

# Final Report of the Education and Local Government Interim Committee



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# Chapter 1

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## **Origins and Responsibilities of the Education and Local Government Interim Committee**

The Education and Local Government Interim Committee (Committee) was originally created as the Education Interim Committee by Senate Bill No. 11 (Chapter 19, Laws of 1999). During the 1999-2000 interim, two study resolutions relating to local government issues were assigned to the Committee by the Legislative Council. The membership of the Committee was expanded to 12 with the addition of 4 members from the House and Senate Local Government Committees. The name of the Committee was informally changed to the Education and Local Government Interim Committee. During the 2001 legislative session, the Montana Legislature passed Senate Bill No. 10 (Chapter 210, Laws of 2001) that made significant changes to the legislative interim committee structure, including statutorily changing the name of the Education Interim Committee to the Education and Local Government Interim Committee and assigning specific local government responsibilities to the Committee.

### **Committee Membership**

The Committee is composed of 12 members: 6 senators and 6 representatives appointed on a bipartisan basis. The Committee is appointed by the end of each legislative session and serves until the next Committee is appointed. The 2003-04 members were:

Senator Greg Barkus  
Senator Bill Glaser  
Senator Rick Laible  
Senator Jeff Mangan  
Senator Don Ryan  
Senator Debbie Shea

Representative Joan Andersen  
Representative Norm Ballantyne  
Representative Sue Dickenson  
Representative Tom Facey  
Representative Verdell Jackson  
Representative Larry Lehman

## **Committee Administration**

At its first meeting of the interim, on August 21, 2003, the Committee elected Representative Joan Andersen as Presiding Officer and Senator Don Ryan as Vice Presiding Officer. Three subcommittees were appointed during the interim as follows:

### K-12 Education Subcommittee

Rep. Larry Lehman, Presiding Officer  
Rep. Tom Facey

Rep. Norm Ballantyne  
Rep. Verdell Jackson

### Local Government Subcommittee

Sen. Jeff Mangan, Presiding Officer  
Sen. Bill Glaser

Rep. Joan Andersen  
Sen. Rick Laible

### Postsecondary Education Policy and Budget Subcommittee

Sen. Greg Barkus, Presiding Officer  
Sen. Don Ryan  
Regent John Mercer  
Governor's Representative David Gibson

Rep. Sue Dickenson  
Sen. Debbie Shea  
Regent Mark Semmens

The Committee was staffed by Connie Erickson, research analyst; Eddy McClure, attorney; and Rebecca Sattler and Fong Hom, secretaries. Leanne Kurtz, research analyst, staffed the Local Government Subcommittee. Pamela Joehler, senior fiscal analyst, and Alan Peura, associate fiscal analyst, Legislative Fiscal Division, staffed the Postsecondary Education Policy and Budget Subcommittee.

Over the interim, the full Committee met four times:


- ▶ August 21, 2003
- ▶ October 30, 2003
- ▶ June 9, 2004
- ▶ September 15, 2004

In addition to the regular Committee meetings, the three subcommittees met numerous times over the interim.


## **Statutory Responsibilities**

The committee is responsible for acting as a liaison with local governments and between both the legislative and Executive Branches and the Board of Regents of Higher Education. In addition, the Committee has specific responsibilities regarding the State Board of Education, the Board of Public Education, the Board of Regents, and the Office of Public Instruction, along with any entities attached to these agencies. Specifically, the Committee is responsible to:

- (1) review administrative rules within its jurisdiction;
- (2) monitor the operations of assigned Executive Branch agencies;
- (3) review proposed legislation of assigned agencies or entities; and
- (4) conduct any interim studies that are assigned to it by the Legislative Council.



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### **Administrative Rule Review**

At its first meeting of the interim, on August 21, 2003, the Committee directed staff to send a brief synopsis of the proposed rules to each Committee member prior to a meeting. If a member wanted more information, the rule was to be placed on the meeting agenda. The Committee did not review or discuss any administrative rules during the interim.

### **Agency Monitoring**

With regard to agency monitoring, the Committee decided that if the Committee, as a whole, or if individual members become aware of issues associated with the performance of an agency under Committee purview, the Committee would

request information from the agency and, if necessary, place the issue on a meeting agenda.

The Committee heard the following presentations by agencies under its jurisdiction:

