



# 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

December 7, 2011

Room 137, 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

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  
REP. JON SESSO

### **COMMITTEE MEMBERS EXCUSED**

REP. MIKE MILBURN, Vice Chair

## STAFF PRESENT

Susan Fox, Executive Director, Legislative Services Division  
Todd Everts, Director, Legal Services  
Lee Heiman, Staff Attorney  
Jen Simmons, Financial Services Manager  
Dawn Field, Secretary

## AGENDA & VISITORS' LIST

Agenda, [Attachment #1](#).  
Visitors' List, [Attachment #2](#).

## COMMITTEE ACTION

The Legislative Council:

- approved the September 15 and 16 written minutes;
- approved recommended prices for the Annotations to the Montana Code Annotated;
- approved a recommendation to delete (1)(k) of 1-11-204, MCA;
- approved appointment of Todd Everts as Code Commissioner;
- approved creation of a subcommittee to further study a legislative security officer proposal;
- approved language changes to the interim committee rules to prohibit public comment given via phone;
- did not approve a motion to file an amicus brief in the *Donaldson v. State* case; and
- set March 7 and 8, 2012, as the Council's next meeting date.

## CALL TO ORDER AND ROLL CALL

- 00:00:01 SEN. WILLIAMS called the meeting to order at 1:00 p.m. The Secretary took roll, REP. MILBURN was excused ([Attachment #3](#)). **SEN. WANZENRIED moved to accept the September 15 meeting minutes as written. The motion passed on a unanimous voice vote.**
- 00:01:52 Cyndi Lockett, Network Administrator; Donald Phipps, Computer Systems Specialist; Joe Kolman, Legislative Environmental Policy Analyst; Jen Simmons, Fiscal Services Manager; and Dawn Hicks, Accounting Technician were introduced as new LSD hires. Todd Everts, Legal Services Director, announced that Alexis Sondru and Julie Johnson have been hired as staff attorneys and will begin in January.
- 00:06:55 Ms. Fox reported on numerous activities and projects:
- retro-commissioning project of the Capitol building, including work with the Department of Environmental Quality (DEQ) on an energy initiative;
  - request-for-proposal (RFP) out for audio-visual and web interface;
  - the Computer System Planning Council (CSPC) met and is working on the Computer Systems Plan and the IT budget;
  - annotations update;
  - ongoing work to reorganize and redefine the communications officer position; and
  - reconstitute staff teams from LSD, Legislative Audit Division (LAD), and Legislative Fiscal Division (LFD) to build team work but also to pass along institutional knowledge and better service to legislators.

00:12:03 SEN. WANZENRIED asked if the personnel policy alignment issues discussed in the 2011 Legislative Session are being taken care of. Ms. Fox reported that the three division directors are meeting regularly and are working to establish uniform branchwide policy where ever possible. SEN. WANZENRIED asked Ms. Fox to highlight areas where discretionary issues remain for Council discussion at a future meeting.

### **2011 SESSION AND BILL UPDATES**

#### **Board of Personnel Appeals Complaint**

00:14:28 **Todd Everts, Director, Legal Services, LSD**, discussed the Board of Personnel Appeals complaint, including actions taken by Staff Attorney Dan White and pending motions and decisions.

#### **HB No. 351 - Treasure State Endowment Program (TSEP) -- local government litigation**

00:16:05 Mr. Everts updated the Council on recent motions and actions taken in the lawsuit filed in response to Governor Schweitzer's line item veto of HB 351 involving the Treasure State Endowment Program. He said a decision on a motion for summary judgement is expected after the first of the year.

#### **Initiative and referenda status**

00:16:55 Mr. Everts updated the Council on the status of Referendum 119 (to require that Supreme Court Justices be elected or appointed from districts) and Referendum 123 (to require taxpayer refunds of surplus balances). He said he would keep the Council apprised of any decisions.

00:18:00 SEN. ESSMANN asked how many members are on the Board of Personnel Appeals and what the next step may be if either side is unhappy with the decision. Mr. Everts said he would find out the Board membership and what the appeals process would be.

00:19:33 SEN. PETERSON and Mr. Everts discussed how the timing of the court challenges mesh with the referenda process and the potential effect on the referenda on the ballot.

#### **Public Comment**

00:26:43 **Harold Blattie, Executive Director, Montana Association of Counties (MACo)**, provided additional information about the HB 351/TSEP litigation.

### **CODE COMMISSIONER ITEMS**

00:28:46 SEN. WILLIAMS noted that this would be Mr. Heiman's last appearance before the Legislative Council as Code Commissioner before his upcoming retirement.

