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Education and Local Government Interim Committee

59th Montana Legislature

SENATE MEMBERS

JEFF MANGAN--Chair
JEFF ESSMANN
KIM GILLAN
BOB HAWKS
RICK LAIBLE
ROBERT STORY

HOUSE MEMBERS

MARK NOENNIG--Vice Chair
ELSIE ARNTZEN
KATHLEEN GALVIN-HALCRO
ROBIN HAMILTON
MIKE JOPEK
JON SONJU

COMMITTEE STAFF

LEANNE KURTZ, Lead Staff
EDDYE MCCLURE, Staff Attorney
FONG HOM, Secretary

MINUTES

Please note: These are summary minutes. Testimony and discussion are paraphrased and condensed. Committee tapes are on file in the offices of the Legislative Services Division. **Exhibits for this meeting are available upon request. Legislative Council policy requires a charge of 15 cents a page for copies of the document.**

February 24, 2006

Capitol Building, Room 137
Helena, Montana

COMMITTEE MEMBERS PRESENT

SEN. JEFF MANGAN, Chair
REP. MARK NOENNIG, Vice Chair

SEN. KIM GILLAN
SEN. BOB HAWKS
SEN. RICK LAIBLE
SEN. ROBERT STORY

REP. ELSIE ARNTZEN
REP. ROBIN HAMILTON
REP. JON SONJU

COMMITTEE MEMBERS EXCUSED

SEN. JEFF ESSMANN
REP. KATHLEEN GALVIN-HALCRO
REP. MIKE JOPEK

STAFF PRESENT

LEANNE KURTZ, Lead Staff
EDDYE MCCLURE, Staff Attorney
FONG HOM, Secretary

Visitors

Visitors' list, [Attachment #1](#).

COMMITTEE ACTION

- The July 15, 2005 meeting minutes were approved unanimously.

TAPE 3A

CALL TO ORDER AND ROLL CALL

SEN. LAIBLE called the meeting to order at 8:34 a.m. Secretary noted the roll visually. Rep. Noennig presided as Chair.

REP. NOENNIG asked for approval and adoption of the July 15, 2005 minutes. The July 15, 2005 minutes were adopted unanimously.

POSTSECONDARY EDUCATION POLICY AND BUDGET REPORT

SEN. STORY gave a synopsis of the Postsecondary Education Policy and Budget subcommittee meeting (**EXHIBIT 1**) held on February 23, 2006. He said that most of their meeting was spent interfacing with five of the Regents who attended the meeting. One of the issues they discussed was how the Board and the Legislature could develop a unified approach toward the University System budget. SEN. STORY said that the memorandum, Shared Policy Goals and Accountability Measures for the Montana University System, was signed.

QUESTIONS

SEN. LAIBLE asked if there was any discussion regarding transfer of credits at the meeting. SEN. STORY said that the accreditation agencies of the University System are controlled by college professors and the Regents would have to work through a council of professors to come to an agreement on unifying courses, and once that happens, the transferability will work. He said that the Regents were bringing forward initiatives to improve the transferability of credits and the accumulation of student data.

REP. NOENNIG said that the universities develop their programs for a particular degree or a particular series of courses and those courses are unique; therefore, they feel that English 101 at one school would not be the same as English 101 at another school.

ALAN PEURA, Fiscal Analyst, Legislative Fiscal Division, said that the Board of Regents decided to implement the issues in the audit findings. The Commissioner's Office recommended to the Board of Regents the initiative on transferability. He said that a major obstacle is that all accreditation bodies require that the PhD faculty approves transferability. Mr. Peura said that the key step to implementing the audit findings will be the creation of a system-wide faculty council dedicated to say that English 101 at one school will be the same as English 101 in another school.

SEN. STORY discussed the other initiatives: providing Indian Education for All; improving

affordability; coordinating and expanding distance learning; and healthcare worker education.

REP. ARNTZEN said that none of those priorities or initiatives were prioritized. She said that the subcommittee will discuss which items will go forward as a priority at the Board of Regents' meeting on March 1 and 2.