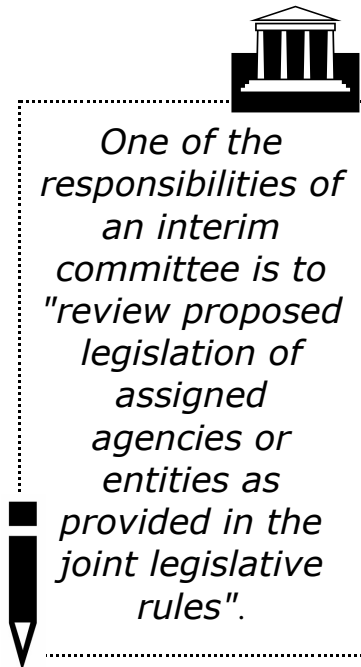
- ❑ On August 21, 2003, Linda McCulloch, Superintendent of Public Instruction, addressed the Committee regarding the No Child Left Behind Act of 2001 and its impact on Montana education. She specifically discussed how "adequate yearly progress" is measured, the new qualifications for classroom teachers and paraprofessionals, and the "Reading First" grant that Montana received.
- ❑ On August 21, 2003, Dr. Kirk Miller, Chair of the Board of Public Education, gave a presentation on the Montana Accreditation Standards, teacher licensure, and the Board's involvement with the Public School Renewal Commission.
- ❑ On October 30, 2003, Edwin Jasmin, Chair of the Board of Regents, and Sheila Stearns, Commissioner of Higher Education, spoke to the Committee about key postsecondary education issues for the next 2 years. Discussion centered mainly on budget issues and potential measures for mitigating the projected deficits.
- ❑ On June 9, 2004, Commissioner Stearns presented the results of the investigation into the financial deficit at the University of Montana Athletic Department. She also presented a letter to the Committee from the Board of Education detailing the recent work of the Board. The letter was accompanied by a packet of information on the importance of an integrated system of education stretching from early childhood through graduate school.
- ❑ On September 15, 2004, Commissioner Stearns spoke to the Committee about the administrative assessments on University System land grant



income. The Board of Regents believes that the Legislature has been violating federal law and the Montana Constitution by levying these assessments and using them for nonuniversity purposes. At this time, the Regents do not wish to pursue legal action. Rather, the Regents would like to work with the Legislature and the Executive Branch to craft an acceptable compromise.

### **Review of Proposed Legislation**

One of the responsibilities of an interim committee is to "review proposed legislation of assigned agencies or entities as provided in the joint legislative rules". Rule C-4.2 of the Legislative Council Rules of Procedure states that before November 1, 2004, an agency may submit a bill draft request to the Legislative Services Division if the request has been reviewed by the appropriate interim committee and approved for drafting by that committee. The purpose behind the rule is to "speed up" the drafting of agency legislation prior to November when individual legislators begin requesting legislation. The rule is not intended as an approval process for agency legislation beyond approval for drafting.



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At its final meeting of the interim on September 15, 2004, the Committee reviewed and approved for drafting legislation from the Office of Public Instruction, the Montana School for the Deaf and Blind, the Montana Historical Society, and the State Library.

### **Interim Studies**

The Committee was assigned one interim study. House Joint Resolution No. 37 (HJR 37) requested a review of the Montana Subdivision and Platting Act with recommendations to revise the Act so that it is clear, concise, and logically organized. The resolution did not envision exhaustive changes to the Act. The study was assigned to the Local Government Subcommittee. For a more complete

description of this study, as well as the other activities of the Subcommittee, please refer to Chapter Two of this report.

House Bill No. 736 , Chapter 548, Laws of 2003, established a K-12 Public School Renewal Commission to propose changes and new provisions regarding the several components of K-12 public education in Montana. The Commission was required to submit a final report of its findings and recommendations to the Committee by September 15, 2004. For a more complete description of the work of the Commission, please refer to Chapter Three of this report.

## **Committee Recommendations**

On June 9, 2004, the Committee approved legislation recommended by the Local Government Subcommittee as a result of the Subcommittee's work on HJR 37. On September 15, 2004, the Committee held its final meeting of the 2003-04 interim and formulated its final recommendations.

The Committee voted to sponsor legislation that:

- creates a K-12 Statewide Health Insurance Program for school employees; and
- encourages the Legislature to support the efforts of the Montana University System to strengthen the state's economy by implementing the policy recommendations identified by the Shared Leadership for a Stronger Montana Economy initiative.

Copies of the Committee-sponsored legislation can be found in Appendix A of this report.

# Chapter 2

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## Subcommittee Reports

At its first meeting, on August 21, 2003, the Committee established three subcommittees: K-12 Education, Local Government, and Postsecondary Education Policy and Budget. Appointments to the subcommittees were made by Representative Andersen and Senator Ryan. The Committee believed that it could accomplish more by working in subcommittees. Each subcommittee developed its own work plan; HJR 37 was assigned to the Local Government Subcommittee. The subcommittees began meeting in October 2003 and met until September 2004.



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### K-12 Education Subcommittee

The K-12 Education Subcommittee met for the first time on October 30, 2004. Following a presentation by Tom Bilodeau, MEA-MFT, the Subcommittee selected health insurance for school district employees as a study topic.

#### **Background**

There are over 200 school employee health care plans in Montana insuring approximately 16,000 public school employees and their dependents. The costs of insurance and the benefits offered vary widely from plan to plan. Because these plans are small in terms of the number of plan participants, they are unable to sustain economies of scale, control costs, and maintain benefits indefinitely. As a result, health insurance costs continue to rise, negatively impacting school district budgets and school employee salaries. The cost of health care and the lack of reasonable health insurance are major problems in the recruitment and retention

of teachers in Montana. The cost of health care may be the single-most divisive issue at school employee bargaining tables across Montana.



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There are at least 70 small school districts that offer no health insurance to their employees. Even worse perhaps, there are approximately 4,000 school employees who are ineligible to participate in or, for various reasons, forego insurance coverage under existing local school district health plans. These employees either do not qualify because they hold part-time jobs or cannot afford the premiums for themselves and their dependents. Consequently, uninsured school employees contribute to the alarming number of uninsured Montanans and shift the high cost of their health care—when and if they seek it—to those who are insured.

