



Legislative Council

65th Montana Legislature

SENATE MEMBERS

FRED THOMAS--Chair
EDWARD BUTTREY
TOM FACEY
JP POMNICHOWSKI
SCOTT SALES
JON SESSO

HOUSE MEMBERS

JENNY ECK--Vice Chair
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WYLIE GALT
AUSTIN KNUDSEN
SHANE MORIGEAU
CASEY SCHREINER

COMMITTEE STAFF

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

MINUTES LOG

August 23, 2018
Yogo Inn
Lewistown, 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

SEN. FRED THOMAS, Chair
REP. JENNY ECK, Vice Chair

SEN. TOM FACEY
SEN. JP POMNICHOWSKI
SEN. SCOTT SALES

REP. SETH BERGLEE
REP. WYLIE GALT
REP. AUSTIN KNUDSEN
REP. CASEY SCHREINER

COMMITTEE MEMBERS EXCUSED

SEN. EDWARD BUTTREY
SEN. JON SESSO
REP. SHANE MORIGEAU

STAFF PRESENT

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

VISITORS' LIST (Attachment 1)

AGENDA (Attachment 2)

COMMITTEE ACTION

The Legislative Council took action on the following:

- directed the Legal Director to look into the Commissioner of Political Practices' advisory opinion on ballot selfies;
- approved the 2021 Biennium budget;
- adopted the proposed price for session proceedings;
- requested that the Code Commissioner draft Code Commissioner bills for review;
- approved the proposed 2018 Annotations to the Montana Code Annotated Prices;
- voted to proceed with LC9995 as a committee bill;
- voted to proceed with LC9994 as a committee bill;
- requested a bill draft to address the meal reimbursement policy;
- voted to support the Executive Director's negotiations with the Department of Administration regarding Room 76 of the Capitol Building; and
- appointed Rep. Hamilton to the NCSL State and Local Taxation Task Force, and leaving a spot open for an appointment of a Republican.

CALL TO ORDER and ROLL CALL

- 00:00:02 Sen. Thomas called the meeting to order at 9:05 a.m. The secretary called roll. Sen. Sesso, Sen. Buttrey, and Rep. Morigeau were excused. (Attachment 3)
- 00:01:24 Sen. Thomas gave opening remarks.

Legislative Services Division Updates - Susan Fox, Executive Director

- 00:02:26 Ms. Fox gave an update on the email migration to Mindcentric.
- 00:03:21 Ms. Fox provided an update on the Legislative Orientation schedule. (Exhibit 1)
- 00:03:30 Ms. Fox said that Amy Carlson, Legislative Fiscal Division, wanted to add some budget training on January 3 and 4, 2019.

Committee discussion

- 00:04:48 Sen. Thomas commented on the new email system.
- 00:05:02 Rep. Eck discussed feedback from some caucus members who had concerns with the email not carrying over and concerns of being able to track the emails.
- 00:05:39 Sen. Thomas asked if there would be a phase where they could use both emails at the same time.
- 00:06:28 Sen. Thomas asked if there was a way to notify senders that the current email address is being upgraded to a new email address.
- 00:06:35 Ms. Fox said that the new system will forward the email message, but she said she is not sure if a message could be sent saying the recipient has a new address.

Interim Committee Updates - Joe Kolman and Sonja Nowakowski

- 00:07:38 Ms. Nowakowski gave update on the activities of the interim committees. (Exhibit 2) Ms. Nowakowski gave a demonstration of the "Legislative Council StoryMap" that is available on the Legislative Council's website at:
<https://montana.maps.arcgis.com/apps/MapJournal/index.html?appid=936addb86f054fd9821bdeb5169c51ad>

Introduction to New Research Tools - Joe Kolman and Sonja Nowakowski

- 00:13:49 Mr. Kolman discussed concerns of getting information to the legislators about the research tools available to them.
- 00:25:30 Ms. Nowakowski gave a demonstration on using the StoryMap as an informational tool regarding the legislative committee rules.

Session Systems Replacement Project Update - Susan Fox

- 00:33:08 Ms. Fox ([Exhibit 3](#))

Committee discussion

- 00:36:30 Rep. Eck asked how many bill draft requests have been received.
- 00:36:52 Sen. Thomas asked how the new bill drafting systems works.
- 00:37:45 Ms. Fox explained how the current bill drafting system works and how the new system will work. She noted that the new bill drafting system will not be available for the 2019 session.

