

For discussion on July 14, 2021
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Education Interim Committee (EDIC)

DRAFT WORK PLAN FOR THE 2021-2022 INTERIM

[REDACTED]

Purpose: To help the Education Interim Committee plan its interim and establish work priorities. When finalized, the work plan will provide guidance to the members, staff, and the public on how the committee will conduct its business throughout the interim. It will serve as a blueprint that allows the committee to complete its work over the next 15 months.

EDIC WORK PLAN, 2021-2022 – DRAFT

STATUTORY DUTIES

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;
 - (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; and
 - (g) review proposed ballot initiatives within the interim committee's subject area and vote to either support or not support the placement of the text of an initiative on the ballot in accordance with 13-27-202. [new per HB 651; 2021]**
- (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 committees have scheduled updates and conversations with the various agencies either at every meeting, on a rotating basis, or ad hoc.

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:

- (1) state board of education;
- (2) board of public education²;
- (3) board of regents of higher education³; and
- (4) office of public instruction.

The entities attached to the State Board of Education (which is the Board of Public Education and the Board of Regents of Higher Education combined) are:

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

ACCREDITATION STANDARDS ADOPTED BY THE 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

¹ **Error! Main Document Only.** 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. The 2019-20 EDIC requested SB 25 which was enacted by the 2021 Legislature and removed language related to fiscal oversight and budget planning for the Montana University System.

² **Error! Main Document Only.** 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, as discussed in this work plan.

³ **Error! Main Document Only.** 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.

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 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.

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.

REVIEW OF STATUTORILY ESTABLISHED ADVISORY COUNCILS AND REPORTS

Senate Bill No. 8 (Facey, 2017) amended 5-5-215 to remove the requirement 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. K-12 Data Task Force (20-7-105) Office of Public Instruction

Senate Bill No. 57 (Pomnichowski for LEG Council, 2021) was a major housekeeping/revision that among other things created a more standardized procedure for entities submitting statutorily required reports to the legislature.

Unless otherwise directed in statute, reports to the legislature, including reports to specific interim committees, are biennial reports and need to be submitted by September 1 of the year preceding a legislative session. In the case of reports to interim committees, the report may be presented orally to the committee rather than in written form, though the committee can request the preparation of a written report as well.

Reports that are statutorily required to be submitted to EDIC are:

Report	Entity	Deadline	Statute
Reemployment of Retired Teachers	TRS	Sept 1, 2022	19-20-732
Educational Opportunity for Military Children	OPI et. al.	Sept 1, 2022	20-1-231
Advanced Opportunity Act	BPE	Sept 1, 2022	20-7-1506
Transformational Learning Programs	BPE	Sept 1, 2022	20-7-1602
Resident Student Financial Aid (annual report)	OCHE	Sept 1, 2021	20-26-105
State Agency Heritage Properties	SHPO	Sept 1, 2022	22-3-423
County Interdisciplinary Child Information and School Safety Team	OPI	Sept 1, 2022	52-2-211
Grow Your Own Grant Program (annual report)	OCHE	Sept 1, 2021	HB 403

Reports that are statutorily required to be submitted to the legislature, but may be of interest to EDIC include:

Report	Entity	Deadline	Statute
Education Commission of the States	ECS	Sept 1, 2021	20-2-501
Perkins CTE Plan	OCHE	Sept 1, 2022	20-7-330
Gifted and Talented Programs	OPI	Sept 1, 2022	20-7-904
At-Risk Students	OPI	Sept 1, 2022	20-9-328
American Indian Students	OPI	Sept 1, 2022	20-9-329
Indian Language Preservation	OPI	Sept 1, 2022	20-9-537
Western Interstate Commission for Higher Education (annual)	WICHE	Jan 15, 2022	20-25-801
MHS Trustees	MHS Board	Sept 1, 2022	22-3-107

ADMINISTRATIVE RULE REVIEW

As noted above, the committee has varied degrees of administrative rule review responsibility for the State Board of Education and its attached entities, 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 – HJ 47

Legislative Council assigned HJ 47, a joint resolution requesting a study of educational programs for the incarcerated, to EDIC at the Council's May 24, 2021, meeting. HJ 47 was ranked 16th of 28 study resolutions in the post-session legislator poll.

This study resolution came about after the failure of two other bills related to this topic:

- HB 583 proposed revising criminal justice laws to, among other things, incentivize individuals to further their education while incarcerated by issuing education credits that would potentially accelerate release from prison or community supervision. The bill also required the Department of Corrections to evaluate the education level of inmates upon entry into a state prison.
- HB 622 proposed the establishing a pilot program that required the Department of Corrections to contract with a unit of the Montana University System to provide instruction in two tracks, one for individuals without a high school diploma and one for those with a high school diploma. Subsection (1) of the bill stated: "The purpose of the program is to provide marketable career skills to individuals who are incarcerated, in prerelease programs, or on probation or parole supervision." The bill provided a \$400,000 appropriation for the 2023 biennium.

Both failed bills and the passed resolution seem to be getting at two issues:

- incarcerated individuals often have low levels of educational attainment which likely make it difficult to find and maintain gainful employment upon release and contribute to recidivism; and
- with Montana's criminal justice policy founded on four principles⁴, including reformation, education has a vital role to play.

In undertaking this study, the committee might start by reviewing the educational status of incarcerated individuals and the educational and career training opportunities currently available. The committee could then investigate available programs and funding streams that focus on developing the employability skills of the recently

⁴ "Laws for the punishment of crime shall be founded on the principles of prevention, reformation, public safety, and restitution for victims." Montana Constitution, Article II, section 28(1).

incarcerated. Staff can gather information on successful programs implemented in other states. Staff can also arrange presentations and assemble various panels to discuss with the committee ideas for strengthening programs aimed at increasing the educational attainment and employability of the recently incarcerated. These panels would likely include representatives from the Department of Corrections; the Department of Labor and Industry; OCHE; and OPI.

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 \$43,000 in its budget for the 2023 Biennium. This will accommodate six two-day meetings of the full committee, in addition to the first organizational meeting. The following is a proposed committee meeting schedule, which includes a meeting in Missoula to allow for a joint session with Board of Regents and visits to educational sites.

Also, these proposed dates include three opportunities to overlap and hold joint sessions with the Section E Interim Budget Committee established in HB 497 (note letter from Rep. Bedey).

1. Wednesday, July 14, 2021
2. Monday-Tuesday, September 13-14, 2021 (Tues PM joint with Sec E IBC)
3. Thursday-Friday, November 21-22, 2021 (at UM - Missoula; joint session with the Board of Regents)
4. Monday-Tuesday, January 24-25, 2022
5. Monday-Tuesday, March 14-15, 2022 (Tues PM joint with Sec E IBC)
6. Monday-Tuesday, June 13-14, 2022
7. Monday-Tuesday, September 12-13, 2022 (Tues PM joint with Sec E IBC)