please direct questions to Dave Bohyer, committee lead staff, at dbohyer@mt.gov or (406) 444-3064, or to the committee's presiding officer, Rep. Franke Wilmer, at (406) 599-3619.

LEGISLATIVE COUNCIL

Council considers budgets, assigns mental health study...The Legislative Council met on Sept. 25 and 26 to conduct council business and to engage in a strategic planning session. At the business meeting, the council discussed the need for additional funding for interim committee activities. The council deferred action and asked to have regular budget reports on the seven interim committees, the Environmental Quality Council, the State-Tribal Relations Committee, the Water Policy Committee, and the Fire Suppression Committee.

The council assigned a mental health study to the Children, Families, Health, and Human Services Interim Committee. The study comes with a \$200,000 appropriation for hiring a consultant to make recommendations on public mental health services and funding. A request for proposals is being drafted and will be presented to the interim committee in November.

The council created a vote systems group to help develop a request for proposals to replace the voting systems in the House and the Senate. The council also created a TVMT advisory group to advise on the expansion of TVMT into more markets. It also adopted a temporary policy that requests for funding to attend NCSL or CSG meetings go through the respective caucus leaders. The 2007 Legislature provided an appropriation for eight legislators to participate in each organization each year. The council will consider a permanent policy at a future meeting.

Strategic planning session...The council also conducted its biennial strategic planning session in September. The members took part in a facilitated discussion and have planned to discuss ideas raised during the session at future meetings. A summary report is being prepared and will be posted along with the meeting minutes on the council's webpage. Information from the planning session will be shared with each legislator in the near future.

Council to meet in November...The next council meeting will be Tuesday, Nov. 27 in Room 102 of the Capitol. An agenda and meeting materials will be posted to the webpage. For more information, contact Susan Byorth Fox at (406) 444-3066 or sfox@mt.gov.

THE BACK PAGE

SOVEREIGNTY 101: A SUB-PRIME PRIMER ON THE CENTRAL ORGANIZING PRINCIPLE OF GOVERNMENT

By Stephen Maly²

Warning: I am about to embark on a swift and superficial but hopefully stimulating journey across a verbal landscape mined with explosive controversy. I'm buckled up—in some sort of self-imposed constraint that resembles something a bit more confining than a seat-belt but not quite as restrictive as a straightjacket. Here goes.

THE CONCEPTS OF STATE SOVEREIGNTY

Sovereignty is a philosophical concept, a legal principle, a doctrine of international relations. Sovereignty connotes ultimate secular legal authority, and in international law, states (countries, nation-states, or nations) are supreme within their respective bordered realms and equal to one another in legal stature. The government of a state has an exclusive monopoly on authority and on the use of organized armed force within its own territory. It has the right to defend its political independence and territory integrity from attackers within and outside the state.

Sovereignty may also be a fiction--a structure of the human imagination that seems to be binding, but which is also under acute stress. On the macro level, such things as transfrontier pollution, radiological and biological weapons of mass destruction, global warming, dysfunctional borders, and international migration are fairly obvious challenges to the notion of national sovereignty, but there is another range of real phenomena at the micro level that also tend to undermine the whole notion of sovereign authority--and its corollary, self-determination--as they pertain to human life as we know it: I'm referring to bugs, drugs, viruses, schizophrenia, bipolarity, DNA, demonic possession, multiple personality disorders and other diseases of mind and body.

Sovereignty has a rich and bloody history. Back in the Middle Ages, a vengeful peasant or knight might whack off the head of an unlovable king, but he couldn't actually undermine the legitimacy of his sovereign liege, dead or alive. Kings ruled by divine right: they often got their scepters from a pope and their marching orders from God. The divine right of kings has been modified substantially over the past thousand years, not least by revolutions in England, America, France, Russia, China, and Iran. In modern times, the legitimate source of secular sovereign authority is the people. Power originates with individuals acting in concert for a collective purpose; they decide to govern themselves for the good of the whole. In the case of Iran, the people are said to speak through the mouths of the mullahs, and in Mao's China power is

famously said to have emanated from the barrel of a gun, but then all revolutionary leaders have been guilty of playing the king over the heads of the nominally sovereign people.

