



# Legislative Council

## 61st Montana Legislature

### SENATE MEMBERS

CAROL WILLIAMS--Vice Chair  
JOHN BRUEGGEMAN  
JEFF ESSMANN  
ROBERT STORY  
MITCH TROPILA  
DAVID WANZENRIED

### HOUSE MEMBERS

DENNIS HIMMELBERGER--Chair  
BOB BERGREN  
MARGARETT CAMPBELL  
TOM MCGILLVRAY  
JESSE O'HARA  
MIKE PHILLIPS

### COMMITTEE STAFF

SUSAN FOX, Executive Director  
GREG PETESCH, Legal Division Director  
DAWN FIELD, Secretary

## MINUTES

June 2, 2010

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.

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### **COMMITTEE MEMBERS PRESENT**

REP. DENNIS HIMMELBERGER, Chair  
SEN. CAROL WILLIAMS, Vice Chair

SEN. JOHN BRUEGGEMAN  
SEN. JEFF ESSMANN  
SEN. ROBERT STORY  
SEN. MITCH TROPILA  
SEN. DAVID WANZENRIED

REP. BOB BERGREN  
REP. TOM MCGILLVRAY  
REP. JESSE O'HARA  
REP. MIKE PHILLIPS

### **COMMITTEE MEMBERS ABSENT**

REP. MARGARETT CAMPBELL

### **STAFF PRESENT**

Susan Fox, Executive Director, Legislative Services Division  
Greg Petesch, Director, Legal Services, Legislative Services Division  
Karen Berger, Financial Services Manager, Legislative Services Division  
Dawn Field, Council Secretary, Legislative Services Division

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

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

### **COMMITTEE ACTION**

The Legislative Council:

- approved the March 1 & 2, 2010, meeting minutes, as written;
- appointed Lee Heiman as acting Code Commissioner;
- approved a biennial operating plan amendment;
- directed staff to pursue Option 3 of the budget scenarios;
- approved bill draft requests from the Governor's Office of Budget and Program Planning for the 2013 Legislature;
- approved media credentialing, including conceptual modifications and amendments;
- approved proposed rules changes, with the exception of No. 4 (segregated for later action);
- approved participation in a legislative space study with the DOA; and
- changed the Council's next meeting date to September 9, 2010, from September 14, 2010.

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

00:00:01 REP. HIMMELBERGER called the meeting to order at 8:05 a.m. The Secretary took roll, REP. CAMPBELL was absent (ATTACHMENT 3). REP. HIMMELBERGER welcomed SEN. TROPILA to the Legislative Council.

### **COUNCIL BUSINESS**

#### **• Approval of minutes**

00:02:04 **SEN. WANZENRIED moved to approve the March 1 and 2, 2010, meeting minutes as written. The motion passed on a unanimous voice vote.**

00:02:20 REP. HIMMELBERGER discussed a letter received from Mr. Robert Cooper regarding the Council's discussion of the *Cooper v. Glaser* lawsuit at a previous meeting. SEN. HIMMELBERGER noted that, as a result of the discussion, the Council requested that Greg Petesch file an amicus brief on behalf of the Montana Legislature. Mr. Cooper's letter expressed his objections to how the issue is being handled and he asked that the record be set straight in the official records of the 2011 Legislature. At SEN. WILLIAMS' request, copies of Mr. Cooper's letter were distributed for review (**EXHIBIT 1**). REP. PHILLIPS suggested that a letter be prepared for the leadership to remind legislators that people do pay attention to what is said on the floor, that this matter did reach Montana's Supreme Court, and that the instruction from the Court on this incident should not be overlooked. REP. PHILLIPS said he would like to discuss the matter further at the September meeting in order to give it proper consideration. It was agreed.

- **Appointment of Acting Code Commissioner**  
00:06:06 **Susan Fox, Executive Director, Legislative Services Division (LSD)**, said that an acting Code Commissioner is needed. She read briefly from the Code Commissioner statutes (**EXHIBIT 2**) and said that staff has proposed that Lee Heiman be appointed acting Code Commissioner until the new Legal Director has gone through a full legislative cycle under the mentorship of Mr. Heiman. **SEN. ESSMANN moved to appoint Lee Heiman as acting Code Commissioner. The motion passed on a unanimous voice vote.**

## **BUDGET DISCUSSION**

- **OP plan amendment in Program 20**  
00:09:25 **Karen Berger, Financial Services Manager, LSD**, said that an operating plan amendment to the operation plan for the current biennium is needed (**EXHIBIT 3**). She explained the \$63,962 amendment is needed to allow purchases to be properly recorded. She said the purchases are listed at the bottom of EXHIBIT 3. **SEN. WILLIAMS moved to approve the biennial operating plan amendment, as discussed. The motion passed on a unanimous voice vote.**
- **Status of Interim Committee budgets/Program 20**  
00:12:55 Ms. Berger discussed an update on Program 21 - interim committee budgets (**EXHIBIT 4**).
- **XMaLpha report on IT systems and process analysis**  
00:16:58 **Steve Eller, Manager, Information Technology Office**, reviewed a Montana IT Session Systems Analysis report (**EXHIBIT 5**).  
  
