



Legislative Council

64th Montana Legislature

SENATE MEMBERS

DEBBY BARRETT--Vice Chair
EDWARD BUTTREY
ROBYN DRISCOLL
TOM FACEY
BOB KEENAN
JON SESSO

HOUSE MEMBERS

CHUCK HUNTER--Chair
BRYCE BENNETT
SETH BERGLEE
STEPHANIE HESS
AUSTIN KNUDSEN
MARGARET (MARGIE) MACDONALD

COMMITTEE STAFF

SUSAN FOX, Executive Director
TODD EVERTS, Legal Division Director
FONG HOM, Secretary

MINUTES LOG

August 24-25, 2016
Room 102, Capitol Building
Helena, Montana

August 24, 2016

Please note: This document is a Minutes Log and provides a notation of the time elapsed between the beginning of the meeting and the time at which the item was presented or discussed, a motion was made, or a vote was taken. The narrative presented here is provided only as a guide to the audio or video record of the meeting. The official discussion, motion, or vote is available on the audio or video archive of this meeting. The Legislature does not prepare a transcript of meeting activities. The time designation may be used to locate the referenced discussion on the audio or video recording of this meeting.

Access to an electronic copy of these minutes and the audio or video recording is provided from the Legislative Branch home page at <http://leg.mt.gov>. On the left-side menu of the home page, select Committees, then Interim. Once on the page for Interim Committees, scroll down to the appropriate committee. The written Minutes Log, along with the audio and video recordings, is listed by meeting date on the interim committee's web page. Each of the "Exhibits" is linked and can be viewed by clicking on the Exhibit of interest. All Exhibits are public information and may be printed.

Please contact the Legislative Services Division at 406-444-3064 for more information.

COMMITTEE MEMBERS PRESENT

REP. CHUCK HUNTER, Chair
SEN. DEBBY BARRETT, Vice Chair

SEN. TOM FACEY
SEN. BOB KEENAN
SEN. JON SESSO

REP. BRYCE BENNETT
REP. SETH BERGLEE
REP. STEPHANIE HESS
REP. AUSTIN KNUDSEN
REP. MARGARET (MARGIE) MACDONALD

COMMITTEE MEMBERS EXCUSED

SEN. EDWARD BUTTREY
SEN. ROBYN DRISCOLL

STAFF PRESENT

SUSAN BYORTH FOX, Executive Director
TODD EVERTS, Legal Director
LAURA SHERLEY, Committee Secretary

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

AGENDA ([Attachment 2](#))

COMMITTEE ACTION

CALL TO ORDER and ROLL CALL - Rep. Chuck Hunter, Presiding Officer

00:00:02 Rep. Hunter called the meeting to order at 1:01 p.m. The committee secretary took roll. ([Attachment 3](#))

LEGISLATIVE SERVICES DIVISION

Staff Updates - Susan Fox, Executive Director

00:01:00 Ms. Fox reported on the new staff hires: Angie Carter, Tammy Stuart, and Susan Murray. She also talked about the retirement of Dave Bohyer and that Dale Matheson will be leaving and moving back to Seattle, Washington.

Session Systems Replacement Project - Dale Matheson, Project Manager

00:03:14 Mr. Matheson gave an update on the SSR Project. ([Exhibit 1](#))

00:09:06 Ms. Fox briefly explained the document, "Roadmap 2017-2018", which will be presented at the August 25th meeting. ([Exhibit 2](#))

Initiative and referenda status - Todd Everts, Legal Director

00:09:53 Mr. Everts ([Exhibit 3](#))

RULES SUBCOMMITTEE REPORT - Rep. Bennett, Presiding Officer

00:12:05 Rep. Bennett gave an overview of the activities of the Rules Subcommittee's meeting.

Committee Questions

00:15:08 Rep. Hunter asked about the status of Rep. Bennett's request for a bill draft requiring all interim committees to use proxy votes.

00:16:00 Rep. Knudsen asked Rep. Bennett if this bill request will deal only with the issue of proxy votes.

00:16:47 Rep. Hunter asked Rep. Bennett to give a brief overview of the Subcommittee's discussion on that issue.

00:18:12 Sen. Keenan asked who were the members of the Rules Subcommittee and requested that the bill draft request be provided in hard copy form.

00:18:49 Rep. Hunter recommended that the Rules Subcommittee's bill draft request be put on the August 25th agenda for review and discussion.

00:19:02 Sen. Barrett asked if there has been any abuse of proxy votes by any members of interim committees.

00:20:09 Rep. Knudsen asked Mr. Everts why proxy votes have not been allowed in the past and what the current protocol for proxy votes is for interim committees.

