



## SENATE SELECT COMMITTEE ON JUDICIAL OVERSIGHT AND REFORM

### 69th Montana Legislature

#### SENATE MEMBERS

Mary Ann Dunwell  
Janet Ellis  
Jason Ellsworth  
Daniel Emrich  
Steve Fitzpatrick  
Chris Friedel  
Carl Glimm  
Jen Gross  
Steve Hinebauch  
Tom McGillvray  
Wendy McKamey  
Shane Morigeau  
Mark Noland  
Andrea Olsen  
Barry Usher

#### HOUSE MEMBERS

Lyn Hellegaard  
Fiona Nave  
Sue Vinton

#### COMMITTEE STAFF

Jacelyn Sterling – Secretary  
Jameson Walker -Attorney

#### PUBLIC MEMBERS

Andrew Billstein  
Joan Mell  
Jim Ramlow

## MINUTES LOG

August 20, 2024

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Helena, Montana

Please note: This document is a Minutes Log and provides annotation 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 recording 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 the 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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#### MEMBERS PRESENT:

Sen. Jason Ellsworth, Presiding Officer (R)  
Sen. Barry Usher, Vice Presiding Officer (R)  
Andrew Billstein, Public Member, Zoom  
Sen. Chris Friedel (R)  
Sen. Carl Glimm (R) Zoom  
Sen. Steve Hinebauch (R)  
Sen. Tom McGillvray (R) Zoom  
Sen. Wendy McKamey (R)  
Rep. Fiona Nave (R)  
Sen. Mark Noland (R)  
Jim Ramlow, Public Member, Zoom  
Rep. Sue Vinton (R)

**MEMBERS EXCUSED:**

Sen. Daniel Emrich (R)  
Sen. Steve Fitzpatrick (R)  
Rep. Lyn Hellegaard (R)  
Joan Mell, Public Member

**MEMBERS ABSENT:**

Sen. Shane Morigeau (D)  
Sen. Andrea Olsen (D)  
Sen. Jen Gross (D)  
Sen. Mary Ann Dunwell (D)  
Sen. Janet Ellis (D)

**STAFF PRESENT:**

Jacelyn Sterling, Secretary  
Jameson Walker, Attorney

**AGENDA** ([Attachment 1](#))

**VISITORS' LIST** ([Attachment 2](#))

**COMMITTEE ACTION**

**CALL TO ORDER/ROLL CALL**

08:05:32 Presiding Officer Jason Ellsworth called the meeting to order at 8:05 AM. The committee secretary took roll.

**COMMITTEE BUSINESS, DISCUSSION**

08:07:04 Presiding Officer Jason Ellsworth

**Motion**

08:19:06 Vice Presiding Officer Barry Usher made a motion to change the language of the visitor sign in sheet to include the language do you swear to tell the truth, the whole truth, and nothing but the truth.

**Discussion on the Motion**

08:19:23 Sen. Chris Friedel  
08:19:50 Presiding Officer Jason Ellsworth  
08:22:23 Rep. Fiona Nave  
08:22:36 Presiding Officer Jason Ellsworth  
08:23:03 Sen. Wendy McKamey  
08:23:23 Presiding Officer Jason Ellsworth  
08:30:32 Sen. Chris Friedel  
08:30:47 Jameson Walker, Attorney, Legislative Services Division (LSD)  
08:31:40 Sen. Daniel Emrich  
08:32:42 Presiding Officer Jason Ellsworth  
08:35:25 Sen. Wendy McKamey

08:36:26 Rep. Sue Vinton

08:36:41 **Vote:** Carried with Sen. Barry Usher, Sen. Steve Hinebauch, Sen. McKamey, Sen. Carl Glimm, Sen. Mark Noland, Sen. Jason Ellsworth voting aye, Sen Steve Fitzpatrick voted aye by proxy. Sen Tom McGillvary, Sen. Chris Friedel, Sen. Daniel Emrich voting nay. Sen. Jen Gross, Sen. Shane Morigeau, Sen. Mary Ann Dunwell, Sen. Janet Ellis, Sen. Andrea Olsen were absent and non-voting.