00:23:43 SEN. STORY asked about the different systems and processes being studied and documented. Mr. Eller said that software and technology capability need to be updated more than actual equipment. Ms. Fox said that the contractor has worked diligently with staff to document the human processes and knowledge base. She said it has been exciting process and that the documentation will help carry the LSD and Legislature through term limits and staff retirements.
- **Computer Systems Planning Council and IT Budget**  
00:28:02 **Hank Trenk, IT Director, Legislative Branch**, discussed the Legislative Branch fiscal year (fy) 2012-2013 preliminary branchwide budget (**EXHIBIT 6**). He said that the Computer Systems Planning Council (CSPC) has met twice and has two more meetings planned to discuss the budget.  
  
00:32:56 REP. PHILLIPS asked if the biennial budget estimate takes into consideration the winner of the Montana accountability project and the increase in time in which computers will be held. Mr. Trenk said legislative branch is complying with the five-year replacement cycle.  
  
00:34:17 SEN. BRUEGGEMAN asked if there has been discussion of the legislative interface for an online agenda and how to incorporate committee votes. Mr. Trenk said no. SEN. BRUEGGEMAN said that he has received a great deal of feedback on the topic and that many members would like to have that feature. He

asked that it be discussed at a future meeting. Mr. Trenk said it would on a future CPSC agenda.

- **Distribution of CSG and NCSL funds**

00:37:05 REP. HIMMELBERGER noted that the Council received budget information in the meeting folder on:

- National Conference on State Legislatures (NCSL) (**EXHIBIT 7**);
- Council of State Governments (CSG) (**EXHIBIT 8**);
- Pacific NorthWest Economic Region (PNWER) (**EXHIBIT 9**);
- Legislative Council on River Governance, CSG West (**EXHIBIT 10**); and
- National Conference of Commissioners on Uniform State Laws (NCCUSL) (**EXHIBIT 11**). REP. HIMMELBERGER encouraged the members to review the budgets and asked that they encourage their caucus members to take advantage of the educational opportunities.

00:38:24 Ms. Fox said that, based on Council input, additional information was added to include columns for notes, sponsorship, and out of pocket expenses for the participant. She explained how the amounts were appropriated for the programs.

00:41:02 SEN. WILLIAMS asked if funds are transferrable between the houses of each caucus. Ms. Fox said that the specificity on how funds are spent is up to the caucus leaders.

00:43:17 SEN. STORY said, referring to PNWER, Council on River Governance, and NCCUSL, that it may be prudent to have reports made to the Council to see if the money allocated to these programs is being wisely spent, because a lot of money is being spent on a small number of legislators. Ms. Fox said that reports would be made at the next meeting. **Greg Petesch, Director, Legal Services, LSD**, explained that the purpose of NCCUSL is mainly to improve transactions between states. He provided several examples and listed Montana's current members. SEN. STORY said that Mr. Petesch's report contained the kind of information the Council needs to decide if the expenditure is worthwhile and useful.

- **Budget Development for Succeeding Biennium, identify budget direction for preparation of 2012-2013 biennial budget**

00:51:37 Ms. Fox said that she would like the Council to discuss how it would like staff to develop the budget. She said specific numbers would be available at the September meeting. She referred members to the branch budget considerations (**EXHIBIT 12**) and to the 2011 biennium budget (**EXHIBIT 13**).

00:57:21 REP. PHILLIPS said he was intrigued by the amount of money not being used. He asked if this has been a common pattern. Ms. Fox explained that this is only the second biennium that money has been budgeted for legislators to attend NCSL and CSG and predicted that much of the remaining money will be spent for summer and fall meetings. REP. HIMMELBERGER encouraged the Council to consider changes to the process that would increase participation. He said that it used to be up to the Council to approve these funds but that the policy was changed to allow caucus leaders to make those decisions. He said that,

considering the impact of term limits, the Legislature should do everything possible to educate its members on important issues.

- 01:01:25 REP. MCGILLVRAY said it is not an equitable process because, even if all of the funding is spent, a very small number of legislators participate. REP. HIMMELBERGER said that was an excellent point. He said that perhaps the Legislature should consider increasing the budget for legislator education. SEN. STORY agreed that the process should be changed and suggested that the process be started sooner and involve the standing committees. He suggested that the topic be a study topic for the next legislature.
- 01:07:51 SEN. BRUEGGEMAN said that his experience has been that, after participating once or twice, the national committees and industries frequently pay for return trips. He said that a better job could be done of tracking what meetings are coming up and who is paying for them.
- 01:09:43 SEN. WANZENRIED said the budget shortfall has been estimated to be \$400 million and that a double standard will be created if the legislative branch does not make budget cuts, but expects the executive branch to do so. He said that the Council must prepare to make and defend difficult budget decisions.
- 01:12:14 REP. PHILLIPS said there needs to be much more accountability from members spending these funds. He asked if there has ever been a report showing the real and tangible benefits to the State of Montana by members attending the training events and meetings. He suggested that legislators be required to submit a brief report to the Council stating what was gained by attending training and educational meetings.
- 01:13:30 REP. BERGREN said that the training money is very important, particularly due to term limits. He said that the education and training is a definite benefit to the people of Montana and is money well spent. SEN. WILLIAMS that cuts will have to be made but said that many times, the Legislature shorts itself to the detriment of the body.
- 01:16:47 SEN. ESSMANN said that increased accountability is a good idea. He referenced his own trip to Iceland and the report he made on what he learned there. He said if legislators participate in events knowing a short report is required, it would benefit the legislator and would inform the Council of the effectiveness of its expenditures.
- 01:19:17 SEN. STORY said that this would be a good opportunity to consider how the budget is constructed, rather than simply using a present law budget process. He discussed the budgeting process in general for the legislative branch. He said that cuts must not harm the core of the legislative process, which is to serve the people.
- 01:24:13 SEN. WANZENRIED said that the Legislature must recognize its role in establishing a budget and be prepared to defend the budget. He said Ms. Fox must be given guidance on where cuts will have to be made.

