



# THE INTERIM

March 2012

A monthly newsletter of the Montana Legislative Branch

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The Interim, along with up-to-date information about interim committees, is also available on the Legislative Branch website at [leg.mt.gov](http://leg.mt.gov).

## Children & Families Panel Requests Bill Drafts on Childhood Hunger, Medicaid

The Children, Families, Health, and Human Services Interim Committee has authorized the drafting of two bills related to the House Joint Resolution 8 study of childhood hunger. The bill drafts were among four study-related ideas approved by the committee at a Jan. 23 meeting.

In November, members had narrowed a list of stakeholder suggestions down to eight topics for which they wanted additional information. After reviewing briefing papers on those topics in January, members agreed to:

- authorize the drafting of a bill to appropriate \$20,000 to pay for the one-time start-up costs for new school breakfast programs and another \$200,000 to reimburse schools for the reduced-price breakfasts that they serve to some low-income children;
- authorize the drafting of a bill to appropriate \$50,000 in funds from the federal Temporary Assistance for Needy Families program for home food support programs;
- send a letter to the Office of Public Instruction to encourage it to take the lead in creating an online clearinghouse of nutrition education information that is available from both government and school programs and from private organizations; and
- send a letter to farmers' markets around the state to suggest that they accept Supplemental Nutrition Assistance Program, or SNAP, benefits. The mailing will include a how-to manual developed by several organizations that outlines the steps a farmer's market must take to accept the federally funded food-assistance benefits.

The committee will review and refine the bill drafts at a future meeting before deciding whether to introduce the legislation in the 2013 Legislature.

The committee also continued its Medicaid monitoring efforts by hearing from two panels of speakers. The first panel focused on ways to detect payment errors, as well as fraud or abuse. The second group of speakers discussed recent fluctuations in the rates the state Medicaid program pays to organizations and individuals that provide services.

Two representatives of Emdeon noted that the federal health care law will soon require states to do more to prevent erroneous Medicaid payments. Emdeon is a national company that manages billing and payment for health care providers and also analyzes information related to claims and payments. Speakers from the Montana Department of Public Health and Human Services and the Montana Department of Justice discussed how those agencies review claims for potential errors or fraud.

The committee heard about Medicaid provider rates from a panel of three speakers and several other people who spoke during the public comment period. Speakers emphasized that a decision not to implement a 2% rate increase scheduled for fiscal year 2011 has affected the financial stability of many providers. They said some providers are now using their reserves to pay for operating expenses. Speakers predicted that some providers may not be able to stay in business if rates are not increased in the future.

The governor withheld funds for the fiscal year 2011 rate increase at a time when it appeared the state general fund's ending fund balance would fall below the level required by law. That triggered a requirement for the governor to make spending reductions.

After hearing from providers, the committee authorized the drafting of a bill to use money from the anticipated budget surplus to make payments to providers equal to the 2% they would have received in fiscal year 2011.

The committee will begin the Senate Joint Resolution 30 study of childhood trauma at the March meeting.

Dr. Robert Anda, a co-principal investigator of the Adverse Childhood Experiences Study, will discuss the results of that study. Other speakers will focus on the incidence of childhood trauma in Montana, trauma prevention in schools and communities, promising practices in the field, and recommendations from practitioners.

The committee will meet March 19-20 in Room 137 of the state Capitol in Helena. The meeting time, agenda, and materials will be posted on the committee's website, <http://leg.mt.gov/cfhhs>, as they become available.

## Districting and Apportionment Commission Reviews Initial Plans

The five-member Districting and Apportionment Commission met Feb. 17 to review proposed plans for new House legislative districts in the state. Four plans were drawn by legislative staff at the request of the commission. A fifth plan was offered by Commissioners Joe Lamson and Pat Smith. The commissioners agreed to take all five plans to the public for comment before adopting a plan later this year. The plans are available on the commission's website at <http://leg.mt.gov/districting>.

The commissioners also adopted a schedule of public hearings this spring in municipalities around the state. The hearings will allow the public to comment on the proposed maps, including what maps or aspects of maps the public likes or dislikes.

The first hearing is in Missoula on March 13 at 7 p.m. in Room 101 of the University of Montana School of Law. The commission will hold a hearing March 14 at 1 p.m. in Pablo at the Tribal Council Chambers in the Tribal Complex. A second hearing will take place that evening in Kalispell at 7 p.m. in Ballroom B of the Red Lion Hotel.

Other March hearings include Butte on March 27 and Helena on March 28.

More information about the hearings, including a document suggesting ways to provide comment to the commission, is on the commission's website.

The commission also encourages comments by mail, email, or fax. All comments become part of the commission's permanent public record and are sent to each commissioner. Send written comments to Districting and Apportionment Commission, Legislative Services Division, PO Box 201706, Helena, MT 59620-1706; by email to [districting@mt.gov](mailto:districting@mt.gov); or by fax to 406-444-3036.

For more information on the Districting and Apportionment Commission visit <http://leg.mt.gov/districting> or contact Rachel Weiss, commission staff, at 406-444-5367 or [rweiss@mt.gov](mailto:rweiss@mt.gov).

## Economic Affairs Committee Looks at Workplace Safety

Unsafe travel conditions and winter storm warnings didn't stop the Economic Affairs Interim Committee from meeting Jan. 19-20, although a few speakers opted for telephonic presentations, including the first use of Skype in any interim committee.

State and federal inspectors, including representatives from the federal Mine Safety and Health Administration and the Occupational Safety and Health Administration, said that Montana's ranking among the worst states for workplace injury and illness has eased slightly, although in 2010, the state had the third worst workplace safety record. (In 2009 Montana had the worst state fatality record.)

Ross Yeager, from the Denver OSHA office, said his office, which is responsible for overseeing private-sector employers and responding to complaints, is focusing on grain elevators and construction sites. OSHA typically inspects companies on a high-hazard list that have not been inspected since 2000.

