



THE INTERIM

September 2010

A monthly newsletter of the Montana Legislative Branch

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The Interim, along with up-to-date information about interim committees, is also available on the Legislative Branch Website at leg.mt.gov.

New Online: Check out the new web page on bill drafting at leg.mt.gov under "Bills."

Coming soon at leg.mt.gov under "Between Sessions": Final reports of interim committees.

Arntzen Named to NCSL Executive Committee



Rep. Elsie Arntzen

For the first time ever, a Montana lawmaker has been elected to serve on the 60-member executive committee of the National Conference of State Legislatures (NCSL).

Rep. Elsie Arntzen, a Billings schoolteacher, received the honor during a recent NCSL meeting in Louisville, Kentucky. NCSL is a bipartisan organization that serves the nation's 7,400 state lawmakers and their staffs. It acts as the voice of state legislatures within the federal government.

"I'm delighted at this opportunity to further serve Montanans," Rep. Arntzen said. "I think it's important that the unique voice of western states be represented at the national level."

Rep. Arntzen has served in the state House of Representatives since 2005. She chaired the House Local Government Committee during the 2009 session and was a member of the Transportation and Business and Labor committees.

She has been a member of the NCSL Women's Legislative Network since 2005 and last year served as its chair.

Audit Division Receives Award from NCSL

The Legislative Audit Division also received recognition at the recent NCSL conference.

LAD staff earned an Impact Award for a 2009 audit report entitled "Upland Game Bird Enhancement Program." Auditors Nick Hill and Joe Murray conducted the performance audit and made several recommendations for strengthening the program's strategic planning process and use of program funds in order to improve hunting



Nick Hill



Joe Murray

opportunities for upland game birds.

Based on the findings of the audit, the 2009 Legislature passed a bill revising the program's funding structure

and creating a 12-member advisory council.

Economic Affairs Subcommittee Studies Problems of Impaired Medical Providers

A subcommittee of the Economic Affairs Interim Committee met July 22 with representatives of health-care and pharmacy licensing boards to discuss whether changes are needed to state laws that provide "time out" assistance and monitoring of medical professionals who have substance abuse problems.

The subcommittee decided to propose a draft bill to require periodic audits of the assistance programs and board action if a physician, nurse, dentist, or pharmacist has three separate violations of his or her agreement to participate in an assistance program.

A report on the response to the bill draft by the full Economic Affairs Committee will be included in the October issue of *The Interim*, along with reports on other actions taken Aug. 19, at what is expected to be the committee's final meeting of the interim. Materials and minutes of the meeting will be posted on the committee website at leg.mt.gov/eaic.

For more information, contact Pat Murdo, committee staff, at 406-444-3594 or pmurdo@mt.gov.

Energy, Telecommunications Committee to Review 4 Bill Drafts at Final Meeting

The Energy and Telecommunications Interim Committee will meet Sept. 10 at 8 a.m. in Room 172 of the State Capitol to wrap up its interim assignments.

Committee members will review four bill drafts and decide whether to refer them to the 2011 Legislature. The committee also will decide whether to send a letter to the Federal Communications Commission regarding proposed federal reforms that the committee believes may put investments in rural broadband telecommunications at risk.

Public comments on the four bill drafts and the draft letter were accepted through Aug. 25. All public comments, as well as the bill drafts and draft letter, are on the ETIC website at leg.mt.gov/etic. Click on the Sept. 10 meeting date under "Meeting Schedule and Materials." At the September meeting, the committee will review the feedback it received and take additional public comment.

The four legislative proposals to be discussed are:

- LC 6001: Revise energy policy review process
- LC 6002: Increase Montana's renewable portfolio standard
- LC 6003: Revise definition of "eligible renewable resource" to include hydroelectric facility expansions
- LC 6004: Extend the sunset for wireless 9-1-1 funding

During the September meeting, the committee also will complete its review of the state's energy policy. Senate Bill 290, enacted in 2009, required the ETIC to review and potentially revise the current energy policy.

Throughout the interim, the committee examined nine specific issues and accepted extensive public comment. At its July meeting, members did not reach a consensus and decided not to pursue revisions to the current energy policy. The committee may revisit its decision and will wrap up its draft energy policy report to the Legislature.

