



# Legislative Council

## 63rd Montana Legislature

### SENATE MEMBERS

JEFF ESSMANN--Chair  
DEBBY BARRETT  
ROBYN DRISCOLL  
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CHAS VINCENT

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MARGARET ( MARGIE ) MACDONALD  
GORDON VANCE

### COMMITTEE STAFF

SUSAN FOX, Executive Director  
TODD EVERTS, Legal Division Director  
FONG HOM, Secretary

## MINUTES LOG

January 8, 2014  
Room 102, Capitol Building  
Helena, Montana

Please note: These minutes provide abbreviated information about committee discussion, public testimony, action taken, and other activities. To the left of each section in these minutes is a time designation indicating the approximate amount of time in hours, minutes, and seconds that has elapsed since the start of the meeting. This time designation may be used to locate the referenced discussion on the audio or video recording of this meeting.

Access to an electronic copy of these minutes and the audio or video recording is provided from the Legislative Branch home page at <http://leg.mt.gov>. On the left-side menu of the home page, select *Committees*, then *Interim*. Once on the page for *Interim Committees*, scroll down to the appropriate committee. The written minutes summary, along with the audio and video recordings, are listed by meeting date on the interim committee's web page.

Hard copies of the exhibits for this meeting are available upon request. Legislative Council policy requires a charge of 15 cents a page for copies of the document.

### COMMITTEE MEMBERS PRESENT

SEN. JEFF ESSMANN, Chair  
REP. CHUCK HUNTER, Vice Chair

SEN. DEBBY BARRETT  
SEN. ROBYN DRISCOLL  
SEN. CLIFF LARSEN  
SEN. CHAS VINCENT

REP. BRYCE BENNETT  
REP. MARK BLASDEL  
REP. KRISTEN HANSEN  
REP. MARGARET ( MARGIE ) MACDONALD  
REP. GORDON VANCE

### COMMITTEE MEMBERS EXCUSED

SEN. JON SESSO

### STAFF PRESENT

SUSAN BYORTH FOX, Executive Director  
TODD EVERTS, Legal Director  
FONG HOM, Committee Secretary

## **AGENDA AND VISITORS' LIST**

Agenda ([Attachment 1](#))  
Visitors' list ([Attachment 2](#))

## **COMMITTEE ACTION**

- The committee accepted the proposed 2014 Montana Code Annotated Prices as presented by Mr. Everts.
- A subcommittee was formed to study the Gmail account project with Rep. Hunter, Sen. Barrett, Rep. Blasdel and Sen. Larsen as members of the subcommittee.

## **CALL TO ORDER AND ROLL CALL**

00:00:58 Sen. Essmann called the meeting to order at 9:01 a.m. The secretary called roll; Sen. Sesso was excused. ([Attachment 3](#))

## **LEGISLATIVE SERVICES DIVISION STAFF UPDATES - Susan Fox, Executive Director**

00:02:41 Ms. Fox provided Legislative Services Division updates: Kristina Liming was hired as the Secretary/Receptionist; Mike Allen was hired as the Network Manager; and Dawn Field was hired as a research assistant for LEPO.

## **ANNOTATIONS PRICE PRESENTATION - Todd Everts, Legal Director**

00:04:07 Mr. Everts discussed the memo dated January 8, 2014, regarding the Proposed 2014 Montana Code Annotated Prices ([Exhibit 1](#)).

### Committee questions

00:05:24 Sen. Essmann asked about the number of sets of full annotations that were sold and if those sets went to the legal profession, and what the market is for individual volumes.

00:05:44 Mr. Everts discussed the number of sets that were printed for the 2013 session.

00:06:45 Kevin Hayes, Legislative Communications Officer, discussed the number of sets sold to the legal profession.

00:07:28 Sen. Essmann asked if West Law or LexisNexis prepare their own annotations.

00:07:50 Mr. Everts said that LSD sells the Montana Code Annotated database and West Law conducts their own annotation process on the Code itself.

### **MOTION to accept the annotations price**

00:08:23 Sen. Barrett moved to accept the proposed 2014 Montana Code Annotated Prices as presented by Mr. Everts. The motion passed unanimously by voice vote.

### **UPDATE ON NCSL, CSG, PNWER - Susan Fox**

- 00:09:23 Ms. Fox referred the committee to the spreadsheets showing the current budget of each organization. She noted that there has been more activity in PNWER this interim. The Council may want to look at increasing the next biennium budget, especially considering Montana hosting the national meeting in 2015. **(Exhibit 2)**
- 00:09:56 Sen. Larsen said that he is on the Executive Committee of PNWER and the co-chair of the Energy Sector, and that hosting the annual meeting is important to Montana.