08:38:07 Presiding Officer Jason Ellsworth

### **Motion**

08:41:38 Vice Presiding Officer Barry Usher Made a motion that elected officials and their supporting subordinates will be subpoenaed when invited to present before the committee to assure they attend meetings. If there are legitimate reasons for the individual unable to attend, they may be excused with the committees' discretion.

### **Discussion on the Motion**

08:46:05 Sen. Tom McGillvray  
08:46:45 Presiding Officer Jason Ellsworth  
08:48:00 Vice Presiding Officer Barry Usher  
08:48:18 Sen. Tom McGillvray  
08:48:43 Presiding Officer Jason Ellsworth  
08:51:56 Vice Presiding Officer Barry Usher

08:52:37 **Vote:** Carried with Sen. Barry Usher, Sen. Tom McGillvray, Sen. Steve Hinebauch, Sen. Wendy McKamey, Sen. Carl Glimm, Sen. Mark Noland, Sen. Chris Friedel, Sen. Emrich, Sen. Jason Ellsworth, voting aye Sen. Steve Fitzpatrick voted aye by proxy. Sen. Jen Gross, Sen. Shane Morigeau, Sen. Mary Ann Dunwell, Sen. Janet Ellis, Sen. Andrea Olsen were absent and non-voting.

08:53:44 Presiding Officer Jason Ellsworth

### **DISCUSSION OF THE MONTANA JUDICIAL STANDARDS COMMISSION**

08:56:48 Roger Webb, Member, Judicial Standards Commission (JSC)

### **Public Comment**

None

### **Committee Questions/Discussion**

09:09:05 Sen. Chris Friedel  
09:09:41 Roger Webb, JSC

09:12:14 Vice Presiding Officer Barry Usher  
09:12:32 Roger Webb  
09:13:33 Rep. Sue Vinton  
09:13:52 Roger Webb  
09:17:38 Joan Mell  
09:18:17 Roger Webb  
09:22:49 Sen. Tom McGillvray  
09:24:24 Roger Webb  
09:28:55 Vice Presiding Officer Barry Usher  
09:29:25 Roger Webb  
09:42:46 Presiding Officer Jason Ellsworth  
09:43:22 Roger Webb  
09:47:34 Sen. Chris Friedel  
09:48:48 Roger Webb  
09:51:00 Sen. Steve Hinebauch  
09:51:41 Roger Webb  
09:56:04 Rep. Sue Vinton  
09:57:46 Presiding Officer Jason Ellsworth  
09:58:06 Jameson Walker, LSD  
10:00:36 Presiding Officer Jason Ellsworth  
10:01:17 Rep. Sue Vinton  
10:02:53 Jameson Walker  
10:03:48 Presiding Officer Jason Ellsworth  
10:03:52 Roger Webb  
10:04:07 Presiding Officer Jason Ellsworth  
10:05:47 Rep. Fiona Nave  
10:06:14 Roger Webb  
10:11:09 Vice Presiding Officer Barry Usher  
10:11:58 Roger Webb  
10:13:26 Presiding Officer Jason Ellsworth  
10:13:43 Roger Webb  
10:13:57 Rep. Sue Vinton  
10:14:31 Presiding Officer Jason Ellsworth  
10:15:21 Jameson Walker  
10:16:00 Presiding Officer Jason Ellsworth

