



# 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

March 14, 2018

Salish Kootenai College

Johnny Arlee & Vic Charlo Theater, Room 106

Pablo, 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

SEN. EDWARD BUTTREY  
SEN. TOM FACEY  
SEN. JP POMNICHOWSKI  
SEN. SCOTT SALES  
SEN. JON SESSO  
SEN. FRED THOMAS

REP. SETH BERGLEE  
REP. JENNY ECK  
REP. SHANE MORIGEAU

### COMMITTEE MEMBERS EXCUSED

REP. AUSTIN KNUDSEN  
REP. WYLIE GALT  
REP. CASEY SCHREINER

### 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 took the following actions:

- adopted a motion for Mr. Everts to draft a bill that would reduce the costs of legal publications and provide information on what entities would be affected within and outside the Legislature for approval by the Council at the next meeting.
- adopted the dates of November 14-16, 2018, for caucus and orientation prior to the 2019 session, and including the December 4, 2018, date for Presiding Officer Training and Rules Committees.

Sen. Thomas appointed Sen. Buttrey and Rep. Morigeau to work with Council staff on the constituent services account issue.

### CALL TO ORDER/ROLL CALL

00:01:42 Sen. Fred Thomas called the meeting to order at 12:37 p.m. The secretary noted roll: Representatives Knudsen, Galt, and Schreiner were excused.  
([Attachment 3](#))

00:03:08 James Steele, Tribal Council, gave some remarks.

## LEGISLATIVE SERVICES DIVISION UPDATES

### Executive Director Updates - Susan Fox, Legislative Services Division

00:09:07 Ms. Fox gave an update on the activities of the Legislative Services Division. She said that Courtney Cannon, Receptionist, left the Division. Bri Nordhagen was hired as an Administrative Assistant for the Division. The Information Technology Department has hired Peder Cannon as a System Engineer.

00:10:56 Ms. Fox referred the committee to a report from Jonathan Byington, Uniform Law Commissioner, regarding the 2017 Annual Report from Uniform Law Commissioners. ([Exhibit 1](#))

00:11:26 Ms. Fox reviewed the budgets of the Legislative Services Division Program 20 ([Exhibit 2](#)) and the Interim Committees and Activities Monthly Financial Program 21 ([Exhibit 3](#)).

00:12:21 Ms. Fox discussed the Financial Compliance Audit that was completed and presented to the Audit Committee in February 2018.

### Committee Questions

00:12:55 Sen. Ed Buttrey asked about the amount that is owed to the Program 21's budget.

00:13:06 Ms. Fox explained that it is due to the way the Division budgeted for it at the front end but overall, Program 21's budget is still in the black.

00:14:03 Ms. Fox discussed language in HB 539 regarding carry forward appropriations and reported that she would use the funds to support leadership and Legislative Council efforts.

00:15:52 Ms. Fox said that she will provide an update of the Session Systems Replacement project at the March 15, 2018, meeting.

**Research Updates - Sonja Nowakowski, Director, Office of Research and Policy, and Joe Kolman, Director, Environmental Policy Office**

00:16:30 Sonja Nowakowski reported on the activities of the interim committees. **(Exhibit 4)**

00:32:08 Joe Kolman reported on the activities of the Environmental Policy Office's interim committees. **(Exhibit 4)**

*Rep. Seth Berglee arrived at 12:56 p.m.*

**Questions from the Committee**

00:45:42 Sen. Buttrey reported that the Economic Affairs Interim Committee objected to the rules that were adopted by the Department of Revenue regarding liquor license auctions.

00:47:23 Sen. Facey asked Mr. Kolman if decoupling is along the lines where Montana Dakota Utilities can have a subsidiary like Knife River.

00:48:07 Mr. Kolman said that that is intended for third-party, not a subsidiary type approach.

00:48:12 Sen. JP Pomnichowski commented on a bill from the Washington state's legislature that would consider a carbon tax on energy produced at any coal-fired generating plant and would have assessed a carbon tax on energy coming from Montana. She said that the bill failed but she would expect some ripple effect from that.

00:49:37 Sen. Thomas asked if any interim committees were considering meeting outside of Helena during this interim.

00:49:52 Ms. Fox said that some committees have subcommittees meeting outside of Helena, but because of the budget restrictions, the researchers have been conservative in their planning.

00:50:48 Mr. Kolman said that most of the researchers plan time to discuss emerging issues.

