



Legislative Council

64th Montana Legislature

SENATE MEMBERS

DEBBY BARRETT--Vice Chair
EDWARD BUTTREY
ROBYN DRISCOLL
TOM FACEY
BOB KEENAN
JON SESSO

HOUSE MEMBERS

CHUCK HUNTER--Chair
BRYCE BENNETT
SETH BERGLEE
STEPHANIE HESS
AUSTIN KNUDSEN
MARGARET (MARGIE) MACDONALD

COMMITTEE STAFF

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

MINUTES LOG

February 9, 2016
Room 102, Capitol Building
Helena, Montana

Please note: This document is a Minutes Log and provides a notation of the time elapsed between the beginning of the meeting and the time at which the item was presented or discussed, a motion was made, or a vote was taken. The narrative presented here is provided only as a guide to the audio or video record of the meeting. The official discussion, motion, or vote is available on the audio or video archive of this meeting. The Legislature does not prepare a transcript of meeting activities. The time designation may be used to locate the referenced discussion on the audio or video recording of this meeting.

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Please contact the Legislative Services Division at 406-444-3064 for more information.

COMMITTEE MEMBERS PRESENT

REP. CHUCK HUNTER, Chair
SEN. DEBBY BARRETT, Vice Chair

SEN. EDWARD BUTTREY
SEN. ROBYN DRISCOLL
SEN. TOM FACEY
SEN. BOB KEENAN

REP. BRYCE BENNETT
REP. SETH BERGLEE
REP. STEPHANIE HESS
REP. MARGARET (MARGIE) MACDONALD

COMMITTEE MEMBERS EXCUSED

SEN. JON SESSO
REP. AUSTIN KNUDSEN

STAFF PRESENT

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

VISITORS' LIST (Attachment 1)

AGENDA (Attachment 2)

COMMITTEE ACTION

CALL TO ORDER and ROLL CALL

00:00:01 Rep. Hunter called the meeting to order at 9:00 a.m. The secretary called roll. Sen. Sesso was excused and left his proxy with Sen. Driscoll (Attachment 4). Rep. Knudsen was absent. (Attachment 3)

Legislative Services Division staff updates - Susan Fox, Executive Director

00:01:10 Ms. Fox discussed the hiring of the new secretary, Laura Sherley, and the logistics of the Campbell trial that will be held in the Old Supreme Court room. (Exhibit 1)

SSR Project update - Susan Fox

00:03:00 Ms. Fox provided an update on the SSR Project. (Exhibit 2)

00:09:49 Ms. Fox discussed the February issue of the Interim Newsletter.

Initiative and referenda status - Todd Everts, Legal Director

00:10:14 Mr. Everts provided an update on initiatives and referenda. (Exhibit 3)

Uniform Law Commission update - Todd Everts, Legal Director

00:11:35 Mr. Everts discussed a letter from Mr. Edwin Eck and a report from the Uniform Law Commissioners. (Exhibit 4)

Committee Questions

00:13:49 Sen. Facey asked about the degree of variance of the Uniform Law Act that an individual state can enact.

E-mail requests - Susan Fox

00:15:03 Ms. Fox discussed two email requests that LSD received: one regarding legislative travel; and the other request that referenced the American Legislative Exchange Council.

Committee Questions

00:19:09 Rep. Berglee said that would be helpful to know what to do with email requests from people who are not constituents.

00:20:04 Rep. Hunter would like staff to provide more guidance on procedures to handle email requests. Sen. Barrett would like more information on what can legally be requested.

00:21:57 Rep. Bennett discussed additional reminders for legislators about the obligation that legislators have to keep the emails.

00:22:30 Rep. MacDonald said that it would be helpful to know where to send those emails.

