

**Local Government Subcommittee  
of the  
Education and Local Government Interim Committee**

Work Plan for the 2005-2006 Interim  
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At its July 15, 2005, meeting, the members of the Education and Local Government Interim Committee (ELG) formed two subcommittees: A Postsecondary Education Policy and Budget subcommittee (PEPB) and a Local Government subcommittee. Members determined that the full committee, when it met, would handle K-12 education matters--following, but taking care not to duplicate, the work being done by the Quality Schools Interim Committee.

**Statutory Requirements**

ELG is statutorily required to act as the Legislature's liaison with local governments. In addition, the committee is assigned numerous statutory duties specific to local governments. Following is the portion of 5-5-215, MCA, relevant to the subcommittee's mission.

The committee is required to:

1. promote and strengthen local government through recognition of the principle that strong communities, with effective, democratic governmental institutions, are one of the best assurances of a strong Montana;
2. bring together representatives of state and local government for consideration of common problems;
3. provide a forum for discussing state oversight of local functions, realistic local autonomy, and intergovernmental cooperation;
4. identify and promote the most desirable allocation of state and local government functions, responsibilities, and revenue;
5. promote concise, consistent, and uniform regulation for local government;
6. coordinate and simplify laws, rules, and administrative practices in order to achieve more orderly and less competitive fiscal and administrative relationships between and among state and local governments;

7. review state mandates to local governments that are subject to 1-2-112 and 1-2-114 through 1-2-116;<sup>1</sup>
8. make recommendations to the legislature, executive branch agencies, and local governing bodies concerning:
  - a. changes in statutes, rules, ordinances, and resolutions that will provide concise, consistent, and uniform guidance and regulations for local government;
  - b. changes in tax laws that will achieve more orderly and less competitive fiscal relationships between levels of government;
  - c. methods of coordinating and simplifying competitive practices to achieve more orderly administrative relationships among levels of government; and
  - d. training programs and technical assistance for local government officers and employees that will promote effectiveness and efficiency in local government; and
9. conduct interim studies as assigned.

These requirements can be fulfilled during the interim using this work plan as a guide.

### **Topics for Subcommittee Consideration**

*Additional subjects may be addressed by the subcommittee as they arise and as time allows.*

#### Interim Study - SJR 11

On May 16, 2005, the Legislative Council assigned SJR 11 to ELG; ELG subsequently assigned the study to the Local Government subcommittee

The resolution requests an interim study of the subdivision review process and is intended as a follow-up to the study requested by HJR 37, passed during the 2003 Legislature and conducted by ELG's Local Government subcommittee last interim. At the urging of the subcommittee, a working group formed to develop legislation to address process-oriented problems with local government review of subdivision applications that members of the group had identified. The working group met independently numerous times and reported its progress to the subcommittee. The HJR 37 study resulted in two pieces of legislation, SB 116 (Laible) and SB 290 (Mangan), both of which were enacted by the 2005 Legislature.

As evidenced by the testimony during the hearing for SJR 11, its sponsor and its proponents envision continuing the working group process to address additional substantive problems that remain with the Subdivision and Platting Act.

The working group has met twice to date and is grappling with the relationship between zoning and

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<sup>1</sup> These sections of the MCA govern the legislative imposition of unfunded mandates on local governments.

local subdivision regulations and what the appropriate land use planning vehicles should be. A consistent problem that has been articulated is the lack of centralized technical assistance and funding to help local governments effectively plan and to handle the exploding workload that some jurisdictions are experiencing.

Members of the working group are putting together proposals for funding or technical assistance provided at the state level, possibly through the university system. The subcommittee will discuss these possibilities as the study progresses.

### Cities and Transportation

The Montana League of Cities and Towns has asked the subcommittee to devote time during the interim on specific transportation-related problems its members are encountering.

Areas of interest include:

- ▶ allocation of fuel tax revenue at the local level;
- ▶ management of the right-of-way and what happens when utilities within a right-of-way must be relocated;
- ▶ local control of street design and project management when the street is part of the state highway system;
- ▶ Community Transportation Enhancement Program (CTEP) funds and how they are allocated;
- ▶ traffic patterns in the state and whether allocation of funds reflects those patterns;
- ▶ effects of the 2005 impact fee legislation on local transportation systems;
- ▶ 2005 changes to local option fuel tax laws; and
- ▶ implications of the federal transportation funding bill on local governments.

Staff will meet with representatives of the League to define a reasonable scope for the study.

