

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

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MINUTES

April 1, 2008

Room 102, 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. DENNIS HIMMELBERGER, Vice Chair
SEN. VICKI COCCHIARELLA
SEN. KELLY GEBHARDT
SEN. DAN HARRINGTON
SEN. COREY STAPLETON

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

MEMBERS EXCUSED

REP. BOB BERGREN
SEN. GREGORY BARKUS
SEN. MIKE COONEY

STAFF PRESENT

Susan Fox, Executive Director, Legislative Services Division, (LSD)

Greg Petesch, Director, Legal Services, LSD

Karen Berger, Financial Services Manager, Finance and Human Resources Office, LSD,

Dawn Field, Council Secretary, LSD

Hank Trenk, Director, Office of Legislative Information Technology, Legislative Branch

Gayle Shirley, Legislative Information Officer, Legislative Branch

Todd Everts, Staff Attorney, Legislative Environmental Policy Office, LSD

Steve Eller, Computer Systems Manager, Office of Legislative Information Technology

AGENDA & VISITORS' LIST

Agenda, Attachment #1.

Visitors' list, Attachment #2.

COMMITTEE ACTION

The Legislative Council:

- approved the January 29, 2008, meeting minutes, as written;
- approved the appointment of Sen. Aubyn Curtiss to replace Sen. Bill Tash on the River Governance Committee;
- authorized preparation of a comprehensive funding proposal for TVMT;
- authorized preparation of information for review regarding changes to the interim committee process;
- approved requesting a joint meeting between the Legislative Audit Committee, the Legislative Fiscal Committee, and the Legislative Council;
- voted to have the Rules Subcommittee begin drafting of rules to allow changes to be made regarding signing off on session minutes;
- voted to adopt a new format for signing off on session minutes by committee chairs;
- voted to direct staff to obtain a cost estimate for changing to a per diem-based reimbursement, to be presented at the June meeting; and
- authorized staff to prepare an estimate of what the cost would be to local and state government to change the unreceipted lodging rate and meal reimbursement rates.

CALL TO ORDER AND ROLL CALL

00:00:04 REP. HIMMELBERGER, acting as presiding officer, called the meeting to order at 8:03 a.m. SEN. COCCHIARELLA moved to approve the January 29, 2008, minutes, as written. The **motion passed** on a unanimous voice vote.

Introduction of New Staff

00:01:36 Hank Trenk, Director, Office of Legislative Information Technology (OLIT), introduced Dale Gow, newly hired as the Legislative Branch Information Security Officer in OLIT. Todd Everts, Director, Legislative Environmental Policy Office (LEPO) introduced Hope Stockwell as the new research analyst in that office.

Update on Fire Suppression Interim Committee

00:03:01 **Susan Fox, Executive Director, Legislative Services Division (LSD)**, provided a brief update on the activities of the Fire Suppression Interim Committee (FSIC). Ms. Fox reported that the FSIC subcommittees (Infrastructure, Contracting, and Wildland Urban Interface) have finalized their

recommendations and will be presenting the findings at public hearings to be held around the state over the next several months. Discussions will be held with local, state, and federal fire suppression entities, and legislators are invited to attend. The FSIC hearing schedule is listed on the Committee webpage.

Sen. Tash resignation from River Governance Committee, Replacement appointed

00:04:27 Ms. Fox announced that Sen. Bill Tash has resigned from the Legislative Council on River Governance. SEN. COCCHIARELLA **moved** to appoint Sen. Aubyn Curtiss as SEN. TASH's replacement, saying that Sen. Curtiss' prior experience and expertise make her the ideal candidate to carry on SEN. TASH's work. The **motion to approve passed** on a unanimous voice vote.

Legislator Orientation Update

00:06:06 Ms. Fox provided an update on legislator orientation, noting that it will include training for new and returning legislators (EXHIBIT #1). She said that Rep. Norma Bixby has requested that cultural sensitivity training be provided, either at orientation, or during the legislative session.

00:15:50 REP. SALES asked if the National Conference of State Legislatures (NCSL) and Council on State Governments (CSG) meeting dates will conflict with the orientation dates. Ms. Fox said there is a conflict but that the option of changing the date is available.

00:16:42 REP. MCALPIN suggested inviting legislative alumni to the Thursday night dinner and said that REP. GALLIK has a list of past legislators.

Legislative Session Calendar

00:17:44 Ms. Fox discussed the 2006 legislative session calendar, including options for Saturday sessions and transmittal dates (EXHIBIT #2).

00:19:32 SEN. COCCHIARELLA said it was good to have a calendar in place to use as a base, but said it should be subject to the approval of leadership, once elected.

POLICY CONSIDERATIONS FOR LEGISLATIVE COUNCIL

Interim Committee Review of Legislation

00:20:21 Ms. Fox reviewed the procedure for review, request, and drafting of agency legislation, and noted that the Rules Subcommittee is considering changing the deadline for preintroduction of a bill (EXHIBIT #3). She reminded the Council that it is responsible for review of all proposed legislation that comes from the Office Budget and Program Planning (OPBB) and the Governor's Office. She said such legislation would likely be presented at the Council's September meeting.

00:24:56 SEN. COCCHIARELLA said that some of the items discussed by Ms. Fox cannot be implemented until new rules are passed. **Greg Petesch, Legal Director, LSD**, said that at different times in the past, the Council and caucus leaders have agreed to enforce bill request limits prior to the rules being adopted, and that the Council can direct staff to act as if the rules are going to be changed, basically retroactively.

