EDUCATION AND LOCAL GOVERNMENT INTERIM COMMITTEE
1999-2000

MEMBERS

Senator Greg Jergeson Vice Presiding Officer	Representative Gay Ann Masolo Presiding Officer
Senator Alvin A. Ellis, Jr.	Representative Joan Andersen
Senator Bea McCarthy	Representative Tom Facey
Senator Mike Sprague	Representative Jeff Mangan
Senator Jon Tester	Representative Linda McCulloch
Senator Daryl Toews	Representative Joe McKenney

COMMITTEE STAFF

Connie Erickson, Research Analyst
Eddye McClure, Staff Attorney
Sandy Whitney, Fiscal Analyst
Jo Ann Jones, Secretary

MONTANA LEGISLATIVE SERVICES DIVISION

Robert B. Person, Executive Director
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ORIGIN AND RESPONSIBILITIES OF THE COMMITTEE

SENATE BILL NO. 11

Introduction

During the 1999 session, the Montana Legislature passed Senate Bill No. 11 that significantly revised the interim committee structure. Historically, interim committees were created to conduct studies assigned by resolution or by bill. It was not unusual to have 10 or more committees operating during an interim. One of the problems with this process was that legislators and staff were involved with interim study committees that had no relation to session standing committee assignments, resulting in a lack of interest, a steep learning curve, the inability to specialize in particular areas, and the inability to follow up on interim committee issues and bills and the activities of state agencies. Legislative Services Division staff developed a proposal to consolidate interim statutory and interim study committees into six permanent interim committees. The proposal was designed to give each committee specific jurisdictional coverage, similar to standing committees, as well as agency rule review, program review, and monitoring duties. The proposal was approved and introduced by request of the Legislative Council.

Senate Bill No. 11 created six interim committees, each responsible for the administrative rule review, program review, and monitoring for specific Executive Branch agencies. The Education Committee was assigned responsibility for the Board of Public Education, the Board of Regents of Higher Education, the State Board of Education, and the Office of Public Instruction. In addition, the duties of the Postsecondary Education Policy and Budget Committee were assigned to the Education Interim Committee. However, in creating the six interim committees, one

jurisdictional area had been overlooked: local government. Because the interim committees were organized around the Executive Branch agencies, local government had been overlooked because there is no specific state agency that has primacy for local government issues; local governments interact with every state agency. In addition, two study resolutions passed by the Legislature and ranked high in the postsession interim study poll dealt with local government issues. Therefore, the Legislative Council assigned local government responsibilities to the Education Interim Committee, thus creating the Education and Local Government Interim Committee. The membership of the Committee was expanded to 12 with the addition of 4 members from the House and Senate Local Government Committees.

Agency Review

Each interim committee is directed to monitor the operation of assigned Executive Branch agencies, with specific attention to:

1. identification of issues likely to require future legislative attention;
2. opportunities to improve existing law through the analysis of problems experienced with the application of the law by an agency; and
3. experiences of the state's citizens with the operation of an agency that may be amenable to improvement through legislative action.

At its October 1, 1999, meeting, the Education and Local Government Interim Committee decided that it did not wish to engage in extensive program review and agency monitoring. However, members were encouraged to attend the meetings of the Board of Public Education and the Board of Regents when those Boards met in their home communities.

Throughout the interim, the Committee heard presentations from the Office of Public Instruction on Indian education and the Montana Statewide Education Profile, from the Governor's Task Force on Teacher Shortage/Teacher Salaries, from the Education Commission of the States, and from the Western Interstate Commission on Higher

Education. The Commissioner of Higher Education gave a report to the Committee on the average actual instructional program cost per student credit hour in the Montana University System. At the Committee's final meeting of the interim on September 8, 2000, members listened to legislative proposals for the 2001 session from the educational agencies and from education and local government professional organizations.

Administrative Rule Review

The Legislature delegates the power to enact law (in the form of administrative rules) to the Executive Branch. The administrative rules must be authorized by the Legislature in statute. Once adopted, these administrative rules have the force of law. The purpose of administrative rules is to implement the statutes that the Legislature enacts. Because the Legislature is a part-time body that generally lacks expertise in the many varied purposes of state government, it often does not have the time, knowledge, and resources necessary to enact the detailed provisions of legislation--in other words, the nitty-gritty details necessary to make a program or a law work as intended. Under Senate Bill No. 11, each interim committee is responsible for the review of administrative rules within its jurisdiction. An interim committee's powers relating to administrative rules include:

- reviewing the incidence and conduct of administrative proceedings under the Montana Administrative Procedure Act (MAPA);
- requiring an agency proposing a rule to hold a hearing on a rule;
- submitting oral and written testimony at an agency's rulemaking hearing;
- requiring an agency to prepare an economic impact statement or a family impact note regarding a proposed rule;
- petitioning an agency for the adoption, amendment, or repeal of a rule;
- making a written recommendation to an agency for the adoption, amendment, or rejection of a rule;
- polling the Legislature to determine whether a proposed rule is consistent with the legislative intent;

- < petitioning an agency for a declaratory ruling on the applicability of a rule;
- < seeking judicial review of the sufficiency of the reasons for the adoption of an emergency rule; and
- < instituting, intervening, or otherwise participating in proceedings involving MAPA in state and federal courts and administrative agencies.

