



# Legislative Council

## 62nd Montana Legislature

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JEFF ESSMANN  
JIM PETERSON  
MITCH TROPILA  
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MARGARET MACDONALD  
TOM MCGILLVRAY  
JESSE O'HARA  
JON SESSO

### COMMITTEE STAFF

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

## Rules Subcommittee of the Legislative Council MINUTES

May 2, 2012

Room 102, Capitol Building  
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. JIM PETERSON  
SEN. MITCH TROPILA  
REP. MARGARET MACDONALD  
REP. TOM MCGILLVRAY  
REP. JESSE O'HARA

### **STAFF PRESENT**

TODD EVERTS, Director, Legal Services  
SUSAN FOX, Executive Director  
DAWN FIELD, Council Secretary

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

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

## **COMMITTEE ACTION**

The Rules Subcommittee of the Legislative Council reviewed and took action on twenty-eight legislative rule issues as listed in *Legislative Rule Issues and Options Table*.

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

- 00:00:00 SEN. PETERSON called the meeting to order at 9:00 a.m. The Secretary noted the roll, all members were present (Attachment 3). REP. MCGILLVRAY was also present. SEN. PETERSON asked Mr. Everts to give an overview of the meeting objectives and goals.
- 00:00:39 **Todd Everts, Code Commissioner, Legislative Services Division (LSD)**, described where the Subcommittee is at in the process of revising legislative rules. He explained how the Legislative Rule Issues and Options table (EXHIBIT 1) would be used as a decision-making tool.
- 00:03:11 In response to a question from SEN. TROPILA on procedure, Mr. Everts explained how a rules bill draft resolution progresses through the legislative process.
- 00:05:20 SEN. PETERSON said that the Subcommittee will review each rule issue and discuss the options as listed in the table, with the goal of reaching a consensus agreement on each item.

## **Issue #1 - Legislative Referenda Classification/Transmittal Deadline**

- 00:06:15 REP. MACDONALD said that a new transmittal deadline for dealing with legislative referenda was used in the 2011 session and that she didn't think it worked very well. She said she would like to go back to the earlier transmittal deadline.
- 00:08:13 REP. MACDONALD discussed her opinion that the new deadline eroded the system of checks and balances of the three branches of government and allows highly partisan issues to become ballot measures.
- 00:10:47 SEN. PETERSON discussed his opinion that the power of the legislative branch has been eroded and that this rule allows the Legislature more power while maintaining judicial branch authority to rule on a measure. He said he would oppose changing the rule.
- 00:14:53 SEN. TROPILA agreed with REP. MACDONALD's position and said that the change allowed legislators to sidestep tough issues legislators were sent to Helena to vote on.
- 00:16:48 SEN. PETERSON further discussed his concerns regarding the weakening of the legislative branch. He referred to several specific examples such as water compact negotiations and executive branch rules used to get around laws for water rights, the creation of health clinics for state employees, and the education lawsuit.

00:20:12 **REP. MACDONALD moved to revert the deadline. The motion failed on a tie vote, REP. MACDONALD and SEN. TROPILA voted yes, SEN. PETERSON and REP. O'HARA voted no.**

**Issue #2 - Legal Review of Proposed Legislation**

00:21:27 Mr. Everts explained the purpose and process of legal review of bill drafts. He asked the Subcommittee to discuss if the current process is sufficient or if more structure is needed. He referred the Subcommittee to a bill draft check list (commonly referred to as the "mothersheet" - EXHIBIT 2) and explained the steps in a bill draft request. He noted that while LSD staff will alert a legislator to potential concerns, it is the legislator's decision to move forward. Mr. Everts explained how he, as Code Commissioner, reviews all bill drafts and works with drafters on potential problems, including constitutional and legal concerns. He reviewed the issue of junque files as it arose in the 2011 legislative session and said that not all legislators understand their use. He said that he researched how other state legislatures deal with this issue and said that Utah has a more formalized process (EXHIBIT 3). He reviewed how Utah has structured its legal review process and noted that additional staff and resources may be required if Montana was to adopt similar measures.

00:35:36 REP. MACDONALD and REP. O'HARA both spoke in support of the proposal.

