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Education and Local Government Interim Committee

59th Montana Legislature

SENATE MEMBERS

JEFF MANGAN--Chair
JEFF ESSMANN
KIM GILLAN
BOB HAWKS
RICK LAIBLE
ROBERT STORY

HOUSE MEMBERS

MARK NOENNIG--Vice Chair
ELSIE ARNTZEN
KATHLEEN GALVIN-HALCRO
ROBIN HAMILTON
MIKE JOPEK
JON SONJU

COMMITTEE STAFF

LEANNE KURTZ, Lead Staff
EDDYE MCCLURE, Staff Attorney
FONG HOM, Secretary

LOCAL GOVERNMENT SUBCOMMITTEE MINUTES

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed. Committee tapes are on file in the offices of the Legislative Services Division. **Exhibits for this meeting are available upon request. Legislative Council policy requires a charge of 15 cents a page for copies of the document.**

December 1, 2005

Capitol Building, Room 102
Helena, Montana

COMMITTEE MEMBERS PRESENT

SEN. RICK LAIBLE, Chair
SEN. JEFF ESSMANN
SEN. KIM GILLAN
REP. MIKE JOPEK
REP. MARK NOENNIG

COMMITTEE MEMBERS EXCUSED

SEN. JEFF MANGAN
REP. JON SONJU

STAFF PRESENT

LEANNE KURTZ, Research Analyst
EDDYE MCCLURE, Staff Attorney
FONG HOM, Secretary

Visitors

Visitors' list, [Attachment #1](#).

COMMITTEE ACTION

- Adopted the October 6, 2005 meeting minutes as corrected

CALL TO ORDER AND ROLL CALL

SEN. LAIBLE called the meeting to order at 1:00 p.m. Sen. Laible turned the chair over to Sen. Essmann. Committee Secretary noted the roll.

SJR 11 STUDY

TIM DAVIS, Montana Smart Growth Coalition, passed out to the Committee the Land Use Planning and Development Problem and Goal Statements (**EXHIBIT 1**). Mr. Davis said that the working group's last meeting was very productive and they had come up with a consensus on the problems and goals of the working group members. On January 13, the working group will discuss proposals from the Realtors, through Michael Kakuk, from Professor Horwich of the University of Montana Law School's land use clinic, and from the Smart Growth Coalition, on how legislation might address some of those problems and goals.

MYRA SHULTS, Montana Association of Counties, said that she wanted to clarify what might be a misconception. The working group will meet on December 13 not January 13. What was decided was that the working group would serve as a vetting committee for legislative suggestions from the various interested entities. MACo's legislative suggestions will be distributed the next day. Ms. Shults said that Harold Blattie could not make the meeting because of a previous commitment, and she is here on behalf of MACo to let this Committee know that they are interested. She said that Mr. Blattie sent her an article out of the Helena Independent Record headlined, "Growth Strains, Inspectors and Planners." She said Sharon Haugen, planner for City of Helena, was quoted in the article and it is an example of what Montana's planners are going through--that they are pressured by development and that they are panicking about how to come up with subdivision regulations and growth policies. Ms Shults said the working group and this Committee need to keep in mind the effect of last session's legislation around the state, and how far legislation should go in this next session.

SEN. LAIBLE asked the working group to proceed to find consensus and commonality, so that this Committee can come out with a nonpartisan bill that the members can feel comfortable with and that is going in the right direction.

REP. NOENNIG said that the breadth of the problem and goal statements is much wider than they had anticipated based on SJR 11. He asked if it is too broad and if that is why the group is ending up with different legislative ideas. He said he did not think the purpose of this Committee is to be a clearinghouse for everybody to decide what legislation they wanted to propose in the area of local government, but more appropriately, what ideas we can come to as a consensus to solve problems that this Committee can endorse. TIM DAVIS said that members of the group agreed that the working group was going to pursue a consensus bill and work on a consensus solution to the problems and to address the goals. He said that he would like this Committee give clear direction to the working group regarding what the Committee would like to see in a consensus bill that addresses these problems and goals. LEANNE KURTZ said that one of the concerns expressed from people who represent other organizations

was that they did not want their hands tied in bringing forth other legislation as long as it does not conflict with the consensus legislation.