Organized hypocrisy is the choicest and most concise definition of sovereignty I've found yet; it's also the subtitle of a recent book by Stanford University professor and former member of the U.S. National Security Council Stephen Krasner. "Organized hypocrisy", he writes, "occurs when states say one thing but do another; they rhetorically endorse the normative principles or rules associated with sovereignty, but their policies and actions violate these rules." One of the most significant fundamental rules in international relations is nonintervention in the internal affairs of other states. Correspondingly, each state has the right to determine its own domestic authority structures. Even a shallow scoop of post-World War II diplomatic history will serve up plenty of examples of that norm being ignored or set aside left and right, especially by the so-called Great Powers and their most exclusive club, the permanent members of the United Nations Security Council.

Limited sovereignty is my favorite oxymoron, because it embodies cosmic contradictions that shape the political psychology of individual citizens and the political economy of the world. Right now, for example, competing and overlapping clusters of powerful countries are struggling to come up with a formula for Kosovo that will not provoke a meltdown between Russia and the Euro-American alliance and another Balkan war. Following NATO's decisive victory over the Milosevic regime in 1999, the ethnic Albanian majority in what was (and still is) formally a part of the Serbian state were provided a sort of international protectorate status, administered by the United Nations and often characterized as "intermediate sovereignty". The implication was clear: the next phase should be independence. That may in fact be in the cards, but Russia has vowed to veto the carefully crafted U.N. plan for Kosovo to transition into "supervised" and "controlled" sovereignty, whereby the largely Christian Serb minority would be substantially self-governing and protected by European Union forces from possible depredations on the part of the emergent state that will be mostly Muslim Albanian. The situation in nearby Bosnia-Herzegovina is similarly undecided and even more complicated; that country is composed of Bosniak (Muslim) and Serb statelets that are still under the tutelage of an externally appointed High Commissioner.

DOMESTIC SOVEREIGNTY

Let's consider several domestic examples of this contradictory construct. Federalism and the separation of powers are manifestly limitations on the sovereign power of the federal government and each of our celebrated branches of government, executive, legislative, and judicial. Before the age of democratic revolutions and their intellectual cheerleaders, such as Montesquieu, Locke, Jefferson, Madison, Hamilton, *et al.*, sovereignty was vested in a monarch, and succession of power was the domain of

²Before taking over the helm of Helena Civic TV, Stephen Maly was a research analyst with the Legislative Services Division.

monarchical dynasties. The great thinkers just named articulated the compelling logic of segregating the respective powers of legitimate bodies that enacted laws, implemented laws, and interpreted laws in relation to a constitution that was considered the basic law.

Federalism also embodies compromises with respect to sovereign authority. In the U.S., states are often referred to as “laboratories of democracy”, because they have the legitimate option to experiment with public policies so long as they do not contravene the federal constitution. Various states’ programs dealing with health and welfare matters, for example, as well as Montana’s 1972 Constitution, illustrate the vitality of this notion of having the freedom and flexibility to set standards apart or even above those enshrined in the U.S. Constitution.

The decade of the 90s was heralded by the National Conference of State Legislatures and others as a heyday for states’ rights. Carl Tubbesing, in the January, 2007 issue of *State Legislatures*, likens the country’s recent experience with federalism to a roller-coaster ride:

A decade ago, relations between the state and federal governments had reached a thrilling apex...Working closely with state leaders, the national government devolved responsibilities to states, giving them significant latitude to craft innovative solutions to welfare, health care, transportation and environmental problems. Freed from the burdens of unfunded mandates and a micromanaging federal government, state legislatures did what they do best. They tailored solutions to public policy challenges to the unique conditions and cultures of each state...That heady experience at the top of the roller coaster didn’t last long, though. For the past few years, the descent has been steep, swift, and scary.

Tubbesing goes on to catalog the many instances in recent years of federal intrusions and the renaissance of unfunded mandates, such as the REAL ID Act and the No Child Left Behind law, both hugely unpopular in Montana and elsewhere. Clearly, the limits on state sovereignty are strict; the laboratories are often disciplined by supreme court rulings or beholden to federal funding, or both.

