



Legislative Council

61st Montana Legislature

SENATE MEMBERS

CAROL WILLIAMS--Vice Chair
JOHN BRUEGGEMAN
JEFF ESSMANN
JESSE LASLOVICH
ROBERT STORY
DAVID WANZENRIED

HOUSE MEMBERS

DENNIS HIMMELBERGER--Chair
BOB BERGREN
MARGARETT CAMPBELL
TOM MCGILLVRAY
JESSE O'HARA
MIKE PHILLIPS

COMMITTEE STAFF

SUSAN FOX, Executive Director
GREG PETESCH, Legal Division Director
DAWN FIELD, Secretary

MINUTES

March 2, 2010

Room 102, State Capitol
Helena, Montana

Please note: These minutes provide abbreviated information about committee discussion, public testimony, action taken, and other activities. The minutes are accompanied by an audio recording. For each action listed, the minutes indicate the approximate amount of time in hours, minutes, and seconds that has elapsed since the start of the meeting. This time may be used to locate the activity on the audio recording.

An electronic copy of these minutes and the audio recording may be accessed from the Legislative Branch home page at <http://leg.mt.gov>. On the left-side column of the home page, select *Committees*, then *Interim*, and then the appropriate committee.

To view the minutes, locate the meeting date and click on minutes. To hear the audio recording, click on the Real Player icon. Note: You must have Real Player to listen to the audio recording.

COMMITTEE MEMBERS PRESENT

REP. DENNIS HIMMELBERGER, Chair
SEN. CAROL WILLIAMS, Vice Chair

SEN. JOHN BRUEGGEMAN
SEN. ROBERT STORY
SEN. DAVID WANZENRIED

REP. TOM MCGILLVRAY
REP. JESSE O'HARA
REP. MIKE PHILLIPS

COMMITTEE MEMBERS EXCUSED/ABSENT

SEN. JEFF ESSMANN
SEN. JESSE LASLOVICH
REP. BOB BERGREN
REP. MARGARETT CAMPBELL

STAFF PRESENT

Susan Fox, Executive Director, Legislative Services Division (LSD)
Greg Petesch, Director, Legal Services, LSD
Karen Berger, Financial Services Manager, LSD
Dawn Field, Council Secretary, LSD

AGENDA & VISITORS' LIST

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

COMMITTEE ACTION

The Legislative Council:

- approved a tentative caucus date of November 17, 2010;
- approved December 6, 2010, for Rules Committee training and Committee Chair training;
- approved Tuesday, January 4, 2011, for Law School for Legislators;
- approved Wednesday, January 5, 2011, for Legislative Rules training;
- approved a policy to provide general guidance to LSD staff regarding use of Capitol space during business hours;
- voted to not allow after hours and weekend use of Capitol space at this time;
- approved sending a letter to leadership and members regarding the availability and use of NCSL and CSG funds for training opportunities;
- approved to change the lodging requirement to be effective at 6:30 p.m.;
- approved drafting of legislation to allow half day pay for legislators; and
- approved the Executive Director's proposed 5% budget reductions.

CALL TO ORDER AND ROLL CALL

00:00:06 REP. HIMMELBERGER reconvened the Legislative Council at 8:30 a.m. The Secretary took roll, were excused (ATTACHMENT #3).

2011 SESSION PLANNING

- **Adopt tentative caucus, training, and orientation schedule**

00:01:08 **Susan Fox, Executive Director, Legislative Services Division (LSD)**, asked members to refer to the proposed caucus, orientation, and continuing education dates (**EXHIBIT 1**) and the legislator social calendar (**EXHIBIT 2**). She briefly discussed the tentative dates and asked for Council input. **SEN. WANZENRIED moved to approve a caucus date for November 17, 2010. The motion passed on a unanimous voice vote.**

00:08:47 The Council discussed possible dates for Rules Committee training and Committee Chair training. Ms. Fox said that, traditionally, both trainings have taken place on the same day. SEN. WANZENRIED suggested setting the dates on December 6. The following concerns were discussed: the impact of term limits on rules knowledge, optimum dates for training, and the importance of and need for extensive rules training for the full legislative body. Ms. Fox said that she would work with Mr. Petesch to design a good curricula that would include actual situations from past legislatures. **SEN. WANZENRIED moved that the Rules Committee meeting and the Committee Chair training be scheduled for**

Monday, December 6, 2010. The motion passed on a unanimous voice vote.

