



THE INTERIM

October 2009

A monthly newsletter of the Montana Legislative Branch

In This Issue

Legislators Asked to Respond to Survey	1
Rules Subcommittee Needs Input, Too	1
Children & Families Committee	2
Economic Affairs Committee	3
Education & Local Government Committee	5
Energy & Telecommunications Committee	5
Environmental Quality Council	5
Legislative Audit Committee	6
Legislative Council	7
State Admin & Veterans' Affairs Committee	7
State-Tribal Relations Committee	8
Ask an Attorney: Legislator Emails	8
Back Page: Social Networking	11
Interim Calendar	15

The *Interim* is published by:

Legislative Services Division

Room 110, State Capitol
PO Box 201706
Helena, MT 59620-1706
(406) 444-3064

For more information:

Legislative Information Office

(406) 444-2957
leginfo@mt.gov

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

New on the Web! Learn about legislator training and funding opportunities. Visit leg.mt.gov and click on "For Legislators" in the left-hand navigation menu. Then click on "Training."

Legislators Asked to Respond to Email Survey

In September, Susan Fox, executive director of the Legislative Services Division, emailed a two-part survey to legislators. The first part asked them to update their contact information. The second asked them to indicate which documents they would prefer to receive electronically next session. The latter information will help the Legislative Council in its effort to move toward a "paperless" Legislature.

So far, 40% of Senate members and 34% of House members have responded to the survey. Each legislator (including those who are term-limited) is encouraged to complete and return the survey as soon as possible, even if the legislator has no changes to contact information or does not want to receive electronic documents.

The results of the survey dealing with electronic documents will be reported in the November issue of *The Interim*.

Rules Subcommittee of Legislative Council Wants to Hear from Legislators, Too

A Rules Subcommittee appointed by the Legislative Council (see related story on p. 7) wants to hear from legislators regarding potential changes to the House, Senate, and Joint Rules.

The goal of the subcommittee is to make legislative rules easier to understand and use. Members are working on a searchable database, shortcuts, and reference guides to make the rules more accessible. Ideas on content, format, or access can be submitted to the subcommittee member from each legislator's respective caucus: Rep. Dennis Himmelberger, Rep. Mike Phillips, Sen. Carol Williams, or Sen. Bob Story.

For more information, contact Greg Petesch (gpetesch@mt.gov) or Susan Fox (sfox@mt.gov) of the Legislative Services Division. The LSD phone number is (406) 444-3064.

CFHHS Looks at Federal Health Care, Other Health Insurance Programs

Federal health care reform proposals pending in Congress could provide health insurance to tens of thousands of Montanans who now lack coverage – a change that could put many people in the market for medical care.

The Children, Families, Health, and Human Services Interim Committee (CFHHS) heard about some of the potential impacts of proposed federal reforms during its September meeting, including whether the state has enough primary-care providers to meet the needs of newly insured people. Committee members also heard about how a proposed expansion of the Medicaid program nationally could affect the state budget.

The presentations on primary care and publicly funded insurance programs were part of the committee's Senate Joint Resolution 35 study of health care.

Primary care generally is provided by family practitioners, internal medicine physicians, and pediatricians. They serve as the first point of contact for any new health care problem a patient experiences, provide continuity of care over time, and coordinate care when a patient has more than one health care provider.

Two Helena physicians discussed some of the issues that have led to a decline in the number of doctors providing primary care and in the number of medical students planning to enter primary-care practice. Dr. Jay Larson noted that medical students graduate with an average debt of \$160,000, and the current system for calculating physician reimbursements places a higher value on procedures performed by specialists. He and Dr. Kurt Kubicka said the reimbursement system is a disincentive not only for medical students but for physicians who are now in practice.

Kubicka said loan forgiveness programs help new doctors with some of their student debt. But the long-term salary outlook remains discouraging because of the current reimbursement system.

Kris Juliar, of the Office of Rural Health at Montana State University, highlighted the results of a recently completed study that looked at the primary-care workforce in Montana. She noted that just 40% of Montana's physicians are primary-care providers. In addition, 12 of the state's 56 counties lack a primary-care doctor.

Dick Brown, of the Montana Hospital Association, told the committee that the state's hospitals have seen a lot of turnover among allied health professionals, such as pharmacists, physical therapists, radiology technicians, and lab technicians. In addition, they've been unable to fill some of those positions and have had to turn to temporary or traveling workers at a higher cost.

The committee also heard about the role community health centers play in providing primary health care. While the centers primarily serve lower-income or uninsured Montanans, they are open to all Montanans.

After hearing the discussion, committee members agreed to send a letter to Montana's congressional delegation urging that, as part of the national health care reform effort, they:

- re-evaluate the reimbursement system for primary-care providers, and
- support expansion of the system of community health centers as a way to increase cost-effective access to health care services.

Other Health Insurance Programs

The committee also heard presentations on the publicly funded Medicaid, Insure Montana, and Montana Comprehensive Health Association Plan (MCHA) programs, all of which provide health insurance to Montanans. The Medicaid program covers low-income children, pregnant women, and some adults with children, as well as people who are blind or disabled.

The Insure Montana program helps small businesses provide health insurance to employees who make less than \$75,000 a year. Some employees also are eligible for help paying their insurance premiums.

