



Legislative Council

62nd Montana Legislature

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DAWN FIELD, Secretary

Subcommittee on Rules MINUTES

March 8, 2012

Room 137, State Capitol
Helena, Montana

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COMMITTEE MEMBERS PRESENT

SEN. JIM PETERSON, Chair
SEN. MITCH TROPILA
REP. MARGARET MACDONALD
REP. JESSE O'HARA
REP. MIKE MILBURN

STAFF PRESENT

Todd Everts, Code Commissioner, Legislative Services Division
Susan Fox, Executive Director
Dawn Field, Secretary

AGENDA & VISITORS' LIST

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

CALL TO ORDER AND ROLL CALL

00:00:01 SEN. PETERSON called the meeting to order. The Secretary noted the roll, all members were present (Attachment 3). SEN. PETERSON said that REP. MILBURN, as Speaker of the House, was present at his request.

PURPOSE AND FUNCTION OF THE LEGISLATIVE COUNCIL RULES SUBCOMMITTEE

00:06:05 **Todd Everts, House and Senate Rules Committee Staff Attorney, Legislative Services Division (LSD)**, reviewed purpose and function of the Legislative Council: legislative administration, education on legislative process and rules, and legislative rules subcommittee responsibility for rule changes, made through the joint resolution process. He explained the process through which the Joint Resolution is crafted by the Rules Subcommittee and subsequently introduced and adopted by the Legislature.

PRIMER ON LEGISLATIVE RULES

00:11:45 Mr. Everts asked each member to discuss the purpose of legislative rules and why they are needed.

00:12:10 REP. O'HARA stated that rules are needed for an orderly process.

00:12:52 SEN. TROPILA said that rules facilitate debate in an orderly, sensible, and logical fashion.

00:13:21 REP. MACDONALD said that the rules help separate passion and personality from the substance of ideas in order to help maintain the focus on legislative business.

00:14:03 REP. MILBURN said that rules provide for an orderly process and fair treatment.

00:14:15 SEN. PETERSON said that rules are there to protect both the minority and majority, and to maintain protocol and civility and respect for the legislative process.

00:16:23 Ms. Fox said that Mason's (*Rules of Legislative Proceedings*) has a historical presence that protects the institution and provides a way for staff and the public to have a sense of stability and familiarity; so its application has an external function, as well as an internal function.

00:17:38 Mr. Everts said that rules are necessary to coordinate constitutional and statutory provisions, and that they are also necessary to protect the rights of individuals, the legislative body, and the public. He said that leadership's selection of a rules delegate is extremely important because having a "go to" rules person on the floor is invaluable to each house.

00:20:48 SEN. PETERSON said that term limits have impacted the legislative process because there are so many fewer legislators who truly understand the rules. He said that the rules delegates likely will need intensive training. Mr. Everts said that the legislators should not hesitate to stop and sort out rules questions before proceeding and that the Rules Committee and staff are there to help.

- 00:23:53 Mr. Everts referred to the 2011 Joint Rules (EXHIBIT 1) as he discussed a PowerPoint presentation of Committee Rules and Procedures (EXHIBIT 2).
- 00:26:05 REP. O'HARA and Mr. Everts discussed statutory requirements for proper notice of hearings.
- 00:29:47 SEN. TROPILA discussed the practice of legislators pushing the vote button for an absent legislator. Mr. Everts said that shouldn't be happening and explained further.
- 00:31:48 REP. MILBURN asked that this issue be noted for further study. He said that rules do allow legislators to vote for another on second reading but not at third, and that he would like to correct that for the next session. Ms. Fox said sometimes the legislator is in the room but not at his or her desk. REP. O'HARA said that the legislator could be at a committee meeting, which are sometimes scheduled during second reading. SEN. TROPILA said the issue ties in with the issue of proxy votes, which he would like to address in the rules.
- 00:34:22 Mr. Everts said that he and Ms. Fox are working on a proposal for proxy votes. He said that proxy voting is needed but that the process may need to be tightened up in order to ensure that they are being used correctly.

DISCUSSION AND IDENTIFICATION OF RULES ISSUES THAT OCCURRED DURING 2011 SESSION & DIRECTIONS TO STAFF REGARDING POTENTIAL AMENDMENTS TO RULES

