

Council Senate Members

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



Council House Members

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

September 25, 2007

Room 152, State Capitol
Helena, Montana

Please note: These are summary minutes. 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.

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. GREGORY BARKUS
SEN. VICKI COCCHIARELLA
SEN. MIKE COONEY

SEN. KELLY GEBHARDT
SEN. DAN HARRINGTON

REP. DEBBY BARRETT
REP. MARGARETT CAMPBELL
REP. DAVE MCALPIN
REP. SCOTT SALES

COMMITTEE MEMBERS EXCUSED

SEN. COREY STAPLETON

STAFF PRESENT

Susan Byorth Fox, Executive Director, Legislative Services Division (LSD)
Gregory Petesch, Director, Legal Services, LSD
Karen Berger, Financial Services Manager, LSD
Hank Trenk, Director, Office of Legislative Information Technology, LSD
Steve Eller, ??, Office of Legislative Information Technology, LSD
Dawn Field, Council Secretary

AGENDA & VISITORS' LIST

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

COMMITTEE ACTION

Legislative Council:

- approved the June 21, 2007, meeting minutes as written;
- approved a \$23,000 budget amendment to allow equipment to be purchased for TVMT;
- approved a motion to delay granting requests from interim committees for additional funding;
- approved a motion to post notice of a NCCUSL appointment in the Montana Bar Association newsletter to solicit letters of interest;
- approved a pay increase, retroactive to July 2007, for Susan Fox, Executive Director, LSD, upon completion of her one-year probationary period; and
- approved an interim policy regarding funding for legislator members to attend NCSL and CSG functions.

CALL TO ORDER AND ROLL CALL

TAPE 1 - SIDE A

00:00:01 REP. BERGREN called to order at 10:06 a.m. The secretary took roll, SEN. STAPLETON was excused, all other members were present (ATTACHMENT #3). The June 21, 2007, meeting minutes were approved as written on a unanimous voice vote.

INTRODUCTION OF NEW LEGISLATIVE SERVICES STAFF

00:00:59 **Hank Trenk, Director, Office of Legislative Information Technology (OLIT), (LSD),** introduced Jerry Churchill, Programmer Analyst, OLIT, and Darrin McLean Architect and Engineering Manager, OLIT. **Susan Fox, Executive Director, LSD,** announced that Claudia (CJ)Johnson was hired as the new Administrative Support and Committee Secretary. Ms. Fox noted that Ms.

Johnson has served for many years as a committee secretary during past legislative sessions. Ms. Fox said that positions are still open for an IT Engineer and an IT Systems Analyst but she anticipates that the positions will be filled within the next month. Regarding the Legislative Information Officer position, Ms. Fox said that applicants have been screened and an offer has been made to a candidate.

BUDGET ITEM -- CHANGE TO OPERATING PLAN

00:03:32 **Karen Berger, Financial Services Manager, LSD**, requested a budget amendment to move \$23,000 from Operational Expenses to Equipment to allow TVMT to purchase needed equipment. She said state policy dictates that the equipment must be accounted for in the equipment category and not in operational costs. REP. HIMMELBERGER **moved** to approve a budget amendment for \$23,000 to purchase the TVMT equipment. The motion **passed** on a unanimous voice vote.

INTERIM COMMITTEE REQUESTS FOR ADDITIONAL FUNDING

00:06:06 Sen. Jim Elliott, Chair, Water Policy Interim Committee (WPIC), submitted a copies of the WPIC Work Plan, meeting dates, estimated expenses, actual expenses, and meeting agendas of the first three meetings (EXHIBIT #2). Sen. Elliott explained the reason for the request, saying that the Committee's budget did not include the costs of including HB 831 in its work. Sen. Elliott said the committee is doing good work and has stayed within budget to date but that he anticipates that will not remain the case for long, due to the extra work load of HB 831. He requested that an additional \$15,000 be appropriated to WPIC to cover the cost of completing the study in HB 831.

00:10:31 SEN. BARKUS asked what the rationale was for planning all out-of-town meetings. Sen. Elliott said he was not involved in that decision and did not know. He said that he thought traveling around the state is a good idea because it gives the public an opportunity to see what the Legislature does.

