



Education and Local Government Interim Committee

61st Montana Legislature

SENATE MEMBERS

KELLY GEBHARDT--Vice Chair
GARY BRANAE
KIM GILLAN
BOB HAWKS
DANIEL MCGEE
JIM PETERSON

HOUSE MEMBERS

WANDA GRINDE--Chair
ELSIE ARNTZEN
RUSSELL BEAN
BOB LAKE
EDITH MCCLAFFERTY
CHERYL STEENSON

COMMITTEE STAFF

LEANNE KURTZ, Research Analyst
JEREMY GERSOVITZ, Staff Attorney
CLAUDIA (CJ) JOHNSON, Secretary

MINUTES

December 11, 2009

Room 102 - Capitol Bldg
Helena, MT

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COMMITTEE MEMBERS PRESENT

REP. WANDA GRINDE, Chair
SEN. KELLY GEBHARDT, Vice Chair
SEN. GARY BRANAE

SEN. BOB HAWKS
SEN. JIM PETERSON
REP. RUSSELL BEAN
REP. BOB LAKE
REP. EDITH MCCLAFFERTY

COMMITTEE MEMBERS EXCUSED

REP. ELSIE ARNTZEN
SEN. KIM GILLAN
SEN. DANIEL MCGEE
REP. CHERYL STEENSON

STAFF PRESENT

LEANNE KURTZ, Research Analyst
JEREMY GERSOVITZ, Staff Attorney
CLAUDIA (Cj) JOHNSON, Secretary

Visitors

Visitors' list, Attachment #1.
Agenda, Attachment #2.

COMMITTEE ACTION

The Education and Local Government Committee (ELG):

- approved the written minutes from the ELG meeting on October 1 & 2, 2009.
- approved the timeframe and plan of the K-12 and the K-20 shared policy goals presented by the subcommittee.

CALL TO ORDER AND ROLL CALL

00:01:12 Rep. Grinde called the committee to order at 8:00 a.m. The secretary called the roll. Attachment #3. Rep. Arntzen, Rep. Steenson, Sen. Gillan and Sen. McGee are excused. Sen. McGee provided a proxy. Attachment #4.

AGENDA

Motion:

00:03:07 Sen. Branae made the motion to approve the written minutes from October 1 & 2, 2009. The motion **passed** unanimously. Sen. McGee voted aye by proxy.

Overview of the committee's agenda

00:03:36 Leanne Kurtz, Research Analyst, gave an overview of the agenda and the issues that will be heard in committee.

Historic Preservation Study (HJR 32)

- **Leanne Kurtz - update on study work/projects,**
- **Chere Jiusto - other states' programs that may serve as models for MT,**
- **Sen. Hawks (designee) for ELG's HJR 32, and**
- **Rep. Ebinger on the Montana Main Street Program.**

00:10:07 Ms. Kurtz distributed a handout of a sample decision package for HJR 32. **(Exhibit 1)** She distributed a memo to the ELG members about the Montana Main Street Program. **(Exhibit 2)** The memo provides information how communities can start a program.

00:17:18 Chere Jiusto, Montana Preservation Alliance, gave an overview of the programs in Montana. She talked about the tax credit for the Certified Local Governments (CLG), which are communities that have been successful in historic preservation and encourage people in smaller communities by providing assistance in the preservation of buildings in the smaller towns. She said that Montana's cultural history is comparable to Colorado, Texas, and Oregon. She suggested that Ms. Barbara Pahl from the National Trust for historic preservation could speak to the committee regarding this topic.

ELG comments and discussion

00:23:22 Sen. Hawks said that he is an advisor from Montana for the National Trust.

00:27:43 Rep. Ebinger said the direction the committee is going is consistent with HJR 32 which he carried. He talked about how to provide the communities with the tools

necessary for economic development through historic preservation.

00:30:01 Rep. Lake wanted to know how many dollars are coming into the state and how much is going to the projects. Sen. Hawks said he didn't know and that is part of the reason why this study is before the committee.

00:33:00 Rep. Ebinger said that some of the programs are one-time only funds. He said that the Main Street Program has always been funded by one-time only monies.

