MINUTES

MONTANA SENATE
59th LEGISLATURE - REGULAR SESSION

COMMITTEE ON RULES

Call to Order: By **CHAIRMAN JON ELLINGSON,** on December 28, 2004 at 1:00 P.M., in Room 102 Capitol.

ROLL CALL

Members Present:
Sen. Jon Ellingson, Chairman (D)
Sen. Vicki Cocchiarella (D)
Sen. Jim Elliott (D)
Sen. Kelly Gebhardt (R)
Sen. Duane Grimes (R)
Sen. Dan Harrington (D)
Sen. Bob Keenan (R)
Sen. Jesse Laslovich (D)
Sen. Dan McGee (R)
Sen. Corey Stapleton (R)
Sen. Bob Story Jr. (R)
Sen. Jon Tester (D)

Members Excused: Sen. Kim Gillan (D)
Sen. Steven Gallus (D)

Members Absent: None.

Staff Present: Greg Petesch, Legislative Branch
Prudence Gildroy, Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearing & Date Posted:
Executive Action:

CHAIRMAN JON ELLINGSON opened the meeting and advised the purpose of the meeting was to request and approve the adoption of SR 1 containing the Senate Rules for the 2005 Legislative session. There were three proposed amendments.

EXHIBIT(rus00a01)

Motion: SEN. VICKI COCCHIARELLA moved that EXISTING SENATE RULES BE ADOPTED.

CHAIRMAN ELLINGSON asked if there were any amendments. **SEN. DUANE GRIMES** raised a point of order. He questioned whether he was assigned to the committee. **SEN. COCCHIARELLA** read a list of the members.

Motion: SEN. JON TESTER moved TO AMEND S30-10 (Exhibit 1 - Tester amendment).

SEN. TESTER advised that this addressed an omission by the **Committee on Committees.**

Discussion:

SEN. BOB STORY questioned why the change was in 2 and not in 3 where the President's appointments were listed. He didn't know why the **Committee on Committees** would want to give up any of its authority to appoint people. He thought that was something those who serve on that committee should think about. It was his understanding there was a reason for a **Committee on Committees.** It is a carryover from the old constitution when the President of the Senate was the Lieutenant Governor and the Senate didn't particularly care to have a Lieutenant Governor who may have been of the minority party appointing the committees, etc. The second reason was they probably didn't want to consolidate power in a president as the House did in the speaker. He was not in favor of taking power away from the **Committee on Committees** and turning it over to the President no matter what party. He said he spoke to then **SEN. TOM ZOOK** several times last session as bills came across the floor that set up committees and allowed the President to appoint the members of them rather than the **Committee on Committees** and **SEN. ZOOK** never took a lot of interest in trying to amend those bills. **SEN. STORY** thought the **Committee on Committees** was a good process in the Senate and anything done to erode the power of that committee was probably not for the best of the Senate.

SEN. TESTER expressed appreciation for **SEN. STORY'S** perspective. He indicated the amendment was very specific and applied only to the **Rules Committee.**

SEN. DUANE GRIMES advised he spoke to **SEN. MIKE WHEAT** about the **Committee on Committees.** From that conversation **SEN. GRIMES** thought this would change dramatically what the **Committee on Committees** had done historically in the Senate. It was a select and, in some cases, powerful group that could make decisions independent of the Leadership. He agreed with **SEN. STORY** and didn't want to erode the power of the committee. He said it was an historic and significant committee that plays a key role for a number of reasons, including the fact that senior Senators can have a position of influence. He didn't like to see the committee structure, which was significantly different from the House, begin to be eroded.

SEN. DAN MCGEE explained the amendment only dealt with the at large member of the Rules Committee. He asked **SEN. TESTER** to further explain. **SEN. TESTER** advised he thought it was important that the President Pro Tem was on the Rules Committee.

SEN. JIM ELLIOTT advised, speaking to the concerns of **SEN. GRIMES** and **SEN. STORY,** the members of the **Committee on Committees** are selected by the same members of the caucus who select the President of the Senate so that the differences in the political philosophies between the members of the **Committee on Committees** and the President of the Senate are very distinguishable. The amendment was a specific committee, a specific member, and because the **Committee on Committees** would be controlled by the members of the party of the President, the addition of the at large member ought not change the outcome of any vote that committee would make. He thought it was an insignificant change and as a member of the **Committee on Committees** he did not feel it eroded any of his power. He recommended the amendment.

