

**Education Interim Committee
2019-2020 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 the committee's work for the next 15 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. A number of statutory duties are common to all interim committees.

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 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 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 and EDIC committees have scheduled updates and conversations with the various agencies either at every meeting, on a rotating basis, or ad hoc.

II. EDIC's Enabling Statute¹

5-5-224. Education interim committee. (1) The education interim committee has administrative rule review, draft legislation review, program evaluation, and monitoring functions for the following executive branch agencies and the entities attached to agencies for administrative purposes:

- (a) state board of education;
- (b) board of public education²;
- (c) board of regents of higher education³; and
- (d) office of public instruction.

(2) The committee shall:

(a) provide information to the board of regents in the following areas:

- (i) annual budget allocations;
- (ii) annual goal statement development;
- (iii) long-range planning;
- (iv) outcome assessment programs; and

(v) any other area that the committee considers to have significant educational or fiscal policy impact;

(b) periodically review the success or failure of the university system in meeting its annual goals and long-range plans;

(c) periodically review the results of outcome assessment programs;

(d) develop mechanisms to ensure strict accountability of the revenue and expenditures of the university system;

(e) 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;

(f) act as a liaison between both the legislative and executive branches and the board of regents; and

(g) encourage cooperation between the legislative and executive branches and the board of regents.

The entities attached to the State Board of Education (which is the Board of Public Education

¹ 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.

² 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).

³ 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.

and the Board of Regents of Higher Education combined) are:

- the Montana Historical Society;
- the Montana State Library; and
- the Montana Arts Council.

III. Accreditation Standards Adopted by Board of Public Education

If new standards or changes to existing 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 costs incurred by school districts in implementing the new standards will be "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 interim committee 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 EDIC 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.

20-9-161. Definition of budget amendment for budgeting purposes. As used in this title, unless the context clearly indicates otherwise, the term "budget amendment" for the purpose of school budgeting means an amendment to an adopted budget of the district for the following reasons:

(1) an increase in the enrollment of an elementary or high school district that is beyond what could reasonably have been anticipated at the time of the adoption of the budget for the current school fiscal year whenever, because of the enrollment increase, the district's budget for any or all of the regularly budgeted funds does not provide sufficient financing to properly maintain and support the district for the entire current school fiscal year;

(2) the destruction or impairment of any school property necessary to the maintenance of the school, by fire, flood, storm, riot, insurrection, or act of God, to an extent rendering school property unfit for its present school use;

(3) a judgment for damages against the district issued by a court after the adoption of the budget for the current year;

(4) an enactment of legislation after the adoption of the budget for the current year that imposes an additional financial obligation on the district;

(5) the receipt of:

(a) a settlement of taxes protested in a prior school fiscal year;

(b) taxes from a prior school fiscal year as the result of a tax audit by the department of revenue or its agents;

(c) delinquent taxes from a prior school fiscal year; and

(d) a determination by the trustees that it is necessary to expend all or a portion of the taxes received under subsection (5)(a), (5)(b), or (5)(c) for a project or projects that were deferred from a previous budget of the district; or

(6) any other unforeseen need of the district that cannot be postponed until the next school year without dire consequences affecting:

(a) the safety of the students and district employees; or

(b) the educational functions of the district. Any budget amendment adopted pursuant to this subsection (6)(b) that in combination with other budget amendments within the same school fiscal year exceeds 10% of the district's adopted general fund budget must be reported by the school district to the education interim committee and the board of public education with an explanation of why the budget amendment is necessary.

V. State Agency Reports 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 each agency's 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. The committee typically receives this report at its final meeting.

VI. Review of Statutorily Established Advisory Councils and Reports

Senate Bill No. 8 (Facey, 2017) amended 5-5-215 to remove the requirement⁴ 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* [repealed by SB 60 (Salomon, 2019) which revised financial aid laws and was requested by last interim's EDIC]~~
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 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 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. Subsequent interim committees have devoted less time to this requirement.