Curt Petty, from MSHA's Helena office, said that injuries and deaths in state mines has fallen in the last 3 years, except at the Stillwater mines where MSHA focuses much of its attention. He said that his office cooperates with the Safety and Health Bureau in the Department of Labor and Industry, which works with many of the 300 mining properties in Montana.

Bryan Page, of the Safety and Health Bureau, said that an OSHA grant helps with training requested by state employers. Thom Danenhower, with WorkSafeMT, a nonprofit organization for public- and private-sector efforts to improve workplace safety, said the group's emphasis on good policies, training, and in-house communication are aimed at reducing as much as \$400 million in Montana's workers' compensation costs.

The committee also heard from:

- Harold Blattie, of the Montana Association of Counties, and firefighter and insurance representatives on funding needs for rural volunteer firefighters' workers' compensation insurance. Sen. Tom Facey asked for a subcommittee to discuss funding options. The subcommittee will meet March 23 at 1 p.m. in Room 137 of the state Capitol.
- Representatives of employers who self-insure for workers' compensation and the private workers' compensation insurers regarding implementation of major workers' compensation reforms in House Bill 334. They noted that not enough time had passed to assess impacts since most of the bill went into effect last July. Lance Zanto, Department of Administration, commented on the impacts of the legislation on state agencies insured through Montana State Fund. Materials that he provided, plus a response from Montana State Fund and an analysis by the Legislative Fiscal Division, are on the committee website (see below).
- Representatives of four licensing boards before the committee for a HB 525 sunset review. The committee endorsed retention of the four boards: the Board of

Public Accountants, the Board of Outfitters, the Board of Nursing, and the Board of Optometry. The committee voted to retain the Board of Dentistry after hearing that dentists, dental hygienists, and denturists had not resolved their disputes with how the Board of Dentistry is organized and representation for each profession on the board.

- Two panelists and a Department of Labor and Industry attorney regarding unlicensed practice and restraint of trade. They discussed concerns with how boards operate and the concerns of people who work in fields somewhat similar to a licensed profession.
- Michelle Barstad, executive director of the Montana Facility Finance Authority. She provided information on loans made to medical facilities and other eligible entities through MFFA.

The committee will meet April 20 in Helena, starting at 9 a.m. in Room 137 of the Capitol. The draft agenda is available at <http://leg.mt.gov/eaic>. For more information, contact Pat Murdo, committee staff, at 406-444-3594 or [pmurdo@mt.gov](mailto:pmurdo@mt.gov).

## Education & Local Government Committee Considers Education Topics in March

The Education and Local Government Interim Committee plans to meet in Helena March 22-23, beginning at 9 a.m. in Room 102 of the Capitol. Items on the agenda include:

- a discussion of educational opportunities for military children and an interstate compact intended to enhance those opportunities;
- updates from the working group reviewing the exemption for subdivisions for rent or lease;
- a presentation from the Montana Library Association on the role of libraries in educating Montana's students;
- a discussion with representatives of the Montana School Boards Association's Indian School Boards caucus;
- continuation of K-12 finance training;
- review of the Legislature's and education community's Shared Policy Goals and Accountability Measures developed for K-20;
- an update on the condition of the Teachers' Retirement System; and
- additional topics included on the committee's work plan.

For more information, visit the committee's website at <http://leg.mt.gov/elgic> or contact Leanne Kurtz, ELG staff, at 406 444-3593 or [lekurtz@mt.gov](mailto:lekurtz@mt.gov).

## State Parks, Eminent Domain on EQC March Agenda

In March, the Environmental Quality Council will explore options for managing Montana's state parks as well as the historic sites of Virginia and Nevada cities. The EQC is meeting in Helena, March 7-8 in Room 172 of the Capitol.

This interim, under the direction of House Joint Resolution 32, the EQC has been studying ways to improve the management, recognition, and coordination of state parks, outdoor recreation, and heritage resource programs.

The conversation has included looking at alternatives for administering the programs. Potential options range from moving state parks out of the Department of Fish, Wildlife, and Parks to another agency or leaving the state parks program where it is, but giving it a governing body that's separate from the current Fish, Wildlife, and Parks Commission.

As for Virginia and Nevada cities, administrative alternatives could include redefining the statutory mission of the state-owned historical sites and the Montana Heritage Preservation and Development Commission that oversees them or converting the state-owned portions of Virginia and Nevada cities into a state park.

In January, the EQC asked state agencies to weigh in on the pros and cons of the various scenarios. Rather than make any particular recommendation at that time, the EQC asked staff to estimate the cost of moving state parks to another agency, including the Department of Natural Resources and Conservation, the Department of Commerce, or the Montana Historical Society, as well as the cost of creating a separate state parks commission. The EQC also asked to review the current sources of revenue available to state parks and other possible funding options.

Council members also wanted more information on the contracts and revenue for Virginia and Nevada cities.

On March 7, the EQC will review this information and decide whether to proceed with any proposal. All of the administrative alternatives discussed thus far would require legislation.

The EQC will also continue the discussion of eminent domain by reviewing information about "public uses" in Montana and the entities granted the authority to condemn private property in Montana for a public use. The information focuses on specific public uses and Montana court cases that deal with the power of condemnation. EQC staff will be seeking direction from EQC members on the underlying policy issue of "public use" and who can exercise eminent domain for a public use.

Staff will provide any updates on the status of legal challenges to House Bill 198, which the Legislature passed to clarify that regulated utilities have the power of eminent domain for public uses to provide service to the customers of its regulated service. In May 2011, several landowners in Pondera and Teton counties filed a lawsuit contending that HB 198 is unconstitutional. In January 2012, District Judge Nels Swandal ruled that HB 198 is constitutional.

