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SUMMARY OF MEETING

COMMITTEE ON LEGAL SERVICES

November 25, 2013

The Committee on Legal Services met on Monday, November 25, 2013, at 10:00 a.m. in SCR 354. The following members were present:

Representative Labuda, Vice-chair
Representative Foote
Representative Gardner
Representative Kagan
Representative Scott (present at 10:17 a.m.)
Senator Brophy
Senator Roberts
Senator Steadman

Representative Labuda called the meeting to order.

10:01 a.m. -- Dan Cartin, Director, Office of Legislative Legal Services, addressed agenda item 1 - Discussion of Chair vacancy.

Mr. Cartin said we wanted to address the chairmanship of the Committee for this meeting and next month's meeting. The Committee's statute says the Committee shall select from among its members a chair and vice-chair. Last January Senator Morse was elected the chair and Representative Labuda was elected the vice-chair. By custom, the chair alternates between the House and Senate each year, usually at the January meeting. We have a vacancy in our chairmanship due to Senator Morse's departure. Representative Labuda, as vice-chair, is the acting chair of the Committee. There are a couple options before you going forward. Representative

Labuda as vice-chair may serve as chair for today's and next month's meetings until the regularly scheduled election for chair in January when it will switch back to the Senate. If that's what you decide, no formal action is necessary today. Alternatively, you could elect a new chair from among the Senate members to preside at these last two meetings of the year. In that case, you make the nominations and you have a vote and you would be doing something that you will do again in about two months.

Representative Labuda said I am willing to serve as acting chair for the next two months. Does that mean we still meet in a Senate room and will we go by Senate rules?

10:03 a.m. -- Debbie Haskins, Assistant Director, Office of Legislative Legal Services, testified before the Committee. She said I believe our next meeting is scheduled in a House committee room. This was about the only room available in the capitol today. She also said that the Committee follows the rules of the house of the person who is chairing the particular meeting.

Representative Gardner said I'm perfectly satisfied with Representative Labuda continuing as acting chair for the next two meetings, but others may wish otherwise. In view of the fact that we have two meetings and everything is a little uncertain other than the date of those meetings, that would be my preference.

Senator Steadman said it does seem that it might be wise for us to select a new vice-chair from amongst the Senate members. I spoke with Representative Labuda and said I was comfortable letting her continue on as acting chair and that can be the natural transition that happens, but she'll need a vice-chair.

Representative Gardner said if we elect a vice-chair from the Senate, I guess then we would continue on in January and there wouldn't be a flip. Is that what Senator Steadman is suggesting?

Mr. Cartin said with having the vice-chair serve as the chair for the last two meetings of the year, a scenario we hadn't contemplated was having a formal election of a vice-chair in those circumstances. The vice-chair, acting as the chair, has the authority to hand over the gavel to a member of the Committee to preside over the meeting in her absence. At this point in time, I'm not sure it's necessary for the Committee to elect a vice-chair. We haven't done the research on that or looked in Mason's, but my suggestion would be to proceed for this meeting with Representative Labuda as the acting Chair and perhaps we can look into that issue for purposes of the next meeting.

Senator Steadman said I take it no motion is necessary and Representative Labuda will be in the role of acting chair by virtue of the fact that she's vice-chair and we can proceed.

Mr. Cartin said that's accurate.

10:07 a.m. -- Julie Pelegrin, Assistant Director, Office of Legislative Legal Services addressed agenda item 2a - Rules of the State Board of Education, Department of Education, concerning Administration of the Accreditation of School Districts (Assessment Administration Security Policies and Procedures), 1 CCR 301-1.

Ms. Pelegrin said this is not your normal issue where the rule conflicts with the statute. This is a rule that gets to the foundational question of what is a rule. Section 24-4-102 (15), C.R.S., which is the definition of a rule in the "State Administrative Procedure Act" (APA), says a rule is the whole or any part of an agency statement of general applicability and future effect implementing, interpreting, or declaring law or policy or setting forth the procedure or practice requirements of an agency. There is further indication of what constitutes a rule in section 24-4-103 (1), C.R.S., where it says that the APA does not apply to interpretive rules that are not meant to be binding as rules or rules of agency organization.