00:22:57 Rep. Hunter said that Rep. Bennett's bill draft will be the first item on tomorrow's agenda.

LEGISLATIVE BRANCH OVERSIGHT OF EXECUTIVE BRANCH AGENCIES

00:23:46 Ms. Fox discussed the document, "Guidelines for Best Practices in Administrative Rules Objection Polling". **(Exhibit 4)**

00:26:38 Ms. Fox discussed making administrative rulemaking training a part of Legislator Orientation 2017.

Administrative Rule Review

00:29:30 Ms. Fox gave a brief overview of events leading up to the drafting of LC0000.

00:31:53 Ginger Aldrich, Staff Attorney for State Administration and Veterans' Affairs Interim Committee, discussed LC0000. **(Exhibit 5)**

Committee Questions

00:42:37 Rep. Hunter asked Ms. Aldrich to discuss the ins and outs of "proposed" versus "adopted", and to clarify the problems that were created when the Commissioner of Political Practices was willing to adopt many of the changes that came up in discussion.

00:43:00 Ms. Aldrich said that currently you can only poll on proposed rules. The poll has to start while it is in the proposal process not after it's been adopted.

00:45:52 Sen. Facey asked if this relates to when we are objecting to a rule and a certain number of legislators are trying to get on the record that what was adopted was not the intent. He commented on the changes which allow the adopted rule to be changed by the agency after public comment is heard.

00:47:06 Sen. Barrett asked Ms. Aldrich if there was anything in current law that prohibits changes to these proposed rules that didn't come from public comment.

00:48:31 Rep. Hunter asked the committee members if they would like to have the Legislative Services staff or the Secretary of the State's Office do the polling.

00:49:04 Ms. Laura Vachowski, Deputy for the Administrative Rule Section, Secretary of State's Office, said that Jorge Quintana will give specific information and a view point on behalf of the Secretary of State's Office.

Committee Questions of Ms. Vachowski

00:49:31 Rep. Hunter asked what would it involve for the Secretary of State's Office to take on the responsibility.

00:49:40 Ms. Vachowski said that if the poll were to be done by the Secretary of State's Office, it would be handled by the Elections Division.

00:50:06 Rep. Hunter recommended postponing the discussion while they wait for the Secretary of State presenters.

Executive Branch Chief Legal Counsel Panel

Dan Whyte, Chief Legal Counsel, Department of Revenue

John North, Chief Legal Counsel, Department of Environmental Quality

00:50:23 Rep. Hunter gave a brief overview for the reasons for a presentation from the executive branch.

01:05:57 Dan Whyte gave an overview of the Department of Revenue rulemaking authority.

01:09:51 John North gave an overview of the Department of Environmental Quality's process for rulemaking.

Committee Questions of the Panelists

01:14:12 Sen. Barrett asked about agencies needing to make new rules for old laws.

01:18:17 Sen. Facey asked if there are situations where you find that the boards are promulgating rules that they have not been authorized to do.

01:21:46 Rep. Hunter asked about a timeframe under the Montana Administrative Procedure Act for the notification process to sponsors in terms of how often you can instigate rules on your own volition as opposed to responding to a recently enacted piece of legislation; what is the volume of that work in comparison to the instigation of rules when you decide an update is a necessary requirement; and are there recommendations to the legislative branch that would make it more effective in getting our goals accomplished and your work accomplished.

01:33:46 Sen. Sesso asked if the reverse ever came to pass where legislation does not require direct rules, but rules are needed.

01:36:59 Rep. Hunter asked Mr. Everts if there is a checklist on amendments to bills that is similar to the checklist on bill drafts.

01:38:46 Ms. Fox suggested that drafters should keep that in mind when drafting amendments. If they are drafting in rulemaking authority, they should go back and check to see if that title, chapter, and part already has rulemaking authority.

Office of the Secretary of State's perspective

01:40:45 Jorge Quintana, Chief Legal Counsel, Office of the Secretary of State, said that the Secretary of State's rules are generally straightforward and simple.

Committee Questions

01:41:41 Rep. Hunter asked Mr. Quintana about the noticing and all the work that the Secretary of State does in terms of processing rules.

01:41:55 Mr. Quintana said that the notice requirements are different depending on the bill.

01:43:17 Rep. Hunter asked Mr. Quintana to discuss the Secretary of State's perspective on its involvement in the polling process.

01:43:35 Mr. Quintana said that the Secretary of State's Office is tasked with doing the polling on vetos and legislative override of vetos, and are familiar with the process and understand what is involved in reaching out to 150 legislators. He said that the pre-polling and the post-polling activities and the mailing should stay with Legislative Services. It would be proper for the Secretary of State's Office to help with drafting the materials, count the votes, and publicize the results either on their webpage or with a letter to Legislative Services where the committee is calling the rule into question.