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*
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*

ADMINISTRATIVE RULE REVIEW

As is noted in the discussion of EDIC's specific statutory duties and related footnotes (see page 2), the committee has varied degrees of administrative rule review responsibility 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.

INTERIM STUDY ASSIGNMENT House Joint Resolution No. 56 (HJ 56)

Legislative Council assigned HJ 56 to EDIC at the Council's May 29, 2019, meeting.

HJ 56 Study of Bullying

Rank in post-session legislator poll: 27/27

This study resolution came about after the failure of HB 199 (Usher) in House Judiciary. HB 199 proposed to amend 20-5-209, MCA, which prohibits bullying in public schools, by adding criminal penalties and seemed to be motivated by a desire to further deter bullying by putting

more punitive "teeth" in Montana's anti-bullying law. Opponents of HB 199 were concerned about criminalizing bullying due to the costs and burdens that might put on the criminal justice system as well as the possible increase in youth incarceration rates. One opponent expressed concern about placing too much emphasis on punishing the bully rather than attending to victims' needs and contributing to the "school-to-prison pipeline." Another suggested a study to look at the problem of bullying from "the broadest perspective possible." In closing, Rep. Usher stated that one of the motivations was to ensure that bullying was stopped prior to a victim becoming desperate and contemplating suicide. House Judiciary tabled HB 199 and Rep. Usher pursued an interim study resolution, HJ 56.

Several opponents to HB 199 were proponents for HJ 56. The sponsor and proponents emphasized a more holistic examination of bullying that moved beyond solely a criminal justice approach. One proponent stated this was "an ounce-of-prevention-beats-a-pound-of-cure issue" and appreciated the study resolution's emphasis on ensuring the safety and recovery of victims of bullying. A lobbyist for Disability Rights Montana supported the study resolution and requested that the effort include a perspective on how bullying impacts students with disabilities. Another proponent proclaimed HJ 56 "a study whose time has come."

The committee might start by reviewing Montana's statute and rule regarding bullying, as well as examples of school district bullying policies. The committee can seek longitudinal data from OPI and school districts to consider the problem of bullying and how it has changed over time. Staff can gather information and arrange for subject matter experts to describe current best practices in preventing bullying behavior, including promising statewide policy enactments in other states. Staff can also assemble various panels to discuss with the committee ideas for strengthening statewide policy aimed at reducing bullying and the kinds of anti-bullying programs that currently exist in Montana schools. These panels could include teachers, students, administrators, parents, school resource officers, youth court representatives, school counselors and psychologists, and other mental health professionals.

This study could also be a part of a broader look at school and student safety and student mental health if the committee desires.

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. Staff will provide a separate document listing some possibilities. The work plan envisions significant time for member-initiated education policy studies, depending on other committee work and availability of staff resources.

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.

COMMITTEE BUDGET AND PROPOSED MEETING SCHEDULE

EDIC has approximately \$40,000 in its budget for the 2021 Biennium. This will accommodate six meetings of the full committee, with the possibility of several 2-day meetings as needed, and leave enough money remaining for the 2021-2022 EDIC to hold an initial meeting in June 2021. The following is a proposed committee meeting schedule. Meetings at the beginning or end of the week have generally been committee members' preference, but adjustments can be made if members prefer other days of the week.

1. Monday, **June 24, 2019** (the costs of this meeting will be paid out of remaining funds of the 2017-2018 EDIC)
2. Monday-Tuesday, **September 9-10, 2019**
3. Thursday-Friday, **November 21-22, 2019** (at MSU - Bozeman, with a joint meeting with the Board of Regents)
4. Thursday, **January 16, 2020** (during "Legislative Week"?)
5. Thursday-Friday, **March 19-20, 2020**
6. Monday-Tuesday, **June 15-16, 2020**
7. Monday, **September 14, 2020**

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