Responses from Interim Committee Chair and Staff Regarding Interim Committee Concerns

00:27:04

Ms. Fox said that this discussion is a continuation of her January 24, 2008, memorandum regarding interim committee concerns. She said the responses received by committee chairs and staff could be used as the basis for rules to change interim committees and that the decisions could help Ms. Berger develop budget proposals. Ms. Fox said that issues, such as budgeting for more out-of-town meetings, more committee members, more subcommittees, or more staff, have been put forth as options.

As a point of interest, Ms. Fox discussed an article written by Eugene Tidball, the Legislative Council's first Executive Director (1957), on the history of Montana's Legislative Council. Ms. Fox said that while reading it, it struck her as very interesting that the issues the first Councils struggled with are the same issues the more recent Councils have also struggled with. She read an excerpt from the article (EXHIBIT #4). Ms. Fox said that she would provide copies of the article to Council members.

00:31:39

Ms. Fox discussed the interim committee issues of concern:

- Meetings held in the state capitol. Ms. Fox suggested proposing a limit or establishing some type of formal guidance to be used when scheduling out-of-town meetings. She said that budgetary issues for LSD staff and executive branch staff are considerations to be discussed. Ms. Fox read several of the responses received back from interim committee chairs.
- Public comment. Ms. Fox proposed establishing more specific guidelines, such as allowing the chair to decide at which time public comment would be allowed, the duration and limit of the testimony, and to ensure that public testimony remains pertinent. She said that interim committees have to provide for the constitutional right to participate, but that there can be guidelines.
- Election of officers for interim committees. Ms. Fox said provisions to require that the chair to switch parties and chambers could be established, and read several of the responses received.
- Statutory language for appointment of subcommittee chair and members of subcommittees, including nonlegislative members. Ms. Fox said this has not been budgeted for or carried through. She said that if non legislative members are being appointed, there are legal requirements that have to be met.
- Subcommittee issue. Ms. Fox said that she would like the Council to consider establishing specific guidelines for establishing subcommittees. She read several of the responses from interim committees, and said that staff resources is a primary problem.
- Claim for reimbursement. Ms. Fox said that Karen Berger, Financial Services Manager, will enforce the policy of refusing claims that do not follow the guidelines. She reviewed a process that would have staff review claims for certain things: accuracy of dates and times; compliance with policy and state law; or extenuating circumstances. She said that if a legislator notifies the Finance Office staff or committee staff of a problem

or request, it could likely be dealt with at that level, but that if not, the conflict would be decided by the committee's presiding officer.

- 00:44:12 SEN. COCCHIARELLA said that it is important that legislators know the process but it is also important that staff doesn't approach this as a policing matter. She said that legislators have sometimes felt insulted and that staff has overstepped bounds. She suggested that staff consult the committee chair first, before declining an expense claim, and added that it is important to keep good relations between staff and legislators.
- 00:45:56 SEN. GEBHARDT agreed that it would be good to have a policy to refer to, adopted by the Council, so that there is a written document for the record.
- 00:46:40 Ms. Fox said that LSD staff has requested training for interim committees, chairs, and staff, at the beginning of the interim. She said that the *Legislator Guide to Interim Participation* is outdated and that she is hoping to update it.
- 00:47:19 Ms. Fox said that the opinion was expressed that there were too many interim committee studies assigned this interim. Ms. Fox said that more information on this will be presented to the Council at the June meeting. She said that proxy voting was also mentioned as an issue that legislators would like to have more information on.
- 00:49:07 SEN. GEBHARDT agreed that proxy voting is a problem and discussed instances in which problems have arisen on the State Administration and Veterans' Affairs Interim Committee (SAVA). He said that some members skip meetings because they know their vote can be counted and recalled a meeting at which one committee member was carrying five proxy votes. He said that if a legislator commits to serving on an interim committee, he or she should plan to attend all meetings. He said that because of the difficulty the SAVA committee had, the Council was requested to provide guidance. Ms. Fox said there is a rule on proxy voting but that it is not very specific.
- 00:51:19 REP. HIMMELBERGER said, regarding past selection of presiding officers for interim committees, that there have been challenges and that in his opinion, partisan politics entered in to the process. He suggested creating a statutory committee chair rotation system and asked for discussion.
- 00:52:46 REP. CAMPBELL asked if the current system is rotated on a voluntary basis. REP. HIMMELBERGER said that it is his understanding that there is nothing in statute on the selection of committee chairs. Mr. Petesch said the tradition of the Council has been that the chair rotates by chamber and by party, but that it has not always been followed. He said REP. HIMMELBERGER was correct in that there are no rules or statutory guidelines governing the selection of committee chairs.
- 00:56:02 SEN. GEBHARDT pointed out that there are twice as many representatives as senators, and said that he did not see any reason why committees have to be evenly divided between the house and senate. He agreed that institutional

memory has been lost and said he would prefer having a written policy to direct the process, rather than statutory language.

