



THE INTERIM

September 2009

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.

LAD Staff Recognized for Performance Audit, Elected to Serve on NCSL Committee

A performance audit report on Montana's opencut mine permitting process has received an Impact Award from the National Legislative Program Evaluation Society (NLPES). Montana was among 22 states to receive the award, which is presented to offices that produce audit recommendations that have documented policy impacts, such as financial savings or program improvements.

Kent Wilcox, of the Legislative Audit Division, was the project lead for Montana's award-winning performance audit. Angie Grove and Kent Rice were also involved. Improving Montana's Opencut Mine Permitting Process (08P-04) was presented to the Legislative Audit Committee in June 2008. The report can be found on the legislative branch website at leg.mt.gov/css/publications/audit/reports.asp.

One of the documented impacts of the report was the enactment of House Bill 678 in 2009. The legislation revised the permitting process for opencut mining, established an opencut fund and annual fee, and exempted certain opencut operations from the Resource Indemnity and Ground Water Assessment Tax.

Angus Maciver, LAD performance audit manager, also received recognition recently when he was elected to the NLPES Executive Committee. The NLPES is one of 10 staff sections associated with the National Conference of State Legislatures (NCSL), a bipartisan organization that serves legislators and their staffs nationwide.

NLPES comprises employees of state legislative agencies engaged in program evaluation or performance auditing. The executive committee directs NLPES efforts related to the NCSL annual meeting, the NLPES annual training conference, and other NLPES programs and activities. The committee is made up of 12 members who are elected to three-year terms by the society's full membership.

New Online Audio Guides to Help Followers of EQC, ETIC and WPIC

The Legislative Environmental Policy Office is launching an online audio service, similar to podcasts, to help legislators and citizens sort through and digest the mounds of information provided by and for certain interim committees.

Prior to each meeting of the Environmental Quality Council, Energy and Telecommunications Interim Committee, and Water Policy Interim Committee, staff will post an audio recording on the committee's web page. The recording, labeled "Audio Guide," will be 3-5 minutes long and will provide



background on the issues that the committee will tackle at its upcoming meeting. The audio guides are intended to engage lawmakers and the public in a new and fun way, helping them get a head start on reviewing meeting materials.

Each committee's audio guide has its own individual name:

- Environmental Quality Council: The EQC Broadcast (leg.mt.gov/eqc)
- Energy and Telecommunications Interim Committee: Short Circuit (leg.mt.gov/etic)
- Water Policy Interim Committee: Water World (leg.mt.gov/water)

The audio guides will be posted on the committees' web pages as a link under the corresponding meeting date, along with the rest of the meeting materials.

For more information, contact EQC staffer Hope Stockwell at (406) 444-1640, ETIC staffer Sonja Nowakowski at (406) 444-3078, or WPIC staffer Joe Kolman at 444-9280.

Legislative Constituent Services Account Information Now Online

In 2007 and 2009, the Montana Legislature revised the statutory provisions dealing with legislative constituent services accounts. The Office of the Commissioner of Political Practices has prepared a handout answering "frequently asked questions" about these accounts.

The handout includes a discussion of changes made to the law during the 2009 legislative session. It is available at politicalpractices.mt.gov.

For more information, contact Mary Baker, program supervisor, Office of the Commissioner of Political Practices, at (406) 444-2942 or mabaker@mt.gov.

Federal Health Care Reform, Other Health Topics on CFHHS Agenda

The Children, Families, Health, and Human Services Interim Committee (CFHHS) will concentrate on health care policy, including proposed federal health care reforms, at its Sept. 21 meeting at 8 a.m. in Room 137 of the Capitol.

A study of health care was assigned to the committee as a result of passage of Senate Joint Resolution 35. As part of its work, the committee will look at how proposed federal reforms could affect Montana. Possible effects range from potential increased costs to the state budget to changes that might be needed in insurance laws. Committee members also want to review the possible effects on health care services in Montana, particularly in rural areas.

Committee members plan to provide comments to Congress on issues of importance to Montanans. They also want to prepare any legislation that may be needed in the state as a result of federal changes.

The committee has set aside an hour and a half to take comment from the public on the federal proposals. Depending on the number of people who wish to speak, testimony may be limited to 3-5 minutes per person.

In addition to tracking the federal health care proposals, the committee will hear presentations on:

- Montana's uninsured population and the state programs that provide coverage to certain groups of people;
- the number of primary-care providers in Montana and how the number of providers affects people's ability to get health care;
- efforts of the Montana Health Care Forum, a coalition of business groups, health care providers, insurance companies, and health care advocacy groups; and
- the health care goals of other advocacy groups working on health care reform.

The committee will hear about the new Healthy Montana Kids program, which goes into effect Oct. 1. The program, approved by voters in 2008, expands health care insurance for low-income children.

Stay tuned to the committee's web page at leg.mt.gov/cfhhs for the latest schedules and news of committee activities. Agendas, staff reports, and other materials are posted on the web page as they become available.