The MCHA is funded primarily by insurance companies and policyholders and provides coverage for high-risk individuals who otherwise can't get insurance or who have lost coverage because of changes in employment. It uses state funds to provide some premium assistance to low-income people.

Mary Dalton, of the Department of Public Health and Human Services, discussed the possible effects on Montana of expansions to the Medicaid program, which are under consideration by Congress. The federal health care reform bills would increase the amount of income a person could earn and still be eligible for Medicaid and also would require the program to cover childless adults. Many states, including Montana, do not provide Medicaid coverage to childless adults who are not blind or disabled.

Dalton said the proposals could add as many as 110,000 Montanans to the state Medicaid program, which is funded by both the state and federal governments. While the proposals call for the federal government to cover most of the costs of the expansion in the first several years, Dalton said the expansion could cost the state anywhere from \$87 million to \$250 million, depending on how it's designed.

Healthy Montana Kids Program Kicks Off

DPHHS provided committee members with materials summarizing the revised insurance program for lower-



income children that was approved by voters in November 2008.

Known as Healthy Montana Kids, the program will begin Oct. 1 to insure

children whose family incomes are at or below 250% of the federal poverty level. For a family of four, that amounts to \$55,125 a year.

Previously, the Children's Health Insurance Program covered children with a family income of up to 175% of poverty, while Medicaid provided insurance to children

with family incomes of up to 100% or 133% of poverty, depending on the age of the child.

Healthy Montana Kids was approved by voters as Initiative 155 in 2008 and funded by the 2009 Legislature. In addition to state and federal funds already dedicated to Medicaid and CHIP, the program is funded with a portion of the annual premium tax paid by insurance companies.

DPHHS is making families aware of the expanded program through a variety of means, including the creation of field offices in Billings and Missoula, a back-to-school campaign, presentations around the state, and the use of "enrollment partners," or agencies interested in helping to spread the word about the program.

Information about the program, including an application form, is available online at www.hmk.mt.gov.

Next Meeting in November

The CFHHS committee will meet again Nov. 16 in Room 137 of the Capitol. The agenda and materials for the meeting will be posted on the committee's web page at leg.mt.gov/cfhhs as they become available.

For more information about the committee, contact Sue O'Connell, committee staff, at (406) 444-3597 or soconnell@mt.gov.

Economic Affairs Committee Gets Broad View of Workers' Comp

In a meeting dominated by workers' compensation presentations and concerns, the Economic Affairs Interim Committee heard about various factors driving the cost of workers' compensation premiums and adopted a work plan for the remainder of the interim.

Cost drivers for workers' compensation premiums include injured workers spending a long time away from work, medical costs, and long-lasting claims. Montana statistics for each of these cost drivers appear worse than those of many other states.

A consultant hired by the state Department of Labor and Industry will analyze the differences between Montana and other states with comparable industries and demographics, such as Wyoming, North Dakota, Washington, and Idaho. The consultant, Ann Clayton, also will provide information to the governor's Labor Management Advisory Council and the Economic Affairs Committee to help them decide what regulatory or statutory changes may be needed.

Approximately 90% of Montana's workers' compensation claims are closed within 5 years of the first report of injury, compared with 95% in Nevada, 97% in Idaho, and 99% in Colorado, according to the National Council on Compensation Insurance. For claims where there is a dispute or an expectation of prolonged medical costs, closure may be difficult or at least require approval by DLI or the Workers' Compensation Court.

Former Workers' Compensation Court Judge Mike McCarter described some of the cost-shifting concerns that he saw during his time on the court. For example, the Centers for Medicare and Medicaid Services have said that they want to be part of any medical claim settlements (in all states) because Medicare should not be the primary party responsible for paying for workplace injuries subject to workers' compensation, even after a worker retires and is eligible for Medicare.

Similarly, private health insurance companies often are reluctant to pay for health care bills from a workers' compensation injury, which means a claimant who settles a medical claim may have to pay full costs without benefiting from either health insurance or workers' compensation fee schedules.

Although 39-71-741, MCA, states that lump-sum payments should be the exception rather than the rule, efforts by an injured worker and the insurer to settle a claim through a lump-sum payment may mean the money is quickly spent with no money left for long-term costs. McCarter suggested that structured annuities or a flexible spending account may help injured workers who want to settle medical claims.

Representatives of large and small employers described their experiences with getting injured workers back to work:

- Connie Welsh, of the state Department of Administration, said that the number of state workers who are replaced is almost equal to the number of people who are out on leave or on workers' compensation.
- Thom Danenhower, of the Montana Municipal Interlocal Authority, a risk retention pool for Montana cities and towns, suggested that statutory time frames might help get workers back to some form of work faster than under the current system, which has no time frames.
- Loren Davis, of Davis Business Machines, told the committee that he frequently encourages experienced injured workers to come back as soon as they are able by allowing them to serve as advisers for brief periods until they are able to fully perform their former jobs.
- Loretta Miller, of Green Meadow Auto Salvage, triggered some discussion of the possibility of a return-to-work pool. Under 39-71-712, MCA, an employer and an injured worker can arrange work with another employer until the injured worker can return to the original job. Others were worried about liability for potential injuries on the temporary job.

Other presentations included descriptions of expanding safety programs in Montana and of the process used by DLI to set new medical fees for workers' compensation. In completing its work plan, the committee decided that it would address member issues as determined by the committee chair from a list of issues in the work plan. At the committee's next meeting Nov. 17 in Helena, topics on the agenda will include unemployment insurance and how professional and occupational licensing boards set fees.

