

**Council Senate Members**  
VICKI COCCHIARELLA--Vice Chair  
BOB KEENAN--Chair  
GREGORY BARKUS  
KELLY GEBHARDT  
DAN HARRINGTON  
MICHAEL WHEAT



**Council House Members**  
BOB BERGREN  
ROY BROWN  
MARGARETT CAMPBELL  
DENNIS HIMMELBERGER  
MICHAEL LANGE  
DAVE WANZENRIED

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# MINUTES

June 5, 2006

Room 102, State Capitol  
Helena, Montana

Please note: These are summary minute. Testimony and discussion are paraphrased and condensed. Committee tapes are on file in the offices of the Legislative Services Division. **Exhibits for this meeting are available upon request. Legislative Council policy requires a charge of 15 cents a page for copies of the document.**

## **COMMITTEE MEMBERS PRESENT**

SEN. BOB KEENAN, Chair

SEN. GREGORY BARKUS  
SEN. KELLY GEBHARDT  
SEN. DAN HARRINGTON

REP. ROY BROWN  
REP. DENNIS HIMMELBERGER  
REP. MICHAEL LANGE  
REP. DAVE WANZENRIED (by phone)  
REP. BOB BERGREN

## **MEMBERS EXCUSED**

SEN. VICKI COCCHIARELLA, Vice Chair  
SEN. MICHAEL WHEAT  
REP. MARGARETT CAMPBELL

## **STAFF PRESENT**

Lois Menzies, Executive Director, Legislative Services Division  
Gregory Petesch, Director, Legal Services, Legislative Services Division  
Karen Berger, Financial Services Manager, LSD

Dawn Field, Secretary, Legislative Services Division

### **AGENDA & VISITORS' LIST**

Agenda, Attachment #1.  
Visitors' list, Attachment #2.

### **COMMITTEE ACTION**

The Legislative Council:

- approved the March 24, 2006 minutes as written;
- voted to establish that consultation regarding proposed land transfers had occurred;
- approved the OBPP bill draft requests;
- approved items 6, 7, 8, 10, 11, 12, 14, 15, 17, 18, 19, 21, 22, 23, 24, and 25 from the fiscal note work group;
- approved drafting a committee bill to generally revise fiscal note statutes;
- approved a committee bill draft request to generally revise laws governing the legislature;
- approved the Budget Proposals for the 2009 Biennium;
- approved the proposed Legislative Branch Information Technology Budget;
- approved the broadband pay plan for the Legislative Branch;
- approved potential legislation requests to be drafted as Council bills for final approval in September; and
- approved caucus and new legislator training dates for 2006.

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

SEN. KEENAN called the meeting to order at 9:00 a.m. The secretary took roll, Senators Cocchiarella and Wheat, and Representatives Campbell and Wanzenried were excused. (Rep. Wanzenried participated in part of the meeting by phone.) The March 24, 2006 minutes were approved as written on a unanimous voice vote.

It was noted that several changes in the order of the meeting agenda would be necessary (presentation times for agenda item numbers 6, 10, and 13 were changed).

**Lois Menzies, Executive Director, Legislative Services Division (LSD)**, asked the Council members to review the memo from Stephen Maly, Executive Director, Helena Civic Television (HCTV), to Governor Brian Schweitzer. Ms. Menzies said that the memo is a followup to a meeting that Mr. Maly had with Governor Schweitzer regarding the expansion of TVMT programming (EXHIBIT #1).

### **CONSULTATION ON PROPOSED PROPERTY TRANSFER**

**Jeanne Holmgren Department of Natural Resources and Conservation (DNRC)**, reviewed the proposed property transfer, saying that the property is held in trust for the Pine Hills School (EXHIBIT #2). She directed the Council to the map in EXHIBIT #2 and reviewed the property to be sold.

SEN. BARKUS asked if a sale of state land to a private company that provides service to Montana affects the price of the land. Ms. Holmgren said that is no exchange for services in kind and that the purchaser has to pay fair market value at a public auction.

SEN. GEBHARDT asked if the land proposed for transfer has buildings on it. Ms Holmgren said that the parcel is vacant.

SEN. KEENAN asked Gregory Petesch, Director, Legal Services, LSD, if he had any concerns regarding the property transfer. Mr. Petesch said that he did not.

**Steve Gibson, Administrator, Youth Services, Department of Corrections (DOC)**, reviewed a second proposed land transfer (EXHIBIT #3). Mr. Gibson said that the property is part of the old Pine Hills School Campus and has buildings on the property. He directed the Council to page 2 of EXHIBIT #3 and reviewed a proposal for demolition of the old buildings and the restrictions placed on the land by DOC. He noted that the prospective buyer has agreed to the terms established by DOC.

Mr. Petesch said that he has no concerns regarding the proposed transaction but that in reviewing the material, he was unable to determine why the sale is being done under **77-2-302**, MCA, while a similar land transaction involving Boulder School property was done under **77-2-351**, MCA.

REP. BROWN **made a motion** to establish that the Legislative Council was properly consulted regarding the proposed land transfers. The **motion passed on a unanimous voice vote**.

