



Legislative Council

62nd Montana Legislature

SENATE MEMBERS

CAROL WILLIAMS--Chair
JEFF ESSMANN
JIM PETERSON
MITCH TROPILA
BRUCE TUTVEDT
DAVID WANZENRIED

HOUSE MEMBERS

MIKE MILBURN--Vice Chair
CHUCK HUNTER
MARGARET MACDONALD
TOM MCGILLVRAY
JESSE O'HARA
JON SESSO

COMMITTEE STAFF

SUSAN FOX, Executive Director
TODD EVERTS, Legal Division Director
DAWN FIELD, Secretary

MINUTES

March 7, 2012

Room 102, State Capitol
Helena, Montana

Please note: These minutes provide abbreviated information about committee discussion, public testimony, action taken, and other activities. To the left of each section in these minutes is a time designation indicating the approximate amount of time in hours, minutes, and seconds that has elapsed since the start of the meeting. This time designation may be used to locate the referenced discussion on the audio or video recording of this meeting.

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Hard copies of the exhibits for this meeting are available upon request. Legislative Council policy requires a charge of 15 cents a page for copies of the document.

COMMITTEE MEMBERS PRESENT

SEN. CAROL WILLIAMS, Chair
REP. MIKE MILBURN, Vice Chair

SEN. JEFF ESSMANN
SEN. JIM PETERSON
SEN. MITCH TROPILA
SEN. BRUCE TUTVEDT
SEN. DAVID WANZENRIED

REP. CHUCK HUNTER
REP. MARGARET MACDONALD
REP. JESSE O'HARA
REP. JON SESSO

COMMITTEE MEMBERS EXCUSED/ABSENT

REP. TOM MCGILLVRAY

STAFF PRESENT

Susan Fox, Executive Director, Legislative Services Division, LSD
Todd Everts, Director, Legal Services, LSD
Dawn Field, Council Secretary

AGENDA & VISITORS' LIST

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

COMMITTEE ACTION

The Legislative Council:

- approved the December 7, 2011, meeting minutes;
- approved a motion to have staff to research how a joint revenue estimating subcommittee might work, including membership and other details;
- did not approve a motion to draft legislation to repeal SB 279 and to craft a new solution to deal with Capitol security issues;
- did not approve a motion to adopt the Security Subcommittee's recommendation for a security officer pilot project;
- adopted dates for caucus and legislator training; and
- changed the May meeting dates to May 2 and 3.

CALL TO ORDER AND ROLL CALL

00:00:02 SEN. WILLIAMS called the meeting to order at 9:00 a.m. The Secretary took roll, SEN. ESSMANN and REP. MCGILLVRAY were excused (Attachment 3).

Approve minutes from December 7, 2011

REP. MACDONALD pointed out that the minutes indicated that she supported hiring a private security officer rather than a sworn-in officer. She said that is not the case but she moved to approve the minutes as written.

Update on Legislative Services Division activities

00:01:15 **Susan Fox, Executive Director, Legislative Services Division (LSD)**, explained reorganization and restructuring of the Division, which resulted in the creation of the LSD Communications Office.

00:02:11 **Kevin Hayes, Legislative Communications Officer**, explained goals of the office and the services offered. He introduced K'Lynn Sloan Harris, Andrew Franks-Ongoy, Sonja Gavin, and Pam Weitz as the Communications Office staff.

00:03:44 Ms. Fox announced that the request for proposal regarding the audio video upgrades was awarded to Granicus. She said that the Council will be given a demonstration when the upgrades are complete. She also noted that LSD recently received an unqualified audit, which is the best score possible.

Commissioner of Political Practices - NCSL, other states

00:05:52 Ms. Fox said that Council members received a memorandum prepared by Todd Everts, Legal Director, LSD, regarding jurisdictional authority over the actions and activities of the Commissioner of Political Practices (EXHIBIT 1). She said that the State Administration and Veterans' Affairs Interim Committee (SAVA) is

also looking into this issue and that David Niss, Staff Attorney, LSD, prepared a memorandum for SAVA outlining certain statutory concerns (EXHIBIT 2). Ms. Fox said the issue is that there is no vehicle in statute to deal with problems that arise in the Commissioner of Political Practices Office. She said that Megan Moore, Research Analyst for SAVA has researched how other states have structured similar positions and that it appears that Montana is the only state with a single commissioner. Ms. Fox said that Ms. Moore is preparing a report for SAVA and that copies will be provided to the Council. She said that various options are available, such as a new legislation, an interim study, or further research of other models. Ms. Fox asked the Council for input on how or if it wished to proceed.