- 00:23:02 Ms. Fox said that there always has been an archive function and we could have more instructions on best to use that.
- 00:24:46 Sen. Barrett asked Mr. Everts about a limitation of time that someone do an information request, is there any limit of time. Mr. Everts said that the state has classified certain types of records to be permanently archived at the Historical Society.
- 00:26:26 Ms. Fox said that Legislative Council is working on a policy for legislators regarding retention of public records.
- 00:27:45 Sen. Facey said that the committee would like to be transparent but there is a need to protect legislators from phishing expeditions and the "I gotcha" experience.
- 00:28:11 Mr. Everts gave a brief background on the issue of retention of records. He said that if the legislators wanted to be transparent and wanted emails involving legislative business to be separated from personal accounts, then each legislator should be given a state government account and all legislative business flowing through that account should be in that account as opposed to a personal email account.
- 00:31:51 Rep. Hunter asked Ms. Fox about any post-session feedback from legislators about the use of the state emails. Ms. Fox said that over the course of the last six months, feedback has been the issue of the bureaucracy of using the state email system and changing passwords on a regular basis.

LEGISLATIVE BRANCH OVERSIGHT OF EXECUTIVE BRANCH AGENCIES

Poll results and process overviews, options - Todd Everts, Legal Director

- 00:35:12 Mr. Everts gave an update on two rulemaking polls conducted by the Revenue and Transportation Interim Committee and the State Administration and Veterans' Affairs Interim Committee.

Committee Questions

- 00:41:46 Sen. Barrett asked about updating the original rule and whether the revised/new rules need to be noticed for public comment.
- 00:43:07 Sen. Facey discussed rules propagated by the administration vs rules propagated by a board.
- 00:46:19 Rep. Hunter asked Mr. Everts about options and how they can delay the rulemaking process.
- 00:48:54 Rep. Bennett discussed the polling process with the SAVA committee and said that guidelines for best practices is needed.
- 00:52:04 Ms. Fox discussed the costs of the polling, who pays for poll, why are the committees are doing the poll, and timing issues.
- 00:55:23 Sen. Barrett said that discussions are being held on ways the legislature can delay the rulemaking.
- 00:56:37 Rep. Hunter asked about the polling of the political practices rules and if the SAVA committee had a chance to provide feedback on the rule draft that was incorporated.
- 00:57:23 Rep. Bennett gave a synopsis of the polling process in SAVA.
- 00:58:10 Rep. Hunter said that he would like committee feedback on those rules.

01:01:57 Rep. Hunter asked that Mr. Everts write a memo on proposed best practices regarding the polling process.

Rulemaking authority and separation of powers

01:05:22 Mr. Everts spoke on general rulemaking delegation and separation of powers. **(Exhibit 5)**

Committee Questions

01:22:56 Sen. Barrett stressed that when a legislator requests a bill, they should understand what the rulemaking authority is.

01:26:59 Ms. Fox suggested that a discussion on rulemaking authority take place in the legislative orientation and training.

01:30:34 Sen. Barrett suggested that Mr. Everts do a Back Page of the Interim Newsletter for informational purposes on rulemaking authority.

01:32:26 Rep. Bennett said it makes sense if interim committees look at the rulemaking authority that fits into each jurisdictions.

01:34:17 Ms. Fox suggested that as agencies bring up specific programs, whether or not they are related to an interim study, and as those new proposed and amended rules come through, they incorporate that as a highlight of any program study.

01:35:56 The committee members discussed having dialogue with the executive branch's internal processes for agencies in developing and writing administrative rules.

01:39:22 Rep. Hunter discussed Mr. Everts writing a backpage article for the Interim Newsletter about training for drafters and legislators, and some kind of development of best practice guidelines for interim committees.

BREAK (reconvened at 10:55 a.m.)

LEGISLATOR PAY

01:54:28 Ms. Fox gave a presentation on Legislator Pay **(Exhibit 6)** and Policy Options on Legislator Constituent Services Stipend and Reimbursement **(Exhibit 7)**.

Committee Questions

02:08:41 Rep. MacDonald asked about a plan to account for the expenses, such as printer ink, printing documents at home.

