

**Education Interim Committee  
2017-2018 Interim**

**Summary of Statutory Duties and Proposed Work Plan**

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This document is an introduction to the Education Interim Committee (EDIC) and a proposed work plan which, as adopted by the committee with directions to staff, will help to guide its work for the next 14 months.

Included in this work plan is discussion of:

- EDIC's statutory duties;
- EDIC's interim study assignment;
- Additional topics within EDIC's subject area jurisdiction;
- Administrative rule review; and
- EDIC's budget, proposed meeting schedule and meeting outline.

**EDIC'S STATUTORY DUTIES**

**I. Section 5-5-215, MCA: Duties Common to All Committees**

A number of statutory duties are common to all interim committees. These are found in **Section 5-5-215, MCA**.

**5-5-215. Duties of interim committees.** (1) Each interim committee shall:

- (a) review administrative rules within its jurisdiction;
- (b) subject to 5-5-217(3), conduct interim studies as assigned;
- (c) monitor the operation of assigned executive branch agencies with specific attention to the following:
  - (i) identification of issues likely to require future legislative attention;
  - (ii) opportunities to improve existing law through the analysis of problems experienced with the application of the law by an agency; and
  - (iii) experiences of the state's citizens with the operation of an agency that may be amenable to improvement through legislative action;
- (d) review [if requested by any member of the interim committee, the]<sup>1</sup> statutorily established advisory councils and required reports of assigned agencies to make recommendations to the next legislature on retention or elimination of any advisory council or required reports pursuant to 5-11-210;
- (e) review proposed legislation of assigned agencies or entities as provided in the joint legislative rules; and
- (f) accumulate, compile, analyze, and furnish information bearing upon its

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<sup>1</sup> SB 8, enacted in 2017, inserts the bracketed language. This item is discussed separately under Part VI on page 5.

assignment and relevant to existing or prospective legislation as it determines, on its own initiative, to be pertinent to the adequate completion of its work.

(2) Each interim committee shall prepare bills and resolutions that, in its opinion, the welfare of the state may require for presentation to the next regular session of the legislature.

(3) The legislative services division shall keep accurate records of the activities and proceedings of each interim committee.

It is up to the committee to determine how it wants to execute its "agency monitoring" responsibilities. Previous ELG committees have scheduled updates and conversations with the various agencies either at every meeting, on a rotating basis, or ad hoc.

## II. Section 5-5-224, MCA: EDIC Enabling Statute<sup>2</sup>

**Section 5-5-224**, MCA, provides EDIC's specific statutory duties, which fall into two primary categories: general state administration of education and postsecondary education. The section requires the committee to:

1. execute administrative rule review, review draft legislation, conduct program evaluation, and monitoring responsibilities for the following agencies and the entities attached to the agencies for administrative purposes:
  - a. State Board of Education
    - i. Montana Historical Society
    - ii. Montana Arts Council
    - iii. Montana State Library
  - b. Board of Public Education<sup>3</sup>
  - c. Board of Regents of Higher Education<sup>4</sup>
  - d. Office of Public Instruction;
2. provide information to the Board of Regents in the following areas:
  - a. annual budget allocations;
  - b. annual goal statement development;
  - c. long-range planning;
  - d. outcome assessment programs; and
  - e. any other area that the committee considers to have significant educational or fiscal policy impact;

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<sup>2</sup> 5-5-224 was amended in SB 151 (Brown, 2017) to remove all references to local government, replacing the former Education and Local Government Interim Committee (ELG) with two committees, one for education and one for local government. It may be worth revisiting this section and considering whether the language reflects the committee's preferences and practice.

<sup>3</sup> In a 1992 decision, Judge Jeffrey Sherlock of the First Judicial District ruled that the Board of Public Education is vested with constitutional rulemaking authority that is independent of any power delegated to the Board by the Legislature. Any rules adopted by the Board of Public Education are not subject to legislative review. However, in the 2003-2004 interim, the Board requested that the former ELG review its rules. That may continue to be the case. In addition, 20-7-101, MCA, requires that the Board submit proposed accreditation standards to the committee. That requirement is discussed in Part III of this paper (Section 20-7-101, MCA, beginning on p. 3).

<sup>4</sup> The Board of Regents is exempt from the Montana Administrative Procedure Act (2-4-102(2), MCA), so any rules adopted by the Board of Regents are not subject to legislative review.

