



Legislative Council

62nd Montana Legislature

SENATE MEMBERS

CAROL WILLIAMS--Chair
JEFF ESSMANN
JIM PETERSON
MITCH TROPILA
BRUCE TUTVEDT
DAVID WANZENRIED

HOUSE MEMBERS

MIKE MILBURN--Vice Chair
CHUCK HUNTER
MARGARET MACDONALD
TOM MCGILLVRAY
JESSE O'HARA
JON SESSO

COMMITTEE STAFF

SUSAN FOX, Executive Director
TODD EVERTS, Legal Division Director
DAWN FIELD, Secretary

MINUTES

May 2, 2012

Room 102, State Capitol
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.

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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. CAROL WILLIAMS, Chair
REP. MIKE MILBURN, Vice Chair

SEN. JEFF ESSMANN
SEN. JIM PETERSON
SEN. MITCH TROPILA
SEN. BRUCE TUTVEDT
SEN. DAVID WANZENRIED

REP. CHUCK HUNTER
REP. MARGARET MACDONALD
REP. TOM MCGILLVRAY
REP. JESSE O'HARA

COMMITTEE MEMBERS EXCUSED

REP. JON SESSO

STAFF PRESENT

Susan Fox, Executive Director, Legislative Services Division
Todd Everts, Director, Legal Services
Dawn Field, Council Secretary

AGENDA & VISITORS' LIST

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

COMMITTEE ACTION

The Legislative Council:

- approved the March 7 and 8, 2012, minutes;
- approved a \$5,000 budget request from the Education and Local Government Interim Committee;
- approved setting the 2012 caucus date for November 13, 2012;
- approved a 2013 legislative session calendar;
- approved a civility training workshop for legislators; and
- scheduled leadership training for November 16 and 17, 2012.

CALL TO ORDER AND ROLL CALL

00:00:01 SEN. WILLIAMS called the meeting to order at 1:32 p.m. The Secretary noted the roll, REP. SESSO was excused (participated via polycom for a portion of the meeting) (Attachment 3). **SEN. WANZENRIED moved to approve the March 7 and 8, 2012 minutes. The motion passed on a unanimous voice vote.**

Update on Legislative Services Division activities, staff changes

00:02:18 **Susan Fox, Executive Director, Legislative Services Division (LSD)**, updated the Legislative Council on recent staff changes.

Commissioner of Political Practices

00:03:47 Ms. Fox briefly reviewed a staff report prepared for the State Administration and Veterans' Affairs Interim Committee (SAVA) regarding the Commissioner of Political Practices (EXHIBIT 1). Ms. Fox said that SAVA intends to draft a study resolution to study the appointment process and position requirements and qualifications needed.

00:05:24 SEN. WILLIAMS said that if any Council members wish to attend the SAVA meeting, the Legislative Council will pay their expenses.

Education and Local Government Interim Committee budget request

00:05:46 Ms. Fox discussed a letter from the Education and Local Government Interim Committee (ELG) requesting an additional \$5,000 to cover ELG committee expenses (EXHIBIT 2). REP. MILBURN asked for the balance of the Council's discretionary fund for emerging issues. Ms. Fox said the fund balance is \$26,612.

00:07:58 SEN. WANZENRIED said that the ELG overspent its budget by sending members to Board of Regents and Board of Public Education meetings. He asked if the costs of attending those meetings are available. Ms. Fox said that ELG staff could provide the information.

