



Legislative Council

65th Montana Legislature

SENATE MEMBERS

FRED THOMAS--Chair
EDWARD BUTTREY
TOM FACEY
JP POMNICHOWSKI
SCOTT SALES
JON SESSO

HOUSE MEMBERS

JENNY ECK--Vice Chair
SETH BERGLEE
WYLIE GALT
AUSTIN KNUDSEN
SHANE MORIGEAU
CASEY SCHREINER

COMMITTEE STAFF

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

MINUTES LOG

December 13, 2017

Plant Biosciences Building, Room 108
Montana State University, Bozeman

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.

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 Log, along with the audio and video recordings, is listed by meeting date on the interim committee's web page. Each of the "Exhibits" is linked and can be viewed by clicking on the Exhibit of interest. All Exhibits are public information and may be printed.

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

COMMITTEE MEMBERS PRESENT

SEN. FRED THOMAS, Chair
REP. JENNY ECK, Vice Chair

SEN. TOM FACEY
SEN. JP POMNICHOWSKI
SEN. SCOTT SALES
SEN. JON SESSO

REP. SETH BERGLEE
REP. AUSTIN KNUDSEN
REP. CASEY SCHREINER

COMMITTEE MEMBERS EXCUSED

SEN. EDWARD BUTTREY
REP. WYLIE GALT
REP. SHANE MORIGEAU

STAFF PRESENT

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

VISITORS' LIST (Attachment 1)

AGENDA (Attachment 2)

COMMITTEE ACTION

The Legislative Council adopted a motion to authorize \$64,000 of the IT Reserve Account for the Vote Systems Upgrade for servers.

CALL TO ORDER AND ROLL CALL

00:00:01 Sen. Thomas called the meeting to order at 10:38 a.m. The secretary called roll. Representatives Morigeau and Galt, and Sen. Buttrey were excused. (Attachment 3)

Public Comment

00:03:17 Rep. Kerry White commented on the importance of the Marsh Lab that conducts the testing for brucellosis and the chronic wasting disease and encouraged the committee to take a tour of the lab.

LEGISLATIVE UPDATES

Executive Director updates - Susan Fox

Session Systems Replacement

00:09:44 Ms. Fox discussed the SSR Project Roadmap (Exhibit 1) and SSR Future Phases (Exhibit 2).

00:10:10 Ms. Fox updated the committee on the IT Reserve Account (Exhibit 3). Ms. Fox discussed the appropriating \$64,000 from the IT Reserve Account for the Vote Systems upgrade (Exhibit 4).

Motion

00:13:15 Sen. Sesso moved to authorize that \$64,000 be taken out of the IT Reserve Account balance to pay for the additional costs associated with the Vote Systems Upgrade.

Discussion

00:13:58 Rep. Eck asked if that money had been earmarked for something else or is it excess money. She also asked about the potential of upgrading the email system.

00:15:45 Ms. Fox explained that the money in the IT Reserve Account was to fund any replacements for major projects, and the email upgrade would be part of the regular IT budget.

Vote

00:16:08 The motion passed unanimously by voice vote.

00:16:36 Sen. Facey asked whether or not the Legislature will be able to absorb the cuts that were initiated in the Special Session of November 2017.

00:16:49 Ms. Fox referred the committee to the Feed Bill spreadsheet.

Legal Office updates - Todd Everts

Codification

00:17:51 Mr. Everts provided an update on the 2017 Regular Session codification.

Committee Questions

- 00:18:53 Sen. Sesso asked if the extra costs would be coming out of the Feed Bill or out of the agency budget.
- 00:19:16 Mr. Everts answered that the costs will come out of the publications budget.

Litigation

- 00:19:26 Mr. Everts gave a status report on the Campaign for Accountability vs. Legislative Services Division lawsuit and Sen. Fielder's case.

Committee Questions

- 00:20:20 Rep. Eck asked Mr. Everts what he meant by "Sen. Fielder and us", and if he was saying "Sen. Fielder and the legislative services" or "Sen. Fielder and the legislative branch".
- 00:20:33 Mr. Everts said that the complaint was against the State of Montana through the Legislative Services Division and specifically Sen. Fielder.

