



# THE INTERIM

December 2011

A monthly newsletter of the Montana Legislative Branch

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The Interim is published by:

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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](http://leg.mt.gov).

## Children & Families Panel Fine Tunes Childhood Hunger Study

The Children, Families, Health, and Human Services Interim Committee narrowed the focus of its study of childhood hunger last month. After sifting through numerous suggestions offered by stakeholders and the public, committee members decided to obtain more information on the following topics:

- ways to increase the number of schools taking part in the School Breakfast Program;
- ways to support efforts to put Montana farm products into schools;
- the transportation issues that make access to full-scale grocery stores difficult for people in rural areas;
- the possibility of creating a clearinghouse for all nutrition education programs offered in Montana;
- ways to use Supplemental Nutrition Assistance Program (SNAP) benefits at farmers' markets;
- ways to support "gleaning" programs that harvest unused produce or grains from fields or recover unsold items from stores or restaurants;
- whether to restart the cannery at the Montana State Prison to can Montana foods for distribution to food banks around the state;
- whether to distribute to food banks some of the milk produced at the State Prison dairy;
- whether flexibility exists in the federal SNAP or Temporary Assistance for Needy Families programs to use some of the federal funds for other food-related programs;
- how programs at the Livingston Food Pantry might be replicated elsewhere; and
- the ongoing efforts to revise and clarify state laws and regulations related to food processing and food safety.

In January, the committee will decide whether to pursue legislation or other action related to those items.

### Speakers Focus on Montana Food Products

At the committee's November meeting, a panel of speakers discussed existing efforts to put more Montana food products into schools or other programs that serve people in need. They emphasized that such programs benefit Montana producers, as well as the students who are able to eat locally produced, healthy foods.

Mary Stein, the Farm to School coordinator for the state's school nutrition programs, said many Montana farmers and ranchers are interested in such programs. However, she said schools face some barriers in putting Montana products on cafeteria tables. For example, some local foods may not be available in large enough quantities to supply a school district. In addition, many schools lack facilities for processing raw products into items that can be used in school meals.

Nancy Matheson of the Department of Agriculture said the agency has worked, often with other groups, to improve the ability of both producers and schools to meet the demand for locally produced foods. She noted that lawmakers in recent years have supported efforts to give schools more flexibility in buying local foods. They also have supported expansion of the infrastructure for processing foods. And several state agencies now are reviewing state laws and regulations involving food processing and food safety. They hope to streamline the regulations and to draft legislation that would eliminate unnecessary laws or revise laws that conflict with each other.

Michael McCormick, executive director of the Livingston Food Pantry, discussed the wide range of programs the pantry has put in place to encourage both the purchase and the production of healthy foods. Among other things, the food pantry has started community gardens. He said the gardens give many of the pantry's clients an opportunity to grow their own food. The pantry also provides classes in how to cook those foods.

### Committee Hears Medicaid Cost-Containment Ideas

As part of its Medicaid monitoring efforts, the committee heard perspectives on cost-containment options from several speakers. They discussed the pros and cons of managed care and other ways of providing medical services to Medicaid enrollees. The federal-state Medicaid program pays for medical costs for certain low-income aged, disabled, or blind Montanans, for low-income children, and for some very low-income adults with dependent children.

Committee members are looking at options for the Medicaid program for a couple of reasons. The state's share of Medicaid costs amounts to 14% of the general fund budget and 21% of state special revenue funds. In addition, the costs are

expected to increase in future years as the program is expanded under federal health care legislation. Medicaid must begin covering all Montanans whose incomes are at or below 138% of the federal poverty level in 2014; states will begin to share the costs of that expansion in 2017.

State Medicaid Director Mary Dalton gave an overview of the range of options for paying the health care providers and facilities that serve Medicaid enrollees. Those payment options include:

- a fee-for-service system, in which physicians and others are reimbursed for each service they provide;
- a primary care case management system that uses the fee-for-service model but also pays certain providers a monthly fee to oversee care and the use of services for some enrollees; and
- a capitated managed care system, in which the state pays a third party a fixed amount of money for each Medicaid enrollee. The third-party entity then creates a network of providers, oversees the use of services by enrollees, and assumes the risk of covering the costs of the needed medical services.

Montana uses a combination of fee for service and primary care case management for Medicaid enrollees.

Other speakers on the topic were Bob Olsen of MHA, an Association of Montana Health Care Providers; Dan Aune of Mental Health America of Montana; Kathy McGowan, representing the community mental health centers; Lander Cooney of Community Health Partners in Livingston; and Bill Hagan and John Kaelin of United Healthcare, which operates capitated managed care plans for Medicaid in a number of states.

DPHHS Director Anna Whiting Sorrell also discussed Gov. Schweitzer's plan to ask the federal government for a waiver to allow the state to receive federal Medicaid funds as a lump sum. The state would then be free to use the money according to guidelines it sets. She said the proposal also would allow the state to create a "public option" for Montana residents to buy their insurance through the state-operated program. Whiting Sorrell said that DPHHS is still exploring the idea with the Centers for Medicare and Medicaid. The agency will not begin vetting the proposal with providers and other stakeholders until CMS has indicated whether it will allow for such a waiver.

### Next Meeting

The committee will meet next on Jan. 28, in Room 137 of the Capitol. Details about the meeting will be posted on the committee's webpage, [www.leg.mt.gov/cfhhs](http://www.leg.mt.gov/cfhhs), as they become available.

## Reapportionment Commission & Staff Hit the Road

Although the Districting and Apportionment Commission hasn't met since July, individual commissioners and staff have traveled around the state visiting with local and tribal officials and other interested groups about the redistricting process. Staff crisscrossed the state, going to places as far apart as Roosevelt and Ravalli counties. Staff or commissioners, or both, have made presentations at a variety of conferences, such as the Montana Association of Counties annual conference, the annual meeting of the Montana Clerks and Recorders, Gallatin County League of Women Voters, and the League of Cities and Towns.

Because staff and individual commissioners cannot visit every area, the Districting Commission encourages Montanans interested in the redistricting effort to send in comments about how legislative districts should or could look after lines are redrawn. More information about how to send in comments and comments already contributed by others are available on the commission's webpage at [www.leg.mt.gov/districting](http://www.leg.mt.gov/districting).

To stay informed on future commission activities, including releases of draft maps and a schedule of public hearings in 2012, sign up to receive email updates. The sign-up form can be accessed on the commission's webpage.

For more information about the commission, contact commission staff Rachel Weiss at 406-444-5367 or [rweiss@mt.gov](mailto:rweiss@mt.gov).

## Neither Snow nor . . . Deters Education & Local Government Committee

The winter storm warnings deterred neither committee members nor scheduled participants in the Education and Local Government Committee's meeting held in Helena on Nov. 17-18, with an agenda that ranged from education data systems, to impacts of oil and gas development, to county zoning protest litigation.