At its first meeting, on June 14, 1999, the Committee directed its staff attorney to bring to the Committee's attention only those administrative rules that the attorney believed to be controversial or problematic. The Committee did not review any administrative rules during the interim.

INTERIM ACTIVITIES

Interim Studies

The Education and Local Government Interim Committee was assigned three interim studies:

1. *House Joint Resolution No. 29* (HJR 29): a review of state laws pertaining to local governments and officials;
2. *House Joint Resolution No. 38* (HJR 38): a study of salary and employment issues of juvenile probation officers; and
3. *Senate Joint Resolution No. 16* (SJR 16): a study of the administration and funding of the Montana University System.

At its June 14, 1999, meeting, the Committee established a Local Government Subcommittee and assigned HJR 29 and HJR 38 to that Subcommittee. The Subcommittee met throughout the interim and reported on the progress of the assigned studies to the full Committee at each Committee meeting. (For a complete discussion of the Subcommittee's work, please see Chapters Two and Three.)

Postsecondary Education Duties and Responsibilities

When Senate Bill No. 11 was enacted, it eliminated some other statutory interim committees and folded their duties into the newly created committees. One of the committees that was eliminated was the Postsecondary Education Policy and Budget Committee. Its duties were assigned to the Education and Local Government Interim Committee.

At the June 14, 1999, meeting, the Committee established the Postsecondary Education Policy and Budget Subcommittee to handle postsecondary education issues and to conduct the study requested in SJR 16. The Subcommittee met throughout the interim and reported on its progress to the full Committee at each Committee meeting. Minutes of the Subcommittee's meetings are available from the Legislative Finance Division. (For a complete discussion of the Subcommittee's work, please consult the Subcommittee's final report entitled *University System Funding - SJR 16*, available from the Legislative Services Division.)

Other Study Activities

In a letter addressed to the Education Interim Committee, the House Education Committee requested a study of out-of-school district attendance and the payment of tuition.[1] The request was made in response to the failure of House Bill No. 542 in 1997 and Senate Bill No. 422 in 1999, both of which attempted to address this difficult issue. At its June 14 meeting, the Committee acceded to this request and appointed a working group to look at the issue and bring recommendations back to the Committee. (See Chapter Four.)

On July 7, 1999, the American Civil Liberties Union filed two lawsuits, one against Rosebud County and a second against the Ronan School District, for violations of the federal Voting Rights Act of 1965. The lawsuits maintained that allowing the at-large election of County

[1]Letter from Rep. Gay Ann Masolo, Rep. Bob Lawson, and Rep. Linda McCulloch to Members of the Education Interim Committee, April 7, 1999, Education and Local Government Committee Files, Legislative Services Division, Helena, Montana.

Commissioners and school district trustees made it almost impossible for American Indians to get elected, even in counties and school districts with large Indian populations. At-large elections for County Commissioners are mandated by state law, and a change in the law is necessary to address the problem. The Committee was asked to sponsor legislation allowing County Commissioners to be elected from geographic districts, otherwise known as single-member districts. State law already allows school trustees to create single-member districts at the discretion of the trustees. (See Chapter Four.)

COMMITTEE ADMINISTRATION

At its first meeting, on June 14, 1999, the Committee elected Representative Gay Ann Masolo as Presiding Officer and Senator Greg Jergeson as Vice Presiding Officer. Presiding Officer Masolo then proceeded to appoint two subcommittees and one working group as follows:

Postsecondary Education Policy and Budget Subcommittee

Sen. Bea McCarthy, Presiding Officer
Rep. Joan Andersen, Vice Presiding Officer
Sen. Alvin Ellis, Jr.
Rep. Tom Facey
Sen. Greg Jergeson
Rep. Gay Ann Masolo
Sen. Daryl Toews
Rep. Linda McCulloch

Local Government Subcommittee

Sen. Mike Sprague, Presiding Officer
Rep. Jeff Mangan, Vice Presiding Officer
Sen. Jon Tester
Rep. Joe McKenney

Tuition Working Group

Sen. Daryl Toews
Rep. Gay Ann Masolo
Sen. Jon Tester

The Committee was staffed by Connie Erickson, research analyst, Eddye McClure, attorney, and Jo Ann Jones, secretary. Sandy Whitney, senior fiscal analyst with the Legislative Fiscal Division, staffed the Postsecondary Education Policy and Budget Subcommittee. Leanne Kurtz, research analyst, conducted the study of juvenile probation officers' salaries requested in HJR 38.

Over the interim, the Committee met five times: June 14, 1999; October 1, 1999; November 5, 1999; June 23, 2000; and September 8, 2000.

The subcommittees met in conjunction with the full Committee. The minutes of all Committee and subcommittee meetings are available from the Legislative Services Division.

The Committee was allocated $19,550 for its expenses over the interim. This included expenses for the subcommittees. The Committee expended its entire allocation.

