

Council Senate Members
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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

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MINUTES

September 22, 2005

Room 152, 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
REP. DAVE WANZENRIED

COMMITTEE MEMBERS EXCUSED

SEN. BOB KEENAN
SEN. MICHAEL WHEAT

STAFF PRESENT

Lois Menzies, Executive Director, Legislative Services Division (LSD)
Greg Petesch, Code Commissioner/Director of Legal Services (LSD)
Kip Davis, Proofreader/Data Entry, Acting Council Secretary (LSD)

Agenda

Agenda, [Attachment #1](#).

COMMITTEE ACTION

The Legislative Council approved:

- Allocation of an additional \$31,000 to the Quality Schools Interim Committee from the discretionary funds to address issues of statewide importance.
- Funding for staff travel to the Legislative Council on River Governance meeting.
- A price for the 2005 Annotations and authorized the Code Commissioner to adjust the price proportionately according to bids received.
- The reappointment of the current Uniform State Law Commissioners from Montana.
- Adoption of the Legislative Council Rules of Procedure.
- Assignment of the State-Tribal Relations Committee as the designated committee for receiving reports on the implementation of tribal secured transaction commercial codes.
- Depositing LSD 2003 feed bill reversion funds into the information technology reserve account.

CALL TO ORDER AND ROLL CALL

SEN. COCCHIARELLA called the meeting to order at 1 p.m. The secretary noted the roll; SENS. KEENAN and WHEAT were excused.

INTRODUCTION OF NEW STAFF

Lois Menzies, Executive Director, Legislative Services Division (LSD) introduced a new LSD staff member:

- Daryle Bowles - Network Administrator, Office of Legislative Information Technology, LSD.

APPROVAL OF MINUTES OF MEETING

The Council approved the minutes of the meeting as written.

QUALITY SCHOOLS INTERIM COMMITTEE UPDATE

SEN. LEWIS presented to the Council the Quality Schools Interim Committee's request for an additional \$31,000, which would be used to pay consultants' fees and to finance the cost of weekly meetings for the committee ([EXHIBIT #1](#)), and explained that the majority of the Committee believe the request for extra funding is justified.

SEN. GEBHARDT noted that the Committee seemed to have spent very little money to date and questioned why more was needed now. SEN. LEWIS answered that most of the money had gone to pay contractors' fees, but all of those bills have not yet been paid. The MSU

contractor bill is \$24,000 and, in order to meet weekly, the Committee needs another \$7,000 to meet expenses.

Connie Erickson, Research Analyst, LSD, offered the Council a progress report on the work of the Quality Schools Interim Committee, explaining that the Committee consists of eight legislators and three non-voting members. The Committee has been meeting regularly and will continue to do so until the court-imposed deadline of October 1. The Committee has hired two groups of consultants: R.C. Woods & Associates to provide a needs assessment and to determine the costs of providing a quality education; and MSU economists Dr. Young and Dr. Stoddard to conduct a study of teacher salaries and recruitment and retention issues. The consultants presented their preliminary findings to the Committee at the August-September meeting, with their final reports due by Sept. 30. The data collected, and funding methodologies presented, by the consultants will be used to create a new funding formula. A working group has been implemented to develop ideas, strategies, and options to present to the Committee. The working group has been meeting weekly and sessions are noticed to the public and the public is invited to comment at every work session. The Committee is using the report of the Joint Select Committee on School Funding from the 2005 session as a blueprint for the new funding formula. A significant factor of the new funding formula will be the series of entitlements based upon the educationally relevant factors in SB 152: per-student, classroom, accredited program, building operations and maintenance, special education block grants and disproportionate cost funding, transportation, capital projects, and school facility payments in order to impart some stability into the school funding system and to reflect the actual costs of a school district. The Committee and working group are currently working on the per-student, classroom, and accredited program entitlements. Another area receiving the attention of the Committee is the issue of at-risk students, especially Indian students, and the Committee is hopeful of including an at-risk factor in the funding formula to address this problem. The Committee is also investigating the issues of health insurance for school personnel and combining and simplifying school district funds. The Committee will include as many of these factors as possible in its initial efforts, and Judge Sherlock has deemed phasing-in the rest to be appropriate. All of the Committee meetings are audio-streamed statewide and televised in Helena and the Committee web page has links to all of the minutes of the meetings, both audio and written, as well as all reports, documents, and presentations made to the Committee.

