

# OFFICE OF LEGISLATIVE LEGAL SERVICES

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## SUMMARY OF MEETING

### COMMITTEE ON LEGAL SERVICES

**February 1, 2013**

The Committee on Legal Services met on Friday, February 1, 2013, at 12:23 p.m. in SCR 353. The following members were present:

Senator Morse, Chair  
Senator Brophy  
Senator Guzman (present at 12:24 p.m.)  
Senator Johnston  
Senator Roberts (present at 12:28 p.m.)  
Representative Gardner  
Representative Kagan  
Representative Labuda, Vice-chair

Senator Morse called the meeting to order.

**12:24 p.m.** -- Senator Morse addressed agenda item 1 - Action on SB 13-079 by Senator Morse; also Representative Gardner - Rule Review Bill.

Senator Morse said this is the annual rule review bill. We meet throughout the year reviewing regulations that come to our attention from our staff and then vote to decide whether those that are brought by our staff should be extended or not extended. The rules are put in the rule review bill either to continue them or to require them to expire on May 15 of the year in question. I do want to explain one interesting thing that is going on with the bill this year. There is a rule within the department of health care policy and financing concerning medicaid services. The rule limited some medicaid services, so it saved money, but the rule is actually outside the scope of the legislative authority. We struck the rule and in this bill we

are striking the rule to say that it should not be extended past May 15 because it contradicts statute. We have removed that rule so the effect is that existing law goes into effect and it increases the amount of money spent on medicaid by about \$42,000 this year and, as you can see on the fiscal note analysis, by about \$300,000 for the next two years. We're removing the rule as, by statute, we ought to do - and in my view is the right thing to do - but the effect in this case is to actually increase the cost to the state because these people that would not get medicaid services under the rule are now eligible for these services and that's where the increased costs come from. Normally, we would send the bill straight to the floor for consideration on second reading. We're in a very interesting predicament here where, because of the removal of the rule, we're increasing the expenditures of the state to where we probably ought to run it through the Appropriations committee. What I plan to do, unless you instruct me otherwise, is when I get to Appropriations to ask them to do nothing about it. In other words, to have the department absorb the cost and not give them an extra \$42,000 but rather encourage them to come back to the legislature and get the law changed so that when they do this rule that doesn't permit the services, that's what the statute says. Right now it doesn't. That will encourage them to either do that or pay the \$42,000 on their own instead of asking the Appropriations committee to attach an appropriations clause for the money. They need to do it within existing resources and if that doesn't work, then come back to the General Assembly and get the law changed. That is a peculiarity about this year's bill. We could just bypass Appropriations even though the rules of the Senate require us to go to Appropriations, but they don't require us once in Appropriations to say something in particular and that's why I would say let's not give them the money and they can fix this by some other means.

Representative Labuda asked if it is Senator Morse's recommendation that we pass the bill with the fiscal note as is? Senator Morse said I'm recommending that we pass the bill but instead of forwarding it to the floor, which is what we normally do, we forward it to Appropriations so we follow the rules of the Senate. Then I go to Appropriations and make the argument that I've made to this Committee that they ought not to add an appropriations clause. That way I've followed the rules and gone through the right process. The Appropriations committee could disagree with me and add the money to the department's funding, but my suggestion is that I make that argument.

**12:30 p.m.**

Representative Gardner moved to send Senate Bill 13-079 to the Senate Appropriations committee.

Representative Labuda said before we vote on the bill, I have another issue I've talked to some of you about. This concerns physical therapists. This was brought to my attention. We've never discussed the physical therapist rules. One thing that bothers me is that Rule 210., which concerns requirements for physical therapists to perform physical therapy on

animals, says physical therapists who perform physical therapy on animals must complete 80 contact hours over and above whatever is required for human physical therapy. That sort of bothers me. Another thing that sort of bothers me is something called dry needling. I go to an acupuncturist and I think that's dry needling. Acupuncturists need a lot more than 46 hours of training, which is what physical therapists must have. I have these questions and I would like to get an explanation from whoever promulgated the rules as to the rationale they used. The statute does say that physical measures, activities, and devices includes mechanical stimulation and I'm not sure when we voted on that bill that we intended that to be an invasive type of stimulation. I have spoken to the rule review bill sponsors and neither of them at this time is inclined to pull out the rule for special consideration. I would ask that when it goes to the Senate floor that someone bring it up and discuss it. If not, maybe when it gets through the Senate and comes to the House we can address it then. For the record, I would like an explanation from the physical therapists or whoever did the rule-making as to what kind of discussion went into that.

