



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

Student Union Building, Copper Lounge
Montana Tech
Butte, Montana

May 24, 2018

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

REP. SETH BERGLEE
REP. JENNY ECK
REP. WYLIE GALT
REP. AUSTIN KNUDSEN
REP. SHANE MORIGEAU
REP. CASEY SCHREINER

COMMITTEE MEMBERS EXCUSED

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:

- acknowledged that consultation on the sale of the Sidney Armory by the Department of Military Affairs had taken place and the matter placed on file;
- adopted the draft Calendar A for the 66th Montana Legislature; and
- adopted the draft Calendar A for the 66th Montana Legislature as shown.

RECONVENE

00:00:01 Sen. Thomas reconvened the meeting at 9:03 a.m. The secretary noted roll. ([Attachment 3](#))

COUNCIL BUSINESS

Subcommittee on Harassment and Discrimination Policy Report

00:01:59 Rep. Eck gave an overview of the subcommittee's meeting on Harassment and Discrimination Policy.

Department of Military Affairs Sale of Sidney Armory - Debra Lafontaine

00:04:40 Ms. Lafontaine ([Exhibit 8](#))

Motion

00:07:43 Sen. Sesso moved that the Legislative Council acknowledge that consultation had taken place and to place the matter on file.

Vote

00:09:09 The motion passed unanimously by voice vote.

Sexual Harassment Prevention Training and Policies - Susan Fox

00:09:50 Ms. Fox ([Exhibit 9](#))

Committee Questions

00:24:14 Sen. Sesso commented on the draft policy containing information that is currently in the Administrative Manual.

00:25:15 Rep. Eck said the subcommittee looked at what Montana had in rules for the Legislative Services Division.

00:28:01 Sen. Buttrey asked about the accused or accuser being a legislator.

00:30:28 Rep. Eck discussed disciplinary action of a legislative branch employee.

00:31:21 Todd Everts, Legal Director, discussed harassment and discrimination in the rules.

00:33:53 Sen. Thomas asked about constitutional issues.

00:34:09 Mr. Everts referred the committee to the human rights rules in the back of the draft policy.

00:38:16 Discussion on Section 1: Policy and Objective A. Right to be free of

discrimination or harassment. No discussion.

- 00:39:06 Discussion on Section 1: Policy and Objective B. Discipline. No discussion.
- 00:39:46 Discussion on Section 2: Definitions of harassment, retaliation.
00:40:02 Sen. Sesso said that this is not new information but information taken from the manual or policies that exist in state government.
- 00:41:30 Discussion on Section 3: Reporting and Inquiry or Investigation Procedure.
00:42:01 Rep. Eck said that it is important that everyone understands the rules, the process, and that people can speak with one another and not have a chilling effect on that conversation.
- 00:45:02 Sen. Sesso wanted to make it clear that the policy is only dealing with cases that involve a legislator.
- 00:46:13 Sen. Pomnichowski asked Sen. Sesso if that would be "by a legislator" or "to a legislator".
- 00:48:52 Rep. Morigeau asked for clarification on the process.
00:50:20 Rep. Eck said the idea is that the complaint is brought to the HR manager and has the complainant fill out the form so that there is a record of what happened and how that was dealt with.
- 00:57:20 Sen. Thomas asked Rep. Eck to walk the committee through what could happen or is most likely to happen.
- 01:04:46 Sen. Buttrey discussed the 3-day requirement.
- 01:06:28 Sen. Sesso discussed the use of the word "informal" in the policy.
- 01:11:58 Rep. Schreiner said his concern is "no action taken or informal" and if that informal gets taken away, he understands the concept that the offended party may not want this to become a larger deal because of the public nature. There should be language saying "information resolution as agreed to by the offended" or something to that effect.
- 01:15:02 Rep. Eck discussed what the third-party investigator process is.
01:19:15 Sen. Buttrey asked if the third-party comes back and says that this complaint has no merit and then the panel meets and they disagree. Would another third-party be appointed?
- 01:20:29 Sen. Pomnichowski asked Rep. Eck about what the timeline the third-party investigation would be.
- 01:21:18 Discussion on Section 5: Discipline and Corrective Action.
01:22:01 Mr. Everts said that the authority to discipline members within each body is found in Article 5, section 10 of the constitution.
- 01:28:51 Sen. Sales commented on the idea that this discussion is just on how to deal with some sort of disciplinary action against harassment.
- 01:31:43 Mr. Everts said that that is under Code of Conduct in statute and also in rules.
01:32:42 Sen. Sales asked what is different about this that we wouldn't have that in our Code of Ethics and why wouldn't this egregious action apply under that.