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

Districting, Apportionment Commission to Bone up on Census, Software

The Districting and Apportionment Commission will meet Thursday, Sept. 24, at 1:30 p.m. in Room 137 of the Capitol. Members will begin learning more about the next U.S. census, review redistricting software packages, and adopt a tentative work plan for the next three years. An agenda and meeting materials will be available by mid-September.

For more information about the commission, sign up to get e-mail notices of its schedule and activities at www.leg.mt.gov/districting. If you have questions about redistricting, contact Rachel Weiss at (406) 444-5367 or rweiss@mt.gov.

Work Comp Safety, Claim Closure Concerns on Economic Affairs Agenda

The Economic Affairs Interim Committee will meet Wednesday, Sept. 9, at 9:15 a.m. in Room 137 of the State Capitol.

The committee will finish a work plan to study workers' compensation as authorized by Senate Joint Resolution 30. It also will learn about programs aimed at improving worker safety and why some claims remain open for long periods.

Representatives of WorkSafeMT, the Montana Chamber of Commerce, and the state Department of Labor and Industry will discuss worker safety as well as programs and incentives intended to help employers implement worker safety.

The committee will hear about problems related to returning injured workers to work as soon as possible from the perspectives of those who handle workers' compensation claims. The Montana Municipal Insurance Authority, which represents both large and small Montana towns, and a representative of a business with fewer than 10 employees will discuss the advantages of getting an injured worker back to work, even in a modified job, as soon as possible.

For example, an employee may heal faster under conditions requiring some movement, even if limited, and from the support of coworkers. Research indicates that an employer benefits because a salary paid for even part-time work may mean the employer avoids paying a higher workers' compensation premium, which is based on claims experience for workers who stay off the job for a prolonged period.

Other speakers at the meeting will include:

- Ann Clayton, a consultant hired by the Department of Labor and Industry, who will discuss her proposed research on Montana and other states' workers' compensation laws;
- Mike McCarter, former workers' compensation

judge, who will review different approaches related to claim closure and the duration of claims; and

- Jerry Keck of the Department of Labor and Industry, who will review medical costs and claim settlements.

As part of its interim work plan, the committee also will consider whether to explore other topics in addition to the workers' compensation study. The public is invited to comment. For more information on the meeting, visit the committee web page at leg.mt.gov/eaic or contact Pat Murdo, committee staff, at pmurdo@mt.gov or (406) 444-3594.

Energy, Telecommunication Committee Seeks Comments on Energy Policy

The Energy and Telecommunications Interim Committee (ETIC) will meet in September to begin an in-depth review of energy policy in Montana.

Senate Bill 290, enacted last session, directs the ETIC to revise the state's energy policy. In developing a new policy, the committee is asking for ideas from stakeholders, the public, and appropriate state agencies.

In advance of the September meeting, the committee is accepting public comment on the following issues:

- rebuilding and extending electric transmission lines;
- integrating wind energy into the electric grid; and
- maximizing state land use for energy generation.

Committee members would like to hear about specific changes in state law that are needed in these areas, as well as thoughts on potential findings and recommendations.

So far, most comments from the public have dealt with wind integration, including the role the state should play in the location, siting, size, and number of wind farms in Montana. Other comments have emphasized the importance of better using public lands for transmission lines to move energy resources to market.

Anyone wishing to comment on these three topics should submit testimony by Sept. 8 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 sent to the committee 10 days before its next meeting, which will be Sept. 24 in Room 172 of the Capitol. The time has yet to be determined.

Over the next nine months, the committee will seek public comment on other energy policy issues. A complete schedule is available under the "Energy Policy" link on the committee's web page at leg.mt.gov/ etc.

At the Sept. 24 meeting, staff of the state Department of Natural Resources and Conservation will discuss the use of state land for energy development. The discussion will cover oil, gas, coal, biomass, and wind. A panel consisting of representatives of the Energy Development Division of the Department of Commerce, Montana Alberta Tie Line, and Move MSTI, a group promoting public utilities on public land, will discuss transmission topics. A panel consisting of representatives of Gaelectric, Naturener, and small wind developers will discuss the integration of wind energy.

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

Environmental Quality Council Begins Biomass Study at Sept. 10-11 Meeting

The Environmental Quality Council will meet Thursday and Friday, Sept. 10 and 11, in Room 172 of the Capitol.

Council staff will present the first installment of a report on expanding the use of biomass for energy production in Montana. The study was authorized by the passage of House Joint Resolution 1.

The report will include information on existing and

proposed biomass projects in Montana, biomass incentives and policies in other states, and federal initiatives and policies related to the use of biomass.