00:58:51 REP. BARRETT said that it may not be realistic to keep the interim committees at their current size because of the rapid growth in the executive branch. She said more and more time and effort is being required to provide the necessary agency oversight and that it may become necessary to expand the size and budgets of interim committees

BREAK

2009 BIENNIUM PREPARATION

Update on General Fund Revenue

01:16:26 **Terry Johnson, Principal Fiscal Analyst, Legislative Fiscal Division (LFD)**, presented a PowerPoint general fund revenue update, discussing the current status of HJ 2, selected revenue source data, economic trends, and a summary/watchlist (EXHIBIT #5). He also distributed copies of a detailed report presented to the Legislative Fiscal Committee (LFC) on March 6, 2008 (EXHIBIT #6).

Council Questions

01:47:01 REP. MCALPIN asked, regarding an article on asbestos lawsuits filed against W. R. Grace, if the state is covered. Mr. Johnson said that he has not seen the article referenced by REP. MCALPIN and could not comment. REP. MCALPIN asked for a projection on oil production trends. Mr. Johnson said that he has spent a great deal of time and resources to develop a reliable method for oil production. He said that he has broken down Elm Coulee Field well by well and found it to be extremely accurate. He said that he used the information to create aggregate information on that field, but has not created that level of detail for other fields. He said that for older fields, aggregate information is often reliable enough to form projections. REP. MCALPIN asked for a projection for the upcoming biennium. Mr. Johnson said his staff is just beginning the revenue estimate process for the 2011 biennium and that he believes there will be a fairly accurate oil production forecast, but cautioned that an unusual event in an oil field could complicate the process.

01:50:32 SEN. COCCHIARELLA said she is a member of the Multi-state Highways Transportation Agreement Group, and asked if Mr. Johnson considers federal transportation funding and related transportation issues, and the possible impacts to Montana, when formulating his report. Mr. Johnson said that the information is considered in a number of ways, such as the highway gas tax revenue. He said there is a definite softening in gas tax revenues and predicted this would soon be the case with diesel tax revenues also. Other areas of the economic base can increase understanding of overall general fund revenue, such as the trucking industry, and its contributions to individual and corporate income tax revenues. He said that a significant slow down in one industry can affect the general fund revenue stream.

01:53:23 SEN. COCCHIARELLA said that the United States Congress is considering reauthorization of the highway funding bill and asked how that could impact state

legislators' budget deliberations. Mr. Johnson said that overall employment in Montana drives wage income and to the extent that the federal highway program has direct bearing on construction activity in Montana, it could impact Montana's employment levels and revenue. He said that Greg DeWitt, Fiscal Analyst, LFD, will be studying the details during the next budget analysis cycle.

- 01:56:06 SEN. COCCHIARELLA asked if the information is available now. Mr. Johnson said he didn't believe it was, but would have Mr. DeWitt contact SEN. COCCHIARELLA.
- 01:56:33 SEN. COCCHIARELLA said that the Multi-state Highways Transportation Agreement Group is meeting on June 27 in Helena. She said legislators from ten states will be attending and invited all Montana legislators to attend.
- 01:57:16 REP. BARRETT referred to the natural resources taxes and royalties (page 4 - EXHIBIT #5) and asked if the numbers included state lands. Mr. Johnson said that revenues from state lands were not included because those revenues go into a state special revenue account for schools (the guarantee account for the support of public schools). REP. BARRETT referred to the last page of EXHIBIT #5 and asked why the Avista and PPL Lease litigation proceeds will not be deposited into the state special revenue account, given that state lands were involved in the dispute. Mr. Johnson explained that the \$8 million settlement will be deposited into the guarantee account, but that if there is more money available in that account, then the general fund that is used to support schools is decreased, so there is a like amount of reversion from the general fund. If there is \$8 million more in the guarantee account, there will be \$8 million less taken from the general fund.
- 01:59:37 REP. HIMMELBERGER referred to slide 13 - oil production decrease, and slide 11 - differential between west Texas and Montana crude prices. He asked if Montana is having a problem getting its oil to the pipelines. Mr. Johnson said no, but that he is monitoring the situation to try to determine what is causing the differential.
- 02:02:32 RE. HIMMELBERGER referred to slide 10 - capital gains income and steady increase - and asked if SB 407 impacted this number. Mr. Johnson said he could not answer that because the tax return information provided to LFD is aggregate information only, due to confidentiality requirements. He said he has no way to make a determination without more detailed tax payer information.

Review of Budget Preparation Process

- 02:04:35 **Karen Berger, Financial Services Manager, Finance and Human Resources Office, LSD,** reviewed the budget preparation process and said that she is requesting input from the Council on new ideas or suggestions, or strategic planning concerns to be included in the budget process.
- 02:07:08 Ms. Berger referred the Council to EXHIBIT #7 - Program 20 - Legislative Services Division, and Program 21 - Interim Committee and Activities, and said that a detailed breakdown of the current status of the budgets are displayed.

02:07:59 Ms. Berger asked that the Council provide some direction as to what it would like included in the budget and said that staff would then flesh out the requests and provide detailed information at the June meeting. She said that LSD staff is identifying needs for the next biennium and that she may have preliminary numbers available in June. She said that she will have to have final approval for the 2011 budget at the September meeting, including the Computer System Planning Council budget.