00:35:19 Ms. Kurtz said the Main Street Program does not directly provide grants to communities. The program assists communities in establishing organizations and Main Street provides the technical assistance. She said that the money is raised locally or through grants. Rep. Ebinger said that Livingston has a Main Street Program by coordinating with the city and businesses.

00:39:25 Rep. Grinde directed the staff to proceed by identifying the structural plan for each agency. She also wanted information about dollars going to specific projects.

Status of historic preservation stimulus grants

- **Dave Cole, Community Development Division Administrator, Department of Commerce**

00:40:57 Mr. Cole gave an overview on the status of several historic preservation projects to be funded through HB 645. He distributed a handout that lists the projects. **(Exhibit 3)** He will provide a list of the funded projects by the next ELG meeting.

ELG comments and questions

00:53:05 Sen. Gebhardt asked that the next report show the location, town, etc. of the projects.

00:54:44 Sen. Hawks asked about overhead costs and if it is standard that the Department of Commerce charges other agencies for administration fees. Mr. Cole said that administration cost is approximately 1.5%. He said there is no travel budget and when they go out to oversee projects they are not paid.

Public Comment

00:56:45 Richard Simms, Director of the Montana Historical Society, remarked on the good work that is taking place in Montana and its historic culture.

Local government stimulus grants

- **Dave Cole, Community Development Division Administrator, Department of Commerce**

00:58:56 Mr. Cole talked about the disbursement of the HB 645 infrastructure grants. He distributed a summary on the status of the funds and where the funds have been used. **(Exhibit 4)** The handout is a summary of the monies disbursed and what the money is being used for.

- 01:03:35 Rep. Grinde asked if the list of projects is on the Department of Commerce's website. Mr. Cole said it is. He said there are 36 projects.
- 01:06:01 Rep. Lake wanted to know if the projects have to be completed by the final disbursement date set for September 30th, 2010. Mr. Cole said the final 10% will be reimbursed for the projects and can be paid out after September 30th because the funds were expended before that date.

Department of Labor and Industry (DLI) rulemaking for fire mitigation construction techniques (50-60-901 and 50-60-902)

- ▶ **Dave Cook, Building Standards Bureau Chief, Department of Labor and Industry**

- 01:08:35 Ms. Kurtz distributed a handout on Fire Mitigation Construction Techniques. **(Exhibit 5)** The handout shows the rulemaking authority for DLI and how it will be enforced. The rules pertain to local subdivision review.
- 01:09:19 Mr. Cook gave an update on SB 51. He met with the stakeholders, city planners, county planners, fire professionals, policy makers, etc., to develop a list of construction techniques that will provide tools for communities to use as guidelines to mitigate fire hazards. He said the guidelines are in draft form at this time. **(Exhibit 6)**

ELG comments and discussion

- 01:12:25 The committee members talked about the construction techniques and the Wildland-Urban Interface (WUI).

Interim zoning staff presentations

- ▶ **Helen Thigpen**
- ▶ **Greg Petesch**

- 01:27:21 Ms. Thigpen distributed a handout of a survey on Western Interim Zoning Statutes comparing interim zoning in Montana with other states, mainly Idaho, regarding interim zoning. She explained how interim zoning works with other states and its related protest provisions. **(Exhibit 7)**
- 01:30:36 Ms. Thigpen distributed and explained two supreme court cases: 1) Fasbender vs. Lewis and Clark County **(Exhibit 8)**, and 2) Liberty Cove, Inc. vs. Missoula County. **(Exhibit 9)**

ELG comments and discussion

- 01:34:53 Rep. Lake asked if a county can institute a interim zoning if they do not have a growth policy in place and no plan to have one. He asked if counties still have the authority to pass an interim emergency zoning. Mr. Greg Petesch, Code Commissioner, LSD, responded that a growth policy is a prerequisite to zoning.
- 01:36:32 Sen. Peterson asked what constitutes an emergency. Mr. Petesch replied that it would be "an exigent circumstance that did not allow the full notice required for permanent zoning regulations to be adopted." He gave an example of the

timeframe for issuing a permit for a gravel pit, and stated it is decided on a case by case basis.