- **Legislative Rules Training**

00:20:01 **SEN. WILLIAMS** moved to accept the Monday, January 3, 2011, date for **Legislative Rules training**. REP. MCGILLVRAY said that he doesn't like having the training the first week of session because it is already very busy. SEN. STORY said it would be too expensive to bring the full legislature back for training in November and December. He suggested holding the training later in the week, rather than the first day of session. REP. O'HARA agreed. **SEN. STORY** moved to amend **SEN. WILLIAMS'** motion to hold **Law School for Legislators on the morning of January 4, 2011 and rescheduling Legislator Rules Training for the afternoon of January 4, 2011**. SEN. WANZENRIED thought that was too much for one day, particularly for the new legislators, and thought the Rules Training should be held the next day. **SEN. STORY** withdrew his motion. He moved to amend **SEN. WILLIAMS'** motion to hold **Law School for Legislators on January 4, 2011, and Legislative Rules training on January 5, 2011**. He suggested that the training be split into House Rules and Senate Rules, to be held on the respective house floors. **The motion passed on a voice vote, REP. MCGILLVRAY** voted no.

- **Review policy for interim committee review of agency legislation**

00:30:54 Ms. Fox referred the Council to *LSD and OBPP Procedures for Interim Committee Review, Request, and Drafting of Agency Legislation (EXHIBIT 3)* in their meeting packet. She briefly reviewed several key points of the policy.

- **Training ideas to forward to staff**

00:34:27 Ms. Fox said that staff has held its first meeting to organize the upcoming new legislator orientation. She discussed several training ideas presented by staff and asked that Council members provide their suggestions to her. SEN. STORY asked if staff surveys the legislators to ask for their input. Ms. Fox said that legislators are surveyed after orientation and that new legislators are surveyed after the session. Not many new ideas have been submitted but suggestions on how to strengthen or improve existing training programs have been given.

STRATEGIC PLANNING INITIATIVES

- **Progress report - initiatives to date**

Ms. Fox passed out a progress report on Legislative Council Strategic Planning Initiatives (**EXHIBIT 4**) and she reviewed potential training topics. SEN. STORY said that the first orientation with new legislators may be more effective if more small group training was done with experienced legislators. Ms. Fox said she also received requests for more down time and that smaller groups and more down time would make the training more relaxed.

- **Initiative 1 - Inter-divisional staff teams - progress to date**

00:42:29 Ms. Fox handed out a table listing LSD, Legislative Fiscal Division (LFD), and Legislative Audit Division (LAD) staff teams. She explained how the teams were designed and how they would work together (**EXHIBIT 5**). She said that efforts

are still in the beginning stages and that she would provide an update at the June meeting.

- **Initiative 2 - To provide Leadership Training and Notebooks**

00:48:04 Ms. Fox reported on leadership training and notebooks (**EXHIBIT 6**). She plans to get additional materials from NCSL and has spoken to a trainer from CSG about what training topics may help. SEN. STORY thought the notebooks were helpful but said they need to be given to leaders earlier and that leadership training needs to begin right after the caucuses.

00:51:01 SEN. WILLIAMS agreed that leadership training is needed much earlier and that book was very helpful. The Council discussed when the best time for leadership training would be.

- **Initiative 3 - Rules Subcommittee report**

00:54:54 Mr. Petesch noted that all members received a summary of yesterday's Rules Subcommittee meeting in their meeting packet (**EXHIBIT 7**) and a document containing draft joint rules (**EXHIBIT 8**). Mr. Petesch reviewed the proposed new joint rules and other changes. He said that action on the proposed changes would be taken by the full Council at the June meeting.

01:11:34 SEN. BRUEGGEMAN said, regarding proposed changes to Joint Rule 40-40, that he liked the idea of limiting bill draft requests. He asked if any thought has been given to setting a certain number aside for leadership to allow for flexibility, so long as the requests meet bill drafting deadlines. Mr. Petesch said the issue was discussed by the Subcommittee, which decided not to propose eliminating the ability to borrow from other members and that leadership would have access to those. SEN. BRUEGGEMAN asked if the request limit would be enacted prior to the 2011 session. Mr. Petesch said no, that the current rules would remain in effect until a new legislature is elected.