#### **MONTANA JUDICIAL PERFORMANCE MEASURES**

10:17:17 Beth McLaughlin, Administrator's Office, Montana Supreme Court

#### **Committee Questions/Discussion**

10:19:13 Presiding Officer Jason Ellsworth  
 10:20:18 Beth McLaughlin  
 10:24:37 Rep. Fiona Nave  
 10:25:28 Beth McLaughlin  
 10:31:41 Presiding Officer Jason Ellsworth  
 10:31:45 Beth McLaughlin  
 10:33:25 Presiding Officer Jason Ellsworth  
 10:35:04 Beth McLaughlin  
 10:35:49 Sen. Chris Friedel  
 10:36:25 Beth McLaughlin  
 10:41:11 Vice Presiding Officer Barry Usher  
 10:41:28 Beth McLaughlin  
 10:41:56 Rep. Fiona Nave  
 10:42:14 Beth McLaughlin  
 10:48:16 Rep. Sue Vinton  
 10:48:23 Beth McLaughlin  
 10:48:57 Sen. Tom McGillvray  
 10:49:16 Beth McLaughlin  
 10:57:05 Presiding Officer Jason Ellsworth  
 10:57:12 Beth McLaughlin  
 11:00:58 Sen. McGillvray  
 11:02:18 Beth McLaughlin  
 11:03:26 Andrew Billstein  
 11:03:49 Beth McLaughlin  
 11:04:40 Sen. Tom McGillvray  
 11:05:03 Beth McLaughlin  
 11:07:08 Presiding Officer Jason Ellsworth  
 11:07:33 Vice Presiding Officer Barry Usher  
 11:07:53 Beth McLaughlin  
 11:08:34 Presiding Officer Jason Ellsworth  
 11:09:01 Beth McLaughlin  
 11:10:09 Jameson Walker

**Public Comment**

None

11:11:03 **Recess for Lunch**

13:31:03 **Reconvene**

**DIVERSITY IN STATE COURT JUDGES**

13:31:09 Andrew Billstein

**Committee Questions/Discussion**

14:19:43 Presiding Officer Jason Ellsworth  
14:19:55 Sen. Chris Friedel  
14:21:03 Andrew Billstein  
14:24:19 Vice Presiding Officer Barry Usher  
14:24:36 Andrew Billstein  
14:25:53 Presiding Officer Jason Ellsworth  
14:26:09 Andrew Billstein  
14:27:09 Jameson Walker  
14:27:42 Presiding Officer Jason Ellsworth  
14:28:10 Vice Presiding Officer Barry Usher  
14:28:40 Andrew Billstein  
14:29:31 Presiding Officer Jason Ellsworth  
14:30:45 Vice Presiding Officer Barry Usher  
14:30:51 Presiding Officer Jason Ellsworth  
14:31:30 Sen. Steve Hinebauch  
14:32:21 Presiding Officer Jason Ellsworth  
14:32:35 Rep. Fiona Nave  
14:32:55 Vice Presiding Officer Barry Usher  
14:33:24 Presiding Officer Jason Ellsworth  
14:34:11 Rep. Sue Vinton  
14:35:00 Presiding Officer Jason Ellsworth  
14:35:58 Sen. Chris Friedel  
14:37:47 Vice Presiding Officer Barry Usher

**Public Comment**

14:39:16 Bruce Spencer, Montana State Bar Association

**COMMITTEE WORK SESSION- FUTURE MEETING TOPICS**

14:40:57 Vice Presiding Officer Barry Usher  
14:41:47 Sen. Chris Friedel  
14:44:41 Presiding Officer Jason Ellsworth  
14:46:09 Sen. Tom McGillvray  
14:47:40 Presiding Officer Jason Ellsworth

**Motion**

14:48:47 Vice Presiding Officer Barry Usher moved to begin draft language to create a constitutional court, that reviews constitutional issues.

**Discussion**

14:51:30 Sen. Tom McGillvray  
14:52:04 Sen. Chris Friedel  
14:52:25 Vice Presiding Officer Barry Usher  
14:52:52 Jameson Walker, LSD  
14:53:44 Vice Presiding Officer Barry Usher  
14:54:12 Sen. Chris Friedel  
14:54:44 Presiding Officer Jason Ellsworth  
14:55:42 Sen. Chris Friedel  
14:56:32 Rep. Sue Vinton  
14:56:48 Presiding Officer Jason Ellsworth  
14:58:42 Sen. Tom McGillvray

14:59:21 **Vote:** Carried by voice vote with Sen. Barry Usher, Sen. Tom McGillvray, Sen. Steve Hinebauch, Sen. Wendy McKamey, Sen. Carl Glimm, Sen. Mark Noland, Sen. Chris Friedel, Sen. Emrich, Sen. Jason Ellsworth, voting aye, Sen. Steve Fitzpatrick voted aye by proxy. Sen. Jen Gross, Sen. Shane Morigeau, Sen. Mary Ann Dunwell, Sen. Janet Ellis, Sen. Andrea Olsen were absent and non-voting.