SEN. BARKUS, referencing the letter from the Committee ([EXHIBIT #1](#)), asked why the important issue of teacher compensation wasn't the first thing the Committee examined. Ms. Erickson answered that, once it was determined that what the Committee actually needed was a labor market analysis, it was concluded that the Committee staff did not have the time or expertise to perform the survey and it would be better handled by a consultant. The bid R.C. Woods submitted was for the needs assessment and did not allow for the intensive data on teacher compensation the Committee desired, so the decision was made to take advantage of the state's contracting authority with the University System.

REP. BROWN commented that while the Committee had a large task to accomplish it had known from the beginning what money was available to the Committee and questioned whether the additional \$31,000 was an appropriation subject to a vote by the full Legislature. Ms. Erickson deferred to **Greg Petesch, Director of Legal Services, LSD**, who explained that the money was already appropriated: while the Joint Select Committee had received an appropriation, the Council also reserves a portion of its an appropriation for use, in a discretionary matter, on subjects of statewide importance, which can be allocated to any committee. REP. BROWN replied that since the Legislature had appropriated a certain amount of money for this Committee, the Committee should have realized that they had a budget and stayed within it. Mr. Petesch answered that the Committee had considered that, but did not feel

they could do an adequate job bringing an effective and defensible funding formula to the Legislature without the additional data provided by the MSU consultants.

REP. WANZENREID asked if the Committee was on track enough to have a proposal to present to a special session by the end of the year. Ms. Erickson assured the Council that the Committee had full intentions of having a funding proposal ready by October 1, although some parts would be phased in later. The LSD staff would begin bill drafting and public meetings would be held around the state at the end of October or the beginning of November. Any changes the Committee felt were necessary would then be made and the proposed legislation would be ready to present at a special session in December.

REP. CAMPBELL **moved** to allocate \$31,000 to the Quality Schools Interim Committee. The motion **passed** on a voice vote with Rep. Brown, Rep. Himmelberger, Rep. Lange, Sen. Barkus, and Sen. Keenan (by proxy) voting no.

UPDATE ON HJR 42 INTERIM STUDY OF PUBLIC EMPLOYEE RETIREMENT SYSTEMS

Dave Bohyer, Director, Office of Research and Policy Analysis, LSD, offered the Council an overview of the State Administration and Veterans' Affairs Committee's work on HJR 42, which is the study of the state's retirement plans that are facing an actuarially unfunded liability of \$1.2 billion. The Committee has adopted a systematic approach to conducting the study: the first phase, which is largely complete, involved gathering information involving the fundamentals of what the retirement systems are, what an unfunded liability means, and some idea of what occurred to cause the unfunded liability; the second phase was gathering and analyzing factual information concerning whether the four retirement systems cited in the resolution were indeed unsound, which they were found to be, and how much time is available to remedy the situation. The third phase is to discuss the options available, which are a one-time infusion of money or an increase in employer contributions. The fourth phase is for the Committee to decide which option or options would be most appropriate for the state to pursue and for LSD staff to begin, in November, the process of drafting legislation to implement those recommendations. The Committee plans on introducing the proposed legislation during the special session.

