

# OFFICE OF LEGISLATIVE LEGAL SERVICES

## COLORADO GENERAL ASSEMBLY

**DIRECTOR**  
Dan L. Cartin

**DEPUTY DIRECTOR**  
Sharon L. Eubanks

**REVISOR OF STATUTES**  
Jennifer G. Gilroy

**ASSISTANT DIRECTORS**  
Deborah F. Haskins    Bart W. Miller  
Julie A. Pelegrin

**SENIOR ATTORNEYS**  
Jeremiah B. Barry    Gregg W. Fraser  
Christine B. Chase    Duane H. Gall  
Edward A. DeCecco    Jason Gelender  
Michael J. Dohr    Robert S. Lackner  
Kristen J. Forrestal    Thomas Morris



**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**

**SENIOR STAFF ATTORNEYS**  
Charles Brackney    Jery Payne  
Brita Darling    Jane M. Ritter  
Kate Meyer    Richard Sweetman  
Nicole H. Myers    Esther van Mourik

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

**STAFF ATTORNEY**  
Jennifer A. Berman

**PUBLICATIONS COORDINATOR**  
Kathy Zambrano

## SUMMARY OF MEETING

### COMMITTEE ON LEGAL SERVICES

**April 27, 2012**

The Committee on Legal Services met on Friday, April 27, 2012, at 12:22 p.m. in SCR 354. The following members were present:

Representative Gardner, Chair  
Representative Labuda  
Representative Murray  
Representative Waller  
Senator Brophy  
Senator Carroll  
Senator Morse, Vice-chair  
Senator Roberts (present at 12:25 p.m.)  
Senator Schwartz (present at 12:28 p.m.)

Representative Gardner called the meeting to order.

**12:23 p.m.** -- Jane Ritter, Senior Staff Attorney, Office of Legislative Legal Services, addressed agenda item 1a - Rules of the State Board of Education, Department of Education, concerning S.B. 10-191 and the appeals process related to the administration of a statewide system to evaluate the effectiveness of licensed personnel employed by school districts and boards of cooperative services, 1 CCR 301-87.

Ms. Ritter said these rules were adopted by the board on April 11, 2012, and are scheduled to expire on May 15, 2013. Typically, a review of rules scheduled to expire in 2013 would

not occur until the upcoming interim. In this case, however, an earlier review is called for by the provisions of Senate Bill 10-191. The board previously submitted the remainder of the rules related to Senate Bill 191. These rules were considered early in the year by the Committee and subsequently extended through House Bill 12-1001. There is no additional statutory requirement for a separate bill to consider the appeals process rules adopted on April 11, 2012. Therefore, the Committee's recommendation regarding the rules may be included in the General Assembly's annual rule review bill, House Bill 12-1086.

Ms. Ritter said the state board has broad general authority to administer article 9 of title 22, C.R.S., the "Licensed Personnel Performance Evaluation Act". Through Senate Bill 191, the board was given further specific statutory authority in sections 22-9-104 (2) (c) and 22-9-105.5 (10) (a), C.R.S., and direction to work with the state council for educator effectiveness to promulgate rules for the implementation of the performance evaluation system. Our Office has identified one issue with the appeals process rules. The rule in question fails to conform to certain statutory requirements and exceeds other statutory requirements. The issue we found is with Rule 5.14 (A) (11), which allows a superintendent to assign "no score" to a teacher in certain instances, which is, in effect, a no performance evaluation rating. The rule reads that if a superintendent determines that a rating of ineffective or partially effective was not accurate but there is not sufficient information to assign a rating of effective, the teacher shall receive a "no score" and shall not lose his or her nonprobationary status. However, if in the following academic school year that teacher receives a final performance evaluation rating of ineffective or partially effective, this rating shall have the consequence of a second consecutive ineffective rating and the teacher shall be subject to loss of nonprobationary status.

