

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

OFFICE OF LEGISLATIVE LEGAL SERVICES
COLORADO GENERAL ASSEMBLY

TELEPHONE: 303-866-2045
FACSIMILE: 303-866-4157
E-MAIL: olls.ga@state.co.us



STATE CAPITOL BUILDING, ROOM 091
200 EAST COLFAX AVENUE
DENVER, COLORADO 80203-1782

DIRECTOR
Charles W. Pike

DEPUTY DIRECTORS
Dan L. Cartin
Sharon L. Eubanks

REVISOR OF STATUTES
Jennifer G. Gilroy

SENIOR ATTORNEYS
Gregg W. Fraser
Deborah F. Haskins
Bart W. Miller
Julie A. Pelegrin

SENIOR STAFF ATTORNEYS
Jeremiah B. Barry
Christine B. Chase
Edward A. DeCecco
Michael J. Dohr
Kristen J. Forrestal
Duane H. Gall
Jason Gelender
Robert S. Lackner
Thomas Morris
Nicole S. Myers
Jery Payne

SENIOR STAFF ATTORNEY FOR RULE REVIEW
Charles Brackney

SENIOR STAFF ATTORNEY FOR ANNOTATIONS
Michele D. Brown

STAFF ATTORNEYS
Nancy Dalien
Brita Darling
Kate Meyer
Jane M. Ritter
Richard Sweetman
Esther van Mourik

PUBLICATIONS COORDINATOR
Kathy Zambrano

SUMMARY OF MEETING

COMMITTEE ON LEGAL SERVICES

December 16, 2008

The Committee on Legal Services met on Tuesday, December 16, 2008, at 9:07 a.m. in HCR 0112. The following members were present:

Representative McGihon, Chair
Representative Labuda
Representative Levy
Senator Brophy
Senator Mitchell
Senator Schwartz
Senator Shaffer
Senator Veiga, Vice-chair

Representative McGihon called the meeting to order.

Jason Gelender, Senior Staff Attorney, Office of Legislative Legal Services, addressed agenda item 1a - Rules of the State Housing Board, Division of Housing, Department of Local Affairs, concerning Resolution #38 - manufactured housing installations, 8 CCR 1302-7.

Mr. Gelender said these rules are uncontested. However, Bruce Eisenhower is here from the department and when I'm done I believe he would like to comment a bit regarding these rules. There are three rule issues today. The first one deals with a requirement in section 24-32-3315 (2), C.R.S., that requires a person who is registering with the division as an installer of manufactured homes to file with the division a letter of credit, a certificate of deposit, or a surety bond in the amount of \$10,000. They have to do that at the same time the initial application for registration is filed. Before the passage of House Bill 08-1319, which took effect last June, there was an additional

subsection of that statute, which required registered installers seeking renewal of registration to also, when applying for that renewal, provide the same letter of credit, certificate of deposit, or surety bond for that registration term. However, that bill repealed that second requirement for renewal of registrations on or after January 1, 2009. The problem is that the current rule, which is part of Resolution #38, Section 3, the paragraph under the heading of "Registered Installers", still requires the letter of credit, certificate of deposit, or surety bond to be provided at the time of applying for renewal, as well as at the time of applying for initial registration. Because it, therefore, conflicts with the statute, as amended by House Bill 08-1319, this rule should not be extended.

Bruce Eisenhauer, Deputy Director, Department of Local Affairs, addressed the Committee. He said last year when House Bill 08-1319 was moving through the process and adopted, either we missed this provision or for some reason we didn't see until we were going through the rule-making process, that the particular provision with the letter of credit, certificate of deposit, or surety bond had been deleted from the renewal section. We feel that will ultimately result in a lack of consumer protection. There are times, staff has informed me, where we've had to draw on those letters of credit or bonds that have been submitted in order to gain compliance for issues that the installers did not take care of. They still have to provide that the first time through, but for the renewal they no longer have to. We think that's a bit inconsistent and would like to seek, if we need to, through legislative changes to have that provision restored. We think it's important to help protect the consumer and to obtain compliance if necessary. We recognize that it's not there and we're not contesting the rule. The other rules we go through as well we'll have to revise. We recognize that.

Representative Levy said I have a question for Mr. Gelender on exactly what the latitude is of the department and the other agencies to implement the legislative intent versus the actual letter of the law, specifically here? We look at some rules where the rule actually conflicts with the law, but there's no direct conflict here. It just goes a little farther than the law toward consumer protection. Is this something where we could make a finding that the rule is consistent with legislative intent even though it's not consistent with the actual express authority granted? Mr. Gelender said I think it's within the discretion of the Committee to decide on the rule as you see fit. The difficulty here is the requirement that's in the rule was actually in the statute until the house bill was passed in the last session, and then it was taken out by that bill. Because of that, it seems clear that, whether inadvertent or not, the bill was actually passed to eliminate that requirement.

Representative McGihon said I would note for the Committee if the department is successful in having legislation passed and signed prior to the rule review bill being passed, we're happy to amend the rule review bill and extend the rules. That is our normal procedure, it happens all the time. Rules get written and people realize the statute doesn't say what the rule says so they fix the statutes. It's not unusual. What is the normal practice is to not extend the rule until the statute is amended.

9:15 a.m.

Hearing no further discussion or testimony, Senator Veiga moved that Resolution #38, Section 3, the paragraph under the heading "Registered Installers"; Resolution #38, Section 5, the third paragraph; and Resolution #38, Section 9, the second paragraph, of the State Housing Board be extended and asked for a no vote. Senator Veiga said I jumped ahead of Mr. Gelender, and I apologize. We should break up the rules. Senator Veiga restated her motion to move that Resolution #38, Section 3, the paragraph under the heading "Registered Installers", of the State Housing Board be extended and asked for a no vote. Representative McGihon said we could hold the motion until Mr. Gelender is finished and have one motion. Senator Veiga said she didn't care. Representative McGihon said why don't we hold the motion and delay action on the motion until we discuss the other sections? Senator Shaffer asked is the issue on the other sections, sections 5 and 9, the same issue that was described in section 3? Mr. Gelender said no, it actually isn't, they're slightly different. Representative McGihon said let's make a decision. Senator Veiga has made a motion on section 3, is there a second? Senator Shaffer seconded the motion. The motion failed on a 0-8 vote, with Senator Brophy, Senator Mitchell, Senator Schwartz, Senator Shaffer, Senator Veiga, Representative Labuda, Representative Levy, and Representative McGihon voting no.

Mr. Gelender said the second rule issue deals with installation inspector education requirements. Essentially, section 24-32-3317 (8), C.R.S., says that every three calendar years, a manufactured housing installation inspector has to complete 24 hours of approved education. They can do this one of two ways: They can do either 12 hours of division-approved education and 12 hours of international code council education, or they can do 24 hours of division-approved education, and they have to do this every three calendar years. The difficulty is in the rule. Resolution #38, Section 5, the third paragraph, states that they have two options to complete their education requirements, one is the 24 hours of division-approved installation education and the other, however, is either eight hours of division-approved installation education and 12 hours of international code council education. The eight

hours option is in conflict with the statutory requirement of 12 hours if they go by 12 and 12. Therefore, we think that rule should not be extended.