Representatives of the Data Quality Campaign and the Office of Public Instruction presented extensive information on using education data to improve student achievement, experiences of other states in building and using education data systems, and Montana's progress in developing an education data warehouse (called Growth and Enhancement of Montana's Students or GEMS) in compliance with SB 329 (2011). One of the ultimate goals of an effective education data system is the ability to deliver student performance information to teachers, parents, and schools in a user-friendly format so that any problems can be quickly identified and remediation can be initiated. The public would be able to access infor-

mation as well, such as a school's test results, program and course offerings, student enrollment, and graduation rates.

Some school representatives have told the committee they are skeptical of the value of increased data collection requirements, which could take more time and resources than they can afford to dedicate. In a very small school, the officials have said, the teachers and administrators know all of the students well and know their capabilities and limitations without the need for an extensive database.

One advantage of the data system, however, would be to keep track of a student's progress when that student moves to a larger district or to provide continuing information about a student who moves from a large district to a small one. A sound data system, the committee learned, would also allow for statewide comparisons and provide researchers with more tools to analyze student achievement across multiple districts.

Student achievement and outcome-based education is at the heart of SJR 28 of performance-based funding for K12 education. The committee adopted a revised study plan to focus on reviewing outcome-based and performance-based education systems in other states, reviewing national literature education systems, determining how data can be used in evaluating the systems, and discussing with Montana educators and administrators whether such systems may be appropriate for Montana.

In the second of a series of conversations with individual school district trustees and superintendents, ELG welcomed school district officials from Malta, Sunburst, Culbertson, Gardiner, and Boulder to share their perspectives on the unique challenges facing the state's smallest schools and on the advantages small schools have in being able to provide more individualized, personal attention to their students.

Legislative staff continued its K-12 finance training with presentations on K-12 studies conducted by various entities from 2001 through present; an analysis of equity and adequacy arguments in Columbia Falls Elementary School District No. 6 v. State; the district court's findings; legislative responses to the court's findings; and the 2005 creation of the Quality Schools Interim Committee and its recommendations. The Havre public school superintendent and finance manager were on hand as part of the training to discuss how they build the budget and what funds comprise the budget.

Local government-related agenda items included a legislative staff presentation on county zoning protest and recent litigation questioning the constitutionality of county zoning protest provisions. Staff also provided an update on the HJR 39 study of subdivision for lease or rent exemptions and on discussions of the impacts of oilfield development on local governments and local infrastructure in eastern Montana.

Upcoming issues of The Interim will include more information on the local government-related topics on ELG's interim work plan.

ELG will meet Jan. 23-24. Check ELG's website (<http://leg.mt.gov/elgic>) for materials from the November meeting, as well as information about the January meeting when it becomes available. A new link has also been activated from ELG's website to a page containing the documents and audio and video clips of the K-12 school finance training, along with reports from previous studies and other resources. ELG's lead staff, Leanne Kurtz, can be reached at 406-444-3593 or [lekurtz@mt.gov](mailto:lekurtz@mt.gov).

## Energy & Telecom Committee Reviews Rural Cell Phone Coverage, PSC Structure

Large and small wireless providers are striving to provide better cell phone coverage in rural Montana -- but there are political and financial challenges.

During a Nov. 17 Energy and Telecommunications Interim Committee meeting, six wireless providers shared their insights on rural cell phone coverage. Mid-Rivers Communications, Nemont Telephone Cooperative, Triangle Telephone Cooperative, Verizon Wireless, AT&T, and Cellular One offered their perspectives on opportunities and challenges in the industry.

Providers discussed the challenges of securing "fill-in licenses" where larger providers may operate but smaller companies can "fill-in". Efforts to increase roaming agreements for texting and data (arrangements between companies, with federal regulatory involvement, so a cell phone owner who has a plan with one company can still make use of a phone in another provider's coverage area) also were discussed. Smaller providers stressed concerns about a reduction in federal Universal Service Fund program money, which is used to support rural wireless communications. The Federal Communications Commission is restructuring its financial support for telecommunications systems and is expected to place more of an emphasis on Internet services, and potentially provide less financial support to wireless providers.

Committee members also learned more about the Public Service Commission's organizational structure. The ETIC is analyzing the statutes that establish the organization and operation of the PSC, including options for replacing the five-member elected commission with an appointed commission, changing terms of office, filling vacancies, and use of districts.

James Lopach, a University of Montana professor of political science, shared his thoughts on the advantages of an appointed commission. He discussed the importance of having

commissioners with solid professional credentials, analytical abilities, and expertise.

Bobby Baker, an attorney, discussed his experiences as an elected commissioner in Georgia. Baker was first elected to the Georgia Public Service Commission in 1992 and served for 18 years. He discussed the importance of accountability.

ETIC members agreed to take another look at the issue in January and determine how to proceed with the discussion.

The ETIC next meets Jan. 13. For more information about the ETIC, including presentations and handouts from the November meeting, go to [leg.mt.gov/etic](http://leg.mt.gov/etic). Or contact Sonja Nowakowski at [snowakowski@mt.gov](mailto:snowakowski@mt.gov) or at 406 444-3078.

## State Parks on EQC January Agenda

The management of state parks in the Rocky Mountain region will be explained to the Environmental Quality Council at its January meeting.

The EQC is studying the management of Montana's state parks, outdoor recreation, and heritage resource programs as directed by HJR32 from last session. The study bill asks for a comprehensive review of the programs and, among other things, recommendations for improving and making their management a greater priority for the state.

The EQC meeting starts Jan. 11 at 1 p.m. in Room 172 of the Capitol and continues Jan. 12.

Also on the agenda will be a discussion of public use under the eminent domain statutes and an update on wolf management.

For questions or comments related to the work of the EQC, please contact Joe Kolman at 444-3747 or [jkolman@mt.gov](mailto:jkolman@mt.gov), or Hope Stockwell at 406-444-9280 or [hstockwell@mt.gov](mailto:hstockwell@mt.gov).

## Legislative Audit Committee Reviews 15 Audits

The Legislative Audit Committee met Nov. 3-4 in Helena to review recent audits of state agencies and programs. The Legislative Audit Division issued 15 audits. Audit findings included:

- Among findings that led to 15 recommendations, The Department of Public Health and Human Services violated state law and the Montana Constitution related to its appropriation authority. The agency also made errors in reporting foster care expenditures, which led to unnecessary repayments of \$1.3 million to the federal government. (Department of Public Health and Human Services, 11-14)

