



# 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

September 15, 2011

Room 137, 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.

Access to an electronic copy of these minutes and the audio or video recording is provided from the Legislative Branch home page at <http://leg.mt.gov>. On the left-side menu of the home page, select *Committees*, then *Interim*. Once on the page for *Interim Committees*, scroll down to the appropriate committee. The written minutes summary, along with the audio and video recordings, are listed by meeting date on the interim committee's web page. You must have Real Player to listen to the audio recording or to view the video.

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

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

### **COMMITTEE MEMBERS PRESENT**

SEN. JEFF ESSMANN

## STAFF PRESENT

Susan Fox, Executive Director  
Todd Everts, Legal Services Director  
Dawn Field, Secretary

## AGENDA & VISITORS' LIST

Agenda, [Attachment #1](#).  
Visitors' list, [Attachment #2](#).

## COMMITTEE ACTION

The Legislative Council:

- approved the June 21, 2011, written meeting minutes;
- concurred with the Environmental Quality Council's decision to hire Joe Kolman as the Legislative Environmental Analyst;
- approved redistribution of half of the Council on River Governance Interstate Committee's 2013 biennium budget to other interstate committees;
- approved the appointment of Sen. Brenden to the Legislative Council on River Governance; and
- approved proposed language allowing the use of proxy votes in Legislative Council.

## CALL TO ORDER AND ROLL CALL

00:00:01 SEN. WILLIAMS called the meeting to order at 10:00 a.m. The Secretary took roll, SEN. ESSMANN was excused ([Attachment 3](#)).

00:00:39 **Susan Fox, Executive Director, LSD**, announced that the Environmental Quality Council (EQC) voted to approve hiring Joe Kolman as the Legislative Environmental Analyst and that the Council must concur in order to complete the hiring process. **SEN. TUTVEDT moved to concur with the EQC decision to hire Mr. Kolman. The motion carried on a unanimous voice vote.** Mr. Kolman thanked the Council members for their approval.

- **Approval of Minutes**

00:02:34 **REP. SESSO moved to approve the June 21, 2011, meeting minutes as written. The motion carried on a unanimous voice vote.**

## NCSL, CSG, WLA UPDATES

00:03:03 SEN. WILLIAMS noted that expenditures and balance reports for each of the interstate committees were provided in the meeting materials and asked that the members review them. Ms. Fox reviewed the National Conference of State Legislatures expenditures and budget ([EXHIBIT 1](#)). She also referred to the Council of State Governments (CSG) expenditures and budget ([EXHIBIT 2](#)) and the Legislative Council on River Governance (CRG) expenditures and budget ([EXHIBIT 3](#)). She said that the CRG will not meet in this fiscal year and recommended that half of the CRG budget be redistributed for use in this fiscal year. Ms. Fox said that the Western Legislative Academy sponsored by the CSG is coming up in October and that the extra money would be helpful. The Council members discussed the recommendation. REP. MCGILLVRAY asked for more information regarding how the NCSL funds were allocated and spent, and if the transfers and expenditures were reflected in the budgets. Ms. Fox explained that

expenses for some of the meetings in the 2013 biennium were paid for in advance with carryover money from the 2011 biennium and that the House took advantage of the carryover money but that the Senate did not.

- 00:18:18 **Karen Berger, Financial Services Manager, LSD**, addressed REP. MCGILLVRAY's concerns about the shifting of money within interstate budgets and confirmed that the transferred money was spent, even though it was not reflected in the 2013 budget tables.
- 00:20:19 SEN. TUTVEDT asked to clarify that the interstate committee funds are budgeted for educational purposes, that the training received is very useful, and benefits legislators and staff alike. He emphasized that the money is spent very carefully and is a meaningful and needed expenditure. SEN. WILLIAMS agreed that the training is very beneficial.
- 00:21:42 **SEN. PETERSON moved to approve redistribution of half of the CRG budget, to be split into split four ways between Republicans, Democrats, House, and Senate. The motion carried on a unanimous voice vote.**
- 00:22:20 Ms. Fox asked the Council to approve a change in appointments to the Legislative Council on River Governance which would replace Sen. Barrett with Sen. Brenden ([EXHIBIT 4](#)). SEN. PETERSON said that he recommended the change in order to balance the work load. **SEN. PETERSON moved to approve the change. The motion passed on a unanimous voice vote.**