### **BUDGET UPDATE - Amy Carlson, Fiscal Analyst, LFD**

- 00:12:59 Ms. Carlson distributed and discussed the 2015 Biennium Budget and General Fund Revenue Trend Update. **(Exhibit 3)**
- 00:16:41 Ms. Carlson distributed and discussed the General Fund Revenue Monitoring Report. **(Exhibit 4)**
- Committee questions
- 00:18:23 Sen. Essmann asked if LFD or the Revenue and Transportation Interim Committee is studying the corporation income tax.
- 00:19:29 Ms. Carlson said that the Revenue and Transportation Interim Committee is not looking at that policy choice.
- 00:21:36 Sen. Essmann asked Ms. Carlson to look at whether the current volatility of the revenue source of the corporation tax is due to net/loss carrybacks and to provide that information to the Council.
- 00:25:12 Rep. MacDonald asked about the public contractor's tax.
- 00:25:15 Ms. Carlson explained that the public contractor's tax is an anomaly and the purpose of that tax allows Montana corporations to get money back on other taxes that they have paid.

### **SB 175 LEGISLATOR MEETING REIMBURSEMENT/PROGRAM 21 CARRYFORWARD**

- 00:25:44 Ms. Fox gave an update on the Program 21 budget **(Exhibit 5)**.
- 00:26:01 Ms. Fox provided a brief overview of the activities of the K-12 Data Task Force that was a result of SB 175.
- Ms. Fox discussed using Program 21 Carryforward and leadership funds to allow legislators to participate in two trainings: a land use CLE and attendance at Notary School.

Committee questions

00:30:03 Sen. Essmann asked if the documents that he and the Speaker signed earlier in the interim effective in the transfer of this money?

00:30:26 Ms. Fox said that Sen. Essmann and Rep. Blasdel transferred money that was left over from the 2011 biennium that didn't get spent in the 2013 biennium. This would be the money that the next President and Speaker would be asked to revert to the IT Reserve Fund at the end of the 2015 biennium.

00:30:55 Sen. Essmann asked if he could defer making any decisions on the disposition of these funds until later.

**INQUIRY ON CHILDCARE FOR 2015 SESSION**

00:31:54 Ms. Fox said that Rep. MacDonald had a request from Rep. Dudik on the issue of childcare and that further discussion is needed.

Committee questions

00:35:11 Sen. Driscoll asked if there would be any off-campus space nearby that might have a spare room other than in the Capitol?

00:38:25 Rep. Hunter asked if childcare information is provided in the same manner as housing information is provided for legislators, and what would the liability ramifications be if space is provided in an official way in the Capitol.

00:40:59 Sen. Essmann said that he would like the inquiry handled as part of the housing availability that staff currently does.

00:43:31 Rep. Hunter asked if Ms. Fox would continue to work on this topic and bring back information to the Council.

**UPDATE ON CAPITOL BUILDING HEATING VENTILATION AIR CONDITION PROJECT**

00:44:48 Ms. Fox gave background information and an update on the HVAC Project.

**2013 SESSION AND BILL UPDATES**

• **Initiative and referenda status - Todd Everts, Legal Director**

00:51:41 Mr. Everts gave a report on the status of initiatives and referenda. He referred the Council to the document put out by the Secretary of State's Office that lists the 2014 Proposed Ballot Issue ([Exhibit 6](#)).

Committee questions

00:52:49 Sen. Essmann asked about the litigation involving legislation from the 2011 session.

00:52:56 Mr. Everts discussed litigation involving an act to deny certain state-funded services to illegal aliens, a legislative referendum requiring parental notification for an abortion for a minor, and Initiative 166 that related to corporations within

the context of campaign contributions.