- The Department of Public Health and Human Services' Child Care Licensing Program failed to notify parents and/or local child care resource and referral agencies of negative licensing actions in at least three instances. In one instance a child walked away from a facility, physical neglect of children occurred in another, and a child was left alone in a third. The agency also does not have a formal process to follow up on cited deficiencies, including instances of accessible cleaning materials and handguns. (Inspection and Complaint Activities for the Child Care Licensing Program , 11P-11)
- The Department of Fish, Wildlife, and Parks ignored an internal checklist, which may have avoided the acquisition of septic treatment ponds as part of a purchase of 164 acres meant to enhance a fishing access site. (Department of Fish, Wildlife and Parks, 11-18)
- The Montana Department of Transportation circumvented state recruitment and selection policy when filling four positions, which led to the hiring of unqualified individuals. The department also did not detect underpayments of prevailing wage for some Federal Highway Planning and Construction Program projects, amounting to an estimated \$200,000-\$350,000. (Montana Department of Transportation, 11-17)
- The Department of Administration could have saved more than \$100,000 in six months if the department adopted a contract that provides for vendor-direct delivery of items, instead of the current practice of relying on Central Stores for delivery. (Procurement of Office Supplies, 11P-09)
- Board of Oil and Gas Conservation inspectors have not inspected 58 percent of the state's active oil and gas wells within the last five years. The board also lacks formal inspection priorities and has some data integrity risks. (Board of Oil and Gas Conservation, Regulatory Activities, 11P-04)
- The Office of Public Instruction has not implemented two recommendations from a 2009 audit related to a lack of onsite reviews of driver education programs and media library rental fees. (Office of Public Instruction, 11-19)
- Montana State University continues to violate state law and Board of Regents' policy by awarding excess tuition waivers to nonresident students. (Montana State University-Financial Related, 11-13)
- The Department of Commerce did not adequately ensure applications were completed and certification requirements were met for some production companies receiving Big Sky on the Big Screen Act tax credits. (Big

Sky on the Big Screen Act: Montana's Film Incentive Program, 11P-08)

Presentations included follow-up reports from these past audits:

- Achievement in Montana (11SP-19)
- Disaster Recovery Program (11SP-20)

And in other business, Brig. Gen. John Walsh of the Department of Military Affairs updated the committee on the department's progress toward meeting the recommendations provided in two recent audits.

The Legislative Audit Division provides independent and objective evaluations of the stewardship, performance and cost of government policies, programs and operations. The division is responsible for conducting financial, performance, and information system audits of state agencies and programs, including the university system.

For more information, call the division at 406-444-3122 or visit [leg.mt.gov/audit](http://leg.mt.gov/audit). To report improper acts committed by state agencies, departments, or employees, call the division fraud hotline at 800-222-4446 or 444-4446 (in Helena).

## Legislative Council Considers Legislative Security Proposal

The Legislative Council will meet Dec. 7 at 1 p.m. in Room 137 of the Capitol building.

In the morning, council members will meet jointly with the Legislative Finance Committee and the Revenue and Transportation Interim Committee to discuss the Legislature's revenue estimating process and to decide on areas for each of the committees to study further. For more information, contact Susan Fox, executive director, Legislative Services Division, or Amy Carlson.

At the council's afternoon meeting, Lee Heiman, code commissioner, will discuss the rules promulgated by the Montana Supreme Court and the publication of the rules in the Montana Codes Annotated.

The council will discuss three initiatives identified at the strategic planning session held in September. Draft material from the planning session are on the council's website. The council will consider a proposal to improve legislative security. The proposal, available on the council's website, calls for adding additional security officers through a contract with the Helena Police Department. The council will also discuss the 2013 legislative session calendar and the appointment of a rules subcommittee.

Heiman will be retiring at the end of the year after almost 32 years of service in state government and the Legislature. He

will be missed, but we are excited about his around-the-world adventure. Congratulations to Lee on his retirement and thanks for his many years of service to the state of Montana. Todd Everts is expected to be appointed code commissioner, returning the duties to the Legal Services Director as part of the succession planning strategy.

We also recently said good-bye to Karen Berger, Financial Services Manager, who retired after 30 years with the Legislative Branch in both the Legislative Audit Division and the Legislative Services Division. Valencia Lane, staff attorney with over 33 years of state service, also has retired. Congratulations to Karen and Valencia on their retirement, and thanks to both for all of the service to the Legislature and to state of Montana. It's a real testament that our staff shows such dedication to the Legislative Branch and had found a home here for so many years.

For more information and to view agendas, minutes, and meeting materials, please visit the Legislative Council's website [leg.mt.gov/legcouncil](http://leg.mt.gov/legcouncil), or contact Susan Byorth Fox at 406-444-3066 or [sfox@mt.gov](mailto:sfox@mt.gov).

## Legislative Finance Committee Meets in December

The Legislative Finance Committee is scheduled to meet Dec. 5 at 10 a.m. and Dec. 6 at 8 a.m. in Room 102 of the Capitol building. The committee will discuss the unfunded liabilities of the state pension systems, the requirements of SJR 26 to review specific programs for performance, and will delve into the history of school funding in Montana. The committee will also receive routine reports on the status of the general fund and on statewide information technology. The agenda and reports can be found at: [http://www.leg.mt.gov/css/Committees/Administration/Finance/2013\\_lfc\\_default.asp](http://www.leg.mt.gov/css/Committees/Administration/Finance/2013_lfc_default.asp)

The Legislative Fiscal Division recently welcomed two new analysts. Rob Miller joined the staff in September. He will be part of the education team. Christina Allen joined the staff in October. She has taken on the natural resources assignment.

## Revenue, Transportation Committee to Discuss Studies at December Meeting

The Revenue and Transportation Interim Committee will meet Thursday and Friday, Dec 8-9, in Room 137 of the Capitol building, beginning at 8 a.m. both days.

The committee will take up each of its assigned studies, including the House Joint Resolution 13 study of the state's income tax system, the Senate Joint Resolution 17 study on the valuation of centrally assessed property and industrial property, and the SJR 23 study of the exemption of nonprofit organizations from property tax and income tax.

The state Departments of Revenue and Transportation will report on their respective activities.

An agenda and other meeting materials are available on the committee webpage at [leg.mt.gov/rtic](http://leg.mt.gov/rtic).

For more information about the committee, contact Jeff Martin, committee staff, at (406) 444-3595 or [jmartin@mt.gov](mailto:jmartin@mt.gov).

## Select Committee on Efficiency in Government

The Select Committee on Efficiency in Government held its third meeting of the interim, at the Benefis Sletten Cancer Institute in Great Falls on Nov. 15-16.

The committee was established pursuant to House Bill No. 642 from the 2011 session. It is comprised of 12 members: six members each from the House and Senate, evenly split between the two political parties. The committee is charged with assessing the efficiency and effectiveness of state government activities in four topical areas: priority budgeting; health care; technology; and natural resources.

The Subcommittee on Health Care/Medicaid met on Nov. 15 to hear ideas from various stakeholders to enhance the efficiency of health care delivered through or affected by state law and policy, especially health services available through Medicaid. Several new suggestions were made to the subcommittee and, when added to other suggestions offered previously by stakeholders, the subcommittee sifted through nearly 30 ideas.

The subcommittee, chaired by Rep. Pat Noonan and with Sens. Mary Caferro and Ed Walker and Rep. Mark Blasdel all attending, settled upon six suggestions or areas that they and the full committee will focus on, each of which is intended to enhance efficiency in Montana's Medicaid program:

- Medicaid provider regulations. By Dec. 10, providers will submit: (a) a list of specific state statutes (MCA) and administrative rules (ARM) that can be revised to enhance efficiency; and (b) the action(s) the providers want the Committee to take on the item listed. Staff of the DPHHS will provide a response to the list and suggestions in time for the Health Care Subcommittee and Committee to review and discuss at the Jan. 9-10 meeting.
- Medicaid application process. The subcommittee will review what application information is required by federal law and what extra information the state asks for, then determine what to recommend to enhance efficiency in the application process. The DPHHS will provide a demonstration of the on-line application.