During the 2003 legislative session, Representative Dave Lewis introduced House Bill No. 302 (HB 302) at the request of the MEA-MFT. HB 302 would have, if passed, established a statewide risk pool and health benefit plans for public school employees. School districts were required to provide health insurance benefits to their employees who were enrolled in the district's health insurance plan in the previous year. In other words, HB 302 covered only those employees who already had health insurance; it did not extend health insurance benefits to the uninsured. Instead of hundreds of health insurance plans across the state, HB 302 envisioned two statewide health insurance plans, basic and standard, from which school employees could choose, offered at an affordable cost. HB 302 was extensively amended in the House before the bill was transmitted to the Senate. Proponents and opponents of the legislation changed as the bill was amended. After an extensive hearing in the Senate Education and Cultural Resources Committee, the bill was tabled. Part of the problem with HB 302 was the inability of the education community to agree on the legislation.

## **Subcommittee Activities**

On January 9, 2004, the K-12 Education Subcommittee met with representatives from school districts, statewide educational organizations, and the health insurance industry to discuss the possibility of preparing legislation that would provide health insurance to all eligible public school employees in Montana. The impetus for the meeting was a proposal from MEA-MFT to address the issue of a lack of health insurance for many school employees. At the January 9 meeting, the K-12 Education Subcommittee told those in attendance that if the education community could come to some agreement on a health insurance proposal, the Subcommittee would consider recommending to the full Committee that the Committee adopt the proposal as a Committee bill. A K-12 Statewide Health Insurance Program Working Group was formed composed of those in attendance at the meeting, along with other interested persons. The members of the Working Group were:

- Blue Cross Blue Shield - Tanya Ask and Bev Spoja
- Billings Public Schools self-insured group - Jeff Greenfield and Dan Martin
- Deaconess Billings Clinic - John Jones
- Employee Benefit Management Services - Cori Cook
- Great Falls Public Schools - Judy Higgins and Donnie McVee
- MEA-MFT - Tom Bilodeau
- Missoula Public Schools self-insured group - Joe Potter and Marta York
- MT Association of County Superintendents - Dottie Donovan
- MT Association of School Business Officers - Lynda Brannon
- MT Rural Education Association - Dave Puyear
- MT School Boards Association - Lance Melton and Bob Vogel
- MT School Health and Welfare Program - Dixie Kibbee
- MT Small Schools Alliance - Claudette Morton
- MT Unified School Trust - Bob Robinson
- Office of Public Instruction - Joe Lamson
- School Administrators of Montana - Darrell Rud

Substantial assistance was also provided by Connie Welsh and Casi Hunter, Montana Department of Administration Employee Benefits Bureau; Carroll South, Board of Investments; Erin McGowan and Christina Goe, Insurance Commissioner's Office; and Jim Edwards, private insurance agent. Input was also received from the Governor's Office and Allegiance Health Plan Administrators. Employee Benefit Resources and the eBenX actuarial firm provided resource information and analysis to the Working Group.

The Working Group held several meetings during the first half of 2004. Considerable discussion centered on general policy objectives of a K-12 statewide health insurance program, establishment and administrative procedures, funding methods, school district participation, employee eligibility, governance, and other related issues. After considerable discussion and debate, the Working Group reached a general consensus on a legislative proposal—the K-12 SHIP—that was presented to the Committee on September 15, 2004. The Working Group recommended the proposal as draft legislation to the full Committee, and the Committee voted to approve the proposal as a Committee bill.

### **K-12 Statewide Health Insurance Program (K-12 SHIP)**

The K-12 SHIP is an entirely voluntary program on the part of employers (school districts and educational cooperatives). However, an incentive to participate comes in the form of a \$200 per eligible employee (does not include retirees or trustees) a month premium credit that is state-funded. Only those employers participating in the program will receive the state-funded credit. The decision by an employer to participate in the K-12 SHIP is final and irrevocable. In other words, "once in, never out". Persons who are eligible to participate include:

- (1) certified and classified employees, including dependents, who are:
  - (a) regularly employed at least 30 hours a week during the school year; or
  - (b) employed for less than 30 hours a week but determined eligible by a collective bargaining agreement or by employer policy;
- (2) current retirees enrolled in a group health insurance plan prior to employer participation in the K-12 SHIP;

- (3) future retirees who choose to participate at the time of retirement;  
and
- (4) school district trustees who are eligible to participate in accordance with state law or school district policy.

Eligible employees can choose to enroll in one of three health benefit plans: basic, standard, or preferred. Network care plans and a Medicare supplement plan will also be available. Eligible members can decline enrollment by means of a written and signed declaration acknowledging restricted future enrollment rights.

When a collective bargaining relationship exists, employers and bargaining units will negotiate:

- a tiered-rate or composite-rate premium payment structure;
- additional benefits, such as dental, vision, or life insurance; and
- the level of the employer contribution towards the premiums for health and other benefits.

In the absence of a collective bargaining relationship, the above decisions will be made by the employer.

The K-12 SHIP will be governed by a nine-member board appointed for 5-year staggered terms. The Governor will appoint the board members from nomination lists submitted as follows:

- four members (including a classified employee) who are enrolled in the K-12 SHIP from a list of nominees submitted by MEA-MFT;
- two representatives of school administrators from a list of nominees submitted jointly by the School Administrators of Montana and the Montana Association of County Superintendents of Schools;
- two representatives of school boards from a list of nominees submitted jointly by the Montana School Boards Association, the Montana Rural Education Association, and the Montana Association of School Business Officials; and

- one retired educator who is enrolled in the K-12 SHIP.