The purpose of this final report is to summarize the activities of the Committee and the subcommittees, with the exception of the Postsecondary Education Policy and Budget Subcommittee, which published a separate final report as noted above.

CHAPTER TWO:
HOUSE JOINT RESOLUTION NO. 29
LAWS AFFECTING LOCAL GOVERNMENTS AND LOCAL OFFICIALS

BACKGROUND

House Joint Resolution No. 29 (HJR 29), introduced by Representative Beverly Barnhart and Representative Toni Hagener, requested that an interim committee study the laws affecting local governments and local officials (Appendix A). The committee was authorized to request the assistance of individuals knowledgeable about and experienced in the practical, legal, financial, intergovernmental, and related issues confronting local governments and local officials. Further, the committee was requested to draft legislation that would provide consistency in simple administrative matters, including requirements for public notice and public hearings, records management, local elections, and contracting and bidding. The Legislative Council assigned the study to the Education and Local Government Interim Committee.

Since statehood, the Legislature has been passing laws allowing or, in some instances, mandating local governments to provide particular services. Often, these laws are enacted without any conscious recognition of the manner in which other services have been authorized. Provisions that are common to all services are repeated in each set of laws. For example, in Title 7 of the Montana Code Annotated (MCA) prior to 1993, there was considerable overlap in the creation of local boards and commissions to oversee various local government services or special districts. Each time that the Legislature passed legislation creating a new board or commission, the legislation specified the exact

number of members, the specific term of office, qualifications for membership, and the procedure for filling vacancies, among other things. Any changes, such as in the number of members, required legislation. In 1993, the Legislature addressed the issue of boards and commissions by creating a single statute with all of the provisions necessary for a local government to create boards and commissions. All of the individual statutes that addressed specific boards and commissions were then amended to reference this new statute.

A similar situation exists with public notice provisions. A local government is required to give public notice of an action that it plans on taking, whether it is creating a special district, calling an election, issuing bonds, or annexing property. Throughout Title 7, MCA, there are over 100 sections that contain public notice provisions, including how many times notice must be given, whether notice is to be published or posted, or both, criteria for the newspaper in which the notice is published, the number of places where the notice must be posted, and the contents of the notice. In 1979 and in 1985, the Legislature enacted standard notice provisions for counties and municipalities. These provisions included criteria for newspapers in which a notice is published, the number of times notice is to be given, the contents of a notice, and when posting a notice is required.

Public notice statutes enacted after 1985 often referenced these standard provisions but not in every case. In addition, the old public notice statutes remained unchanged. This has resulted in a mishmash of public notice provisions, each one differing only slightly from the other, that causes great difficulties for local governments as they struggle to follow the various public notice laws so as not to open themselves up to protests and possible litigation.

Although the Legislature has the responsibility to provide clear statutory authority and direction to local governments, these laws must be consistent, effective, and flexible in order to guide local governments

and officials in carrying out the duties expected by their constituents. HJR 29 is an attempt by the Legislature to collaborate with local governments and officials in an effort to modernize state laws affecting local governments and officials.

SUBCOMMITTEE DELIBERATIONS

The Committee assigned the HJR 29 study to the Local Government Subcommittee, which adopted a study plan and authorized the establishment of a working group composed of local government officials to assist in the study. The working group consisted of Gordon Morris of the Montana Association of Counties (MACo), Alec Hansen of the League of Cities and Towns, Ken Weaver of the Local Government Center at MSU-Bozeman, Lynda Brannon of the Association of School Business Officials, Loran Frazier of the School Administrators of Montana, Jani McCall representing the city of Billings, and Rep. Toni Hagener.

The working group was surveyed as to what areas in Title 7, MCA, were most in need of revision for consistency. The working group identified the public notice provisions in Title 7, MCA, as a priority for revision. Working with the working group and other local government officials, staff identified all of the statutes in which a local government is required to provide public notice of an action.

Because of the sheer number of the statutes involved (over 100), only those statutes that required a public notice of a local government hearing were considered for revision. Staff then prepared a bill draft that simplified the public notice provisions in Title 7, MCA, by using the general notice provisions in sections 7-1-2121, 7-1-4127, and 7-1-4128, MCA, as the standard. Those standard notice provisions include:

(1) publication in a newspaper that meets certain criteria; if no newspaper in the county meets the criteria, then the notice must be posted in three places within the affected jurisdiction;
(2) publication at least twice, with at least 6 days separating publication;
(3) first publication no more than 21 days prior to the action and second publication no less than 3 days prior to the action; and
(4) notice to contain date, time, and place; brief statement of action to be taken; address and telephone number of contact person; and any other information required by law.

All of the identified statutes were then reviewed to see if reference to the standard provisions in sections 7-1-2121, 7-1-4127, and 7-1-4128, MCA, was appropriate. Once the initial bill draft was completed, it was sent out to the working group and to other local government officials for comment. Five areas were identified as being in need of further research and possible revision:

(1) period of time in which to protest a governmental action;
(2) notice requirement for public hearing that is continued to another time or place;
(3) requirement to publish a notice and to post a notice as well;
(4) increased cost to local governments; and
(5) use of the Internet for publishing a notice.