REP. LANGE asked if the Committee had looked at different pension plans around the country and the methods they had used to regain a sound financial footing. Mr. Bohyer answered that the Committee had looked at the plans of abutting states, as well as the other western states, but had not considered private sector pension plans. The information received from the other states is only available dating back to 2003 because many states only perform actuarial reports every few years, because of the expense involved. The other states have used a variety of approaches, with most increasing the employer's share, although some attempts have been made to reduce employee benefits or to increase the employee contributions. Some of these attempts have been successful, although others have been challenged in court because of the impairment of contract argument. In comparison with the other states, Montana's pension plans rank about in the middle in terms of benefits, vesting time, employee and employer contributions, retirement age, and years needed for full retirement.

SEN. HARRINGTON questioned whether a one-time infusion of money would actually begin to solve the problem or if it would merely prolong the problem until later. Mr. Bohyer answered that, although the idea had only been discussed briefly and with no specific amounts mentioned, any one-time infusion would help to mitigate the problem. To solve the unfunded liability would require about \$600 million.

REP. BROWN, noting that many states have experienced similar problems but have rebounded while Montana has not, asked if the Committee is looking at structural and procedural changes in how the Board of Investments handles the funds, because without changes in how they have been operating there is no guarantee that the infusion of money won't be lost in the next month to more bad investments. Mr. Bohyer explained that the Committee has found that the pension plans in other states have not rebounded and, indeed, some states are in a much worse position than Montana. In every case, they are doing what Montana is doing--investigating options and dealing with each pension plan on a case-by-case basis. The Committee is looking at some structural changes in the way the boards operate, specifically in requiring the retirements boards to meet more often with the Board of Investments, so that the expense side of the equation talks to the asset side of the equation. The Committee is not looking into how the Board makes investment decisions because the Board must follow requirements that exist under general accounting standards for public entities and must follow the prudent investor rule, which is pro forma for all public retirement systems. The standard is a equity to debt ratio of 65:35. Pension plan investments rely on a long-term strategy and the Board is confident that, long-term, they will achieve the returns they are anticipating.

SEN. COCCHIARELLA wondered when the employer contribution rate was raised. Mr. Bohyer replied that the contributions had not been raised since before 1989, which was as far back as the Committee looked. SEN. COCCHIARELLA commented that, in her memory, there was only one time that the state pension plans were not facing an unfunded liability and that this is a typical situation and questioned what were realistic numbers for this problem. Mr. Bohyer agreed that pension plans often face this situation and likened it to buying a house with a 30-year note. The Committee is looking at real numbers and the budget office has directed the retirement systems to report on the investments that are currently actuarially unsound and those reports are expected at the Committee's October meeting. The model used during the 2005 Legislative Session is one of the models the Committee will be looking at. The Committee plans to have legislation drafted and ready to be introduced during the special session.

SEN. COCCHIARELLA suggested that Carol South, of the Board of Investments, be invited to address the Council about this issue.

UPDATE ON COUNCIL OF STATE GOVERNMENTS-WEST ANNUAL MEETING

SEN. TASH told the Council that Rep. Keane and himself had been asked to attend the CSG-West Executive Committee meeting by leadership. The task of the executive committee was to appoint legislators to attend the Western Legislative Academy's upcoming class in November. There were 10 applicants from Montana, and the limited class size will permit 3 to attend. Sen. Larson, Rep. Himmelberger, and Rep. Arntzen were chosen, although the other seven applicants may be able to attend if some other states drop out. SEN. TASH explained that he was a member of the Western Water & Environment Committee of CSG-West and the Legislative Council on River Governance. Because Montana is a headwaters state, it is especially important that the state participate in discussions concerning the Columbia River, which is relevant to every constituent in this state. The next meeting on the Legislative Council on River Governance has been tentatively set for Oct. 27, and SEN. TASH said that it was critically important for Montana members to maintain their involvement for many reasons, including the potential impact on river flows and hydroelectric power generation and transmission as well as areas involving the Endangered Species Act. On a final note, SEN. TASH said that it had been useful to listen to the report by Ms. Erickson and told the Council about legislation in Congress that would propose selling state lands in the western states and allocating the money to be placed in school trust funds.