00:37:36 SEN. PETERSON and Mr. Everts discussed SEN. PETERSON's concern that the proposal, if adopted, could make it easier to block a bill from proceeding. Mr. Everts assured SEN. PETERSON said that the intent is not to allow staff to block a bill from proceeding but identify potential issues.

00:41:24 **Susan Fox Executive Director, LSD**, said that nonattorney bill drafters are allowed in Montana, which is one of the reasons why legal review is necessary. She explained that the "mothersheet" is mainly an administrative tool used to keep track of the bill and to give legislators a heads up that a bill may be questioned on certain components of the bill. She said that is done as a service to legislators so that they are better prepared to present and defend their bills. She noted that the 2011 session is the only session that she has seen junque files referenced and requested so frequently.

00:47:27 SEN. PETERSON asked where the proposed language would appear on the checklist. Mr. Everts said he would provide sample checklists at the next Subcommittee if the proposal is approved.

00:48:26 SEN. TROPILA asked Mr. Everts about Option 2 and where the wording would appear. Mr. Everts said the wording would be on the checklist and would not appear on the bill draft.

00:49:10 SEN. PETERSON said that he would support Option 2 because legislators owe due diligence to the process and that it would aid in the drafting process.

00:50:16 **REP. O'HARA moved to approve Option 2. The motion passed on a unanimous voice vote.**

### **Issue #3 - Revenue Estimating Process Changes**

00:51:01 SEN. PETERSON said that he would like to place this rule issue before the full Council. Ms. Fox said it is on the next day's agenda. SEN. PETERSON commented that the Revenue and Transportation Interim Committee (RTIC) has spent a great deal of time on this issue. He said that it comes down to the fact that there is a great deal of distrust between the House and Senate. He discussed his concerns further.

### **Issue #4 - Reconfiguring Rules Subcommittee membership to be evenly divided**

00:54:47 REP. MACDONALD explained that having an even number of standing committee members would bring balance and a more collaborative approach to the legislative process. She said that she did not see the ability of the Speaker and President to be tie-breakers and that she would like that to be part of the rule.

00:56:49 SEN. PETERSON said that he appreciated REP. MACDONALD's viewpoint but that his opinion is that there has to be a majority rule. He said that the people of Montana decide the makeup of the Legislature, which is reflected in committee assignments; and that the rule proposal may be idealistic, considering the process.

00:59:43 **REP. MACDONALD moved to approve Option 1 with the Speaker and President included as tie-breakers. The motion failed on a 3-1 voice vote. REP. MACDONALD voted yes, SEN. TROPILA, SEN. PETERSON and REP. O'HARA voted no.**

### **Issue #5 - Cloture Rule**

01:01:55 REP. MACDONALD discussed her concerns and stated that she thought it was abused at times in order to dispose of a bill. Mr. Everts discussed the current rule and process. Ms. Fox suggested that it be included in training and that it would be mainly up to leadership to patrol it. It was agreed to move on.

### **Issue #6 - Proxies/Absentee voting**

01:04:41 Ms. Fox discussed several instances in which proxy vote issues have been problematic and noted that Mason's Manual does not address the issue of proxy votes. She said that she understands the need for them but that this is a complicated issue and that guidance is needed. She asked the members to consider how strict or broad the Legislature wants to be on what is required in its proxy vote language.

01:08:56 REP. O'HARA commented that allowing the use of proxy votes has resulted in fewer members attending hearings, which can be discouraging to members of the public who come to testify on a bill.

01:09:40 SEN. PETERSON asked about consistency of rules between committees. Mr. Everts said that a proxy must be noted in the minutes but that each committee has a certain amount of authority to establish its own requirements for proxy voting. Ms. Fox said that is where guidance may be needed.

- 01:10:59 REP. MACDONALD discussed a recent Law and Justice Interim Committee (LJIC) meeting in which an important vote was taken and the chair chose not to allow proxy votes to be counted. She said that the issue became arbitrary and capricious and that she has concerns about how the process is to go forward. She said that while committee chairs do have the discretion regarding proxies, there must be consistency in the process.
- 01:13:32 SEN. PETERSON agreed that there is a need for consistency. He suggested that Ms. Fox and Mr. Everts draft language for standard recommendations for proxies. It was agreed. Ms. Fox said that one issue that comes up often is if a proxy has to be specific to a motion or gives blanket authority to vote on anything. She asked for input from the members. SEN. PETERSON said the he understands the concern but still thought that committees need flexibility.