- 01:32:55 Mr. Everts discussed the human rights act which is derived from federal legislation that outlines the responsibilities of institutions in terms of employer/employee relationships.
- 01:40:22 Sen. Facey said that the subcommittee tried to focus on the legislative process.
- 01:42:15 Rep. Schreiner said that what is needed is a policy that outlines what will happen if somebody experiences sexual harassment, they will know the process of reporting.

Break - Reconvened at 11:06 a.m.

- 02:04:06 Discussion on Section 4: Records and Confidentiality
- 02:04:55 Rep. Eck said that confidentiality is critical to the process.
- 02:07:50 Sen. Thomas said that this section needs more work.

Public Comment

- 02:09:05 Marilyn Lockhart, member of the Montana State University President's Commission on the Status of University Women, urged the committee to pass a policy on prohibiting discrimination and harassment for all legislators and those who interact during these meetings.
- 02:11:16 Yvonne Rudman, member of MSU President's Commission on the Status of Women, commented on what contributes to the toxic environment in which women need to contend with in the workplace.
- 02:14:41 Danika Comey, Bozeman, supports the anti-harassment policy.
- 02:15:17 Nora Peterson, Bozeman, supports the robust and anti-sexual harassment, anti-discrimination policy and sexual harassment prevention training.
- 02:17:06 Discussion on Section 4.
- 02:17:22 Mr. Everts provided a synopsis of earlier discussions on the topic.
- 02:18:20 Ms. Fox asked for action on the suggested changes and get the policy together with the new language on records and confidentiality.
- 02:18:41 Rep. Eck discussed what happens if the leadership panel has a tie vote.
- 02:20:10 Sen. Sales asked about the purpose of the panel if the panel locks up and the complaint automatically goes to the investigation.
- 02:21:23 Rep. Schreiner said that if this isn't a formalized legislative committee, this ceased to be confidential conversation.
- 02:22:08 Sen. Thomas said that in going to the rules or ethics committee, it is a public hearing. The constitution clearly states that any of our committee's hearing are open to the public.
- 02:22:23 Rep. Schreiner said we are putting ourselves in a position where people are going to say that this is a legislative committee, and the first meeting should be public. Rep. Schreiner said that using the term "vote" can muddle the water as far as public perception.
- 02:24:16 Sen. Facey asked how to look at one off-behavior and how to separate that from a pattern.

- 02:29:42 Rep. Eck said that she would resist the temptation to look at this panel in legislative terms in the way we do business legislatively.
- 02:31:21 Sen. Thomas directed staff to revise the policy for review at the next Legislative Council meeting.

Rules subcommittee appointment

- 02:32:12 Sen. Thomas asked for volunteers to be on the Rules Committee: Sen. Buttrey, Rep. Eck, Rep. Morigeau, and Sen. Thomas expressed interest in serving.

Budget development for next session

- 02:34:45 Ms. Fox reviewed budget information: the last phase of the Session System Replacement, the installation of the vote display boards, additional money for the Council of State Governments annual meeting in 2019, the market survey for staff salaries, ITSD rates, repair and upgrade of A/V systems and reducing transmission costs, adoption of the IT budget on August 23, and a conference call discussion of the preliminary budget. Ms. Fox asked if the chair wanted to form a subcommittee or appoint leadership to be the contact people for any policy questions before the budget conference call.
- 02:38:52 Sen. Thomas appointed Sen. Sesso, Sen. Sales, Rep. Knudsen, and himself to be the contact people for the budget.

Calendar Schedule

Motion

- 02:40:52 Rep. Knudsen moved to tentatively adopt the draft Calendar A for the 66th Montana Legislature as shown.

Committee Discussion

- 02:41:21 Sen. Buttrey asked about transmittal dates for the two houses.
- 02:41:39 Sen. Sesso asked about an agreement to move some of the training to Thursday, Friday of the previous week. Sen. Thomas said yes.

Vote

- 02:41:58 The motion passed unanimously by voice vote.

PUBLIC COMMENT on matters within the jurisdiction of the Legislative Council

None.

Next meeting date and place

- 02:42:42 Sen. Thomas asked about the next Council meeting. He asked Ms. Fox to research meeting dates in September and location.

ADJOURNMENT

- 02:44:04 Sen. Thomas adjourned the meeting at 11:47 a.m.

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