

Council Senate Members

VICKI COCCHIARELLA--Vice Chair
BOB KEENAN--Chair
GREGORY BARKUS
KELLY GEBHARDT
DAN HARRINGTON
MICHAEL WHEAT



Council House Members

BOB BERGREN
ROY BROWN
MARGARETT CAMPBELL
DENNIS HIMMELBERGER
MICHAEL LANGE
DAVE WANZENRIED

Montana Legislative Council
PO BOX 201706
Helena, Montana 59620-1706
(406) 444-3064
FAX (406) 444-3036

MINUTES

March 24, 2006

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, Vice Chair

SEN. GREGORY BARKUS
SEN. KELLY GEBHARDT
SEN. DAN HARRINGTON

REP. BOB BERGREN
REP. ROY BROWN
REP. MARGARETT CAMPBELL
REP. DENNIS HIMMELBERGER
REP. MICHAEL LANGE

MEMBERS EXCUSED

SEN. BOB KEENAN, Chair
SEN. MICHAEL WHEAT

REP. DAVE WANZENRIED

STAFF PRESENT

Lois, Menzies, Executive Director, Legislative Services Division (LSD)
Gregory Petesch, Legal Director, LSD
Karen Berger, Financial Services Manager, LSD
Dawn Field, Legislative Secretary, LS0

AGENDA & VISITORS' LIST

Agenda, [Attachment #1](#).
Visitors' list, [Attachment #2](#).

COMMITTEE ACTION

The Legislative Council:

- approved the September 22, 2005, minutes, as written;
- approved the request to expand the use of audio minutes for session committees;
- approved drafting a bill to correct the codification issues connected to HB 671 and SB 285;
- voted to proceed with all of the potential budget proposals for the 2009 biennium; and
- approved granting authority to the chair or vice chair of Legislative Council to act on electronic polls taken by Council members.

CALL TO ORDER AND ROLL CALL

SEN. COCCHIARELLA called the meeting to order at 9:05 a.m. The secretary noted the roll ([ATTACHMENT #3](#)). The September 22, 2005, minutes were approved as written by a unanimous voice vote.

CONSULTATION ON PROPOSED PROPERTY TRANSFER FROM DEPARTMENT OF CORRECTIONS (DOC) TO JEFFERSON COUNTY

SEN. COCCHIARELLA cautioned those present that the Legislative Council has no decision making authority regarding land transfers. The Council may question or make comment on a proposal, but the final authority lies with the Board of Land Commissioners.

Greg Petesch, Legal Services Director, LSD, said that on the surface, the proposed land transfer appears straight forward. However, upon further consideration, certain questions were raised.

The first question relates to the DOC's jurisdiction over the land proposed to be transferred. In 2001, the governor issued an executive order granting the DOC jurisdiction over the land that was formerly used by the Montana Developmental Center, which was to be transferred to the Department of Health and Human Services (DPHHS) under an agency reorganization. Mr. Petesch questioned whether the executive order conflicts with 2-15-132, MCA. This law provides that the department that succeeds to all or part of the functions of an agency under a reorganization (i.e., DPHHS) also succeeds to the rights to all real and personal property.

The second question concerns the appropriate statute under which the property is being transferred. The Department of Natural Resources and Conservation (DNRC) is transferring the property under the authority of 77-2-351, MCA. However, Mr. Petesch stated that the transfer may be more appropriately covered under 77-2-302, MCA, which pertains to the disposition of former institutions.

The third question concerns a possible mortgage on the property proposed to be transferred. In 1991, when the Legislature authorized the remodeling and renovation of the Montana Developmental Center, the Legislature also authorized a \$10 million loan to cover the costs and a 30-year mortgage on the property. Mr. Petesch questioned whether the property proposed to be transferred to Jefferson County is subject to that mortgage.

Mr. Petesch noted that he identified these issues this week but there has not been enough time to address them.

Tom Butler, Trust Lands Legal Counsel, DNRC, said that he only recently became aware of the mortgage issue and said the DNRC will determine if there is a conflict before moving forward with the land transfer. He said he has examined the underlying deeds to the land and is of the opinion that the land is sovereign land and not subject to the restrictions that trust lands are. He said Mr. Petesch did raise an important point regarding the possible conflict between state statute and the governor's executive order regarding jurisdiction of the property. Mr. Butler said that before the land transfer is brought before the Land Board, the DNRC will thoroughly research all of the concerns and be satisfied that the legal footing for the transfer is solid.