**Issue #7 - Time requirements to expedite committee executive action**

- 01:17:24 Mr. Everts discussed the bottleneck effect of taking executive action on bills before transmittal break. SEN. PETERSON said that as President, he meets every Friday with committee chairs to get a status report and to keep bills flowing in an attempt to avoid a log jam situation. He said that he understands the need for action but is reluctant to take away chair authority.
- 01:21:35 REP. MACDONALD spoke in support of Option 2, saying it would create one more level of awareness for deadlines without affecting a chair's ability to direct traffic.
- 01:22:26 Ms. Fox said Option 2 could be implemented easily. She explained that separate calendars could be created for each committee to indicate their deadlines for executive action. She said she would add this to the calendar and also cover it in leadership and chair training. It was agreed that Option 2 would be pursued.

**Issue #8 - Class 1 Committee appointment requirements**

- 01:24:34 REP. O'HARA said this rule issue first came up in the 2007 session and that he thinks it is unfair. SEN. PETERSON said that he is not opposed to further discussion, in the name of fairness.
- 01:26:16 REP. MACDONALD agreed with REP. O'HARA and said that the idea that any duly elected member of the House be denied a Class 1 committee assignment is egregious. Ms. Fox read from the existing language and asked the members to give careful consideration to the issue.
- 01:29:42 **REP. O'HARA moved to approve Option 3. The motion passed on 3-1 voice vote, SEN. TROPILA voted no.**

**Issue #9 - Prohibition to hijack bill/establish trigger for removing "by request of Committee"**

- 01:30:22 SEN. TROPILA said that he requested this rule issue but upon further thought, did not want to proceed further. It was agreed.

**Issue #10 - Interim Committee approval of agency bills for pre-introduction**

- 01:30:58 Ms. Fox said that she is working with LSD programmer Jim Gordon on this issue and discussed the proposal (EXHIBIT 4) they are working on. She said that staff has indicated it would be of great help to them.
- 01:34:03 SEN. PETERSON asked for more explanation. Ms. Fox explained that it would make clear that the bill draft is agency legislation and that approval by an interim committee for drafting does not, in any way, imply endorsement or support by that committee. Mr. Everts said that no rule change is needed and that it would be done as part of the bill drafting process. **REP. O'HARA moved to approve Option 2.**
- 01:36:55 SEN. PETERSON discussed his concerns about the sometimes overwhelming amount of agency legislation and how it fits in with the legislative branch needs. He thought that there should be a limit on agency legislation and that once a certain level is met, the agency should have to find individual legislators to sponsor their bills.
- 01:40:21 Mr. Everts discussed why the process is set up as it is. He said that pre-introduction of agency bills is an efficiency measure to allow bill drafters to get agency bills done before elections. At that time, he said, bill drafters need to be able to concentrate solely on legislator bills. He cautioned that if a limit is put on agency bills, it could clog up the process.
- 01:43:50 **The motion to approve Option 2 passed on a unanimous voice vote.**
- Issue #11 - Motion to postpone a day certain - require specific date**
- 01:44:02 Mr. Everts reviewed the issue. SEN. PETERSON said that it sounded more like a matter of enforcing the rule. It was agreed that no further action is needed. Ms. Fox said it would be addressed in legislator education.
- Issue #12 - Establish rules for proper use of computers on House and Senate floors and standing committees**
- 01:45:37 SEN. PETERSON said it is a pet peeve of his to see members not engaged in the legislative process. He said that he understands the benefits but that overall, he thinks computers on the floor create a huge distraction.
- 01:49:32 Mr. Everts said the issue is important and deserves a certain amount of deliberation and research, perhaps even warranting an interim committee study. He said there are many technology issues to consider beyond a computer, including smart phones and other electronic devices, as well as email and public record retention requirements. He cautioned that there a number of "mine fields" and that he would recommend a slow and deliberative approach.
- 01:53:35 REP. O'HARA asked about expanding the legislator IT allowance. SEN. PETERSON asked staff to do further research on the topic.
- 01:54:38 SEN. TROPILA asked if staff could prepare a white paper study report. Mr. Everts said that staff could draft guidelines for dealing with the issue and that the report would be a combination of legal opinions and recommendations. SEN.