Potential Budget Proposals

02:10:10 Ms. Fox reviewed potential 2011 biennium budget items (EXHIBIT #8), which included a discussion of TVMT. She provided a TVMT Update (EXHIBIT #9) from Stephen Maly, and said it may be time to provide more specific policy and guidance for the TVMT program. She reviewed Mr. Maly's pursuit of grant funding for the project, but said that state funding is needed also, and asked that the Council indicate if it is interested in continuing its funding for TVMT. SEN. COCCHIARELLA **moved** to have Ms. Fox prepare a comprehensive funding package for TVMT, for Council review at the June meeting.

02:14:19 REP. MCALPIN asked how much tax revenue the lobbyist fee generates. Ms. Berger said it provides about \$55,000 per biennium. REP. MCALPIN asked what total cost of the TVMT funding proposal is. Ms. Fox said that she doesn't have a firm number at this time, and is hoping to develop a more comprehensive proposal. She said she will work to make the numbers as realistic as possible and that she will offer a tiered proposal.

02:15:37 SEN. STAPLETON asked what making video streaming available to state employees would entail. He referred to a recent newspaper article about the availability of computer games on state employee computers and asked if streaming would have to be standardized, as the games issue seems to be. Ms. Fox said the game issue lies with hardware issues, but that video streaming is beneficial to state employees because they can remain at their work station while monitoring issues of importance. She said the real issue is bandwidth availability and cost. Ms. Fox said in her opinion, video streaming is win-win situation because it would allow legislative proceedings to be broadcast to state employees and citizens alike, many of whom reside in remote areas of the state.

02:18:54 SEN. STAPLETON asked SEN. COCCHIARELLA to clarify her motion. SEN. COCCHIARELLA said her motion is for Ms. Fox to prepare a detailed proposal for the Council to consider at its June meeting. SEN. STAPLETON said that he would support motion but expressed his concern that it not open the door for state computer use for other purposes, such as games. He said that he does support TVMT but is concerned about the recent controversy regarding having computer games on state computers.

02:23:02 The **motion passed** on a unanimous voice vote.

02:23:17 Ms. Fox said that she would make sure the proposal is compartmentalized so that the Council can pick and choose what it thinks is most appropriate. She said

she would like a steering committee to help guide the process because of the significant decisions that have to be made.

- 02:24:41 Ms. Fox discussed the Computer System Planning Council and decisions for consideration for list of potential budget/legislation items (page 2, EXHIBIT #8).
- 02:26:41 Ms. Fox discussed funding for Pacific Northwest Economic Region (PNWER), Legislative Council on River Governance (LCRG), National Conference of State Legislatures (NCSL), and Council of State Governments West (CSG-WEST) - pages 2 and 3 of EXHIBIT #8.
- 02:30:01 REP. BARRETT asked for information on how the executive branch handles travel and participation in these types of groups. Ms. Fox said she didn't have that information but would find out. REP. BARRETT said she would like to have a comparison of tax dollars spent for executive travel, versus dollars spent for legislative travel.
- 02:31:10 Ms. Fox discussed Districting and Apportionment - page 3, EXHIBIT #8. She noted that staff attendance at NCSL meetings on this issue is a very valuable tool.
- 02:34:06 REP. HIMMELBERGER said at some point, he would like to have a discussion on the funding component of redistricting and apportionment. Ms. Fox agreed that it would be a good policy discussion to have and said that it could be a future agenda item. REP. HIMMELBERGER said that he would like that.
- 02:38:45 SEN. STAPLETON agreed, saying that in his opinion, the entire process of the last cycle was not handled properly. He suggested that, in the next cycle, the Legislative Council consider creating recommendations and/or boundaries for the Commission to abide by.
- 02:42:03 Ms. Fox discussed interim committee budgets - pages 3 and 4, EXHIBIT #8. She said she would appreciate input from the Council on issues such as committee size, out-of-town meetings, establishing new committees or combining existing committees, and increasing the level of participation.
- 02:45:50 SEN. COCCHIARELLA **moved** to have Ms. Fox prepare information for review regarding changes to the interim committee process.
- 02:46:51 SEN. COCCHIARELLA asked for information that would show how adding members would affect the a committee's bottom line cost, an average cost for an out-of town meeting, and the cost of adding an entire new interim committee with staffing resources and costs included. She asked that interim work load issues also be considered, including space issues for potential new staff, and the varying degrees of how comprehensive interim studies are.
- 02:50:15 REP. MCALPIN asked if the Strategic Planning session discussions of maintaining standing committee assignments through an interim in lieu of interim

committee assignments is still under consideration, and if so, if it could be part of SEN. COCCHIARELLA's motion.