BOARD OF PUBLIC EDUCATION

Dr. Kirk Miller, Chairman

Diane Fladmo, Vice Chair

Steve Meloy, Executive Secretary

Patty Myers, Board Member

STEVE MELOY, Executive Secretary of the Board of Public Education, gave a presentation on the history and activities of the Board of Public Education (**EXHIBIT 2**).

- The Board is made up of seven members appointed by the Governor with overlapping terms of seven years.
- A non-voting student representative is chosen by the Association of Student Councils and serves up to two years.
- The Board is responsible for the state funded School for the Deaf and Blind.
- The Board is responsible for coordinating the budgets and budget requests for the Historical Society, Montana Arts Council, and the State Library Commission.
- Mr. Meloy discussed the Montana Accreditation Standards and the Chapters of Accreditation (**EXHIBIT 3**).
- The Board works with the Office of Public Instruction to ensure that all school districts meet Montana's education standards.
- Mr. Meloy discussed the Certification Standards and Practices Advisory Council.
- Mr. Meloy discussed the Board's position paper written in 2001 which created the School Renewal Commission.

TAPE 3B

- Mr. Meloy discussed the Montana Advisory Council for Indian Education (MACIE).
- Mr. Meloy addressed the Board's role in the issue of SB 198, bullying and harassment policies in school districts.
- Mr. Meloy submitted a copy of the letter to Rep. Kathleen Galvin-Halcro (**EXHIBIT 4**) regarding SB 198.

DR. KIRK MILLER, Chairman, Montana Board of Public Education, discussed the efforts that the Board of Public Education has been involved in and where the Board is with school funding in Montana (**EXHIBIT 5**).

- The Governor's K-12 Public School Funding Advisory Council

- Adequacy Study of Augenblick and Myers
- Montana K-12 Public School Renewal Commission
- SB 152
- New funding formula for quality education; the work of the Quality Schools Interim Committee of which he was a member
- Special Session called by the Governor in December, 2005

Dr. Miller said that they need to continue working on SB 152, that the commitment of the Board of Public Education is to work with the Governor's Office, the Legislature, the State Superintendent of Public Instruction, and all the education partners to assure that they will continue to provide for quality programs for children.

DIANE FLADMO, President of National Association of State Boards of Education (NASBE), said that NASBE's function is to do research. She distributed a list of the committees under the Board of Public Education (**EXHIBIT 6**): P-20 Committee, Budget Committee, Indian Education for All Committee, and the Policy and Planning Committee.

PATTY MEYERS, Great Falls, talked about the Professional Educator Preparation Program Standards. She said that language in the standards have been updated and are in the final stages of proofing and editing. She said that one of the things that No Child Left Behind demanded is a highly qualified education work force. She said that they make sure that their standards adhere with the standards of the National Council for Accreditation of Teacher Education Programs.

STEVE MELOY said that the Board of Public Education is quasi-legislative in that it implements rules to carry out the intent of the Legislature and the Constitution; it is quasi-judicial and hears appeals of denial of licensures to teachers. Mr. Meloy said that they are actively involved in working with Shared Leadership, Higher Education, and the Superintendent of Public Instruction in getting the message out regarding the importance of education for the state's economic viability.

QUESTIONS

SEN. GILLAN asked Dr. Miller if resources, technical assistance, or too few people trying to do too many things, the factors that are dragging education down.

TAPE 4A

DR. MILLER said that human capital, with the expertise to do all of the things that are necessary, require different types of thought about funding of the system. He said that if provided with the right amount of resources, they would be able to make better progress than they have and they would be able to talk more about the regionalization concepts and other

things that would be more efficient.

DIANE FLADMO said that it is difficult to do good work with good people if you don't have money to provide the support for good programs. She said that our information systems are inadequate, and low salaries make it difficult to recruit and retain teachers.

