



Special Select Committee on State Settlement Accountability

65th Montana Legislature

SENATE MEMBERS

NELS SWANDAL - Chair
MARY CAFERRO
STEVE FITZPATRICK
NATE MCCONNELL
KEITH REGIER

HOUSE MEMBERS

ALAN DOANE
KIMBERLY DUDIK
RON EHLI
BRADLEY HAMLETT
FORREST MANDEVILLE

COMMITTEE STAFF

JULIANNE BURKHARDT - Staff Attorney
SHERI SCURR - Research Analyst
RACHEL WEISS - Research Analyst
NADINE SPENCER - Secretary
SONJA NOWAKOWSKI - Research Director

MINUTES LOG

April 25, 2018

Room 152, 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.

Access to an electronic copy of these minutes and the audio or video recording is provided from the Legislative Branch home page at <http://leg.mt.gov>. On the left-side menu of the home page, select Committees, then Interim. Once on the page for Interim Committees, scroll down to the appropriate committee. The written Minutes Log, along with the audio and video recordings, is listed by meeting date on the interim committee's web page. Each of the "Exhibits" is linked and can be viewed by clicking on the Exhibit of interest. All Exhibits are public information and may be printed.

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

COMMITTEE MEMBERS PRESENT IN HELENA

REP. RON EHLI - Vice Chair

COMMITTEE MEMBERS PRESENT VIA CONFERENCE CALL

SEN. NELS SWANDAL - Chair
SEN. STEVE FITZPATRICK
SEN. KEITH REGIER

REP. ALAN DOANE
REP. BRADLEY HAMLETT
REP. FORREST MANDEVILLE

COMMITTEE MEMBERS ABSENT

SEN. MARY CAFERRO
SEN. NATE MCCONNELL

REP. KIMBERLY DUDIK

STAFF PRESENT IN HELENA

JULIANNE BURKHARDT, Attorney
SHERI SCURR, Research Analyst
RACHEL WEISS, Research Analyst
TODD EVERT, Chief Legal Counsel
NADINE SPENCER, Committee Secretary

VISITORS' LIST (Attachment 1)

AGENDA (Attachment 2)

COMMITTEE ACTION

The Special Select Committee on State Settlement Accountability;

- Adopted the committee rules and procedures;
- Voted to authorize Rep. Ehli to pursue funding for the committee through the leadership fund or any other available sources if the request for funding from Legislative Council fails.

CALL TO ORDER and ROLL CALL

00:00:06 Sen. Swandal called the meeting to order at 1:03 p.m. He turned the duties of the chair over to Rep. Ehli.
00:00:34 Rep. Ehli thanked the committee for their participation via conference call and asked the staff to introduce themselves.

INTRODUCTION OF COMMITTEE MEMBERS AND STAFF

00:01:15 Julianne Burkhardt, staff attorney, Legislative Services Division (LSD)
00:01:19 Todd Everts, chief legal counsel, LSD
00:01:21 Rachel Weiss, research analyst, LSD
00:01:24 Nadine Spencer, committee secretary, LSD
00:01:26 Sheri Scurr, research analyst, LSD
00:01:30 Angus Maciver, legislative auditor, Legislative Audit Division (LAD)
00:01:55 The secretary called the roll. **(Attachment 3)**

COMMITTEE ORGANIZATION

Draft Rules and Procedures - Rachel Weiss, Legislative Services Division

00:02:53 Ms. Weiss said the committee received a copy of suggested draft rules and procedures. **(Exhibit 1)** She said they are based on the Legislative Council's rules, procedures, and guidelines for interim committees.
00:05:12 Rep. Ehli said the meeting is being publicly recorded and broadcast and all testimony will be part of the official record. He said that anyone who plans to testify needs to sign the visitor register.
00:05:51 Rep. Ehli opened the discussion on the draft rules and procedures for the committee.
00:06:05 Rep. Doane asked Rep. Ehli about the protocol for committee discussion.

Motion

00:06:24 Rep. Doane moved to adopt the draft rules and procedures as presented.