One of the EQC's responsibilities is to monitor the activities of state agencies. The following agencies will provide reports on the following topics at the September meeting:

Department of Natural Resources and Conservation

- Habitat Conservation Plan (summary of draft Environmental Impact Statement)
- House Bill 674, issuance of state bonds for land acquisition
- Effects of reappraisal on the homesite/cabin leasing program
- 2009 fire season
- Senate Bill 131, designating parcels in the wildland/urban interface

Department of Fish, Wildlife, and Parks

- Wolf delisting, litigation, and the 2009 hunting season

Department of Environmental Quality

- Financial status of the Petroleum Tank Release Fund
- Superfund program update

Council staff will also provide updates on the SJR 28 study of recycling and solid-waste recovery and the HJR 15 study of public access on private land for tourism and recreational activities. The state Department of Commerce will report on the implementation of the Distressed Wood Products Revolving Loan program created by HB 669.

The agenda, meeting reports, and other material are available on the EQC web page at leg.mt.gov/eqc. For more information, contact Todd Everts, legislative environmental analyst, at (406) 444-3747 or teverts@mt.gov.

Law and Justice Committee Ranks Study of DUI Laws as Top Priority

The Law and Justice Interim Committee held an organizational meeting Aug. 3 and took the following actions:

- elected Rep. Shannon Augare of Browning to serve as chair of the committee and Rep. Ron Stoker of Darby as vice chair;
- determined that a study of DUI laws requested by SJR 39 would be the committee's top priority;
- limited the scope of an SJR 29 study of DNA evidence to storage matters related to the retention and preservation of biological evidence for future DNA analysis in felony cases; and
- decided to study emerging issues, including prerelease placements for sex offenders and how to handle cases involving people who hoard pets.

The committee will focus its agency monitoring duties on the public defender system and on the implementation of the committee's mental health diversion bills (HB 130, HB 131, and HB 132), which were enacted last session.



Rep. Shannon Augare The committee decided to conduct all its meetings in Helena because the Capitol provides access to live Internet streaming and television broadcasting. However, committee members were encouraged to tour correctional facilities and treatment programs such as the Warm Springs Addictions Treatment and Change Program for the DUI study and the state crime lab and local evidence rooms for the DNA study.

The committee will meet Sept. 28 and 29 at the Capitol. The time and room number will be announced when available. The tentative meeting schedule for the rest of the interim is:

- Dec. 14, 2009
- Feb. 8, 2010
- April 5, 2010

- May 17-18, 2010
- July 12, 2010
- Sept. 3, 2010

For more information about the committee, visit leg.mt.gov/ljic or contact Sheri Heffelfinger, committee staff, at (406) 444-3596 or sheffelfinger@mt.gov.

Legislative Audit Committee Schedules September Meeting

The Legislative Audit Committee will meet Sept. 29 in Room 172 of the Capitol. Although a meeting time and final agenda have not been set, the following audit reports will likely be presented to the committee:

Financial-Related Audits

- Montana State University (All Campuses), 09-13
- University of Montana (All Campuses), 09-12

Information Systems Audits

- Consolidated Environmental Data Access and Retrieval System (CEDARS): Verification of Data Accuracy and Integrity, 09DP-01
- Management Information and Cost Recovery System: Claims Processing (MICRS), 09DP-06

Performance Audits

- Board of Horse Racing, 09P-02
- Montana's Subsequent Injury Fund, 09P-03
- Reimbursement Office Business Practices, 08P-12
- State Vehicle Fleet Management, 09P-04

Followup reports to previous audit reports will also be presented on:

- Chemical Dependent and Sex Offender Treatment Programs (original report, 07P-08)
- Improving Montana's Opencut Mine Permitting Process (original report 08P-04)
- Montana School for the Deaf and Blind (original report, 07P-13)
- Montana's 9-1-1 Emergency Telephone System (original report, 07P-12)

- Prioritizing Forest Fuels Reduction Project (original report 06P-13)

More information about the committee is available at leg.mt.gov/audit. Or contact Legislative Auditor Tori Hunthausen, Legislative Audit Division, at (406) 444-3122 or thunthausen@mt.gov.

Legislative Council Adopts Work Plan, Develops Strategies for the Future

The Legislative Council met briefly Aug. 20 to adopt an interim work plan and review legislative branch budget items. The council discussed the possibility of videoconferencing interim committee meetings and reviewed a legal analysis regarding outside contributions to interim committees.

Gayle Shirley, legislative information officer, gave the council an update on the Legislators Back to School Program, sponsored by the National Conference of State Legislatures. Shirley will send information about the program to all legislators toward the end of August, and the council encourages them to participate.

The council conducted a strategic planning session Aug. 20-21 similar to those conducted in each of the last several interims. The sessions have led to a variety of initiatives, such the expansion of TVMT; additional public outreach, including the creation of the legislative information officer position; and enhanced support and training for legislators. Coverage of the planning session will appear in next month's issue of *The Interim*.

The Legislative Council will meet next on Tuesday, Sept. 22, in Helena. For more information or to review meeting materials, visit the council's web page at leg.mt.gov/legcouncil, or contact Susan Byorth Fox, LSD executive director, at (406) 444-3066 or sfox@mt.gov.