#### **EXECUTIVE BRANCH POLICY REGARDING LEGISLATIVE INFORMATION REQUESTS**

**Bruce Nelson, Chief of Staff, Governor's Office**, reviewed the background of the issue, saying it began with a telephone call from Representative Mary Caferro to the Department of Commerce in February, 2006, requesting information on housing assistance for a family in her district. Rep. Caferro's request was unanswered and she subsequently contacted the Governor's Office. Mr. Nelson noted that the Council members were provided with copies of communications within the Department relating to Rep. Caferro's request (EXHIBIT #4). Mr. Nelson discussed the outcome of the situation and explained the Executive Branch policy regarding legislative and media information requests. He stressed that the purpose of the policy is to ensure prompt and accurate responses to information requests. Mr. Nelson said that the Governor's Office is very aware of the importance of working with legislative committees and staff and was surprised by a GOP E-Brief and a radio program characterizing the Governor as ruling over state employees through intimidation. He noted that neither the Governor's Office nor the Department of Commerce were contacted by the parties who publically criticized the situation.

REP. LANGE disagreed with Mr. Nelson's assessment of the issue. He clarified that the reason Mr. Nelson was invited to address the Council was because of the Council's concerns and not because of the incident involving Rep. Caferro. REP. LANGE said that he appeared on the radio program referenced by Mr. Nelson and asked Mr. Nelson if he had listened to the program. Mr. Nelson said that he had listened to part of the program. REP. LANGE said that Department of Commerce Director Priete had initially agreed to discuss the issue on the air but later said he was unavailable and did not appear on the radio program.

REP. LANGE asked if the Governor is enacting a policy requiring a director of an agency to go through the Governor's Office before responding to a legislator. Mr. Nelson said no. REP. LANGE asked Mr. Nelson to confirm if the Governor's policy is to ensure that legislators will receive timely responses and that the policy is not an attempt to restrict an agency director or

staff person's ability to communicate with a legislator for any reason. Mr. Nelson said that the intent of the Governor's policy is to ensure prompt and thorough responses to legislative inquiries. On occasion, it may be necessary to contact the Governor's Office when such an inquiry involves policy issues, in order to ensure that the policy expressed in the response is consistent with those of the Governor.

REP. LANGE agreed that it is important that the Governor's policy is carried out in a consistent manner but asked why that wasn't stated in the emails regarding this issue. Mr. Nelson said that he did not draft any of the responses nor did he see the email before it was sent.

REP. LANGE asked if the Governor is prepared to release an official written statement regarding the intent of his policy. Mr. Nelson said that the Governor would be happy to issue a written statement outlining his policy regarding legislative requests for information.

### **REVIEW OF AGENCY LEGISLATION**

**Lois Menzies, Executive Director, LSD**, reviewed the procedure for review, request, and drafting of agency legislation (EXHIBIT #5). She said that the Council must decide if it will request the legislation on behalf of the agencies, so that it can be submitted for drafting. Ms. Menzies also said that it is very important that agency bills are received as early as possible so that they can be drafted and pre-introduced before the legislative session.

### **TAPE 1 - SIDE B**

**Office of Budget & Program Planning - David Ewer, Budget Director, Governor's Office**, distributed a list of 16 standard bill requests by the Office of Budget and Program Planning (OBPP) (EXHIBIT #6). Mr. Ewer reviewed the list of proposed bills with the Council.

REP. LANGE **moved** to approve drafting of the proposed bill drafts from OBPP.

SEN. GEBHARDT asked about the training state-tribal communications proposed bill. **Amy Sassano, Budget Office**, said that there is statutory requirement for a report that documents consultations between the State and the Tribes.

Ms. Sassano said that this particular bill draft request has nothing to do with the budget but is a placeholder to get the request moving in the process.

REP. LANGE's motion to approve the OBPP bill draft requests for drafting **passed on a unanimous voice vote**.

### **REPORT FROM JOINT LEGISLATIVE COUNCIL AND LEGISLATIVE FINANCE COMMITTEE FISCAL NOTE WORK GROUP**

**Jon Moe, Fiscal Analyst, Legislative Fiscal Division (LFD)** and REP. LANGE reported that the fiscal note work group considered 25 different options for improving fiscal notes (EXHIBIT #7). REP. LANGE noted that the first five items in the report do not carry a recommendation from the work group and that it was agreed not to move forward items 9, 13, 16, and 20. He said that the remaining items were approved unanimously by the work group and that he would explain each recommendation.

SEN. BARKUS asked if the reason the first five items carry no recommendation is because the work group felt there was no need to make a change or because it could not reach agreement. REP. LANGE said that the work group felt the first five items were policy questions and that the Legislative Council needed to consider each individually.

REP. LANGE reviewed the findings of the work group, beginning with item 6 (EXHIBIT #7).

Ms. Menzies said if the recommendations are approved, the implementation plan would be put in place through New Legislator Orientation, training for returning legislators, and through cooperation with other agencies. She said that Mr. Moe and LFD would take the lead in implementing the recommendations.