SEN. LAIBLE asked if the Committee could get a written summary on the status on e-Learning. DR. MILLER said that the latest newsletter from the Montana Schools e-Learning Consortium reported that there are 300 students participating. He said that students have received credits that they would not otherwise have received as a result of the e-Learning system that has been built. MR. MELOY said that they are interested in accountability and staying involved with the project. They have contracted with the Advisory Board and the Consortium for an analysis of the data that would be coming out of the first round of the Consortium.

SEN. LAIBLE asked what the cost is on a perceived basis per classroom and what the revenue stream is that went into the program from the school districts that have signed up to it and what the costs are to provide online service. MR. MELOY said that the school district has struggled with what happens when one of their teachers provides service to one of the district students through this program. He said that he can provide the information on costs per classroom and the revenue stream to Sen. Laible.

SEN. MANGAN asked Ms. Fladmo to explain the advanced placement and college prep courses offered in public schools and the percent of Native Americans participating in the AP and college prep courses. MS. FLADMO said that advanced placement courses are offered at the junior and senior level in high school. She said that she attended school on a reservation and saw that many of her Native American classmates did not make it to their senior year. The fact that the curriculum that is associated with the advanced placement programs are rigorous and challenging, students in a more rural school setting may or may not have teachers who are qualified and prepared to teach AP classes. She said that western states in the country are behind in offering AP classes.

SEN. MANGAN said that 45% of students have taken one AP course; 61% of students have taken two or more AP courses and have completed their bachelor's degree in four years or less; 29% of students who enroll in college without having taken such a course, complete degrees on schedule; and 60% of all recent high school graduates entering into a community college need to take at least one remedial course. He said that when we start talking about the issues with minorities and other challenges in our state, particularly funding and the Native American issues, we cannot assist them on the higher education side if we cannot meet those challenges in our public school side.

SEN. STORY asked if some of the problems of transferability of credits from one college into

another might be solved if they could allow the teacher education program credits to be transferable. MS. MEYERS said that she would like to say that that would help but the Professional Educator Preparation Program Standards Committee does not deal with the transferability of credits. SEN. STORY asked what the justification is of saying that a program at the University of Montana won't accept transfers from a program at Northern Montana when both have to meet the same standard of product. MS. MEYERS said that it is local control. She said the colleges will look at a syllabus and say that it does or doesn't meet their standards, and therein lies the problem.

SEN. HAWKS asked Dr. Miller how to improve the statistics that Sen. Mangan had provided to the Committee. DR. MILLER talked about College Summit which is P-20 in nature. He said that if you take students who are better than their numbers and get them into college, they become help others within their own high school environment go through the same process. An application was submitted for Montana to become a new site for initiating this program. The College Summit's success rate is 80%. Dr. Miller said that there are projects out there that are focused on how to provide the correct programming so that the Achievement Gap is closed.

SEN. STORY asked if there was an alternative standard regarding accreditation that schools can obtain. DR. MILLER said that there is a process for variance to standards. The key issue is that you cannot violate teacher licensure and you cannot put a non-certified or a non-licensed person in the classroom and have that be approved as a variance, but you are allowed a variance if you can show that your intent meets or exceeds what the intent of the rule was. MR. MELOY discussed the charter school rule that the state has where a charter school can be created but it has to be through the local school districts. He said that to date, no one has applied through that rule to create a charter school.

SEN. STORY asked there are many requests for variances to standards. DR. MILLER said that alternatives and variances to standards are provided at every single meeting of the Board of Public Education. The Office of Public Instruction provides the statistics, what areas are applied for, what rules have variances approved. Dr. Miller said that he can provide the Committee that information.

SEN. STORY asked why the Regents thought that there is a need for a higher standard of writing proficiency than what people are doing presently. MS. FLADMO said that the Regents think that many students do not have enough experience with writing proficiency exams and the writing proficiency process. She said that they will be working with the writing proficiency implementation committee under the auspices of the P-20 Committee to teach teachers at the K-12 level the expectations and letting students know what's ahead for them.