- 00:56:47 Sen. Essmann asked if SB423 is still under litigation and requested that Mr. Everts inform the committee on the status of that bill.
- **Session Systems Update - Susan Fox, Steve Eller, and Shawn Whyte**
- 01:00:56 Steve Eller, Computer Systems Manager and Project Manager, gave an update on the progress of replacing the Session Systems. He said that he will be giving status updates as the project progresses.
- 01:02:54 Shawn Whyte, Project Manager, gave a presentation on the Session System Replacement ([Exhibit 7](#)).
- Committee questions
- 01:18:57 Rep. Hunter asked if there are companies that are associated with these kind of legislative products?
- 01:19:13 Ms. Whyte said they have been looking at a number of systems and have been talking to other states. They looked at the market place and what's available online. There are two major companies that have some experience with some of the processes: Propylon and International Roll Call.
- 01:20:28 Rep. Hansen asked if we are talking about the system itself or does all of interrelate, or are we talking about just the session system piece?
- 01:20:57 Ms. Whyte said that they have done an analysis on all the business processes related to the session systems within the Legislative Services Division and that will be put in the RFP.
- 01:22:50 Rep. MacDonald said that she would like to know if our statutes around procurement are adequate to the magnitude and questions that need to be answered on working on a system like this.
- 01:24:03 Ms. Fox said that the Department of Administration provides assistance in the procurement process.
- 01:25:29 Steve Eller commented about working with the procurement process in the private industry, federal and state government, and the Department of Administration's procurement process is a good one.
- 01:33:36 Sen. Essmann suggested having a second email round with people that are registered to participate in this process for feedback.

**BREAK reconvene at 11:00**

## **COUNCIL BUSINESS: LEGISLATIVE IMPROVEMENT**

02:01:44 Ms. Fox referred the committee to the book, *Council of State Governments Book of States* and said that she got a lot of information from that book on legislatures, elections, and all of state government.

- **Follow-up on discussion for adoption of goals for a legislative session calendar**

02:02:30 Ms. Fox discussed the restated goals for a legislative calendar ([Exhibit 8](#)).

### Committee questions

02:06:29 Rep. MacDonald said that a motion to adopt the goals could be made.

02:07:12 Sen. Essmann asked if a couple of items could be added to the bullet points to cover tools that legislators have to serve their constituents, and to broaden the main heading.

02:11:07 Rep. Hunter discussed the calendar and having specific goal statements to reflect what the committee wants to do with orientation and training.

02:13:18 Rep. Hansen said that one of the primary responsibility of Legislature is to pass a budget. She wanted to know if that needs to be reflected in the goals.

02:14:41 Sen. Essmann said the Council can adopt that.

02:15:32 Sen. Barrett asked about bill requests after the general election.

02:17:17 Ms. Fox provided statistics on the number of bill draft requests after the filing deadline, and the number of legislators who requested bill drafts. She also explained the Executive Planning Process.

02:23:31 Sen. Barrett asked if a final report of an interim committee is mandatory.

02:24:14 Ms. Fox commented on technology that has changed the way information is made available and how a final report is produced.

### **MOTION**

02:27:33 Rep. MacDonald moved to adopt Goals 1-7, with a preface to guide discussions on the legislative calendar.

02:28:19 Rep. Hansen asked that the budget be added as an 8th goal.

02:28:25 Ms. Fox asked if she could refine the Goals to be adopted after lunch.

### **MOTION WITHDRAWN**

02:28:43 Rep. MacDonald withdrew her motion.

02:28:51 Rep. Hunter said that if the Council is going to add new items to the calendar, he would prefer that everyone have a chance to concretely think about those ideas. The Council could adopt this as a working draft following Ms. Fox's revisions and revisit this on our next meeting.

- **History of Montana and Annual Sessions**

02:30:38 Ms. Fox gave a presentation on "Annual Sessions - Montana History" ([Exhibit 9](#)) but referred to the document, "History of Montana Annual Session Proposals" ([Exhibit 10](#)) in her presentation.

**LUNCH - reconvened at 1:17 p.m.**

- **History of Montana and Annual Sessions (continued)**

04:18:07 Ms. Fox discussed Annual Sessions versus Biennial Sessions ([Exhibit 11](#)) and Legislative Sessions with Limited Scope ([Exhibit 12](#)).

- **What do other legislatures do - second installment, session structures and calendars, budget processes and information**

04:30:10 Ms. Fox distributed a spreadsheet that lists states, the current session length limit, method of setting, bill carryover, limited sessions, etc. ([Exhibit 13](#)). Ms. Fox discussed the interim committee membership of Nevada and the bill introduction rule of New Mexico.

- **Study of Seven Legislatures Session Calendars**

04:33:29 Ms. Fox discussed session calendars of Alaska, Nevada, North Dakota, Oregon, South Dakota, Utah, and Wyoming ([Exhibit 14](#)).

Committee questions

04:42:36 Sen. Essmann asked if Nevada has a biennial or annual budget. Ms. Fox said she would research that.

04:44:36 Rep. MacDonald asked about the formation of Wyoming's appropriations and budget committees. Ms. Fox said she would research that.

