

Council Senate Members

BOB KEENAN--Vice Chair
VICKI COCCHIARELLA
BRENT CROMLEY
DUANE GRIMES
JON TESTER
FRED THOMAS



Council House Members

KIM GILLAN--Chair
ROY BROWN
GEORGE GOLIE
JEFF LASZLOFFY
DOUG MOOD
DAVID WANZENRIED

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MINUTES

March 26, 2004

Room 102, State Capitol
Helena, Montana

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed. Committee tapes are on file in the offices of the Legislative Services Division.

Exhibits for this meeting are available upon request. Legislative Council policy requires a charge of 15 cents a page for copies of the document.

COMMITTEE MEMBERS PRESENT

SEN. VICKI COCCHIARELLA
SEN. BRENT CROMLEY
SEN. DUANE GRIMES
SEN. JON TESTER
SEN. FRED THOMAS

REP. ROY BROWN
REP. GEORGE GOLIE
REP. JEFF LASZLOFFY
REP. DOUG MOOD

MEMBERS EXCUSED

SEN. KEENAN
REP. GILLAN
REP. WANZENRIED

STAFF PRESENT

Lois Menzies, Executive Director, Legislative Services Division, (LSD)
Greg Petesch, Legal Director, Legal Services Office, LSD
Dawn Field, Council Secretary

AGENDA & VISITORS' LIST

Agenda, Attachment #1.
Visitors' list, Attachment #2.

COMMITTEE ACTION

- approved the January 16, 2004, minutes as written;
- approved writing a letter of recommendation from Legislative Council endorsing the HCTV grant application;
- asked staff to develop a proposal for funding an additional day or days for interim committee review of agency bill drafts;
- approved the changes to the Legislative Rules of Procedure relating to bill drafting; and
- approved paying the registration fees for the four members of the Pacific Northwest Economic Region (PNWER) to attend the 2004 annual PNWER meeting.

CALL TO ORDER AND ROLL CALL

SEN. COCCHIARELLA called the meeting to order at 9 a.m. The secretary noted the roll (Attachment #3), SEN. KEENAN, REP. GILLAN, and REP. WANZENRIED were excused. The January 16, 2004, minutes were approved as written.

Board of Regents Economic Development Initiative – Dave Gibson, Chief Business Officer, Governor's Office of Economic Opportunity

The purpose of the economic initiative is to develop a course of action by which the university system can coordinate more efficiently with the executive and legislative branches, our congressional delegation, the K-12 educational system and the business community to improve Montana's economy and create more good paying jobs for citizens. Mr. Gibson distributed summarized copies of the report (*Shared Leadership for a Stronger Montana Economy* - EXHIBIT #1) and discussed:

- the key elements of the process;
- members of the leadership group;
- the three stages of the process;
- progress made to date; and
- the six areas targeted for action.

Mr. Gibson said a mid-May goal has been set for completing work and making decisions in order for proposals to be completed in time for consideration by the 2005 Legislature. He also welcomed Legislative Council involvement and said the Council would be kept abreast of progress made.

Mr. Gibson also provided full text copies of *Shared Leadership for a Stronger Montana Economy* as originally written by the Board of Regents (EXHIBIT #2) and an Economic Leadership Project Team Master List (EXHIBIT #3).

SEN. TESTER asked how many people were on each team and if an optimum number had been established. Mr. Gibson said the team sizes were limited to 7 - 10 people and each team member had to commit to giving a certain amount of time and effort to this project.

Mr. Gibson distributed copies of the six project areas (EXHIBIT #4) which are designed to:

- improve access to 2-year and 4-year education;
- improve and expand worker training;
- increase technology transfer and research commercialization;
- expand entrepreneurship and small business development;
- promote collaboration between the university system and government; and
- use university resources to generate direct economic growth in Montana.

SEN. COCCHIARELLA asked for an example of one of the six projects. Mr. Gibson discussed, as an example, the plan to improve access to 2-year and 4-year education, saying four key areas have been identified:

- how to better prepare disadvantaged students to enter into the university system;
- how to improve distance learning programs;
- how to determine if higher education is affordable and available; and
- identify what barriers exist for transfer students, both between 4-year institutions and between the 2-year and 4-year institutions.

TVMT Update – Stephen Maly, Executive Director, Helena Civic Television (HCTV)

Lois Menzies, Executive Director, Legislative Services Division (LSD) reminded Council members that Mr. Maly's transition from being an employee of the LSD to Executive Director of HCTV has been completed, by virtue of the 18-month contract approved by the Legislative Council. The contract provides for televising interim committee meetings during this interim and can be renewed to provide coverage during the 2005 Session.