REP. LANGE **moved that the Legislative Council support items 6, 7, 8, 10, 11, 12, 14, 15, 17, 18, 19, 21, 22, 23, 24, and 25 from the fiscal note work group.** SEN. KEENAN asked for public comment. No comment was given. REP. LANGE's **motion passed on a unanimous voice vote.**

REP. LANGE discussed the five items that the work group felt were policy decisions best addressed legislatively (Items 1-5, EXHIBIT #7).

- Item 1 - move the fiscal note function out of the Governor's Office.

The Legislative Council took no action on Item 1.

- Item 2 - establish an independent review of fiscal notes during the session.

REP. BROWN asked if a study has been done to see how close fiscal notes are to actual costs. Ms. Menzies said that LSD has not done such a study and asked Mr. Moe to comment. Mr. Moe said that he is not aware of any study of that nature being done by LFD. He noted that there have been certain circumstances in which LFD staff has made changes in a fiscal note after consultation with a previous budget or after consultation with OBPP.

The Legislative Council took no action on Item 2.

- Item 3 - increase staff resources... to aid in timeliness and accuracy.

Amy Sassano, OBPP, said that the Budget Office has hired temporary session employees in the past but does not have plans to do so in the 2007 legislative session. The OBPP is fully staffed and is comfortable that the work load can be handled.

SEN. BARKUS said that in reading the findings of the work group, that he did not see anything relative to the need for the changes. He asked if there is evidence fiscal notes are grossly incorrect or if the interest in studying the issue was due to disgruntled legislators. REP. LANGE said that during the 2005 legislative session, all legislators were given the opportunity to complete a survey regarding fiscal notes and that the information from the surveys served as the basis for the study.

SEN. BARKUS said that the first 45 days of a legislative session are very busy. The Budget Office is very involved in the appropriations process and is also the same time that the legislators are under pressure to meet transmittal deadlines. He asked if there had been

discussion of easing the timing restrictions. REP. LANGE said that this issue was discussed. The issue in Item 3 is if the Legislature wishes to grant OBPP spending authority to hire extra staff. The Budget Office has indicated that it does not need the extra staff, so no recommendation was made.

The Legislative Council took no action on Item 3.

- Item 4 - instead of sponsor's fiscal note, have a sponsor's rebuttal form... indicating the sponsor's disagreement.

SEN. GEBHARDT thought this was a good idea but questioned if statutory changes would be necessary. Mr. Moe said that he was reasonably certain that a change in statute would be necessary. He explained that the sponsor's fiscal note is rarely used. He said that what is being suggested in this option is that the sponsor could specifically address objections to the fiscal note without him having to complete a total fiscal note.

SEN. GEBHARDT said that he has signed fiscal notes that he disagrees with but that he then addresses his disagreement on the floor. He said that Item 4 would allow a bill's sponsor another way to address concerns regarding a fiscal note.

## **TAPE 2 - SIDE A**

REP. BROWN said he supported Item 4 because the opportunity for a sponsor to address concerns on the floor isn't always available because the bill may die in committee because of the high fiscal note.

SEN. BARKUS agreed with SEN. GEBHARDT and REP. BROWN. He asked Mr. Moe if adding a sponsor's comment section to the fiscal note would require a statutory change. Mr. Moe said that a sponsor's fiscal note is described specifically in statute so a statutory change would be necessary. Mr. Petesch confirmed Mr. Moe's opinion.

SEN. BARKUS asked if the preparer of the fiscal note could transcribe a legislator's comments into the fiscal note as part of the items of interest. Mr. Moe said that would be possible to do but questioned whether there would be adequate time for that, given the time restrictions placed on a fiscal note. He pointed out that the report also addressed the idea of legislators contacting OBPP when there is disagreement with a fiscal note and try to work out the disagreement directly with that office.

REP. BERGREN agreed and said that the sponsor is not always present when his bill is being acted upon. He said that he would support a change in statute.

Mr. Moe suggested, out of concern for the timeliness of the process, that the rebuttal form be separate.

SEN. KEENAN asked Mr. Petesch if it would be possible to address this by joint rule or if a change in statute is necessary. Mr. Petesch said that the joint rules governing fiscal notes are mostly duplicative of the statutes governing fiscal notes, that joint rules are not meant to amend statute and that the appropriate action would be to prepare legislation to amend the statute.

SEN. GEBHARDT **moved** to create a form sheet to be attached to a fiscal note that the sponsor could fill out as a rebuttal to items put in the fiscal note. This would allow the sponsor the opportunity to contest any portion of the note. He suggested that the rebuttal form be limited to one to two pages.

SEN. KEENAN asked Mr. Petesch to comment. Mr. Petesch said the Council could put in a bill request to revise fiscal notes and decide the extent of the revisions at a later date.

SEN. GEBHARDT said that his motion is to generally revise fiscal notes, with the ideal that it will allow for a sponsor's comment sheet. He said that he was not in favor of expanding the time limit because that could slow down the process.

REP. LANGE said that Item 5 also addresses making statutory changes in fiscal notes and suggested combining Items 4. and 5. The Council agreed.

Ms. Sassano commented that if a rebuttal form is created, she hoped that the first course of action would still be for a legislator to contact OBPP with his concern. She said that OBPP will work with the legislator to address the concern and that often it is just a matter of explaining what the fiscal note is based on.

