



# Legislative Council

## 63rd Montana Legislature

### SENATE MEMBERS

JEFF ESSMANN--Chair  
DEBBY BARRETT  
ROBYN DRISCOLL  
CLIFF LARSEN  
JON SESSO  
CHAS VINCENT

### HOUSE MEMBERS

CHUCK HUNTER--Vice Chair  
BRYCE BENNETT  
MARK BLASDEL  
KRISTIN HANSEN  
MARGARET ( MARGIE ) MACDONALD  
GORDON VANCE

### COMMITTEE STAFF

SUSAN FOX, Executive Director  
TODD EVERTS, Legal Division Director  
FONG HOM, Secretary

## MINUTES LOG

September 4, 2014  
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.

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.

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. JEFF ESSMANN, Chair  
REP. CHUCK HUNTER, Vice Chair

SEN. DEBBY BARRETT  
SEN. ROBYN DRISCOLL  
SEN. CLIFF LARSEN  
SEN. JON SESSO (by phone)  
SEN. CHAS VINCENT

REP. BRYCE BENNETT  
REP. MARK BLASDEL  
REP. KRISTIN HANSEN  
REP. MARGARET (MARGIE) MACDONALD  
REP. GORDON VANCE

### STAFF PRESENT

SUSAN BYORTH FOX, Executive Director  
TODD EVERTS, Legal Director  
FONG HOM, Committee Secretary

## AGENDA (Attachment 1)

## VISITORS (Attachment 2)

### COMMITTEE ACTION

The Legislative Council adopted the Information Technology Plan and the Legislative Branch budget; and approved the creation of a bill draft request for the Feed Bill, approved the costs of session proceedings as presented, and approved the recommendation from the Code Commissioner with respect to LCcc15.

### CALL TO ORDER AND ROLL CALL

00:00:01 Sen. Essmann called the meeting to order at 8:08 a.m. The Secretary called roll; everyone was present with Sen. Sesso participating by phone. [\(Attachment 3\)](#)

### LEGISLATIVE SERVICES DIVISION UPDATES

- **Update on legislative services division, security desk**

00:01:38 Ms. Fox gave an update on the new editors that were recently hired and the upcoming hiring of a new attorney. She also gave an update of the HVAC project and the repositioning of the security desk in the Capitol Building.

- **Current budget updates, operational plan change**

00:03:59 Ms. Fox gave update on the operational plan change. [\(Exhibit 1\)](#)

00:04:54 Ms. Fox gave update on the NCSL, CSG, and PNWER budgets [\(Exhibit 2\)](#); Program 20 [\(Exhibit 3\)](#); Program 21 [\(Exhibit 4\)](#); and the draft feed bill report [\(Exhibit 5\)](#).

00:06:18 Sen. Essmann asked if the minutes from the June meeting need to be adopted. Ms. Fox said that the audio minutes are the official minutes and the Minutes Log is just an accompaniment to the audio minutes.

- **Litigation, initiative, and referenda status - Todd Everts, Legal Director**

00:07:31 Mr. Everts reported that none of the citizen ballot initiatives made the ballot due to insufficient signatures. The only ones left are C45, the constitutional amendment to rename the state auditor, and LR126, the referendum to revise the close of late voter registration.

- **Session systems replacement update - Steve Eller, Computer Systems Manager**

00:08:28 Mr. Eller gave an update on the Session Systems Replacement Project.

### LEGISLATIVE BRANCH BUDGET

00:13:54 Ms. Fox gave an overview of the Information Technology Plan.

- **IT Planning Council Plan and IT Budget Recommendations - Dale Gow, Legislative Branch CIO**

00:14:51 Mr. Gow gave an overview of the IT planning that is governed by Title 5, Chapter 11, part 4.

