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SUMMARY OF MEETING

COMMITTEE ON LEGAL SERVICES

July 19, 2011

The Committee on Legal Services met on Tuesday, July 19, 2011, at 10:06 a.m. in SCR 356. The following members were present:

Senator Morse, Chair
Senator Brophy
Senator Roberts
Representative B. Gardner, Vice-chair
Representative Labuda (present at 10:14 a.m.)
Representative Levy
Representative Murray
Representative Waller

Senator Morse called the meeting to order.

10:07 a.m. -- Jennifer Gilroy, Revisor of Statutes, Office of Legislative Legal Services, addressed agenda item 1 - Discussion and Committee Approval of C.R.S. Publication Contract RFP and Action Plan.

Ms. Gilroy said I'm going to talk to you about five different things. The first thing I'm going to do is give you a little background on why we're here today, to remind you of the process and what is required by statute. Then, I'm going to review with you the timeline for the RFP process for the publications contract and then walk you through the highlights of the RFP itself. Then I

thought I would briefly review with you the standards for your consideration in awarding the contract. Finally, I want to chat with you briefly about the list you all have for the government recipients of the Colorado Revised Statutes.

Ms. Gilroy said the reason we're here is to talk about the contract for the publication of the Colorado Revised Statutes and the session laws. The last time the publications contract went out for bid was 10 years ago in 2001. Four companies bid on the contract in response to the RFP that was issued. The Committee at that time awarded a five-year contract to LexisNexis. Then, in 2007, the Committee elected to extend that contract for an additional five years, as they can under the statute, rather than putting it out to bid again. That contract expires in December 2012. You may be wondering why, more than a year before the expiration of that contract, we're here today and that is because our goal is to have plenty of time to get a new contract in place. The statute does require that at least every 10 years the contract go out to bid. Our goal today is to walk you through the RFP, which is the process by which we request bids for publishing the statutes and session laws. I hope that this Committee will be able to select a contractor, either at your September 13 meeting or at your October 4 meeting, allowing me sufficient time to negotiate the terms of the new contract with the selected publisher over the course of the fall. Then, we need to have it approved by the Attorney General's Office and the Controller and the Chair has to sign it, all of which takes a surprising amount of time. The goal is to have it ready to go by June 2012 because the statute does require the new contract to be in place at least six months prior to the expiration of the old contract.

Ms. Gilroy said I thought I would briefly go over the timeline, make sure it meets with your approval. My goal is to open the RFP for bidding on Monday, July 25. My plan is to post it on the General Assembly's website and tweet about it and to run an ad on Sunday indicating that the RFP will be on the General Assembly's website as of Monday. I'm also sending personal letters to all of the companies that bid on the RFP 10 years ago as well as our five vendors who currently purchase the statutes database for publishing, such as ThomsonReuters, the Colorado Bar Association, Bradford, and others. I will also contact other companies who have contacted me and indicated some interest in bidding on a publications contract. Finally, John Utterback at the Department of Personnel facilitates the website for the bids that the department has, so he and I are going to work together to make sure that's on their website on Monday as well. For the timeline, I give bidders 30 days to respond. The close of the bid will be 3:00 p.m. on Friday, August 26. I intend to take the following week, August 29 to September 2, to review the bids and prepare for the Committee a confidential work product memo that

will summarize and compare the bids to help you at the next meeting. I will mail that out to you a week in advance of the meeting, as well as the proposals from the vendors. We meet again on September 13. At that time, I'll arrange to have those who bid on the contract to make short presentations to you all. They'll respond to any questions you might have specific to the particular vendors. Then, if you're so inclined and time permits, the Committee can discuss the various bids in executive session and then come out of executive session to select a vendor. It was all done in one meeting 10 years ago. Whether or not that will be doable for this Committee, I don't know. I don't know how many bids we'll receive, so as a backup, your next meeting would be October 4 where you could ask for follow-up presentations or additional time to discuss and make your selection. Once you select a publishing company to do the contract, our Office will be working with them to negotiate the terms of that contract, which we will hopefully have in place by the end of the year.

Senator Morse asked if Ms. Gilroy means the end of the fiscal year? Ms. Gilroy said I hope to have the terms of the contract negotiated by the end of the calendar year and then signed by everybody by the end of the fiscal year 2012.

Representative Levy asked do you expect any major changes in the contract itself? Ms. Gilroy said as I walk you through the RFP, I'll highlight some of the things that are different from the existing contract. It's very similar, but there are a few enhancements that we are requesting the bidders address in their proposals.

Ms. Gilroy said I'll walk you through the draft RFP. I will say that Mr. Utterback from DPA offered to take a look at the RFP as well, so I'm going to send it to him after I make changes that this Committee directs me to make. If he has any additional changes, I'll make those as well with your approval. There are essentially four sections to the RFP. The first is the procedural requirements, where the proposals are to be sent to, what the deadline is. In section 1.2, there is a schedule for the Committee for how you're going to be selecting the publisher. The one thing I will draw your attention to is that the RFP release is on July 25th. I had originally thought of doing two separate publications, both on Sundays in the Denver Post. When I spoke with Carol Pfarr from the Department of Personnel, who is the head of the division of purchasing, she said not to do that, that one publication is enough in the Denver Post, which includes on-line as well as the newspaper itself. So, I'm planning to advertise on Sunday, July 24. The advertisement will indicate a link to the General Assembly's website that will be up and running on

Monday, July 25, so everyone has access at the same time. As I mentioned before, the proposals are due at 3:00 p.m. on August 26 and then presentations by the applicants will be on September 13. Also indicated in the RFP is that there may be follow-up presentations on October 4 if the Committee feels the need for that. Section 1.3 indicates that the proposals have to be done by cost. They have to give us a breakdown of the cost for each segment of the proposal, based on a five-year contract. I just don't want a situation where a bidder lowballs the first year and then cranks the price up in subsequent years, so I've asked them to do a flat-rate bid for all five years of what could be a five-year contract. As I mentioned earlier, the general consideration the Committee has in selecting a contractor is to select the lowest responsible bidder. That's language that is in the constitution and in statute. I think the adjective "responsible" permits a lot of flexibility. One of the things you'll note in section 1.3 is it talks about the applicant providing any information that would indicate things they could do that would be especially advantageous to this state or potential purchasers of the session laws and the statutes.

Representative Labuda said a year ago when I was chairing the Committee, somebody contacted me about session laws. I didn't know what it was and I forwarded it to you. I anticipate that the individual or entity is going to be one of the bidders. We're familiar with organizations like LexisNexis, but this was an organization I've never heard of. Is there any kind of screening? Ms. Gilroy said I spoke to that individual. They were an entity that is more interested in doing on-line comparisons of different state statutes in different areas of law. My guess is that it is an entity that will probably not be interested in bidding on this. The world is very different in the ways the laws of the state and the nation are published, and part of what we did in Senate Bill 261 last year was address that very issue, to recognize that the way in which we publish the official versions of the law don't foreclose other entities, such as Justia, the entity that contacted you originally, from also publishing the laws of the state of Colorado or any other state that's part of the public domain. Original editorial work that our Office does, such as the source notes, annotations, tables, and indices, are copyrightable and you have to go through certain hoops to be able to use those. The law itself is open to other entities to publish. What we're seeking by means of this proposal is someone who will publish the official version of the statutes, which currently is still the books. That may change some day in the future. I don't believe that Justia actually has a printing and binding facility that would meet the requirements of the RFP.