00:11:42 REP. BARRETT asked if HB 831 had an appropriation and funding for the study. **Krista Evans, Research Analyst, Legislative Environmental Policy Office (LEPO)**, said that HB 831 does contain an appropriation for the study but that the appropriation is for the study being conducted by the Montana Bureau of Mines and Geology, Another portion of the study deals with water quality issues and was not funded. This is the portion of the study that WPIC is working with.

00:12:49 SEN. COONEY asked where the money comes from for the additional committee funding. REP. BERGREN said that there is a reserve account for these types of requests and asked Ms. Fox to provide additional information. Ms. Fox said that Legislative Council has a reserve account of \$50,000 to cover unexpected expenses, such as for emerging topics of importance to the State, for interim committee expenses, or emergencies. Sen. Cooney asked if the reserve account has been used in this biennium. Ms. Fox said no.

00:15:50 REP. BARRETT said that the Environmental Quality Council (EQC) usually deals with water quality issues and asked if any savings could be realized from the

EQC budget since WPIC has the water quality study. Ms. Evans said that historically, EQC has handled water issues but has several studies assigned to it. She said she did not know if there was any extra funding that could be allocated to WPIC for its work.

00:17:02 REP. HIMMELBERGER asked for a more detailed explanation of how the funding in HB 831 is being used. Ms. Evans explained that HB 831 provided \$500,000 for a closed basin case study to gather information on the interaction between and surface and ground water in closed basins. The study was assigned to the Montana Bureau of Mines and Geology. A report to the full Legislature will be prepared, but in the meantime, the Bureau is reporting to WPIC at each of its meetings and WPIC is providing feedback. Ms. Evans said the biggest expense will be the cost of drilling new wells but that the Bureau is using existing wells to conduct its work whenever possible. She said that she could provide additional information from the Bureau if the Council is interested.

00:22:42 SEN. BARKUS asked if WPIC meetings could be consolidated or lengthened in order to save money but still get the work done. Sen. Elliott said WPIC is already holding two-day meetings and thought that lengthening meetings would create a hardship for the members. He said that two members have already resigned because of the work load.

00:25:01 REP. HIMMELBERGER asked Sen. Elliott to report on the level of public participation to date at the WPIC meetings held around the state. Sen. Elliott said that there has been strong public participation at each of the meetings. He said that the Thompson Falls meeting was broadcast to the community and that the local high school participated in the meeting as well.

TAPE 1 - SIDE B

00:27:09 REP. BARRETT said she thinks it is important that WPIC travels to each closed basin to hear from residents on why that basin was closed and the concerns of the people. She said that she would support WPIC's request for additional funding.

00:28:38 **Rep. Klock, Chair, Energy and Telecommunications Interim Committee (ETIC)**, distributed a letter from ETIC (EXHIBIT #3) stating that while additional funding for that Committee is not necessary yet, it may be in the coming months because of the work load that ETIC elected to do, such as the carbon sequestration study. Rep. Klock agreed that committee travel out of Helena for meetings is important to citizen involvement. He briefly reviewed the agenda for the upcoming ETIC meeting to be held in Colstrip.

00:31:00 REP. CAMPBELL asked if the ETIC study will look at terrestrial carbon sequestration and the potential impact on rangeland and timberland. Rep. Klock said that the goal at this time is to gather information mainly relating to coal issues.

00:32:12 REP. HIMMELBERGER said that while he appreciated the fact that notice is being given to Legislative Council, he thought it was premature to approve the

funding requests. He said that there may be more requests coming in and recommended that no action be taken at this time.

00:34:08 SEN. COONEY said he agreed with REP. HIMMELBERGER but also acknowledged that the committees will face difficulties if they end up going over budget before Council meets again. He said he also supported no action at this time and asked Sen. Elliott to respond. Sen. Elliott said that he understood the reasoning on one hand but warned that this approach could be a dangerous one and could result in WPIC not being able to fulfill its statutory duties.

REP. BERGREN said that Legislative Council will meet in January of 2008 and asked Sen. Elliott if WPIC could maintain its work load until then. Sen. Elliott said that the WPIC will not run out of money but will not be able to plan if it doesn't know if the money is going to be there. Sen. Elliott said that the uncertainty of the situation is what concerns him the most.

