



State Administration and Veterans' Affairs Interim Committee
64th Montana Legislature

SENATE MEMBERS

DEE BROWN--Chair
DOUG KARY
CLIFF LARSEN
JONATHAN WINDY BOY

HOUSE MEMBERS

BRYCE BENNETT--Vice Chair
FORREST MANDEVILLE
WENDY MCKAMEY
KATHY SWANSON

COMMITTEE STAFF

SHERI SCURR, Lead Staff
GINGER ALDRICH, Staff Attorney
KATYA GROVER, Secretary

MINUTES LOG

November 17, 2015
Room 137, 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

SEN. DEE BROWN, Chair
REP. BRYCE BENNETT, Vice Chair

SEN. DOUG KARY
SEN. CLIFF LARSEN
SEN. JONATHAN WINDY BOY

REP. FORREST MANDEVILLE
REP. WENDY MCKAMEY
REP. KATHY SWANSON

STAFF PRESENT

SHERI SCURR, Lead Staff
GINGER ALDRICH, Staff Attorney
KATYA GROVER, Secretary

VISITORS' LIST (Attachment 1)

AGENDA (Attachment 2)

COMMITTEE ACTIONS

The committee:

- Voted to request brief a presentation (spread out during the remaining meeting days of the interim) from each assigned statutory advisory council and entity required by statute to provide a report to the committee, and asked that the presentations include whether the advisory council or reporting entity sees value in the council or report continuing to be provided for in statute.
- Scheduled its next meeting for 3 p.m. on Tues., Nov. 24, to be conducted by conference call for the sole purpose of administrative decisions concerning the committee's statutory duty to conduct a poll of the Legislature on 16 rules proposed by the office of Commissioner of Political Practices that 23 legislators have objected to.
- Adopted the following additional meeting dates for the remainder of the interim: Feb. 10, April 19, June 21, Aug. 23, and Nov. 14.
- Adopted the proposed HJR 21 study plan with one change: moved the task of examining laws in other states about personal information ownership rights to the committee's February meeting rather than the April meeting.

CALL TO ORDER AND ROLL CALL

00:00:09 Sen. Brown called the meeting to order at 8:30 a.m. The committee secretary called roll. [\(Attachment 3\)](#)

PENSION OVERSIGHT

Actuarial Valuations, FY 2015 - MPERA Retirement Systems - Dore Schwinden, Executive Director, MPERA

00:01:55 Sheri Scurr, **Staff Researcher Analyst**, provided a handout to the committee members produced by Montana Board of Investments. The handout provided information about pension fund investments. [\(Exhibit 1\)](#)

00:02:47 Mr. Schwinden provided information on the MPERA retirement systems actuarial valuations. [\(Exhibit 2\)](#) [\(Exhibit 3\)](#) [\(Exhibit 4\)](#)

Committee Questions of Mr. Schwinden

00:10:56 Sen. Brown asked about a sliding scale for the Guaranteed Annual Benefit Adjustment (GABA) mentioned in Exhibit 3.

Actuarial Valuation, FY 2015 - Teachers' Retirement System - Shawn Graham, Executive Director, TRS

00:12:24 Mr. Graham provided information on the TRS retirement system actuarial valuations. [\(Exhibit 5\)](#)

Committee Questions of Mr. Graham

- 00:19:21 Sen. Brown asked about the difference between contributions into the system vs. benefits paid out on page 10 of Exhibit 5.
- 00:22:06 Sen. Brown asked Mr. Schwinden and the Board of Investments to provide the same data with respect to MPERA and retirement systems.
- 00:23:01 Sen. Larsen asked about the graph on page 10 of Exhibit 5 showing progress toward 100% funding.
- 00:24:08 Sen. Windy Boy asked about the trend on teacher retention and hiring new teachers to replace those who retire.
- 00:26:57 Sen. Kary asked about the discrepancy in numbers referring to average benefits on page 6 and the last page of Exhibit 5.

HJR 21 - STUDY ON PERSONAL INFORMATION PRIVACY & OWNERSHIP

Big Picture Overview - Federal and State Laws - Sheri Scurr, Staff Research Analyst

- 00:30:56 Rep. Bennett assumed chairmanship and provided an overview of HJR 21.
- 00:32:47 Ms. Scurr provided an overview of federal and state laws with respect to personal information privacy and ownership. [\(Exhibit 6\)](#) [\(Exhibit 7\)](#)

Committee Questions of Ms. Scurr

- 00:58:49 Sen. Brown asked whether, in cases of children's personal information, a guardian or parent must allow the disclosure of information.