01:14:45 **BREAK - 20 minutes until 10:10 a.m.**

- **Legislative Space Subcommittee report**

01:37:30 SEN. WANZENRIED referred to the status report for Legislative Space Subcommittee in the meeting materials (**EXHIBIT 9**). He said that if the Legislative Council is going to proceed with working with the executive branch on space issues, it must have a business plan with specific ideas for how much space is needed and how the space will be used. He said that legislative branch has an obligation to establish what the short and long term space needs are and how public's needs will be served as well.

01:40:39 SEN. BRUEGGEMAN said the purpose of the discussion was to determine how more space could be made available and be more accessible and usable for the public. He agreed that there must be a long term plan in place before changes are made. He said his concerns include legislative staff housed in the basement, creating more public space close to the cafeteria, installation of more televisions for the public to view proceedings or work while they are in town for legislative proceedings, parking needs, larger committee hearing rooms, and the needs of

agencies currently housed in the Capitol that may have to be moved out. He said that the DOA needs to be more closely involved in the process. SEN. WANZENRIED said that staff needs more specific direction on what needs to be done in order to develop a solid business plan before moving forward on decisions. He said that Ms. Fox had several ideas on what a good next step would be.

- 01:46:00 Ms. Fox said Cathy Duncan, Fiscal Analyst, LFD, has knowledge of these types of studies and that she would work with her to gather more information. She said she would review HB 5, the long range building bill, for additional information.
- 01:47:11 REP. HIMMELBERGER said the Council should at least make a recommendation to next Legislative Council to continue with the Legislative Space Subcommittee and planning efforts.
- 01:48:06 SEN. STORY said the study needs to be done and will require a bill and funding to determine the needs of the legislative and executive branch agencies. He said that has to be dealt with before decisions can be made.
- 01:51:15 SEN. WANZENRIED asked that this issue be on the June agenda as an action item. He said that the issue of media credentialing and space is another issue that will have to be dealt with and said a clear policy needs to be established.
- 01:53:52 SEN. WILLIAMS and SEN. STORY expressed concern that traditional media may be pushed out by bloggers and internet news providers without a policy in place. SEN. STORY said he didn't support the idea of "first come, first serve", and suggested either creating a lottery system or restricting all media to the gallery.
- 01:56:55 REP. HIMMELBERGER asked why media needs to be on the floor and can't be located elsewhere. SEN. BRUEGGEMAN supported continuing to allow traditional media access to the floor because of the public service they provide. He suggested that press passes could be rotated among them and that alternative media could be placed elsewhere. REP. PHILLIPS agreed that traditional media is important to the process and should have floor access, and said that a distinction between real journalists and bloggers should be established.
- 02:00:00 REP. HIMMELBERGER agreed that media coverage is an important part of the process but said he is unconvinced that media needs to have floor access. He said that the last Council attempted to deal with this issue by proposing a policy that would have limited media access to the galleries but that the proposal was misunderstood by the media and the Council backed away from the plan.
- 02:01:44 Ms. Fox said that positive strides have been made from the last Council's deliberations. Media access was improved, decorum issues were addressed and Gayle Shirley, Legislative Information Officer, LSD, provided media training. Ms. Fox said the issue of credentialing still must be addressed. The Council discussed some of the problems that have been encountered and issues that

would have to be dealt with in creating a credentialing process. Ms. Fox said that she would continue to investigate possible solutions, and, as requested by SEN. STORY, that Mr. Petesch would be consulted as part of the process.

- 02:10:01 SEN. WANZENRIED said another space issue is who controls the space when the legislature is not in session. He suggested that two issues be clarified in statute: strengthening legislative control of space and providing more specific guidance on how the space may be used when the legislature is not in session.
- 02:11:55 REP. MCGILLVRAY referred back to comments made about bloggers and stated that his opinion is that bloggers serve an important role in the media sphere and that they should have a place in media access.
- 02:12:38 REP. HIMMELBERGER clarified that the last Council's action in dealing with media space evolved out of safety concerns.
- 02:13:20 Ms. Fox asked the Council for input on what hours legislative space should be available for use and to whom it should be available. She said that issues such as staffing, use of equipment, and security all must be considered. She referred to two legal memos prepared by Mr. Petesch on similar issues in 1982 (**EXHIBIT 10**) and 1985 (**EXHIBIT 11**) and said that they may provide good guidance to the Council.