For more information, contact Sonja Nowakowski, committee staff, at 406-444-3078 or snowakowski@mt.gov.

Legislative Council Expected to Adopt LSD Budget, Finalize Media Registration

The Legislative Council is scheduled to meet Sept 9 in Room 102 of the Capitol. A time has not yet been determined.

In preparation for the 2011 session, the council will discuss legislative rules, adopt a draft budget for the Legislative Services Division, and finalize new procedures for the media to register for Capitol access passes.

The council also will hear reports from contractors who have been studying legislative space needs and session systems and processes. New staff will be introduced, and members of legislatively funded organizations will be invited to provide information on membership.

For more information, including council agendas, minutes, and meeting materials, visit the council website at leg.mt.gov/legcouncil or contact Susan Byorth Fox, executive director of LSD, at 406-444-3066 or sfox@mt.gov.

Members of the bipartisan Legislative Council are Reps. Bob Bergren, Margaret Campbell, Dennis Himmelberger (presiding officer), Tom McGillvray, Jesse O'Hara, and Mike Phillips, and Sens. John Brueggeman, Jeff Essmann, Mitch Tropila, Robert R. Story, David E. Wanzenried, and Carol Williams (vice presiding officer).

Tentative Dates, 2011 Session Legislator Caucuses, Orientation & Continuing Education

Adopted by Legislative Council, June 2010

Activity/Event	Adopted Dates
General Election	Nov. 2, 2010
Senate Caucuses	Nov. 17, 10 a.m.
House Caucuses	Nov. 17, 10 a.m.
Leadership Orientation (new)	Nov. 17
Legislator Orientation	Nov. 17-19
Legislative Dinner	Nov. 17, evening
Bobcat-Griz Football Game	Nov. 20
Thanksgiving Holiday	Nov. 25
Rules Committee: Rules Training & Hearing on Rules	Dec. 6, morning
Committee Chair Training	Dec. 6, afternoon
Start of 2011 Session	Jan. 3, noon
Law School for Legislators	Jan. 4, morning
Legislative Rules Training	Jan. 5, afternoon

Legislative Finance Subcommittee Hears Options to Address Budget Gaps

A subcommittee of the Legislative Finance Committee met Aug. 2 to consider options to deal with the projected 2013 biennium budget imbalance.

Legislative Fiscal Division staff presented more than 30 options related to programs administered by the state Department of Public Health and Human Services.

Subcommittee members are Sens. David Wanzenried (chair), Dave Lewis, and Rick Ripley, and Rep. Jon Sesso. They were joined by four members of the Children, Families, Health, and Human Services Interim Committee: Reps. Mary Caferro and Gary MacLaren, and Sens. Christine Kaufmann and Trudi Schmidt.

The subcommittee reviewed and commented on each option, took public comment on the options, and instructed staff to do additional research. The subcommittee also will take public comment at <http://www.surveymonkey.com/s/CGPSJJS>. Those comments will be compiled and submitted to the subcommittee at its next meeting in mid-September.

The options, developed by LFD staff at the direction of the LFC, are available at leg.mt.gov/lfc, as is an audio recording of the meeting.

For more information, contact Kris Wilkinson, LFD staff, at 406-444-2986 or kwilkinson@mt.gov.

Revenue Committee Focuses on Revenue Estimating, Cyclical Reappraisal

The Agricultural Land and Forest Land Property Reappraisal Subcommittee and the Residential and Commercial Property Reappraisal Subcommittee of the Revenue and Transportation Interim Committee met the morning of Aug. 2 to finish reviewing the last 6-year reappraisal cycle. The full committee met Aug. 2-3 to continue its review of the revenue estimating process and to discuss potential changes related to property taxes.

Review of Property Reappraisal

At the Agricultural Land and Forest Land Property

Reappraisal Subcommittee meeting, Dallas Reese, from the state Department of Revenue, described how the federal Natural Resources Conservation Service conducts soil surveys. The surveys include information on soil characteristics, as well as observations of such things as topography, land forms, and vegetation. The NRCS soil surveys along with a variety of other information are used to determine the productivity value of agricultural land. Reese also summarized the statutory valuation formulas used to calculate productivity values of various categories of agricultural land based on yield or on carrying capacity of grazing land.