**SEN. GEBHARDT's motion to create a committee bill to generally revise fiscal note statutes passed on a unanimous voice vote.**

- Item 5 - something in statute that better defines what a fiscal note is and what it should include to establish a clearer expectation of the legislature.

REP. LANGE said there was division within the work group on Item 5. He said that the work group felt that wording on fiscal notes could be improved and that Mr. Moe drafted model language (pages 4 and 5, EXHIBIT #7). He noted for the record that Item 5 will be addressed in the Council's previous action.

SEN. KEENAN asked that the Legislative Finance Committee be notified of the Legislative Council's actions. Mr. Moe said this issue is already on agenda for the next Legislative Finance Committee meeting. Mr. Moe asked to note that the model language he drafted was taken from comments received in the legislator surveys and that he realized that some changes would likely be needed.

#### **STATUTES AND RULES IMPACTED BY THIRD-PARTY LEGISLATORS**

Greg Petesch, Legal Counsel, LSD, said the purpose of his report is to identify problematic statutes in the event of a third-party legislator. Mr. Petesch reviewed and explained his recommendations regarding third-party legislators (EXHIBIT #8).

SEN. GEBHARDT asked if the needed changes could be addressed in one bill draft. Mr. Petesch said that revising the laws governing the committee membership of administrative and interim committees could be done in one bill draft and suggested making the language broad enough to cover the issues.

SEN. HARRINGTON said that he was concerned about how third party legislators will affect caucuses and nonpartisan committee structure. Mr. Petesch agreed that this is a concern and

said that wording would have to be drafted to address those concerns. Regarding nonpartisan committees, Mr. Petesch said that the appointing authority may choose not to place a third-party legislator on an interim committee. He said that language could be rewritten to require that the partisan membership of certain committees be equal, which would preclude a single member third party legislator from serving on a committee.

REP. LANGE suggested that the duties of the floor leader be spelled out more specifically. He also suggested writing language to clarify that interim committees would have to be neutral.

REP. BROWN asked, for instance, if the House was split 50-49-1, if the single member would be precluded from being Majority Leader or Speaker of the House. Mr. Petesch said that the offices are determined by election on the floor. The other offices are elected at caucus and the statute specifically provides that, for example, Majority Leader is a caucus position. In the absence of any change, Mr. Petesch said that he would assume that the single member caucus could elect himself Minority Leader and without a statutory change, could make argument that he is able to make appointments.

REP. BROWN said that his concern is that the third party legislator may end up being in a leadership position by vote but not by party. Mr. Petesch said that the majority and minority leaders are elected at caucus but that the vote on the floor would elect the Speaker, so the third party legislator, if nominated, could be elected as Speaker of the House.

REP. LANGE **moved** to approve a committee bill draft request to generally revise laws governing the legislature and that Mr. Petesch will suggest the appropriate language to address the issue. REP. LANGE's **motion passed on a unanimous voice vote.**

#### **BUDGET PROPOSALS FOR 2009 BIENNIUM**

Lois Menzies said that the budget proposals were originally discussed at the March meeting and that they have been updated to include cost estimations, as requested by the Council. Ms. Menzies reviewed and explained each of the eight proposals (EXHIBIT #9):

- Pacific NorthWest Economic Region (PNWER) funding -- request for \$41,077 would cover dues, salary, travel, registration, and other related expenses for four members.

REP. BERGREN asked if dues were paid the current year. Ms. Menzies said that dues were not paid but that language in HB 2 directs staff to work with the appropriate committee to use carryforward money to pay for participation expenses but that dues were not paid.

SEN. BARKUS asked for a breakdown of how the \$41,077 would be used. Ms. Menzies said that the budget would cover two years' dues (\$30,000) and that the remainder would cover travel expenses for the appointed members for two years.

- Legislative Council on River Governance (LCRG) funding -- request for \$18,535 would cover salary and travel expenses for four members, travel expenses for staff, and other incidental meeting costs for the 2009 biennium. Ms. Menzies said that carryforward money was used to pay these costs in 2006.

SEN. GEBHARDT asked if there is an annual membership to LCRG. Ms. Menzies said no, because it is a committee of CSG West and if Montana was a dues paying member, CSG West would cover dues. Montana is not a dues paying member of Council on State Governments



(CSG) West at this time. SEN. GEBHARDT asked how much CSG dues are. Ms. Menzies said this is addressed in item 4.

SEN. BARKUS said that the Northwest Power Planning Council (NWPPC) has strong oversight of the Columbia River Basin. He asked if there is a way to budget for LCRG through NWPPC. Ms. Menzies said that the Legislature could add funds to NWPPC for that purpose or it could require that organization to pay the associated expenses through HB 2.

### **TAPE 3 - SIDE A**

- Legislator participation in interstate organization -- request for \$69,864 would cover legislator salary, travel, and registration expenses for eight members to attend three 3-day National Conference of State Legislatures (NCSL) meetings and for eight members to attend three 3-day CSG meetings.

SEN. HARRINGTON recalled that there used to be funding for these programs and asked how many years it had been since they had been fully funded. Ms. Menzies and Mr. Petesch estimated that funding had not been approved for these programs since the mid-1990s.