Ms. Ritter said section 22-9-106 (4.5) (b), C.R.S., expressly sets forth two options when a teacher receives an ineffective performance rating and an option for "no score" is not given. The section reads, in part, for a person who receives a performance evaluation rating of ineffective, the evaluator shall either make additional recommendations for improvement or may recommend the dismissal of the person. Furthermore, any language related to the assignment of "no score" does not appear elsewhere in statute, including the sections related to the appeals process. The direction that appears in Rule 5.04 (A) (11) concerning the potential loss of nonprobationary status in a year following a "no score" is also absent from statute. Furthermore, the board's own rules do not contemplate a "no score" scenario for teachers. The previously submitted and adopted rules concerning the performance evaluation system include language requiring the annual assignment of one of four effectiveness ratings: Highly effective, effective, partially effective, or ineffective. In addition, Rules 3.03 (D) (1) through 3.03 (D) (4) explicitly address the implications of the four distinct ratings on probationary and nonprobationary status. The implication of a "no score" is not addressed anywhere in these rules.

Ms. Ritter said importantly, by providing a "no score", or essentially no performance

evaluation rating, the rule leaves the door open to repeated assignments of "no score" rather than ratings of effectiveness or ineffectiveness as contemplated by Senate Bill 191. Secondly, and perhaps more critically, statute directs that all teachers receive a performance evaluation report that measures their level of effectiveness and provides them with a guide for improvement. Section 22-9-106 (1) (c), C.R.S., requires that all teachers receive at least one written evaluation report annually, and section 22-9-106 (1) (d) (V) (B), C.R.S., states that one of the purposes of the evaluation shall be to measure the level of effectiveness of all licensed personnel within the school district. By providing certain teachers with "no score" in a given year, Rule 5.04 (A) (11) fails to provide those teachers with a clear measure of their effectiveness or ineffectiveness as well as indications of where improvement is needed, a clear intent of Senate Bill 191. Therefore, Rule 5.04 (A) (11) fails to meet statutory requirements of section 22-9-106, C.R.S.

Ms. Ritter said in conclusion, because Rule 5.04 (A) (11) exceeds the statutory authority of section 22-9-106 (4.5) (b), C.R.S., and also fails to meet the statutory requirements of section 22-9-106 (1) (c) and (1) (d) (V) (B), C.R.S., we recommend it be repealed and included in the annual rule review bill. Finally, the remainder of the rules adopted on April 11, 2012, concerning the appeals process for the statewide system on educator effectiveness, are within the board's rule-making authority, do not conflict or exceed the authority of existing statute, and should be extended.

Representative Labuda asked if we eliminate this rule, what impact might that have on the rest of the rules? Ms. Ritter said somebody from the state board might be better equipped to answer that, but my reading of the rules would be that it would just revert back to teachers would have to appeal their rating of ineffective or partially effective and that would either be upheld or they would get a rating of effective, and then it would proceed from there as the statute suggests. By pulling this rule out, it doesn't affect the other rules.

Representative Waller said when I was looking at the objection to the rule, it seemed to me that if they provided another evaluation within that year's time period, then the objections would be overcome. Am I missing something? Ms. Ritter said the rule says another evaluation would wait until the following year.

Representative Waller asked that the "no score" would be the evaluation they get for that year and then the following year they would get another evaluation? Ms. Ritter said correct.

Representative Waller asked if the rule were changed to add a new evaluation period within the same year, would that resolve your issues with the rule? Ms. Ritter said I believe so, as long as at some point in the year the teacher gets a rating that they can use for improvement or loss of nonprobationary status.