- 01:25:53 Ms. Fox referred to three handouts prepared by Ms. Berger to use in discussion of the budget:
- division and staff budgets (**EXHIBIT 14**);
  - 2009 session feed bill update (**EXHIBIT 15**); and
  - three 2013 budget scenarios (**EXHIBIT 16**).
- Ms. Fox agreed that the budget decisions must be able to be justified. She discussed the branchwide program components listed on EXHIBIT 14. She asked the Council to not impose the Governor's request that personal services be cut by 4 percent along with a permanent FTE reduction because of the unique needs of the legislative branch. She asked, if cuts in personal services must be made, that the divisions be notified as soon as possible in order to begin planning for the impact the cuts will have. Ms. Fox discussed the points of interest budget items listed on EXHIBIT 12.
- 01:43:29 Ms. Fox asked the Council to study the three budget "scenarios" outlined in EXHIBIT 16 and to use them as the basis for discussing how to proceed with the budgeting process. She and Ms. Berger provided additional information on the three scenarios. Ms. Fox cautioned the Council that the numbers are preliminary but would give the Council a sense of what each budget scenario would look like. She said that the division directors would work together to craft a budget proposal based on whichever option the Council members choose.
- 01:49:36 SEN. STORY said it is difficult to make such important decisions in such a short time. He suggested that a subcommittee be formed to work with staff on the budget issue.
- 02:24:44 **SEN. WANZENRIED moved to direct staff to pursue option 3 - Implement the 5 percent statutory plan - as the basis for the 2013 budget.** He predicted that additional cuts would be necessary but that option 3 would give the Council a good idea of what cuts will look like in the legislative branch.
- 02:29:02 REP. HIMMELBERGER agreed that forming a subcommittee was a good idea. He appointed SEN. WILLIAMS as chair and SEN. ESSMANN, REP. MCGILLVRAY and REP. PHILLIPS to serve. He asked that the full Council be kept informed of the work done and that the appropriate staff participate. SEN. STORY said that he supports the motion because the third option is the most viable. He predicted that more reductions may be needed and suggested that contingencies for a 10 percent be considered also.
- 02:33:36 **SEN. WANZENRIED's motion to base the 2013 budget on Option 3 passed on a unanimous voice vote.** SEN. WANZENRIED requested that the Subcommittee make an actual recommendation, as based on approved cuts, because it is appropriate for the Council to "have our fingerprints on what is sent to the budget office". He said it would serve the legislative process well if the Legislative Council takes ownership of whatever is recommended.
- 02:38:41 **Amy Carlson, Legislative Fiscal Analyst, Legislative Fiscal Division (LFD),** discussed 17-7-1111, MCA, and clarified confusion regarding reduction

requirements. Ms. Carlson explained how the base starting point for budgets has been set traditionally. She said that LFD staff has suggested to the Legislative Finance Committee (LFC) that it adopt a motion to take the 5% plan in statute and say that the LFC's starting point for subcommittee action will be the adjusted base, less that 5%, so everything will be a positive motion after that point. She said the LFD asked the Governor's Office to put the LFC's preliminary numbers into the N-BARS computer system, which, even though it requires the Governor's Office to do much more detailed work and fleshing out of the 5% reduction ideas, will give the end product more validity. She said that if the LFD adopts the motion, adjusted base, less 5%. She said the LFD ran estimates of what the adjusted base would be \$1.827 billion for 2012 and \$1.840 billion for 2013, which, after the 5% reductions, would amount to approximately \$1.735 billion in the first year and \$1.738 in the second year. She said that anticipated revenues for 2012 are \$1.740 billion and \$1.827 billion for 2013. Ms. Carlson said, based on the LFD estimates, this is a rational starting point from which the Legislature can begin its work.

- 02:47:54 SEN. STORY asked who makes the actual decision on the starting point. Ms. Carlson said that the LFC typically recommends the initial motion but the actual adoption is made by the House Appropriations and Senate Finance and Claims Standing Committees. SEN. STORY said it important that Council members and legislators use their influence between now and January 2011 to manage discussions and that first vote in order to avoid motions to go back to previous years as the base starting point.
- 02:50:36 SEN. WANZENRIED agreed with SEN. STORY and said that the time to make a decision on the base is now, not at the beginning of the 2011 session. He said that previous experience has proven that that approach does not work and that he hopes that current legislators will convey that message to new legislators. He said that the public needs an understandable and transparent process, and that if the base budget is rolled back to a previous year, that will not happen.
- 02:52:29 **Tori Hunthausen. Legislative Auditor, Legislative Audit Division (LAD)**, was welcomed to the meeting. Ms. Hunthausen said she was present to listen to the guidance given on the budget development discussion. She said that she is working very closely with Ms. Fox and Ms. Carlson on the budget development and would continue to do so.
- 02:53:19 SEN. WANZENRIED asked Ms. Hunthausen to update the Council on the utilization of staff resources within the three divisions. Ms. Hunthausen said that an offsite meeting was held last week. An external facilitator was hired and 60 branch staff attended the all-day "legislative summit". The meeting provided the opportunity for staff to put a name to a face and to understand what the respective roles are. Ms. Hunthausen said that she has received positive feedback from the staff and that she will be meeting with Ms. Fox and Ms. Carlson very soon to review the feedback and plan further.