Mr. Eisenhower said Mr. Gelender is correct. The department made a mistake.

Representative Levy said I wonder if there isn't another possible conflict here, which is the statute in section 24-32-3317 (8) (b), C.R.S., says 24 hours every three calendar years versus the rule that says within the previous three years. So, you would have a three-year period, the period ends, and you start another three-year period, versus rolling three-year periods. I think that could conflict as well, in terms of how you count your credits. Mr. Gelender said I see the point your making. I would say the rule is possibly ambiguous on that. It may make sense for the department to look at that while they're tweaking the rest of it. I don't know that it rises to the level of something we would bring here to the Committee.

Representative Levy said I think it actually makes a difference. If you think about CLEs, you have a three-year period that ends and then you start over again versus within the previous three years you would be able to continually count credits on a rolling basis.

Senator Mitchell said I'd just underscore the point that Representative Levy just made, that it's more than a semantic difference because it could have a concrete impact on a regulated person that they could be declared out of compliance, but under the other one they would be in compliance. What seems semantics on paper is livelihood to the people who are covered. It would be nice to clarify so that it tracks the way the statute reads rather than the way the rule could be read.

Representative McGihon said to Mr. Gelender it seems to me that we have a different issue between this paragraph and the last. Would you agree? Mr. Gelender said yes.

9:21 a.m.

Hearing no further discussion or testimony, Senator Veiga moved that Resolution #38, Section 5, the third paragraph, of the State Housing Board be extended and asked for a no vote. Senator Shaffer seconded the motion. The motion failed on a 0-8 vote, with Senator Brophy, Senator Mitchell, Senator Schwartz, Senator Shaffer, Senator Veiga, Representative Labuda, Representative Levy, and Representative McGihon voting no.

Mr. Gelender said the third issue deals with the manner in which the division or one of their independent contractors responds to complaints regarding installations of manufactured housing. Section 24-32-3317 (6), C.R.S., says the division or an independent contractor that does inspections and enforcement of proper installation of manufactured homes on behalf of the division shall inspect the installation of a manufactured home upon request filed by the owner, installer, manufacturer, or retailer. Resolution #38, section 9, the second paragraph, says in addition to the required inspections, the division may inspect the installation of a manufactured home upon written complaint filed by the owner, installer, manufacturer, or dealer of a manufactured home. What has happened here is that the statute is requiring an inspection upon request and the rule is giving the division the option of whether or not to perform an inspection in that situation. Therefore, we think the rule should not be extended.

Mr. Eisenhower said staff had informed me that the reason they had "may" in there previously is that often times the issues are resolved before the inspector is required to go out and actually physically reinspect the premises, that compliance will be made in some other manner. Therefore, they had "may" instead of "shall" so they weren't required to physically go out if the issue is resolved prior to that time.

Representative Labuda said it makes perfect sense to me, but it doesn't jive with the statute. Mr. Eisenhower said we agree.

Representative Labuda said maybe another statutory change is needed.

9:24 a.m.

Hearing no further discussion or testimony, Senator Veiga moved that Resolution #38, Section 9, the second paragraph, of the State Housing Board be extended and asked for a no vote. Senator Schwartz seconded the motion. The motion failed on a 1-7 vote, with Senator Brophy voting yes and Senator Mitchell, Senator Schwartz, Senator Shaffer, Senator Veiga, Representative Labuda, Representative Levy, and Representative McGihon voting no.

Chuck Brackney, Senior Staff Attorney for Rule Review, Office of Legislative Legal Services, addressed agenda item 1b - Rules of the Commissioner of Agriculture, Division of Inspection and Consumer Services, Colorado Department of Agriculture, concerning fertilizers and soil conditioners, 8 CCR 1202-4.

Mr. Brackney said the first rule has to do with fertilizers and specifically the labels that go on the packaging for fertilizers in Colorado. The General Assembly had a chance to amend the regulation on this during the 2008 session in House Bill 08-1231. The commissioner has rule-making authority regarding this in section 35-12-114, C.R.S. It says the commissioner has the authority to make rules relating to labels, which is what we'll be looking at. The specific statute on labels is section 35-12-105 (1), C.R.S., which contains a number of items that need to be on the labels of every package of fertilizer sold in the state. It includes the name and address of the registrant and the date of manufacture or a date code relating to the date of manufacture that need to be in there. Rule 5.1 provides a number of things that have to be on the labels. All these do relate to items in the statute. However, you won't see in that rule any mention of the name and address of the registrant or the manufacture date or a code related to the manufacture date and those are things required by the statute. Because Rule 5.1 fails to include a complete list of fertilizer label information required by statute, it conflicts with section 35-12-105 (1), C.R.S., and should not be extended. The commissioner is not disputing our recommendation.

9:27 a.m.

Hearing no further discussion or testimony, Representative Levy moved that Rule 5.1 of the Commissioner of Agriculture be extended and asked for a no vote. Senator Shaffer seconded the motion. The motion failed on a 0-8 vote, with Senator Brophy, Senator Mitchell, Senator Schwartz, Senator Shaffer, Senator Veiga, Representative Labuda, Representative Levy, and Representative McGihon voting no.

Chuck Brackney addressed agenda item 1c - Rules of the Secretary of State, Department of State, concerning the address confidentiality program, 8 CCR 1505-13.

Mr. Brackney said the next two rules are separate things but both are under the heading of something called the "Address Confidentiality Program Act" created by the General Assembly during the 2007 regular session. It creates a mechanism that allows a person who is a victim of domestic violence, stalking, or a sexual offense to seek protection by having their address removed from public records. The notion is that someone who is trying to track them down using public records won't be able to find their address. It's the secretary's office who is charged with overseeing the program, including the forwarding of mail from the substitute address to the real address of that person. Currently there are over 100 people who are participating in this

program. The rule-making authority is section 24-21-213, C.R.S., which says the secretary of state is authorized to adopt any rules necessary to carry out the provisions of the act. The "Address Confidentiality Program Act" was amended in 2008 by House Bill 08-1274. That bill changed section 24-21-205 (3), C.R.S., to expand the list of people whose addresses might be changed under the program because of their residence and relationship to the victim. Section 24-21-205 (3) (j), C.R.S., says the name of a parent, spouse, or dependent child, which was what the original legislation looked like, and "other family member" was added to that list. The program was made available to not only the victims' parents, spouse, and children, but also to other family members who would benefit from the program as long as those other family members reside with the program participant. In response to House Bill 08-1274, the secretary adopted Rule 2.1, which defines the term "other family member". It's important to note that the term "other family member" is not defined anywhere in the statutes in the act. The rule says that "other family member" means a person who resides with the victim and defines himself or herself as a family member regardless of any blood or marital relationship. The rule allows individuals themselves to define themselves as family members for purposes of the program even if they're not in any way related to the participant by blood or marriage. The wording of the rule, as a practical matter, gives complete discretion to the person in question to decide whether he or she is a family member or not for purposes of this program. The rule-making authority the secretary has with regards to this act is, we think, sufficient for the secretary to adopt a rule defining the term "other family member", especially given that there isn't any definition in statute. However, the problem with the rule is it doesn't define who an other family member is. Instead, the rule allows someone else to decide whether he or she is a family member for purposes of this program. It is not within the statutory authority of the secretary to cede this responsibility for determining who is eligible for a government-funded program that carries a fiscal impact. The criteria for this determination should be set forth in the rule, not passed on to the potential beneficiary in an open-ended manner. Because the definition of "other family member" found in Rule 2.1 goes beyond the statutory authority given to the secretary in section 21-24-205 (3) (j), C.R.S., it should not be extended.