REP. NOENNIG said that he would ask the working group to jettison goals if it is obvious it will not reach consensus. SEN. LAIBLE said that the fact that some groups might bring additional parallel legislation is understandable. He said he would be concerned if they bring legislation that guts what the working group has done.

CORRECTION TO OCTOBER 6, 2005 MINUTES

MS. KURTZ said that there is a correction to the October 6, 2005 minutes. The correction is on page 12, and should read "Ms. Shults noted that Carbon County asked for a copy of the draft Park County regulations, held a public hearing in September and adopted the new regulations on September 29, 2005." **SEN. LAIBLE moved that the October 6, 2005 minutes be approved as corrected.**

LOCAL GOVERNMENT PLANNING, Community Technical Assistance Program History

DAVE COLE, Administrator, Community Development Division, Department of Commerce, gave a presentation on the programs that have been administered by his Division: the federally funded Community Development Block Grant Program, the state funded Treasure State Endowment Program, which funds infrastructure projects for communities, the Montana Coal Board and the Hard Rock Mining Impact Board, and the Community Technical Assistance Program (CTAP). He provided a document to the Committee showing the state's role in supporting local planning (**EXHIBIT 2**). Mr. Cole said that the budget he is proposing is lean in keeping with the Governor's desire to minimize growth in state spending. His proposal will provide for one full time attorney and one full time senior planner.

QUESTIONS FROM THE COMMITTEE

SEN. LAIBLE asked Mr. Cole if he thought about making it an enterprise-type program so that local communities who ask for assistance would pay a fee commensurate with the services that they receive. MR. COLE said that they have not given that idea serious consideration because he is afraid that if it was a paid for service program the calls would not come.

REP. JOPEK asked if the phone calls that Mr. Cole's division receives come from areas that are just starting to experience growth, or are they from areas that are already under way in growth. MR. COLE said that they receive a wide variety of calls, from local governments with large professional planning staffs to small towns that need help, for example, in reviewing a certificate of survey or a subdivision plat. REP. JOPEK asked what Mr. Cole meant when he said he wanted "our support". MR. COLE said that he has heard, and based on information in the committee's work plan, that the Committee is considering different alternatives for providing technical assistance to local governments. He said that even though he has tried to craft a conservative lean budget, he is swimming against the current in terms of the Governor's desires

of no program expansions. Mr. Cole said that he thinks this is something of interest to everyone, both the Executive Branch and the Legislative Branch to make sure that local governments get the assistance they need to implement the complex statutes.

SURVEY OF LOCAL GOVERNMENT PLANNERS

LEANNE KURTZ said that at the last subcommittee meeting, there was discussion of one-time funding to help local planning offices get their growth policies in place, re-instituting a CTAP type program, and technical assistance needs in general. The subcommittee requested information about what kinds of fees are being charged for reviewing subdivision applications and the workload that planning offices are experiencing. Ms. Kurtz passed out and discussed the survey, which was developed by Ms. Kurtz, Linda Stoll, Tammy McGill, and Harold Blattie entitled "Planning and Development Costs and Commitments" (**EXHIBIT 3**). This survey was distributed to members of Montana Association of Planners, Montana Association of Counties, and League of Cities and Towns, and is on the Local Government Subcommittee's website.

QUESTIONS FROM THE COMMITTEE

REP. JOPEK asked Ms. Kurtz if the Committee was going to be able to see whether the fees are paying for 100% of the services, or will some of the services be augmented by property tax levies? MS. KURTZ referred the Committee to question 6 on the second page of the survey, which asks if there are other sources of revenue used other than fees and levies. REP. JOPEK said that when you look at growth areas, there is a tendency to go more from property taxes to fees, something which Flathead County is experiencing as they are trying to go to 100% fee practice where certain counties might not have gone there. When you look at a fee structure from one county to the other, it is almost incomplete data because one county will say they are charging \$100 and another county charges \$200 but you don't know at what level property taxes are subsidizing those fees.