- System of Care Account. Review and, if necessary and possible, fix the “system of care account” statute (52-2-309, MCA) designed to allow the DPHHS to administer and deliver services to high-risk children with multiagency service needs through fund transfers among various state agencies. Legislative staff will examine and report, and DPHHS will respond.
- Long-term care partnership insurance. Under section 53-6-803, MCA, the DPHHS can collaborate with private insurers to implement long-term care insurance partnerships in light of or as a response to problems associated with asset transfers, the Medicaid hardship process, etc. Pinpoint concerns and suggestions, then request response from DPHHS and Insurance Commissioner.
- Asset transfers and Medicaid eligibility. Determine if cost-efficiency can be enhanced by modeling Montana law after the state of Washington’s laws that address/limit the transfer of assets held by Medicaid applicants.
- Transportation for the developmentally disabled. Determine if state law can be changed to allow service providers to provide transportation more efficiently.

The subcommittee recommended to the full committee that, going forward, the subcommittee and Committee limit further work regarding health care/Medicaid to the six issues and the committee tacitly concurred, then added to the list.

The Subcommittee on Work Planning also met Nov. 15. Sen. Jon Sonju chaired the subcommittee and led a discussion that included subcommittee members and Dick Clark, Montana’s chief information officer, on information technology efficiencies. Sonju also led the discussion of the staff’s draft study plan and meeting schedule. The subcommittee’s members--Sonju, Sen. Mary Caferro, Blasdel, Rep. Ron Ehli, and Rep. Galen Hollenbaugh--toiled through the series of tasks assigned by HB 642 and set the meeting schedule for the remainder of the interim.

The committee and applicable subcommittees plan to finish studying the health care/Medicaid issues and suggestions in January, and the committee will finalize health care/Medicaid recommendations by February. The subcommittee also determined that the full committee should address the topic of “priority budgeting” later in the interim, after work is complete on the topics of health care, technology, and natural resource efficiencies.

The full Committee met Nov. 16 and received suggestions for enhancing government efficiencies from a panel of Great Falls-area elected officials (moderated by Sen. Ed Buttrey). The members received reports from the two subcommittees and tacitly agreed with the subcommittees’ recommendations.

Committee members were also briefed on various aspects of health care in Montana by: Susan B. Barton, RiverStone Health, Billings; Mary Dalton, medicaid manager, Department of Public Health and Human Services; and Tim Kober, program and account manager, Magellan Health Services. A number of citizens also offered their own suggestions and comments at various times during the subcommittees’ and full committee’s meetings. Sonju asked Sen. Jim Keane to work with Walker, Rep. Kathleen Williams, and committee staff to identify appropriate individuals from state government and natural resource industries to inform the committee when it turns its attention to natural resource topics.

The committee encourages everyone to submit suggestions for enhancing government efficiency within the areas of health care/Medicaid, technology, natural resources, and priority budgeting and has provided an online input tool to foster participation. The online input tool can be found at <http://leg.mt.gov/sceg> under the heading “Provide Your Suggestions to the Committee”.

The select committee’s next meeting is scheduled for Jan. 9-10 in Room 102 of the Capitol building. The Health Care/Medicaid and Technology Subcommittees are also scheduled to meet, probably Jan. 9. Details about the subcommittees’ and full committee’s meetings will be provided in the meeting agendas, which will be posted to the committee’s webpage as soon as available.

More information about the committee can be found on the committee’s web page, or by contacting Dave Bohyer, lead staff for the SCEG, at [dbohyer@mt.gov](mailto:dbohyer@mt.gov) or 444-3592.

## Water Panel Looks at Subdivision Water Supply

Every house needs water. Where that water comes from, how it gets there and who makes those decisions will be explained to the Water Policy Interim Committee in January.

Supplying water to subdivisions is one of the panels featured at the WPIC meeting, which starts at 9 a.m. Jan. 10 in Room 172 of the Capitol. It continues the morning of Jan. 11.

The committee is studying wells that pump less than 35 gallons per minute and yield less than 10 acre-feet of water a year. Thousands of these wells exist around the state for various uses including domestic, stock, and irrigation. Some argue that the cumulative effect of exempt withdrawals may be impairing senior water rights.

The agenda includes a presentation by the Montana Bureau of Mines and Geology examining exempt well development in areas studied by the Ground Water Investigation Program.

Also on the agenda is a discussion of water mitigation banks in Washington, the management of the Missouri River, and an update from the Reserved Water Rights Compact Commission.

For more information visit [www.leg.mt.gov/water](http://www.leg.mt.gov/water) or contact Joe Kolman, committee staff, at 406-444-3747 or [jkolman@mt.gov](mailto:jkolman@mt.gov).

## The Back Page

### Legislative Minutes: There's More to 'Em Than Meets the Eye

**By Susan Byorth Fox, Executive Director  
Legislative Services Division**

#### Introduction

The Legislature is the people's branch. Montanans send a representative sample of the state's population to Helena every 2 years to set policy and adopt a budget. The end product is legislation that is codified, then implemented by the Executive Branch. Drafters, on behalf of the legislators, strive to create bills that the average citizen can understand and interpret without legal assistance. The entire legislative process is one that provides multiple sets of eyes on the legislation; it can be refined so its meaning is clear and reflects the legislative body's intent. The legislation that is started by an individual legislator becomes the work of the institution and the law of the land. The law is administered, tested, litigated, and interpreted by many.

In legal circles there is debate on whether legislative intent can be determined. Testimony includes proponents and opponents and committee discussion and also includes individual opinions, industry information, and inaccurate or even eventually disproved information, but it is part and parcel of the legislative record. Where else would one begin to explore legislative intent beyond the actual bill itself but in the record that the Legislature leaves of its deliberations during the legislative process. A "legislative history" may be used to try to discern the legislative intent.

The legislative history is a collection of the documents that are created through the legislative process prior to the enactment of the legislation. The primary sources are the minutes and exhibits that are produced in committee hearings on various sequential versions of the bills. Minutes can be in written form or, as is currently done, in a digital recorded audio format. In other states and for the United States Supreme Court, other documents are used (and may give one pause) that include committee staff reports, floor notes, rejected amendments, veto messages, budget reports, newspaper accounts, and voters' information.

Legislative intent generally comes up during litigation, but there are also administrative processes that seek to understand legislative intent. During a 2000 study, the Legislative Council discussed legislative intent and heard testimony that

the intention for passing a bill could be based on the subject of the bill or on motives having nothing to do with the actual bill. Do the materials that can be gathered regarding a bill truly provide insight into the intent of the entire legislative body? The problem is whether what is said at a committee meeting of 10 to 20 legislators truly can reflect the intent of the entire body.

Before one resorts to legislative intent, the general rule for interpretation of statute is the plain meaning of the language. This standard was set in the late 19th century and has been followed generally since then, its popularity waxing and waning with the composition of the United States Supreme Court. As hard as we try, language is not always clear in its meaning, and it leaves courts to either consult the pre-enactment materials that create a legislative history or resort to other methods. Other methods have varied through time from looking at the public history of the day to a more basic interpretation of similar statutes and statutory construction. Basically, the plain meaning of the statute would be as a normal speaker of English would understand it. If there is no plain meaning, or if the plain meaning would lead to an absurd result, courts may resort to legislative history. Montana's materials for legislative history are slim compared to the volumes that may result from congressional action and may or may not be helpful in understanding the intent behind legislation.