Representative Gardner said I may have jumped the gun with my motion because we're the committee of reference and we need to take public testimony. My suggestion was if you believe that a rule review is appropriate, I think you have the power to get that rule review done and it seems to me that the most efficient and appropriate time for that to be discussed is when the bill comes back to this Committee as the House committee of reference. We've done a rule review before in the second committee of reference. The last thing I want to do is a rule review on the floor of either house.

Senator Morse said I agree. I think that any of us has the power to ask the staff to re-review this rule. The rule has been reviewed and gone through the process and, in staff's view, there was enough statutory authority that it didn't come to our attention, as most of the rules don't. We rely on our staff but occasionally issues come up and if a member of the lobby can convince a member of this Committee to ask for the review, then it can be done. I think what will happen is staff will look at it again and then make a recommendation to us that they need to bring it before the Committee because they have exceeded their scope or they don't need to bring it because they have not exceeded their scope. I think the member could overrule that and bring it before the Committee and the Committee can review it. Again, I agree with Representative Gardner that it ought to happen in the House committee meeting because we ought to keep this bill moving. We don't have the notice to be able to do that today. I don't think it is appropriate to say today we're not going to extend that rule because we won't be able to take public testimony, but we can certainly do that when we get to the House.

Representative Kagan said I'd like to establish whether or not staff actually looked at the rules governing physical therapists when they changed from the rules of the director to the board model in 2011. Were they reviewed by staff for possibly exceeding the statutory authority of the board?

**12:36 p.m.** -- Debbie Haskins, Assistant Director, Office of Legislative Legal Services, addressed the Committee. She said yes, the rules that are being discussed are rules that the physical therapy board submitted to the Office this fall and they were reviewed by Chuck Brackney and he did approve the rules. They've already been reviewed and we did not find a problem with them.

Hearing no further discussion or testimony, the motion passed on vote of 8-0, with Representative Gardner, Representative Kagan, Representative Labuda, Senator Brophy, Senator Guzman, Senator Johnston, Senator Morse, and Senator Roberts voting yes.

**12:38 p.m.** -- Dan Cartin, Director, Office of Legislative Legal Services, addressed agenda item 2 - Approval of OLLS Budget for FY 2013-14.

Mr. Cartin said we appreciate the opportunity to present our budget for the 2013-14 fiscal year. You'll see with our budget we'll be making adjustments in the course of the session as deliberations over the state budget take place, it ultimately comes before the Executive Committee for approval, and thereafter is part of the legislative appropriation bill. This is the first part in the journey for our Office's budget. With that, I'll turn this over to Sharon Eubanks.

**12:39 p.m.** -- Sharon Eubanks, Deputy Director, Office of Legislative Legal Services, addressed the Committee. She said I plan to go through our request quickly but I realize that for some of you on the Committee this is the first time you've seen our budget and I don't want to preclude any questions anyone has on the budget. For the upcoming fiscal year, we're requesting a total of \$5,487,761 for our Office, which represents a 4.82% increase from our current year's budget. There are four primary areas of our budget: Personal services, operating expenses, staff travel, and the Colorado Commission on Uniform State Laws. The lion's share of our budget is in personal services. In that area, we're requesting \$4,969,955 and that represents an increase of 5.16% from our current budget. Of that amount requested, \$69,784 are to fund a 2% salary survey increase in accordance with the JBC common policies that were just adopted. In addition, our request includes \$138,327 to fund additional merit and promotion salary increases, including a 1.6% merit increase requested by the Governor for the executive branch. This is to facilitate retention of our staff and the continued advancement of Office employees consistent with the promotion and salary range model previously approved by the Committee. These salary increases then generate additional costs in terms of associated costs for retirement, medicaid, and short term disability, which are also included in our request. Finally, our personal services request includes \$80,232 for transit allowance and participation in the EcoPass program that we've been doing for quite a while now. That's a 7.31% increase from our current budget because we anticipate an increase in the program cost for 2014.