LINDA STOLL, Missoula County, said that was the first question they wanted to focus on. She said that at the last meeting, she talked to the Committee about how difficult it was to try to establish a fee-based system that paid for a percentage, and what is a fair percentage for reviewing subdivisions. The survey asked how much it costs local governments to provide the function and how much they receive by way of fees. We will not get a subdivision by subdivision specific response, but what we will get is a general idea as to the percentage of cost capture that is occurring at the local government level for providing the service, which is subdivision review, versus of what they generate by way of fees.

SEN. LAIBLE asked Ms. Stoll if the survey is a form that is easy for the planning director to fill out. MS. STOLL said that she thinks that it will take more than planners at a local level to answer some of the questions. Input from finance officers, clerk and recorders will also be needed because of the type of information they wish to capture.

REP. NOENNIG asked Ms. Kurtz if she gave a target date that might help them complete the survey. MS. KURTZ said it was suggested that responders provide as much information as possible by the end of November, and then in a reminder that will go out, a definite date will be set.

PUBLIC COMMENT

MYRA SHULTS, Montana Association of Counties (MACo), told the Committee what she does for the MACo and JPIA, the insurance company for MACo. She said that until the end of 2003, she did litigation and defended counties who were insured by JPIA on land use cases, both subdivision and zoning. She said that she was done with litigation and JPIA trained her in land use and hired her as a consultant to fill the gap that the demise of CTAP had created. Ms. Shults discussed the problem she has with surveyors. She supports education and technical support for surveyors.

TAMMY MCGILL, past president of Montana Association of Planners, said that MAP's platform for the next legislative session will be to stop changing regulations and allow planners to catch up. She said that MAP has formed a task force which is looking to neighboring states to see what types of technical assistance programs they are using. She said that when they reach some conclusions, they would like to meet with League of Cities and Towns and MACo or those who are using the technical assistance programs, and figure out what they want and what they need.

MS. KURTZ asked Ms. McGill if she had a timeframe. MS. MCGILL said that the task force has been meeting via email and they have acquired information from other governing bodies in other states on their technical assistance programs. It was MAP's goal to have something done by the end of December.

REP. JOPEK asked Ms. McGill if the Department of Commerce and Dave Cole have been involved in these discussions. MS. MCGILL said that at that time they have not been because MAP wants to figure out what they need before they go outside. She thinks it is futile to start talking about a program until the scope of what they need is decided.

ALEC HANSEN, League of Cities and Towns, said that it is important to be able to talk to people who understand the laws and regulations, how things should be handled before decisions are made. He said that he would like to see a technical assistance program on land use issues redeveloped in the Department of Commerce.

MODEL SUBDIVISION REGULATIONS

PROF. JOHN HORWICH, University of Montana School of Law Land Use Clinic gave a report on model subdivision regulations (**EXHIBIT 4**).

QUESTIONS FROM THE COMMITTEE

SEN. LAIBLE asked Mr. Horwich if there was flexibility in the model subdivision regulations for local governments to tailor regulations to their own particular needs. MR. HORWICH said that flexibility is provided in two ways. One is the model regulations themselves, with the understanding that this is one approach and that no one should adopt the model without careful consideration, customizing it to work for them. Second, there are several places within the model regulations that provide specific alternatives. There are a number of supplements that go with the model regulations that show alternative ways in which communities might approach some of these issues where state law provides flexibility.

SEN. LAIBLE asked what the costs would be to utilize the model regulations or the services of the Land Use Clinic. MR. HORWICH said that there are no costs. He said that when a final is ready, they will provide, at no costs to local communities, a hard copy of the model regulations, a CD of the model regulations, and access to it on their website. SEN. LAIBLE asked if local governments that have their own planners customize the model regulations, would they be able to send them back to the Land Use Clinic for legal review? MR. HORWICH said that is not something they have been asked to do in the past, but they could.