**Motion**

15:00:09 Sen. Barry Usher moved to redraft the bill from 2023 to make it optional for judges to participate in partisan elections. As in SB302 from the 2023 session.

**Discussion**

15:01:23 Jameson Walker  
15:01:50 Sen. Chris Friedel  
15:02:05 Presiding Officer Jason Ellsworth  
15:03:25 Rep. Sue Vinton  
15:03:48 Vice Presiding Officer Barry Usher  
15:04:22 Presiding Officer Jason Ellsworth  
15:04:52 Jameson Walker  
15:05:32 Rep. Sue Vinton  
15:06:03 Vice Presiding Officer Barry Usher  
15:06:32 Sen. Wendy McKamey  
15:08:05 Rep. Fiona Nave  
15:08:47 Presiding Officer Jason Ellsworth  
15:10:48 Sen. Mark Noland  
15:12:41 Sen. Steve Fitzpatrick  
15:13:44 Vice Presiding Officer Barry Usher

15:14:17 **Vote:** Carried by voice vote with Sen. Barry Usher, Sen. Tom McGillvray, Sen. Steve Hinebauch, Sen. Wendy McKamey, Sen. Carl Glimm, Sen. Mark Noland, Sen. Chris Friedel, Sen. Emrich, Sen. Steve Fitzpatrick, Sen. Jason Ellsworth, voting aye. Sen. Jen Gross, Sen. Shane Morigeau, Sen. Mary Ann Dunwell, Sen. Janet Ellis, Sen. Andrea Olsen were absent and non-voting.

### **Motion**

15:15:11 Sen. Tom McGillvray moved to draft a committee bill to limit the supreme courts original jurisdiction to habeas corpus and all writs that are in law to be rescinded, except provided in article 7 section 2.

### **Discussion**

15:17:10 Vice Presiding Officer Barry Usher

15:17:46 Rep. Sue Vinton

15:18:03 Sen. Tom McGillvray

15:18:35 Presiding Officer Jason Ellsworth

15:19:05 Vice Presiding Officer Barry Usher

15:19:36 Sen. Tom McGillvray

15:20:00 **Vote:** Carried by voice vote with Sen. Barry Usher, Sen. Tom McGillvray, Sen. Steve Hinebauch, Sen. Wendy McKamey, Sen. Carl Glimm, Sen. Mark Noland, Sen. Chris Friedel, Sen. Emrich, Sen. Steve Fitzpatrick, Sen. Jason Ellsworth, voting aye. Sen. Jen Gross, Sen. Shane Morigeau, Sen. Mary Ann Dunwell, Sen. Janet Ellis, Sen. Andrea Olsen were absent and non-voting.

### **Motion**

15:20:28 Sen. Fitzpatrick moved to begin drafting bill language allowing public access to government documents in procession of the judicial branch upon conclusion of a case.

### **Discussion**

15:22:34 Sen. Chris Friedel

15:22:41 Sen. Steve Fitzpatrick

15:23:37 Rep. Sue Vinton

15:24:08 Sen. Steve Fitzpatrick

15:24:46 Presiding Officer Jason Ellsworth

15:25:21 **Vote:** Carried by voice vote with Sen. Barry Usher, Sen. Tom McGillvray, Sen. Steve Hinebauch, Sen. Wendy McKamey, Sen. Carl Glimm, Sen. Mark Noland, Sen. Chris Friedel, Sen. Emrich, Sen. Steve Fitzpatrick, Sen. Jason Ellsworth, voting aye. Sen. Jen Gross, Sen. Shane Morigeau, Sen. Mary Ann Dunwell, Sen. Janet Ellis, Sen. Andrea Olsen were absent and non-voting.



**Motion**

15:26:00 Vice Presiding Officer Barry Usher moved to begin drafting a bill section writ of mandamus within the legislature.

