



THE INTERIM

July 2012

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.

Districting Panel Accepting Public Comment in Advance of August Meeting

The Districting and Apportionment Commission will meet in Helena Aug. 13-17 to discuss draft legislative redistricting plans and to adopt a tentative 100-district map of Montana House districts. In November, the commission will pair the House districts to create “nested” Senate districts and will hold another public hearing on those Senate pairings. A final public hearing on the complete plan will be held in December, just before the commission must submit the plan to the 2013 Legislature for a constitutionally mandated review by legislators. After receiving the plan, the Legislature will have 30 days to provide feedback to the commission. The commission, however, is not required to adopt any changes suggested by the Legislature.

Even though the initial public hearings on the draft plans are complete, the commission continues to take public comment. Send written comments by regular mail to Districting and Apportionment Commission, Legislative Services Division, P.O. Box 201706, Helena, MT 59620-1706; by e-mail to districting@mt.gov; or by fax to 406-444-3036.

For more information on the commission, please visit <http://leg.mt.gov/districting>. To stay up-to-date on future commission activities and meetings, sign up to receive e-mail updates by clicking “Sign up for Electronic Notices of Committee Activities” on the commission’s website.

EAIC Explores Health Data Gathering, Insurer Options

During a June 11-12 meeting, the Economic Affairs Interim Committee heard reports from physicians, health researchers, and health insurers. The committee also decided on a no-action approach regarding its study of health insurance exchanges, because the U.S. Supreme Court had not yet acted on the legal challenge to the Patient Protection and Affordable Care Act. That federal law requires the creation of health insurance “exchanges” that would serve as an online marketplace to compare and buy health insurance policies.

The committee decided to hold its last meeting in September, rather than Aug. 28 as originally scheduled. The meeting date will be announced in

the September issue of *The Interim*. That meeting will also include review of any department-proposed legislation for the 2013 session.

Insurers Talk ACA

On June 11, committee members heard from Montana's major insurers that some provisions of the Affordable Care Act that already are in effect may remain in the insurers' ongoing health plans, even if the Supreme Court voids some or all of the Affordable Care Act. Ken Provencher, chief executive officer of Oregon-based PacificSource, expressed concern about the uncertainty surrounding the Affordable Care Act, including rules to implement various provisions. But he said PacificSource, a new insurer in Montana, expects to move forward regardless of the Supreme Court decision. Mary Belcher, chief legal counsel for Blue Cross Blue Shield of Montana, also said that BCBSMT does not expect to automatically take back any of the benefits of the law that have been put into place to date. Todd Lovshin of Allegiance Life and Health noted that employees like many of the new benefits, which include allowing adult children up to the age of 26 to stay on their parents' health insurance plan (Montana already allowed up to the age of 25), requiring coverage for children up to the age of 19 regardless of pre-existing conditions, eliminating lifetime limits on insurance policies, and -- for certain plans -- removing cost-sharing for preventive or wellness care.

Angela Huschka, who reviewed New West Health Service's Medicare Advantage policies, noted that New West believes more work by Congress on the Affordable Care Act would not be bad. Joe Lotus from Assurant said his firm has not taken a public position on the next steps following the Supreme Court decision.

Work Comp for Firefighters

On June 12, Billings firefighter Joe Sands asked the committee to consider adopting as a committee bill previously introduced legislation relating to firefighters and workers' compensation. Under the bill, firefighters who had cleared specified medical tests in advance would automatically obtain workers' compensation if they contracted certain cancers and other diseases. Research, particularly since the Sept. 11, 2001, terrorist attacks, has indicated that certain cancers and diseases are associated with toxins from burning structures. Representatives of work comp insurers generally opposed the automatic presumption. They said that work comp coverage remains a possibility, but the firefighter ought to prove the relationship between the disease and the firefighting conditions.

Following the full committee's meeting, Sen. Tom Facey met with representatives of volunteer firefighters and work comp insurers to discuss mandatory coverage of volunteer firefight-

ers and volunteer emergency medical services technicians, as well as ways to pay for that coverage. The subcommittee that Sen. Facey chairs is working on draft legislation for the proposal. For more information on the subcommittee and to see the draft bill, visit the subcommittee link at the EAIC website, <http://leg.mt.gov/eaic>.

Final Committee Topics

Although the committee may discuss health insurance exchanges at its last meeting of the interim, depending on the Supreme Court's actions, the following agenda items are a sure bet:

- whether legislation is needed to incorporate into the licensing process for medical providers some questions helpful in compiling data for planning for health care workforce needs;
- whether consumer complaints now handled by the Board of Hearing Aid Dispensers could be coordinated in some fashion with the Office of Consumer Protection at the Department of Justice to decrease the licensing board's costs and perhaps ensure better compliance; and
- ways to improve licensing of medical providers. A representative of Montana hospitals said improvements would particularly benefit rural hospitals faced with shortages of health care providers.

Meeting materials, video recordings of the meetings, and other information are available on all the EAIC meetings on the committee's website. Committee staffer Pat Murdo also may be contacted for further information, at 406-444-3594 or pmurdo@mt.gov.

Tours, Coal Trains, and Electric Co-op Oversight on Tap for Energy Committee

The Energy and Telecommunications Interim Committee is continuing its road show with a trip to Billings this month, tackling topics ranging from coal train traffic to increased oversight of rural electric cooperatives.

The ETIC is scheduled to meet July 16-17 in Billings. The meeting begins at 8:30 a.m. on Monday, July 16, at the Montana Board of Oil and Gas Conservation Office, 2535 St. John's Ave.

The ETIC will have a busy schedule while in Billings. Committee members will spend the morning of July 16 touring PPL Montana's J.E. Corette Facility and the Phillips 66 Refinery. The J.E. Corette Plant in Billings is a one-unit, coal-fired plant that started commercial operation in 1968. The Phillips 66 Billings Refinery began operations in 1949 and is an active petroleum refinery. The refinery currently converts crude oil,

condensate, and field butane, by various processes, into liquid petroleum gases, gasoline, jet fuel, diesel oil, fuel oils, and petroleum coke.