- 00:12:25 REP. MILBURN thought the Council should pursue the issue, saying the current system is not working.
- 00:13:09 SEN. WILLIAMS suggested that Council members attend future SAVA meetings to monitor the issue and to offer input. She thought that legislation may be necessary to "tweak" statutory language. She asked Ms. Fox to ask SAVA if it would object to Legislative Council members sitting in on future discussions regarding this topic. Ms. Fox said she would make the request.
- 00:16:52 SEN. PETERSON said that he attended that last SAVA meeting and that while no consensus was reached about how to proceed, it was agreed that current statutory language must be examined. He said he has received comments from concerned constituents and also anticipates bill draft requests from concerned legislators. He said that his opinion is that it should not be up to the governor alone to choose a Commissioner of Political Practices.
- 00:19:27 REP. SESSO agreed that there are concerns. He discussed the need for the Commissioner to be independent. He thought that the recent problems with the office have been more of an exception than the rule and said that changes should not be based just on those issues. He said that the SAVA is the proper avenue through which to explore the issue and for decision making.
- 00:22:17 SEN. WILLIAMS said she would like to know what other states do because it would provide more information on which to base decisions.
- 00:24:11 SEN. ESSMANN (*called in on polycom phone*) said the fundamental problem with the current structure is that it lacks due process. He said the current structure places all of the duties and responsibilities with one person and suggested that the duties be divided into several parts.
- 00:26:16 SEN. WILLIAMS suggested that additional funding would help the Commissioner deal with the work load and noted that requests for additional funding have been denied. She said the Legislature must think of what the needs of the Commission are and commit to supporting and funding the office so can it can do the job properly.

LITIGATION/ADMINISTRATIVE PROCEEDINGS UPDATES

Board of Personnel Appeals complaint

00:28:04 **Todd Everts, Legal Director, LSD**, updated the Council on the Board of Personnel appeals complaint. He provided a list of current members and the duties of board (EXHIBIT 3).

House Bill No. 351 (TSEP) -- local government litigation

00:30:16 Mr. Everts updated the Council on the litigation regarding HB 351 - TSEP. He reported that Judge Sherlock ruled in favor the Legislature and said that the state has 60 days to file an appeal.

Senate Bill No. 409 -- state cabin site leasing

00:31:56 Mr. Everts said the Legislature became involved in this issue because it was named in the suit. He briefly reviewed the issue and said that LSD staff attorneys prepared a brief to dismiss the Legislature from the suit, which was granted (EXHIBIT 4).

00:36:41 SEN. TUTVEDT commented that the intent of SB 409 was to establish standards for leasing state ground in a manner similar to the practice of the Department of Natural Resources and Conservation (DNRC). He said he found it odd that the Court would stop the process established in SB 409 since it so closely follows the DNRC requirements.

Initiative and referenda status -- LR 119, LR 123

00:37:51 Mr. Everts said that LR 123 - contingent tax payer refunds for surplus, is being litigated and that the litigants are waiting for court decisions to be made regarding a motion to dismiss and a motion for summary judgment. He said that LR 119 is also in litigation, that the issue has been briefed and that litigants are awaiting court action.

00:39:13 SEN. TUTVEDT asked what the time line is for decisions. Regarding LR 119, Mr. Everts predicted that the justices would make a decision in advance of the June primary ballot. He said that LR 123 will be on the November general ballot so the Court will have more time to make a decision.

00:40:17 REP. SESSO referred back to the SB 409 litigation and asked Mr. Everts several questions regarding the Legislature's involvement. Mr. Everts discussed the LSD legal staff's brief, the role of the Attorney General in defending the law, legislative immunity, and options; should the law be ruled unconstitutional.

LEGAL REVIEW OF BILLS

Overview of current legal review process

00:48:41 Ms. Fox discussed a report prepared for the Council regarding legal or constitutional concerns noted in bill draft junque files (EXHIBIT 5). The report included a spread sheet with a list of bills for which the drafter noted any legal or constitutional concerns and a thorough explanation of LSD's current bill draft review process.

00:54:53 SEN. TUTVEDT asked about the current status of the bills listed in the spreadsheet. Ms. Fox reviewed the disposition of most of the bills.