For information about the committee, contact Pat Murdo, committee staff, at pmurdo@mt.gov or (406) 444-3594, or visit the committee web page at leg.mt.gov/eaic.

Education, Local Govt. Committee to Take on Variety of Policy Matters

The 12-member Education and Local Government Interim Committee was scheduled to jump into its 2009-2010 work plan with both feet (actually, all 24 feet) at a meeting Oct. 1-2, just as *The Interim* was going to press.

The committee was scheduled to hear presentations on a variety of topics, including historic preservation, the Driver Education Program's approach to cell phones and texting, and interim, or "emergency" zoning.

On Oct. 2, the committee was to hear from representatives of the Office of Public Instruction, Office of the Commissioner of Higher Education, Board of Public Education, Board of Regents, and Montana Virtual Academy.

Details of the meeting will be provided in the November issue of *The Interim*. The committee will next meet Dec. 11.

For more information, check the committee web page at leg.mt.gov/elgic or contact Leanne Heisel, committee staff, at (406) 444-3593 or lheisel@mt.gov.

Energy Committee Seeks Comments on Three New Energy Issues

The Energy and Telecommunications Interim Committee (ETIC) is again calling for public comment as it continues to review and consider changes to Montana's energy policy.

Senate Bill 290, enacted last session, requires the ETIC to revise the current state energy policy. During October, the committee will accept public comment on three specific energy issues:

- increasing the supply of low-cost electricity with coal-fired generation;
- promoting alternative energy systems; and
- reducing regulations that increase ratepayers' energy costs.

Members are especially interested in hearing about specific changes that the public believes are needed to state law regarding these topics.

Public comments should be submitted by Oct. 20 to snowakowski@mt.gov or Legislative Services Division, Attn. Sonja Nowakowski, P.O. Box 201704, Helena, MT 59620-1704. Please put "Energy Policy" in the subject line. Comments will be compiled and provided to the committee 10 days before its next meeting Nov. 9-10 in Room 172 of the Capitol.

The ETIC met Sept. 24 and focused its energy policy discussion on rebuilding and extending transmission lines, integrating wind energy, and maximizing the use of state land for energy generation. In August, the committee received about 60 public comments on those three topics, totaling more than 130 pages. While the committee received a variety of comments, many dealt with transmission. All public comments are posted on the ETIC's web page at leg.mt.gov/etic.

Committee staff provided a summary of the suggestions for policy statements and policy changes in state law that were offered by the public, stakeholders, and state agencies in August and at the September meeting. The four-page summary is available on the committee's web page. At its November meeting, the committee will review the information and decide which issues deserve further consideration.

In December, the ETIC will again request public comment on the final three issues outlined in SB 290.

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

Environmental Quality Council Discusses Forestry, Recycling

The Environmental Quality Council met Sept. 10-11 in Helena, devoting much of the first day to forestry and state lands. Staff presented reports on the HJR 1 study of biomass and the HJR 30 study of fire suppression. The state Department of Commerce provided a list of entities that have received loans through the Distressed Wood Products Revolving Loan program established with enactment of HB 669 last session.

The EQC discussed the effects of property-tax reappraisal on annual fees charged by the state

Department of Natural Resources and Conservation on the 802 leased cabin sites and home sites on state land. Lessees on sites near Seeley, McGregor, Rogers, and Echo lakes particularly expressed concern with the amount that their fees could increase because of reappraisal. Jeanne Holmgren, chief of the Real Estate Management Bureau of DNRC, said the agency has been working with the lessees to develop mitigating alternatives. The state Land Board ultimately will decide how to proceed.

A panel of experts discussed the history of environmental public-health tracking in Montana, efforts to receive additional funding from the Centers for Disease Control to enhance the program, and the importance of collecting hospital discharge data to identify possible environmental public-health trends. The EQC has asked the state Department of Public Health and Human Services to report next January on progress it has made with the Montana Hospital Association to develop a discharge data collection system using \$300,000 appropriated by the Legislature for this biennium.

On Sept. 11, the EQC began the SJR 28 study of recycling. Dusti Johnson, with the state Department of Environmental Quality, discussed the challenges of rural recycling, including limited transportation and lack of markets, and the unique solutions some communities have developed to overcome the challenges. Scott Berens with Earth FirstAid in Billings told the committee about starting up and expanding his curbside recycling program over the past few years.

Bob Lane, chief legal counsel for the state Department of Fish Wildlife, and Parks, reported on the status of a lawsuit regarding removal of the gray wolf from the federal Endangered Species List in Montana. The plaintiffs had asked the court to halt the scheduled public hunt of wolves in Montana and Idaho until their case could be heard. A federal judge in Missoula rejected that request. Wolf hunting opened in backcountry areas of Montana Sept. 15.

Lane also reported on the implementation of HB 190 related to stream access and the department's efforts

so far to install stream access features on fences in 13 locations.

The Department of Environmental Quality updated the EQC on the overall status of the Superfund program, discussing ongoing cleanups in Kalispell and Whitefish. The EQC also received a financial status report on the Petroleum Tank Release Cleanup Fund and the use of \$1.3 million in federal stimulus dollars to remediate seven sites across Montana where no responsible party is available to pay to clean up petroleum contamination.