Monday afternoon will be dedicated to a presentation of the Public Service Commission's proposed legislation for 2013 and an update on Denbury Resources Inc.'s enhanced oil recovery efforts in Montana. An update on the Mountain States Transmission Intertie Review Project is also planned. The project is a collaboration between county commissioners and local non-governmental organizations.

On Tuesday, the ETIC will return to its discussion about Southern Montana Electric Generation and Transmission Cooperative Inc. and the organization's recent bankruptcy and reorganization. As requested by the committee in May, draft legislation and public comment will be brought to the committee. The committee also will tour the Sanjel Training Facility. The training and maintenance facility is used to train Sanjel Corp. crews on how to repair and operate equipment used in oil operations. Sanjel operates in Wyoming, Montana, and North Dakota.

The committee will wrap up its work in Billings after hearing from the Yellowstone County Commission and the Missoula City Commission about their recent decisions related to coal train traffic in Montana. In June, the Yellowstone County Commission adopted a resolution stating its support for coal and coal-based power, as well as the expansion of ports along the West Coast to accommodate sales of Montana coal to Pacific Rim nations. The Missoula City Commission in May adopted a resolution asking the U.S. Army Corps of Engineers to conduct a "programmatic environmental impact statement" on the cumulative effects of air pollutants, traffic delays, coal dust, and noise pollution related to the construction of ports for coal exports and related train traffic.

Members of the public interested in joining the ETIC on any of the tours must contact ETIC staff in advance of the meeting. Seating for the tours is limited. Additional meeting information, including the agenda, is available at <http://leg.mt.gov/etic>.

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

EQC to Review State Parks, HB 142 Bill Drafts

At a July 18 meeting, the Environmental Quality Council will again discuss the idea of giving Montana's state parks their own governing body. The EQC gave preliminary approval to the concept in May with bill draft LC 9000. However, council members have proposed a few tweaks and will review those changes before deciding whether to move forward with the draft.

Public support expressed at previous EQC meetings for a state parks board separate from the current Fish, Wildlife, and Parks Commission has been two-fold: 1) to get more discussion time spent on parks and recreation-specific policy issues; and 2) to insulate state parks from contentious wildlife management issues.

The EQC has been looking at administrative alternatives for state parks as part of its HJR 32 study of state parks, outdoor recreation, and heritage resources. The whole of the EQC's interim work has been compiled into a draft report that will be presented at the July meeting. The EQC will also receive data on the effects of HB 370, which was approved by the 2011 Legislature and increased the portion of the optional light motor vehicle registration fee that benefits state parks. The amount increased from \$3.50 to \$5.37 on Jan. 1 of this year.

Review of Required Reports

Meanwhile, the EQC will continue its HB 142 responsibilities, which include review of all statutorily required agency reports and all statutorily established advisory councils.

In July, the EQC will review the following reports and make recommendations on whether each should be continued:

- Clark Fork River Basin Task Force;
- Numeric Nutrient Standards for Montana's Surface Waters, published by the Department of Environmental Quality;
- Total Maximum Daily Load determination, DEQ; and
- Solid Waste Management, DEQ.

As part of its HB 142 work in May, the EQC reviewed the Alternative Livestock Advisory Council (ALAC), which is attached to the Department of Fish, Wildlife, and Parks (DFWP), and made a preliminary recommendation that it be disbanded. DFWP has suggested ALAC is no longer necessary in light of the passage of I-143 in 2000, which stopped the issuance of alternative livestock ranch licenses. ALAC met only three times after August 2000 and has not met since 2007.

Eliminating ALAC would require a bill draft. The EQC has asked staff to draft LC 9022 and will review the proposal at its July meeting before deciding whether to recommend to the 2013 Legislature that the advisory council be disbanded.

Other items on the EQC's July agenda include an update on the Montana Oil Pipeline Safety Review Council and DFWP's study of brucellosis in elk. The EQC also will review proposals from DEQ and the Department of Natural Resources and Conservation for agency legislation in the 2013 legislative session.

All proposed bill drafts and meeting materials for the July 18-19 EQC meeting will be made available approximately two weeks in advance on the EQC's website, <http://leg.mt.gov/eqc>. The meeting will be held in Room 172 of the Capitol.

Questions about the EQC's work may be directed to staffers Joe Kolman (406-444-3747 or jkolman@mt.gov) or Hope Stockwell (406-444-9280 or hstockwell@mt.gov).

Legislative Audit Committee Recommends Improvements for State Veterans' Homes, State Public Defender

The Legislative Audit Committee met June 19 in Helena to review 10 recent audits of state agencies and programs. Audit findings are described below.

A performance audit of the Montana State Veterans' Homes identified a difference in cigarette tax funding allocations for the two facilities located in Glendive and Columbia Falls. The audit recommends that the Legislature review the current allocation process and determine whether it should be addressed in statute. The audit also recommends that the Department of Public Health and Human Services comply with the statutorily prescribed rate calculations for the facilities and implement a cost-containment plan for the Montana Veterans' Homes that reduces expenses. (*Montana State Veterans' Homes 12P-03*)

A performance audit of the Office of the State Public Defender made numerous recommendations to the office regarding complying with state laws, improving indigency determinations and contracts for attorney services, and improving management controls over program activities. (*Improving Statewide Consistency of Key Processes for the Office of the State Public Defender 11P-03*)

A performance audit of the motor vehicle title and registration process found that the Motor Vehicle Division of the Department of Justice could strengthen controls to ensure vehicle ownership records in the Montana Enhanced Registration and Licensing Information Network (MERLIN) are accurate, duplicate plates do not exist, and fee adjustments are correct. Additionally, the audit recommends that the department improve communication with county offices, which are responsible for front-end title and registration transactions. (*Motor Vehicle Title and Registration Process 11P-07*)