On March 8, the EQC continues its HB 142 activities by reviewing four statutorily-established advisory councils that are attached to the Department of Environmental Quality, including the Water and Wastewater Operators' Advisory Council, the Air Pollution Control Advisory Council, the Water Pollution Control Advisory Council, and the Small Business Compliance Assistance Advisory Council. HB 142 requires interim committees to review advisory councils and all statutorily-required agency reports and make recommendations to the next Legislature as to whether the councils and reports should be continued.

Background papers on each of the above advisory councils, as well as the HJR 32 administrative cost estimates, the March agenda, and all other meeting materials can be found on the council's website at <http://leg.mt.gov/eqc>.

Questions can be directed to staffers Joe Kolman (406-444-3747, [jkolman@mt.gov](mailto:jkolman@mt.gov)) or Hope Stockwell (406-444-9280, [hstockwell@mt.gov](mailto:hstockwell@mt.gov)).

## Legislative Audit Committee Reviews 17 Audits

The Legislative Audit Committee met Feb. 8 in Helena to review 17 recent audits of state agencies and programs. Audit findings are described below.

A performance audit of the Montana Mine Inspection Program found that the state duplicates federal regulation of mines, and is not effective. The audit also found that changes in mine safety training programs should be considered to improve financial sustainability and cost-effectiveness. (*Mine Safety Inspections and Training Programs* 11P-10)

An information systems audit on the security of laptop data found that laptops now comprise almost 25 percent of all computers used in state government, and current controls do not ensure an adequate level of security for all data within four state departments reviewed. (*Improving Controls over Security of Laptop Data* 11DP-12)

Financial audits determined the following retirement systems are not actuarial sound:

- Public Employees' Retirement System-Defined Benefit Retirement Plan (*Public Employees' Retirement Board* 10-08B)

- Sheriffs' Retirement System (*Public Employees' Retirement Board 10-08B*)
- Game Wardens' and Peace Officers' Retirement System (*Public Employees' Retirement Board 10-08B*)
- Highway Patrol Officers' Retirement System (*Public Employees' Retirement Board 10-08B*)
- Teachers' Retirement System (*Teachers' Retirement System 10-09B*).

A financial-compliance audit found that the Montana Department of Commerce delayed charging disbursements of approximately \$2 million without an immediate corresponding charge to an appropriation, which is contrary to requirements of the Montana Constitution and state law. Auditors made five recommendations to the department related to the controls over grants, payment and contract approvals, and subrecipient monitoring. (*Department of Commerce 11-16*)

A financial-compliance audit of the Montana Arts Council found an error in accounting, resulting in the 2010-2011 grant expenditures being inaccurate on the council's financial schedules. Two recommendations were made regarding internal controls over financial reporting and noncompliance with state laws. (*Montana Arts Council 11-24*)

Auditors issued an unqualified opinion on the financial statements of the Montana Guaranteed Student Loan program, but did make three recommendations regarding noncompliance with the Montana Constitution and state law, an accounting error, and financial statement preparation controls. (*Montana Guaranteed Student Loan Program 11-06A*)

An unqualified opinion was issued on the financial statements of Montana University System Workers' Compensation Program, but the audit contained recommendations for strengthening internal controls regarding premium revenue. (*Montana University System Workers' Compensation Program 11C-04*)—Audit performed by Junkermier, Clark, Campanella, Stevens, PC

The financial audit of the Board of Investments contains no recommendations and one disclosure issue related to the board's investment of endowment funds on behalf of the Montana University System. (*Board of Investments 10-04B*)

Three recommendations were made in the financial-compliance audit of the Montana Department of Livestock. The recommendations included areas where the department can improve accounting controls related to recording brand transactions, coding revenue transactions, and accruing federal moneys; can enhance compliance with state accounting policy related to the Board of Horse Racing simulcast revenue recognition; and can improve the timeliness of deposits to

comply with the state law and state accounting policy. (*Department of Livestock 11-22*)

The financial audits of the following programs produced unqualified opinions with no recommendations, meaning users can rely on the information presented in the financial statements for the time period audited.

- *Montana Water Pollution Control and Drinking Water State Revolving Fund Programs (11-25A)*
- *Montana State Fund (10-05B)*
- *Montana State University (11-11A)*
- *University of Montana (11-10A)*

The financial-compliance audits of the following entities contain no recommendations, meaning that for the time period audited, the agency's financial operations have been conducted properly, the financial reports are presented fairly, and no instances of noncompliance were identified.

- *Montana Board of Housing (11-07)*
- *Legislative Branch (11C-09)*—Audit performed by Junkermier, Clark, Campanella, Stevens, PC
- *Consumer Counsel (11C-10)*—Audit performed by Junkermier, Clark, Campanella, Stevens, PC

The Legislative Audit Committee is planning to meet next in early June.

The Legislative Audit Division provides independent and objective evaluations of the stewardship, performance and cost of government policies, and programs and operations. The division is responsible for conducting financial, performance, and information system audits of state agencies and programs, including the university system. To search for a specific audit, use the identifier listed above in parentheses. For more information, call the division at 406-444-3122 or visit <http://leg.mt.gov/audit>.

To report improper acts committed by state agencies, departments, or employees, call the division fraud hotline at 800-222-4446 or 444-4446 in Helena.

## Legislative Council to Meet in March

The Legislative Council is meeting in Helena, March 7 at 9 a.m. in Room 102 of the Capitol. The Security Subcommittee will meet at noon on March 7, in Room 102. The Rules Subcommittee will meet on March 8 at 9 a.m. in Room 137.

Security Subcommittee

- Sen. Carol Williams
- Sen. Jim Peterson
- Rep. Chuck Hunter
- Rep. Jesse O'Hara

## Rules Subcommittee

Sen. Jim Peterson  
 Sen. Mitch Tropila  
 Rep. MacDonald  
 Rep. Jesse O'Hara

For more information and to view agendas, minutes, and meeting materials, visit the Legislative Council's website at <http://leg.mt.gov/legcouncil>, or contact Susan Byorth Fox at 406-444-3066 or [sfox@mt.gov](mailto:sfox@mt.gov).