Litigation, Initiative, and Referenda Status - Todd Everts

- 00:39:53 Mr. Everts gave an update on Sen. Fielder's lawsuit and an update on the ballot initiatives. ([Exhibit 4](#))

Committee discussion

- 00:41:26 Rep. Knudsen discussed his concern regarding the Commissioner of Political Practices issuing an advisory opinion on ballot selfies and cited 13-35-201(1) that stated that "An elector may not show the contents of the elector's ballot to anyone after it is marked." Rep. Knudsen said he had brought his concerns to Commissioner Mangan and to date nothing has been done.
- 00:41:40 Sen. Thomas said that this issue should go to the Secretary of State's Office.
- 00:41:45 Rep. Knudsen asked Mr. Everts in what direction should the Legislature, Legislative Council, or leadership go and how does that process begin.
- 00:46:09 Mr. Everts said that he would need to read the Commissioner of Political Practices' advisory opinion, and find out on what authority the Commissioner had to issue that opinion.

Motion

- 00:47:33 Rep. Knudsen moved that the Legislative Council direct Mr. Everts to look into the Commissioner of Political Practices' advisory opinion on ballot selfies.

Committee discussion

- 00:48:14 Sen. Facey asked about the ramifications of posting the selfie, does the vote not count, does the person go to jail? He said he could support the motion but would like to move cautiously.
- 00:51:03 Sen. Thomas said that the motion would outline an effort by staff to look into the law and come back with an opinion.

Vote

- 00:53:33 The motion passed unanimously by voice vote.

House and Senate Committee Statistics

00:54:13 Ms. Fox ([Exhibit 5](#))

OBPP Agency Bill Draft Requests

00:55:35 Ms. Fox ([Exhibit 6](#))

Motion/Vote

00:56:39 Rep. Knudsen moved to proceed with the Office of Budget and Program Planning's proposed legislation HB 2 through HB 15 for drafting purposes. The motion passed unanimously by voice vote.

Further discussion regarding standing committees

00:58:09 Rep. Eck noted that there were 103 bills in Human Services Committee in the 2017 session.

00:58:54 Rep. Knudsen said that in some sessions there are more tax bills than others.

01:00:03 Rep. Schreiner said that what he has seen in his time in the Legislature that more bills in the Human Services end up in the Appropriations committee.

01:02:03 Rep. Eck said a solution would be to switch the Taxation Committee with the Human Services Committee. Rep. Eck said that the committee should think about that and get feedback from other members.

01:02:50 Rep. Knudsen said that his only concern is that if the Council makes a change, would that be a long term change?

Appointment to NCSL State and Local Taxation Task Force

01:03:41 Rep. Eck discussed the appointment of Rep. Hamilton to the NCSL State and Local Taxation Task Force committee. She would like the Republican counterpart to do the same in making those appointments.

1:04:57 Ms. Fox commented that the appointments to the interstate or intrastate organizations have to be balanced.

Sen. Thomas said that he would like to keep this item open in order to appoint a Republican to the Task Force.

BREAK (reconvened at 10:29 a.m.)

01:23:52 Rep. Eck asked if the Council wanted to make the Human Services Committee an A committee that meets in the afternoon and would there need to be a change to the Rules.

01:24:31 Ms. Fox said that the rules say that all class A committees meet in the mornings, but that would be an easy amendment to make.

01:24:53 Sen. Thomas requested that Ms. Nowakowski look into that for review at the next Council meeting.

POLICY PROHIBITING DISCRIMINATION AND HARASSMENT

Subcommittee Report

01:25:31 Rep. Eck discussed the draft policy ([Exhibit 7](#)) and the flow chart ([Exhibit 8](#)).

Discussion on most recent drafts

01:28:27 Ms. Fox ([Exhibit 7](#))

Committee discussion

01:38:36 Sen. Thomas said that he would like to discuss the confidentiality part of the policy and the mandatory training for legislators.

01:42:08 Sen. Facey commented on the changes that were made to the draft policy.

01:45:53 Rep. Eck discussed mandatory training and the ability of leadership to enforce mandatory training.

01:47:16 Sen. Sales said that he can't support this with the mandatory training in it.

01:48:56 Sen. Thomas commented on the mandatory training.

01:50:21 Rep. Knudsen commented on the legality of mandatory training and agreed that this should be voted on today.

01:55:19 The committee discussed the pros and cons of enforcing mandatory training for legislators, reviewed the first sentence in Section 6, Training, in the Harassment Policy, making training mandatory for staff.

01:40:59 Rep. Eck discussed deleting the last sentence "Attendance will be taken..." and add "For all staff, the training will need to be taken prior to day 1 of session."

01:41:56 Rep. Knudsen and Rep. Eck discussed what the consequences would be if a staff member missed the training.