Mike Green, representing the petitioners in *Lucas v. Montana Department of Revenue*, and CA Daw, representing the Department of Revenue, discussed the status of the lawsuit challenging the phase-in of certain agricultural land. The lawsuit has been complicated by the death of one of the petitioners.

The subcommittee spent a considerable amount of time discussing how the department determined the value before reappraisal of agricultural land, particularly for agricultural land that was reclassified because of a change in use (e.g., from grazing to crop production) or because of a mapping change to a parcel of land. The value before reappraisal is used as the starting point to phase in valuation changes from reappraisal. The subcommittee also discussed the differences in the productivity values of agricultural land along county lines.

During the full committee meeting, committee members posed a series of questions to the Department of Revenue for discussion at the September meeting. The questions focus primarily on the determination of the value before reappraisal, phase-in, and differences in agricultural values along county lines.

The Residential and Commercial Property Reappraisal Subcommittee covered the following topics at its August meeting:

- The Department of Revenue presented an update on informal property tax reviews, property tax appeals, and potential property tax revenue implications. The Flathead Valley counties are still a concern; the average increase in residential values in certain lakeside areas was much higher than the rest of the state.

- The subcommittee reviewed possible declines in post-reappraisal values of residential property. Although preliminary sales assessment ratio studies show that the values determined for 2008 appear to be correct, private appraisers have noticed that high-valued properties in particular appear to have lost value. Sen. Bruce Tutvedt presented a proposal for lowering the tax rate for properties showing a decline in value after a private appraisal and state approval of the appraisal. The subcommittee recommended that, subject to certain changes, the full committee request a bill draft to incorporate the ideas.
- The subcommittee discussed eliminating the statutory confidentiality provisions of residential and commercial realty transfer certificates so that private appraisers would have access to actual sales data. The disclosure of sales price information would also give property owners an idea of what property in their neighborhood was actually selling for, which may help alleviate “sticker shock” that may occur after reappraisal.
- Finally, the subcommittee discussed the methods used for the reappraisal of class four commercial property. The subcommittee reviewed the income approach, including capitalization rates, and discussed when the income approach or the cost approach is used, and how income information can be gathered from commercial property owners. The full committee requested that the Department of Revenue present more information on the income approach at the September meeting.

Economic Forecasts, Revenue Estimates

On Aug. 2, the Revenue and Transportation Committee discussed economic forecasting and the revenue estimating process. Dr. Patrick Barkey, director of the Bureau of Business and Economic Research at the University of Montana, described the difficulties of developing state economic forecasts and state revenue estimates and the sources of forecast error. Dr. Myles Watts, Department of Agricultural Economics and Economics at Montana State University, also described economic forecasting methods, shortcomings of forecasts, and the connection between economic forecasts and tax revenue.

Legislative Fiscal Division staff compared the accuracy of revenue estimates with actual revenue collections over

the past 14 fiscal years, sources and accuracy of economic forecast data, and revenue estimating profiles of the individual income tax and corporate income tax. The committee voted to send a letter to the Legislative Council exploring the possibility of acquiring additional forecasting services from Moody's Economy.com.

Jeff Martin, committee staff, presented options for revising the revenue estimating process that included:

- introducing the revenue estimating resolution in the Senate rather than the House;
- constitutionally requiring the passage of a revenue estimating resolution; or
- creating a joint subcommittee of the Legislature to consider the revenue estimating resolution.

Implementing any of these options would require a constitutional amendment or changes to statute or joint rules.

Another possibility offered, which also would require a change in statute, was for the RTIC to continue to meet through the legislative session to assist with the revenue estimate. The committee did not take action on any of the options.

Legislative Proposals

Based on the recommendations of the Residential and Commercial Property Reappraisal Subcommittee, the committee requested three bill drafts related to property taxes. The committee requested the drafting of Sen. Tutvedt's proposal allowing a change in the property tax rate based on a loss in the base value of residential and commercial property after reappraisal. The committee also requested two bill drafts that would allow public disclosure of sales price information contained on realty transfer certificates for residential property and for commercial property, respectively.