Discussion on the Motion

00:06:46 Rep. Hamlett said he is the only member of the minority party present and they do not believe correct procedure was followed when the interim committee was formed. [\(Exhibit 2\)](#)

Vote

00:08:34 The motion carried 6-1 by roll call vote. Rep. Hamlett voted no. Rep. Dudik, Sen. Caferro, and Sen. McConnell were absent. [\(Attachment 4\)](#)

Budget Overview - Todd Everts, Legislative Services Division

00:09:41 Mr. Everts discussed the memo from Susan Fox, executive director, LSD, outlining potential costs and funding for the special select committee. [\(Exhibit 3\)](#)

Committee questions and discussion

00:12:47 Sen. Regier asked Mr. Everts about the committee's subpoena power and liability to pay for document requests and expenses for witnesses to testify. Mr. Everts said the committee is not liable.

00:13:46 Rep. Mandeville asked Mr. Everts about the available balance in the Emerging Issues fund and the process to request money from leadership funds.

00:15:06 Rep. Ehli thanked Rep. Hamlett for his earlier input and said he appreciates his participation and that he is willing to discuss any of his concerns.

00:15:31 Rep. Hamlett asked Mr. Everts about procedure and if Legislative Council needs to approve the special select committee at its next meeting. Mr. Everts said the council does not need to approve the committee, but does need to approve funding from the Emerging Issues account.

00:16:22 Rep. Ehli asked Mr. Everts about using legislator constituency funds.

00:18:23 Rep. Ehli said directions for staff can be discussed at the end of the meeting.

INVESTIGATIVE AUTHORITY OF THE MONTANA LEGISLATURE

Introduction and Background - Todd Everts, Legislative Services Division

00:19:09 Mr. Everts said the committee received a memo regarding the information request made by Rep. Ehli regarding the Montana Legislature's investigative authority. [\(Exhibit 4\)](#)

00:23:00 Mr. Everts discussed source of Legislative investigative authority.

00:25:53 Mr. Everts discussed scope of Legislative investigative authority.

00:26:18 Mr. Everts discussed exercise of Legislative investigative authority.

00:28:12 Mr. Everts discussed limitations on Legislative investigative authority.

Committee questions and discussion

00:30:11 Sen. Regier asked Mr. Everts if the committee is limited to investigating executive branch confidential settlements paid to public employees. Mr. Everts said the scope and direction of the committee will be discussed later.

00:31:11 Rep. Hamlett asked Mr. Everts about disclosing settlement amounts and the public right to privacy. Mr. Everts said it will be discussed later by Ms. Burkhardt under constitutional privacy and public right to know.

Role of Legislative Audit - Angus Maciver, Legislative Audit Division

00:32:24 Mr. Maciver provided an overview of the role of the Legislative Audit Committee and Division.

00:40:08 Rep. Ehli commented on the ability of the LAD to collect confidential information, and the inability to disclose the information, and what information the special select committee will be able to access.

Committee questions and discussion None

Public comment

00:42:03 Kevin Nelson, Billings, said he will provide his public comment later in the meeting.

STATE EMPLOYEE TERMINATION SETTLEMENTS

Constitutional Privacy and Public Right to Know - Julianne Burkhardt, Legislative Services Division

00:43:03 Ms. Burkhardt provided a legal analysis on the constitutional privacy and right to know provisions regarding state employee termination settlements. **(Exhibit 5)**

Committee questions and discussion

00:54:45 Rep. Ehli asked Ms. Burkhardt about the public's right to know and a case involving a settlement with the mayor of Hamilton and how it compares to state settlements.

00:55:50 Rep. Ehli asked Ms. Burkhardt about information requests made by the LSD versus the LAD and if access to confidential information will be available to the special select committee.

00:57:23 Rep. Ehli asked Mr. Maciver the same question.

Statutory Law and Policy Regarding Termination Settlements and Whistle Blowers - Sheri Scurr, Legislative Services Division

01:04:29 Ms. Scurr said the committee received an inventory of Montana statutes and rules on state employee grievances, discharge, retaliation protections, and access to personnel information. **(Exhibit 6)** She provided an updated copy with two additional rules related to the Human Rights Commission. **(Exhibit 7)**

01:06:36 Ms. Scurr discussed Montana Code Annotated (MCA) statutes.

01:14:41 Ms. Scurr discussed Administrative Rules of Montana (ARM).

Committee questions and discussion

01:18:34 Rep. Ehli asked Ms. Scurr about agency policy and state law.

