

**Council Senate Members**

GREGORY BARKUS  
VICKI COCCHIARELLA  
MIKE COONEY  
KELLY GEBHARDT  
DAN HARRINGTON  
COREY STAPLETON



**Council House Members**

BOB BERGREN--Chair  
DENNIS HIMMELBERGER--Vice  
DEBBY BARRETT  
MARGARETT CAMPBELL  
DAVE MCALPIN  
SCOTT SALES

## Montana Legislative Council

PO BOX 201706  
Helena, Montana 59620-1706  
(406) 444-3064  
FAX (406) 444-3036

# MINUTES

September 16 & 17, 2008

Room 102, State Capitol  
Helena, Montana

Please note: These are summary minutes. Testimony and discussion are paraphrased and condensed. **Exhibits for this meeting are available upon request. Legislative Council policy requires a charge of 15 cents a page for copies of the document.**

Please note: These minutes provide abbreviated information about committee discussion, public testimony, action taken, and other activities. The minutes are accompanied by an audio recording. For each action listed, the minutes indicate the approximate amount of time in hours, minutes, and seconds that has elapsed since the start of the meeting. This time may be used to locate the activity on the audio recording.

An electronic copy of these minutes and the audio recording may be accessed from the Legislative Branch home page at <http://leg.mt.gov>. On the left-side column of the home page, select *Committees*, then *Interim*, and then the appropriate committee.

To view the minutes, locate the meeting date and click on minutes. To hear the audio recording, click on the Real Player icon. Note: You must have Real Player to listen to the audio recording.

### **COMMITTEE MEMBERS PRESENT**

REP. BOB BERGREN, Chair  
REP. DENNIS HIMMELBERGER, Vice Chair  
SEN. VICKI COCCHIARELLA  
SEN. MIKE COONEY  
SEN. KELLY GEBHARDT  
SEN. DAN HARRINGTON  
SEN. COREY STAPLETON  
REP. DEBBY BARRETT  
REP. MARGARETT CAMPBELL  
REP. DAVE MCALPIN

### **COMMITTEE MEMBERS EXCUSED**

SEN. GREGORY BARKUS  
REP. SCOTT SALES

**STAFF PRESENT**

SUSAN BYORTH FOX, Executive Director  
GREG PETESCH, Director, Legal Services  
KAREN BERGER, Financial Services Manager  
HANK TRENK, Director, Legislative Office of Information Technology  
DAWN FIELD, Council Secretary

**AGENDA & VISITORS' LIST**

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

**COMMITTEE ACTION**

The Legislative Council:

- approved the June 24, 2008, meeting minutes as corrected;
- will send a letter to the State Land Board stating it was consulted regarding the proposed 351 land transfer to the City of Malta;
- voted to approve Ms. Fox to continue work on the LegiCorps legislative intern program proposal;
- approved proposed legislation from the Governor's Office Information Technology Long Range Bill (HB 10), the Governor's Education Bill, and the K-12 School Facility Program;
- approved LC 0179 - Code Commissioner's Report (Gebhardt);
- approved LC 0180 - Code Cleanup Bill (Campbell);
- approved LC 0182 - Deadline for submission of legislative budget (Cooney);
- approved a bill draft request to revise fiscal notes (SB 66 - 2007);
- approved a bill draft request to clarify mandatory leave for employees holding public office;
- approved the Legislative Computer Systems Computer Planning Council Plan and proposed budget;
- approved a funding proposal for TVMT;
- approved the proposed Program 20 Legislative Services Division budget;
- approved a budget increase for the State Administration and Veterans' Affairs Interim Committee for actuarial services;
- approved the proposed Program 21 Legislative Services Division budget - interim committees;
- approved drafting of a bill for a legislator allowance;
- approved drafting of a bill to increase reimbursement amounts for meals, gas, and lodging for legislators, state, and county employees;
- approved LC0181 -feed bill for 2009 legislature - drafting;
- approved the proposed price for set of legislative proceedings - 2009 session;
- approved proposed changes to Joint Rules, for review by the 2009 Session Joint Rules Committee;
- approved proposed changes to House Rules for review by 2009 House Rules Committee;
- approved proposed changes to Senate Rules for review by 2009 Senate Rules Committee;

- requested Mr. Petesch to draft proposed language/recommendations to the 2009 Session Joint Rules Committee on how to accept and dispose of minority reports;
- voted to separate the Senate Natural Resources and Energy Standing Committees into two standing committees, for final approval by the Senate Rules Committee and Leadership;
- voted to recommend that the Agriculture and Livestock Standing Committee be changed to a class 3 committee;
- voted to recommend that the Local Government Standing Committee be changed to a class 2 committee;
- approved drafting a bill to amend 5-2-202, MCA, - eliminate the Legislative Administration Committee from statutory language;
- approved drafting of formal guidelines for designation of legislative space for memorials to past legislators; and
- approved Mr. Petesch to proceed with the NCCUSL applicant process.

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

00:00:01 REP. BERGREN called the meeting to order at 10:30 a.m. The secretary took roll, SEN. BARKUS and REP. SALES were excused (ATTACHMENT #3). SEN. COCCHIARELLA asked to make several corrections to the June 24, 2008, meeting minutes. She said that SEN. STAPLETON should be listed as excused. **Susan Fox, Executive Director, Legislative Services Division (LSD)**, said an additional error was made on page 8. The correct amount approved for the operating plan adjustment was \$30,000, not \$60,000, as indicated in the minutes; and that the transfer was from the Legislative Services Division to the Legislative Fiscal Division. SEN. COCCHIARELLA **moved to approve the minutes as corrected**. The **motion passed** on a unanimous voice vote.

### **351 LAND TRANSFER: GREAT PLAINS DINOSAUR MUSEUM**

00:03:59 **Kelly Casillas, Legal Counsel, Department of Commerce**, said the Department of Commerce is requesting consideration of a land transfer of state property to the City of Malta pursuant to 77-2-351, MCA. Ms. Casillas said the proposal received preliminary approval from the Land Board on the previous day. Ms. Casillas reviewed the background information relating to the creation of the Great Plains Dinosaur Museum in Malta. Information packets were provided to Council members (EXHIBIT #1).

00:07:54 **Dave Cole, Administrator, Community Development Division, Department of Commerce**, said he was assigned oversight of the dinosaur museum construction. He said the Department of Commerce worked with the Judith River Foundation to determine the location of the museum and other details. Mr. Cole said the information packet includes site sketches, floor plans, and photographs. He discussed the project in detail, including the recent lease agreement made between the Judith River Foundation. He said the Department of Commerce thinks the transfer makes sense and that Rep. Wayne Stahl and the community are all in strong support of the project. Mr. Cole also discussed "Leonardo" and the notoriety the dinosaur fossil has brought to the area. He said a website and new displays are under development and that great effort is being made to make the museum known nationally.

- 00:16:08 **Ann Booth, Executive Director, Phillips County Economic Growth Council, Judith River Foundation**, extended a heartfelt thank you to the Legislature and to Dave Cole. She said the City of Malta is very motivated to be a good owner of the property and is very committed to the success of the museum. She noted that \$35,000 of local money was quickly gathered to inject in the project when a funding deadline was looming.
- 00:18:29 REP. MCALPIN asked if attendance targets have been met. Ms. Booth said yes, that there was such good attendance that the decision was made to keep the museum open year round.
- 00:20:43 REP. BARRETT asked if there is an admission charge. Ms. Booth said yes and that an onsite gift shop and dig programs also bring in revenue. REP. BARRETT asked if adequate income is being taken in to cover expenses. Ms. Booth said yes, and that she is confident the additional costs from the new building will be met.
- 00:23:18 **Barbara Smith, Fiscal Analyst, Legislative Fiscal Division (LFD)**, said she is responsible for reviewing the Department of Natural Resources and Conservation (DNRC) budget. She said that the Land Board gave only preliminary approval because there was not a plan in place to assure that the land would remain in a public use. She said the Land Board would like that plan to be in place before final approval is given.
- 00:24:29 REP. BARRETT referenced the Montana Constitution, Section 4. Article 9, and asked Greg Petesch if it is the duty of the legislature to deal with and fund this type of request. **Greg Petesch, Legal Counsel, LSD**, said that the constitutional provision authorizes the legislature to fund cultural, historical, and tourism related projects. He said this transaction is unusual because the 2005 Legislature funded a land purchase, and that the land is now being given to the City of Malta for a public use, so essentially, the appropriation for purchase is being turned into a grant to Malta through the 351 transfer process. He said the 351 program allows the state, through the Land Board, to transfer property to a public entity for a public use, subject to certain restrictions in the Constitution.
- 00:26:47 REP. BERGREN said the Legislative Council will send a letter to the Land Board stating that the Council has been consulted.