Eschewing the up and down image of a roller coaster, one could describe the U.S. as having unsteadily but inexorably evolved toward a layer cake variant of federalism, wherein decision-making powers are arranged in hierarchical fashion: the top layer (federal) is superior, the lower layers (state, tribal, municipal) are subordinate. In contrast, the Canadian federal system is more akin to a bundt cake. The Canadian provinces have more power than do American states, and exercise quasi-sovereign jurisdiction in arenas set forth in the constitution, such as the ownership and control of natural resources. In both cases, as in nearly all examples of federal states—including Australia, Germany, India, and Mexico—sovereignty is purposefully fragmented through the subdivision of powers between the central government and state or provincial governments.

Let’s pause to consider the contemporary realities with respect to the state of Montana. Article II of the Montana Constitution begins as follows:

Section 1. Popular sovereignty. All political power is vested in and derived from the people. All government of right originates with the people, is founded upon their will only, and is instituted solely for the good of the whole.

Section 2. Self-government. The people have the exclusive right of governing themselves as a free, sovereign, and independent state. They may alter and abolish the constitution and form of government whenever they deem it necessary.

Standing alone, as clear statements of principle, these configurations are powerful, even masterful. But our state constitution (and every state constitution in the United States) is subservient to the preemptory authority of the federal constitution, through the exercise of the supremacy clause and under the overarching penumbra of the commerce clause. There is a vast literature on the genesis, evolution, and shifting legal ramifications of these clauses in the U.S. Constitution. The same can be said about a further limitation on state powers: tribal sovereignty. This important and complex topic warrants lengthy discussion and analysis at another time and place.

In short, Montana is not a sovereign state. Our vaunted constitution is part and parcel of well-organized hypocrisy within the confines of the United States. The limitations on sovereignty are both substantial and firmly rooted in the nation’s jurisprudence, and while claims are often made that the 10th Amendment to the U.S. Constitution offers a firewall against the feds, the record suggests otherwise. [See Sidebar]

SOVEREIGNTY AND OUR CITIZEN LEGISLATURE

Senator Cory Stapleton, in the May, 2007 Special Session, offered an amendment to House Bill 3 (an omnibus energy package) that would have disallowed the granting of tax credits to any company intending to build an electricity transmission line that crossed an international border. (The matter at hand was the proposed Montana-Alberta Tie Line, or MATL.) Senator Stapleton began his remarks by referring to sovereignty, “which is something that we rarely ever address here in the Montana Legislature, and I suspect that most citizen legislatures don’t either, although we happen to be a border state.” Speaking to the goal of energy independence, Senator Stapleton declared that “the United States of America should not have our energy grids connected with Mexico or Canada.” (The amendment failed.)

Currently, there are no transborder transmission lines linking Alberta to Montana; however, there are massive transfers of electricity from Quebec and Ontario to the New England states and from British Columbia to California that have been going strong for decades, and without which the United States would be desperately short of power. Similarly,

without the importation of natural gas and crude oil from Canada and Mexico, our country would be more dependent on unstable Middle Eastern and African sources of supply.

Senator Jim Elliott was the sponsor of SJR 17, a joint resolution urging "Congress to create a system that ensures that trade agreements are developed and implemented using a democratic, inclusive mechanism that enshrines the principles of federalism and state sovereignty." The measure contains 16 whereas clauses leading to this concluding supplication:

(1) That the U.S. Congress be urged to create a replacement for the outdated Fast Track system so that U.S. trade agreements are developed and implemented using a more democratic, inclusive mechanism that enshrines the principles of federalism and state sovereignty.

(2) That this new process for developing and implementing trade agreements include an explicit mechanism for ensuring the prior informed consent of state legislatures before states are bound to the non-tariff terms of any trade agreement that affects state regulatory authority so as to ensure that the United States trade representative respects the decisions made by states.

SJR 17 passed by a wide margin in the Senate (44-6) but was tabled in the House Business and Labor Committee. Without delving into the many strands of argument against the procedures by which the Congress and many past administrations have negotiated bilateral and multilateral trade pacts, I think it's fair to say that this nonbinding proposal is emblematic of bipartisan mistrust of federal prerogatives.