Public comment None

COMMITTEE GOALS, OBJECTIVES, AND MEETING SCHEDULE

01:20:54 Rep. Ehli provided an introduction.

Committee discussion

01:21:20 Rep. Doane asked Mr. Maciver about the chart showing an increase in the cost of employee settlements from 2012-2013. **(Exhibit 8)**

01:26:45 Sen. Regier asked Mr. Maciver about the definition for settlement and if an employee is paid unused sick leave and vacation or if they receive extra money.

01:29:50 Sen. Regier asked Mr. Everts if the scope of the committee is limited to looking at executive branch confidential settlements paid to public employees and if the committee can also consider non-monetary compensation. Mr. Everts said the committee needs to make that determination.

01:31:30 Sen. Regier asked Mr. Everts if the committee can put a timeframe on requesting information or requiring a witness to appear under its subpoena power.

01:32:44 Sen. Regier commented on a reasonable time period to request information.

01:33:10 Rep. Hamlett asked if an agency can terminate a settlement agreement if an employee that signed the agreement discloses the settlement amount. Mr. Everts said there are criminal immunity provisions for witnesses that appear before a committee.

01:34:50 Sen. Swandal asked Mr. Everts if the state is allowed to put in a settlement agreement that neither party can disclose the settlement.

01:35:15 Ms. Burkhardt said her interpretation of the statute is that the amount of the settlement and the terms of the settlement would probably be public information and is an open question whether a confidentiality provision in the settlement document would be enforceable. Sen. Swandal said he is concerned that the state could require a non-disclosure provision. Ms. Burkhardt said she agreed with his concern.

01:36:37 Rep. Hamlett said he is concerned about protecting private individuals that give testimony.

01:37:20 Sen. Swandal said individuals have a right to privacy and commented on the lack of disclosure and public information by state agencies regarding the reason why there is an increase in settlements and to determine what is being done to keep it from happening in the future. He commented on the need for legislative policy.

01:39:18 Rep. Hamlett said the committee needs to determine if an agency has protection from public disclosure of their settlements.

01:39:41 Rep. Ehli asked Mr. Maciver about the request to schedule an audit. Mr. Maciver said the audit is expected to begin in May.

01:41:05 Rep. Ehli asked Mr. Maciver about the scope of the audit.

01:44:55 Rep. Ehli asked Mr. Maciver how long it will take to complete the audit. Mr. Maciver said it will depend on the scope and will probably be completed by the end of the year.

01:45:37 Rep. Ehli asked Mr. Maciver if information will be available to the committee before the audit report is finalized. Mr. Maciver said they traditionally do not release reports prior to the public hearing by the Legislative Audit Committee.

01:48:24 Rep. Hamlett commented on the issue of dealing with employee problems and finding legislation to fix the problems.

01:51:13 Rep. Ehli agreed and commented on the ability of the special select committee to start the process.

01:51:53 Sen. Regier commented on the objection by committee members and the process used to form the committee. He compared it to the select committee that was formed during the 2013 Legislative Session on retirement systems. Rep. Ehli agreed.

01:53:23 Rep. Ehli provided his recommendations on the committee goals and objectives and the need to look at the reason state settlements have increased in the last seven years. He said that the ultimate goal of the committee should be things to do legislatively to better define the line between individual privacy and the public's right to know.

01:57:13 Rep. Hamlett said he recommends allowing for a minority report.

01:58:29 Rep. Ehli asked Rep. Hamlett about his proposal.

01:59:08 Rep. Hamlett said he recommends that a majority of the committee members agree to any proposed legislation.

02:00:33 Rep. Ehli asked staff if all interim committees require a 75% majority vote on committee legislation. Mr. Everts said no.

02:01:11 Rep. Ehli said the committee can decide whether to require a 75% majority vote in order to move committee legislation forward. He asked Rep. Hamlett about his motion.

Motion

02:03:46 Rep. Hamlett moved to require a 70% majority vote of the members present on any proposed committee legislation.

Discussion on the Motion

02:04:28 Rep. Ehli

02:04:42 Rep. Hamlett

02:05:13 Rep. Ehli

02:05:24 Rep. Mandeville

02:05:51 Rep. Ehli

02:06:02 Rep. Mandeville

02:06:25 Rep. Ehli

02:06:31 Rep. Hamlett

02:07:44 Rep. Mandeville

02:08:16 Rep. Hamlett

02:08:28 Rep. Ehli

Motion

02:08:48 Rep. Hamlett withdrew his previous motion and moved that if the committee recommends legislation a vote of 70% of the committee members is required to move the legislation forward as a committee bill.