At least three of the employee members, one of the school administration members, and one of the trustee members must be from a first-class school district. The first-class districts are the largest school districts in the state.

The incentive credit will cost approximately \$48 million annually and will come from an appropriation indexed to the annual rate of medical cost inflation.

The Working Group believes that the K-12 SHIP will provide quality and affordable health insurance benefits to the vast majority of public school employees and retirees, will address issues of school employee compensation and retiree income protection, and will directly enhance the capacity of Montana schools to



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recruit and retain high quality teachers. The K-12 SHIP will allow for provide the equitable provision of quality health benefits to school employees and their dependents and is a cost-effective way of protecting state, school district, and family budgets in the face of ever-rising medical care costs.

## **Local Government Subcommittee**

As anyone who is familiar with the sheer volume of Title 7 of the Montana Code Annotated (MCA) can attest, the local government arena includes everything from soup to nuts *and* the kitchen sink. An entity called the Local Government Subcommittee had within its purview a host of public policy matters that affect the governance of cities, towns, counties, fire districts, weed districts, and water and sewer districts, not to mention roads, airports, taxes, housing, and emergency services, to name a few. The members of the 2003-04 Local Government Subcommittee (Subcommittee) considered a handful of local government-related items



brought to their attention early in the interim, but they quickly recognized that if they had any hope of accomplishing something by a September 2004, deadline, they would need to limit the scope of their work to the study that they had been assigned, which promised to be a complex and time-intensive project.

Therefore, the Subcommittee made the HJR 37 study of the Montana Subdivision and Platting Act (MSPA) its sole focus.

### **HJR 37 Study of the MSPA**

Of Montana's 93.156 million acres, about 26.14 million (28%) are under the jurisdiction of the federal government and more than 5 million (5.4%) compose state land, leaving around 62 million acres (about 67%) in private ownership. Privately owned land is made up of vast, sweeping ranches, small lots in town, and everything in between. How that private land is divided has been of interest to legislators since the First Legislative Assembly convened at Bannack in a frigid December in 1864, shortly after which "An Act concerning Partitions of Real Estate" was approved on February 9, 1865. It was Montana Territory's first subdivision bill. Countless measures affecting the division of land have been considered by subsequent legislative assemblies, and the subject of dividing land has become increasingly complex as Montana's economic landscape has changed and as the population has grown and shifted.

Heard often in planning and development circles is the statement: "All of the easy land has already been subdivided." Subdivisions these days on the land that hasn't already been divided or developed present planners, developers, realtors, builders, environmental advocates, and elected local government officials with a tangle of challenges, not the least of which is a complicated set of state statutes that govern the entire process.

The latest legislative measure to address subdivision of land recognized that reality and called for clarification of the statutes after decades of piecemeal amendments. HJR 37, sponsored by Representative Mark Noennig and passed by the 58th Legislature, requested that an interim committee review the MSPA. The resolution came about after a bill, House Bill No. 370 (HB 370) amending subdivision statutes failed to reach the House floor. In the April 23, 2003, Senate

Local Government Committee hearing for HJR 37 and in a memo to the Legislative Council urging the members to assign the study to an interim committee, Representative Noennig made the following points:

- Testimony against HB 370 indicated that the bill would have eliminated the "remainder doctrine", a concept that is not expressly provided for in statute but that is used by some local subdivision review entities to determine whether the land that is left in a parcel after a subdivision is carved out is subject to review.
- The term "minor subdivision" is used many times in the law but is never defined, nor is it clear when a minor subdivision should be reviewed.
- Subdivision law is interpreted and applied differently in different counties, and some review entities use a summary review procedure that is not well defined in statute.
- The ability of a local government to make decisions about minor subdivisions should be made clear.
- The law should allow for unique local regulations, but how those regulations are implemented should be consistent.

### **Subcommittee Activities**

To identify additional, specific problems with the MSPA and to frame its study, the Subcommittee solicited information from those who work with it on a regular basis. At its first meeting on October 30, 2003, the Subcommittee asked those in attendance to articulate in general terms the problems that they saw with the MSPA. Problems identified at the October meeting fell into six categories.

1. Time:
  - Review takes too long—developers lose valuable time.
  - It is difficult and takes too long to schedule a preapplication meeting in some jurisdictions.
  - It is unclear what other entities are consulted during the review process, what the expertise of the staff of those other entities is, and whether those entities are held to specific-time restrictions.
  - Timeframes are not consistent in the MCA: in some places, time is measured in "days", and in others, it is measured in "working days".
2. Incomplete Applications:
  - Incomplete applications or applications that do not meet the standards cost time at the state (DEQ) review level.
  - There is confusion over when an application is considered complete and when the "clock" starts and stops if an incomplete application must be returned to the developer.
3. Multiple Meetings:<sup>1</sup>

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<sup>1</sup> The problem of multiple meetings and new information presented at subsequent meetings was the subject of *Brandborg, et al. v. Board of County Commissioners of Ravalli County*. After a planning board hearing on a proposed subdivision, the Board of County Commissioners of Ravalli County (Board) approved the plat conditioned on obtaining additional ground water data. The court ruled in this case that because the Ravalli County subdivision regulations delegate the duty of collecting and analyzing data to the planning board, including receiving and considering any public comments based on any additional data, the Board "did not have the authority to approve the subdivision conditioned on obtaining additional data". In addition, the court ruled that "the Board's conditional approval also eliminated the public's right to comment in a public hearing before the planning board on any new data" and expert recommendations based on that data.