- 01:40:14 Ms. Thigpen discussed the case of Liberty Cove vs. Missoula County (see Exhibit 9), and the decision to adopt interim zoning.
- 01:46:12 Ms. Kurtz distributed a handout of the 76-2-205, MCA, which governs procedures for adoption of regulations and boundaries. **(Exhibit 10)**
- 01:47:12 Ms. Thigpen distributed a handout about "What Constitutes a Compensable Taking Under the Fifth Amendment of the United States Constitution." **(Exhibit 11)**
- 01:55:48 Sen. Gebhardt talked about commercial/industrial vs. residential and when it constitutes a takings, and asked if all values taken from commercial property are still valuable for residential. Ms. Thigpen said the court will look at the land as a whole and not a part of the economic use. Sen. Gebhardt summarized that a total takings is when property, for example ASARCO Smelter is sold to be used for a housing development and the Department of Environmental Quality (DEQ) determines it is contaminated and cannot be used for anything, and the determination had not been made before the purchase of the property would be a definition of a total takings.
- 02:02:33 Rep. Lake wanted to know if a takings is limited to real property. Ms. Thigpen said the takings clause is applied to real property. Rep. Lake asked about the Mitchell Slough in Ravalli County that is on private property and if there is a case for takings. Mr. Petesch responded that the owners knew when they purchased the property that there was public water on that property.
- 02:08:03 Mr. Petesch distributed a handout **(Exhibit 12)**, and explained due process considerations regarding interim zoning. He discussed:
- ▶ Procedural Due Process.
 - ▶ Substantive Due Process, and
 - ▶ Application of Concepts to Zoning in Montana.
- Mr. Petesch summarized that zoning is a constitutional exercise of police power if it has a substantial bearing upon the public health, safety, morals, or general welfare of the community for substantive due process purposes.
- 02:26:16 Break
- Interim zoning panel discussion (questions provided):**
- ▶ **Glenn Oppel, Montana Association of Realtors (MAoR)**
 - ▶ **Myra Shults, Montana Association of Counties (MACo)**
 - ▶ **Tim Davis, Montana Smart Growth Coalition (MSEC)**
- 02:41:37 The panel members responded to written questions from the committee. **(Exhibit 13)** They gave information what interim zoning means to their organizations.

ELG comments and discussion

03:43:10 The committee members asked further questions of the panel members. They discussed protest provisions and legal moratoriums.

Public Comment

04:00:14 Jeff Sealey, Deputy County Attorney, Lewis and Clark County, responded to previous comments by the panel members regarding agriculture and forest land protest provisions.

04:08:29 **Lunch**

04:46:30 Rep. Grinde called the committee back to order at 12:40 p.m..

Two-Year Education Initiative and follow-up on Two-year Integrated IT Approach report from October meeting

• **Mary Sheehy Moe, Office of the Commissioner of Higher Education**

04:46:56 Stephanie Hacksaw, President of the Miles City Community College (CCC) joined the committee via polycom phone.

04:47:14 Mary Sheehy Moe, Deputy Director of two-year Education, distributed a handout explaining the 2-year education initiative. **(Exhibit 14)** She talked about the five key strategies of the initiative for making education affordable.

ELG comments and questions

04:54:22 Sen. Gebhardt wanted to know how Montana is doing on the 2-year credit transfer. Dr. Moe said they are working on common courses. Registrars and teachers from all Community Colleges (CC) in Montana are finalizing 1000 courses that will become the same courses for each CC.

04:57:05 Sen. Gebhardt wanted to know if the numbers are only for Montana students enrolled or out-of-state students online. Dr. Moe said only for Montana students.

04:57:47 Sen. Branae and Dr. Moe discussed the Virtual Academy that will be beginning this fall.

04:59:18 Stephanie Hacksaw responded to Sen. Gebhardt's question. She said that the CCC is working with Dr. Moe to collaborate on shared policy goals. She talked about how the CCC is installing the Banner Software program which will provide the CCs the information needed in transferring courses from one CC to another.

05:01:45 Sen. Peterson and Dr. Moe talked about how students in the CCs are trained to operate specialized equipment, and how the students will receive accreditation for this training.