TROPILA said he would like access issues, such as using electronic devices to funnel questions to others in a meeting room, to be addressed. REP. MACDONALD asked if it would be sensible to have specific guidelines for computer use and general decorum. It was agreed.

01:58:19 SEN. PETERSON recessed the Subcommittee for five-minute break.

**BREAK**

02:10:40 SEN. PETERSON called the meeting back to order at 11:18 a.m.

**Issue #13 - Require fiscal note before voting**

Mr. Everts said this issue comes up during every legislative session and that it is mostly a timing issue between the legislative and executive branches. No further action was taken.

**Issue #14 - Clarification of bill receipt/possession process for transmittal purposes**

02:13:54 Mr. Everts said that he thought rules relating to this issue are fairly clear but that it keeps coming up. SEN. PETERSON said that he has discussed it with Marilyn Miller and that their recollections are the same: that as of the date stamp on the bill, it is in the possession of that particular house. He said the rules are clear.

02:16:01 REP. MACDONALD asked about electronic posting and actual transmittal of a bill. Mr. Everts said transmittal occurs when the actual physical bill changes hands. Ms. Fox said that the electronic status reflects only the physical action of a house.

02:17:48 SEN. PETERSON said he wasn't sure anything could be done about this issue. No further action was taken.

**Issue #15 - Update reference Rule to Mason's Manual to include 2010 version**

02:18:58 REP. MACDONALD moved to update rules to reflect the 2010 Mason's Manual. The motion passed on a unanimous voice vote.

**Issue #16 - Authorize House to dispose of bill without hearing to be consistent with Senate Rules**

02:19:48 SEN. PETERSON explained that at the written request of the sponsor, a committee may dispose of a bill without a hearing but that the House does not have a corresponding rule. Mr. Everts discussed the rule issue in more detail.

02:21:43 SEN. TROPILA asked about the history of the rule and how it came about. Mr. Everts said he would research that. REP. O'HARA said that for several reasons, he liked the proposal and thought it would eliminate confusion.

02:24:48 SEN. TROPILA commented that he could see how it could be used adversely and would not support a change without additional information.

02:26:52 SEN. PETERSON related his personal advice of "don't get married to your bills" and asked Mr. Everts about public notice requirements. Mr. Everts said he would research the issue further.

02:28:28 REP. O'HARA said it would be unfair to the public who travel to testify on a bill to arrive at the Capitol, only to learn that the bill is dead. He said he would rather have the ability, as the Senate does, to pull a bill back before it is put on a hearing agenda. SEN. PETERSON said that he would like Mr. Everts to research SEN. TROPILA's concern further. It was agreed.

**Issue #17 - Witness testimony requirements**

02:29:42 Mr. Everts discussed the issue and said that the rules clearly allow for testimony. He thought that this issue would best be addressed through committee chair training. It was agreed.

**Issue #18 - Clarification of a motion to reconsider**

02:32:13 SEN. PETERSON discussed the issue and said that the rules are clear and that they must be enforced by the committee chair.

02:32:58 REP. MCGILLVRAY said that he doesn't think the rule is clear in the House rules. Mr. Everts discussed the problem and said that the Senate Rules are more structured and that he would like clarification in the House Rules. Mr. Everts said that he would come up with language to make the House conform with the Senate. It was agreed that Mr. Everts will draft language for consideration at the next meeting.

**Issue #19 - Elimination of positive disposition of language to conform Senate and House Rules**

02:35:22 Mr. Everts said this issue is a concern of his and it came up a number of times in the 2011 session. He said he would like Senate Rules to conform with House Rules.