Many of the meeting presentations are available on the EQC web page at leg.mt.gov/eqc.

For more information about the council, contact EQC staffer Hope Stockwell at (406) 444-1640 or hstockwell@mt.gov.

The next meeting of the EQC is scheduled for Jan. 7-8 in Room 172 of the Capitol in Helena. An agenda and related meeting documents will be posted on the EQC's web page at least 10 days prior to the meeting.

Legislative Audit Committee to Report Updates in Nov. Issue

The Legislative Audit Committee was scheduled to meet Sept. 29, as this issue of *The Interim* was going to press. Details of the meeting will be reported in the November issue.

Since the September issue, the committee added three additional audits to its agenda for Sept. 29. They are:

Financial-Compliance Audits

- Office of Public Instruction (09-19)
- Montana State Library Commission (09-23)

Follow-up to Previous Audit Report

- Emergency Medical Services 10SP-03 (original report 07P-11)

For more information about the committee, contact Legislative Auditor Tori Hunthausen, Legislative Audit Division, at (406) 444-3122, or thunthausen@mt.gov. A complete meeting agenda is available on the Audit Division web page at leg.mt.gov/audit.

Legislative Council Plans Strategy

The Legislative Council met Sept. 22 to refine its strategic planning initiatives. The council discussed five major initiatives at a planning session in August:

- develop interdivisional legislative staff teams to better support the Legislature and be a more visible resource;
- provide more training for legislative leadership and for all legislators before and during sessions and during the interims;
- improve the legislative rules and access to the rules, through electronic and other means;
- provide opportunities for more legislators to participate in interim activities, including training and team building; and
- enhance work space for legislators and staff.

The council met with Clayton Schenck, legislative fiscal analyst; Tori Hunthausen, legislative auditor; and Susan Fox, executive director of the Legislative Services Division, to brainstorm on the development of interdivisional staff teams. The council believes the team concept would provide better staff support and institutional knowledge for legislators and would help legislators to find the right source for information during sessions and interims.

Subcommittees to Work on Strategic Planning

The council established subcommittees to deal with various aspects of the planning initiatives, including a rules subcommittee, a succession planning subcommittee, and a legislative space subcommittee.

Members of the Rules Subcommittee are Rep. Dennis Himmelberger, Rep. Mike Phillips, Sen. Bob Story, and Sen. Carol Williams.

Members of the Legislative Space Subcommittee are Sen. John Brueggeman, Sen. Dave Wanzenried, Rep. Tom McGillvray, and Phillips.

The Succession Planning Subcommittee comprises members of the Legislative Management Committee: Rep. Bob Bergren, Rep. Jesse O'Hara, Sen. Jeff Essmann, and Sen. Jesse Laslovich.

Council Schedules December Meeting

The Legislative Council will meet Monday, Dec. 14, in Helena. The Rules and Succession Planning subcommittees are scheduled to meet that morning. Agenda items will include an overview of the state's master-planning process and legislative space.

For more information or to view meeting materials, visit the Legislative Council web page at leg.mt.gov/legcouncil. Or contact Susan Byorth Fox, council staff, at (406) 444-3066 or sfox@mt.gov.

SAVA to Study Public Retirement, Bonus Pay for State Employees

The State Administration and Veterans' Affairs Interim Committee will meet Oct. 29-30 in Room 137 of the Capitol. The committee will begin work on the HB 659 study of state retirement systems and redesign of the Teacher's Retirement System and the HJR 35 study of bonus pay practices for state employees. A draft agenda will be available in mid-October.

The committee was scheduled to hold a teleconference meeting Oct. 1 to discuss options for acquiring actuarial services and possibly consulting services for the retirement systems study. Coverage of the meeting will be included in the November issue of *The Interim*.

GABA Legal Memorandum

David Niss, staff attorney for the committee, has written a legal memorandum related to the committee's oversight of the state retirement systems. The memo and an addendum examine the constitutionality of amending the guaranteed annual benefit adjustment provisions included in many of the public retirement systems. The memorandum is available on the committee web page at leg.mt.gov/sava under "Staff Reports."

For more information, contact Rachel Weiss, committee staff, at (406) 444-5367 or rweiss@mt.gov or visit the committee web page at the address above.

State-Tribal Relations Committee to Meet at Reservations in October

The State-Tribal Relations Interim Committee will meet at the Rocky Boy's Reservation Oct. 7 and the Fort Belknap Reservation Oct. 8 and 9.

On Oct. 7, the committee will meet in the Rocky Boy's Tribal Council Chambers from 9 a.m. to 3:30 p.m.

Topics on the agenda include:

- An update from the Governor's Office of Indian Affairs
- Law enforcement and extradition
- Disparities in health care
- School dropout rates
- Cultural and historical preservation
- Economic development
- State-funded programs
- State-Tribal cooperative agreements

On Oct. 8, the committee will meet in the Fort Belknap Tribal Council Chambers from 10 a.m. to 5 p.m. Topics

on the agenda will be similar to those listed above with the inclusion of:

- State-tribal foster program
- Tribal employment rights
- Health issues

On Oct. 9, the committee will tour the reservation's Buffalo Pasture & Projects (or the Savoy Bridge ARRA project) and the Fort Belknap water plant.

At each meeting, the public will have an opportunity to comment on any matter under the committee's purview.