SEN. COCCHIARELLA asked for a definition of sovereign land. Mr. Butler said that sovereign land is land owned by the State of Montana but not dedicated to a specific purpose or held in a trust for a specific use.

SEN. COCCHIARELLA asked to discuss the history of the ownership of the property. Mr. Petesch related how the property came into state ownership in the early 1900s and its history as the Montana Developmental Center, and said that he had determined that control of the property was given to the DOC in 2001. He said he obtained his information from the DNRC.

Valerie Wilson, Attorney, (DOC), explained that the DPHHS has jurisdiction of approximately 20 acres on the north side of the Boulder River and the DOC has jurisdiction of approximately 1,000 acres on the south side of the Boulder River. The DOC gained jurisdiction of this property when a governor's executive order transferred administrative oversight of the property from the Department of Institutions to the DOC and has already completed several transfers of property to Jefferson County for various uses.

Ms. Wilson said that this is the first she has heard of the mortgage issue and that adjustments will have to be made to the property transfer proposal if it is determined that property under the jurisdiction of the DPHHS is involved.

SEN. BARKUS asked if the State reimburses Jefferson County for property taxes. Ms. Wilson said that she did not know. She indicated to the Committee members that a Jefferson County Commissioner sitting in the audience was shaking his head "no". SEN. BARKUS asked if Riverside, Aspen, and the Montana Development Center facilities are privately or publically owned institutions. Ms. Wilson said that the Montana Developmental Center and the Riverside Youth Facility are state-owned facilities and that Aspen is a private, non-profit organization which leases property from Jefferson County.

Public Comment

Tom Harrington, Jefferson Local Development Corporation (JLDC), said the primary duty of his organization is to promote economic development in the county, which is essential for the well-being of the community. He said he is in favor of the proposed land transfer because the proposed methamphetamine treatment center will provide good employment opportunities. He acknowledged that there may be a small amount of opposition from some citizens but said that he thought the majority of the community fully supports establishing the treatment center in Boulder. He pointed out that the Aspen youth facility was recently acquired by Youth Dynamics, Incorporated, in Billings.

Mike Rupert, CEO, Boyd Andrew Community Services, said that Boyd Andrew is the entity that wants to build and operate the methamphetamine treatment facility on the land being proposed for transfer. He provided background information on the Boyd Andrew program and explained that providing corrections and chemical dependency treatment is a mainstay of the program.

Chuck Notbohm, Jefferson County Commissioner, said that to his knowledge, the State is not reimbursing Jefferson County for taxes but that he would check to make certain. He stated that he is in support of the land transfer and that it would provide economic benefit to Jefferson County.

Sen. Dave Lewis, Helena, SD 42, said that as a board member of Boyd Andrew Community Services, he is in strong support of the land transfer and methamphetamine treatment program.

Bob Marks, Board of Directors, Jefferson Local Development Corporation, spoke regarding the possible mortgage issue. He said if it is determined that this property is under the jurisdiction of the DPHHS, the proposed transfer may have to be revised to reflect this. He testified that the property exchange is an opportunity to preserve historical structures that have been abandoned by the State and to provide employment for people in an economically depressed area.

Harold Stepper, Jefferson County Planner, urged support of the transfer, saying that this is a win-win situation because Montana must address a growing problem of methamphetamine addiction and Jefferson County needs the economic development.

Vance Goyins, recovering meth addict, Helena, stated that he has been incarcerated at both the state penitentiary in Deer Lodge and a prerelease center in Helena. Mr. Goyins testified from his personal experience that the prerelease setting provided very effective treatment. He urged support of the land transfer, saying that meth abuse is reaching epidemic proportions in Montana and that treatment programs, such as the one proposed by Boyd Andrew, are an absolutely necessary tool to combat this problem.

Keven Sandoval, recovering addict, Helena, testified that he has been able to remain drug and alcohol free since 2000 because of the treatment programs he has participated in. He also urged support of the land transfer, saying that the treatment program he completed changed his life.

Input from Council Members

SEN. COCCHIARELLA, REP. LANGE, and REP. CAMPBELL all agreed that the discussion of this issue was important for the Council to participate in. SEN. COCCHIARELLA asked the

DNRC to carefully investigate the issues raised in the discussion and to not make a decision regarding the land transfer until the DNRC has resolved all concerns to its satisfaction.