Representative Gardner said in the lead-in of the RFP, you made a change to

the draft to invite proposals from "qualified applicants". The first thing I think when I see "qualified applicants" is whether we define "qualified applicants". Are we trying to limit the applicants in any way and, if so, how do we do that? What's to keep "Bob Gardner Publishing" from setting up next week and submitting the lowest responsible bid? What is the limit on responsibility here? Ms. Gilroy we don't define "qualified", but the terms of the RFP itself define what's "qualified". If you, Bob Gardner, Inc., can meet the requirements set out in the RFP, then you're qualified. If you can't do it, like if you can't print the books but you can put the statutes on-line, then maybe you're not qualified in the sense of meeting all of what we're looking for by this RFP. That's what I intended when I put the word "qualified" in there, but if you feel more comfortable having it out I'm happy to take it out.

Representative Gardner said I just wonder, since the constitution sets the basis for award but doesn't tell us what "responsible" is, if there might be a way to appropriately define that. I'm not sure it's been a problem in the past, but I think there probably is a way to do that without being overly restrictive. You could say in order to be qualified or a responsible proposer, one must have these capabilities, and they can be described somewhat generically. I think the danger with these things is you can overrestrict your competition, but, on the other hand, you don't want to have to consider proposals that aren't serious or, in essence, responsible. Ms. Gilroy said we can add that for sure. I'll point out, too, that there are places in the RFP where we do qualify both the term "qualified" and "responsible". One of them that I was just getting to is in section 1.3. It talks about how proposals must express how the service that the applicant proposes to provide would be most advantageous to the state and potential purchasers. The reason I raise that is because one of the things I would note for you is that the cost of a full set of these statutes right now is very advantageous to the citizens of Colorado and other states. It's \$270. If you were to buy it from another vendor, it might be \$4,000. So, there are different ways a potential bidder could identify under that clause that they're particularly responsible because they are going to provide our official law at a very reasonable cost to users of it. Another example is in the next paragraph, where it talks about an applicant can also include any matters they believe are particularly relevant to the Committee's considerations of its proposal, such as what they would do to enhance the products or services to be provided.

Ms. Gilroy said, coincidentally, the next provision, section 1.5, talks about the Committee's considerations and it does talk about how the bidders have to be reliable, experienced publishers, and have the ability to successfully perform in a professional manner in accordance with the prescribed standards and

applicable statutes. In the very first paragraph, there is a reference to sections of law that we are suggesting potential bidders look at before they actually bid on this so they know what their responsibility is. They can provide information about their prior experience, reputation in the community, in-house capabilities, location, or financial standing. All of this can go toward qualification as well as responsibility as contemplated by the constitution and the statutes. I would note that in the late 1990s, Senate Wells added an amendment to this section that qualified that term "responsibility" by also stating that the Committee may consider the economic, fiscal, and tax impacts on the state in awarding to the lowest responsible bidder.

Representative Gardner said I think you touch on it when you put in the phrase "qualified applicants". Perhaps we just need to, in the considerations section, make some reference and say a "qualified applicant is considered to be one that's a reliable and experienced publisher". I don't think we have to rewrite the whole thing.

Representative Labuda said I have a question that goes to bonding or insurance. If we pick somebody who seems to be very good that we've never heard of and it falls through, how do we cover it? Ms. Gilroy said in section 4.3 there is a bonding requirement and I'll go over that.

Ms. Gilroy said section 1.7 talks about how the applicant proposes to market the books as well as handle customer service, which is something we really value. This is an important consideration for responsibility. There are two kinds of customer service: Our consumers - the persons who are purchasing these items - and also the General Assembly and the General Assembly's staff. Section 1.9 requests the applicant to make a single list of the highlights they want to note for the Committee, so it makes an easy comparison with other applicants. It is a single page list so we know exactly what their bid is and what the cost is for every item of the bid. In section 1.12, we give notice that our staff will be providing the Committee with a summary of the highlights and comparing them to other bidders. That concludes the general ramifications.

Representative Murray said this is a wonderful document. One question I had, though, is if one applicant has a question, is there a system in place to answer that question to all applicants? Ms. Gilroy said I was prepared to respond to inquiries, but I don't know who the applicants will be. If a particular applicant is asking a question during this 30-day period, other than posting it on our website, I'm not sure how I can respond to everybody fairly and equally. I supposed I could do it that way and tweet, otherwise I'm not sure.

Representative Murray said in my experience there has been a format for that sort of thing, that the question has to be in writing, the response is in writing, and you distribute it to everyone, and then there is no question that any one vendor might have any more information than another vendor. Ms. Gilroy said I appreciate this input and I'll talk with Mr. Utterback from DPA about it. I'm just curious how they know how you respond equally to everyone when you don't know who your bidders are yet, other than on a public access website.

Representative Gardner said the typical process in a federal acquisition would be that a proposer would submit a question, either in writing or electronically, and then the answer is posted for proposers to see. That way a proposer doesn't get an answer to a question that sends them off in one direction and they're the only one with that information. I think maybe a line in the RFP about questions or clarifications from proposers should be directed to whoever and answers will be posted. Ms. Gilroy said I will plan to do that.

Representative Murray said I'm looking at section 1.12 on the summary by staff. I wonder if there can be any consideration given to include the executive director of the state internet portal authority (SIPA) in an advisory capacity. They have no interest in this at all but they are a citizen-facing organization rather than an internally organized organization. They are accustomed to serving citizens. It just seems to me that you have to have somebody that is an expert in the "next greatest thing" and what is it that we're not thinking of when it comes to citizen-facing applications. Ms. Gilroy said that is a great idea. The only thing I know of right now for someone outside the General Assembly is that under our C.R.S. publication statutes, there is direction that the executive director of the department of personnel provide us with technical advice and assistance. That's different from what you're suggesting and I like that idea. I'm very happy to make contact with them and see if they can help me with some wording to add to the RFP, with the permission of the Committee.

Representative Gardner said I take it that the summary and evaluation of proposals to the Committee by staff would be a pre-decisional document under the open records act, so that it would not be releasable to proposers. Ms. Gilroy said we would consider it to be confidential work product and an exception to open records.

Ms. Gilroy said section 2.0 describes what our world is like to publishers who aren't familiar with us, that we have a general session once a year, the time parameters of that, and that publishers would need to publish shortly after that.