- 00:16:34 Darrin McLean gave a presentation on the Information Technology Plan. [\(Exhibit 6\)](#)
- Committee questions
- 00:33:07 Rep. Hansen asked about the involvement of the IT in the discussion with the Education Local Government Interim Committee regarding archiving records.
- 00:33:28 Mr. McLean answered that they will review the Education and Local Government Interim Committee’s findings to see in which direction the Branch will go.
- 00:45:14 Sen. Vincent asked if there has been any resolution about where the IT will be housed, in the basement or on the third floor and if there is anything that should be considered by the Legislature.
- 00:45:42 Mr. Gow said that they have ongoing discussions with Ms. Fox to look at alternatives.
- 00:46:31 Sen. Barrett asked about legislators being provided a list of preferred computers or mobile devices from the IT department.
- 00:47:00 Mr. McLean said that they have updated the Allowance Form to include what they support.
- 00:47:44 Rep. Hunter asked about security threats.
- 00:48:09 Mr. McLean said that the greatest threat that we have are viruses that get on our machines and leak data without us knowing.
- 00:48:48 Sen. Larsen asked about people hacking the systems.
- 00:49:06 Mr. McLean said that they have never caught anyone hacking but have caught them trying to get on the machines with the virus definitions.
- 00:49:37 Sen. Essmann said that there are two competing desires: one is a movement to the Cloud, and the other is a move toward enhanced security and protection of data. Is this a continual move toward offsite storage and offsite data retention that makes the problem worse? Mr. McLean said that he doesn’t know if that makes the problem worse.
- 00:52:13 Sen. Sesso appreciated the report that was prepared and thanked those who had put the report together.
- **Proposed Budget Discussion**
- 00:53:37 Mr. Gow discussed the draft IT Budget. [\(Exhibit 7\)](#)
- Committee questions
- 00:58:49 Sen. Essmann asked about funds in the training budget that could be used to train

committee support personnel.

00:59:05 Mr. Gow said that to date they haven't used it but it would be available if needed for any specialized training.

00:59:20 Sen. Essmann said he would like Mr. Gow to analyze that with the chief clerk and the secretary of the senate.

01:00:56 Sen. Essmann asked if the Division will be going through the process of acquiring new computers and software and if it would be cheaper to just stay with the current system?

01:01:16 Ms. Fox said that the costs of maintenance of computers will in the end equal the costs of a new system.

- **Committee action on the IT Plan and Budget**

01:11:27 Ms. Fox discussed committee action on the adoption of the IT Plan and the IT budget.

**Motion/Vote**

01:11:41 Rep. MacDonald moved to adopt the Information Technology Plan. The motion passed unanimously by voice vote.

- **Presentation of Legislative Services Division budget**

01:12:35 Ms. Fox discussed Program 20, Legislative Services Division. [\(Exhibit 8\)](#)

Committee questions

01:16:13 Sen. Essmann asked if the Executive Branch will participate in the expense for security for this building?

01:16:22 Ms. Fox said that the Department of Administration will include the expenses for the Helena Police Officers in its budget.

01:17:01 Sen. Essmann asked how the three officers will be dedicated during session.

01:17:08 Ms. Fox explained that the third officer will be assigned to the Legislature and to the Capitol Complex with 14 hours of coverage during the session. During session there will be one officer in the Capitol Building at all times and an officer in each gallery. Ms. Fox discussed the Memorandum of Understanding requiring that an officer has to be available when there are interim committees in the building. When there are no meetings, that officer will be available to assist on the Capitol Complex.

01:20:05 Ms. Fox discussed Program 21, Interim Committees and Activities [\(Exhibit 9\)](#), and the specifics of Program 21 [\(Exhibit 10\)](#).

- **Discussion on Carbon Rulemaking**

- 01:24:45 Rep. MacDonald asked about the EQC and ETIC subcommittees on carbon and climate impacts that once the interim is over, how does it interplay with new leadership that would have the capacity to refocus the direction of the EQC and ETIC committees and the subcommittees?
- 01:26:12 Sen. Essmann said that new leadership could take all the work of the previous interim session, tear it up and chart a different path.
- 01:27:11 Sen. Larsen discussed the EQC's attempt at addressing the Federal 111D rulemaking on carbon.
- 01:29:53 Sen. Vincent asked Ms. Nowakowski if the Environmental Quality Council has oversight of DEQ.
- 01:30:45 Ms. Nowakowski explained that EQC did not create an agency oversight subcommittee last interim and the Energy Telecommunications Interim Committee has no say in that rulemaking process.
- 01:32:34 Sen. Vincent asked what it would take for the state to take primacy over 404B1 permitting for the jurisdictional determinations under the Clean Water Act rule that the EPA is also promulgating.
- 01:33:17 Ms. Nowakowski said that that has not been a part of the discussion. This has focused solely on the 111D rulemaking and the carbon rules.