00:42:20 REP. HIMMELBERGER **moved** to defer a decision on allocating additional funds to interim committees to a future Legislative Council meeting. SEN. COCCHIARELLA said she agreed with REP. BARRETT that WPIC is doing important work but agreed that deferring a decision would still be supported approval of the funding requests.

00:44:05 Sen. Elliott asked to speak on a point of parliament. He said that the Water Policy Interim Committee is not an interim committee but a statutorily-created committee working in an interim. He asked that distinction be noted in the motion. REP. HIMMELBERGER amended his motion to reflect that. SEN. COONEY said that there was no need to change motion but recorded that the request was made. He asked that staff monitor this situation and said that it would be recorded that Sen. Elliott and Rep. Klock were the first to request additional funding. REP. BERGREN asked that all committees create a status sheet of their respective budgets and submit them to Legislative Council.

00:45:43 REP. HIMMELBERGER said he believes that requests for additional funding may be increasing and that committees are changing the way in which they conduct business. He said it may be time for the Legislature to consider changing the funding formula for interim committees and putting guidelines in place clarifying what Legislative Council will support or not support.

00:47:01 REP. HIMMELBERGER's **motion passed** on unanimous voice vote.

MENTAL HEALTH STUDY APPROPRIATION OF \$200,000

00:47:34 Ms. Fox presented a *Study Plan for \$200,000 Mental Health Study Appropriation* (EXHIBIT #4) and several related documents (EXHIBIT #5). After a brief presentation, Ms. Fox said that the Children and Families Interim Committee would like to have the study assigned to that committee. She discussed the three options for the Council's consideration, as listed on page 1 on the study plan (EXHIBIT #4).

00:49:42 REP. BARRETT said that she has a letter from Mental Health Services in Dillon stating that the mental health service plan funding was cut in 2003. She asked Rep. Edith Clark if the funding has been restored and/or increased for mental health services and the local advisory committees. **Rep. Edith Clark. HD 28,** said that she didn't have exact numbers but that funding has been restored and in some cases, increased. She said that she could provide exact figures, should the Council need that information.

Public Comment

00:50:59 Rep. Edith Clark, Chair, Children and Families Interim Committee, urged the Council to approve the use of the \$200,000 appropriation for an independent study. She said the mental health system can be improved but that the system needs a major overhaul and a fresh perspective in order to make substantive changes. She said that the Children and Families Interim Committee is very interested in this study and is willing to help in any way to find a better solution to mental health issues in Montana.

00:52:26 **Tracy Velazquez, Montana Mental Health Association (MMHA),** distributed copies of *Transforming Mental Health Care In America* (EXHIBIT #6). She agreed that the study needs to be done and discussed the struggles of those who are attempting to use the current mental health system in Montana.

Ms. Velazquez said that MMHA would like to see a step-by-step plan and also suggested looking at the success that other states have had in integrating mental health care into the primary care system. She said that Tennessee has designed a program that combined its federally-funded community health centers with its community mental health centers. Ms. Velazquez said that by integrating mental health into a primary care system, federal funding could be maximized and the stigma of mental illness would also be reduced.

Ms. Velazquez said she would like to look at how to increase the capacity of mental health professionals. There are very long waiting lists due to the lack of funding and the declining number of practicing mental health professionals in Montana.

TAPE 2 - SIDE A

Ms. Velazquez also recommended examination of how to improve the connection between the criminal justice system and the mental health system, the juvenile justice system and the adult system, and the civilian and military systems. Regarding service area authorities (SAAs), Ms. Velazquez said that the service area authorities (SAAs) had held a brainstorming session on how the mental health system could be improved and that there were many good ideas.

00:57:06 **Anita Roessman, Montana Advocacy Program,** endorsed the previous testimony regarding the need for the mental health study to be done. She agreed that mental health care funding was generously increased in the 2007 legislative session but stated that even with the increases, the funding level is still not enough.