The HJR 37 Working Group and the Subcommittee spent considerable time discussing the court decision and how to reconcile the decision with desired changes to the MSPA. Section 76-3-605, MCA, allows for only one public hearing on a proposed subdivision. Additionally, as Eddy McClure, Subcommittee legal staff, explained, the Montana Constitution guarantees every person the right to "examine documents or to observe the deliberations of all public bodies . . ." (Article II, section 9). The public also "has a right to expect governmental agencies to afford such reasonable opportunity for citizen participation in the operation of the agencies prior to the final decision as may be provided by law" (Article II, section 8). Further, Ms. McClure explained, amendments to section 2-3-103, MCA, made through House Bill No. 94 by the 2003 Legislature, provided that an agency (defined, with some exceptions, as any state or local government authority authorized to make rules) "may not take action on any matter discussed unless specific notice of that matter is included on an agenda and public comment has been allowed on that matter".

- More than one meeting may be held to review an application (such as a Planning Board and a Board of County Commissioners) with the possibility of new information being presented at the second meeting after a recommendation has been made based on the first meeting's testimony.
4. Remainders:
    - Local jurisdictions differ in how remainders are handled and whether or not a survey is required for the remainder.
  5. Definitions:
    - "Minor subdivision" is used in statute but is not defined.
  6. Summary Review/Expedited Review:
    - Section 76-3-505, MCA, provides for summary review and for exemptions from hearing requirements and certain review criteria. However, to qualify for those exemptions, a proposed subdivision must be located in an area covered by a growth policy and zoning regulations. Countywide zoning is not occurring in Montana.

Also in October 2003, an invitation to comment on proposed changes to the MSPA (see Appendix B) was mailed to a list of organizations and individuals who had testified on HB 370 or who were otherwise identified as potential interested parties in the HJR 37 study. The invitation to comment was posted on the Subcommittee's website and was expressed to those who attended the Subcommittee's meeting.

Those who submitted comments were asked to present their information in detail to the Subcommittee at its meeting on January 9, 2004.

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In light of *Brandborg* and HB 94, Ms. McClure framed the question for the Working Group: With regard to subdivision review, how can the public's right to examine documents that represent the best and most credible evidence and the public's right to have a reasonable opportunity to participate be balanced with the local governing body's right to know that the process has predictable finality?

The Working Group's answer to the question can be found in New Section 9 of the proposed bill draft (Appendix A).

Prompted by the complaint that subdividers occasionally are not aware of all the information that is expected by local planning staff and when that information is required, the Subcommittee directed staff to survey local planners throughout the state. In December 2003, with assistance from the Montana Association of Planners (MAP) president Jeff Bollman, a questionnaire was distributed to local planners requesting information about preapplication conferences, whether they are required under the local regulations, how the preapplication process works, and whether preapplication conferences save time for the subdivider and planning staff. The responses proved to be valuable to the Subcommittee in making the decision to require local regulations to establish preapplication processes. The questionnaire and a summary of the responses are included in this report as Appendix C.

At the conclusion of the January 9 meeting, the Subcommittee recognized that there was common ground among the submitted proposals for changing the MSPA, so members asked those in attendance who were interested and inclined to develop language for a bill draft that incorporated the common interests.

An informal Working Group formed to put together such a "consensus" proposal. Primary participants were:

- Peggy Trenk and Michael Kakuk, Montana Association of Realtors
- Tim Davis, Montana Smart Growth Coalition
- Jeff Bollman, president, MAP and then-planner for the city of Billings
- Tammy McGill, vice president, MAP, and planner for Stillwater County
- Byron Roberts and Curt Chisholm, Montana Building Industry Association
- Myra Shults, attorney, Joint Powers Insurance Authority (Montana Association of Counties-affiliated)
- Anne Hedges, Montana Environmental Information Center
- Jim Kemble, represents the Montana Association of Registered Land Surveyors during legislative sessions

- Ray Lazuk and Jim Madden, Department of Environmental Quality (DEQ staff participated in Working Group discussions that involved state-level sanitation and water review)

The Working Group—its membership representing interests that are often at odds with one another—met several times from January through May and painstakingly negotiated the language that would be proposed in a bill draft to the Subcommittee and eventually to the full Committee.

The Subcommittee reviewed the bill draft in detail at its June 8, 2004, meeting and, with minimal changes, unanimously endorsed it. The next day, the Subcommittee recommended that the Committee formally request the bill. The Committee unanimously accepted the Subcommittee's recommendation, and Senator Laible agreed to carry the legislation.

The bill as it was requested by the Committee is included in this report in Appendix A and, until it is introduced, may be tracked on LAWS by its assigned number, LC 40.