Senator Veiga said if I understand your analysis, what you're saying is you think the rule leaves too much discretion, that it allows someone to define who is an other family member and you don't consider that to be a definite definition, and that there's a more precise definition. Mr. Brackney said that's exactly right. We would like to see it say who they consider to be an other family member. It doesn't, and we think it allows people, almost anybody as long as they reside there, to decide whether they are a family member or

whether they aren't. That's the problem with the rule, not so much who it might include, but that it doesn't really define who that is.

Senator Veiga said it does define who it is, you just don't think the definition is precise enough. Correct? It includes somebody who resides there who holds himself out as a family member, so that is a definition. Mr. Brackney said I suppose that's correct. It is a definition but not a precise definition or even close to that. I would agree with that. I don't know if that changes the issue.

Representative Levy said I have some problems with your analysis as well, in that the purpose of the program is address confidentiality and if there is an individual who is closely associated with the person who seeks to be confidential or anonymous or have their address protected that needs to be on the list because of that association, it seems to me you can't define it precisely. Does a common law marriage fit? Everyone knows "Joe" and "Mary" consider themselves to be married, even though they aren't, and if they know where Joe lives, it doesn't do any good to have Mary's address confidential. It seems to me you can't define it precisely in order to carry out the purpose of the program. Mr. Brackney said we're, again, just concerned it gives too much discretion to the people involved and not enough definition to it. Given that we are talking about a government program that does cost some money, we're concerned that maybe this definition should be a little more precise.

Representative McGihon asked do you find any legislative history in the bill to help with the definition of "other family member"? I have some concern the definition is too broad when it says regardless of any blood or marital relationship. In Representative Levy's example, there's clearly a common-law marital relationship that they hold themselves out. My question is about the legislative history in the bill. Mr. Brackney said as a matter of fact, there was testimony before the Senate Judiciary committee. It was very brief on this particular point, but the person from the secretary's office who testified mentioned grandparents, aunts, and uncles and that was all.

Representative Labuda said the difficulty I have with the rule is that if the victim wants to announce that this is my common-law husband, the person is covered, but if the common-law spouse on his or her own says I'm a family member and the victim doesn't want that person to be a family member, there is the problem with this rule as it's written. If I were a victim, I could conceive of some people I would not want to be included as a family member. Mr. Brackney said that's true. That goes to the discretion part that goes to the other person, not the victim.

Senator Veiga said following up on some of the comments made by Representative Levy, I appreciate where the secretary is coming from, because you're trying to encompass a common-law spouse, and that's a legal determination. So, if you're trying to define that by way of a rule, you would exclude as many people that consider themselves to be common-law married as you would include. In other words, it's a factual determination in combination with a legal determination as to whether somebody is common-law married. It's a set of legal criteria, but you present a series of facts to say I hold myself out and here's all these series of things. What are you going to say? You've resided together for so many years, you are joint holders of property, you're such and such. To me, it's a better definition than to sort of preclude people who actually hold themselves in a familial relationship, whether it's a common-law spouse or a partnership relationship. I think the rule is perfectly appropriate and absent a direct conflict with the statute, I won't be voting not to extend.

Senator Mitchell said I think Senator Veiga means she will be voting to extend the rule. I think Representative Levy makes a good point about the purpose of the statute and the fit with the language "other family member", but that highlights issues or dilemmas created by this statute, not by the rule or the asserted flaws in the rule. If we need to extend confidentiality protections to someone who is closely associated with the victim or with the covered confidential person, it may or may not make sense to tie it to "other family member", but that was a legislative choice and one, perhaps, the legislature should revisit. The flaw that Representative Levy highlights is in the statute, not in the rule. Coming down to the dispute before us today, I understand the issue maybe just a little bit differently than the dialogue between Mr. Brackney and Senator Veiga and it's simply that there needs to be a clear definition and the definition needs to be established by someone legally authorized to do so. The problem with the secretary's formula that says a person who holds himself out as a family member is that we can have identical facts in two different cases and, depending on the subjective opinion of a citizen, in one case you've got a covered person and in the other case you don't have a covered person. That is not reliable, consistent law or policy. The judgment needs to be made by an authorized state policymaker, not by someone's subjective view. Finally, I think Representative Labuda points out another important problem, and that is even if there was some justification for delegating that discretion, it should be delegated to the victim or to the covered person, not to the other, somehow related, person, such as the roommate, the friend, the domestic partner, or whoever it is. The discretion of who is my family circle should fall with the person the statute intended to protect, not with their cast of associates. All that being said, I think we've seen real drafting and implementation flaws

highlighted by Mr. Brackney, but I think the more fundamental problem is the one Representative Levy raises. Maybe we want to extend the protection beyond other family members and maybe we should fix the statute at our next opportunity to do so.

Representative McGihon asked Mr. Brackney is the legislative intent to protect the address of the victim? Mr. Brackney said yes, to protect the victim by protecting the address of the victim.

Representative McGihon said if we have persons known to reside with the victim, the intent of the rule is to protect the address of the victim by protecting those persons that reside with the victim? Mr. Brackney said yes, I think that's right. I wouldn't have any problem with their trying to make it broad, I think that makes sense, but I think it's just the way it's done probably isn't quite right from our standpoint.

Representative McGihon asked does the legislation give the authority to participate in the program to the victim or to the other family member or is that a silent issue? Mr. Brackney said as a matter of fact, it's quite extensive in the statute. You have to meet a number of things and go through a lot of hoops. It's not just anyone who can be covered under this program. It's not easy.

Representative McGihon said I'm talking about the other family members. So, there's a victim who has gone through the hoops and the other participants who reside at the same address. Does the legislative history or does the statute address how those persons may participate in the program, at the request of the victim, at their own request, both? Mr. Brackney said I'm not aware of anything specifically on that in the statute we looked at. For example, if it was a parent, who is clearly covered by that statute, I think they can have their address substituted as long as they reside with the person and the person is a participant in the program. I don't think they have to go through a single or set of complicated determinations.

Representative McGihon said but the statute itself does not address whether or not the victim or the parent is the one who makes that determination of participating in the program. Mr. Brackney said right.

Andrew Whitfield, Deputy Secretary for Licensing, Secretary of State, addressed the Committee. He said our office actually implements the program. I think what you're asking is whether other people in this program would actually be covered but not actually be victims themselves. What the statute actually states is that if you are a victim of domestic violence, sexual abuse, or

stalking, you will be covered by the statute. The statute also states that if you fear for your safety, you would also be covered.