01:42:29 Ms. Fox discussed taking that sentence out of the policy and work on mandatory training language for the House and Senate staff and permanent staff policy.

01:42:50 Sen. Facey wanted to note for the record that the training for pages might be abbreviated because the pages are only here for 5 days.

02:02:01 Rep. Eck asked about having language that says, "at time and date that works for all legislators" and making sure that it is available and not a barrier.

01:44:52 Rep. Schreiner commented for the record that if we take out mandatory training or leave it in, leadership of the Legislature is going to heavily encourage that training happens and everybody acknowledges that, even if leadership can't legally mandate it.

01:46:38 Sen. Thomas asked Rep. Eck to amend the language as discussed.

02:05:59 Sen. Thomas asked Mr. Everts if the Legislative Council has the authority to adopt the policy and put it in place.

02:06:52 Mr. Everts said that the Council has the authority to develop the policy.

02:08:08 Rep. Knudsen asked if there will be another Council meeting before session. Ms. Fox said that the Legislative Council will have a short meeting during Legislative Orientation.

Motion/Vote

02:09:25 Rep. Knudsen moved that the draft policy of the Montana Legislature Prohibiting Discrimination and Harassment, version V be amended as follows: in Section 6, in the first sentence, strike the first "mandatory", and insert the word "provided"; in the first sentence, following the first "legislators" insert the word "and"; following presiding officers, insert "and shall be mandatory for"; strike the last sentence of Section 6. The motion passed unanimously by voice vote.

02:10:44 Rep. Berglee asked if there is anything in the policy that protects legislation dealing with gender issues or abortion issues that could be classified as an aversion towards a group.

- 02:12:11 Sen. Pomnichowski said that is clarified by subsection (b) on page 3 of the draft policy. She said that it does not say, for the purpose of creating a law or changing legislation and does not have anything to do with a proposal to change the law.
- 02:14:25 Sen. Sales asked Ms. Fox if this is new language or language from an existing policy. Ms. Fox said that the language is from the existing permanent staff policy and language found in the Montana Human Rights Act.
- 02:14:57 Mr. Everts said that Article V, section 8, of the Montana constitution, talks about immunity for a legislator.
- 02:16:45 Sen. Thomas asked Mr. Everts about what is and what is not confidential and when it becomes public.
- 02:18:18 Rep. Knudsen said that he will resist any attempts to alter Section 4.
- 02:25:11 Sen. Thomas asked how this harassment policy differs from what is being done in other state agencies.

Motion/Vote

- 02:30:00 Rep. Knudsen moved that the Legislative Council recommend adoption of the draft policy, as amended, to the joint rules committee. The motion carried unanimously by voice vote.

TVMT

Progress Report - Lindsey Krywaruchka, Operations Manager, Legislative Services Division

- 02:30:54 Ms. Krywaruchka ([Exhibit 9](#))

Programming Policy & Operating Guidelines

- 02:32:42 Paul Heit-Renne, Director of Operations, Montana PBS ([Exhibit 10](#))

Committee discussion

- 02:38:12 Sen. Pomnichowski ask if it was possible for PBS to submit its scheduling information to the listing agencies so that it will appear on the cable channel and if it was possible to put the schedule on the PBS app or onto a webpage where the public would know when to expect a certain committee hearing at a certain time.
- 02:40:42 Rep. Schreiner asked if the PBS app would enable streaming of TVMT.
- 02:42:28 Ms. Krywaruchka commented on streaming programs that TVMT produces and upgrading the services that provide the streaming.
- 02:43:10 Dean Lawler, Engineering Director, Montana PBS, discussed the technology side of Montana PBS.

Committee discussion

- 02:47:51 Sen. Facey asked Ms. Fox about the price associated with Montana PBS compared to the price associated with Helena Civic TV.

Rebranding presentation

- 02:49:23 Scott Sterling, Director of Production, Montana PBS ([Exhibit 11](#))

Committee discussion

- 02:56:04 Sen. Pomnichowski asked about the statement in Section 2(c) of the Proposed Programming Policy and Operating Guidelines, where it states "programming should be nonpartisan, nonsectarian and not related to a political campaign". She said that many times legislators are in office or are running for office and have participated in dedication ceremonies, etc. She asked if legislator participation in certain programming would be in violation of that policy.
- 02:57:20 Mr. Heit-Renne explained how the guidelines apply.
- 02:58:30 Sen. Pomnichowski commented on Mr. Sterling's job on the rebranding.
- 02:59:46 Ms. Krywaruchka briefly commented on the audio/video equipment, broadcasting in High Definition, and the work on closed caption and complying with FCC standards for closed captioning.
- 03:01:10 Sen. Pomnichowski asked Ms. Krywaruchka if Montana PBS uses voice recognition software to help with closed caption.
- 03:02:35 Sen. Thomas thanked Rep. Eck for her work on the harassment policy.