Public comment

- 02:17:32 **Marilyn Miller, Secretary of the Senate**, stressed the importance of having a policy in place. She discussed her concerns, including the use of expensive sound equipment and damages caused to meeting rooms and equipment by food and drink. She said that having a policy in place would be of great help to session and interim staff.
- 02:21:13 REP. HIMMELBERGER said a recent incident put LSD staff put in a very tough place because an individual obtained a LSD staff member's home telephone and called the employee at home to gain access. He agreed that a policy must be put in place. SEN. STORY asked if there is a written room use policy now. Ms. Fox said no. SEN. STORY suggested finding a model policy to review at the next meeting. He pointed out that private meeting rooms are available in Helena and said that perhaps the State should consider charging for use of its rooms. REP. HIMMELBERGER suggested that the Council adopt a temporary policy so staff has something to back them up until a formal policy can be adopted.
- 02:25:24 SEN. WANZENRIED agreed that direction is needed but questioned whether the Council has the statutory authority to do that. Ms. Fox agreed that statute is unclear and that the Council may want to clarify and strengthen statutory language. Mr. Petesch said that Ms. Fox was correct that there is no explicit authority but that Legislative Council, as the administrative arm, has some implied authority. He said it would give more weight to a policy to have more explicit language in statute.

- 02:27:21 REP. HIMMELBERGER said he would like a formal motion and a vote of record. Ms. Fox said that she has a written draft policy stating that meeting rooms will be available for public use Monday through Friday from 8:00 a.m. until 5:00 p.m. She asked for input on if interim committee or formal legislative activities would be allowed after hours or if an individual legislator request would be sufficient to access space after hours.
- 02:29:35 The Council discussed questions about the policy, such as hours, staffing, costs, security, and damages. Ms. Fox said that staff is available during business hours and has been able to accommodate requests so far. She said that currently, there is no authority to charge or accept a fee for damages and that the Council may wish to discuss that.
- 02:33:21 **SEN. WANZENRIED moved that the Legislative Council provide general guidance to LSD staff to continue the status quo policy in lieu of policies yet to be developed to enforce use of legislative space during normal business hours Monday through Friday, except as agreed to with caveats by leadership.** SEN. STORY said the policy should allow use during business hours when staff is available and the issue of after hours and weekend use should be dealt with separately. **SEN. STORY moved, as a substitute motion, to adopt a policy to allow people to use the building from 8 a.m. to 5 p.m. on work days when staff is available, as has been done in the past. SEN. STORY's motion passed on a unanimous voice vote.**
- 02:36:10 SEN. STORY said, regarding after hours and weekend use, that legislators have asked to use Capitol space on weekends and evenings. He said that the determining factor in allowing use must be if the event is informational in nature or a campaign event. He said another issue is that an private organization requested use of Capitol space on a weekend for its annual meeting. He discussed the situation and said he would prefer not to approve after hours or weekend use until a firm policy is in place.
- 02:39:48 **SEN. STORY moved to not allow the use of legislative space for after hours and weekend meetings until an official policy can be adopted.** REP. PHILLIPS asked about the use of state equipment when reserving the rooms and said he does not support allowing the public to use legislative equipment. Ms. Fox said this has been allowed in the past because most groups using the space need equipment also. REP. PHILLIPS said the practice impacts LSD staff, resulting in them making substantive contributions to meetings not related to the legislative process. Ms. Fox agreed but said that the TVMT statutes were written such that all three branches of government were covered, as well as other activities; and is why LSD has chosen to support that. She said a benefit of the policy is that LSD worked with the DOA to wire Room 152 in the Capitol as a METNET-capable room, which has proven to be useful to the legislators and staff. **SEN. STORY's motion passed on a unanimous voice vote.**
- 02:44:33 SEN. WANZENRIED said that the other space issues were minor and that nothing more needed to be done at this time. SEN. STORY said that, eventually, a policy on press access will have to be adopted.

