



# Legislative Council

## 66th Montana Legislature

### SENATE MEMBERS

MARK BLASDEL  
MARGARET (MARGIE) MACDONALD  
JP POMNICHOWSKI  
SCOTT SALES  
JON SESSO  
FRED THOMAS

### HOUSE MEMBERS

KIM ABBOTT  
SETH BERGLEE  
WYLIE GALT  
GREG HERTZ  
SHANE MORIGEAU  
CASEY SCHREINER

### COMMITTEE STAFF

SUSAN FOX, Executive Director  
TODD EVERTS, Legal Division Director  
FONG HOM, Secretary

## MINUTES LOG

December 10, 2019  
Room 172, Capitol Building  
Helena, Montana

Please note: This document is a Minutes Log and provides a notation of the time elapsed between the beginning of the meeting and the time at which the item was presented or discussed, a motion was made, or a vote was taken. The narrative presented here is provided only as a guide to the audio or video record of the meeting. The official discussion, motion, or vote is available on the audio or video archive of this meeting. The Legislature does not prepare a transcript of meeting activities. The time designation may be used to locate the referenced discussion on the audio or video recording of this meeting.

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Please contact the Legislative Services Division at 406-444-3064 for more information.

### COMMITTEE MEMBERS PRESENT

SEN. MARK BLASDEL  
SEN. MARGARET (MARGIE) MACDONALD  
SEN. JP POMNICHOWSKI  
SEN. SCOTT SALES  
SEN. JON SESSO  
SEN. FRED THOMAS

REP. KIM ABBOTT  
REP. SETH BERGLEE  
REP. WYLIE GALT  
REP. GREG HERTZ  
REP. SHANE MORIGEAU  
REP. CASEY SCHREINER

### COMMITTEE MEMBERS EXCUSED

### STAFF PRESENT

SUSAN BYORTH FOX, Executive Director  
TODD EVERTS, Legal Director  
FONG HOM, Committee Secretary

## VISITORS' LIST ([Attachment 1](#))

## AGENDA ([Attachment 2](#))

### COMMITTEE ACTION

At the December 10 meeting, the Legislative Council took the following actions:

- Approved upgrading the sound system in the Senate Chamber, the third and fourth floor meeting rooms, and in the House Chamber.
- Approved to reimburse legislators participating in the HB 586 study for their travel and per diem expenses.
- Voted that participation by legislators in the Leadership Montana educational retreat will be considered a legislative act and an educational opportunity without any recrimination with respect to an ethics violation.
- Approved to reimburse expenses and salary for those legislators participating in Legislative Week.

At the December 11 meeting, the Legislative Council took the following action:

- Approved the Economic Affairs Interim Committee's decision to not do the HJ29 Study, and the Transportation Interim Committee's decision to not do the HJ34 Study

### CALL TO ORDER/ROLL CALL

13:04:52 Rep. Casey Schreiner called the meeting to order at 1:04 p.m. The committee secretary called roll. ([Attachment 3](#))

### OTHER STUDY UPDATES - Susan Fox, Executive Director

#### HJ 35 Update

13:06:09 Susan Fox gave an update on HJ 35. She referred the committee to the memo from the Revenue Interim Committee regarding the HJ 35 Tax Study. ([Exhibit 1](#))

#### SB 310 Steering Committee Report

13:08:29 Ms. Fox gave a demonstration on the Council's website on where to find information and documents on the Senate Bill 310 Study.

13:09:05 Rep. Kim Abbott reported on the activities of the SB 310 Subcommittee.

13:11:00 Ms. Fox discussed the matrix that she is developing.

### EXECUTIVE DIRECTOR UPDATES - Susan Fox, Executive Director

13:12:41 Ms. Fox gave an update on the audit conducted by the Legislative Audit Division. She introduced the newest member of the IT Division, Brad Villa.

*(Sen. Sesso joined the meeting at 1:13 p.m.)*

#### Session Systems Replacement

13:13:28 Ms. Fox ([Exhibit 2](#))

### **Vote Boards**

13:21:38 Ms. Fox gave a presentation on the new Vote Boards and the protocols of what is and isn't allowed to be on the vote boards.