The committee approved several bill drafts for pre-introduction by request of RTIC. The purpose of the proposals is to simplify or clarify certain statutory provisions. The proposals include:

- repealing an inoperative business equipment property tax reimbursement (LC 0225);

- correcting an adjusted tax rate under the extended property tax assistance program (LC 0228);
- reducing the withholding tax rate on proceeds from lottery winnings (LC 0228);
- correcting the terminology describing agency liquor stores (LC 0285);
- repealing the Montana Capital Company Act (LC 0226); and
- clarifying the provisions of the Entitlement Share Payment Program (LC 0236).

The committee decided not to recommend two property tax assistance proposals. LC4005 would have replaced existing property tax assistance programs with a property-tax circuit breaker program for residential property taxpayers and renters. The amount of assistance would have been based on income and the amount of property taxes paid directly or indirectly through rent. The proposal failed on a tie vote.

The other proposal, LC4006, would have expanded two existing programs by reducing the amount of loss in property tax assistance for a taxpayer because of a small increase in the taxpayer's income. The proposal failed on a voice vote.

As part of its agency monitoring duties, the committee reviewed legislative proposals submitted by the Department of Revenue. The committee, without taking a position on the proposals, authorized the drafting of all of the department's proposals including:

- correcting an unintended error in prior legislation (in 2003, SB 407 was enacted to revise individual income taxes) that failed to limit the deduction for federal taxes for trusts in the same manner as for individuals (LC0229);
- allowing flexibility in county property assessment office hours, establishing a combined value for land and improvements, changing the definition of animal unit to reflect the typical size of grazing animals, and eliminating language referring to agriculture and forest land "grades" (LC0231);
- allowing an electronic copy of tax forms to serve as the official record and determining the reimbursement to the general fund for accommodations taxes paid by

state agencies through a formula (LC0230);

- authorizing nonprofits to raffle or auction alcoholic beverages, eliminating confusion in the liquor application creditor protest process, and adopting a good neighbor policy for citizens of neighboring states (LC0232); and
- simplifying and improving the consistency, clarity and understandability of certain laws regarding serving alcohol to underage persons (LC0233).

Department of Transportation Report

Department of Transportation Director Jim Lynch updated the committee on the proposed transportation of oil extraction equipment through Montana. The department is currently considering environmental assessment comments on the Imperial Oil Project to transport equipment to the oil sand fields in Alberta and is reviewing truck permits for the proposed Conoco Coke Drums move to Billings.

Annual Property Reappraisal

In response to a committee request, Larry Finch, Department of Revenue, presented a report on changing the current six-year property reappraisal cycle for agricultural land, residential and commercial property, and forest land to an annual reappraisal. Finch said that property tax systems become less equitable the longer the time between reappraisals, especially if property values increase rapidly or the rate of growth in market values differs across regions of the state. The department is scheduled to present a second report at the September meeting on administrative changes, fiscal impacts, and funding options for an annual reappraisal of property.

September Meeting

The Revenue and Transportation Interim Committee will meet Sept. 15-16 in Room 137 of the Capitol. The meeting times have not been set. The property reappraisal subcommittees will not meet.

The full committee will evaluate information presented by the Department of Revenue and agricultural land owners on agricultural land valuation issues. Two national economic forecasting firms (Global Insight and Moody's Economy.com) will discuss the national and state

economic outlook as part of the committee's review of the revenue estimating process.

An agenda and meeting materials will be posted on the committee webpage at leg.mt.gov/rtic when available. For more information, contact Jeff Martin, committee staff, at 406-444-3595 or jmartin@mt.gov.

Committee to Discuss 5 Proposals Related To Water Rights, Wells, Sewage Systems

The Water Policy Interim Committee will debate whether to proceed with five bill drafts at a meeting Sept. 8-9 in Room 172 of the State Capitol. The meeting will convene at 9:30 a.m. the first day and 8 a.m. the second.