Representative McGihon said to the question of whether or not once you have a victim that participates, do you have a different answer than Mr. Brackney's as to whether or not the statute allows the victim or the other family member to decide whether or not they participate? Mr. Whitfield said the reason the statute was created was for other victims to participate. The reason we came up with the language we did is recognizing the fact that victims or survivors of domestic violence typically or in some cases are not necessarily going to other family members, they're actually going to other households. That might be, as we mentioned before, grandparents or aunts, but can also be friends. That's what we were looking to embody with the rule.

Representative McGihon said so your testimony is that the rule looks to protect the victim but it sounds like it is beyond the statutory language of "other family member", absent a very broad reading of "it takes a village" kind of family. Mr. Whitfield said right, that's fair.

Senator Schwartz said I am concerned about any abuses that might take place, that someone could more or less want to look for the anonymity for whatever reason, and we give it. It might be an uncle or someone who really is not that closely associated with the victim, and may be part of that household but may not be a threat to her identity. I'm worried about an abuse that could take place, that anyone could present themselves in that category and the victim doesn't have the ability to have oversight of that. Mr. Whitfield said I think your concern is legitimate, but honestly what we have found in the program and the 25 other programs that run around the United States is there's really no good reason to use this program unless you are actually a victim. The reason being that all the mail from that person would go to our office, so you're going to have us sifting through and forwarding your mail. But even beyond that, if you are actually in a criminal situation, we're going to provide information to police officers or authorities and say we can tell you this person is in the program and we can tell you exactly what their address is.

Representative Levy said going back to my original point, the language I focused on when I was reading the statute is other family member who resides with the applicant who also needs to be a program participant in order to ensure the safety of the applicant. I think that language was put in there to broaden the other family member language to not a precise definition. I don't see anything in here that says that the rule has to strictly define who may or may not be a family member as the Office is requesting. I think it was

deliberately written to make this very fluid and loose so that the program could actually function. If you do try to define it, you're going to be creating lines and that's going to leave somebody outside of them whose known whereabouts could put the applicant at risk. I think I'll be joining Senator Veiga if she's of a mind to actually vote to extend the rule.

Mr. Whitfield said to that point, I think it's important to understand how the program works. It's not the secretary's office that is actually personally making determinations as to whether or not the person should be in the program. We run the program, but it's actually application assistants who are victim advocates and people of that nature who are making the determination that these people fear for their safety.

Representative Labuda said regarding the people who run the program, is it based on their experience of what the victims go through that this rule was drafted this way? Mr. Whitfield said this rule was drafted this way because there's a couple different elements that happened last year. What happens is most programs actually define family members as people that live in a household. There was some objections last year to actually using the term household and that's why this rule was drafted the way it is. Again, it's just a recognition of the fact that people who are survivors of domestic violence, sexual abuse, or harassment, are not necessarily going to go to a household that is made up of family members per se. There are other people they may consider family members, in an "it takes a village" sort of situation.

Representative McGihon said when you say the household language was rejected, where does that occur? In drafting session discussions or on the legislative record? Mr. Whitfield said it was off the legislative record. We were told beforehand if we did want something with household, I believe it was Senator Tupa at the time who didn't like the language of household, and so we decided to drop it and go with something else.

Senator Mitchell said I think it's a good point that we get some further guidance about the purpose of this section with the additional qualifications that at least someone who resides with the victim and someone whose confidentiality is also necessary to protect the victim. However, the problem with reading those additional purposes as broadening the universe of possible covered people is that it is "and" not "or". You start out with the requirement that it be another family member and someone who resides with the victim and someone whose confidentiality is necessary to protect the victim, and we can't shift the purpose and then just discard all the prerequisites that were prior listed. It doesn't get broader, it gets tighter. Yes, it has to be people that suit

the purpose, but it has to start out as an other family member, however defined.

Senator Veiga said I think that's sort of my point. Not the qualifications Senator Mitchell was referencing, but the fact that our legal legislative body decided not to define other family members. When we're talking about a program that's protecting victims and family members of whatever definition, then I think it's appropriate to define it broadly, absent some statutory direction from us that it cannot be defined broadly. From my perspective, the rule is entirely appropriate. We may think it allows too much discretion, but there's nothing from a legislative perspective that we enacted that said you cannot define it broadly.

Senator Mitchell said back to the original issue presented by staff, we're concerned not with the definition, but with the decision-maker, and with the variability of the decision-maker and with the unequal application of policy to identical sets of facts, because people outside of government make determinations, not because authorized decision-makers make determinations, and that, I think, is the problem with the rule.

Senator Veiga said we didn't say from the legislative perspective that the secretary needs to decide who is the family member. They chose to enact a rule, but a family member is a very personal thing. Who I consider to be my family may be somebody Senator Mitchell may not consider to be my family. To me, the definition of the rule is entirely appropriate because of that. Families are very unique and very changing and fluid in our society today and so in order to give justice to that and absent the legislature opining that we cannot do that, I think the rule is entirely appropriate.

Jackie Sanders, Manager for the Address Confidentiality Program, Secretary of State, addressed the Committee. She said I wanted to testify to one piece I think is important to clarify, and that's in the application process. On the actual application that is given to application assistants and victim advocates in the community, they sit there with the victim or survivor, they fill out the application, and the victim identifies household members and writes down who needs to be in the program to keep them safe. Then, if there's anyone who is over 18, even if it's a dependent child over 18, that person has to also sign that application and sign a list of agreements that are pretty rigid about participating in the program. They have to agree that we're their legal agents for mail and for personal service, and they agree that we can throw out some of their nonfirst-class mail. They have to agree to all the terms and conditions to be in this program. They have to sign that application and initial all the agreements. Then, the application assistant also has to sign off. That's three

people that have to agree to this process. I just wanted to make that one piece a little more visible. It's subjective, yet there is responsibility for defining who should be in this program.

Representative McGihon asked if it's Ms. Sanders' experience that victims reside and say that they are staying with friends who are like family, or that these people have been their friends for so long they are family, or whether they actually stay with family members, or is it everything combined? Ms. Sanders said so far we have 123 people in the program as of today. Most common would be a single parent, a woman with a child or two. Second most common is a single woman by herself. Then we have maybe 20% of people who would include people on the applications. A spouse, I don't know if they're married, I don't ask for a marriage certificate. They may or may not have the same last name. That would include partner or fiancée and we have one same sex couple. I think being in the program is a responsibility. It's not a good time. It's inconvenient. I can't image someone would want to be in it. I actually haven't seen a family comprised of friends or roommates, but I think kinship is an option if that's what someone needs to stay safe.

Senator Schwartz said you may have mentioned this, but what is the number of people involved in the program at this point? Ms. Sanders said we have 123 participants as of today since July 1, 2008.

Representative Labuda said that 123 is persons in the program, not victims? Ms. Sanders said correct.

Representative Labuda asked do you have any idea what the breakdown is between those two? Ms. Sanders said I would guess there are close to 60 who are actually victims. One thing it's important to note is that this is a brand new program, and the largest program in the country, Washington, has approximately 3,500 people in the program, half of which are minors. This program has started faster than any other program in the country so far, including Washington. No other program has had this many people enroll in this short of a time.

Representative Labuda said as I listened to the latest testimony I heard the term "household", which to me is probably what should have been in the statute in the first place. I understand there's a political reason that it wasn't, but I think the statute needs to be changed.