Ms. Roessman agreed that the Children and Families Interim Committee would be the appropriate committee to oversee the mental health study because of the knowledge and expertise of its members. She also agreed that an independent study would provide the best avenue to gather needed information in time for the 2009 legislative session.

Ms. Roessman concluded her comments by saying the state institutional systems have been flooded with demands and that policy decisions are badly needed. She restated her opinion that an independent study would be the best approach and that there are many new innovative programs underway in other states that would be valuable sources of information.

00:59:42 REP. CAMPBELL referred members to a memo from an administrator at the Roosevelt Medical Center (in EXHIBIT #5) and asked that everyone read it if they haven't done so already. REP. CAMPBELL said the information in the memo paints a stark and ugly but realistic picture of what is occurring all over the state, particularly in rural areas such as her district. There have been over 20 suicides, all under 25 years of age, in her district. Services simply aren't available. It takes months to get into see a mental health professional and the great distances that must be traveled to get services present obstacles as well. The Indian Health Service budget is exhausted about six months into a fiscal year with emergency issues such as alcohol, car accidents, and other health emergencies and as a result, mental health issues are pushed aside.

REP. CAMPBELL said that judging by the number of proposed bill dealing with mental health that were introduced in the 2007 session, there are serious mental health care needs all over the state. REP. CAMPBELL **moved** that the mental health study be funded, assigned to the Children and Families Interim Committee, and to have the study contracted out.

01:04:12 REP. HIMMELBERGER said that mental health care in Montana has been studied in Montana before. He asked Rep. Clark if information from those previous studies is available and relevant. He also asked how this study would be different from previous studies and what measures the Children and Families Committee would take to ensure that this study would provide usable and useful information. Rep. Clark said the previous studies have resulted in minor improvements but that Montana has never undertaken a comprehensive study inclusive of all of the areas that need to be covered, such as rural and urban Montana, access to care, and recruitment of providers. Past studies have been piecemeal and the information can be used with the independent study to create a better system. Montana cannot afford to keep the status quo and this is one way to work to improve the system. Rep. Clark said that the outcome likely would not be perfect but would be a good start and that improvements would come incrementally.

01:07:49 REP. MCALPIN said it is important to recognize that healthcare policy is very dynamic arena and that a study conducted several years ago may be irrelevant and useless. He said that this is a golden opportunity to find solutions.

- 01:08:42 SEN. BARKUS said he is concerned when he sees a mental health "study" because the enormity of the problem makes it a very difficult topic to cover. He suggested that the study should have very specific guidelines and goals because to do otherwise could result in an unreliable outcome.
- 01:10:25 REP. CAMPBELL said it is important to keep in mind that the shelf life of past mental health studies isn't very long. She said that the Request For Proposal (RFP) could be structured to gather the exact data needed to achieve sound mental health legislation that is inclusive of all of the areas discussed.
- 01:12:26 REP. HIMMELBERGER asked who would be in charge of drafting the RFP and administering the funding. REP. CAMPBELL said the Children and Families Committee should construct the RFP because of its knowledge of the issue. REP. CAMPBELL asked if Ms. Fox would be able to assist in the RFP process. Ms. Fox said she would like to be involved, with the Council's permission. The Council agreed.
- 01:14:41 REP. HIMMELBERGER asked Ms. Roessman to add her perspective. Ms. Roessman said that the Department of Public Health and Human Services (DPHHS) study conducted in 2000 with the Technical Assistance Collaborative (page 5, EXHIBIT #4) recommended moving into a different type of managed care system for mental health. Three Service Area Authorities were the result of that study and were intended to make care more regional and responsive to communities.
- Ms. Roessman also discussed the collapse of mental health managed care in 1999 and the separation of children's mental health from the adult system in the 2003 legislative session, causing the collapse of the service area authorities' budgets to where a managed care model would not work. Ms. Roessman said these are representative of the many changes in the mental health care system in Montana and is a good reason why a new study needs to be conducted. There is a tremendous amount of change going on at the federal level as well that needs to be considered.
- 01:16:53 Referring to Ms. Fox's study proposal (page 7, Other States and Federal Models, EXHIBIT #4), REP. BARRETT asked if there is sufficient staff and/or resources available to pursue federal grants that are available for mental health. She said that Montana has lost out in the past because no one has been available to prepare grant proposals. **Deb Matteucci, Behavioral Health Program Facilitator, Department of Corrections (DOC) and DPHHS**, responded that in 2005 when the grant opportunity referenced by Rep. Barrett came up, it was open only to states. At that time, there was no staff resources available in the Addictive and Mental Disorders Division to write a grant application. Ms. Matteucci said that there is some grant applications being made but that there is not a concentrated approach by the State to secure federal grant dollars. She noted that Sen. Weinberg is aware of this and that one of the challenges faced is the lack of data that the grant applications require. Montana is missing this information because it is not collected in any sort of uniform fashion. She suggested that asset mapping would enable the State to identify resources,