The State-Tribal Relations Committee acts as a liaison with tribal governments in Montana; encourages cooperation between tribal, state, and local governments; conducts interim studies as assigned; and may propose legislation and report its activities, findings, or recommendations to the Legislature.

For more information, contact Casey Barrs, committee staff, at (406) 444-3957 or cbarrs@mt.gov. The committee web page is leg.mt.gov/tribal.

Does Public Have Right to View Legislators' Emails?

Q. To what extent is legislators' email subject to public inspection?



A. Article II, section 9, of the Montana Constitution provides:

Right to know. No

person shall be deprived of the right to examine documents or to observe the deliberations of all public bodies or agencies of state government and its subdivisions, except in cases in which the demand of individual privacy clearly exceeds the merits of public disclosure.

Because the right to know is included within the declaration of rights in the Montana Constitution, it is

considered a "fundamental right."¹ Any infringement of a "fundamental right" will trigger the highest level of scrutiny, strict scrutiny, by the courts.²

In *Missouliau v. Board of Regents*, 207 Mont. 513, 675 P.2d 962 (1984), the *Missouliau* challenged the closure by the Board of Regents of a job performance evaluation of the University System's presidents. The challenge was based on the constitutional right to know.

The Montana Supreme Court held that the right to know is not absolute but must be balanced against competing constitutional interests in the context

¹ See *Butte Community Union v. Lewis*, 219 Mont. 426, 712 P.2d 1309 (1986).

² See *Wadsworth v. State*, 275 Mont. 287, 911 P.2d 1165 (1996), and *Gulbrandson v. Carey*, 272 Mont. 494, 901 P.2d 573 (1995).

of each case. The court applied a two-part test to determine whether the presidents had a constitutionally protected privacy interest: (1) whether the presidents had a subjective or actual expectation of privacy, and (2) whether society would be willing to recognize that expectation as reasonable. The first part of the test was satisfied because the presidents were assured that the evaluation would be confidential, as were others providing input to the regents. The second part of the test was also satisfied by the need to ensure an unabashed and candid evaluation of presidents. Evaluations of university presidents' job performance were matters of individual privacy protected by Article II, section 10, of the Montana Constitution. In this case, the demands of individual privacy of the university presidents and other university personnel in confidential job performance evaluation sessions by the Board of Regents clearly exceed the merits of public disclosure.

Section 2-6-101, MCA, concerning public documents classifies "writings" as public and private. According to Section 2-6-101(2), MCA:

- (2) Public writings are:
- (a) the written acts or records of the acts of the sovereign authority, of official bodies and tribunals, and of public officers, legislative, judicial, and executive, whether of this state, of the United States, of a sister state, or of a foreign country, except records that are constitutionally protected from disclosure;
 - (b) public records, kept in this state, of private writings, including electronic mail, except as provided in 22-1-1103 and 22-3-807 and except for records that are constitutionally protected from disclosure.

Section 2-6-102, MCA, provides that every citizen has a right to inspect and take a copy of any public writings of this state, except as provided in sections 22-1-1103 and 22-3-807, MCA, [library records and human skeletal remains records], or section 2-6-102(3), MCA, and as otherwise expressly provided by statute.

Every public officer having custody of a public writing that a citizen has a right to inspect is bound to give the

citizen a certified copy of it on demand, on payment of the legal fees for the copy, and the copy is admissible as evidence in like cases and with like effect as the original writing. However, the certified copy provision does not apply to the public record of electronic mail provided in an electronic format. Records and materials that are constitutionally protected from disclosure are not subject to the provisions of section 2-6-102, MCA. Information that is constitutionally protected from disclosure is information in which there is an individual privacy interest that clearly exceeds the merits of public

If legislators are using email to transact public business on personal machines, then the emails are "public documents" and may be "public records."

disclosure, including legitimate trade secrets, as defined in section 30-14-402, MCA, and matters related to individual or public safety. A public officer may not withhold from public scrutiny any more information than is required to protect an individual privacy interest or safety or security interest.

Section 2-6-202(1)(a), MCA, defines public records as including:

- (i) any paper, correspondence, form, book, photograph, microfilm, magnetic tape, computer storage media, map, drawing, or other document, including copies of the record required by law to be kept as part of the official record, regardless of physical form or characteristics, that:
 - (A) has been made or received by a state agency to document the transaction of official business;
 - (B) is a public writing of a state agency pursuant to 2-6-101(2)(a); and
 - (C) is designated by the state records committee for retention pursuant to this part; and
- (ii) all other records or documents required by law to be filed with or kept by any agency of the state of Montana.

Section 2-6-202(1)(b), MCA, provides that a public record includes electronic mail sent or received in connection with the transaction of official business.

Under the constitutional provision and sections 2-6-101, 2-6-102, and 2-6-202, MCA, email may be a public document depending upon the subject matter of the email. Section 2-2-121(2)(a), MCA, provides that a public officer or public employee may not use public time, facilities, equipment, supplies, personnel, or funds for the officer's or employee's private business purposes.

There is no similar prohibition for legislators. Therefore, a legislator may use publicly provided computers and email systems for private business purposes. The emails on the public system relating to private business purposes should be protected from disclosure, because the legislator would have an actual expectation of privacy and society should recognize the reasonableness of this expectation for part-time citizen legislators who are required to maintain businesses while serving in the Legislature.

