



# Legislative Council

## 61st Montana Legislature

### SENATE MEMBERS

CAROL WILLIAMS--Vice Chair  
JOHN BRUEGGEMAN  
JEFF ESSMANN  
JESSE LASLOVICH  
ROBERT STORY  
DAVID WANZENRIED

### HOUSE MEMBERS

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

### COMMITTEE STAFF

SUSAN FOX, Executive Director  
GREG PETESCH, Legal Division Director  
DAWN FIELD, Secretary

## MINUTES

September 22, 2009

Room 102, State Capitol  
Helena, Montana

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**

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

SEN. JEFF ESSMANN  
SEN. JESSE LASLOVICH  
SEN. ROBERT STORY  
SEN. DAVID WANZENRIED

REP. BOB BERGREN  
REP. TOM MCGILLVRAY  
REP. JESSE O'HARA

### **COMMITTEE MEMBERS ABSENT/EXCUSED**

SEN. JOHN BRUEGGEMAN  
REP. MARGARETT CAMPBELL  
REP. MIKE PHILLIPS

### **STAFF PRESENT**

Susan Fox, Executive Director, Legislative Services Division (LSD)  
Greg Petesch, Director, Legal Services, LSD  
Dawn Field, Legislative Secretary, LSD,

## AGENDA & VISITORS' LIST

Agenda, Attachment #1.  
Visitors' list, Attachment #2.

## COMMITTEE ACTION

The Legislative Council:

- approved the August 20, 2009, meeting minutes, as written;
- approved the

## CALL TO ORDER AND ROLL CALL

00:00:09 REP. HIMMELBERGER called the Legislative Council to order at 9:02 a.m. The Secretary took roll, SEN. BRUEGGEMAN was absent and REP. CAMPBELL and REP. PHILLIPS were excused (ATTACHMENT #3).

## Fiscal Year 2009 General Fund Revenue Collection Report

00:01:28 **Terry Johnson, Principal Fiscal Analyst, Legislative Fiscal Division (LFD)**, distributed three documents pertaining to 2009 general fund revenue collections: *FOCUS ON General Fund Fiscal 2009* brochure (EXHIBIT #1), *General Fund Status: Fiscal 2009 Actual/2011 Biennium Projected* written report (EXHIBIT #2), and *General Fund Status: Fiscal 2009 Actual/2011 Biennium Projected* PowerPoint slides (EXHIBIT #3). Mr. Johnson referred to his PowerPoint presentation slides (EXHIBIT #3) in his discussion.

00:16:17 SEN. STORY asked about general fund reversion (page 4, EXHIBIT #3). Mr. Johnson explained how some of the reverted amounts were the result of other factors besides budget, such as windfall monies.

00:18:25 SEN. WILLIAMS asked, regarding reversions, if stimulus money affected how agencies spent their general fund money. **Lois Steinbeck, Senior Fiscal Analyst, LFD**, provided information on several specific reversions within the Department of Public Health and Human Services (DPHHS) and said that the stimulus money has not significantly affected the DPHHS budget.

00:21:40 In response to a question from REP. MCGILLVRAY regarding income tax data, Mr. Johnson said he is waiting for the actual tax return data for 2008 from the Department of Revenue.

00:22:44 REP. HIMMELBERGER noted that oil revenues are greater than anticipated. He asked if the higher revenue is due to higher volume or because of higher barrel prices. Mr. Johnson said that it is most likely due to higher barrel prices and that complete production data is not yet available.

## STRATEGIC PLANNING INITIATIVES

### Proposed work plan and discussion of initiatives

00:24:59 **Susan Fox, Executive Director, Legislative Services Division (LSD)**, gave a brief summary of the discussion that took place at the August Strategic Planning session. She asked Council members to refer to the proposed work plan for

Legislative Council Strategic Planning Initiatives (EXHIBIT #4) and provided a short review of each initiative topic.

**Initiative 1 - Staff Teams - page 1, EXHIBIT #4**

Ms. Fox said that the purpose of this initiative would be to strengthen support services for legislators by compiling staff expertise from all three divisions for a full complement of services. She said term limits have affected the process because legislators don't always know what resources are available to them. She discussed the study options listed on page 1, EXHIBIT #4.