### **IT Reserve Request**

13:24:09 Ms. Fox referred the committee to the picture of the Senate that shows the new sound system. [\(Exhibit 3\)](#)

13:24:48 Ms. Fox discussed the following: IT Reserve Account Activity [\(Exhibit 4\)](#) and the IT Reserve Account Request [\(Exhibit 5\)](#).

### **Committee Questions**

13:28:14 Rep. Schreiner asked about the Portal App.

13:29:22 Rep. Greg Hertz asked about upgrading the House sound system at this time.

### **Motion/Vote**

13:30:02 Rep. Hertz moved to upgrade the sound system in the Senate Chamber, the third and fourth floor meeting rooms, and in the House Chamber. The motion passed unanimously by voice vote.

### **Emerging Issues: HB 586 reimbursement - State Labs**

13:30:50 Ms. Fox discussed the HB 586 reimbursement for the State Lab Committee.

### **Motion/Vote**

13:32:02 Sen. MacDonald moved to reimburse those on the HB 586 study for their travel and per diem expenses. The motion passed unanimously by voice vote.

### **LEGAL OFFICE UPDATES - Todd Everts, Legal Director**

#### **MCA Publications: Codification/Annotations**

13:33:10 Todd Everts reported on the publication of the MCAs, and the digital subscriptions.

### **Litigation**

Mr. Evert did not have anything to report.

### **Initiatives**

13:38:14 Mr. Everts [\(Exhibit 6\)](#)

### **Appointment of Rules Committee**

13:39:34 Mr. Everts discussed appointing members to the rules subcommittee.

13:39:39 Rep. Schreiner said that they will take action on appointment of the rules

subcommittee at the next meeting.

13:39:55 Ms. Fox discussed topics that the rules subcommittee will have to consider for the upcoming 2021 legislative session.

## **COUNCIL BUSINESS**

### **Response to leadership inquiry re: Commissioner of Political Practices and Legislator activities - Todd Everts and Jaret Coles**

13:42:22 Mr. Everts gave background information on the Legislative Council's response memo to the Commissioner of Political Practice's memo of September 27, 2019.

13:52:09 Rep. Schreiner said that it is important to have this issue as a public record.

13:52:49 Jaret Coles discussed the memo "Request for Guidance: Legislators' Participation in Educational Activities, dated November 26, 2019 ([Exhibit 7](#)), and the Flow Chart ([Exhibit 8](#)).

14:13:28 Mr. Everts discussed the response to the jurisdictional issue.

14:24:31 Jeff Mangan, Commissioner of Political Practices

14:44:06 Jaime MacNaughton, Chief Legal Counsel, Office of Commissioner of Political Practices discussed the following documents: Memorandum dated September 27, 2019 ([Exhibit 9](#)) and E-mails regarding Leadership Montana Legislative Retreats ([Exhibit 10](#)).

### **Committee Questions**

14:51:17 Sen. Thomas asked if Mr. Mangan had followed up on the educational element of the retreat offered by Leadership Montana.

14:57:26 Sen. Thomas asked why the Legislative Council is involved in this complaint.

14:58:33 Sen. Thomas asked about Mr. Mangan's response to Leadership Montana's first email.

14:59:59 Sen. Thomas asked Mr. Mangan what he considers a legislative act, and if the event put on by Leadership Montana is considered an educational opportunity and not a legislative act for legislators.

15:01:23 Rep. Abbot asked Mr. Mangan if this issue could be resolved expediently so that members could participate in an event that is educational.

15:02:42 Mr. Everts suggested that at the next legislative session that jurisdiction is clarified.

15:09:12 Rep. Berglee asked Mr. Mangan if it would be his position that legislative acts would only constitute something that is originated by Legislative Services or a member of leadership.

15:12:00 Rep. Hertz asked Mr. Mangan if legislators pay to attend an event, would that attendance be considered a legislative act.