- 00:37:12 REP. MACDONALD listed rules issues she would like to be addressed:
- the 2011 rule change dealing with the calendar for introduction and transmittal of legislative referenda;
 - create a process or rule to mark or flag proposed legislation that staff has identified as potentially having constitutional concerns;
 - continue discussion of rules changes for the revenue estimating process;
 - reconfigure the Rules Committee to a 50-50 membership, with the Speaker breaking ties;
 - examine rules for closure because it is not being used as intended;
 - rules for proxy votes in committees; and
 - consider rules to move bills faster through the process and to establish a time limit or benchmark for executive action.
- 00:43:58 REP. O'HARA discussed how committee assignments are made and asked if changes were made to ensure that all legislators would be assigned to an A Committee. Mr. Everts said he would check on that. Ms. Fox recalled that not all legislators want an A Committee assignment.
- 00:47:07 Mr. Everts said that House Rule 30-10 gives the Speaker authority to make committee assignments but does not require an appointment to an A Committee. SEN. PETERSON and REP. O'HARA both requested that the this issue be put on the list for further consideration by the Subcommittee.
- 00:48:16 SEN. TROPILA discussed concerns about interim committee bills and gave an example of an Environmental Quality Council (EQC) bill draft that had been

changed drastically by the time it hit the Senate floor. He said it bothered him because the bill still carried the EQC name but the content and intent no longer resembled the bill approved by the EQC. SEN. PETERSON said that he doesn't like how agency bills are approved for pre-introduction by an interim committee. He said the process gives the connotation of discussion and approval by that interim committee, which could be influential. Ms. Fox explained the purpose of the agency bill pre-introduction process and said that the process could be changed to alleviate those concerns.

00:53:37 SEN. TROPILA asked SEN. PETERSON what his preferred solution would be. SEN. PETERSON said that agencies should not be prohibited from pre-introducing bills but that the bill should be clearly marked as an agency bill and not as a committee bill. Ms. Fox agreed that the current process has caused consternation.

00:54:34 REP. MILBURN said that he already submitted his list of ideas to Mr. Everts but had one addition. He said he could not recall the rule number but that it is the rule for a motion to postpone to a day certain, and confusion of how to do it. He said it is in the House Rules Quick Reference Guide under House Rule 50-120. The Subcommittee discussed the rule briefly. REP. MILBURN said he would like suggest ideas on how to improve the reference book.

00:57:34 SEN. PETERSON said he would like to add an explanation on the difference between House, Senate, and Joint Rules. He said it is especially confusing to new legislators. He said the quick reference guides are very handy but thought that some type of coding would help improve its usefulness. Mr. Everts discussed changes made by former staff attorney Lee Heiman to improve the guide.

SEN. PETERSON said that another issue that he would look at is the use of computers and other electronic devices on the floor. He discussed several specific concerns and said that while technology has improved access to critical information, it has also created distractions. He noted that some states have restricted access to the internet in order to keep legislators attuned to their work. Ms. Fox said that comments have been received from the public regarding legislators not paying attention when people are testifying or providing public comment and that it will be a difficult issue to wrestle with. REP. MILBURN suggested that the issue be added to the list for legislator education and orientation. He said he would make a note of it in the Leadership notebook for the 2013 session. He said that legislators should not be "tweeting" or logged into their Facebook account when in a floor session and suggested that this be addressed through a specific rule.

01:04:57 REP. MACDONALD said that she appreciated the concerns discussed but said that computers do have legitimate uses on the floor. She said that she has used her computer to research issues during floor debates and to make notes to herself. She said it would be a mistake to restrict internet access but agreed that certain abuses are taking place. She suggested a direction from leadership might be a better approach than creating rules.

- 01:07:41 Mr. Everts discussed legal ramifications to consider. Ms. Fox said that the public's right to know also factors in to this issue and that they can request access legislators' phones and computers if the legislator is observed conducting legislative business on them.
- 01:09:38 SEN. PETERSON and Ms. Fox discussed the state stipend to purchase computers for legislators and why the program was designed as a stipend program. Ms. Fox said this is a complicated issue and that the state does not give clear guidance on it, so a rule may a good thing.
- 01:11:42 REP. O'HARA asked about deleted emails. Ms. Fox said that deleted emails can be recovered and that sharing of information could depend on the policies of the internet provider. Ms. Fox said she could research policies in other states. SEN. PETERSON said his opinion is that the 2-hour block in floor session is separate from committee work and that he would to have sideboards on the floor session.
- 01:17:56 SEN. PETERSON said that rules issues he would like to consider are proxy votes and several key motions that seem to create problems frequently. He said that both could be given special attention in the quick reference guide.
- 01:18:43 SEN. PETERSON recessed the Subcommittee for a 15-minute break.
- BREAK**
- 01:44:21 SEN. PETERSON called the meeting back to order. Mr. Everts and Ms. Fox discussed Joint Rules 40-100 (page 19, EXHIBIT 3) regarding fiscal notes for all bills reported out of committee. SEN. PETERSON said this was an issue in the Senate. Ms. Fox said that Marilyn Miller, Senate Secretary, had discussed this rule with her also.
- 01:50:58 Mr. Everts discussed Joint Rule 40-190 (page 24, EXHIBIT 3) regarding what defines possession in terms of transmitting a bill to other house. Mr. Everts said that he would like the rule more clearly articulated.
- 01:53:18 Mr. Everts discussed Joint Rule 40-200 (page 25, EXHIBIT 3) regarding change of classification of revenue bills. Ms. Fox said that the rule needs more structure and definition and that the current language isn't working. REP. O'HARA said the rule was abused in the 2011 session and agreed that the rule needs to be tightened.
- 01:56:49 Mr. Everts discussed Joint Rule 60-20 (page 28, EXHIBIT 3) and said it has to be changed to reference the most recent version of Mason's Manual.
- 01:57:42 Mr. Everts discussed Senate Rule S30-70 (page 42, EXHIBIT 3), making House Rules conform to Senate Rules.
- 01:59:50 Mr. Everts discussed Senate Rule S30-80 (page 44, EXHIBIT 3) regarding public testimony and witnesses. He said that best practices need to be highlighted for rules training.