#### **2011 SESSION PREPARATION**

- **Fiscal Note review - revisit HB 442 (2007)**

- 02:56:46 REP. HIMMELBERGER said this issue was discussed at a previous Rules Subcommittee meeting. REP. PHILLIPS asked that the members note the list of co-sponsors on HB 442 (**EXHIBIT 17**). He briefly reviewed the bill's history and said that there is value in the study, given the importance that fiscal notes have during a session.
- 02:59:55 **REP. PHILLIPS moved that Council draft legislation to study the usefulness of fiscal notes.** REP. MCGILLVRAY asked if the motion is for a single study after the 2011 session or an ongoing study of fiscal notes, to be done after every session. REP. PHILLIPS said his motion would be to require an ongoing economic assessment of the usefulness of certain fiscal notes, as described in HB 442. SEN. ESSMANN said that due to the current budget concerns, he would support a single study but not an ongoing one. He said if the study proved to be useful, he would consider creating a permanent process.
- 03:03:17 SEN. STORY said fiscal notes are done by the OBPP and the analysis is done by the LFD, which results in one branch judging another's work. He thought that the bill would create more tension between the two offices and said that he wasn't sure that the study would be productive.
- 03:05:40 REP. PHILLIPS said the bill was a result of the observation that the legislative branch is increasingly ineffective, partially due to term limits. He said that because of that, he can see great value in the LFD having the opportunity to review the work of the OBPP. SEN. WANZENRIED said that legislation was introduced in the 2005 session to address many of the deficiencies identified by REP. PHILLIPS. He said that the bill didn't pass in 2005 but was reintroduced and passed in the 2009 session. He said that the system, while not perfect, is better than it was and that it would be very expensive to transfer the function of fiscal notes from the OBPP to the LFD. He said he does have concerns about the bill, mainly due to budget concerns.
- 03:09:44 Ms. Carlson updated the Legislative Council on how the LFD is addressing the issue of fiscal notes. She reported that two new FTE were approved but that only one position has been hired to date because of budget concerns. She said that plans are in place to have two LFD staff working part-time through the 2011 session on fiscal notes and will act as a liaison between legislators and the OBPP to provide better information on fiscal notes.
- 03:12:34 **REP. PHILLIPS withdrew his motion, based on the information presented.**
- **Review tentative caucus, training, and orientation schedules**
- 03:12:55 Ms. Fox said that Wednesday, November 17, 2010, at 12:00 p.m., as the caucus date. She suggested that the caucus be scheduled earlier in the day in order to begin training in the afternoon. She asked the members to comment.
- 03:14:21 After a brief discussion, it was agreed that the caucus time would be set for 10:00 a.m. on November 17, 2010.

- **Rules Training**



03:15:56 Ms. Fox presented several options regarding when Rules Committee Training. She suggested that the Rules training be scheduled for Monday, December 6, 2010, in order to allow leadership time to appoint committee members; and to have Committee Chair training the following day. It was agreed, after discussion, that the issue would be revisited in the Rules Subcommittee report in the afternoon portion of the meeting.

#### **LEGISLATIVE COUNCIL PHOTOGRAPH - GRAND STAIRCASE**

03:20:36 REP. HIMMELBERGER recessed the Council for the photo session and a lunch break. He asked the members to return at 1 p.m.

#### **LUNCH BREAK**

04:59:13 REP. HIMMELBERGER reconvened the meeting at 1:02 p.m.

#### **• OBPP Legislation Requests**

04:59:40 **Amy Sassano, Deputy Budget Director, Governor's Office**, discussed a list of proposed legislation, requested on behalf of the Office of Budget and Program Planning (OBPP) (**EXHIBIT 18**).

05:08:08 SEN. STORY asked if the State is in negotiations for the pay plan. Ms. Sassano said it is her understanding that the chief negotiator has met with union officials.

05:08:38 REP. MCGILLVRAY asked if HB 15 (school facility grant program) money comes from the Coal Trust. Ms. Sassano thought that the money comes from the navigable water rentals program and HB 645 but would verify the funding source. REP. MCGILLVRAY said it would be helpful to himself and to freshman legislators in particular, to have a more detailed explanation of the OBPP bills. Ms. Sassano asked when the information should be provided to the legislators. REP. MCGILLVRAY said that caucus meetings would be a good time.