- Payment of CSG dues -- \$159,464 request would cover NCSL and CSG dues through the 2009 biennium.
- Phase II of US Census Bureau's 2010 Redistricting Data Program and Initial meeting and organization of Districting and Apportionment Commission -- request for \$4,000 which would cover staff training and expenses associated with the first meeting of the Districting and Apportionment Commission.
- New interim committee -- request for \$29,472 if a new eight member interim committee is statutorily created and \$43,495 if a new 12 member committee is created.
- Increased membership on interim committees -- the request for \$14,023 would cover the expense of adding four members (two House and two Senate) to existing committees and \$28,047 would cover the cost of adding eight members (four House and four Senate) to existing interim committees.
- Legislative Branch public information officer and costs associated -- based on the position description in EXHIBIT #9, the estimated cost of employing a full-time information officer for the Legislative Branch would be \$63,625 for FY2008 and \$59,634 for FY 2009.

SEN. HARRINGTON said that he was not certain that there was a need for a full-time public information officer for the Legislative Branch but that it is important to fund participation in interstate programs. He said that the Legislature has suffered as a result of not being funded and that it would benefit Montana to have participation in these programs.

REP. HIMMELBERGER agreed with SEN. HARRINGTON and said that with term limits, it is critical that legislators be more informed and effective. He said he did support the proposal for a full-time public information officer because in his door-to-door campaigning, it became very

obvious that the public knows little about the Legislature. He said the position would be beneficial to legislators and the public alike.

REP. LANGE concurred with REP. HIMMELBERGER and SEN. HARRINGTON. He said that he was not convinced there was a need for both Item 6 (increased membership on an interim committee) and Item 7 (creation of a new interim committee) but did agree that participation on interim committees is very important. He said because of that, he would support keeping both proposals alive until each proposal could be researched further.

**REP. HIMMELBERGER moved to approve all proposals for further consideration and that LSD incorporate them into its proposed budget for the 2009 biennium. SEN. BARKUS made a substitute motion to segregate items 1-4 (state participation in and dues for interstate organizations) and vote on items 5-8 as separate issues.**

After a brief discussion, **SEN. BARKUS' motion to approve items 1-4 passed on a unanimous voice vote.**

**SEN. BARKUS moved to approve item 5 - funding for Districting and Apportionment Commission. The motion passed on a unanimous voice vote.**

**REP. LANGE moved to approve item 6 - creation of a new interim committee.**

REP. HIMMELBERGER asked REP. LANGE if by moving to approve item 6, he was abandoning item 7. REP. LANGE said that he didn't know which option is better and would like to approve both. He suggested that a subcommittee be formed to study both and then report back to the Council in September.

SEN. GEBHARDT asked for a description of the work load of current interim committees. Ms. Menzies said that the workload for certain committees has increased due to critical issues such as education and revenue. Some of the work load could be shifted in order to balance out the demands placed on interim committees. The committees may not wish to make any changes but this is one alternative that staff identified as a possible solution.

REP. LANGE's **motion passed 7-4 on a roll call vote** (Attachment #4). SEN. BARKUS, SEN. GEBHARDT, SEN. KEENAN, and REP. BROWN voted no. SEN. KEENAN noted that SEN. HARRINGTON has SEN. WHEAT's proxy (ATTACHMENT #5), SEN. BERGREN has SEN. COCCHIARELLA's and REP. WANZENRIED's proxies (ATTACHMENT #6 and ATTACHMENT #7).

**REP. BERGREN moved to approve item 7 - increased membership on interim committees. The motion passed 7-4 on a roll call vote** (Attachment #8). SEN. BARKUS, SEN. GEBHARDT, SEN. KEENAN, and REP. BROWN voted no. SEN. KEENAN noted that SEN. HARRINGTON has SEN. WHEAT's proxy (ATTACHMENT #5), SEN. BERGREN has SEN. COCCHIARELLA's and REP. WANZENRIED's proxies (ATTACHMENT #6 and ATTACHMENT #7).

**REP. HIMMELBERGER moved to approve item 8 - Legislative Branch public information officer.**

SEN. BARKUS asked at what level of the pay scale or grade the public information officer would be placed. Ms. Menzies said that the position is not a supervisory position and would be placed just below the entry level research analyst position. The position would require a college degree and strong communication skills. Currently, the duties of this position are either divided up or are not done at all. Staff is able to do some public outreach on a volunteer basis, such as the Legislator Back To School program.

REP. HIMMELBERGER's **motion passed 7-4 on a voice vote (ATTACHMENT #9)**. SEN. BARKUS, SEN. GEBHARDT, SEN. KEENAN, and REP. BROWN voted no. SEN. KEENAN noted that SEN. HARRINGTON has SEN. WHEAT's proxy (ATTACHMENT #5), SEN. BERGREN has SEN. COCCHIARELLA's and REP. WANZENRIED's proxies (ATTACHMENT #6 and ATTACHMENT #7).

The Legislative Council recessed for lunch.

