



# Legislative Council

## 64th Montana Legislature

### SENATE MEMBERS

DEBBY BARRETT  
ROBYN DRISCOLL  
TOM FACEY  
RICK RIPLEY  
JON SESSO  
CHAS VINCENT

### HOUSE MEMBERS

BRYCE BENNETT  
JEFF ESSMANN  
STEPHANIE HESS  
CHUCK HUNTER  
AUSTIN KNUDSEN  
MARGARET ( MARGIE ) MACDONALD

### COMMITTEE STAFF

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

## MINUTES LOG

January 30, 2015  
Room 152, 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. DEBBY BARRETT  
SEN. ROBYN DRISCOLL  
SEN. TOM FACEY  
SEN. RICK RIPLEY  
SEN. CHAS VINCENT  
SEN. JON SESSO

REP. BRYCE BENNETT  
REP. JEFF ESSMANN  
REP. STEPHANIE HESS  
REP. CHUCK HUNTER  
REP. AUSTIN KNUDSEN  
REP. MARGARET (MARGIE) MACDONALD

### 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 reaffirmed its previous recommendation regarding the legal review notes to include the additional language provided by Mr. Everts to accompany those legal review notes.

**CALL TO ORDER AND ROLL CALL**

00:00:01 Sen. Barrett called the meeting to order at 7:00 a.m. The secretary called roll. Everyone was present. ([Attachment 3](#))

**Legal Review and Legal Review Note - Todd Everts, Legal Director**

00:01:14 Todd Everts gave a presentation regarding the legal review process of bill drafts and the junque files. ([Exhibit 1](#))

Committee discussion

00:16:24 Rep. Hunter asked Mr. Everts to describe what it's been in the system and where it is today and what has changed.

00:17:02 Mr. Everts said that they were directed in the 2013 session to note on the status system that a legal review note had been issued for a particular bill to be placed on the status system once it was introduced. Because there were some concerns, the legislative leadership directed Legislative Services Division to reevaluate how the process was going.

00:17:39 Rep. Hunter said that it seemed to him that there was a process put in place by Legislative Council for how we would handle that on the system, and now we have a change to that process that's not been made by Legislative Council. We are now operating in a way that is different than what the Legislative Council agreed to in terms of setting up and operating the system.

00:18:09 Mr. Everts said that you have a Legislature in session, you have a Legislature that has majority leadership, and you also have the Legislative Council. This issue is unique in terms of precedent regarding who and what constitutes legislative leadership of the Legislature when it is in session versus the Legislative Council. Staff took direction from legislative leadership.

00:19:32 Rep. Hunter said that the Legislative Council is responsible for hiring an executive director and the executive director is responsible for overseeing the staff of the Legislative Services Division, and the Legislative Council, being the supervisor of the executive director, would be the authority for making these decisions.