- **Legislative Branch Biennium Budget Comparison**

- 01:37:28 Ms. Fox gave a presentation on the Legislative Branch Biennium Budget Comparison. [\(Exhibit 11\)](#)
- Committee questions
- 01:39:30 Sen. Essmann asked about one-time only expenditures that now look like they will be moved into the ongoing base budget. What were those OTO funds appropriated for and why were they appropriated as OTO?
- 01:40:12 Ms. Fox said that the Legislative Council had made a request last interim for a review of the IT budget and the TVMT budget. The Council segregated out the TVMT money for Phase II as one-time only and granted the authority to use the IT Reserve Funds for that. Ms. Fox explained that the other OTO is from the IT budget and designated as capital improvements and expenditures resulting from budget items on legacy and the declining and obsolete systems.
- 01:42:00 Sen. Essmann said that if we wanted to avoid making a commitment to an ongoing based budget increase, which items would we identify for OTO?

- 01:42:05 Ms. Fox said that on the IT budget, section 2, HB 2 Present Law Projects Budget, G and H, Responsive Website Redesign and Document Management System.
- 01:42:16 Ms. Fox said that the estimated balance for FY 2016 would be \$1.6 million and based on action that would have to happen next summer. [\(Exhibit 12\)](#)
- 01:43:24 Rep. Hunter asked about Charter Cable's upgrade to HD and what kind of leverage would the committee have on any attempt to move Charter along to get HD service.
- 01:44:27 Ms. Fox said that Stephen Maly, Helena Community Television, has been trying to have conversations with Charter on that topic, but she is not sure the status of that discussion.
- 01:46:30 Rep. Hansen asked Ms. Fox to explain the transfers to the reserve account.
- 01:47:35 Ms. Fox said that for the division carryforward, some of that comes in the form of personal services that doesn't get used and some of it comes from the IT budget because of contingency budgeting.
- 01:50:20 Ms. Fox said that the EQC/ETIC subcommittee issue is in the budget as a one-time only designation.

**Motion/Vote**

- 01:50:38 Rep. Hunter moved to adopt the Legislative Branch budget, contingent upon the Audit and Finance Committees approving their sections as presented, and also with the proviso that Items G and H on the Central IT Budget be taken from the reserve funds and that the increased funding for the joint EQC/ETIC Subcommittee be presented as an one-time only expenditure. The motion passed unanimously by voice vote.

**BREAK** - reconvened at 10:14 a.m.

**FEED BILL**

- **Session staff pay matrix**

- 02:07:48 Ms. Fox discussed the House and Senate Staff Pay Matrix. [\(Exhibit 13\)](#)
- 02:11:01 Marilyn Miller, Secretary of the Senate, discussed the pay matrix.

**Motion/Vote**

- 02:13:41 Sen. Vincent moved for adoption of the suggested pay matrix with the 25 cent addition as suggested by the Secretary of the Senate. The motion passed.

**Technology allowance**

- 02:14:37 Ms. Fox discussed the Communications Allowance. [\(Exhibit 14\)](#)

Committee questions

- 02:21:24 Sen. Essmann asked about land line expenditures.
- 02:21:48 Rep. MacDonald agreed that they could eliminate land lines except for those in leadership offices.
- 02:22:33 Mr. Everts recommended that they keep the phones on the House and Senate floor.
- 02:22:56 Ms. Fox said she will prepare a list and will work with Ms. Miller and Ms. Grovom on the staff side and distribute the list at the next Council meeting.
- 02:23:49 Sen. Driscoll liked the idea of an electronic letterhead but doesn't want to give up the stationery.
- 02:24:36 Rep. Bennett discussed the stationery issue and said that he uses postcards a lot.
- 02:28:10 Ms. Miller discussed the expenses of the land line phones.
- 02:29:02 Sen. Essmann asked for volunteers to review the data on the phones and bring a proposal at the next meeting. The four volunteers are: Sen. Driscoll, Rep. MacDonald, Rep. Blasdel, and Sen. Essmann.