LUNCH (reconvened at 1:15 p.m.)

2019 SESSION PLANNING

Presentation of Draft 2021 Biennium Budget - Susan Fox

04:09:50 Biennium Budget Comparison ([Exhibit 12](#))

Legislative Services Division Program 20 - Susan Fox

04:12:21 Program 20 ([Exhibit 13](#))

Legislative Branch IT Plan - Susan Fox

04:13:51 Information Technology Plan: 2021 Biennium ([Exhibit 14](#)) and IT Budget Increases ([Exhibit 15](#))

MCA State Special Revenue Fund

04:23:09 MCA State Special Revenue Fund ([Exhibit 16](#))

Legislative Services Division Program 21 - Susan Fox

04:24:10 Program 21 ([Exhibit 17](#))

Approve Preliminary Legislative Branch Budget

04:25:59 Ms. Fox discussed the submission of the preliminary budget into the system by September 1, and finalizing the budget by October 10.

Legislative Audit and Fiscal Divisions Budget

04:26:53 Ms. Fox said that both the Legislative Fiscal and Audit Committees have to adopt their respective budgets. The Council is responsible for submitting the branch budget, and traditionally the motion was contingent upon the Finance and Audit Committees approving their budgets.

Committee Questions

04:27:17 Sen. Facey asked if the executive branch uses the same bill drafting software that LSD uses to draft bills.

04:27:36 Mr. Everts explained the method of bill drafting that the executive uses, that when those drafts are sent to the LSD staff the bill drafts are converted into the bill drafting software that LSD uses.

Motion

04:29:09 Rep. Eck moved to approve the 2021 Biennium budget, including the Legislative Audit's and Legislative Fiscal's budget upon their approval.

Vote

04:29:50 The motion passed 7-1, with Sen. Facey, Sen. Thomas, Sen. Pomnichowski, Rep. Eck, Rep. Schreiner, Rep. Berglee, and Rep. Galt voting aye, and Sen. Sales voting no.

Session Proceedings Cost - Susan Fox

04:30:26 Proposed Price for Session Proceedings 2019 Session ([Exhibit 18](#))

Motion/Vote

04:31:53 Sen. Facey moved to adopt the proposed price for session proceedings. The motion passed unanimously by voice vote.

Session staff pay matrix - Susan Fox

04:32:23 House and Senate Short Term Staff Pay Matrix ([Exhibit 19](#))

Motion/Vote

04:33:15 Rep. Eck moved to approve the request for the session staff pay matrix. The motion passed unanimously by voice vote.

Feed Bill bill draft request

04:33:43 Ms. Fox requested a bill draft for the Feed Bill and will present the bill draft at the Legislative Council's November meeting for consideration by the new leadership.

Motion/Vote

04:34:05 Rep. Eck moved that staff prepare bill draft for the Feed Bill for review at the November meeting. The motion passed unanimously by voice vote.

Code Commissioner bill draft requests

04:34:31 Mr. Everts said that the Legislative Council needs to request that the Code Commissioner present proposed legislation at the Council's November meeting for approval and selection of a sponsor.

Motion/Vote

04:34:59 Rep. Eck moved that the Council request the Code Commissioner to draft Code Commissioner bills for review at the next Legislative Council's meeting. The motion passed unanimously by voice vote.

Annotation Pricing

04:35:25 Mr. Everts ([Exhibit 20](#))

Motion/Vote

- 04:36:01 Rep. Eck moved to approve the proposed 2018 Annotations to the Montana Code Annotated Prices. The motion carried unanimously by voice vote.
- 04:36:30 Sen. Thomas said that there was a Rules Subcommittee report that will be brought forward at the next meeting.

Committee questions

- 04:37:06 Sen. Pomnichowski asked about the balance on the first page of the Summary 2017 Feed Bill that does not include pre-session training. Sen. Pomnichowski discussed items on page 3 that includes items such as caucus and start up for the 2019 session and two days pre-session training. She asked if legislators would be compensated for their time before they are sworn in as members of the Legislature. **(Exhibit 21)**
- 04:38:15 Ms. Fox explained that the balances on the first page of the summary don't include those costs, but the estimates are reflected on the subsequent sheets.