Mr. Maly said HCTV is a non-profit organization that covers many city and county meetings, as well as state-level proceedings held at the Capitol. Most interim committee meetings have been broadcast, including an interim committee held in Great Falls. TVMT is sharing some of its programming with Cable 7 in Great Falls, in an effort to stimulate interest and demand for this programming outside of Helena. Executive and Judicial Branch events have also been broadcast, as mandated by the contract. To date, several of the Governor's press conferences and a Public Service Commission work session have been aired, and the oral arguments on the smoking ban issue will be broadcast from the Supreme Court in April.

A federal grant application is being prepared to compete for the \$500,000 Technology Opportunities Program grant offered by the United States Department of Commerce. Mr. Maly is working with a private sector videoconferencing company to prepare this grant. It has to be matched by the State, but the matching funds are available and it will not be necessary to request additional funds. If HCTV is successful and is awarded this grant, the plan is to transmit all of what HCTV covers in the next legislative session: every floor session of the House

and Senate and increased coverage of the committee meetings. The coverage would be broadcast via live videostreaming on the Internet and to cable stations in about 75 Montana communities. The results of the grant application should be known by the end of the summer. Mr. Maly requested a letter from the Legislative Council endorsing the proposal and said the Governor's Office has also been asked for a letter of endorsement, as well as all three of the congressional delegates. These letters will be attached to the grant application and Mr. Maly felt they would be very beneficial.

Mr. Maly said he had alternative plans in place, should the grant application not be approved. They are all similar, in that they all combine telecommunications and television or satellite uplinks and downlinks to television stations. These alternatives are more expensive and not of the same time frame, but with some help from the private sector and the use of existing infrastructure, can be done.

Mr. Maly invited Council members to visit the HCTV website: www.helenacivictv.org. Click on Television Montana for updates and progress on the TVMT project.

The city and county contracts Mr. Maly is working with require a rigorous amount of budgeting and accounting measures, including capital expenditures. Mr. Maly said that has made him aware that there is a need to develop a similar type of instrument for the State. Mr. Maly is responsible for determining the type of equipment needed, how long it will last, the cost, repairs and maintenance, etc. There has not been a lot of time devoted to this yet, but he will be working on this and will keep Ms. Menzies and the Council informed. It will be a funding issue down the road.

Mr. Maly introduced Bob Garrison, Vice President and General Manager of Bresnan Communications. Mr. Maly said Bresnan Communications will play a very important part in accomplishing these goals.

SEN. TESTER asked where the televised meetings are currently being aired. Mr. Maly said Helena is the only location broadcasting the meetings but anyone may request a copy of the tapes.

SEN. THOMAS **moved** to authorize a letter from the Legislative Council, endorsing the HCTV grant application and asked staff to draft the letter. The **motion passed unanimously** on a voice vote.

Bob Garrison, Vice President and General Manager, Bresnan Communications,

addressed the Council:

- Bresnan owns the cable system in every major city in Montana and has the ability to be of great help to Mr. Maly's goal of statewide broadcasting.
- The Big Sky Channel broadcasts statewide and is the likely candidate for broadcasting TVMT programming.
- Bresnan Communications is very pleased to be working with HCTV and the collaboration allows Bresnan to bring programming in that isn't available elsewhere.
- Bresnan is in the process of investing approximately \$80 million to upgrade existing Montana cable systems to a 750 megahertz channel capacity and hopes to be 95% complete by the end of this year.

SEN. GRIMES expressed appreciation to Bresnan Communications for choosing to invest in Montana and for assisting Mr. Maly and the efforts of TVMT.

Status Report on State Revenue Collections and Expenditures – Terry Johnson,

Principal Fiscal Analyst, Legislative Fiscal Division (LFD) provided copies of a detailed report, as prepared for the Legislative Finance Committee's March 11, 2004, meeting (*General Fund/Federal Funds Update: 2005 Biennium Projected* - EXHIBIT #5). The purpose of the report is to provide information on significant general fund revenue trends that are occurring in fiscal 2004 and to provide an outlook for the remainder of the 2005 biennium.

Mr. Johnson began his discussion by distributing a summarized version of his report, which included a PowerPoint presentation (*General Fund/Federal Funds Update* - EXHIBIT #6). Contents discussed were:

- fiscal year 2004 revenue trends;
- selected revenue source discussion;
- disbursement issues;
- general fund balance sheet;
- expenditure reductions; and
- a summary.

SEN. THOMAS asked how long the changes in federal law would continue to affect the refunds. Mr. Johnson said accelerated depreciation was the reason for the reduction in corporate income tax revenue but that the effects would balance out at the end of the biennium. SEN. THOMAS asked if corporate income tax revenue would increase in the next biennium. Mr. Johnson said it is anticipated that it will increase.

SEN. THOMAS asked if the upswing in individual income tax would continue when the federal reduction was eliminated. Mr. Johnson said because of the cap mechanism built into the old system, there will be less of an impact on state revenues. The second round of tax reform that took place at the federal level was an accelerated impact. Based on current federal law, a lot of those accelerated rates go back to the previous levels, so what that means is that we are going to have that impact at the same time. This gets very complicated very quickly.

