



## LEGISLATIVE COUNCIL 67th Montana Legislature

### SENATE MEMBERS

Mark Blasdel – Presiding Officer  
Jill Cohenour  
Jason Ellsworth  
Pat Flowers  
JP Pomnichowski  
Cary Smith

### HOUSE MEMBERS

Kim Abbott – Vice Presiding Officer  
Laurie Bishop  
Wylie Galt  
Derek Harvey  
Casey Knudsen  
Rhonda Knudsen

### COMMITTEE STAFF

Susan Fox - Executive Director  
Todd Everts - Attorney  
Fong Hom - Secretary

# MINUTES LOG

December 6, 2021  
Room 102  
Helena, Montana

Please note: This document is a Minutes Log and provides annotation 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 recording 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 the 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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### **MEMBERS PRESENT:**

Sen. Mark Blasdel, Chair (R)  
Rep. Laurie Bishop (D)  
Sen. Jill Cohenour (D)  
Sen. Jason Ellsworth (R)  
Sen. Pat Flowers (D)  
Rep. Wylie Galt (R)  
Rep. Derek Harvey (D)  
Rep. Rhonda Knudsen (R)  
Sen. JP Pomnichowski (D)  
Sen. Cary Smith (R)

### **MEMBERS EXCUSED:**

Rep. Kim Abbott, Vice Chair (D)  
Rep. Casey Knudsen (R)

### **STAFF PRESENT:**

Susan Fox, Executive Director  
Todd Everts, Attorney  
Fong Hom, Secretary

## **AGENDA** ([Attachment 1](#))

## **VISITORS' LIST** ([Attachment 2](#))

### **COMMITTEE ACTION**

The Legislative Council at its December 6, 2021, meeting took the following actions:

- Voted to send a letter to the Law and Justice Interim Committee recommending that the Department of Corrections report on education and employment opportunities for the inmates in the Women's Prison with a focus on Native women;
- schedule a Legislative Training Day on January 26, 2022; and
- draft a letter requesting that the governor include in his space study, adequate office space for the House and Senate, and staff, especially for the Information Technology staff.

### **CALL TO ORDER/ROLL CALL**

09:33:32 Presiding Officer Blasdel called the meeting to order at 9:33 a.m. The committee secretary took roll. ([Attachment 3](#))

### **DIVISION UPDATES**

#### **Executive Director Updates**

09:35:43 Susan Fox, Executive Director, introduced the new Legislative Services Division's hirees: Emil Gatz and Maie Lee Jones, and Travis Brown.

09:36:54 Todd Everts, Legal Director, announced that Jaret Coles and Julie Johnson have been selected as Deputy Directors of Legal Services.

#### **Status of 2021 Feed Bill**

09:37:37 Ms. Fox gave an update on the 2021 Feed Bill and Program 21 ([Exhibit 1](#)), and the 2023 Bien Legislator Activities Reports ([Exhibit 2](#)).

#### **Legal Office Updates**

##### **Codification**

09:39:32 Mr. Everts reported on the status of Codification.

##### **Initiatives**

09:39:32 Mr. Everts discussed the ballot initiatives from the Secretary of State's Office. ([Exhibit 3](#))

##### **Litigation**

09:40:05 Mr. Everts gave a presentation on the status of litigation activities. ([Exhibit 4](#))

### **COUNCIL BUSINESS**

#### **Law and Justice Interim Committee Request re: Senate Joint 26**

09:40:47 Ms. Fox discussed the letter from the Law and Justice Interim Committee (LJIC) regarding the Senate Joint Resolution 26 Study of the Montana Women's Prison and the availability of programs at the prison. ([Exhibit 5](#))

#### **Committee Questions and Discussion**

09:41:32 Sen. Flowers discussed drafting a letter to the LJIC recommending that the Department of Corrections report out education and employment opportunities for Native women at the Women's Prison.

**Motion**

09:42:08 Sen. Flowers moved that the Legislative Council send a letter to the Law and Justice Interim Committee recommending that the Department of Corrections report out on education and employment opportunities for the Women's Prison with particular focus on Native women.

**Vote**

09:42:27 The motion passed with Rep. Bishop, Rep. Galt, and Sen. Smith voting aye by proxy.

**District & Apportionment Commission Request for Funds**

09:42:54 Ms. Fox discussed the request from the Montana Districting and Apportionment Commission for additional funds to hire outside technical and professional consultants to assist with redistricting tasks. [\(Exhibit 6\)](#)

**Motion**

09:44:33 Sen. Cohenour moved to approve \$50,000 from the Emerging Issues Funds and Program 21, as requested by the Districting and Apportionment Commission.

