

Education and Local Government Interim Committee 2015-2016 Interim

Summary of Statutory Duties and Proposed Work Plan

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This document is an introduction to the Education and Local Government Interim Committee (ELG) and a proposed work plan which, as adopted by the committee with directions to staff, will help to guide its work for the next 14 months.

Included in this work plan is discussion of:

- ELG's statutory duties;
- ELG's interim study assignments;
- Additional topics within ELG's subject area jurisdiction;
- Administrative rule review; and
- ELG's budget and proposed meeting schedule.

ELG'S STATUTORY DUTIES

I. Section 5-5-215, MCA: Duties Common to All Committees¹

A number of statutory duties are common to all interim committees. These are found in **Section 5-5-215, MCA**.

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 statutorily established advisory councils and required reports of assigned agencies to make recommendations to the next legislature on retention or elimination of any advisory council or required reports pursuant to 5-11-210;
- (e) review proposed legislation of assigned agencies or entities as provided in the joint legislative rules; and
- (f) accumulate, compile, analyze, and furnish information bearing upon its

¹ HB 142, enacted in 2011, added subsection (d) to the section. This item is discussed separately under Part VII on page 6.

assignment and relevant to existing or prospective legislation as it determines, on its own initiative, to be pertinent to the adequate completion of its work.

(2) Each interim committee shall prepare bills and resolutions that, in its opinion, the welfare of the state may require for presentation to the next regular session of the legislature.

(3) The legislative services division shall keep accurate records of the activities and proceedings of each interim committee.

II. Section 5-5-224, MCA: ELG Enabling Statute

Section 5-5-224, MCA, provides ELG's specific statutory duties, which fall into three primary categories: local government relations; general state administration of education; and postsecondary education. The section requires the committee to:

1. act as a liaison with local governments;
2. execute administrative rule review, draft legislation review, program evaluation, and monitoring responsibilities for the following agencies and the entities attached to the agencies for administrative purposes:
 - a. State Board of Education
 - b. Board of Public Education²
 - c. Board of Regents of Higher Education;³ and
 - d. Office of Public Instruction;
3. provide information to the Board of Regents in the following areas:
 - a. annual budget allocations;
 - b. annual goal statement development;
 - c. long-range planning;
 - d. outcome assessment programs; and
 - e. any other area that the committee considers to have significant educational or fiscal policy impact;
4. periodically review the success or failure of the university system in meeting its annual goals and long-range plans;
5. periodically review the results of outcome assessment programs;
6. develop mechanisms to ensure strict accountability of the revenue and expenditures of the university system;

² In a 1992 decision, Judge Jeffrey Sherlock of the First Judicial District ruled that the Board of Public Education is vested with constitutional rulemaking authority that is independent of any power delegated to the Board by the Legislature. Any rules adopted by the Board of Public Education are not subject to legislative review. However, in the 2003-2004 interim, the Board requested that the committee review its rules. That may continue to be the case. In addition, SB 345, enacted by the 2015 Legislature, amends the requirements for the Board of Public Education's submission of proposed accreditation standards to the committee. That requirement is discussed in Part III of this paper (Section 20-7-101, MCA, found beginning on p. 4).

³ The Board of Regents is exempt from the Montana Administrative Procedure Act (2-4-102(2), MCA), so any rules adopted by the Board of Regents are not subject to legislative review.

7. study and report to the legislature on the advisability of adjustments to the mechanisms used to determine funding for the university system, including criteria for determining appropriate levels of funding;
8. act as a liaison between both the legislative and executive branches and the Board of Regents;
9. encourage cooperation between the legislative and executive branches and the Board of Regents;
10. promote and strengthen local government through recognition of the principle that strong communities, with effective, democratic governmental institutions, are one of the best assurances of a strong Montana;
11. bring together representatives of state and local government for consideration of common problems;
12. provide a forum for discussing state oversight of local functions, realistic local autonomy, and intergovernmental cooperation;
13. identify and promote the most desirable allocation of state and local government functions, responsibilities, and revenue;
14. promote concise, consistent, and uniform regulation for local government;
15. coordinate and simplify laws, rules, and administrative practices in order to achieve more orderly and less competitive fiscal and administrative relationships between and among state and local governments;
16. review state mandates to local governments that are subject to 1-2-112 and 1-2-114 through 1-2-116;⁴
17. make recommendations to the legislature, executive branch agencies, and local governing bodies concerning:
 - a. changes in statutes, rules, ordinances, and resolutions that will provide concise, consistent, and uniform guidance and regulations for local government;
 - b. changes in tax laws that will achieve more orderly and less competitive fiscal relationships between levels of government;
 - c. methods of coordinating and simplifying competitive practices to achieve more orderly administrative relationships among levels of government; and
 - d. training programs and technical assistance for local government officers and employees that will promote effectiveness and efficiency in local government; and

⁴ These sections of the MCA govern the legislative imposition of unfunded mandates on local governments.