### **Sanitation Review**

Although it was not central to the Working Group's mission during the interim, the water and sanitation review of subdivisions loomed as a thorny issue that would demand the Working Group's attention. The MSPA, which is codified in Title 76, chapter 3, MCA, regulates local government review of divisions of land that create parcels containing less than 160 acres. The Montana sanitation in subdivisions laws are codified in Title 76, chapter 4, MCA, and regulate state-level (Department of Environmental Quality (DEQ)) review of divisions of land that create parcels containing less than 20 acres.

It has not been clear to those tasked with developing local subdivision regulations under section 76-3-504, MCA, whether the local regulations must address water supply, sewage, and solid waste disposal for subdivisions involving parcels containing less than 160 acres that DEQ does not review (parcels from 20 acres to 160 acres). Myra Shults summarized the problem in a document prepared for a

Joint Powers Insurance Authority land use training program: "The standard procedure had been [for the local governing body] to conditionally approve subdivisions, requiring that prior to filing the final plat the subdivider obtain DEQ review and approval. DEQ does not review lots 20 acres and larger pursuant to Title 76, chapter 4 of the Montana Code Annotated."<sup>2</sup>

The Granite County Attorney requested that Attorney General McGrath issue an opinion on three specific questions regarding local government review of water and sanitation. The questions were:

1. Is a local governing body required to adopt subdivision regulation standards for water supply and sewage and solid waste disposal that are at least as stringent as the standards set forth in the Montana Department of Environmental Quality regulations?
2. Is a local governing body required to incorporate by reference into its subdivision regulations the standards for water supply and sewage and solid waste disposal adopted by the Montana Department of Environmental Quality?
3. When must a proposed subdivision undergo review to show compliance with local subdivision regulations?

Ms. Shults summarized the opinion (49 A.G. Op 7), issued August 17, 2001: "According to that opinion, counties not only must adopt subdivision regulations for water supply and sewage and solid waste disposal that are as stringent as those of DEQ, but also review of a proposed subdivision for compliance with these regulations must occur at the preliminary plat stage, rather than at the final plat stage."<sup>3</sup>

In the absence of legislative action, the opinion has the force of law, and numerous county planning offices and the development community have been wrestling with how to comply.

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<sup>2</sup> Myra Shults, "Heads Up III!; November 2003 JPIA Land Use Training", p. 6.

<sup>3</sup> Ibid.



*Lengthy discussions among Working Group members centered around the appropriate amount and nature of sanitation information that should be available at the preliminary plat stage of a proposed subdivision.*

Realizing that competing legislation from opposite points of view may surface to address sanitation review and with an interest in continuing in the spirit of consensus that had served the Working Group so well, lengthy discussions among Working Group members centered around the appropriate amount and nature of sanitation information that should be available at the preliminary plat stage of a proposed subdivision. Some members expressed belief that because water and other sanitation matters are based on science, they belong strictly within the realm of the scientists at DEQ, not before the planning board or a Board of County Commissioners. In addition, those in that camp maintained that getting all of the detailed sanitation data is an expense that subdividers should not be subject to

before they even know whether a proposed subdivision will meet the local governing body's other criteria.

Others asserted that the planning board and Board of County Commissioners are absolutely the appropriate venues for review of water and sanitation information, that the public has a right to comment on the information in the presence of those entities, and that a procedure for forwarding to DEQ the information along with the comments received at the local government level may streamline DEQ's review.

### **Subcommittee Activities**

The Working Group reported to the Subcommittee at its September 14, 2004, meeting that the Working Group's members had been able to reach agreement on four general concepts, but that many important details remained unresolved. See Appendix D for a description of the areas of general agreement. The Working Group pledged to the Subcommittee that it would continue its efforts to reach consensus on language to incorporate into a bill that would clarify state and local governments' roles in sanitation review of proposed subdivisions. The Working Group also expressed members' intention to involve local health departments in



its continuing discussions. Senator Mangan requested a bill (LC 394) that would be the vehicle for any sanitation review legislation to which all of the members of the Working Group, including the local health department representatives, could agree.

## **Postsecondary Education Policy and Budget Subcommittee**

The Postsecondary Education Policy and Budget (PEPB) Subcommittee met five times over the interim: December 10, 2003; January 20, 2004; March 24, 2004; May 19, 2004; and July 7, 2004. The major focus of the PEPB Subcommittee this interim was to work with the Board of Regents on developing a course of action by which the Montana University System (MUS) could take a greater, more defined role in growing Montana's economy and creating more good jobs for Montana citizens. This initiative became known as the "Shared Leadership for a Stronger Montana Economy".

### **"Shared Leadership for a Stronger Montana Economy"**

Beginning in the autumn of 2003, the Board of Regents held a series of discussions about the need for the MUS to take a more direct leadership role in the economic development of the state. The discussions came about because of a recognition on the part of the Regents of the need for states to compete in the rapidly changing global economy and of the relationship between a strong economy and a strong educational system. An ad hoc Working Group was formed to refine these discussions into a recommended course of action. The Working Group proposed a four-step process, three of which could be accomplished within a few months, while the fourth step would take 2 to 5 years.



*The Board of Regents held a series of discussions about the need for the Montana University System to take a more direct leadership role in the economic development of the state.*

Step One: Establish a leadership group to provide broad policy oversight and a project team to conduct the policy research and develop recommendations. The leadership group would be composed of leaders from the Legislative and Executive Branches and from business, education, and other relevant organizations. The project team would be composed of senior staff members of some of the entities represented on the leadership group and other staff persons from related agencies.