An information systems audit of photocopier data security found that the agencies audited have generally implemented security controls related to photocopiers but that security could be improved through increased awareness and improved contractual language. (*Photocopier Data Security 12DP-01*)

An information systems audit of information technology governance found that the Montana Information Technology Act (MITA) provides an effective governance framework but some procedures could be changed by the Department of Administration to improve effectiveness. These include modifying the agency information technology template and review process to ensure completeness and continuity, expanding project management policy guidance and reporting procedures for state agencies, and clearly delineating information technology policies and formalizing a systemic policy development process. (*Strengthening Processes Related to IT Governance 11DP-13*)

A financial audit of the state of Montana's basic financial statements for the fiscal year ending June 30, 2011, looked at the financial reporting of Montana State Fund (MSF) workers' compensation claims incurred before July 1, 1990 (Old Fund claims). In fiscal year 2011, the general fund became responsible for paying the Old Fund claims when the Old Fund resources were exhausted. During the fiscal year, approximately \$50,000 was transferred out of the general fund to MSF to pay claims. The remaining claims outstanding total around \$64 million and are an obligation of the general fund. The audit found that the state's financial statements do not present the claims liability according to Generally Accepted Accounting Principles. The audit also disclosed material noncompliance with the Montana Constitution and state law. As of July 1, 2011, the Public Employees' Retirement System – Defined Benefit Retirement Plan and retirement systems for game wardens and peace officers, sheriffs, teachers, and Montana Highway Patrol officers were not actuarially sound. Actuarial soundness is defined as an amortization period for the Unfunded Actuarial Accrued Liability (UAAL) of 30 years or less. (*11-01A*)

The Montana Single Audit Report is a statewide biennial report compiled from the Montana Statewide Audit reports (10-01 and 11-01A) and audits performed at each state agency. The report for the two fiscal years ending June 30, 2011, notes that audits at state agencies resulted in 21 recommendations related to major federal programs. Of these recommendations, nine reported questioned costs totaling over \$4.6 million. The report identifies seven major programs that did not comply with all the federal requirements applicable to those programs. The audit also reported 11 significant deficiencies and one material weakness in internal controls. (*Montana Single Audit Report 10-02*)

The financial compliance audit of the Montana Medical Legal Panel contains no recommendations, meaning that for the time period audited, the agency's financial operations have been conducted properly, the financial reports are presented fairly, and no instances of noncompliance were identified. The financial compliance audit of the Flathead Community

College reported an internal control deficiency on cash controls. The two audits were performed by a contracted outside accounting firm. (*Montana Medical Legal Panel 11C-07 and Flathead Community College 12C-05*)

Three recommendations were made in the financial compliance audit of the Montana State Lottery related to control systems over contract monitoring and financial reporting. (*Montana State Lottery 10-30B*)

The next Audit Committee meeting is anticipated in October.

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 Montana University System.

For more information, call the division at 406-444-3122 or visit its website at <http://leg.mt.gov/audit>. To search for a specific audit, use the identifier listed above in parentheses. To report improper acts committed by state agencies, departments, or employees, call the division fraud hotline at 800-222-4446 or 406-444-4446 in Helena.

Council Looks Ahead to Legislative Session

The Legislative Council will meet in August, when it will take up the proposed budget for the legislative branch. The approved budget will be submitted to the Office of Budget and Program Planning to be included in the budget submitted by the governor to the 2013 Legislature.

Also in August, the council will decide whether to request any committee legislation. In addition, the Rules Subcommittee will meet to adopt draft bills to forward to the Rules Committee, which will be appointed following the November election. The Rules Committee is scheduled to meet in early December.

In preparation for the 2013 Legislature, the Legislative Council has adopted a tentative session calendar and set dates for the post-election caucuses and training sessions. The caucuses, at which House and Senate members will select their leaders, are scheduled for Nov. 14. Orientation will follow the caucuses and continue through Nov. 16. The Rules Committee is scheduled to meet Dec. 3, when training for presiding officers of session committees will also be held. The first day of the session is Jan. 7.

The calendar and a list of current bill drafts are available on the legislative website, at <http://leg.mt.gov>. Click on the "Sessions" link on the left-hand side of the home page and then select 2013 from the drop-down menu.

The LAWS database, which makes bill drafts easily searchable and has links to drafted bills, is expected to be up and running sometime in July. Bill drafting will begin toward the end of the summer.

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

Finance Committee Releases Big Picture Report

During the June meeting of the Legislative Finance Committee, the Legislative Fiscal Division released the Preliminary Budget Outlook for the 2015 Biennium, commonly referred to as the Big Picture report. This report is designed to provide a preliminary review of the financial condition of the state for the 2015 biennium, taking into consideration future revenues, current service level impacts, and other spending pressures. The full report is available online, but the executive summary is provided here for reference. The LFC will hear an update to this report at the September meeting of the committee.

Big Picture Report: Executive Summary

The estimate of the 2015 biennium structural balance is a refreshing change from the estimate provided two years ago. The Legislature approved spending at a level lower than the potential spending outlined in the 2010 report level, and revenue levels and trends have improved substantially in the past two years. These factors combined with lighter spending pressures have improved the outlook for the 2015 structural balance.

In addition to a positive structural balance in the 2015 biennium, a higher-than-anticipated 2013 biennium ending fund balance is expected. The final anticipated ending fund balance at the end of the 2011 Legislature was \$150.4 million. If the spending and revenues anticipated in this report hold true, the 2013 ending fund balance will be \$331.0 million higher than anticipated, or \$481.4 million.