Ms. Eubanks said the second area of our budget is operating expenses. For that area, we're

requesting \$428,190, which is a decrease of nearly eight-tenths of one percent from our current budget. Adjustments were made in several budget lines in an attempt to have those lines more closely reflect our actual expenditures. That means there's been decreases in lines for rental equipment and for other purchased services and increases for data processing supplies, software purchases, food services, noncapitalized equipment, official functions, and registration fees. The amount requested for the two largest portions of our budget within operating expenses, legal fees and contract printing of the Colorado Revised Statutes, remain unchanged from our current year's budget.

Ms. Eubanks said the third area within our budget I want to touch upon is staff travel. The total amount we're requesting is \$16,000, an increase from our current level of funding. Again, this is an attempt to have the amount budgeted for both in-state and out-of-state travel reflect the actual amount of expenditure.

Ms. Eubanks said lastly, we have the Commission on Uniform State Laws. We are requesting \$73,616, which is a 1.96% increase from what we currently budget for the commission. The increase is requested in anticipation of an increase in the annual membership dues for the commission, similar to what has happened in the past few fiscal years. Otherwise, our request for the commission is the same as the current year.

Ms. Eubanks said in conclusion, our total request is \$5,487,761. When you add in PERA A.E.D and S.A.E.D., our grand total is \$5,759,744.

Representative Labuda said I want to say thank you very much for all your staff do for us. I will support your budget because I know that costs have gone up. I'm particularly delighted to see the increased funding for training and travel because those are much needed.

Senator Morse said over the last several years we've had to make cuts in those areas. We've done the best we can. As you can see, most of the money is spent on salaries and we squeezed some of the other operating lines - even though they've never been very big - to try to make sure that we could do something on the salary side. This year with a 5.5% increase, we raised the operating expenses where we've had to and then allocated the rest to personal services to try to get caught up because we haven't been able to do much of anything in the last several years. In this case, when I spoke with Mr. Cartin and Ms. Eubanks, I suggested that they raise only what they have to in the operating line and put the rest into salaries. We are way out of market with respect to the lawyers and legal assistants. We have been worried that when the economy comes back we are going to lose some really good people because we've gotten so far behind the market. We have structured this more for personal services increases and we've done it deliberately. I'm going to argue with the Executive Committee that it's the appropriate approach.

**12:46 p.m.**

Representative Gardner moved that the Committee approve the FY 2013-14 proposed budget for the Office of Legislative Legal Services. The motion passed on vote of 8-0, with Representative Gardner, Representative Kagan, Representative Labuda, Senator Brophy, Senator Guzman, Senator Johnston, Senator Morse, and Senator Roberts voting yes.

The Committee discussed the next meeting date, March 1, and how long a meeting it might be. Senator Morse said it should be a quick meeting, unless we end up with a rule review on the physical therapy rule.

Representative Labuda said I have been getting notices from someone outside the room and I understand that what we talked about was considered a formal request by staff and so I don't know what kind of briefing we might get.

Senator Morse said nobody has yet requested that staff look at the rule concerning physical therapists. Again, even if such a request comes from one of the Committee members, staff would look at it and if they say the rule is fine and doesn't need the Committee's attention, then we won't be hearing it in Committee.

Representative Gardner said I think Representative Labuda, notwithstanding staff, could make that motion and press the issue.

Senator Morse said she could make that motion and we would vote on that motion.

Representative Gardner said we could have public testimony about that issue and the rule review bill.

**12:52 p.m.**

The Committee adjourned.