Protest Period

Current law requires a 20-day protest period before a municipality can hold a hearing on a proposal to annex property. The standard notice provision requires publication of the first notice no more than 21 days prior to the hearing. If the standard notice provisions were applied to the annexation procedures, the time between the first publication and the hearing would not provide municipal officials with sufficient time to consider protests to a proposed annexation. One solution offered to the Subcommittee was to shorten the protest period to 15 days, but this did not meet with Subcommittee support because of the negative impact to

citizens. A second solution was to move the first publication date back a few days for the annexation statutes, but the Subcommittee felt that this defeated the purpose of the legislation, namely, to standardize the public notice requirements. The Subcommittee finally agreed to replace the specific number of days when notice must be published with the requirement that a notice must be published at least twice prior to a hearing. This would allow a municipality to set the notice dates in sufficient time to accommodate the 20-day protest period. The solution would also help the more rural cities and counties that have to publish their notices in a weekly newspaper. They would have the flexibility to align their public notices with the newspaper's publication deadline. Local citizens would not lose anything because notices would still have to be published twice.

Continued Public Hearing

Currently, a public hearing may be adjourned or continued to another date, place, or time if local officials feel that it is warranted. In some circumstances, a local government must give 5-days notice before the second hearing can be held. In other circumstances, no notice is required. The issues are a lack of standardization and whether citizens should be notified of a postponed or continued hearing. One solution offered was to require that a rescheduled hearing be noticed in the same manner that the original hearing was noticed. Some local officials opposed this because they felt that it would have the effect of prolonging their deliberations, especially if the notice had to be published in a weekly newspaper. It was also felt that the people most interested in the issue under consideration would be at the first hearing and would know that it had been rescheduled. The Subcommittee chose not to address in this legislation the issue of publishing a notice of a rescheduled hearing.

Publishing and Posting

Current law requires a local government, in some circumstances, to both publish and post a notice of a hearing. In most other circumstances, the

posting of a notice is required only if publishing is not possible. The standard notice provisions in sections 7-1-2121 and 7-1-4127, MCA, state that a notice must be posted only if there is no daily or weekly newspaper that meets the statutory criteria. The issue here is whether a local government is providing adequate notice if publication only is required. The Subcommittee engaged in a discussion over the use of the Internet as an option for posting a notice. The Subcommittee supported the use of the Internet as a supplement to publication in the same way that local governments currently may supplement their public notices with radio and television announcements. The Subcommittee decided that posting a notice will be required only if publication in a newspaper is not possible.

Increased Costs/Use of the Internet

Current law requires a local government to publish two notices in some circumstances and only one notice in other circumstances. The standard provisions require that a notice be published two times. If adopted, the bill could result in increased publishing costs to a local government. The city of Billings suggested that the bill draft be revised to allow one of the two required legal notices to be on the Internet. This would meet the requirement of two notices yet not increase publishing costs for those local governments with a website. The Subcommittee expressed concern about use of the Internet as a legal notice. Not every local government has a website, and not every citizen has access to the Internet. The Subcommittee made no recommendation regarding the Billings' request.

SUBCOMMITTEE RECOMMENDATIONS

From the very beginning of the HJR 29 study process, Subcommittee members expressed skepticism as to the need for the study and concern over the number of bill drafts that such a study could generate. Members were concerned that the issues identified in the study

resolution had been brought to the Legislature in the past but had failed passage. The Subcommittee did recognize the need to involve local government officials--city, county, and school district--in the study. When the decision was made to focus on standardizing the public notice statutes, the Subcommittee stressed the need to not alleviate the work of local government officials at the expense of citizens. In other words, citizens must have adequate notice of hearings, and if that involves more work for local officials, then so be it. The Presiding Officer of the Subcommittee expressed dismay that the counties had not participated in the deliberations on the bill draft. He expressed a reluctance to move forward with legislation that local officials would oppose during the legislative session because certain provisions prove unworkable. At the Subcommittee's final meeting, on September 7, 2000, the Subcommittee decided that the bill was too large in scope and could result in unintended consequences. It felt that it had opened up a Pandora's box and that the bill should not be recommended as a Committee bill. It was suggested that perhaps the bill be broken up into smaller bills and that the local government professional organizations find individual legislators to carry the legislation. The Subcommittee unanimously approved a motion that no recommendation be made to the full Committee regarding the bill draft to standardize the public notice provisions in Title 7, MCA. The Education and Local Government Interim Committee accepted the recommendation at its final meeting.

CHAPTER THREE:
HOUSE JOINT RESOLUTION NO. 38
JUVENILE PROBATION OFFICERS' SALARIES

BACKGROUND

The basic compensation structure for juvenile probation officers (JPOs) has been in place since 1974. That year, the 43rd Legislature enacted 10-1234 R.C.M. (Chapter 329, L. 1974), directing the Youth Division Judge of each judicial district to appoint chief JPOs. The chief JPOs were to be compensated "a sum specified by the court upon appointment", not to exceed $11,000 a year or $40 a day. The statute further directed that the salary of each officer "be apportioned among and paid by each of the counties in which such officer is appointed to act, in proportion to the assessed valuation of such counties for the same year". Deputy JPOs' salaries were not to exceed 90% of the chiefs' salaries. Judges set the salaries, and the counties paid them.