02:10:39 Rep. Hunter asked if the Council is going beyond its authority to require an accounting when it is not in statute?

02:11:16 Sen. Facey commented on Ms. Fox's presentation on the stipend and reimbursement issue.

02:13:16 Ms. Fox suggested that the Council adopt rules and guidelines for legislators on policy options on stipend and reimbursement of expenses.

02:15:39 Rep. Berglee asked what the viability would be of doing something along the lines of online reporting.

02:16:52 Ms. Fox said she would look into online reporting.

02:18:04 Sen. Buttrey asked Ms. Fox about using a system where the legislators are allocated the money per SB 283, provide receipts via an app or online to avoid the taxation on the reimbursements.

02:19:35 Rep. Bennett discussed Sen. Buttrey's idea.

02:21:41 Sen. Keenan said he has a concern that this money somehow could be tied

02:22:28 together with the Commissioner on Political Practices and campaign reporting. Rep. Hunter said he has concerns with the term “constituent services fund” and would like to find a different name as the guidelines are drafted.

02:23:59 Rep. Hunter asked if staff needs to go back and research in terms of the money up front, reimbursement later, and questions about advancing funds.

02:24:47 Rep. Hunter asked Susan if there is any logic in having a discussion with the Commissioner of Political Practice’s about potential interaction between these two accounts. Susan said that would be a good idea and that recordkeeping, transparency, and separation of accounts are important.

02:27:36 Ms. Fox said that staff would need to know what kind of information is needed in order to change the hourly rate, or change the method that pay is determined.

02:29:04 Sen. Facey asked for more information on legislator pay in neighboring states.

02:30:27 Rep. MacDonald would like some information on an index for legislator pay in terms of inflation costs of living over time and also indexing to some sort of average benchmark in the Executive Branch of a certain level employee.

02:31:39 Rep. Hunter said he wanted to look at the average annual wage statewide.

02:31:48 Rep. Berglee said that legislator pay should be based on the population as a whole and if the state wages are in general hurting and going down, legislator’s pay should not be going up.

02:32:30 Ms. Fox discussed the issue of per diem. She asked if the Council would like her to work with Harold Blattie of the Montana Association of Counties on that issue.

02:36:59 Rep. Hunter said that the general consensus is to move forward as Ms. Fox suggested.

GUIDELINES FOR LEGISLATIVE APPOINTMENT

02:40:28 Ms. Fox discussed the guidelines for appointments. [\(Exhibit 8\)](#)

Committee Discussion

02:46:12 Sen. Barrett discussed the amendment to HB 2 that called for two legislators to be appointed to a higher education committee.

02:48:20 Rep. MacDonald responded that in the Sentencing Commission it was a bill that had certain appointments by the Department of Justice and certain appointments by the governor, etc., and that the Commission would have the Department of Justice to pick up the tab for those appointees and that the Commission would cover the legislative branch people.

02:49:35 Rep. Hunter discussed appointments made by the Senate President, minority leader, Speaker of the House, and minority leader that would preclude the appointments taking place if all the appointments must be made by the Committee on Committees and the Speaker.

02:50:25 Ms. Fox said that she will check the intent of the bill.

02:50:38 Rep. Hunter discussed Section C: Provisions specified in the appointment must be made during the session.

02:51:12 Sen. Buttrey said that it might be helpful to have some guidelines on “how to appoint a new member or a substitute member”.

02:53:21 Rep. Hunter asked that Ms. Fox come back with a redraft to include the new ideas that were discussed.

LUNCH (reconvened at 1:30 p.m.)

2017 SESSION PLANNING

Caucus and orientation dates

04:30:40 Ms. Fox discussed the proposed caucus and orientation dates (**Exhibit 9**).

Discussion on dates

04:34:07 The committee discussed the need to start work on the dates as soon as possible. There is a reluctance to moving any dates back. Rep. Hunter discussed having caucus on a Monday, Tuesday, and Wednesday instead of Wednesday, Thursday, and Friday.

