

COMMITTEE ON LEGAL SERVICES
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Sen. Jennifer Veiga, Vice Chair
Rep. Bob Gardner
Rep. Jeanne Labuda
Rep. Claire Levy
Rep. Ellen Roberts
Sen. Greg Brophy
Sen. Shawn Mitchell
Sen. Brandon Shaffer
Sen. Abel Tapia

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SUMMARY OF MEETING

COMMITTEE ON LEGAL SERVICES

January 29, 2008

The Committee on Legal Services met on Tuesday, January 29, 2008, at 8:04 a.m. in SCR 352. The following members were present:

Representative McGihon, Chair (present at 8:07 a.m.)
Representative B. Gardner
Representative Labuda
Representative Levy
Representative Roberts
Senator Brophy
Senator Mitchell (present at 8:17 a.m.)
Senator Tapia
Senator Veiga, Vice-chair

Senator Veiga called the meeting to order. She said there are 3 items on the agenda. Let's start with the rule review bill, Senate Bill 08-075. You have a copy of the draft in front of you. I'm going to have Debbie Haskins explain a possible amendment we need to add to the bill.

Debbie Haskins, Senior Attorney, Office of Legislative Legal Services, addressed the Committee. She said the Committee has a copy of the bill and an explanation of all the rules that are in the bill. Briefly, this is your annual rule review bill. It deals with the rules that were adopted between November 1, 2006, and before November 1, 2007. In the "State Administrative Procedure Act" (APA), there is an automatic expiration that the rules will automatically expire on May 15, 2008, unless they are extended by the General Assembly acting by bill and that's this bill, the rule review bill. The bill is drafted to postpone the expiration of the rules from that year, with the exception of the ones that are specifically listed in the bill, and those are the ones this

Committee has found at your meetings in the fall either had a conflict or a problem with statutory authority. That's what the bill does. We do have a situation where we had some rules that are in the bill from the department of education, state board of education, concerning the summer school grant program. We brought these rules to the Committee at the November 13 meeting and the Committee voted not to extend the rules, and they're in the bill. We did not realize this at the time, but the same week that we were bringing the rules to you, on November 8, a few days before the Committee meeting, the board readopted the very same rules as the ones that are in the bill. Because they were adopted in November, they're now 2008 rules, so they're in the next cycle, which isn't generally when we would deal with them, but they are exactly the same rules that you have in the bill. We had a similar situation a couple years ago where we took rules to the Committee and then in March, the state agency readopted the same rules. We went back to see what we did then, and what we did was asked the Committee to repeal the rules and then do a vote on an amendment to the bill to add them to the bill to be repealed. We're recommending that you take a 2-step process, which is to do a motion to repeal the rules, vote on that, and then if you vote to repeal the rules, then adopt an amendment, which I have prepared, that would add those rules to the bill to be repealed. We do have a provision in the APA, which says if an agency readopts an identical rule to one that has been allowed to expire through the rule review process, those readopted rules are automatically void. That statute doesn't really come into play here because the rule review bill hasn't passed yet and so the rules haven't expired. When we found this situation 2 years ago, we felt like if you didn't do what we're recommending, it was a little bit of a loophole for the agencies. That's how we handled it 2 years ago, with a very similar situation.

Senator Veiga said since I am technically the bill sponsor, Representative McGihon should chair the Committee.

Senator Brophy said I think I'm following all of this. My one question would be what would be our procedure if they came back real quick after we made our action here, and they adopted a rule that was very similar but different enough to have kind of a straight face approach? We do the same thing often with the courts. If they declare a law unconstitutional, we'll pass a law that addresses what they said was unconstitutional but very similar in nature. What would be our procedure at that point? Ms. Haskins said the statute doesn't say "identical", it says "similar", so I think our procedure would be the same. I think we would have to analyze to what degree is it the same or similar. Here, it is word-for-word, the same.