Various amendments raised the allowable maximum salaries from the original $11,000 a year to the current $29,000 a year and changed the counties' cost allocation from assessed valuation to actual judicial district workloads (41-5-104, MCA).

In 1987, Representative John Mercer carried House Bill No. 325 (HB 325), instituting a wholesale reorganization of social services and youth services and creating the Department of Family Services. HB 325 emerged from an exhaustive study conducted by the Council on Reorganization of Youth Services--an entity appointed by Governor Ted Schwinden in 1985. The Council's specific charge was to recommend "ways to reorganize and improve the delivery of services to Montana's

problem youth".[2] When its work was completed, the Council made a number of recommendations, one of which was that "local youth services, including youth court/probation services, be consolidated to be administered and operated within a new state department", with the JPOs continuing to operate at the local level through new "local geographic service areas".[3] The Council also recommended that the JPOs' pay, benefits, and tenure status be included in the new Department of Family Services' pay matrix, with the positions classified at the level closest to the current salary. The Council advised, and HB 325 specified, that the counties' financial responsibility for youth probation services be frozen at the FY 1987 level, with any increases in costs to be borne by the state.

During HB 325's initial hearing before a January 23, 1987, joint meeting of the House State Administration Committee and the Human Services and Institutions Subcommittees of the Appropriations Committee, all of the witnesses present provided testimony in general support of the bill and the reorganization. The JPOs and their representatives who spoke, however, voiced concern about shifting the administration of their positions from District Courts to the state. Although testimony indicated support for the reorganization in general, the JPOs worried that altering the administration of their positions might compromise the emphasis on community-based services. The potential for loss of local control and accountability prompted a Montana Juvenile Probation Officers' Association (JPOA) request that the administration shift be "surgically removed" from the bill. During Committee discussion on the same day, a representative of the JPOA commented that the JPOs' primary concern "is that the probation officers feel they can better serve the kids if they are answerable to a judge and both of them are answerable at the county level".[4]

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[2] *Report to the Governor from the Council on Reorganization of Youth Services*, published by the Council on September 17, 1986.

[3] Ibid.

[4] Minutes from the House State Administration Committee executive session, January 23, 1987.

The placement of JPOs and the surgical removal of that provision from HB 325 were the focus of heated debate during the bill's journey through the 50th legislative session. Governor Schwinden signed HB 325 into law on April 24, 1987, minus the provision relocating the administration of JPOs to the new Department of Family Services.

Twelve years later, during the 1999 session, House Speaker John Mercer again attempted to alter the JPO salary structure. As was the case in 1987, this proposal generated considerable discussion, and several amendments were proposed. Ultimately, the House Appropriations Committee tabled House Bill No. 431 (HB 431) and rejected efforts to reconsider the bill. The failure of HB 431 to reach the House floor resulted in the drafting and eventual passage of House Joint Resolution No. 38 (HJR 38) (Appendix B).

HJR 38 requested that an appropriate legislative interim committee:

- examine the funding and employment mechanisms currently in place for Montana JPOs;
- analyze options for addressing pay discrepancies;
- develop, in cooperation with the JPOA, MACo, the Montana Supreme Court Administrator, the Department of Administration (DOA), and other appropriate agencies, entities, and individuals, legislation to enact a more functional and consistent pay system for Montana JPOs; and
- report its study findings to the 57th Legislature.

SUBCOMMITTEE DELIBERATIONS

The Education and Local Government Interim Committee assigned the HJR 38 study to the Local Government Subcommittee. Following is a synopsis of the steps that the Subcommittee took to complete the study using the provisions of HJR 38 as a guide.

***Examine the funding and employment mechanisms currently in place for Montana juvenile probation officers*.**

At the Subcommittee's meeting on November 4, 1999, staff presented information on the current employment and salary structure for chief and deputy JPOs provided in sections 41-5-1701, 41-5-1704, and 41-5-1705, MCA.

***Analyze options for addressing pay discrepancies*.**

At the Subcommittee's November meeting, staff described the problems with the current structure as those problems are articulated in the preamble of HJR 38. The preamble states, in part:

> *Montana juvenile probation officer salaries are set by District Court Judges, but the salaries are paid by counties through the county budget process, subject to County Commissioner approval . . . [The] duality in the salary structure along with the differences in each county's tax base has created wide discrepancies in pay rates for chief and deputy juvenile probation officers . . . .*

At the same meeting, representatives of the JPOA presented the organization's recommendations for JPOS' salary adjustments, including a chart that showed current chief and deputy salaries and the estimated costs of the proposed adjustments.

Subcommittee members were also informed that the Court Funding and Structure Committee (CFSC), authorized through Senate Bill No. 184 (SB 184) and charged with examining District Court funding, had been meeting to discuss the possibility of state-funded District Courts. The recommendations generated by the CFSC would provide an additional option for addressing JPO pay discrepancies.