AUDIO COMMITTEE MINUTES: EXPANDED FOR 2007 SESSION TAPE 1 - SIDE B

Lois Menzies, Executive Director, LSD, reviewed the purpose and time line of the audio minutes pilot project, saying that its original purpose was to create an accurate and timely record of committee meetings and to create greater public access to the legislative process through audio streaming. She said that House and Senate staff have developed a proposal to expand the use of audio minutes for the 2007 legislative session. Ms. Menzies asked Steve Eller to provide a comparison of summary minutes and audio minutes and to also demonstrate how audio minutes are accessed via the Legislative Branch website. Ms. Menzies said it was important that the Council see both forms of minutes before making a decision.

Steve Eller, Computer Systems Manager, Office of Legislative Information Technology, LSD, guided the Council through a visual demonstration of how audio minutes may be accessed by legislators, staff, and the public. He also discussed the differences in formatting between summary committee minutes ([EXHIBIT #1](#)) and audio committee minutes ([EXHIBIT #2](#)).

Marilyn Miller, Chief Clerk, House of Representatives, said that audio minutes include everything required by law for official minutes and that summary minutes, because of the lack of experienced and knowledgeable secretarial staff, are difficult to prepare. Ms. Miller proposed that Legislative Council approve the use of audio minutes for as many committees as can be accommodated for the 2007 session, with the exception of the subcommittees. She said it is her opinion that the time has come for this step to be taken and that while there may be some technological glitches encountered along the way, they will be addressed and overcome. She recommended that audio recording of the six subcommittees be delayed until all six could be done simultaneously.

REP. BROWN asked what the time limit and procedure is for retaining audio stream records. Ms. Miller said that the records will be maintained indefinitely. Steve Eller said he is researching the long term formatting for audio files and that currently, there are no legal time requirements designated for retention of audio files. Another issue that will have to be addressed is rapid technological advances and how those may affect formatting and storage.

Bill Lombardi, Secretary of the Senate, said he is in full support of the proposal. He said the technological issues can be worked out, and he urged the Council to approve the proposal.

SEN. GEBHARDT asked how much money was saved by using audio minutes. Mr. Lombardi said that fewer committee secretaries were hired for the 2005 legislative session, but that he didn't have an exact figure on how much money was saved.

Ms. Menzies said it is the intent of LSD to preserve the audio minutes indefinitely. She explained that the minutes are currently stored on a server but will eventually have to be downloaded into another format for long term preservation, but the idea is to make them available for as long as possible.

SEN. GEBHARDT asked how soon the audio minutes were available on the Internet. Ms. Menzies said that the recording was not posted until it could be linked with both with the

meeting log and scanned exhibits. She said that it took several days to a couple of weeks for that process to be completed.

SEN. BARKUS asked what the process will be for a committee chair to sign audio minutes. Ms. Menzies said the process will remain the same as it has been.

REP. BROWN asked, regarding a constituent complaint that exhibits were either missing or mislabeled and that the time stamp was off in audio minutes, how closely the minutes are reviewed by staff to ensure accuracy. Ms. Miller said that she tracks House committees carefully and that there is a procedure in place to review minutes for accuracy. She said that the key to creating accurate minutes will be to provide training for committee chairs, so that they are aware of the procedures that must be followed, such as asking people for the proper spelling of their names or asking that copies of exhibits be given to the committee secretary.

REP. BROWN asked if audio or video tapes are admissible in court as evidence in determining legislative intent. Mr. Petesch said that a court would require a transcription of a tape before allowing it to be entered as evidence.

REP. CAMPBELL asked for an explanation of a committee chair's duties, regarding review and approval of minutes. SEN. COCCHIARELLA said as a committee chair, she reviews the minutes log for accuracy. Ms. Miller said the typed minutes are the official minutes and if approved by the chair, become the official record.

Ms. Miller recommended hiring two secretaries for every three committees, with one secretary covering the morning class one committee meetings and one secretary for the class two and three committees meetings in the afternoon.

SEN. COCCHIARELLA asked how the expansion project will be funded. Ms. Miller said that it will be paid for from savings and the existing budget. Ms. Menzies said that much of the infrastructure is in place and that only minimal equipment purchases will be necessary. **TAPE 2 SIDE A** She said that the existing budget will be used to get as much of the proposal done as possible.

SEN. BARKUS asked if there is a backup system in the event of system failure. Ms. Menzies said that steps are taken to create backup information and explained several of the measures that are in place.