- 00:57:30 Mr. Everts explained how drafters craft bills and said that while only a judge can make a determination on a bill's legality or constitutionality, the drafter's job is to notify a legislator of any potential concerns and to offer options for dealing with the concerns. He said the Council can decide if the bill review process needs to be formalized more.
- 01:02:33 Ms. Fox said the goal is to draft bills to be as solid as possible but that there are situations in which the legislator wants litigation in order to get clarity on a particular issue. She said that because of the unprecedented number of requests made in 2011 to see the junque files, she and Mr. Everts would like some guidance on how to proceed in future legislatures.
- 01:05:03 REP. MACDONALD discussed her concerns about the high number of bills that were legislative referenda and said that sending bills with dubious constitutional questions through the process raises a red flag with her.
- 01:05:55 REP. MILBURN thanked Ms. Fox for the information and said his opinion is that the current system works and that no changes are needed.
- 01:07:28 SEN. ESSMANN said there are many different opinions regarding the federal supremacy clause. He discussed his opinion, as an attorney, that staff raised supremacy issues in several bills that he would not have because of the limits in 10th amendment. He said that it is the role of the courts to settle these questions and that while it is important that staff point out concerns, they should not have the final word.
- 01:09:39 REP. HUNTER agreed that the process is working but said that there was more work than in previous sessions to "clean up" bills that probably should not have made it to the committee level. Regarding the junque file issue, he said the information is useful and given that, he said he would prefer to know when the bill comes to committee if legal review has found concerns. He asked if there could be a process to alert the committee to such concerns.
- 01:11:25 REP. MACDONALD said, with respect to legislative referenda, the system may not be working as well as it should be, particularly because of a new rule that allowed those bills to be started late in the process. She said that with the late introduction and transmittal dates for those bills, it would make sense to have some type of notation on the bills that would alert voters of the concerns.
- 01:13:10 SEN. TUTVEDT asked how staff concerns are noted on a bill draft. Ms. Fox explained. SEN. TUTVEDT said that with SB 409, for example, he was not aware of the concerns noted in the junque file. He suggested noticing concerns on the fiscal note. Ms. Fox said she wasn't sure how staff concerns could be incorporated into a fiscal note. REP. HUNTER commented that not all bills have a fiscal note.
- 01:17:24 SEN. WANZENRIED asked about the level of resources that would be needed to change the process and said that the need would have to be balanced against the time spent on drafting bills. Mr. Everts explained how he works with drafters

to resolve concerns, including working with the requestor. He said he could research bill review processes in other states.

01:20:30 SEN. WANZENRIED asked how much staff time has been taken up dealing with junque files and related issues. Ms. Fox said it has required email exchanges, legal memos, and more; and has presented a conundrum to staff. SEN. WANZENRIED suggested that there should be a way to note on a bill draft that the sponsor has been notified of a legal issue and has chosen to go ahead with the draft. Mr. Everts said that committee staff can inform the committee.

01:25:54 The Council discussed what could be done. Ms. Fox said one option would be to add a "technical note" box to the LC cover sheet.

01:28:25 SEN. WILLIAMS said she thought notification of concerns on a bill draft would save staff and committee time. She said it wouldn't limit a legislator's ability to bring the bill forth but would allow leadership to encourage members to deal with the concerns. She said she would like to have staff research how to do it. It was agreed that Ms. Fox would report back at the May meeting.

01:34:42 SEN. WILLIAMS recessed the meeting for a break until 10:40 a.m.

BREAK

SEN. WILLIAMS called the meeting back to order.

REVENUE ROUNDTABLE DISCUSSION

Overview (see RTIC memo)

01:59:48 Ms. Fox reviewed the concepts discussed in the February 10, 2012, memo from Jeff Martin, Revenue and Transportation Interim Committee (RTIC) staff, on the revenue estimating process, as examined by the roundtable discussion between RTIC members, the Legislative Fiscal Committee (LFC), and the Legislative Council (EXHIBIT 6).

RTIC comments & Items assigned to the Legislative Council for consideration: Joint Tax Subcommittee: composition; dates to be completed; legislative calendar

02:04:26 SEN. PETERSON reported, as a member of RTIC, on the roundtable discussion. He said that while it was agreed that discussion should continue, there was not consensus on what should be done. SEN. PETERSON discussed several of the options considered at the roundtable meeting (Table 1: Legislative Process, EXHIBIT 6) and said the objective is to give more transparency and authenticity to the revenue estimating process. He thought it would be good to have more people look at it than just the RTIC and House and suggested that the revenue estimate be introduced by resolution in the Senate rather than House. He discussed the legislative process the resolution would take from there, including what committees would review it, transmittal dates that would have to be met, and potential problems such as rule changes. He noted that the revenue estimate has not been transmitted to the Senate in the last several sessions and that the process he discussed would bring more people into the process and allow more transparency and authenticity. He said that the rules could be written to try the proposal for one session and that while the RTIC was lukewarm to the idea, it was willing to try it.