Timing is of the essence. It also talks about elections and that there may be a situation where special supplements are necessitated following a general election. What I failed to include here and what I'll be adding is also potentially a special supplement following an odd-numbered year statewide election. Section 2.1 talks about our government consumers. Under our current contract, by statutory requirement, we do provide sets of statute books to our state and local governments, courts, and a few other entities, under the cost of the contract itself. Our Office is responsible for making sure that approximately 3,000 sets of statutes are delivered to various government agencies. I'll be talking about that with you in a little bit more detail at the conclusion of this presentation. It's included in the RFP so they know it will be part of who their consumers are in addition to their own private sales. The next four sections talk about the different methods by which the laws are published, the first being the session laws. We had approximately 2,300 pages of session laws this year, although in the past it's been as high as 3,500 pages. It's a three-volume set. This gives bidders an idea of what those session laws are, as well as the red book, which indicates what sections of law are actually amended. It's a 115-page pamphlet that accompanies the session laws. Section 2.3 talks about the statutes themselves. It's a 20-volume set including the court rules, indices, and how many pages those run.

Representative Levy said we've talked in the past about how much people actually make use of the paper copies of the session laws. Did you take that into account and include the printing and binding of the session laws in the RFP? Ms. Gilroy said I did. It's a hard thing to predict. I'll talk about this more, but the government consumers of the books actually were consuming a lot. We were way over the number of volumes that we were allotted under our current contract with LexisNexis. We were over by about 270 sets, which our Office pays for out of our budget at \$35 a set and that ran us close to \$10,000 to do it. Carol Mullins is a member of your staff in the Office and she personally took on the challenge and called every one of our 735 offices and put them on a statute diet. She got them to voluntarily agree to accept fewer sets and now we are well under our allotted 3,150 sets. We are at about 2,900 sets now. Other states have a declining demand for books themselves, whereas Colorado seems to be maintaining both in the private consumers as well as government consumers. So, I did take it into account. I thought about it, but I didn't know what to do with it. I left it where it was at the time because we're well within our budget and we're hoping we can maintain that.

Representative Gardner said I would like to encourage you to revise the RFP to take account for a possible passage of the uniform legal materials act. Right now, section 2.3 says the official statutes are printed annually in a

softbound format. I wonder if we want to account for that it may not always be the case over the next 10 years. Perhaps the official version will become digital. Ms. Gilroy said I appreciate that and I realize it's on the horizon, but the longest contract you can issue is a five-year contract. I wanted to ask the Committee about it in section 2.5, so when we get to that we can talk about it because I had that thought as well.

Ms. Gilroy said section 2.3 discusses the statutes and section 2.4 discusses the CD-ROMs, which are still in high demand with private consumers. We get about 600 under our contract for our government consumers. Section 2.5 discusses on-line public access. There's a few things I want to talk about on this. First, one of the directions is that we are interested in an easy-to-navigate, intuitively navigable website or statutory public access. In addition to that, there are three qualifiers. One is the ability to link an internet user to the session laws, where if, for example, you're using the 2010 statutes on-line and you know that a bill passed that amended a statute and you go to that section there is a "hook" that will link you to the session laws of the bill that amends that section of law. In an effort to try to make sure that an internet user has information that is the most current available without changing the database, that was the method that LexisNexis came up with and it seems to be a really wonderful way of keeping the user informed. The other thing we would like is to continue with the link from the source note, so if you are looking at a law and you see that a bill amended that section back in 2008, you can click on the bill link in the source note and it will take you to that 2008 bill in the session laws. Finally, a way of capturing the URL when you're looking at a specific section of law or a method to get a section of law from the website to copy into an e-mail or something if you're trying to give guidance to someone.

Senator Roberts said with the words "easy to navigate" and "intuitively searchable", I wonder if there is some way to throw in some language with input from you based on what you may be hearing about a mechanism for customer feedback. What is "easy to navigate" and "intuitive" to my children is vastly different from me. I think user-friendly is very important but we have a broad range of those. Ms. Gilroy said I will do my best to come up with something more specific than that. I appreciate that there is a broad range of users out there.

Senator Roberts said I just don't want the publisher to say that anybody under 35 can do this, therefore I've met the contract.

Ms. Gilroy said this is the area of the RFP I would propose to the Committee

that we ask the bidders to give us a bid on technology to assure the authenticity and reliability of the on-line statutes. I know there are different levels of technology out there to try to do that. Tom Morris from our Office was just educating me about hash readers. A hash reader is a technology that, when we put something on the internet, the pages or documents are numbered. Then when the user picks it up at the end, if the number is the same then they know it hasn't been hacked into or mucked with, but if it varies from what it shows on the screen, then they know something has happened to it. It's not a way of preventing the statutes from being manipulated or changed; it's merely a notification to the user this isn't what was originally on-line. There's also other technologies, such as electronic signatures or watermarks. I don't know what the Committee would like to guide me on for what to put in the RFP so we at least would know what they would charge to put that kind of technology into the on-line public access product.

Representative Gardner said I think maybe we just need to solicit from them, as part of the proposal, an option or the potential for that, how they would propose to do that, what would be the cost, and if they want to propose alternatives because there are lots of different technologies out there. It's the direction we're headed and we will be behind the times and using way too much paper if we're not there in about five years.

Representative Levy said I think I agree with the direction Representative Gardner is suggesting of soliciting their proposal for how they would assure the integrity of the document. I would remind the Committee that as long as we still do have the official printed paper copy and that is referred to as the official laws of the state of Colorado we don't have to be overly concerned because it's quite easy for somebody to do that comparison between what they're looking at on-line and something else and know if it's accurate or inaccurate. We ought to start educating ourselves through the RFP on what different publishers would propose.

Representative Murray said SIPA might be helpful with that or someone in OIT might know the current status of that kind of application. I had another suggestion that as part of the publication on-line that the vendor develop an icon that is very distinctive, that represents the Colorado Revised Statutes, and that the icon be linked to the General Assembly homepage. It's another way for people to know that we have a General Assembly homepage.

Ms. Gilroy asked Representative Murray to explain that a little more. You're not talking about a trademark? What would be the purpose of it? Representative Murray said so that if someone, a private entity, buys a copy

of the Colorado Revised Statutes on the CD-ROM, that as they're going through, there is a little icon that says click here if you want to go to the General Assembly website. It's just a clickable icon.

Representative Murray said I want to make sure I read this correctly as far as additional electronic formats, that they will be presenting a format that can be downloadable onto an e-reader. Ms. Gilroy said I don't know if they will or won't. We're giving them the opportunity and this is an example of other ways they can enhance the product or services they can provide. Maybe some can, maybe some don't intend to, but this is an opportunity for that. I think it's something we're interested in to see if there are applications or e-readers, but this is their chance to show us or at least an ability to work with us in the future to develop those and promote those. I want to make sure they know this is the direction we're thinking. We don't want to limit ourselves just to books and just to public access on-line.