9:58 a.m.

Hearing no further discussion or testimony, Senator Shaffer moved that Rule 2.1 of the Secretary of State be extended and asked for a yes vote. Senator Veiga seconded the motion. Senator Mitchell said for what it's worth, I would support an amendment next session to take out the phrase "other family member" and to target a broader category of people. Representative McGihon said I would vote for Senator Mitchell's bill. I think the Committee can see the problems with the bill that Mr. Brackney raised and also the benefit of the program and for anything to cause the program to cease would concern all of us. The motion passed on a 7-1 vote, with Senator Brophy, Senator Schwartz, Senator Shaffer, Senator Veiga, Representative Labuda, Representative Levy, and Representative McGihon voting yes and Senator Mitchell voting no.

Mr. Brackney said there's one other issue that has to do with the disclosure of confidential address information to criminal justice agencies and criminal justice officials. The "Address Confidentiality Program Act" creates an expedited process whereby criminal justice agencies or officials can gain access to the confidential address information in the course of a criminal investigation. That's covered in section 24-21-210 (12), C.R.S. It also states that a requesting agency shall certify to the secretary that the official or agency has a system in place to protect the confidentiality of a program participant's actual address. The notion is that once the secretary hands over this information, the requesting criminal justice agency should take seriously the idea of keeping this information confidential beyond its use in the criminal justice investigation. They have to certify to the secretary that they do in fact have a system to do that. Rule 5.2 says the requesting agency has to include a statement describing how the participant's actual address will be protected. What this does, by requiring them to describe the process, is add a requirement not found in the statute. They not only have to certify that there is a system in place for the protection of this information as required by the statute, but they also have to describe to the secretary how this process works. This requirement is an additional burden placed on law enforcement that just isn't found in the act governing this. In addition, given that this is supposed to be an expedited process for the release of this information, it seems that they're creating an extra obstacle, an additional burden, when you would think that in an expedited process like this you would have fewer obstacles and maybe lesser burdens on criminal justice agencies when they're requesting this information. Because Rule 5.2 creates an additional requirement for criminal justice agencies to meet when attempting to gain access in an expedited manner to confidential address information, it conflicts with section 24-21-210 (12), C.R.S., and should not be extended.

Ms. Sanders said this portion of the rules was revised many times and given

much thought. This is an error. We overlooked it. We don't need to know how they keep it confidential. We just want them to keep it confidential and want them to certify that they will keep it confidential. There is a proposed rule-making hearing on January 2 changing that language from describing "how" to "that". It's a simple word change, which should take care of the problem.

Representative McGihon said you would agree with the finding of Mr. Brackney? Ms. Sanders said yes, I agree.

10:04 a.m.

Hearing no further discussion or testimony, Senator Shaffer moved that Rule 5.2 of the Secretary of State be extended and asked for a no vote. Representative Labuda seconded the motion. The motion failed on a 0-8 vote, with Senator Brophy, Senator Mitchell, Senator Schwartz, Senator Shaffer, Senator Veiga, Representative Labuda, Representative Levy, and Representative McGihon voting no.

Jery Payne, Senior Staff Attorney, Office of Legislative Legal Services, addressed agenda item 1d - Rules of the Division of Motor Vehicles, Department of Revenue, concerning the definition of "nonresident" for the purposes of driver's license and identification card issuance, 1 CCR 204-29.

Mr. Payne said this is a rule issue concerning driver's licenses and identification cards. The division promulgated this rule to exempt temporary and seasonal workers from having to obtain a driver's license. This was done through defining "resident". Unfortunately, the rule inadvertently made it impossible for such workers to comply with the program that brings them to Colorado and, therefore, conflicts with Colorado law. Section 42-1-102 (81), C.R.S., defines resident for the purposes of issuing a driver's license or an identification card. It says resident means any person who owns or operates any business in this state or any person who has resided within this state continuously for a period of 90 days or has obtained gainful employment within this state, whichever shall occur first. Therefore, a person becomes a resident upon obtaining gainful employment. The division's Rule 2 provides that a person who is employed in this state by means of a document that authorizes only temporary or seasonal employment shall not be considered to have obtained gainful employment in this state and, therefore, shall not be a resident of this state. The rule excludes people from another country who are employed under a temporary authorization issued by the federal government. This has two relevant effects: The person is prohibited from obtaining both a

driver's license and an identification card in Colorado.

Mr. Payne said next to deal with is the "Colorado Nonimmigrant Agricultural Seasonal Worker Pilot Program Act". The act creates a pilot program to expedite the application and approval of seasonal and temporary workers. Section 8-3.5-109, C.R.S., of the pilot program requires employees to obtain an identification card. It says that within two weeks after an employee's arrival in Colorado, the employee shall apply for an identification card. Colorado law, however, prohibits issuing an identification card to a nonresident. Section 42-2-302 (2) (c), C.R.S., says the department may not issue an identification card to any person who is not a resident of the state of Colorado. Therefore, Rule 2 prohibits people in the pilot program from obtaining an identification card, which the program requires. Because Rule 2 prohibits compliance with Colorado law, it should not be extended.

10:08 a.m.

Hearing no further discussion or testimony, Senator Shaffer moved that Rule 2 of the Division of Motor Vehicles be extended and asked for a no vote. Senator Schwartz seconded the motion. The motion failed on a 0-8 vote, with Senator Brophy, Senator Mitchell, Senator Schwartz, Senator Shaffer, Senator Veiga, Representative Labuda, Representative Levy, and Representative McGihon voting no.

Julie Pelegrin, Senior Attorney, Office of Legislative Legal Services, addressed agenda item 1e - Rules of the State Board of Education, Department of Education, concerning amendment to Public School Finance Act rules based on enactment of HB08-1204 and HB08-1388 that relate to approved facility schools, 1 CCR 301-9.

Representative McGihon asked if Ms. Pelegrin wants to go through the rules one-by-one, and consider a single motion or multiple motions? Ms. Pelegrin said I don't think there's an issue that would cause us to need to break it up. If you want to move all the rules in one motion, I think there's no reason not to do that.

Representative McGihon said what we'll do is have Ms. Pelegrin present them rule by rule so we can have discussion on each rule and then let Ms. Pelegrin complete her presentation before we have a motion.

Ms. Pelegrin said these rules actually address the funding for what's called facility schools. As you all are aware, the constitution guarantees free public

education to everyone between the ages of six and 21, but some of these students are placed in a facility by court. There's various types of facilities. The most common kind people are aware of are the residential treatment facilities. When a child is placed in one of these facilities, their education is provided to them by a school within the facility, which I'll refer to as facility schools. In order to meet the state's obligation of providing this free education, the state reimburses the facilities for the education services that are provided. Those facility schools that meet the criteria established by the department I'll refer to as approved facility schools. What we're talking about here are rules that address how the approved facility schools receive their reimbursement. Before we go much farther, I should let you know that the department and I have met, we've gone over all this, they do not contest any of the issues, and they will be seeking some statutory changes to address some of the issues.