However, many legislators purchase and use their own personal computers for public business. The reasonableness of a privacy expectation for public

business conducted on a personal computer is less compelling.

Pursuant to Title 2, chapter 6, MCA, the State Records Committee has developed "guidelines" for the retention of email records. The guidelines specify that email is a public document and may be a public record subject to retention schedules for all public records. The determination of the "record" value of email is based upon its content.

If a legislator receives a request for copies of emails, it would be appropriate to seek the assistance of the Legislative Services Division in determining if the emails are "public" in nature and subject to examination. If legislators are using email to transact public business on personal machines, then the emails are "public documents" and may be "public records."

Political business is not the same as public business. Legislators should comply with retention schedules and records management requirements for emails relating to public business that are public records.

Information on public records and the state E-Mail Guidelines can be found at www.sos.mt.gov/Records/What_Is_Record.asp.

Social Networking 101

Social networking supports the democratization of knowledge and information. It focuses on building online communities of people who share interests and activities or who are interested in exploring the interests and activities of others.

Most social network services are web-based and provide a variety of ways for users to interact.

Social media transform people from content consumers into content producers. Examples include blogs, wikis, and virtual worlds, including:

- **Facebook, MySpace, Ning:** These are some of the hundreds of social networking sites where people create a website profile, add photos and graphics, send emails, post messages, and link their profiles to those of friends.
- **Twitter:** This is the most popular "micro-blogging" service. It allows people to stay connected through the exchange of short (140 characters or less) updates.
- **LinkedIn, Plaxo:** These are business-oriented sites where users create a professional online identity, exchange ideas and opportunities, and stay informed through contacts and news.
- **YouTube, Flickr, Picasa:** These are examples of video-sharing websites where users can upload, view, and share photos and video clips.
- **Delicious, Digg:** These are social bookmarking and aggregation sites where users find, store, and share content and vote and comment on other users' links.

The Back Page

Social Networking: Feel-Good Fad or Boon to Democracy?

By Gayle Shirley
Legislative Information Officer

The Utah Senate doesn't just make news. It blogs it, tweets it, and posts it to YouTube.

In fact, the upper chamber of the Beehive State has become something of a poster child for the phenomenon known variously as social networking, social media, and Web 2.0. You can't attend a legislative conference these days without hearing about the plunge that Utah and other states have taken into the reservoir of "new" media.

"Increasingly, social media are fundamental to getting and staying elected," according to Ric Cantrell, who, as chief deputy of the Utah Senate, is the main push behind the plunge in that state. "But for social media to work, you have to believe in transparency. You have to believe citizens have an honest, legitimate role to play in American self-government."

Rep. Steve Harrelson of Arkansas, speaking with Cantrell at a forum sponsored this year by the nonpartisan National Conference of State Legislatures (NCSL), encouraged legislators to climb onto the virtual bandwagon before it leaves them in the cyber-dust.

"I think it's imperative for us to be able to communicate with our constituents, because that's the basis for good representation, and that's one of the main things social media does," he said. "I think eventually our constituents are going to require us to have some sort of presence on the Internet."

The point, he noted, is to meet constituents where they are. And these days, that's increasingly likely to be online.

Promoters of civic engagement have been ballyhooing the potential

of social media for the past few years. Some see it as a way to knock a hole in the wall between government and the people it serves. Some predict that social media will transform the interaction between citizens and elected officials.

In a 2007 report by the IBM Center for the Business of Government, David C. Wyld wrote that the new media "are really new ways of living and existing."

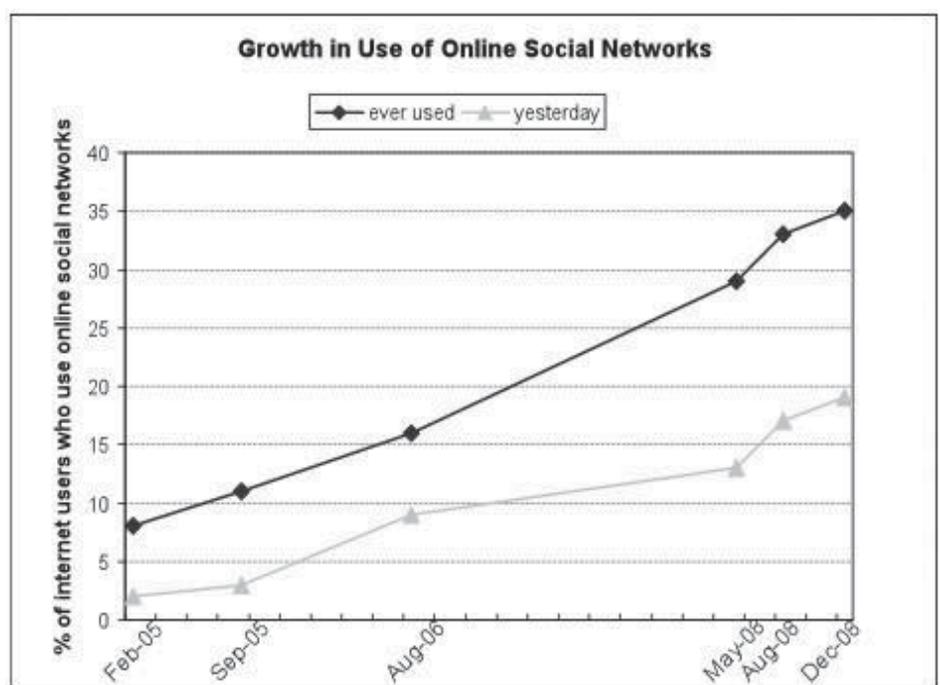
"In them lies the great potential and the very real prospect [to] increase civic engagement and... strengthen democracy for the 21st century."