#### **LEGISLATIVE CAUCUS & ORIENTATION**

- 00:28:28 Ms. Fox updated the Council on Legislator Orientation and Training, scheduled for November 12-14. She said two additional items have surfaced, one of which will be presented by Sheri Ohs regarding a proposal for additional legislator training.
- 00:30:28 **Sheri Ohs, wife of the late Karl Ohs, former legislator and Lieutenant Governor of Montana**, said she is creating a foundation in her husband's name to promote his legacy of finding common ground and building consensus among his peers. Mrs. Ohs asked the Legislative Council to consider allowing her to provide a legislative orientation session teaching those skills to new and current

legislators. Mrs. Ohs said that the Peacemakers Foundation in Billings has agreed to design a class and to provide a professional facilitator from North Carolina legislature and that the Karl Ohs Memorial Foundation would fund part or all of the cost. Mrs. Ohs said the public is tired of the past behavior of the Legislature and of the lack of finding common ground, and that she believes the opportunity to develop skills on consensus building and reconciling differences would not only benefit legislators, but their constituencies as well.

- 00:34:21 Ms. Fox said that the Peacemakers Foundation is a bible-based organization and realizes that because of separation of church and state considerations, the Council may not be able to sponsor the training. She said that if the Council is supportive of the proposal, she would work with Mrs. Ohs to provide meeting space and to make the opportunity available to legislators who wish to attend.
- 00:35:29 SEN. GEBHARDT asked how long the training would be. Ms. Ohs estimated it would last approximately four hours but said she is open to suggestions on how to design the program or how to combine it with other training.
- 00:37:00 In response to a question from REP. HIMMELBERGER about other plans for the foundation, Mrs. Ohs said that she plans to offer scholarships and that SEN. COONEY plans to sponsor a bill in the 2009 Legislature to name the law academy building for her late husband.
- 00:37:49 SEN. COCCHIARELLA asked if there is a four-hour block of time available during orientation. Ms. Fox said lack of available time is a problem and proposed that it could be offered following rules and committee chair training and could be scheduled for December 16, 2008. SEN. COCCHIARELLA asked if state money would be used to pay legislators to attend. Ms. Fox said no, because legislators would already be in Helena. SEN. COCCHIARELLA said she doesn't disagree that this type of training is needed but asked if other private groups would also have an opportunity to offer training for legislators. Ms. Fox said yes, and said if she was approached, she would consider each proposal.
- 00:41:43 REP. BERGREN said his thought is that the Council can be supportive of the effort to allow space and contact of legislators, but that should be the extent of the Council's involvement.
- 00:42:18 Ms. Fox discussed the second effort, saying that the Education and Local Government Interim Committee (ELG) is planning an education workshop in Helena on January 10, 2009. She said the ELG has provided a rough draft of what may be offered at the workshop (EXHIBIT #2) and noted that the workshop would be of no cost to the legislators. Ms. Fox said she would work with the ELG if that is the Council's wish.
- 00:44:56 SEN. COONEY agreed it would be a good opportunity for legislators to educate themselves on the complex issue of school funding and other topics relating to education. SEN. GEBHARDT agreed that school funding is complicated and also thought it would be beneficial to legislators.

- 00:45:45 REP. BERGREN asked the Council how it wished to proceed regarding Mrs. Oh's proposal. SEN. COCCHIARELLA said she was reluctant to take action and that the most the Council could do would be to offer the use of the building. She said not enough is known about the foundation at this point to do more.
- 00:47:54 REP. BERGREN asked if Mrs. Ohs could still proceed with her plans if the Council doesn't take action. Ms. Fox said yes, if the Council would allow her to work with Mrs. Ohs with the logistics. She said no formal action beyond that is necessary.
- 00:48:47 SEN. GEBHARDT said he understands SEN. COCCHIARELLA's concerns but thought that the Council could have more input and control if it did take action.
- 00:49:25 SEN. COONEY said he would be satisfied with Ms. Fox working with Ms. Ohs. REP. BERGREN agreed, and said Ms. Fox could continue to work with Mrs. Ohs.

#### **LEGISLATIVE INTERN PROGRAM: PROPOSAL FROM FORWARD MONTANA**

- 00:51:09 Ms. Fox explained that an intern program exists in statute but that it is not funded, and that she has been looking for ways to change that. She said she was approached by Mr. Bacino and Forward Montana out of their similar interest in a legislative intern program, and that it has been proposed that the Legislative Council partner with Forward Montana on their legislative leadership development program, LegiCorps. Ms. Fox said that information was included in the materials mailed out in advance of the meeting (EXHIBIT #3).
- 00:54:29 **John Bacino, Legicorps Program Director, Missoula**, referred to the draft proposal (EXHIBIT #3) to explain why the program is needed and how it would work. He emphasized that fewer and fewer graduates are dedicating themselves to public service and that there are few opportunities in Montana for young people to develop the skills or experience that are important to have as a public servant. Mr. Bacino said the Montana Legislature could benefit and that the Legicorps program would take measures to ensure that it would be a nonpartisan program.
- 00:57:16 REP. MCALPIN asked how the interns would be assigned. Mr. Bacino said the Legislature could choose how to assign interns.
- 00:58:10 SEN. HARRINGTON said that interns used to be assigned from the university system, that it was a wonderful program, and that many legislators came out of the intern program. Mr. Bacino said that is exactly what he had in mind.
- 01:00:17 SEN. GEBHARDT asked if the intern would earn college credit for serving. Mr. Bacino said that had not been decided yet but that he would work to get the interns as many credits as possible.
- 01:01:22 REP. HIMMELBERGER said he applauded the interest and effort but did have concerns about the perception that Forward Montana has been, historically, a partisan group. He asked how that perception would be overcome and if Mr.

Bacino could assure the Council that the program would truly be nonpartisan. Mr. Bacino said he is very aware of the concerns voiced by REP. HIMMELBERGER and wholeheartedly agreed that the program must be nonpartisan. He said one strong assurance is the robust oversight committee and he pointed out that legislators of both parties are members. Mr. Bacino said that he would personally watch for partisan behavior and situations and make every effort to keep the program nonpartisan.

- 01:05:23 REP. BARRETT asked how the program will be funded. Mr. Bacino said he is pursuing a number of private, public, and corporate funding sources, as well as grants.
- 01:06:06 SEN. HARRINGTON **moved** to support the intern proposal. He said it is an important issue and would be very helpful. He said those who apply are truly interested in the process. SEN. COCCHIARELLA said her concerns are what the role of the intern would be and funding. She said she likes the concept but needs more clarity on what the program will be. Ms. Fox said that input is needed, both from legislators and staff, on what they would like included as intern duties and roles. She said any guidance from the Legislative Council would be appreciated.
- 01:10:42 REP. MCALPIN asked if SEN. HARRINGTON would include in his motion some parameters for review at the November Council meeting. SEN. COCCHIARELLA said that most of the advisory group assisting the effort have legislative experience and expertise, and could assist in developing guidelines for the Council to consider.
- 01:12:00 Mr. Bacino said the advisory group has been acting as consultants only up to this point in time, and that only two members have confirmed that they will serve on the oversight committee (Bob Brown and Chuck Butler).
- 01:12:31 In response to a question from SEN. GEBHARDT regarding the amount of the budget, Mr. Bacino said the amount in the proposal is the "Cadillac" version for ten interns.
- 01:13:09 REP. HIMMELBERGER said he could not support the proposal as currently designed because of his concerns over partisan issues. He said he appreciated the effort and supports the intern program but would prefer an approach that did not include an association with a group with a partisan background.
- 01:14:43 SEN. STAPLETON said he also had concerns. He said he likes the oversight mechanism but would like the intern screening process made tighter because of the great level of access they would have to legislators and the potential for information to be misused against a legislator. He said he would like the program to be balanced to include interns from all sides. REP. BERGREN said he shares the same concerns of SEN. STAPLETON and REP. HIMMELBERGER and asked Mr. Bacino what assurances he could give the Council that these concerns would be addressed. Mr. Bacino said that he would welcome ideas or suggestions from the Council on how to attract a diverse group of interns in order

to ensure that the pool is representative. Regarding assignment of interns, Mr. Bacino said that interns would be placed only with legislators who wanted one.