The WPIC studied a wide range of water policy issues during the interim, including adjudication of water rights, exempt wells, coal-bed methane water, septic systems, and water right regulation.

The draft legislative proposals, as well as findings and recommendations of the committee, are included in "Boiling It Down" the committee's final report, which is still in draft form. It can be found at leg.mt.gov/water.

The committee accepted written public comment in August but will continue to consider public input until it completes its interim work Sept. 9.

Here are brief summaries of the bill drafts to be considered:

- LC 8002: This bill draft is based on Senate Bill 507, which was enacted by the 2009 Legislature but contained a contingent voidness clause that was activated by a state Supreme Court decision. LC 8002 would allow those who use the beds of navigable rivers for such things as irrigation diversion dams to apply for a historic easement, lease, or license to compensate the state for that use since the state owns the beds of navigable rivers. It also creates a process to obtain easements, leases, or licenses for new uses on the beds of navigable rivers.
- LC 9004: The WPIC heard concerns from the public about the increasing density of single wells and septic systems in some parts of the state. The state

Department of Environmental Quality requires that a subdivision lot using an individual water well and septic system must be at least 1 acre in size. This requirement dates to the 1970s. The minimum lot size with either community water or sewer is half an acre. There is no minimum lot size if both community water and sewer systems are used.

Individual septic systems use a drain field and a mixing zone. Solid wastes settle in the septic tank, and the liquid effluent is discharged into a drain field. Beyond the drain field is the mixing zone, defined in law as an area where water quality standards may be exceeded. Water wells must be drilled at least 50 feet away from septic tanks and 100 feet from drain fields. Ground water mixing zones must not intercept the zone of influence of an existing water well, defined as a 100-foot radius around the well.

Mixing zones are allowed to cross property lines. At a minimum, this creates a situation where a lot owner may be prohibited from drilling a well because of a neighbor's mixing zone. It also means a new well may be drilled 100 feet from a drain field but within a mixing zone, where, by law, water quality standards are exceeded.

LC 9004 would require that, for a single lot in a subdivision, a drain field mixing zone must be located wholly within the boundaries of the lot on which the drain field is located or that an easement for the drain field mixing zone outside the boundaries of the lot must be obtained.

For a drain field mixing zone serving more than one lot, the mixing zone would need to be located within the subdivision unless an easement were obtained for the mixing zone outside of the subdivision boundary.

- LC 9005: This bill draft clarifies that counties may require public water and sewer systems in new subdivisions.
- LC 9002: This proposal addresses the use of water

for mitigation and aquifer recharge related to new ground water appropriations. State law requires that new uses of ground water in closed basins that result in a net depletion of surface water and that cause adverse effect must be offset through aquifer recharge or mitigation. In most cases, this would require that historic uses of water undergo change authorizations. Mitigating the effects of a new ground water appropriation also may be needed outside of closed basins where a new well would adversely impact an existing water right.

Current law, 85-2-310, MCA, does not allow the marketing of water without first identifying each user, each place of use, and each contract. While this provision is a curb against speculation, it prohibits the marketing of water for mitigation or aquifer recharge in an area where the new user is not yet identified. There are concerns among water-right holders that during a completion period allowed by the state Department of Natural Resources and Conservation for water that is sold or leased for aquifer recharge or mitigation, a water right could be considered abandoned. Water-right holders also are concerned about the status of a portion of a water right that is not changed.

LC 9002 would allow water marketing without contracts in place, but only for the purpose of aquifer recharge or mitigation. Furthermore, during a completion period for a change authorization, the law should state that a water right cannot be considered abandoned. For an appropriation right that retains the original beneficial use, the flow rate and volume of water allowed at the point of diversion must be equal to the flow rate and volume allowed under the initial beneficial uses minus the amount that was sold or marketed for mitigation or aquifer recharge.

- LC 9999: This draft bill would allow district court judges some discretion in awarding attorney fees and court costs in water-related cases appealed to district court.