In 5 to 10 years, he said, "blogging and other interactive web tools will just be part of the ratcheted-up expectations people have for their governments."

From Fringe to Mainstream

All of which is pretty mind-boggling when you consider that the first social media tools were introduced to the public only about a dozen years ago. By 2002, their popularity was exploding.

The Pew Research Center reported this year that the share of adult Internet users who have a profile on a



Two Who 'Tweet'



A 'Virtual Me'

During the 2009 session, Rep. JP Pommichowski found a few moments amid the frenzy to share her thoughts with her constituents via her website. She blogged about the regulation of gravel pits and added a

photo and a few comments about some "fabulous" new teal pumps with copper buckles that she'd just bought.

"I try to blog on topics of interest to politicians and my Montana friends and neighbors – about what I'm doing and learning and working on," she said, "I always try to include photos and some 'color commentary.' I think it's friendlier and more charming than text alone. I try to make the entries informational but also entertaining" by relating "some of the humorous and more personal aspects of life at the Capitol."

The Bozeman legislator realized when she first ran for office that she needed "an online presence – a virtual introduction of me."

"We as a society not only are comfortable with technology, but we also expect to get most of our information from it," she explained. "When the website was live, a blog seemed the next natural online presence. A blog can be updated more easily and more frequently than a website; it can accept comments from readers on blog entries and include profile information. Basically, it's more 'conversational' than a website."

Rep. Pommichowski updates her blog every day or two during the session and every couple of weeks during the interim. "It doesn't take long to do," she said, "anywhere from 5 to 30 minutes."

Not satisfied with just dipping her toes into social networking, the Bozeman representative also "tweets" and chats with followers on Facebook.



Unfiltered, Inexpensive

Rep. Tom McGillvray decided midway through the 2009 session to try to establish a connection with "traditional and also a potentially younger set of constituents" using the micro-blogging tool Twitter. The experiment

was successful enough that he recently opened a Facebook account, too.

"Social networking tools, websites, blogs, etc., give a public servant an inexpensive way to communicate directly with constituents," he said. "I have spent thousands of dollars of my own resources to communicate with constituents via mail and newsletters. These tools give us a process to directly communicate our ideas and positions, as well as information to our districts and constituents, without cost and directly without media filters."

The Billings legislator said he has about 100 followers on Twitter "from the entire spectrum of political persuasions." He tried to "tweet" several times a day during the session but finds he is doing so less often during the interim.

"It does take time," he said. "With commitments to family, career, legislature, constituents, etc., it's easy to be distracted from tweeting. As all of us (in the legislative branch) know, we don't have staff, so help is difficult to find or justify for this purpose when there are more pressing needs."

Rep. McGillvray has one recommendation for those who choose to use social media.

"You should take care to say what you have to say respectfully and accurately," he said. "Once you have posted information, it's out there for everyone to read, and they use it as they see fit. You have control over your content, but not how that information may be used. My Twitter comments also showed up on conservative and liberal blogs."

social networking site has more than quadrupled in the past four years – from 8 percent in 2005 to 35 percent.

As part of its Internet and American Life Project tracking survey, Pew found that:

- 75% of online adults age 18-24 have a profile on a social network site, as do
- 57% of those 25-34,
- 30% of those 35-44,
- 19% of those 45-54,
- 10% of those 55-64, and
- 7% of those 65 and older.

Although social networking is still clearly a phenomenon of the young, it's making inroads among more mature generations. Facebook, the most popular social networking site at the moment, is already seeing a creep toward graying users.

Mark Zuckerberg, the 20-something creator of Facebook, boasted earlier this year that his site had reached a milestone: 150 million users worldwide. "If Facebook were a country, it would be the eighth most populated in the world, just ahead of Japan, Russia, and Nigeria," he said.¹

In the United States, Facebook use has been growing particularly rapidly among people over age 45. The fastest growing segment of all is women over age 55; their usership grew by an astounding 175.3% from September 2008 to February 2009.²

Slow to Join the Dance

Government has been slow to embrace social networking, but that's not necessarily a bad thing, according to Lt. Col. Gerald Ostlund, webmaster for the U.S. Army Reserve.

"We're a very deliberative group of people, and we have to be as stewards of taxpayer dollars and very sensitive

information," Ostlund said. "Because you don't see a government agency that's out there at the cutting edge doesn't mean they don't get it or that they're too old to get it. It's because they're taking a very deliberative approach, they're planning and they're rolling it out slowly."³

Still, more and more government agencies and public officials are beginning to join the dance.

More than 35 legislatures and caucuses already are incorporating the latest Web. 2.0 technology into their websites, according to the NCSL. Some, like the Utah Senate, have plunged enthusiastically into social networking. Others are dipping their toes to test the waters.