- 01:19:38 REP. BARRETT said statutory language already exists regarding the legislative intern program, including selection criteria and term of service. She read from the statute, which said that the Legislative Council is to establish guidelines; and said that at this time, she thought it would require a change in statute to do what is being proposed. She said she too has concerns about the potential for partisanship and that she would not support the proposal.
- 01:21:02 REP. HIMMELBERGER said he did not think this proposal was ready to move forward. He said he would like to delay action until the Council can do more work is done.
- 01:21:54 SEN. COONEY said he understands the concerns raised, but said it would provide a great opportunity to involve young people. He said it can't help but be a partisan process up to a point and that measures can be taken to make changes, if problems arise. He said the most important thing is to give young people a chance to learn about the legislative process. He urged the Council to approve the motion and continue to refine the proposal. He said if the product is not what the Council wants at the November meeting, it doesn't have to go forward with the program. He said that Ms. Fox can keep the Council apprised of the issue and that Council concerns can be addressed.
- 01:24:17 SEN. HARRINGTON agreed that it would provide a great opportunity for young people and that the process can't help but be somewhat partisan. He said that interns will come to the program with their own ideas and that it would be difficult to tell them not to be partisan. SEN. HARRINGTON thought it would be easy to make sure that both sides of the aisle are represented and there would be no significant problems.
- 01:26:58 SEN. COCCHIARELLA said the statutory language is there because the Legislative Council and the legislature both believe the intern program is important. She agreed that interns are not nonpartisan. She said that the Legislative Council and the Legislative Services Division should select the interns but that the LegiCorps proposal is a way to fund the interns. She said that if the legislature truly believes in the importance of interns, it should fund the program, which would eliminate any outside influence. She said it is a good idea and that one shouldn't argue against this proposal unless one is ready to offer a better idea.
- 01:30:14 SEN. HARRINGTON said his motion is to support the proposal made by the LegiCorps group, and to allow the legislature to work with LegiCorps on the ground rules. He said that negotiations can be taken care of by Legislative Services. SEN. STAPLETON asked if funding is included in the motion, and if the proposal being voted on is what was presented in the document from Forward Montana (EXHIBIT #3). Ms. Fox said no, that it could also include the state's intern program, which would run parallel with the LegiCorps program.



She said this would fulfill statutory obligations but would allow funding issues to be addressed, and allow her to continue working on the unresolved issues.

- 01:32:36 REP. HIMMELBERGER said that was not the original motion and that new issues were included. SEN. HARRINGTON said he would make a substitute motion to his original motion to include what Ms. Fox said. REP. BERGREN said, without objection, the chair would allow the substitute motion.
- 01:34:07 SEN. HARRINGTON **moved** to have Legislative Council go on record to continue discussion about the intern program with Ms. Fox and Mr. Bacino, and to allow work to continue.
- 01:34:48 REP. BARRETT said she said she was disappointed that an issue of this importance was being presented to the Council at such a late date. She said she was concerned about the use of out-of-state funding and would rather have the universities or the legislature fund the program. She said she would vote no.
- 01:35:36 SEN. GEBHARDT suggested highjacking some of the Governor's scholarship money.
- 01:35:54 REP. CAMPBELL said she has been involved in higher education for many years and that any effort made to build and develop new leaders is very important. She liked the proposal because it would bring young people directly into the legislature. She said she did not share the concerns of other Council members because the work of the legislature is supposed to be transparent and available to citizens. She said that if problems did occur, the legislator could ask that the intern be reassigned to another legislator. She thought that many current lawmakers were probably involved in politics at a young age and that if a young student is interested in the process and is willing to give the time to participate in the process, the legislature has an obligation to make it happen.
- 01:38:17 SEN. STAPLETON said he was disappointed with the outcome of the discussion because it came to a partisan issue, which he thought was unnecessary. He said the intern program is widely supported but that the objections stemmed from how they would come into the program. Ms. Fox said that the LegiCorps program isn't the only entrance into the intern program and that she will be working with the universities to fill five intern positions separate and apart from the LegiCorps program. She repeated that the LegiCorps program would run parallel to the state's legislative program. SEN. STAPLETON asked if the motion could be segregated to vote on the programs separately. REP. BERGREN said it was not necessary to vote on the state program because it already exists. He said he shares some of the partisan concerns stated by other Council members but also thinks that a balance can be achieved between the sides. He said he would tentatively support the motion until the next Council meeting, but that if his concerns remained, he would withdraw his support.
- 01:41:19 REP. HIMMELBERGER said he has no objection to the intern program but does have concerns with the Forward Montana proposal. He said he would vote against the motion on that basis.

01:42:38 SEN. HARRINGTON's **motion passed** on a 6-5 roll call vote, with SEN. GEBHARDT, SEN. STAPLETON, REP. BARRETT, REP. HIMMELBERGER, and REP. SALES (proxy left with Rep. Himmelberger) voting nay (ATTACHMENT #4).

## **AGENCY LEGISLATION**

### **OBPP Legislation Review for 2011 Biennium**

01:44:37 **David Ewer, Budget Director, Office of Budget and Program Planning (OBPP), Governor's Office**, provided a list of proposed bills for the 2011 biennium, to be sponsored by OBPP (EXHIBIT #4). Most have already been requested, there are three before the Council today. Mr. Ewer said that the Council had asked him to discuss that draft that would be numbered HB 10 further and that he would present two additional proposals. He discussed HB 10 - Information Technology Long Range Building bill, saying that it makes sense to have a single bill that would provide cohesiveness and consistency in information technology development throughout state government and is a logical extension of Montana Information Technology Act (MITA). Mr. Ewer said that Dick Clark, Chief Information Officer (CIO), Department of Administration (DOA), is present for questions, if needed.

01:50:14 Mr. Ewer stated, in regards to the other two requests, that changes to the Governor's education bill are statutory, not present law, and require a bill; and that the Governor has requested a K-12 Facility Program bill, in order to provide ongoing support for school facilities.

01:51:56 SEN. COONEY asked if a project has to have a ceiling or target amount in order to be in HB 10. Mr. Ewer said yes, that an item would have to be a substantial request and is not intended for routine replacement of equipment.

01:57:08 SEN. COCCHIARELLA asked to segregate the bill draft request for HB 10 because of her concerns and asked Dick Clark, CIO, DOA, to address the Council regarding her concerns. Mr. Ewer said Mr. Clark was available for questions but did not have a prepared presentation. SEN. COCCHIARELLA said that when the CIO position was created, it was given too much power. She said that actions taken since the creation of the position are of great concern and that the Council needs to be aware that each agency will now have all their hardware located in a new building and that the agencies will be charged for information going in or out of the new system. She said she has no objection to having a single IT system but that she sees the potential for a huge increase in costs to state government because agencies will be paying much more to the DOA for agency computer operations. She discussed the State Fund situation and Governor Schweitzer's veto of SB465 to exempt State Fund from MITA. SEN. COCCHIARELLA asked the Council to pay attention to the costs and to note that way too much power has been delegated to the CIO position. It needs to be aware of what is going on and she didn't think the Council has heard everything it needs to hear. She predicted the IT Budget request would be a big surprise to legislators.

- 02:03:35 REP. BARRETT asked under what authority this could be done if the bill was vetoed. SEN. COCCHIARELLA said it is being done through other legislation and through MITA. She referred to information that was included in the meeting packet from LFD (EXHIBIT #5) and an audit report and what has been done to date to combine IT efforts under one umbrella.
- 02:04:44 SEN. COONEY said he understands SEN. COCCHIARELLA's frustration and that he also has concerns. He acknowledged that IT costs will likely increase but said that the bill draft request for HB 10 would provide a greater level of accountability for IT purchases by giving the legislature a bigger say on big ticket IT purchases and by having a better idea of what will be spent on individual IT proposals.
- 02:07:28 SEN. COCCHIARELLA said the problem is that she doesn't don't know what is in HB 10. She said the CIO has not worked with the State Fund, as had been agreed, and that her concerns about the potential for huge cost increases have not diminished. She said she the bill draft request may appear to be an innocuous request but that she has grave concerns that it may result in a huge increase in costs unanticipated by the legislature.
- 02:09:30 SEN. COONEY said SEN. COCCHIARELLA's concerns shows why HB 10 would be beneficial to legislators because it would allow the legislature to have input on big ticket IT purchases and that it would be nice to have IT issues dealt with in one bill. He said even though a specific bill has not been drafted, he would still like to see the concept of HB 10 proceed so that the legislature would have the ability to see what is being proposed for IT purchases. He said it is important to know what agencies are purchasing and referred the Department of Revenue's failed POINTS system as an example of why legislators need to see it.
- 02:11:28 REP. BARRETT asked how or if projects proposed in HB 10 will be prioritized, in the event the bill is not funded at the amount requested. Mr. Ewer said the requests will be broken out by agency, that each proposal would be evaluated on its own merit, and that no project would have priority over another.
- 02:13:39 SEN. STAPLETON asked if the courts' computer systems will be put on the central IT system also. Mr. Ewer said his sense is yes (affirmative nod from Dick Clark, CIO, DOA). SEN. STAPLETON said that would be good and that his opinion is that the judicial branch's system has been inferior to that of the executive and legislative branches. He thought it would allow better management and said that while he hears SEN. COCCHIARELLA's concerns, overall he thinks it is important to centralize the IT system. He said that by strengthening the CIO position, agencies will be forced to use best practices and be consistent.
- 02:18:00 REP. BARRETT asked, regarding the K-12 Facility Program bill draft proposal, what the amount requested would be. She noted that in the last session, it was \$40 million. Mr. Ewer said his recommendations have not been approved by the Governor, but a combination of one time money, such as \$40 million and possibly other monies also, such as the navigable water settlement money. He

said the school funding law suit may have a bearing on the amount requested. He said that school facilities study was done and would be presented for the 2009 Legislature's consideration.