TAPE 4B

SEN. STORY asked if the Board can justify its stance that a college professor who is teaching at the college level is not qualified to teach advanced placement courses because he doesn't have a K-12 certificate. MR. MELOY said that that is an issue of the work of the dual enrollment committee and they are working on it. He said that he did not know what the resolution will be.

SEN. HAWKS said that he has been listening to college professors for years about the decline in writing ability in the university system but what he has realized is that they have had evolving standards for writing abilities that have been rising significantly. They have initiated their own writing across the curriculum through the university system. Those standards have gradually been rising. What we have not had is the coordination with the secondary system to prepare those students and the question is, is it the responsibility of the university system to do remedial work? He said that it is not and it is an expensive proposition for the university system to try to keep those kids or bring them up to a level where they can perform. If you don't want to put barriers in front of students through the process, then there should be some provision post-graduate between college and high school where they have an intense catch up period so they are prepared. That is a much more efficient way to do this.

SEN. LAIBLE asked what "No Child Left Behind" has to say about "highly qualified" teachers, and those who do not meet those standards, teaching high school students. DR. MILLER said that there are specific things that the Board of Public Education believes are necessary to be a highly qualified teacher. He said that if we allow anyone who hasn't met those high certification standards to teach, then we are not doing what we were intending to do.

SEN. LAIBLE said that he would like to see more effort in the direction allowing students to take classes in college and still be a high school student.

BREAK

UPDATE ON THE COLUMBIA FALLS CASE

EDDYE MCCLURE, Staff Attorney, LSD, began her update by giving a brief history of the Stroebe case. In 1993, there was an equity lawsuit in Helena Elementary #1, which questioned whether money was being distributed to the districts in an equitable manner. HB 667 was passed which revised the formula that dealt with equity. In 2001, Mr. Stroebe, Superintendent of Billings Public School, filed a lawsuit before Judge Honzel in Helena, alleging that the school funding systems still violated equal protection and taxpayer equity. He claimed that the mills being paid by different taxpayers were in violation of equal protection, due process, and many of the tax equity portions of the Montana Constitution. The complaint was amended several times and the State argued that Mr. Stroebe did not have standing. In December of 2003, the District Court dismissed Mr. Stroebe's complaint in total, and while that was pending, Mr. Stroebe filed an appeal (**EXHIBIT 7**) before the Montana Supreme Court. The decision was issued in January of 2006.

The Montana Supreme Court said that they will not talk about standing and they will not deal with whether the current funding formula is unconstitutional, that they will rule that the whole matter that is before them is not justiciable. The Court said that they would not issue an opinion based on three things: 1) a justiciable controversy that required parties to have existing and genuine rights or interest; 2) the controversy must be one upon which the judgment of the court may effectively operate, as distinguished from a debate or argument invoking a purely political, administrative, philosophical or academic conclusion; and 3) it must be a controversy the judicial determination of which will have the effect of a final judgment in law or decree in equity upon the rights of one or more of the real parties in interest.

Ms. McClure said that the Supreme Court's decision in Columbia Falls requires that the school funding system undergo reform, and further constitutional challenge to the funding system at this time is not one from which a judgment of the Court may effectively operate. She said that the Montana Supreme Court has assigned that duty to the Legislature. The district court said that it is unconstitutional under Article 10, section 1(3), but they didn't think that the current funding system violates equal protection.

Ms. McClure said that the Supreme Court reminded the Legislature that they redirected Judge Sherlock, in the Columbia Falls case, to vacate its conclusion that the system does not violate equal protection. The Court is saying it will look at the new funding formula under both prongs (adequacy and equity) and you have to meet both prongs, meaning that you can't just provide what you think is adequacy if you don't distribute it in an equitable manner. The Attorney General's Office is not aware of any plaintiffs filing any progress report or going back to court, or planning on going back to court; therefore, the Attorney General has not filed anything on behalf of the state. Ms. McClure said she believes the plaintiffs are planning to wait until April, after the 2007 regular session, to decide whether or not they go back to court.