05:11:04 **SEN. WANZENRIED moved that the Legislative Council authorize the LC's be drafted for each of the bills requested by the OBPP. The motion passed on a unanimous voice vote. SEN. WILLIAMS said REP. BERGREN voted yes by proxy.**

#### **• Media Credentialing**

05:12:26 Ms. Fox discussed the issues and options, as addressed in the media access report prepared for the meeting, including a proposed application for an accreditation process (**EXHIBIT 19**). (*Attached to the report were five documents relating to the media credentialing issue:*

- *EXHIBIT 20 - legal memo from Greg Petesch to Susan Fox regarding media access to the floor of the chambers during session;*
- *EXHIBIT 21 - public comment from John Barrows, Montana Newspaper Association;*
- *EXHIBIT 22 - public comment from Marnee Banks, reporter, KXLH Capitol Bureau;*
- *EXHIBIT 23 - public comment from Ian Marquand, Montana Freedom of Information Hotline; and*
- *EXHIBIT 24 - an article by John Miller, Associated Press, regarding media credentialing.)*

## Public comment

- 05:21:54 **Ian Marquand, independent consultant and contractor, Montana Freedom of Information Hotline, Inc. Chair, and President of the Montana chapter of the Society of Professional Journalists**, said the changes made to the first draft are appreciated. He said that the main issue, particularly on the Senate floor, is having an ample number of audio ports available and adequate space for tripods. Mr. Marquand discussed the issue of decorum, saying that media representatives try not to be disruptive or distracting but that there are occasions in which the media is engaged by a legislator. He said that these sidebar conversations should not be considered violations of decorum. Mr. Marquand referred to page 3 of EXHIBIT 19 and said he would prefer the definition of inappropriate behavior to read, "Inappropriate behavior includes lobbying...." He asked to strike the words, "may" and "but is not limited to". He questioned whether a one-time intrusion, such as cell phone ringing, should be grounds for removal from the floor. Mr. Marquand said that media representatives are very appreciative of the sentence that protects coverage from anything that would be deemed disrespectful of the institution. He said they are also pleased about the option to testify on relevant topics and bills but would prefer to have the right to testify included in the policy and not listed only as an option.
- 05:26:59 Mr. Marquand said he is concerned that some of the language about inappropriate behavior may be too broad and that he could not imagine a media person interrupting a legislator, for example. He referred to EXHIBIT 22 - public comment from Marnee Banks, KXLH - regarding a shortcut through the bathrooms used by media representatives in past sessions. He said that the media considers this is vital shortcut and requested continued access the media.
- 05:28:53 Mr. Marquand estimated that about 15 reporters are in the Capitol on a daily basis during a legislative session which he said, is a reasonable amount to be accommodated. He said that there will be times when a particular issue draws more media into town but that these instances are dealt with. He said the media is very cooperative and wants to make the process work. He reminded the Council that the media performs a very important public function and is very important to the legislative process.
- 05:30:37 **John Barrows, Executive Director, Montana Newspaper Association**, agreed with Mr. Marquand's comments and said he has several specific comments to discuss:
- The Association sponsors and pays interns to cover the session but would like to make it clear that the students are chosen by the University of Montana and that the Association has no control over them.
  - The Association is concerned about the occasional media representative who comes to the Capitol for just a day or two. He said that the certification process may be too burdensome and that the Association would prefer that the handbook continue to be used.
  - The Association would like to emphasize that dealing with decorum and other issues will remain separate from the content and intent of what media representatives report on.

## Council Discussion

- 05:33:48 SEN. ESSMANN asked at what point is the maximum carrying capacity of the Senate Floor reached or exceeded and how many video ports and cameras should be allowed on Senate floor. Mr. Marquand said it is very unlikely that all 15 reporters would be on the Senate Floor at once. The Sergeant at Arms makes the decision on maximum capacity and regarding the number of ports, public radio has provided splitters in order to accommodate more reporters.
- 05:36:55 SEN. WANZENRIED asked Mr. Marquand if he considers "bloggers" members of the media. Mr. Marquand said he does. SEN. WANZENRIED asked how it is determined who has access. Mr. Marquand said that all media is considered equal. SEN. WANZENRIED asked, since there are no distinctions made, if Mr. Marquand is comfortable using a "first come, first served" policy. Mr. Marquand said that option is the best one available under the current situation.
- 05:40:34 SEN. STORY said it is the "set up, tear down" portion of coverage as the reporters enter and exit meetings and hearings that is most disruptive, particularly for legislators seated near them. He asked how that could be dealt with. Mr. Marquand said that issue is an unfortunate fact of dealing with the media. He agreed that it can be distracting. He said that the Legislative Information Officer can instruct the media on how best to minimize the noise and distraction and that he would be happy to help design a best practices guide for media representatives. SEN. STORY said that would be helpful.
- 05:45:01 REP. PHILLIPS said that "accreditation" indicates a certain standard of capability and performance and his opinion is that the process being proposed is simply a registration process. Mr. Marquand said that the process could probably be called either an accreditation process or a registration process.
- 05:46:35 REP. HIMMELBERGER asked Nancy Clark, Senate Sergeant of Arms, to comment. **Nancy Clark, Senate Sergeant of Arms**, said that in the 2009 session, the assistance of Gayle Shirley, LIO, and the walk through proved to be very helpful. She said the pamphlet prepared by Ms. Shirley laid down the rules of what is expected and should definitely be used again. She said that she had only a few problems with the press and that they were taken care of. Regarding space, Ms. Clark said that Senate space is very limited but that occupancy has not been a huge issue. She reviewed the number and location of jacks available on the Senate floor and in the Gallery, as listed several other accommodations made in the Senate Gallery for the press. She said it would be very helpful is the Sergeants of Arms were given a list of the media representatives, including a photograph. She said that changing the color of the badge from year to year would also help.
- 05:50:28 REP. MCGILLVRAY said he would like the definitions regarding appropriate attire to be more clear and to include the term, "business attire". Ms. Clark said that the Senate has a strict dress code which was upheld by President Story but that the House is less restrictive. She related an incident when she was the House Sergeant in which a female was asked not to wear denim jeans. REP.