- 00:09:06 **Leanne Kurtz, ELG staff**, estimated that the expense was approximately \$3,000 but said that the exact numbers would be available in just a few moments.
- 00:09:38 SEN. WANZENRIED said that for future good business practices, he would like to see a process to require more accountability. He said a similar request for an executive budget request likely would not be approved and he didn't support approving a legislative request either.
- 00:10:35 SEN. TROPILA asked if the ELG will be able to complete its work if the budget request is not authorized. Ms. Kurtz said the Committee has enough money to have one more meeting. SEN. TROPILA asked for additional details regarding the number of meetings needed and the cost for each meeting. Ms. Kurtz provided the information.
- 00:12:13 SEN. TUTVEDT said that long travel distances for several members is part of the issue. He said that this should be taken into consideration and that it would set a bad precedent to discourage these members from attending meetings.
- 00:14:37 SEN. WANZENRIED said that while he is sympathetic, travel expenses should have budgeted for accordingly at the beginning of the interim.
- 00:15:28 SEN. ESSMANN suggested that interim committees be required to provide periodic budget reports to the Council in future interims. Ms. Fox said that interim committee budget information is provided to the Council at every meeting. She said she was aware of this issue but due to the timing of ELG and Council meetings, the request was not able to be made until now.
- 00:17:09 REP. MILBURN agreed that the committee has spent a lot on travel expenses but said that the committee has been very active and involved. He said that he is in favor of approving the request.
- 00:18:34 **REP. MILBURN moved to approve the ELG request for an additional \$5,000.** REP. MCGILLVRAY opposed the motion and said that the committee could complete its work through phone conferences in order stay within its budget.
- 00:20:14 SEN. TROPILA spoke in support of the motion, saying that the ELG has been actively engaged in issues in eastern Montana that will affect the entire state.
- 00:21:19 SEN. PETERSON said that he would reluctantly support the motion because the education and tax credit issues the ELG is working on will be important topics in the 2013 Legislature.
- 00:23:10 **The motion passed on a 10-2 voice vote, REP. MCGILLVRAY and SEN. WANZENRIED voted no.** SEN. WILLIAMS said that she does not want the decision to set a precedent and suggested that letters be sent to interim committee chairs advising them to stay in budget. It was agreed that Ms. Fox would prepare letters for all interim committee chairs.

Litigation and Administrative Proceedings

- 00:25:19 **Todd Everts, Director, Legal Services, LSD**, updated the Council on five issues.
- 00:25:28 MEA-MFT Administrative Proceedings regarding collective bargaining agreement -- HB 13, 2011.
- 00:27:33 State Cabin Site Leasing -- SB 409, 2011.
- 00:29:09 Legislative Referendum 123 -- tax credit for taxes owed if certain revenue triggers occur.
- 00:30:59 Legislative Referendum 119 - Supreme Court Justice Districts.
- 00:31:47 Consent decree issued -- Montana Quality Education Coalition.
- 00:34:17 REP. SESSO asked about the implications of the Montana Quality Education Coalition court decision. Mr. Everts said that the consent decree doesn't necessarily bind the Legislature to provide the funding but that further legal action is likely if it chooses not to.
- 00:36:08 SEN. TUTVEDT asked why the Legislature is never part of the requests or negotiations. SEN. PETERSON said that he and Speaker Milburn have wondered that as well and met with legal counsel to discuss it. He said that he requested a bill draft to modify and re-define the role and responsibilities of the Attorney General in these types of matters with the Legislature.
- 00:38:35 REP. MILBURN discussed his position on the court ruling and what the Legislature should do to correct the situation.
- 00:41:29 SEN. ESSMANN discussed his concerns about the challenge of separation of powers under the Montana Constitution and legislation in other states providing for fuller legislative branch participation.
- 00:43:36 REP. SESSO asked for an update on the state space lawsuit. Mr. Everts said he could get the information. SEN. WILLIAMS said Mr. Everts could update the Council at the next day's meeting.

Rules Subcommittee report

- 00:44:39 SEN. PETERSON reported that the Rules Subcommittee met earlier in the day and discussed 28 proposed rule changes. He said that staff is in the process of revising the list and that any recommendations will come before the full Council.

STRATEGIC PLANNING INITIATIVES 1: 2013 SESSION

Set caucus and orientation dates

- 00:46:07 Ms. Fox said that dates chosen at the last meeting fell on Veterans' Day (November 12). She noted that a date change would result in a conflict with the Western Leadership Academy (WLA). REP. MCGILLVRAY discussed concerns that the date change could impact a legislator wishing to run for a leadership position.

00:49:00 **SEN. WANZENRIED moved to reschedule the caucus date to Wednesday, November 14, 2012, at 10:00 a.m.** SEN. WILLIAMS said that training is always helpful to legislators but that she thought it was important for legislators to be in Helena that week. **The motion passed on a unanimous voice vote.**

00:51:27 SEN. PETERSON asked that all legislators signed up for the WLA be advised of the caucus date change and be told that their presence in Helena is a priority. Ms. Fox said she would contact all who applied for the WLA and let them know.