Representative Murray said that's great. The other issue I heard from somebody about is the ability to print more than just the page you're looking at. I understand that gets into territory of copyrights and how much do you let people print out and how easy do you make it for them to print out all of the statutes. Somehow that needs to be worked through but sometimes you want to do a whole section or multiple sections that are next to one another in statute and is there a way to facilitate that for people so that it's not so limiting? Ms. Gilroy said I appreciate that point. It's my experience that you can print out one section at a time and that is very purposeful by our publisher. Everything is up on-line, free of charge to the public. I think part of the thought is that we don't want someone going out there and replicating an entire thing and marketing that. I have reservations about that; at the same time I appreciate the frustration as well. Let me work with you on that.

Representative Murray said a limitation on the number of pages or something. Ms. Gilroy said okay.

Ms. Gilroy said section 2.7 was just to let the publishers know the languages, formats, and methods by which we communicate with our publisher, which may seem archaic to some of you. I think there may be changes in the future to those and we've indicated that in the RFP as well. We indicate to the applicants that pages have to be produced with double columns. I'm actually going to change that because it could be multiple columns and possibly even PDFs when we do our tables. It will be much easier for us if we could use a PDF or a table. I'm going to change that language slightly to allow for that.

Ms. Gilroy said section 2.8 discusses the actual public sale prices. The session laws are priced in a different way than the statutes. For the statutes, the price is set by the publisher and for the session laws, the price is set by statute as a cost to the publisher plus 20% in shipping. I gave examples of what the current costs are. The 2011 statutes will see a little increase of 5%. They'll be \$284 in-state and \$304 out-of-state. The price for the CD-ROM is also set by the publisher and accommodates a lot of what we asked our publisher to do for us on-line. I think they make up a lot of their price on the CD-ROMs sold to the private world. This is giving an indication to the applicants where they can get information about setting the prices on these products.

Ms. Gilroy said I'll move on to the third section of the RFP and that's printing requirements, basically indicating to the applicants that we want the product to look essentially the same, as close as possible to the product we currently use. It gives them an idea of the timing we're looking for. We complete the session laws as soon as the Governor's final period of time for action on bills. As soon as we can get all the bills chaptered and the tables prepared for the session laws, we expect that publishing to be done within 30 days. Same thing for the statutes - when the final title is released, we expect that final product to be back in our hands within 30 days. It's 26,000 pages in 20 volumes. It's a very short turnaround time for them, but it has to be as quickly as possible. We also expect it to be on-line within 30 days of the release of that final title.

Senator Roberts said going back to section 2.8, where we have the public sale price and there is the 20% in delivery charges. It was triggered in my head with the CD-ROM. The 20% has nothing to do with delivery charges. In other words, we're not going to pay 20% for delivering the CD-ROMs. Ms. Gilroy said that's correct. The section of law that's referenced has to do with the pricing of the session laws, not the CD-ROMs. The session laws are priced at the publisher's cost plus 20% and then delivery costs. That's for someone in the public purchasing it; that is not our cost. Under our contract, we receive 1,200 sets of the session laws. If you and your law firm wanted to purchase a set of session laws, you would pay \$30.90, which is an amount LexisNexis came up with by taking their own cost of production and adding as much as 20%, and then add a delivery charge.

Senator Roberts said so we're saying the profit margin is 20% and that's an historical pattern? Ms. Gilroy said yes, it is, for the session laws.

Ms. Gilroy said moving on, we've covered the timing of the production and publication of these books, and the quantity is in section 3.2. I would just

mention in section 3.3, this is what we're seeking as a flat rate bid from the applicants for both the session laws and statutes in the various formats. It does allow for some modifications. Obviously, there may be times when you're more productive and the number of pages increases significantly and times when other things may go into effect or the consumer price index may change significantly that would allow them to give some flexibility to their flat rate bids. I would briefly mention section 3.5. This is the result of Senate Bill 261 that indicates to the publisher that we do hold a copyright for our original publication editorial work so they are aware of that. The next thing I would mention is section 3.8, that customer service is a very important thing to us, both in how they deal with our Office and the General Assembly as well as folks purchasing these products through private industry. Finally, the last section of the RFP deals with some of the general considerations. The contractor support, which is the first thing we talked about. The duration of the contract, which can be up to five years and can be extended for an additional five years. There is the ability to terminate it if either party is unable to perform. In section 4.3 is the provision about the bond, responsibility for loss or damage. I failed to identify those things that are different in the RFP, but a lot of them have to do with the electronic and new formats. One of the things that is new is section 4.8, which is making our contractor aware that Amendment 47 or Article XXIX of the state constitution applies to them as an independent contractor with the state, so they need to be aware of the gift bans. That's generally the RFP. You all have given me a lot of good guidance. With your permission I would ask that I be able to make the changes you've recommended and I can e-mail them to you so you can see them.

Representative Labuda said back to the bonding question. I'm looking at section 4.3 where it says a bond in the amount of half a million dollars. How long has that been in the RFP? Should that be upped for any reason? Ms. Gilroy said it was in the RFP 10 years ago in the same amount. It easily covers the current contract amount by a lot. I'm anticipating that the new contract amount will be under this amount. I can give some flexibility in this section and if we find out the contract amount will actually exceed this, then when we negotiate the terms of the contract we can increase the level of that bond.

Representative Labuda said I think that might be a good way to go.

Representative Levy said if we could go back to the first part of the RFP. Maybe this isn't commonly in an RFP, but what I was looking for and didn't find was a statement that we will accept the lowest responsible bidder, which

is a constitutional requirement. There is a reference in section 1.5 that says "[i]n determining the lowest responsible bidder or in determining whether to extend the contract". I was looking for some statement that tells the responder what their target is, which is to be the lowest responsible bidder. Ms. Gilroy said you're correct, that's the closest it comes other than in the very first paragraph of the RFP. It directs the applicants to read section 2-5-105, C.R.S., which is where it lays it all out. It makes perfect sense to just put it in there in black and white.

Senator Morse said as a Committee we'll be voting eventually. It's possible that we would end up with a contract that's one or two above the "lowest responsible bidder" or the term is somewhat subjective as we will decide ourselves. Is that an accurate assessment? Ms. Gilroy said I think that is accurate.

Representative Murray said this list of government entities that the statutes are sent to represents hard copies of the statutes. Is that correct? Ms. Gilroy said yes, it does.

Representative Murray said I guess I question why we're sending 17 states hard copies of our statutes, rather than CD-ROMs, and how many copies do we send each state? Ms. Gilroy said I will be responding to that when I get to that portion of the presentation, but I can tell you the statute does allow for us to do reciprocal trading of the statutes and we send one set.

Ms. Gilroy said going back to the inquiry about the constitutional question and responsible bidder Senator Morse had. The constitution does state that publication shall be performed under contract to be given to the lowest responsible bidder below such maximum price and under such regulations as need be prescribed by law. Currently, there is that one additional qualifier about the fiscal and tax impacts to the state, but I think the term "responsible" can be a flexible term for your purposes and deciding what really is responsible. When you see the bids come in, it may become more apparent to you. It may not ultimately be the absolute lowest bid cost-wise if you don't think they will be the most responsible in what they can provide. Maybe you have a lot of confidence in one bidder over one that can't seem to assure you that they can perform the contract to the quality and level you wish to have it performed.

