



Legislative Council

65th Montana Legislature

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RULES SUBCOMMITTEE MINUTES LOG

August 22, 2018
Yogo Inn
Lewistown, 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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SUBCOMMITTEE MEMBERS PRESENT

SEN. FRED THOMAS
SEN. EDWARD BUTTREY

REP. JENNY ECK

COMMITTEE MEMBERS EXCUSED

REP. SHANE MORIGEAU

STAFF PRESENT

TODD EVERTS, Legal Director
FONG HOM, Committee Secretary

VISITORS' LIST ([Attachment 1](#))

AGENDA ([Attachment 2](#))

COMMITTEE ACTION

The Rules Subcommittee took the following actions:

- adopted Amendment 1 to H20-20;
- adopted Amendment 2 to H30-05, as amended;
- adopted Amendment 4 to H40-80;
- adopted Amendment 6 to H50-160;
- adopted Amendment 7 to H70-60;
- adopted Amendment 3 to H30-10;
- amended language in H70-10(2) and H50-160(10); and
- maintained language in Joint Rules 10-85(1) and added language regarding the Harassment Policy that will be adopted by the Legislative Council.

CALL TO ORDER/ROLL CALL

00:46:57 Sen. Fred Thomas called the meeting to order at 1:27 p.m. The secretary noted the roll. Rep. Shane Morigeau was excused. ([Attachment 3](#)) Sen. Thomas gave opening remarks.

STAFF CHANGES TO RULES

00:48:19 Todd Everts, Legal Director, said that there were no staff changes other than changes being made to the Harassment Policy.

MEMBER-RECOMMENDED CHANGES TO RULES

Joint Rules, LC6886 (Exhibit 1)

Amendment 1 to 40-160

00:48:58 Sen. Ed Buttrey discussed Amendment 1 to Joint Rules 40-160. Enrolling.

00:50:37 Mr. Everts said that the subcommittee might want to discuss issues associated with once a bill has passed each body, it is the power of those bodies that override a single member of a Legislature having an ability to slow the bill up or pocket veto it.

00:52:08 Sen. Buttrey asked if language could be added, "they may delay delivery of those enrolled bills to either the governor or the secretary of state upon written request by the sponsor," and give them a "may", and ultimately they would have the power to decide what to do, but if the sponsor requests it, then they have the ability to hold the legislation for longer period.

00:52:51 Mr. Everts said that the argument is that even the Speaker and the President don't necessarily have the ability to hold a bill. It can happen under current rule that if a bill passes both bodies before the end of the session, they have the ability to hang on to the bills before they are sent to the governor. It is the 5 working-day deadline currently after the session is over to get those bills that have passed to the governor.

00:53:49 Sen. Buttrey withdrew his proposed Amendment 1 to 40-160.

00:54:13 Rep. Eck said that Mr. Everts had said that one single member cannot override

the will of the body once the body has made a decision. That is essentially what happens when a bill is held, not essentially what occurs.

00:54:44 Mr. Everts said that under the current rules, before the session is over, there is no deadline in terms of holding that bill.

House Rules, LC6888 (Exhibit 2)

Amendment 1 to H20-20

Motion

00:57:20 Sen. Buttrey moved for adoption of Amendment 1 to H20-20.

Subcommittee discussion

00:57:00 Sen. Buttrey discussed the amendment.

Vote

01:00:16 The motion passed unanimously by voice vote, with Rep. Morigeau voting yes by proxy.

Amendment 2 to H30-05, Interim Committee Appointments

Motion

01:00:23 Sen. Buttrey moved for adoption of Amendment 2 to H30-05.

Subcommittee discussion

01:04:00 Sen. Buttrey discussed the amendment and said that many of the changes are built to mirror what is being done in the Senate.

01:04:25 Sen. Thomas asked about the timeframe of 14 days in the Senate rules.

01:07:55 Sen. Buttrey said that the intent of the 14 legislative days was to give people the ability to know what the interim is going to look like and give the body a chance to reconsider some appointments.

01:07:58 Rep. Eck asked what would happen if there needed to be changes to the interim committees during the interim.