Montana's Bill Drafting Manual states:

If a drafter must resort to the rules of statutory construction in order to explain the effect of a bill, the drafter has done a poor job. The exception to this is the plain meaning rule, which dictates that statutes are to be interpreted using the ordinary meaning of the language in the statutes unless a statute explicitly defines terms otherwise.

The Montana Supreme Court has adopted the plain meaning rule through case law and mentions both statutory construction and legislative history:

Unlike the Virginia and Arizona courts, we are bound by the more stringent mandate that "the office of the judge is simply to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted or to omit what has been inserted." [Citations

omitted.] Further, statutory language must be construed according to its plain meaning and, if the language is clear and unambiguous, no further interpretation is required. [Citations omitted.] In construing a statute, this Court must also read and construe each statute as a whole so as to avoid an absurd result “and to give effect to the purpose of the statute.” [Citations omitted.] If the plain words of a statute are ambiguous, however, the next step in judicial interpretation of the statute is to determine the intent of the legislature. [Citations omitted.] This is accomplished by examining the legislative history of the statute, including the title of the original bill. [Citations omitted.] *Infinity Insurance Co. v. Dodson*, 302 Mont. 209 (2000).

First and foremost, the Legislature should draft and enact laws that are explicit so that the plain meaning can be determined with some certainty through reading what is in the statutes. But because there can be ambiguity in the English language, we must take care to have as complete a legislative history as possible so that the courts, if they must resort to it, can use it to whatever extent it can assist them.

### **Background and History**

The deliberations, debates, and testimony that result in the laws that govern our society are worthy of documenting, but there are different forms of documentation. Constitutionally, the Legislature is required to keep a journal, but there are no specific requirements as to what constitutes a journal. Mason’s Manual states that it should be a record of what is done rather than what is said. The Constitution also requires the Legislature to record every vote of each member of the Legislature on each substantive question and to make those votes public. The journals record the actions and votes on bills and motions under each order of business, but they do not capture the debate or discussion held on each bill, amendment, or motion.

The bulk of the work of the Legislature happens in committee, the citizen’s forum to participate. Our Constitution guarantees our right to know and our right to participate. The open meeting laws reflect these rights. Within the open meeting laws are requirements for minutes to be kept and to be available for inspection. There are also requirements for what has to be included in the minutes: (a) the date, time, and place of the meeting; (b) a list of the individual members of the public body, agency, or organization who were in attendance; (c) the substance of all matters proposed, discussed, or decided; and (d) at the request of any member, a record of votes by individual members for any votes taken. These requirements were enacted in 1963 and are listed in section 2-3-212, MCA.

For legislative committees, minutes are kept of the hearings and the discussions, deliberations, and testimony that occur. During the 2011 Legislative Session, questions arose regarding legislative minutes in hearings on two bills. In the course of the discussions, it became apparent that there is a lot of confusion about both the current and historical status of legislative minutes. There’s actually a lot to be confused about, but in this article I hope to provide information to clarify the status of legislative minutes, to educate about the efforts that have been accomplished to date, and to outline our goals for the future.

Legislative histories can be laborious because staff must gather information from many sources, such as the current statutes or session law, the LAWS system or the History and Final Status publication, the various bill versions, the written summary minutes or written logs and attachments of committees from various sources, which may be the legislative website or at the Montana Historical Society or Law Library collections, and audio and video recordings when available. A “Montana Legislative History Research Guide” has been prepared by the Montana Law Library and can be accessed through their website or through the Legislative Reference Center or Montana Historical Society websites.

### **2011 Legislation and Concerns Raised**

House Bill No. 120 (Ch. 65, L. 2011) requested by the Legislative Council and sponsored by Rep. Tom McGillvray, allows audio recordings to be designated as official minutes and, if an audio recording is designated as official, also requires a written log that includes all of the statutory requirements for minutes. In addition, if the minutes are recorded and designated as the official record, a log or time stamp for each main agenda item is required for the purpose of providing assistance to the public in accessing that portion of the meeting. This places into law the current practice of the Montana Legislature but allows other jurisdictions to continue with written minutes as before.

House Bill No. 578, which was sponsored by Rep. Michele Reinhart and subsequently died in committee, would have required that written records be kept of all legislative meetings. In the preamble, the legislation provided an argument for written records. It stated:

Whereas, Article V, section 11, of the Montana Constitution prohibits the Legislature from passing a bill that is so altered or amended on its passage through the Legislature as to change its original purpose; and

Whereas, Montana statutes frequently require various agencies to implement the law adopted by the Legislature and to administer the law in the context of the Legislature’s intent when it adopted the law; and

Whereas, whenever the judiciary is unable to adjudicate a question of law from the clear meaning of a statute, the judge or court is obliged to rely, in part, upon the Legislature's intent when it adopted the law; and

Whereas, the Legislature's intent in adopting a law may be discernible only by understanding the discussion had by legislators while in committee; and

Whereas, the discussion had by legislators while in committee is currently recorded by means of audio or video technology that usually, but not always, functions at a reliable and useable level of quality and that is subject to relatively rapid functional and economic obsolescence.

There was testimony on House Bill No. 578 that stated the cassette tapes for 1997 were obsolete and that records were lost to the public. This is not entirely accurate (for the most part, audio cassette tapes are still available and can be accessed by the public to the extent that the original recording is audible) and led people to believe that the same was true for current legislative minutes. This understanding is problematic and the status is complicated, and I will discuss the issues in depth in this paper.

The other concern was quality of the audio, because sometimes speakers turn away or don't use the microphones and "nuggets" of information are lost. Even in the past, there was no guarantee that those nuggets were included by the secretaries in the summary and there was no back up audio to double-check. Problems with audio tapes that were recorded at variable speeds can be remedied by use of the original equipment, which is retained by the Montana Historical Society and can be shared with the Law Library as needed.

Even if the Legislature were to return to written minutes, the problem of the ability to produce complete written minutes would remain. Technology is not yet advanced enough to transcribe minutes from a committee setting. Although individuals can use voice or automatic speech recognition software for dictation or transcription, it is specific to individual voice patterns. In a committee setting, there are numerous speakers and voices that change daily, the software is not advanced enough to convert the group audio to text, and current accuracy levels would still require human editing and correction. (Think of autocorrect and spell check errors.)

Producing verbatim minutes would require a return to the time-consuming practices of previous sessions. However, the hiring of enough skilled secretaries would be unrealistic and possibly cost-prohibitive, even if we could find a qualified workforce to do the job. In addition to transcribing minutes and other duties, it would require proofing and an approval process that could delay availability, possibly for months after a hearing. Currently, legislative secretaries are able to staff

more than one committee and are virtually finished with their work by the end of session.