- 00:20:07 Rep. Hunter said that we are in a place where, in his view, the Legislative Council has authority for setting how we are going to do this. Other forces have intervened to direct the staff to do something different, which is a legal issue.
- 00:20:30 Sen. Barrett said that we requested a meeting with Susan Fox and Todd Everts to discuss in some length what the problem was and we came up with a solution. Sen. Barrett said that she realized that it isn't up to the majority party, it is up to the legislators and to the Legislative Council. We will make a decision and go forward.
- 00:21:12 Rep. Hunter said that he points out that a decision evidently has been made and implemented by the majority, and for this Legislative Council to make a different decision, requires a positive vote of the members. It is his view that the decision that was made by a prior Legislative Council to institute the policy and to implement it in a way that has been implemented over the last biennium, is the policy of the Legislative Council, and only the Legislative Council can change that policy.
- 00:21:44 Sen. Barrett said she agreed and that is why we are here this morning.
- 00:21:52 Sen. Vincent asked Mr. Everts, if in his review of legal notes that were previously drafted, did he find anything that might have been omitted in potentially relevant cases?
- 00:22:23 Mr. Everts said they reviewed four legal review notes and of those there were two that he decided to clarify.
- 00:24:52 Sen. Facey said that as the Legislative Council, we should reaffirm to Mr. Everts and his staff of what their job is and what standard they have to meet and what standards they don't have to meet.
- 00:27:01 Rep. Essmann said that to function well, we need to regulate how we engage in conflict. We need to make an effort to have a disclaimer on the legal review notes so that people won't be tempted to pick them up and wave them around on the steps of the Capitol as proof of anything because the legal review note is not proof of anything. We also need to recognize that with respect to what the duties of our staff are, there are some tensions over whether statutes control the legislative process or do we have the power through our rules to control the legislative process.
- 00:31:15 Mr. Everts discussed training on this issue in Law School for Legislators. As Rep. Essmann has pointed out, legislators are unsure of what a legal review note means and does not mean. He distributed a copy of a legal review note form ([Exhibit 2](#)). He also noted that the Legislative Council went beyond the Utah process and made sure that the requestor could respond in writing to these legal review notes. He recommended further articulation of what the legal review notes are to help not only the legislators but Legislative Services Division and his staff.

- 00:34:12 Sen. Barrett asked if the Legislative Council, as an administrative committee, does it make recommendations to the Legislature or are they rule and law?
- 00:34:36 Mr. Everts said that the Legislative Council is a committee of the Legislature and they make recommendations to the Legislature.
- 00:36:22 Rep. Hunter said that the Legislative Council is charged with hiring and supervising the executive director of the legislative services division. To have a conclusion where the majority leadership can simply come to the session and direct the Council to do anything they want, seems to him to be a very logical conclusion based upon the statutory construction of how we have built the Legislative Services Division. The functioning of the process of the staff and the work they do for us t at the direction of leadership, that is not statutorily supported, he can't agree with the conclusions that are represented there.
- 00:37:43 Sen. Barrett asked about the process of the public looking at the junque files.
- 00:38:49 Ms. Fox explained about the newly developed system of looking at the junque files and the sign up sheet and the area in the basement that has been set up for people to review junque files.
- Motion**
- 00:40:11 Sen. Vincent moved that Legislative Council recommend that the 64th Legislature re-implement the process established in 2015, that the legal review notes are posted in the status system, and that the bills are also accompanied with an explanation should the bill have a legal review note.

#### Committee discussion

- 00:40:53 Sen. Sesso asked about the legal review note, the **bold** vs the *italics*. He does not see the italics part on the note itself. Is it Mr. Everts' intention that the content of his handout, in its entirety, be placed on the review note?
- 00:41:45 Mr. Everts said that the bold is in addition to what the italics is.
- 00:41:56 Sen. Sesso said he would support the motion and that he concurs with Rep. Hunter that this is the forum to make these decisions and he hopes that the President and the Speaker would continue to turn to its legislative counsel for these matters in the future.
- 00:43:26 Rep. Hunter said he appreciates the spirit of the motion and would point out that he believes that they are making a motion to do something that is already in place by Council decision.
- 00:44:02 Sen. Sesso asked if Sen. Vincent would replace the word "re-implement" and say "reaffirm" because we have to have a motion to add the language that has been suggested by the Code Commissioner, and to say reaffirm what was there with this addition.

**Substitute Motion**

00:44:43 Sen. Vincent made a substitute motion that Legislative Council reaffirm its previous recommendation to legislative sessions regarding the legal review notes to include the additional language provided by Mr. Everts to accompany those legal review notes.

**Vote**

00:45:11 The motion carried unanimously by voice vote.

**Direction to staff**

00:45:52 Ms. Fox asked for direction on how staff is to respond if someone asks staff if a legal review note exists and the chair becomes upset with the staffer because of the response.

00:46:18 Rep. Bennett said that they should tell the truth.

**ADJOURNMENT**

00:46:46 Sen. Barrett adjourned the meeting at 7:49 a.m.

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