00:39:17 **Tori Hunthausen, Legislative Auditor, Legislative Audit Division (LAD)**, said that she fully supports information sharing and believes that there are tools already in place that the branch is not using as effectively as it could. She said that she has met with Mr. Schenck and Ms. Fox to discuss how the three divisions could work more effectively together. However, Ms. Hunthausen said, she wanted it to be on the record that she has concerns regarding the pooling of resources and said that the LAD, as auditors, need a certain degree of separation and independence in order to remain completely objective in its work. She restated her support for the sharing of information and expertise whenever possible, and said that she would be willing to regularly appear on the Legislative Council meeting agenda to discuss LAD audit activity.

00:44:45 **Clayton Schenck, Legislative Fiscal Analyst, LFD**, said he would welcome more collaboration between the three divisions of the legislative branch. He suggested that efforts be focused on how to institutionalize the process and to fine-tune the study resolution process in order to encourage closer working relationships. Mr. Schenck offered several scenarios in which the LSD and LFD have successfully collaborated in the past and also discussed how Texas and California have addressed similar situations.

00:52:01 REP. BERGREN said that this issue was of interest to the Council on two levels: staff interest in improving collaboration and being able to communicate with others working on the same issue, and the needs of legislators. He said that by improving the seamlessness of the branch, more information could be more easily accessed by more legislators. He said that the growing pains created by term limits have affected the building of relationships and knowledge base and that this initiative would take the good base that exists now and build on it to improve the system for new legislators coming in. He pointed out that there is a great deal of staff turnover facing the legislative branch that will also affect the flow of information, which is another strong reason to strengthen communication.

00:55:13 SEN. ESSMANN referred back to Ms. Hunthausen's comments regarding her concern for the need for a certain degree of independence and objectivity and asked, if the team participation was limited to simply a research function, if that would still permit rotation and objectivity. Ms. Hunthausen explained the difference between a performance audit and a financial compliance audit; and how staff expertise is used for the two different types of audits. She said that her staff is hired as auditors, not as researchers, and as such, have to follow Government Accountability Office (GAO) national standards, which make it very

difficult for an auditor to perform in any other role. She said that in very general terms, an auditor could participate in certain types of activities, such as commenting on completed audits; but would have to be able to remain impartial and unbiased.

- 01:01:15 Ms. Fox said that a performance auditor does in-depth case file review and investigates at a level a researcher would never have the time to do. Because of that, she said, performance auditors are a great resource for researchers and legislators. Ms. Fox said that currently, there is no formalized process listing which auditors are working on what audits and that it would be helpful for staff to know that. She suggested that it would be most helpful if the administrative committees and the interim committees all were more aware of one another's activities. Ms. Hunthausen said that she is learning more about the interim committee process and that she believes that collaboration can be improved. She suggested that the directors of the three divisions meet to discuss what is going on in order to avoid duplication of efforts and to keep one another informed.
- 01:08:07 REP. HIMMELBERGER asked about the performance audit selection process. Ms. Hunthausen explained how the list is compiled and prioritized by the Legislative Audit Committee.
- 01:08:14 SEN. WANZENRIED questioned Ms. Hunthausen regarding GAO standards and who can or must use them; and said that his opinion is that they may create an artificial barrier to the audit process. Ms. Hunthausen explained Montana's constitutional requirements regarding post-audit function and her support of using the GAO standards, saying that she does not view them as a barrier, but rather, a means to ensure unbiased and objective work.
- 01:18:13 SEN. STORY said most audits contain a list of recommendations for changes, which could be construed as the ground work for policy decisions. Ms. Hunthausen disagreed, saying that the auditor does compile a list of recommendations based on the evidence gathered in the course of the audit but that the LAD does not have the statutory authority to enforce the recommendations, and thus does not influence legislative action. SEN. STORY asked if statute would allow an auditor to assist an interim committee if the committee requested assistance in dealing with audit report recommendations. Ms. Hunthausen said that an auditor may speak directly to a specific audit report but not outside of that report, and could not offer a personal opinion on the recommendations. SEN. STORY said that it is fairly common knowledge that audit staff are involved in legislative drafting. Ms. Hunthausen disagreed, and asked for an example. SEN. STORY said that he has been in LAD staff offices to discuss legislation. Ms. Hunthausen stated that her staff is available to act as a sounding board but does not participate in the drafting process.
- 01:23:02 REP. HIMMELBERGER asked for more information regarding how performance audits are administered in Texas. Mr. Schenck explained that in Texas, audits are completed by teams made up of fiscal analysts, legislative analysts, an auditor, and in some cases, an attorney. He discussed the difference between a

certified performance audit and an internal audit and said that the question is to determine if a certified audit is needed or if a simpler internal audit would suffice. Mr. Schenck recalled that he had been very impressed with the Texas program and would gather additional information on it.