SEN. GEBHARDT **moved** to approve the request to expand the use of audio committee minutes during the 2007 session. The motion **passed unanimously on a voice vote**.

UPDATE ON GENERAL FUND REVENUE

Terry Johnson, Principal Fiscal Analyst, Legislative Fiscal Division (LFD), presented a Power Point version of his general fund revenue update (**EXHIBIT #3**). He also provided copies of the full report (**EXHIBIT #4**). Mr. Johnson discussed:

- an overview of aggregate general fund revenue;
- selected revenue source data comparing individual income tax, corporate income tax, property tax, and oil and gas production tax;

- underlying economic factors, such as wages and salaries, capital gains income, and other categories; and
- the projected FY 2006 balance of \$227.8 million.

Committee Questions

SEN. HARRINGTON asked why crude oil prices have spiked. Mr. Johnson said that it is due to the limited capacity of the pipelines and increased production occurring in Canada. SEN. COCCHIARELLA said that refineries are also operating at capacity.

REP. HIMMELBERGER asked why audit collections have decreased. Mr. Johnson said that the Legislative Finance Committee (LFC) questioned Director Bucks about audit collections. Director Bucks reported that the decrease was due to the conversion process to the new tax collection system and predicted that audit collections would increase once the new system is fully implemented.

REP. LANGE asked Mr. Johnson to notify the Council immediately of any rulings on the workers' compensation cases. Mr. Johnson said that LFD staff is following the cases very closely and that information would be disseminated as soon as it is received.

TAPE 2 - SIDE B

REP. LANGE confirmed that the Billings refineries are operating at peak capacity and noted that as the state begins to rely more on oil revenue, it is important that legislators understand that refining capacity limitations have a direct fiscal impact on state revenues. Mr. Johnson said that Rep. Lange made an important point. He said that recent fires at Denver refineries also factor into the issue and shows how vulnerable Montana is to circumstances out of the state's control.

RECENT COURT CHALLENGES TO STATE STATUTES

Valencia Lane, Staff Attorney, LSD, discussed her March 13, 2006, report outlining recent court challenges to state statutes ([EXHIBIT #5](#)) and an update on two cases involving the Department of Environmental Quality (DEQ) ([EXHIBIT #6](#)).

UPDATE ON ACTION ITEMS IDENTIFIED DURING 2005-2006 INTERIM PLANNING SESSION

Television Montana (TVMT) Update -- Stephen Maly, Executive Director, Helena Civic Television, introduced Sean O'Donnell, Bresnan Communications, and said that Mr. O'Donnell would be available to answer technical questions regarding Bresnan's connection to TVMT. Mr. Maly's presentation and update ([EXHIBIT #7](#)) included:

- the TVMT vision statement;
- the goals and objectives;
- the history of TVMT and current status;
- available options and recommendations;
- other state government beneficiaries; and
- Montana Channel programs.

TAPE 3 - SIDE A

SEN. HARRINGTON asked for further discussion regarding the broadcasting equipment acquired by Carroll College when the Omega TV deal collapsed. Mr. Maly thought that Carroll College plans to sell the equipment.

REP. HIMMELBERGER asked for an estimate of what it would cost to purchase the equipment from Carroll College. Mr. Maly said it is valued at about \$320,000 but that Carroll would sell it for about \$200,000 because some of the equipment was in need of repair and because of stipulations attached by Omega TV. He said HCTV had considered buying the equipment, but was hesitant to purchase equipment that may be in need of extensive repair.

REP. HIMMELBERGER asked for Mr. Maly's opinion on whether broadcasting equipment should be placed at the Capitol versus the HCTV facility. Mr. Maly said if equipment is purchased by the state, the equipment should be placed in state-owned facilities, even though it may be easier and cheaper to place it at the HCTV facility.

SEN. COCCHIARELLA asked Mr. Maly to report back to the Council after his discussion with Senator Burns. She said no decision would be made until more information is available.

REP. HIMMELBERGER asked who Mr. Maly is proposing to purchase the equipment. Mr. Maly said that he wasn't certain who should be the purchaser. He discussed the advantages and disadvantages of owning equipment and which agency would oversee the operation, if state owned. He said he would relate to Senator Burns that the State has provided \$1 million of funding and would like federal support.

SEN. COCCHIARELLA asked if the budget figures in the proposal were for the biennium. Mr. Maly said that they were for the biennium.

REP. CAMPBELL said that she was in support of the HCTV proposal because it would greatly improve access to information for constituents living in eastern Montana.