Must Montana Workplaces Accommodate Medical Marijuana?

by **Lisa Mecklenberg Jackson**
Legislative Services Division Attorney

Q. Is a Montana workplace required to accommodate the use of medical marijuana?



A. No. As of June 2010, laws legalizing possession of marijuana for certain medical purposes exist in 14 states, including Montana. The laws generally allow a seriously

ill patient to grow and/or use marijuana with a doctor's written or oral recommendation. The laws protect the prescribing physician and the patient from criminal prosecution.

These state laws conflict with the federal Controlled Substances Act, which prohibits the possession, use, and cultivation of marijuana, a Schedule I drug. However, in 2009, the U.S. Department of Justice issued a memorandum stating that it would focus its resources on prosecuting large-scale enterprises that unlawfully sell marijuana and not individuals who comply with their state's medical marijuana law. A rise in the use of medical marijuana appears to have followed this federal policy change.

Section 50-46-205(2)(b), MCA, clearly provides that an employer is not required to accommodate an employee's use of medical marijuana. Furthermore, a recent Montana Supreme Court case¹ specifies that medical marijuana use is not protected as a "reasonable accommodation" for an employee under the Americans with Disabilities Act or the Montana Human Rights Act.

Courts in other states that allow medical marijuana use

have ruled that employers are not legally required to accommodate marijuana use, whether the person is a candidate for employment or a current employee who has a prescription and intends to use it.

For example, the Oregon Supreme Court held that, because marijuana possession is unlawful under federal law, even when used for medical purposes, state law does not require an employer to accommodate an employee's use of marijuana to treat a disabling medical condition.²

Several other court cases extend the right of employers beyond the workplace.

In California, the state Supreme Court held that the law protects medical marijuana users from criminal prosecution but not from being fired based on failing an employment-related drug test.³ The case in question involved an employee's off-duty use of medical marijuana to treat a disability.

In Washington, an employer's termination of or refusal to hire a person based on the person's use of medical marijuana outside of the workplace in accordance with the Medical Use of Marijuana Act is not actionable as a wrongful discharge in violation of public policy.⁴

In a nutshell, in Montana and elsewhere, an employer does not have to accommodate the use of medical marijuana when making a hiring decision or for current employees. With respect to current employees, all employers should have a written policy prohibiting the possession or use of drugs in the workplace and specify whether testing is an element of the drug-free workplace program.

² Emerald Steel Fabricators, Inc. v. BOLI, 230 P.3d 518 (2010)

³ Ross v. Ragingwire Telecommuns, Inc., 174 P.3d 200 (2008)

⁴ Roe v. Teletech, 216 P.3d 1055 (Wash. Ct. App. 2009)

¹ Johnson v. Columbia Falls Aluminum, 2009 MT 108N

The Back Page

Medical Marijuana Act: Not What We Expected?

by Sue O’Connell
Legislative Research Analyst

When voters approve a proposal placed on the ballot through citizen initiative, most policymakers take that as a sign of support for an idea generated from the ground up. So legislators typically don’t tinker much with a law created by initiative.

But pictures of people smoking marijuana outside of public buildings around Montana and a 167 percent growth in the number of people receiving medical marijuana cards in a six-month period have led some lawmakers to think that voters haven’t gotten what they expected from Initiative 148.

That 2004 ballot measure allowed people with debilitating medical conditions to use marijuana without running afoul of state law. The Medical Marijuana Act permits those patients or a person they designate as their “caregiver” to grow and possess a limited amount of marijuana. If for some reason they’re questioned by local or state law enforcement about their possession, they can’t be arrested or prosecuted if they haven’t violated the possession limits.

Initiative 148 carved out a small exemption in state drug laws. The sale, possession, or distribution of marijuana remains illegal otherwise under state law. And any activity involving marijuana – whether it’s for medical purposes or not – is illegal under federal law.

In the first few years after its creation, Montana’s medical marijuana program remained relatively small. But the explosive growth in the program over a matter of months made headlines around the state and called attention to what many people perceived as gaps in the law.