SEN. BOB KEENAN disagreed with the amendment because he takes the rules of the Montana Senate seriously and thought they were important. This amendment would amend the rules to correct an oversight on the part of the Committee on Committees. He didn't see why the **Committee on Committees** could not meet the next week. There was no set number of members for the committee and it could meet and add **SEN. DAN HARRINGTON,** the Pro Tem. He disagreed with changing all the rules, which are going to be in effect through the next session and perhaps into the further sessions, for the reasons that had been expressed. He thought the **Committee on Committees** could meet and add **SEN. HARRINGTON** and it would be taken care of more appropriately than changing the rules of the

Montana State Senate to fix a mistake that was an oversight made by the **Committee on Committees.**

SEN. CORY STAPLETON wondered if there was a ratio that **SEN. TESTER** was trying to maintain. **SEN. TESTER** said it would have been his intent to appoint a Republican to keep the ratio. He said this wasn't that big of a deal and he had heard enough opposition to withdraw his motion.

Motion: SEN. TESTER moved TO AMEND S30-10. (Exhibit 1 - Ellingson amendment)

SEN. TESTER advised this would allow him to appoint select committees. He indicated this revolved around the situation with education. He noted he was already allowed to appoint conference committees and special committees. He talked to **Greg Petesch, Code Commissioner,** about the meaning of special committees and it means select committees. **SEN. TESTER** thought the **Education Committee** could handle the issue in the Senate but this would allow him to appoint a select committee if necessary.

Discussion:

SEN. COCCHIARELLA commented the Senate may change the membership of any committee on one-day's notice. She assumed that language meant the **Senate Committee on Committees** may change the membership. She wondered if the Senate can make a motion on the floor to change a committee. **Mr. Petesch** advised yes. **SEN. COCCHIARELLA** asked **SEN. TESTER** about a scenario where it would be important to have that kind of immediate discretion. **SEN. TESTER** advised that scenario was the education issue and if the **Education Committee** got bogged down, they could move forward with a select committee. He indicated it was a time issue.

SEN. STORY asked about the difference between a "special committee" and a "select committee" and if legislation is needed to do either one. **CHAIRMAN ELLINGSON** indicated select committee is referred to later in the Rules. He indicated they were entirely within their power to change their rules on this matter without any statutory change. **Mr. Petesch** agreed and clarified a select committee is a committee that is appointed in normal times to deal with one specific issue. An example from last session was the **Select Committee on Districting and Apportionment.** A special committee was one appointed by the President to escort dignitaries to and from the chamber. That was the only instance in which he had heard it referred to. **SEN. STORY** asked if a select committee is similar to a standing committee or has a purpose. He wondered if enabling legislation was needed for the

committee to function or if it could function at the direction of the **Committee on Committees** or the President or if a bill was needed to give the committee the authority to do anything. **Mr. Petesch** advised they could allow it to function through their rules. None of the standing committees were recognized in statute. The standing committees were determined by the session through the rules each session. He said they could add, subtract, or delete. Select committees are committees that are created normally just for that specific session to deal with one specific issue.

SEN. STAPLETON asked if a report out of the select committee still has to go through a standing committee. **Mr. Petesch** replied no and said bills may be referred to and reported from standing or select committees. Last session, bills were referred to and reported from the Senate **Districting and Apportionment Committee**. **SEN. STAPLETON** advised two years ago, when the Republicans were in the majority, he spoke against a similar expansion of the President's power; it was **SEN. KEENAN** who would have benefitted from that. For consistency, he indicated he would oppose this also. He didn't think it was a party issue but thought it important to recognize the difference between the Speaker of the House and the President of the Senate. This amendment would increase the power of the President. If the select committee can report out directly and send legislation to the Senate, he thought that was significant.

CHAIRMAN ELLINGSON asked if **SEN. TESTER** wanted to close. **SEN. TESTER** maintained this is a special case and he appreciated the discussion. He wanted to have every possible ability to deal with the education issue in the Legislature and he said he would appreciate a favorable vote.