3. periodically review the success or failure of the university system in meeting its annual goals and long-range plans;
4. periodically review the results of outcome assessment programs;
5. develop mechanisms to ensure strict accountability of the revenue and expenditures of the university system;
6. study and report to the legislature on the advisability of adjustments to the mechanisms used to determine funding for the university system, including criteria for determining appropriate levels of funding;
8. act as a liaison between both the legislative and executive branches and the Board of Regents; and
9. encourage cooperation between the legislative and executive branches and the Board of Regents.

### III. **Section 20-7-101, MCA: Accreditation Standards Adopted by Board of Public Education**

If new standards or changes to the accreditation standards for public schools are proposed, the Board of Public Education must submit the proposals, along with economic impact statements to the EDIC for review. Only if EDIC determines that the cost to school districts of implementing the standards is insubstantial may the Board implement the standards right away. Otherwise, the Board must wait and seek adequate funding for the proposed standards from the next Legislature prior to implementation.

**20-7-101. Standards of accreditation.** (1) Standards of accreditation for all schools must be adopted by the board of public education upon the recommendations of the superintendent of public instruction. The superintendent shall develop recommendations in accordance with subsection (2). The recommendations presented to the board must include an economic impact statement, as described in 2-4-405, prepared in consultation with the negotiated rulemaking committee under subsection (2).

(2) The accreditation standards recommended by the superintendent of public instruction must be developed through the negotiated rulemaking process under Title 2, chapter 5, part 1. The superintendent may form a negotiated rulemaking committee for accreditation standards to consider multiple proposals. The negotiated rulemaking committee may not exist for longer than 2 years. The committee must represent the diverse circumstances of schools of all sizes across the state and must include representatives from the following groups:

- (a) school district trustees;
- (b) school administrators;
- (c) teachers;
- (d) school business officials;
- (e) parents; and
- (f) taxpayers.

(3) Prior to adoption or amendment of any accreditation standard, the board

shall submit each proposal, including the economic impact statement required under subsection (1), to the education and local government interim committee<sup>5</sup> for review at least 1 month in advance of a scheduled committee meeting.

(4) Unless the expenditures by school districts required under the proposal are determined by the education and local government interim committee to be insubstantial expenditures that can be readily absorbed into the budgets of existing district programs, the board may not implement the standard until July 1 following the next regular legislative session and shall request that the same legislature fund implementation of the proposed standard.

(5) Standards for the retention of school records must be as provided in 20-1-212.

#### **IV. Sections 20-9-161, MCA: School District Budget Amendment Reporting**

Section 20-9-161 requires school districts to report to ELG and to the Board of Public Education any budget amendment adopted to address an unforeseen need affecting the educational functions of the district if the budget amendment, in combination with other budget amendments within the same school fiscal year, exceeds 10% of the district's adopted general fund budget.

A school district budget amendment is defined for Title 20 as an amendment to a district's adopted budget because of:

- increased enrollment;
- destruction of school property by fire, flood, storm, or other events;
- a judgement for damages against the district issued by a court;
- a legislative enactment occurring after adoption of the budget that imposes an additional financial obligation on the district;
- the receipt of tax revenue from a prior fiscal year; and
- other unforeseen needs.

#### **V. Sections 22-3-421 through 22-3-424, MCA: Require State Agencies to Report on Heritage Properties**

Sections 22-3-421 through 22-3-424, MCA require state agencies to regularly report to the Preservation Review Board on the status and stewardship of the agencies' heritage properties. The State Historic Preservation Officer (SHPO) is required to provide the information presented to the Preservation Review Board, along with any recommendations, to "an appropriate interim committee". The Preservation Review Board is part of the Montana Historical Society, which is an agency allocated to the State Board of Education for administrative purposes (2-15-1511, MCA). Because EDIC is statutorily required to monitor the activities of the State Board of Education, it is the appropriate interim committee to receive the SHPO's report.

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<sup>5</sup> There are several statutory references to the former Education and Local Government Interim Committee (ELG) that were not amended in SB 151 and warrant amending in future legislation; 20-7-101 and 20-9-161 are two examples.

**VI. Section 5-5-215, MCA: Require Interim Committees to Review Advisory Councils and Reports**

Senate Bill No. 8 (Facey, 2017) amended 5-5-215 to remove the requirement<sup>6</sup> that interim committees review statutorily established advisory councils and required reports each interim and made the review discretionary. If any member of the committee requests that EDIC review an advisory council or required report, the committee must do so.

Advisory councils relevant to EDIC's subject area jurisdiction and the entities to which they are attached are as follows:

1. Fire Services Training Advisory Council (2-15-1519, MCA); *Board of Regents*
2. Certification Standards and Practices Advisory Council (2-15-1522, MCA); *Board of Public Education*
3. Governor's Postsecondary Scholarship Advisory Council (2-15-1524, MCA); *Office of the Commissioner of Higher Education*
4. K-12 Data Task Force (20-7-105) *Office of Public Instruction*

In addition, section 2-15-122, MCA, allows the Governor or a department head to create advisory councils. Information about councils created under this authority must be filed with the Secretary of State's office.