**Legal Office Updates - Todd Everts**

**Codification for Special Session**

00:51:30 Todd Everts reported on the November 2017 Special Session codification.

**Litigation**

00:52:24 Mr. Everts reported on the litigation that is currently ongoing: Campaign for Accountability vs. Legislative Services Division and Sen. Fielder.

**Initiatives**

00:53:34 Mr. Everts **(Exhibit 5)**

**Committee Questions**

00:56:45 Sen. Facey asked about the Legislative Services Division's legal review that is done on initiatives.

00:56:51 Mr. Everts explained the process for ballot initiatives.

## **Annotations and Legal Publications Process**

00:59:26 Mr. Everts explained the annotations and legal publications process. He said he would like to define "publish" that is in statute with regard to publishing on paper electronically. Mr. Everts also discussed the requirement of indexing the Codes in paper format, which he said is obsolete. He would like to bring forth options in a bill draft format to update the archaic codification and publication statutes to allow the flexibility to streamline and save money.

## **Questions from the Committee**

01:07:32 Rep. Jenny Eck asked about the implications to other forms of publications that the Legislative Services Division are responsible for.

01:07:51 Mr. Everts said that they are responsible for the legislative review of session law from Montana. He said that he would like to present some statutory options in a bill drafting format. He said that "publish" isn't defined in the codes.

01:09:47 Rep. Eck asked about what entities might be impacted by the bill draft.

## **Motion**

01:09:57 Sen. Tom Facey moved that Mr. Everts draft a bill that would reduce the costs of publication and what entities would be affected within and outside the Legislature for approval to the next Council meeting.

## **Discussion**

01:10:35 Sen. Facey asked about the publication of school laws, criminal laws, and the liquor laws that are mandated.

01:10:47 Mr. Everts said that those laws are not mandated. The statute says that ancillary publications may be published.

01:11:29 Sen. Facey commented that he would like to see how many ancillary publications are done and if there are costs to the Division.

01:11:54 Ms. Fox said that some of those entities contract with the Legislative Services, but those entities pay the costs and are responsible for distributing those publications. Ms. Fox said that she will provide budget details to the committee.

01:12:27 Sen. Ed Buttrey commented on not drafting a bill that is all encompassing because there will be certain areas that he would support and certain areas that should be left as is.

01:13:17 Sen. Facey said that his motion will encompass Sen. Buttrey's concerns.

## **Vote**

01:13:30 The motion passed unanimously by voice vote.

**Break** (reconvened at 2:00 p.m.)

## **COUNCIL BUSINESS**

### **Confirm Caucus & Orientation dates: November 14-16, 2018**

01:26:12 Ms. Fox discussed the draft 2019 Session Calendar ([Exhibit 6](#)) and Orientation dates ([Exhibit 7](#)). She asked that the committee tentatively adopt the orientation dates of November 14-16, 2018. She said that a rules and presiding officer

training is tentatively proposed for December 4, 2018.

### **Motion**

01:30:10 Rep. Eck moved to adopt the Caucus and Orientation schedule as presented in Exhibit 7, including the December 4, 2018, date for Rules and Presiding Officer training.

### **Discussion**

01:31:24 Rep. Morigeau asked about law school for legislators and if that included the Indian law portion.

01:31:45 Sen. Thomas is concerned about not meeting the first week of the year.

01:32:30 Sen. Sales commented on the legislators taking the first six Saturdays off in the 2017 session.

01:32:59 Ms. Fox said that she wanted to give options so that she can build a calendar that had the first six Saturdays off to let the committee see the ramifications of that.

### **Vote**

01:34:04 The motion to adopt the calendar schedule passed unanimously by voice vote.

01:34:21 The committee further discussed the start date of the session, money in the Feed Bill for training days, and what days can be reimbursed to the legislators.

01:50:12 Ms. Fox asked that members of the Legislative Council provide ideas to her regarding the session calendar.

### **Size of Legislature - Susan Fox**

01:54:19 Ms. Fox discussed the *revised* "Considerations for Changing the Size of the Legislature" ([Exhibit 8](#)), and the "Regional Analysis of Legislative District" ([Exhibit 9](#)).

### **Legal and Population Analysis - Todd Everts**

02:04:33 Mr. Everts ([Exhibit 8](#))

### **Committee Questions**

02:09:31 Sen. Sales asked Mr. Everts about changing the legislator's term to a 16-year hard fix.