## Finance Committee to Review Public Pension Finances, Performance Measures

The Legislative Finance Committee is scheduled to meet in Helena, March 8-9 in Room 102 of the Capitol. The agenda includes updates on year-to-date revenues and expenditures, continuing education on school funding, the statutory appropriations report, and an overview of the statewide information technology strategic plan. There will also be an update on the recent pay plan adjustments, including potential budget implications for the 2015 biennium.

As part of its work plan, the committee will discuss financial issues related to pensions, including:

- return on investment analysis and discussion;
- Teachers Retirement System update from David Senn;
- Public Employees Retirement System update from Roxanne Minnehan;
- follow up on the "Green Sheets" from Megan Moore, Legislative Services Division
- legal analysis of contract rights from David Niss, LSD.

The committee will also review performance measurements, including updates on:

- Medicaid trends;
- Medicaid caseload growth, including Healthy Montana Kids;
- death penalty costs;
- motor vehicles insurance verification system; and
- Montana Digital Academy.

The agenda and meeting material are available at <http://leg.mt.gov/lfc>.

## SCEG Subcommittees Make Recommendations

The Select Committee on Efficiency in Government met Feb. 6 and 7 on the Montana State University campus in Bozeman. The committee discussed ways to implement or enhance government efficiency and effectiveness in three public policy areas: health care, including Medicaid; technology; and natural resources.

At the Subcommittee on Natural Resources meeting, Richard Opper, director, Department of Environmental Quality, discussed DEQ's online services and IT plans for the future, and Jack Schunke, of Morrison-Maierle, described how DEQ's online resources intersect with Morrison-Maierle. Legislative staff reported on file transfer services and moving large amounts of information and on a "natural resource stakeholder" outreach proposal. The subcommittee developed recommendations for the full committee for focusing the natural resources portion of the larger study.

Blake Bjornson, MSU student body president, welcomed the full committee to MSU. A panel of Gallatin-area officials discussed efficiencies at state-local government intersections. The panel included Sean Becker, Bozeman city commissioner and mayor; Earl Mathers, county administrator, Gallatin County; Kirk Miller, superintendent, Bozeman School District; and Jeff Rupp, Gallatin County Human Resource Development Council.

A second panel discussed "State Government Efficiency: What's Working, What Needs Improvement", from the business perspective. This panel included Chris Naumann, executive director, Downtown Business Partnership; Stuart Leidner, executive director, Prospera Business Network; Jan Brown, executive director, Yellowstone Business Partnership; and Daryl Schleim, executive director, Bozeman Chamber of Commerce.

On Feb. 7, the Technology Subcommittee met to continue its discussion of possibly gaining efficiencies through technology. Dick Clark, chief information officer, Department of Administration, gave an update on the partnership between the state ITSD and the university system. Tammy LaVigne, deputy CIO, Al Parisian, CIO at the Montana State Fund, and Barbara Smith, Legislative Fiscal Division, briefed members on the status of the State Data Center. Smith also reported on technology matters involving boards/commissions, the Montana State Fund, private business, and a follow-up on electronic storage return on investment and on statutory changes.

The subcommittee also discussed the Montana Information Technology Act (MITA) audit and the Statewide Strategic Plan for Information Technology.

Waded Cruzado, president of MSU, welcomed the committee members and guests. A panel discussed “Innovative Natural Resource Technology”. The panel included Evan Barrett, economic development director, Governor’s Office; Steven Corrick, communications director, Algae Aquaculture Technology; Mark Reinsel, president, Apex Engineering, PLLC; and Becky Mahurin, director of Technology Transfer, MSU.

The Natural Resources Subcommittee, the Technology Subcommittee, and the Health Care/Medicaid Subcommittee each reported to the full committee.

As a result of the Health Care Subcommittee’s report, the committee directed staff to prepare five draft bills to:

- create a four-year tort reform and wellness pilot project for Medicaid enrollees and certain Medicaid providers in selected counties;
- eliminate the requirement for unit billing for certain Medicaid mental health services;
- revise the Medicaid application and eligibility determination process;
- impose a penalty on people who receive assets that were improperly transferred by a person who applies for Medicaid coverage of long-term care costs; and
- revise rules related to the 72-hour presumptive eligibility program for mental health crisis stabilization services.

The committee also directed staff to prepare letters requesting the Department of Public Health and Human Services to create a stakeholder group to start planning for the expansion of the Medicaid program under the federal health care law, and to work with mental health providers toward an outcome-based system of services and develop a method that can measure what will be accomplished in three specific areas.

Finally, the committee adopted a preliminary recommendation to the next Legislature that the 2014-15 biennial appropriation for utilization review of Medicaid services be limited to only those services for which a review is required under federal law.

The Technology Subcommittee’s report resulted in full Committee requests for additional information on:

- the cost-benefit analysis of the Northern Tier Network and the migration of the university system into the state data centers;
- support for continued migration of state agencies to the state data centers, including MPERA, TRS, State Fund, and the Department of Justice;
- the Statewide IT Strategic Plan;

- lists of state statutes and administrative rules that:
  - » require a “wet” signature;
  - » require a piece of paper to be submitted or retained as the official record; and
  - » limit or require on-site storage of records for local governments;
- multi-state purchasing solutions and the state’s experience with the current GIS multi-state procurement; and
- the state’s IT plan to provide adequate bandwidth for a stable, predictable, and affordable statewide network, including middle-mile connectivity.

The Natural Resources Subcommittee’s report resulted in several recommendations that mirrored recommendations from the Technology Subcommittee and in requests from the full committee for additional information on the funding mechanism for “file transfer services” through ITSD’s proprietary rates; and on natural resources and “cloud” computing, electronic signatures, and submission of information through electronic means.