Reports relevant to EDIC that are required by statute and that will need to be reviewed to comply with Ch. 126, L. 2011 include the following:

1. Carl D. Perkins Career and Technical Education Improvement Act, 2006 -- Legislative Report (20-7-330, MCA); *Board of Regents*
2. Biennial Report to the Governor and the Legislature (22-3-107, MCA); *Montana Historical Society*
3. At-Risk Students Report (20-9-328, MCA); *Office of Public Instruction* on or before September 15 of even-numbered years
4. American Indian Achievement Gap Report (20-9-330, MCA); *Office of Public Instruction* on or before September 15 of even-numbered years
5. Education Commission of the States (20-2-501, MCA); *Education Commission of the States*

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<sup>6</sup> This requirement was added to 5-5-215 in 2011 through HB 142 (Sands) and the 2011-12 ELG extensively reviewed all of the advisory councils and required reports, recommending the elimination of several. The 2013-14 and 2015-16 ELGs devoted less time to this requirement.

6. Western Regional Higher Education Compact (20-25-801, MCA); *Western Interstate Commission for Higher Education*
7. State Agency Heritage Properties (22-3-421 through 22-3-424, MCA); *State Historic Preservation Office*

### **INTERIM STUDY ASSIGNMENT House Joint Resolution No. 1 (HJ 1)**

The Legislative Council will likely assign HJ 1 to EDIC at the Council's June 6 meeting.

#### **HJ 1 Study of Funding of Educational Programs for Students with Special Needs**

Rank in post-session legislator poll: 4th out of 20

This interim study resolution was introduced by request of the 2015-2016 School Funding Interim Commission. Fundamentally, the Commission wanted to examine more closely whether Montana's current school funding formula is aligned with the needs and costs of programs to serve students with special needs (including students with disabilities, language learners, gifted and talented students, and at-risk students). HJ 1 asks that an interim committee look at current best practices for serving special needs students and compare those practices with what is happening in Montana schools. The resolution also requests an examination of the various ways that funding for programs to serve students with special needs is structured in other states and an evaluation of whether Montana's existing funding structure requires modification.

School district financial information can be analyzed to determine the current levels of expenditures for programs serving students with special needs compared with state funding and other revenues generated by districts for these programs. Staff can gather information and arrange for subject matter experts to describe current best practices. Staff can also assemble a panel of school district personnel to share the kinds of programs that exist in Montana schools. Working with NCSL and ECS education experts, staff can provide a review of funding mechanisms in other states and associated pros and cons of those mechanisms. It is likely that a number of stakeholder groups including parents and advocates for the various student groups under the umbrella of "special needs" will participate in this study, as well as representatives from the special education cooperatives that serve many rural Montana school districts.

The meeting outline following this work plan narrative includes agenda items reflecting HJ 1.

#### **ADDITIONAL TOPICS WITHIN EDIC'S SUBJECT AREA JURISDICTION**

In addition to monitoring the activities of the agencies and entities that are charged with carrying out the state's K-12 and higher education programs, the committee may wish to examine specific education policy areas. The work plan envisions significant time for member-initiated education policy studies, depending on other committee work and availability of staff resources. (A compilation of possible topics has been distributed to members and posted to the website.)

It is vital to remember that while the interim spans 14-15 working months, the capacity of any interim committee is finite and limited by the committee's budget and meeting time, as well as staff workload. As the committee discusses additional topics, the guiding principle will be the need to communicate clearly what topics are priorities and to what degree the committee wishes to explore these topics. Realistically the committee can cover a few topics at great depth or a number of topics in a more cursory manner; it is not realistic to tackle many topics deeply.

### **ADMINISTRATIVE RULE REVIEW**

As is noted in the discussion of EDIC's specific statutory duties and related footnotes (see page 2), the committee has full or limited administrative rule review responsibilities for the State Board of Education, the Board of Public Education, the Board of Regents, and the Office of Public Instruction. The committee determines the extent to which it will exercise that authority. The options range from detailed committee examination of all proposed rules to a summary of proposed rules by EDIC's legal staff to EDIC's legal staff providing members notice of any particularly significant or unusual proposed rules.

