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Education and Local Government Interim Committee

61st Montana Legislature

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TO: Education and Local Government Interim Committee members
FROM: Jeremy Gersovitz, Staff Attorney
RE: Background to SJR2
DATE: September 10, 2009

Madam Chair, members of the committee--I have been asked to give the following background to Senator Lewis' SJR2. This is a joint resolution requesting an interim study to reexamine the community college establishment process and to report the results to the 62nd legislature. When evaluating this study and its relatively low ranking in the prioritization poll conducted after the session, the legislative council recommended, and ELG authorized, this study take the form of a white paper analyzing the issue and presenting options. This represents the first step in that process.

First, a little history. Importantly, we are sailing in largely uncharted waters when we embark on a study of this issue. For while the laws which set out the procedure for creating a new community college have existed for some 38 years, they have never been used to completion. The matter came to the forefront of our collective consciousness this last legislative session due to a confluence of events that led to two bills on this subject. Both ultimately died in committee.

Rewind to 2006, when a group of Bitterroot Valley residents dusted off the never before used statutes and proposed the establishment of a new community college district in Ravalli County. Possessed of seven contiguous school districts, a taxable valuation in excess of \$62 million, and six public high schools enrolling more than 2,100 students, proponents filed an organizational petition signed by at least 20% of the registered electors with the Board of Regents. After determining the petition met the statutory requirements, the regents ordered an organization election for May 8, 2007. By a majority (52% to 48%) voters approved the creation of the community college district and elected seven trustees of the proposed community college district. The regents certified the results on July 11, 2007.

Now let's look at each bill briefly in turn as they may function as helpful guideposts to your future work.

Senator Laible's SJ12 would have given the legislature's stamp of approval to the Bitterroot Valley Community College District. But on February 19, 2009, SJ12, was tabled in the Senate's Education and Cultural Resources Committee on a 5-4 vote.

Senator Lewis' SB41 would have clarified the community college district approval process. The committee thought this bill was necessary in light of a Montana Attorney General's Opinion from February of 2007 (requested by the Commissioner of Higher Education) which decided a number of issues relative to the approval process for a community college district.

In his opinion, the Montana Attorney General held that: the Legislature has the final authority to approve the creation of a new community college district; that this approval occurs after the approval by the local voters but before the Board of Regents issues its organizational order; and that the Regents are required to make a recommendation. SB41 would have put into statute what the Attorney General had decided relative to the approval process, specifying the legislature's approval would be by a joint resolution and that whether the regents' recommendation was positive or negative was not binding upon the legislature, which had the final say.

This "approval" issue dates back to 1971, when SB236 amended the 1965 community college legislation to require that the proposed community college districts be approved by the legislature upon the regents' recommendation. (Now codified at Title 20, chapter 15). Lacking from this amendment, however, was language setting out the timing of the approval or the means of legislative approval.

Gazing back across the months to SJ12, you might remember that the Board of Regents is responsible for the governance and control of the Montana University System. Members voted last December against approval of the new community college district in Ravalli County. They also took the opportunity to detail the Office of the Commissioner of Higher Education to work with the trustees-elect and with representatives of the PEPB Interim Subcommittee to establish what they characterized as an innovative 2-year education model in Ravalli County. Reasons why they recommended the Montana legislature not approve the proposed new community college district? Primarily, the Board of Regents was swayed by the fact that there are already 15 two year colleges in the state with one only fifty miles away. The regents also were put off by the thought of replicating an infrastructure-intensive 20th century model given the potential of 21st century technologies that can be applied in the higher education environment.

What other issues swirl about the community college establishment process? What debates can you expect the pot to come to a boil over?