Legislative calendar

00:54:16 Ms. Fox said that three proposed session calendars were mailed in the meeting materials (EXHIBITS 3, 4, and 5) and that another one has been proposed by REP. SESSO (EXHIBIT 6). Ms. Fox discussed each calendar.

00:57:23 REP. SESSO discussed his proposed calendar (EXHIBIT 6).

01:02:01 REP. MCGILLVRAY spoke in support of REP. SESSO's proposed calendar.

01:05:31 SEN. PETERSON also spoke in support of REP. SESSO's proposed calendar.

01:04:0 **SEN. PETERSON moved to adopt the Sesso calendar. The motion passed on a voice vote, REP. MACDONALD and SEN. WANZENRIED voted no.**

Legislator Training planning

01:06:25 Ms. Fox referred the Council members to a draft copy of the 2012 New Legislator Orientation agenda (EXHIBIT 7). She said that feedback from the last new legislator training indicated that the training was too intensive, so LSD staff has tried to streamline and simplify it. She reviewed the proposed schedule and training topics and discussed having veteran legislators to help with the training of new legislators.

01:14:56 REP. MACDONALD asked about using the week before session for training. Ms. Fox said it has been discussed but that bill drafting staff is very busy. She said that fiscal staff is not as busy so there may be a possibility for training on the budget or other training topics.

01:16:49 SEN. ESSMANN asked if the media hook-up issues in the Senate have been resolved. Ms. Fox said that she was not aware of that issue. SEN. ESSMANN said the problem involved the media hook-ups near Sen. Gallus's chair and asked Ms. Fox to look into the matter.

01:18:15 SEN. WILLIAMS discussed the need for training on civility in politics. She asked the Council members to strongly consider her request and said that the Council must be proactive

REP. HUNTER said that he has attended a training on that topic and thought it would be very valuable. He asked if it would be possible to allow legislators to come in the week before session begins to work with IT staff to get their laptops formatted and hooked up for use during the session. It was agreed.

- 01:21:15 REP. MACDONALD said decorum and civility are important topics and that having training on their importance would help with legislative credibility and help set a positive tone for the legislative session, especially if legislative leadership took an active and visible role in the training. She said that would go a long way in setting the tone for the session.
- 01:22:20 **SEN. WANZENRIED moved to adopt civility training.** He asked if Ms. Fox needed additional guidance or input from the Council regarding the legislator training issues. Ms. Fox said she would like input on when the training should be held. SEN. ESSMANN said he thought the training would be useful.
- 01:24:21 Ms. Fox said that at some point, after primary, she would like the Legislative Council to send letters to returning legislators to encourage them to participate in the mentor teams. **The motion passed on a unanimous voice vote.**
- 01:25:11 SEN. WILLIAMS recessed the Council at 2:57 p.m. for a short break.
BREAK
- 01:39:17 SEN. WILLIAMS called the meeting back to order.

Caucus, Orientation, and Continuing Education

Ms. Fox referred Council members to a proposed schedule for caucuses, orientation, and continuing education for legislators (EXHIBIT 8). REP. SESSO thought that new leadership training should take place in the afternoon right after the caucuses.

- 01:40:03 SEN. TUTVEDT thought that leadership training should be separate from the caucus and legislator training because new leaders have so much to do in those first few weeks after election.
- 01:40:49 SEN. WILLIAMS and SEN. PETERSON both agreed that new leaders have much to attend to and that it would be more effective to schedule it for another time.
- 01:47:17 After discussion, it was agreed that leadership training would be held Friday afternoon and all day Saturday, November 16 and 17, 2012.

Legislative Security: job descriptions, conditions of employment

- 01:48:11 SEN. WILLIAMS said that the Security Subcommittee plans to meet again in the morning so action on this item will be delayed until the next day. She said that all Council members are invited to attend the Subcommittee meeting.

REP. SESSO said that he had to leave the meeting but wanted to give his input on the LAWS update proposal, which was to do both options: work through the process to make sure the system update is included in HB 10 (Long Range Building Program) and to have a separate bill drafted to ensure that if HB 10 fails for whatever reason, the update will still move forward.