04:36:24 Rep. Hunter asked if everyone was agreeable with the caucus/orientation dates of November 16 through November 18, as proposed.

Discussion on the orientation content

04:36:43 Ms. Fox discussed the topics under the bulleted “Wednesday, November 16 to Friday, November 18 - suggested dates for Caucus/Orientation I”.

04:41:25 Rep. Hunter asked about the attendance at the second training session in December.

04:44:31 Rep. MacDonald asked Rep. Burglee and Rep. Hess about their impressions of the training sessions.

04:45:25 Rep. Hess said the budget training was very helpful and also found the second training to be helpful. Rep. Burglee said the budget training was good, and he thought the focus groups were also helpful.

04:48:33 Mr. Everts asked if the Council thinks that there needs to be a duplication of the rules and procedures and ethics training that was held in December and January. Can that training be done once.

04:49:50 Rep. Hunter said that as far as commenting on content, as he has listened to legislators, the one thing going deep into the session that we as leaders have requests for is training about how to present and manage your bills as you move through the process. He suggested doing more in that area.

Proposed 2017 session calendar

04:51:26 Ms. Fox discussed the proposed 2017 session calendar. (**Exhibit 10**)

Discussion on caucus/orientation dates

04:55:14 Rep. Hunter referred the committee back to the document, “Proposed Legislative Caucus & Orientation Calendar for late 2016” and discussed the dates that staff had proposed for training sessions.

04:55:45 Rep. Hess asked Mr. Everts if it would be helpful to have the Rules and Procedure training in January instead of in December.

04:56:39 Amy Carlson commented that the timing of the budget training in early December was good.

04:58:44 Rep. Hunter asked that staff proceed with the suggested changes about rules and procedures and ethics training being offered once at the January session.

Discussion on proposed session calendar

- 04:59:17 Rep. Hunter asked if the committee members were comfortable with adopting this proposed calendar as the session calendar.
- 04:59:45 Rep. MacDonald discussed opening up a few more Saturdays early on for people to have time to absorb and do homework, etc.
- 05:01:26 Sen. Facey endorses not working the second Saturday in January and the possibility of scheduling one or two trainings for late afternoon of the first week or second week.
- 05:02:12 Rep. Hunter asked Ms. Fox to review changes in the calendar as discussed.
- 05:02:40 Ms. Fox discussed various calendar scenarios.
- 05:09:30 Rep. Hunter said it would be useful to see what the calendars might look like and adopt something at the May meeting with the option of looking at a couple of different scenarios.
- 05:09:47 Rep. MacDonald suggested noting that the dates are “subject to change” on the transmittal break dates.

Discussion on Legislator Letterhead

- 05:10:47 Ms. Fox discussed the issue of whether or not the legislators wanted their committee assignments put on their stationery.
- 05:12:11 Rep. Berglee asked if it would be possible to provide an option on the request form.

Budget Development Direction

- 05:13:56 Ms. Fox discussed the progress of the Budget and the Feed Bill. In May, a preliminary budget will be presented to the Council for adoption in August and a final budget in October.

TELEVISION MONTANA (TVMT)

Future Options from Strategic Planning Session

Legislative Services Division

- 05:17:54 Ms. Fox gave a presentation on expanded use from TVMT. **(Exhibit 11)**
- 05:23:30 K'Lynn Sloan-Harris, Audio/Video Coordinator, gave a presentation on the use of resources to inform and educate the public.
- 05:36:36 Ms. Fox discussed the production of “Short Spots”.

Committee Questions

- 05:41:57 Rep. Bennett discussed educating the public about what the Legislature is all about and how the information presented on how the Legislature functions is confusing. He would like to focus on “this is how you can come and do public testimony at a hearing” rather than “this is the legislature, this is what it’s all about, this is how you can interact with the legislature”.

Helena Civic Television (HCTV)

- 05:43:22 Stephen Maly gave a presentation on TVMT’s operations **(Exhibit 12)** and briefly discussed the interim calendar **(Exhibit 13)**.