SEN. THOMAS asked if the trigger would go down to about \$20 million in October. Mr. Johnson said he believed it would be less than that, probably around \$10 million. Right now, under current law, it is 2% but in October it decreases to 3/4 of 1%. This results in a significant change.

SEN. THOMAS asked if supplementals were included in the calculation (Page 6 of EXHIBIT #6) and said there would be an additional \$13 million in the ending fund balance if they were not. Mr. Johnson said Sen. Thomas was correct from the standpoint of the legislature did not build in any supplementals for 2005. But, public schools for instance, have statutory authority to come forward and request a supplemental if there is a shortfall. Also, from the standpoint of the trigger mechanism, the Executive Budget Director is required to include supplementals in the calculation.

SEN. THOMAS asked to discuss the income data on Page 2, EXHIBIT #6 and asked Mr. Johnson to reconcile the differing information. Mr. Johnson said there were several factors influencing this:

- the State has received \$7 million from an unanticipated audit of corporate income taxes;
- the cigarette tax was increased; and
- there will be significant refund activity in corporate income tax occurring before year end.

REP. GOLIE revisited the corporate income tax refund issue (Page 3, EXHIBIT #6) and asked if something out of the ordinary was occurring. Mr. Johnson said the LFD is bound by strict confidentiality requirements and that he was not able to provide much additional information. He could say that there are a number of cases where there has been overpayment in previous years and now the corporations are claiming refunds for the overpayments. REP. GOLIE asked how far back a corporation could claim losses for prior years in Montana. Mr. Johnson said a corporation may go back three years and claim losses. REP. GOLIE asked how that affects the budget. Mr. Johnson said it creates a significant problem.

REP. GOLIE referred to Page 4, EXHIBIT #6 and asked why the District Court supplemental was so large. Mr. Johnson said, based on an analysis of District Court assumption costs completed by Harry Freebourn, Fiscal Analyst, LFD, several areas of cost overruns had been identified. These amount to about \$2.4 million per year and are mainly in the area of personnel services. REP. GOLIE asked if the Court's supplemental is statutory. Mr. Johnson said the Supreme Court may request a supplemental but the Legislature could reject it.

REP. BROWN asked why the tobacco settlement payment was so much smaller than it was in the previous year. Mr. Johnson said that originally the tobacco settlement was paid in two payments, one in December and one in April. As of this fiscal year, there will be only one payment made and it will be made in April. REP. BROWN asked if the school supplementals were due to lower than expected reductions in ANB monies. Mr. Johnson said it was due to that factor and to other factors as well.

SEN. COCCHIARELLA said it didn't make sense to her that corporations would overpay their taxes and now be asking for refunds. Mr. Johnson said corporations are required by statute to make estimated income tax payments and are assessed a penalty if they do not. Mr. Johnson said he would have to look at each return individually, but that it was his opinion that this was the reason for many of the corporate refunds.

SEN. COCCHIARELLA said the \$7.2 million of State Fund money that Montana is not going to receive seemed like a huge number and asked if this issue was being investigated. Mr. Johnson said the Legislative Finance Committee did investigate. LFD asked for and received a copy of the legislative audit of the State Fund. After analyzing the audit, it was discovered that the situation is due to unrealized losses. HB 363 mandates that unrealized losses must be taken into account when determining how much is to be transferred. SEN. COCCHIARELLA asked Mr. Johnson to define what an unrealized loss is. Mr. Johnson said these are paper losses of investments.

SEN. THOMAS asked Mr. Johnson to explain the fee authorized by the 2003 Legislature which allowed the State Auditor's Office (SAO) to assess a fee for registering a portfolio in Montana

and if those fees were used to increase the SAO'S budget. Mr. Johnson said the portfolio registration fees are deposited into the general fund.

Interim Committee Review of Agency Legislation – Dave Bohyer, Director, Office of Research and Policy Analysis, LSD

Mr. Bohyer addressed the Council, stating that at the March meeting, changes were made to the process by which interim committees review agency legislation. Both staff and interim committees would like clarification as to what level of review is anticipated. Some of the committees feel they must do nothing more than briefly review and approve any proposed agency legislation, while other committees are concerned that by approving agency legislation, they are "endorsing" the proposed legislation. This issue also carries budget concerns: if the committees are expected to give the proposed legislation anything more than a cursory review, it could mean allocating funds for additional meetings. Staff would like to be able to provide the interim committees with direction on this issue and is seeking Council input.

SEN. COCCHIARELLA expressed concern that legislative committees could act in such a way as to impose their will on the Executive Branch outside of the legislative process. Mr. Bohyer said in this instance, there was no separation of powers issue and that the Legislative Branch is actually providing a huge courtesy to the Executive Branch by allowing it to request legislation through the interim committees. Mr. Bohyer said that the Legislative Council, when it sponsored the bill assigning interim committees the responsibility for reviewing agency legislation that the interim committees are in a better position to reflect on the merits of agency requests. However, there is a disparity among the committees as to how much information the committee members have, when they have it, and how much focus is put on those bill draft requests.