Legislative Finance Committee to Track Federal Stimulus Spending

The American Reinvestment and Recovery Act of 2009 (ARRA) has provided Montana with \$1 billion in stimulus funding. This money and the corresponding

“freed-up” general fund resources were appropriated in House Bill 645. Money is being distributed around the state for a variety of purposes. So far, most of the funds have been used for extended unemployment benefits and the enhanced federal match rate for the Medicaid program.

Here is some basic information on stimulus spending through June 2009:

- Total expenditures in Montana: \$110 million
- Extended and additional unemployment benefits: \$21 million
- Supplemental Nutrition Assistance Program (food stamps): \$4.5 million
- Department of Transportation construction projects: \$2.2 million
- “Quick Start” grants for schools: \$86,680
- City and county projects: \$1,865
- Enhanced Federal Medical Assistance Percentage for Medicaid: about \$60 million

Information on the distribution of financial resources to local areas under HB 645 is available on the governor’s ARRA web page at recovery.mt.gov. The page contains an interactive map that shows funding for each of the 56 Montana counties. Additional details for each county can be accessed by clicking on the “Governor’s Monthly Reports” and the “By County” links.

In addition to the stimulus spending contained in HB 645, the federal legislation also provided funds to federal agencies for other projects within the state. For example:

- The U.S. Department of Health and Human Services has allocated additional funding for increased demand at community health centers, as well as for capital improvements at the centers. Health centers in Montana will receive a total of \$2.8 million.
- The U.S. Department of Interior has allocated \$123 million to projects in Montana, including \$40 million for the completion of the Fort Peck/Dry Prairie Rural Water System project, which will provide clean drinking water for 27,430 homes in that area.

Information about the federal grant allocations, as well as progress reports from federal agencies on the effectiveness of the grants, are also on the ARRA web page. The first progress reports will be available Nov. 1.

At its latest meeting, the Legislative Finance Committee appointed a subcommittee to provide legislative oversight of federal stimulus spending. The subcommittee is scheduled to meet in Helena on Sept. 24. A meeting time and room number have not yet been determined.

Legislative Fiscal Division staff are available to explain the details of stimulus funding included in HB 645 or allocated through federal agencies. For more information, contact Barb Smith at (406) 444-5347 or basmith@mt.gov.

Full Finance Committee to Meet Sept. 24-25

The Legislative Finance Committee will meet Thursday and Friday, Sept. 24 and 25, in Room 102 of the Capitol. The committee will convene at 1 p.m. on Thursday and 8 a.m. on Friday. The agenda and meeting reports will be available on the committee web page at leg.mt.gov/lfc. For more information about the committee, contact Clayton Schenck at cschenck@mt.gov or (406) 444-2986.

The committee is scheduled to hear the following presentations:

- a report on progress by the state Department of Public Health and Human Services (DPHHS) in implementing the Healthy Montana Kids program;
- evaluation of budget reductions required in the 2013 biennium because of one-time-only appropriations to DPHHS;
- a subcommittee report on federal stimulus funds;
- a budget proposal by the Montana State Fund;
- a report on the status of the general fund; and
- a subcommittee report on performance measurement

The committee is in the process of selecting a new legislative fiscal analyst to replace Clayton Schenck, who is retiring at the end of the year. A four-member

subcommittee will interview three finalists and make a recommendation to the full committee at the September meeting.

Revenue, Transportation Committee Reviews Individual Income Taxes

The Revenue and Transportation Interim Committee will meet Thursday and Friday, Sept. 17 and 18, in Room 137 of the Capitol. The Thursday session will start at 1 p.m., and the Friday session will start at 8 a.m.

The committee will take a broad look at individual income taxes in Montana, including an SJR 37 study of the filing status of married taxpayers, past legislative proposals to base the Montana's individual income tax on a percentage of federal tax liability, and the recodification of individual income tax laws.

At the latest meeting of the committee on July 1, Sen. Kim Gillan of Billings, chair of the committee, appointed a four-member subcommittee to discuss the House Bill 658 (property tax mitigation legislation) request that the full committee review property tax assistance programs, including circuit breakers. The subcommittee met with interested parties Aug. 17. Based on that meeting, the panel directed staff to draft a study plan on property tax assistance for the committee's consideration at the September meeting.

Other agenda items will include:

- a report on Montana's motor vehicle insurance liability laws and a summary of the enforcement of liability insurance under SB 508;
- updates on proposed transportation projects to move oil sands extraction equipment through the state;
- an overview of stimulus spending in the state;
- the applicability of 9-1-1 fees on prepaid wireless services, and
- reports by the Montana Departments of Revenue and Transportation.

More information about the meeting will be available in early September on the committee's web page at leg.mt.gov/rtic. For more information, contact Jeff Martin, committee staff, at (406) 444-3595 or jmartin@mt.gov.