The following recaps the major points found in the Big Picture report:

1. Revenue is currently estimated to be 5.1 percent higher in the 2013 biennium than anticipated during session. Revenue in the 2015 biennium is currently anticipated to be 7.1 percent higher than the revenue in the 2013 biennium. (See also the upside risk stated in No. 5 below.)
2. Spending growth rates have slowed from growth rates in previous biennia. Specifically, secure care in the Department of Corrections has leveled off; the inflation for

schools that is statutorily based on the previous years' Consumer Price Index is anticipated to be 0.89 percent in fiscal year 2014 and 2.3 percent in fiscal year 2015; and the growth in Medicaid caseloads appear to have slowed from previous growth rates.

- a. Spending is split into three components of varying degrees of prior legislative commitment:
 - i. The base budget in this report is the level of spending approved by the previous legislature less one-time appropriations, or \$3.676 billion in the 2013 biennium
 - ii. The present law budget is that level of spending authorized by the previous session to continue at the current level, or \$254 million.
 - iii. Current service level consists primarily of temporary funding approved by the previous legislature that was approved for ongoing services. This amount is substantially smaller than the report of two years ago and is estimated at \$33.6 million.
- b. Other Spending Pressures:
 - i. Pension liabilities: the unfunded and unamortized portion of the pension liabilities is a legal liability of the state. The ranges of choices for the legislature to consider are demonstrated in the pension report presented to the Legislative Finance Committee and the State Administration and Veterans' Affairs Committee on June 12. The biennial cost of the range of Scenarios 1 through 3 is \$31.6 million to \$244 million.
 - ii. Other key costs pressures: No inflationary pay increases have been given to state employees in four years, no inflationary increases have been given to most providers of human services, and many other spending demands have been held constant or kept to low growth for four years. As a result, pressure points may have developed in ways that cannot be estimated by this analysis.

3. Note that present law and the base budget is the only definition considered in statute to be ongoing spending from the previous biennium. Current service level funding and other spending pressures are new proposals to be considered by the next legislature, but do comprise current services of the state. Structural balance: The revenue and spending trends, assuming present law and current services are funded in the manner described above, result in a structural balance of \$132 million for the 2015 biennium. In other words, revenue is greater

than assumed spending by \$132 million or 3.3 percent of biennial spending. If only present law spending were considered, the structural balance would be \$165 million, or 4.2 percent of biennial spending.

4. The ending fund balance at the end of the 2013 biennium is anticipated to be \$331 million above the session-anticipated level of \$150 million. This increase of more than \$300 million could be available for one-time investments.
5. Net upside risk associated with development of natural resources in Montana and North Dakota: The Fiscal Division staff believes the revenue and spending impacts from the current and potential development of natural resources in Montana and North Dakota are not fully assessed at this time.
 - a. There is significant upside revenue risk to this forecast. IHS Global Insight is updating the economic forecasts of the region as a result of the recent and proposed development. The updated forecast is not yet available and no commitment has been made by IHS Global Insight as to when it will complete this forecast. For more information, please see the Natural Resource Development section of the full report.
 - b. There is a smaller, but not insignificant, spending risk resulting from this natural resources development. Costs in the areas of public safety, health and human services including the state share of the cost of the benefits, K-12 schools, natural resource agencies, and other costs may be under spending pressure. As development expands, increased demands for services and the cost for providing those services will grow. Please see the Natural Resource Development section of the full report for more information.

At this time, some level of increased development, primarily in North Dakota and its spillover into Montana, has been captured in this forecast. Expanded oil drilling and hydraulic fracturing in Montana has just begun in the past nine months. Quarterly oil production in Montana has been on a decline since mid-2006 and has seen few quarters of increase over that time period. Production increased 7.4 percent over the last calendar quarter of 2011 and may be a sign of ongoing increased production. Revenue impacts typically lag six to 24 months behind the economic activity so it is unlikely that these impacts are seen in the revenues at this time. Additional research is needed to refine the level of revenue growth Montana might expect from this additional development.

The full report can be found at <http://leg.mt.gov/css/fiscal/reports/2011-2012-interim-reports.asp#june2012>.

RTIC Continues Study of Centrally Assessed Property

The Revenue and Transportation Interim Committee will continue its study of the valuation of centrally assessed property when it meets July 19-20, in Room 102 of the Capitol.

The committee also will receive draft final reports for two of its studies: the House Joint Resolution 13 study of the state's income tax system and the Senate Joint Resolution 23 study of income and property tax exemptions for nonprofit organizations.

For the Senate Joint Resolution 17 study of centrally assessed property, the committee will receive information on industrial property valuation and the appeals process for centrally assessed property. In addition, University of Montana Law School Professor Kristen Gustafson Juras will present a comparative study of Montana's centrally assessed property taxation.

The two agencies for which RTIC has monitoring duties, the departments of Revenue and Transportation, will also present their legislative proposals to the committee. Interim committees review proposed agency legislation in order to approve the bills for drafting and introduction before the start of the legislative session.

In other committee business, the Department of Revenue will provide the statutorily required report on tax havens. Luxembourg's Ambassador to the United States is scheduled to discuss that country's inclusion in Montana's list of tax havens.

The committee also will discuss the desired approach to the revenue estimate for the next two-year budget period, including the types of information that should be presented to the committee through the rest of the interim.

An agenda and other meeting materials will be posted to the committee website in July, at <http://leg.mt.gov/rtic>.

For more information about the committee, contact Megan Moore, committee staff, at 406-444-4496 or memoore@mt.gov.

State Admin Committee Approves Study Bill, Reviews Pension Matters

At its June meeting, the State Administration and Veterans' Affairs Interim Committee approved a committee bill seeking an interim study of the Office of the Commissioner of Political Practices. The study resolution will be introduced in the 2013 Legislature.

The committee reviewed a second bill draft regarding the office but delayed action on that proposal until August. It

would set out guidelines for handling alleged ethics violations involving the commissioner.