- 02:51:26 SEN. GEBHARDT said that he thought the Senate Natural Resource Committee should be brought back for the 2009 session, in light of global warming issues, and said that water issues could be included in that committee.
- 02:51:50 REP. BARRETT said she agreed with Ms. Fox's discussion of combining Water Policy and Local Government Interim Committees, because land use and water use are so intertwined.
- 02:53:04 SEN. COCCHIARELLA said her motion is broad and intended to be all-inclusive at this point. The **motion passed** on unanimous voice vote.
- 02:53:20 Ms. Fox said that standing committees is a responsibility of Legislative Council and that the Council can look at this issue, and that it could be referred to the Rules Subcommittee for further examination. She said that she will have information prepared for a future meeting.
- 02:54:45 Ms. Fox discussed several Legislative Council strategic planning initiatives - page 4 of EXHIBIT #8.
- 02:55:56 Ms. Fox said a last issue in need of discussion is merit pay. She reviewed that HB 14 provided for performance pay and moving people up. Managers and supervisors have been meeting on a regular basis but, Ms. Fox said, there has been a certain amount of cynicism from staff on why merit pay should be pursued if no funding is attached. She said it would be helpful to know the Council's position on merit pay and if it plans to support funding for merit pay.
- 02:58:56 SEN. STAPLETON asked if legislative leadership would have input on merit pay for legislative staff. Ms. Fox said that legislative input could be an element, if the Council desires. SEN. STAPLETON asked for information on how the other branches gather input for employee merit pay. Ms. Fox said she would find out.
- 03:01:06 SEN. COCCHIARELLA said Legislative Council did adopt a position of support for merit pay. Ms. Fox said that she has difficulty documenting that and would like the Council to reaffirm its support for merit pay. She said that LSD has been working hard to design a system for merit pay but feels the plan cannot move forward until Legislative Council provides direction. REP. HIMMELBERGER asked if it could be on a future agenda. Ms. Fox said that it could, and that she hoped to have manager's reports available in the future also.
- 03:04:40 SEN. COCCHIARELLA discussed the situation of the legislative branch having "three heads" of LSD, LFD, and Legislative Audit Division (LAD). She noted that a new Auditor must soon be selected by the Legislative Audit Committee to replace Scott Seacat, who is retiring. She said that the strategic planning session discussion has included the fact that the legislative branch is not under the direction of one person, as other branches are. She said this has created problems and, at times, has created "a three-headed monster", with no one

person being in charge. SEN. COCCHIARELLA said this is an opportune time to make some changes and that the issue falls under merit pay, and how it will be handled. She said that she would like the Council to take immediate action to notify the Legislative Audit Subcommittee Search Group of Legislative Council's concerns and to consider the need for creating one leadership position to oversee all three divisions of the legislative branch.

- 03:09:18 REP. HIMMELBERGER asked Mr. Petesch to comment on the best avenue for addressing SEN. COCCHIARELLA's comments. Mr. Petesch agreed that the Council has no authority over the Legislative Audit Committee or the Legislative Finance Committee, but said SEN. COCCHIARELLA is proposing that the Selection Subcommittee for Legislative Audit Committee be apprised that Legislative Council wishes to have discussions considering restructuring of the legislative branch, and to take the restructuring considerations into account when making its decisions. He said that certain considerations, such as legislative pay and information technology staff and equipment, must be agreed to by all three divisions, but that as a general rule, the statutes treat the divisions as autonomous entities.
- 03:12:20 REP. HIMMELBERGER asked how far the selection process has gone and if there is time for Legislative Council to act. Ms. Fox said there is time to act, but that she is not sure what impact could be had, considering the existing statutory language. SEN. COCCHIARELLA asked Council members to think about this over the lunch break and asked to continue discussion later in the meeting. She said her preference would be to have the lead person hired by Legislative Council because legislative leadership serves on Legislative Council, and that the LAC and the LFC be placed on another level. She said she does not want the LAC to hire another person on the presumption that the person will be the "top dog at that end of the building", and that she is asking that the LAC Search Subcommittee give consideration to and discussion of restructuring as part of the process when offering someone the audit position.
- 03:15:42 SEN. STAPLETON agreed, and said that because all three directors have very important roles and make significant decisions, he has been of the opinion that legislative leadership should have a role in hiring these key positions. He said it has amazed him that so little is passed through legislative leadership during an interim and that he would like to see that changed.
- 03:19:30 REP. BARRETT said that in preparing for the Council meeting, she read a document provided in the mailing that listed the Council's statutory duties. She read aloud four duties that pertained to Legislative Council's interaction and responsibilities to the other two legislative branch committees. She said that after reading through the document, she is of the opinion that all three committees should be meeting. Ms. Fox said that she has no recollection of this being done in the past. Mr. Petesch said that at one point in time, the Legislative Council did approach the LAC and the LFC to create a management committee. That committee met only a few times because there was no statutory authority for it to make decisions. He said the Legislative Council may create a proposal, but unless the LAC and LFC approve the proposal, it can go nowhere.

- 03:22:46 REP. BARRETT **moved** to request a joint meeting between the Legislative Audit Committee, the Legislative Fiscal Committee, and the Legislative Council, and that meetings take place once an interim to discuss the flow of the legislative branch. REP. HIMMELBERGER asked if the meeting would include all committee members, or just selected members from each of the respective committees. REP. BARRETT said her motion was for the entire membership of all three committees.
- 03:24:41 SEN. COCCHIARELLA said that it would be a good idea to have agenda items in place, such as the ones mentioned by REP. BARRETT. REP. BARRETT said the agenda could also include items suggested by the other committees.
- 03:25:39 REP. BARRETT asked if the members would be able to submit reimbursement claims for attending. Ms. Fox said each committee budget would have to pay its members, but that the meeting could be scheduled to coincide with other meetings in order to save on expenses.
- 03:26:58 The **motion passed** on a unanimous voice vote.
- 03:27:27 Ms. Fox said she has read several documents about the history of the legislative branch and that there have been reorganizations of the branch from time to time. She said a joint subcommittee of the three major committees could be formed to explore the idea and that she would research the issue further, if desired.