SAVA to Review Actuarial Evaluations of Public Retirement Plans in October

The State Administration and Veterans' Affairs Interim Committee (SAVA) has canceled a meeting scheduled for Sept. 23 and will meet next on Oct. 29 and 30. Actuaries from both the Teachers' Retirement System and the Montana Public Employee Retirement Administration will provide information on the most recent actuarial evaluations of the state's public retirement systems. The state Board of Investments will discuss the investment of the systems' assets.

For more information about the committee, contact Rachel Weiss, committee staff, at (406) 444-5367 or rweiss@mt.gov. Visit leg.mt.gov/sava to sign up to get e-mail notices of committee activities and to get up-to-date information about the committee.

Water Policy Committee to Examine Water Law History, Water Science

The Water Policy Interim Committee will examine the history of water law and the science of how water works at its Sept. 21 meeting in Helena.

The committee will meet at 9 a.m. in Room 172 of the Capitol. Presentations will include a historical overview of water law in Montana and the West, as well as hands-on presentations demonstrating the science behind surface water and groundwater.

Also on the agenda are updates on the Ground Water Investigation Program, the water-right ownership transfer process, and the water-right adjudication audit.

At its latest meeting, the committee indicated that it wants to study a variety of issues, including various aspects of permitting and enforcement. The panel will decide on a draft work plan in September.

For more information about the committee, contact Joe Kolman, committee staff, at (406) 444-9280. Or visit the committee's web page at leg.mt.gov/water.

Constitutional Provision Provides Some Legislative Immunity

This is the first of a series of articles in which a member of the Legislative Services Division legal staff will



answer legal questions related to the legislative process.

Q. What is the scope of immunity available to legislators pursuant to Article V, section 8, of the Montana Constitution?

A. The Montana Constitution contains a “speech or debate clause” nearly identical to that of the U.S. Constitution. According to Article V, section 8, of the Montana Constitution:

Section 8. Immunity. A member of the legislature is privileged from arrest during attendance at sessions of the legislature and in going to and returning therefrom, unless apprehended in the commission of a felony or a breach of the peace. He shall not be questioned in any other place for any speech or debate in the legislature.

In Montana, there has been only one reported case that has construed the “speech or debate clause.” In *Single Moms, Inc. v. Montana Power Co.*, 331 F.3d 743 (9th Cir. 2003), the plaintiffs claimed that Montana legislators violated single mothers’ constitutional rights when the legislators voted to enact legislation deregulating the Montana energy markets. The District Court relied upon *Chappell v. Robbins*, 73 F.3d 918 (9th Cir. 1996), holding that legislators have an absolute common-law immunity against civil suit for their legislative acts. The Ninth Circuit Court upheld the District Court’s dismissal of the claims against the legislators. The common-law immunity described in *Single Moms, Inc.*, is based upon an interpretation of federal law. In *Supreme Court of Virginia v. Consumers Union of the United States, Inc.*, 446 U.S. 719 (1980), the Supreme Court stated at page 732:

We have also recognized that state legislators enjoy common-law immunity from liability for their legislative acts, an immunity that is

similar in origin and rationale to that accorded Congressmen under the Speech or Debate Clause. *Tenney v. Brandhove*, 341 U.S. 367 (1951). In *Tenney* we concluded that Congress did not intend § 1983 to abrogate the common-law immunity of state legislators. Although *Tenney* involved an action for damages under § 1983, its holding is equally applicable to § 1983 actions seeking declaratory or injunctive relief.

Article I, section 6, of the U.S. Constitution provides:

Section 6. The senators and representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the United States. They shall in all cases, except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the session of their respective houses, and in going to and returning from the same; and for any speech or debate in either house they shall not be questioned in any other place.

Both the U.S. and Montana Constitutions provide in speech or debate clauses that a legislator “shall not be questioned in any other place” with regard to speech or debate in the legislative body. A literal reading of this language in Article I, section 6, of the U.S. Constitution and Article V, section 8, of the Montana Constitution might lead to a premature conclusion that the clause only protects members of the legislative body against suits for slander arising from spoken words of the members. Case law from the federal courts and from states with constitutional provisions similar to Montana’s makes it clear that the scope of the speech or debate clauses is not so limited and that the clauses are, in fact, a constitutional basis for general legislative immunity.

The U.S. Supreme Court has held that the speech or debate clause provides a general legislative immunity from suit to members of Congress for acts taken by Congress within its constitutional sphere of operations. See, for example, *Tenney v. Brandhove*, 341 U.S. 367

(1951). In *Tenney*, William Brandhove brought an action under federal law against a committee of the California Legislature for conspiring to deprive him of his rights as part of a committee investigation. The Supreme Court found that the federal statute under which Brandhove brought the action was not intended to overturn

“The purpose of the clause is to prevent the chilling of legislative actions by ‘intimidation of legislators by the Executive and accountability before a possibly hostile judiciary.’ To that extent, it helps to ensure the separation of powers.”

legislative immunities in those areas in which state legislators have traditionally acted.