### **TAPE 3 - SIDE B**

#### **UPDATE ON GENERAL FUND**

**Terry Johnson, Principal Fiscal Analyst, Legislative Fiscal Division**, presented a Power Point update on general fund revenue (EXHIBIT #10) and a one-page summary of general fund revenue by source (EXHIBIT #11). Mr. Johnson discussed:

- a summary of aggregate general fund revenue;
- a comparison of selected revenue sources:
  - ▶ individual income tax,
  - ▶ corporation income tax, and
  - ▶ oil and gas production tax; and a
- 2007 biennium general fund outlook.

Mr. Johnson discussed specific revenue sources, as listed in EXHIBIT #11.

REP. HIMMELBERGER asked when oil and gas taxes are due. Mr. Johnson said that they are due quarterly. He said that to date, \$48 million has been collected in the first two quarters, which is right on track and also said that the price discounting issue may impact the remaining two quarters.

REP. HIMMELBERGER, regarding low audit collections, recalled that the Department of Revenue (DOR) thought that the low audit collections situation would correct itself. He asked if the low audit collection number in Mr. Johnson's report indicated that that situation was still ongoing. Mr. Johnson said DOR has investigated its internal procedures and is reviewing its procedures that determine what constitutes an "audit" dollar. The Department has indicated that it will provide a detailed spreadsheet showing revised audit dollars for anticipated 2006, but also a historical pattern in order to make a true comparison.

REP. HIMMELBERGER asked if the 2005 Legislature authorized adding several additional FTE in audit for DOR. Mr. Johnson said that additional FTEs were authorized in HB 2.

SEN. HARRINGTON asked if price discounting on oil is still an issue. Mr. Johnson said that the problem still exists but is not as bad as it once was. Mr. Johnson said that he did not have

adequate data to determine how widespread the problem actually was. The next quarter's data should reveal more information.

REP. BROWN asked why budget and revenue estimates are so far off and asked what could be done to make them more accurate. Mr. Johnson said that there are several factors that largely influence the growth in revenue, mainly capital gains, rents, and royalty payments. He said that he could not comment on whether tax policy has influenced this issue because he had not done an in depth analysis of tax policy.

SEN. BARKUS said that a certified public accountant (CPA) recently contacted him with concern that several of his customers had filed their tax returns and that their accounts had not been debited or credited. He asked if Mr. Johnson was aware of any problems with the income tax computer system at DOR. Mr. Johnson said that in the process of discussing the audit collection issue with DOR, he had shared that concern with DOR and that he has heard from other legislators with the same concern. He said that Director Bucks provided graphics that show that DOR is meeting its 45-day target for issuing refunds. He said that in light of current revenue collections, he would find it difficult to believe that receipt of revenues is not being done on a timely basis as well.

REP. HIMMELBERGER asked if the coal trust earnings are lower than they have been previously (EXHIBIT #11). Mr. Johnson said that is the case, that the coal trust interest earnings dropped even lower than anticipated. He said that the drop has occurred because the gains experienced in past years are not happening due to higher interest rates.

#### **TAPE 4 - SIDE A**

#### **REVIEW AND INITIAL APPROVAL OF PROPOSED LEGISLATIVE BRANCH INFORMATION TECHNOLOGY BUDGET**

**Hank Trenk, Director, Office of Legislation Information Technology, LSD**, reviewed the Computer System Planning Council's FY 2008-2009 preliminary computer plan and budget (EXHIBIT #12), including three new proposals:

- legislator IT reimbursement program (\$135,000);
- network technician - 1 FTE (\$74, 514); and;
- security and disaster recovery officer (\$141,861).

Mr. Trenk said that this budget is a starting point and that there is time for changes or modifications. He said that the Computer System Planning Council would be meeting again in August and would present an updated budget to the Council for final approval at its September meeting.

SEN. GEBHARDT, regarding the legislator reimbursement program, asked if the legislator or the State would be considered the owner of the equipment. Ms. Menzies said that the \$900 reimbursement to a legislator would not cover the entire purchase amount and that the equipment would stay with the legislator throughout the life of the equipment.

REP. HIMMELBERGER said if the \$900 reimbursement would be available per legislator per term. Mr. Trenk said the reimbursement would be per biennium. Ms. Menzies noted that SEN. BRUEGGEMAN (a member of the Computer System Planning Council) felt very strongly that

this proposal would aid legislators in doing their job more effectively and would streamline the work, as well as reduce paper and printing costs.

REP. HIMMELBERGER asked why the legislator reimbursement was made for the biennium instead of annually. Mr. Trenk said that the Planning Council determined that \$900 would pay for a low end lap top that would meet legislative needs but that the Council could recommend a different amount.

SEN. BRUEGGEMAN called in to the meeting via teleconference to discuss his reasons for supporting the legislator reimbursement plan for purchasing computer equipment. He said that this approach would act as a stipend for legislators, rather than the State supplying equipment. He also discussed the current voting board system and how laptops could potentially eliminate the need for a voting board in the future.

SEN. BARKUS asked at what point could there be consideration of eliminating the voting system, provided all legislators have a laptop. Mr. Trenk said that the current vote system vendor and that he would not recommend using laptops for voting but that the laptop could interface with the voting board in other ways. He said that there are several design features that will be looked at in the 2007 session.