#### **Set prices for Annotations**

00:29:03 **Lee Heiman, Code Commissioner, LSD**, presented price recommendations for the Annotations to the Montana Code Annotated ([EXHIBIT 1](#)). **REP. SESSO moved to approve the price recommendations. The motion passed on a unanimous voice vote.**

### **Rules promulgated by Supreme Court and future publications**

00:30:12 Mr. Heiman discussed (1)(k), 1-11-204, MCA, Duties of Code Commissioner pertaining to rules promulgated by the Supreme Court (EXHIBIT 2). He discussed a brief historical background, his recommendation that the Council rescind subsection (k) requiring the Legislative Council to publish the rules, and the rationale for his recommendation.

00:39:55 **SEN. WANZENRIED moved preparation of legislation to implement the recommendation to delete the current requirements of subsection (1)(k) in 1-11-204, MCA. The motion passed on a unanimous voice vote.**

### **Bid farewell to Lee Heiman**

00:41:31 SEN. WILLIAMS, on behalf of the Legislative Council, thanked Mr. Heiman for his many years of service and wished him well in his retirement. The Council members acknowledged their thanks and appreciation by standing and applauding Mr. Heiman.

00:42:19 Mr. Everts spoke of Mr. Heiman's many contributions and dramatic impact on Montana's legislative institution over his 32 years of service to the Legislature. Mr. Heiman thanked all for their kind words and said it was his great pleasure to work for Legislative Council and the legislators.

### **Appoint new Code Commissioner**

00:47:09 Ms. Fox recommended that Mr. Everts be appointed as Code Commissioner. **SEN. WANZENRIED moved to appoint Todd Everts as Code Commissioner. The motion passed on a unanimous voice vote.** The Council members congratulated Mr. Everts.

### **STRATEGIC PLANNING INITIATIVES**

00:49:12 SEN. WILLIAMS asked to review the Strategic Planning Session minutes (EXHIBIT 3). Ms. Fox summarized each section and said that she based the Work Plan (EXHIBIT 4) on the decisions made at the Strategic Planning Session.

00:56:01 **REP. O'HARA moved to adopt the Strategic Session Planning Session written minutes, as written.** The Council discussed how the work plan would be executed over the remaining interim. **The motion passed on a unanimous voice vote.**

### **Proposal for Legislative Security Officer**

00:59:16 Ms. Fox reviewed a proposal for Legislative Services Division to contract with the Helena Police Department to provide two full-time uniformed officers to be available during the interim and 2013 legislative session (EXHIBIT 5).

01:10:52 REP. MCGILLVRAY asked if the proposal would replace the current contracted officer or be in addition to that position. Ms. Fox said the two officers would be in addition to Officer McGee, who is the current contracted officer who patrols the Capitol complex.

- 01:12:21 SEN. TUTVEDT discussed his concerns about having armed officers on the Capitol campus. He said he would prefer to address security concerns through the sergeant at arms office or other avenues and that he would not support the proposal.
- 01:13:44 SEN. ESSMANN discussed how the positions would be paid for and if the Executive and Judicial Branches would be contributing; and several security concerns. Ms. Fox responded to his concerns and explained the rationale for the funding of the proposal.
- 01:20:21 SEN. ESSMANN asked if putting out a request-for-proposal (RFP) to private firms to provide security was considered. Ms. Fox said it was not but could be pursued.
- 01:21:16 REP. HUNTER said he would support the motion because of the heightened level of security the additional officers would provide. He agreed with suggestions that the Executive and Judicial Branches should contribute and asked if the Department of Administration offered to help with the cost. Ms. Fox said that was not discussed but that it could be part of a new proposal.
- 01:23:12 SEN. TROPILA discussed his concerns about hiring of a person lacking the proper training or professional qualifications, as opposed to a trained police officer. Ms. Fox said that staff has expressed a great deal of concern about professional qualifications. She said that the position should require a high level of training.
- 01:25:48 REP. MCGILLVRAY asked Sergeant McGee to discuss his routine and work responsibilities. Sergeant McGee said that Montana is far behind and lax in its security features. He noted that he is a single officer who covers a ten-mile area and that the Capitol building can have over 1,000 occupants daily during a legislative session. He said that security needs to be strengthened in order to be able to provide the appropriate response, should the need arise. He said that under the proposal, there would one or two officers in the Capitol building at all times during a legislative session.
- 01:30:27 REP. MACDONALD asked if it is possible to privately contract with armed guards to perform security duties. Sergeant McGee said he could not speak for private companies but that the Helena Police Department requires extensive training for its officers and employs a very skilled and well-trained police force.
- 01:40:41 After additional discussion, **SEN. WANZENRIED moved to place the issue in a subcommittee, which would prepare recommendations for the Council's March 2012 meeting.** He said that a broader discussion on security and time to study the concerns are needed before moving forward. **The motion passed on a unanimous voice vote.** SEN. PETERSON, REP. HUNTER, REP. O'HARA, and SEN. WILLIAMS were appointed to the subcommittee and will meet before the March meeting. Ms. Fox requested that Sergeant McGee and Assistant Chief Jersowitz attend the subcommittee meeting to provide further assistance. SEN. WILLIAMS agreed.

