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**STATE ADMINISTRATION AND VETERAN AFFAIRS INTERIM
COMMITTEE**
67th Montana Legislature

SENATE MEMBERS

Dee Brown
Janet Ellis
Douglas (Doug) Kary
Edith (Edie) McClafferty

HOUSE MEMBERS

Jacob Bachmeier
Jessica Karjala
Forrest Mandeville
Wendy McKamey
Ray Shaw
Marvin Weatherwax

COMMITTEE STAFF

Jameson Walker - Attorney
Bri Nordhagen - Secretary
Sheri Scurr - Research
Analyst

MINUTES LOG

February 27, 2020

9:00 AM

Room 137, Capitol Bldg., Helena

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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ROLL CALL

Members Present:

Rep. Wendy McKamey, Chair (R)

Sen. Janet Ellis, Vice Chair (D)

Rep. Jacob Bachmeier (D)
Sen. Dee Brown (R)
Rep. Jessica Karjala (D)
Sen. Douglas (Doug) Kary (R)
Rep. Forrest Mandeville (R)
Sen. Edith (Edie) McClafferty (D)
Rep. Marvin Weatherwax (D) - by phone

Members Excused:

Rep. Ray Shaw (R)

Members Absent:

Staff Present:

Jameson Walker, Attorney
Bri Nordhagen, Secretary
Sheri Scurr, Research Analyst

AGENDA ([Attachment 3](#))

Committee Business Summary

On Preliminary Bill Draft 02 to revise the definition of lobbying, the committee:

- voted 9-0 to remove revisions related to federal lobbying by state and local governments under section 5-7-120, MCA; and
- voted 9-0 to postpone to the next meeting further consideration of PD02 (as amended) so that members would have a chance to review the definition of lobbying in other states.

On PD03 to deposit the total lobbying fee to the general fund, the committee:

- voted 9-0 to accept PD03 as a committee bill, but to repeal rather than revise section 5-11-1112, MCA, which is the special revenue account for legislative broadcasting services.

On PD04 to revise lobbyist payment reporting by principals, the committee:

- agreed by consensus to not move forward with PD04 as a committee bill; and
- instructed staff to incorporate into PD02, which will be reviewed again at the next committee meeting:
 - changing the terminology of “telephone and telegraph” in section 5-7-209(5)(a)(vii), MCA, to “voice and electronic communications”; and
 - changing the 10-year lobby reports retention requirement under section 5-7-209(5)(e), MCA, to 4 years.

Regarding the committee’s next meeting date, the committee:

- instructed staff to poll committee members about joining the LFC subcommittee (or potentially the full LFC committee) for the pension stress test briefing on either March 23

or March 24 and to collect committee member questions to be forwarded to LFC and the pension subcommittee; and

- instructed staff to poll committee members about whether the next regular committee meeting should remain on March 25 or be changed to June 18 to make the currently scheduled June 17 meeting a two-day meeting (June 17-18).

CALL TO ORDER - ROLL CALL (Attachment 1) (Attachment 2)

09:00:35

Lobbying law revisions

09:02:49 Sheri Scurr, Research Analyst, Legislative Services Division (LSD), began presenting her staff report "Revising Lobbying Laws" (**Exhibit 1**), beginning with Part I - conforming statutes to court rulings.

09:07:36 Jameson Walker, Staff Attorney, LSD, gave his review of two Montana Supreme Court Cases, MT Auto Assoc v. Greely (**Exhibit 2**) and State Bar v. Krivec (**Exhibit 3**)

Questions by the committee

09:15:35 Sen. Kary asked Mr. Walker whether the court considered the governor's office quasi-judicial. Sen. Kary asked Mr. Walker if the committee in a bill could change the definition of lobbying to include lobbying the governor and not just legislators.

Lobbying law revisions (continued)

09:18:23 Ms. Scurr continued her review of her staff report and referred to administrative rule 44.12.1010A by the Commissioner of Political Practices, (**Exhibit 4**) and an article by the National Conference of State Legislatures' "How States Define Lobbying and Lobbyist", (**Exhibit 5**). Ms. Scurr then discussed Preliminary Bill Draft PD02, revising lobbying laws, (**Exhibit 6**).