SEN. BARKUS asked if there would be restrictions for privatizing the operation. SEN. COCCHIARELLA said she didn't think there would be any restrictions and she also endorsed the idea of co-sponsoring a donor's conference with the Governor.

REP. LANGE said, regarding Mr. Maly's three recommendations listed in EXHIBIT #7, that more concrete information is needed before the Council could make a decision. SEN. COCCHIARELLA said that this issue would be placed on the next meeting agenda and that by then, more specific recommendations would be available. She suggested that two Legislative Council members discuss this issue with Governor Schweitzer, including the possibility of co-sponsoring a donor's conference. She also asked Mr. Maly to prepare a spreadsheet of options for the Council to review at the next meeting. SEN. BARKUS asked to explore the possibility of private investors. SEN. COCCHIARELLA appointed SEN. HARRINGTON and SEN. BARKUS to meet with the Governor to discuss the proposal.

Fiscal Note Work Group Update

REP. LANGE reported that a work group meeting was held on March 9 to discuss how the process of fiscal notes could be improved. The working group reviewed completed surveys with Jon Moe, Fiscal Specialist, LFD, and discussed options for reform. REP. LANGE discussed a draft copy of the options identified by the working group (EXHIBIT #8). He said that the next

work group meeting may be held in conjunction with the Legislative Fiscal Committee in June, 2006.

REP. BERGREN commented that an amendment can significantly affect a fiscal note and asked if the logistics of how to keep a fiscal note current with an amended bill was discussed. REP. LANGE said that issue was considered and said there are options for legislator training to help with this. The work group will examine each recommendation to see how it could possibly affect rules, statute, legislators, and staff. REP. LANGE said he would continue to report to the Council and the Legislative Finance Committee on the progress of the fiscal note working group.

Information Technology Update

Ms. Menzies noted that during the Council's planning session, members agreed to push forward with technology improvements within the Legislative Branch. She said that staff would like specific direction on how the Council would like to proceed on this issue. She reminded the Council that it ranked this issue as its third highest priority at the planning session. She asked Hank Trenk to review what technology is currently available and follow up with a discussion to gather ideas from the Council. The ideas will be presented to the Computer System Planning Council, which would design and present a strategic technology plan to the Council at the June meeting. **Hank Trenk, Director, Office of Legislative Information Technology, LSD,** discussed the IT services offered in the 2005 session and the differentiation between services offered to senators and representatives ([EXHIBIT #9](#)).

TAPE 3 - SIDE B

REP. HIMMELBERGER asked for an explanation of the acquisition process for desktop computers. Mr. Trenk said that the Legislative Branch policy established a four-year replacement cycle and that every two years, approximately half of the computers are replaced. REP. HIMMELBERGER asked if the acquisition process is opened up for bid. Mr. Trenk said that the State bids on a term contract and that three vendors are on the term contract: Dell, HP and IBM. Purchases are made from the term contract.

REP. HIMMELBERGER said that he would like every legislator to have a laptop in order to decrease or eliminate the need to print paper copies of bills. He asked for a cost comparison of reducing or eliminating paper copies of bills to the purchase price of laptop computers for legislators.

SEN. COCCHIARELLA thought that computers should be built into legislator desks.

Mr. Trenk said that the mobility of a laptop would be lost if computers were built into legislator desks. He said that a printing cost study was done several years ago. At that time, printing costs for a session were approximately \$300,000. Since then, printing costs have declined steadily because of Internet access, so the cost savings would not be significant enough to justify purchasing laptop computers.

Mr. Trenk said that during the 2005 session, Rep. Gallik went "paperless". He demonstrated for the Council how Rep. Gallik was able to use the LAWS system to access bill information. He also briefly discussed measures other states have taken to increase electronic availability of

bills during first, second, and third reading, as well as amendments, the consent calendar, and other relevant information regarding a bill.

SEN. GEBHARDT asked what happens when there are problems accessing the Internet. Mr. Trenk said that a redundancy plan would be designed into a system to allow for glitches and that paper copies could be made in order to keep the Legislature functioning.

SEN. COCCHIARELLA asked if technology is available that would allow legislators to amend a bill from their desk. Mr. Petesch said that was not feasible.