PUBLIC COMMENT

TIM DAVIS, Smart Growth Coalition, said that different groups have helped draft the model subdivision regulations and have been talking about providing some resources to get out hard copies, CDs, and put it on websites. He said that the benefit of the model subdivision regulations is that the different groups who are involved in subdivision regulation lawsuits have come together to help draft the model. He said that he thinks that when the time comes in adopting them, local governments will feel more comfortable adopting them because The Realtors, MAP, and the Smart Growth Coalition were involved in putting together the model.

TAMMY MCGILL, Montana Association of Planners, said that she knows they may take some heat for having the model regulations out later than anticipated, but it was the feeling of the working group and MAP that the regulations be done right. She said that although they are model regulations, communities will adopt them wholesale. She said that she wants the model regulations to be right and have the planners look at them and be able to use them. She also said that MAP has not been included in any kind of discussions about mass producing the model regulations. She said that producing anything in hard copy is wasteful because of the technology of the Internet.

SEN. LAIBLE thanked everyone who put their time and effort in getting this right and he would rather they take time to make it workable.

MYRA SHULTS, JPIA, MACo, said that for years she has trained county officials on land use issues. She said that she would like to have four of her smaller counties in western Montana

use the model regulations and then have a two-day seminar to actually create subdivision regulations for those four counties. She said that in January she will meet with Mr. Davis, Mr. Kakuk and Ms. McGill, include certain attorneys and planners, and discuss what the Land Use Clinic has done so far and work on the document and submit their comments to the students.

QUESTIONS FROM THE COMMITTEE

REP. NOENNIG asked Mr. Horwich if the regulations are crafted in such a way that if there are alternatives and no one makes a choice, that it is known which alternative is used in the regulation. Mr. Horwich said that the model itself could be adopted verbatim with no alternatives, the text itself having one approach to everything.

SEN. ESSMAN thanked Mr. Horwich and his students for their time on the project.

REP. NOENNIG asked Mr. Horwich to give the Committee an overview of the Land Use Clinic. Mr. Horwich said that the Law School is one of eight in the country that requires all graduating students to have clinical experience. The Land Use Clinic is in its sixth year and is an in-house clinic with five to eight students. It is interdisciplinary and does not have any non-law students. Students work with local communities predominantly in the western part of the state. The students draft new ordinances, specific provisions, draft growth policies, zoning ordinances, and do some work preparing legislation.

IMPACT FEES (SB 185)

TIM DAVIS, Smart Growth Coalition, talked about SB 185, the Impact Fee Bill. The Montana Association of Counties and the Smart Growth Coalition conducted a full day forum on the implementation of the law; what it means; what the best practices for impact fees are; how it is available to cities, counties, and interested entities; the differences between impact fees and subdivision exactions; what the prerequisites are to obtaining impact fees; what the bill does and does not allow; and where should counties go in the future. Mr. Davis said that copies of the handouts could be provided if the Committee wanted.

QUESTIONS FROM THE COMMITTEE

SEN. LAIBLE asked Mr. Davis if this is something that could be done on model subdivision regulations or could the Land Use Clinic be used to help local governments understand the system. MR. DAVIS said that it was his understanding that the building industry has begun the process of drafting a guide to impact fees.

SEN. LAIBLE asked if the group that is working on tools to assist local governments with impact fees is built on consensus. MR. DAVIS said that it was.

REP. JOPEK asked if there had been any discussion regarding deferment programs or other programs working with local jurisdictions that have housing authorities. MR. DAVIS said they

did discuss that in the forum and the bill does allow for an offset which will have to be a credit to get a subsidy refund for affordable housing.