Potential Legislation for Legislative Council Sponsorship

- 03:28:38 Ms. Fox referred to the list for potential legislation and discussed each of the proposals (EXHIBIT #10). She passed out copies of SB 37 regarding submission of the legislative branch budget (EXHIBIT #11). She said that Jon Moe, Fiscal Analyst, LFD, would discuss the proposal to revisit fiscal note laws in the afternoon portion of the meeting.
- 03:31:35 Ms. Berger discussed concerns related to practices and the propriety of some of the practices that occur in the first few weeks of the session. Ms. Berger provided background information on the issues and discussed the general issues, including two possible solutions (EXHIBIT #12).
- 03:37:10 REP. MCALPIN asked what happens if the excess funds from the previous feed bill aren't spent. Ms. Berger said the leftover funds are used to pay the expenses of the next legislative session and that the charges are reversed, once the feed bill from the current session is authorized. After that occurs, the funding reverts to the previous fiscal year.
- 03:39:31 REP. HIMMELBERGER asked Mr. Petesch if state law has been violated by doing things the way they have been done in the past few sessions. Mr. Petesch said the authority to do what has been done is not as clear as it could be. REP. HIMMELBERGER said that clarity and guidance are needed. Ms. Berger said that this issue will become acute in January 2009, because the existing feed bill money will not cover January's feed bill expenses. REP. HIMMELBERGER said at the very least, the language needs to be clarified. Mr. Petesch said this

involves the drafting of the feed bill, which authorizes expenditures for the planning for the succeeding legislature. He said that language could be added to cover "the commencement of and payment of operations for the succeeding session, until the next feed bill is passed". Mr. Petesch said another problem is that the feed bill is frequently held up by new legislators who are anxious to display their fiscal responsibility. SEN. HARRINGTON commented that in the past, no checks were issued until the feed bill was passed, which caused problems.

03:45:11 REP. BARRETT said this issue would be an appropriate issue to discuss with the LFC and LAC, and that education on the importance of this issue would eliminate the problem. SEN. GEBHARDT **moved** to have staff draft a bill proposal that would address funding of first 30 days of a legislative session and put authorization of the funding in code.

03:47:58 After discussion by the Council, SEN. GEBHARDT withdrew his original motion and **moved** to draft proposed language to address wording authority to spend the money and the other to address how the funding would be placed in the bill. The **motion passed** on a unanimous voice vote.

LUNCH BREAK

04:58:51 REP. HIMMELBERGER called the meeting back to order at 1:01 p.m.

Fiscal Note Study from 2005-2006 Interim

04:59:13 **Jon Moe, Fiscal Analyst, LFD**, reviewed the efforts of the 2006-06 Fiscal Note Work Group (EXHIBIT #13) and updated the Council on the options implemented to date (highlighted in orange). He said that copies of SB 66 to revise fiscal notes were in the meeting packet (EXHIBIT #14). Mr. Moe also provided copies of the *Sponsor's Rebuttal to Fiscal Note* form, created in SB 66 (EXHIBIT #15).

05:10:03 REP. BARRETT asked why fiscal notes are not prepared in conjunction with the corresponding bill draft. Mr. Moe said that the process allows for fiscal notes to be requested at the beginning of session, with the exception of preintroduced bills. REP. BARRETT thought it would be more efficient to prepare the fiscal note earlier in the drafting process and asked if doing so would require a statutory change. Mr. Moe said it would not, that an agency can prepare a fiscal note at any point in the drafting process but that the official request for a fiscal note doesn't come until leadership makes the request. SEN. COCCHIARELLA said it makes sense to wait to prepare a fiscal note, in the event the bill is never introduced.

05:13:27 Ms. Fox discussed information compiled from other states relating to annual and even-year sessions (EXHIBIT #16) and Montana's constitutional requirements regarding legislative sessions (EXHIBIT #17). Ms. Fox discussed Montana's legislative session history and discussed several scenarios that could require statutory or constitutional changes. She said that changes and adjustments would have to be made to current practices and procedures, should changes be made. REP. SALES asked what the final vote was for the 1981 bill. Ms. Fox said that she would try to find out. SEN. HARRINGTON said it was his recollection that it was the lobbyists who pushed to return to biennial sessions.

- 05:35:26 REP. SALES said that he would support having even-year legislative sessions for many reasons, such as being able to serve on an interim committee and having time to acclimate before a legislative session. He said he thought there would be public support for the idea and asked that it be fleshed out for further consideration.
- 05:37:05 REP. BARRETT said that there is merit to the idea of annual sessions also and supported additional research into the issue.
- 05:39:03 REP. HIMMELBERGER asked if a subcommittee should be formed to study this issue further.
- 05:39:14 REP. BARRETT said it would a suitable agenda item for the proposed joint meeting with LAC and LFC.
- 05:40:03 SEN. COCCHIARELLA, in reference to Ms. Fox's discussion of past proponents and opponents of this issue, suggested that perhaps they be invited to a panel discussion at the proposed joint meeting.
- 05:41:05 **Steve Eller, Computer Systems Manager, Legislative Information Technology Branch, LSD**, reviewed discussion at the previous Council meeting regarding proposed changes to standing and conference committee processes, specifically the possibility of eliminating the requirement of having the committee chair having to sign off on the minutes and allowing the committee secretary to sign the minutes. Mr. Eller said that SEN. GEBHARDT spoke in favor of requiring a chair signature and presented a proposal that would take care of some of the problems, while maintaining the requirement for a chair signature (EXHIBIT #18). He said the changes would not require a statutory change, but would require a change in administrative rules.
- 05:45:54 Ms. Fox said that if this is to be implemented, it must first be referred to the Rules Subcommittee to incorporate changes, and a standardized form must be adopted.
- 05:46:41 SEN. GEBHARDT asked about the permanency of audio minutes. Mr. Eller said that audio minutes are printed and sent to the Montana Historical Society, and that digital sound files will also be archived. Ms. Fox said that she is working with the Historical Society on how best to store electronic records.
- 05:51:33 SEN. COCCHIARELLA strongly supported the proposal because it would provide a checklist of what the committee secretary has done and thought it would eliminate many problems. She **moved** to refer this issue to the Rules Subcommittee to begin drafting of rules to allow for the changes to be made.
- 05:53:21 SEN. STAPLETON asked if legislator versus staff accountability could become a problem if the proposal was adopted, and what the true significance of a chair's signature is on the meeting minutes. Mr. Petesch said that authentication is important and that it is the responsibility of the presiding officer to make certain