- 02:20:33 SEN. COONEY **moved** to request a bill draft request for HB 10. SEN. COCCHIARELLA said she did not disagree with putting IT under one umbrella but did want to warn the Council about the level of power given to the CIO. She warned the Council that, for example, the State Fund will not be able function properly if it is not allowed to move its computers into its new building, as the CIO has ruled. She said it will cause great difficulty and confusion for claimants and employers alike. The **motion passed** on a 8-4 voice vote. SEN. COCCHIARELLA, SEN. GEBHARDT, REP. BARRETT, and REP. SALES (Himmelberger proxy) voted no.
- 02:22:48 SEN. COONEY **moved** to approve a bill draft request for the Governor's Education Bill. The **motion passed** on a unanimous voice vote, with REP. SALES voting yes by proxy (Himmelberger).
- 02:24:14 SEN. COONEY **moved** to approve a bill draft request for the K-12 School Facility Program, with a low bill number. Mr. Petesch said that Joint Rule 40-40 provides that the first 15 House Bill numbers are reserved for the Governor's bill draft requests. He said that after those numbers are taken, new requests are assigned a bill number in the order in which they are introduced. SEN. COONEY amended his motion to drop the mention of a special number. The **motion passed** on a 11-1 voice vote, with REP. SALES voting yes by proxy (Himmelberger), and REP. BARRETT voting no.
- 02:28:01 **LUNCH BREAK**
- 03:36:57 The meeting was called back to order at 2:05 p.m. There was a short discussion of members who would not be able to attend the next morning's meeting and if agenda items should be moved to be dealt with at today's meeting. REP. MCALPIN said he would leave his proxy. SEN. COCCHIARELLA said she planned to attend the morning meeting. It was decided to move the rules discussion to the next morning's meeting.

## **2011 BIENNIUM PREPARATION - REQUESTED LEGISLATION**

### **Code Commissioner Report - LC 0179**

- 03:38:07 Mr. Petesch distributed copies of the Code Commissioner Bill Report (EXHIBIT #6). He said that agency responses to proposed changes were due by October 1, 2008. Mr. Petesch reported that changes of names or clarifications of terms were made in 69 sections, erroneous citations were corrected in 40 sections, obsolete language was removed from 9 sections, four of which dealt with grammatical provisions, and that the remaining changes are directions to the code commissioner. SEN. COONEY **moved** to approve the LC 0179 - Code Commissioners' Bill Report. The **motion passed** on a unanimous voice vote. SEN. GEBHARDT will carry the bill.

### **Code Cleanup Legislation - LC 0180**

03:46:41 Mr. Petesch explained that the bill contains over 2,000 sections and is too large to print multiple copies. He said the bill has no substantive changes and is intended to gender neutralize and modernize archaic code language, as well as clean up other drafting issues, such as active and passive voice.

03:50:35 SEN. COCCHIARELLA **moved** to approve to LC 0180 - Code Cleanup Legislation, and congratulated all those who worked on the bill. She suggested that the title of the bill be changed to more accurately reflect the nature of the bill. Mr. Petesch said so noted, and that he come up with a different title. the would change the title of the bill. The **motion passed** on a unanimous voice vote. REP. CAMPBELL will sponsor the bill.

#### **Deadline for Submission of Legislative Budget - LC 0182**

03:51:44 Mr. Petesch said LC 0182 was introduced but failed in the 2007 Legislature (EXHIBIT #7). Mr. Petesch explained that the bill is needed to change the deadline for the submission of the legislative budget, because the current meeting deadline precludes timely submission.

03:52:40 SEN. GEBHARDT **moved** to approve LC 0182 and recommended that the bill be assigned to the State Administration Committee. The **motion passed** on a unanimous voice vote. SEN. COONEY will sponsor the bill.

#### **Fiscal Note Rebuttal Bill Draft Request - SB66, L. 2007**

03:54:52 Mr. Petesch said this bill was introduced as SB 66 in the 2007 Legislature (EXHIBIT #8). He said a major component of this bill is that it include a sponsor rebuttal form, rather than requiring an entirely new fiscal note. SEN. GEBHARDT **moved** to approve the fiscal note bill draft. The **motion passed** on a unanimous voice vote. SEN. GEBHARDT said he would sponsor the bill unless SEN. WANZENRIED, who was the sponsor of SB 66 in 2007, wants to sponsor this bill. Mr. Petesch said a sponsor can be assigned at the November meeting.

#### **Mandatory Leave for Employees Holding Public Office**

03:58:30 Mr. Petesch discussed an email from a Great Falls attorney requesting information on whether an employer is required to keep an employee's job open while the employee served in the legislature (EXHIBIT #9) and a 1996 memorandum Mr. Petesch prepared for Senator Mike Halligan regarding 2-18-620, MCA, (EXHIBIT #10). Mr. Petesch explained that there has been confusion over whether or not the language applies to public and private employees, and said recommended that the Council either repeal the law or recodify it as a new section under labor laws.

04:04:24 REP. MCALPIN said it appeared to him that, as currently written, that the law could be overturned. Mr. Petesch said he believes the law is defensible but that the language also needs to show legislative intent, which is what the proposed changes will accomplish. In response to questions and concerns voiced by SEN. STAPLETON, REP. BERGREN, and REP. MCALPIN, Mr. Petesch said his concern is that if the law was to be successfully challenged, the ambiguity in statute about job security would have a chilling effect on who would run for the legislature in future. REP. MCALPIN **moved** to request that Mr. Petesch draft

the necessary language to fix this issue. SEN. GEBHARDT thought the law should simply be repealed and that it be handled through negotiations between the employer and employee. SEN. COCCHIARELLA said the law was created to give some measure of protection to those who choose to serve in a public office and that if the language is not fixed, it will make it more difficult for people to run. REP. BERGREN said he strongly supported the proposal because Montana's is a citizen legislature and that this type of a safeguard is needed.

04:11:03 The **motion passed** on a 11-1 voice vote, with SEN. GEBHARDT voting no. A sponsor will be assigned later.

### **2011 BIENNIUM PREPARATION - BUDGET PROPOSALS**

04:13:45 Ms. Fox gave a brief overview of the budget proposals before the Council and said that changes can still be made, if needed. She said that Karen Berger and Hank Trenk's assistance was invaluable to her in preparing the budget.

04:16:32 **Karen Berger, Financial Services Manager, LSD**, referred the Council members to the Program 20 budget in the meeting materials (EXHIBIT #11) and explained the different components of the budget. She asked them to look at the attachments on page 2 and said that the colored columns illustrate the changes between bienniums and between the 2011 biennium and the 2008 base.

04:21:53 Ms. Berger referred the members to page three, which included a summary of biennium to base comparison and a list of what is included in the total statewide present law personal services adjustment.

### **Computer System Planning Council Report**

04:25:03 **Hank Trenk, Director, Office of Legislative Information Technology (OLIT)**, presented the Legislative Branch Computer System Planning Council (CSPC) preliminary computer plan and budget (EXHIBIT #12) and the Legislative Branch Computer System Plan for the 2011 Biennium report (EXHIBIT #13). Mr. Trenk discussed several topics, including how to deal with obsolete systems, the impact of impending retirements and related personnel issues, the uncertainty of supporting WordPerfect software, and the bills status system. He referred the Council to the table listing other states' cost of replacing bills processing and code update systems (EXHIBIT #14).

4:38:30 Mr. Trenk also discussed the Legislative Branch Fiscal Year 2010-2011 budget (EXHIBIT #15).

04:38:50 Mr. Trenk discussed the Legislative Branch Computer System Plan for the 2011 Biennium report (EXHIBIT #13), briefly reviewing the contents of each chapter. He also discussed 2-17-518, MCA, rulemaking authority regarding state agency software and management systems (EXHIBIT #16).

SEN. HARRINGTON **moved** to adopt the CSPC budget proposal and plan. The **motion passed** on a unanimous voice vote.