18. conduct interim studies as assigned.

III. Section 20-7-101, MCA: Accreditation Standards Adopted by Board of Public Education

SB 345 (Ch. 379, L. 2015) amended section 20-7-101, MCA, to:

- require accreditation standards recommended by the Superintendent of Public Instruction to be developed through the negotiated rulemaking process provided for in the Montana Negotiated Rulemaking Act;
- require recommendations presented to the Board of Public Education include an economic impact statement;
- allow for the formation of a negotiated rulemaking committee with representation from certain listed groups;
- require the Board of Public Education to submit each proposal and its economic impact statement to the Education and Local Government Committee at least 1 month in advance of a scheduled committee meeting; and
- require delayed implementation of the proposal unless expenditures by school districts are determined by the Education and Local Government Committee to be insubstantial.

The section text with amendments enacted via SB 345 are shown below.

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 superintended 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 superintended of public instruction must be developed through the negotiated rulemaking process under Title 2, chapter 5, part 1. The superintendent may form a negotiated rulemaking committee for accreditation standards to consider multiple proposals. The negotiated rulemaking committee may not exist for longer than 2 years. The committee must represent the diverse circumstances of schools of all sizes across the state and must include representatives from the following groups:

- (a) school district trustees;
- (b) school administrators;
- (c) teachers;
- (d) school business officials;
- (e) parents; and
- (f) taxpayers.

~~(2)(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 and local government interim committee for review at least 1 month in advance of a scheduled committee meeting. ~~The interim committee shall request a fiscal analysis to be prepared by the legislative fiscal division. The legislative fiscal division shall provide its analysis to the interim committee and to the office of budget and program planning to be used in the preparation of the executive budget.~~

~~(3)(4)~~ If Unless the fiscal analysis of expenditures by school districts required under the proposal is found are determined by the legislative fiscal division education and local government interim committee to have a substantial fiscal impact 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. ~~A substantial fiscal impact is an amount that cannot be readily absorbed in the budget of an existing school district program.~~

~~(4)(5)~~ Standards for the retention of school records must be as provided in 20-1-212.

IV. Sections 20-9-161, MCA: School District Budget Amendment Reporting

Section 20-9-161 requires school districts to report to ELG 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.

A school district budget amendment is defined for Title 20 as an amendment to a district's adopted budget because of:

- increased enrollment;
- destruction of school property by fire, flood, storm, or other events;
- a judgement for damages against the district issued by a court;
- a legislative enactment occurring after adoption of the budget that imposes an additional financial obligation on the district;
- the receipt of tax revenue from a prior fiscal year; and
- other unforeseen needs.

V. Section 82-2-701, MCA: Sand and Gravel Deposit Program

The Bureau of Mines and Geology is required to establish a Sand and Gravel Deposit Program to investigate, if funding allows, sand and gravel deposits in areas where there are conflicts between development and sand and gravel operations. In prioritizing areas for investigation, the Bureau must consider the largest counties (based on census data) and the counties with the most opencut mining permits and subdivision applications.

Within 1 year of starting an investigation the Bureau is required to report the results to the county in which the investigation occurred, the Environmental Quality Council, and ELG.

VI. Sections 22-3-421 through 22-3-424, MCA: Require State Agencies to Report on Heritage Properties

The 2009-2010 ELG requested SB 3 as a result of that interim's HJR 32 study of historic preservation. The bill's provisions, codified in Title 22, chapter 3, part 4, requires state agencies to regularly report to the Preservation Review Board on the status and stewardship of the agencies' heritage properties. The State Historic Preservation Officer (SHPO) is required to provide the information presented to the Preservation Review Board, along with any recommendations, to "an appropriate interim committee". The Preservation Review Board is part of the Montana Historical Society, which is an agency allocated to the State Board of Education for administrative purposes (2-15-1511. MCA). Because ELG is statutorily required to monitor the activities of the State Board of Education, it is the appropriate interim committee to receive the SHPO's report.

VII. Section 5-5-215, MCA: Require Interim Committees to Review Advisory Councils and Reports

In 2011, SB 147 amended 5-5-215, MCA, (see I. above) to include among all interim committee duties the review of statutorily established advisory councils and required reports of assigned agencies and to make recommendations to the next legislature on retention or elimination of any advisory council or required report.