A roll call vote was begun and **SEN. STORY** raised the issue of proxy votes as a point of order. He said the committee had not voted to accept proxies yet. **CHAIRMAN ELLINGSON** believed that until they adopted new rules, they were operating under the old rules. The old rules provided authorization to vote by proxy. **SEN. STORY** contended only if the committee approved that. **CHAIRMAN ELLINGSON** said the issue was did the **Committee on Rules** approve voting by proxy in the last legislative session. **SEN. STAPLETON** believed a vote by proxy was allowed only if the senator was absent on legislative business. **Mr. Petesch** clarified a senator could vote in absentia if on other legislative business. A senator may vote by proxy if authorized by the committee; that was in S30-100. **CHAIRMAN ELLINGSON** suggested proceeding with the vote and that **SEN. STORY** could advance his question after the vote. **SEN. STORY** indicated the

motion would die 5-5 without the proxy vote. **SEN. COCCHIARELLA** recalled proxies were utilized on both sides in the last session. **SEN. STAPLETON** maintained this was looking backward when it's convenient and forward regarding **SEN. LASLOVICH** voting. **CHAIRMAN ELLINGSON** advised the rules specifically state proxies shall be accepted if authorized by the committee and this is a committee that is duly authorized to act in this legislative session. **SEN. LASLOVICH** is a member of that duly authorized committee. He said **SEN. STAPLETON'S** point was not substantiated by the rules. **SEN. TESTER** indicated there were several ways to handle this. The committee could adjourn to a time specific or recess until a time specific. They could locate **SEN. GALLUS.** He noted technically **SEN. LASLOVICH** had not been sworn in. **SEN. STAPLETON** recognized that the majority needs to operate but this is a substantial change. **CHAIRMAN ELLINGSON** stated they could adjourn until they could review the records of the last rules committee to determine the authorization of authority to proceed with proxies; they could adjourn to a time specific at which time both **SEN. GALLUS** and **SEN. GILLAN** would be there. He said it appeared they didn't know for certain that the **Rules Committee** authorized the use of proxies in the last session. **SEN. STORY** thought they would find the **Rules Committee** didn't meet much last session. The last time they met all members were present so there was no need for proxies. An additional member, **SEN. BILL GLAZER,** was appointed to the committee by the **Committee on Committees** before the last meeting which had to do with the reclassifying of a revenue bill. **SEN. STORY** agreed with **SEN. STAPLETON** there would be enough votes to pass the amendment and withdrew his objection to using the proxy.

Vote: Motion passed 7-4 by roll call vote with KEENAN, MCGEE, STAPLETON, and STORY voting no.

Mr. Petesch explained the purpose of the **Lois Menzies** amendment to S30-50 was to correct the current practice with minutes which is not the procedure required by rule. It required that minutes be printed on archival paper and delivered to the Historical Society. The copying and delivery of minutes is not done by the **Legislative Services Division** librarian; that is handled by the Secretary of the Senate's office. The minutes are printed on archival paper and the electronic copies are then transferred to the Legislative Services Division Library and to the State Law Library on a CD-rom format. The proposed rule change conforms the rule to current practice.

Motion: SEN. COCCHIARELLA moved TO AMEND RULE S30-50.

SEN. STORY asked why print on archival paper. **Mr. Petesch** indicated the Historical Society only keeps paper records and archival paper is probably the safest medium to keep them on. The Historical Society does not trust electronic technology. **SEN. LASLOVICH** pointed out that the word "who" should be stricken in S30-50(2). **SEN. ELLINGSON** asked that the committee consider that grammatical error corrected in the amendment. There was no objection.

Vote: **Motion carried unanimously.**

SEN. COCCHIARELLA proposed to amend the name of the **Business and Labor Committee** to **Business, Labor and Economic Affairs**. **SEN. ELLINGSON** asked if the proposal would amend the name at SR 3-20 and wherever else it is referred to in the rules and that was affirmed.

Discussion:

SEN. MCGEE asked why the interim committee was given the name Economic Development. **Mr. Petesch** indicated they didn't like their name so they proposed legislation to change their name from the Business and Labor Committee to the Economic Affairs Committee because they thought it was a better designation of what they were doing in the interim. There is no requirement that the Senate committee names correspond to the statutory committee names. **SEN. STORY** advised the interim committee is a conglomeration of several business and economic committees and is a little broader than the one committee in the Senate. **SEN. KEENAN** noted there was an effort in the House to have a Business and Labor and Tourism Committee. He thought economic development would include tourism.