Ms. Pelegrin said last year, the General Assembly passed two bills that affected the funding for facility schools. One was House Bill 08-1204, which created a new unit within the department and it also created a new type 1 board with rule-making authority, which is the facility schools board. The other provisions that the General Assembly adopted last year were part of the school finance bill and they changed how we do the funding for facility schools. In going over these rules, what we really have to look at is the interaction between those two statutes.

Senator Schwartz said I don't know if we should ask the department, but I had some questions reading about the reference toward the alternative youth corrections facility in Pueblo. My question is are they an authorized facility school because young people are placed in that and it has a high school within the facility? Just clarification on whether that is also defined as a facility school. Ms. Pelegrin said I believe that is a state operated program, which is one of the rules we will address that is going to need a statutory change. It was a drafting oversight last year.

Ms. Pelegrin said the first issue that arises concerns the actual authority to approve facility schools for reimbursement. As I mentioned last year, the General Assembly adopted House Bill 1204, which created the new division and the new type 1 facility board. Specifically, in section 22-2-407, C.R.S., the facility schools board is to adopt rules for the creation and maintenance of a list of facility schools that are approved to receive reimbursement for educational services. Rule 2254-R-14.01 talks about an approved facility school being approved by the state board of education. Rule 2254-R-16.02 (1) talks about the state board revoking its approval of a school and Rule 2254-R-20.00 generally covers the criteria for a school to be placed on the

approved list. As I stated, the authority for those rules is now being given to the facility schools board, so the state board of education doesn't have authority to enact those and, therefore, we would recommend that Rules 2254-R-14.01, 2254-R-16.02 (1), 2254-R-20.00 not be extended.

Ms. Pelegrin said the next rule issue is the authority to reimburse state-operated facilities. Rule 2254-R-14.03 defines a state-operated program as a regional center, the Colorado school for the deaf and the blind, the Colorado mental health institute at Fort Logan, and the Colorado mental health institute at Pueblo. It then goes on to say that these state-operated programs are eligible to receive reimbursement. That's referred to in Rules 2254-R-14.04, 2254-R-14.06, 2254-R-17.02, and 2254-R-19.01 (2). However, section 22-54-129, C.R.S., which talks about the reimbursement for these facility schools, defines "facility" as a day treatment center, residential child care facility, or another facility licensed by the department of human services or a hospital licensed by the department of public health and environment. The definition does not include a facility or educational program that's operated by a state agency because those are not licensed by another state agency. This was a drafting oversight because the intention in the section where we created the unit was the regulatory aspects of these facilities, and it wasn't supposed to apply to state-operated facilities. When we created the funding, because we wanted a tie between the two, we just used the same definition and it escaped everyone's attention that we left out state-operated facilities. Vody Herrmann of the department wanted me to mention that because these rules are in place and are effective until May and state-operated facilities need to be funded, they have been funded this year, so there's no concern about that. The department will be seeking a statutory change in January to make that clear. Therefore, since the statute does not authorize reimbursements for state-operated programs, we would recommend that Rules 2254-R-14.03, 2254-R-14.04, 2254-R-14.06, 2254-R-17.02, and 2254-R-19.01(2) not be extended.

Ms. Pelegrin said as stated, the definition for "facility" is really pretty tightly defined, as only treatment facilities licensed by the department of human services and hospitals licensed by the department of public health and environment. Rule 2254-R-14.07 generally refers to the term "group care facility or home". The department defines various types of group care facilities or homes, one of which is in Rule 2254-R-14.07(5), as a "specialized group facility for children with disabilities", which is defined as a group home or a group center that is licensed or certified by a county department of social services, by the Colorado department of human services, or by the Colorado department of public health and environment. They also have a catch-all under that group care facility or home, which is "other appropriately licensed or

approved group home", defined in Rule 2254-R-14.07(3) as being a group facility for five or more children approved or licensed by a county department of social services or by the Colorado department of human services. As just stated, to be a facility in the definition from statute, you have to be licensed by the department of human services. Therefore, both Rules 2254-R-14.07 (3) and 2254-R-14.07 (5) conflict with that statute and we recommend that they not be extended.

Representative Levy said I'm going to display my complete ignorance about social services and licensing care. The question is whether the department of human services delegates to county departments of social services certain licensing or certification functions and might this be necessary because of that? Ms. Pelegrin said no, the department of human services has specific licensing authority that is actually in the definition of facility. It refers to facilities licensed pursuant to section 26-6-104, C.R.S., which doesn't provide for delegating that. I think county departments of human services may do some other licensing, but it needs to be licensed by the department. I don't actually know that county departments of human services still license. This may actually be old language from the rule that's just been extended over time.

Representative Labuda said do I understand that we're not going to be disenfranchising the education of any kids with eliminating these rules, that they're covered elsewhere? Ms. Pelegrin said I believe that all of the facility schools that have been funded will continue to be funded because I think they all are actually licensed by the department of human services. I think they all fit within the definition of facility. I know all the players were at the table last year and the definition was carefully crafted to make sure no one was left out.

Ms. Pelegrin said the definition of public placement is next. An approved facility school receives reimbursement for educational services that are provided to a student who is placed in a facility. "Placed in a facility" is defined as being placed there by action of a public entity in Colorado or placed there by the student's own determination if the student is homeless. Rule 2254-R-14.08 defines "pupil in public placement or pupil publicly placed" only as being a pupil who is sent there by action of a public entity. It does not include the student who is homeless and places himself or herself. Therefore, Rule 2254-R-14.08 conflicts with the statute and we recommend that the rule not be extended.

Ms. Pelegrin said in a similar vein, the next rules talk about an approved facility that includes nonresident pupils. Rule 2254-R-16.01(1) says the approved facility may receive reimbursement for those nonresident pupils if

parental rights have been terminated or if the pupil is defined as abandoned or homeless or if an in-state public agency has publicly placed the pupil. Section 22-2-402 (4), C.R.S., doesn't actually refer to whether it's a resident pupil or nonresident pupil. It refers to whether the pupil has been publicly placed or is homeless and place themselves. Rule 2254-R-16.01(1) would allow reimbursement for a child who is only there because parental rights have been terminated and the statute wouldn't allow for that. Therefore, Rule 2254-R-16.01(1) conflicts with the statute and we recommend that it not be extended.

Ms. Pelegrin said next is time for reporting student information. Section 22-54-129 (3), C.R.S., says approved facility schools have until November 10 to report their pupil enrollment. Under Rule 2254-R-16.02, the approved facility schools are required to report, if they report their enrollment, by October 5. Once again, Rule 2254-R-16.02 conflicts with section 22-54-129 (3), C.R.S., and therefore we recommend that it not be extended.

10:26 a.m.

Hearing no further discussion or testimony, Senator Shaffer moved that Rule 2254-R-14.01 in its entirety, Rule 2254-R-16.02 (1), Rule 2254-R-20.00 in its entirety, Rules 2254-R-14.03, 2254-R-14.04, 2254-R-14.06, 2254-R-17.02, 2254-R-19.01 (2), 2254-R-14.07 (3), 2254-R-14.07 (5), and 2254-R-14.08, Rule 2254-R-16.01 (1) in its entirety, and Rule 2254-R-16.02, of the State Board of Education be extended and asked for a no vote. Senator Veiga seconded the motion. The motion failed on a 0-8 vote, with Senator Brophy, Senator Mitchell, Senator Schwartz, Senator Shaffer, Senator Veiga, Representative Labuda, Representative Levy, and Representative McGihon voting no.