Representative Gardner said what you need from us today to proceed is a motion approved to do several things. Let me make sure I cover them. We would need to approve your proposed action plan for C.R.S. publication and

further authorize the issuance of the RFP with such revisions as deemed appropriate by Ms. Gilroy as revisor of statutes. Do you need any other authorization other than that to move this process forward? Ms. Gilroy said no.

Representative Gardner said I'm not making that motion yet. Let Ms. Gilroy finish up, but I wanted to make sure we had a good motion for what we need to do.

Ms. Gilroy said if you feel it is an appropriate time to proceed with that motion, that's fine. I was just going to review for the Committee the actual consideration for you to keep in mind before our next meeting on September 13 for purposes of how you select the contractor.

11:07 a.m.

Hearing no further discussion or testimony, Representative Gardner moved that the Committee approve the proposed action plan for the Colorado Revised Statutes publications contract and authorize the issuance of the request for proposals with such revisions as deemed appropriate by the revisor of statutes. The motion passed on an 8-0 vote, with Representative Gardner, Representative Labuda, Representative Levy, Representative Murray, Representative Waller, Senator Brophy, Senator Morse, and Senator Roberts voting yes.

Ms. Gilroy said just a couple more housekeeping matters. In terms of the standards for selecting the publishing company, you'll be making this decision potentially as early as your next meeting on September 13. The provision I just read to you out of the state constitution requires you to select the lowest responsible bidder and section 2-5-105, C.R.S., talks about you providing the contract to the lowest responsible bidder but taking into consideration the economic, fiscal, and tax impacts of the award on the state of Colorado, its citizens, and its businesses. Within the RFP, in determining whether it's a responsible bidder, we talk about the applicant showing to each of you how they can provide the most advantageous services and products to the state in both the session laws and the statutes. In section 1.4, we talk about the applicant providing to you what they believe the Committee would consider in terms of enhancing the product or services they intend to provide. Finally, in section 1.5, I will make sure to change it to take into account that the bidder can successfully perform in a professional manner in accordance with prescribed standards and applicable statutes, prior experience, reputation in the community, in-house capabilities, their location, their financial standing,

and any other relevant factors they think would be worthwhile for your consideration. These are things you all need to keep in mind as you review the bids. I don't know how many you can anticipate receiving. There are fewer and fewer entities out there that publish books, which is another thing to think about. I would just add to this something that is out there in the ether. It's something separate and apart but I want to remind you. There is a one-dollar tax levy that is charged on every civil action filed in this state and that amount goes to the general fund. It's for statutory revision work. It doesn't go to our budget or the legislative budget. It's anticipated for fiscal year 2011-12 that we'll bring in approximately \$346,000. The idea of this amount is for the revision of statutes. I want to make you aware that there is money that goes into the general fund that contemplates the revision of statutes.

Representative Gardner said it's probably not a subject for today, but we either need to repeal the one dollar and quit taking it or we ought to devote it to the purpose for which it is intended.

Representative Murray said there is some expense, such as Ms. Gilroy's salary, and whoever else is identified as participating in the revising process, so that when we use money from the general fund for the Office some of that could conceivably be from the fees. We need to come up with a number for how much the revisor's office costs.

Senator Morse said I know the entire Office is involved in updating the statutes during the summer when there is time.

Ms. Gilroy said Representative Murray had a really good observation. I can tell you that Dan Cartin, our director, is actively working on putting a dollar amount on all the different jobs that our Office does. I have prepared for him an estimation on what percentage of time and dollar amount our Office dedicates to the publications process. It's significant. Forty-five of our 48 employees spend some percent of their time doing publications work in the course of a year. It was surprising to me how much. Some as much as 80% of their time. Others as little as 1%. It varies a great deal depending on the role.

Representative Murray said I just want to emphasize that because it comes in to the general fund and we don't necessarily earmark that it's being spent for the revisor of statutes doesn't mean that the fee isn't being used for the revisor of statutes. I think we need to identify that more specifically.

Ms. Gilroy said I finally will go to the list Representative Murray just referred to. This is a compressed list of who we send statutes to. As I mentioned earlier we send out about 2,900 sets of statutes to various state and local governments and courts in the state. There are 735 offices receiving them. All of them know the name Carol Mullins, who works with them individually. There are companies that devote whole divisions to doing what she does and she makes sure that every single office in the state of Colorado gets what they need and that judges have a set in chambers and a set in their office so they can work and do their jobs efficiently. We are required to do that under the law. I didn't want to give you a list of 735 offices; I just wanted to give you some indication. I personally wanted to thank Carol Mullins for all the work she has done on this and the great service she's provided for the state. She's worked so hard to reduce the numbers that we are obligated to provide.

Representative Labuda said going back to the other states we provide our statutes to, is that just a sampling? Do we do this with all the states and if not, how did we come up with these particular states? We're exchanging with the state of Alabama because why? Ms. Gilroy said my understanding is these are all the states we provide statutes to. The statute contemplates this exchange and fewer and fewer states use books. This is a smaller number of states than it had been 10 years ago. As state statutes have become more available on-line, the demand for state statutes exchanges has reduced significantly. There's only 17 states represented here and I suspect that will continue to decline.

Senator Morse said I want to make a quick comment on some of the things Ms. Gilroy has said for members of the Committee. This is a different process than most of the rest of the things we are involved in. We will be soliciting RFPs, evaluating RFPs, selecting a vendor. Normally in the things that we do there is a great deal of lobbying that goes on, but this process really is overseen by statute and is supposed to be a sort of pristine process. I'm encouraging everybody to understand that and I know that for myself my schedule is such from now until September 13 that I wouldn't really be able to be lobbied by these different organizations, but I think if we're really going to evaluate these RFPs the way they're intended to be evaluated, that's not a lobbying process. It's a very deliberative process with the data that's submitted and to give everybody a fair shake in that regard as opposed to give those that can afford to lobby a little bit different of a shake.

Representative Gardner said my comments are on the same line. This is an unusual process in procurement in that a legislative committee is collectively the source selection authority and while it would not be illegal for someone

to lobby us about the merits of their product and to speak to us off-line, I personally will decline to have those discussions with anyone outside of the context of the hearing until the decision is made. I just want to publicly say that, with respect to those who have proposals to submit, I encourage them to submit the best and most competitive proposal that they possibly can, submit any questions about the process through the avenues set forth in the RFP, and I will take input at the meeting at which presentations are made. I would encourage my colleagues to do likewise and that way we will have as clean a process as possible for source selection.

11:20 a.m. -- Bob Lackner, Senior Attorney, Office of Legislative Legal Services, addressed agenda item 2 - Litigation Update.