- One centers around who is to conduct the election. Section 20-15-208, MCA, specifies that it "shall be conducted, in accordance with the school election laws, by the trustees of the elementary districts ordered to call such election." For the Bitterroot Valley Community College organization election--which was 6 local elections in 6 local school districts--there was a cooperative effort by the MUS, the Secretary of State, the Ravalli County Election Administrator and the local school districts. Last summer, the Secretary of State had been of the opinion that the office had neither the ability nor the authority to conduct the elections. The office was willing to review the petitions as they currently do with initiatives. And they were willing to canvass multi-county elections similar to how they

conduct statewide canvasses. Ultimately, the Secretary of State suggested the county election administrators be charged with this duty, though many of them do not conduct school elections. For its part, the Montana University System believed the party best equipped to administer the elections are the Secretary of State or the county election administrators who regularly perform that function.

- The next question is which entity should bear the cost of the election. Current state law, specifically Section 20-15-208, MCA, sets out that the cost shall be borne by the elementary districts ordered by the regents to call the election.
- Finally, committee members might want to confront amending the language in Section 20-15-313, MCA, to make clear whether the mandatory mill levy set out in that code section is automatically triggered upon legislative approval of the creation of a new community college district or whether it is subject to voter approval subsequent to the legislature's approval. A corollary is whether the ballot language approving the organization of a community college district must include wording informing voters that a vote "for" organization of the district will automatically trigger the imposition of the mandatory levy without a further vote of the electorate.

The mill levy issue had drawn the attention of PEPB some two years ago relative to the Bitterroot Valley Community College District. There the ballot employed in the May 8, 2007, vote to approve the organization of the district did not include language informing voters that subsequent to legislative approval of the proposed district, the Ravalli County Commissioners would impose the mandatory levy without another vote of the local electorate. Concerns were raised that this might trigger a court challenge. Statutorily, once a community college district is approved by this legislature pursuant to Section 20-15-209, MCA, the community college board of trustees is required to submit to the Board of Regents an operating budget financed by a state general fund appropriation, a mandatory mill levy amount, revenue derived from student tuition and fees, unrestricted income from other sources, and any optional mill levy approved by the electorate. Section 20-15-312, MCA, provides that the mandatory levy represents a specific percentage of the combined total of the fixed cost of education and the variable cost of education as defined and determined by the legislature. This percentage must be specified for each community college by the Board of Trustees and approved by the Board of Regents. Once this specified percentage is determined, Section 20-15-313, MCA, mandates the Board of County Commissioners of any county where a community college is located to "fix and levy a tax on all the real and personal property within the community college district at the rate required to finance the mandatory mill levy prescribed by Section 20-15-312(1)(b), MCA, and the voted levy prescribed by Section 20-15-311(5), MCA, if one has been approved by the voters."

Thus in the case of the Bitterroot, if the legislature had subsequently approved the petition to establish a new community college district, then Section 20-15-313, MCA, would have obligated the Ravalli County Commissioners to levy a tax on real and personal property in order to finance the mandatory levy amount. The optional voted levy referred to in Sections 20-15-311 through -313, MCA, occurs after the imposition of the mandatory

mill levy. Ultimately then, the May 8, 2007, local election combined with legislative approval of the proposed community college district, would have set off the requirement that the Ravalli County Commissioners impose the mandatory levy without a vote by the local electors.

As to the ballot language, once a proposed community college district meets the requirements of Section 20-15-201, and the registered voters present a petition to the Board of Regents that satisfies the requirements of Section 20-15-202, the Board of Regents has no choice but to, under Section 20-15-203, MCA, order the elementary districts encompassed by the proposed community college district to hold an election on this proposition. That same code section sets out the approximate form of the proposition which does not include language informing the voters that a vote for organizing the community college district along with the legislature's subsequent approval will automatically impose the mandatory mill levy. Arguably though, there is at least an oblique reference in the proposition language that directs the reader to "the provisions of the laws authorizing community college districts in Montana" which would include Section 20-15-313, MCA, the mandatory levy statute.

And in this particular case, an April 27, 2007, news article in the local *Ravalli Republic* had set out that a vote in favor of the community college district would bring with it the duty to support the school through local property taxes.

Ultimately, all these issues are up to you. You created the community college districts by statute and thus those same statutes can be amended or even repealed.

I am happy to answer any questions you may have. Thank you.