Title 2, chapter 4, part 4 of the Montana Code Annotated provides for legislative review of administrative rules. In summary, interim committees may:

- request and obtain an agency's rulemaking records;
- submit to an agency written recommendations for the adoption, amendment, or rejection of a proposed rule;
- require that a rulemaking hearing be held;
- poll the legislature to determine whether a proposed rule is consistent with legislative intent; and
- request an economic impact statement for a proposed rule.

EDIC legal staff will lead the committee's administrative rule review activities.

### **COMMITTEE BUDGET AND PROPOSED MEETING SCHEDULE**

EDIC has approximately \$30,000 in its budget for the 2019 Biennium. This will accommodate seven meetings of the full committee, with the possibility of several 2-day meetings as needed. The following is a proposed committee meeting schedule. Meetings at the end of the week have generally been committee members' preference, but adjustments can be made if members prefer other days of the week.

1. Tuesday, June 13, 2017
2. Friday, September 15, 2017
3. Wednesday-Thursday, November 8-9, 2017
4. Friday, February 9, 2018
5. Friday, April 13, 2018
6. Thursday-Friday, June 14-15, 2018
7. Friday, September 7, 2018

Outline of Proposed Work Plan and Meeting Dates for Education Interim Committee 2017-2018

June 13 2017	September 2017 (Fri Sept 15)	November 2017 (2) (Wed-Thu Nov 8-9)	February 2018 (Fri Feb 9)	April 2018 (Fri April 13)	June 2018 (2) (Thu-Fri June 14-15)	Sept 2018 (Fri Sept 7)
<p>Organizational meeting</p> <p>Elect officers</p> <p>Review statutory duties</p> <p>Rule review (including fiscal impact of proposed accreditation standards)</p> <p>Monitor agency/entity operation</p> <p>Review assigned study HJ 1—funding for special needs</p> <p>Receive stakeholder and public comment on work plan</p> <p>Establish work plan and identify topics for committee exploration</p>	<p>Rule review (including fiscal impact of proposed accreditation standards)</p> <p>Monitor agency/entity operation</p> <p>HJ 1—funding for special needs:</p> <ul style="list-style-type: none"> <li>• Review previous studies</li> <li>• Special Education funding and cooperatives</li> <li>• G&amp;T funding, programs and best practices</li> </ul> <p>Member-identified and emerging issues as determined by the committee</p>	<p>Rule review (including fiscal impact of proposed accreditation standards)</p> <p>Monitor agency/entity operation</p> <p>HJ 1—funding for special needs</p> <ul style="list-style-type: none"> <li>• Best practices for special education</li> <li>• At-risk funding, programs and best practices</li> <li>• Programs and best practices for English learners</li> <li>• Follow up</li> </ul> <p>Member-identified and emerging issues as determined by the committee</p>	<p>Rule review (including fiscal impact of proposed accreditation standards)</p> <p>Monitor agency/entity operation</p> <p>HJ 1—funding for special needs</p> <ul style="list-style-type: none"> <li>• Alternative funding mechanisms and policy considerations</li> <li>• Follow up</li> </ul> <p>Member-identified and emerging issues as determined by the committee</p>	<p>Rule review (including fiscal impact of proposed accreditation standards)</p> <p>Monitor agency/entity operation</p> <p>HJ 1—funding for special needs</p> <ul style="list-style-type: none"> <li>• Follow up</li> <li>• Preliminary discussion of any findings and recommendations, committee reports, and bill drafts</li> </ul> <p>Member-identified and emerging issues as determined by the committee</p> <p>Preliminary discussion of any findings and recommendations, committee reports, and bill drafts</p>	<p>Rule review (including fiscal impact of proposed accreditation standards)</p> <p>Monitor agency/entity operation</p> <p>HJ 1—funding for special needs</p> <ul style="list-style-type: none"> <li>• Follow up</li> <li>• Continued discussion of any findings and recommendations, committee reports, and bill drafts</li> </ul> <p>Review agency/entity legislation</p> <p>Member-identified and emerging issues as determined by the committee</p> <p>Continued discussion of any findings and recommendations, committee reports, and bill drafts</p>	<p>Rule review (including fiscal impact of proposed accreditation standards)</p> <p>Monitor agency/entity operation</p> <p>HJ 1—funding for special needs</p> <ul style="list-style-type: none"> <li>• Public comment, review, revise any findings and recommendations, committee reports, and bill drafts</li> </ul> <p>Review reports:</p> <ul style="list-style-type: none"> <li>• Historic Preservation</li> <li>• American Indian Achievement</li> <li>• At-risk student</li> <li>• Military Children</li> <li>• DPHHS Preschool Report (HB 639)</li> </ul> <p>Public comment, review, revise any findings and recommendations, committee reports, and bill drafts</p>