Mr. Lackner said I'm pleased to present to you the most recent version of the litigation summary. As an aid to this Committee, the Executive Committee, and the Joint Budget Committee, our Office periodically summarizes the lawsuits in which the General Assembly has been named as a party, as well as cases in which members of the General Assembly may have a particular interest, especially when the lawsuit challenges legislation passed by the General Assembly. In the interest of time and subject to your questions, I'll be providing a very broad overview of what's in the written document. I'll be focusing my time this morning on highlighting new cases or developments that may be of interest to all of you. As you will see, the summary lists for each case the subject, background, and issues, the current status, counsel of record, and the person in the Office who is monitoring the case. The first set of cases are cases in which the General Assembly is a party. As you will see, two cases in this category have been settled since the last summary was prepared. Those cases are the election contest filing cases involving Mary Severance and a case captioned *Hanks v. State and Mike Mauer*. This was a case involving judicial review of information contained in the blue book. In this case, the court decided all substantive issues in favor of the state and Mr. Mauer. The court ultimately denied the defendant's request for attorney fees but granted the defendant's request for costs. Those costs, in the amount of \$323.44, have now been paid and the defendants have entered a satisfaction of judgment so the litigation is at an end. We'd like to be able to say this kind of case won't appear again but this seems to be a frequently contested matter.

Mr. Lackner said the next group of cases are ongoing cases that are in various stages of development. The *Benefield* case involves open records request issues and related claims for attorney fees. This is the case where the Colorado Republican Party made a request in 2006 under the open records act for the production of certain constituent survey responses from former

Representative Debbie Benefield and nine additional members of the House. This case has already made one journey to the court of appeals to resolve the CORA issues. Last fall the district court rejected the Colorado Republican Party's motion for attorney fees and costs in the underlying action. The Colorado Republican Party has appealed that denial to the court of appeals. On June 30 of this year, the Representatives filed their answer brief. The grounds on which the representatives object to the payment of Colorado Republican Party's fees and costs are listed in the summary. The deadline for the Colorado Republican Party to file its replay brief is today, so we'll continue to monitor that.

Mr. Lackner said the next case is *Bruce v. State*. This is the case involving the designation of assets as part of the state's required emergency reserve under TABOR. A one-day trial was held on June 17 of this year. As of today, the court has not issued a ruling.

Mr. Lackner said the next case involves *Gruber v. Colorado State Patrol*. This involves tort and constitutional claims brought against two House members, Representatives Amy Stephens and James Kerr, and the Colorado State Patrol and three of its officers. The defendants, including the members of the General Assembly, are being represented by the Attorney General's office. The district court has dismissed most of the plaintiff's claims. The trial on the remaining claims has been set for October 11 of this year.

Mr. Lackner said finally, we have two new cases to discuss in which the Generally Assembly is a party. First is a case involving a *pro se* prisoner litigator who has brought a case concerning the constitutionality of House Bill 93-1302 and subsequently enacted statutes regarding mandatory parole. This is *Stamps v. General Assembly*. In May of this year, plaintiff Ivan Stamps filed a complaint against the General Assembly alleging that the legislature unlawfully enacted House Bill 93-1302 because that bill included mandatory parole provisions resulting in a net increase in periods of imprisonment without either allocating funds to defray the increased costs of the longer periods of imprisonment as is generally required by statute, or including in the bill an explicit exception to the funding requirement as permitted by that section. Stamps further alleges that the General Assembly's failure to allocate such funding in the bill harms Stamps and the taxpayers by necessitating an ongoing misappropriation of public moneys of approximately \$5 million per month in violation of state law, the due process clause of the Fourteenth Amendment, and article V, section 33 of the Colorado constitution, which among other things requires that moneys in the state treasury be disbursed only by lawful appropriations. For relief, Stamps requests that the sections of

House Bill 93-1302 that provided for mandatory parole and all subsequently enacted Colorado statutes regarding mandatory parole be declared void. He also requests that the court enjoin the General Assembly from using public moneys to pay the costs of housing prisoners whose mandatory parole has been revoked. The General Assembly, through attorneys in the Office, filed a motion to dismiss Stamps' complaint on the grounds that the doctrine of legislative immunity bars his claims that legislation be declared void and for an injunction against the expenditure of any state and federal moneys that are subject to legislative appropriation. To the extent that he seeks to enjoin the General Assembly from expending federal moneys that are custodial funds not subject to legislative appropriation, his complaint fails to state a claim upon which relief can be granted. The case is currently pending before the Denver district court on the motion to dismiss.

Mr. Lackner said the next case is a suit over medical marijuana legislation. On or about June 30 of this year, a group of plaintiffs, including the Patient Caregiver Rights Litigation Project, the Colorado Patients' Alliance, the Rocky Mountain Caregivers Cooperative, and two named individuals, filed a lawsuit in Denver district court alleging that all or part of three pieces of legislation - House Bill 10-1284, Senate Bill 10-109, and House Bill 11-1043 - referred to as the medical marijuana legislation, are unconstitutional under the medical marijuana provisions of the state constitution enacted by the voters in 2000. The complaint names as defendants the General Assembly, Governor Hickenlooper, and Roxy Huber and Martha Rudolph, executive directors of the departments of revenue and public health and environment, respectively. Among other claims, the complaint alleges that the right of a qualifying patient or caregiver to medical marijuana is an individual constitutional right analogous to the civil rights guaranteed by the Bill of Rights provisions of our state constitution. The plaintiffs interpret the medical marijuana provisions of the state constitution as establishing a fundamental right to free access on the part of all Colorado citizens and residents to medical marijuana for debilitating medical conditions. The complaint further alleges that the legislation unconstitutionally restrains patients' access to medicine, limits strict patient confidentiality provisions, and inflicts severe harm upon qualifying medical marijuana patients by effectively depriving them of ready or all access to medication. The complaint alleges that no compelling state interest or rational basis exists for infringement of the constitutionally secured right of access of hundreds of thousands of qualifying patients to their medication, nor has the legislation been narrowly drawn to achieve any such interest in the least restrictive manner possible. Plaintiffs seek a declaration that the provisions of the medical marijuana legislation be declared unconstitutional in whole or in part. As to the individually-named

defendants, the plaintiffs additionally request an order from the court barring them preliminarily or permanently from implementing or enforcing the legislation. As of the present time, it does not appear that any of the defendants have been served with a copy of the complaint.

Mr. Lackner said that completes the first category of cases. Now moving on to the second category are cases in which the General Assembly may have a particular interest. In this category are cases that have been concluded since the last summary was prepared. The first case is *Developmental Pathways v. Ritter*. This is the case involving the constitutional challenge to Amendment 41. An order of dismissal has been entered and the case is at an end.

Mr. Lackner said the next case is *Colorado Oil and Gas Ass'n v. Colorado Oil and Gas Conservation Comm'n*. This case dealt with the legality of promulgation by the COGCC of oil and gas rules. On February 8, 2011, the district court granted the plaintiff's motion to dismiss the complaint with prejudice, so the case is at an end.