- **Permanent chamber/party staff**

- 02:30:53 Ms. Fox gave a presentation on permanent chamber staffing. [\(Exhibit 15\)](#)

Committee discussion

- 02:33:47 Rep. Hunter said that a half time position would be the right level in the House Minority.
- 02:34:58 Rep. Blasdel said that it would be a half time position for an 18-month period.
- 02:37:56 Rep. Vance said that he would be concerned about making an assumption that a Senate President and a House Speaker, just because they were in the same caucus, could work together well enough to share a staff person.
- 02:43:43 Sen. Vincent asked if somebody of that pay scale suffice for the type of things that you are looking at having addressed as an aide, or would it be something that you would want to have a clerk or secretary to perform those types of duties.
- 02:44:35 Sen. Essmann said his personal opinion is that an aide level would be appropriate.
- 02:46:03 Sen. Larsen asked if this position is one for each chamber and that the parties would share that person?
- 02:46:17 Sen. Essmann said that what would make sense at this point would be contemplating

four part-time positions, one for each chamber, one for each party or one for each set of leadership.

02:47:16 Sen. Essmann asked if Mr. Everts could review the section for temporary legislative staff and tweak that to permit up to a 24-month hiring period without incurring other costs.

- **Draft Feed Bill Request**

**Motion/Vote**

02:49:39 Rep. Bennett moved for the creation of a bill draft request for the Feed Bill. The motion passed unanimously by voice vote.

**COST OF SESSION PROCEEDINGS**

02:51:02 Ms. Fox discussed the costs of session proceedings. ([Exhibit 16](#))

**Motion/Vote**

02:51:59 Rep. Hunter moved for adoption of the costs of session proceedings as presented. The motion passed unanimously by voice vote.

**2015 SESSION**

- **Update of Rules Subcommittee activities**

02:52:40 Mr. Everts said that the Rules Subcommittee will meet before the Legislative Council meeting in November to fine tune the rules. The draft joint resolutions will be sent to the committee members at which time a final decision will be had at the November meeting. Mr. Everts discussed the Rules Subcommittee's proposals. ([Exhibit 17](#))

- ▶ **Committee questions on Issue #2**

02:56:30 Rep. Hansen asked if the Rules Committee discussed whether compliance was the best way to go or whether just overruling the Supreme Court decision was a better option.

02:57:16 Mr. Everts said that they did not discuss that.

- ▶ **Committee questions on Issue #6**

03:02:15 Rep. Hansen asked for an explanation or rationale behind that rule change.

03:02:20 Sen. Essmann said that last minute introduction of bills a day or two prior to the transmittal deadline is highly problematic in terms of fair notice to the public and an opportunity for the committees to have hearings.

03:02:40 Rep. Hansen asked about exceptions for leadership bills and situations where late in the session, there's a contingency issue that leadership is able to negotiate a conclusion or a compromise. Would there be a need for a leadership waiver if by necessity there is agreement?