### **Appoint Rules Subcommittee**

- 01:44:59 SEN. WILLIAMS appointed SEN. PETERSON, SEN. TROPILA, REP. O'HARA, and REP. MACDONALD to the Rules Subcommittee. Mr. Everts suggested that the Subcommittee begin meeting after the first of the year and follow the past model of meeting prior to each Council meeting. He said he has a number of topics prepared and asked the Council members to make their suggestions for changes as well. He said the proposed changes would be presented to the Council in the fall. SEN. WILLIAMS encouraged Council suggestions and participation. Ms. Fox said an article could be published in the Interim newsletter requesting legislators to provide concerns and suggestions. SEN. WILLIAMS agreed. Mr. Everts mentioned that other items on the work plan, such as the legislative calendar, would require coordination with the Rules Subcommittee.
- 01:48:09 SEN. TUTVEDT said the Council had discussed how to build in a 10-day break at the end of session to wait on the Governor's action (or veto) on a bill, and that Mr. Everts had said at that time the rules would not allow for it. SEN. TUTVEDT requested that information be provided on those rules, what the end game would look like, and what rules need to be changed to meet the Governor as an equal and review any veto. Mr. Everts agreed to provide the rules and potential options in regard to that issue.

### **Initiate discussion on legislative calendar for 2013 Session**

- 01:49:23 Ms. Fox discussed a proposed 2013 legislative session calendar ([EXHIBIT 6](#)). The Council members held a general discussion related to the legislative calendar, which included Saturday sessions, legislator education and training days, transmittal deadlines and break, and other relevant topics. It was agreed that staff would research options further and report back to the Council.

### **INTERIM COMMITTEE UPDATES**

#### **HB 642 - Select Committee on Efficiency in Government (SCEG)**

- 02:08:48 Ms. Fox discussed a proposal under consideration by the SCEG to require all state agencies to migrate to the State of Montana Data Center (SMDC) and how such a requirement could affect the Legislative Branch. She said she is working with IT staff to draft a memo to discuss branch concerns and asked the Council members for their input. She said she intends to present the memo to the SCEG and will also discuss her concerns with the Computer Systems Planning Council.
- 02:11:46 Ms. Fox reported on the off-site video streaming provided by LSD IT staff for the SCEG meeting in Great Falls. She said there were only a few minor glitches and that the plan is to provide streaming for the Bozeman and Butte meetings also.
- 02:14:02 The Council discussed migration to the Data Center. SEN. ESSMANN asked for additional explanation of LSD servers and the Data Center. Ms. Fox said she is in the process of inventorying the servers in an attempt to determine how each server is used.
- 02:15:46 SEN. WANZENRIED said that a tour of the SMDC is worth the time and that there is a lot of unused capacity at the Data Center. He noted that certain entities are not willing to migrate, specifically the university system, but suggested that

security would be greatly improved and that costs would be reduced through migration to the Data Center.

- 02:16:38 SEN. WILLIAMS said a tour could be arranged for the March meeting. It was agreed.
- 02:17:49 Ms. Fox referred the members to an excerpt from the *Rules, Procedures, and Guidelines for Interim Committees* mailed to them in advance of the meeting (EXHIBIT 7) and discussed her own and staff concerns on the issue of allowing public comment to include phone testimony under the public participation guidelines. Ms. Fox said the proposed rule change would not allow public comment to be taken by telephone and would encourage use of written comment submitted electronically or through regular correspondence.
- 02:24:00 The Council discussed numerous concerns, including the potential for false or anonymous testimony with no verification, how to deal with changing and advancing technologies, and the importance of protecting public participation and the legislative process.
- 02:30:44 SEN. TROPILA suggested that the language needed to be tweaked further to clarify that phone comment would not be allowed regardless of the discretion of the chair.
- 02:31:50 REP. O'HARA moved to approve the underlined language in C. and E., and to include the language change suggested by SEN. TROPILA as an amendment. SEN. WILLIAMS requested assistance from Mr. Everts. Mr. Everts recommended the following language: "*After C., put sub (1), and say 'except as provided in C.(2); and insert sub (2) in front of "Public comment may not be accepted over the phone."*"
- 02:32:56 SEN. TUTVEDT said he understood why the activity should be discouraged but did not support taking the power away from the chair.
- 02:33:59 **REP. O'HARA withdrew his motion. SEN. TROPILA moved to approve the amended language, as proposed by Mr. Everts.** Mr. Everts reread his proposed language.
- 02:35:36 **The motion passed on a 9-3 voice vote. SEN. TUTVEDT, SEN. ESSMANN, and SEN. WANZENRIED voted no. REP. MILBURN voted yes by proxy (McGillvray).** Ms. Fox said she recognizes that this may not be the best solution but would at least but give the Council time to allow further study and consideration of how to deal with the issue. SEN. ESSMANN stated that the major issues are how to provide fairness and veracity of identification.