**12:33 p.m.** -- Katy Anthes, Executive Director for Educator Effectiveness, Department of

Education, and Kady Lanoha, Senior Policy Associate, Department of Education, testified together before the Committee. Ms. Anthes said we thought we would provide a little bit of context as to why the rule was added because we do know it wasn't contemplated in the statute, but we believe we found a gap. Ideally, evaluation systems would be thoughtfully and carefully implemented so that all teachers would receive an evaluation rating that reflects a comprehensive body of evidence and that is fair. However, we know that, especially in these first early years, the systems will be imperfect, so teachers will need the opportunity to appeal the process used to assign the rating if the rating was flawed or there were errors in the data that was used to assign the rating. The set of rules that was submitted to you outlined the process that may be used by a teacher to appeal the evaluation rating he or she was initially assigned. In the course of thinking through that process, a question was raised by the bill sponsors about what happens when it becomes clear that the process used to assign the rating was incomplete or the data relied upon was inaccurate. In some instances, it might be easy for a district or an evaluator to quickly correct the mistake, such as we mis-attributed data and this is actually the data we should attribute, and then assign a rating immediately. However, there may be other instances, if the process was not followed throughout the year, that a rating of either effective or ineffective would not be able to be assigned. For instance, maybe that teacher was not observed, so the evaluator would not know whether that teacher was actually effective or ineffective. That was where the idea of the "no score" came up. Because these evaluation systems are comprehensive and complex, it would be very difficult to just go in and do an evaluation. The evaluation system is a complete body of evidence over a year's worth of time. It is true that the statute does not reference a "no score" rating and that there are sections of law that only address how a district should proceed based on an effective or ineffective rating. Those sections just don't contemplate what should happen when an initial rating is appealed and it is not possible for the reviewer of the appeal to determine what the accurate rating should be. The rule attempts to fill the gap there, so that districts have the direction they need to implement the law consistently and deal with those unique situations. Since we assume that districts would not want to make the same mistake twice and after an appeal they would address any errors in their evaluation process in the next year, we do not have any significant concerns that a teacher would receive a "no score" for multiple years in a row. With that said, we defer to your judgment, but just wanted to share our rationale for including this section in the first place.

Representative Waller asked again, why don't they just go back and do another evaluation? Ms. Anthes said our evaluation process contemplates multiple observations and multiple pieces of evidence throughout the whole year. The appeal process could be late so in the process at the end of the year because of the timelines that the teacher may not be teaching at that point, so an observation could not occur that late.

Representative Waller asked if you couldn't base the next evaluation off the observations that happened earlier in the year? Ms. Anthes said what we're contemplating, for instance, is what if the first observation never took place. What if that was the reason why the teacher was

appealing, that they didn't have observations throughout the year so there is literally no evidence from which to base the change of score.

Representative Waller said it seems to me that is completely unacceptable. If you're promised an evaluation, you should be given your evaluation, and if not, you get a passing score. It's not the teacher's fault.

Ms. Lanoha said I just want to point out that the way the rule is written it says if there is insufficient information to assign a rating. In an instance where it could be corrected or the reviewer could assign a rating, it would move forward. This is dealing with a unique situation where there isn't sufficient information and it's not possible to assign a rating.

Representative Labuda said I'm thinking if I'm a principal or supervisor my job is to look closely at the rules and I better not come up with anything insufficient. It's my fault if the teacher doesn't get an adequate rating. Is there anywhere in the rules that holds me to task for not doing my job? Ms. Anthes said I don't believe there is any place in the rules that specifically calls that out.

Ms. Lanoha said you'd be incentivized to do your job and have all the information so you didn't have a situation where you had to assign a "no score".

Representative Labuda asked how would I be incentivized if I'm not held accountable for doing this? Ms. Lanoha said if you have a "no score" it just slows down the process and you don't have a rating for that educator for that year. If you want to have the process work the way it's supposed to, you want an accurate rating assigned.

Representative Labuda said it troubles me that if the person who is supposed to be giving the ratings and observing doesn't do his or her job, there's nothing that holds that person accountable. I know you didn't write the rules because these came from the state board, but the state board approved the rules that the commission wrote.

Ms. Anthes said that is correct. I think that would be a district decision. We're not saying they wouldn't be held accountable, but the superintendent has the ultimate authority over the process and the appeal process and if that superintendent found that one of his or her principals was not doing their job, I would think that principal would be held accountable. It is not explicitly stated as such in the rules currently.

Representative Labuda said in case the state board is listening, they need to hold everybody in this process accountable.

Representative Murray said there is a principal evaluation portion to this bill, too, so it's not just teachers that are evaluated, though this particular issue we're talking about is just

teachers.