Questions by the committee

09:25:17 Sen. Kary asked Ms. Scurr if state agencies who are lobbying the federal congress have a place to report. Sen. Kary asked Ms. Scurr if the state could dictate lobbying efforts on the federal level.

09:26:20 Rep. Mandeville asked Ms. Scurr if the local governments were actively following the law as written, if regular reporting was actively happening or was that a new requirement.

09:28:31 Sen. Ellis asked Mr. Walker when section 5-7-120, Montana Code Annotated (MCA), concerning federal lobbying was enacted and for help with the history.

Lobbying law revisions (continued)

- 09:29:53 Ms. Scurr continued explaining PD02.
- 09:30:45 Sen. Brown commented about agency rules and the role of the legislature.

Lobbying law revisions (continued)

- 09:31:44 Ms. Scurr continued presenting her staff report referring to Part II of the report on the lobbying fee. She referred to an LSD memo on MPAN funding ([Exhibit 7](#)), an extract from Legislative Audit 18-21, ([Exhibit 8](#)), and a Legislative Fiscal Division memo on lobbyist registration fee revenue ([Exhibit 9](#)).
- 09:36:19 Ms. Scurr explained Preliminary Bill Draft PD03 revising the deposit of the lobbying fee, ([Exhibit 10](#)).

Questions by the committee

- 09:37:21 Sen. Kary asked about section 2 of PD03 and if there will still be a need for the state government broadcasting account in the state special revenue to exist.
- 09:38:28 Susan Fox, Executive Director, LSD, responded that the account could be repealed.

Lobbying law revisions (continued)

- 09:38:52 Ms. Scurr continued her staff report presentation, moving to Part III on when and how lobbying reports are filed.
- Sen. Brown commented on the need for the next legislature or interim committee to uncomplicate the reporting deadlines and thresholds.
- Ms. Scurr discussed the following handouts: a summary table developed by Sen. Ellis showing reporting dates currently and as proposed in Preliminary Bill Draft PD04 ([Exhibit 11](#)), a copy of the 2019 MCA section 5-7-208. Principles to file report ([Exhibit 12](#)), the FAQ sections from the Lobbyist Guide for the 2019 Legislative Session ([Exhibit 13](#)), and form L-5 Lobbying Financial Report ([Exhibit 14](#))
- 09:49:53 Ms. Scurr continued her presentation of her staff report and discussed how lobbying reports are filed and the two data bases maintained by the Office of the Commissioner of Political Practices (COPP).
- 09:52:41 Ms. Scurr presented PD04 and options for the committee ([Exhibit 15](#)).

Questions by the committee

- 09:57:48 Sen. Brown asked about digital and electronic reporting, duplications, and why hard copy reports were being done.
- 09:58:18 Chairwoman McKamey stated that the question could be addressed by Jeff Mangan, Commissioner of Political Practices, when he presented later.

Lobbying law revisions (continued)

- 09:58:45 Ms. Scurr continued her presentation of PD04.

Questions by the committee

- 09:59:15 Sen. Brown asked Ms. Scurr if there was a reason to keep lobbying records for 10 years.

Commissioner of Political Practices

- 10:00:11 Jeff Mangan, Commissioner of Political Practices, presented a PowerPoint entitled "Lobbyist Online Reporting Update". ([Exhibit16](#))

Questions by the committee

- 10:09:46 Sen. Brown asked Commissioner Mangan what the average lobbying expense was for each session and if the big players should be looked at with more scrutiny than small players.
- 10:10:24 Commissioner Mangan
- 10:11:00 Sen. Brown commented on the need to examine lobbying not only of the legislature but also of the governor and perhaps also of other state-elected officials such as the State Auditor. She asked Commissioner Mangan to comment on this during public comment.

Public comment

- 10:13:19 Commissioner Mangan
- 10:23:18 Roger Hagan representing himself as a lobbyist
- 10:25:20 Rhonda Wiggers representing herself as a lobbyist

Questions by the committee

10:31:00 Sen. Brown asked Ms. Wiggers why she wasn't listed on the COPP's lobbyist website and why there was a lack of consistency.