- 03:03:26 Rep. Bennett asked if there is a reason behind the 7 days as opposed to any other specific amount of days?
- 03:03:47 Rep. Blasdel said that there were discussions on the 7 days because of working with the budget office to get a fiscal note, etc., that jams up the process for a chairman that would give them the time that they had to get the fiscal note.
- 03:05:20 Rep. Hunter discussed the situation where committee chairs might sit on bills until it is too late to get anything done with them. He said that he would like to give some thought to some kind of balancing rule that would require a committee chairman to move things along and not get stacked in those last couple days and would like to have a proposal for the November meeting on that subject.
- ▶ **Committee questions on Issue #10**
- 03:08:30 Sen. Barrett asked about the process of the governor's appointees and how that was handled last session.
- 03:09:10 Sen. Essmann said that he has requested several times for a complete list of the governor's appointments. He discussed the effort last session to formalize negotiations with the Executive Branch on what the nomination package should include in terms of background information. He said that the Council can continue those discussions and the next leadership group can work with the governor to fine tune that.
- ▶ **Committee questions on Issue #4**
- 03:09:59 Sen. Vincent asked if language in Issue 4 will be tighten up or clarified regarding the requirements of turning a general bill into a revenue bill. Is that what were aiming for?
- 03:10:30 Mr. Everts said yes.
- 03:10:35 Sen. Vincent said that he believed that the Senate President assigned the confirmation to the committees as it is. The biggest change is moving it from a second reading and a third reading vote. Is that the big change as far as treating it like a regular resolution?
- 03:10:50 Sen. Essmann said that the primary thrust of the change will be to task the presiding officer with the duty to have the resolutions drafted. Due to lost institutional memory on the part of many committee chairmen rather than handling the confirmation resolutions in a group where they were noncontroversial. Some segregated every single one which is quite time-consuming and unnecessary. So the main thing was to allow a grouping of the nominations, a referral to committee, allow a procedure for any senator to request the committee or the floor of the senate to segregate and deal with it from a management standpoint in a clear fashion. So the ability of any senator to segregate would be preserved.
- ▶ **Committee questions on Issue #5**
- 03:12:25 Rep. MacDonald asked what the legislative history of that rule was and having them on

staggered timeframes. How long has that change been in effect?

03:13:12 Ms. Fox said that she doesn't have specific dates but it has been in place for at least for 30 years.

03:13:57 Sen. Essmann said that you need to look at those expenditures in the same timeframe as the expenditures so as to consider them equally.

03:14:45 Rep. MacDonald said that this is a very significant change in terms of how we manage our budgets and could be one that leads to unintended consequences. She said that the Council needs to look at this carefully as we consider adopting this change.

- **Results of Survey on Legislator Use of Electronic Communications**

03:15:28 Ms. Fox discussed the results of the survey on electronic device use by legislators. **(Exhibit 18)**

03:22:16 Sen. Essmann said the discussion of Rules Subcommittee was to not move forward with a rule on the use of electronic communications but to leave it up to the Full Committee.

03:24:24 Sen. Sesso asked if the recommendation is to give committee chairs some discretion on what they want or don't want, and to point to this draft as a guideline for the use of electronic equipment, particularly during testimony.

03:25:27 Ms. Fox said that the Rules Subcommittee needs to take whatever the full Council decides on this and make them compatible.

03:26:12 Sen. Sesso suggested that the Council endorse a formulation of a set of guidelines that would be distributed to all legislators during training, and to all committee chairpersons that this is the set of guidelines and if you do not adhere to the guidelines, you may be subject to some criticism or action of the chair.

03:29:36 Sen. Essmann suggested that the Rules Subcommittee continue to work on the guidelines and send out a final set for review and comments.

- **Standing committee draft rules of procedure**

03:31:34 Ms. Fox gave a presentation on the draft rules of procedure. **(Exhibit 19)**

Committee questions

03:32:05 Ms. Fox said each standing committee could adopt the draft rules of procedure at the committee's discretion.

03:32:28 Rep. Hunter commented on the section on informational witnesses and would like to broaden that out, in particular for agencies that are there to provide background information.

03:33:17 Sen. Vincent said he agrees with Rep. Hunter but thinks that the proponent/opponent issue pertains to agencies.

03:35:35 Sen. Essmann asked the committee members to review that and if there are any comments, contact any member of the Rules Subcommittee.

### **LONG-RANGE PLANNING**

- **Capitol Complex Master Plan - Tom O'Connell, State Architect and Administrator of the Architecture Engineering Division, Department of Administration**

03:37:22 Mr. O'Connell gave a presentation on the Capitol Complex Master Plan.