REP. HIMMELBERGER said that there has been past discussion of eventually reaching the point of being a "paperless" legislature. He said that this would create savings in printing and possibly in FTEs also. He said that this should be seriously considered.

SEN. BRUEGGEMAN said that because of term limits, legislative memory is being lost. He said that it is his vision that eventually not only will the bill text of the bill being considered be displayed, but amendments and any rules that apply to the vote in question. This would be a powerful educational tool and help people understand the rules and what rule applies to which bills, etc.

REP. BERGREN **moved to approve all five components of the proposed plan.** The motion passed 10-1 on a roll call vote (ATTACHMENT #10). SEN. KEENAN voted no. (SEN. HARRINGTON has SEN. WHEAT's proxy (ATTACHMENT #5), SEN. BERGREN has SEN. COCCHIARELLA's and REP. WANZENRIED's proxies (ATTACHMENT #6 and ATTACHMENT #7)).

Ms. Menzies asked if the Council is in agreement that the first project to be funded from the reserve account should be replacement of the House and Senate voting system. She explained the many steps that need to be completed in order for the new system to be up and running for the 2009 legislative session. SEN. GEBHARDT suggested that whatever software is used in the new system be checked for compatibility with State programs and with legislator laptops as well.

#### **ADOPTION OF LEGISLATIVE BRANCH BROADBAND PAY PLAN PROPOSAL**

Ms. Menzies noted that each Council member had a copy of the proposed pay plan (EXHIBIT #13) and said that she had spoken personally with each Council member regarding the broadband pay plan proposal. She reviewed its history and why it was pursued. She said that recruitment problems and the issue of retiring staff, as well as making salaries for state employees more competitive were the main reasons. Ms. Menzies noted that state law and

legislative policy require that the Legislative Branch classification and pay plan be comparable to that of the Executive Branch. Ms. Menzies also said that the Legislative Branch Administrative Manual also requires employee compensation to be competitive in three areas: the Executive Branch, other state legislative agencies, and the private sector. It also requires that salary surveys be conducted every biennium. That was done for the very first time in the fall of 2005. Ms. Menzies said that the pay plan proposal covers the three divisions of the Legislative Branch and that Scott Seacat, Legislative Audit Division (LAD), and Clayton Schenck, LFD, were also present to answer questions.

REP. BERGREN spoke in support of the broad band pay plan proposal, saying that with term limits, retainment of knowledgeable and experienced legislative staff is more important than ever.

REP. WANZENRIED asked for an explanation of the cost of implementing the pay plan. Ms. Menzies explained that the Council is statutorily required to adopt the pay plan for the Branch. She said that the cost of implementing the pay plan is approximately \$339,000, which would be spread across the three divisions and would cover the remaining fiscal year and the next fiscal year. If Legislative Council approves the proposal, it will move on to the Legislative Finance Committee and the Legislative Audit for their approval. All three committees must approve the proposal in order for it to go into effect.

REP. LANGE asked if it would be possible to get a more detailed explanation of how the various bands are structured. Ms. Menzies said she could put that information together.

REP. WANZENRIED **moved and recommended that the broadband pay plan proposal be adopted by the Council** and urged the LFC and LAD to do the same. He said that all three committees must be prepared to stand together in the 2007 legislative session to see this through.

SEN. BARKUS asked if this pay plan will be affected by the new pay plan discussed by the Governor's Office at the morning's meeting. Ms. Menzies said that the pay plan adopted in 2005 contained a 4% salary increase for 2007 and is generally considered a cost of living adjustment. The same would apply to a pay plan adopted by the 2007 session. Typically the Legislature adopts a salary increase for the Executive Branch and then a like amount in dollars goes to the Legislative Branch. Cost of living adjustments would also be given to Legislative Branch employees. A performance-based pay plan is in development for Legislative Services and Legislative Fiscal Divisions. The Legislative Audit Division already uses a performance-based pay plan.

SEN. BARKUS referenced EXHIBIT #13 and asked why the pay bands are so broad.

#### **TAPE 4 SIDE B**

Ms. Menzies said that the nine pay bands are very broad and that they also overlap. They provide the framework in which the occupational wage ranges fall. The pay band is used to classify employees through survey data gathered from other states' legislatures and the private sector.

**The motion to approve the broadband pay plan for the Legislative Branch passed on a unanimous voice vote.** (REP. WANZENRIED voted "yes" via teleconference phone.)

### **REVIEW AND APPROVAL OF POTENTIAL 2007 LEGISLATION FOR LEGISLATIVE COUNCIL**

Ms. Menzies referenced the list of potential legislation for Legislative Council (EXHIBIT #14) and recalled that the Council had requested two additional bills at the morning portion of the meeting (to revise fiscal notes and statutes regarding third-party legislators). If the proposals are approved, they will be presented as bill drafts at the Councils' September meeting. Ms. Menzies discussed each proposal listed in EXHIBIT #14.

SEN. GEBHARDT asked, regarding the issue involving a PERS exemption for LSD temporary session employees, if these employees pay into social security. Ms. Menzies said that they do. The proposed exemption would leave the temporary employees out of the retirement system.

REP. BERGREN asked how far reaching the exemption would be. Ms. Menzies said that the exemption is specific for legislative session personnel employed by LSD.