HJR 10 STUDY OF FIRE-RELATED STATUTES

LEANNE KURTZ discussed the HJR 10, the study of fire-related statutes resulting from an audit conducted by the Legislative Audit Division on DNRC's fire suppression program. The audit pointed out that many of the statutes that govern fire suppression have not been changed since the 40s, that they were outdated and did not reflect what is going on in the world of fire suppression. The Environmental Quality Council was assigned HJR 10, which assigned it to a subcommittee. The subcommittee directed a working group consisting of fire chiefs, fire wardens, DNRC staff, MACo, Plum Creek, the Wood Product Association, the Governor's Forest Liaison and others to work on the study by focusing on every statute that deals with fire. The group is interested in developing a set of policy statements regarding fire suppression and fire mitigation. Ms. Kurtz told the Committee that if they are interested, she could send a list of policy statements that the group is talking about. She said the reason that the Committee might be interested in this is that the bulk of the fire-related statutes are probably in Title 7, Chapter 33, which governs fire districts and local fire departments. When the group gets into Title 76 governing DNRC's fire suppression responsibilities there might be issues there. She brought up the wildland/urban interface codes, which are building guidelines for building in the wildland/urban interface. There is no statutory definition of wildland/urban interface. There is a set of guidelines which were produced as a result of a legislative resolution in 1993 asking for a group of people to work on a set of interface codes. The HJR10 work group has discussed that the codes should be updated, using the 1993 codes and new national and international wildland/urban interface codes. Ms. Kurtz told the Committee that she will continue to provide updates.

SEN. LAIBLE said that it would be worthwhile for the Committee to see the result since it deals with local governments.

QUESTIONS FROM THE COMMITTEE

SEN. ESSMAN asked if there was any thought given to involving the insurance industry because of how they insure and how they rate which could have an impact on property owner attitudes toward observing the urban interface codes. MS. KURTZ said that there is no representation from the insurance industry on that work group. She said that she would include the insurance industry in the work group's next meeting on January 5.

REP. JOPEK asked if the committee jettisoned the funding formula out of the bill. MS. KURTZ said that Barb Smith, LFD, took the possibility of looking at funding options to the Finance Committee and the Finance Committee did not want to deal with that issue. She said that this group is not focusing on funding fire suppression.

PUBLIC COMMENT

MICHAEL KAKUK, Montana Building Industry Association, said that although he hasn't been following this, in looking at some of the material that's been handed out, some of the guidelines are clearly building codes. If that is the case, the Department of Labor should be involved.

GLENN OPPEL, Montana Association of Realtors, said that he did not make it to the first meeting of the HJ 10 study group and he did not know if it was clear to them what was going to happen with the work group that Ms. Kurtz was referring to. His impression was that they would look at what came out of the 1991 resolution, the fire protection guidelines for development in the wildland residential interface and look at the international wildland urban code and come up with Montana's own guidelines for development. He thought it was something that was going to be offered voluntarily to local governments to adopt into their building codes. Again, they have the same concerns as Mr. Kakuk in how this would be implemented, through subdivision regulations or zoning regulations or building codes. He said that another question came up in their legislative committee, how do you identify the wildland/urban interface? If we are going to create a work group, what will their goal be?

LEANNE KURTZ explained what the group was talking about. She said that the group was talking about a separate process, outside of the legislative process, in which stakeholders would develop a new set of guidelines that could ultimately be adopted by building codes, by DNRC, and by the State Fire Marshall's Office in their administrative rules. It would be a Montana-specific set of guidelines. The HJR 10 group does not have the charge or time to do that, but this would be something that DNRC could take the lead on, with involvement from the Department of Justice and the Building Codes Division of the Department of Labor.