The study resolution, LCsa02, requests an interim study on the appointment of the commissioner and on alternatives for revising the operations and structure of the office. The committee requested the bill drafts earlier this year, after reviewing information related to the office and to how similar offices in other states are structured.

During the first day of the committee's two-day meeting, topics of discussion also included: a briefing on the administration's State Employee Health Clinic initiative; the committee's review of the Department of Administration's statutory advisory councils and reports and its proposals for draft legislation; the committee's review of the Board of Veterans' Affairs statutorily required annual report; the Department of Military Affairs' proposals for draft legislation; and an update on the state's broadband pay plan.

SAVA, LFC Pension Review

The committee met on June 12 in joint session with the Legislative Finance Committee to hear about several matters regarding the state's public employee pension systems. The committees first heard a presentation by the Teachers' Retirement System (TRS) actuaries about the actuarial assumptions underpinning analysis of the TRS. Subsequently, committee members heard legislative proposals from the Teachers' Retirement Board and the Montana Public Employees Retirement Board.

Staff for the two committees presented preliminary legal, policy, funding, and fiscal analysis of the state's pension challenges. As a result of the pension-related briefings, the committees agreed to appoint a joint subcommittee made up of two SAVA members and two LFC members. The subcommittee will request a briefing from the governor's staff on the governor's proposed legislation to address pension funding challenges. The subcommittee members will then report back to their respective committees.

Before wrapping up its meeting, SAVA authorized staff to draft the four legislative proposals of the Teachers' Retirement Board and the nine proposals of the Public Employees' Retirement Board. The committee also agreed to ask TRB and PERB to conduct actuarial analyses to determine the required additional funding and resultant funded ratio for hypothetical amortization periods for each of the pension plans.

The committee is scheduled to meet next on Aug. 8-9 in Helena. More information about the committee's meeting, including room location and starting times, will be posted to the committee's website, <http://leg.mt.gov/sava>, as details are confirmed.

Questions about the committee's work may be directed to Sheri Scurr, committee staffer, at sscurr@mt.gov or 406-444-3064.

Water Committee to Take Public Comment on Exempt Well Bill Drafts

The Water Policy Interim Committee meets in Helena July 12-13, fresh off a road show in western Montana to gather comment on an exempt water well study.

In June, the WPIC held public meetings in Bozeman, Kalispell, and Hamilton. The main work of the WPIC this interim is the study required by House Bill 602, which directed the panel to study exempt wells and provide a report to the 2013 Legislature "that provides clear policy direction and necessary legislation to guide Montana's policy" on exempt wells.

Users of exempt wells do not have to obtain a permit. A permit application includes an evaluation to ensure that new uses of water don't affect existing water users, such as irrigators.

An exempt well may pump up to 35 gallons per minute as long as the annual volume of water does not exceed 10 acre-feet. That amount is equal to a football field under 10 feet of water. To put that much water on the gridiron, one would have to fill a gallon milk jug every 10 seconds, around the clock, for a year.

The 2011 Legislature found that exempt wells may have an adverse effect on existing water rights and that current law does not give the Department of Natural Resources and Conservation adequate direction on how to administer exempt wells.

In recent years, most debate about exempt wells centered on their use in residential housing developments. Between July 2004 and June 2011, two out of every three lots that were subdivided obtained water through an exempt well, rather than a new public water system or a connection to an existing public system.

Obtaining a single water right for more than 10 acre-feet of water for a public water system to serve a subdivision would ensure that other water users are not affected by new development. However, it may be a time consuming and expensive process. Yet single wells on each lot within the subdivision may each use up to 10-acre feet, providing the same amount of water to the area with no analysis of the effects.

The first draft of the study, "*The Exemption: To change or not to change?*" summarizes the work so far of the WPIC. The report is available at: <http://leg.mt.gov/content/Committees/Interim/2011-2012/Water-Policy/Staff-Reports/exempt-well-report-june.pdf>.

Also available are the bill drafts, which would:

- implement a statewide prohibition in new subdivisions on multiple exempt wells that cumulatively exceed a total of 10 acre-feet. The bill also would establish a mitigation exchange in Gallatin, Lewis and Clark, Missoula, and Ravalli counties to offset the effects of new water uses. (LC8000)
- require larger, denser subdivisions to install public water systems, which would most likely also require a water use permit. The bill would affect subdivisions of 30 or more lots, with an average lot size of 3 acres or less. (LC8001)
- reduce the volume allowed under the exemption to 10 gallons per minute and 1 acre-foot of water consumed. The amount of water consumed is that amount used by plants or lost to evaporation. (LC8002)
- lower the exemption volume to 5 acre-feet for wells drilled in closed basins and in unconfined aquifers, which are more likely to be connected to surface water used by senior water right holders. (LC8003)
- limit the amount of water used by new subdivisions to 35 gallons a minute and 10 acre-feet a year, regardless of the number of lots and the number of wells that are used. The use of more water would be subject to permitting. (LC8004)

The bill drafts and more information about the study are available online at <http://leg.mt.gov/water>. A brochure explaining the study is at: <http://leg.mt.gov/content/Publications/Environmental/2012-wpic-brochure.pdf>.

For more information or to submit comment, contact Joe Kolman, committee staff, at 406-444-3747 or jkolman@mt.gov.

Longtime Taxation Staffer Retires

Research analyst Jeff Martin retired in May, just shy of 25 years of service with the Legislative Services Division and nearly 30 years with the State of Montana.

Jeff staffed the Senate and House Taxation committees over the course of 12 regular sessions and during several special sessions. He also staffed the Revenue and Transportation Interim Committee, as well as its predecessor committee, throughout his tenure with the Legislative Services Division.

Legislative Services Research Director Dave Bohyer said that Jeff will be missed by both coworkers and legislators. "Jeff has a wealth of knowledge and understanding of all facets of state and local taxation that will be difficult to replace in the near term," Bohyer said. "Jeff is a rare individual who was able to translate very complicated taxation bills and issues into laymen's language so that nearly everyone could understand the effect and implications of the policy change."