**12:43 p.m.** -- Senator Michael Johnston testified before the Committee. He said I wanted to answer Representative Waller's point. The problem here is if I'm a teacher and Senator Morse is my principal and Senator Morse never once comes to my classroom to evaluate me. It's May and Senator Morse realizes he forgot to evaluate me so he decides to call me terrible and turns in the evaluation. That evaluation gets turned in May 15, I get it, I go to appeal that, and I start the appeal on May 23, but the school year is over. You can't now start the evaluation that Senator Morse should have started nine months ago, which is to come to my room two or three times a year, observing me, documenting me, and getting information. You've missed the whole window to gather information. In that situation, that Senator Morse is terrible doesn't actually indicate whether I'm a great teacher or not a great teacher. The presumption that because he missed, I ought to get a pass, is not necessarily accurate. I may be great or I may not be great, but we literally have no data on how well I did because Senator Morse never did his job. To Representative Labuda's point, this is exactly the way that as a superintendent you would identify real problems with your principals. If you have to get a "no score", that means that a principal fundamentally failed in his duty to do the basic job he's required to do. Under this bill, as Representative Murray indicated, all principals are at-will employees and so they can be released at any time, and I would say a principal who is not doing any direct evaluation of their teachers is probably the first indication that the principal is in major neglect of duty. The other option is that you might appeal a score because, for instance, Senator Morse has done evaluations of me all year long and my evaluations are strong, but in my student growth score, I got the lowest possible rating. That caused me to have an ineffective rating. It might be because the 27 students that you counted in my score were not actually in my class. If I appeal that, I can get the right 27 students, recalculate the data, and get my actual score. That's a problem you could fix right away. In some cases, the superintendent could actually fix the problem, correct the data, and give me an accurate evaluation. But in the Senator Morse example, there may be data that is missed that you can't go back and recover. The point is that the absence of data doesn't indicate a positive performance or negative performance, it just is a "no score". The council, as they were working through this, discovered that this was something we had not thought of before, but it would be really unfair in either direction to either assume that someone was strong or assume someone was not because of lack of duty by the principal.

Senator Morse said what I like about the approach that the board has taken is that I may, as the principal, have teachers I need to do this for, so I've scheduled observations to give me enough data. On those two days I've scheduled for Senator Johnston, my wife is diagnosed with cancer or something and I have to leave the building that day and then the second time something else catastrophic happens in my life. There needs to be flexibility to determine if that's what happened. Statistically, this isn't going to happen much, but I know there are times when principals are called out of their normal routine. I know from being a CEO myself that there are so many times when my day is planned and it doesn't come anywhere close. I think

there needs to be this flexibility in the system to say that bad things may happen and since we are rule-based we have to have the ability to deal with the realities of life.

Senator Brophy said that raises two questions for me. In the event that something occurred that we couldn't do an evaluation because of the time factor, did the board contemplate granting the minimum passing grade for that particular year instead of a "no score"? In other words, just say that by default you're effective. Two, if you want to stick with the "no score" ruling, what's to keep a principal and a certain group of teachers from gaming the system and just doing "no score" out of purposeful disobedience because they don't like the Senate Bill 191 process or some other reason?

**12:49 p.m.** -- Ms. Anthes said again the board did not spend much time talking about the first question about giving them an effective rating. To Senator Johnston's point, there is no data to decide whether they would be effective or ineffective so we're essentially holding them harmless. We're not giving them a negative or a positive, we're just holding them harmless for that year. The second question is around the possibility of gaming the system. I don't think that will happen because a "no score" wouldn't count toward your years of effective service for gaining your nonprobationary status, so there is incentive to have a score because it will count toward your tenure status.