TRANSPORTATION IN CITIES AND TOWNS

ALEC HANSEN, Montana League of Cities and Towns, said that after the legislative session ended, he was asked what issues could be looked at that would provide the most benefit to cities and towns and what issues cities and towns are struggling with. Members of the League and Cities and Towns said that local government transportation funding is an issue and has been a problem in the state. Cities and towns receive about \$11M a year in state gas tax. That is a statutory appropriation found in Title 15, chapter 7, part 101. That amount has not been increased for many years. Now is the time to take a look at the funding for transportation in the state of Montana to find out what is going on and see if there are ways to make improvements and to allocate the money more appropriately. He said that we need to look at what other western states are doing, how are they funding local government transportation, what share of the gas tax goes back to cities and counties, whether there is something that can be learned to help solve some of the problems, how other states are handling their increase in federal transportation funds, and how can we get more federal funding into the streets and roads of cities and counties.

REP. NOENNIG said that when he thinks of funding for streets and repairs, he thinks of public transportation. He asked Mr. Hansen if that was part of what he was considering. MR. HANSEN said that funding for public transportation should be a part of this study because that is the most efficient and effective way of moving people.

PUBLIC COMMENT

TIM DAVIS, Smart Growth Coalition, said that they have spent two years doing a transportation study. They brought in a regional transportation expert from Boulder, Colorado, to do a transportation study, as well as stakeholders, cities, and the Department of Transportation. They addressed multimodal transportation, where the funding comes from, how could it be spent differently. He said that he would provide a copy of the study to Ms. Kurtz and the Committee.

MS. KURTZ said that she will work on the transportation funding issue and include that on the February agenda. She said that at the last meeting, Sen. Essmann had asked about metropolitan planning organizations (MPOs), which is in the context of cities and transportation, how other states are empowered to extend their own federal transportation funds rather than running it through the state highway department. In answer to that, Ms. Kurtz gave a background on MPOs. Federal law requires that any area with a greater than 50,000 population form a metropolitan planning organization to do transportation planning in coordination with cooperative entities, such as state department of transportation, federal highways and local jurisdictions. Montana's MPOs are administered by the Department of Transportation.

SJR 40 STUDY OF COUNTY ATTORNEY SERVICES

SHERI HEFFELFINGER, Staff Research Analyst for the Law and Justice Interim Committee, gave an update on SJR 40 ([EXHIBIT 5](#)).

QUESTIONS

REP. NOENNIG asked if the Supreme Court standardized statistics on collecting and reporting caseloads. MS. HEFFELFINGER said that it was adopted in May, 2005, effective January 1, 2006. It is a uniform filing standard for district courts and primarily relates to paternity cases and civil cases such as abuse and neglect.

SEN. ESSMANN asked if the LJIC will be doing further study of a district attorney system and was there any discussion by her committee about having a long term defender group and less of a long term inexperienced prosecution group. MS. HEFFELFINGER said that it was discussed and it was of the issues that was raised about parity. The points discussed involved whether the county attorneys will be the ones who initiate because they are in more control and they have more discretion about what they take to court and to trial and what they don't. Other issues discussed were professional development for county attorneys, training, qualifications for the job, parity with the public defender. These issues did not get consensus to move forward.

The Montana County Attorneys Association opposed the idea of a district attorney.

NEXT MEETING DATE

MS. KURTZ said that the Subcommittee is scheduled to meet on June 12 and by that time there might be some solid recommendations coming out of the work group to put a panel together of people who are not often heard from and do some video conferencing.

Ms. Kurtz reviewed the work plan for the February meeting. Because the December 2 meeting was cancelled, the subcommittee will meet on February 23 and the full Education Local Government Committee on February 24. The SJR 11 working group will be on the agenda, as well as information on the transportation study, a discussion about SB 48, (Business Equipment Tax), a proposal on technical assistance for planners will be presented by John Horwich. Ms. Kurtz also said that she wanted to bring in someone to talk about the Main Street Program in the Department of Commerce, and updates on the fire study and SJR 40 study.

REP. JOPEK asked if counties or school districts have concerns on the Business Equipment Tax exemption. MS. KURTZ said that it is on MACo's radar, and she will find out if the school districts have concerns on that issue.

ADJOURN

SEN. ESSMANN adjourned the meeting at 3:35 p.m.

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