### **Broadcasting Budget Sheet and History**

- 04:44:30 Ms. Berger explained the state broadcasting services budget (EXHIBIT #17), as requested by the Council at its June meeting, and said that capturing the Television Montana (TVMT) data has been a challenge because of the various sources of funding used to fund the broadcasting project to this point. She said the proposal attempts to consolidate funding for the 2011 biennium. She discussed the funding sources listed in the budget proposal.
- 04:50:10 Ms. Fox discussed a September 8, 2008, memorandum outlining recommendations made by the TVMT Subcommittee that met in August (EXHIBIT #18), saying that the Subcommittee chose options A through E (37 communities plus PBS) requiring an appropriation of \$150,117 for the 2009 session cost and Option A (4 cities) costing \$440,688 for the 2010-2011 biennium. She said that by 2011, TVMT would be included in the LSD budget and that a specific appropriation for broadcasting services would no longer be required in the feed bill. She also discussed options not selected on page 3.
- 04:53:14 **Stephen Maly, Executive Director, Helena Civic Television (HCTV)**, thanked the Subcommittee for its work and its support for keeping TVMT moving forward. He urged the Legislative Council to consider going a step further by funding statewide coverage (Option F for session and options A2 through F for the biennium) for the 2009 session and subsequent interim. He said that if the program is expanded only to the areas chosen by the Subcommittee, the expansion area covers a rather select group of urban citizens. Mr. Maly said that TVMT coverage of legislative work is of great value to all citizens, as well as to the legislative body.
- 04:55:47 REP. BERGREN asked what the difference is between the proposal approved by the Subcommittee and the full coverage requested by Mr. Maly. Mr. Maly said the additional cost for the session activities would be approximately \$96,000 and that coverage for the interim would total about \$816,000. He said this amount would include not only legislative proceedings, but also activities of the governor, the Supreme Court, the military, and other state entities. He said he is confident that once Montana citizens know what is available to them, they will want the coverage.
- 04:59:48 REP. BERGREN said by his calculations, the total amount of all the options listed on pages 2 and 3 of the recommendations (EXHIBIT #17) would be approximately \$1.6 million. Ms. Fox said that independent cable operators may not be able to broadcast TVMT, which would affect the total amount. Mr. Maly said his calculation is about \$1.2 million for the entire biennium.
- 05:04:00 REP. MCALPIN asked if Option F - New remaining 13 mid-size communities - on the options not selected list could be added easily. Mr. Maly said Option F would be very easy to add back in for the 2009 session. He said it was very difficult for him to choose which communities would receive coverage and that his decisions were mostly based on factors such as available circuitry or distance from Helena.
- 05:06:09 REP. BERGREN thought if the entire package could be done for \$1.2 million, it was a great deal for the citizens of Montana. He said it makes sense to have the

government as accessible as possible to all citizens and that most citizens would support that. SEN. COCCHIARELLA agreed and **moved** to approve the proposal, including full expansion of the project as discussed by Mr. Maly.

05:11:07 REP. HIMMELBERGER thought a slower and more prudent approach would be best for good long term results. He said that technology changes concern him, as does the fact his informal poll of constituents indicate that not many people tune into watch interim activities.

05:14:20 SEN. STAPLETON asked what, if any, empirical data has been studied on the ratings from the first cycle of TVMT broadcasting. He said it is a backwards approach to build and fund broadcasting services until it is known what the market interest is. He said the number of people watching should be a part of the decision making. Mr. Maly said no data has been collected because such information is very expensive to collect. He said that small carriers have an incentive to market this programming to their viewers because it is free programming and that he has created marketing tools to assist larger companies, such as Bresnan, in order to encourage them to broadcast TVMT.

05:20:02 REP. BERGREN said that open access to government is what is important and that market demand should not be the major consideration.

05:21:36 SEN. STAPLETON said he supports the service but is also concerned about rapidly changing technology. He said he is hesitant to invest in hardware and delivery systems that may be obsolete in a few years. He said it is a matter of due diligence to consider ratings information and, while he agrees that citizens should have access to their government, the legislature is still responsible for making good business decisions.

#### **Public Comment**

No public comment was given.

05:25:05 REP. BARRETT said that the state is not in the entertainment business and that the amount is a big expenditure. She said that her small community gets legislative updates through Gayle Shirley, the Legislative Information Officer, and through newspaper coverage.

05:26:02 SEN. COCCHIARELLA's **motion passed** on a 10-2 voice vote. REP. HIMMELBERGER and REP. SALES (Himmelberger proxy) voted no.

05:30:37 Ms. Fox asked for a motion to adopt Program 20 as discussed. She noted that numbers will change slightly by November. REP. BARRETT **moved** to approve the Program 20 budget. The **motion passed** on a unanimous voice vote.

#### **Interim Committee Proposals: Program 21**

05:33:13 Ms. Berger briefly discussed the Program 21 budget (EXHIBIT #19).

05:36:14 SEN. COONEY asked if interim committee budgets include additional travel. Ms. Berger said that in most cases, it is a wash because while certain costs increase,



such as staff expenses, others decrease. SEN. COONEY said that many of the interim committees traveled more than usual in the last interim and asked how budgets were affected. Ms. Fox said that committee budgets were able to absorb the additional travel costs. SEN. COONEY predicted that committees will continue to travel outside of Helena and suggested that a travel policy may need to be created. REP. BERGREN said more thought should be put in before scheduling out-of-town meetings, including an appropriate fiscal note. SEN. COONEY said he is not opposed to out-of-town meetings, but that he doesn't want the Council to be faced with additional funding requests. Ms. Fox said that a contracted services element of \$3,000 was added to each committee and that committee chair training has also been added to help with this issue short term. Ms. Berger said that the Program 21 budget also includes some additional funding for out-of-town rental facilities for meetings.

- 05:42:56 SEN. GEBHARDT said that the State Administration and Veterans' Affair Interim Committee (SAVA) deals with proposals for retirement bills, and that it is statutorily required to use an actuary to analyze the proposal to determine the effect a proposal may have on the public employee retirement system. He said that requirement has been ignored for years but that the SAVA feels it can no longer do so. He said the SAVA voted to send a memorandum to the Legislative Council requesting additional funding for the next biennium that would cover the cost of an actuarial and one additional meeting (EXHIBIT #20). SEN. GEBHARDT said his personal opinion is that too many studies have been assigned to interim committees and that the quality of work of the committees and staff has suffered as a result. He recommended that the Legislative Council reduce the number of studies assigned to an interim committee. SEN. GEBHARDT **moved** to add money into the Program 21 budget to include the cost of actuarial analysis of retirement bills.
- 05:48:13 REP. BARRETT asked how much would be needed. SEN. GEBHARDT said Mr. Bohyer SAVA Research Analyst, had suggested \$50,000 but that the Council could give direction. He **amended his motion** to specify an amount of \$50,000 for actuarial costs. The **motion passed** on a 10-1 voice vote, with REP. HIMMELBERGER voting no. SEN. GEBHARDT said he would also like to discuss extending the deadline for the SAVA to complete its work from September 15 to November 15. He said his request could be discussed in the rule review portion of the meeting.
- 06:00:59 SEN. GEBHARDT **moved** to accept the Program 21 budget, as proposed. The **motion passed** on a unanimous voice vote.
- 06:01:23 Ms. Fox said that there have been a number of proposals to create new interim committees and read a list of requests received to date (EXHIBIT #21). She pointed out that the request from the ELG Committee was on the backside of the list. She discussed the potential impact on existing staff resources and choices for dealing with the impacts, saying that some of the costs and demands of new committees could be absorbed and accommodated, but that some cannot, such as space and additional staff.

06:08:48 **Todd Everts, Director, Legislative Environmental Policy Office (LEPO)**, said that in addition to the committees on the list (EXHIBIT #21), the Fire Suppression Interim Committee voted at its last meeting to request that it be extended through the 2009-2010 interim.

### **Compensation and Reimbursement Proposals**

06:09:16 Ms. Fox discussed the provisions of LC LC02 - a proposed bill draft providing for increased reimbursement for lodging and meals for state employees and for reimbursement to legislators while not in session (EXHIBIT #22). She said she consulted closely with the Montana Association of Counties

06:15:16 SEN. COCCHIARELLA said the July 1 effective date is very important, particularly for workers' compensation issues, and asked that it be retained in the bill draft.

06:16:00 SEN. GEBHARDT **moved** to draft two separate bills, one to deal with legislator reimbursement and the other to deal with meals, gas, and lodging.

06:17:04 SEN. GEBHARDT amended his motion to include the July 1 effective date. The **motion passed** on a unanimous voice vote. A sponsor will be assigned later.

### **Legislative Budget: Feed Bill Issues and Bill Draft (LC 0181)**

06:18:41 Ms. Berger reviewed the Council's decision to change language in the feed bill that would allow the balance of a previous session feed bill to be used as start up costs for the next session. She said that the remaining balance of the feed bill would cover round trip mileage and one or two day's per diem. She said that the House balance from 2007 is about \$45,000 and the Senate balance is about \$130,000. She asked the Council for assurance that she has the authority to not pay legislators until the feed bill is approved and that the House and the Senate are treated the same, even though the Senate has a larger balance. Ms. Fox said the issue could be decided at the November meeting.