01:28:25 Ms. Fox said that there may be a need a need to close the loop. One division doing performance audits and the other looking at performance measures for budgeting decisions. She said that while the LFD and the LSD are probably more similar to one another than to LAD, there are similarities, such as nonpartisan work and following professional and legal standards.

01:30:54 Ms. Hunthausen asked for clarification on what exactly the Council was asking of her. She said that the Legislative Audit Committee (LAC) would be meeting very soon and that she would like clarification on what to present to them. SEN. STORY said that the Council is simply interested in looking at the process and how best to maintain institutional experience and knowledge. He said it is important to preserve such knowledge and to keep it accessible to legislators and staff, in light of term limits and imminent staff turnovers.

01:33:53 REP. MCGILLVRAY asked about the availability of an online list of audit reports. Ms. Hunthausen said that a complete list is available online. She said that her staff is working on an audit resource guide book for legislators, and that each legislator will receive one, when available. REP. MCGILLVRAY asked if training on the role of the LAD is included in legislator training. Ms. Fox said yes, but that it is rather sparse at this point.

01:36:31 Mr. Schenck made an additional suggestion that interim committee chairs and staff meet with one another to identify each committee's top priorities and to agree on the top priorities for the interim.

01:39:46 REP. HIMMELBERGER agreed that the Council's interest is in improving the legislature. He said, that from his perspective, the three committees do not have clear knowledge of what the other committees do and that closer ties and better cooperation would make the system work more efficiently. He thanked Mr. Schenck and Ms. Hunthausen for coming.

01:42:25 **Break** - REP. HIMMELBERGER recessed the committee from 11 a.m. to 11:15 a.m.

01:42:57 REP. HIMMELBERGER called the Council back to order 11:15 a.m. to continue discussion of the strategic planning session initiatives.

## **Initiative 2 - Leadership and legislator training - Elected leadership**

01:44:04 SEN. STORY discussed past training practices and suggested having follow-up and additional training sessions all through out a legislative session. He said that additional slack time is available at the end of a session, which may be a good time to do a more formal debriefing, rather than a paper evaluation, which relatively few legislators complete.

- 01:46:54 SEN. WILLIAMS agreed that the timing of and cost for training are big challenges. She said that training opportunities during the interim may be helpful.
- 01:48:40 Ms. Fox said that funding is available in Program 21 for training. She said that committee staffers could assist with training at the end of session and that there are other resources available that haven't been used in past.
- 01:50:03 REP. BERGREN discussed his perspective as the Speaker of the House and said it would have been helpful to him to have a transition team of legislative leaders and staff. He suggested having the outgoing and incoming leaders and staff spend a day together to discuss what works and what doesn't work. He stressed the importance of good communication skills and conflict resolution techniques.
- 01:54:52 REP. MCGILLVRAY said that a great deal of information is given to legislators all at once in the legislator orientation training sessions and said that it would be helpful to have training on the more important topics repeated several times, in order to make sure that it is fully understood. He said that because of term limits, it is very important that the system and process be preserved.
- 01:58:35 REP. BERGREN said that the leadership notebook has a very detailed information but that it was sometimes difficult to extrapolate it out. He suggested that it be made easier to use.
- 01:59:41 SEN. STORY said it would be wise to use the first few Saturdays of a session for training. He suggested making them paid days, but not legislative days, in order to provide incentive for legislators to attend.
- 02:01:14 Ms. Fox asked that Council members bring ideas back from any leadership conferences that they attend.

**Initiative 2 - Leadership and legislator training - pre-session/session**

- 02:03:00 SEN. WILLIAMS said that the lack of time is the biggest training obstacle. She suggested adding one day to legislator orientation training and perhaps a day or two at the beginning of the session.
- 02:04:53 REP. BERGREN said that the light work load of the first week of session makes that week a good time to go back and reinforce training done at legislator orientation. SEN. WILLIAMS suggested that groups be broken up into smaller and bipartisan groups. REP. HIMMELBERGER asked if the training could be administered through the committee structure. Ms. Fox said yes, that staff could rotate through the committees to do presentations and training.
- 02:09:01 REP. HIMMELBERGER asked, referring to the legislative social calendar, if several evenings in the first half of the session could be blocked out for legislative training. Ms. Fox said that the legislators have control of the social calendar and could schedule as they please.
- 02:11:06 Lunch break until 1 p.m.