that the minutes are accurate, but said that the accuracy of meeting minutes has greatly improved because of audio minutes.

05:58:48 SEN. COCCHIARELLA's **motion passed** on a unanimous voice vote.

05:59:00 SEN. COCCHIARELLA said **moved** to adopt the format presented by Mr. Eller, for use by committee chairs to sign off on minutes. The **motion passed** on a unanimous voice vote.

Updates on Administrative Rules, Media Access, and Leadership Training

06:00:31 Ms. Fox said that she is working the Gayle Shirley and others to design signature brochures for all interim committees. She presented a brochure for the Children and Families Intercom Committee, designed by Lisa Jackson Mecklenberg (EXHIBIT #19).

06:01:22 Ms. Fox further explained that brochures developed for legislators will be identified by a red border and that brochures developed for the public will have a blue border. She provided examples of each:

- *Administrative Rules: a Legislator's Guide to Delegating Authority through the Bill Drafting Process* (EXHIBIT #20);
- *From Idea to Introduction: A Guide for Legislators on Requesting and Sponsoring Bills* (EXHIBIT #21); and
- *Having Your Say: How to Testify Effectively Before a Legislative Committee* (EXHIBIT #22).

Ms. Fox discussed a checklist for bill drafts, as requested by REP. BARRETT (EXHIBIT #23) and pointed out the check list, added to the bottom of the bill draft cover. She said that training will be provided to bill drafters on the proper use of the checklist. She also discussed the "prod" macro and the process that will be used. Ms. Fox said that this will increase the amount of dialog between the drafter and the legislator, improving communications and the bill drafting process.

06:06:44 SEN. GEBHARDT said that the brochures written for legislators are a great idea, particularly in light of the impact of term limits.

06:07:28 REP. BARRETT said that she appreciated the work done and said she was relieved to hear that the changes would not add to staff workload. Ms. Fox said that staff worked to streamline the process to minimize the impact.

06:08:38 Regarding media access, Ms. Fox said that she and Lenore Adams, LSD Facilities Coordinator, met with journalists to do a "walk through" of the Capitol. She said that representatives of the sound contract people accompanied the group and identified problem areas. She said that she is generating cost estimates to change or improve media access and that she and Ms. Shirley plan to organize a "Media Day" at the Capitol prior to the 2009 session, which will include a map and a tour. Ms. Fox said that policies will be standardized and that troublesome areas, such as the Senate Floor, are being worked on. She said that cost estimates would be presented at the June meeting.

- 06:11:17 Regarding Leadership Training, Ms. Fox said that she has contacted Mary Fairchild, NCSL, to request information and training materials and that she would compile and distribute relevant information. She said that she met with Colorado legislative staff and was given a copy of Colorado's "President's Notebook". She reviewed what the notebook contains. Ms. Fox said her goals are to define leadership and to work with current leaders to create similar manuals for Montana's House and Senate leadership.
- 06:14:43 REP. BARRETT suggested that all legislators receive at least a portion of the manuals, saying that it would be good for all legislators to know what leadership duties are.
- 06:16:21 SEN. GEBHARDT said that manuals should be created in an electronic format and be available to all legislators, but that leadership should be provided with hard copies.

LIO Report on Judicial Institute as model for Legislative Institute for future

- 06:17:33 **Gayle Shirley, Legislative Information Officer (LIO), LSD**, reported on Montana's first ever Judicial Institute. She said it provided a great opportunity for the judicial branch to explain what it does, and its responsibilities. She said that she asked to attend because of the Council's interest in having a public information officer and positive promotion of the legislative branch; and her interest in establishing a similar institute for the legislative branch. Ms. Shirley discussed specifics of the program and said that she has contacted NCSL to inquire about the availability of grant funding.