SEN. GRIMES commented that neither extreme works. Members don't want a full-blown hearing with witnesses nor does it work to just approve everything that comes along. A definition of a "mid-level review" by the committees would be helpful.

SEN. THOMAS said the current system is better than the old system and didn't see the need to change anything. The committees have the knowledge base to sign off on these bills or not.

Mr. Bohyer explained that some of the interim committees are responsible for large agencies that typically bring forth many requests for legislation. Giving a bill draft request even a cursory review becomes a time consuming process if each must be considered individually. The staff is looking to the Council for direction on whether they should plan for the review by scheduling additional committee time or whether they should plan to adhere to the six or so meetings currently budgeted. SEN. COCCHIARELLA asked if the polling process could work to speed the process. Mr. Bohyer said it could but that the dynamic of committee work is lost in the polling process.

SEN. CROMLEY said the review process simply acts as a conduit and the bill, when drafted, doesn't mention the interim committee, only the agency which requested it. Mr. Bohyer said that was correct and the only instance in which the interim committee name shows up is as the requester in the bill tracking system (i.e., LAWS).

SEN. TESTER thought that a committee's approval of a bill draft request did a lot to get bills passed. The time it takes to review and look at a bill is time well-spent because that speeds up the efficiency of the whole legislative process. When an agency bill is introduced in the session there are people on the floor who understand the bill. If there are committees that don't have the time to give an adequate, cursory review of proposed legislation, then they should adjust their work load or come up with additional funding for extra meeting time. This is an important function of interim committees, and it expedites the legislative process. SEN. COCCHIARELLA asked if that meant SEN. TESTER endorsed committees expanding their meeting times. SEN. TESTER said he was suggesting that the committees adjust their work loads to fit bill review in within their current allotted meeting time.

REP. LASZLOFFY said agencies should be encouraged to not bring contentious legislation before an interim committee, but to find an individual sponsor instead. This process is meant for the housekeeping-type bills.

SEN. COCCHIARELLA asked if agencies have to bring all of their bills right now through this review process. Mr. Bohyer said the rules provide that "unless requested by an individual member, a bill draft request submitted at the request of an agency, must be submitted to, reviewed by, and requested by the appropriate interim or statutory committee". The Executive Branch has no right under the Montana Constitution to introduce any piece of legislation.

SEN. THOMAS recommended that the Legislative Council remain with the current process and encourage interim committees to use their time wisely in order to review proposed agency legislation. An agency still has the option of finding an individual sponsor if its bill request is not approved by an interim committee.

SEN. COCCHIARELLA said interim committees must understand that authorizing legislation for drafting is not an endorsement of a particular bill request. Mr. Bohyer said the language adopted in March by the Council stated, "The interim committee's action on an agency proposal is not necessarily a position or comment on the merits of the proposal."

SEN. TESTER said he has served on the Environmental Quality Council (EQC), and the EQC did an adequate review of agency bill drafts. He saw no need for any directive. Mr. Bohyer pointed out that the EQC typically has more meetings than other committees and that could be why the time for review seemed adequate.

REP. LASZLOFFY said it is difficult to anticipate how many bill draft requests a particular agency may bring forth, which makes it difficult for a committee to plan its work load.

SEN. GRIMES said the Council must strive to preserve the legislature's constitutionally mandated authority over the legislative process without making the interim committees partisan.

SEN. THOMAS suggested allowing more time for bill review in the next interim. REP. LASZLOFFY suggested requiring the agency bills to come in earlier in order to allow the committees more time to review them. Mr. Bohyer said the bill proposals are reviewed by the Governor's budget office from mid-April through mid-June. Committees begin their review after completion of the budget office's review. That is about as early as it can be done. REP. BROWN said overall, it seemed to him that the current process is working better than the

process used in the past. He said the committees could extend their work day to accommodate bill review without incurring significant cost. SEN. COCCHIARELLA asked Mr. Bohyer and Mr. Petesch to comment. Mr. Bohyer said the process is better because there is some level of review, unlike in the past. Mr. Petesch said the new system is much better because legislators who serve on interim committees frequently also serve on session standing committees that hear the agency legislation, so they are already familiar with the bills. Those interim committees which don't give blanket approval to proposed agency legislation help the drafting process enormously by eliminating bill drafts that would not have made it through the legislative session.

SEN. THOMAS **moved** that the Legislative Council endorse the current system for this interim, that the Council encourage more thorough review by the interim committees next interim, and that the Executive Director develop a proposal for an additional day or days of meetings for the committees during the next interim. The **motion passed unanimously** on a voice vote.