Public comment

10:33:23 Bruce Knudsen, Board Member for the Montana Society of Association Executives

10:34:45 Bruce Spencer, State Bar of Montana

Questions by the committee

10:45:11 Sen. Brown asked Mr. Spencer if he agreed that once a lobbyist is severed from a contract for lobbying there's no purpose for more reporting.

Public comment

10:46:59 Dan Ellison representing himself as a part-time lobbyist

10:48:08 JamieMacNaughton, chief legal counsel, COPP

10:49:49 Denise Roth Barber, National Institute on Money in Politics

10:53:23 Chairwoman McKamey explained how the committee work session would be managed

BREAK

10:54:40

RECONVENE

11:05:55 Chairwoman McKamey began the committee working session for PD02, revising lobbying laws

Committee discussion

11:07:22 Rep. Mandeville stated the committee could leave out section 5-7-120, MCA and stated that the main policy question was how broad the committee wanted to make "public official" read.

11:08:15 Rep. Karjala stated she didn't think the committee could enforce it and therefore "public official" should be taken out.

11:08:45 Chairwoman McKamey asked Mr. Walker what the committee's authority was given the State Supreme Court rulings.

11:10:43 Sen. Ellis stated she wanted a chance to read Sen. Kary's handout from NCSL on how lobbying is defined in other states and asked if the committee could postpone action on PD02.

11:11:39 Sen. Brown stated the committee might be able to agree on two things, changing the 10-year report retention period to 4 years and to not require reports after a contract is severed.

11:11:45 Chairwoman McKamey reminded the committee there was not a lot of time left to complete the committee's work and that if some action on PD02 could be taken today, she would entertain a motion, and additional action could be taken at the next meeting.

MOTION

11:13:18 Sen. Brown made a motion to wait until more information is given until the committee votes and to not move forward on PD02 until the committee had read the document from NCSL and looked at how other states define lobbying.

Committee discussion

11:13:44 Sen. Kary asked that the committee be allowed to discuss the bill.

11:14:06 Sen. Brown withdrew her motion.

11:14:09 Sen. Kary asked Mr. Walker for clarification about section 6, page7, line 7 of PD02, and whether the penalty there was a misdemeanor or a felony.

11:15:27 Rep. Karjala asked if felony and misdemeanor apply to civil penalties and civil law.

Ms. Scurr stated it was a civil penalty and not criminal, so it was neither a misdemeanor nor a felony.

11:16:18 Rep. Karjala asked Ms. MacNaughton about section 5-7-120, MCA, and whether enforcement fell within jurisdiction of the COPP and if so how would the commissioner's office enforce that and why.

Ms. MacNaughton said it would not fall under the COPP for enforcement.

MOTION

11:18:59 Rep. Karjala made a motion to remove lines 8-11 on page 3 from the bill draft PD02.

VOTE

11:21:39 Motion to remove lines 8-11 on page 3 from the bill draft PD02 passed on a voice vote 9-0.

MOTION

11:22:06 Rep. Mandeville moved to postpone further discussion on PD02 as amended until the next meeting.

VOTE

11:22:42 Motion to postpone discussion on bill draft PD02 passed without objection.

MOTION

- 11:23:17 Sen. Ellis moved to accept PD03 as a draft bill but repeal section 5-11-112, MCA.
- 11:24:34 Sen. Brown made a motion to segregate section two from action on the body of the bill.
- 11:26:21 After some discussion about process, Chairwoman McKamey ruled that Sen. Ellis' motion would be the recognized motion.

Committee discussion

- 11:27:39 The committee discussed the funding of the COPP and the deposit of the lobbyist license fee.

Questions by the committee

- 11:30:43 Sen. Brown asked Commissioner Mangan about how much money had been collected from license fees.
- 11:31:51 Rep. Karjala asked Commissioner Mangan if the special revenue fund would be subject to the approval of the appropriations committee every session.
- 11:33:45 Sen. Brown stated she would like to see a special IT fund for the COPP.
- 11:34:06 Rep. Karjala stated she preferred making a statutory appropriation
- 11:34:51 Sen. Ellis stated that the COPP was funded by the general fund and commented on the appropriations process
- 11:35:49 The committee discussed the original purpose of the licensing fee, how it was used to fund the legislative broadcasting service, and the appropriations process.