### **Price of Set of Proceedings for 2009 Session**

06:21:33 Ms. Fox said that legislative proceedings are the documents produced during the session and the list shows what was charged in 2007 and also the proposed cost for 2009 (EXHIBIT #23). She discussed the proposal, including the prices, saying that the LSD is allowed to charge commensurate costs, and that online ordering is now available.

06:24:02 SEN. COONEY asked if status sheets are available online. Ms. Fox said no, except by individual bill. SEN. COONEY asked if daily journals are available online. Ms. Fox said they are supposed to be. She said some people still want a hard copy but that most people want the online availability.

06:25:38 SEN. COONEY **moved to approve** the proposed price for a set of legislative proceedings. The **motion passed** on a unanimous voice vote.

06:27:35 The Legislative Council recessed at 4:55 p.m.

**DAY TWO - SEPTEMBER 17, 2008** (Technical difficulties prevented the first ten minutes of the meeting from being recorded or broadcast. The time stamp below picks up the meeting where the broadcast began).

The Legislative Council was called back to order at 8 a.m. REP. MCALPIN, SEN. BARKUS, REP. MCALPIN, and REP. SALES were excused.

### **Rules Subcommittee Proposal**

SEN. COCCHIARELLA, as the subcommittee chair, reviewed the work of the Rules Subcommittee. Mr. Petesch distributed copies of a revised summary (EXHIBIT #24) of all of the changes made to the rules and said he would use the summary to discuss LC 8000 (EXHIBIT #25). He briefly explained each proposed change. *(Please refer to EXHIBIT #24 and EXHIBIT #25 to view the text of the individual proposed rule changes. The minutes text includes only the proposed rules changes on which the Council members asked questions or discussed.)*

SEN. COONEY asked for discussion on **Joint Rule 10-140** to clarify that a committee may table a bill for a constitutional amendment.

### **TECHNICAL DIFFICULTIES RESULTED IN RESTART OF COMPUTER**

00:00:02      **DISCUSSION OF PROPOSED CHANGES TO Joint Rules 10-140 - Voting**  
SEN. GEBHARDT said the bill would still go to third reading. SEN. COONEY disagreed, and said the House could kill it on the floor if it didn't get the requisite number of votes. Mr. Petesch discussed an example of a constitutional amendment that was approved by the full House, which qualified it for the ballot and said because of the full House approval, the amendment did not have to go to the Senate.

**Joint Rule 30-60 - Estimation of revenue** - Mr. Petesch explained the proposed changes (adds statutory citation for revenue estimating function).

00:08:35      SEN. COONEY asked if creating a deadline for the revenue estimate to be submitted has been discussed. Mr. Petesch said that would require a statutory change and that the Subcommittee did not address that issue. He said the Revenue and Transportation Interim Committee (RTIC) has looked at legislation to change that. SEN. COCCHIARELLA asked if RTIC came up with an agreement or proposal. Mr. Petesch said he was not certain and that the RTIC was meeting again in November to draft the estimate, so there was still time to propose changes.

00:12:38      **Joint Rule 30-70 - Appointment to interim committees** - Mr. Petesch said this rule would have to be revisited in the event that the changes are made to session standing committees or if the proposed additional interim committees are approved.

- 00:13:20 **Joint Rule 40-40 - Bill requests and introduction** - Mr. Petesch explained the proposed changes, saying that it sets a specific date for preintroduction (or an agency bill loses its priority).
- 00:16:47 Ms. Fox said the Governor's Budget Office is aware of the deadlines and that the information has been distributed to agency directors, so advance notice has been given. SEN. COONEY said he still has some concern about the deadline.
- 00:17:48 REP. BARRETT discussed a situation from the last session in which a legislator presented two bills addressing two different sides of one issue. She said that in committee, both bills were voted down. The legislator then worked on yet another bill on the same issue, which many assumed was the committee bill. That bill ultimately passed. She asked if this was legal. Mr. Petesch said so long as the member has bill requests in that apply to the topic under consideration, he can introduce as many bills as he wants. If it is to be a committee bill, it takes the required vote by each committee. REP. BARRETT said that in the process, the legislator eliminated several bills and used titles from another legislator's bill. She asked if that was right. Mr. Petesch said the rules provide that if a bill designed to achieve the same purpose has been finally rejected by a chamber, the title can be used. He said that tabling a bill is not rejection. The other issue is that the requestor of a bill is not required to be the sponsor of a bill, so it sounds like an unusual situation but said he did not think the rules precluded it.
- 00:20:34 Mr. Petesch noted that the preintroduction requirement in **Joint Rule 40-40** does not apply to a newly elected state official.
- 00:25:27 **Joint Rule 40-100 - Fiscal notes** - Mr. Petesch explained the proposed changes. He referred the Council to the language changes in subsection (10) on page 25 of LC 8000 (EXHIBIT #25). SEN. COONEY said he has great concern that this provision could be used to kill legislation and would not support this proposal for that reason. SEN. COCCHIARELLA said that much time was spent discussing this and that it is an effort to deal with past problems. She said the change was intended to ensure that the fiscal note would be accurate and that the language will allow the presiding officer to decide if the bill needed a new fiscal note. She said the Rules Subcommittee felt the proposed change is an improvement over current practice.
- 00:28:25 REP. CAMPBELL agreed with SEN. COONEY's concerns and suggested changing the wording to so that the language couldn't be used to impede the passage of a bill.
- 00:29:45 SEN. GEBHARDT said there are ways for the sponsor to bring a bill forward with a corrected fiscal note now, and if LC 0459 is passed to create a sponsor's rebuttal form, that would provide another avenue for bringing a bill along in the process. Mr. Petesch provided copies of LC 0459 - revising the fiscal note process (EXHIBIT # 26), and said that another possibility would be to reduce the amount of time the Budget Office has to revise a fiscal note. SEN. COONEY said his concerns remain and that it is a difficult situation to resolve.

00:34:29 **Joint Rule 40-190 - Transmittal of bills between houses** - Mr. Petesch said that it provides that transmitted bills must be referred to committee and scheduled for hearing. SEN. COCCHIARELLA said the change won't take care of the situation of a hearing being scheduled for the last day of session. Mr. Petesch said that was correct. SEN. COONEY asked if setting a time frame the Subcommittee considered setting time frame in which a bill had to be scheduled for hearing. SEN. COCCHIARELLA said it was discussed.

00:40:31 SEN. COCCHIARELLA **moved** to approve the proposed changes to joint rules to the full legislature for consideration. Mr. Petesch noted that the 2009 Joint Rules Committee also has the authority to make changes to the Joint Rules and that he would like to avoid the situation of having competing sets of proposed changes. He asked the Council to decide if it wanted its proposed changes to be in the form of a recommendation to the new Joint Rules Committee or if it wanted its proposed changes in the form of a bill draft. SEN. COCCHIARELLA **moved** to draft the Legislative Council's proposed changes as recommendations to be referred to the Joint Rules Committee. SEN. COONEY asked to segregate 40-100 - revise fiscal notes - from the motion. REP. BERGREN agreed. The **motion passed** on a unanimous voice vote.

00:45:15 SEN. GEBHARDT **moved** to include **Joint Rule 40-100** in the joint rules recommendations. SEN. STAPLETON said he supports the motion and said that the proposed changes would provide a level of protection. SEN. COONEY said he would not support the change and predicted that it would allow abuse and may used to cause more mischief than occurs under the current rule. The **motion passed** on a 7-4 voice vote, with REP. SALES voting yes (Himmelberger proxy), and SEN. COONEY, SEN. HARRINGTON, REP. CAMPBELL, and REP. MCALPIN (Cooney proxy) voting no.

### House Rules Changes

00:48:20 Mr. Petesch reviewed proposed House rules changes using the updated summary of proposed changes (EXHIBIT #24) and LC 8002 - revision and adoption of house rules (EXHIBIT #27). *(Please refer to EXHIBIT #24 and EXHIBIT #27 to view the text of the individual proposed House Rule changes. The minutes text includes only the proposed rules changes on which the Council members asked questions or discussed.)*

**H10-50 - Legislative Administration Committee duties** - Mr. Petesch said the proposed changes eliminate the Legislative Administration Committee but that new language has been added to describe the duties of the majority leader of the House. He said that proposed House Rules H10-60, H10-70, and H10-80 describe other House leadership positions. He said that proposed H10-90 deals with legislative staffing issues. REP. BARRETT pointed out that the House has not had a Chaplain for a number of years and asked if the language should be stricken. REP. CAMPBELL said she liked the idea of having a House Chaplain and would like to leave the option open. Mr. Petesch said the language could be changed to read "may appoint a chaplain".

**H30-60 Public Testimony** - Mr. Petesch said the proposed changes no longer require a specific witness form for those who wish to testify and clarifies that cell phone use is allowed at the discretion of the chair. REP. BARRETT asked if text messaging is allowed. REP. BERGREN said that Subcommittee discussed the issue of text messaging and decided that it would fall under subsection (5). Mr. Petesch said the Subcommittee did not reach a clear conclusion on how to deal with text messaging.