- 02:14:45 SEN. TUTVEDT discussed his concerns about how the joint rules would be written to deal with the transmittal dates. Mr. Everts said he would have to do a legal analysis. He said that a resolution technically is a bill and has to follow the process.
- 02:18:45 REP. MILBURN asked to discuss the way HB 2 originates in the House then is transmitted to the Senate, and if changed, then goes to Conference Committee. He said the way the Conference Committee is set up, the originating house is at a disadvantage. Mr. Everts and Ms. Fox both responded, saying that the originating house gets a chance to accept or reject amendments and that the bill would only go to Conference Committee if the changes are rejected.
- 02:21:00 Mr. Everts said the leverage over the entire issue is the constitutional requirement for a balanced budget. He discussed the importance of the failsafe provision.
- 02:22:56 SEN. PETERSON discussed several scenarios that could occur if rules were ignored. He said that there is enough distrust in the rules process that the House is "fearful of being left high and dry". SEN. WILLIAMS commented that that is how the Senate has felt the last several sessions.
- 02:25:49 SEN. WANZENRIED said that SEN. PETERSON did a good job of summarizing the issues. He said the Legislature should hold itself to a higher standard and take more responsibility for the process, and has an obligation to do the right thing.
- 02:29:43 REP. SESSO said he is a proponent of changing the process and described an alternative process and time line for the revenue estimate process. He said change could be accomplished more easily if the Council and leadership were behind it. **REP. SESSO moved to have staff to research how a joint revenue estimating subcommittee might work, who would be members, and to propose it formally by summer.**
- 02:38:16 SEN. ESSMANN said he thought REP. SESSO's concept is worth exploring and would support a motion. He suggested that making it a step-by-step process may make it easier to make changes.
- 02:42:35 SEN. WILLIAMS asked Amy Carlson to comment how such a proposal may affect staff time. **Amy Carlson, Legislative Fiscal Analyst, Legislative Fiscal Division (LFD)**, said there are no LFD staff concerns at this time.
- 02:44:00 REP. SESSO, SEN. PETERSON, and SEN. WILLIAMS all spoke in support of the motion.
- 02:48:12 **The motion passed on a unanimous voice vote.** SEN. WILLIAMS encouraged the Rules Subcommittee to draft a language proposal for the May Council meeting. REP. SESSO said he would like to allow public comment on the issue.

02:50:02 Ms. Fox discussed Table 2: Independence and Expertise; Table 3: Frequency of Estimates or Updates; Table 4: Accuracy of the Estimate; and Table 5: Managing Volatility (EXHIBIT 6). She said that the Steering Committee is scheduled to meet in late March and that staff would try to have a draft proposal prepared by then.

02:53:19 SEN. WILLIAMS recessed the meeting for a lunch break. She announced that the Security Subcommittee would meet during the lunch hour for a brief meeting.

LUNCH BREAK

04:02:37 SEN. WILLIAMS called the Legislative Council back to order at 1:08 p.m.

Security Subcommittee report

04:03:08 REP. HUNTER reported on the Security Subcommittee held during the lunch hour. He said that the Subcommittee chose option 2: hire one officer for a pilot project for 9 months of FY 2013 for a cost of \$56,851 (page 2, Options for Consideration EXHIBIT 7). He discussed details of option 2.

04:09:27 SEN. PETERSON commented that there are issues that need to be worked out with a security officer and that any armed officer in the Capitol must have proper training.

04:12:49 SEN. TUTVEDT asked how much money was spent on extra security during the last session and if one officer would be enough. Ms. Fox said that one officer should be sufficient most of the time but that there may be times when an additional officer is needed. SEN. TUTVEDT said it is a question of risk and that he wasn't sure the risk was that high. He said perhaps he shouldn't have voted for SB 279. Ms. Fox said that numerous security surveys have been done and that the openness of the Capitol is an issue for many. She discussed some of the concerns and said that to the extent that legislators represent government, they may be at a higher risk than others. She noted that many high schools now have police officers on staff.

04:16:35 REP. MILBURN said he supported the motion but suggested that the Council also consider adding certain restrictions to SB 279.