MOTION

- 11:37:42 Sen. Brown made a motion to strike out section two of PD03 and leave the rest alone.
- 11:38:22 Ms. Scurr clarified that Sen. Ellis' motion had already been made and recognized by the chair, so the motion to be voted on was to accept provisional bill draft PD03 as a committee bill, but taking section two out of the bill and replacing it with a repealer and correcting the effective date to 2021.

VOTE

11:38:22

Motion to accept bill draft PD03 as a committee bill but taking out section two and replacing it with a repealer and correcting the effective date to 2021 passed on a voice vote 9-0.

Committee discussion

- 11:39:39 Chairwoman McKamey began the work session on PD004, revising reporting on lobbying and updating terminology.
- 11:40:35 Sen. Brown stated the IT system was not up to par yet for filing electronically so the committee should not put a bill in next session to require electronic reporting.
- 11:41:39 The committee discussed the COPP's electronic filing system for lobbying reports.
- 11:43:51 Sen. Brown asked Ms. Scurr about where in the bill to address not having zero expense reporting.
- 11:44:00 Ms. Scurr reviewed the reporting provisions of PD04 and options for the committee.
- 11:47:10 Chairwoman McKamey asked about session versus interim reporting.
- 11:47:35 The committee discussed the frequency of reporting and whether the committee should change reporting before the electronic system was upgraded.
- 11:50:40 Sen. Ellis asked about the records retention change from 10 years and whether that could be done in PD02 instead of PD04.
- 11:51:35 Sen. Brown suggested an individual legislator could pick up PD04 rather than move forward with it as a committee bill.
- 11:52:11 Sen. Kary stated 2022 is when these reporting changes would come into play and that by that time the electronic reporting would be fixed.
- 11:52:53 Sen. Kary also stated the term "telephone" should be changed to "voice" or "electronic communication".
- 11:53:25 Sen. Ellis stated that change could be done in PD02.
- 11:54:00 Sen. Brown stated she would also like to see the 10-year records retention changed to 4 years and that also could be done in PD02.
- 11:54:41 Sen. Ellis asked to have Sen. Kary's and Sen. Brown's amendments added to bill draft PD02.

MOTION

11:55:15 Chairwoman McKamey accepted Sen. Ellis' proposal on bill draft PD002 as a motion.

VOTE

11:55:29 Motion passed without objection.

11:56:37 Mr. Walker addressed Sen. Kary's previous question about the penalty provisions in PD02 and reviewed the legislative history.

Rule review

11:57:23 Mr. Walker discussed rules soon to be published and rule review memos that would be coming later

Committee discussion

11:58:33 Rep. Mandeville reiterated to state agencies listening the importance of getting their rule drafts in before the committee meets and not the day after, so they have time to review it on time and the deadlines don't pass.

General public comment

11:59:24 none

LUNCH

11:59:57

RECONVENE

13:00:42

Ballot Interference Prevention Act (BIPA)

13:01:47 Ms. Scurr began her review of BIPA ([Exhibit 17](#)) and referenced current law relating to BIPA ([Exhibit18](#)), the Arizona statute ([Exhibit 19](#)) the 9th Circuit court decision on the Arizona law ([Exhibit 20](#)), an NCSL article on

laws in other states ([Exhibit 21](#)), the Montana Secretary of State's directive to implement BIPA ([Exhibit 22](#)), and the guidance from the Commissioner of Political Practices ([Exhibit 23](#)), a memo from the Office of Public Instruction to school districts ([Exhibit 24](#)).

13:08:28 Mr. Walker gave a review of the 9th Circuit Court decision on the Arizona law.

Committee questions

13:18:41 Rep. Mandeville asked Mr. Walker if there were any challenges in the 26 other states to similar laws. Rep. Mandeville asked if there had been any court challenges to Montana's law yet.

13:19:37 Sen. Brown asked Mr. Walker if there was a difference between state legislatures passing laws and initiatives, also how many states passed initiatives rather than passing laws through their legislatures.