04:51:57 Lindsay Grovom explained that all that information is in a calendar format so you can see each state and when they have their budget hearings and orientation.

04:52:16 Sen. Essmann said he would like a spreadsheet that shows the population represented in the districts.

04:54:40 There was a discussion among the members regarding redistricting and how other states use Saturdays as a legislative day during session.

05:07:18 Sen. Essmann said that we have later deadlines for revenue and tax bills than we do for the budget bills. He would like to find if that is the pattern in most of the 50 states or not.

- **Legislator Compensation**

05:10:11 Ms. Fox discussed legislator compensation and statutes related to legislator compensation in Montana (**Exhibit 15**). Ms. Fox discussed session staffing in other states (**Exhibit 16**). Ms. Fox discussed a handout provided by Rep. Hansen on Candidate Qualifications and Filing Fees and annual salary (**Exhibit 17**).

Committee questions

05:19:41 Rep. MacDonald asked if anyone has taken the broadband pay system and applied the formula to the work of the legislators.

05:20:39 Ms. Fox said the first answer is no because that broadband pay plan came up in the middle of session. In answer to the second question, currently the Finance Committee is doing a study of the broadband system.

05:22:34 Rep. MacDonald commented on the Department of Labor and Industry's transition to Pay Plan 20 in the mid-2000s and the analysis that was done regarding experience and education, what the body of skills and background and education was, getting into the marketplace. She would like to apply that kind of analysis to legislative work.

05:24:04 Rep. Hunter commented on the connection to the kind of analysis that goes into a job classification.

05:24:48 Rep. Hansen said she would be interested in knowing about whether legislators get stipends during the interim, if they get a travel budget or allowance, or some sort of constituent expense account.

05:29:21 Sen. Larsen commented on his expertise on employment matters.

05:34:25 Sen. Essmann said that he would like to look at what other large geographic states with citizen legislatures do to assist the legislators who travel.

05:37:54 Rep. Hunter commented to the line of thinking about the skill set and requirements of the job.

05:38:46 Ms. Fox commented on the need for more stakeholder input.

**PUBLIC COMMENT**

05:39:56 Mary Anne Dunwell, Helena, provided her written comments on improving the public's ability to participate in the state legislature (**Exhibit 18**).

**BREAK - reconvened at 2:56 p.m.**

## LEGISLATOR ORIENTATION AND TRAINING

- 05:56:55 Ms. Fox discussed a proposal to structure the orientation and training after Nevada's and Wyoming's model. She referred the committee to Exhibit 14, Study of Seven Legislatures Session Calendars - Orientation - Training.
- Committee questions
- 06:03:28 Rep. Hansen asked if the three-day training would be optional for experienced legislators or would there be a day for those already signed up for PERS.
- 06:11:27 Rep. Bennett discussed training for vice-chairs.
- 06:14:58 Sen. Essmann asked if legislator pay is tied to legislative day.
- 06:16:14 Rep. MacDonald said that legislators attend and are paid for interim committee work and that's not a legislative day, so at some level it is within their jurisdiction to pay legislators for working for a day even if it's not a legislative day.
- 06:16:52 Mr. Everts said that there are two separate statutes that deal with pay for legislators during the session versus outside of the session.
- 06:17:11 Sen. Essmann said that in terms of that initial orientation in November, he would like to consider including a presentation on ethics.
- 06:23:03 Ms. Fox said she would like to bring a curriculum for the committee to review of what is proposed on certain days.
- 06:23:46 Rep. Hunter wanted clarification on the week for the budget hearing.
- 06:24:08 Ms. Fox said that the budget is a separate thing and is not part of the orientation and training. She wanted verification of having November 12-14 as the days for caucus and the initial orientation.
- 06:24:23 Sen. Essmann said that seeing no objection, to proceed with that.

## E-MAIL FOR LEGISLATORS PROJECT

- **Legal analysis - Todd Everts, Legal Director**
- 06:25:40 Mr. Everts discussed the legal analysis of Legislator Electronic Communications and Public Record/Right-to-Know Requirements ([Exhibit 19](#)).
- Committee questions
- 06:40:32 Rep. Hansen said that a definition of what is the Legislature doing when it is transacting official businesses is important.
- 06:41:40 Sen. Essmann pointed out that the requirement in terms of the public record that is contained within the statute that Mr. Everts cites is broader than what the constitution requires. He commented on the legislature being a public body and the need for communication with legislators during deliberations.