01:01:22 **H40-160 - Motions in the Committee of the Whole** - Mr. Petesch said language was added to deal with motions that are used but not enumerated in the rules. SEN. COONEY said he is concerned about adding new motions to second reading and fears that it may complicate things. He asked if the House and Senate would be similar on this rule. REP. CAMPBELL asked the Joint Rules Subcommittee to explain why S50-140 on dividing the question was not included. Mr. Petesch said that the Senate has a specific rule for dividing a question (50-100), so it is already provided for.

**H50-160 - Questions requiring other than a majority vote** - Mr. Petesch said the proposed change adds citations for extraordinary vote requirements, including the noxious weed management trust fund.

**H60-20 - Nondebatable motions** - Mr. Petesch said the proposed changes remove the "to postpone to a date certain" motion and also removes language regarding the Legislative Administration Committee

01:09:03 SEN. COCCHIARELLA **moved** to recommend that the proposed changes be forwarded to the House Rules Committee for consideration. The **motion passed** on a unanimous voice vote.

**BREAK**

### **Senate Rules**

01:24:11 Mr. Petesch reviewed proposed Senate rules changes using the updated summary of proposed changes (EXHIBIT #24) and LC 8001 - revision and adoption of senate rules (EXHIBIT #28). *(Please refer to EXHIBIT #24 and EXHIBIT #28 to view the text of the individual proposed Senate Rule changes. The minutes text includes only the proposed rules changes on which the Council members asked questions or discussed.)*

**S30-130 - Majority/minority reports** - Mr. Petesch said that the proposed changes are substantive and call for the elimination of minority reports. He explained that no one knows how to do them anymore and that the Subcommittee held a long debate on this proposed rule. He discussed the rationale for the proposal to eliminate minority reports.

SEN. STAPLETON said the Senate submitted a minority report in the 2007 session and said that the report would prove to have historical value. He said the senators involved in the report felt very strongly about their concerns being on record. He predicted that the next time there is a tied chamber and a member switches parties, the report will be a great reference. He said that he would

support statutory changes regarding elections and switching of parties after elections.

- 01:43:26 SEN. COCCHIARELLA said the proposed rule change has nothing to do with what SEN. STAPLETON just discussed. She said the rule addresses action in committees and said that the minority vote is now documented, because committee proceedings are either taped or recorded in some manner. SEN. COONEY said his concern is if, without language, that SEN. STAPLETON could be prevented from creating a similar report in the future. SEN. STAPLETON agreed that there are electronic and paper records available, but said a minority report allows a great deal more information to be submitted into the record beyond a recorded vote. He said that not only were the senators allowed to voice their concerns, but that a valuable reference may have been created for future use. SEN. COCCHIARELLA thought a different rule would be needed to address SEN. STAPLETON's concerns. REP. BERGREN said his interpretation is that a minority report isn't necessarily from the minority party, but a minority of people who voted a particular way on a specific issue. Mr. Petesch said that under current Senate rule 20-50, proposed to be renumbered 20-60, SEN. Stapleton's report would be allowed to be entered into the record or even put on the calendar.
- 01:48:29 SEN. STAPLETON read from Mason's Rules regarding minority committee reports. He said that before minority reports are eliminated, its usefulness ought to be considered. There was additional discussion regarding minority reports and the proposed rule changes.
- 02:04:22 SEN. COCCHIARELLA **moved** to recommend proposed changes to the Senate Rules Committee. SEN. COONEY asked to segregate the references to minority reports. REP. BERGREN agreed. The **motion passed** on a unanimous voice vote.
- 02:05:33 SEN. COCCHIARELLA **moved** to leave the language in these rules that remove the minority report for standing committees. She said she hopes that between now and November, or whenever the Rules Subcommittee meets, that SEN. STAPLETON's concerns can be addressed with whatever rule addresses the minority party's opinions. REP. CAMPBELL said an agreement may be possible if the committee minority report is referred to as the dissenting report. She agreed that there needs to be a way for the minority to voice its concerns but also thought that SEN. STAPLETON's concern is a separate concern from this proposed rule change. She said, for the record, that such minority reports would provide a valuable historical perspective.
- 02:08:41 SEN. GEBHARDT explained that when a committee report is read, a member of the minority has the chance to request segregation and explain why. He said when that is done, it is put on the record. He said that one has to be attentive in order to segregate the report before it is accepted but that emphasized that there is an opportunity to create minority report.

- 02:12:57 SEN. COCCHIARELLA said that if minority reports are to be kept, rules need to be written on how it will be used, who gets it, and where it will be recorded. She said there is nothing in the current rules that make it work, and is another reason the Subcommittee chose to get rid of it. SEN. STAPLETON said that if the report is not being used properly, then leadership should address that by providing training.
- 02:15:30 After additional discussion on the motion, SEN. GEBHARDT **made a substitute motion** to ask Mr. Petesch to draft language for the Joint Rules Subcommittee on how to accept and dispose of a minority report. Mr. Petesch said he would draft the language but recommended that it be submitted to the session Rules Committee. SEN. GEBHARDT **amended his substitute motion** to submit the language to the session Rules Committee. He said it would be best to have the language in the joint rules, rather than in the house and senate rules separately.
- 02:16:37 SEN. STAPLETON asked if there is a movement for making the House and Senate rules the same and said there are good reasons to have different rules. REP. BERGREN said the Subcommittee thought it would be practical and logical to have certain things be similar. SEN. COCCHIARELLA said there were no changes made to make one house look more like the other and that the changes were simply intended to make the process run more efficiently.
- 02:19:16 SEN. COONEY asked SEN. GEBHARDT to restate his motion. SEN. GEBHARDT said his motion was to have Mr. Petesch prepare rules for minority reports and that they be placed in the joint rules, to be presented to the session joint rules committee. The **motion passed** on a unanimous voice vote.

## **SESSION PREPARATION**

### **Senate Standing Committee Composition**

- 02:20:38 Ms. Fox said this agenda item is directly related to rules and referred the Council to a Standing Committee Status Report (EXHIBIT #29). The report included proposed changes to standing committees and two charts indicating the bill count for each Senate and House standing committee for the last three legislative sessions. Ms. Fox reviewed the report and proposals for change with the Council.
- 02:28:36 After discussing workload issues, the rationale for changes made in the past, and if additional changes should be made, REP. BARRETT **moved** to separate the Senate Natural Resources and Energy Standing Committee into two standing committees. **Todd Everts, Staff Attorney, Legislative Environmental Policy Office**, said that energy issues are on the rise and noted that additional staff was needed to help with the committee work load in the 2007 session. The **motion passed** on voice vote, SEN. COONEY voted no.
- 02:31:19 Ms. Fox asked the Council if it wanted to change the class status of the committees. The Council agreed that the new Senate leadership should make that decision. Mr. Petesch said he would make changes in the proposed rules changes to reflect the action of the Council.



- 02:32:09 SEN. COCCHIARELLA **moved** to change the Livestock and Agriculture Standing Committee to a class 3 committee and to change the Local Government Standing Committee to a class 2 committee. The **motion passed** on a unanimous voice vote. Mr. Petesch said he would make the necessary changes in the proposed rules.
- 02:32:44 SEN. COCCHIARELLA said the Senate State Administrations Standing Committee has an enormous work load. SEN. COONEY said one issue is jurisdiction and said that as President of the Senate, he has the ability to assign bills but that committee chairs are protective of their areas of oversight, as was the case in the last session. He said that is what contributed to the heavy workload.
- 02:34:21 REP. HIMMELBERGER asked why the State Administration is an "A" House committee and a "B" committee in the Senate. Mr. Petesch said it is because the House has more members available to serve. SEN. GEBHARDT said another issue is the availability of Senate meeting rooms and staff.
- 02:35:31 Mr. Petesch said a rules issue remains and said that a committee bill is needed to amend section 5-2-202, MCA, which deals with legislative administration committees. He said if the committees are not going to exist, they should not be referenced in statute. REP. HIMMELBERGER **moved** to draft a committee bill to make the necessary statutory changes in 5-2-202, MCA. The **motion passed** on a unanimous voice vote.

