



## LEGISLATIVE FINANCE COMMITTEE

### 61<sup>st</sup> Montana Legislature

Room 110 Capitol Building \* P.O. Box 201711 \* Helena, MT 59620-1711 \* (406) 444-2986 \* FAX (406) 444-3036

#### SENATE MEMBERS

KEITH BALES  
STEVE GALLUS  
DAVE LEWIS  
RICK RIPLEY  
DAVID WANZENRIED  
CAROL WILLIAMS

#### HOUSE MEMBERS

WILLIAM GLASER  
CYNTHIA HINER  
GALEN HOLLENBAUGH  
LLEW JONES  
JON SESSO  
JANNA TAYLOR

DIANE MCDUFFIE, Secretary  
AMY CARLSON, Director

# MINUTES

## LEGISLATIVE FINANCE COMMITTEE

### CONFERENCE CALL

JUNE 29, 2010

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.**

Please note: These minutes provide abbreviated information about committee discussion, public testimony, action taken, and other activities. The minutes are accompanied by an audio recording. For each action listed, the minutes indicate the approximate amount of time in hours, minutes, and seconds that has elapsed since the start of the meeting. This time may be used to locate the activity on the audio recording.

An electronic copy of these minutes and the audio recording may be accessed from the Legislative Branch home page at <http://leg.mt.gov>. On the left-side column of the home page, select *Committees*, then *Interim*, and then the appropriate committee.

To view the minutes, locate the meeting date and click on minutes. To hear the audio recording, click on the Real Player icon. Note: You must have Real Player to listen to the audio recording.

#### COMMITTEE MEMBERS PRESENT

SEN. KEITH BALES  
SEN. DAVE LEWIS  
SEN. RICK RIPLEY  
SEN. DAVID WANZENRIED  
SEN. CAROL WILLIAMS

REP. CYNTHIA HINER  
REP. GALEN HOLLENBAUGH  
REP. LLEW JONES  
REP. JON SESSO  
REP. JANNA TAYLOR

## STAFF PRESENT

AMY CARLSON, Director  
DIANE MCDUFFIE, Secretary

## VISITORS

Amy Sassano, Office of Budget and Program Planning  
Mark Bruno, Office of Budget and Program Planning

## CALL TO ORDER AND ROLL CALL

00:00:21 Rep. Llew Jones, Chair called the 214th meeting of the Legislative Finance Committee (LFC) to order via conference call at 1:40 p.m. on Tuesday, June 29, 2010. The meeting was held in Hearing Room 350, of the State Capitol, Helena, Montana. The secretary noted the roll. (Attachment 1)

## MONTANA LOTTERY SUPPLEMENTAL

00:01:28 Greg Dewitt, Fiscal Analyst, Legislative Fiscal Division (LFD) presented a memo on the Montana Lottery Supplemental Appropriation Proposal and a letter from George Parisot, Executive Director, Montana Lottery explaining the supplemental request and mitigation plan. (Exhibit 1, 1a) Mr. DeWitt explained the proposed supplemental appropriation is to transfer \$650,000 in state lottery enterprise fund authority from FY 2011 to FY 2010. Increased ticket sales and corresponding increase vendor fees account for \$225,000 and a contract to purchase 60 lottery ticket vending machines accounts for \$425,000. The statutory requirement of being an unforeseen and unanticipated emergency appears to be difficult to defend as it applies to the purchase of ticket vending machines. In regards to the plan to reduce expenditures, it appears that significant risk exists for a supplemental appropriation in the 2011 Legislative Session. It is the role of the LFC to report to the Governor whether the request meets statutory criteria and to raise any necessary compliance issues.

00:08:38 BREAK  
*Technical difficulties*

00:11:07 **Senator Williams** joined the meeting.

00:11:40 George Parisot, Director of Montana Lottery explained that the supplemental request (*technical difficulties*) is for vendor fees due to excess sales of lottery products. The department is expecting to top \$47,000,000. The second item is related to the purchase of lottery vending machines. The Lottery contracted to purchase lottery ticket vending machines. The Lottery paid for half of these machines during FY 2010 with the remainder to be paid at the beginning of FY 2011. The Lottery does not have the authorized budget to purchase the remaining machines. Mr. Parisot said he believed when the machines were ordered that the first payment would fit within the existing budget. This was an accounting mistake. The mitigation plan includes negotiations with the vendor to lease the remaining machines and to reduce spending to cover the excess cost of the machines.

00:18:25 **Sen. Bales** asked about the legality of buying equipment without an appropriation. Mr. DeWitt said the Lottery can buy equipment with their operating budget. The approving

authority can move money between different categories.