REP. HIMMELBERGER asked how many state legislatures are paperless. Mr. Trenk said that a very small number of states have made the decision to go paperless. Most states are similar to Montana and are moving toward that as technology progresses. He discussed the obstacles of being a paperless legislature, saying that the biggest hurdle is being able to provide the amount of equipment needed to outfit legislators and staff. He said that staff is mindful of how to improve the legislative web pages in order to improve access by legislators and the public.

SEN. COCCHIARELLA asked Mr. Trenk to pursue designing an improved web page for easier access to bills. Mr. Trenk said that the design process has already started and that a rudimentary system could be in place for the 2007 session.

REP. LANGE asked if other state agencies are on the same replacement cycle as the Legislative Branch. Ms. Menzies said that the state standard for replacing computer equipment is a three to five year cycle. REP. LANGE asked if it would be possible for computers from other agencies that are scheduled to be replaced could be used by the Legislature before releasing them. Mr. Trenk said that the reason machines are phased out is because they are obsolete and that there would very likely be problems in using them. REP. LANGE said that he would like to know if this is a possibility.

REP. LANGE asked if having some type of a template that legislators could use to send amendments or bill changes to staff would be of benefit to the process. Mr. Petesch said yes, but that can be handled now through email. A concern is if the legislator needs a floor amendment and the staffer is not at his or her computer, it could hold up the process. Having a paper copy of an amendment can be helpful in certain situations.

SEN. BARKUS said that most legislators either upgrade or purchase computers for personal or business use. He asked if the State could establish compatibility standards and provide a purchase allowance if a legislator provided his or her own laptop. Mr. Trenk said that would be a good way to solve several problems, such as what to do with the laptops when the session is over and the complicated policy and procedural issues that come with state-owned computers. It would also solve the problem of getting used to a new computer because the legislator would be able to use what is already familiar.

REP. BROWN asked, if a legislator accepts a stipend towards the purchase of a laptop, would that make the laptop subject to access by the public. Mr. Petesch said there are greater privacy protections for a privately-owned machine but if a request was made for a document that is considered public, such as an email between the legislator and LSD staff concerning a bill, the document would have to be provided. Any private or personal document or correspondence would remain protected. Mr. Petesch explained that in the case of a request for access to a

legislator laptop, any private information on the machine would be redacted or blacked out before the public documents are released.

ATTORNEY GENERAL'S OPINION REGARDING CODIFICATION OF MOTOR VEHICLE LAW

Mr. Petesch said as the Code Commissioner, he is seeking input from the Council regarding this issue. He reviewed that during the 2005 session, two massive motor vehicle law revisions were passed - HB 671 and SB 285. Mr. Petesch said that there were conflicts between the two bills and that coordination instructions had to be drafted to ensure that they would work together in the event both bills passed. He explained that not all of the sections of the bills were passed, making codification extremely difficult. He discussed the codification process and said that he codified only the parts of the bill that became effective. The Office of Budget and Program Planning (OBPP) communicated to him that the fiscal note would be incorrect if the bill was codified as Mr. Petesch codified it. The Department of Justice (DOJ) also contacted Mr. Petesch and said that as codified, the motor vehicle fee revenue collected by the DOJ would be affected, causing a shortage of funding for the computer system, which the bill was premised on. The DOJ requested an opinion from the Attorney General who ruled that the law, as codified, is erroneous. Mr. Petesch said that his belief is that legislative action is needed to rectify this situation.

TAPE 4 - SIDE A

SEN. HARRINGTON **moved** to draft a bill to correct the codification issues connected to HB 671 and SB 285.

REP. BROWN pointed out that the AG opinion could be challenged in court. Mr. Petesch said that is the prerogative of the Council but cautioned that the process would be a very lengthy one. He said he also believed that it was not the intent of the 2005 Legislature to not impose motor vehicle fees and that this was a legislative error which should be fixed by the legislature.

The **motion passed** on a unanimous voice vote.

SELECTION OF CAUCUS DATES, NEW LEGISLATOR ORIENTATION, LEGISLATOR CONTINUING EDUCATION, AND LAW SCHOOL FOR LEGISLATORS

Ms. Menzies presented the proposed dates for the upcoming caucus, new legislator orientation, and continuing education ([EXHIBIT #10](#)). She noted that staff has suggested that new legislator orientation be scheduled before the caucuses because this would allow new legislators to better understand their role and responsibilities as legislators before participating in a caucus. She asked the Council for its input.