Role of FTC - Digital Privacy and the Consumer Data Privacy Bill of Rights - Charles Harwood, Director, Northwest Region, Federal Trade Commission (by phone)

- 01:02:43 Ms. Scurr introduced Mr. Harwood to the committee members.
- 01:07:25 Mr. Harwood provided a presentation about privacy and data security. [\(Exhibit 8\)](#)

Committee Questions of Mr. Harwood

- 01:30:00 Sen. Brown asked whether children's information, such as on medicare forms, is protected by federal law and whether only parents or guardians can release that information.
- 01:31:38 Rep. Bennett asked about what rights people have over the actual information ownership.
- 01:33:18 Sen. Windy Boy asked about protection of cultural and intellectual property rights of tribes.

Panel Presentation: Personal Consumer Data

Deb Huron, Walmart, Portland (by phone)
Eric Ellman, Consumer Data Industry Association (by phone)
Grant Agnew, ACRAnet, Billings
Dave Koch, ACRAnet, Spokane
Brad Griffin, MT Retailers Association

- 01:43:08 Rep. Bennett introduced the panel to the committee members.
- 01:45:36 Aimee Grmoljez, Walmart, MT Bankers Association, introduced Ms. Huron.
- 01:47:47 Ms. Huron

Committee Questions of Ms. Huron

- 01:53:13 Rep. Bennett asked whether people having more control over personal information ownership rights would have an effect on the business.
- 01:55:33 Sen. Larsen asked whether Walmart, as a retailer, protects customers' information.
- 01:59:05 Rep. Bennett introduced Mr. Ellman.
- 01:59:53 Mr. Ellman
- 02:07:57 Mr. Agnew
- 02:11:50 Mr. Koch
- 02:18:33 Rep. Bennett commented on Mr. Koch's presentation.

Committee Questions of Mr. Koch

- 02:19:14 Rep. Mandeville asked about how his organization compiles reports.
- 02:20:02 Rep. Mandeville asked what protects those reports from being shared.
- 02:21:11 Rep. Bennett asked whether all the employers are provided with customers' private or personal information.
- 02:22:17 Mr. Griffin

Committee Questions of Mr. Griffin

- 02:29:28 Sen. Brown asked about opt-in and opt-out policies in the retail business.
- 02:31:17 Sen. Brown asked how legislators can help protect the consumer so there are more possibilities to opt in than to opt out.
- 02:33:08 Rep. McKamey asked Mr. Griffin whether his marketing agents use a method that tracks immediately everything that is purchased by a shopper.

- 02:34:37 Sen. Brown added that credit card and bank statements provide a phone number that a customer can call to opt out of sharing his or her information and that consumers need to be aware fo this option.
- 02:35:24 Rep. Mandeville commented that smaller retailers in Montana may not have the readers for new credit cards with a chip designed to protect privacy.
- 02:37:30 Sen. Kary asked about disclaimers on phone applications.
- 02:38:27 Sen. Windy Boy thanked the panel presenters for providing the information on the subject.
- 02:38:48 Rep. Bennett asked how information ownership is covered in the federal law.

Public Comment - none

ADMINISTRATIVE MATTERS

HB 142 Duties - Statutory Advisory Councils and Required Reports - Sheri Scurr, Staff Research Analyst

- 02:40:13 Ms. Scurr discussed the statutory duties of the advisory councils, as well as required reports. **(Exhibit 9)** Ms. Scurr asked the committee members how they want to approach the statutory reports.

Committee Discussion on Statutory Reports

- 02:47:36 Committee members discussed how, when, and in what form they would like to receive reports and information about the advisory councils.

Motion

- 02:53:36 Sen. Brown moved that each assigned statutory advisory council and entity required by statute provide a brief report to the committee spread out over time and that the committee members receive the reports a week prior to the SAVA meeting and that the reports include whether the advisory council or reporting agency sees value in the council or reporting requirement continuing to be provided for in statute.

Discussion on the Motion

- 02:54:13 Committee members discussed the motion.

Vote

- 02:56:19 The motion passed unanimously on a voice vote.

Meeting Schedule for Interim

- 02:56:34 Committee members discussed the dates for future committee meetings.
- 02:57:15 During the discussion, Ms. Scurr distributed the Study Plan Proposal for HJR 21 and the Legislative 2015-2016 Interim Calendar. **(Exhibit 10) (Exhibit 11)**

02:59:02 The committee members agreed on the following meeting dates for the remainder of the interim: February 10, April 19, June 21, August 23, but deferred a decision on the November meeting date until they had more information on when the caucuses would be.