SJR 8, HJR 6 Subcommittee - shared policy goals and accountability measures.

Review Nov. 9 and Dec. 10 subcommittee meetings

▶ **Rep. Lake**

Fiscal Division staff summary of process/products

- ▶ **Kris Wilkinson and Pam Joeher, Legislative Fiscal Analysts**
- ▶ **Participants' perspectives on progress**

- 05:13:11 Rep. Lake gave an overview and update on the subcommittee's work from the last two meetings. He is comfortable with the way the subcommittee meetings are going. He introduced the subcommittee's nonlegislative participants.
- 05:17:19 Ms. Joeher distributed a handout called Shared Policy Goals and Accountability Measures. **(Exhibit 15)** She explained what measurable goals are, how they are attained, how performance is measured, and provided a timeline that the Montana University System (MUS) will sign on to a written agreement between the education partners.
- 05:22:25 Madalyn Quinlan, Office of Public Instruction (OPI), explained the K-12 education shared policy goals. Ms. Quinlan distributed two handouts that address: 1) K-20 shared policy goals and highlights from the ELG subcommittee discussion **(Exhibit 16)**, and 2) K-12 shared policy goals. **(Exhibit 17)**
- 05:25:16 Mr. Meloy talked about the Board of Public Education's (BPE) perspective on the direction the subcommittee is going.
- 05:27:04 Tyler Trevor, Associate Commissioner, MUS, said he is appearing before the committee on behalf of the Commissioner Sheila Sterns, and he commented on the process of shared policy goals.

Motion

- 05:28:18 Rep. Lake made the motion to accept the plan (see Exhibit 15), and the timeframe for the signed written agreement by the educational agencies for the K-12 and the K-20 shared policy goals with the word change suggested by Ms. Quinlan - "**prepare students with the knowledge and skills necessary for success in the 21st century global society.**"

Discussion

- 05:30:00 Sen. Hawks talked about how to move forward and achieve the goals that have been submitted to the committee. Rep. Bean wanted to know how OPI defines problem schools. Ms. Quinlan stated it is schools that have struggled for the past seven years.

Vote

- 05:35:19 Rep. Lake's motion **passed** unanimously. Sen. McGee voted aye by proxy.

Board of Public Education (BPE) accreditation standards rulemaking process update

- ▶ **Steve Meloy, BPE**
- ▶ **Kris Wilkinson, LFD**

- 05:40:20 Kris Wilkinson distributed and explained a handout about the BPE adopting accreditation standards before the ELG committee could review the amendment

and LFD could develop a cost analysis on the amendment or standard before it became part of the BPE rules. **(Exhibit 18) (Exhibit 19)**

05:40:28 Mr. Meloy distributed a memo he had written in response to a memo from Jeremy Gersovitz, LSD staff attorney, who had pointed out BPE's error in their rulemaking process. Mr. Meloy's responded by explaining how BPE has corrected the problem. **(Exhibit 20)**

05:47:52 Rep. Lake, Rep. Bean, Mr. Meloy, and Ms. Wilkinson discussed BPE rulemaking and the timeline that BPE has to implement a rule. The committee talked about the cost and effect if a revised rule has changed and its effect on the local school boards if the implementation of the rule had to wait before it was approved by the Legislature.

Virtual Academy

▶ **Dr. Bruce Messinger, Chair of the Governing Board for the Montana Virtual Academy (MTVA), and Superintendent of Schools for Helena.**

05:48:41 Dr. Messinger announced and introduced Dennis Parman (OPI) who will be Vice Chair on the Governing Board for the Virtual Academy. Dr. Messinger distributed a press release announcing the new director Robert Currie, for the Virtual Academy. **(Exhibit 21)** The new director will be on board starting in January and his duties will include bringing together all of the course development and preparing for registration this spring for fall classes. Mr. Currie is from Michigan, which is the leader in the virtual academy concept. Dr. Messinger said that Montana is being recognized nationally for design of the K-12 and MUS collaboration.

06:03:14 The committee members and Dr. Messinger discussed students obtaining a degree online, and the role of retired teachers in teaching the offered courses.