Where We Were, Where We Are

From its creation in late 2004 until December 2007, the medical marijuana program registered just under 600 patients. Patient numbers grew slowly but steadily during that time. Since then, the numbers have increased as follows:

Date	No. of Registered Patients
December 2008	1,577
June 2009	3,921
December 2009	7,339
March 2010	12,081
June 2010	19,635

The state Department of Public Health and Human Services, which oversees the registry program, now receives thousands of applications each month. Although figures weren’t available for July 2010, the department estimates that about 23,500 people currently hold patient cards.

Some people believe the numbers have increased in part because more people are aware of the program. At legislative hearings televised in 2007 and 2009, people using and growing medical marijuana testified about their participation in the program and may have eased the fears that some people had about participating in it.

But many people point to an October 2009 change in federal government policy as a turning point in the medical marijuana programs in Montana and elsewhere. Last fall, the Obama administration announced that federal prosecutors would not pursue drug cases against medical marijuana patients in the 14 states that allow medical use of the drug.

As the number of patients increased, other high-profile events also occurred around the state:

- At least one organization hired doctors to conduct clinics around the state, traveling to different cities. Often, the doctor would see hundreds of people in a single day to determine if they were eligible for a registry card.
- Storefront businesses selling marijuana popped up in many cities and towns, prompting numerous local

governments to consider whether to restrict medical marijuana activities to certain parts of their towns or ban them altogether.

- Some medical marijuana patients smoked openly in public, often on the grounds of government buildings. The images were captured and spread across the state by the media.

All these items caught the attention of the Children, Families, Health, and Human Services Interim Committee this past spring. The committee devoted much of its April meeting to hearing from state agencies, law enforcement and local government officials, and the medical marijuana industry about issues related to the law and the increased number of patients and caregivers.

So What, Exactly, Is the Law?

Because marijuana remains a Schedule I controlled substance under federal and state law, doctors cannot write prescriptions for it and pharmacies cannot stock or dispense it. State laws allowing medical use of marijuana are careful to avoid talking about prescribing or dispensing the drug through the normal medical channels.

Instead, Montana law allows a doctor to provide “written certification” that:

- a person has a “debilitating medical condition” that is listed in the Montana Medical Marijuana Act; and
- the potential benefits of the medical use of marijuana are likely to outweigh the health risks of using the marijuana.

Because patients authorized to use medical marijuana can’t get it at a pharmacy, the law allows patients to grow their own marijuana or designate a “caregiver” to grow and provide the marijuana for them. The role of the caregiver varies. Some provide medical marijuana to only one patient, while others have created businesses and supply medical marijuana to dozens or hundreds of patients.

Other key provisions of Montana’s Medical Marijuana Act include:

- A patient and a caregiver each are allowed to possess up to six marijuana plants and 1 ounce of marijuana in any form.

- A patient may not operate a vehicle, aircraft, or motorboat while under the influence of marijuana or smoke marijuana in a school bus or on public transportation, on school grounds, in a correctional facility, or at a public park, beach, recreation center, or youth center.
- Employers are not required to accommodate the medical use of marijuana.
- Governmental medical assistance programs and private health insurers aren’t required to reimburse a patient for the costs of using medical marijuana.
- A patient or caregiver with a card may not be arrested, prosecuted, or penalized for growing, buying, or having amounts of marijuana within the legal limits, but could face prosecution if they have more than six plants or 1 ounce.

While the law may appear black and white on these provisions, the practical application of it has shown that many gray areas exist.

For example, the prohibitions on smoking in public areas are limited to specific areas – leading to the highly public use of medical marijuana in some instances. Employers are not required to accommodate the medical use of marijuana, but some employees have filed wrongful discharge suits alleging they were fired because of their medical use of marijuana. Others have filed workers’ compensation claims asking that the costs of their medical marijuana be covered by workers’ compensation. And although patients are limited to six plants and 1 ounce of marijuana, a section of the law known as the “affirmative defense” allows possession of more than that amount. People may claim the defense even if they haven’t applied for a registry card.

Some issues related to medical marijuana – particularly those involving law enforcement – have been simmering below the surface since the law passed. But with the sudden growth of the program, a wide range of entities found themselves facing questions about the law.

Into the Void . . .

The Children and Families Committee decided to step into the debate in April, after hearing from state agencies, local government officials, law enforcement officials, and people in the medical marijuana industry.