***Develop, in cooperation with the Montana Juvenile Probation Officers' Association, the Montana Association of Counties, the Montana Supreme Court Administrator, the Department of Administration, and other appropriate agencies, entities, and individuals, legislation to enact a more functional and consistent pay system*.**

The HJR 38 study plan envisioned a roundtable discussion among all of the interested organizations. That did not occur, but interested entities and stakeholders were notified of the study, informed of meetings, and asked to comment. The JPOA took the lead in proposing changes to the current JPO salary structure and worked with the Subcommittee throughout the interim to refine the proposal and elicit support.

MACo provided written comments on HJR 38 to Subcommittee members and indicated support of the proposal during the Subcommittee's final meeting. The Office of the Supreme Court Administrator was provided with a copy of the HJR 38 study plan. In September 1999, staff contacted District Court Judge John Warner, then Chairman of the Montana Judges' Association, informing him of the HJR 38 study and soliciting any comments that either he or the Association might have. Neither staff nor the Subcommittee received formal comment from the District Courts on the salary study.

SB 184 provided that staff support for the CFSC would come from the DOA. The primary focus of the CFSC had been to examine approaches to and ramifications of the state assuming the costs of District Courts, including JPO salaries. CFSC staff attended the Subcommittee's June meeting to explain the CFSC's activities and help answer questions about how JPO salaries would be affected by what the CFSC was proposing.

SUBCOMMITTEE RECOMMENDATIONS

In June 2000, the Subcommittee directed staff to draft a bill implementing the JPOA's recommendations. At its final meeting, on September 7, 2000, the Subcommittee voted unanimously to recommend that the full Education and Local Government Interim Committee request a bill (LC 128, Appendix C), revising the JPO salary structure.

For the chief JPOs, the bill:

1. removes the fixed minimum and maximum salary restrictions *(Section 2(1))*;
2. ties the salaries of the chief JPOs to the salary that District Court Judges earn, providing that the minimum salary of a chief JPO may not be less than 50% of a judge's salary and not more than 55% of a judge's salary for those with 0-5 years of experience; not more than 60% of a judge's salary for those with 6-10 years of experience; and not more than 65% of a judge's salary for those with more than 10 years of experience *(Section 2(2))*;
3. removes the current cost-of-living benefit because the JPO salaries will be tied to the judges' salaries, which is adjusted every 2 years *(Section 2(1))*;
4. retains the current longevity allowance and provides that longevity is in addition to the salaries determined by the minimum and maximum percentages *(Section 2(2) through (4))*;
5. allows for the longevity credit earned to remain with the officer, regardless of whether the officer transfers to another county or judicial district *(Section 2(4))*;
6. requires that 50% of the officer's salary be paid with state general fund dollars through the Office of the Supreme Court Administrator and that 50% be paid by the counties to which the officer is assigned, using the allocation scheme for county payment established in section 41-5-104, MCA *(Section 2(6))*; and
7. requires the Office of the Supreme Court Administrator to submit a budget request for an amount equal to one-half of the sum of the chief JPOs' salaries to ensure that enough money exists for the state to pay for 50% of the chiefs' salaries *(Section 1(2))*.

For the deputy JPOs, the bill:

1. changes the deputy's minimum salary from 60% of the chief's salary to not less than 35% of a District Court Judge's salary and not more than 40% of a judge's salary for those with 0-5 years of experience; 45% for those with 6-10 years of experience; and 50% for those with more than 10 years of experience *(Section 3(2))*;
2. removes the current cost-of-living benefit because the deputies' salaries will be tied to the judges' salaries, which is adjusted every 2 years *(Section 3)*;
3. retains the current longevity allowance and provides that longevity is in addition to the salaries determined by the minimum and maximum percentages *(Section 3(2) and (3))*;
4. allows for the longevity credit earned to remain with the officer, regardless of whether the officer transfers to another county or judicial district *(Section 3(3))*;
5. retains language requiring that 100% of a deputy's salary be paid by the counties that make up the judicial district in which a deputy is appointed to act. However, counties may be reimbursed as available funds allow through the Office of the Supreme Court Administrator (with general fund dollars) for the incremental increases in a deputy's salary that occur as a result of the biennial adjustment in judges' salaries *(Section 3(5)).*
6. requires the Office of the Supreme Court Administrator to submit a budget request for an amount equal to any increases in deputies' salaries attributable to the pay structure established in Section 3(2) to allow for reimbursement to counties *(Section 1(2))*.

The legislation, if passed, will result in a fiscal impact to the state. In the first biennium after passage, the state's share of the chief JPOs' salaries will be approximately $500,000, payable from the state general fund. Assuming that the salaries will be brought to the maximum in the first biennium and assuming that there is a 7% increase in judges' salaries in the second biennium, the state's share increases in the

second biennium by about $40,000 and in the third biennium by about $56,000.

After reviewing the proposal at its final meeting of the interim, on September 8, 2000, the Education and Local Government Interim Committee voted unanimously to request LC 128 as a Committee bill.