The Subcommittee on Natural Resources is scheduled to meet March 1, at 8 a.m. in Room 102 of the state Capitol in Helena. The full committee will meet at 9:45 a.m., also in Room 102. Details about the subcommittee’s and committee’s meetings are available at <http://leg.mt.gov/sceg>.

For more information, contact Dave Bohyer, lead staff, at [dbohyer@mt.gov](mailto:dbohyer@mt.gov) or 406-444-3592.

## State Admin Committee to Study Office of Commissioner of Political Practices

The State Administration and Veterans’ Affairs Interim Committee met Jan. 27 in Helena. Following the resignation of the commissioner of political practices, the committee discussed the vacancy. David Niss, staff attorney, described the statutory weaknesses of the laws governing the commissioner’s office. The committee decided to study how ethics offices are structured in other states and will hear a preliminary report at the April meeting.

The Department of Administration reported on agency accomplishments, including the completion of emergency planning, a web-based leasing database to track all state building leases, and efforts to increase e-government services. Paula Stoll, administrator, State Human Resources Division, discussed the state broadband pay plan.

Representatives the Legislative Audit Division summarized three recent audits: *Improving Montana’s Office Supply Acquisition Process* and Department of Military Affairs financial and performance audits.

The committee continued work on two studies adopted at the beginning of the interim. The first study deals with anonymous election material and the authority of the commissioner of political practices. The committee received a briefing on relevant state laws and recent attempts to amend these laws.

The second study is looking at combining school board, municipal, and primary elections. Committee staff described Montana's election laws and dates and summarized recent legislation enacted in other states to consolidate elections. The committee discussed whether to discontinue this study and focus on the study of ethics offices in other states. The committee did not make a decision on the matter.

The committee adopted the 2010 Principles and Guidelines for Public Employee Retirement Systems with two changes. It added a guideline to require an independent review of the Board of Investments' rate of return on investment every five years. Language was added to Guideline T regarding local government enrollment of firefighters in the Firefighters' Unified Retirement System to reflect that the guideline is current practice and that the Legislature should "continue to authorize" the practice.

Other retirement system items included an update on the Teachers' Retirement System's outreach efforts and the TRS year-end report. David Niss discussed a memorandum on the constitutionality of changing current retirement benefits. Amy Carlson, legislative fiscal analyst, briefed the committee on Legislative Finance Committee work related to pensions. The two committees will meet jointly in June.

As part of the House Bill 142 review of advisory councils and required reports, the committee heard from representatives of the Department of Administration on the Capitol Complex Advisory Council and the 9-1-1 Advisory Council and on the required report on business and industrial development corporations.

The committee will meet April 19 in Helena. For more information, contact Megan Moore, committee staff, at 406-444-4496 or [memoore@mt.gov](mailto:memoore@mt.gov). The committee website is found at <http://leg.mt.gov/sava>.

## Water Panel to Evaluate Bill Drafts on Water Supplies

The Water Policy Interim Committee takes its first crack in March at evaluating five proposals that mainly deal with water supplies in subdivisions.

The committee is meeting in Helena, March 6, starting at 9 a.m. in Room 172 of the Capitol.

As it has the last two interims, the committee this interim is studying wells that pump less than 35 gallons per minute and

yield less than 10 acre-feet of water a year. Thousands of these wells exist around the state for various uses including domestic, stock, and irrigation. Some argue that the cumulative effect of exempt withdrawals may be impairing senior water rights.

Several interested parties floated ideas earlier this year that the committee wanted to see in bill draft form.

The discussion drafts include:

- Establishing by law that the water used by exempt wells in certain counties must be offset with mitigation water. (LC8000)
- Requiring that larger, denser subdivisions install public water systems, which would most likely also require a water use permit. (LC8001)
- Reducing the volume allowed under the exemption. (LC8002)
- Lowering the exemption limit on volume for wells drilled in unconfined aquifers, which are more likely to be connected to surface water used by senior water right holders. (LC8003)
- Limiting new subdivisions to an exemption of 35 gallons a minute and 10 acre-feet a year using one or more wells. Appropriations of more water would be subject to permitting. (LC8004)

Also at the meeting will be updates on the state water plan, the Ground Water Investigation Program, and the Renewable Resource Grant and Loan Program.

For more information visit <http://leg.mt.gov/water> or contact Joe Kolman, committee staff, at 406-444-3747 or [jkolman@mt.gov](mailto:jkolman@mt.gov).

## Back Page

### To Buy or Not to Buy: Examining the Food Choices of SNAP Recipients

**By Sue O'Connell**  
**Legislative Research Analyst**

For every eight Montanans who go into a grocery store, seven buy whatever they want and can afford. The eighth shopper can do the same — but his or her purchases are getting more scrutiny these days.

The eighth shopper is using Supplemental Nutrition Assistance Program (SNAP) benefits. That's the federal program formerly known as Food Stamps. It provides monthly benefits to low-income people to help them buy food.

In January 2012, the number of SNAP recipients in Montana totaled 127,111 people, or nearly one in eight of the state's residents.

The question being raised in Montana and elsewhere in the country is whether the program should limit the types of foods recipients may buy with their federal benefits.

Right now, they can buy any food item that's not a hot food prepared to be eaten on the premises, such as a cooked hot dog eaten at one of the tables in a supermarket deli. Alcohol and tobacco are not considered foods for SNAP purposes.

Almost all other items in a grocery or convenience store meet the definition of food under the federal SNAP law. The fact that SNAP recipients can buy soda pop, candy bars, chips, and other less-than-nutritious foods has some people shaking their heads.

They contend it doesn't make much sense for a government program to pay for foods that might be contributing to the nation's obesity problem and the chronic diseases — such as diabetes, heart disease, and high blood pressure — that often go hand in hand with weight problems.