- **Initiative 4 - Interim committee improvement and interim training for legislators**

02:45:38 Ms. Fox discussed the ideas listed in the progress report (**EXHIBIT 4**) and said that she would collect information on whatever ideas the Council is interested in pursuing.

02:48:41 SEN. STORY said, regarding the suggestion to clump interim committee meetings, that it would be a hardship on citizen legislators. He suggested that the structure of interim committees be modified to allow more House members to serve, such as four Senate members and eight House members. SEN. BRUEGGEMAN agreed with SEN. STORY that more House members need to have the opportunity to serve on an interim committee. REP. MCGILLVRAY asked if changing interim committee structure would require a change in rule and in law. SEN. BRUEGGEMAN said changes would be required in both. Mr. Petesch verified. SEN. WILLIAMS said committees would have to be weighted in order to keep power balanced between the houses.

02:52:32 The Council discussed the issue of weighting committees and other difficulties that may be encountered in expanding the size of interim committees. It was agreed that staff would present information on weighting interim committees and on the costs of expanding membership at the next meeting. REP. HIMMELBERGER asked if there were other topics regarding how to improve interim committees that needed to be discussed. He encouraged the Council members to review the strategic planning session initiatives and to contact Ms. Fox to place items of interest on the next meeting agenda.

- **Revisiting the issue of CSG and NCSL funding**

03:00:45 SEN. WILLIAMS suggested sending a letter to all leadership stating Legislative Council's position that these educational trips are important tools to members and that members ought to be able to take advantage of them. She proposed that money not used by June 1, 2010, be pooled and that the Council appropriate it for summer or fall meetings. SEN. WILLIAMS said the funding would have to be committed, but not necessarily spent by June 1. SEN. STORY said he had concerns about pooling the leftover funds because it could result in one caucus being allowed to spend more than the other. SEN. WILLIAMS asked SEN. STORY to propose an alternative plan, saying the current situation is not fair because Republican House members are not being given a chance to take advantage of training opportunities.

03:06:44 REP. MCGILLVRAY said a solution would be to send a letter to legislators on NCSL and CSG committees to let them know money is available to them but that they still must request it. REP. HIMMELBERGER said that has already been done and that members made requests that were not responded to. He said that perhaps a letter should be sent to leadership and that leadership needs to be more accessible to membership.

03:11:13 SEN. WILLIAMS asked if the members would object to sending a letter to members and leadership, encouraging the use of the funds. SEN. STORY said that part of the problem is lack of knowledge and experience in the House, due to term limits. REP. PHILLIPS said he was inclined to leave the issue alone

because the House Republicans chose their leadership and could now live with the consequences. REP. HIMMELBERGER suggested that the letter be sent to the legislators appointed to NCSL and CSG alerting them to upcoming events and of their eligibility to attend and would also include contact information for their leader. **SEN. WILLIAMS so moved.**

03:15:00 REP. MCGILLVRAY asked that the letter be sent to leadership as well, encouraging them to approve use of the funds. SEN. WILLIAMS asked to include that in her motion and to also attach a list of appointees to each leader. She asked that the letter be sent to SEN. STORY and REP. PHILLIPS for review and approval.

03:16:12 SEN. STORY asked that copies of the respective budgets be sent to each leader. He said he knows from speaking with Leader Sales that his policy is that termed-out legislators will not be approved to use training funds. REP. HIMMELBERGER argued that the Speaker's policy is not a good use of money and shows the Council's lack of willingness to put a policy in place. He said that members should be able to participate in training opportunities if they have been appointed to NCSL or CSG, regardless of the leader's position. REP. PHILLIPS said, in keeping with the budget shortage, that it would be a good time to consider how any leftover funding could revert back to the general fund. He said that legislators traveling out-of-state to meetings when the state is in a budget pickle does not sit well with constituents. SEN. WILLIAMS agreed that adequate budget cuts need to be made but said she was concerned that if educational opportunities are cut now, that the Legislature may not get the funding back. She stated that it is in the best interest of the Legislature to have properly trained and educated legislators and that the Council should not take any action that would undercut the legislature.