APPROVAL FOR FUNDING STAFF TRAVEL TO LEGISLATIVE COUNCIL ON RIVER GOVERNANCE MEETING

Ms. Menzies requested that the Council approve funding for an LSD staff person to attend an upcoming Legislative Council on River Governance meeting. The Council has already allocated funds to cover the costs for four Legislators to attend this meeting but, because of an oversight, the motion did not include funding for a staff member.

SEN. COCCHIARELLA noted that no single state is providing staff to the entire River Governance Council and that a LSD staff person is key to bringing the state's issues before the Council.

SEN. HARRINGTON **moved** to approve funding for an LSD staff person to attend at the Legislative Council on River Governance meeting. The motion **passed** by voice vote, with Sen. Barkus voting no.

TVMT UPDATE

Stephen Maly, TVMT, Helena Civic Television, updated the Council on the status of the Television Montana project (TVMT) and explained that Helena Civic Television is under contract with LSD to provide gavel-to-gavel coverage of the legislative sessions and interims and part of his obligation is to seek to expand this coverage statewide. While the production services are funded by the Legislature, the expansion of coverage beyond the Helena area is not. Omega TV, a private for-profit production company that had been covering and televising Montana sports, will no longer be operating because of a lack of advertising revenue and the owner is publically talking about gifting the equipment of a satellite truck to a non-profit entity, likely Carroll College. If this does occur, and if the satellite connections are made to this building and Bresnan Communications agrees to use the same downlink infrastructure that is currently in place, but unused since the sports coverage ceased, it will be possible to extend coverage of the legislative proceedings statewide. Mr. Maly told the Council that he may ask the Council for some kind of official support in the form of correspondence or conversations with officials from entities competing for statewide broadband to expedite this expansion of coverage.

UPDATE ON LEGISLATIVE PUBLICATIONS

Greg Petesch, Code Commissioner, said his reason for addressing the Council is to discuss the setting of a price for the 2005 Annotations. Bids have not been received yet, but statute provides that the sale price to the public must be set by the Council and cannot exceed cost plus 25%. The statutory deadline for publication of the codes was met, and the codification staff deserves congratulations for completing an unusually difficult codification process in a timely manner. The index is being proofed and will be at the publisher soon and in the hands of the subscribers in about 45 days. The annotations are one of the primary tasks, and statutorily mandated of the legal department and are essentially compilations of interpretations of the law and changes in the law, and include digests of all of the Supreme Court cases and Attorney General opinions, amendment notes, citations to electronic legal research systems, and pertinent law review articles. The bids for printing the annotations are due Sept. 30 and the awarding of the contract is based on the lowest bid. We are experiencing declining sales of the annotations, mostly because of the increased use of the CD-ROM, and only anticipate printing 750 sets of the annotations, down from 800 published last interim. The current price of the

annotations is \$315 and are sold on a subscription basis with 3 shipments. Mr. Petesch asked the Council to set the price at \$315 and allow him to adjust that price based upon the percentage this year's winning bid differs from the winning bid of the last interim.

REP. LANGE **moved** that the price for the 2005-06 Annotations be set at \$315, with adjustments to be made to that price in accordance with the percentage that the winning bid differs from the winning bid received during the last interim. The motion **passed** unanimously by voice vote.

APPOINTMENT OF UNIFORM STATE LAW COMMISSIONERS

Lois Menzies reviewed [EXHIBIT #2](#), explaining that the Council could reappoint the current members or accept nominations for new members.

SEN. BARKUS questioned whether anyone else had expressed interest in being appointed. Ms. Menzies answered "no".

REP. WANZENREID **moved** that the Council reappoint the current Uniform State Law Commissioners. The motion **passed** unanimously by voice vote.