Advisory councils relevant to ELG's subject area jurisdiction and the entities to which they are attached are as follows:

1. Fire Services Training Advisory Council (2-15-1519, MCA); *Board of Regents*
2. Certification Standards and Practices Advisory Council (2-15-1522, MCA); *Board of Public Education*
3. Governor's Postsecondary Scholarship Advisory Council (2-15-1524, MCA); *Office of the Commissioner of Higher Education*

In addition, section 2-15-122, MCA, allows the Governor or a department head to create advisory councils. Information about councils created under this authority must be filed with the Secretary of State's office.

Reports relevant to ELG that are required by statute and that will need to be reviewed to comply with Ch. 126, L. 2011 include the following:

1. Carl D. Perkins Career and Technical Education Improvement Act, 2006 -- Legislative Report (20-7-330, MCA); *Board of Regents*
2. Biennial Report to the Governor and the Legislature (22-3-107, MCA); *Montana Historical Society*

3. At-Risk Students Report (20-9-328, MCA); *Office of Public Instruction* on or before September 15 of even-numbered years
4. American Indian Achievement Gap Report (20-9-330, MCA); *Office of Public Instruction* on or before September 15 of even-numbered years
5. Education Commission of the States (20-2-501, MCA); *Education Commission of the States*
7. Quality Schools Facilities Grant Program (90-6-810, MCA); *Department of Commerce*
8. Western Regional Higher Education Compact (20-25-801, MCA); *Western Interstate Commission for Higher Education*
9. State Agency Heritage Properties (22-3-421 through 22-3-424, MCA); *State Historic Preservation Office*

During the 2011-2012 interim, which was the first interim this provision was in place, ELG set aside time on its agendas to hear from representatives of each of the advisory councils, examined each of the required reports in detail, and recommended changes. The 2013-2014 committee allocated less time to this requirement. The extent of review in which the committee engages is entirety up to the members.

INTERIM STUDY ASSIGNMENTS HJR 26; SJR 20; SJR 21

The Legislative Council has assigned three interim studies to ELG: HJR 26 study of youth concussion laws; SJR 20 study of county road easements on state trust land; and SJR 21 study local fire and emergency services.

HJR 26 Study of Youth Concussion Laws

Rank in post-session legislator poll: 12 of 15

HJR 26 requests an interim study of the Dylan Steigers Protection of Youth Athletes Act which was passed by the 2013 Legislature as Senate Bill No. 112 and codified at Title 20, Chapter 7, Part 13, MCA. The Act requires school districts to adopt policies and procedures to provide information about the risks of concussion and requires that a youth athlete exhibiting signs of concussion be removed from participation and prohibits an athlete's return to participation following removal until being cleared by a medical professional. HJR 26 can be summarized as asking the following questions:

- Are school districts implementing the requirements of the Act consistently?
- Do school district policies and procedures reflect the most current scientific and medical understanding of concussion identification and recovery?
- What changes, if any, to current law or its implementation are necessary to ensure that all Montana youth athletes are protected?

The Montana Department of Public Health and Human Services (DPHHS) has conducted an initial assessment of the implementation of the Dylan Steigers Protection of Youth Athletes Act and plans on conducting a more robust follow-up survey during the fall of 2015. Additionally, the Montana High School Association (MHSA) has been exploring options for assisting its member schools in implementing the requirements of the law. It appears that by collaborating with DPHHS and MHSA and requesting updates on their respective efforts, the committee can gather much of the information requested in HJR 26. Staff will organize presentations from these entities throughout the interim and ensure that other information requested by the committee is made available. Based on the committee's direction, staff will compile information for a report to the 65th Legislature and prepare any requested draft legislation.

SJR 20 Study of County Road Easements on State Trust Land

Rank in post-session legislator poll: 4 of 15

The following points provide brief background information on the impetus for request of this study.

- County roads that have been legally established as county roads and some roads that have been used as county roads but have not been legally established cross state trust land.
- Some counties have identified these roads and some have not. There is significant disparity among counties in identification of roads, in determination of which roads cross state trust land, and in determination of potential market value of the easements across state trust land.
- The Montana Constitution (Art. X, section 11) prohibits state trust land from being disposed of until full market value of the land has been secured by the state.
- This provision has been interpreted by the Montana Supreme Court to require that full market value be secured for public and private road easements on state trust land.
- The Department of Natural Resources and Conservation is obligated to require counties to pay full market value of the land when granting easements across state trust land. DNRC works with counties to complete the applications for easements and to determine the full market value of the land, but leaves it up to the counties to identify the roads.
- Many counties have neither the resources to identify all of the roads for which legal easements are required nor the money to pay for the easements once full market value is established.
- Absence of legal easements on state trust land has become problematic in some counties where private property is accessed using these roads, and where the private property may be difficult to sell without legal easements having been established.

A general approach to this study would include the following steps.

1. Review the legal history of the issue, including the Enabling Act of 1889, legislation enacted over time, the 1999 *Montrust* decision, and the state and

counties' response to the decision.