2013 SESSION

Legislative Services Division Preliminary Budget

- 01:50:38 Ms. Fox said that she is still collecting information on the budget. She noted that it appears that there will be a steep increase in Information Technology Services Division (ITSD) rates. She discussed the reasons for the increase.
- 01:52:01 Ms. Fox discussed the interim committee survey and said that she would have survey results at the next meeting.
- 01:52:33 Ms. Fox discussed national organization dues and said that full dues would be paid the first year of the biennium and partial dues would be paid the second.
- 01:53:16 Ms. Fox discussed TVMT coverage of legislative meetings and said that a new contract with Bresnan will have to be negotiated at some point and that she is also working on a permanent archive solutions.
- 01:54:45 Ms. Fox discussed market pay survey research.
- 01:54:56 Ms. Fox discussed the legislative branch retirement account. She said that the branch was "over the hump" of branch retirements and that the Council needs to decide if it wishes to fund the account again.
- 01:55:39 Ms. Fox said that she would discuss the feed bill in more detail in the next agenda item. She noted that the salary survey will not be in until October.

IT allowance reallocation and Legislator communications

- 01:56:04 Ms. Fox discussed the use and expense of desk-top telephones during a legislative session, saying she was stunned by the number of phones installed and the accompanying expenses such as activation fees, monthly fees, voice mail fees, and other associated costs.
- 01:58:07 SEN. ESSMANN said that the desk-top phones in the Senate leadership offices weren't used much and thought that it would be better to use that money as an allowance to legislators to cover their cell phone expenses.
- 01:59:01 SEN. TROPILA asked if eliminating voice mail would provide a significant savings. Ms. Fox estimated it would be about \$5,000 in savings.
- 02:00:24 SEN. TUTVEDT agreed with SEN. ESSMANN's comments. He suggested keeping one telephone on the main secretary's desk and having one in the Speaker's and President's offices. SEN. WILLIAMS said that she used her desk-top phone a lot because her cell phone has a limit on minutes. She said that she likes the security of a desk-top phone as well. She discussed other related issues of concerns.
- 02:02:56 SEN. PETERSON said that there must be some sort of communications system and suggested that Ms. Fox do a cost-benefit analysis. He said that the issue is becoming more complicated with all of the new technologies available.
- 02:07:21 Ms. Fox discussed use of the IT allowance. **Hank Trenk, Director, Office of Legislative Information Technology**, said that he thought the allowance should

be between \$900 and \$1,000 in order to cover the cost of the computer and other essential items, such as software.

- 02:08:24 Mr. Trenk discussed why legislators are given an allowance to purchase their own computer versus the state buying the computers and lending them to legislators. SEN. PETERSON said that he would like Mr. Everts to comment on media issues and legislative work on personal computers.
- 02:09:58 Mr. Everts said that the Rules Subcommittee directed staff to do legal research and draft recommendations for dealing with technology concerns, such as what constitutes public email to a legislator; use of email, texting, and social media; and use of electronic devices in public hearings. He said that the Rules Subcommittee decided it needed to take a judicious and slow approach.
- 02:11:24 SEN. PETERSON asked about the legal standing of emails on a legislator's computer, considering that the emails would be a mixture of personal, business, and legislative communication. Mr. Everts said that it would depend on the type of email. He said that email related to a bill, for instance, it would be considered public information. He said that there are many similar issues and concerns that will have to be dealt with.
- 02:12:47 SEN. TROPILA asked about public access to legislator phone records, should an allowance be made for cellular telephones for legislators. Mr. Everts said the potential for public access exists. Ms. Fox said that there are certain protections for legislators but not complete protections. She said that she will get more information.
- 02:14:01 SEN. ESSMANN asked Mr. Trenk to investigate if there would be a cost savings to creating a more centralized computer system in which only a monitor, keyboard, and mouse would be required at a legislator's desk.

Feed Bill - session budget, caucus costs

- 02:15:34 Ms. Fox referred the Council to the 2011 Feed Bill Report (EXHIBIT 9). She discussed the current balances.

Identify Proposed Council Legislation

- **Publications, Including Supreme Court rules**

- 02:16:20 Mr. Everts reviewed the provisions of LC5555 - eliminate the publication requirement of court rules within the Montana Code Annotated (EXHIBIT 10).
- 02:18:59 SEN. TROPILA asked who pays the publishing costs for the court rules. Mr. Everts said the LSD pays up front but recoups the expense through MCA and Annotation sales.
- 02:19:56 It was agreed that the bill draft would proceed as drafted. SEN. ESSMANN inquired about limiting House Floor time used for executive branch speeches. SEN. WILLIAMS said the topic would be addressed at the next day's meeting.