CHAPTER FOUR:
OTHER COMMITTEE ACTIVITIES

OUT-OF-DISTRICT TUITION

For the last two legislative sessions, the Legislature has debated and discussed the issue of tuition for students who attend school outside of their school district of residence. Under current law, there are two types of out-of-district attendance approval: discretionary and mandatory. Under discretionary approval, attendance is subject to the approval of the resident district and the district of choice. Tuition may be charged by the district of choice and is generally paid by either the resident district or by the parent. However, when a student crosses a county line to attend school in another district, approval is mandatory (neither district may object unless a school's accreditation is jeopardized by the acceptance of the child) and the tuition is paid out of the county equalization funds. In other words, the state pays the tuition. In 1997, Representative Ray Peck introduced House Bill No. 542 to eliminate the state payment of tuition for students who cross county lines to attend school. In 1999, Senator Daryl Toews introduced Senate Bill No. 422 that, in its original form, eliminated tuition altogether but was later amended to require the district of residence to pay the tuition for students who cross a county line to attend school in another district. Both bills failed passage. In April 1999, the House Education Committee sent a letter to the Education Interim Committee, requesting the interim committee to take up the issue of school district tuition and to present a bill to the 57th Legislature.

Following the 1999 legislative session, the Legislative Auditor issued a financial-compliance audit of the Office of Public Instruction. The auditors looked at tuition reimbursements and questioned the legality of the state paying the tuition for students who cross a county line to

attend another school while the district of residence or the parent pays the tuition for transfers within a county, all other things being equal. The report concluded:

> By paying tuition payments for certain out-of-county students, but not the tuition of students with similar conditions attending districts within the county, sections 20-5-324(6) and 20-9-334, MCA, create an inequitable distribution of the state's share of basic education costs.[5]

Armed with the request from the House Education Committee and the report from the Legislative Auditor, the Education and Local Government Interim Committee agreed to study the tuition issue and appointed a working group for that purpose.

One of the first tasks that the Tuition Working Group undertook was a statewide survey of school districts to determine which districts are charging tuition to out-of-district students, the tuition rate, and reasons for charging tuition and to identify any problems with the tuition laws. Of the 251 surveys sent out, 134 (53%) were returned. Forty-seven school districts reported that they charged tuition in some form. However, more than twice that many (109) reported charging no tuition or no tuition in certain instances. Most of the districts charging tuition based their rates on the rates established by the Office of Public Instruction. The reason most often given for charging tuition was to cover the costs of educating those students. Although there were many problems with the current tuition laws listed by the reporting school districts, the problems that appeared on more than one survey included tuition paid for cross-county students, students placed by the state in group homes, tuition agreements with neighboring states and provinces, and the responsibility of public school districts to provide educational services to students placed by their parents in private for-profit facilities

[5] *Financial-Compliance Audit of the Office of Public Instruction for the Two Fiscal Years Ended June 30, 1998* (Legislative Audit Division, April 1999), p. 13.

physically located within a school district but not attached to the district.

On January 26, 2000, the Tuition Working Group met with school officials from all across the state to discuss how to address the concerns identified in the survey and in the Legislative Auditor's report. As a result of that meeting, the Tuition Working Group agreed to:

(1) not address the issue of out-of-state/province tuition;
(2) pursue the issue of children placed by state agencies in group homes outside of their district of residence by pursuing the concept embodied in House Bill No. 413 from the 1999 legislative session; staff was directed to work with the appropriate entities on this issue;
(3) not address the issue of students placed by their parents in private facilities and the responsibility of local school districts to provide educational services; and
(4) request that the Education Forum (an informal group composed of representatives of state educational agencies, professional education organizations, and school districts) develop a proposal to address the out-of-county tuition issues for consideration by the Education and Local Government Interim Committee.

From February through April 2000, a working group of the Education Forum met to develop legislation to address the issue of out-of-district tuition. The first bill draft was presented to the Committee at its meeting on June 23, 2000. Following public comment and Committee discussion, some minor revisions were made. The final bill draft was adopted by the Committee on September 8, 2000, and will be introduced by request of the Education and Local Government Interim Committee (Appendix D). The following is a summary of the bill's provisions.

1. **Eliminate the state payment of tuition for children who cross a county line to attend school outside of their resident district (Section 3).**

A recent Legislative Auditor's report questioned the legality of the state paying the tuition for children who attend school outside of their resident district if they have to cross a county line while requiring the home district or the parent to pay the tuition under the same circumstances except that a county line is not crossed. The bill draft will eliminate this disparity.

2. **Require the state payment of tuition when children must attend school out of district because of geographic conditions (Sections 3 and 10).**

   If a student is unable to attend school in the resident district because of the presence of geographic conditions that make attendance impractical, the state will pay the tuition for the student to attend school in another district. The determination of geographical conditions will be made by the county transportation committee with a right of appeal to the Superintendent of Public Instruction.

3. **Allow a school district greater flexibility in granting tuition waivers (Sections 2 and 3).**

   Under current law, if a school district waives tuition for one student, it must waive tuition for all students regardless of who is paying the tuition. Under this proposal, a school district would have the flexibility to waive tuition paid by one group (e.g., parents) but to charge tuition paid by another group (e.g., school district). However, if tuition is waived for a student in one group, it must be waived for all the students in that group.