Representative McGihon said the Committee is going to go slightly out of order on today's agenda. I apologize for the fact this will inconvenience some of you who are waiting for other issues. We're going to go into the executive session portion and then come back for the remainder of the agenda.

Charley Pike, Director, Office of Legislative Legal Services, addressed agenda item 5 - Executive Session to consider attorney client matters pursuant to section 24-6-402 (3) (a) (III), C.R.S.

Mr. Pike said my introduction to this is there are several issues involved in a matter that came before the Committee at its last meeting that I think taken as a whole suggest that the Committee should go into executive session in

accordance with the statute to consider those. These are attorney-client matters and it involves existing, current litigation as well as, in accordance with the statute, matters that would normally be kept confidential. That's about as much as I will say at this point. I think the usual process would be, if the Committee is comfortable with that much of an explanation, a motion to go into executive session, and a vote taken. It would take a two-thirds vote of the Committee to do that. I would be happy to try to provide further explanation if the Committee feels that's appropriate.

10:31 a.m.

Hearing no further discussion or testimony, Senator Veiga moved that the Committee convene in executive session based on the description provided by Charley Pike. Representative Labuda seconded the motion. The motion passed on a 8-0 vote, with Senator Brophy, Senator Mitchell, Senator Schwartz, Senator Shaffer, Senator Veiga, Representative Labuda, Representative Levy, and Representative McGihon voting yes. Representative McGihon said at this time the Committee will go off the internet but continue to record under the requirement of statute.

The tape system was turned off, and the Committee went into executive session.

11:42 a.m.

The Committee returned from executive session. Representative McGihon said the Committee has completed its executive session and the Committee will return to the regular agenda. *(See attachments at the end of these minutes for the signed attestations of Representative McGihon and Mr. Cartin and Ms. Eubanks regarding the executive session.)*

Jennifer Gilroy, Revisor of Statutes, addressed agenda item 2 - Approval of the Rule Review Bill and Sponsorship of the Rule Review Bill and Other Committee on Legal Services Bills: Revisors' Bill(s) and the Bill to Enact C.R.S.

Ms. Gilroy said I'm here to invite the Committee to consider sponsoring two bills that are regular bills each legislative session. Both are nonsubstantive, technical bills, but very important in the roles that they play. The first is the bill to enact the statutes. This is a bill that regularly is considered by the legislature each session at the beginning of each session. It's an early bill because primarily what it does is provide that all of the changes that you made

during the last legislative session and intervening special sessions, which there were none this year, are enacted as the positive and statutory law of the state of Colorado. You may or may not know that once you pass all those bills and we feed them into the C.R.S., we're making revision changes to them. We might do harmonizations for two bills that impact the same area of law, or we might make spelling, punctuation, or capitalization changes. So, we're making slight revisions and changes to it to feed it into the current law. Once we do that, then we ask that the legislature consider a bill to enact that as the positive law of the state of Colorado so that the laws can be used and recognized by a court of law in this state. The second bill I would also ask the Committee to consider is the annual revisor's bill. This is a bill that, again, is technical and nonsubstantive, but unlike the bill to enact, it's one we hold off until the very end of the session in hope that we can correct any errors that might occur in bills that are going through the process, as well as any errors that our staff and others in the public may have discovered in the statutes over the course of the last year. We endeavor to make sure these are nonsubstantive changes to the statutes. It is a bill that is sponsored by this Committee each year. I would ask that you sponsor these two bills. I would need a prime sponsor for each house and then to know whether or not each of you would like to co-sponsor each bill.

Senator Schwartz agreed to sponsor the bill to enact the C.R.S. Representative McGihon assigned Representative Gardner as the other sponsor for the bill. Representative Labuda, Representative Levy, Representative McGihon, Senator Mitchell, and Senator Shaffer agreed to be co-sponsors on the bill.

Senator Brophy and Representative Labuda agreed to sponsor the revisor's bill. Representative Levy, Representative McGihon, Senator Mitchell, Senator Schwartz, and Senator Shaffer agreed to be co-sponsors on the bill.

Representative McGihon asked Ms. Gilroy to check with those members not at the meeting to see if they want to co-sponsor the bills.

Debbie Haskins, Senior Attorney, Office of Legislative Legal Services, addressed the Committee. She said usually at the December meeting we ask you to approve the rule review bill as drafted with amendments to incorporate the Committee's votes taken at the December meeting. We're in a little bit of a quandary here this year about whether you might want to hold off a little bit on introducing the bill this year. At the October 15 meeting of the legislative council, there was a vote taken by the council asking that the Committee review rules of the oil and gas commission out of cycle. The rules were adopted on December 10, which makes them not subject to this year's rule

review bill, but there's been a lot of interest about reviewing those rules during this particular legislative session. We do not have the rules submitted to this Office yet, but we do have this vote from the council asking that the Committee review the rules out of cycle so they can be covered in this year's rule review bill. I don't know what the pleasure of the Committee is, whether you want to go ahead and approve the bill as normal or not.

Representative McGihon said legislative leadership did agree and the leadership of this Committee was consulted about taking those oil and gas rules out of cycle. Mr. Pike indicated his office would be able to do that. Is that correct? Mr. Pike said yes, we can't assure at this point exactly when we'll have them ready for the Committee. It depends a little on when we get them.

Representative McGihon said the attorney general has yet to sign off on the rules. The rules have only just been voted on and the attorney general has to sign off on the rules. Mr. Pike said I would assume in February or January, somewhere in there.

Representative McGihon said in addition, this Committee has often at the December meeting passed the draft of the rule review bill knowing full well that we have other rules that need to be reviewed and incorporated or not incorporated in the bill. I think there are a fair number of rules that we have not gotten to. My suggestion, if the Committee is willing to accept this, is that we consider the draft bill at a January meeting. I suspect we're going to have at least three meetings between now and the end of January, one for further executive session considerations, and at least a long day on oil and gas and other miscellaneous rules. If the Committee is in agreement, we'll consider a draft bill in January. I believe Senator Veiga and I will be the rule review bill sponsors, at least at this point, as is typical. The Committee did not object to considering the rule review bill at a later meeting.

Ms. Haskins said the only other thing is the statute does require we have an organizational meeting after the session to elect a chair and vice-chair and we may have some new folks appointed, so that's another meeting we'll have to factor in there, but we'll see if we can't do that. It's a short meeting that we can probably combine with one of these other meetings.

Charley Pike addressed agenda item 3 - Report on OLLS Member Survey Responses and How OLLS is responding to the Results.

Mr. Pike said we do surveys of all of the members about how the Office is operating and what members' impressions are. We've done that in 2007 and

2008. We received 21 responses the first year and 29 the second time. The one thing we want to communicate to you is we do listen to the members, and we do want to provide you some feedback about what we do in response to the criticisms that members provide for us in those forms. There are questions about consistency in our performance, that we ought to work more closely with other staff agencies, we should provide more education training for members, and we should provide more information to members regarding the history of their bills. Those have been some consistent things we have heard from members over the course of the last few years, including in these last two surveys.