### Attorney General Opinion: Self-governing Municipalities and Public Power

In 51 Op. Att'y Gen. No. 5 (2005), Attorney General Mike McGrath held:

1. Under the Montana Nonprofit Corporation Act, an authority created pursuant to an interlocal agreement among self-governing municipalities may incorporate a public benefit nonprofit corporation to operate an electric and natural gas utility.
2. An authority created by interlocal agreement between self-governing municipalities may exercise only those powers that any of the municipalities might exercise.
3. Operation of an electric and natural gas utility is a public purpose for which a self-governing municipality may grant funds.
4. Debt incurred through corporate bonds issued by a public benefit nonprofit corporation incorporated by an authority created by interlocal agreement between self-governing municipalities is not subject to laws regulating municipal debts or obligations if the municipalities are not legally obligated to appropriate money to pay the debt and the debt is without recourse to the spending power of the

municipalities.

Greg Petesch, Legislative Services Division Chief Legal Counsel, will discuss this opinion at the subcommittee's October 6 meeting.

Attorney General Opinion: Spending Caps and How Local Governments Might be Affected

In 51 Op. Att'y Gen. No. 4 (2005), Attorney General Mike McGrath held:

The enactment of Mont. Code Ann. § 17-8-106 by the 1981 legislature placed no enforceable limits on the spending power of a subsequent legislature.

At the October 6 meeting, Greg Petesch will discuss any possible impact of this opinion on the reimbursement to local governments of revenue originally collected by local governments and forwarded to the state.

U.S. Supreme Court Decision: Eminent Domain

In *Kelo v. City of New London*, the U.S. Supreme Court ruled that local governments may force property owners to sell their property to make way for private economic development when it is determined that the public would benefit, even if the property is not blighted and the success of the private endeavor is not guaranteed. The Fifth Amendment to the Constitution prohibits the taking of property by the government except for public use. Justice John Paul Stevens, writing for the 5-4 majority, concluded that "public use" can be economic development and creation of jobs in a depressed area. He also wrote that "[p]romoting economic development is a traditional and long accepted function of government", and that the court should not "second-guess" local governments.

At the October 6 meeting, Greg Petesch will discuss the impacts of this decision on local governments in Montana.

Business Equipment Tax

SB 48, enacted during the 2005 Legislature, removed the class eight property tax provision that would have phased out the taxation of class eight property contingent on a certain increase in state wages and salaries and increased the cap on the exempt aggregate market value of class eight property from \$5,000 to \$20,000. The increase of the cap is of concern to local governments because it results in more property being exempt and, consequently, a loss of revenue to local governments. Section 15-10-420, MCA, allows an increase in mills to offset the loss, but representatives of the League of Cities and Towns and the Montana Association of Counties both request another look at that shifting of property tax burden to other taxpayers.

SB 185 (Impact Fees)

The 2005 Legislature enacted SB 185, allowing the imposition of impact fees for development. The measure was a compromise among various interests including the building industry, Realtors, local governments, and environmental and smart growth advocates. The subcommittee will hear from those interests regarding how the new provisions are being implemented, problems they are encountering, and model regulations that are being developed.

### SB 116 and SB 290

SB 116, enacted by the 2005 Legislature, significantly changed the process for local review of subdivision applications. SB 290 changed the state's water and sanitation review of proposed subdivisions. Both bills were the result of the HJR 37 interim study conducted during the 2003-2004 interim. The University of Montana School of Law Land Use Clinic is developing model regulations for SB 116; the Department of Environmental Quality is responsible for implementation of most of SB 290. Both subjects are on the subcommittee's October 6 agenda and the subcommittee may wish to continue following implementation of these laws during the interim.

### Main Street Program

Enactment of HB 481 during the 2005 session created Main Street in Montana. It is based on the National Trust for Historic Preservation's Main Street Program, which is intended to revitalize older, traditional business districts throughout the country--blending local economic development with historic preservation. Main Street in Montana will be administered through the Department of Commerce, using an appropriation of \$250,000 for the biennium to fund it. The subcommittee will learn how the program works and how the appropriation is being used.

### Uniform Penalties for Zoning Violations

Penalties for violating zoning laws are a mixed bag in the Montana Code Annotated. There is interest among counties in standardizing those penalties. The subcommittee will learn what the proposals are and will have the opportunity to weigh in on making those penalties uniform.

### Updates on the Work of Other Committees

The Law and Justice Committee is studying services provided by county attorneys. Staff assigned to that study will update the subcommittee on those activities.

The Environmental Quality Council's Assigned Studies subcommittee is overseeing a study of fire statutes, many of which directly impact county operations. Staff assigned to that study will update the subcommittee on those activities.

### Regular Comments from Local Government Representatives and the Public

Before each subcommittee meeting, spokespersons for the League of Cities and Towns and the Montana Association of Counties will be invited to bring to the subcommittee any items they or their members wish to discuss. During the last subcommittee meeting before the 2007 session, those groups will be invited to present any legislative initiatives they want to share with the subcommittee. General public comment will also appear on each agenda.