



Legislative Council

61st Montana Legislature

SENATE MEMBERS

CAROL WILLIAMS--Vice Chair
JOHN BRUEGGEMAN
JEFF ESSMANN
ROBERT STORY
MITCH TROPILA
DAVID WANZENRIED

HOUSE MEMBERS

DENNIS HIMMELBERGER--Chair
BOB BERGREN
MARGARETT CAMPBELL
TOM MCGILLVRAY
JESSE O'HARA
MIKE PHILLIPS

COMMITTEE STAFF

SUSAN FOX, Executive Director
ROBERT STUTZ, Legal Division Director
DAWN FIELD, Secretary

MINUTES Conference Call

October 25, 2010

Room 102, State Capitol
Helena, Montana

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 - via conference call

REP. DENNIS HIMMELBERGER, Chair
SEN. CAROL WILLIAMS, Vice Chair

SEN. JEFF ESSMANN
SEN. ROBERT STORY
SEN. MITCH TROPILA
SEN. DAVID WANZENRIED

REP. TOM MCGILLVRAY
REP. JESSE O'HARA
REP. MIKE PHILLIPS

COMMITTEE MEMBERS ABSENT/EXCUSED

SEN. JOHN BRUEGGEMAN
REP. BOB BERGREN
REP. MARGARETT CAMPBELL

STAFF PRESENT

Susan Fox, Executive Director, Legislative Services Division
Rob Stutz, Director, Legal Services
Dawn Field, Council Secretary

VISITORS' LIST

Visitors' list, Attachment #1.

COMMITTEE ACTION

The Legislative Council voted to reject Governor Schweitzer's proposed conditional settlement offer on a unanimous voice vote.

CALL TO ORDER AND ROLL CALL

- 00:00:01 REP. HIMMELBERGER called the meeting to order at 9:00 a.m. The Secretary took roll. SEN. BRUEGGEMAN, REP. BERGREN, and REP. CAMPBELL did not participate in the conference call (ATTACHMENT 2). Rep. Jon Sesso also joined the conference call.
- 00:01:13 SEN. WILLIAMS gave a recap of the meeting with Governor Brian Schweitzer on October 19, 2010. She noted that the Governor offered a conditional settlement agreement (**EXHIBIT 1**) for the Legislative Council's consideration and that the Council would discuss and vote on the offer during the teleconference meeting. She said that while it is a positive step to continue to communicate with the Governor, the meeting did not have the conclusion she was hoping for. REP. HIMMELBERGER added that he would like communications to remain moving forward and suggested that both branches do their best to communicate more effectively.
- 00:03:58 **Rob Stutz, Director, Legal Services, Legislative Services Division (LSD)**, said that the settlement proposal essentially mirrors the lawsuit and if accepted, would not end the litigation and would require the Legislature to agree that HB 676 violated the law.
- 00:05:23 **SEN. STORY moved to reject Governor Schweitzer's proposed settlement offer.**
- 00:07:11 SEN. ESSMANN stated that he supported the motion. He discussed the duties and responsibilities of each of the three branches of government in upholding and defending Montana's Constitution. He said that the issue of the Governor being able to change his legal opinion of HB 676 at this point in the process must be decided and suggested that depositions be taken to determine if Governor Schweitzer is prevented from raising the issue now.
- 00:11:42 Mr. Stutz said briefly reviewed the events of the last week and the e-mail correspondence that occurred.
- 00:13:12 SEN. STORY asked Mr. Stutz to discuss the Governor's suggestion that the lawsuit be taken directly to the Supreme Court for a ruling. Mr. Stutz explained why he thought that would be unwise and listed five supporting arguments against pursuing that course of action (**EXHIBIT 2**).

- 00:19:09 SEN. STORY asked if it would be any less costly to go directly to the Supreme Court. Mr. Stutz said that either route could be expensive and that he didn't think cost should be the main consideration in a decision.
- 00:20:59 Rep. Sesso referred back to the Council's Oct. 4 meeting at which the Council discussed crafting its own settlement agreement. He asked why that has not been done. REP. HIMMELBERGER said he thought that he and SEN. WILLIAMS had unofficially expressed the Legislative Council's wishes to the Governor in the Oct. 19 meeting. SEN. WILLIAMS said that the Council needs to formally respond to Governor Schweitzer's draft settlement offer and asked Ms. Fox and Mr. Stutz to draft a response for Council members to review.
- 00:24:47 Mr. Stutz said that one difficulty is the question of who has the authority to make a settlement on behalf of the Legislature. He explained several of the issues involved in making that determination.
- 00:26:21 **Susan Fox, Executive Director, LSD**, suggested that, instead of responding in terms of the Governor's settlement proposal, the Legislative Council write a letter explaining its reasons why the Governor should dismiss the lawsuit. She discussed several possible reasons that such a request could be based on.
- 00:27:03 REP. PHILLIPS agreed with that approach, saying that he has personally heard from a number of his caucus members with similar thoughts.
- 00:28:16 REP. HIMMELBERGER said that Ms. Fox will draft a letter relaying the Council's vote on the Governor's settlement offer and that it will also reiterate the Council's rationale for requesting dismissal of the lawsuit. He said that the letter will be put out for review before sending, either by the full Council or SEN. WILLIAMS and himself.
- 00:29:09 SEN. ESSMANN supported sending the letter. He discussed the importance of strenuously defending the legislative branch and said that if the Legislature gives in, a precedent will be established that will invite future governors to engage in a similar attempt to interfere with legislative branch work. He thanked REP. HIMMELBERGER and SEN. WILLIAMS for representing the Legislative Council and the Legislature so well in their meeting with the Governor.
- 00:31:30 SEN. STORY asked if outside counsel would be consulted. Ms. Fox said yes.
- 00:32:14 With no further business before the Legislative Council, REP. HIMMELBERGER adjourned the meeting at 9:41 a.m.

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