Representative Diane Rice sponsored HJR 25, which passed by a vote of 94-5 in the House and 32-18 in the Senate. The resolution includes the following clauses:

WHEREAS, the Security and Prosperity Partnership aims to integrate United States laws with Mexico and Canada on a broad range of issues such as e-commerce, transportation, environment, health, agriculture, financial services, and national security, which may lead to negative changes in United States administrative laws; and

WHEREAS, state and local governments throughout the United States would be negatively impacted by the Security and Prosperity Partnership or a North American Union process, such as an open borders vision, eminent domain takings of private property along potential superhighways, and increased law enforcement problems along such superhighways; and

WHEREAS, this trilateral partnership to develop a North American Union has never been presented to Congress as an agreement or treaty and has had virtually no congressional oversight; and

WHEREAS, initiatives advancing the Security and Prosperity Partnership will lead to the erosion of United States sovereignty and could lead to integrated continental court systems and currency; and

WHEREAS, United States policy, not foreign consortiums, should be used to control our national borders and to ensure that national security is not compromised.

HJR 25 concludes with the statement that the Montana Legislature urge:

. . . the President and the Congress of the United States to withdraw the United States from any further participation in the Security and Prosperity Partnership, any efforts to implement a trilateral political, governmental entity among the United States, Canada, and Mexico, or any other efforts used to accomplish any form of a North American Union.

Once again, and this time with relatively few dissenting votes, the Montana Legislature went on record as being firmly opposed to something that would erode the sovereignty of the nation or the state.

Representative Rick Jore introduced perhaps the most broad and far-reaching bill dealing with the issue of state and national sovereignty, and I am including most of HB 712 here for your consideration.

AN ACT ENACTING THE MONTANA SOVEREIGNTY PROTECTION ACT; REJECTING THE AUTHORITY OF THE UNITED NATIONS OVER THE TERRITORY OR PEOPLE OF MONTANA; AND PROVIDING PENALTIES

NEW SECTION. Section 2. Purpose. The purposes of [sections 1 through 7] are to:

(1) maintain and preserve the state of Montana as a free and independent state as provided in the declaration of independence and the Montana constitution and as preserved in the 9th and 10th amendments to the constitution of the United States;

(2) reject any claim that the united nations charter has any lawful or constitutional authority in or over this state under either the charter of the united nations or the constitution of the United States; and

(3) recognize the power of symbols and flags and their proper legal function when flown over official state property, which is to proclaim dominion over territory and to demonstrate allegiance to a given authority.

NEW SECTION. Section 3. Findings. (1) Each elected official of this state and of each of its political subdivisions has taken an exclusive oath of allegiance to support the constitution of the United States. An elected official has not taken an oath to support the united nations and cannot take such an oath by law.

(2) The united nations charter is not by definition or in practice a treaty made under the authority of the United States as provided for in Article II, section 2, of the United States constitution, but rather is a constitution for world government.

(3) Although the preamble of the united nations charter states that it was made in the name of the peoples of the united nations, the charter was never initiated by the people of the United States and was not ratified by the people of the several states of the United States.

(4) Because the united nations charter has never been constituted by the people of the United States or ratified by the people of the several states, any claim of governing authority of the united nations charter over any state of the United States is wholly illegitimate and unconstitutional.

(5) The display of any government flag over any government property indicates dominion and authority over the territory and allegiance on the behalf of the people of that territory to the authority.

NEW SECTION. Section 4. Flags or symbols prohibited. A flag or other symbol representing the united nations may not be flown or otherwise displayed from any official mast, building, or

other property of the state of Montana or any of its political subdivisions receiving state funds. This section does not prohibit the display of united nations flags or symbols for historical or educational purposes.

NEW SECTION. Section 5. Prohibition on support. The legislature or a legislative body of a political subdivision of this state may not authorize the expenditure of any public funds to support any program or other activity carried on under the authority of or in cooperation with the united nations.

NEW SECTION. Section 6. Enforcement of international court actions. A judicial decree, judgment, order, or other action entered by an international court or other judicial body acting under the authority of, in cooperation with, or in relation to the united nations is not enforceable in any court in this state. A resident of Montana or a person lawfully in Montana is not subject to any subpoena, warrant, extradition, or other process issued by an international court or other judicial body acting under the authority of, in cooperation with, or in relation to the united nations.

NEW SECTION. Section 7. Penalties. A knowing violation of [section 6] is a misdemeanor punishable as provided in 46-18-212. Each violation is a separate offense, and a fourth or subsequent violation is a felony punishable as provided in 46-18-213.

This bill passed by one vote in the House (50-49), but died in the Senate Judiciary Committee. Had it succeeded and been signed by the Governor, it would be against the law to fly the U.N. flag on public property, and it would be illegal for Montana National Guard members to participate in any authorized United Nations peacekeeping operation.