02:38:34 **REP. O'HARA moved to approve Option 3. The motion passed on a unanimous voice vote.**

**Issue #20 - Eliminate adverse committee reports**

02:38:55 Mr. Everts said that this issue occurs when a "do not pass" motion is made in committee. He summarized what happens on the House and Senate floors and said that the rule is confusing, difficult to apply, and anti-intuitive.

02:43:14 REP. MCGILLVRAY agreed with Mr. Everts's assessment that it is confusing and counterintuitive and noted that in four sessions, he has never seen it used. SEN. PETERSON said he has seen it used in the Senate to make a political statement and said that he would support Option 3.

02:44:45 **REP. O'HARA moved to approve Option 3. The motion passed on a unanimous voice vote.**

**Issue #21 - Streamline Senate confirmation process**

02:45:07 Mr. Everts explained the background of the issue and said that revisions to streamline the process made in the last legislature didn't help. He said that there needs to be a way to make the confirmation process follow traditional resolution-



style voting and that he would like to be able to have staff look at what may be able to be done.

02:46:37 SEN. PETERSON discussed former Sen. Story's rule change and said that while it does make the process more cumbersome, it is appropriate. Ms. Fox said it is more of a logistics issue and that she would also like to find a way to retain the special qualities needed for the appointment process but streamline the logistical side.

02:49:59 Ms. Fox suggested Option 3 - let staff work on developing a more streamlined process, as the best option to start with. It was agreed.

#### **Issue #22 - Clarify re-referral process in House Rules**

02:52:27 Mr. Everts explained the issue and said that he finds the wording of the rule confusing. REP. MCGILLVRAY agreed and discussed examples of when a three-fifths vote is needed versus a majority vote to move bills out of committee. Mr. Everts said point is, is that a bill is still in possession of committee which hasn't reported it out, and may not. REP. MCGILLVRAY and Mr. Everts discussed it further.

02:56:04 It was agreed that no action would be taken.

#### **Issue #23 - Prohibit Whereas clauses in bills, retain in resolutions**

02:56:14 Ms. Fox provided background information and said that she has seen bills with three and four pages of whereas clauses, which were not intended to be used that way. She said that if they are to be used in a bill, there must be a way to ensure that they are verified and true statements. Mr. Everts discussed a similar opinion.

02:58:50 **REP. MACDONALD moved to approve Option 3. The motion passed on a 3-0 unanimous voice vote (REP. O'HARA was not in the room).**

#### **Issue #24 - Sufficient information for bill draft request assignment**

02:59:48 Ms. Fox explained the issue and said that this rule revision would clarify that she has the authority to require more information before accepting bill draft requests.

03:00:50 SEN. TROPILA asked for an example. Ms. Fox provided one. SEN. PETERSON said he didn't think a rule change was needed to fix this issue.

#### **Issue #25 - Establish rules regarding requests for copies of junque files and databases**

03:02:58 Ms. Fox provided background information and said that she planned to address this topic more in training but that she would like input from the Council on if it wanted rules or more parameters for dealing with junque file requests. It was agreed that the issue would be dealt with through legislator education.

03:04:37 SEN. TROPILA commented that this is an emerging issue and cautioned that staff and legislator training be done thoughtfully and carefully.

#### **Issue #26 - Establish introduction deadlines for general bills**

03:06:31 Ms. Fox said she thought this issue could be dealt with through more legislator training on the legislative calendar and deadlines. It was agreed.

**Issue #27 - Revise requirement for appropriation in bills with appropriation and contingent voidness clause**

03:07:36 Ms. Fox said upon further thought, she no longer wished to pursue this issue. It was agreed.

**Issue #28 - Require notification of leadership regarding global amendments to HB 2**

03:08:01 Ms. Fox said that global amendments create a huge burden on staff and that there needs to be a way to involve leadership earlier in order to monitor the process. SEN. PETERSON said that while it would be nice for leadership to know, he didn't want to impact legislator input in the process but that it would improve the process if motions could be more thoroughly vetted

03:10:30 **REP. O'HARA moved to approve Option 2. The motion passed on a unanimous voice vote.**

**ADJOURNMENT**

03:12:25 SEN. PETERSON said that the table would be updated for the next Subcommittee meeting He adjourned the meeting 12:20 p.m. The Rules Subcommittee will meet again on a date to be determined.

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