#### **Capitol Space - Blaylock Memorial**

- 02:36:35 SEN. COONEY reviewed that the Senate resolution was passed several years ago to create a memorial plaque, to be displayed in the Capitol, to honor the late Senator Chet Blaylock, and that about the same time the Capitol Complex Advisory Complex Committee was also formed to have oversight of how and what items would be displayed in the Capitol. SEN. COONEY said while it is a good program, it did halt the process of displaying the Blaylock Memorial because of a requirement that an individual be deceased for ten years before being eligible to be memorialized in the Capitol. He said one approach would be to set aside the Senate hallway between the majority and minority offices as space to honor senators of distinction. He said another option would be to create legislation requesting that the Capitol Complex Advisory Committee move forward with placing a memorial plaque honoring Senator Blaylock. He explained several different avenues the Council could take. SEN. COONEY noted that the Blaylock family is very disappointed that the plaque has not been displayed in the Capitol, as the legislation intended.
- 02:41:34 SEN. HARRINGTON commented that Senator Blaylock was a very hard worker and deserving of the honor. He said he would support the use of the Senate hallway to honor him.
- 02:42:42 SEN. GEBHARDT thought it could be done by executive order, if the correct criteria is met. SEN. COONEY said he would like to take care not to undo the work of the Capitol Complex Advisory Committee. He said that by using private

Senate space, the plaque could be displayed without having to meet the requirements of the Advisory Council. SEN. COONEY **moved** to have the Legislative Council create formal guidelines on how to manage such projects, and to designate the Senate leadership hallway as memorial space to past senators. REP. BARRETT asked if the Blaylock family would be satisfied with that location. She pointed out that it is not in a public area of the Capitol. SEN. COONEY said the hallway is not always locked and said that other items on display are behind locked doors a good deal of the time. The **motion passed** on a unanimous voice vote. SEN. COONEY said he would work with the Council staff.

### **Legislative Space Study Resolution**

02:50:01 Ms. Fox said that this was discussed at the last Council meeting and reviewed the provisions of the joint resolution to examine legislative space to develop a long-term plan (EXHIBIT #30). No action was taken.

### **NCCUSL Resignation and Proposed Process**

02:52:47 Mr. Petesch said that Justice Nelson has submitted his resignation from the National Conference of Commissioners on Uniform State Laws (NCCUSL). He said the Legislative Council is the appointing authority. He explained the duties of the Council and the process through which appointments are made. He said that he would present a list of applicants for appointment at the November meeting. REP. HIMMELBERGER **moved** to instruct Mr. Petesch to proceed with the process of soliciting applicants for appointment to the NCCUSL. The **motion passed** on a unanimous voice vote.

### **Committee Chairman Training**

02:55:10 Ms. Fox said that a training session and manual was created for the 2007 Legislature for committee chair training and that plans have been made to offer the same training on December 15, 2008. She asked the Council for input or suggested revisions to the training manual or specific training topics that should be covered. SEN. COCCHIARELLA suggested asking former Senator Mike Halligan to assist in the training. SEN. GEBHARDT suggested former Senator Dale Mahlum.

### **House and Senate Staff Pay Matrix**

02:57:49 Ms. Fox discussed the House and Senate staff pay matrix (EXHIBIT #31), saying that the switch to the broadband pay plan affected the matrix. She said that she has discussed several options with Marilyn Miller on how to migrate the pay matrix to the broadband plan. She explained how the two plans would be matched up.

03:00:20 SEN. COONEY noted that in the last session, the Senate had to go above the pay matrix in order to attract qualified staff. Ms. Fox said she would send copies of the old matrix and the new matrix for Council members to review.

### **Vote System and Public Access**

03:04:07 **Steve Eller, Computer Systems Manager, OLIT**, updated the Council on the new vote systems. He said the project is going very well and that the physical

installation is almost complete, and that the software configurations have begun. He said he is available for tour, should the Council wish to have one. He asked the Council for direction on how to deal with distribution of digital voting records.

03:06:20 Mr. Eller said vote records are public data by nature and that there needs to be a public request procedure. He said the best and simplest solution would be to give the requestor all of the record and let them sort through the information. He said that Senate voice votes would not be included because there is no record of them. Ms. Fox said there is a rule that requires that staff not compile vote records for the public and explained the rationale for the rule. She said if the entire database is made available, the public's right to know and information to access requirements would be met.

03:09:17 SEN. GEBHARDT asked if the project is staying within budget. Mr. Eller said the project is just slightly over budget because of several unexpected expenses, but that they overages have been taken care of.

### **Media Access Update and Proposals**

03:10:15 Ms. Fox provided handouts showing staff work that has been done to improve media access: "*Covering the Legislature*" A Reporter's Guide (EXHIBIT #32) and a sample map showing the location of media audio feeds located in the committee rooms (EXHIBIT #33). She asked for Council suggestions or comments on the documents. Ms. Fox also announced that a media training date has been set for December 8, 2008, and that \$18,000 has been spent to upgrade and increase press feeds in several meeting rooms and the House and Senate chambers. She said that a press release will also be sent out alerting the media to all of this information and noted that it sends a very positive image of the legislature.

### **Information Officer and Session Role**

03:16:17 **Gayle Shirley, Legislative Information Officer (LIO)**, presented and discussed potential session work activities for the Legislative Information Officer (EXHIBIT #34). Ms. Shirley said it would be very helpful to her to have clear guidance from the Council on what she can or cannot do as the LIO and that she would like feedback on the list she discussed.

03:19:34 SEN. COONEY thanked Ms. Shirley for the list for Council consideration. He said he did have concern about several items, mainly about the potential for being put in the position of appearing to be involved in partisan activities. SEN. COONEY identified several items on the list that could cause difficulty and said because of the important role the CIO has in the legislature, it is very important that it be perceived as completely nonpartisan.

03:22:06 REP. BARRETT asked what Ms. Shirley had in mind in order to respond to requests for information from public. Ms. Shirley said she frequently gets telephone calls from the public wanting information about the legislature. She

said she refers the call to the appropriate staff member or answers the question herself.

- 03:23:10 REP. BARRETT said that she followed Wyoming's legislative session last year through weekly house and senate updates submitted by Wyoming's CIO. She said it was very interesting and asked if Ms. Shirley had plans to do something similar for Montana. Ms. Shirley said she is open to direction from the Council and would create a similar program if the Council wished her to. She noted that she has been sending out NewsLinks and other media notices regarding legislative activities. REP. BARRETT asked her to get in touch with the Wyoming CIO to get information. Ms. Shirley said she has already met the Wyoming CIO and would be happy to work with her to adapt Wyoming's format to Montana's needs.
- 03:26:40 SEN. GEBHARDT said the smaller weekly papers would especially appreciate the coverage because they can't afford to send a reporter to cover the full legislature.
- 03:27:21 Ms. Shirley said she is very aware that her work must be nonpartisan. She thanked the Council for the suggestions and comments, and said that they will give her guidance in her work.
- 03:28:12 In response to a question from REP. CAMPBELL about how media services have been handled in the past through the House and Senate Sargeants, Ms. Fox said that would have to be determined. Ms. Shirley said that she maintains a media contact list and would provide it to session staff and legislators.
- 03:29:55 REP. BARRETT asked if the media is utilizing the CIO position. Ms. Shirley said yes. She said that she has worked with LSD staff to create several informational pamphlets, including a media guide to the legislature. She provided a final copy of *"A Student's Guide to the Legislature"* (EXHIBIT #35).

#### **Leadership Brochure, Notebooks, Turnkey Operation**

- 03:32:54 Ms. Fox reviewed a legislative information questionnaire that will be distributed to all legislators immediately after election and said that it will provide consolidated information to staff (EXHIBIT #36) that can be used to create a single database of information for legislator and LSD use. Ms. Fox also reviewed a database that was created to assist leadership, session staff, and LSD staff in making sure that each legislator has the services needed, such as an office, a telephone, or a computer, for example (EXHIBIT #37). She said the database will indicate who is assigned to each room and what services have been assigned to the legislator by leadership, and that the information will be of great value in preparing for the session. She said it is hoped that the database will be completed by the time the legislators arrive in January.
- 03:38:44 Ms. Fox discussed the leadership brochure and asked for input from the Council on what should be included.

#### **November Council Meeting - Invite New Leadership**

03:40:27 REP. BERGREN asked to invite new leadership.

### **OTHER ISSUES**

#### **Merit Pay**

03:40:49 Ms. Fox said until it is known what the executive branch is proposing for its merit pay program, the work on the legislative branch plan can't progress further. She said that LSD directors have assured staff that every effort is being made to implement the merit pay proposal and that work is ongoing.

#### **Districting and Apportionment**

03:41:34 Ms. Fox provided copies of a districting and apportionment schedule (EXHIBIT #38) and briefly discussed the time line. She said the this session's presiding officers would be making important appointments to the Commission.

### **PUBLIC COMMENT**

No public comment was given.

### **FINAL MEETING DATE**

03:44:13 Ms. Fox suggested meeting dates of November 17 or 18 in order to coordinate with the Legislative Finance Committee for a joint chairs meeting with leadership. After discussion on possible dates and agenda items, REP. BERGREN tentatively set November 18 as the date for the next meeting.

### **ADJOURNMENT**

03:47:36 With no further business before the Legislative Council, the meeting was adjourned at 12:04 p.m. The next Council meeting is scheduled for Tuesday, November 18, 2008, in Helena.

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