Senator Brophy asked what if the timing is such that they adopt a similar rule in between when we have scheduled meetings and when the bill is actually signed by the governor? If somebody were trying to gamesmanship this thing to the "nth" degree, then would our other statute come into effect, basically calling that rule null and void? Ms. Haskins said no. With the situation we had 2 years ago, we took the rules in November and they adopted virtually the same rules in March, but the rule review bill still had not passed. Here, we took it to the Committee in November, and they readopted the same rules in November, but your bill hasn't passed. It's a very similar situation.

Representative Levy said maybe Ms. Haskins can remind her a little bit more about this particular rule. According to the memo, we disagreed with staff's conclusions, so does that mean we actually allowed the rule to remain in effect? Ms. Haskins said actually, it was the board who disagreed with our staff conclusions. It was a contested rule issue before this Committee.

Representative McGihon asked so we did strike these rules down? Ms. Haskins said yes. It's in the bill on page 3, lines 24 through 27, and page 4, lines 1 through 3.

Representative McGihon asked what is the proper motion? Ms. Haskins said we need a motion that the rules that are listed in the amendment be repealed. We have a vote on that, and then based on what you decide there, you move the bill and the amendment.

8:14 a.m.

Hearing no further discussion or testimony, Senator Veiga moved that rules 2207801-R-2.00 (3), 2207801-R-2.00 (4), and the introductory portion to 2207801-R-2.01 (2) of the State Board of Education be repealed and asked for a yes vote. Senator Tapia said I want to make sure I understand. We have not moved the bill yet, but this is an amendment to the bill? Representative McGihon said not yet, this is a motion. Senator Tapia asked isn't this L.001? Representative McGihon said this is simply a motion with regard to those particular rules. This is usually the motion where we ask that the rule be continued and a no vote. That's akin to the motion Senator Veiga is making at the moment. Is it correct that in this case we want a yes vote? Ms. Haskins said yes. The motion that we're acting on at the moment is a motion to repeal the 3 rules that were just read by Senator Veiga. If you want to repeal them, you need to vote yes. Senator Veiga said I understand, based on Ms. Haskins' presentation, that we do want to repeal them. Charley Pike, Director, Office of Legislative Legal Services, said if it helps the Committee to think about it, right now you're acting as the Committee on Legal Services on the rule issue.

In a moment, you'll be acting as the committee of reference for the bill. The motion passed on a 9-0 vote, with Representative Gardner, Representative Labuda, Representative Levy, Representative McGihon, Representative Roberts, Senator Brophy, Senator Mitchell, Senator Tapia, and Senator Veiga voting yes.

Representative McGihon said we're to the bill.

8:17 a.m.

Hearing no further discussion or testimony, Senator Veiga moved Senate Bill 08-075 to the committee of the whole and amendment L.001. There was no objection to the amendment and it passed unanimously. The motion to send the bill to the committee of the whole passed on a 9-0 vote, with Representative Gardner, Representative Labuda, Representative Levy, Representative McGihon, Representative Roberts, Senator Brophy, Senator Mitchell, Senator Tapia, and Senator Veiga voting yes.

Senator Veiga said we have 2 other items on our agenda. The first is an election of a chair and vice-chair. I think everybody is aware that it switches back and forth. For the chair, we hold it currently in the Senate so it will go back the House for this year and we take a vote every year. I would now open it up to motions for chair.

8:19 a.m.

Representative Labuda nominated Representative McGihon to serve as chair of the Committee. No objections were raised to that motion and it passed unanimously.

Representative McGihon asked for nominations for vice-chair.

8:20 a.m.

Senator Tapia nominated Senator Veiga to serve as vice-chair of the Committee. No objections were raised to that motion and it passed unanimously.

Representative McGihon said the next item on the agenda is the election to fill the vacancy of Mike Cerbo on the Uniform Laws Commission.

8:20 a.m.

Representative McGihon nominated Representative Levy to serve on the National Conference of Commissioners on Uniform State Laws.

Representative Gardner seconded the motion. No objections were raised to that motion and it passed unanimously.

8:21 a.m.

The Committee adjourned.