Discussion on the Motion

02:09:29 Sen. Regier

02:10:06 Sen. Swandal

02:10:38 Rep. Ehli

02:10:51 Ms. Weiss restated the motion.

Vote

- 02:11:07 The motion failed 1-6 by roll call vote. Rep. Hamlett voted aye. Rep. Dudik, Sen. Caferro, and Sen. McConnell were absent. **(Attachment 5)**
- 02:11:46 Rep. Ehli commented on the proposed scope of the committee and asked the committee if there are additional recommendations.
- 02:13:24 Sen. Regier asked Rep. Ehli about collecting information and providing a breakdown of the amount of money, employee position, and the department.
- 02:15:22 Ms. Weiss said the request made by Sen. Regier includes information about the department, the money involved in the settlement, the salary paid to an employee, and the position.
- 02:15:40 Sen. Swandal said he recommends finding out if there was a non-disclosure agreement and who requested it. Rep. Ehli agreed.
- 02:16:07 Sen. Regier said he recommends obtaining all information that isn't considered confidential.
- 02:16:37 Rep. Ehli commented on reviewing the scope of the committee once the requested information is received.
- 02:17:22 Rep. Hamlett asked about the parameters and how far to look back and collect information. Rep. Ehli said the information provided by Mr. Maciver is from 2003-2018 and can be used as a guide.
- 02:18:41 Rep. Hamlett said he recommends looking back to an era when members of the Republican party were in the executive office and said he believes it is a problem inherent in the system and not the political party. He said it is also important to calculate for inflation.
- 02:19:31 Rep. Ehli said they can probably do that, but that the reason the committee was formed was to find out why payments have increased since 2011.
- 02:20:42 Sen. Hamlett commented on tracking information and looking at multiple accounting procedures used by different agencies.
- 02:21:49 Rep. Ehli said the committee can expand its scope to other areas if necessary after receiving the information from staff.
- 02:22:41 Rep. Hamlett said information from a broader period of time will provide a better overview and give a more accurate trend. Rep. Ehli said he agreed, but the committee will stay within the current scope.
- 02:24:43 Rep. Hamlett said the longer the time period being looked at, the better Montana will be served.
- 02:25:39 Rep. Ehli opened discussion on next steps.
- 02:26:19 Sen. Regier asked how information will be disseminated to the committee.
- 02:26:35 Rep. Ehli said there is a request before Legislative Council, which meets on May 23, to fund the committee through the Emerging Issues fund. He said money is also available from the leadership fund and asked staff about the constituent accounts.

Motion

- 02:29:19 Rep. Doane moved to authorize Rep. Ehli to pursue funding through the leadership fund, or any other available funding sources, if the request for funding from Legislative Council fails.
- 02:30:06 Ms. Weiss repeated the motion.

Vote

02:30:31 The motion carried 6-1 by roll call vote. Rep. Hamlett voted no. Rep. Dudik, Sen. Caferro, and Sen. McConnell were absent. ([Attachment 6](#))

02:31:14 Rep. Ehli opened discussion on other direction for staff.

02:31:43 Rep. Hamlett said he is concerned about participation by members that were appointed to the committee and asked about appointing Sen. Jon Sesso, SD 37 and Rep. Kelly McCarthy, HD 49.

02:32:47 Rep. Ehli said he reached out to all of the committee members to encourage participation and said if they do not want to participate he can talk to leadership.

02:33:56 Rep. Hamlett commented on replacing members if they do not want to serve on the committee. Rep. Ehli said he will contact the absent committee members.

02:35:13 Rep. Ehli asked staff about any additional information needed.

PUBLIC COMMENT ON MATTERS WITHIN THE JURISDICTION OF THE COMMITTEE

02:35:44 Mr. Nelson commented on expanding the special select committee to include other political subdivisions of the state.

02:47:22 Rep. Ehli thanked the staff and the committee.

ADJOURN

02:47:36 With no further business before the committee, Rep. Ehli adjourned the meeting at 3:51 p.m.

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