#### **OTHER COUNCIL BUSINESS**

##### **Member concern: *Donaldson v. State*, discussion of amicus brief**

- 02:38:37 REP. MCGILLVRAY discussed his concerns about protecting legislative authority and separation of powers as they relate to the *Donaldson v. State* decision (EXHIBIT 8). **REP. MCGILLVRAY moved to have legislative staff petition the**

**Court to grant permission for staff to file an amicus brief on behalf of the Legislature supporting Judge Sherlock's decision.**

- 02:43:01 Mr. Everts said that legal staff has researched what would need to be done, should the Council approve the motion and the Supreme Court grant the request. He said that staff would have to work quickly in order have an amicus brief ready to file by the end of January.
- 02:45:34 REP. MACDONALD asked how many times the Legislature has filed an amicus brief. Mr. Everts said the last time this Council authorized an amicus brief before Supreme Court was in *Cooper V. Glaser* in 2009.
- 02:47:43 SEN. TUTVEDT and SEN. ESSMANN said they supported the motion and discussed the basis for their opinions.
- 02:49:55 SEN. WANZENRIED and REP. MACDONALD opposed the motion and discussed their opinions.
- 02:52:55 SEN. PETERSON explained why he would support the motion.
- 02:53:44 SEN. WILLIAMS discussed the distinctions between the *Donaldson v. State* case and the *Cooper v. Glaser* case and why she would not support the motion. **REP. MCGILLVRAY's motion failed on a 6-6 roll call vote. REP. HUNTER, REP. MACDONALD, REP. SESSO, SEN. TROPILA, SEN. WANZENRIED, and SEN. WILLIAMS voted no. REP. MILBURN voted yes by proxy (McGillvray).**
- 02:59:07 Ms. Fox pointed out that the meeting folders have updated budget information: leadership funds and national committee participation ([EXHIBIT 9](#)), a Feed Bill report ([EXHIBIT 10](#)), Program 21 - interim committees budget update ([EXHIBIT 11](#)), and Program 20 (Legislative Services Division) budget update ([EXHIBIT 12](#)). She said if the Council members have questions, please call her or Jen Simmons.
- 03:04:07 SEN. WANZENRIED discussed concerns about "work groups" and public meeting notice requirements. He said there needs to be a policy established because this is a gray area. SEN. WILLIAMS asked Mr. Everts and Ms. Fox to look into the issues. Ms. Fox responded to several of SEN. WANZENRIED's concerns and said that she would ensure that all meetings are properly noticed.

**Legislative Training with Legislative Finance Committee**

- 03:09:47 Ms. Fox discussed the potential of a legislative training session scheduled for March 2012 to be held in conjunction with Legislative Finance Committee (LFC).
- 03:11:45 REP. SESSO said he is not opposed to the notion but that his opinion of the last joint training session is that it was not as productive as it should have been. He discussed his position further and said that the LFC made a recommendation to delay the "Big Picture" report until June in order to have more accurate budget information. He suggested having the LFC, the Revenue and Transportation Interim Committee (RTIC), and Legislative Council agree to meet in the same



week and schedule evening workshops and presentations to provide the needed education and information.

03:17:49 SEN. PETERSON said he supports training and agreed that having the training later in the year would result in better information. He suggested late summer or early fall.

03:19:38 SEN. WILLIAMS also agreed that choosing a different time is a good idea but said that staff schedules and work load should also be considered in the decision. Ms. Fox said the decision could wait until the March meeting.

03:21:43 REP. SESSO proposed another alternative, which was to offer all legislators the opportunity to attend the committee meetings of their choice, and perhaps even pay travel costs. He discussed how such an opportunity would provide an incentive to legislators who are serious about educating themselves on the important issues, which would benefit the Legislature as a whole.

03:25:49 SEN. WILLIAMS said further discussion would be held at the March meeting. She discussed her concerns about the impact of term limits, the lack of decorum in the Legislature, and the importance of legislator participation in both training and social events in order to foster a better understanding of one another and of the issues. She agreed that the trainings could be structured differently and suggested that committee members work with staff to identify options for change. She asked staff to explore the topic with the other committees. The Council members discussed possible meeting dates. It was agreed that the Council would meet on March 7 and 8.

SEN. WILLIAMS said that for the March meeting, the Council should schedule an agenda item for the results of the revenue estimating roundtable follow-up in January.

#### **Public Comment**

03:33:17 No public comment was given.

#### **ADJOURNMENT**

03:33:46 With no further business before the Legislative Council, REP. O'HARA moved to adjourn the meeting. The meeting was adjourned.

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