4. **Allow a school district to place tuition receipts in the over-BASE portion of the district's budget (Sections 4 and 6).**

   Currently, tuition receipts are included in a district's BASE budget. The effect of moving the tuition receipts to the over-BASE budget

would be to cut the maximum tuition rate in half, thus reducing the tuition costs to districts and parents.

5. **Require that the state payment for tuition come from the state general fund (Sections 1, 5, 7, 8, 9, and 11).**
   Under current law, whenever the state is required to pay tuition for a student attending school outside of the county of residence, the tuition must be paid by the County Superintendent out of the equalization revenue that would otherwise be deposited into the state general fund. This bill draft requires state-paid tuition to be financed out of the state general fund. This will require an appropriation to the Superintendent of Public Instruction either in this bill or in House Bill No. 2. The effect of this change will be to remove the county altogether from the tuition payment provisions.

6. **Eliminate the requirement that the state pay the transportation costs for students for whom the state pays tuition (Section 5).**
   Under the transportation laws, the state and the counties pay the on-schedule transportation costs for school districts no matter where the students attend school. Requiring the state to pay additional transportation costs results in the state paying more for those students who attend school out of county.

7. **Establish the tuition rate statutorily (Section 4).**
   The rate of tuition is currently a flat rate (roughly 40% of the per-ANB entitlement) set by administrative rule. Whenever the entitlement changes, the Office of Public Instruction has to revise the rule. Setting the rate in statute at a percentage of the per-ANB entitlement eliminates the need to revise the rule every time that the entitlement is adjusted.

8. **Allow the payment of tuition in the year of attendance (Section 5).**

Currently, the tuition payment is made in the year following the year in which the child attended school out of district. This means that the tuition payment is always a year in arrears. Under this bill, the tuition payment will be made in the year of attendance.

SINGLE-MEMBER COUNTY COMMISSIONER DISTRICTS

On July 7, 1999, the American Civil Liberties Union filed two lawsuits, one against Rosebud County and a second against the Ronan School District, for violations of the federal Voting Rights Act of 1965. The lawsuits maintained that allowing the at-large election of County Commissioners and school district trustees made it almost impossible for American Indians to get elected, even in counties and school districts with large Indian populations. Two other counties in the state, Roosevelt and Blaine, were also threatened with lawsuits if single-member commissioner districts were not created. State law allows school trustees to create single-member districts, but it is optional on the part of the trustees. However, state law mandates that County Commissioners be elected countywide, unless the voters in the county, as a result of the 10-year voter review process, have voted to have single-member commissioner districts.

At the October 1, 1999, meeting of the Education and Local Government Interim Committee, Sarah Bond of the Attorney General's Office briefed the Committee on the lawsuits and a possible remedy for avoiding any future lawsuits. She suggested that the Committee consider legislation that would allow a County Commission to create single-member commissioner districts in much the same way that school district trustees create single-member districts. The districts would be created by a vote of the Commission following a public hearing. The creation of the single-member districts would be optional on the part of a Commission. At its meeting on June 23, 2000, the Committee reviewed a draft of the legislation and agreed to bring it up for consideration at the final meeting in September. On September 8, 2000, the Committee again reviewed the draft bill. There was some opposition to allowing a County Commission to create single-member districts without a vote of the people. Members of the Local Government Subcommittee felt that the bill should have been brought to the Subcommittee prior to

consideration by the full Committee. On a vote of 8 to 3, the Committee agreed not to proceed any further with this bill draft.

CHAPTER FIVE
MATERIALS AVAILABLE

The following materials relevant to the Education and Local Government Interim Committee are available from the Legislative Services Division.

Minutes of Meetings

Minutes and exhibits are available for the following Committee and Subcommittee meetings:

Education and Local Government Interim Committee

June 14, 1999	June 23, 2000
October 1, 1999	September 8, 2000
November 5, 1999	

Local Government Subcommittee

September 30, 1999	July 28, 2000
November 4, 1999	September 7, 2000
June 22, 2000	

Staff Reports and Memoranda

Proposed Work Plan for the 1999-2000 Interim, Education and Local Government Interim Committee, September 1999, Connie Erickson, Legislative Services Division

Study Plan for House Joint Resolution No. 29: A Study of Laws Affecting Local Governments and Officials, September 1999, Connie Erickson, Legislative Services Division

Study Plan for the HJR 38 Study of Juvenile Probation Officer Salaries, September 1999, Leanne Kurtz, Legislative Services Division

The Structure of Higher Education in Montana: Meandering the Murky Line, September 1999, Eddye McClure, Legislative Services Division

Title 7, Chapter 3: A Cafeteria-Style Approach to Local Government, October 1999, Connie Erickson, Legislative Services Division

Tuition Surveys, December 12, 1999, Eddye McClure, Legislative Services Division

Background and Legal Analysis of Vocational-Technical Education Funding in Montana, January 2000, Eddye McClure, Legislative Services Division

APPENDIX A

APPENDIX B

APPENDIX C

APPENDIX D