**Discussion**

15:26:49 Presiding Officer Jason Ellsworth

15:29:00 Sen. Steve Fitzpatrick

15:29:23 **Vote:** Carried by voice vote with Sen. Barry Usher, Sen. Tom McGillvray, Sen. Steve Hinebauch, Sen. Wendy McKamey, Sen. Carl Glimm, Sen. Mark Noland, Sen. Chris Friedel, Sen. Emrich, Sen. Steve Fitzpatrick, Sen. Jason Ellsworth, voting aye. Sen. Jen Gross, Sen. Shane Morigeau, Sen. Mary Ann Dunwell, Sen. Janet Ellis, Sen. Andrea Olsen were absent and non-voting.

**Motion**

15:29:54 Sen. Fitzpatrick moved to begin drafting bill language creating parameters, and basic language for the award of attorney fees.

**Discussion**

15:31:40 Vice Presiding Officer Barry Usher

15:32:34 Sen. Steve Fitzpatrick

15:33:44 Vice Presiding Officer Barry Usher

15:34:02 **Vote:** Carried by voice vote with Sen. Barry Usher, Sen. Tom McGillvray, Sen. Steve Hinebauch, Sen. Wendy McKamey, Sen. Carl Glimm, Sen. Mark Noland, Sen. Chris Friedel, Sen. Emrich, Sen. Steve Fitzpatrick, Sen. Jason Ellsworth, voting aye. Sen. Jen Gross, Sen. Shane Morigeau, Sen. Mary Ann Dunwell, Sen. Janet Ellis, Sen. Andrea Olsen were absent and non-voting.

**Discussion**

15:34:23 Sen. Fitzpatrick requested to begin draft research on a definition of a prevailing party on a writ of mandamus case.

15:35:35 Sen. Mark Noland

15:36:00 Sen. Steve Fitzpatrick

15:37:17 Sen. Mark Noland

15:37:43 Presiding Officer Jason Ellsworth

15:37:49 Sen. Wendy McKamey

15:38:18 Sen. Steve Fitzpatrick

15:38:38 Presiding Officer Jason Ellsworth

15:39:59 Sen. Wendy McKamey

15:40:22 Sen. Steve Fitzpatrick

15:41:04 Presiding Officer Jason Ellsworth

15:41:44 Jameson Walker

15:42:30 Presiding Officer Ellsworth  
15:42:45 Vice Presiding Officer Barry Usher  
15:43:52 Presiding Officer Jason Ellsworth  
15:44:21 Sen. Wendy McKamey  
15:44:37 Rep. Sue Vinton

**Motion**

15:44:13 Sen. Hinebauch moved to begin bill draft language removing the requirement that attorneys belong to the Montana state bar and to work with Rep. Sue Vinton and Andrew Billstein in the drafting process.

**Discussion**

15:46:47 Sen. Tom McGillvray  
15:47:06 Presiding Officer Jason Ellsworth

15:48:03 **Vote:** Carried by voice vote with Sen. Barry Usher, Sen. Tom McGillvray, Sen. Steve Hinebauch, Sen. Wendy McKamey, Sen. Carl Glimm, Sen. Mark Noland, Sen. Chris Friedel, Sen. Emrich, Sen. Jason Ellsworth, voting aye. Sen. Steve Fitzpatrick voting nay. Sen. Jen Gross, Sen. Shane Morigeau, Sen. Mary Ann Dunwell, Sen. Janet Ellis, Sen. Andrea Olsen were absent and non-voting.

**Motion**

15:48:33 Sen. Usher moved to begin drafting language requiring courts to give the Legislative branch and Executive branch legislative deference when a bill comes to courts disputing legislative bills.

**Discussion**

15:50:04 Sen. Steve Fitzpatrick  
15:51:31 Jim Ramlow  
15:54:32 Presiding Officer Jason Ellsworth  
15:55:38 Sen. Steve Fitzpatrick  
15:57:27 Presiding Officer Jason Ellsworth  
15:58:25 Vice Presiding Officer Barry Usher  
16:00:14 Presiding Officer Jason Ellsworth  
16:02:15 Sen. Wendy McKamey

16:02:55 **Vote:** Carried by voice vote with Sen. Barry Usher, Sen. Tom McGillvray, Sen. Steve Hinebauch, Sen. Wendy McKamey, Sen. Carl Glimm, Sen. Mark Noland, Sen. Chris Friedel, Sen. Emrich, Sen. Steve Fitzpatrick, Sen. Jason Ellsworth, voting aye. Sen. Jen Gross, Sen. Shane Morigeau, Sen. Mary Ann Dunwell, Sen. Janet Ellis, Sen. Andrea Olsen were absent and non-voting.