Report from SJR 32 Subcommittee on Medical Liability Insurance – Rep. George Golie, Presiding Officer

REP. GOLIE updated the Council on the action taken by the SJR 32 Subcommittee at its meeting held the previous day:

- The Subcommittee examined over 30 of the 51 options it had before it for consideration. The options not adopted by the Subcommittee are free to be sponsored for legislation by other legislators.
- The Subcommittee used a consensus approach for the majority of the decisions.
- Nine options will be presented as draft bills for consideration at the next Subcommittee meeting, and several of the options will be included in the final report.

REP. GOLIE said he would like the Legislative Council to vote that the forthcoming legislative proposals from the Subcommittee will be "at the request of Legislative Council". The Subcommittee will present its proposed legislation to the Council at the June meeting.

REP. MOOD asked if REP. GOLIE was asking the Council to request the proposed legislation before the Council had a chance to review it. REP. GOLIE said the Subcommittee has worked very hard to learn the issues, has listened to all of the stakeholder testimony, and would like to be the body that carries the proposals. The Legislative Council must grant that power to the Subcommittee.

SEN. COCCHIARELLA said it was her opinion that the Legislative Council must see the proposed legislation before it could approve or endorse it. REP. GOLIE said he was concerned that the Subcommittee would spend all its time on bringing forth its proposals and that the Legislative Council would then make changes or eliminate some of the proposals.

REP. LASZLOFFY said the purpose of a subcommittee is to distill information gathered on the subject matter and bring it back to the full committee. The Legislative Council was charged with the SJR 32 study, and the Legislative Council is mandated to make the final decision.

REP. BROWN asked Mr. Petesch if the Subcommittee has the authority to request the drafting of legislation and to bring it before the House or Senate with its name on it or does it have to

come through the Legislative Council. Mr. Petesch replied that any proposed legislation must come through the Legislative Council.

SEN. COCCHIARELLA commented that in her experience of serving on the EQC, the subcommittee recommendations were always brought before the full EQC, and she could not recall any recommendations ever being overturned by the full Council. The SJR 32 Subcommittee should not feel threatened or that all its work will not be acknowledged. REP. GOLIE said the Subcommittee has worked very hard with the stakeholders and there is a concern that the work may be undone. There are controversial proposals that could take a great deal of time to explain and discuss with the Legislative Council.

SEN. GRIMES said the question is how thorough a review will the Legislative Council want to do. It was an exhausting meeting, and the Subcommittee is hoping to not have to do it again. The Subcommittee has to abide by the Legislative Council's decision, but some of these issues will take quite a bit of time to discuss.

REP. GOLIE said if the proposals are to be brought before the Council, then the stakeholders must be informed because they will want to attend. SEN. THOMAS said the Council will hear the report from the Subcommittee and will act on it. The stakeholders have had their opportunity for input and to work on the product. SEN. TESTER pointed out that if the Legislative Council chooses not to support one of the proposals from the Subcommittee, it can still be brought forth as legislation.

REP. LASZLOFFY said this situation is analogous to the a legislative session, with the Committee of the Whole and all the standing committees. Those committees are, in fact, subcommittees of the Committee of the Whole. The standing committees hash everything out and bring a recommendation back to the Committee of the Whole. The public doesn't get to testify during second reading. SEN. COCCHIARELLA asked Mr. Petesch to respond to REP. LASZLOFFY'S statement. Mr. Petesch said the issue is one of open meetings and the public's right to participate. If the Council is going to receive a report from a subcommittee and is going to decide whether or not to adopt the report, it will have to allow time for the public to comment.

SEN. THOMAS responded that if that was the case, it meant that every bill that is brought before a committee for review and authorization must be subject to public comment. This amounts to a hearing. Mr. Petesch said the distinction is when an interim committee reviews agency legislation, the bill proposals are not yet actual bill drafts, but a cursory statement on what the agency is requesting. It would be difficult to take comment on a two-line summary statement. The SJR 32 proposals will be actual bill drafts that the Subcommittee is asking the Council to request. These are two different things. The public has the right to comment on anything within the Council's jurisdiction. SEN. THOMAS said whether it would be difficult for the public to testify on a 2-line idea doesn't matter. If public comment is not required there, then it is not required here either. Mr. Petesch said what is being brought to the Council is the recommendation that the Council authorize the drafting of bills. The proposals will be in bill form. That is the distinction and the public has the right, under the statute passed last session, to comment on anything within the Council's jurisdiction. In order for the Council to act on these proposals, they must appear on the Council agenda. Because the Council placed them on the agenda, the proposals are within the Council's jurisdiction and the public cannot be precluded from comment.