The NCSL has posted a web page on which to track the use of these tools among legislatures.⁴ Here are just a few examples of how legislators are interacting with the public using social media:

- The Virginia Legislature is considering using a wiki to explain legislative terminology and respond to frequently asked questions.
- The Arizona and Minnesota Houses of Representatives use Twitter to send out meeting notices and bill updates.
- The Illinois Senate Democrats have a page on MySpace.
- The Washington Legislature uses mash-ups to help residents identify who represents them and to help legislators visualize policy issues, such as which counties have higher rates of unemployment.
- The Utah Senate posts important floor debates on YouTube and photographs of legislators at work on Picasa.

Many more individual legislators, including several in Montana, have taken the initiative on their own to interact with their constituents online. (See "Two Who Tweet" on opposite page.)

1 Facebook Blog, Jan. 7, 2009, <http://blog.facebook.jp/blog.php?post=46881667130>

2 Inside Facebook, Feb. 2, 2009, <http://www.insidefacebook.com/2009/02/02/fastest-growing-demographic-on-facebook-women-over-55/>

3 "Poll: Government Sites Slow to Adopt Social Media," by Lindsey Miller, April 16, 2009, www.ragan.com

4 <http://www.ncsl.org/default.aspx?tabid=13409>

Life on a Two-Way Highway

What makes social networking so compelling? First and foremost is the chance to turn monologues into dialogues.

Web 2.0 “is not about technology,” said Alan Webber of Ronin Research Group, during a recent webinar sponsored by *Governing* magazine. “It’s really about two-way conversations between people. It’s about relationships. It’s about trust – a positive emotional link. Lastly, it’s about engagement – a relationship between two people or entities that is beneficial to both.”

In short, Web 2.0 tools, unlike the earlier (now often referred to as Web 1.0) generation of static resources, are interactive and participatory – just like government in a representative democracy. They offer new ways for citizens to provide input into the policymaking process, and more direct ways for legislators to learn how public policy affects their constituents.

New State Task Force Appointed to Consider Social Networking Issues

A new state task force was scheduled to meet Sept. 28 to begin grappling with issues surrounding the use of social media by employees and officials of the State of Montana.

According to Dick Clark, chief information officer for the state, the task force will include “a cross-section of participants,” including members of the legislative and judicial branches of government. Its mission will be to develop “an overall plan for the State that everyone can agree on.”

Among the topics Clark hopes the task force will consider are “productivity, privacy, security, and bandwidth, as well as contractual and legal issues.”

How information posted on social networking sites meets the requirements of the state’s public records laws is another issue the group may tackle.

“Social networking is here and it’s here to stay,” Clark said. “We as a state have to figure out how we want to deal with it. It’s much more than a technology issue. It could be great if done right.”

Legislators can reap other benefits as well. Using social media, they can communicate with constituents directly, immediately, and without the filter of the traditional news media. They can harness the collective wisdom, open up a conversation, and put a more human face on government.

“It’s a great way to engage the voters in a two-way conversation,” according to Florida Sen. Dave Aronberg.⁵

And the tools, for the most part, are free.

Driving Civic Engagement?

There is no question that social media are making giant inroads into society and into government and politics. But are they meeting initial expectations that they will drive civic engagement?

A new report released by Pew⁶ in September finds no sea change, but it does see hints that forms of civic engagement anchored in blogs and social networking sites could alter long-standing patterns of civic engagement.

The latest study found that 37 percent of Internet users aged 18-29 use social media as a venue for political or civic involvement, compared to 17 percent of online 30-49-year-olds, 12 percent of 50-64-year-olds, and 10 percent of Internet users over age 65.

“The impact of these new tools on the future of online political involvement depends in large part upon what happens as this younger cohort of ‘digital natives’ gets older,” the Pew report said. “Are we witnessing a generational change or a life-cycle phenomenon that will change as these younger users age?”

The answer to this question lies in the future, but today one thing is clear: In the words of web expert Jakob Nielsen, the use of social media is “not a trend that can be ignored.”⁷

5 “The New Public Sphere,” by Mary Branham, *State News*, August 2009, p. 10.

6 The Internet and Civic Engagement, Pew Internet & American Life Project, September 2009, <http://www.pewinternet.org/Reports/2009/15--The-Internet-and-Civic-Engagement.aspx>

7 “Social Networking on Intranets,” Jakob Nielsen’s Alertbox, Aug. 3, 2009, <http://www.useit.com/alertbox/social-intranet-features.html>

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

October 2009						
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
				1 Education & Local Government Committee, 1 p.m., Room 137 State Admin & Veterans' Affairs Committee, 1:30 p.m., Room 102	2 Education & Local Government Committee, 8:30 a.m., Room 137	3
4	5	6	7 State-Tribal Relations Committee, 9 a.m., Rocky Boy's Reservation	8 State-Tribal Relations Committee, 10 a.m., Fort Belknap Reservation	9 State-Tribal Relations Committee, Fort Belknap Reservation	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29 State Admin & Veterans' Affairs Committee, time TBA, Room 137	30 State Admin & Veterans' Affairs Committee, time TBA, Room 137	31

November 2009						
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
1	2	3	4	5	6	7
8	9 Energy & Telecomm Committee, 9 a.m., Room 172	10 Energy & Telecomm Committee, 8 a.m., Room 172	11	12	13	14
15	16 Children & Families Committee, time TBA, Room 137	17 Economic Affairs Committee, 8:30 a.m., Room 152	18	19	20	21
22	23	24	25	26	27	28
29	30					

Legislative Services Division
PO Box 201706
Helena, MT 59620-1706