Step Two: Achieve broad-based agreement on the fundamental changes occurring in the world's economy and the implications of these changes for Montana.

Step Three: Achieve broad-based agreement on those areas that provide the best opportunity for change but still leverage the MUS's core competencies.

Step Four: Develop specific recommendations for action or policy changes. This last step will involve the formation of teams that will focus on each of the priority areas identified in Step Three by developing clear, anticipated outcomes and processes to achieve these outcomes.

The process was adopted by the Regents and the PEPB Subcommittee in January of 2004. In March of 2004, six initiative areas were identified and six project initiative teams were created to study and refine each initiative and develop an action plan for implementing each initiative. The six initiative areas were:

- access to higher education;
- worker training;
- technology transfer;
- entrepreneurship and small business development;
- support of state government; and
- generating direct economic growth.

At the May 19, 2004, joint meeting of the Board of Regents and the PEPB Subcommittee, the six initiatives were approved with amendments. The initiatives were then further refined by incorporating the amendments and other changes recommended by the leadership group and the project team. The refined initiatives are:

- MUS/business partnerships for workforce training and education;
- promotion and enhancement of access to postsecondary education;
- distance and online learning coordination across the MUS;
- MUS/business partnerships to forge stronger relationships between the MUS and the private sector;
- MUS and government collaboration to allow the MUS to become more engaged in helping the state solve some of the state's major problems; and
- MUS/Montana promotion partnership to promote Montana to prospective out-of-state students and alumni.

On July 7, 2004, the PEPB Subcommittee carefully reviewed and discussed the six initiatives and then chose its three top priorities. The priorities are, in no order of preference:

- workforce training and education;
- access to postsecondary education; and
- distance and online learning.

The Subcommittee also reaffirmed its support for all six initiatives and submitted a request for a resolution to the Committee encouraging the Legislature to support the implementation of the initiatives. At its September 15, 2004, meeting, the Committee approved the resolution as a Committee bill.

For a more complete discussion of the "Shared Leadership for a Stronger Montana Economy" project, please refer to Appendix E of this report.

## **Agreement on Policy Goals and Accountability Measures**

Last interim, the PEPB Subcommittee and the MUS entered into an agreement that identified statewide public postsecondary education policy goals and related accountability measures to be used as an assessment tool for policymakers, the MUS, and the public in evaluating the achievement of the policy goals. The policy goals and accountability measures are:

1. Prepare students for success through quality education.
  - a. completion rates
  - b. retention rates
2. Promote access and affordability.
  - a. affordability compared to other states
  - b. state support as a percent of personal income and per capita income
3. Deliver efficient, coordinated services.
  - a. transferability among institutions
  - b. percent of expenditures in instruction, administration, athletics, etc.
4. Be responsive to market and employment needs and opportunities.
  - a. job placement rates by field or program
  - b. growth in FTE enrollment, certificates, and degrees conferred in 2-year education
5. Contribute to Montana's economic and social success
  - a. research and development receipts and expenditures
  - b. technology transfer (licensing and commercialization)
6. Collaborate with the K-12 school system and with other postsecondary education systems.
  - a. collaborative programs with K-12, community colleges, tribal colleges, and private colleges (when appropriate)
  - b. average SAT or ACT scores of first-time, full-time MUS freshmen

The MUS further agreed to prepare an Accountability Report for the House and Senate Education Committees and the Joint Appropriations Subcommittee on

Education. The report must be posted on the Board of Regents' website and on the PEPB Subcommittee's website.

At its final interim meeting on July 7, 2004, the PEPB Subcommittee, in agreement with the Board of Regents, renewed the policy goals and accountability measures agreement for another 2 years. A copy of the agreement can be found in Appendix F of this report.

# Chapter Three

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## **K-12 Public School Renewal Commission**

### **Background**

The 2003 Legislature passed House Bill No. 736 (HB 736), a bipartisan measure that created a K-12 Public School Renewal Commission whose purpose was to propose changes and new provisions regarding the several components of K-12 public education in Montana, including but not limited to:

- the revenue available for public education;
- the structure of school district governance;
- the methods of funding public education;
- the role of state government in public education; and
- the role of the federal government in public education.

The Commission was composed of 28 members who represented the Governor's Office, the Office of Public Instruction, the Board of Public Education, legislative leadership, parents, school trustees, local governments, American Indians, teachers, agriculture, taxpayers, school administrators, school business officials, special needs students, labor, and small and large schools. The Commission met 12 times over the interim as it worked to formulate recommendations for providing a basic system of free, quality elementary and secondary schools. The Governor's Office and the Board of Public Education provided staffing for the Commission. HB 736 required the Commission to report its findings and recommendations to the Committee.

### **Findings and Recommendations**

1. The Commission agrees that the Montana Accreditation Standards are the foundation upon which a Montana quality education should be built.
2. The Commission recommends greater flexibility in the school calendar and time (days/hours) requirements. The Commission also

supports encouraging local school districts to provide expanded learning opportunities addressing the unique learning needs of all students by flexing time and resources.