REP. LANGE asked, regarding the rules workshop scheduled for January 2, 2007, how the rules process will work, in the presumption of a House majority. Mr. Petesch said the rules committee would be appointed after caucus, and once named, would meet prior to session to recommend changes to House rules. He predicted that many of the provisions made in the 2005 session to deal with the tie situation would be proposed to be eliminated. Draft rules would be approved and adopted by the House, once convened.

REP. LANGE asked if the new presiding officer-elect would have to operate under the 2005 rules regarding set-up of committees. Mr. Petesch said the 2005 rules would remain in effect until the new House is seated.

REP. BERGREN said if that is case, then no committee assignments can be made until after the first day of session. Mr. Petesch said unless the elected caucus leadership could agree to a potential rules committee meeting for the purpose of drafting proposed rules for the House, the first week may be spent drafting rules, as happened in 2005.

REP. LANGE said that is his concern and suggested setting aside time to deal with that issue.

Mr. Petesch said another issue to consider is what happens if a third-party legislator is elected. Neither current rules nor the statutes recognize third parties, and rules may have to be drafted to deal with that possibility.

REP. LANGE asked Mr. Petesch to draft recommendations for addressing these issues.

SEN. COCCHIARELLA suggested combining committee chair training with the pre-session rules committee meetings. She agreed with REP. LANGE's concern about the House rules issue and said that an agreement must be reached between leadership before committee appointments could be made.

REP. LANGE said that regardless of what party is in the majority, it would behoove all parties to agree to a time after elections to have a rules discussion. He said he envisioned drafting a Memorandum of Understanding (MOU) between the parties that would allow for the process of selecting committee chairs and making committee appointments to move forward. He asked Mr. Petesch to assist in drafting the MOU.

REP. HIMMELBERGER said it is his opinion that it works well to have caucuses before new legislator orientation and expressed reservation about changing the dates.

The Council discussed several potential scheduling scenarios and noted that a late election day and early Thanksgiving holiday complicated the matter. After discussion, it was agreed that the proposed dates would remain the same but the order of events may be changed.

Ms. Menzies presented the proposed schedule of programs and events for the 2006 new legislator orientation ([EXHIBIT #11](#)) and asked the Council for input.

REP. LANGE asked, in the event of fiscal note revision, that training time be allowed for that. Ms. Menzies said that allowances would be made to include that, if needed.

2009 BIENNIUM BUDGET PREPARATION

Ms. Menzies discussed the 2007 biennium budget summary and the 2009 biennium budget development ([EXHIBIT #12](#)).

TAPE 4 - SIDE B

REP. BROWN said that he has been frustrated in the past by the lack of funding for legislators to participate in programs such as the National Conference of State Legislatures (NCSL) or

Pacific NorthWest Economic Region (PNWER). He recommended that as the Legislative Council, a decision should be made to prioritize funding for these activities and that it be adhered to.

Ms. Menzies said that REP. BROWN provided her with the perfect segue into the next agenda item of potential 2009 biennium budget items ([EXHIBIT #13](#)). Ms. Menzies reviewed the list with the Council and said that more specific cost estimates would be provided for the June meeting. She asked the Council members to indicate which of the potential budget items they wished to pursue.

SEN. GEBHARDT asked what purpose a parliamentarian would serve and if the position would be filled by House or Senate members. Ms. Menzies said this proposal was to have a staff member who is well versed in rules serve as parliamentarian and whose main purpose would be to assist legislators in resolving disputes.

Ms. Menzies said that she would like to have the Council's permission to continue refining the proposals, including providing cost estimates. Additionally, if there is an item on the list that the Council does not wish to pursue, Ms. Menzies asked that she be notified of that.

SEN. HARRINGTON said that funding used to be provided for participation in programs such as NCSL and Council of State Governments and that he feels they are very worthwhile meetings for legislators to attend. He said it is important for Montana to be represented at regional meetings and supported allocating funding, such as providing an allowance for each legislator.

REP. HIMMELBERGER concurred with SEN. HARRINGTON, saying that not participating results in a loss of legislative knowledge and that participation in any educational opportunity should be encouraged.

REP. HIMMELBERGER said he also supports the idea of strengthening public awareness of legislative issues. He suggested creating a subcommittee to explore the remaining issues and set priorities for further action.

REP. LANGE **moved** to proceed with all of the proposals on the list, including the last seven items. He asked the staff to prepare cost estimates for each item.

SEN. BARKUS thought that including the entire list may be too much and noted that the last seven items were just suggestions. He asked if the staff would have time to prepare options for those items. Ms. Menzies said that she would attempt to do so and that perhaps some of the items could be combined.