01:08:52 Sen. Buttrey asked Mr. Everts if changes to the membership of an interim committee require approval by the body?

01:09:16 Mr. Everts said that it would be the Speaker who is making the appointment. He discussed the requirements for vacancies and the appointment procedure, and that the Legislature would not have to be in, in order to approve that change.

Modified Motion to Amendment 2

01:10:15 Sen. Buttrey modified his motion to change the 14 legislative days to 10 legislative days and to correct the typo on line 15.

Subcommittee discussion

01:10:49 Mr. Everts and Ms. Fox commented that the members of the Legislative Finance Committee must be appointed before the end of the legislative session, and if there is a vacancy on the Audit Committee when the session first starts, they have to be appointed by the 10th day.

Vote

01:11:52 The motion carried unanimously with Rep. Morigeau voting aye by proxy.

Amendment 3 to H30-10, House standing committees -- appointments -- classification

Motion

01:12:06 Sen. Buttrey moved for adoption of Amendment 3 to H30-10.

Subcommittee discussion

01:13:23 The committee members discussed Sen. Buttrey's amendment.

01:22:42 Rep. Eck asked to hold off on voting on this amendment and come back to it later.

01:22:52 Sen. Buttrey said he would withdraw his motion and come back to it at the end of the meeting.

01:23:44 Rep. Eck said that leadership does not have a lot of disciplinary tools when dealing with someone who is a problem actor or dealing with a potential victim who has an interest in confidentiality.

01:24:59 Sen. Buttrey asked if the Legislature would be liable if the public was not informed of some activity that a public official had done.

01:25:02 Mr. Everts said that it takes the body itself to censure a person, kick him out, or impeach, and the subcommittee has been dealing with steps that can be taken prior to formalizing it.

LC6888 Amendment 4 to H40-80, Rereferral -- Appropriations Committee rereferral -- normal progression

01:26:45 He referred the subcommittee to page 24 of the House Rules LC6888, and his Amendment 4 to H40-80.

Subcommittee discussion

01:28:17 Rep. Eck asked what the rule is with appropriations, if it is a simple majority.

01:28:34 Mr. Everts said that this amendment includes all bills.

01:28:51 Sen. Buttrey said that this amendment covers both rereferral of any bill and also the Appropriations Committee rereferral.

01:29:20 The subcommittee discussed who controls the rereferral of bills, the majority or the minority.

01:31:09 Rep. Eck discussed the blast vote not allowing a minority of the body to supersede the majority of the body.

01:33:05 Sen. Thomas suggested incorporating Amendment 5 to H40-90 and Amendment 6 to H50-160.

01:34:02 Sen. Buttrey discussed Amendment 6, page 43, of LC6888. He preferred to leave Amendment 4 as is, take a vote, then move on to Amendments 5 and 6.

Motion/Vote

01:35:51 Sen. Buttrey moved to adopt Amendment 4 to H40-80 of House Rules. The motion carried with Rep. Morigeau voting aye by proxy.

LC6888 Amendment 5 to H40-90. Legislation withdrawn from committee

01:36:20 Sen. Buttrey discussed the amendment.

Motion/Vote

01:36:26 Sen. Buttrey moved to adopt Amendment 5 to H40-90. The motion passed with

Rep. Morigeau voting aye by proxy.

LC6888 Amendment 6 to H50-160. Questions requiring other than a majority vote

01:37:55 Sen. Buttrey discussed the amendment found on page 43, under the title "Members Present and Voting", and removing subsection (3).

Motion

01:38:03 Sen. Buttrey moved for adoption of Amendment 6 to H50-160.

Subcommittee discussion

01:39:13 Rep. Eck asked if Amendment 6 ties in with Amendment 3. She said the motion on Amendment 4 is for subsection (3) and (6), and Amendment 5 is for subsection (4).

Vote

01:39:38 The motion passed with Rep. Morigeau voting aye by proxy.

LC6888 Amendment 7, H70-60. Joint rules superseded

01:39:41 Sen. Buttrey discussed Amendment 7, on page 52, removing the Appendix.