03:22:24 REP. HIMMELBERGER agreed with SEN. WILLIAMS that participation in these events are very valuable to the members. SEN. STORY suggested that the members receive the House Republican budget figures because it may encourage members to become involved. He asked if leftover funds would revert to the general fund or to the Legislative Technology fund. **Karen Berger, Financial Services Manager, LSD**, said funds could revert to either the general fund or the Legislative Technology fund. She explained how the Council reverts funds through a carryforward program into the Legislative Technology fund. A portion of the money reverts to the general fund and a portion creates a 30% carryforward for 2 years. After 2 years, the House and Senate leaders may choose to have the money revert to the general fund or direct that it be deposited into the Technology Fund (that authority is statutory).

Public comment

03:25:59 **Senator Joe Tropila, SD 13, Cascade County**, said that experience comes with tenure and that the problem is term limits.

03:26:48 **SEN. WILLIAMS' motion passed on a unanimous voice vote.**

- **Travel matrix issue -- continued from 3/1/10**

03:27:42 **SEN. STORY** moved to approve Option 1b - to change the lodging requirement to be 6:30 p.m limit for travel as a reasonable travel policy (EXHIBIT 9 - March 1 meeting).

03:30:02 REP. PHILLIPS said it would be more logical to simply allow lodging if a legislator has to drive more than five hours in any one day. SEN. STORY said it would run into late night drives home for legislators who were had arrived in Helena the previous day for a meeting.

03:32:56 **SEN. STORY's** motion passed on a voice vote, REP. MCGILLVRAY voted no.

- **Half day issue**

03:33:38 **SEN. STORY** moved to have staff draft legislation to allow for half day pay. **The motion passed on a unanimous voice vote.** In response to a question from Ms. Berger about the reasonableness policy, it was agreed the intent of the motion was that it would become effective immediately.

- **5% reduction in budget**

03:36:18 SEN. STORY said he did receive the information he requested (the Governor's proposed budget cuts) and discussed several points of interest. **SEN. WILLIAMS moved to proceed with Ms. Fox's proposed reductions. The motion passed on a 12-0 unanimous vote with SEN. WILLIAMS voting "aye" by proxy for SEN. WANZENRIED, SEN. LASLOVICH, REP. BERGREN, and REP. CAMPBELL and SEN. STORY voting "aye" by proxy for SEN. ESSMANN.** (See Attachment #4).

DIRECTIONS TO STAFF, SUBCOMMITTEES, AND FUTURE MEETING DATES

- **Future subcommittee meetings**

03:39:25 It was agreed that dates would be determined at a later date. Ms. Fox will coordinate. REP. HIMMELBERGER said the next meeting date is June 2, 2010.

03:39:42 Regarding the letter that will be sent to leadership and legislators addressing the use of CSG and NCSL training funds, SEN. WILLIAMS said that it must be made clear in the letter that salary will not be paid but that expenses would be. REP. PHILLIPS said it would be useful to have a different spread sheet to show a more detailed breakdown of expenses. Mr. Petesch said that statute provides that legislators are entitled to claim salary for every day of authorized legislative business, therefore can't be prevented from claiming salary. SEN. WILLIAMS asked, in an effort to stretch funding so that more people could attend, if legislators could be "encouraged" not to claim salary. Mr. Petesch said that could be done. REP. PHILLIPS asked Mr. Petesch to explain why the next day's training was not considered authorized legislative business. Mr. Petesch said there is no formal requirement that legislators receive training during an interim, which is different than the statutory obligation to appoint members to committees.

- **Public comment**

03:44:13 **Gayle Shirley, Legislative Information Officer, LSD**, updated the Council on the Teachers Institute on Representative Democracy & Legislative Process training workshop scheduled for June 14-16, 2010, in Helena (**EXHIBIT 12**).

03:46:29 REP. PHILLIPS asked if the brochure was available electronically and said that he would like to notify Bozeman schools. Ms. Shirley said it was and also provided the website address: www.leg.mt.gov/teacher-institute.

03:47:33 REP. PHILLIPS asked to revisit the 2007 bill to study the usefulness of fiscal notes at the June meeting. It was agreed.

ADJOURNMENT

03:48:22 With no further business before the Council, REP. HIMMELBERGER adjourned the meeting at 12:25 p.m. The next meeting is scheduled for June 2, 2010, in Helena, Montana.

CI0429 0113dfxa.