

**COMMITTEE ON LEGAL SERVICES**

Rep. Jeanne Labuda, Chair  
Sen. John Morse, Vice Chair  
Rep. Bob Gardner  
Rep. Daniel Kagan  
Rep. Claire Levy  
Rep. Ellen Roberts  
Sen. Greg Brophy  
Sen. Morgan Carroll  
Sen. Shawn Mitchell  
Sen. Gail Schwartz

**OFFICE OF LEGISLATIVE LEGAL SERVICES  
COLORADO GENERAL ASSEMBLY**



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

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

**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  
Esther van Mourik

**SENIOR STAFF  
ATTORNEY FOR  
RULE REVIEW**  
Charles Brackney

**SENIOR STAFF  
ATTORNEY FOR  
ANNOTATIONS**  
Michele D. Brown

**STAFF ATTORNEYS**  
Troy Bratton  
Brita Darling  
Kate Meyer  
Jane M. Ritter  
Richard Sweetman

**PUBLICATIONS  
COORDINATOR**  
Kathy Zambrano

**SUMMARY OF MEETING**

**COMMITTEE ON LEGAL SERVICES**

**February 10, 2010**

The Committee on Legal Services met on Wednesday, February 10, 2010, at 8:02 a.m. in SCR 352. The following members were present:

- Representative Labuda, Chair
- Representative B. Gardner (present at 8:06 a.m.)
- Representative Kagan
- Representative Levy
- Representative Roberts
- Senator Brophy (present at 8:09 a.m.)
- Senator M. Carroll
- Senator Morse, Vice-chair

Representative Labuda called the meeting to order.

**8:03 a.m.** -- Senate Morse discussed agenda item 1 - Action on SB 10-060.

Senator Morse said I bring to you the rule review bill. As you recall, all the governmental agencies implement rules, we review them, and those that we find are outside the statute we do not continue, the rest of them we continue. In this case there were three sets of rules that we thought went beyond the statute. Some were really just of a technical nature, but still beyond the statute and so we are not extending those rules in the department of health and human services, the department of natural resources, and the public utilities commission. Those rules we do not extend; the rest of the rules this bill does extend.

**8:05 a.m.**

Hearing no further discussion or testimony, Senator Morse moved Senate Bill 60 to the committee of the whole with a favorable recommendation. Senator Morse said if I could modify my motion, I move the bill to the consent calendar. The motion passed on a 6-0 vote, with Senator Carroll, Senator Morse, Representative Kagan, Representative Labuda, Representative Levy, and Representative Roberts voting yes.

**8:06 a.m.** -- Chuck Brackney, Senior Staff Attorney for Rule Review, Office of Legislative Legal Services, addressed agenda item 2 - Discussion on LLS No. 10-0522 - APA Emergency Rule-making Changes.

Mr. Brackney said you'll recall at the last meeting you directed us to draft the bill regarding the extension of the period of time that emergency rules are effective for. You should have a January 27 draft of the bill. The way we left that was if I didn't hear anything from you, your silence was your consent to go ahead with the bill. I'm pleased to report there were no comments regarding the actual language of the bill. However, there was some concern regarding the title. The title on the draft from January 27 is definitely broad and there was some notion that maybe it should be tighter. On another handout is the current title, the one that's actually attached to the draft, and one that is much narrower. We would like your direction regarding which of those we should go with.

Senator Carroll said part of why we separated them into separate bills is so that we wouldn't have a big title about all of the "State Administrative Procedure Act" (APA). I'm wondering if it isn't possible to go tighter. It says increases the number of days, and I'm wondering if we should say increases the number of days to 120 days in the title.

Senator Morse said my only thought would be we're precluding discussion, and it's just an up or no vote on that. It's worth thinking about but I wonder if somebody during this process really brings up a good argument to increase it or decrease it, do we really want the flexibility taken away from us to do that? I understand tightening the title to take away the flexibility to change something unrelated in the APA, but that is the guts of this bill. I think we've gotten comfortable with that number, but there still has been some discussion and once we get to the public testimony phase in the committees or in the chambers, some department may say something to us that hasn't been said.

Representative Levy said I agree with Senator Morse. I think we've got a title that's limited as to its topic being the number of days that an emergency rule can be in effect. I wouldn't want to completely foreclose any ability to change

it in case, looking at the calendar and provisions for notice and all of those, somebody says 121 or 119 might be better.

Senator Carroll said my colleagues may have persuaded me on this, but the original ask was for 180 days. I think we have the plurality of the Committee thinking 120 days would be outside, that we weren't wanting to drag out emergency rules forever. That said, maybe it is too tight to have it in the title, but "increases" could be anything potentially. We basically decided that 180 was too long and with the title saying increases it could be 200 or who knows. Maybe that's not likely. I don't feel that strongly about it one way or the other.

Representative Labuda said I'm tending to agree with Senator Carroll's first comment. I remember how we talked about different days and we ended up broadening, initially, the bill beyond what we had intended to do, so we tightened the bill back up. I'd be willing to insert 120 days to make sure we don't get waylaid again by trying to broaden the context.

Representative Roberts said I think we want some flexibility for the bill discussion. I'd be shocked if we couldn't overwhelm people trying to get 280 days in conversations should somebody try to do that.

Representative Kagan said I actually agree that we should leave the number of days out.

Representative Gardner said I'm in agreement. I'm rather confident in the abilities of my House colleagues on this Committee to persuade others. If they are unable to do so then I will discuss at length the merits of 120 days over any other number that might possibly be used. I think we're better to leave it out. There may be members who look at that and think we are usurping the ability of the House to act on the matter. I'd rather persuade them and if they feel persuaded, they're less likely to think the Committee is acting like the JBC or something.

**8:13 a.m.**

Hearing no further discussion or testimony, Senator Carroll moved to adopt the drafter's version two of the title change for the bill. Representative Gardner seconded the motion. The motion passed on a 7-1 vote, with Senator Carroll, Senator Morse, Representative Gardner, Representative Kagan, Representative Labuda, Representative Levy, and Representative Roberts voting yes and Senator Brophy voting no.

**8:15 a.m.**

The Committee adjourned.