- 00:22:28 Amy Carlson, Director, LFD explained that options 1 and 2 are relatively immediate. The committee can act on them today and a letter can be delivered to the budget office. Option 3 causes delay in the ability of the budget office to make a decision. If the committee does not give a report to the Governor than the Governor has to wait 90 days before taking action and that will be after the fiscal year has closed causing a timing issue.
- 00:29:30 **MOTION: Rep. Sesso** moved Option 1 - "Inform the Governor that the committee does not raise any issues of statutory compliance with the proposed transfer."
- 00:30:19 **Sen. Wanzenried** asked if it would be appropriate to ask staff to provide recommendations to clarify statute.
- 00:31:00 **Sen. Williams** agreed with looking at a statutory change or a letter to the principles saying this isn't how the committee likes to do business. Anytime issues that happen quickly it leaves people out of the loop for making good decisions.
- 00:32:11 **Sen. Bales** said he has concerns with the issue of mismanagement and recommended separating the two items.
- 00:33:40 **Rep. Taylor** agreed with Sen. Bales.
- 00:34:27 **Rep. Sesso** said he is not in agreement with the mismanagement issue. He asked Mr. Parisot to explain what he is saying in his memo regarding "...realizing that the Lottery did not have the authorized budget"..
- 00:35:24 Mr. Parisot said that he believed the machines could be purchased within the existing budget. *Technical difficulties*
- 00:37:01 **Rep. Sesso** withdrew his Motion.
- 00:37:12 **MOTION: Sen. Bales** moved to approve \$225,00 without concerns, and address concerns on the \$425,000. **VOTE:** Motion passed. **Sen. Gallus** voted yes by proxy and **Sen. Ripley** voted no.

#### **PPL UPDATE**

- 00:39:20 **Sen. Wanzenried** explained that members of the LFC were sent a one page summary of the differences of the legal opinions from Jaret Coles, Attorney, Legislative Services Division and Candace West, DNRC Chief Legal Counsel. (Exhibits 2 and 3) **Sen. Wanzenried** relayed to the LFC what Anthony Johnstone, Attorney General's Office, explained to the subcommittee. PPL was granted an extension until August 12 to appeal. The Justices would meet on October 15 and decide whether or not to grant review or decide not to decide. If the Supreme Court grants review it would be heard and decided by next June. He also said the Court held that the riverbeds are not part of the public school funds established in the constitution. Therefore, the income generated is not subject to annual appropriations. He pointed out that the language in the decision "the

land board is still required to administer these lands according to the trust obligation imposed by the constitution" affirms the District Court decision that the land board has the authority to lease the riverbeds and use the funds for the support of public education.

- 00:47:09 **Sen. Bales** asked if another conference call will be scheduled after the August 12 extension.
- 00:48:34 **Sen. Wanzenried** said on October 15 the LFC would know if the case will be argued before the court.
- 00:50:14 **Sen. Bales** asked if it was the consensus that PPL would appeal. **Sen. Wanzenried** said there was no one there from PPL so we can only assume that they intend to appeal. **Sen. Ripley** commented that a bond was negotiated from \$48 million to \$52.7 million calculated through June of 2011.
- 00:51:50 **Sen. Williams** asked what procedure and under what condition is the LFC able to file an injunction.
- 00:52:51 Jaret Coles, Attorney, LSD said he believes the court would entertain an injunction. The land boards resolution is to expend the damages for the purpose stated in the resolution. From a litigation stand point, the closer it gets to the time in which the money would go from the State Treasury to the purpose of purchasing land it's no longer possible to stop the transaction.
- 00:57:23 **Sen. Lewis** said the principal that applies is the right of the legislature to control appropriations. He said he wants to be sure the committee takes whatever action is appropriate and not miss the opportunity by delaying action.
- 00:58:14 *Rep. Cindy Hiner left the meeting*
- 01:03:44 **Sen. Bales** expressed concern with the issue of division of powers, the authorization of the land board to buy land and the fact that when the legislature authorized buying lands through bonding there was a no net gain policy which is being ignored. The report from Sen. Wanzenried indicated that the land board was going to move forward with their proposal. If the committee is considering an injunction maybe sooner would be appropriate.
- 01:06:38 **Sen. Wanzenried** asked if there is any other avenue the LFC can take and can staff provide other options for the committee.
- 01:07:51 **Sen. Williams** said if the committee votes today on an injunction her vote will be no. She thinks it's too early and the committee needs to be cautious. The people of Montana do not want one branch of state government suing another. *Sen. Williams left the meeting.*
- 01:08:55 **Sen. Ripley** suggested Mr. Coles proceed with the preparation of injunction on behalf of the committee to have it ready and have staff look for an alternative to avoid an injunction.

01:11:44      **Rep. Hollenbaugh** asked if the committee should also be looking at legislation to clarify statutes for future litigation.

01:18:00      **Rep. Sesso** ask Mr. Coles how much time is required to prepare an injunction.

*Technical difficulties conference call ended.*

01:16:20      Mr. Coles said he would have to research exactly what the process is for an injunction.

*Attempting to reconnect with Rep. Jones, Sen. Ripley and Sen. Wanzenried  
Rep. Hollenbaugh left the meeting*

01:24:16      **Rep. Jones** and **Sen. Ripley** joined the meeting via conference phone. It was decided without objection an email will be sent to the LFC members confirming what the committee agreed to and operate under the decisions of the Chairman without a motion. The action items for staff from this point forward would be as follows:

1.      Extend the date for the goal of the subcommittee from June 28th to the next LFC meeting.
2.      Work with the subcommittee to research other options or alternatives for resolving the issues.
3.      Develop a draft committee bill to clarify statute on these issues.
4.      Research what is necessary to file an injunction, but do not draw up paperwork.

**ADJOURNMENT**

01:31:36      Meeting adjourned.

Representative Llew Jones, Chair

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Diane McDuffie, Committee Secretary

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