The Back Page

An Eye on Ethics: Examining Montana's Office of the Commissioner of Political Practices

By Megan Moore
Legislative Research Analyst
Legislative Services Division

With election season in full swing, newspaper articles about how candidates are faring in the money race are fairly common. Allegations of unethical campaign practices also appear from time to time. In both cases, the Office of the Commissioner of Political Practices is often a key figure in the story. Many candidates for public office are familiar with the office as the collector of campaign finance filings, but few people may be aware of all of the office's duties and how other states design their campaign and ethics enforcement offices.

The role of the commissioner of political practices has also been the focus of increased attention, perhaps due to the recent high rate of turnover for that position. There have been five commissioners in the last seven years, the same number that served for the first 29 years of the office's existence, from 1975 to 2004. Three commissioners have served in the relatively short period of time since the term of former Commissioner Dennis Unsworth ended in December 2010. The first commissioner, Jennifer L. Hensley, did not receive a vote in the Senate Judiciary Committee during the 2011 Legislature and thus was not confirmed by the Senate as required by law. David B. Gallik was appointed on May 13, 2011, after Hensley wasn't confirmed. He resigned Jan. 18, 2012, amid staff accusations related to time spent on his private law practice. The current commissioner, Jim Murry, was appointed Feb. 6, 2012.

About the Commissioner's Office

The office now known as the Commissioner of Political Practices was created in 1975 and originally named the Commissioner of Campaign Finances and Practices. The statement of purpose for the bill creating the office cited the need to "consolidate and clarify the authority to enforce the election and campaign finance laws."¹ The name of the office changed in 1980 as a result of Initiative 85, which also changed requirements related to lobbyists.

Originally, the speaker of the House, president of the Senate, and the minority leaders of both houses appointed the commissioner. If they could not agree, the Supreme Court appointed a fifth member to the selection committee. The 1979

Legislature changed the appointment of the commissioner by giving that power to the governor, with confirmation by the Senate. Legislative leadership retained a role: recommendation of names to the governor.² The governor, however, is not required to choose a nominee from the names provided by leadership.

The commissioner is appointed for a six-year term and is not eligible for reappointment unless appointed to serve fewer than three years of an unexpired term resulting from a vacancy.

There are just three qualifications for the office. The commissioner must be:

- a U.S. citizen;
- a resident of Montana; and
- registered to vote in Montana on the date of appointment.

Restrictions exist, as well. The commissioner may not knowingly:

- hold another position of public trust or engage in an occupation or business that interferes or is inconsistent with the execution of the duties of the commissioner's office;
- participate in any political activity or a political campaign;
- make contributions to a candidate, political committee, or for or against a ballot issue;
- engage in any activity that is primarily intended to support or oppose a candidate, political committee, or ballot issue;
- attend a fund raiser for a candidate, political committee, or ballot issue; or
- participate in a matter pertaining to the commissioner's office that involves a relative or is a conflict of interest or results in the appearance of a conflict of interest between public duty and private interest.

The qualifications and restrictions are fairly recent additions to the statutes governing the commissioner's office, enacted by the 2005 Legislature.³

¹ Chapter 480, Laws of 1975.

² Chapter 483, Laws of 1979.

³ Chapter 479, Laws of 2005.

Duties and Responsibilities of the Commissioner

The duties and responsibilities of the office can be grouped into three general categories: ethics, lobbyists, and campaign finance and elections.

The role related to ethics includes receiving ethics complaints and disclosures from public employees, state officers, and candidates. The types of disclosures filed are for individuals with salaries from two separate public employment positions, business disclosures for state officers and candidates, and disclosures of private interests that may create conflict with public duty for public officers and employees. In addition to disclosures, the office also receives complaints about potential violations of the code of ethics by state officers, legislators, state employees, and county attorneys.

The commissioner is also responsible for licensing lobbyists, collecting reports on payments to lobbyists, and conducting investigations related to lobbyist disclosure. To fulfill these duties, the commissioner must make lobbyist information publicly available, investigate irregularities in lobbyist reports, and hold informal hearings if reports are not filed in the required time frame.

The campaign finance and election duties of the commissioner are the most numerous. Generally, they involve receiving campaign finance reports from candidates and political committees and investigating complaints related to campaign finances and election practices. Some of the specific duties include:

- prescribing forms for reports and publishing a manual prescribing a uniform system of accounts;
- preparing a form for the Code of Fair Campaign Practices set forth in section 13-35-301, MCA, and providing the forms to candidates for (voluntary) signature;
- publishing campaign contribution limits in administrative rule (adjusted based on the Consumer Price Index);
- receiving campaign finance reports and constituent service account filings and examining them for compliance and conformity with law;
- making filed reports available for public inspection;

- investigating alleged violations of election and campaign laws contained in Title 13, chapters 35 and 37; and
- notifying the secretary of state if a candidate is not in compliance and is ineligible to appear on the ballot.

Ethics Offices Elsewhere

Forty-one states⁴ have independent ethics commissions, but the structure and authority of the commissions vary considerably from state to state. Differences include the ways in which they define “ethics,” the officials and employees over whom they have jurisdiction, the extent of their authority, and the composition of the commission.⁵ The states organize ethics-related duties in the following ways:

- Seven states⁶ have ethics commissions that perform functions similar to those of the Montana commissioner of political practices, including campaign finance, ethics, financial disclosure, gift restriction, and lobbying duties.
- Twelve states place at least some of the duties performed by the Montana commissioner with an elected officeholder rather than a commission. Of these, 10 states⁷ give the secretary of state some of these duties. In two states, the attorney general regulates ethics laws.⁸
- The remaining 22 states split duties among two or more commissions or state agencies, or do not undertake all of the duties given to the Montana commissioner.⁹

Montana is the only state with a single commissioner. Seven states have a commission that performs functions similar to those of the Montana commissioner; those commissions have memberships ranging in size from five to 11 members. The appointing authority for the commissions varies by state. However in all states except Iowa, the appointment power is shared among some combination of the following: the governor, the lieutenant governor, the attorney general, legislative leadership, the secretary of state, and the chief justice of the state Supreme Court. Most of the states require that the appointees represent a balance among political parties. The following table provides information about the commissions that perform functions similar to those of the Montana commissioner of political practices.