Representative McGihon said with providing more history on bills, does that seem to come up now because of term limits? Mr. Pike said I think that's part of it. I think there's an assumption that each member makes when they request a bill that they've come up with an idea that's never been approached before and then to their shock they find out that several years before it was introduced and there are horror stories related to that and they'd like to know what those horror stories are. In the context of the responses, Julie Pelegrin has worked on some ideas to respond to that as well as some of the other concerns, and I'll let Ms. Pelegrin capsule those quickly for the Committee.

Ms. Pelegrin said in terms of trying to improve the consistency of performance across the Office, a reminder that we do CLE training every year. We do quite a bit of it within the Office. To work on our skills, we had a training in November specifically on drafting skills to review some of the basics in the drafting manual. We've also been working on developing a directory of standardized language to use for certain items that appear repeatedly in bills, such as creating cash funds, creating grant programs, and creating boards and commissions. As far as education and training for members, we're working with legislative council staff, the joint budget committee, and Marilyn Eddins and Karen Goldman to prepare brown bag programs for this session. They'll be every other Thursday, starting in January and running through March. We have a schedule in mind of skills-related programs, such as legislative rules, conference committees, how to work on the budget, and understanding the budget. Then, what we'd like to do for next session is again that same sort of schedule, only have subject matter topics, such as the basics of criminal law, basics of school finance, basics of education law, and that kind of thing. We will make sure we have those well-publicized and hopefully get as much encouragement for people to attend as possible. Also, another idea we're working on that I haven't had a chance to talk much with council staff, is doing interim newsletters for committees of reference. Maybe like once a month, council would send out an e-mail newsletter to each committee of reference

that would provide updates on anything changing in the federal law, recent case law changes, issues of interest that are identified by the committee chairs, or issues that arose during session that people would like to have a little more background information on. We think that might be helpful for members in raising their knowledge of the subject matter they're working in. Finally, with information on bill histories, we're working on getting a database together that will have all of the bills back to 1999, so that when we get in a bill request, we can search for what's been introduced and then provide to the bill sponsor a list of the bills that were introduced, who carried them, how they compared to the bill request, and what happened to them. We're still in the planning stages and there's timing issues and figuring out how similar the bills have to be to get included on that list. We're still working out those kinks, but we hope to implement it at least on a pilot basis.

Representative McGihon said on the newsletter, I'm presuming it's electronic and anybody from another committee could review it. Ms. Pelegrin said yes, we can share. Probably what we'd do is post it the Office web site and to the council web site, so people could go to the web sites and pull them off there, too.

Representative McGihon said and possibly just send a notice to members saying the following newsletters are out. I know that I received information this summer that I was unaware that I received on some federal legislation that I'm now interested in.

Senator Shaffer said this made me think of some ideas that have been suggested to me of ways we could provide more information and make information more accessible through our web site. It's more of a comment/question for follow-up. How can I share those ideas with you or Michael Adams or whoever, to try to see if we can make information more accessible? Mr. Pike said anytime, anywhere.

Mr. Pike said in closing, I don't want to ignore the fact that one of my messages is the feedback we've received has been generally very positive about the job we're doing. I thank the members for that and I hope we can continue to measure up to that.

Senator Mitchell said regarding the brown bag law summaries, would you consider applying for CLE credit? Ms. Pelegrin said absolutely.

Ms. Pelegrin said I would like to add that anything you have about better ways to get feedback or any feedback you have for us we're very interested in

hearing. Representative McGihon said Mr. Pike and I had discussed this on the CLE credits. Other states have made a habit of letting attorneys know when they are having in-house training for which CLE credits have been applied for. Those of us who are attorneys, if you wouldn't mind us invading your time, would be very appreciative of receiving the hours.

Charley Pike addressed agenda item 4 - Update on OLLS Budget for FY 2008-09.

Mr. Pike said normally we would try to have our budget here for your consideration at this meeting. We have prepared a budget based on an assumption of the possibility of a 5% increase over the current year's budget, paralleling what the executive branch has done and consistent with the usual guidelines we get from the executive committee and joint budget committee. However, it's pretty obvious that there is likely to be some reductions in the current fiscal year budget that will effect both the potential increase over the current year's budget in terms of a 5% increase, which may be factored down, and it will obviously also be based on a reduced budget if that happens. For those reasons, we think that it's appropriate at this time to wait until one of your future meetings to provide you with a budget for the Office that is more likely to be consistent with the real life realities we'll be facing at that point.

Representative McGihon said Senator Mitchell sent a letter to the Committee to discuss a rule that will fall under this rule review period. Senator Mitchell said that's correct. Actually, in light of the Committee's action to defer taking up the whole rule review bill, we now have another meeting with adequate time for me to turn in the question to Office staff, and I presume they'll get an analysis and action item before the next meeting of this Committee.

Representative McGihon said is it acceptable for sometime between now and the end of January? Senator Mitchell said yes, sometime between now and the next time this Committee meets.

Representative McGihon said I'm just considering the Office's workload and getting bills in, but it will be before the rule review bill is up. We may not get it on the next agenda. It's a question of whether or not staff has time to conduct the rule review before the next meeting. I'm saying staff can commit to getting it done by the end of January. If not the next meeting, probably at the second meeting. Senator Mitchell said it would suffice to have an analysis and an opportunity for this Committee to review at any time before the bill gets introduced or even when it acts as a committee of reference in either house. My assumption that it would be on the agenda for our next meeting was based

on communications I've had with Ms. Haskins that usually require a minimum of one week's notice, so I assume the two to four weeks' notice would suffice or is that not the case?

Representative McGihon said the notice suffices. I'm just concerned with staff's ability to conduct the rule review. As a part of this, I want to be clear that if a rule has been enacted and staff finds in the rule review that it does not comply with the statute, the rule is not extinguished by the passage of the rule review bill, it expires. You understand that? Senator Mitchell said yes, it expires at the end of its one-year life cycle.

Representative McGihon said right, this Committee has no authority to repeal the rule during its life cycle, but simply to not allow the extension of the rule.

Senator Mitchell said the issue I wanted to make sure would receive consideration by this Committee at some point has to do with recent rules promulgated by the state nursing board and whether or not they exceed the provisions of the nurse practice act.

Representative McGihon asked if it relates to advanced practice nurse bills from the last session? Senator Mitchell said yes.

Representative McGihon said that will be rules we address in this cycle. Does Ms Haskins know if that's already being reviewed? Ms. Haskins said the rules are within the purview of this year's cycle and they have been reviewed by our staff and approved, but we will be taking another look at them and deciding whether we should bring them back to the Committee or not. I think the question would be if our staff still feels that the rules are authorized, then do you want us to have a hearing where that's argued?

Representative McGihon said I think Senator Mitchell is requesting that hearing regardless of the outcome of your review. Ms. Haskins said okay, that's our understanding.

Senator Mitchell said I believe that will turn out to be the case, but I'd be interested in hearing staff's analysis. If they conclude the rules are sufficient and compliant, then I want to hear from them before deciding about requesting a hearing.

12:09 p.m.

The Committee adjourned.