**12:50 p.m.** -- Senator Johnston said the key part is to remember that the appeal happens only after the second consecutive ineffective rating in a row. You could have someone ineffective the first year and ineffective the second year, and then they appeal but the appeal is overturned and the second ineffective rating stands. So, if there is a whole year of data to indicate already that the person is not effective and in the second year, you gave them a pass, that means you start the whole process all over again and they would now have to have two more consecutive years before they were facing the loss of nonprobationary status. Now it's a four-year process. What we said here is that if there isn't any fair data to evaluate you, we'll count this as a "no score" and if you come back in year three and are found to be ineffective again through a fair evaluation, that counts as your two consecutive years. If you gave a conditional pass to them in the second year because Senator Morse never came to observe, that has the effect of pushing off for two more years any consideration.

Senator Brophy asked what if Senator Morse is conspiring with the ineffective teacher to lose his notes related to his classroom evaluations, granting them a year of a "no score"? Was that contemplated as a way to gain a free year's worth of ineffective teaching, costing the students of Colorado another year's worth of good education?

Senator Johnston said the much easier thing for Senator Morse to do, which is exactly what happens almost all the time, is to just give you a good evaluation the first time around. Even if your data is highly ineffective, Senator Morse can give you a good evaluation each year, regardless of your performance. The purpose of this bill is that now you're going to balance

some of the data and the actual personnel evaluation, so that if the supervisor's evaluation is way out of line with the data, you now have a reason for questions and concern. I think the important thing is the evaluation gives you, as a superintendent or supervisor of principals, some insight into how Senator Morse is doing because you would know if there are a bunch of "no scores" or if there is a huge gap between his subjective evaluation and the data-driven component of the evaluation.

Senator Brophy said I'm now convinced that this is a reasonable rule, but I think it's outside the bounds of the clear letter of the statute. I almost need the sponsor of the bill to say that this is within the bounds of legislative intent.

Senator Johnston said I'll defer to my cosponsor, Representative Murray, but I think this is squarely within the bounds of legislative intent.

Representative Murray said there are unpredicted consequences when you write a bill and when you get down to the specifics of trying to implement something. Things like this are going to come up and I think this is a good solution to the issue.

Representative Labuda said a few people approached me about this rule and one thing that was pointed out was that this is a whole new system and the rules will probably be rewritten many times. There's probably going to be a bill next year that will come back to us to change something based on what we've learned this year. I'm inclined to leave the rule in.

**12:56 p.m.**

Hearing no further discussion or testimony, Senator Morse moved that all of the rules of the State Board of Education of the Department of Education, concerning the process for nonprobationary teachers to appeal second consecutive performance evaluation ratings of ineffective or partially effective as adopted by the board on April 11, 2012, and which are included in the board's rules concerning the statewide system on educator effectiveness, be extended, effective May 15, 2012, in House Bill 12-1086, the annual rule review bill, and urged a yes vote. Senator Brophy seconded the motion. The motion passed on a 9-0 vote, with Senator Brophy, Senator Carroll, Senator Morse, Senator Roberts, Senator Schwartz, Representative Gardner, Representative Labuda, Representative Murray, and Representative Waller voting yes.

**12:58 p.m.** -- Senator Morse addressed agenda item 2 - Action on HB 12-1086 by Representative B. Gardner; also Senator Morse - Rule Review Bill.

Senator Morse said I present to you today House Bill 12-1086, which is the annual rule review bill, which has been duly worked on by the Committee. I would ask for an aye vote.

**12:59 p.m.**

Senator Morse moved amendment L.006. He said this amendment adds to the bill the actions that the Committee took today on the rules from Senate Bill 191 and the teacher effectiveness system. No objections were raised to that motion and it passed unanimously.

**1:01 p.m.**

Hearing no further discussion or testimony, Senator Morse moved House Bill 12-1086, as amended, to the Senate committee of the whole with a favorable recommendation. The motion passed on a 8-0 vote, with Senator Brophy, Senator Carroll, Senator Morse, Senator Roberts, Senator Schwartz, Representative Gardner, Representative Labuda, and Representative Waller voting yes.

**1:02 p.m.**

Senator Schwartz moved that the bill go to the consent calendar in the Senate. Senator Brophy objected to the motion so the motion was disregarded.

**1:03 p.m.** -- Jennifer Gilroy, Revisor of Statutes, Office of Legislative Legal Services, addressed agenda item 3 - Committee Approval of the Publications Contract with Lexis-Nexis.