This is not the first time legislative minutes have been at issue. In the 1995-96 interim study, the state archivist had believed that requests for tapes of committee meetings of a particular session would taper off within 10 years after that session, and therefore storage of the tapes would no longer be necessary. Based on that belief, the recordings were not considered to be a permanent record.

### 1995-96 Interim Study

As times changed and more women entered the workforce, and as computers made specific secretarial skills of shorthand and typing on a typewriter no longer necessary, the opportunities for the Legislature to hire people with secretarial skills changed. To be a legislative secretary, one had to be willing to work every other year for 6 months or so. In the past, we were lucky to have many secretaries return session after session, but it became harder as time marched on. The 54th Legislature (1995) passed a study resolution requesting the Legislative Council to conduct a study of legislative committee minutes and to propose a clear definition of the components to be included in committee minutes. Staff conducted research and interviews and worked with a group composed of the current and former Chief Clerks of the House and Secretaries of the Senate, librarians, the State Archivist, a senator, and a long-time legislative secretary.

The 1995-96 interim study noted the long delay for availability of minutes as the legislative secretaries labored after session to complete the minutes. Anecdotal information says that one set of minutes was not available after the 1995 session until January 1996. The need to rely on minutes to understand the legislation is problematic for the public, agencies, and the courts. As finding qualified people to do full summary minutes every other year as a temporary job became more difficult, the House, Senate, and Legislative Services Division staff worked on finding solutions.

The study by the Legislative Council found that:

- Very few guidelines or consistent standards existed for what constituted a complete set of quality minutes.
- Committee secretaries could be minimally qualified when hired and received little relevant training.
- Committee secretaries had other duties and responsibilities that made it difficult to complete minutes in a timely manner.
- Standing committee secretarial positions were not highly sought by professional secretaries because of the seasonal nature of the job and pay levels

- Four out of five survey respondents indicated that committee minutes lacked sufficient detail.
- Only one in six respondents felt that committee minutes met their needs.
- Almost half favored a verbatim transcript of committee action.
- A majority of respondents indicated an overall desire for better-trained and better-qualified secretaries, more detail in the minutes, and more timely minutes.
- Lack of timeliness was problematic for state agencies adopting rules and for the legal community in preparing for litigation (including legislative intent).

The conclusions of the study were:

- People who use legislative committee minutes to meet their business or public responsibilities see a need for improved records of committee activities.
- Resources allocated to recording activities do not meet demands of the users of those records.
- The Legislature needs to provide for additional numbers of better-qualified, better-trained secretaries.
- Committee presiding officers should take more responsibility for reviewing committee minutes.
- The current requirement for summary minutes, coupled with the other duties and responsibilities, makes it extremely difficult for committee secretaries to produce the minutes in a timely manner.
- If the Legislature is unwilling or unable to commit adequate resources for the production of high-quality summary minutes in a timely manner, the current method of producing summary minutes should be replaced with a more simplified version of the minutes.

The Legislative Council reviewed its issues and options and questioned the need for continuing the current method of producing committee minutes. Adequate resources were a problem, and Council members could not resolve all of the issues. They believed that if determining legislative intent was necessary for a particular piece of legislation, the audiotapes of the meeting would be more valuable than a written record. They adopted a motion to change minutes to simplified minutes with copies of tapes available as appropriate and with written statements allowed for testimony, to encourage the setting of deadlines in rules, and to store minutes on CD-ROM.

There were critics of the proposal even then who believed it to be a step backward. But since then, there has not been much public criticism until this session. The supporters of

the proposal maintained that it was better for a person to listen to the audio personally to glean intent or reasons for a vote than to rely on a secretary's decision as to what information should or should not be included as an interpretation of what was said. One criticism was the lack of detail, the level of which is subjective, unless one has a verbatim transcript. The audiotapes provide practically complete detail of what was said and the written record contains the rest.

### Current Process

Today, we have digital recordings of all standing committee meetings. With the advent of TVMT, the Capitol Building has been equipped with cameras and audio equipment in each committee room. Not only are there audio recordings, there are video recordings of many hearings and of all House and Senate floor sessions. The secretary keeps a written record of the actions of the committee, including all of the statutory requirements for minutes, with a written log with time stamps to assist people in finding the testimony that they wish to hear without listening to the whole hearing. The written log also contains names of those who testify, motions, votes, exhibits, amendments, or other documents that the committee has received. They can be completed, proofed, and scanned and available on the website within a week of the hearing. The audio recording and video recording, if any, are made available immediately, both in real time during hearings as audio streaming and after the hearing as a static on-demand recording.

Since the audio recording is the official record, the presiding officer signs a document similar to an agenda that lists what happened in that committee on that day, not needing to proofread the summary minutes, which in the past had caused considerable delay. A person who needs to access the content of the testimony or discussion may access it from the website or request a copy of the audiotape or videotape and the written materials. The Legislative Services Division is currently using proprietary software that requires one to download a specific application in order to be able to listen to the audio from the website. We are researching options for a solution to alleviate as many problems as possible.

Persons who need a verbatim transcript of the hearing must obtain that service on their own. There is concern that the cost of transcription makes the minutes inaccessible for the average citizen, but with most current audio and written information posted to the website, people have the advantage of listening to the record themselves and following the written log for votes or other written documentation.

### History of Minutes

Since at least 1972 and through 1995, written summary minutes were taken by legislative secretaries who summarized the discussions on each bill; the audio cassette tapes were not

retained. These minutes always have been summary minutes and were never a verbatim transcript of the discussions.

From 1997 to 2005, the Legislature used traditional cassette tapes that are in an analog format. The Montana Historical Society has retained tapes from 1997 to date, with an exception. In 1997 and in 1999, the House experimented with a written log that referred to audiotapes and included a time stamp. The Senate stayed with the summary minutes. Because there were only logs kept by the House in 1997 and 1999, the House tapes were retained by the MHS. The tapes for the Senate, however were disposed of because at that time the recordings were not considered a permanent record. In 2001 and 2003, summary minutes were reinstated in both houses. Since 2003, digital recordings have been made with the written log that includes exhibits, etc. For 2003 and 2005, there are sometimes both analog and digital recordings on either the legislative website or the Montana Digital Archive.

In 2004, the Legislative Council authorized an Audio Minutes Pilot Project involving about half of the committees for the 2005 session. In the Audio Minutes Pilot Project in 2005, the House had 8 standing committees that kept written summary minutes with a cassette backup and 6 standing committees that used audio recordings and written logs. In the Senate, 12 standing committees kept written summary minutes with a cassette backup and 6 standing committees used audio recordings and written logs. For 2007, the Legislative Council adopted audio minutes as the official record, and all standing committees have audio recordings that are the official record and are accompanied by a written log with time stamp.

There is still a need for legislative secretaries. Because of the simplified nature of the minutes, it is easier to train new staff (and we provide training), and no prior secretarial skills are necessary (although they are still valued). As you can see from the box, the number of secretaries and the costs of staffing (in 2011 dollars) are decreasing in the transition to audio minutes.