identify areas in need, and seek out federal funding opportunities more aggressively.

- 01:21:59 REP. CAMPBELL's **motion passed** on a 9-2 on roll call vote (Attachment #4). SEN. BARKUS and REP. SALES voted no. (NOTE: SEN. STAPLETON's proxy was received via fax after the vote was taken.)
- 01:34:34 **Patty Jacques** introduced herself as the volunteer fund raiser coordinator for the Montana State Hospital (MSH). She said the 2005 Legislature approved HB 5, which authorized DPHHS to raise funds for a chapel at MSH. She distributed copies of a brochure (EXHIBIT #7) outlining the effort to raise the funding for the chapel, saying that \$40,000 of the \$350,000 needed has been raised through the volunteer efforts of herself and others.

TAPE 2 - SIDE B

VOTE SYSTEMS AND TVMT ADVISORY SUBCOMMITTEE

- 01:35:55 **Steve Eller, Computer Systems Manager, OLIT**, presented a Power Point slide show (EXHIBIT #8) explaining the planned schedule for upgrading the Montana House and Senate vote systems and displays. Mr. Eller reviewed the process, reported on the progress made to date, and discussed the steps remaining and time line for completion (January 2009).
- 01:43:26 SEN. GEBHARDT asked if the system will be compatible with future changes, such as computer voting and chamber automation. Mr. Eller said yes, that future needs have been anticipated and planned for.
- 01:44:08 SEN. COONEY asked who Mr. Eller and Mr. Trenk are consulting with regarding historical preservation requirements. Mr. Eller said that he has been consulting with Lenore Adams, Facilities and Purchasing Manager, LSD. Ms. Fox said that she would assume that consultations have taken place with the Department of Administration and State Architect, Tom O'Connell.
- 01:45:16 Mr. Trenk discussed in detail a draft copy of the system requirements. (EXHIBIT #9) He noted that the highlighted text in the document are requirements that House and Senate Legislators/Leadership need to make decisions on. He asked for a group of volunteer legislators to serve in a subcommittee that would work with his staff to make the necessary decisions. He said that most of the decisions could be handled through conference calls and would not take a great deal of time.
- 01:54:56 After discussion by the Council, REP. BERGREN appointed SEN. BARKUS, SEN. COONEY, REP. SALES, and REP. CAMPBELL to serve on the subcommittee. Mr. Trenk said the RFP would be out by December 1, 2007, and that he would contact the subcommittee members soon.

APPOINTMENTS

Appointment to National Conference of Commissioners of Uniform State Law (NCCUSL)

- 01:57:06 SEN. COONEY said it is statutorily required that Montana belong to NCCUSL. Montana has a certain number of members appointed to NCCUSL. Ms. Fox read a list of Montana's current NCCUSL Commissioners: Edwin Eck, Joe Mazurek,

James Nelson, Greg Petesch, and Bob Sullivan. SEN. COONEY provided copies of Montana NCCUSL Commissioner Appointments (EXHIBIT #10) and discussed the duties and requirements of NCCUSL. He said NCCUSL meets annually to discuss public policy issues and encourages all states to adopt the policies. Examples of policy put forth by NCCUSL are national uniform codes on notary law, service of process, and general nonprofit statutes.