Committee Questions

- 06:07:42 Sen. Facey asked how TVMT is funded.
06:10:00 Rep. Bennett asked about video quality.

City/County Franchise Agreements

- 06:15:34 Ms. Fox discussed the meeting with the City and the County, HCTV representatives, and Rep. Hunter that she attended. The issue of agreements was discussed.
06:17:55 Rep. Hunter commented that it was clear that the city and county officials are all on the same page about trying to move in the same direction.

Public Comment

- 06:18:52 Ron Alles, City Manager, Helena, discussed the city's agreement with Charter Communications and with HCTV.
06:23:03 Melissa Lewis, Charter Communications, discussed the partnership between Charter and Montana and the success of TVMT.

Committee Discussion

- 06:27:52 Rep. Hunter asked about increasing the amount of information that flows out of TVMT, increasing the quality of the signal being broadcast around the state and how to achieve that, and increasing programming.
06:29:36 Sen. Buttrey asked about a risk of contract negotiations breaking down, potentially losing coverage for next session.
06:30:05 Ms. Fox said that with her discussion with Mr. Underwood, she understood that the Channel 191 decision was related because the signal comes out of the franchise agreement with Helena and the County.
06:31:54 Sen. Buttrey asked about the high definition.
06:36:26 Rep. Hunter asked who would produce and fund a program to help citizens come and be prepared to testify before a committee or to interface with the legislature.
06:37:03 Ms. Fox discussed the funds in the HCTV contract. She said that if that is an area you are interested in, to come up with options for her to work on in finding ways to fund future programs.
06:39:31 Rep. Hunter said that general consensus of the committee is for Ms. Fox to proceed with surveying the public and other legislators on their views for the programming on TVMT.
06:39:59 Ms. Fox asked that the committee members think of what they would like to put in the survey.
06:40:49 Rep. Hunter asked that Ms. Fox put into an email to the committee members posing that in a direct way so that we have something to respond to.

Discussion on Remote Testimony

- 06:41:34 Ms. Fox said that the presentation could be presented at the May meeting.
06:42:18 Sen. Buttrey has thoughts on video testimony and some of the issues that we would have and there needs to be robust discussion.
06:42:43 Rep. Hunter said that the topic of remote testimony will be on the May agenda.

BREAK (reconvened at 3:55 p.m.)

RULES SUBCOMMITTEE

- 06:54:39 Rep. Hunter appointed Rep. Bennett, Rep. Hess, Sen. Facey, and Sen. Buttrey to the Rules Subcommittee with Rep. Bennett to serve as chair. He asked about polling the legislators regarding what rules or subject matter if any should be changed.
- 06:56:15 Sen. Facey discussed allowing new legislators the ability to carry pre-introduced bills.
- 06:57:00 Rep. Hunter discussed surveying the 150 legislators for ideas.

Next steps regarding the Rules Subcommittee

- 06:57:46 Mr. Everts discussed soliciting the advice from the Clerk of the House and the Secretary of the Senate. Staff has also brought forward potential issues that were identified from the last session as other sources.
- 06:58:02 Rep. Hunter asked Mr. Everts to start that dialogue with the Secretary and the Chief Clerk in advance.

PUBLIC COMMENT ON ANY MATTER IN LEGISLATIVE COUNCIL JURISDICTION - None

NEXT MEETING DATE: Thursday, May 19, and Friday, May 20, 2016*

- 07:00:31 Ms. Fox said that she would like to have a two-day meeting in May with half day for the Rules Subcommittee and the Council meeting after that. (*The Council later changed the dates to May 18 and 19, 2016.)
- 07:01:39 There was a discussion regarding the August meeting dates. Rep. Hunter said the committee will meet August 24 and 25, 2016.

ADJOURNMENT

- 07:05:25 With no further business before the committee, Rep. Hunter adjourned the meeting at 4:06 p.m.