<b>Numbers of secretaries and salary paid (in 2011 dollars):</b>		
2001	29	\$287,185
2003	30	\$263,059
2005	27	\$220,877
2007	16	\$150,163
2009	22	\$186,446
2011	24	\$173,255

**What Is Available and Where?**

The Montana Historical Society (MHS) holds Montana Territorial Legislative records from 1864 to 1889 and Montana State Legislative records from 1890 to the present. MHS notes that many of the territorial and early state records do not include House and Senate committee minutes, with consistent minutes starting in the 1950's. MHS has many

resources available to research legislative history and access most materials, which can be found on the Northwest Digital Archives, the Montana Shared Catalog, and the Montana History Wiki. The Montana Law Library has minutes back to 1977.

While the majority of the legislative records contain paper minutes, exhibits, bills, and related materials from the session, more current records also contain analog or digital recordings (or both) of hearings and debates. MHS holds the audiotapes for hearings for the 1997 and 1999 Legislature; summary minutes for those hearings are not available for the House. A listing of all recordings and media types held in the collection will be available on the Montana Wiki website soon.

In 2007, MHS began working closely with the Legislative Services Division (LSD) to ensure the long-term preservation and accessibility of the digital audio and video files being produced by the Legislature. The audio files are now the official record of legislative proceedings, and because we now have video recordings, both are produced and cared for in a manner to ensure their long-term preservation and access. This includes the creation of logs to provide intellectual access and an extensive preservation plan to address the special preservation needs of digital recordings. MHS has procedures in place to care for, preserve, and provide long-term access to all formats of legislative records, including the paper and analog records and the digital audio and video recordings.

Consisting of over 500 boxes of materials, several thousand audiotapes, and thousands of hours of digital audio and video, the legislative records at MHS are one of the most used collections. Each year more than 200 patrons use these materials for a variety of purposes, from legal to historical research. The MHS Research Center provides access to the legislative records in the original formats in the reference room and to inventories online through the catalog for off-site research. In addition, MHS works closely with LSD on providing access to legislative materials through the LSD website.

The Legislative Reference Center has minutes on microfiche from 1987 to 1995 and video minutes on CD for certain committees. The Legislative Reference Center also has the House and Senate Journals back to 1866, the Session Laws back to 1864, and statutes since 1879 -- they are now called the Montana Code Annotated, but previously were known as the Revised Codes of Montana and before that the Laws of Montana. The Legislative Reference Center will perform legislative histories for legislators and staff, and the Law Library will do legislative histories for the public.

**Efforts at Preservation and Archiving**

There are technological advances that can assist in the preservation and archiving of digital audio and video records,

requiring policies on electronic records and data migration. Since 2007, in conjunction with the Montana Historical Society, Helena Civic Television (HCTV), and the MHS State Archives, the Legislative Services Division (LSD) has received funding to hire an Electronic Records Archivist who would serve as an MHS liaison between LSD and HCTV to determine and implement best practices for preservation of and access to these valuable recordings. Funding for the position was renewed during the 2011 Legislative Session as a budget item in the LSD general budget.

A Memorandum of Understanding has been signed through the end of June 2013, and there will be a proposal for the 2013 session to continue the program in some form. Many goals have been accomplished with the Montana Historical Society and represent an earnest effort to preserve and maintain legislative records and to make them more accessible to anyone requiring legislative records. Accomplishments to date:

- Produced a document on best practices for preservation of electronic records submitted to LSD and MHS that provides ongoing communication with the LSD media specialist.
- Developed a plan for storage needs for various media, with continuing review and implementation of the plan as needed. Currently, MHS has storage for all digital videotapes (DVs), DVDs, and cassettes in the collection and has adequate room for growth.
- Maintenance of transfer and playback equipment for various media: The system used by LSD to create duplicates was transferred to MHS. MHS staff created duplication procedures and are now transferring analog recordings to digital format daily (making new master recordings), providing copies to patrons as requested, and making use of copies for in-house viewing.
- The Electronic Records Archivist, in consultation with LSD staff and the State Archivist, reviewed existing collections, new digital recordings, and the contents of interim and standing committees' records to determine what was historically significant. The determination was made that all floor and standing and interim committee recordings, along with written minutes that serve as intellectual access, should be considered the official historical record of the Legislature of Montana.
- The Electronic Records Archivist has processed and created inventories, prepared inventory for online access, and completed all online cataloging for the hard-copy records of the 2009 and 2011 Legislatures. The resulting access points can be viewed on the Northwest Digital

Archives and the Montana Shared Catalog and on the Montana History Wiki.

- Created and maintain inventories/catalogs for recordings (analog and digital at MHS and at LSD), including completion of reboxing, relabeling, and relocating all tapes housed at LSD; processed DVs and mini-DVs from 2003-2009, including creation of a detailed inventory listing committees covered, number of tapes, running time of tapes, and types of tapes; consolidated and labeled 2011 Legislative Session DVDs (ongoing); and completed 1997-2007 audio and video inventories.
- Implemented a preservation plan, including analog to digital transfer of DV and mini-DV recordings: 500 MHS staff hours (142 videos transferred); 2,137 videos left to transfer, and to provide consultation and advice for transfer of 2005-2009 unedited digital audio files.
- Updated training materials for LSD maintenance of recordings.
- Participated 2008 to 2011 in Library of Congress/National Digital Information Infrastructure and Preservation Program funding project with Washington Digital Archives. The Washington State Digital Archives Project provides server space, a website, and a support system through the Digital Archives to work on preservation. (This includes migration abilities, security, integrity of records, and backup and access capabilities.)

There are 2,321 audio files (964 GB) available for access on the Montana Digital Archives website; metadata storage is 15.69 GB and backups are 1.74 TB. The 2011 Legislative Session digital audio files are in the process of being transferred. The grant funding for the project ends in 2011. The state partners in the Washington State Multi-State Preservation Partnership are exploring grant-funding opportunities that should be reported on by the end of the year.

### Future Goals

The reference to obsolete, inaccessible records that was mentioned earlier is not accurate, but the sentiment must be respected. If records are not in an accessible format and there is no migration plan to preserve the records, there needs to be action taken. Because we have the audio cassette tapes from 1997 through 2005, we have the possibility of being able to record them into a digital format and preserve them for the future. An initial estimate to convert more than 10,000 cassette tapes is over \$100,000. Although cassette tapes have a limited shelf life, the tapes are still in good condition at this time, but the medium will continue to degrade. Some of the problems are in the quality with which they were originally recorded; currently there are efforts to transfer

what we have to a digital format, but additional resources and time are needed.

Although a cost-benefit analysis may need to be conducted, in an initial look, the first phase should probably be to transfer the most vulnerable tapes which would be the 1997 and 1999 House committee tapes since the House minutes are written logs. (For 1997, there are 1,483 total analog cassette tapes and for 1999, 1,826 audio tapes.) The next phase would probably be to convert the 2001 (1,286 tapes), the 2003 (2,592 tapes), and the 2005 (3,252 tapes) committees for which there were only audio cassette recordings. The options for preservation are limited but effective, but the two main ones at this point are to transfer the analog files to digital and store them on archival quality CDs or, ideally, on web servers. An electronic migration plan would also need to be adopted for the eventuality that new technology will require migration.