Committee Discussion

01:45:57 Rep. Hunter commented on the bill draft prepared by staff and asked if the Legislative Services staff should handle the polling process or have the

- Secretary of State's Office process a part of the polling.
- 01:50:38 Sen. Sesso suggested leaving the process as is and on an ad hoc basis, if there is a rush on these types of polls, we can delegate to the Legislative Services Division to enlist the help of the Secretary of State's Office as necessary.
- 01:51:15 The committee members discussed the time-consuming process of putting together the materials, compiling the packets, counting the results, following up with legislators that don't know what's going on, and if the Secretary of State's Office doing part of the process would be a net savings of time to staff.
- 01:56:44 Rep. Knudsen recommended leaving the polling process with the Legislative Services Division.

Motion/Vote

- 02:00:35 Rep. Bennet moved that LC0000 move forward as a committee bill. The motion passed unanimously by voice vote, with Rep. MacDonald voting yes by proxy.

BREAK (Reconvened at 3:20 p.m.)

RECORDS MANAGEMENT

E-Mail Guidelines Brochure, Training Schedule, and Draft Records Management Update - Susan Byorth Fox, Executive Director

- 02:18:50 Ms. Fox ([Exhibit 6](#))

Committee Questions/Discussion

- 02:25:15 Rep. Hunter asked Ms. Fox if she wanted approval from the committee on the E-Mail Guidelines for Legislators.
- 02:25:39 Sen. Sesso asked about the information found on pages 5 through 9 of the brochure.
- 02:28:10 Rep. Hess asked Mr. Everts if "emails containing discussion about legislative business", qualify as legislative business.

Public Comment

- 02:29:28 Rep. Jeff Essmann, HD 54 (by phone)

Committee Discussion

- 02:35:53 Sen. Sesso and Sen. Facey recommended having the E-mail Guidelines be a part of Legislator Orientation and Training 2017.
- 02:37:28 Rep. Hunter recommended adding the e-mail instruction piece to the legislator training and asked the committee to define "legislative business" in the brochure.
- 02:38:33 Sen. Sesso asked Mr. Everts to respond to Rep. Essmann's comments.
- 02:44:44 Rep. Hunter asked Mr. Everts if defining "legislative business" would require an adoption of the language in statute.
- 02:46:11 Rep. Hunter recommended taking action on the proposed bill draft at the next Legislative Council meeting.
- 02:46:48 Sen. Barrett said our responsibilities as legislators in this depends on clarification of what is considered official legislative business.
- 02:50:32 Rep. Knudsen commented on the current MCA definition of "legislative business" and "public record".

- 02:53:10 Sen. Facey commented on Rep. Jones' bill from the 2015 Session that was referenced by Rep. Essmann in his public comment which had to do with format and not content.
- 02:54:04 Rep. Hunter asked if the Legislative Council has to adopt the Records Management Policy.
- 02:56:13 Rep. Hunter recommended that the updated brochure be mailed to the committee members before the next meeting.
- 02:56:23 Sen. Sesso asked Mr. Everts about mass emails being in the discussion of legislative business that would be subject to the 2-year retention policy.
- 03:05:28 Sen. Barrett commented on there being legitimate information requests and the public's right to know.

LEGISLATOR COMPENSATION - Susan Fox, Executive Director

- 03:06:33 Ms. Fox discussed the memo regarding State Wage and Benefit Information ([Exhibit 7](#)); the memo from Barbara Wagner, Montana Department of Labor and Industry ([Exhibit 8](#)); and LCLC02 ([Exhibit 9](#)).

Committee Questions

- 03:13:51 Rep. Berglee asked about the number of legislators who are on the state health plan.
- 03:16:00 Sen. Barrett asked if there was anything in statute that allows a legislator to chose other health coverage.
- 03:17:18 Sen. Sesso asked about the deadline when legislators should be applying for state health coverage.
- 03:24:56 Sen. Sesso said that on the wage side, he prefers section 2, indexing to the state average weekly wage without smoothing be added in the bill draft.
- 03:28:18 Rep. Hunter and Rep. Knudsen agreed with Sen. Sesso.

Motion

- 03:31:53 Rep. Hunter suggest that a motion be made to draft a bill using Section 2 based on an average weekly wage divided by 40 to get hourly wage, no smoothing effect, and raise the President's and the Speaker's salary by \$5 per day. Sen. Facey moved the motion.

Vote

- 03:32:10 The motion passed unanimously by voice vote.

Public Comment - none

RECESS

- 03:32:27 Rep. Hunter recessed the meeting at 4:34 p.m., to reconvene on August 25, 2016, at 8:30 a.m.