04:17:05 SEN. TROPILA asked if the \$56,851 will come out of the LSD budget and where carryover funds come from. Ms. Fox explained that carryforward funds come from the ending fund balance of the previous biennium and can be used for certain types of expenses. She explained how the funds can be used.

04:20:01 SEN. TROPILA asked how the position would be funded if it became permanent. SEN. PETERSON said it would likely become a funding request that would have to go through the legislative process as part of the budget.

04:25:28 REP. MACDONALD said it was clear to her after watching the Senate floor debate on SB 279 that the Legislative Council would be the body to flesh out the details. She said while she strongly opposed the bill, it is now law and it is absolutely necessary that the Council address it.

- 04:26:25 SEN. WANZENRIED said it seems clear that most of the Council members are uncomfortable with this issue. **He moved that the Legislative Council prepare legislation to repeal SB 279 and have the Council prepare a more responsible solution.**
- 04:31:27 SEN. PETERSON thought a motion would be premature and that more discussion was needed.
- 04:32:19 REP. MILBURN agreed and said he would rather have the Council define the responsibilities of a security officer and structure the restrictions and training requirements of the position.
- 04:34:14 SEN. WILLIAMS agreed with SEN. WANZENRIED's comments and that the issue should be put back before the 2013 Legislature for much more discussion.
- 04:35:41 SEN. TUTVEDT said he did not support repealing SB 279 just to make a statement. He thought that leadership would, after consultation with the minority and LSD staff, make the right decisions in how to structure the position.
- 04:38:24 **SEN. WANZENRIED's motion failed on 6-6 roll call vote. Rep. Milburn, Rep. O'Hara, Rep. McGillvray (proxy to Milburn), Sen. Essmann, Sen. Peterson, and Sen. Tutvedt voted no.**
- 04:39:26 SEN. WANZENRIED questioned REP. MILBURN about Rep. McGillvray's proxy vote and asked if he had discussed this issue with Rep. McGillvray. REP. MILBURN said he held a valid proxy and had the authority to vote it based on discussions he has had with Rep. McGillvray on this issue. He said the Council needs to move on and figure out how to best implement the law.
- 04:41:43 **REP. HUNTER moved to adopt the recommendation of the Security Subcommittee to select option 2 to provide a single security officer for October 1, 2012, through June 30, 2013.**
- 04:43:49 SEN. WANZENRIED asked what policy will be going forward. SEN. WILLIAMS said her understanding is that a pilot program using only carryforward money would be implemented for 2013 session but that beyond that, the position would have to be approved as a budget item. Ms. Fox said the intent was to solve an immediate need for security in a responsible manner with trained people with established protocol. She said that the Helena Police Department is willing to help out with the 2013 session but that there would be only a short window to evaluate the position and decide if it was a success. She said that would put the Helena Police Department in an awkward position because it would allow little advance notice on whether or not the position would be continued.
- 04:47:26 SEN. TUTVEDT said that when he voted for SB 279, he never envisioned that the person would not be a trained professional.
- 04:49:48 SEN. PETERSON said he worked in a good faith effort to find a good solution but that the issue had been turned into a podium to cross examine and second

guess the 2011 Legislature. He said it would be wise to not fund the position and leave it up to 2013 leadership to address.

- 04:50:55 REP. MILBURN agreed that the issue had become a political football and that he was not willing to waste any more time on it.
- 04:51:34 SEN. WILLIAMS agreed that a good faith effort had been made to resolve the issue but she said that she also agreed with SEN. WANZENRIED that SB 279 should not have been passed. She said that she hoped that the next legislature would make a good effort to fix the bill and said she would be comfortable with a pilot program if there was an agreement to fix the statute. She said if the Council does nothing, then the issue is left to the 2013 leadership, which was a bad idea.
- 04:53:49 REP. SESSO said he did not support having a security officer for several reasons. He said he thought the discussion was healthy and even though a solution was not found, he did not want the discussion to be characterized as political or bickering
- 04:56:05 REP. HUNTER said that he was tempted to withdraw the motion but would not because dealing with the issue was the right thing to do. He said that he also opposed SB 279 but that his position on the bill had nothing to do with security issues in the Capitol.
- 04:57:34 **REP. HUNTER's motion failed 3-9 on roll call vote. Rep. McGillvray (Milburn proxy), Rep. Sesso, Sen. Essmann, Sen. Peterson, Sen. Tropila, Sen. Tutvedt, Sen. Wanzenried, and Sen. Williams voted no.** SEN. WILLIAMS said that the Council did not give due diligence to the issue would revisit it at a future meeting. She said that the lack of action allows many concerns to go unaddressed and that the Council must discuss this again in order to give Ms. Fox the tools needed to proceed.
- 04:59:49 SEN. WANZENRIED asked if staff could create position descriptions for security officers. Ms. Fox said she would do that.
- 05:00:28 SEN. TUTVEDT referred to 45-8-321 and 45-8-329, MCA, and asked Ms. Fox review them in creating position descriptions.
- 05:03:30 SEN. ESSMANN said that the position should require either current or prior law enforcement employment. REP. MILBURN agreed and said that such a requirement would satisfy safety concerns.
- 05:07:57 SEN. TUTVEDT asked how much notice the Helena Police Department will need in order to have an available officer. Ms. Fox said that it takes about six months for an officer to become fully trained so the May meeting would be about as late as the issue could go without letting the Department know of the Council's plans.