ADOPTION OF LEGISLATIVE COUNCIL RULES OF PROCEDURE

Ms. Menzies reviewed the Legislative Council Rules of Procedure ([EXHIBIT #3](#)) and explained that there were no proposed changes at this time, although they can be amended at a later date.

REP. BROWN **moved** that the Rules be adopted as presented. The motion **passed** by unanimous voice vote.

DESIGNATION OF APPROPRIATE COMMITTEE TO REPORT ON IMPLEMENTATION OF TRIBAL SECURED TRANSACTION COMMERCIAL CODES (SJR 4)

Ms. Menzies reviewed SJR 4 ([EXHIBIT #4](#)) which encourages tribal governments to adopt secured transaction commercial codes, and explained that the Council is required to designate an appropriate interim committee to provide a report to the next Legislature concerning this issue. The State-Tribal Relations Committee is the appropriate forum for this action and the Committee is willing to assume this task.

SEN. HARRINGTON **moved** to assign oversight authority of SJR 4 to the State-Tribal Relations Committee. The motion **passed** unanimously by voice vote.

APPROVAL FOR DEPOSITING LSD 2003 FEED BILL REVERSION INTO INFORMATION TECHNOLOGY RESERVE ACCOUNT

Ms. Menzies reviewed [EXHIBIT #5](#), and explained that the Legislative Branch in the future will be faced with replacing some expensive, large-scale systems, such as the voting systems used in the House and Senate. During the 2005 session, the Legislature passed HB 28, sponsored

by the Legislative Council, that created a reserve account for funding major IT projects. One source of money that may be deposited into the reserve account is \$186,325 in unexpended 2003 feed bill funds appropriated for services provided during the session by LSD.

REP. CAMPBELL **moved** to approve deposit of 2003 LSD feed bill reversion funds into the Legislative Branch Reserve Account for Information Technology Projects. The motion was **approved** by unanimous voice vote.

STAFF REPORTS

Ms. Menzies offered updates to the Council on:

- 2005 Session bill statistics ([EXHIBIT #6](#) & [EXHIBIT #7](#))
- Results of 2005 session surveys ([EXHIBIT #8](#))
- Audio minutes and videoconferencing pilot projects ([EXHIBIT #9](#) & [EXHIBIT #10](#))

In regards to the videoconferencing pilot project, REP. HIMMELBERGER commented that he thinks the program has a lot of merit but there is still much to be addressed. The evening hours were especially challenging, and it was sometimes difficult for the committee chair to control the meeting and to maintain decorum.

SEN GEBHARDT feels the reason there was not more participation is that citizens had never attended a committee hearing before and if the project is continued there will be increasingly more participation from remote sites.

REP. WANZENREID said that this is a good system and a good start. An effort should be made to educate people about the system.

REP. CAMPBELL opined that, considering the isolated locations in the state, this is a very viable option and she believes the committees had the opportunity to hear from people they wouldn't have heard from otherwise. Especially because of the rural nature of this state, this program should be enhanced.

- The agency broadband pay plan proposal ([EXHIBIT #11](#))

REP. LANGE questioned how merit would be decided. Ms. Menzies explained that annual performance appraisals would be used to determine pay based on performance. She acknowledged that this determination would be the most difficult part of implementing the proposal. She noted, however, that any across-the-board salary increases approved by the Legislature would apply to all employees.

REP. BROWN expressed confusion about how less bands can help with recruitment or competitiveness. Ms. Menzies said that within the broad bands are occupational wage ranges for each position. Establishing wage ranges based upon market data should make the branch more competitive.

PUBLIC COMMENT ON ANY PUBLIC MATER WITHIN THE LEGISLATIVE COUNCIL'S JURISDICTION

There was no public comment at this time.

OVERVIEW OF TOMORROW'S PLANNING SESSION

Ms. Menzies reviewed the agenda for tomorrow's planning session. (see [EXHIBIT #12](#))

ADJOURNMENT

With no further business, SEN. COCCHIARELLA adjourned the meeting at 4 p.m.

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