#### Committee questions

03:53:59 Sen. Vincent asked about the situation of parking during session.

03:54:03 Mr. O'Connell said that the proposal is to, except during session times, close that section off and make it a pedestrian affair but that would not happen without the involvement of the Capitol Complex Advisory Council.

03:54:15 Mr. O'Connell discussed the levels of parking and a parking garage.

- **2011-12 Legislative Space Study**

03:56:17 Ms. Fox discussed the results of the space study that was authorized by the Legislative Council.

#### Committee questions

03:59:42 Rep. Hansen asked if the Legislative Council's role would be to create a master plan or a strategic plan that would incorporate the long-range planning conclusions.

04:00:35 Ms. Fox said that Cathy Duncan who staffs the long-range planning committee could explain what the long-range planning committee does.

### **2015 SESSION (continued)**

- **Legislator compensation and benefits**

04:02:32 Ms. Fox discussed the issue of flex accounts and how to make that available to legislators.

- **Update on parking, housing, and childcare arrangements**

04:02:50 Ms. Fox gave an update on parking, housing and childcare. There are applications online for people who plan to offer housing or childcare to legislators. She is still in discussion with the City and the Department of Administration on the parking issue.

- **Review Legislative Calendar and Orientation Agenda**

- 04:04:30 Ms. Fox said that the Legislative orientation agenda and calendar are in the member's packet. She said that she is still working on more speakers on ethics for the January schedule.
- 04:04:53 Sen. Essmann said that most members of the leadership were invited by the State Legislative Leadership Foundation to an October conference in Jackson Hole on ethics and leadership. He asked Ms. Fox if she was going to survey members of the Council for volunteers to participate in any of the orientation meetings in November or January.
- 04:06:00 Ms. Fox said that most of the veteran legislators are involved in the mentor groups. She said she will be reaching out to the Council members and see if there are any areas of interest that they want specifically addressed.

- **Committee Legislation**

- ▶ **LC 8000 - Clarifying the restriction on the number of words in the title**

- 04:07:38 Mr. Everts discussed the bill draft regarding word restrictions in referred legislation. [\(Exhibit 20\)](#)
- 04:08:59 Sen. Essmann said the proper motion would be to request a bill draft and then it would be a matter of someone approving the bill draft and someone to sponsor.
- Motion**
- 04:11:07 Rep. Hansen moved to approve LC 8000 as a committee bill.
- Discussion
- 04:11:43 Rep. Bennett said that the Supreme Court decided that the goal of this piece of law was to make referenda readable and just by saying that these things that take up space are very important content when it comes to what is being changed in law.
- 04:13:55 Mr. Everts said if LC 8000 were passed, then we would go back to our previous practice of putting those sections that are amended or repealed in the title.
- 04:17:01 Sen. Essmann suggested that the committee change the draft so that the first sentence retains the current statute 5-4-102 as section 1, and then add a section 2 that basically conforms to the rule change that the appealed and amended bills be listed in the section of the bill.
- 04:17:52 Rep. MacDonald said she would be against that. One of the difference between legislative referendum and the bills in the process that we go through is that we sit in hearing with bills and look at them section by section and go through an extensive and lengthy vetting process. Putting a law on the ballot is that there is a tiny bit of information that people are being asked to make a decision on.

**Roll Call Vote**

04:19:44 The motion to allow or request the introduction of a bill draft request for LC 8000 failed on a roll call vote, 6-6. ([Attachment 4](#))

- **Code Commissioner Report**

04:21:54 Mr. Everts presented the Code Commissioner Bill Report ([Exhibit 21](#)) and LCcc15 - revising and clarifying the Montana code annotated. ([Exhibit 22](#))

**Motion/Vote**

04:22:00 Sen. Larsen moved to approve the recommendation from the Code Commissioner with respect to LCcc15. The motion passed unanimously by voice vote.

**ADJOURNMENT**

04:23:55 Seeing no further business before the committee, Sen. Essmann adjourned the meeting at 12:32 p.m.

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