QUESTIONS

SEN. STORY asked if the Legislature has determined that it costs \$10,000 to adequately educate a student in a rural setting and will equity demand that \$10,000 be spent on every child in the state of Montana. MS. MCCLURE said that if you get within a range, it is acceptable.; however, there must be a rational reason for spending different amounts for different schools or for different students.

SEN. LAIBLE asked if it would be to the Legislature's best advantage to load more money into the classrooms and put additional money into a per student basis, whether a classroom has 30 kids or 5 kids. MS. MCCLURE said that there just has to be data on why certain numbers are chosen.

TAPE 5A

REP. NOENNIG asked if the district court would still have jurisdiction if the plaintiffs decided to appeal and go back to court in April. MS. McCLURE said that it would go back to Judge Sherlock's court.

SEN. MANGAN said that if the Committee wanted to, it could take up these issues and make it part of the work plan for the rest of the year. He asked Ms. Lombardi if the Governor's Office is looking at possible revisions to the current funding formula up to this point, and if they are planning to offer legislation. JAN LOMBARDI, Governor's Education Policy Advisor, said that she does not believe that their work with education is complete. She said that they are in preliminary stages in the executive planning process of which K-12 issues will be reviewed and addressed by both the Budget's Office and OPI.

SEN. STORY said data was collected by the Quality Schools Interim Committee, although it is not universally accepted data. He said that the problem with the data collected is that it is dated. The data was collected last summer and every year that goes by it becomes less relevant. You have to use the data soon or get any use out of it; if you don't, you will have to go back and recollect it.

UPDATE ON LOCAL GOVERNMENT SUBCOMMITTEE

SEN. LAIBLE, Chair of the Local Government Subcommittee, gave an update on the activities of the Subcommittee (**EXHIBIT 8**) and discussed the Work Plan:

- SJR 11, Study of Subdivision Review -- the working group has brought forth a list of what they consider the problems within the system and coming up with goals that they would like to achieve.
- Attorney General Opinions and U.S. Supreme Court Decision regarding Eminent Domain -- that information was provided by Greg Petesch in the October meeting, and written documents are available.
- Business Equipment Tax, ramifications of SB 48 -- SB 48 raised the business equipment tax exemption from \$5,000 to \$20,000.
- Implementation of SB 116 and SB 290 -- Professor John Horwich has been working with his law school students on model subdivision regulations.
- Model regulations are being developed for SB 185.
- Main Street Program -- the Subcommittee heard an overview the previous day.
- Uniform penalties for zoning violations and statutes governing special districts -- Mr. Blattie of MACo will give a presentation in June.
- HJR 10, Fire Statutes -- a working group is trying to find consensus on addressing the wildland urban interface.

QUESTIONS

SEN. MANGAN asked Sen. Story if the Committee should send a letter asking the Department

of Revenue to be aware of the committee's concerns regarding SB 48. SEN. STORY said that the Committee does need to have the Department of Revenue clarify what it is going to do and what it has done, especially with the last reappraisal installation.

SEN. MANGAN moved that the Committee draft and send a letter to the Department of Revenue outlining the concerns regarding SB 48, how are they going to deal with deleted property in their certification process, and invite the Department of Revenue to attend the full committee meeting. MOTION PASSED UNANIMOUSLY.

OTHER COMMITTEE WORK

LEANNE KURTZ said that the next meetings are scheduled for June 12 and June 13. The Executive Branch agencies that the Committee is assigned and other entities will bring initial legislative proposals at the June meetings. She said that an update from the Governor's Office regarding school funding will be on the agenda.

SEN. MANGAN asked the Committee if they wish to keep discussions open on the school funding issue. SEN. STORY said that there are still some issues that remain and will come back; i.e., health insurance. He said that we haven't heard from the plaintiffs in a formal setting and that would be good to have them come in and update the committee.

ADJOURN

REP. NOENNIG adjourned the meeting at 12:27 p.m.

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