03:34:27 REP. HIMMELBERGER called back the Council back to order at 1:03 p.m.

### **COUNCIL BUSINESS FROM AUGUST MEETING**

#### **Approval of minutes from August 20-21, 2009, meeting**

03:34:51 SEN. WILLIAMS moved to approve the written August meeting minutes. The motion passed on a voice vote, with SEN. STORY voting no. He said that the audio minutes are the official record, so the written minutes, in his opinion, do not need to be approved. It was agreed that the issue would be an agenda item at the next meeting.

#### **Staffing Update**

03:36:00 Ms. Fox reported that interviews are underway or scheduled for a legislative research position, two legislative attorney positions, a revenue data analyst in the LFD, and an IT systems analyst and a network engineer. Ms. Fox updated the Council regarding the IT security officer vacancy and a recommendation for an audio-video program manager. She noted that Fong Hom reached her five-year longevity and that Kenneth Baggs has been hired as an IT Support Technician.

#### **State Administration and Veterans' Affairs Interim Committee Operating Plan Update**

03:40:34 Ms. Fox reviewed the issue and the current action plan of the SAVA Committee regarding the use of an actuary in the study of the state retirement plan. She said the Council must decide whether to approve a generic operating plan of SAVA or wait until SAVA approves a specific operating plan. SEN. WANZENRIED asked if could be approved by email or teleconference. Greg Petesch, Legal Director, said that the Council must convene and have a quorum of members in order to take action. He said a conference call would suffice but that email would not.

03:44:30 **SEN. WANZENRIED moved that the Legislative Council convene via conference call after the SAVA decision to vote on the approval of the SAVA operating plan. SEN. ESSMANN said that the teleconference meeting would meet the public participation requirement and agreed that it would be an more efficient means of handling the issue. The motion was approved on a unanimous voice vote.**

#### **TVMT RFP status**

03:46:10 Ms. Fox discussed the TVMT request for proposal and said that she anticipates awarding the contract in November, 2009. She briefly reviewed several components of the RFP.

#### **NCSL/CSG Travel Claims Approval**

03:48:18 Ms. Fox passed out copies of the National Conference of State Legislatures (NCSL), Council of State Governments (CSG), and Pacific Northwest Economic Region (PNWER) budgets (EXHIBIT #5) and said that not all claims have been received.

03:49:28 REP. HIMMELBERGER asked to discuss his concerns regarding the process through which travel claims are paid because he has suggestions to improve the process. He asked Greg Petesch to provide a historical background.

- 03:51:18 Mr. Petesch said that approval of out-of-state legislator travel claims has been a long-standing and contentious issue. He reviewed the history the issue and the requirements of 5-11-305, MCA.
- 03:58:30 REP. HIMMELBERGER discussed his perspective and understanding of the situation and proposed that the Legislative Council appoint a subcommittee with the authority to approve travel requests and expenses.
- 03:59:22 REP. O'HARA agreed with REP. HIMMELBERGER's concerns.
- 04:00:12 Mr. Petesch clarified that there are two travel funds: one is accessed through Legislative Council and the other through caucus leadership. He pointed out that the Council has no control over caucus leadership funds. In response to a question from SEN. STORY, Mr. Petesch said that the policy approved by previous Legislative Council would remain in place, unless changes are approved by the current Council.
- 04:05:42 SEN. WILLIAMS explained how, as a legislative leader, she has used the funding for training and educational opportunities for legislators. She said she did not feel this issue was a problem all across the board and for that reason, she could not support REP. HIMMELBERGER's position. SEN. LASLOVICH said that he would like to hear from the House Republicans who have found this to be a problem.
- 04:09:19 REP. BERGREN said overall, the process is working, but that he does believe there are some problems in the House Republican side. He asked REP. MCGILLVRAY, as Rep. Sales' appointed replacement to the Council, to comment. REP. MCGILLVRAY said that Rep. Sales supports giving preference on interim committee requests, travel, and training opportunities to junior legislators over termed-out legislators, and said that he supports REP. SALES' position. The Council members further discussed the issue and their individual opinions.
- 04:19:55 **REP. HIMMELBERGER moved to change the process for approving travel and training requests from caucus leadership to a Legislative Council Subcommittee. REP. BERGREN offered a substitute motion to establish a travel board, made up of the respective caucus leaders or their designee, and that the travel board would have control over the travel of their respective caucus.** REP. HIMMELBERGER asked for clarification regarding the membership of the travel board. REP. BERGREN said that the members would have to be Legislative Council members appointed to the travel board. **REP. HIMMELBERGER withdrew his motion.**
- 04:22:27 SEN. WILLIAMS opposed the motion, saying that Rep. Sales, as House Minority Leader, would not have the opportunity to speak to the motion and in effect, would be giving up his role in dealing with his own caucus. REP. HIMMELBERGER responded that there was no assurance that the policy would not be changed; and that as a leader, Rep. Sales knows that policy can and does change.