**Discussion on the Motion**

09:44:55 Sen. Ellsworth asked Ms. Fox to go into more detail on the two programs, the Prison Reallocation and the Racial Block Voting.

09:50:46 Rep. Knudsen asked what the dollar amount is that they are asking for. Ms. Fox said that the Commission is asking for \$40,000 for the Racial Block Voting analysis and \$10,000 for the Prison Reallocation project.

09:51:19 Sen. Ellsworth said that he cannot support the motion.

09:52:30 Sen. Cohenour said that she supports the motion and stated her reasons.

**ROLL CALL VOTE**

09:56:37 The motion failed 6-6, on a tie vote, with Senators Blasdel, Ellsworth, and Smith, and Representatives C. Knudsen and R. Knudsen voting no. Rep. Galt voted no by proxy. Senators Cohenour, Flowers, and Pomnichowski, and Representatives Abbott and Harvey voting aye, and Rep. Bishop voted aye by proxy.

**Office of Legislative Information Services 2021 Biennium Report and LAWS II - SSR Update**

09:57:01 Dale Gow, CEO, Information Technology Division, gave the 2021 Biennium Report from the Office of Legislative Information Services (OLIS). Mr. Gow also gave an update on the Session System Replacement (SSR) Project. [\(Exhibit 7\)](#)

**Committee Questions and Discussion**

10:05:10 Sen. Cohenour asked about the current email system and said that she has had difficulty in working with that system.

10:07:04 Sen. Ellsworth discussed the issue of legislators labeling their priority bills during session.

10:07:57 Ms. Fox said that the system was designed around the function of the rules and the rules is where priority bills are discussed. The rules subcommittee will be the one to decide a different method of determining priority bills or how they are labeled.

10:09:22 Todd Everts, Legal Director, referred the Council to Joint Rule 40-40, that outlines the drafting priority.

10:10:08 Sen. Pomnichowski gave background history of why the current email system is being used.

10:13:06 Sen. Ellsworth discussed JR 40-40(2)(a). He asked if there could be a motion to address this issue.

10:14:23 Mr. Everts explained JR 40-40, and said the system was built around the rule and the Rules Subcommittee is set up to deal with these types of issues.

10:17:16 Sen. Flowers complemented the Legislative Services and the IT staff for their good work.

### **Retrospective Video**

10:18:18 Ms. Fox presented the video that Lindsay Krywaruchka, IT Operations Manager, produced.

10:22:11 Ms. Krywaruchka commented.

### **Amendments-in-Context Discussion**

10:23:55 Ms. Fox gave a presentation on Amendments-in-Context (AIC). Ms. Fox distributed three packets of information to show how the Amendments-in-Context works: A Business Report ([Exhibit 8](#)); Committee of the Whole Amendment ([Exhibit 9](#)); and the Amendments in Context (AIC) Legend ([Exhibit 10](#)).

### **Committee Questions and Discussion**

10:32:27 Sen. Pomnichowski asked Ms. Fox about AIC being logged in the journal or system. She asked how amendments to amendments, conceptual amendments in committee or on the floor, are handled.

10:33:12 Ms. Fox discussed conceptual amendments.

10:34:21 Marilyn Miller, Secretary of the Senate, asked if all legislators must have laptops.

10:36:37 Sen. Blasdel said that this issue will be further discussed in future meetings.

### **Legislator Portal Demonstration**

10:37:08 Susan Murray gave a demonstration on the Legislator Portal. ([Exhibit 11](#))

### **Committee Questions and Discussion**

10:50:35 Sen. Pomnichowski asked several questions regarding the Legislator Portal: is the Portal connected to the bills database, will "search for a bill hearing" still be available online, will the floor agenda still have dynamic links, and will documents such as amendments, legal notes, or fiscal notes associated with bills be available online. She also asked if "Key Word" search will be enabled and accessible.

**BREAK** (reconvened at 11:05 a.m.)

### **Confirmation of Legislator Devices for 2023 Session**

11:08:31 Mr. Gow discussed finding a common platform, such as laptops and/or tablets for legislators, and supporting those platforms.