#### **2011 SESSION AND BILL UPDATES**

- **Board of Personnel Appeals complaint**

- 00:24:03 **Todd Everts, Chief Legal Counsel, LSD**, updated the Council on the Board of Personnel appeals complaint, reporting that:
- an October 6 & 7 hearing before the Board is scheduled;
  - a motion filed to sever the defendant (State of Montana) filed by LSD Staff Attorney, Dan Whyte was denied; and
  - Mr. Whyte filed an additional motion for summary judgment and oral arguments will be heard September 20.
- 00:26:56 REP. HUNTER asked about the use of reserves in state employee health plans and if that impacts the complaint case. Mr. Everts said he did not think so but would look into it.
- 00:28:35 REP. MACDONALD recalled that at the last Council meeting, she had requested research to see if a legislature has ever failed to approve a negotiated pay plan. Ms. Fox reported that she found that there hasn't always been a negotiated agreement in place before a legislative session, that she found no evidence that a negotiated agreement was not passed, and that negotiated agreements have not always been followed as agreed to.

- **Senate Bill No. 423/Medical Marijuana Issue Update**

00:30:35 SEN. WILLIAMS asked that members read the report prepared by Sue O'Connell, "*SB 423 Monitoring: Montana Medical Marijuana Act - Developments from June 2011 through August 2011* ([EXHIBIT 5](#)).

00:30:59 REP. MCGILLVRAY asked Mr. Everts about SB 233 - revision of the Montana Environmental Policy Act (MEPA) provisions regarding consideration of alternatives. Mr. Everts said that SB 233 bill split state-initiated projects and permitted projects and that there are different criteria for each. He said it is still required that alternatives be generated but that how they are treated varies. He said he would provide more information, if necessary.

00:32:16 Mr. Everts briefly discussed Ms. O'Connell's report regarding the legal challenge by the Montana Cannabis Industry Association.

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

00:33:13 Mr. Everts also updated the Legislative Council on the local government litigation filed by certain counties in response to the Governor's amendatory veto of HB 351. He said he would watch the case closely because the issue gets at the heart of the Legislative Branch's authority and the Governor's authority with respect to amendatory vetoes and that he would keep the Council up-to-date.

00:34:16 Ms. Fox said that she could provide paper copies of the complaint, should the Council wish to have it.

• **Initiatives and referenda status**

00:34:43 Mr. Everts said Terry Johnson, Legislative Fiscal Division, was available to answer questions regarding SB 426 - referendum for contingent property and income tax reductions, as requested by the Council at its last meeting.

00:35:12 Terry Johnson, Principal Fiscal Analyst, Legislative Fiscal Division (LFD), distributed a schematic example of SB 426, as prepared during the 2011 Legislative session ([EXHIBIT 6](#)). He provided a brief summary of how the Treasure State Taxpayer Dividend program:

- it will be referred to Montana voters in the November 2012 election;
- if approved, the legislation will go into effect and be applicable beginning in fiscal year 2013;
- the Department of Administration will be required to certify the ending fund balance after the close of the fiscal year;
- income tax relief and property tax relief will be provided if the certified ending balance is greater than 125% than what was budgeted and approved by the Legislature.

Mr. Johnson explained how the tax relief would be calculated and provided several examples. He noted that 2014 is the first year that the dividend program could impact state finances.

00:43:19 SEN. WILLIAMS asked if there are implications for local government or only for the state. Mr. Johnson said the program will affect only the state general fund.

- 00:44:39 **Harold Blattie, Executive Director, Montana Association of Counties (MACo)**, discussed MACo's concerns regarding the mechanics of the Treasure State Taxpayer's Dividend Program. He briefly discussed the local government litigation filed in response to the Governor's amendatory veto of HB 351 and a concern about how TSEP grant funds could be used in the future to grant or withhold political favors. Mr. Blattie noted that MACo is not a party to the lawsuit.
- 00:51:12 Mr. Everts reviewed the status of initiatives and referendums filed with the Secretary of State ([EXHIBIT 7](#)). He said there is more information available on the Secretary of State's website, including Ballot Issue #4 - HB 198 (eminent domain) and Ballot Issue #7 (prevent the Legislature from repealing or amending laws passed by an initiative), which, he said, would have a bearing on legislative power.
- 00:53:53 REP. MCGILLVRAY asked how far-reaching Ballot Issue #7 initiative could be regarding the Legislature's ability to "put meat on the bones" of a bill. Mr. Everts said that, if approved, the Legislature's power would be limited.
- 00:55:53 REP. O'HARA asked if other states have approved a similar initiative. Mr. Everts said that California has the provision in its constitution and that he will research further to find out about other states.
- 00:56:51 SEN. PETERSON asked what the deadline is for ballot initiative signatures. Mr. Everts referred to the last page of EXHIBIT 7 and said the deadline to turn signatures in to county election administrators is September 30, 2011.
- 00:59:06 SEN. TUTVEDT asked what the effect of Ballot Issue #3 - refer SB 423 (medical marijuana) to voters - would be, if approved. Mr. Everts explained the process that would be followed, should SB 423 be repealed.
- **Interim Committee Updates**
- 01:00:46 SEN. WANZENRIED updated the Council on the first meeting of the Select Committee on Efficiency in Government (SCEG) - HB 642. He said the SCEG was charged with examining four areas of study: budget, information technology, Medicaid, and natural resource policy. He discussed his concerns about the effectiveness of interim committees and work load concerns, and said that he asked the SCEG to adopt a rule that would require a two-thirds vote to advance any SCEG recommendations. SEN. WANZENRIED also discussed his concerns about transparency and said that if meetings are going to be held outside of Helena, the meetings ought to be required to be audio and/or video-streamed because the public deserves to be a part of the process. He also discussed how staff is being utilized and several other concerns.
- 01:07:57 SEN. WILLIAMS said that she heard from several providers and state agencies who were not notified of the meeting. She also discussed her concern that staff was not being utilized to the extent that it should be. She suggested that the Legislative Council urge the SCEG to use legislative staff to a greater extent. She agreed with SEN. WANZENRIED on the importance of keeping meetings well-noticed and accessible to the public.

