



## 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 EHLLI  
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

November 5, 2018  
Room 102, 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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#### **COMMITTEE MEMBERS PRESENT IN HELENA**

SEN. NELS SWANDAL, Chair  
REP. RON EHLLI, Vice Chair

#### **COMMITTEE MEMBERS PRESENT VIA CONFERENCE CALL**

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

SEN. STEVE FITZPATRICK  
SEN. KEITH REGIER

#### **COMMITTEE MEMBERS ABSENT**

SEN. MARY CAFERRO  
SEN. NATE MCCONNELL

## **STAFF PRESENT IN HELENA**

JULIANNE BURKHARDT, Attorney  
SHERI SCURR, Research Analyst  
RACHEL WEISS, Research Analyst  
NADINE SPENCER, Committee Secretary

## **VISITORS' LIST (Attachment 1)**

## **AGENDA (Attachment 2)**

## **CALL TO ORDER AND ROLL CALL**

08:12:18 Sen. Swandal called the meeting to order at 8:12 a.m. The secretary called the roll. **(Attachment 3)**

## **COMMITTEE DISCUSSION OF EXECUTIVE BRANCH RESPONSES AND NEXT STEPS**

08:13:25 Rep. Ehli thanked the agencies for responding to the committee's request for information on state employee settlement data and asked about the response from the Governor's office regarding findings. **(Exhibit 1)**

08:17:06 Sen. Swandal said that Raph Graybill, chief legal counsel, Office of the Governor, is on the conference call and available for questions.

08:17:22 Rep. Ehli asked Mr. Graybill about the information that the Governor's office provided and if some of the numbers were eliminated because the committee did not define more extensively what it was looking for.

08:20:24 Rep. Ehli asked Mr. Graybill if the data from the Governor's office includes settlements that were in litigation or went to trial.

08:22:25 Sen. Regier asked Mr. Graybill about limitations on data provided by agencies pre-2013.

08:25:43 Sen. Regier asked Mr. Graybill if the lack of data before 2013 affected the dollar amount that was reported.

08:26:46 Sen. Regier asked Mr. Graybill about whether the data shows if there was an increase or a decrease in the number of employee settlements.

08:28:58 Sen. Regier asked Mr. Graybill about the reliability of data pre-2013 for the amount spent on employee settlements.

08:29:26 Sen. Regier asked Mr. Graybill about the validity of the statement that the number and average value of known termination and discharge settlements are down sharply.

08:30:23 Rep. Hamlett asked Mr. Graybill about management being able to use the information from settlements to make adjustments and about preserving data.

08:33:47 Sen. Swandal said that Angus Maciver, Legislative Auditor, Legislative Audit Division, is present in the meeting room and available for questions.

08:34:02 Rep. Doane asked Mr. Graybill about the special settlement account and payments made from the agencies.

08:35:23 Sen. Regier asked Mr. Maciver about the graph he provided during the 2017 Legislative Session that showed potential employee settlement expenditures for 2003-17 and how it compares to the graph that was provided by the Governor's office. **(Exhibit 2)**

08:41:45 Sen. Regier asked Mr. Maciver if the Legislative Audit Division found any limitations on pre-2013 data.

08:43:26 Rep. Ehli asked Mr. Maciver about the timeframe for the performance audit and if it will be available for the 2019 Legislative Session.

08:45:41 Rep. Ehli asked Mr. Maciver if the audit will contain the Montana University System and if they will have access to information from the Department of Administration, Risk Management and Tort Defense Division.

08:50:10 Rep. Ehli commented on the audit.

08:50:45 Rep. Hamlett asked Mr. Maciver about going forward and if they can include a breakdown, by agency, of the number of claims per 100 employees and the average dollar amount of settlements.

08:53:43 Rep. Dudik commented on including all agencies and not just the Governor's office. Sen. Swandal said information was requested from all agencies.

08:55:07 Sen. Swandal asked Mr. Graybill if the settlement amount included attorney fees and other costs. Sen. Swandal commented on looking at the total cost and not just the cost paid to the employee.

08:56:30 Rep. Hamlett commented on agency appointments and employee retention.

08:57:55 Rep. Mandeville commented on moving forward and the need to look at the retention schedule and to better define what a settlement process should look like.

08:59:24 Rep. Dudik commented on the upcoming election and working with current legislators.

#### **PUBLIC COMMENTS**

None

#### **COMMITTEE WORK SESSION**

09:00:10 Sen. Swandal opened discussion on moving forward and said that the 5-year retention period is not sufficient.

09:00:48 Rep. Dudik agreed and said it needs to be uniform and that privacy for the individuals involved should be maintained.

09:01:19 Sen. Swandal said legislation can be requested during the next session to help govern the process. He said the agencies indicated that settlements were the result of a good faith dispute and asked the committee about the public's right to know.

09:02:48 Rep. Dudik commented on the confidential nature of settlement agreements.

09:03:22 Sen. Swandal asked about legislation to control allowing confidential language in settlement agreements.

09:04:40 Rep. Hamlett commented on legislative oversight of agencies and privacy issues for individuals versus an agency.

09:05:35 Sen. Swandal said employee privacy should be protected, but the public has a right to know what goes on in an agency.

09:05:52 Rep. Ehli said it is important to legislatively define the public right to know versus the right to privacy.

09:07:23 Sen. Swandal commented on continuing the committee into the next legislative session.

09:07:54 Rep. Hamlett thanked Sen. Swandal and Rep. Ehli for their service to the legislature.

09:08:17 Sen. Swandal thanked the committee members and staff.

**ADJOURN**

09:08:41 Sen. Swandal adjourned the meeting at 9:08 a.m.

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