**Discussion**

16:03:10 Presiding Officer Jason Ellsworth

**Motion**

16:04:03 Presiding Officer Jason Ellsworth moved to begin drafting a bill prohibiting retired judges to hear constitutional cases in court.

16:05:06 **Vote:** Carried by voice vote with Sen. Barry Usher, Sen. Tom McGillvray, Sen. Steve Hinebauch, Sen. Wendy McKamey, Sen. Carl Glimm, Sen. Mark Noland, Sen. Chris Friedel, Sen. Emrich, Sen. Steve Fitzpatrick, Sen. Jason Ellsworth, voting aye. Sen. Jen Gross, Sen. Shane Morigeau, Sen. Mary Ann Dunwell, Sen. Janet Ellis, Sen. Andrea Olsen were absent and non-voting.

**Motion**

16:05:37 Sen. Barry Usher requested to have letters of complaint drafted related to several topics the committee had discussed.

**Discussion**

16:07:27 Presiding Officer Jason Ellsworth  
16:08:17 Rep. Sue Vinton  
16:08:30 Presiding Officer Jason Ellsworth  
16:08:33 Vice Presiding Officer Barry Usher  
16:09:06 Presiding Officer Jason Ellsworth  
16:09:12 Vice Presiding Officer Barry Usher  
16:09:55 Sen. Steve Hinebauch  
16:10:09 Sen. Steve Fitzpatrick  
16:10:50 Sen. Mark Noland  
16:11:29 Andrew Billstein  
16:12:14 Presiding Officer Jason Ellsworth

16:12:24 **Recessed**

16:19:53 **Reconvened**

**Motion**

16:29:59 Vice Presiding Officer Barry Usher amended his motion stating the committee draft a letter of complaint to the judicial standards commission and a letter to the attorney discipline board. These letters will be reviewed by committee members and signed at a later date.

16:20:42 **Vote:** Carried by voice vote with Sen. Barry Usher, Sen. Tom McGillvray, Sen. Steve Hinebauch, Sen. Wendy McKamey, Sen. Carl Glimm, Sen. Mark Noland, Sen. Chris Friedel, Sen. Emrich, Sen. Steve Fitzpatrick, Sen. Jason Ellsworth,

voting aye. Sen. Jen Gross, Sen. Shane Morigeau, Sen. Mary Ann Dunwell, Sen. Janet Ellis, Sen. Andrea Olsen were absent and non-voting.

**Motion**

16:20:54 Sen. Usher made a motion to ask the Judicial Standards Commission to revise the report required by 3-1-1126 and submit it to the committee.

**Discussion**

16:21:33 Presiding Officer Jason Ellsworth

16:22:01 Sen. Tom McGillvray

16:22:46 Rep. Sue Vinton

16:24:20 Presiding Officer Jason Ellsworth

16:25:18 Sen. Tom McGillvray

16:25:53 Jameson Walker

16:26:08 Rep. Sue Vinton

16:26:49 Jameson Walker

16:28:48 Presiding Officer Jason Ellsworth

16:29:11 Rep. Sue Vinton

16:30:14 **Vote:** Carried by voice vote with Sen. Barry Usher, Sen. Tom McGillvray, Sen. Steve Hinebauch, Sen. Wendy McKamey, Sen. Carl Glimm, Sen. Mark Noland, Sen. Chris Friedel, Sen. Emrich, Sen. Jason Ellsworth, voting aye, Sen. Steve Fitzpatrick voted aye by proxy. Sen. Jen Gross, Sen. Shane Morigeau, Sen. Mary Ann Dunwell, Sen. Janet Ellis, Sen. Andrea Olsen were absent and non-voting.

**PUBLIC COMMENT ON ANYTHING WITHIN THE JURISDICTION OF THE COMMITTEE**

None

**Discussion**

16:30:56 Jameson Walker

**ADJOURNMENT**

Adjournment: 16:31:32