- 01:10:59 SEN. TUTVEDT said that he attended the technology portion of the agenda. He also agreed that video and/or audio streaming of offsite meetings is important.
- 01:13:12 REP. MILBURN and SEN. WILLIAMS briefly discussed the Children, Families, and Health and Human Services Interim Committee's decision to also study Medicaid, despite the fact that the Council assigned the study bill to the SCEG. SEN. WILLIAMS stated that it was a duplication of efforts to have both committees studying the issue and not an efficient use of legislative or staff time and resources. After additional discussion, it was agreed that House and Senate Leadership would discuss possible measures to address these concerns.

## **COUNCIL BUSINESS**

- **Proxy language in Legislative Council Rules of Procedure**

- 01:17:27 SEN. WILLIAMS asked the Council to discuss the proposed language for allowing proxy votes in the Legislative Council rules ([EXHIBIT 8](#)). She reviewed interim committees rules regarding proxy votes. The Council was concerned about language that proxies must list specific items. The Council members agreed that a proxy empowers the one with proxy to vote on any matter before a committee. **SEN. TUTVEDT moved to allow the use of proxy votes to be provided in email or written form and that the proxy not be limited to a single or specific issue. The motion passed on a unanimous voice vote.**

- **Adopt interim dates**

- 01:23:19 Ms. Fox suggested December 7, 2011, as the next meeting date. SEN. WILLIAMS said that a meeting date would be finalized at the retreat.
- 01:26:29 Ms. Fox discussed a Program 21 budget update ([EXHIBIT 9](#)).

- **Public Comment**

- 01:27:33 **Kevin Nelson, Billings**, provided comment on legislative rules that pertain to public notice of legislative meetings and hearings. He asked if a rule could be adopted that would make mandatory a 24-hour notice for meetings and hearings. He discussed how last minute changes prevent the public from participating fully in the legislative process and that it is disenfranchising when a citizen takes the time to drive to Helena to attend a hearing or meeting, only to discover, upon arrival, that the hearing date has been changed or cancelled. Mr. Nelson also asked that termed-out legislators not be allowed to serve in interim committees, saying that legislators who will be serving in a future session should be the ones making policy and legislative decisions.
- 01:30:50 Mr. Everts said it is within the purview of the Legislative Council to review rules and draft changes regarding public notice of meetings and hearings but that there are circumstances that sometimes make it difficult to do that, such as around transmittal and other deadlines. SEN. WILLIAMS said the issue would be discussed at the retreat. She commented on the issue of termed-out legislators and the difficulty of filling interim committees.
- 01:33:13 SEN. PETERSON thanked Mr. Nelson for taking the time to drive from Billings to provide comment to the Council. He said that the Council can review the rules

but that there is more sensitivity to providing public notice than meets the eye. SEN. PETERSON also discussed the impact of term limits and his opinion that they have weakened the Legislative Branch.

**OTHER COUNCIL BUSINESS**

01:35:44 No other business was discussed.

**RECESS**

01:35:49 REP. MILBURN moved to recess the Council meeting. The motion passed on a unanimous voice vote. Ms. Fox asked that the Council members be at the Barrister Bed and Breakfast by 12:30 for lunch and the afternoon Strategic Planning Session. The next meeting of the Legislative Council will be December 7, 2011, in Helena.

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