2. Working with DNRC Trust Lands Division, establish the scope of the problem by identifying which counties have acquired easements, which have begun the process, and which have not begun to identify roads for which easements are required. Establishment of the scope will also include an estimate of the road miles involved and the variability of land values in the counties.
3. Working with the counties, develop strategies for applying resources to road identification, which in many cases, will have to occur before easement acquisition may be begun.
4. Over the course of the study, identify options for assisting counties in identifying roads for which easements must be obtained and identify options for DNRC and the 2017 Legislature to consider to facilitate the process.

SJR 21 Study of Local Fire and Emergency Services

Rank in post-session legislator poll: 1 of 15

The following points provide brief background on why the study in SJR 21 was requested..

- Legislation has been introduced during the last several sessions that would affect the powers and duties of local fire departments, fire districts, fire service areas, and fire companies, as well as the qualifications, duties, and benefits provided to paid and volunteer firefighters and emergency medical technicians.
- The Department of Natural Resources and Conservation requires counties to provide workers compensation coverage for operators of firefighting apparatus provided to counties and assigned to fire agencies in the counties pursuant to agreements entered into as part of the State-County Cooperative Fire Protection Program, and many local fire agencies do not have the financial resources to comply.
- Powers, duties, jurisdictions, financing, and operations of local fire and emergency service agencies are not well understood by the public or by policymakers.
- A comprehensive review of local fire protection, emergency services, and firefighter and emergency medical technician benefits would lead to more comprehensive, consistent, and coordinated services across jurisdictions to the benefit of the state's citizens.

SJR 21 is a wide-ranging study that touches on multiple facets of local fire and emergency services. It will be necessary for the committee to prioritize its work, as it is likely unrealistic to thoroughly examine every issue listed in the resolution. The sponsor of SJR 21 recognized this, and asked that prioritization be specifically mentioned in the resolution.

In order to facilitate prioritization, comment will be solicited from local fire agency personnel,

firefighter organizations, the Montana Association of Counties, the Department of Natural Resources and Conservation, State Fund, and other individuals and organizations as determined by the committee.

It will also be necessary for the committee to have a complete picture of the structure of local fire and emergency services in the state, including what the various fire protection and emergency service entities are, their powers and duties, jurisdictions, and funding mechanisms. Regardless of how the committee chooses to prioritize its work on this study, that baseline information will be critical.

ADDITIONAL TOPICS WITHIN ELG'S SUBJECT AREA JURISDICTION

Local Government

The committee is charged with a number of broad statutory duties with respect to local governments. Rather than focus time and resources on each provision in section 5-5-224, it may be advisable to simply focus on the overarching requirement that the committee "act as a liaison with local governments"--following up on committee member-initiated suggestions for research and legislative attention, as well as soliciting input from city and county representatives and providing an opportunity for public comment at each meeting.

Other interim committees, such as the Revenue and Transportation Interim Committee and the Environmental Quality Council, may explore topics related to local government. Staff will monitor the work of other committees and ensure that ELG is informed as appropriate.

Education

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. The work plan envisions time for member-initiated education policy studies, depending on other committee work and availability of staff resources.

Coordination with SB 128 School Funding Interim Commission

The SB 128 Commission is tasked with conducting a study of educational needs and costs related to the basic system of free quality public elementary and secondary schools. ELG and the Commission share members, subject-area interest, and staff, so coordinating activities between the two entities is proposed to avoid duplication, create efficiencies, and to keep ELG members who are not Commission members up-to-date on the Commission's deliberations. The coordination may include joint meeting time, regular reporting, scheduling meetings in the same week, or some combination of those efforts.

ADMINISTRATIVE RULE REVIEW

As is noted in the discussion of ELG's specific statutory duties and related footnotes (see page 2), the committee has full or limited administrative rule review responsibilities for the State Board of Education, the Board of Public Education, the Board of Regents, and the Office of

Public Instruction. The committee determines the extent to which it will exercise that authority. The options range from detailed committee examination of all proposed rules to a summary of proposed rules by ELG's legal staff to ELG'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.

ELG legal staff will lead the committee's administrative rule review activities.

COMMITTEE BUDGET AND PROPOSED MEETING SCHEDULE

ELG has \$49,548 in its budget for the 2017 Biennium. This will accommodate six meetings of the full committee, most of which will be 2-day meetings. The following is a proposed committee meeting schedule. Meetings at the end of the week have generally been committee members' preference, but adjustments can be made if members prefer other days of the week.

1. Thursday, July 16, 2015
2. Thursday-Friday, September 24-25, 2015
3. Thursday-Friday, December 3-4, 2015
4. Friday, March 11, 2016
5. Thursday-Friday, June 23-24, 2016
6. Thursday-Friday, September 8-9, 2016