Vote: **Motion carried unanimously.**

SEN. STAPLETON proposed a conceptual amendment to S50-130 having to do with amendments by the Committee of the Whole. He wanted to be able to offer an amendment without having it on the board--to allow, with unanimous consent, to not have to prepare, stipulate, and print out amendments on hard copy on simple amendment. He said they do it now but are not following the rule. **Mr. Petesch** advised his concern was unless there is a written printed copy of the amendment they can't enroll the amendment in the bill in the event it is adopted. **SEN. COCCHIARELLA** thought the part that slows down the process was having a hard copy on everyone's desk. She didn't think they needed to change the language to do that or that they would be in violation if they don't hand out the piece of paper. **SEN.**

STAPLETON agreed. He recalled the difficulty in the last session with amendments holding up the process. **Mr. Petesch** stated the rule did not require that amendments be printed and distributed to each desk. The rule required amendments be prepared by staff and delivered to the Secretary of the Senate for reading. An electronic copy is sent to the Amendment Coordinator who prints it on a form so the sponsor can sign it. It is then delivered to the Secretary of the Senate, who reads it. It is only when they ask for it that it has to be printed and distributed to each member. This rule says each amendment has to be prepared, approved by staff, and delivered to the Secretary of the Senate for reading. They were getting backed up when the amendments weren't getting from downstairs to the Amendment Coordinator's office in sufficient time to allow them to be printed on the Amendment Coordinator's printer and given to the Senators to sign because staff was getting them simultaneously downstairs with Senate action on the floor. Even with the magic of electronics, it takes a few minutes. **CHAIRMAN ELLINGSON** could not remember a time when an amendment had been offered in the Committee of the Whole when it hadn't been prepared and signed by the person offering the amendment. **Mr. Petesch** indicated the reason for that was to enroll that amendment if it was successful. **CHAIRMAN ELLINGSON** said the rules do not require a copy of an amendment be on each member's desk and was reluctant to have an amendment offered without a form with the signature of the person proposing it. He thought there was flexibility in the rules when changing something from six percent to three percent. **SEN. STAPLETON** withdrew his motion.

SEN. STORY asked for clarification on the amendment of S30-10 where it said "the **Committee on Committees** shall, with the approval of the Senate, appoint members of standing committees." He wondered if the Senate votes on the standing committees as they are appointed by the **Committee on Committees** or if it meant the Senate had given that authority over to the Committee on Committees. **Mr. Petesch** advised where it says "the Senate may change the membership of a committee on one-day's notice", in practice it has meant the Senate has acquiesced in the appointments of the Committee on Committees but the Senate always retains the authority to change the membership of any committee. The Senate has approved by acquiescence the appointments of the Committee on Committees historically while retaining the authority to change any of them they did not like. **SEN. MCGEE** asked if it was a majority vote and **Mr. Petesch** said it was a majority vote on motion. **SEN. STORY** cited Rule 30-30 and advised in light of the committee's amendment to 30-10-2 giving the President authority to appoint select committees, he wondered if that is one of the select committees and what that committee does. **Mr. Petesch** advised he had never had the pleasure of

attending the Select Committee on Long Range Planning. **SEN. STORY** asked if that was the subcommittee of the **Senate Finance Committee** that does long range planning and all the grants. **Mr. Petesch** advised the subcommittees are dealt with in the Joint Rules. At one time there was a Long Range Planning Committee put in place to deal with bonds and a long-term plan for state debt. He repeated he had never had the privilege of attending a meeting of this select committee. **SEN. ELLINGSON** asked if this was a different committee than the subcommittee to the joint committee. **Mr. Petesch** said it was a Senate select committee as enumerated in the rules. **SEN. TESTER** asked if the definition of select committee was a committee that dealt with a single issue. The **Committee on Long Range Planning** deals with the arts, water issues, bonding issues, etc. and doesn't meet that definition. **Mr. Petesch** said it appeared the label of the committee was wrong; if it was a standing committee of the Senate then it should be enumerated in the list of standing committees of the Senate. There should not be a perpetual select committee.