- 15:15:48 Rep. Casey Schreiner said that if a third party is paying lodging for a legislator, is that considered a legislative act at that point?
- 15:17:12 Sen. Thomas said he is scheduled to go to an educational event whereby his fee will be waived. He asked if it would be okay for him to attend that event because he is a legislator and therefore it is a legislative act.
- 15:20:27 Rep. Schreiner asked Mr. Mangan if someone files an ethics complaint with his office and he determines that that was a legislative activity and is not under his jurisdiction, does that complaint at that point gets tossed aside?
- 15:22:01 Mr. Mangan said if that it is public at the time it hits his desk, and he would forward it to the Legislature and Mr. Everts.
- 15:22:47 Rep. Schreiner asked, if the complaint is not within Mr. Mangan's jurisdiction, does it end up being published by him?
- 15:25:34 Rep. Berglee said that this is important to have on record what we are trying to accomplish. The issue he sees is that you have an ethics complaint in terms of legislative judgement which is then referred to the legislative body. There is also the idea of public opinion and the idea that someone just decides that it is an ethical violation and then files it as such.
- 15:28:53 Mr. Everts said that the legal opinions that are provided aren't binding in a court of law. They are advisory. If you were to change the statute to allow a staff role in that in terms of making a determination, you will still get into the unlawful delegation of authority to staff for a decision which is ultimately you as legislators acting in the ethics committees and as the body, that is your constitutional duty to make that decision.
- 15:30:47 Sen. Sesso said there are two issues: one, can we provide any direct relief to the Citizenship Montana group. Secondly, there is no further interpretation of what our legal staff has put together regarding the decision making process that we all have to go through. He also would ask staff to prepare for the March meeting a set of options that clarifies anything in the law that needs clarification that includes but is not limited to who has jurisdiction particularly during the interim.

### **Motion**

- 15:34:43 Sen. Thomas moved that participation by legislators in the Leadership Montana educational retreat be considered a legislative act and an educational opportunity without any recrimination with respect to an ethics violation.

### **Discussion**

- 15:35:46 Rep. Hertz said he liked the idea of the motion but is concerned about other events that legislators might attend that provides educational opportunity and is not sure what this motion might do.
- 15:36:15 Sen. Sesso said that this is the first time in his recollection that there has been any question as to whether or not an event like what Leadership Montana is putting on would be considered anything but an educational opportunity for

15:39:15 legislators trying to improve and better themselves in the conduct of their jobs.  
Sen. MacDonald agreed and supported the motion.

### **Vote**

15:39:55 The motion passed unanimously by voice vote.

15:40:12 Sen. Sesso asked staff to prepare options in addressing if there is more clarity needed on the business of a legislative act, clarity on the gift ban, clarity on educational opportunity, etc., and including but not limiting the standing of the ethics committee during the interim.

15:42:16 Rep. Casey directed staff to prepare information on Sen. Sesso's request and to send out the flow chart related to ethics laws and post it to the Legislative Council's website.

### **Public Comment**

15:43:03 Laurence Hubbard, Leadership Montana

### **Legislative Week - Susan Fox**

15:44:56 Ms. Fox distributed version 8 of the draft Legislative Week schedule.  
**(Exhibit 11)**

15:47:26 Ms. Fox discussed the cost estimates of Legislative Week. **(Exhibit 12)**

### **Committee Questions**

15:50:57 Sen. Pomnichowski asked about the breakout session on Wednesday regarding states responses to declining coal markets and asked how topics are being determined. She also asked if the committee will be fully staffed.

16:00:35 Ms. Fox discussed the cost estimates. **(Exhibit 12)**

### **Motion**

16:05:54 Sen. Sales moved that legislators attending Legislative Week be compensated for two nights of lodging and two days of salary.

### **Discussion**

16:06:33 Sen. Pomnichowski said that motion is specific to two days, but if people need to stay an extra day, she would like more latitude to say that Legislative Council supports legislators participating in Legislative Week, and whatever needs to be done to accommodate that.

16:06:37 Rep. Schreiner asked if the motion would be that Legislative Council authorizes legislators to participate in Legislative Week and costs associated with it; i.e.,

lodging, mileage, and per diem.

**Motion withdrawn**

16:06:44 Sen. Sales withdrew his motion.

**Motion/Vote**

16:06:51 Sen. Pomnichowski moved that expenses and salary be covered for those legislators participating in Legislative Week. The motion passed unanimously by voice vote.

**PUBLIC COMMENT on any topic under the jurisdiction of the Legislative Council**

None.

16:07:53 Ms. Fox discussed the tour on the vote boards in the chambers.

**RECESS**

16:08:12 With no further business before the Council, Rep. Schreiner recessed the meeting at 4:08 p.m.

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