Public Comment

No public comment was given.

2013 SESSION: Legislative Branch budget topics

Legislative Branch budget direction

- 05:10:38 Ms. Fox said reviewed the Program 21, Interim Committees and Activities Program budgetary and expenditure report (EXHIBIT 8).
- 05:13:33 Ms. Fox reviewed the 2011 Feed Bill Report (EXHIBIT 9).
- 05:14:17 Ms. Fox reviewed budget reports for the National Conference of State Legislatures, the Council on State Governments, and other interstate legislative organizations (EXHIBIT 10).
- 05:14:36 Ms. Fox said she is now in the budget planning process and that a draft budget is due in September. She asked the Council for direction on how to proceed on developing the budget.
- 05:17:08 REP. SESSO said he would like to pursue modernization of information technology systems and that he was willing to lead the effort to get it done. He said that the budget numbers should be the same as the last time, before the 5% cuts were implemented.
- 05:19:40 REP. HUNTER and SEN. WILLIAMS agreed with that approach.
- 05:20:26 SEN. TUTVEDT asked if the improvement would be a one-time expenditure or an ongoing item. Ms. Fox said it would be about a \$6 million one-time expenditure and explained how the IT Reserve Account is used to fund these types of projects. SEN. TUTVEDT asked about the functionality of a new system. Ms. Fox said the system would be created for Montana but based on other operating systems.

Set caucus and orientation dates

- 05:22:53 SEN. TUTVEDT said that there is a Council on State Governments (CSG) training in mid-November. Ms. Fox referred the Council to the list of proposed dates for caucus and orientation (EXHIBIT 11).
- 05:26:33 **SEN. WANZENRIED moved adoption of the proposed dates, subject to discovery of the CSG meeting.** REP. MACDONALD said that the Western Legislative Academy is scheduled for November 13-16.
- 05:32:57 The Council discussed the proposed dates. It was agreed that the caucuses would be held on November 12 and legislator orientation on November 13 and 14.
- 05:34:19 After discussion, it was agreed that leadership training would be held on November 12 and December 3. Ms. Fox discussed the legislative dinner, saying it would be scheduled for November 12 as well.
- 05:35:37 Ms. Fox said that a decision on additional training, suggested for January 2-4, could be made later.

05:36:25 Ms. Fox discussed Law School for Legislators and Legislative Rules Training. She said that she would work with Ms. Carlson to make sure staff is available to help out.

05:37:54 **SEN. WANZENRIED withdrew his motion. He made a substitute motion to adopt the proposed dates as amended. The motion carried on a unanimous voice vote.**

Legislative calendar

05:38:38 Ms. Fox said that four different calendar scenarios were prepared for the Council (EXHIBIT 12). She said the cover memo provides a brief description of each scenario. She said that the last page shows details from the 2011 session and the extra costs that were incurred because of the date changes that occurred. She said the different scenarios would give the Council a better idea of what potential costs would be. Ms. Fox reviewed each scenario.

05:45:10 REP. MILBURN said he is hesitant to extend the session because of the impact on people's lives and livelihoods. He asked to discuss the ramifications of committees not meeting on Mondays and Fridays and asked if there would be a way to design a calendar to resolve that. Ms. Fox said that issue has been discussed and that the red lettering on the calendars was intended to alert committees to deadlines. She said that a special calendar would be created for that purpose.

05:47:12 REP. MACDONALD said that the current calendar seems to be an artifact of an earlier age before term limits, when many of the legislators had a better working knowledge of the legislature. She said the learning curve for new legislators is much greater now and that the calendar may need to be adjusted in order to provide more opportunities for them to learn. She said the ultimate goal is quality decisions for a better legislative process. REP. MACDONALD said she would support going into the first week of May.