On the other side of the coin, many people say that the food choices made by SNAP recipients shouldn't be singled out for criticism. They note that the recipients may be paying for some of these foods with their own dollars, because the monthly SNAP benefits rarely cover a household's full food budget. They also say that SNAP recipients should have the same rights as other shoppers to make decisions about what they eat.

The debate appears to have gained momentum in the past couple of years, as more Americans have turned to the SNAP program during tough economic times. Preliminary data for

November 2011 show that nearly 46.3 million Americans were receiving SNAP benefits. The program provided \$6.2 billion in assistance that month alone.<sup>1</sup>

The Children, Families, Health, and Human Services Interim Committee has found itself in the middle of what has become a national discussion over the use of SNAP benefits. As the committee worked on a study of childhood hunger over the summer and fall, some committee members raised the question of whether the state should take steps to restrict SNAP purchases. Members of the public and the Legislature also weighed in on the topic.

Rep. Tom Burnett specifically asked the committee to take action in January this year. Thirty-six legislators signed on to his letter suggesting that the committee direct the Montana Department of Public Health and Human Services to ask the federal government for permission to prohibit the use of SNAP benefits for food items that are high in high-fructose corn syrup, cholesterol, sodium, and fat. As an alternative, Rep. Burnett suggested that the state could prepare a list of allowable foods, similar to the list used by the Special Supplemental Nutrition Program for Women, Infants, and Children.

The committee did not forward the request to DPHHS, in part because past federal action indicated the idea wasn't likely to win federal approval.

Other states have made similar requests to the U.S. Department of Agriculture, which runs SNAP and other food-assistance programs. So far, the USDA's answer has been "no." And that answer has come from both Republican and Democratic administrations.

However, a growing number of states are voicing the idea that it's time to change SNAP guidelines to promote better health.

#### Tipping the Scales in the Debate

Supporters of limiting SNAP purchases say the program may be playing a role in the increasing number of Americans who are considered obese. They also stress that the chronic diseases associated with being overweight or obese are running up the country's health care bill.

People are considered to be underweight, overweight, obese, or at a healthy weight based on their body mass index, or BMI. This number is determined by using a person's height

<sup>1</sup> "Supplemental Nutrition Assistance Program: Data as of February 1, 2012," U.S. Department of Agriculture Food and Nutrition Service [online], available at <http://www.fns.usda.gov/pd/34SNAPmonthly.htm>, accessed Feb. 14, 2012.

and weight. The table below shows the various weight categories, based on BMI, for an adult who is 5 feet, 9 inches tall.

Height	Weight Range	BMI	BMI
5'9"	124 lbs. or less	Below 18.5	Underweight
	125 lbs.-168 lbs.	18.5-24.9	Healthy Weight
	169 lbs.-202 lbs.	25-29.9	Overweight
	203 lbs. or more	30 or Higher	Obese

About one-third of U.S. adults are obese, while about 17% of children meet that definition.<sup>2</sup>

It wasn't always that way. In a survey conducted between 1976 and 1980, 15% of adults were obese. By 2007-2008, that number had risen to 34.3%.<sup>3</sup>

However, the number of Americans who are overweight has remained fairly steady over the decades, at about 33%.

People who are above a healthy weight are at higher risk for a number of health problems, many of which are ongoing and require continued medical care. These chronic diseases may lead to acute health problems that require even higher levels of care. Heart disease, for example, may lead to a heart attack. A person with high blood pressure is at higher risk of suffering a stroke. And diabetes may eventually result in blindness, nerve damage, kidney damage, or foot sores and infections leading to amputation.

The CDC says that chronic diseases cause seven out of 10 deaths in the United States and account for about 75% of health care costs each year.<sup>4</sup>

Pointing to those and similar statistics, proponents of limiting SNAP purchases say a tax-funded program that helps so

many Americans buy food should have guidelines in place that make it harder for participants to buy unhealthy foods.

### States Try, Try Again But Don't Succeed

The idea of limiting SNAP purchases has surfaced in at least 11 state legislatures in the past year, in the form of at least 16 pieces of legislation. Four involved resolutions asking Congress or the USDA to give states more flexibility in determining the parameters of their SNAP programs, including food purchases. Seven bills directed the state human services agency to seek a waiver of the federal requirements. Most of the bills died — bearing out the prediction of a 2011 Arizona State University study that said proposals to limit SNAP purchases had a “weak” chance of political success.<sup>5</sup>

That study rated the political feasibility of each of its recommendations based on “state and federal administrative support, as well as potential acceptability to advocates and stakeholders.”<sup>6</sup>

The ASU report noted that the idea of limiting food purchases has received a lot of attention. However, it said the idea has also drawn fire from food and beverage industry groups, organizations that work to end hunger, and the USDA itself.

A coalition opposing legislative efforts to restrict SNAP purchases says such restrictions could increase the stigma associated with being a SNAP recipient and keep people from signing up for assistance. “This business of being treated differently is a big piece for us,” said Ellen Vollinger, legal director for the Food Research and Action Center in Washington. “It’s a big step backward, to the age of paper coupons.”<sup>7</sup>

The USDA has turned down two states that have sought exceptions to the SNAP law.

In 2004, under President George W. Bush, the USDA turned down a proposal by the state of Minnesota to prohibit SNAP purchases of candy and soft drinks that are taxed under state law. The USDA said the waiver would change the definition of “food” contained in the federal law. Thus the state’s pro-

<sup>2</sup> “U.S. Obesity Trends,” *Centers for Disease Control and Prevention* [on-line], available at [www.cdc.gov/obesity/data/trends.HTML](http://www.cdc.gov/obesity/data/trends.HTML), accessed Feb. 14, 2012.

<sup>3</sup> Cynthia L. Ogden and Margaret D. Carroll, “Prevalence of Overweight, Obesity, and Extreme Obesity Among Adults: United States, Trends 1960-62 Through 2007-08,” *National Center for Health Statistics*, June 2010, p. 5.