MCGILLVRAY said that the House should have high standards as well and not allow jeans. REP. HIMMELBERGER said his understanding is that in the House of Representatives, the dress code is set by the Speaker. Mr. Petesch confirmed that as the policy. REP. MCGILLVRAY asked if the Speaker's decision extends to the press. REP. HIMMELBERGER said it applies to anyone within the walls of the House.

- 05:54:12 SEN. ESSMANN referred to Joint Rule 10-50 (page 3, EXHIBIT 19) asked if revocation of privileges could also include a suspension, which would allow the presiding officer to impose a variety of sanctions. REP. HIMMELBERGER said his understanding is that the presiding officer has the latitude to deal with the situation.
- 05:58:49 The Council discussed its options, with input from Ms. Fox.
- 06:01:19 **SEN. WANZENRIED moved to approve the proposed media credentialing draft, including the conceptual modifications suggested by Mr. Marquand, for final approval at the September meeting. REP. PHILLIPS moved to amend the motion to change the word "accredited" to "registered" throughout the draft. The Council discussed the proposed amendment. REP. PHILLIPS' motion to amend the proposed media credentialing draft passed on a unanimous voice vote.**
- 06:05:04 **SEN. STORY moved to amend the motion to allow for other options in addition to revocation of privileges by adding the words "or suspended" after "revoked" in Joint Rule 10-50. The Council discussed the amendment. SEN. STORY asked that the pamphlet be updated to include the revised language, if adopted. The motion passed on a 9-1 voice vote, SEN. WANZENRIED voted no.**
- 06:10:16 **SEN. WANZENRIED's motion, as amended, passed on a unanimous voice vote, REP. BERGREN voted yes by proxy (Sen. Williams).**
- **Ethics Committee and rules discussion**
- 06:11:01 SEN. WANZENRIED said that under the current system, it is difficult for a legislator to quickly determine whether he or she is involved in a conflict of interest. He said that if the credibility of the Legislature is to be raised, there must be a more streamlined process to ensure that legitimate questions are dealt with promptly.
- 06:12:42 SEN. STORY asked if the process would apply to a situation prior to taking an action or post-action. SEN. WANZENRIED said his interest is self-policing so that each legislator is able to take the responsibility to find the answer if he or she suspects a conflict, before action is taken.
- 06:15:07 SEN. ESSMANN asked why the Ethics Committee can't operate between session. He said that legislators remain in office for the entire interim and there

should be a process for the duration of the interim. Mr. Petesch said that would require a statutory change. He referred to Senate S 31-60 and 2-2-112, MCA, as part of his explanation.

- 06:17:50 SEN. BRUEGGEMAN suggested that one option would to assign an interim committee the responsibility for ethics issues that arise during an interim.
- 06:18:49 SEN. STORY didn't think that was a practical solution because ethics issues arise unexpectedly. He said the Legislature should figure out a way to police itself, rather than turning the responsibility over to appointed member of the executive branch for 16 months of a biennium.
- 06:20:25 SEN. WILLIAMS asked if it would be sufficient to have a Subcommittee of the Legislative Council make the decisions on ethics during the interim, until it is determined that a change is needed and what the change may be. SEN. STORY said that ethical issues that come up during an interim are generally more serious and need to be looked at very carefully.
- 06:23:06 SEN. ESSMANN asked to have this issue on the September meeting agenda. It was agreed.
- 06:23:59 REP. HIMMELBERGER took a few minutes to acknowledge Greg Petesch's 31 years of service to the Legislature. He said that Mr. Petesch, as Legal Director and Code Commissioner, has been a valued and respected member of the staff and that the Council offers its deep gratitude and thanks for Mr. Petesch's service, wisdom, and guidance. Mr. Petesch thanked the Council members for their service to the State of Montana and said that working for the Legislature has been a privilege. He said that the legislative branch is the people's most direct branch of government and that most people don't recognize the sacrifices that legislators make to serve. He said that he has yet to meet anyone in Montana who is not represented in the Legislature.

### **STRATEGIC PLANNING INITIATIVES**

#### **• Progress report - initiatives to date**

- 06:26:40 Ms. Fox reported that the interdivisional staff teams training (discussed earlier by Ms. Hunthausen) was an unprecedented event and very successful. She said she would continue to report on the progress made on this initiative.
- 06:29:01 Ms. Fox reported that planning for orientation continues and that efforts to restructure and improve the training are ongoing. She said that options for a paperless legislature are being explored and may be included as part of the legislator training. She said that the Subcommittee reports and remaining agenda items would cover the other initiative topics.
- 06:31:01 SEN. STORY asked if the Legislative Audit Office will be included on the support teams for new legislators. Ms. Fox said it is more difficult to incorporate LAD staff

because of the division's structure but that she will continue to work on how to include LAD where applicable.