In 1945, the United States Senate ratified the Charter by an overwhelming vote, 89-2. In a recent critique of the Bush Administration's policies in Iraq, several prominent lawyers maintain that: "The United Nations Charter is a treaty of the United States, and as such forms part of the 'supreme law of the land' under the Constitution, Article VI, Clause 2."

Former Senator Jesse Helms, no friend of the U.N., reached the same conclusion but added a provocative twist:

True, the U.S. Senate ratified the UN Charter fifty years ago. Yet in so doing, America did not cede one syllable of its sovereignty to the United Nations. Under the American system, when international treaties are ratified they simply become domestic U.S. law. As such, they carry no greater or lesser weight than any other domestic U.S. law. Treaty obligations can be superseded by a simple act of Congress. [quoted in "Extracts from the Rocky Shoals of International Law", David B. Rivkin, Jr. and Lee A. Casey, The National Interest, Winter, 2000.]

While I'm confident that a number of legal scholars would take issue with Helms on this matter, I'm absolutely certain that American Indian tribes all across the country, including those in Montana, can readily admit to the practical truth that the United States government, under direction from Congress, has routinely broken solemn and technically binding treaties without suffering any adverse legal consequence.

SJR 12, introduced by Senator John Brueggeman and garnering the support of 42 of his colleagues in the Senate and 58 members of the House, took a different tack to the pattern just described. The last two of nine whereas clauses and the punch-line of the resolution illustrate this difference:

WHEREAS, with foreign trade projected to be a key factor of Montana's economy and with the economy of Montana inextricably intertwined to the rest of the world, our state's economic development depends upon a deliberate strategic development plan that includes recognition of the role of international education in all its facets; and

WHEREAS, the United States' national security and economic competitiveness depend significantly on the country's ability to provide future leaders with the education that will best prepare them to respond to the demands of the 21st century.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Montana Legislature finds that international education is an essential component of the bright future of the great State of Montana.

BE IT FURTHER RESOLVED, that the Montana Legislature encourage international education to ensure that students and future leaders are prepared to meet the challenges of a global society.

THE GLOBAL CONTEXT IN BRIEF REPRISÉ

National (or state) sovereignty remains the cornerstone of contemporary international relations, notwithstanding Krasner and others' penetrating insight into rampant violations of its structural integrity. Still, the edifice is cracking, just as many established states (the USSR, Yugoslavia, Sudan) have broken apart or are now in the process of dissolving into smaller and often more coherent political entities seeking legal recognition but realizing at the same time that the sovereign state in an age of globalization faces almost innumerable security risks and economic as well as ecological challenges--think of the Kurds and Kashmir and the small, predominantly Muslim enclaves such as Chechnya that remain embedded in the Russian Federation.

Since the end of the Cold War, the international political system has exhibited profound and proliferating instabilities. The deployment of and need for United Nations peacekeeping operations is at an all time high. NATO is still a military presence in the Balkans and is heavily engaged in Afghanistan, and the European Union is about to take on military security responsibilities in Kosovo.

National governments and international institutions are struggling to adapt to challenges that do not fit the status quo parameters of state sovereignty. A few years ago, in reflecting on the outcome of the Yugoslav debacle, conservative columnist William Safire quipped that "Some leader must formulate and sell a new form of shared sovereignty to accommodate insurgencies and defuse ethnic conflict not just in Kosovo, but in other lands where there can be no clear winner—from Iraq to East Timor and the West Bank." As Krasner notes more recently in reference to the

European Union, it is “a new, new thing in the international environment. It is not a sovereign state. It is not just an international organization; its member states are no longer fully sovereign. And yet we don’t have a name for it”.

The pooling or sharing of limited sovereignty may soon become necessary for survival. Humanitarian assistance and other nongovernmental organizations are clearly encumbered by territorial borders, legal boundaries, and other institutionalized rules that don’t fit contemporary social and economic realities. Witness the difficulty of preventing genocide in Darfur, mainly because a sovereign government in Khartoum has the legal right to refuse foreign intervention. Meanwhile, many ordinary citizens in many countries are either unaware of the magnitude of changes underway or are stuck, psychologically and otherwise, in a paradigm that places national sovereignty at the pinnacle of authority.