The Supreme Court has stated that the purpose of federal speech or debate clause immunity is not simply to provide personal or private immunity to congressmen, but to provide protection to the legislative institution by ensuring that legislative functions may be performed independently. To that extent, the clause

helps to ensure the separation of powers.

The Supreme Court has also stated that the purpose of the clause is to prevent the chilling of legislative actions by “intimidation of legislators by the Executive and accountability before a possibly hostile judiciary.” *Eastland v. United States Servicemen’s Fund*, 421 U.S. 491, 502 (1975).

The Supreme Court has also held that the clause does not protect only “pure” speech or debate. Rather, the immunity offered by the clause has been applied by the Supreme Court and other federal courts to grant absolute substantive immunity from liability and to grant individual congressmen immunity from suit for acts found to be within the “legitimate legislative sphere.” *Kilbourn v. Thompson*, 103 U.S. 168 (1881).

The Montana constitutional grant of immunity specifically applies to “speech” in the legislative process. However, the grant of immunity should be interpreted as much broader and should be construed to apply to any activity taken within the legitimate sphere of legislative activity. *Single Moms, Inc.*, indicates that Montana should follow the general interpretation of the common law and constitutional immunity provisions of the United States and other states in protecting any activity taken within the legitimate sphere of legislative activity.

The Back Page

KABOOM: Reflections on the Post-World War II Generation

By Jeff Martin, Legislative Research Analyst
Legislative Services Division

Coming up with a topic can be one of the more difficult challenges of writing a Back Page article. Luckily, there is a muse of back page articles; for me it's either Melpomene, the muse of tragedy, or Thalia, the muse of comedy – I'm not sure which.

Whichever the muse, she has inspired me several times. One night earlier this summer, I was surfing the Internet while waiting for Outlook to download the usual 50 billion spam messages¹, and I stumbled on a *Sports Illustrated* cover from the 1950s featuring Mickey Mantle and Willie Mays. It reminded me of an article I wrote in 1999 (also muse-inspired).

The world was planning to celebrate the new millennium on Jan. 1, 2000, but, as we all know, the 21st century really began Jan. 1, 2001. However, I decided to write a brief retrospective of the 20th century; by Dec. 31, 2000, the new millennium would be old news.

In that article, I made the pitch that the 1950s was not the drab decade that many people thought it was. Jeffery Hart celebrated the 1950s in the book *When the Going Was Good!* He claimed that not since the 1920s had so much been happening in both popular and high culture in literature, the theater, politics, theology, and the arts.

David Halberstam took a more somber view of the decade. In *The Fifties*, he traced the development of franchises such as McDonald's and Holiday Inn, the growth of suburbia, and the significance of television as the catalyst of our national conscience. He also described the social turmoil lurking beneath the surface: racial tension, sexual freedom, feminism, and challenges to the social order. The turmoil erupted into public prominence in the 1960s.

The Detonation

The 1950s were also part of the phenomenon known as the "Baby Boom," the post-World War II generation born between 1946 and 1964. The national birthrate increased dramatically over the prewar and war years. The table below shows the annual number of births and the birthrates from 1940 to 2007.

Year	Live Births in Millions	Births/1,000 persons	World Series Winner
1940	2,360	17.9	Cincinnati Reds
1945	2,858	19.5	Detroit Tigers
1946	3,411	23.3	St. Louis Cardinals
1947	3,817	25.8	NY Yankees
1948	3,637	24.2	Cleveland Indians
1949	3,649	24.0	NY Yankees
1950	3,632	24.1	NY Yankees
1951	3,820	24.5	NY Yankees
1952	3,913	25.1	NY Yankees
1953	3,965	25.1	NY Yankees
1954	4,078	25.3	New York Giants
1955	4,104	25.0	Brooklyn Dodgers
1956	4,218	25.2	NY Yankees
1957	4,308	25.3	Milwaukee Braves
1958	4,255	24.5	NY Yankees
1959	4,295	24.3	LA Dodgers
1960	4,258	23.7	Pittsburgh Pirates
1961	4,268	23.3	NY Yankees
1962	4,167	22.4	NY Yankees*
1963	4,098	21.6	LA Dodgers
1964	4,027	21.0	St. Louis Cardinals
1970	3,731	18.4	Baltimore Orioles
1980	3,612	15.9	Philadelphia Phillies
1990	4,158	16.7	Cincinnati Reds
2000	4,059	14.4	NY Yankees
2004	4,112	14.0	Boston Red Sox
2005	4,143	14.0	Chicago White Sox
2007	4,315	NA	Boston Red Sox

* Luckily, Willy McCovey didn't hit the ball a foot higher. Charlie Brown agonized over his liner in *Peanuts*.

1 "If it weren't for spam mail, I'd get no mail at all."