Motion: **SEN. STORY moved TO STRIKE RULE 30-30.**

Discussion:

SEN. COCCHIARELLA advised Long Range Planning is a subcommittee of the Finance and Claims Committee. **Mr. Petesch** advised the Joint Appropriations Subcommittees are addressed in the joint rules. **SEN. COCCHIARELLA** asked if the Senate does not have a Long Range Planning Committee and **Mr. Petesch** replied they have a committee because it is in their rules. **SEN. STORY** said they have never been appointed and never met. **Mr. Petesch** said the subcommittees are referenced in the joint rules and are not enumerated by name. It refers to the joint subcommittees of Finance and Claims and Appropriations. **SEN. MCGEE** asked if one goes to the House rules to have enumeration of the committees under Appropriations. **Mr. Petesch** clarified those are subcommittees created by the joint committee. **SEN. MCGEE** asked if they are nowhere enumerated and **Mr. Petesch** did not believe so. He believed that was a practice the joint committee has adopted to deal with processing HB 2. The ability to do that is reflected in Joint Rule 30-50. **SEN. MCGEE** asked about the effect of deleting 30-30. **Mr. Petesch** advised there is no risk to the way appropriation bills are handled. **SEN. TESTER** asked if that would also include bonding bills. **Mr. Petesch** advised those bills can be referred to any standing committee to address at the prerogative of the presiding officer. **SEN. ELLIOTT** thought **SEN. STORY'S** concern arose because of the amendment of the ability of the President to appoint select committees and perhaps he was concerned some mischief might arise. He didn't believe that

would occur. He was ambivalent about the amendment and uncomfortable about voting on the amendment because he didn't know enough about the effects that might have. **SEN. STORY** indicated no concern about mischief. He expressed confusion about whether this referred to the subcommittee or a different committee. He didn't know what good it did the Senate to have this committee without a committee in the House. He didn't think it was in the House rules. The mischief would be if a President decided to load up the Finance and Claims Committee. **SEN. ELLINGSON** commented prior to their amendment, the Committee on Committees had the power to appoint members of the Select Committee. The Committee on Committees to his knowledge had never appointed the members of the Subcommittee on Long Range Planning. He wondered if they had done that on the basis of their power to appoint a select committee. **SEN. KEENAN** guessed that at some point in time there was a select committee on long range planning attached to the Senate Finance and Claims Committee that never went away. **SEN. STORY** said with their last rule adoption, even without this rule, if the President wished to appoint a select committee on long range planning he could do it. He thought this was a confusing rule and would be better out of the system. **SEN. COCCHIARELLA** referred to the negative impact of term limits and was sure former **SEN. FRANCIS BARDENOUVE** could have told them exactly. She thought they could get rid of this committee in their rules if it doesn't exist.

Vote: Motion carried by voice vote with LASLOVICH voting no.

SEN. STORY addressed SR 30-130 regarding majority and minority reports. It said if members of the committee can't agree on the report then the majority and the minority of the committee present at the meeting present separate reports. He thought if something can't be agreed on coming out of committee that meant it was tied. He wondered how there could be a majority and minority in a tied situation. He wondered how that rule applied and how it was used. **Mr. Petesch** explained if everybody in the committee wanted the bill reported it must be reported with a positive recommendation. If the amendments or a specific amendment continued to fail on a tie vote in committee, then his experience was one member of the committee agreed to change their vote on the amendment if a minority report was submitted along with it that had the alternative that could not be agreed upon. A bill was submitted that everyone supported with a disputed provision with a recommendation it be adopted and a minority report with the alternative amendment. He had only seen this used a couple of times.