13:20:41 Sen. Ellis asked Mr. Walker if there was any timeframe for when the Supreme Court decides to take a case.

Panel: Comments on experiences implementing BIPA

13:23:30 Regina Plettenberg, County Election Administrator, Ravalli County reviewed the "School and Special District Elections LR - 129 Ballot Collection Registry Stats" handout ([Exhibit 25](#))

13:29:33 Rina Moore, County Election Administrator, Cascade County reviewed the "BIPA Ballot Interference Prevention Act" slideshow. ([Exhibit 26](#))

13:36:11 Casey Hayes, County Election Administrator, Gallatin County

13:45:15 Nicole Thuotte, School Election Specialist, Office of Public Instruction (OPI)

13:47:12 Dana Corson, Election Services Director, Secretary of State's Office (SOS)

13:48:38 Jeff Mangan, Commissioner, COPP

Questions by the committee

14:00:46 Sen. Brown asked Mr. Hayes about postal worker delivery of ballots.

14:01:58 Rep. Bachmeier asked Ms. Plettenberg if there was concern that some people didn't or wouldn't come back after not filling out the registry.

14:06:27 Rep. Karjala asked how BIPA would be implemented in a situation where the voters are disabled and staff is coming from a group home.

14:10:15 Rep. Mandeville asked Mr. Mangan if there was data on how many forms were filled out correctly or incorrectly in his office. Rep. Mandeville asked how the enforcement worked.

- 14:12:51 Sen. Kary asked Mr. Mangan if county election officials can go out to a senior facility to collect ballots. Sen. Kary asked if there could be an effort by county election administrators, the SOS, and the COPP to do public service announcements about BIPA before an election.
- 14:17:36 Sen. Ellis asked whether the information gathered is private. Sen. Ellis asked if there was any effort at the local government level to document how much time and resources are being put toward this effort.
- 14:22:28 Sen. Brown asked if spouses and family members living in the home should be exempt from the ballot harvesting initiative.
- 14:23:58 Rep. Bachmeier asked Ms. Moore if exempting spouses and family members would solve the drop box issue.
- 14:27:51 Rep. McKamey asked the panel if there was anything that could be done to help with these issues.
- 14:34:16 Rep. Mandeville left the meeting.
- 14:34:23 Sen. Brown left the meeting.

Public comment

- 14:35:19 Sapphire Carter, Chippewa Cree Tribe
- 14:38:29 Ms. Scurr referenced written public comment received from Ashley Newsom, Missoula MT ([Exhibit 27](#)) and Alex Zoellner, Missoula MT ([Exhibit 28](#))

Election Security Grant - Informational Briefing

- 14:39:58 Mr. Corson, Election Services Director, (SOS) gave his informational briefing on the "\$3.1 million more for elections" security grant handout. ([Exhibit 29](#))

Questions by the committee

- 14:42:09 Sen. Ellis asked Mr. Corson for a copy of the email sent to local governments and about the administration costs.
- 14:42:30 Ms. Brandi Pierson, chief fiscal officer, SOS, addressed the indirect cost calculations and how the office determined them.
- 14:44:56 Sen. Ellis asked Ms. Pierson if she could provide indirect cost information to the committee in writing. Ms. Pierson explained the process of determining indirect and direct costs.
- 14:49:15 Sen. McClafferty asked if the spreadsheet on the costs could be provided to the full committee.

14:49:28 Rep. Karjala asked Ms. Pierson if the spreadsheet information showed both direct and indirect costs.

14:50:50 Chair McKamey requested that the full committee be sent a copy of the Secretary of State's electronic newsletter referenced by Mr. Corson that showed the distribution of the grant money to each county.

Public comment

None

WRAP UP - DISCUSSION

14:52:30 Chairwoman McKamey stated that the committee had received an invitation from the Legislative Finance Committee's Subcommittee on Pensions and Local Government to attend its next meeting, which will include information on the pension stress test reports from the Cavanaugh MacDonald actuarial firm.

14:54:29 Ms. Scurr discussed with the committee possible upcoming meeting date changes.

ADJOURNMENT

15:09:57