The joint goals of LSD and MHS include pursuing ongoing preservation of digital audio with the Washington State Digital Archives Project, including the records of the 2011 Legislative Session. If the grant is not renewed, we will work with Washington State Digital Archives to transfer recordings back to MHS. We will also be creating a plan for maintenance of and access to files currently on the LSD website. There could be another web portal where the older digital audio files could be accessed. We intend to create links from the LSD website to Washington State Digital Archives and to improve the access portal. And as referred to above, we will work on a plan to convert analog files (cassette tapes) to digital audio. For digital video, we need to create a migration plan to DVDs for preservation and online access. I acknowledge the need to update branch policies to create and adopt retention schedules for all legislative recordings, but the lack of policies is not the same as lack of effort. The migration, transfer, maintenance, access, and preservation are all goals so that the Legislature's audio and video files are preserved and made accessible to all.

In addition, staff is working on new solutions to make the audio and video recordings of the Legislature more accessible to the public through the legislative website and more integrated with the written record, which will make future efforts at creating legislative histories simpler.

A 2010 NCSL document entitled "Preserving Legislative Digital Records" outlines many of the same concerns that Montanans have expressed. It is incumbent upon the Legislature to preserve its records for historical and legal purposes. Public access and e-discovery require preservation strategies. Just as there are policies and procedures for important paper records, those policies are equally important for digital records. In the transition to audio files and bringing forth TVMT and a video record of the Montana Legislature, preservation was not planned for, so we find ourselves slightly

behind the curve. The good news is that we are collaborating with the Montana Historical Society and slowly bringing all of our analog and digital records to a state of accessibility. With additional time and resources, we will complete our task by having policies and procedures in place, including a migration plan when technological advances require it.

Other changes that may assist are in the planning stages as we undertake projects to transition information technology into new formats and make additional capital investments. We have the benefit of the expertise at the Montana Historical Society and the Washington State Digital Archives and access to others who face the same issues, such as the Minnesota Historical Society, which has a Library of Congress grant to develop an approach for capturing, managing, and providing access to state digital legislative records; and the National Digital Information Infrastructure and Preservation Program of the Library of Congress. The National Conference of Commissioners on Uniform State Laws has drafted and adopted a model act "The Uniform Electronic Legal Material Act," that provides guidance to states on authenticating and preserving state electronic legal materials. Montana will need to study the act carefully, but should prepare itself to be able to adopt the act and implement its requirements in the future.

Times change, and it is up to the legislative leadership and future Legislatures to determine where we go. There are policy decisions to be made, and the Legislative Council is well positioned to make them. The intent of this article is to help the Legislature go forth with the knowledge of all of the current activity and all of the efforts that the legislative staff and the Montana Historical Society have made and are dedicated to handling in a professional manner for the benefit of all Montanans.

## Resources

Bridges, W. and Melchiori, A. Fumbling in the Ash Cans. [PowerPoint presentation] Washington State Senate, 2005 NCSL Annual Meeting.

Erickson, Connie. "Appropriate Minutes of All Meetings Required...To Be Open Shall Be Kept..." Legislative Services Division, November 1996.

Foley, Jodie. "Montana Legislative Session Analog Recordings Preservation Proposal", Draft, Montana Historical Society, April 29, 2011.

Foley, Jodie. "Legislative Recording Preservation Project" Quarterly Report, Montana Legislative Services Division and MHS Research Center, October 2011.

Gavin, Sonia. "Legislative Committee Minutes" Legislative Reference Center Inventory Memo, Legislative Services Division, April 19, 2011.

Gordon, S. and Jazayeri, H. "Lost Legislative Intent: What will Montanans Do When the Meaning Isn't Plain?" 70 Mont. L. Rev. 1 2009.

Greenberg, Pam. Preserving Legislative Digital Records. National Conference of State Legislatures, March 2010.

Kruckenberger, Molly. "Legislative Records at the Montana Historical Society", Montana Historical Society, April 2011.

Maxwell, C. and Foley, J. "Montana Legislative Services Digital Video and Audio Preservation Planning Document", Montana Historical Society, State Archives, August 18, 2010.

Menzies, Lois. Audio Minutes Pilot Project. [File]. Montana Legislative Services Division, 2004-2005.

Montana Law Library. "Montana Legislative History Research Guide", September 5, 2007.

Montana Legislative Services Division. Bill Drafting Manual, Montana 2010.

National Conference of State Legislatures. Mason's Manual of Legislative Procedure. 2010 Edition.

#### **Websites:**

Montana Digital Archives--(<http://montana.digitalarchives.wa.gov/default.aspx>)

Montana Law Library--(<http://www.lawlibrary.mt.gov>)

Montana Legislative Services LAWS database--([http://laws.leg.mt.gov/laws11/law0203w\\$.startup](http://laws.leg.mt.gov/laws11/law0203w$.startup)), and Session Information (minutes, etc.) ([http://laws.leg.mt.gov/laws11/LAW0200W\\$.Startup](http://laws.leg.mt.gov/laws11/LAW0200W$.Startup))

Montana Shared Catalog--(<http://mtscprod.msl.mt.gov/uhtbin/cgiisirs/?ps=hFUxSfR7S/MT-HIST/301900287/60/1180/X>)

Northwest Digital Archives--(<http://nwda-db.orbiscascade.org/nwda-search/>)

Montana Wiki--(<http://montanahistorywiki.pbworks.com/w/page/21639634/FrontPage>)

Montana History Wiki: Legislative History Guide--(<http://montanahistorywiki.pbworks.com/w/page/21639685/Legislative%20History%20Guide>)

## Calendar of Legislative Events

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

December						
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
				1	2	3
4	5 Legislative Finance Committee, Rm. 102, 10 a.m.	6 Legislative Finance Committee, Rm. 102, 8 a.m.	7 Legislative Council, Rm. 137, 1 p.m.	8 Revenue & Transportation Committee, Rm. 137, 8 a.m.	9 Revenue & Transportation Committee, Rm. 137, 8 a.m.	10
11	12 Legislative Consumer Counsel, Rm. 152, 1 p.m.	13	14	15 Law & Justice Committee, room & time TBA	16 Law & Justice Committee, room & time TBA	17
18	19	20	21	22	23	24
25 Christmas	26	27	28	29	30	31

January						
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
1 New Year's Day	2	3	4	5	6	7
8	9 Select Committee on Efficiency in Government, Rm 102, time TBA	10 Select Committee on Efficiency in Government, Rm 102, time TBA  Water Policy Committee, Rm 172, time TBA	11 Water Policy Committee, Rm 172, time TBA  Environmental Quality Council, Rm 172, time TBA	12 Environmental Quality Council, Rm 172, time TBA	13 Energy & Telecommunications Committee, room & time TBA  State Tribal Relations Committee, room & time TBA	14
15	16 Martin Luther King, Jr., Day	17	18	19 Economic Affairs Committee, Rm. 137, 9 a.m.	20 Economic Affairs Committee, Rm. 137, 9 a.m.	21
22	23 Children & Families Committee, Rm. 137, time TBA  Education & Local Government Committee, room & time TBA	24 Education & Local Government Committee, room & time TBA	25	26	27 State Administration & Veterans' Affairs Committee, room & time TBA	28
29	30	31				







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