Ms. Gilroy said the Committee should have received a draft of the publications contract. You'll recall that back in September last year, this Committee selected LexisNexis as the contractor for the publication of the Colorado Revised Statutes and the session laws for a five-year period following the expiration of the current contract. The statute does require that the Committee determine the terms and conditions of this contract and you basically did that by establishing the terms and conditions in the request for proposals (RFP). This contract draft follows those terms very closely. I have been working both with Nikki Daugherty and counsel at LexisNexis, as well as Linda Shubow with the Attorney General's office, negotiating and fine-tuning the terms of this contract. I think we're very close. We might have minor changes still to fill in, and we'll be done and have this contract prepared and ready for execution by both the Attorney General, the state controller, and the Chair of this Committee prior to the June 30 deadline. The general terms of the contract provide that it is a five-year contract as you had indicated in your RFP. It's to begin January 1, 2013, and will continue through and expire on December 31, 2017. The scope of the contract will provide for the publication of the state statutes, the U.S. Constitution, the court rules, and the session laws and red books. It includes a duty on LexisNexis to print, deliver, warehouse, advertise for sale, and sell the statutes, session laws, red books, and special supplements if there are any voter-approved amendments. They also are required to provide customer support, not only to the public but also to our Office. You'll also see that they will continue to prepare, produce, deliver,

warehouse, and sell the DVDs with periodic updates in January and May. Our Office will receive 600 copies of that, which we distribute. In addition to that, they provide on-line public access to the Colorado Revised Statutes, session laws, and the state and U.S. constitutions through the General Assembly's homepage. You all specified some specific terms on that public access and I want to let you know that we have included all those within the contract, including such things as the "hooks" that will link to bills that have amended the section of law you're looking at; the hyperlinks in the source notes that will take you to the session laws and the bill that amended the section; being able to capture the URL and make a copy of that particular statute you're looking at; being able to print out an entire section of law or, at a minimum, 10 pages; and also Representative Murray had asked for a unique and distinctive C.R.S. icon that can be usable by the hosts of other internet sites to directly link you to the Colorado Revised Statutes and they are working on that as well.

Ms. Gilroy said we have received some complaints about the search engines on the on-line public access version of the statutes and I wanted to let you all know that I'm working with LexisNexis. They are developing a customer-user interface that's much friendlier and much easier to use. It's taken some time because I wanted the "hooks" and hyperlinks to remain. I'm anticipating that it's imminent now. They've been working on it for over a year. Nikki Daugherty from LexisNexis will be here on May 1 to work with me and Wade Harrell, the IT expert in our Office, to demonstrate the new navigability and accessibility. I'm hoping that it will be much improved and our users will be happier with it.

Ms. Gilroy said in addition to the internet availability, the books, and the DVDs, LexisNexis is developing and preparing for marketing e-books of our statutes. Several of you are beta-testing. We have five titles of our statutes right now. I'm happy to report that you have an extension of time within which to test, so we won't be having LexisNexis come out this spring, but at your next meeting probably in September. You'll have use of the iPads and the ability to beta-test the e-books over the course of the summer. We will send you e-mails for updates as more and more titles are developed and produced over the course of the summer.

Ms. Gilroy said also, the terms of the contract provide that any print session laws, red books, and statutes be done as expeditiously as possible. The sales terms are the same as what were provided by LexisNexis in their proposal in response to the RFP. We'll receive 1,200 sets of the session laws and over 3,000 of the red books. There is a 3% adjustment, depending upon the future of the U.S. bureau of labor statistics producer price index for technical, scientific, and professional publications beginning in January 2014. The costs that we're paying for these publications can either go up or they can go down. The same is true with the C.R.S. The contract price is the same as what they included in their proposal. We would receive over 3,000 sets of the C.R.S. for distribution among courts and state offices throughout the state. We'll get 600 subscriptions to the DVDs and we'll also receive 100 sets of the e-books so each member can have a set of the e-books when they're completed. Those are the highlights of the contract. Representative Gardner, as the Chair of the Committee, will be the one to actually

execute the contract.