OPI reports by:

- ▶ **Madalyn Quinlan, Chief of Staff, Office of Public Instruction (OPI) Critical Quality Educator Shortages report**
- ▶ **Dennis Parman, Deputy Superintendent, OPI, Race to the Top**

06:12:17 Mr. Parman distributed a handout about the Race to the Top program explaining it is a new agenda of the No Child Left Behind Program by the U.S. Department of Education. **(Exhibit 22)**

06:29:43 Dan Villa, Governor's Office, had a copy of the application form for the committee to view that will be used to apply for a Race to the Top Program grant, and said that a minimum of four signatures are required; the Governor's, the OPI superintendent, Chair of the Board of Public Education, and the Attorney General.

ELG comments and questions

06:37:21 Committee members discussed how the program will affect low-achieving schools. Members asked if the program will be funded by the federal

government later down the road, and if the Governor's Office is on board with the program. Mr. Villa replied that it is a 3-year grant and if Montana is awarded a grant this fall, then it will continue another two years and be done.

06:45:16 Ms. Quinlan distributed a handout about Critical Quality Educator Shortages. **(Exhibit 23)** She explained how OPI has identified critical schools which are more rural and have a higher percentage of economically disadvantaged students, plus have a greater challenge in closing the achievement gap.

School Counselor Initiative

- ▶ **Renee Dubay** Director For Partnership for Access for OCHE
- ▶ **Steve Meloy**

06:55:00 Steve Meloy, BPE, introduced the BPE staff. He distributed handouts explaining the role of counselors in school. **(Exhibit 24)(Exhibit 25)** He talked about the Counselor Initiative that started in 2003. It defines the scope and purpose of school counselors.

06:58:16 Renee Dubay distributed and explained a handout about implementation of a comprehensive counseling program in every school in Montana. **(Exhibit 26)** She talked about the professional development options that provide the models for a comprehensive school counseling program.

06:59:30 Carrie Stefanatz, President of the Montana School Counselors Association (MSCA), said she represents 250 Montana school counselors throughout Montana. She had a handout that addresses the transforming of school counseling in Montana schools. (see Exhibit 25)

07:03:02 Barb Holden, past President of the MSCA, distributed a handout called Making a Difference that explains what the Association does. **(Exhibit 27)**

07:09:04 Ms. Stefanatz distributed a handout **(Exhibit 28)**, and explained the TRiO programs that include; 1) educational opportunity for low-income, 2) first-generation, and 3) disabled Americans. She talked about the Federal TRiO programs that are funded under Title IV. Some of the programs are:

- ▶ Upward Bound
- ▶ Educational Talent Search
- ▶ Upward Bound Math & Science
- ▶ Veterans' Upward Bound.

Ms. Stefanatz explained how these programs provide services for students. She had a handout of a media release announcing the graduation of 11 women in the Montana Women's Prison who have completed a program called "Pathways to Success". **(Exhibit 29)** The program is coordinated by Sen. Kim Gillan and Cindy Bell through a grant awarded to MSU Billings College of Professional Studies and Lifelong Learning and the downtown Billings campus that provided the studies for the women inmates.

ELG comments and questions

07:14:27 Sen. Hawks asked what tools can be used to be effective in the future for school

counselors. Ms. Stefanatz responded that the counselors' goals are to focus on prevention rather than just response. Renee Schoening, Elementary School Counselor from Deer Lodge, commented that part of the model is data driven and said they don't need any more to do. Barb Holden talked about how she handles interpersonal training by obtaining the trust of the students.

07:19:40 Rep. Bean said that as a former administrator he appreciated the comments from the counselors. Sen. Branae is also a retired counselor and thanked the counselors for what they do. Ms. Schoening said she was in the mental health environment and found that she could reach the children better in the school setting.

07:27:18 Renee Dubay talked about several programs one being the UPWARD Bound program and several others that handle the non-barriers under the TRiO programs

07:30:34 Ms. Kurtz said that the next ELG meeting will be held on March 12, and added that the subcommittee will be meeting on March 11.

Adjournment

07:33:36 Rep. Grinde said there is no further business to discuss and adjourned the ELG committee at 3:37 p.m.

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