- 02:20:58 Ms. Fox reviewed the provisions of LCLC02 - revising laws related to legislative publications and printing (EXHIBIT 11). She noted that there are several drawbacks, such as not being able to use an online purchasing system unless there was no distinction between public and private sector purchases. REP. MACDONALD asked if the percentage of purchases that come from the private sector versus the public sector is available. Ms. Fox said that it is usually fairly even.
- 02:24:00 REP. MCGILLVRAY asked about declining sales of hard copies of the publications. Ms. Fox said that sales did decline for a number of years but that sales have stabilized for the last few years. She said at this point in time, publishing the materials is still worthwhile. She said that she could get specific sales information for the Council, if desired.
- 02:25:32 SEN. TROPILA discussed online ordering and said that offering that option might result in increased sales and revenue, and differentiating between private and public sales. It was agreed that Ms. Fox would get more information on how to allow online purchases and how the current process differentiates between public and private sector purchases.
- 02:28:57 SEN. WILLIAMS suggested having just one purchase price for the MCAs. REP. HUNTER supported that suggestion. SEN. ESSMANN did also. It was agreed to add that to the list of topics to be researched by Ms. Fox.
- 02:30:52 SEN. TROPILA said he would like to find out what the true cost of one set of MCAs is in order to determine a fair cost.
- 02:31:29 Ms. Fox discussed recommendations from the legislative print shop (pages 4 and 5, EXHIBIT 12) and said that the language simply updates the statute to reflect the fact that very few people subscribe to session proceedings because so much information is available online.
- 02:32:19 REP. HUNTER suggested, as part of the restructuring of legislator allowances, paper copy revenue from MCA sales could "go into that setting". REP. MCGILLVRAY thought that legislators should pay the full purchase price for MCAs, particularly since they can be accessed online for free.
- 02:33:25 SEN. WILLIAMS asked Ms. Fox to find out how many legislators purchase paper copies of MCAs.
- **Legislator payroll and benefits**
- 02:33:51 Ms. Fox reviewed the provisions of LCLC05 - revise laws related to legislator payroll and benefits (EXHIBIT 12).
- 02:37:31 REP. HUNTER asked about Section 2 (3)(c) regarding unused employer contributions and why they can't be directly transferred into the general fund. He said it appears to be a convoluted loop to get the money to the same place. Ms. Fox said she would work with Mr. Everts to see what is necessary but that there

must be something in statute stating what must be done with the money. SEN. WILLIAMS said the Council would clear this up at its next meeting.

- **LAWS Update proposal**

02:39:06 Ms. Fox said that Mr. Trenk has discussed including the LAWS update proposal in HB 10 (Long Range IT Planning) with Dick Clark, CIO, Information Technology Services Division, Department of Administration. She referred to REP. SESSO's suggestion to also have a separate proposal, in the event it was not approved as a part of HB 10. SEN. WILLIAMS thought that efforts should proceed and asked members to speak with Ms. Fox if they have suggestions on how to proceed.

- **TVMT update**

02:40:46 Ms. Fox said that the statutes need to be updated and that she would like to present them at the next meeting. She said that the Computer Systems Planning Council (CSPC) statutes also need to be updated and that the CSPC is working with a consultant on that.

02:41:32 Ms. Fox said that a bill was passed in 2011 to require review of statutorily required advisory councils and required reports of assigned agencies. She said that staff is hoping that it will not have to do that every two years and would like the Council to consider a bill that would allow the process to space that out to more than every two years.

- **Member Issues**

02:42:29 REP. HUNTER asked to have Mr. Everts research possibilities for a bill draft that would provide more protection for private information on electronic devices. It was agreed.

02:43:38 SEN. WILLIAMS reminded the Council that the Security Subcommittee will meet in the morning at 8:00 a.m. Ms. Fox asked the members to bring photo identification to the data center tour.

02:45:36 SEN. WILLIAMS recessed the meeting at 4:20 p.m. The Legislative Council will reconvene at 9:00 a.m. on May 3, 2012.

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