LEGISLATOR COMPENSATION

LC9995: Legislator Constituent Services Funds

- 04:39:24 Ms. Fox discussed LC9995: revising the constituent services account. **(Exhibit 22)**

Committee questions

- 04:43:42 Sen. Pomnichowski discussed the allowance, which is currently called a stipend, that already exists in law. She asked why would it be considered setting legislator compensation?
- 04:44:11 Ms. Fox said that the issue of legislator pay was a concern that was raised and she only wanted to make the Council aware of it.
- 04:44:54 Sen. Facey commented on how the IRS would rule on this.

Motion/Vote

- 04:45:32 Sen. Facey moved to proceed with LC9995 as a committee bill. The motion passed unanimously by voice vote.
- 04:46:29 Ms. Fox said that staff will work on the legal issues and straighten out the tax portion in the draft and present the bill draft at the November meeting for consideration and finding a sponsor for the bill.

LC9994: Third-Party Compensation

- 04:46:44 Ms. Fox discussed LC9994: revising the method of calculating legislator pay to be consistent with the method for setting compensation of executive branch officials and supreme court justices **(Exhibit 23)** and the 5-State Compensation Method Fiscal Information **(Exhibit 24)**.

Committee questions

- 04:51:33 Rep. Schreiner asked about other states having a constituent services account,

if those accounts are taxed, is there a reporting mechanism for those accounts, and are those accounts treated as stipends that are taxed as income.

04:52:19 Rep. Eck asked about a potential amendment to the bill.

04:52:30 Ms. Fox discussed the fiscal impact if the constituent services account was or was not included as part of legislator compensation.

04:52:54 Rep. Schreiner said that the committee either has to make a decision on whether or not the constituent services account is compensation or a business expense. Whatever the decision is, the Legislature should not include that in the total compensation because it is being mislabeled.

Motion

04:54:04 Sen. Facey moved to approve LC9994 as a committee bill and to not include the constituent services account.

Committee discussion

04:54:52 Sen. Thomas commented of the impact of this legislation on future legislatures.

04:56:53 Sen. Sales and Rep. Eck said they are in support of the motion.

Vote

04:59:20 The motion passed unanimously by voice vote.

Fiscal information on meals reimbursement

04:59:41 Ms. Fox ([Exhibit 25](#))

Committee discussion

05:03:19 Sen. Thomas commented on the document and asked if this meal reimbursement policy be adjusted as proposed.

Motion/Vote

05:04:22 Sen. Sales moved to request a bill draft to address the meal reimbursement policy for the next legislative session. The motion passed unanimously by voice vote.

Public Comment on legislator compensation issues, constituency funds, etc.

None.

MISCELLANEOUS ADMINISTRATIVE MATTERS

Records Management Policy

05:06:06 Ms. Fox ([Exhibit 26](#))

Committee questions

05:07:58 Sen. Pomnichowski asked about the references to paper and digital documents.

Capitol Projects Updates

05:11:25 Ms. Fox reported on the Capitol parking. ([Exhibit 27](#))

05:15:08 Ms. Fox reported on the Capitol skylights.

05:15:52 Ms. Fox reported on the replacement of the boilers.

05:16:30 Ms. Fox reported on the carpet replacement project.

05:17:10 Ms. Fox discussed the issue of Room 76 and Print and Mail.

Motion/Vote

05:20:00 Sen. Facey moved to support Ms. Fox's negotiations with the Department of Administration for the use of Room 76. The general consensus of the committee was to support Sen. Facey's motion.

Discussion on the appointment to NCSL State and Local Taxation Task Force

Motion/Vote

05:21:07 Rep. Eck moved that the Legislative Council appoint Rep. Hamilton the NCSL State and Local Taxation Task Force and that the Council also leave an open spot for the President or the Speaker to appoint a Republican member to the Task Force. The motion carried unanimously by voice vote.

2019 Legislative Session caucuses, orientation, and training dates

05:22:50 Ms. Fox (**Exhibit 28**)

05:22:52 Ms. Fox discussed the recommendation from the state tribal relations for training, the recommendation from the local government committee for entitlement share training, law school for legislators, and help from NCSL for training in sexual harassment.

GENERAL PUBLIC COMMENT

None.

NEXT MEETING DATE

05:24:47 Sen. Thomas discussed the next meeting date of November 16 in Helena.

05:24:58 Sen. Facey asked if it is the 14th or the 16th.

05:26:27 Sen. Pomnichowski asked if the meeting could be noticed for the 14th and if need be, move it to the 16th.

Further Business

05:26:41 Sen. Pomnichowski said that moving the Bill Printing Services out of the one building where the Legislature conducts its business is a move that is not in support of the people's branch of government. She would appeal to the General Services Division to restore full services to the Legislative Branch in the Capitol Building.

ADJOURNMENT

05:29:04 Sen. Thomas adjourned the meeting at 2:34 p.m.