Mr. Lackner said another case of interest is the *Lobato* case, which involves the constitutionality of the present system of financing public education. A five-week trial is set to commence August 1.

Mr. Lackner said the next case is *Colorado Mining Association v. Huber*. This case involves whether the reinstatement of statutorily prescribed increases to the state coal severance tax rate reflecting adjustments to the tax formula to account for inflation violates TABOR. The supreme court heard oral arguments on June 7 of this year but has not yet issued a ruling.

Mr. Lackner said the next case is *Justus v. PERA*, which involves the constitutionality of Senate Bill 10-001, which was major legislation involving a modification to certain PERA requirements. By order dated June 29, 2011, the district court granted the state's motion for summary judgment as to all the plaintiff's claims. The court held that while the plaintiffs unarguably have a contractual right to their PERA pension itself, they do not have a contractual right to a specific COLA formula in place at their respective retirement, for life without change. In so holding, the Court reviewed the history of repeated efforts made by the General Assembly, over the past 40 years, to modify the COLA formula for existing retirees. Based on numerous and steady changes in the PERA COLA formula for retirees, plaintiffs could not have had a reasonable expectation that the COLA formula that was in place at the date of their retirement would be unchangeable for the rest of their lives. In addition, the court also held that plaintiffs' takings and due process claims likewise are

premised on the existence of a constitutional right to an unchangeable COLA formula and necessarily fail because no such right exists. The 42 U.S.C. § 1983 claims also fail because the underlying constitutional claims fail. It appears this order means that proceedings before the trial court may be at an end. Plaintiffs may still be within their window during which they may be exercising their appeal rights, so it's premature to say that the entire litigation is at an end.

Representative Roberts asked if Mr. Lackner has the date of when the appeal right on the PERA case will be extinguished? Mr. Lackner said I don't but I'll be happy to get that for you.

Mr. Lackner said the next case is *Direct Marketing Ass'n v. Huber*, which is the case involving the legality of so-called "Amazon Bill", i.e., House Bill 10-1193, concerning the collection of sales and use taxes on sales made by out-of-state retailers. In June of this year, federal district court Judge Robert Blackburn granted the plaintiff's motion for a preliminary injunction in part on the grounds that direct marketing association demonstrated a substantial likelihood of success on the merits in both its discrimination claim and its undue burden claim under the so-called "dormant" commerce clause of the United States constitution. The court thereupon enjoined the department of revenue from enforcing the act and any regulations promulgated thereunder until further order of the court. On May 6, 2011, direct marketing association and Ms. Huber filed cross-motions for summary judgment as to only the commerce clause issue. The district court agreed to certify any granting of summary judgment as a final ruling for appeal purposes. The district court would then stay its consideration of the other claims in the case pending the resolution of the commerce clause issue by the tenth circuit court of appeals. However, if the district court denies both motions for summary judgment, the case would proceed in the district court. At this time, the parties are awaiting a ruling from the district court on the cross-motions.

Mr. Lackner said the next case is *American Tradition Institute v. State*, which involves the constitutionality of the state's renewable energy standard mandate. You may remember I gave the Committee an overview of this litigation at your April meeting. Since then the state has answered and certain parties have moved to intervene, on which the parties are responding. There have been no additional significant actions in this case since that time.

Mr. Lackner said next are two cases addressing the drawing of the state's seven congressional districts. The two cases are *Moreno v. Gessler* and *Hall v. Gessler*. Two complaints were filed in May requesting the redistricting of

the state's congressional boundaries to cure alleged legal infirmities with the currently drawn district boundaries. The two complaints raise substantially similar factual allegations, claims, and requests for relief. Judge Robert Hyde of the Denver district court consolidated the two cases under the caption *Moreno v. Gessler*. Secretary Gessler has answered. A case management order has been entered and a trial date of October 11, 2011, has been set.

Mr. Lackner said the last case I want to discuss is *Kerr v. State*. In May of this year a group of 35 plaintiffs commenced a lawsuit against the state in U.S. district court, alleging that TABOR violates the guarantee clause of the U.S. constitution, other specific provisions of the U.S. constitution, and federal statutory provisions. In addition to Representative Kerr, the 35 named plaintiffs include four other current members of the General Assembly and two members of this Committee - the Chair and Representative Levy. The guarantee clause is found in section 4 of article IV of the United States constitution. Under this clause, the federal government guarantees to every state a republican form of government. As of the preparation of this summary, the state has not answered or otherwise responded to the complaint. That completes all of the prepared remarks this morning. I'm happy to answer any questions.

Representative Gardner said the *Stamps* case is remarkable for the fact that the Office, rather than retaining outside counsel, is doing the representation. I just wanted to call it to the Committee's attention. Mr. Cartin and I had a discussion about the representation of the General Assembly on this, and I encouraged Mr. Cartin to use his in-house resources, somewhat for reasons of cost but also because we have very fine counsel in the Office. To the extent that their workload permits, I think we ought to give them the opportunity to do that. How is that going? Are Jason Gelender and Michael Dohr glad they get to be courthouse lawyers?

11:43 a.m. -- Dan Cartin, Director, Office of Legislative Legal Services, addressed the Committee. He said I did have a conversation, as we always do with these kinds of matters, with the Chair and Vice-chair. For the reasons Representative Gardner stated, for the variety of issues that are in play here, and for the familiarity we have with defending against these issues and with Representative Gardner's good encouragement, we went ahead and decided to take this one on internally. Jason and Michael are learning the ins and outs of filing electronically with the court, talking with clerks of the court, generating arguments, and it's all gone quite well. We appreciate the support and direction from you in connection with this particular matter.

Representative Levy said I think it's an excellent idea for you to do this in-house. I thought typically you polled the whole Committee on the decision whether to retain outside counsel or not. Am I mistaken? I know I received calls in the past about it. Mr. Cartin said that is true. In the past we have historically polled all the members of the Committee on that particular question of whether or not to retain outside counsel. We didn't do it in this instance. We made a judgment call to go ahead, given the fact it was the interim and the timeliness of it. You are correct, and perhaps we should have polled the Committee.

Representative Levy said I think if it's a decision to retain outside counsel, which then entails cost and the decision as to which counsel to retain, I would like to be consulted on that. Keeping it in-house is a slightly different decision. Mr. Cartin said absolutely, thank you for that direction.

Representative Labuda asked Mr. Lackner about the *Amazon* case and if the Committee could get an update on how those cases are faring nationally. If I recall, the state of New York was intending to go all the way to the U.S. supreme court, but I haven't heard any rumors since then. Mr. Lackner said I think the attorneys in our Office that follow that case more particularly do follow what's going on nationally and we will try to prepare a written document that would summarize the consequences and rulings of those cases as they come out across the country.