- 06:47:55 Rep. Hunter asked Mr. Everts about the definition of public writings and the written acts or records of the acts of the authority which would include legislative officers. He would like further definition of what an act would be.
- 06:50:51 Rep. Bennett commented that if we're talking about eliminating different kinds of communications and different opportunities, he would hope that we would look at committees differently than we look at floor sessions. Those should be viewed as two separate features if we're going to limit the way that we use those sorts of communications. Rep. Bennett asked about the legislative work that they do and the need for disclosure might blend into the campaign world.
- 06:52:16 Mr. Everts commented about the distinction between political activity and policymaking as a member of a policymaking body.
- 06:54:08 Sen. Vincent said the question that he comes to when talking about bright lines is how can that be enforceable?
- 06:56:09 Mr. Everts said that the ultimate remedy under the public right to know and examine provisions is nullifying a decision that was made by the body that made it.
- 06:58:23 Sen. Barrett said that committee hearings are open to the public. We might have a person testifying in person and we might have someone texting or emailing us during the hearing. She commented that there is a clear distinction between when we go into executive action, we are deliberating, we are taking an act, and at that point, no one should have extra input.
- 06:59:07 Sen. Essmann said that this is an excellent question for the rules committee.
- **Update on electronic records management studies**
- 06:59:46 Ms. Fox gave an update on the electronic records management studies. She also discussed the subsection (b) of Mr. Everts memo, "Legislator Electronic Communications and Public Record/Right-to-Know Requirements", on bill draft requests and why they are public.
- **Description of Gmail pilot project from 2013**
- 07:05:05 Darrin McLean, Enterprise Architect, LSD, discussed the Gmail pilot project that started before the 2013 session.
- Committee questions
- 07:09:08 Rep. Bennett said that Google is known to collect information from the emails they have and sell that information to third party vendors. If this information is being collected from all our legislative account, would those account have those same problems.
- 07:09:37 Mr. McLean answered that when he looked into that, they are not distributing any information to 3rd party vendors.

- 07:11:10 Rep. Hunter asked about the annual fee per user.
- 07:11:37 Mr. McLean said that as soon as we disable the user, the fee is dropped.
- 07:12:25 Sen. Essmann said that he supports the use of a uniformed email address and appropriate archiving, but parameters on what is appropriate and how long should be further discussed.
- 07:14:36 Rep. Hansen asked about the use of her personal email account, her campaign email account, and her legislative account as one email account and how to get those people to migrate there and leave her personal account alone?
- 07:16:48 Sen. Essmann requested that a subcommittee work with Mr. Everts. He asked for four volunteers: Rep. Hunter, Sen. Barrett. Rep. Blasdel and Sen. Larsen.
- **More information on messaging and eDocs plan for 2015**
- 07:20:18 Kevin Hayes, Legislative Communications Officer, discussed ideas heard at the last Council meeting about legislative messaging services and how to proceed in the future. He discussed the memo from Ms. Fox to legislators during the 2013 session regarding participation in the electronic documents system (eDocs) ([Exhibit 20](#)). The thought for the 2015 session is to proceed down the same road, market it better, and try to reach out to legislators before session begins.
- Committee questions
- 07:23:43 Sen. Essmann asked if the committee decides to go down that road and a decision is made in June, would that be adequate time for marketing?
- 07:24:34 Mr. Hayes said that June would be adequate time.

**Public comment - none**

- **Next meeting date - March 20, 2014 -- agenda items**
- 07:25:51 Ms. Fox said that she will present the third installment of "what do other legislators do". She discussed having a stakeholder panel discussion, budget proposals for the succeeding biennium, and proposed legislation that might be developing at that point.
- 07:27:37 Sen. Vincent asked about rule changes to the rules committee for next session.
- 07:28:19 Ms. Fox said that in the past Legislative Council has solicited ideas on any rules that legislators might want to discuss or change.
- 07:29:37 Sen. Essmann asked about hours other comparable legislatures devote to their budget hearing process. He would like more information in terms of support for legislative leadership versus the legislative body, whether it's during session or whether it is year round, if work done for constituent services and transportation of meetings is an issue. He asked Rep. MacDonald and Sen. Larsen to do some brainstorming on that.

07:35:20 Ms. Fox said that the Council could refine the Goals until it reflects their intent (Exhibit 8).

- **Change May date**

07:36:06 Ms. Fox discussed changing the May meeting date to June 9th or 10th. Sen. Essmann decided to re-schedule the meeting for Tuesday, June 10th.

## **ADJOURNMENT**

07:38:49 With no further business before the committee, Sen. Essmann adjourned the meeting at 4:38 p.m.

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