In response to a question from SEN. CROMLEY, Mr. Petesch said the Legislative Council could authorize the subcommittee legislation to be drafted, and if approved, the legislation would be "by request of the Legislative Council". An individual member would have to be the sponsor, but the requester and the requesting entity would be the Legislative Council. SEN. CROMLEY said it seems to him that this is exactly the same thing that is happening with the interim committees' review of agency legislation, yet they don't need hearings. Mr. Petesch said hearings are not needed, but the public must be allowed to comment on any action item the committee has before it. The interim committees hear the report from the agency, a motion is made to either authorize the bill proposals to be drafted or not, and before the committee makes a decision, the public must be allowed to comment. SEN. CROMLEY said he wasn't sure the interim committees knew that.

SEN. GRIMES said he wanted to thank the Legislative Council for making SJR 32 such a high priority and thanked REP. GOLIE for his good work with such a tough assignment. He cautioned the Council that the issues will be contentious and that the Council members should expect to be lobbied.

REP. GOLIE said he was not anticipating that there will be consensus among the Legislative Council on the proposals. He agreed that some of the issues are very contentious and expressed his concern that he did not want to lose the valuable work done by the Subcommittee.

Mr. Petesch asked to clarify that when allowing public comment, a committee can limit the time period that it will accept comment. In response to a question from SEN. CROMLEY, Mr. Petesch said the Council could be challenged on whether a meeting was open and whether the public was allowed to participate. If it is determined that either the meeting was not open, or that the Council didn't allow participation in the meeting, the decision made could be voided. If the decision is voided, the process would have to begin all over again.

SEN. THOMAS said he was not opposed to having public comment but was concerned that this issue would open up the Committees to comment on every matter that comes before it. He asked Mr. Petesch where this mandate originated. Mr. Petesch said it is mandated by the Montana Constitution and was prompted by the Bryant ruling from the Supreme Court. Not only did the Supreme Court say that people had the right to participate, it had to be knowing participation, so that documents being considered by a committee must be made available to the public upon request before action may be taken. That is the statute enacted by the legislature in the last session in response to the Bryant case.

REP. GOLIE said the Subcommittee knows the legislation, the members know what they want to carry or sponsor, and he would like to get the proposed legislation assigned before the next Council meeting. All the assignments of the proposed legislation would be under the stipulation that if the member is returning to the Legislature, he/she would be the sponsor. REP. LASZLOFFY said it didn't seem to him that any protocol was being followed and was opposed to assigning legislation at this point in time.

SEN. COCCHIARELLA said she trusts the process and didn't think it was necessary to do anything more than to hear the Subcommittee report and recommend which bill draft requests will go forward. SEN. TESTER agreed with SEN. COCCHIARELLA, saying that the legislation is

going to have to go in front of 150 legislators and the Subcommittee might as well hear the concerns now.

REP. GOLIE asked the Council to clarify that all the Council expects at the June meeting is the Subcommittee's proposed legislation. SEN. COCCHIARELLA said that was correct and that the Legislative Council would review and formulate its own recommendations on what legislation would be drafted from the Subcommittees recommendations. REP. GOLIE said that is what would be done.

Recent Court Challenges to State Statutes – Greg Petesch, Code Commissioner, Legislative Services Division (LFD)

Mr. Petesch said this report is the updated version of the report he has been giving the Legislative Council. He said he would discuss the highlights of each case (EXHIBIT #7):

- Item 1 - *Montanans for the Responsible Use of the School Trust v. Darkenwald* - This case is still on the report because there had been word that an appeal had been filed, but Mr. Petesch had not been able to confirm that officially.
- Item 2 - *Brown v. Montana Districting and Apportionment Commission* - This case also was left on the report because a sentence was added to the last sentence under Legislative Action. Mr. Petesch said he had previously recommended that legislative action was not necessary because the challenged statutes were repealed by SB 429. He said he was now suggesting that the Council reconsider his recommendation, in light of the holding in *Wheat v. Brown*.
- Item 3 - *Wheat v. Brown* - The Court found that the Legislature had no role in the redistricting process and therefore, struck down the three bills passed for assigning holdover senators. Mr. Petesch recommended that Section 5-5-116, MCA, be repealed and said the Council may also wish to review Sen. Esp's bill that replaced the challenged statutes. This ruling clearly places the LSD staff between two masters because LSD statutorily staffs both the Legislature and the Redistricting and Apportionment Commission. The only holding right now that requires legislative action is to repeal but the Legislature will need to carefully think about and review the other statutes that deal with the duties and responsibilities of the Legislature in relation to the Redistricting and Apportionment Commission.

REP. BROWN asked if that meant the LSD staff should not be assisting or staffing the Redistricting and Apportionment Commission. Mr. Petesch said although LSD is statutorily required to staff the Redistricting and Apportionment Commission, based on the Court's analysis that the Legislature has no role, it certainly must be considered that interjecting LSD staff into the Commission's process, is an indirect attempt to achieve what the Legislature can't achieve directly.