SEN. GRIMES asked about the historic problems with indefinite postponement and tabling. This involved Rule 30-70. **Mr. Petesch**

advised this issue arose because on the Senate floor the motion to indefinitely postpone is used to finally dispose of bills that do not pass second reading. It is a way to kill a bill. A committee cannot kill a bill. A bill that is in committee is always subject to the will of the Committee of the Whole. If the Committee of the Whole wants a bill in committee it may take it regardless of what motion has been made in the committee. Tabling has been used to set the bill on the table and leave it until choosing to deal with it again. Some people who liked the concept of killing bills thought that committees had the authority to kill bills, so they added "or indefinitely postpone" to the committee rule which says a bill may be "do pass, do not pass, or table" in committee. In his opinion, in the committee, tabling and indefinite postponement have the same effect because it means they are putting it aside and not dealing with it until choosing to do so. He reiterated that a committee can't kill a bill. **SEN. STAPLETON** thought the difference was indefinite postponement allowed discussion; a motion in committee to table, especially if it was a contentious issue, has a different outcome. **SEN. ELLIOTT** agreed it was a mechanism to allow debate. It had been his experience that after a tabled motion had been made, if anyone objected, the Chair would allow the tabled motion to be withdrawn and allow that person to make a point. **CHAIRMAN ELLINGSON** said his understanding was, even though in the Committee as a Whole indefinite postponement is a final rejection of the bill and can't be acted upon except by motion, in committee activity a motion to indefinitely postpone is equivalent to a tabled motion. If it were indefinitely postponed in a standing committee, it wouldn't prevent the Senate from taking it from that committee and acting on it on Second Reading. **Mr. Petesch** said that was correct. **SEN. STORY** indicated even if it was moved in committee to indefinitely postpone a bill, the vote can be reconsidered and brought back where a tabling motion just needed a motion to bring a bill off the table. In answer to a question by **SEN. GRIMES, Mr. Petesch** advised when a bill is taken from committee and moved to the Committee of the Whole, there are no amendments on that bill. The reason is committees don't amend bills, they recommend amendments to the Committee of the Whole. The reason committees believe they amend bills is because reports of standing committees are always accepted.

SEN. GRIMES addressed the issue of the motion to indefinitely postpone and stated his experience in Judiciary was it caused more problems than it solved. He indicated there is no motion to indefinitely postpone in the House so it might make the transition easier for former House members elected to the Senate.

SEN. ELLIOTT did not find anything wrong with the motion but favored prepared written amendments rather than making an ad hoc

decision because there were often unintended consequences to actions they thought were totally innocuous. He didn't want to discourage **SEN. GRIME'S** motion but to encourage a more prepared attitude towards dealing with the motions.

Motion: SEN. GRIMES moved TO STRIKE "INDEFINITELY POSTPONE OR" FROM COMMITTEE ACTION in 30-70-C2.

Discussion

SEN. GRIMES asked if **Mr. Petesch** had any thoughts. **SEN. MCGEE** advised having served in both the House and the Senate, there is a distinction between those two bodies. Those that have never served in the House had perhaps not seen how the tabling motion could be used to shut something down immediately. The Senate tends to allow people to speak before an action is taken. He thought committees should be allowed to articulate their arguments before slamming the door shut. Some House committee chairmen would allow discussion before accepting the motion to table. In some cases, with a contentious bill, before anyone could say anything there was a motion to table and it was acted upon. He thought is was a matter for the committee chair. He favored the motion and stated that the Senate is more deliberative.

Vote: Motion carried unanimously.

Motion: SEN. COCCHIARELLA moved that SENATE RULES AS AMENDED BE ADOPTED.

Mr. Petesch raised a point of order noting there was an unusual situation because of the timing of this meeting. If they put "by request of the **Senate Rules Committee**" on this motion, it would be required to be pre-introduced under the Joint Rules. He understood the reason for the late meeting, but he said he would need an individual to request a Senate Resolution to reflect this committee's action and it would not have "by request of the Senate Rules Committee" designation on it. He indicated they would need to explain that to the Senate because this was the first time in his knowledge that this occurred.

Motion/Vote: SEN. LASLOVICH moved that SENATE RULES AS AMENDED BE ADOPTED. Motion carried unanimously.

SEN. STORY asked how they would deal with the Joint Rules and **CHAIRMAN ELLINGSON** advised they would have to have a meeting with the **Joint Rules Committee. Mr. Petesch** said he hoped that on the first day of the session both bodies would make a motion to adopt

the Joint Rules of the 58th Legislature as Joint Rules of the 59th Legislature until the resolution is approved.

ADJOURNMENT

Adjournment: 2:25 P.M.

_____
SEN. JOHN ELLINGSON, Chairman

_____
Prudence Gildroy, Secretary

JE/PG

Additional Exhibits:

EXHIBIT(rus00aad0.PDF)