- **Teacher's Institute**

06:33:24 **Gayle Shirley, Legislative Information Officer (LIO)**, updated the Council on the upcoming Teacher's Institute on Representative Democracy and the legislative process (**EXHIBIT 25**).

06:38:24 Ms. Shirley distributed a brochure designed to assist visitors to the Capitol (**EXHIBIT 26**). She said the cost of producing the brochure was split among the Governor's Office, the Secretary of State's Office, the Montana Historical Society, and the Legislative Branch. She said the brochure covers topics such as tours, presentations, parking, safety and decorum, scheduling a visit, and Capitol office information.

06:40:26 Ms. Shirley said that as a result of the interdivisional meeting, she noticed that many of the issues discussed came down to communication. In the interest of improving communication, Ms. Shirley said she had the idea of serving as a clipping services to provide links to media coverage of the legislature and related activities to staff on a daily basis. She said she would be happy to make the information available to legislators as well.

06:41:48 SEN. WILLIAMS suggested recording the Teacher's Institute and giving a copy to all new legislators. Ms. Shirley said she would look into doing that.

06:42:48 REP. O'HARA commended Ms. Shirley for her work on the Capitol brochure.

- **Rules Subcommittee report**

06:43:56 Mr. Petesch reviewed twenty proposed rules changes approved by the Rules Subcommittee and several other recommendations (**EXHIBIT 27**). He said that a motions summary "cheat" sheet has been created to serve as a reference guide for legislators (**EXHIBIT 28**). **SEN. STORY moved to forward the proposed rules changes to the standing Rules Committee and that the proposed changes be incorporated into the draft rules to be considered at the December meeting.**

06:57:31 SEN. WILLIAMS said she is concerned about restrictions being placed on the number of bill drafts a member can request (No. 4 - EXHIBIT 27). She said this would place quite a burden on new legislators to get their bill drafts done in a very short amount of time. She said she has discussed this with REP. BERGREN and that he also opposes this proposal.

06:59:21 REP. PHILLIPS said that while he appreciates the burden the requirement would on new legislators, the restrictions on holdover senators would be a good thing. He thought this would help ensure the quality of work over the quantity of work.

07:00:11 SEN. TROPILA asked why the Subcommittee approved No.12 -prioritizing motions in the committee of the whole (EXHIBIT 27). Mr. Petesch said it was because of the high number of bills requested in the 2009 session. He said the

proposed rule would hold the legislature to about the same number of bills. SEN. WILLIAMS, SEN. STORY, SEN. TROPILA, and Mr. Petesch further discussed the implications of the proposed rule.

**SEN. ESSMANN moved to segregate No. 4 for additional discussion and action at the September meeting, and to forward the other proposed rules to the Rules Committee.** REP. HIMMELBERGER said that could be done without objection and the other proposed rules could be discussed.

- 07:07:26 SEN. ESSMANN said, regarding the concerns about too many bills being introduced, that having some sort of index would help legislators police themselves and encourage them to work together on similar interests. Mr. Petesch said that most of that information is available now on the LAWS system but that system limitations prevent all of the information from being easily accessed. However, he said, his experience has shown that even if a legislator is made aware that another bill draft has been submitted on a topic he is interested in, the legislator usually chooses to have his own bill drafted anyway.
- 07:12:05 Ms. Fox said that often the LAWS system can be modified to make accessing this information easier.
- 07:13:05 **SEN. STORY's motion to approve the proposed rules changes, with the exception of No. 4, and forward them to the Rules Committee passed on a unanimous voice vote.**
- 07:13:20 REP. PHILLIPS said that he would like the Council to consider a rule to require that the Speaker of the House put all bills that are due second reading to be put on the agenda for second reading. He asked Mr. Petesch to confirm that currently there is no House rule that does this. Mr. Petesch did so. REP. PHILLIPS asked that this be a September agenda item. It was agreed.
- 07:14:55 REP. HIMMELBERGER said that the Subcommittee moved forward with the proposal for a session parliamentarian. He asked if the Council had questions. REP. MCGILLVRAY said that Mr. Petesch has been the "go to guy" for rules questions and asked if that was an official role or one that evolved over time. Mr. Petesch said that as staff for the House, Senate, and Joint Rules Committees, the role was thrust upon him. REP. MCGILLVRAY suggested that a new staff member be assigned to the Rules Committees. Ms. Fox said that there will be at least one staff assignment to the Rules Committee. REP. HIMMELBERGER said that having several individuals may be problematic and that it would be better to have just one authority with the final word.
- 07:21:26 SEN. STORY reviewed the Subcommittee's discussion and said that the Subcommittee was leaning towards having a staff person serve as the rules authority who would work with the Rules Committee and act as an advisory parliamentarian.