### **Committee Questions and Discussion**

- 11:13:35 Sen. Pomnichowski said that she would like to have a common platform that would be available to all legislators and installed on whatever devices each legislators wanted to use during session.
- 11:13:57 Ms. Fox discussed Android vs Apple, laptop vs tablet, and what kind of support is needed, and the availability and costs of purchasing the devices.
- 11:16:27 Sen. Flowers said he understands the need for consistency but if we have consistent software and consistent portals, then consistent hardware is not essential.
- 11:17:46 Rep. Abbott suggested including each caucus' staff in whatever plan is decided on.
- 11:20:31 Sen. Blasdel asked for an estimate on purchasing the devices. Sky Foster, Technical Services Manager, gave a figure of around \$80,000 or \$150,000.
- 11:22:37 Rep. Knudsen asked about the IT allowance and if legislators could use that allowance to purchase the device of their choice.
- 11:24:59 Sen. Pomnichowski said that whatever device a legislator uses, there should be minimum system requirements.
- 11:27:12 Rep. Harvey asked about issuing a device that is already formatted.
- 11:28:13 Sen. Cohenour asked about a timetable to address the supply chain and costs.
- 11:30:26 Ms. Fox said that further information regarding the Council members' concerns could be presented at the Council's March meeting.
- 11:31:24 Sen. Cohenour asked Mr. Gow if the RSA device that was issued to them could be used as the login.

### **Legislative Training Day Discussion**

- 11:33:09 Ms. Fox discussed the training survey that was put out by Joe Kolman (**Exhibit 12**). She discussed doing a training day in January 2022.
- 11:38:22 Rep. Knudsen and Sen. Ellsworth said they support a training day in January 2022.

### **Motion/Vote**

- 11:40:38 Sen. Cohenour moved to schedule a legislative training day for January 26, 2022. The motion passed unanimously by voice vote, with Rep. Bishop and Rep. Galt voting aye by proxy.
- 11:41:19 Ms. Fox said that this will come out of the carryforward funds. She asked for topics to discuss on the training day.
- 11:42:01 Sen. Blasdel asked about the 40% response rate on the training survey.
- 11:43:35 Ms. Fox suggested incorporating caucus aides to help with training in January.
- 11:44:42 Sen. Pomnichowski discussed using the videos that were made for the 2021 session.

### **Overview of Legislative Cycle**

- 11:47:00 Ms. Fox gave an overview of the Legislature presence in a legislative cycle. (**Exhibit 13**)

### **Caucus Staff Reports**

None.

### **Caucus Websites Discussion**

11:59:24 Ms. Fox referred the Council to the document "Proposal for Caucus Webpages" (**Exhibit 14**). She said there are concerns on what is acceptable, what is not, and is this something that the Council wants to pursue now or look at developing either legislation or a more clear guideline of what is acceptable.

12:01:19 Mr. Everts discussed the concerns of the legal staff and the Commissioner of Political Practices (COPP) regarding what is acceptable and what is not on the development and utilization of caucus websites.

12:04:56 Rep. Harvey said that he doesn't want to operate in the gray zone on what the staff can and cannot do legally. He suggested pressing the pause button and work on developing legislation to address the concerns.

12:05:54 Rep. R. Knudsen said that it is time to move forward with developing the caucus webpages.

12:06:44 Sen. Cohenour expressed her concerns that legislative staff could be put in a position that would go against the ethics laws that state employees have to follow.

12:13:59 Sen. Flowers said that given what he has heard from the chief legal counsel, we should get more clarity legislatively before we move forward.

12:14:37 Sen. Pomnichowski asked Mr. Everts about the legal liability if something was posted that might be found slanderous.

12:15:18 Mr. Everts said that he can provide to the members and their staff some guidance but there isn't any guarantee based on the law that would eliminate the potential liability of someone bringing in a complaint either against a legislator or staff.

12:19:30 Ms. Fox said that legislators are different and have different ethics laws than state employees. Caucus aides are state employees and not elected officials.

12:21:25 Ms. Fox suggested putting into law that any state employee that is employed by the Legislature working on behalf of one of the legislative caucus falls under legislative ethics.

12:21:47 Rep. Knudsen asked about the Legislative Council putting out a statement to that effect. Mr. Everts said that a statement by the Council isn't the law and that it would serve as a rule of Legislative Council itself but not of the Legislature.

12:22:54 Sen. Cohenour said that we as the Legislative Council cannot exempt legislative staff from the rules and regulations of state employment unless we have a statutory change of some kind that allows them to be treated differently in some way, shape, or form.

### **Motion**

12:26:08 Rep. Knudsen moved to proceed with the development of a caucus website.

### **Roll Call Vote**

12:26:08 The motion failed on a roll call vote, 6-6, with Senators Cohenour, Flowers, and Pomnichowski; Representatives Abbott and Harvey voting no, and Rep. Bishop voting no by proxy. Senators Smith, Ellsworth, and Blasdel; Representatives C. Knudsen and R. Knudsen voted aye, with Rep. Galt voting aye by proxy.

### **Motion**

12:28:21 Sen. Ellsworth moved to poll the Legislature.