<sup>4</sup> “Rising Health Care Costs are Unsustainable,” *Centers for Disease Control and Prevention* [on-line], available at [www.cdc.gov/workplacehealth-promotion/businesscase/reasons/rising.html](http://www.cdc.gov/workplacehealth-promotion/businesscase/reasons/rising.html), accessed Feb. 14, 2012.

<sup>5</sup> Punam Ohri-Vachaspati, et al., “Policy Considerations for Improving the Supplemental Nutrition Assistance Program Program: Making a Case for Decreasing the Burden of Obesity,” *Arizona State University School of Nutrition & Health Promotion*, Dec. 14, 2011, p. 21.

<sup>6</sup> *Ibid.*, p. 8.

<sup>7</sup> Richard Fausset, “Food stamp bills seek to restrict junk food,” *Los Angeles Times*, Jan. 29, 2012.

posal could not be approved because it was in direct conflict with the law.<sup>8</sup>

And just last August, under President Barack Obama, the USDA rejected New York City’s request to prohibit SNAP recipients from using their benefits to buy soda and other drinks with a high sugar content. Mayor Michael Bloomberg had requested the waiver as a way to reduce obesity and poor nutrition. The USDA denied the waiver because of the difficulty in determining which beverages may or may not be purchased with SNAP benefits and in determining how effective the ban would be on reducing obesity.<sup>9</sup>

The decision was consistent with the position paper the USDA issued in March 2007 that listed the following as the “serious problems” facing proposals to limit food purchases based on nutritional value:

- No clear standards exist for defining foods as healthy or unhealthy.
- Placing restrictions on food would increase the complexity and costs of the SNAP program because the government would have to identify which food products don’t meet nutritional standards, grocery stores with computerized scanning systems would have to change the systems, and employees at the checkout counter may have to enforce the requirements.
- Restrictions may not change the purchases made by SNAP recipients, because they can use their own money to buy foods and beverages.
- No evidence exists that SNAP participation contributes to poor diet quality or obesity.<sup>10</sup>

The USDA paper also took issue with claims that SNAP beneficiaries buy unhealthy foods more frequently than do other shoppers. It included a USDA analysis of national data showing that SNAP recipients are no more likely to consume soft drinks than are higher-income individuals. Recipients also were less likely to eat sweets and salty snacks. The table below is reprinted from the position paper.

Food Category	SNAP Participants Consuming at Least Once a Day	Persons Above 130% of Poverty Consuming at Least Once a Day
Soft Drinks	61%	59.2%
Salty Snacks	61.6%	72.1%
Salty Snacks	29.6%	36.5%

**Food Fight Likely Not Finished**

The current USDA position gives states little room to make changes to their SNAP program. But the pressure remains to review and possibly revamp the kinds of foods that SNAP will pay for. The pressure is coming not just from legislators, but from other state officials, from academic researchers, and from public interest groups.

- In February 2011, Texas Comptroller of Public Accounts Susan Combs, a Republican, issued a report on the costs of obesity and strategies to curb the problem in Texas. The report included 15 recommendations that ranged from increased physical education classes in schools to local government policies promoting walking and bicycling — and asking the Texas congressional delegation to change SNAP to limit unhealthy food choices.<sup>11</sup>
- The Physicians Committee for Responsible Medicine, which advocates for preventive medicine and clinical research, has suggested that the federal government should limit SNAP purchases to a simple set of healthful foods that fit within the categories of whole grains, legumes, vegetables, and fruits.<sup>12</sup>
- In September 2010, the executive director of the Center for Science in the Public Interest co-authored an editorial in the *American Journal of Public Health* that questioned the value of using tax dollars to pay for soft drinks. While noting that other public food programs have nutritional guidelines for purchases, the editorial acknowledged that limiting SNAP purchases was likely to “draw intense opposition.”<sup>13</sup>

<sup>8</sup> “Waiver Response Outline,” *U.S. Department of Agriculture*, May 2004.

<sup>9</sup> Patrick McGeehan, “U.S. Rejects Mayor’s Plan to Ban Use of Food Stamps to Buy Soda,” *New York Times*, Aug. 19, 2011.

<sup>10</sup> “Implications of Restricting the Use of Food Stamp Benefits,” *U.S. Department of Agriculture Food and Nutrition Service*, March 1, 2007.

<sup>11</sup> “Gaining Costs, Losing Time: The Obesity Crisis in Texas,” *Texas Comptroller of Public Accounts*, Feb. 4, 2011.

<sup>12</sup> “A Proposal for Improved Healthfulness in the Supplemental Nutrition Assistance Program,” *Physicians Committee for Responsible Medicine* [on-line], available from [www.pcrm.org/health/reports/improve-supplemental-nutrition-assistance-program](http://www.pcrm.org/health/reports/improve-supplemental-nutrition-assistance-program), accessed Feb. 6, 2012.

<sup>13</sup> Jonathan D. Shenkin and Michael F. Jacobson, “Using the Food Stamp Program and Other Methods to Promote Healthy Diets for Low-Income Consumers,” *American Journal of Public Health*, September 2010, Vol. 100, No. 9, pp. 1562-1564.

The Capitol Area Food Bank of Texas was one advocacy group that disputed part of the Texas Comptroller's report and recommendations. It said independent data hasn't yet confirmed that SNAP recipients are more likely to make worse food choices than other grocery shoppers. The food bank supported, instead, the idea of giving SNAP benefits greater purchasing power if they are spent on fresh healthy food, noting: "Often it is access to affordable healthy food in low-income neighborhoods and/or the cost of healthier foods relative to other foods such as fast food, that dictates what can be purchased."<sup>14</sup>

Most reports and studies of SNAP include restrictions on food purchases as just one recommendation among many for making changes to the program. Suggestions also include providing incentives for healthy purchases — an idea favored by the USDA.