05:51:01 SEN. TUTVEDT asked about holding days for the end of session in order to deal with governor vetoes. Ms. Fox said that was not included in the scenarios because that complicates the process. She explained further. SEN. TUTVEDT asked how difficult it would be change the rules that would make it easier to do that. Mr. Everts said it is an issue of Legislature's ability to transmit HB 2 to the governor. He said the House and Senate have to come together to pass the budget and get it to the governor; and that setting a deadline to do that is a problem. He said that adjusting the rules would back up against the Constitution and ultimately the Legislature's ability to get the budget done by a certain date. He discussed some of the variables that would make it difficult to articulate a rule that would accommodate all of the issues.

SEN. WILLIAMS said one benefit of going into May would that that the Legislature would have real data from the DOR, which would allow for a more accurate revenue estimate.

05:56:15 SEN. PETERSON expressed concerns regarding rural legislators and those who live long distances from Helena. He said that he is torn between dragging the schedule out too far and the advantages of having more days at the end to deal with the revenue information that becomes available. He commented that there would be merit in having annual sessions.

06:00:00 SEN. ESSMANN said he likes the idea of shorter annual sessions and discussed several benefits. He said another reason not to stretch out the session is because of housing costs. SEN. WILLIAMS said that while she understands the concerns, her feeling is that the extra days in April would be a sensible approach in dealing with the revenue issues.

06:03:44 REP. SESSO discussed the pros and cons of several of the calendar options, and made several suggestions for additional options.

06:11:32 REP. MACDONALD did not support taking Saturdays off. She also suggested taking a longer Easter break or other longer weekend breaks, rather than a longer transmittal break.

06:13:34 SEN. PETERSON said he liked several of REP. SESSO's suggestions. He discussed taking a week break in the middle of the session and said that work could still be finished by the end of April if legislators would commit to working a full day on Saturdays.

06:16:06 SEN. TUTVEDT noted that April is a very busy month for farmers. SEN. TROPILA commented that a week off would create additional expense and hardship for legislators. He said he liked calendar 4.

06:18:32 SEN. WILLIAMS asked if the Council wanted to vote or postpone the vote until May. **SEN. PETERSON moved adopt to calendar one with a week off in middle the session, similar to REP. SESSO's suggestions. He said the motion would also include shortening the Easter break to three days.**

06:20:16 SEN. PETERSON clarified his motion and said while it may add some financial hardship, it would allow the legislature's work to be done by the end of April.

06:21:49 REP. MACDONALD asked SEN. PETERSON if he would consider modifying his motion to retain the traditional transmittal break and have another 4-5 day break in April in order push back the last legislative day to allow time to get more more accurate data from the DOR. SEN. PETERSON said he would be amenable to that. **The motion as amended passed on voice vote, REP. SESSO and SEN. WANZENRIED voted no.** REP. SESSO discussed his reasons for objecting. SEN. WILLIAMS said that perhaps instead of a motion, Ms. Fox should be allowed to create additional options for consideration at the May Council meeting. It was agreed that Ms. Fox would work on new calendar proposals for the May meeting.

06:28:18 Amy Carlson, LFD, reminded the Council that even though the tax deadline is April 15, the DOR has to have time to process returns so useful information won't be available until the end of April.

06:35:25 After additional discussion, **SEN. PETERSON withdrew the motion.** Ms. Fox asked the Council to define "meaningful break". SEN. PETERSON said it would have to be at least 3-4 days. SEN. WILLIAMS said 4 days would be a good minimum.

06:37:11 SEN. ESSMANN said that after reviewing the proposals, it might be wise to poll the Legislature with the options. SEN. WILLIAMS said that could be done but that the final decision rests with the Council. She said that leadership should discuss the issue with their own delegations before a final vote. REP. SESSO suggested posting the proposals on the Council web page for comment from legislators.

06:38:55 SEN. WILLIAMS recessed the meeting for a 10-minute break.

BREAK

SEN. WILLIAMS called the meeting to back to order.

Permanent House and Senate staff discussion

06:53:41 Ms. Fox discussed her findings through research from the National Conference of State Legislatures (NCSL). She said that if permanent staff is hired, she would encourage the Council to give careful consideration to issues such as pay and benefits, employee classification, and position descriptions. She said she could work with leadership to create a list of needs and that she has spoken with SEN. TUTVEDT about what legislative staff can and can't do, versus hand-selected partisan staff.