### **Discussion on the Motion**

- 12:28:40 Sen. Pomnichowski asked Sen. Ellsworth aboutt his motion.
- 12:28:59 Sen. Ellsworth explained that his motion is to poll the Legislature on the issue of legislative intent when we hired the legislative staff.
- 12:29:08 Sen. Cohenour asked Mr. Everts if this is appropriate because her understanding of the rule regarding polling the Legislature would be on a specific statute and whether or not or how that statute was intended to be.
- 12:30:42 Sen. Cohenour asked if a legislative poll carries the weight of a statutory change.
- 12:31:30 Mr. Everts said that it could be a poll on a question of what the Legislature intended. There is specific statutory guidance on legislative polls as they relate to rules.
- 12:32:42 Sen. Cohenour said that having a legislative website is something that was suggested by our staff, discussed within Legislative Council, and it's not a question of a statutory nature. She said she will not support polling the Legislature on the intent to have political website. This question should be clarified before the next Legislature and have further discussions about what we believe the taxpayers expectation is of our work in the Legislature.
- 12:34:37 Sen. Flowers said if we conduct a poll regardless of the outcome, the final decision on whether we proceed with developing caucus websites would come back to Legislative Council.
- 12:35:04 Sen. Ellsworth said that this was discussed with staff.
- 12:36:27 Sen. Cohenour said that this caucus website discussion originated in the Council. It was not something that was discussed with our staff but it was something that was brought up during the Council's strategic planning. She will vote no.

### **Roll Call Vote**

- 12:39:26 The motion failed on a tie vote, 6-6, with Senators Cohenour, Pomnichowski, Flowers; Representatives Abbott, Harvey voting no and Rep. Bishop voted no by proxy. Senators Ellsworth, Smith, and Blasdel; and Representatives C. Knudsen and R. Knudsen voting aye, and Rep. Galt voted aye by proxy.
- 12:39:34 Ms. Fox suggested looking at the guidelines regarding this issue.

### **Rules Subcommittee Establishment and Discussion**

- 12:41:26 Mr. Everts discussed the establishment and the duties of the Rules Subcommittee.

### **Motion**

- 12:43:12 Sen. Ellsworth moved to form a Rules Subcommittee.

### **Vote**

- 12:43:20 The motion passed unanimously on a voice vote with those present to vote.

### **Appointment of members to Rules Subcommittee**

- 12:43:27 Sen. Blasdel appointed Rep. C. Knudsen and Rep. Abbott to serve on the House side; Sen. Flowers and Sen. Smith to serve on the Senate side. Sen. Blasdel appointed Rep. C. Knudsen as chair of the Rules Subcommittee.

### **Legislative Office Space Discussion**

- 12:45:47 Sen. Esp discussed the lack of sufficient office space for members of the House. He requested that a letter be sent to the governor asking that office space for House members be included in the governor's space study.
- 12:48:58 Ms. Fox discussed the issue of new carpet in the office space and more offices for the IT staff located in the basement. She reminded the Council members that the Legislative Council is the long-range planning committee for the Capitol Building.
- 12:52:11 Sen. Esp added that there may be some infrastructure funds available for other office space in other buildings.
- 12:52:59 Sen. Pomnichowski commented that she would like to see the IT department moved from the basement to the third floor.

### **Motion**

Sen. Pomnichowski moved that the Legislative Council request that the governor include in his space study, adequate office space for the Senate and the House members, the legislative staff, and the IT Department.

### **Vote**

- 12:55:32 The motion passed unanimously on a voice vote with Sen. Flowers, Rep. Bishop, and Rep. Galt voting aye by proxy.
- 12:56:04 Sen. Blasdel commented on the Districting and Apportionment Commission's request for additional funding to hire outside consultant. He requested that DAC send its final dollar amount to Ms. Fox so that a conference call could be scheduled to discuss the request.

### **Public Comment**

- 12:57:29 Rep. Theresa Manzella discussed forming a special select legislative committee to review Montana's state and federal election laws. She also requested funding for this committee come from the Emerging Issues Account.
- 13:01:12 Mary Beveridge, Helena, commented on the special select committee.  
**(Exhibit 15)**
- 13:10:20 Rep. Brad Tschida, House District #97, relayed instances of voter fraud in Missoula County.
- 13:19:26 Sen. Blasdel said that since Legislative Council has already adopted a work plan and budget, he didn't think he had the ability to allocate money to fund the special select committee.
- 13:19:34 Sen. Blasdel appointed Rep. R. Knudsen as chair of the Succession Planning Subcommittee.

### **ADJOURNMENT**

- 13:21:49 Sen. Blasdel adjourned the meeting at 1:21 p.m.