SEN. COONEY asked that the Legislative Council consider appointing Mr. Garth Jacobsen as its next Commissioner and said that Mr. Jacobsen is highly qualified to act as a NCCUSL Commissioner. He referred the Council to Mr. Jacobsen's biography and professional credentials in EXHIBIT #10 and noted that Mr. Jacobsen is a member of the Montana Bar and has been very active in NCCUSL for a number of years. SEN. COONEY also disclosed that Mr. Jacobsen is Rep. Hal Jacobsen's brother.

02:03:41 The Council discussed the specifics of membership, specifically the distinction between the different levels of membership, including life time membership.

TAPE 3 - SIDE A

REP. HIMMELBERGER asked SEN. COONEY if he thought this matter should be a public process in which applications are solicited before an appointment is made. SEN. COONEY said he didn't know what process has been in the past but that it was his understanding that Legislative Council must make the appointment. He added that since the Commissioners serve with no pay, he wasn't sure any one would apply to be appointed.

02:06:37 REP. BERGREN and REP. HIMMELBERGER asked Greg Petesch to provide additional information. **Greg Petesch, Director, Legal Services, LSD,** explained that:

- this is statutorily-required entity over which Legislative Council has authority to appoint members;
- each state has one vote and all appointees from that state have to agree on how to cast its one vote;
- there is budget for commissioner's dues and travel expenses but no salary; and
- the budget is not sufficient to cover expenses for all of the commissioners so expenses are prorated among the commissioners, according to money available.

Mr. Petesch also explained the process of appointing members in the past and noted that the time commitment to serve on NCCUSL is substantial, saying that past volunteer members have resigned due to the time commitment.

02:11:06 REP. BERGREN asked Mr. Petesch if the last NCCUSL commissioner to be appointed was chosen after the position was advertised or if the Council simply made an appointment. Mr. Petesch said the last appointment was Jim Vidal and that Mr. Vidal had asked to be considered. Mr. Petesch said the Council asked him to first place a notice in the Montana Bar Association Newsletter to solicit letters of interest. A subcommittee reviewed the letters and made recommendations to the full Council.

- 02:12:07 SEN. BARKUS asked whose budget contains the funding for NCCUSL. Mr. Petesch said that money is appropriated to LSD for this entity. SEN. BARKUS asked for clarification that even though Mr. Jacobsen lives in Washington State, Montana would still pay for his expenses to attend NCCUSL events. Mr. Petesch said that is correct, assuming money is available. He said the commissioners are aware that the money is pro-rated among all of the commissioners traveling to that function.
- 02:13:35 REP. BERGREN asked if it would be agreeable to the Council to post a notice of the NCCUSL appointment with the Montana Bar Association and continue the discussion at the next Council meeting. SEN. BARKUS said while he appreciated SEN. COONEY's suggestion to appoint Mr. Jacobsen, he didn't think it was right to appoint someone in Washington to represent Montana on NCCUSL. SEN. COONEY said that he would like Mr. Jacobsen to know if he would be eligible or not to apply. SEN. BARKUS asked why Mr. Jacobsen would not apply to represent Washington. SEN. COONEY said he did not know that but that Mr. Jacobsen's past connection with NCCUSL has been through Montana.
- 02:16:19 SEN. COCCHIARELLA referred to EXHIBIT #10, page 2, and read some of the requirements for NCCUSL appointees. She thought that if an individual is qualified and willing to serve and to pay expenses, their residency should not be a limiting factor.
- 02:17:56 SEN. COONEY **moved** to direct Mr. Petesch to post an advertisement in the Montana Bar Association publication/website soliciting interest in the NCCUSL appointment.
- 02:18:52 REP. HIMMELBERGER asked Mr. Petesch if a subcommittee had been formed in the past to review applications. Mr. Petesch said yes and that after reviewing the letters of interest, the subcommittee made its recommendation to the Council.
- REP. HIMMELBERGER asked if SEN. COONEY would amend his motion to include the formation of a subcommittee. SEN. COONEY said that there is no time consideration at this time, that he would prefer to wait and see what kind of interest is generated by the notice, and that he didn't think his motion needed to be amended at this time. Mr. Petesch said the next NCCUSL annual meeting will be in August 2008 and that there is plenty of time to address this matter. He asked Council to allow him time to review the statutes and said he would report back to the Council. The Council agreed.
- 02:22:18 SEN. COONEY's **motion passed** on voice vote, SEN. BARKUS voted no.