02:12:32 Mr. Everts said that Sen. Sales is potentially talking multiple subjects linking in term limits with reducing the size. He said that he would have to analyze the numbers. You could make that change to the constitution, the 16-year hard fix but then also fixing the term, same as the Senate in the House, and see what that impacts the other provisions of the legislature in terms of the election cycle.

02:14:11 Sen. Facey said that Sen. Sales has the ability to put in a bill draft to do something that he thinks is appropriate and he would encourage him to move forward with his ideas.

02:15:21 Sen. Sesso said that he would not support a motion for the Council to move forward with any analysis or bill to reduce the number of legislators or any other ideas to strengthen the body in response to impact term limits.

02:19:49 Rep. Eck said that she would not be opposed to looking at a proposal around length of terms in the House, but she would not support a motion to reduce the

- number of legislators in the House or Senate.
- 02:20:35 Rep. Morigeau commented on doing an analysis on the Voting Rights Act and would like to continue the analysis and asked that that be part of the motion.
- 02:21:20 Sen. Sales said that his main reason for bringing this topic up is that there are good merits to reducing the size of the Legislature that are not partisan reasons. It is his opinion that smaller bodies work better than bigger bodies.
- 02:25:28 Sen. Thomas introduced Dan Decker, who gave the tour of the school.

**Legislator Compensation Topics - Susan Fox, Legislative Services Division, and Jeff Mangan, Commissioner of Political Practices**

**Third-party Commission Survey**

- 02:26:42 Ms. Fox ([Exhibit 10](#))
- 02:26:57 Rep. Morigeau introduced the staff from the Salish Kootenai College.

**Constituent Services Account**

- 02:27:50 Ms. Fox ([Exhibit 11](#))
- 02:39:09 Jeff Mangan, Commissioner of Political Practices, commented on the issues of having a constituent services account.

**Committee Questions**

- 02:42:47 Sen. Sesso asked Commissioner Mangan about the constituent services money being classified as a gift.
- 02:43:57 Commissioner Mangan
- 02:44:43 Sen. Sesso asked if the idea of creating a third-party commission came from the Legislative Council.
- 02:45:03 Ms. Fox discussed the issues of Legislator Compensation.
- 02:45:18 Rep. Eck asked about a timeframe for using the stipend. Ms. Fox said it should be used by the end of December 31, 2018.
- 02:45:53 Rep. Eck asked about being reimbursed for time. Ms. Fox said the Council had decided that time would not be reimbursed.
- 02:46:53 Sen. Sales said that if the stipend is considered income, the legislator should be able to do anything they want with it. If it is not taxed, then the any amount that is spent should be reimbursed on an expense-type basis.
- 02:48:06 Sen. Thomas appointed Sen. Buttrey and Rep. Morigeau to work with Ms. Fox on a proposal with options regarding legislator compensation.
- 02:49:49 Rep. Eck asked about keeping a log of expenditures.
- 02:49:58 Sen. Buttrey discussed the first account and the secondary account.
- 02:50:12 Ms. Fox said that keeping a log is only a recommendation. In the event that there is an inquiry as to how the money was spent, keeping a log can help in verifying whether or not taxes were paid on the amount.
- 02:51:12 Sen. Buttrey said that if that money is treated as salary, on what grounds would someone have to object as to how that money was used.
- 02:52:47 Sen. Sales asked for something in writing regarding what our best guess is on this issue.

- 02:55:51 Commissioner Mangan explained why Ms. Fox and he were having this discussion. It was because questions were coming up and as soon as the legislator compensation is put in the public money realm, legislators open themselves up to those kind of questions; i.e., how was that money utilized, was that money tracked, and was that money used appropriately. The other option is making it part of the legislator's benefit or salary and take the constituent services tag off of it.
- 02:59:12 Rep. Eck asked about reimbursing for time. Ms. Fox said that the Legislative Council has provided information on that issue through statute, the brochure, and the website.
- 03:00:57 Mr. Everts discussed the salary issue.

**PUBLIC COMMENT** - None

- 03:02:48 Sen. Thomas discussed the agenda for the March 15, 2018 meeting.
- 03:08:30 Rep. Eck asked if the committee was going to revisit the question of legislator compensation in general.
- 03:08:38 Ms. Fox said that the only topic that has not been discussed regarding legislator compensation is the third-party compensation commission. She discussed the reason for the survey.

**RECESS**

- 03:09:16 With no further business before the committee, Sen. Thomas recessed the meeting at 3:44 p.m., to reconvene at 8:00 a.m. on March 15, 2018, in Polson, Montana.

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