- Item 4 - *American Cancer Society v. State of Montana* - This case is scheduled for oral arguments in April.
- Item 5 - *Columbia Falls Elementary School District v. State* - This case has been heard, and Judge Sherlock is in the process of making a ruling.
- Items 7 and 8, as per the Legislative Council's direction from the January meeting, have been referred to the Economic Affairs Interim Committee, which has jurisdiction over insurance regulation statutes.

Mr. Petesch said new items appearing on his report were Items 12, 13, and 14, and all deal with challenges to environmental statutes.

Mr. Petesch said the last item on his report (*Federal Administrative Challenge*) is an administrative appeal coming from the impact aid schools to the federal Department of Education. At one time, the state contributed retirement money to schools using impact aid. The decision was made to discontinue this, and the retirement money is now coming out of the federal funding. The schools are claiming harm because they are no longer getting the same amount of money. The federal statute says that state legislation can't take into account federal impact aid money, if the purpose of the legislation is to reduce the amount of state aid to the district.

Review, Revision, and Adoption of Legislative Council Rules of Procedure – Lois Menzies, Executive Director, Legislative Services Division (LSD)

Ms. Menzies asked to segregate one of the rules (C-5) and said the remaining proposed changes to the rules were mostly housekeeping or clarifying in nature (EXHIBIT #8). The changes that are being proposed were the result of a debriefing meeting with the bill drafters after the 2003 legislative session. She described each proposed change and provided an explanation for the change.

SEN. THOMAS **moved** to adopt the rules changes, as recommended by Ms. Menzies. SEN. CROMLEY asked, regarding C-7.2 (2)(b) changes to formal review bill drafts, if Sundays would be included in the 24-hour time limit. Ms. Menzies said as it stands now, Sundays do count toward the 24-hour limit. Mr. Petesch agreed but suggested that the rule be clarified by inserting language such as, "one legislative day and nonlegislative days do not apply to calculations on time limits under these rules". SEN. THOMAS **amended his motion** to include Mr. Petesch's suggestion. The **motion passed unanimously** on a voice vote.

Ms. Menzies discussed Rule C-5, which requires bill draft requests to be specific. If a request is not specific, LSD staff must return it to the requester. In accordance with leadership's directives, this rule has not been enforced during past sessions. SEN. THOMAS **moved** to strike Rule C-5 in its entirety. Mr. Petesch said the bill draft request form states that the request must be specific and that language was put there to reflect Rule C-5. Mr. Petesch said the word "specific" was the problem. He said the rule is not being enforced and should either be enforced, modified, or stricken because it puts staff in a very difficult position. He suggested that the rule be amended to require that sufficient information be included on the bill draft request form to allow public notice of the request to be given.

SEN. GRIMES said leadership ought to have the right to have general requests because if a critical issue arises at the end of the session, a bill draft request would be available to address that issue.

REP. LASZLOFFY suggested putting a mechanism in place which would allow Mr. Petesch to call the Speaker of the House or the President of the Senate about problematic bill draft requests and have the Speaker or the President instruct the legislator to fix the request.

Mr. Petesch suggested that language such as "A bill draft request must contain sufficient information to allow the request to be entered onto the Legislative Automated Workflow System (LAWS)" would remedy the problem.

SEN. THOMAS **withdrew** his motion and **moved** to amend C-5 in the Rules of Procedure per the language offered by Mr. Petesch. The **motion passed** unanimously on a voice vote.

Potential 2007 Biennium Budget Items – Lois Menzies

Ms. Menzies distributed a list of potential 2007 biennium budget items (EXHIBIT #9):

- Legislative Council on River Governance (LCRG) funding;
- Pacific Northwest Economic Region (PNWER) funding;
- information technology initiatives; and
- legislator participation in the National Conference of State Legislatures (NCSL) and Council of State Governments (CSG).

Ms. Menzies said there are no costs attached to any of the items at this point and offered to have cost estimates for each item at the June Council meeting.

SEN. COCCHIARELLA felt these issues should be dealt with by the full Legislature. Ms. Menzies asked Council members to inform her of any items they wished to add to the list, in order to prepare them for the next Council meeting.

Potential Legislative Council-sponsored Legislation for 2005 Session – Lois Menzies

Ms. Menzies said she had no report at this time and encouraged Council members to contact her with their suggestions before the June meeting.

Progress Report on 2003 Planning Session Action Items – Lois Menzies

Ms. Menzies asked the Council to refer to *Legislative Council 2003 Planning Session: Action Items Receiving Highest Ratings* - EXHIBIT #10 and *Legislative Council 2003 Planning Session Progress Report on Selected Action Items, March 2004* - EXHIBIT #11. She reviewed the action steps taken since January, as discussed in EXHIBIT #11.

Action Item No. 1 - Provide Rules Training for New and Returning Legislators -- Ms. Menzies distributed copies of the tentative agenda for the *Legislative Rules Workshop* - EXHIBIT #12. Ms. Menzies said NCSL staff, current and former legislators, and LSD staff could all be involved in this training.