Motion

01:39:52 Sen. Buttrey moved to adopt Amendment 7 to H70-60.

Subcommittee discussion

01:42:22 Rep. Eck said that it is important to have some structure to where bills are going and that we try to put people on committees based on their areas of expertise and interest.

01:43:22 Sen. Buttrey said that they rerefer bills to different committees quite often in the Senate.

01:46:23 Rep. Eck asked to look at subsection (b) on page 56 and discuss that.

01:47:41 Sen. Buttrey said that if we go back to the first part of that section on page 52, it says, "except as provided in subsections (2) through (4), they must..." He said that (2) through (4) gives you exceptions as to when bills do not have to be assigned to those standing committees.

01:48:43 Rep. Eck asked if the impact of taking that off is because everything would fall within (2) through (4).

Vote

01:50:58 The motion passed with Rep. Morigeau voting aye by proxy.

LC6888 Amendment 3 to H30-10. House standing committees -- appointments -- classification

Motion

01:51:27 Sen. Buttrey moved for adoption of Amendment 3 to H30-10.

Subcommittee discussion

01:52:27 Sen. Buttrey asked Mr. Everts if the Joint Rules states that people assigning committee members are to consult with the minority leaders.

01:53:05 Mr. Everts said it is in House Rules and in the Joint Rules.

01:53:10 Sen. Buttrey said that we are not changing that requirement that there is

01:53:15 consultation with the minority.
Mr. Everts referred the subcommittee to 30-10(1).

Vote

01:53:17 The motion passed with Rep. Morigeau voting aye by proxy.

Discussion on changing House rules H70-10

01:53:40 Sen. Buttrey said H70-10(2) is to amend rules and H70-30 is to suspend rules, with both requiring a 2/3 vote.

01:53:49 Sen. Thomas said that he would like to consider what is done in the Senate, changing the rules by a majority vote that takes place 24 hours prior.

01:55:08 Mr. Everts said that Sen. Thomas is suggesting that the House Rule emulates S60-10. **(Exhibit 3)**

01:55:49 Sen. Buttrey discussed the 2/3 vote for H70-30 and H50-160, changing H70-10(2) to majority, and striking that from H50-160. On page 43 of LC6888, subsection (10) that reads "a motion to amend rules pursuant to H70-10(2) or suspend rules pursuant to H70-30 (two-thirds)", to strike "amend rules pursuant to H70-10(2) or" so that it reads "a motion to suspend rules pursuant to H70-30 (two-thirds)".

Motion/Vote

02:00:34 Sen. Buttrey moved to amend the language in H70-10(2) and H50-160(10). The motion carried with Rep. Morigeau voting aye by proxy.

02:01:43 Rep. Eck asked about the work of the subcommittee and if that would that be in the Joint Rules?

Discussion on Policy on Harassment

02:01:38 Ms. Fox said that the subcommittee concluded that the Harassment Policy needed to come before the Legislative Council.

02:03:23 Sen. Thomas discussed the Wyoming's harassment policy. He said the Joint Rules should be amended so that it does reference the new policy.

02:04:56 Ms. Fox discussed the documents from NCSL on harassment, the draft Harassment Policy, and the House Staff Manual from the Clerk of the House.

02:06:48 Sen. Buttrey said that he had received the documents from NCSL and recommended a comprehensive review of them. He also recommended referencing the document as an appendix to the rules so that the Council could control any changes or updates to the document as needed.

02:08:11 Rep. Eck asked where in the Joint Rules is the reference to the sexual harassment policy.

02:08:25 Mr. Everts said it is 10-85 of the Joint Rules.

02:08:57 Rep. Eck said that changes will need to be made because there will be some conflict between what has been drafted and what is in the Joint Rules. She believes that having a statement regarding subsection (1) that it is not tolerated, and that a violation of the policy must reported, not necessarily putting in the whole process but just enough that there is clear direction.

02:09:42 Sen. Thomas asked Rep. Eck to make a motion to update 10-85 Joint Rules once the sexual harassment policy is adopted.

02:10:07 Sen. Buttrey asked if Sen. Thomas is asking for a motion that would retain the first paragraph and some requirement to have to report it, and then add reference to whatever document we would come up for the harassment policy.