In 1945, the birthrate began to increase over the birthrate recorded in 1940. Between 1946 and 1957, the number of live births and the birthrate generally increased and then declined through 1964. About 76 million people were born between 1946 and 1964.

Since at least 1970, annual birthrates have been significantly below the levels of the Baby Boom period.

Some of us Baby Boomers are New York Yankees fans. Between 1946 and 1964, the Yankees appeared in 15 World Series and won 10. After the 1964 series, the Yankees fell into obscurity until the late 1970s.²

“In 1950, 16 workers supported one retiree’s Social Security benefits; in 2008, there were 3.2 workers per retiree.”

People born during the Baby Boom are now 45 to 63 years old and are beginning to retire.³ On Oct. 15, 2008, Kathleen Casey-Kirschling, a former school teacher, became the first Baby Boomer to file for Social Security benefits. She was born one second after midnight on Jan. 1, 1946. The Social Security Administration reports that, over the next two decades, nearly 80 million Americans will become eligible for Social Security benefits,⁴ or about 11,000 per day.

Although Michael J. Astrue, commissioner of the Social Security Administration, touts Social Security as providing “economic protection to millions of Americans and their families,”⁵ the huge number of retirees has people worried not only about the viability of the Social Security system to meet retirement obligations but also the nation’s ability to provide services to retirees and other age groups.

2 It’s tough being an American League fan. I haven’t forgiven the league for adopting the designated hitter rule.

3 Baby boomers account for more than 60 percent of the Montana Legislature.

4 “Nation’s First Baby Boomer Files for Social Security Retirement Benefits – Online!” News Release, Social Security Administration, Oct. 15, 2007. Retrieved from <http://www.ssa.gov/pres-office/pr/babyboomerfiles-pr.htm>.

5 Ibid.

In 1950, 16 workers supported one retiree’s Social Security benefits; in 2008, there were 3.2 workers per retiree. That ratio has been fairly stable since 1974, but by 2030, when most of the Baby Boom Generation will have retired, there will be 2.2 workers supporting one retiree. Because of the combination of declining birthrates and mortality rates, the Social Security Administration expects the ratio of workers to retirees to gradually fall.⁶

Americans age 65 or older will account for more than 20 percent of the population by 2030, compared to 13 percent now. In Montana, people age 65 or older will account for almost 26 percent of the state’s population by 2030.

In 1983, Congress may have had an inkling of the dire trends of the Social Security system. In that year, Congress increased the age at which a person could receive full Social Security benefits. Beginning with people born after 1937, the retirement age to receive full benefits was increased by 2 months a year, except for people born between 1943 and 1954 and in 1960 or later. For the former age group, the retirement age to receive full benefits is 66 and for the latter group, 67.

The ostensible reasons for increasing the retirement age were improvements in the health of older people and increases in the average life expectancy. Since the program began paying benefits in 1940, the average life expectancy of men reaching age 65 has increased to age 81 and the average life expectancy of women reaching age 65 has increased to age 84.⁷ Given the decline in the ratio of retirees to workers that was evident at the time, Congress may have been concerned about the viability of the system.

The Social Security Administration sends to each person who pays into the Social Security system an annual statement of potential Social Security benefits

6 The 2008 Annual Report of the Board of Trustees of the Federal Old-Age and Survivors Insurance and Federal Disability Insurance Trust Funds, May 15, 2009. Retrieved from www.ssa.gov/OACT/TR/2009/.

7 “Retirement Planner: Retirement benefits by year of birth,” Social Security Administration. Retrieved from www.socialsecurity.gov/retire2/agereduction.htm.

depending on the age at which the person retires. The latest statement includes a prediction that by 2041, the Social Security Trust Fund will be exhausted. The Associated Press reported in August that the fund will be busted by 2037.

So much for the grim statistics. The rest of this article deals with a few random musings about the Baby Boom Generation.

My Town

I grew up in a small town in north-central New Mexico. The population trends since 1946 are reflected in what has happened to the town's school district. When I began school in the 1950s, there were five elementary schools and several "satellite" schools, a junior high, and a high school. I recall having 25 to 30 classmates in each elementary grade. In the late 1950s and early 1960s, the school district built another elementary school and junior high school. Since then, some of the elementary schools and the original junior high have been converted to other uses; one elementary school was razed for residential dwellings, and a satellite school in a canyon just below my parent's house became a tennis court.

A Faux Generation

The Baby Boom Generation was the first generation to be named for the time period in which it was born. There have been other named generations – for example, the Lost Generation of the 1920s and the Beat Generation of the 1950s.

In the article "This Is The Beat Generation," John Clellon Holmes wrote: "Any attempt to label an entire generation is unrewarding, and yet the [Beat] generation which went through the last war . . . seems to possess a uniform, general quality that demands an adjective." This generation was "brought up during the collective bad circumstances of a dreary depression" and "weaned during the collective uprooting of a global war."