The committee's activities since then have included the formation of a work group of interested parties, which provided recommendations for changes to the law; creation of a subcommittee that met three times this summer; and consideration of legislation that would create a regulatory structure for people who grow and sell medical marijuana, as well as make a number of other changes to the law.

Committee members undertook these activities keeping in mind that voters approved the medical use of marijuana. They have consistently expressed their desire to keep in place the protections afforded to medical use by I-148.

Committee members know their proposal is just a starting point for what is likely to be a high-profile topic of discussion during the 2011 Legislature.

But they also have said they want to clear up the gray areas within the law and put in place provisions they hope will provide more guidance for patients, physicians, caregivers, law enforcement officials, and others. Subcommittee members also shared concerns they had about information contained in the medical marijuana registry statistics for June 30, which showed:

- People ages 21-30 made up nearly 25 percent of the registered patients. When patients ages 18-20 are included, 28 percent of cardholders are 30 years of age or younger.
- Two-thirds of the cardholders had received their cards for the debilitating medical condition of "chronic pain." The condition making up the next-highest percentage of cardholders is severe or chronic pain and muscle spasms, at 16 percent. Those figures compare to the 2.5 percent of patients who had

received their cards because they had been diagnosed with cancer, glaucoma, HIV, or AIDS.

- Nearly 4,000 people had signed up to grow medical marijuana for patients. Montana has no limits on the number of patients a caregiver may have and no fee to become a caregiver. Slightly more than 100 caregivers had more than 20 patients as of June 30; some have testified at recent legislative meetings that they have hundreds of patients.

In addition to creating a regulatory structure, subcommittee members approved changes they believe will clear up law enforcement and local government concerns, as well as their own concerns about the registry statistics. The changes would:

- require a person to be a Montana resident to obtain a registry card as a patient;
- require written certification from two physicians for a person's whose debilitating medical condition is chronic pain;
- spell out the standard of care that physicians must meet when providing a written certification;
- give local governments authority to regulate the location and other aspects of medical marijuana businesses, but not ban medical marijuana businesses;
- repeal the affirmative defense provisions;
- require a fingerprint background check for caregivers; and
- prohibit use of medical marijuana in any area open to the general public.

Committee members know their proposal is just a starting point for what is likely to be a high-profile topic of discussion during the 2011 Legislature. They also know it won't be the only proposal on the table. As of August, four medical marijuana bills had been requested by individual legislators. One would license growers and allow nonprofit, state-regulated distribution centers in major Montana cities. Another proposes several revisions to existing law. And two would repeal the Medical Marijuana Act altogether.

All interim committee meetings are held in the Capitol in Helena unless otherwise noted.

September 2010						
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
			1 State-Tribal Relations Comm, time & place TBA	2	3 Economic Affairs Comm, time TBA, Rm 102	4
5	6	7	8 Water Policy Comm, 9:30 am, Rm 172 Finance Subcomm on Judicial Branch, time TBA, Rm 152 Legislative Consumer Comm, 1:30 pm, Rm 317	9 Legislative Council, time & place TBA Law & Justice Comm, time TBA, Rm 152 Water Policy Comm, 8 am, Rm 172	10 Energy & Telecomm Comm, 8 am, Rm 172 Law & Justice Comm, time TBA, Rm 152	11
12	13 State Admin & Veterans Affairs Comm, time & place TBA Environmental Quality Council, time TBA, Rm 172	14 Environmental Quality Council, time TBA, Rm 172	15 Revenue & Transportation Comm, time TBA, Rm 137	16 Revenue & Transportation Comm, time TBA, Rm 137	17 Finance Subcomm on Education, time & place TBA	18
19	20	21	22	23	24	25
26	27	28 Legislative Audit Comm, time & place TBA	29	30		

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October 2010						
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
					1	2
3	4	5	6	7 Legislative Finance Comm, 1 pm, Rm 102	8 Legislative Finance Comm, 8 am, Rm 102	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24/31	25	26	27	28	29	30

You can find the most up-to-date information
about legislative interim committee meetings
on the Legislative Branch website

leg.mt.gov

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