### Supporting the Carrot, Not the Stick

In fact, the USDA recently funded a pilot project to test the idea of providing incentives. Selected SNAP recipients in Hampden County, Massachusetts, are receiving an additional 30 cents in SNAP benefits for every SNAP dollar that they spend on fruits and vegetables. The incentive payments are capped at \$60 per month per household.

The pilot project began in November 2011 and will run through the end of this year. As part of the pilot, the agencies involved must collect and analyze information to:

- determine whether the program increased fruit and vegetable consumption and had other effects on food choices;
- look at the effects the program had on recipients and retailers; and
- determine the costs and benefits of the program.<sup>15</sup>

The idea of offering Montana public assistance recipients an incentive for healthier lifestyles also surfaced during the 2011

Legislature. Rep. Burnett introduced House Bill 605, which would have set up a sweepstakes program for participating adults who received benefits under SNAP, Medicaid, or the Temporary Assistance for Needy Families program. Participants would have been eligible for prizes of \$500 to \$5,000 if they met certain criteria for body mass index, blood pressure, and cholesterol. They also would have had to test negative for alcohol, nicotine, and illegal drugs.

The bill was tabled in the House Appropriations Committee a week after it was heard.

Other ideas for improving access to healthy food for SNAP recipients include increasing the use of SNAP benefits at farmers' markets, matching SNAP benefits spent at a farmer's market with state or local funds, and increasing the ability of grocery stores to offer healthy foods by providing grants or tax incentives for remodeling.

In January, the Children, Families, Health, and Human Services Committee agreed to encourage more Montana farmers' markets to accept SNAP benefits. Projects elsewhere in the country are testing other incentives, in hopes of offering SNAP recipients a wider range of healthy food choices.

### A Continuing Conversation?

SNAP benefits are funded 100% by the federal government, and federal law controls the program. States have virtually no ability to change the scope of SNAP on their own. They can control some of the peripheral issues related to the SNAP program, such as matching SNAP benefits spent at farmers markets. However, substantive changes must come from the federal government. To date, the USDA has shown little interest in allowing states to make those changes individually.

But the pressure from states is clearly on, given the recent wave of state-level legislation. Should that pressure keep up, Congress may begin looking at both the carrot of incentives and the stick of restrictions.

<sup>14</sup> Texas Comptroller Obesity Report recommendation including limiting 'bad' food purchases with SNAP," *Capital Area Food Bank of Texas* [on-line], available from <http://www.hungerisunacceptable.com/blog/2011/02/14/texas-comptroller-obesity-report-recommendation-includes-limiting-0e2%80%9cbad%e2%80%9d-food-purchases-with-snap>, accessed Feb. 6, 2012.

<sup>15</sup> "Healthy Incentives Pilot (HIP) Evaluation," *USDA Food and Nutrition Service* [on-line], available from [www.fns.usda.gov/snap/hip/evaluation.htm](http://www.fns.usda.gov/snap/hip/evaluation.htm), accessed Feb. 15, 2012.

### Calendar of Legislative Events

All interim committee meetings are held in the Capitol in Helena unless otherwise noted.

March						
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
				1 Select Committee on Efficiency in Government - Natural Resources Subcommittee, Rm, 102, 8 a.m.  Select Committee on Efficiency in Government, Rm 102, 9:45 a.m.	2	3
4	5	6 Water Policy Committee, Rm 172, 9 a.m.	7 Environmental Quality Council, Rm 172, 1 p.m.  Legislative Council, Rm 102, 9 a.m.  Legislative Council - Security Subcommittee, Rm 102, 12 p.m.	8 Environmental Quality Council, Rm 172, 9 a.m.  Legislative Council - Rules Subcommittee, Rm 137, 9 a.m.  Legislative Finance Committee, Rm 102, time TBA	9 Legislative Finance Committee, Rm 102, time TBA	10
11	12	13 Districting & Apportionment Commission, University of Montana School of Law, Rm 101, 7 p.m.	14 Districting & Apportionment Commission, Pablo, Tribal Complex, Tribal Council Chambers, 1 p.m.  Districting & Apportionment Commission, Kalispell, Red Lion Hotel, Ballroom B, 7 p.m.	15	16	17
18	19 Children & Families Committee, Rm 137, time TBA	20 Children & Families Committee, Rm 137, time TBA	21	22 Education & Local Government Committee, Rm 102, 9 a.m.	23 Economic Affairs Committee - Subcommittee on Rural Volunteer Firefighter Work Comp, Rm 137, time TBA  Education & Local Government Committee, Rm 102, 9 a.m.	24
25	26	27 Districting & Apportionment Commission, Butte, room & time TBA	28 Districting & Apportionment Commission, Helena, room & time TBA	29	30	31

April						
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
1	2	3 State-Tribal Relations Committee, Crow Agency, room & time TBA	4 State-Tribal Relations Committee, Crow Agency, room & time TBA	5 State-Tribal Relations Committee, Crow Agency, room & time TBA	6 State-Tribal Relations Committee, Crow Agency, room & time TBA	7
8	9	10	11	12 Districting & Ap- portionment Com- mission, Lewistown, room & time TBA	13 Districting & Appor- tionment Commis- sion, Bozeman, room & time TBA	14
15	16	17	18 Districting & Ap- portionment Com- mission, Great Falls, room & time TBA	19 Districting & Appor- tionment Commis- sion, Browning, room & time TBA Law & Justice Com- mittee, room & time TBA State Administration & Veterans' Affairs, room & time TBA	20 Economic Affairs Committee, Rm 137, 9 a.m. Law & Justice Com- mittee, room & time TBA	21
22	23	24	25	26 Revenue & Transpor- tation Committee, Rm 137, time TBA	27 Revenue & Transpor- tation Committee, Rm 137, time TBA	28
29	30					



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