REP. BROWN said that providing training was of critical importance for the next session. REP. LASZLOFFY said he did not see the value of bringing in NCSL staff for just an hour and said there were many staff members who could provide the training. REP. GOLIE thought having an impartial third-party to provide the initial training, such as NCSL, was a good idea. SEN. COCCHIARELLA said NCSL staff could provide an in-depth training on Mason's Manual of Legislative Procedure. SEN. THOMAS said the outline proposed by Ms. Menzies was a good start and that he would be like to work with Ms Menzies and Mr. Petesch to provide input on the rules training. He suggested beginning the training with Mason's and transition into Montana

rules. REP. LASZLOFFY commented that there are many veteran legislators who are very knowledgeable of the rules and suggested using them as a resource.

SEN. COCCHIARELLA asked if there were Council members willing to volunteer to help with the rules training planning. SEN. THOMAS, REP. MOOD, REP. GOLIE, and REP. LASZLOFFY volunteered.

Ms. Menzies noticed that the new legislator orientation also includes some components of the rules, such as a mock committee meeting, a mock floor session, a bill mechanics session, and a take-home video of a Senate and House floor session.

Action Item No. 2 - Encourage Statewide Expansion of TVMT -- This action item was addressed earlier in the meeting with Mr. Maly.

Action Item No. 3. - Promote TVMT; Reach Out To Local Television Stations -- Ms. Menzies updated the progress made, as discussed in EXHIBIT #11.

Action Item No. 4 - Encourage Legislators To Speak Highly of the Legislature and to Defend the Institution -- REP. LASZLOFFY updated the Council on plans made, as discussed in EXHIBIT #11.

Action Item No. 5 - Educate the Public on the Role of the Legislature -- Ms. Menzies said the Council approved an interactive video pilot project for the 2005 Legislature. She discussed the proposal details, as contained in EXHIBIT #13 and said the next step will be to meet with the interested vendors.

Action Item No. 6 - Commit Time and Money for Legislator Training -- Ms. Menzies reviewed progress to date, as discussed in EXHIBIT #11.

Action Item No.7 - Create a Mentorship Program -- REP. BROWN said there was not a lot of cost associated with this proposal and would just require the time and effort to pair the new legislators with the existing legislators. SEN. TESTER said this would be encouraged at the party caucuses.

REP. GOLIE commented that in the 2001 Session, he and REP. GILLAN assigned each new legislator to a veteran legislator. The results were varied; some of the legislators made an effort to stay in contact with each other others did not. They felt they it was difficult to find time for mentoring because the session is so busy.

Action Item No. 11 - Appropriate Sufficient Money to Achieve Goals -- Ms. Menzies reviewed progress to date, as discussed in EXHIBIT #11.

Action Item No. 14 - Make Low-cost Improvements to the Legislative Branch Website -- Ms. Menzies reviewed progress to date, as discussed in EXHIBIT #11.

Action Item No. 21 - Educate Legislators on the Costs of Drafting Bills - Ms. Menzies reviewed progress to date, as discussed in EXHIBIT #11.

New Legislator Orientation Program Update – Lois Menzies

Ms. Menzies reviewed the tentative agenda for New Legislator Orientation (EXHIBIT #14) and asked for Council input.

Other Business

Ms. Menzies also distributed the projected 2005 Legislative Calendar (EXHIBIT #15). The Council discussed whether or not the first two Saturdays of the session should be legislative working days. SEN. THOMAS supported the idea of keeping the schedule as is.

The Council also agreed to keep its schedule its next meeting for June 25, 2004.

REP. GOLIE **moved** to pay the registration fees for the four members of the Pacific Northwest Economic Region (PNWER) to attend the 2004 annual PNWER meeting in Victoria, British Columbia. After a brief discussion, the **motion passed** unanimously on a voice vote.

Sen. Grimes asked whether there were issues concerning the Legislature that staff would like to bring before the Legislative Council for its consideration. He said that these issues could become future agenda items. Sen. Cocchiarella said the Management Advisory Subcommittee has in the past discussed how to seek staff input. Sen. Cocchiarella asked members to promptly submit any agenda items for the June meeting to Ms. Menzies.

Sen. Cocchiarella also asked that any tax information for legislators that is published in *The Interim* be included in the January issue. In addition, she also said that she would like the Legislative Council to form a safety committee for the session consisting of two people from each house of the Legislature to take action on safety issues. The committee could notify the responsible parties to correct safety problems and generally raise awareness about safety.

Sen. Thomas said that he thought it was appropriate for the Legislative Council to consider legislation addressing the membership and authority of the Legislative Council. He said that the Council ought to be more leadership driven and that the majority leaders should be statutorily assigned to the Council, similar to the minority leaders. Sen. Thomas also stated that the Council ought to be the lead committee in the Legislature.

Adjourn

With no further business coming before the Council, the meeting adjourned at 4 p.m..

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