Legislator Compensation and Reimbursement

- 06:24:49 Ms. Fox said this issue has been discussed by the Council, as well as by the State Administration and Veterans' Affairs Committee (SAVA), but that no action or proposals have resulted from the discussions. At issue is the \$12 non receiptable lodging reimbursement and discussion of phone and or mileage stipends. She said that those concerns are intertwined with REP. MCALPIN's inquiry regarding rules proposed by the Commissioner of Political Practices for constituent accounts (EXHIBIT #24). She said it is a complicated issue, with the potential to impact other state employees and local governments.
- 06:26:52 SEN. GEBHARDT said the discussion that occurred at the SAVA meeting was regarding the \$12 reimbursement for private lodging which was termed "a joke" because it is so outdated. He said that the SAVA discussed simply paying legislators a set per diem amount and letting the legislator handle his own lodging and food. Regarding mileage, SEN. GEBHARDT said that it may be a good idea to provide for mileage because of the long travel required for most legislators. He said that the SAVA wanted to address this issue, but thought it would be wise to find out what, if any, action the Legislative Council may take.
- REP. HIMMELBERGER asked Mr. Petesch to comment. Mr. Petesch said that providing the per diem for legislators would not affect the executive branch, but that changing the reimbursement rate would impact all governments across the

state. SEN. COCCHIARELLA said it would also affect Workers' Compensation claimants, jurors, and members of public committees.

- 06:31:21 REP. MCALPIN asked how a cost estimate could be structured that would capture the cost of changing to a per diem reimbursement. Ms. Fox said that legislative services financial staff and the Department of Administration (DOA) could produce a cost estimate. REP. MCALPIN **moved** to direct staff to obtain a cost estimate for changing to a per diem-based reimbursement, to be presented at the June meeting. The **motion passed** on a unanimous voice vote.
- 06:32:28 SEN. STAPLETON said that as a legislator with a young family, he would appreciate having more than three paid trips home. REP. SALES said that an attempt was made to change this in HB 2 in the 2007 session but found, in the process, that it is in statute and the matter was not pursued any further. He said he agreed with SEN. STAPLETON that more than three paid trips home are needed.
- 06:34:14 SEN. GEBHARDT asked to have staff research to also research reimbursement rates for other state employees also, saying that it may be time to review those numbers. He said that as legislators, it is their duty to look out for local governments and other state employees.
- 06:35:48 REP. BARRETT said that there is a difference between citizen legislators performing legislative work and full-time state and county employees who are traveling as part of a regular job; and that reimbursement rates should reflect that.
- 06:37:09 SEN. COCCHIARELLA said that SEN. GEBHARDT has a good point and said that meal rates are rarely increased, and that it is getting very difficult to find anything but an inexpensive fast food meal for the breakfast and lunch reimbursement rates. She referred to a 1989 bill that passed for reimbursement rates
- 06:38:52 SEN. GEBHARDT **moved** to have staff prepare an estimate of what the cost would be to local and state government to change the unreceipted lodging rate and meal reimbursement rates. The **motion passed** on a 8-1 roll call vote, with REP. HIMMELBERGER voting no (ATTACHMENT #4).
- 06:43:18 SEN. COCCHIARELLA said that she would like an explanation of the rules proposed by the Commission of Political Practices regarding constituent accounts. She said that she is concerned about possible limits that could prevent legislator travel to events, such as NCSL. Mr. Petesch said that he provided written comment on the constituent services account rules, but that he has not seen the proposed rules concerning gifts of substantial value. He said that he would contact the Commissioner to see if he can get a copy of draft rules, if they are available.

SEN. STAPLETON asked for further explanation of a gift ban. Mr. Petesch said there is a statutory code of conduct for public officers, public employees, and

legislators, which defines gifts of substantial value and restricts the value to \$50. He said that educational activities are excluded and that the code language prohibits the acceptance of gifts if they can be deemed a reward for official action taken or an attempt to influence action. SEN. STAPLETON asked why this issue is being discussed. Mr. Petesch said that he has not seen any proposed rules relating to gifts, only to constituent services accounts. He said that because rumors are going around that something is afoot, he will inquire further.

06:47:52 Ms. Fox said that she has had numerous requests regarding the Taiwan trip, which may be the reason the rumors are going around. She said that she has documents available to clarify legislator travel but suggested that if the issue is of concern, definitions could be more clearly written. REP. HIMMELBERGER said it is his understand that a request was made from the executive branch about the \$50 limit and how it related to the Taiwan trip. SEN. STAPLETON said that he hoped that this would not be allowed to interfere with educational opportunities for legislators.

PUBLIC COMMENT

06:51:07 No public comment was given.

ADOPT NEXT MEETING DATE / WRAP UP

06:51:23 **Leanne Heisel, Research Analyst, Fire Suppression Interim Committee (FSIC)**, provided copies of an email update from Sen. Cobb, Chair, on behalf of the FSIC (EXHIBIT #25).

Regarding the proposed joint meetings between the legislative committees, REP. CAMPBELL asked if LAD and LFD meeting dates should be considered before selecting a Council meeting date. Ms. Fox said that LFC will be meeting on June 5 and 6; and that LAC is scheduled to meet on June 20. She suggested the Council set a June meeting date and said that she would work with Mr. Schenck and Mr. Seacat to arrange a joint meeting date, possibly in September. REP. HIMMELBERGER noted that primary elections are scheduled for June 3. SEN. GEBHARDT suggested scheduling Legislative Council for June 5 or 6, and to request an hour or so for a joint meeting with the Legislative Finance Committee. REP. HIMMELBERGER asked Ms. Fox to look into arranging that.

ADJOURNMENT

06:54:33 With no further business before the Council, REP. BERGREN adjourned the meeting at 2:57 p.m. The next meeting date will be announced at a later date.

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