3. The Commission recommends greater flexibility in the school calendar and time (days/hours) requirements, without reducing the minimum aggregate hours of pupil instruction required by law, to allow local school districts to provide expanded professional development opportunities.
4. The Commission strongly recommends an intensive study of regional education service agencies as a key component in restructuring and renewing public education in Montana.
5. The Commission recommends that statutes be clarified to eliminate barriers to voluntary consolidation of school districts.
6. The Commission recommends that tax inequities among school districts be addressed and that any new funding formula avoid building in disincentives to consolidation.
7. The Commission supports statewide school district employee health insurance pooling with state incentives for participation.
8. The Commission supports legislation that would restore the position of a Gifted and Talented Specialist in the Office of Public Instruction with an appropriate budget for an advisory council, professional development, liaison activities with postsecondary teacher preparation programs, and other outreach services.
9. The Commission supports legislation that would begin to "phase in" increased state support for special education for programs such as services for "high cost" students with disabilities, preschool services, extended school year services, and professional development activities.
10. The Commission recommends that all school districts receive adequate funding to cover the costs of operating and maintaining quality public elementary and secondary schools.
11. The Commission recommends the following revenue and taxation revisions to support school funding:

- a. implementation of a statewide equalization plan with an emphasis on homeowner equity and uniform property taxation;
  - b. funding the BASE budget using statewide equalization;
  - c. using equalized funding to fund the maximized budget;
  - d. using a balanced taxation approach that includes existing statewide taxes, such as property taxes, income taxes, and natural resource taxes, and also considers new revenue, such as a statewide general sales tax, to be used as a mechanism for equalization; and
  - e. using a balanced taxation approach that includes existing statewide taxes, such as property taxes, income taxes, and natural resource taxes, and also considers new revenue, such as a statewide general sales tax, to be used as a mechanism for funding quality public schools.
12. The Commission strongly supports the benefits of expanding kindergarten services to improve student learning and achievement and supports the Montana Legislature providing the statutory and budgetary flexibility to school districts so that they can offer additional kindergarten services to all students.
  13. The Commission supports state-funded Indian Education for All curriculums and policies/rules developed through partnerships led by the Office of Public Instruction, Board of Public Education, and Legislature, including Indian educators, tribes, and others.
  14. The Commission supports state-facilitated, public/private partnerships for locally based summer programs and extended-day school programs for identified students.
  15. The Commission recognizes that adequate infrastructure, in the form of physical plant and equipment, is a key component of a quality educational system.<sup>4</sup>

## **Committee Activities**

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<sup>4</sup>Montana K-12 Public School Renewal Commission Findings and Recommendations, Report to the Education and Local Government Interim Committee, September 15, 2004.



On September 15, 2004, the Commission presented its finding and recommendations to the Committee. The Committee thanked the Commission and voted its support for all of the Commission's work. However, because this was the last meeting of the interim and the Committee did not have the time to synthesize the vast amount of information that the Commission had amassed for each of its recommendations, the Committee declined to approve a Committee bill implementing the findings and recommendations. Instead, the Committee encouraged individual legislators to submit bill draft requests.

The final report of the Commission will be published in December of 2004. More complete information about the work of the Commission is available on its website at [www.discoveringmontana.com/gov2/css/boards/renewal/default.asp](http://www.discoveringmontana.com/gov2/css/boards/renewal/default.asp).

# Chapter Four

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## Available Materials

The following materials relevant to the Education and Local Government Interim Committee and its three subcommittees are available from the Legislative Services Division (LSD) or on the LSD website at [www.leg.mt.gov](http://www.leg.mt.gov). Follow the "Committees" link or the "Interims" link to the Education and Local Government Committee.

### **Minutes of Meetings (exhibits included)**

#### Full Committee:

August 21, 2003	June 9, 2004
October 30, 2003	September 15, 2004

#### Postsecondary Education Policy and Budget Subcommittee:

December 10, 2003	May 19, 2004
January 20, 2004	July 7, 2004
March 24, 2004	

#### K-12 Education Subcommittee:

October 30, 2003  
January 9, 2004  
May 27, 2004

#### Local Government Subcommittee:

October 30, 2003	June 8, 2004
January 9, 2004	September 14, 2004
April 2, 2004	

## **Staff Reports and Memoranda**

*Approved Legislation Related to Land Use Planning and Regulation 2003 Montana Legislature*, May 2003, Mary Vandebosch, Legislative Services Division

*Local Government Legislation Approved by the 2003 Montana Legislature*, July 2003, Connie Erickson, Legislative Services Division

*Education and Local Government Interim Committee Proposed Work Plan for the 2003-2004 Interim*, July 2003, Connie Erickson, Legislative Services Division

*Study Plan House Joint Resolution No. 37*, October 2003, Leanne Kurtz, Legislative Services Division

*School Employee Health Insurance Proposal*, May 27, 2004, Connie Erickson, Legislative Services Division

*Report of the Special Panel on the University of Montana Athletic Deficit*, May 20, 2004, Office of the Commissioner of Higher Education

*Montana Board of Regents' Accountability Report on the Montana University System to the 58th Legislature*, January 16, 2003, Office of the Commissioner of Higher Education

*Six Action Items Designed to Implement Shared Leadership for a Stronger Montana Economy* (two reports), July 7, 2004, and July 12, 2004, Office of the Commissioner of Higher Education

*Montana K-12 Public School Renewal Commission Findings and Recommendations*, report to the Education and Local Government Interim Committee, September 15, 2004.