- **Legislative Space Subcommittee Report A**

- 07:23:48 SEN. WANZENRIED referred to the statutes related to allocation of space for the Legislature (**EXHIBIT 29**) and asked that Council members look at (3)(b) : *"Subject to 2-17-108, the department, with the advice of the legislative council, shall allocate other space for the use of the legislature, including but not limited to space for committee rooms and legislative offices."* SEN. WANZENRIED said under the current statute, control of the space of the Capitol building is under the purview of the Department of Administration, subject to the advice of the Legislative Council. He said that Subcommittee discussed drafting a bill to reverse that. Another idea discussed was the need for a business plan in order to determine what the legislative branch's future needs are. SEN. WANZENRIED said that, coincidentally, a consulting firm is already doing similar work on the entire Capitol Complex and that approximately \$30,000 funding is available to use to develop a business plan. If the decision is made to proceed with developing the business plan, it would become a living document and would move the process along towards the goals identified in the plan.
- SEN. WANZENRIED said another topic discussed by the Subcommittee was conducting a comprehensive inventory of the Capitol building. He referred to 2-17-108, MCA, (page 2, EXHIBIT 29) requiring an inventory of the Capitol building. He said there is no inventory that identifies what exactly is legislative space. He said that there is some question about who controls certain spaces in the Capitol, such as the security desk on the first floor. He said that without an inventory, the Legislature is essentially just a tenant in the Capitol building and that the Council needs to clarify what kind of control the Legislature should have over its space and how it wished to proceed.
- 07:31:03 Ms. Fox said that a bill draft will be available for consideration at the September meeting. The Council discussed if it should join with the DOA's Capitol Complex study and creating a business plan for the Legislature. Ms. Fox said the study would be completed before the Council's September meeting. The Legislative Council discussed the options. SEN. STORY cautioned that a study should include all of the occupants of the Capitol.
- 07:37:17 Ms. Fox reminded the Council that her instruction from the Council at it's March meeting was to first identify the legislature's needs before dealing with the other occupants of the building. She said that the other agencies in the building would likely have a similar long-term needs study done during phase two of the study. **SEN. WILLIAMS moved that the Legislature participate in the DOA's study.** REP. MCGILLVRAY said that space on the second floor space was also discussed as a potential study area and wondered if the tenants of that floor would be willing to help pay for the study.
- 07:39:58 SEN. WILLIAMS said her motion was just to look at legislative space. SEN. WANZENRIED said that having a business plan would give the legislative branch a strong footing in space discussion. He thought the \$30,000 would be a good investment but said that if the Council does vote to proceed, it must follow through with action.



07:41:50 **SEN. WILLIAMS' motion passed on a voice vote, REP. MCGILLVRAY voted no.** SEN. STORY said that he still has concerns about the proposed bill draft and said that while he does not disagree with the concept, the bill draft will have to be carefully drafted or it would likely be vetoed by the governor. He suggested that a tenant's association be formed through which the legislative branch could keep the other tenants informed. He suggested that SEN. WANZENRIED act as the Council's ambassador. SEN. WANZENRIED agreed to but thought SEN. STORY should put in the bill draft request on behalf of the Legislative Council. Ms. Fox said that she had enough direction for now.

- **Interim Committee Improvement**

07:43:02 SEN. ESSMANN asked to defer discussion until September. Ms. Fox noted that the Council received information in their meeting packet that lists all of the House, Senate, and Administrative or Interim committees as well as options for improving interim committees (**EXHIBIT 30**).

07:45:01 Ms. Fox noted that LC3334 - a bill draft revising requirements for recording of minutes (**EXHIBIT 31**) and LC3333 - a bill draft revising pay options for legislators (**EXHIBIT 32**) were in the meeting packet but could wait for consideration until the September meeting.

#### **DIRECTIONS TO STAFF, PROPOSED FUTURE MEETINGS, MEMBER ISSUES AND REQUESTS**

07:45:31 REP. HIMMELBERGER asked to change the September 14, 2010, meeting date. After discussion, the Council agreed to change the meeting date to September 9, 2010.

07:49:21 SEN. ESSMANN distributed a document regarding federal mandates and the impact of health care reform legislation enacted by Congress, and Montana's statutes with respect to state employee benefits and Medicaid expansion (2-1-401-2-1-408, MCA (**EXHIBIT 33**)). He asked that the Legislative Council request an executive branch analysis of the expense of the impacts. He asked if the issue should be placed on the September meeting agenda. Ms. Fox said that other information requests have been received regarding the federal legislation and that a staff team has been assembled to deal with this and discussed the provisions of the bill through a conference call with congressional staff. She said information is being compiled from a variety of sources and the information will be posted on the website as it becomes available. The Council agreed that the topic would be addressed at the September meeting. Ms. Shirley explained how to access the information through the legislative branch home page: [www.leg.mt.gov](http://www.leg.mt.gov), look under the "What's new" category and click on "federal health care reform".

07:57:11 SEN. STORY asked to have legal staff prepare a summary of the issue and what provisions or statutory changes may be needed. SEN. WILLIAMS said that the Children and Family, Health and Human Services Interim Committee (CFHHS) is more equipped to address this than the Council is and that the issue ought to be directed to that committee.

**Other issues before the Council**

07:58:47 SEN. BRUEGGEMAN requested staff to develop a list of legislators who wish to be on a "do not mail" list. He said there should be a way for legislators to direct all state agencies on how to direct electronic mail and correspondence. Ms. Fox discussed what has been done to date to that end.

SEN. WANZENRIED asked that the information discussed regarding the federal health care reform information discussed by SEN. ESSMANN be forwarded to the CFHHS.

**ADJOURNMENT**

08:04:15 With no further business before the Council, REP. HIMMELBERGER adjourned the meeting at 4:05 p.m. The next Legislative Council meeting is scheduled for September 9, 2010, in Helena.

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