Representative Gardner asked what action does the Committee need to take under statute? As I understand it, the Committee does need to approve the contract. Ms. Gilroy said right, I would ask that there be a motion to approve the contract draft.

Representative Gardner asked if we need to do so with some contingency? I gather that this document may change in some way between now and the time it's signed. Do we need to approve it, subject to nonmaterial changes? Ms. Gilroy said I would appreciate that. We're very close. There are very minor changes that are left. There are a couple prices that are blank, the public sale costs for two different print publications as well as the e-books. Those are more substantive than not. I would ask for flexibility for completing the final terms of the contract - which I will provide to the members of the Committee by e-mail or other communication, subject to any objection from any members - but that we approve the contract as drafted now.

Representative Gardner said we would approve the contract subject to review and objection by members of the Committee, so we would send it out one last time and if someone does object we either resolve the objection in some way or call a meeting.

Senator Carroll asked what's the benefit of doing a five-year contract if there's no price lock? Ms. Gilroy said part of it, in my opinion, is that it takes a lot of your time and a lot of staff time to go through the RFP process. It was a very lengthy, time-consuming process - almost a two-year process - to get this contract in place. I've talked to other states that have this price adjustment with LexisNexis, and they've never actually implemented it. I'm hopeful that will be the case here unless there is a reduction in the index. Other than that, I think it's mainly a time and resource issue.

Senator Carroll said it may be moot if it hasn't happened, but by having a theoretical price increase to the state on a contract, I'm not sure there is any price protection in place. I have confidence in the Office, but I would feel better if there were some kind of ceiling or cap or process that if over the next five years the price is going to go up from what we are approving now, you will tell us why you feel okay with it. Ms. Gilroy said there is a cap of 10%.

Senator Schwartz said there was some distinction that the on-line version of the statutes weren't as reliable as the books. Is there some further development of the on-line version that they are as reliable as the books? Are the e-books, in particular, the same as the books? Ms. Gilroy said the books will remain the same. In terms of reliability, are you comparing that to the on-line access?

Senator Schwartz said in our last discussion, it was said that the reliable version of the statutes is contained in the books. Ms. Gilroy said yes, that's true. The books are the official version

and it remains that way currently. The on-line version is not an official version nor are the DVDs or e-books. I would mention, however, that House Bill 12-1209 did pass this year and it is law. Currently, the Colorado Revised Statutes on-line are not identified in statute as an official version, so they are not currently subject to the requirements of authentication, preservation, and permanency that House Bill 1209 would require of official versions of electronic materials. I anticipate that in the future, that may be the case. It won't probably be the version that we currently have as the public access provided by LexisNexis. I think our own LIS department will be working on that, as well as how we as the General Assembly will meet the requirements of House Bill 1209 because there is more than just the statutes. There are the session laws, the journals, the bills, the amendments, and the bill summaries. There are a lot of different legal materials available electronically that will have to be subject to that. At this point, it's still just the books, but it may change in the future by legislation.

Representative Gardner said I want to make sure that Ms. Gilroy is comfortable if we would approve the contract subject to final review and objections of the Committee. What I would anticipate is that when all the agencies that need to review the contract have done so and you and I are at a point that we're ready to sign, we would send it to the Committee and say now is the time to raise objections. We would need to do that in sufficient time to have a meeting. I would suspect if we have anything, it might just be a question at that point. Is that a process that would work? Ms. Gilroy said that would be fine.

**1:18 p.m.**

Hearing no further discussion or testimony, Senator Morse moved to approve the contract, subject to final review by the Committee, and that Committee members be permitted to opt in to objecting to the contract and failing to opt in then the contract will be approved. Representative Waller seconded the motion. The motion passed on a 8-0 vote, with Senator Brophy, Senator Carroll, Senator Morse, Senator Roberts, Senator Schwartz, Representative Gardner, Representative Labuda, and Representative Waller voting yes.