Holmes pointed out that the Beat Generation had been compared to the Lost Generation, the postwar generation of the 1920s. The symbols of the Lost Generation "were the flapper, the flask of bootleg

whiskey, and an attitude of desperate frivolity expressed by the line "Tennis, anyone?"

Many Baby Boomers came of age in the 1960s, the decade of:

- the assassinations of President John Kennedy, Martin Luther King, and Bobby Kennedy;
- a variety of other social and cultural upheavals, such as the Free Speech Movement at Berkeley, the Vietnam War, antiwar protests, and Woodstock;
- the landing of astronauts on the moon, and
- the Charles Manson cult murders.⁸

It was these and other events that made many people think the 1950s was a dull and uneventful decade by comparison.

On the other hand, most Baby Boomers born in the 1960s were not yet teenagers by the time the Vietnam War ended in 1973. As such, these Baby Boomers did not fully share the experiences of older Baby Boomers.

Trust Babies, Not

One of the odder analyses of the Baby Boom Generation that I came across is whether Baby Boomers can expect an inheritance from their parents. According to Michael Weiss, most Baby Boomers won't inherit a dime.⁹ Weiss cites several reasons for this.

First, health care costs of Baby Boomers' parents are absorbing a sizeable amount of their wealth. Second, stock market setbacks (the dot.com meltdown and the more recent unpleasantness in the stock market) have also eaten into their wealth. Finally, there is a "declining bequest ethic." It may be that parents of Baby Boomers are having too much fun spending their own money or are worried about having enough money to live out their remaining years. Or maybe Baby Boomers so irritated their parents that the assets will go to a favorite charity.

8 In 1975, Manson cult member Lynette "Squeaky" Fromme, born in 1948, was convicted of attempting to assassinate President Gerald Ford. She was paroled from prison on Aug. 14, 2009.

9 Michael J. Weiss "GREAT Expectations," American Demographics, May 1, 2003. Retrieved from http://findarticles.com/p/articles/mi_m4021/is_4_25/ai_100751507/.

Conversely, Weiss thinks that Baby Boomers will be more willing to transfer wealth to their children. But that may only happen if Baby Boomers can restrain their profligate spending.

The Statistical Generation

I agree with Holmes that labeling an entire generation is unrewarding. However, there is a certain pathos associated with the Lost Generation and the Beat Generation related to each generation’s common experiences of global war and economic upheaval. It is easy to lose track of these two so-called generations because they were defined by the historical period in which they lived.

Many people born in the earlier part of the Baby Boom were caught up in the turbulence of the 1960s and the first part of the 1970s, but I doubt whether this generation possesses “a uniform, general quality that demands an adjective.”

Whatever the cohesiveness of the cultural and social experiences of the Baby Boom Generation,

that cohesiveness is now seemingly overwhelmed by statistical, demographic, and policy analyses. Policymakers fret over the effect of Baby Boomers on society: What demands will older Americans make on governmental services? What effect will they have on

“The Baby Boom Generation may be better remembered for the magnitude of its effects on the workings of society than for its achievements, failures, and foibles.”

the economy and tax structure, and vice versa? How will they cope with events outside their control?

So the Baby Boom Generation may be better remembered for the magnitude of its effects on the workings of society than for its achievements, failures, and foibles. The generation will provide employment for statisticians, demographers, and policy analysts beyond 2064, the centennial of the last Baby Boomer’s birth.

October 2009						
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
				1 Education & Local Government Committee, time & place TBA	2 Education & Local Government Committee, time & place TBA	3
4	5 State-Tribal Affairs Committee, tour of Rocky Boy’s Reservation	6 State-Tribal Affairs Committee, tour of Rocky Boy’s Reservation	7 State-Tribal Affairs Committee, tour of Rocky Boy’s Reservation	8	9	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 & place TBA	30 State Admin & Veterans’ Affairs Committee, time & place TBA	31

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

September 2009

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
		1	2	3 Legislative Consumer Counsel, 1 p.m., Room 172	4	5
6	7	8	9 Economic Affairs Committee, 9:15 am, Room 137	10 Environmental Quality Council, time TBA, Room 172	11 Environmental Quality Council, time TBA, Room 172	12
13	14	15	16	17 Revenue & Transportation Committee, 1 pm, Room 137	18 Revenue & Transportation Committee, 8 am, Room 137	19
20	21 Children & Families Committee, 8 am, Room 137 Water Policy Committee, 9 am, Room 172	22 Legislative Council, time & place TBA	23	24 Districting & Apportionment Commission, 1:30 pm, Room 137 Energy & Telecomm Committee, time TBA, Room 172 Legislative Finance Committee, 1 pm, Room 102 LFC Performance Mgmt Subcomm, time & place TBA LFC ARRA Oversight Subcommittee (tentative), time & place TBA	25 Legislative Finance Committee, 8 am, Room 102	26
27	28 Law & Justice Committee, time & place TBA	29 Law & Justice Committee, time & place TBA Legislative Audit Committee, time TBA, Room 172	30			

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