Where am I going with these lightly researched musings on sovereignty? Nowhere in particular, but considerations of sovereignty and the multiple forces and conditions that limit its exercise are thought provoking, and can lead to some observations about life in general and political life in Montana.

Some words are laden with complex meaning. More often than not, people glide glibly over their seemingly polished surface and do not openly contemplate or dwell upon the complexities of derivation, interpretation, and variable usage. When one stops to pick and probe beneath the outer shell of a pithy word, the mind is easily confounded by the contours of the “meat” below. Sovereignty is one such walnut. Placing the word “limited” in front of it compounds confusion; the resulting phrase is a recipe for disorderly thinking, and it can drive a person, or even a legislative body, nuts.

Switching metaphors, political communities and the individuals who people them are like onions. We construct our loyalties and fealties in layers, from the innermost core of identity (the sovereign individual) to the outermost membrane of morally acceptable and practically justiciable authority (the state constitution, the Supreme Court, the commander in chief, the U.N. Security Council, the Papacy, the Grand Council of Imams, etcetera). For some, that inner sanctum is sacrosanct, and clothed in religious belief, for others it is a fascinating maelstrom of competing forces of nature, such as germs, viruses, memories, desires, and the

sparks of conscience. Likewise, the outer layers of legitimate political authority are a matter of unceasing public argument in a free society. One thing is certain and nearly universal: it is wise to handle onions gently, and not cut across their many layers indiscriminately unless one wants to shed a lot of tears.

SIDEBAR

The 10th Amendment to the U.S. Constitution is similar to a provision in the Articles of Confederation, which held that “Each state retains its sovereignty, freedom, and independence, and every power, jurisdiction, and right, which is not by this Confederation expressly delegated to the United States, in Congress assembled. The 10th Amendment states that “The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved for the states respectively, or to the people.” While the amendment makes explicit the idea that the federal government is limited to those powers enumerated in the Constitution, the Supreme Court in 1931 (*U.S. v. Sprague*) found that the measure “added nothing to the [Constitution] as originally ratified”.

Notwithstanding vigorous assertions of states’ rights over the years, the Supreme Court has only rarely ruled federal laws unconstitutional for violating the 10th Amendment. For example, the court invalidated a portion of a 1985 federal act that obliged states to take title to any radioactive waste within their respective borders that was not disposed of prior to January 1, 1996. In 1997, the Court ruled that the provision in the Brady Handgun Violence Prevention Act that required state and local law enforcement officials to conduct background checks on persons purchasing handguns violated the amendment because if “forced participation of the State’s executive in the actual administration of a federal program.” In essence, the 10th Amendment prevents the federal government from compelling states to enforce federal regulations, but has not yet proven a barrier against the expansion of federal powers well beyond those enumerated in the Constitution.

Generally speaking, advocates for states rights in defiance of federal authority have lost ground; proponents of a stricter application of the 10th Amendment are preaching to a seemingly dwindling choir.



INTERIM CALENDAR

UNLESS OTHERWISE SPECIFIED, ALL ROOM DESIGNATIONS ARE IN THE CAPITOL

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
November 2007						
				1	2	3
4	5	6	7 Economic Affairs Committee, HJR 48 Subcommittee, Miles City	8 Energy and Telecom Committee, Room 172, 8 a.m. Law and Justice Committee, Butte Economic Affairs Committee, Miles City	9 Law and Justice Committee, Butte	10
11	12	13	14	15	16 Children, Families, Health, and Human Services Committee, Room 137	17
18	19	20	21	22	23	24
25	26	27 Legislative Council, Room 102	28 Legislative Audit Committee, Room 152	29 Legislative Audit Committee, Room 152	30 Law and Justice Committee, Room 137 State Administration and Veterans' Affairs Committee, Room 102	

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
December 2007						1
2	3	4	5	6 Revenue and Transportation Committee, Room 137, 8 a.m.	7 Revenue and Transportation Committee, Room 137, 8 a.m	8
9	10	11 Legislative Finance Committee, Room 102	12 Legislative Finance Committee, Room 102	13 Education and Local Government Committee: HB 49 Subcommittee PEPB Subcommittee, Room 102, 9 a.m. K-12 Subcommittee	14 Education and Local Government Committee	15
16	17	18	19 Water Policy Committee	20 Water Policy Committee	21	22
23	24	25	26	27	28	29
30	31					

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