REP. LANGE's motion **passed on a unanimous voice vote.**

OTHER BUSINESS

Ms. Menzies introduced Leslie Bergman, Human Resource Technician, and Tim Montgomery, Information Technology Network Technician, as new LSD staff.

Ms. Menzies also reported that the Legislative Branch passed a financial compliance audit with a clean fiscal bill of health and commended the Financial Services staff of Karen Berger, Lenore Adams, Kelly DaSilva, Jen Simmons, and Leslie Bergman for the excellent results.

Ms. Menzies updated the Council on the status of the broadband pay plan proposal. She said that progress is being made in developing the plan and that it should be ready for implementation by July 1, 2006, if approved by the Legislative Council. She said that the Legislative Finance Committee and the Legislative Audit Committee must also concur before implementation can occur. The Finance Committee and the Audit Committees are scheduled to meet after Legislative Council and will act on the pay plan proposal at that time.

Ms. Menzies proposed for the Council's consideration a procedure for approving legislator requests for financial support to participate in interstate activities during the interim. In the past, these types of requests have been approved by email and Ms. Menzies said this isn't the appropriate avenue to handle these requests. Ms. Menzies suggested that this responsibility be delegated by the Council to the chair. She explained that Council members could be polled and the chair would then have the authority to approve the request.

SEN. GEBHARDT **moved** to grant authority to the chair of the Legislative Council to act on electronic polls taken by Council members. SEN. HARRINGTON asked to include the Council vice chair. SEN. COCCHIARELLA asked Mr. Petesch to address SEN. HARRINGTON's request and also the rules on attendance.

Mr. Petesch said the motion could be phrased to allow the vice chair to act in the absence of availability.

SEN. GEBHARDT amended his motion to include the vice chair to have authority to act on electronic polls of Council members.

The motion **passed on a unanimous voice vote.**

REP. LANGE asked to discuss an issue involving the Department of Commerce and also requested that this issue be addressed again at the June meeting. REP. LANGE said it has been brought to his attention that legislators have experienced difficulty in requesting data and communicating with the staff of the Department. REP. LANGE read an email generated from Angela Nelson of the Department and sent to all Department of Commerce staff, advising staff to immediately report information requests or contacts initiated by a legislator or legislative staff to their division administrator, who would then report the contact to Marty Tuttle and subsequently to Director Tony Preite. The email instructed staff to explain the communication, to include any response expected back by the legislator or legislative staff, and any response provided by Department staff. REP. LANGE said the email also included information requests by the press or media.

REP. LANGE said that legislators are concerned that information may be being filtered or restricted. He said in the interest of open government, a legislator should be able to contact an agency and be provided necessary information without a filter or at least be informed of the rules of procedure that are being applied by the agency. He asked that the Department of Commerce and the Governor's office be invited to discuss this issue at the next Council meeting.

SEN. COCCHIARELLA said that the Economic Affairs Interim Committee is studying licensure by the Department of Labor and Industry and that staff and committee members have experienced resistance when requesting data and information. She wondered if department

staff could be hesitant to communicate with legislators or legislative staff for fear of reprimand or retribution. She agreed that the legislators and legislative staff need to know if there is a policy or rules causing this problem and that a discussion is needed to clarify the issue.

REP. BERGREN commented that he has had state employees from several different agencies ask to meet him off site and after hours because they had been instructed not to have discussions with legislators. He said he does not wish to sound accusatory but agreed that a discussion is needed. If there is a procedure providing for continuity of information, that is a justifiable policy. But if information is being filtered, the Council needs to know why.

REP. LANGE agreed that at this point, no one is accusing anyone of withholding information but that this matter does need to be investigated. The issue is that the Legislative Branch doesn't know what types of requests have been made by legislators and how they were responded to. It would be good to have a clear understanding of what is happening.

TAPE 5 - SIDE A

REP. BROWN said that all involved parties - legislators, the press, and all state agencies - should be invited to participate in the discussion.

SEN. BARKUS commented that while it may seem heavy-handed the Governor has the right to run his staff this way; however, it should be known to the public and to legislators.

SEN. COCCHIARELLA closed the meeting for purposes of completing an annual performance appraisal for the Executive Director.

The meeting was adjourned. The next meeting of the Legislative Council is scheduled for June 5, 2006, at the State Capitol in Helena.
CI0429 6144dfxa.