**1:19 p.m.** -- Debbie Haskins, Assistant Director, Office of Legislative Legal Services, addressed agenda item 4 - Discussion of a Regular Meeting Date in the Legislative Session for the Committee on Legal Services.

Ms. Haskins said, as you know, the Committee doesn't have an assigned meeting date during the session and it makes it extremely difficult to schedule meetings of the Committee. Senator Schwartz, unfortunately, has missed a couple of the meetings because we've had meetings on days when she's been in the Capital Development Committee. That has caused a conflict for one of your members this session. I have been mulling over this idea for quite a while and thinking that if we had an assigned time that would be wonderful. Our Office doesn't have a lot of control over the schedule because the committees of reference are scheduled by the Legislative Council staff. My proposal would be that we would negotiate with our colleagues

in Legislative Council to see if we could get a dedicated meeting time for the Committee. Our suggestion is the third Friday of January, February, March, and April, from noon to 2 p.m. What I'm hoping we can accomplish is that no other committees would be scheduled against that meeting date. At a minimum, you need to have three meetings during the session, one early in January to organize the Committee and elect a Chair and Vice-chair and then you need to hear the rule review bill twice. I think this would make it easier on our staff and you could have it in your calendar. We could try it and see if it would work.

Senator Morse said I know what a pain it is to schedule a meeting; however, I have standing committee meetings outside the building on the second and third Fridays. I would be happy to do it on the first or fourth Friday, but that's why a lunch meeting or a 7:30 a.m. meeting works reasonably well for me.

Senator Carroll asked what about third Friday mornings? Ms. Haskins said we run into the Appropriations committees.

Representative Gardner asked how does the first Friday each month look? Ms. Haskins said we can look into that. Let me suggest that we look at some other dates. There's no hurry on this and we can talk about it at our first meeting in the fall.

Representative Gardner asked if it is really something we have to have a vote on? Ms. Haskins said I don't think so.

Representative Gardner asked if the Committee generally likes the idea if we can find a time? The Committee indicated they liked the idea. Representative Gardner directed Ms. Haskins to do further inquiry and think about whether the first Friday works.

**1:26 p.m.** -- Tom Morris, Senior Attorney, Office of Legislative Legal Services, addressed agenda item 5 - Consideration of a Committee Bill regarding Defining the Use of the Word "must" in the Colorado Revised Statutes.

Mr. Morris said we have an update to the proposal from last time that took some of the feedback from the Committee. We added a definition of the word "shall" and included some of the legislative declaration language into the statute itself. We're pretty much where we were when we left off last time in the sense that this is still something that the Office believes would be helpful in improving the clarity of our drafting and the statutes.

Representative Gardner asked if there is a desire for the Committee to do a bill in the last several days of the session, which could be done? I think I can represent that Representative Levy's concern is addressed by this draft. Is that fair? Mr. Morse said from my conversations with Representative Levy, I think that is right. She seemed okay with it.

Representative Labuda said my proposal would be that we should try to enact something like this now because during the summer staff does a lot of updating of statutes anyway and this would be available for them to follow.

Representative Gardner said it's my sense that some of this is already occurring even though we didn't pass a bill. Mr. Morris said that is correct. The Business Team has been proceeding in this fashion for the last two sessions as a sort of pilot project and to gain some experience. We've had positive results from that.

**1:29 p.m.** -- Dan Cartin, Director, Office of Legislative Legal Services, testified before the Committee. He said it is late in the session to do a bill. It might be beneficial to have Representative Levy here to participate in a final discussion. You can move forward with a bill, but in the absence of that, without the objection of the Committee, I think the Office will proceed with implementing "must" where it's appropriate. Perhaps the Committee can take this matter up again as far as a bill goes to formalize the drafting and construction principle next session.

Representative Gardner asked if it's the sense of the Committee that the Office ought to proceed with the implementation of what is conceptually in the bill draft? There was some discussion of training and I assume that training of improved draftsmanship will take place around the word "must". I think the consensus of the Committee is to defer action but to encourage you to move forward with the change. The Committee indicated agreement.

**1:31 p.m.**

The Committee adjourned.