Greg Petesch, Director, Legal Services, LSD, asked to discuss one additional item. He reminded the Council that the 2005 Legislature enacted SB 36, instructing the Code Commissioner to recodify the Montana Code Annotated on a title-by-title basis and that this was to be secondary to the completion of the other interim duties of the Code Commissioner. He reviewed the definition of "recodify" (1-11-101, MCA). He recalled two past study resolutions that called for an interim study of drafting bills in a gender neutral style. Instead of conducting an expensive interim study, Legislative Council directed the Code Commissioner to begin drafting bills in a gender neutral manner and since 1993, bills have been drafted in that manner. Mr. Petesch said that, as part of the direction given to him as Code Commissioner from SB 36, he would like to begin rewriting titles on a title-by-title basis to reflect current bill drafting language. He said the changes would be nonsubstantive but would ensure that when he retires, the database would be clean. He asked that the Council request a bill draft directing the Code Commissioner to "modernize the language in terms of gender neutering and eliminating archaic language on a title-by-title basis and we get as far as we get each interim". Mr. Petesch said that rewriting the first seven titles in this interim would be a good start.

SEN. GEBHARDT asked why a bill is needed. Mr. Petesch said that these are changes to language of law and that he is reluctant to make the changes without legislative approval. SEN. KEENAN said that there was no objection and would be included in the list of legislative proposals.

**REP. LANGE moved to draft the bills, as requested in EXHIBIT #14.** REP. BROWN said that he was uncomfortable about the travel reimbursement issue and said that it was not fair to exempt legislators only. Ms. Berger, said that the dollar amount is only \$1200 over the course of several years and said that she didn't know what the impact would be on other agencies.

**The motion passed on a 7-1 voice vote, with REP. BROWN voting no.**

### **SELECTION OF DATES FOR CAUCUSES**

Ms. Menzies pointed out a handout listing the proposed dates for Caucus, Orientation and Continuing Education (EXHIBIT #15) and a calendar with highlighted dates (EXHIBIT #16). She said that the decision is whether to schedule caucus or orientation first.

The Council discussed potential scheduling options.

SEN. BARKUS asked why Law School for Legislators was scheduled on a legislative day instead of in advance of the session. Ms. Menzies said that past attempts to schedule the Law School and the Rules Workshops during caucuses have not been successful. The first and second days of the session are typically fairly slow and present a good time for training.

SEN. BARKUS asked if orientation could start Monday morning and give opportunity to mix and meet and split orientation half-days on Monday and Wednesday.

**REP. BERGREN moved to exchange the caucus date with the new legislator training date (caucus would be held on the afternoon of Monday, November 27 and New Legislator training would be held on Tuesday and Wednesday, November 28 and 29). The motion passed on a unanimous voice vote.**

Ms. Menzies said that at the March meeting, the Council had indicated interest in developing formal committee chair training. She asked if the Council would like LSD staff to move ahead on development of that training. She suggested December 11, 2006, as the date for training. She said that seasoned legislators will be needed to assist with the training.

SEN. KEENAN asked if the date suggested by Ms. Menzies would work for the Legislative Audit and Legislative Finance Committees. Ms. Menzies said that the meeting date would not conflict with their meeting dates.

#### **TAPE 5 SIDE A**

Ms. Menzies discussed additional training to be held on the first day or two of the session. She suggested that Mr. Petesch highlight and discuss the most common and important rules during training at the beginning of session. She also asked permission to invite a speaker to talk about the importance of a legislator's role in representing democracy.

SEN. GEBHARDT asked what the cost of bringing in a speaker would be. Ms. Menzies said that NCSL would pay a portion and that carryover money could be used as well.

#### **UPDATE ON EXECUTIVE DIRECTOR RECRUITMENT AND SELECTION PROCESS**

REP. LANGE reported that the Subcommittee appointed to conduct the interview set a date for the interviews. After discussion, it was agreed that the full Council would meet on June 28 to interview three finalists selected by the Subcommittee.

SEN. GEBHARDT reported that there had been 16 applicants for the job and that the Subcommittee chose six candidates for interviews. He noted that if none of the six candidates were satisfactory, the Subcommittee could draw more candidates from the applicant pool.



REP. HIMMELBERGER said that he had received a call from Rep. Alan Olson, who asked if he could be reimbursed for his expenses relating to his participation in the upcoming PNWER meeting. Ms. Menzies said that in the past, the Council has supported travel, salary, and registration expenses for four members to attend and that carryover funds are available. The problem is that the Council cannot take action on this because it was not on the agenda and does not have a meeting before the August PNWER conference. She reminded the Council that it had approved a process for dealing with these types of situation through electronic polling of members, with the Chair or Vice Chair allowed to take action after the other members have been polled.

SEN. KEENAN said that either he or SEN. COCCHIARELLA can approve the funding once the Council has been polled and that they would work with Ms. Menzies to approve the funding for PNWER participation.

### **ADJOURNMENT**

With no further business before the Council, SEN. KEENAN adjourned the meeting at 3:15 p.m. The next Legislative Council meeting will be held on September 15, 2006, in Helena.