Initiatives

- 00:21:26 Mr. Everts ([Exhibit 5](#))

COUNCIL BUSINESS

E-mail/Public Records

Overview - Susan Fox

- 00:22:22 Ms. Fox presented the Email Guidelines for Legislators brochure ([Exhibit 6](#)), the PowerPoint "Electronic Communications & Public Records for Legislators" ([Exhibit 7](#)), and Mr. Everts' memo re Legislator Electronic Communications and Public Record/Right-to-Know Requirements ([Exhibit 8](#)).

Email training - Todd Everts

- 00:23:33 Mr. Everts gave background information regarding the request for email training for legislators. ([Exhibit 8](#)) He discussed the Email Guidelines for Legislators brochure. ([Exhibit 6](#))
- 00:27:07 *Training video played at 11:05 a.m.*

Committee Questions

- 01:07:19 Sen. Thomas asked if the previous Legislative Council had adopted this proposal.
- 01:07:33 Ms. Fox said that the Council has been trying to get a records management policy for the Legislative Services Division. The previous council had agreed that the 4-year estimate was sufficient to give some guidance but that policy has not been adopted as part of the formal records management policy.
- 01:08:52 Darrin McLean, Legislative Services Senior Systems Analyst, discussed the current retention records for mt.gov, and that those records are archived and searchable.
- 01:09:34 Sen. Thomas asked where the legislative emails being archived.
- 01:09:44 Mr. McLean said that those emails are archived on servers within the state system.

Proposed new email solution - Darrin McLean

Storage capabilities, Archiving capabilities, Cost analysis

- 01:12:20 Mr. McLean ([Exhibit 9](#))

Committee Questions

- 01:23:52 Sen. Pomnichowski asked Mr. McLean about contracting with Mindcentric.
- 01:24:16 Rep Eck asked about the migration costs for existing legislators' emails.
- 01:25:05 Ms. Fox said that it would be better to migrate what is in an existing mailbox to one place.
- 01:25:44 Rep Eck commented on the preference of having an old account that is kept in place until the statute of limitations is reached.
- 01:27:05 Sen Thomas asked about archiving and passwords on the Mindcentric platform.
- 01:29:37 Rep. Schreiner asked about platforms used by people to access emails on mobile devices.
- 01:33:46 Sen Thomas asked about using the Sen./Rep. email addresses.
- 01:38:21 Sen. Facey asked about the 4-year policy.
- 01:39:08 Ms. Fox discussed the House members' terms, challenging a bill's title for two years, and the recordkeeping retention schedules.
- 01:40:13 Sen. Facey said that, based on what Ms. Fox said, he supports that the maximum of 4 years.
- 01:42:59 Sen. Sales asked about the number of requests received by the Legislative Services staff and active requests.
- 01:43:13 Ms. Fox discussed a request from the Associated Press asking for information on any formal complaints or litigation regarding sexual harassment.
- 01:45:10 Rep. Knudsen commented on Title 27 that dealt with specific statutes and statutes of limitations that would apply to a perspective lawsuit over open record retention for legislator emails.
- 01:48:01 Sen. Pomnichowski discussed a scenario with Mr. McLean where if someone sent an email to an old mt.gov account, if a notice could be sent back to the sender saying "this email address has been changed, please update your address book, it is now _____". She also asked Mr. Everts about legislators making their own determination on whether an email is personal or legislatively related.
- 01:54:12 Sen. Pomnichowski suggested a policy that could direct ISPs to state its archiving policy and the size limit for mailboxes in consideration for elected officials.
- 01:54:52 Sen. Facey asked if the chair wanted a motion moving forward on this issue.
- 01:55:02 Sen. Thomas said that the Council needs to answer more questions in order to adopt any form of policy.
- 01:56:07 Rep Eck discussed trying out some of the platforms and suggested a policy for retention of emails after a legislator is termed out.

Public Comment

None.

LUNCH

- 02:05:05 Sen. Thomas reconvened the meeting at 1:38 p.m.

COUNCIL BUSINESS (continued)

Third-party Compensation Commission - Susan Fox

Historical, Legal, Budgetary, and Transition

02:05:32 Ms. Fox discussed the document, "The Difficulty of Setting Legislator Pay" (**Exhibit 10**) and "Reducing the Size of the Legislature" (**Exhibit 11**).

Committee Questions

02:16:54 Sen. Sales commented on changing the legislature to comprise of 80 members in the House and 40 members in the Senate.

02:19:21 Rep Berglee said that the argument that you will get against it is that you will lose representation, especially in the rural areas.