11:46 a.m. -- Dan Cartin addressed the Committee again. He said there are a couple quick things. You were just given a memo from Ed DeCecco of our Office. This is a follow-up to a question Senator Roberts raised at the Committee meeting in April relating to the fees charged by state archives to access tapes of legislative proceedings. There was also a question at that meeting related to digitization of some of the deteriorating tapes that are housed in archives. The memo that Ed has done is a preview of a presentation that he will give to the Committee at an upcoming meeting. It gives a recap of the discussions he has had to date with Terry Ketelsen, the state archivist with the department of personnel. Those discussions have centered around the potential reduction or elimination of fees associated with legislators or legislative staff reviewing tapes at archives, and also some information Mr. Ketelsen has provided relative to cost to digitize tapes from the time period from 1973 to 1990. At the next meeting, Ed will be here to talk about archive's proposal to you and Mr. Ketelsen should be available as well to answer questions of the Committee.

Senator Roberts said I won't be at the September 13 meeting, but I would

certainly love to know how that goes. I maintain it's a problem for us legislators seeking to listen to tapes to pay \$75 an hour, so I appreciate Ed preparing this and hope we get to a better spot.

Mr. Cartin said secondly, the Office is in the process of preparing an annual report of the Office's activities for the past year, with some descriptions of the items that we're working on that we're statutorily charged with effectuating, some metrics, some performance measurement. I hope to get that e-mail to each of you in the next week or so and then I will follow up with each of you. I'd love the opportunity to chat with each of you individually about what the Office has done the past year and what we have on our plate going forward.

Representative Waller said I'm guessing this issue isn't ripe for this Committee right now but I want to make sure that we're prepared when it comes forward. I've been reading in the newspaper about some proposed rule changes to the childcare laws in the state by the executive branch. In an effort to not cause our staff to have sleepless nights like perhaps they did during our last session when we were discussing the rule review bill, I was wondering at what point can we get more information? At what point in the process are these proposed rules going to be with the Office and then, alternatively, in front of this Committee so we can start reviewing those rules as soon as possible to ensure what we have the best rule review bill possible as we get into the next legislative session?

Mr. Cartin said I'm not familiar with the rules you're talking about, but I'm assuming that they will be promulgated prior to October 31. Representative Waller said that's my understanding. I guess part of my issue is I'm not overly familiar with them either, it's just what I read in the Denver Post and the Denver Post calls them 98 mind-numbing pages of proposed rules for childcare centers. I want to make sure I understand and know what those 98 mind-numbing pages are as soon as possible, so then we can effectuate the absolute, best-possible rule review bill.

Senator Morse said the reason for the question is because there are in-cycle reviews and out-of-cycle reviews, which is probably what we're about to hear about.

Mr. Cartin said if the rules should come to our Office prior to October 31, then they'll be assigned to an attorney to review and they would go through the ordinary rule review process. If our staff spotted an issue with those rules, we would touch base with the department that promulgated the rules and if that issue can't be resolved then we would take that rule to the Committee.

There have been instances when we have been directed by the Chair to go ahead and make a certain group of rules a priority for review and to report to the Committee on those rules, regardless of whether or not we find an issue with the rules. It would all be a timing matter. If they come in after October 31, we could be directed to prioritize and do an expedited review of those rules for purposes of reporting to the Committee.

11:52 a.m. -- Debbie Haskins, Assistant Director, Office of Legislative Legal Services, addressed the Committee. She said the timing issue really is the date of adoption of the rules. If the rules are adopted on or before October 31, 2011, then they're subject to this year's cycle of rule review, which we're doing right now. We don't have these rules in-house yet and we don't know when we'll get them. We don't review the rules until they're actually adopted and submitted to us.

Senator Morse said I would add that the agency itself has rules regarding the way they promulgate those and so you would probably have access as a member of the public to those rules, as they have to post them for 30 days before they can hear them. If that process is in progress, you could look at the rules today even though we wouldn't worry about those rules until they are actually promulgated because that's the process.

Representative Waller said thank you very much for that explanation. I appreciate that very much. I would like these particular rules to be a priority. Mr. Cartin mentioned talking to the Chair to make this a priority. Is that something this Committee can vote on to make a priority for something we're going to review going forward?

Ms. Haskins said I think what I'm hearing from Representative Waller is that regardless of when the rules are adopted, you want our staff to review the rules as soon as they come in. It doesn't really matter whether they're in cycle or out cycle, you would want to be aware that the rules have come in and for us to review them and deal with them sooner than later. Representative Waller said yes.

Senator Morse said correct me if I'm wrong but we review every rule that gets done to make sure it complies with statute. Staff makes a determination based on your discussions and review with the agency and then staff comes to us if they don't think the rules fit within the statute. Certainly, they would be giving some deferential treatment because you specifically asked, but we review every rule that every agency promulgates every year without fail.

Representative Gardner said if a rule is not adopted before October 31, then it will sit on the books through the entire legislative session and not be subject to the rule review bill until the next legislative session. Ms. Haskins said in the ordinary course of things, yes.

Representative Gardner said I think the concern about this set of rules is that they are particularly onerous and I would be concerned for small business involved in something that is a vital function for families in Colorado that they might have rules promulgated on November 15 and might be living with them for the next 18 months. My recollection with respect to the oil and gas rules was that we pulled them forward. What is necessary and required to have a set of rules that are promulgated in December, for example, pulled into the process for the next session of the General Assembly? Ms. Haskins said none of this is written down anywhere, so it's been sort of ad hoc. Generally what we have done is that if we have direction from the Chair or a request of a member of the Committee that we review a rule out-of-cycle, or sooner than its regular course of time, we would do that. At the time the rules come in we would let you know and then have the Chair and Vice-chair direct us to do the review. In the oil and gas rules situation, the executive committee, at the request of Representative May, took a vote and specifically directed the Committee to review the rules out-of-cycle. I don't think we need a vote; we just need the Chair or a member of the Committee to tell us to review the rules and then we would schedule that for a meeting.

Mr. Cartin said if an issue was found with the rule and the Committee voted on that particular out-of-cycle rule, you wouldn't vote not to extend the rule. Because it's out of cycle, you would vote to repeal the rule, but it could be included in the rule review bill.

Senator Morse said couldn't it also occur that if all that failed for whatever reason - the Chair wouldn't let us review the rule, as an example, or we reviewed it but couldn't come to any conclusion as a Committee - any member of the General Assembly could still introduce a separate bill that repeals that rule or fails to extend a rule that is being reviewed within cycle? You can do that, you just have to run through the normal process. Isn't that right? Mr. Cartin said that's correct, among other options.

Representative Labuda said having read the same articles in the Denver Post that Representative Waller did, I would strongly urge that we review the rules as soon as possible.

Senator Morse said I think we ought to wait until the rules are actually

adopted. You can certainly look at the rules on the website, but those rules are still subject to change before they're adopted.

Representative Gardner said if they're adopted by October 31, I don't know what will happen. They'll be in the cycle, so we probably ought to wait and see what happens and ask staff to keep us advised of what the status of the rules is.

Mr. Cartin said we've been put on notice.

12:00 p.m.

The Committee adjourned.