- 02:01:03 Mr. Everts discussed Senate Rule S40-40 (page 47, EXHIBIT 3) regarding reading limitations and rules for engrossing.
- 02:02:14 Mr. Everts discussed Senate Rule S50-90 (page 50, EXHIBIT 3) regarding reconsideration rules. He referred to scripts for certain floor motion actions for the House (green handout, EXHIBIT 4) and Senate (pink, EXHIBIT 5).
- 02:04:34 SEN. TROPILA discussed reconsideration motions and rule language stating that "debate is limited to the motion". He said he would like to give more substance to the rule in order to clarify why a bill is being reconsidered.
- 02:09:36 Mr. Everts discussed Senate Rule S50-50 (page 49, EXHIBIT 3) regarding motions to refer or re-refer.
- 02:13:20 SEN. PETERSON said he would not object to using the House wording in the Senate Rules. SEN. TROPILA agreed.
- 02:16:53 Mr. Everts discussed Senate Rule S70-10 (page 59, EXHIBIT 3) regarding nominations from the Governor. He said it became an issue in the 2011 session and he suggested that it be smoothed out to make it less contentious. SEN. PETERSON said that the rule was changed under Sen. Story in order to make the appointment process more transparent. Ms. Fox discussed her perspective.
- 02:19:05 Mr. Everts discussed House Rule H40-80 (pages 80 and 81, EXHIBIT 3) regarding rereferral of bills.
- 02:19:43 Mr. Everts discussed House Rule H40-100(2) and (3) (page 81, EXHIBIT 3) regarding adverse committee reports. He said he would like the Subcommittee to decide if adverse committee reports could be eliminated.
- 02:21:22 Ms. Fox discussed the overuse of "whereas" clauses in bills in the 2011 session, and said that the use was more of an argument for the bill, rather than background. She asked the Subcommittee to consider the proper use of whereas clauses and to give staff guidance.
- 02:23:22 Ms. Fox discussed bill draft requests said the when a drafter gets only three or four word description from the legislator, it makes it very difficult for the drafter to draft the bill. She discussed several other concerns regarding bill draft requests and said that she would like guidance.
- 02:25:25 Ms. Fox discussed the issue of junque files and her efforts to deal with them in the last session. She said she would like a policy in place to give staff guidance.
- 02:26:44 Ms. Fox discussed bill introduction deadlines, saying that this is another area where staff would like guidelines.
- 02:27:57 Ms. Fox discussed Joint Rule 40-65 (page 18, EXHIBIT 3) regarding appropriations for bills requesting an interim study and a question of where the appropriation has to be: in the bill or in HB 2.

02:29:02 Ms. Fox discussed requests for global amendments to HB 2 and the impact of these requests on fiscal staff. She said that because of the inordinate amount of staff time consumed by this, she would like to discuss it.

02:30:35 Ms. Fox discussed the need for paper copies of fiscal notes in bills and for bills for third reading. She said that the paper copies are frequently not distributed and asked if paper copies for legislators were necessary. She said that copies will still be printed for the public. She said that the issue is part of the "going paperless" discussions that have been ongoing in both the Computer Systems Planning Council and the Select Committee on Efficiency in Government.

02:35:41 Mr. Everts said that he and Ms. Fox will work together on the issued identified and will present options for consideration at the next Subcommittee meeting. He said that Rules Training for Legislators would be discussed at the next meeting, and throughout the interim, and that he would like input from the Subcommittee as work progresses.

PUBLIC COMMENT

02:36:44 No public comment was given.

02:36:49 SEN. PETERSON said he would like the Subcommittee to continue discussion of the topic of bills with legal or constitutional concerns, as discussed by the full Council that morning, and that he would like these bills be identified or flagged. Mr. Everts agreed and said that the Legislature, as the body that passes laws, has an obligation to know if its laws are legal and constitutionally sound. He said he would like the Legal Director to have some say in the matter and to have an avenue through which the requestor can dispute staff's concerns. He said he would work with bill drafters also to get their input.

02:43:21 The Subcommittee discussed its next meeting date. It was noted that the date set for caucus would have to be changed because of a conflict with Veteran's Day. Ms. Fox reminded members that the May meeting date was changed to May 2 and 3.

ADJOURNMENT

02:46:20 SEN. PETERSON adjourned the meeting at 11:50 a.m. The next Subcommittee on Rules meeting will be held in May, date to be determined. C10429 2122dfxa.