03:04:45 **Ginger Aldrich, Staff Attorney**, asked the committee members whether they would like to have the 5 handouts that the Commissioner of Political Practices referred to during the last meeting for the afternoon discussion of the COPP rules.

Other Rule Review Activity

03:11:39 Ms. Aldrich provided rule review from the Secretary of State. [\(Exhibit 12\)](#) Ms. Aldrich also spoke about a statutory conflict. [\(Exhibit 13\)](#)

03:14:48 Sen. Brown suggested an agency cleanup bill be requested as opposed to a committee bill during the next Legislative Session.

LUNCH (reconvened at 1:00 p.m.)

Confidential Health Care Information - Montana Statutes and Federal Law - Erin MacLean, Freeman & MacLean, P.C.; State Bar of Montana, Health Care Law Section, Chair

04:30:09 Ms. Scurr provided materials for Ms. MacLean's presentation as background information. [\(Exhibit 14\)](#) [\(Exhibit 15\)](#) [\(Exhibit 16\)](#)

04:31:20 Rep. Bennet explained what the committee members would like to learn from Ms. MacLean's presentation.

04:31:53 Ms. MacLean provided a presentation about confidential health care data and healthcare information. [\(Exhibit 17\)](#) [\(Exhibit 18\)](#) [\(Exhibit 19\)](#) [\(Exhibit 20\)](#) After the meeting, Ms. MacLean provided the following document as additional information pertaining her presentation. [\(Attachment 4: Disclosures for Public Health Activities\)](#)

Committee Questions of Ms. MacLean

04:55:07 Sen. Brown asked for clarification on the meaning of each color in the map on page 2 of Exhibit 15 showing states in which medical records are owned.

04:59:23 Sen. Brown asked about medical records regarding children and whether a parent or guardian should be asked permission before sharing the child's personal medical information and be notified every time those records are shared.

05:05:03 Rep. Bennett asked about the New Hampshire law.

05:05:27 Sen. Brown made a comment about the New Hampshire law.

05:05:43 Rep. McKamey asked about HITECH Act.

05:07:35 Sen. Windy Boy asked whether the HJR 21 study could include an examination of the New Hampshire law concerning ownership of health information.

Panel Presentation: Personal Financial Data

Tawnya Schoolitz, Chief Compliance Officer, 1st Interstate Bank, MT Bankers Association Representative

Kelly O'Sullivan, Banking Division, Department of Administration

Nick Mazanec, State Auditor's Office

Matt Dale, MT Office of Consumer Protection

05:12:50 Ms. Schoolitz ([Exhibit 21](#))

05:26:29 Rep. Bennett reminded presenters that the goal of the committee is not to talk about privacy but about the ownership of information.

05:27:18 Ms. Schoolitz

05:28:21 Ms. O'Sullivan

05:38:09 Mr. Mazanec ([Exhibit 22](#))

05:48:08 Mr. Dale ([Exhibit 23](#))

Committee Questions

05:56:27 Sen. Brown asked about the opt-in opt-out selection in disclosures.

05:58:34 Rep. Mandeville asked about a possible impact on the banking industry if customers had sole ownership of their information.

State Government Data

Ron Baldwin, Montana's State Chief Information Officer

Joe Frohlich, Enterprise Security Manager

06:07:01 Mr. Baldwin ([Exhibit 24](#))

06:26:25 Rep. Bennett reminded Mr. Baldwin about the focus of the study.

06:27:07 Mr. Frohlich

06:34:24 Mr. Baldwin

Committee Questions

06:38:27 Sen. Kary asked Mr. Baldwin whether it was true that the Department of Revenue can share an individual's information without that individual's consent.

06:39:51 Sen. Kary asked how an individual would know that information about him or her is not being shared and whether that individual is notified when information about him or her is being shared.

06:43:08 Rep. McKamey asked Mr. Frohlich about determining who owns the information.

06:44:19 Rep. McKamey asked about deleting data.

Public Comment on HJR 21 - none

06:46:50 Rep. Bennett informed the committee members about the date of the caucus meeting and proposed November 14, 2016, as a date for SAVA's November meeting. With no objections from the committee members, November 14, 2016, was announced as the committee's final meeting date.

BREAK (reconvened at 3:35 p.m.)

RULE REVIEW

Commissioner of Political Practices Rules, MAR Notice No. 44-2-207

07:05:11 Sen. Brown resumed chairmanship and spoke about the legislative poll. Sen. Brown asked Ms. Aldrich to talk about what the committee has to do administratively in order to do the poll.