02:22:56 Rep. Eck asked about statute or constitutional requirements regarding decreasing the number of seats, how that would affect the political breakdown of districts, and how that breakdown would be determined.

02:25:09 Sen. Sales asked about redistricting that was done in the past, if the districts were getting bigger or staying stagnant.

02:26:41 Sen. Sales discussed advantages for larger districts with a large population that would help with the selection of those districts and have less gerrymandering occurring.

02:30:07 Rep. Eck said that freeing up some funds is a way to increase compensation for sitting legislators.

02:30:36 Ms. Fox discussed working on numbers to see what the savings would be, but they only did it for salary and per diem (**Exhibit 12**). She discussed other alternatives, such as looking at the third-party option via the compensation commission.

02:31:43 Rep. Eck asked if Ms. Fox had a sense of the overall savings beyond salary and health insurance.

02:31:48 Ms. Fox said that calculations regarding health insurance were not done. She said it was hard to have much economy of scale, and with term limits there needs to be some institutional memory to operate and that would take more analysis.

02:32:34 Sen. Facey said that he would like to consider the questions of size and compensation separately. He said that if we look at compensation, we came across a big roadblock last session and the roadblock was the veto.

02:35:45 Sen. Pomnichowski commented on the redistricting and apportionment commission being the only body with the power to set the size of the legislature. She would like more information before questions are asked to which there are already answers.

02:37:41 Sen. Thomas discussed moving forward on reducing the size of the legislature. His opinion is that it is actually in the constitution to delegate straight to the legislature with that decision.

02:41:03 Mr. Everts presented background information on Greg Petesch's memo and Mr. Everts' legal review that was on Sen. Priest's bill in 2015, and the attorney general's interpretation of the constitution that determined that the legislature didn't have the ability to reduce the size of the district. He also discussed an attorney general opinion that interpreted the constitution to say that a senator's

term of office can't be shortened. If you go forward with this, there may be a risk that someone, a sitting legislator, who may be impacted by this, who could use those attorney general opinions to impede progress on what you are trying to do.

02:43:12 Ms. Fox said that what she intended in that transition was to make sure that no senator's term would be shortened and that it would be good to delve into that more because most of those opinions were done in 1973.

02:44:01 Rep. Knudsen asked if the committee wanted to move forward on reducing the size of the legislature, and if so, he would not be in support of this.

02:45:53 Sen. Sesso asked what action needs to be taken to give the legislature a chance to pass a law to accommodate a change.

02:47:34 Sen. Thomas said that there needs to be a motion for legislation that we would take to the next session.

02:49:05 Ms. Fox said staff would need to draft a bill to determine the size of the legislature, have a legal analysis of the bill, and present that to the legislators before the next session.

02:49:46 Rep. Knudsen asked whether the question is, should the committee move forward with a committee bill to implement a plan that was suggested by Ms. Fox. Anyone can carry a bill to try to do this, so the pertinent question is, do we want to move forward with a committee bill.

02:50:25 Sen. Sales said that if a decision came from the Legislative Council, it would have more bearing on the situation than if it came from an individual.

02:53:34 Rep. Eck said that she would not like to see this die right out of the gate since it is something we are just considering.

02:54:05 Sen. Sesso asked if there will be public hearings or discussions at a future Legislative Council meeting.

02:54:24 Sen. Thomas said that Sen. Sesso has a good point, and if the committee wanted to develop a plan, whether or not it is endorsed, to allow the public to discuss it.

02:55:55 Sen. Pomnichowski asked if a discussion on this subject be an agenda item for the Council's next meeting.

02:56:02 Rep. Schreiner commented on the discussion regarding concerns from his constituents over increasing the size of urban centers which would then decrease representation, and given those conversations, he would not support a draft bill on that subject.

02:56:50 Rep. Knudsen asked a procedural question on proxies.

02:57:08 Sen. Sales said that he received an email from Sen. Buttrey giving his proxy to Sen. Sales.

02:57:46 Rep. Berglee said that the committee should move forward to some extent on this.

02:59:11 Sen. Thomas suggested taking another look at this subject, then decide if the committee has a proposal to take to the public and have the public weigh in on it.

03:00:08 Rep. Knudsen said that he is in favor of a third-party compensation commission.

03:01:08 Rep. Eck said that she agrees.

03:02:13 Sen. Pomnichowski asked how a commission would be selected or appointed.