07:00:25 REP. MILBURN said that he thought that the Council should follow Ms. Fox' advice for her to work with leadership to identify the needs. SEN. PETERSON agreed and said the issue is worth pursuing. He discussed how the additional staff would be of help to leadership for various duties.

07:02:33 SEN. TUTVEDT wondered about how much work could be done by non-partisan staff and how public information laws may affect the work done. He said that certain political information in internal documents should have some level of protection. Mr. Everts said there is no firewall to protect that work because Montana's stringent open meeting laws and "sunshine" laws afford little protection to the work product of state employees, personnel records excluded.

Standing Committee topics

07:05:35 Ms. Fox said she is working with IT and session staff on a proposal to change the process for dealing with votes and proxies. She discussed several of the issues and said that one solution may be in a minutes macro that would automatically embed the information into the electronic record. She said that any change may slow down the posting of information. Ms. Fox also discussed the difficulties in dealing with proxy votes and what may be required to change the process for using them. She said that she would be working on a proposal with Marilyn Miller and session secretaries but would like input from the Council. She said the Rules Subcommittee may wish to be involved in this issue also.

- 07:12:34 SEN. WILLIAMS said that she recognized the difficulty in dealing with committee votes but thought that it was information that the public ought to be able to access. Mr. Everts read from Article V, section 11 of the Constitution and said that it is not a question of if this will be done but rather when. REP. HUNTER asked how long the delay would be before the information would be posted. Ms. Fox explained and said that there would be trade-offs but that overall, it would be a beneficial change.
- 07:15:11 It was agreed that the issue would on the May agenda.
- 07:15:19 Ms. Fox referred to the House Standing Committee member and assigned bills document (EXHIBIT 13) and the Senate Standing Committee member and assigned bills document (EXHIBIT 14). She asked the members to review them and let her know the whether the Council would like to make changes to the committee structure.
- 07:18:24 SEN. ESSMANN suggested sharing the information with the Senate Committee on Committees, saying that it could help in making room assignments.

Legislator Training

- 07:19:14 Ms. Fox asked if the Council wanted to plan a spring training session. She said that staff met recently to begin planning new legislator orientation and training. She said the group would like input from the Council and that she would provide copies of the evaluation forms from the last training. She said that comments indicated that it was too much information and staff wants to make it more meaningful.
- 07:21:24 Ms. Fox said she would like volunteers to review the handbook and give input on its usefulness. SEN. TUTVEDT said that having leadership training needs to be at a different time than new legislator training.
- 07:22:44 REP. MACDONALD said the legislator training done in March of 2010 was very beneficial but that the window of opportunity for this spring has closed because of campaign obligations. She said that the first week of January would provide a good opportunity for training. SEN. WILLIAMS said that the Council had agreed at the retreat that legislator training is valuable but agreed that it was too late to plan for this year.
- 07:24:54 SEN. WILLIAMS discussed a state legislative leaders conference in Rhode Island in May that will deal with pension reform. She said it conflicts with the May meeting date and asked if the date could be changed. After discussion, it was agreed that the Council meeting date would be changed to May 2 and 3.
- SEN. WILLIAMS said that she wants a two-day meeting in order to deal with all of the work before the Council, which would include a tour of the Montana State Data Center. She asked SEN. WANZENRIED to discuss the Data Center. SEN. WANZENRIED said that he has already toured the Center and thought that it was very worthwhile. SEN. WILLIAMS asked Ms. Fox to discuss the letter she sent to the Select Committee on Efficiency in Government regarding the Data

Center and the Legislative Branch plans. Ms. Fox discussed the letter (EXHIBIT 15) which addressed the needs of the Legislative Branch. She said that while most IT services could be moved to the Data Center, there are certain concerns and functions that she felt should be kept onsite within the Legislative Branch.

07:33:33 SEN. WANZENRIED said that there may be reasons for agencies to not move to the Data Center but that the Legislature needs to do whatever it can to encourage migration to the Center. He said it would not only decrease costs but would take care of other problems. He said that exemptions could be considered on a case-by-case basis.

07:35:07 SEN. WILLIAMS said that the Legislative Council needs to see the Data Center and that she would like to schedule a tour for the May meeting.

PUBLIC COMMENT

No public comment was given.

ADJOURNMENT

07:35:59 REP. O'HARA moved to adjourn the meeting at 4:42 p.m. The Legislative Council will meet next on May 2-3, 2012, in Helena, Montana.

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