07:06:25 Ms. Aldrich spoke about when and how to conduct the poll. **(Exhibit 25)** Ms. Aldrich also reminded the committee members that the Chair could set up a special meeting to discuss the polling process.

07:09:23 Committee members and Ms. Aldrich discussed various dates pertaining to the legislative poll, and the publication and adoption of the rules.

07:21:11 Committee members and Ms. Aldrich discussed other details of what would be decided on in a special administrative meeting regarding the legislative poll.

07:24:58 Committee members unanimously agreed to hold a special administrative meeting on November 24, 2015.

Overview of Public Comments and Agency Response - Jonathan Motl, Commissioner of Political Practices

07:26:58 Sen. Brown introduced the discussion and asked Commissioner Motl to talk about exploratory committees.

07:28:51 Sen. Brown clarified that she does not comment on anything from today's agenda and spoke about the level of complexity of the documents provided by the Commissioner.

07:32:04 Commissioner Motl provided an overview of public comments on MAR Notice No. 44-2-207 and the COPP responses.

07:40:21 Sen. Brown spoke briefly about comments from the public on several COPP rules.

07:42:28 Ms. Aldrich spoke about the deadline for publication of the rules.

- 07:44:22 Sen. Brown asked Commissioner Motl to clarify whether he will wait for the poll results as long as the poll is finished by December 10, 2015.
- 07:46:13 Ms. Scurr asked Commissioner Motl to clarify about the dates of publication and adoption of the rules.
- 07:48:36 Ms. Aldrich clarified about the dates of filing the rules with the Secretary of State and their publication.
- 07:49:19 Ms. Scurr asked about the segregation of the rules for the purpose of publication.
- 07:50:11 Sen. Brown commented on publication of the rules.
- 07:52:13 Rep. Bennett also commented on publication of the rules.
- 07:53:01 Rep. Mandeville asked for clarification on the publication process of administrative rules.

Overview of SAVA's Powers and Options

- 07:55:13 Ms. Aldrich ([Exhibit 26](#)) ([Exhibit 27](#)) ([Exhibit 28](#))

Committee Questions of Ms. Aldrich

- 08:04:09 Sen. Brown asked for clarification on whether the committee's suggestions or lack of an action on the rules would delay adoption of the rules.

Public Comment on the COPP Rules

- 08:05:27 Al Smith, Montana Trial Lawyers Association
- 08:07:59 Rep. Nancy Ballance, HD 87
- 08:19:36 Sen. Brown commented on how rules will be presented in the polling. Sen. Brown also asked Ms. Aldrich to comment on the publication of rules.
- 08:20:56 Rep. Ballance continued her public comment.
- 08:22:14 Rep. Kerry White, HD 64
- 08:25:51 Brent Mead, Montana Policy Institute
- 08:32:51 Ms. Scurr brought committee's attention to a written comment provided by Eric Wang, Center for Competitive Politics. ([Exhibit 29](#))

Motion

- 08:33:34 Sen. Kary moved that the committee delay the adoption of the following rules until the next meeting: new rules 1, 4, 5, 6, 7, 8, 10, 11, 12, and proposed rules 44-10-201, 44-10-301, 44-10-307, 44-10-321, 44-10-323, 44-10-327, and 44-10-329.

Discussion on the Motion

08:34:48 Committee members discussed the motion.

Vote

08:40:17 The motion failed on a roll call vote, 4-4. ([Attachment 5](#))

ADMINISTRATIVE MATTERS

Committee Discussion of the Next Meeting

08:41:53 Ms. Scurr asked about the November 24, 2015, meeting.

08:42:58 Rep. McKamey asked whether the next meeting will be administrative only meeting.

Committee Work Session

08:44:12 Rep. Bennett asked the committee staff to provide more information about what other states have done with respect to personal information ownership. Rep. Bennet also asked to invite speakers who can contribute to this topic.

HJR 21 Study Plan

08:45:21 Ms. Scurr referred to Exhibit 10 and reminded the committee members that they have to adopt HJR 21 Study Plan during this meeting.

Committee Discussion on HJR 21 Study Plan

08:48:06 Committee members discussed the study plan, the dates for future meetings and their content.

Motion

08:51:24 Rep. Bennett moved that the committee adopt the HJR 21 Study Plan as written with the exceptions of moving the study question of "what methods have other states used" from the April meeting to the February meeting and having a decision point during the February meeting about how to narrow the committee's focus for the following meetings.

Vote

08:50:05 The motion passed unanimously on a voice vote.

ADJOURNMENT

08:53:06 With no further business before the committee, Sen. Brown adjourned the meeting at 5:24 p.m.