03:02:26 Ms. Fox discussed sending out a survey asking if the commission would be appointed by the governor or by legislators, the number of members, and what are the thoughts of the council members.

03:03:16 Sen. Thomas said that it is a good idea to ask that question and get an answer.

Sexual Harassment Training - Susan Fox

Current Legislator Orientation Training & Staff Training

- 03:05:00 Ms. Fox said that the constituent services stipend discussion will continue.
- 03:05:42 Ms. Fox discussed training for sexual harassment and what training is currently being done. She referred the committee to the brochure, "Harassment is Against the Law" (**Exhibit 13**) and the NCSL LegisBrief on Sexual Harassment Policies and Training in State Legislatures (**Exhibit 14**).

Committee Questions

- 03:09:21 Sen. Thomas asked if there were any reports received of complaints of sexual harassment.
- 03:09:30 Ms. Fox said they have had no formal complaints, but she has had discussions with staff on how to handle circumstances where somebody has been subjected to inappropriate behavior.
- 03:12:23 Sen. Facey said that he knows of no circumstances or no situations where sexual harassment has arisen and that he would like to include registered lobbyists into the mix because they work in the Capitol building and have a position of power and influence.
- 03:13:34 Rep. Eck said that we need to do a better job of training. She would like to hear what other states are doing and what different training options are available at the next Council meeting.
- 03:15:41 Sen. Sales said if things are broken, don't fix it.
- 03:17:37 Rep Knudsen said that we do have some situations where we do have people who are in power over others, for example, staff. It probably would be in our best interests to have some clear delineations, that if you feel sexual harassment has happened, these individuals need to know who to report. He said he is not inclined to put anything in statute.
- 03:19:55 Sen. Thomas said that he agrees with the comments that were made.
- 03:20:22 Rep Eck said speaking for herself and for women in the legislature, the perception of women legislators are different than male legislators as to what the culture is in the legislature. There is room for training, room for better understanding about what sexual harassment is, and what a safe work place is. She doesn't see any harm in expecting all members to understand that.
- 03:21:30 Sen. Thomas asked Ms. Fox to further review this topic and report back to the committee.

Staff Book - sample of last session, ideas for next - Susan Fox

- 03:22:35 Ms. Fox discussed the staff book, the Copper Book, and the sample questionnaire for the Copper Book.
- 03:24:16 Sen. Pomnichowski said that the areas of staff specialization is helpful.

PUBLIC COMMENT on any matter under Council's jurisdiction

None.

- 03:25:59 Sen. Thomas recessed the meeting at 3:00 p.m.

OPTIONAL TOUR OF ROMNEY HALL AND MARSH LAB

The group received a printout of Romney Hall's renovations and a brochure which discussed the reasoning for the renovations (**Exhibit 15**). The printout is located in the meeting folder.

Reconvene for Public Comment

- 03:26:12 Sen. Thomas reconvened the meeting at 6:05 p.m. The secretary noted the roll. Sen Sesso was not present.
- 03:27:10 Sen. Thomas asked for Public Comment on any issues before the Legislative Council today. Seeing none, Sen. Thomas went back to the email discussion.

PRIORITIES FOR INTERIM - Council members

- 03:27:43 Ms. Fox summarized Mr. McLean's email presentation. She referenced the Mindcentric system that has a demonstration site and if any of the members of the committee was interested, she would request access to the site.
- 03:29:45 Rep. Eck asked if there were any negotiation on migration.
- 03:30:20 Ms. Fox said that she will list those concerns and get them ironed out before the March meeting. She said she would do more research on the archive period, statute of limitations, and password and levels of security regarding emails.
- 03:35:06 Sen. Thomas directed staff to ask Mr. McLean to set everybody up for the Mindcentric demonstration and to develop this for more discussion and report back at the next Legislative Council's meeting to move forward with this.

Strategic Planning Session results, work plan, and next meeting date

- 03:36:45 The committee discussed proposed locations and meeting dates. (**Exhibit 16**)
- 03:39:39 It was suggested that the committee hold its March 14, 2018, meeting in Pablo and Polson; the May 23 and 24, 2018, meetings in Butte, a conference call in August of 2018, and the September 19, 2018, meeting in Lewistown, with the last meeting held in Helena in November of 2018.

ADJOURNMENT

- 03:47:05 With no further business before the committee, Sen. Thomas adjourned the meeting at 6:25 p.m.

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