- 04:25:01 SEN. LASLOVICH stated that in his experience as a legislator, leaders are elected based on their ability to lead, not on how they distribute money. He discussed his position on the issue, saying that he was frustrated that it had come to this. He concluded his statement by stating that he would not support the motion.
- 04:27:40 SEN. ESSMANN said that he would oppose the motion at this time because it is still early in biennium and too early to have a clear idea of how out-of-state training opportunities be allocated. He said that the Council has the authority to change the policy but that he is not sure if this would be the right time to make changes.
- 04:28:25 **REP. BERGREN's substitute motion failed on a 3 - 7 on a roll call vote, with SEN. ESSMANN, SEN. LASLOVICH, SEN. STORY, SEN. WANZENRIED, SEN. WILLIAMS, REP. CAMPBELL (proxy by Bergren), and REP. MCGILLVRAY voting no (ATTACHMENT #4).**

**IT RESERVE FUND REQUEST FOR LEGACY COMPUTER SYSTEMS ANALYSIS AND DOCUMENTATION**

- 04:29:35 Ms. Fox explained the purpose of the Legislative Branch Reserve Account, how it is funded, and the need for the computer systems analysis (EXHIBIT #6). She asked that the Council approve the request for expenditure authority from the reserve fund for up to \$500,000 in order to contract with the successful vendor.
- 04:32:52 **SEN. WANZENRIED moved to approve the expenditure of reserve funds up to \$500,000 to form a contract with the successful vendor.**
- 04:36:18 The Council held a discussion about the IT processes to be studied, how they would be prioritized, and whether there was coordination with the executive branch.
- 04:47:47 **SEN. WANZENRIED restated his motion to clarify that it is "to approve a 2-step process to allow the RFP to go forward and bring the contract for expenditure of up to \$500,000 back to the Legislative Council for consideration".**
- 04:48:09 **The motion passed on a unanimous voice vote.**

**Appointment of subcommittees**

- 04:48:41 REP. HIMMELBERGER appointed REP. PHILLIPS, REP. HIMMELBERGER, SEN. WILLIAMS and SEN. STORY to the Rules Subcommittee.
- 04:49:28 REP. HIMMELBERGER appointed SEN. LASLOVICH, SEN. ESSMANN, REP. O'HARA, and REP. BERGREN to the Succession Planning Subcommittee.
- 04:51:19 REP. HIMMELBERGER said that SEN. WANZENRIED, SEN. BRUEGGEMAN, REP. PHILLIPS, and REP. MCGILLVRAY were appointed to the Legislative Space Subcommittee .

04:52:13 REP. HIMMELBERGER said that REP. BERGREN REP. O'HARA, SEN. LASLOVICH, and SEN. ESSMANN were appointed to the Management Subcommittee. He said that the subcommittees could meet at the conclusion of the day's meeting.

04:53:40 REP. HIMMELBERGER asked to reschedule the March 3, 2010, meeting to March 18, 2010. The December 10, 2009, meeting date was changed to December 14, 2009.

#### **PUBLIC COMMENT**

04:58:03 No public comment was given.

04:58:09 Ms. Fox said that Sheryl Olson, GSD, DOA, will address the Council regarding legislative space at the December meeting and that materials and maps will be available. She said that she is also going to meet with Nancy Clark, Senate Sargent of Arms, and Ed Tinsley, House Sargent of Arms, to discuss legislative space.

05:00:48 SEN. ESSMANN asked that an organization chart for the Legislative Branch and a list of those eligible for retirement be prepared for the Succession Planning Subcommittee's December meeting.

05:01:29 REP. HIMMELBERGER said that he has been receiving emails from an organization that specialized in succession planning. Ms. Fox said that she would forward the information to other Subcommittee members.

05:01:59 REP. HIMMELBERGER said that the Rules Subcommittee will meet upon adjournment.

#### **ADJOURNMENT**

05:02:12 With no further business before the Legislative Council, REP. HIMMELBERGER adjourned the meeting. The next meeting is scheduled for December 14, 2009. in Helena.

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