Motion/Vote

02:10:31 Rep. Eck moved to amend 10-85 of the Joint Rules to maintain the language in subsection (1) and to add language to reflect the updated harassment policy that will be adopted by the Legislative Council. The motion passed with Rep. Morigeau voting aye by proxy.

02:11:36 Ms. Fox discussed the flow chart that Kelly DaSilva has developed that will be distributed at the full Council meeting.

Discussion on 10-130. Bills -- sponsorship -- style -- format

02:12:27 Sen. Thomas referenced 10-130, and discussed what the Senate and the House does for co-sponsorship of a bill. He suggested putting something in the rules that says if a co-sponsor's signature can't be read and confirmed, then that co-sponsor will be left off the bill.

02:14:08 Rep. Eck commented on the importance of putting on the website who is co-sponsoring a bill.

02:15:29 Ms. Fox said that the signatures are sent to the Journal Clerk staff who makes any changes or corrections in the database so that it can be proofed and confirmed by the bills processing staff.

Ms. Fox discussed additional funding for a chamber automation that will help confirm co-sponsors and said that the automation would cost \$1.2 million.

02:17:45 Sen. Thomas asked about changes to 30-70 in Joint Rules. Appointment of interim committees.

02:17:50 Sen. Buttrey said that most of the changes that the Rules Subcommittee had recommended to the Joint Rules last interim had been incorporated.

02:21:00 There was a discussion on the number of bill draft requests and the deadlines.

02:29:22 Sen. Buttrey suggested talking to NCSL or asked other states how they do their pre-introductory review and what their constitutional requirements are.

02:29:52 Ms. Fox discussed offering to a legislator a history of the last five sessions of bills that were requested.

02:32:15 Sen. Buttrey requested staff to look at similar states and find out what they are doing in limiting bill draft requests.

40-160. Enrolling

02:34:48 Sen. Buttrey wanted to discuss Amendment 1 to 40-160 regarding enrolled bills and requiring them to go in a timely fashion to the governor and to the secretary of state for signatures. He asked if the subcommittee wanted to revisit that.

Further committee discussion

02:38:17 Mr. Everts discussed the flexibility of bills that are progressing through the session.

- 02:38:30 Sen. Buttrey said one of the reasons he was trying to make a change is that on line 1, page 32, it says a bill that has passed both house of the Legislature...and then it says "may". In reality because the word "may" is there, it doesn't have to do any of those things.
- 02:40:42 Sen. Buttrey discussed the five working days after the 90th Legislature day and that he is happy with that as long as that is a hard requirement. A bill has to be enrolled, clerically corrected, and delivered to the governor and secretary of state for signatures, but he isn't sure how to make them sign a bill.
- 02:40:55 Mr. Everts said that the journal provisions in terms of the signature of the presiding officers come into play as well.
- 02:40:57 Ms. Fox said that there is no way to enforce this rule if the Legislature is no longer in session.
- 02:41:05 Sen. Buttrey said he would be happy with the 5 working days after the Legislature sine die, and suggested making it "must" instead of "may" and putting in "by the 90th day, the bills must be a) enrolled; b) be clerically corrected; c) signed by the presiding officers; and d) be delivered to the governor or the secretary of the state by whatever day or by sine die, whether the bill is signed or not.
- Mr. Everts said that the signature is something he needs to look into legally in terms of authentication by the presiding officers and also in conjunction with the journal requirements.
- Sen. Buttrey asked for the ability to bring up this amendment up at the October meeting which would give Mr. Everts time to research.
- Sen. Thomas thinks that is a good idea.
- 02:42:59 Sen. Buttrey requested that the changes to the rules made by the Rules Subcommittee on August 22, 2018, not be acted on at the full Council's meeting on August 23, 2018.
- 02:43:30 Rep. Eck asked that the discussion on the amendments to the sexual harassment policy in the Joint Rules be delayed until the October meeting and voted on in the November meeting.

ADJOURNMENT

- 02:44:50 Sen. Thomas adjourned the meeting at 3:25 p.m.