Council on State Governments (CSG) Changes

- 02:22:54 Ms. Fox explained that CSG made changes to its committees and that appointments to the new committees must be made. Ms. Fox distributed a list of current appointments (EXHIBIT #11) and said it is Legislative Council's responsibility to make the appointments. She said because this year's meeting has already been held, immediate action is not necessary. REP. MCALPIN

asked to include Rep. Parker in any consultations made with leadership on recommendations. The Council agreed.

POLICY CONSIDERATION FOR LEGISLATIVE COUNCIL

- 02:25:03 REP. BERGREN explained that for the first time in many years, funding has been allocated for members to attend the National Conference of State Legislatures (NCSL) and CSG meetings and said the question is how to select who gets the funding and what criteria should be used to make the selection. Ms. Fox referred to page 2 of EXHIBIT #12 - *Policy Considerations for Legislative Council* and said that the process, or lack of, for obtaining funds to attend NCSL/CSG meetings was an issue this past summer because there were so many funding requests from legislators to attend these meetings. Ms. Fox said that there is not a clear policy for allocating the fund, therefore she passed the requests on to House and Senate leadership. She suggested that a policy be adopted in order to avoid a similar situation in the future. Ms. Fox said other areas for policy discussion are funding requests for interim committees, as heard earlier in the days' meeting, and also for use of the legislator computer stipend for the 2009 Legislature.
- 02:27:31 SEN. COONEY agreed that criteria is needed for deciding what legislators are granted funding assistance to attend NCSL and CSG meetings, as well as other meetings. He said that he is constantly getting funding requests and that he would like to develop a formal policy as quickly as possible.
- 02:30:37 SEN. COCCHIARELLA recalled that this has been an issue before previous Councils and thought that recommendations had already been established. She said that there has not been good followthrough on Council's part and suggested that a subcommittee be formed to research past Council records to find the recommendations or to reformulate recommendations.
- 02:31:56 Mr. Petesch said that this is the first time in a long time that there has been money available for this type of activity and that SEN. COCCHIARELLA was correct about a travel policy being adopted by the Council in the past. He said that past Council minutes should have record of the policy.
- 02:32:40 SEN. HARRINGTON recalled that until the 1980s, funding was almost always available to legislators to attend these types of meetings.
- 02:34:37 REP. HIMMELBERGER supported SEN. COCCHIARELLA's suggestion of researching this through a subcommittee. He suggested that the subcommittee do the research and bring back recommendations to the next Council meeting.
- REP. BERGREN said he has been bombarded by requests and that he needs to have something in place now. TAPE 3 - SIDE B
- 02:42:04 SEN. COCCHIARELLA suggested that the matter be taken up as part of the strategic planning meeting scheduled for the afternoon. REP. BERGREN asked if policy decision can be made in a planning session. Mr. Petesch said that the

meeting had been properly noticed and so long as any votes were properly recorded, any action taken by the Council would be defensible.

02:45:24 REP. BERGREN said the matter would be taken up in the strategic planning meeting.

LSD REPORT AND UPDATE

02:45:49 Ms. Fox reported that the Legislative Branch merit pay project is still in progress, Regarding TVMT, HCTV and LSD are in negotiations with Bresnan and other companies regarding interim committee streaming but all are in general agreement that the bulk of the money will be saved for broadcast of the 2009 Legislative Session in order to expand coverage from 20 to 30 cities. Ms. Fox asked if the Vote System Subcommittee would be willing to help prioritize the communities to which broadcasting should be expanded. Ms. Fox said the current contract will go through the 2009 session.

02:47:27 REP. CAMPBELL asked if discussion have been held with NEMONT. Ms. Fox said not to her knowledge but thought that perhaps NEMONT may be represented through another entity, such as MidRivers or VisionNet. She said that she would find out and make certain they are included.