⁴ The nine states without a statewide ethics commission include, among others, all of the states that border Montana: Arizona, Idaho, New Hampshire, New Mexico, North Dakota, South Dakota, Vermont, Virginia, and Wyoming.

⁵ David E. Freel, “Trends and Issues in State Ethics Agencies,” *The Book of the States 2005*, p. 366.

⁶ Arkansas, California, Iowa, Kansas, Louisiana, Nebraska, and Oklahoma

⁷ Arizona, Colorado, Idaho, Michigan, New Hampshire, New Mexico, North Dakota, South Dakota, Vermont, and Wyoming

⁸ Utah and Virginia

⁹ “Table 6.9: Ethics Agencies: Jurisdiction Subject Areas,” *The Book of the States 2005*.

Comparison of Selected State Ethics Commissions

Office Name	Commissioners			Office	
	#	Selection	Term	Staff	Est. Budget
Arkansas Ethics Commission	5	Appointed by G, LG, AG, SP, and HS	5 years 1 term	9	\$680,000
California Fair Political Practices Commission	5	G appoints the chair and 1 commissioner (of different party than G); SOS, AG, and State Controller each appoint 1 commissioner (if all officers of same party, state controller selects member from a list provided by another party)	4 years 1 term	80	\$8.298 million
Iowa Ethics and Campaign Disclosure Board	6	G appointed, balanced as to political party affiliation and gender	6 years 1 term	5	\$537,000
Kansas Governmental Ethics Commission	9	Chair appointed by G; G, AG, SOS, SC, SP, SML, HS, HML each appoint 1 commissioner; not more than 5 commissioners of same party, the 2 appointed by G must be of different political parties	2 years 1 term	9	\$684,000
Louisiana Board of Ethics	11	7 appointed by G (1 from each congressional district), 2 appointed by Senate, 2 appointed by House; all subject to senate confirmation; all selected from list submitted by state's 8 private universities	5 years 2-term limit	41	\$3.84 million
Montana Commissioner of Political Practices	1	Selected by G. List of names submitted by panel of SP, SML, HS, and HML but G not required to choose from list; confirmed by senate	6 years 1 term	4	\$564,214
Nebraska Accountability and Disclosure Commission	9	SOS serves as one commissioner; 4 appointed by SOS – one each from lists submitted by Democratic and Republican state chairs and 2 from citizenry at large; 4 appointed by G – one each from 2 lists submitted by Legislature and 2 from citizenry at large; no more than 4 of 8 commissioners from same party and at least 1 registered independent	6 years 1 term	7	\$650,000
Oklahoma Ethics Commission	5	Appointed by G, SP, HS, SC, and AG; no more than 3 commissioners of same political party	5 years 2-term limit	6	\$647,354

AG=Attorney General G=Governor HS=Speaker of the House HML=House Minority Leader
 LG=Lieutenant Governor SOS=Secretary of State SP=Senate President SML=Senate Minority Leader
 SC=Chief Justice of the Supreme Court

The jurisdiction of these commissions also varies to some extent. All of the commissions have jurisdiction over executive branch employees, state employees, and lobbyists. Most also have authority related to state elected officials, state appointed officials, legislators, judicial branch employees, and

local elected officials. Montana's commissioner does not have jurisdiction over local appointed officials, local employees, the private sector/vendors, and state colleges and universities. Montana is the only state among the eight without duties related to the state universities.

Jurisdiction of Selected State Ethics Commissions¹⁰

Jurisdiction for:	AR	CA	IA	KS	LA	MT	NE	OK
State elected officials	X	X	X	X		X	X	
State appointed officials	X	X			X	X	X	X
Executive branch employees	X	X	X	X	X	X	X	X
Judges	X	X		X		X		X
Judicial branch employees	X	X		X	X	X		X
Legislators	X	X		X	X	X	X	X
Legislative employees	X	X		X	X	X	X	
State employees	X	X	X	X	X	X	X	X
Local elected officials	X	X		X	X	X	X	
Local appointed officials	X	X			X		X	
Local employees	X	X			X		X	X
State colleges and universities	X	X	X	X	X		X	X
Private sector/vendors			X	X	X		X	X
Lobbyists	X	X	X	X	X	X	X	X

Questions Surround Ethics Offices

Most of the ethics boards and commissions in the states are independent but have jurisdiction over the appointing entity or entities. This may lead to questions about real or perceived independence. In addition to the attempts to balance appointment power and political party affiliation discussed above, other mechanisms for creating an impartial commission include establishing an odd number of commissioners and limiting the terms of commissioners.¹¹

State ethics commissions often have control over their budgets and staff, which contributes to their autonomy. However, a concern for many ethics commissions is receiving adequate funding, especially when facing across-the-board budget cuts.¹² The Montana commissioner's office has four staff in addition to the commissioner and plans to request funding for a staff attorney in the 2013 legislative session. Currently, the office contracts with attorneys for legal services.

Campaign finance and ethics enforcement offices in other states are not without controversy. Following are some examples of recent news accounts of ethics office issues in other states.

- California's governor appoints the presiding officer of the California Fair Political Practices Commission and

one commissioner. Current Gov. Jerry Brown formerly served as attorney general; he appointed one commissioner in that role, as well. Brown's three appointees comprise a majority of the five-person commission.¹³ This situation could continue to occur in the future as it is fairly common for a governor to serve in another state-wide office before being elected governor. The secretary of state and attorney general are the other officeholders who appoint commissioners in California.

- In 2011, Connecticut combined nine watchdog groups into one agency called the Office of Governmental Accountability. The merged offices include the Freedom of Information Commission, responsible for campaign finance disclosure, and the Office of State Ethics. Other agencies involved in the consolidation have duties related to child and victim advocacy, judicial selection and review, state contracting, and firearms permits. Critics of the new office cited concerns that the divisions have different and even conflicting mandates.¹⁴
- The Texas Ethics Commission faces considerable criticism from many corners. Critics contend that the commission aggressively enforces and levies fines for minor violations, such as filing a report a day late, but is not

¹⁰ Information adapted from "Table 6.10 Ethics Agencies: Jurisdiction," *The Book of the States 2005* and review of state agency websites.

¹¹ David E. Freil, "Trends and Issues in State Ethics Agencies," *The Book of the States 2005*, p. 367.

¹² Ibid.

¹³ David Siders, "Jerry Brown Assumes Uncommon Influence Over FPPC," *The Sacramento Bee*, July 21, 2011.

¹⁴ Keith M. Phaneuf and Jacqueline Rabe, "Watchdog Panel Gives Malloy Three Choices for New Executive Director," *The Connecticut Mirror*, Aug. 1, 2011.

involved in more serious ethical transgressions. There is no framework or funding for the commission to conduct investigations and no cooperation or coordination with county attorneys. The commission also does not disclose complaints, who made them, or how a fine is determined.¹⁵

- Complaints about lack of disclosure and ineffectiveness also plague the Tennessee Ethics Commission. The commission is relatively new, created in 2006 after the “Tennessee Waltz” FBI investigation that led to the conviction of five lawmakers. Records about late filing are public, but ethics complaints are only disclosed if the commission reviews the complaint in a public hearing. Tennessee law does not allow the commission to investigate or prosecute. The commission forwards complaints to the attorney general for investigation and to another agency, such as the Tennessee Bureau of Investigation, for prosecution.¹⁶
- In Georgia last year, the then-executive director of the state ethics commission accused the commission chairman of eliminating the deputy director position because of an investigation into the governor’s campaign spending. The chairman cited a 40 percent budget cut as the reason for cutting the deputy position. Other changes to the office converted the executive director position from an investigative position to an administrative position.¹⁷

Montana Looks at Legislative Action

Following former Commissioner Gallik’s resignation, the State Administration and Veterans’ Affairs Interim Commit-

tee requested a study of the Montana office. The committee received a briefing in April and then voted to request a draft study resolution for introduction in the 63rd session of the Montana Legislature. SAVA received the draft resolution at the June committee meeting and voted to formally request the legislation as a committee bill. The discussion also touched on whether the committee had enough time this interim to complete a study and forward substantive recommendations to the next Legislature for changes to the office. The committee agreed that forwarding the study resolution would not preclude committee members from working toward a solution for the 63rd session.

At the April meeting, SAVA did discuss some ideas for reforming the office. Those ideas included expanding from a single commissioner to a commission with multiple members and transferring appointment of the commissioner from the governor to the Judicial Nomination Commission. That commission recommends to the governor nominees to fill Supreme Court and District Court vacancies. The nominating commission also provides the chief justice of the Montana Supreme Court with a list of candidates for appointment as chief water judge or associate water judge. The Judicial Nomination Commission is composed of four lay members appointed by the governor and who are not attorneys or judges, two practicing attorneys who are appointed by the Supreme Court from different judicial districts, and one district judge elected by the other district judges. Some committee members wondered if the governor would still indirectly control the nomination, because the governor appoints four of the seven Judicial Nomination Commission members.

¹⁵ Mark Lisher, “‘Toothless’ Secretive Texas Ethics Commission Fails the Public,” *Texas Watchdog*, Oct. 27, 2011.

¹⁶ “Ethics Commission Keeps Complaint Numbers Under Wraps,” *Missouri News Horizon*, Aug. 11, 2011.

¹⁷ Aaron Gould Sheinin, “Ethics Commission Deals with Challenges of Change,” *The Atlanta Journal-Constitution*, Nov. 25, 2011.

Calendar of Legislative Events

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

July						
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
1	2	3	4	5	6	7
8	9	10	11	12 Water Policy Committee, Rm 172, time TBA	13 Water Policy Committee, Rm 172, time TBA	14
15	16 Energy & Telecommunications Committee, Montana Board of Oil & Gas Conservation, 2535 St. Johns Ave., Billings, 8:30 a.m.	17 Energy & Telecommunications Committee, Montana Board of Oil & Gas Conservation, 2535 St. Johns Ave., Billings, 7:30 a.m.	18 Environmental Quality Council, Rm 172, 1 p.m.	19 Environmental Quality Council, Rm 172, 9 a.m. Revenue & Transportation Committee, Rm 137, time TBA	20 Revenue & Transportation Committee, Rm 137, time TBA State-Tribal Relations Committee, room & time TBA	21
22	23	24	25	26	27	28
29	30	31				

August						
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
			1	2	3	4
5	6	7	8 State Administration & Veterans Affairs Committee, room & time TBA	9 State Administration & Veterans Affairs Committee, room & time TBA	10	11
12	13 Districting & Apportionment Commission, room & time TBA	14 Districting & Apportionment Commission, room & time TBA	15 Districting & Apportionment Commission, room & time TBA	16 Districting & Apportionment Commission, room & time TBA	17 Districting & Apportionment Commission, room & time TBA	18
19	20 Children & Families Committee, room & time TBA	21 Children & Families Committee, room & time TBA	22	23	24 Legislative Council, room & time TBA	25
26	27	28	29	30	31 Law & Justice Committee, Rm 137, time TBA	

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