02:48:15 SEN. COCCHIARELLA reported that Ms. Fox's performance evaluation is being considered and the four Council members (REP. CAMPBELL, REP. HIMMELBERGER, SEN. BARKUS, and SEN. COCCHIARELLA) who conducted the performance evaluation have unanimously agreed that Ms. Fox has satisfactorily completed the probation period and should receive a pay increase accordingly. SEN. COCCHIARELLA **moved** to approve a pay increase to reflect the pay band level anticipated by the hiring committee for Ms. Fox in recognition of her completion of the probation period and that it be retroactive to July (when the probation period ended). SEN. COCCHIARELLA said that she would provide copies of the pay matrix if requested. She asked for comment from the other Council members. SEN. BARKUS said reviews reflected by staff and subcommittee reflect a very satisfactory evaluation. The **motion passed** on a unanimous voice vote.

PUBLIC COMMENT

02:53:14 Mr. Petesch reminded that codes have been shipped and available downstairs for \$10. He reported that CD-ROMS have not yet been shipped because of vendor issue but it is hoped that the issue will be resolved soon.

02:54:05 SEN. BARKUS said he had had difficulty using the credit card payment system. Mr. Petesch said he would look into that.

02:54:30 REP. CAMPBELL asked about the \$140 million property tax payback issue and said that she would like clarification of legislative intent (HB 9, 2007 May Special Session). SEN. COONEY said the question that has been raised is the possibility of whether the trigger occurred the way the legislature intended it to. He asked if staff could be directed to determine legislative intent.

- 02:56:28 REP. HIMMELBERGER said that he attended the recent Revenue and Transportation Interim Committee meeting where this issue was originally brought to light. He said that in his opinion, the law is quite clear and that it seems to be more of an issue of interpretation by the Executive Branch. He said he was unsure of what the Council could do and asked Mr. Petesch to comment. REP. BERGREN said that the intent could be polled but agreed that the language of the law is clear and that the argument as about a technicality in the trigger mechanism and who determines it. He also asked Mr. Petesch to comment.
- 02:58:16 Mr. Petesch said he has looked at this issue briefly and that it appears to him that there are two issues of statutory construction involved: whether an appropriation was made because the trigger was met and whether the tax rate was reduced because a trigger was met. The language in HB 2 is different in terms of making the appropriation than the trigger language reducing the tax rate. Legislative intent is only looked in construing a statute only when a statute is ambiguous. In terms of the reduction of tax rate, Mr. Petesch said that he told fiscal analysts that he did not see any ambiguity in the language, therefore the plain meaning of the language should be applied. However, the Executive Branch decision will stand unless it is challenged legally and it appears that is unlikely. The legislative remedy is to address this in 2009 or sooner, in the event of another special session. The statute could be amended to retroactively apply the clarification. At this point, it is a pure question of statutory construction because there is no ambiguity in the language.
- 03:00:23 SEN. COCCHIARELLA said she wanted it to be clear that it was Legislative Fiscal Division questioning whether or not the trigger had been met. The intention of the Legislature is that it intended that the give back would occur. This was not an Executive Branch decision to not want to give it back. REP. HIMMELBERGER said that he was not implying that the Executive Branch did not want the give back to occur but that there are some differences in interpretation and that is where the controversy occurred. He said that this will be audited by the Legislative Audit Division and will be resolved by the end of the year. The Revenue and Transportation Committee didn't object to the money being given back, the concern was if the letter of the law was being followed.
- 03:03:15 The Legislative Council recessed, to reconvene after lunch at the Barrister Bed and Breakfast for a strategic planning session.

STRATEGIC PLANNING SESSION

The Legislative Council reconvened at 2 p.m. at the Barrister Bed and Breakfast for the strategic planning session.

NCSL/CSG Policy Consideration

REP. BERGREN **moved** that for temporary policy, for the appropriations for NCSL and CSG for 8 legislators per year per organization, the approving

authority for 2 legislators per organization is the leader of the caucus. The motions was approved on a 9 - 0 voice vote, with SEN. STAPLETON, REP. CAMPBELL, and REP. MCALPIN not voting.

The Legislative Council conducted a strategic planning session through 5 p.m. on September 25, reconvened at 9 a.m. on September 26, and adjourned at 1:30 p.m. A summary of the results of the planning session is attached (appendix). The next Council meeting is scheduled for November 27, 2007, in Helena.

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