Mr. Pelegrin said the General Assembly authorized and directed the state board to adopt rules to implement the education accountability act (accreditation act). Part of those rules, under section 22-11-207, C.R.S., were to establish objective, measurable criteria for the department to apply in determining the appropriate accreditation category. The state board has been charged with adopting rules to figure out what accreditation category each district and the state charter school institute should fall into. The state board adopted Rules 5.03 and 10.01 (B) to enforce the policies and procedures of the department with regard to security around the statewide assessment. As you may recall, the state takes tests every year. Those are tests developed by a vendor and that vendor has certain security procedures for administering those tests. The department has adopted those security procedures just as a policy. But then, the state board adopted Rules 5.03 and 10.01 (B) saying that if a district, the institute, or a school fails to follow those policies and procedures, then their accreditation would basically be lowered by at least one level. We have a rule that the state board clearly has authority to adopt in terms of criteria for accreditation, but it pulls into it policies and procedures that have not been adopted by rule but that will have consequences. It appears that these policies and procedures actually do fall within the definition of a rule because they are generally applicable to the state charter school institute, school districts, and public schools, and if they are not followed, then those policies and

procedures have a future effect of lowering the school's or district's accreditation level. Therefore we recommend that Rules 5.03 and 10.01(B) not be extended.

10:11 a.m.

Hearing no further discussion or testimony, Senator Roberts moved to extend Rules 5.03 and 10.01 (B) of the State Board of Education and asked for a no vote. Representative Gardner seconded the motion. The motion failed on a vote of 0-7, with Senator Brophy, Senator Roberts, Senator Steadman, Representative Foote, Representative Gardner, Representative Kagan, and Representative Labuda voting no.

10:13 a.m. -- Julie Pelegrin addressed agenda item 2b - Rules of the State Board of Education, Department of Education, concerning Administration of the Accreditation of School Districts (District Accreditation Contracts), 1 CCR 301-1.

Ms. Pelegrin said the department annually reviews the performance of each school district, each public school, and the state charter school institute, they assign a plan for the coming year, which corresponds to the accreditation level of the district or the institute, and then the district or the institute enters into an accreditation contract with the department. There are three steps there: Review, plan, and contract. There are five accreditation levels: Accredited with distinction, which is the highest; accredited; accredited with improvement plan; accredited with priority improvement plan; and accredited with turnaround plan.

Ms. Pelegrin said section 22-11-206 (2), C.R.S., recognizes that the accreditation contract has a term of one year and will be automatically renewed so long as the district or the institute is accredited or accredited with distinction. In adopting rules for the implementation of accreditation, the state board adopted Rule 3.02, which allows the automatic renewal of an accreditation contract if the district or institute is accredited, accredited with distinction, or accredited with an improvement plan. The statute doesn't allow for the accredited with an improvement plan. We therefore recommend that Rule 3.02 not be extended. The department is seeking a statutory change with regard to this issue.

10:15 a.m.

Hearing no further discussion or testimony, Representative Gardner moved to extend Rule 3.02 of the State Board of Education and asked for a no vote. Senator Steadman seconded the motion. The motion failed on a vote of 0-7, with Senator Brophy, Senator Roberts, Senator Steadman, Representative Foote, Representative Gardner, Representative Kagan, and Representative Labuda voting no.

10:16 a.m. -- Julie Pelegrin addressed agenda item 2c - Rules of the State Board of Education, Department of Education, concerning Administration of the Exceptional Children's Educational Act, 1 CCR 301-8.

Ms. Pelegrin said to be an educator, you need to be licensed by the state. However, there are some folks that almost qualify, but not quite, and they can get an authorization to teach and it's usually for a limited time. Specifically, the rule talks about the temporary educator eligibility authorization. It's created in section 22-60.5-111 (5), C.R.S., and is basically for educators who are going to be working in special education and who are still in training and haven't quite completed training to get their license yet. In section 22-60.5-111 (5) (d), C.R.S., the temporary educator eligibility authorization is valid for one year and may be renewed twice, so that would be a total of three years. Rule 3.04 (2) says the authorization is valid for three school years and cannot be renewed. Even though we end up with basically the same amount of time, there is still a conflict between the rule and the statute because under the statute you would have annual review of the authorization, and under the rule the person gets it and has it for three years. We recommend that Rule 3.04 (2) not be extended.

Representative Kagan said here we have a rule that's in conflict with state statute. Absent any further action it will continue in effect until May 15 and then it will expire. It's not a tragedy if this rule continues until May 15, but is there another procedure that we sometimes engage in that says this has to stop now, or that any rule gets a life until at least May 15 of the following year even if it's in conflict with statute? Ms. Pelegrin said normally that's correct because nothing can really happen until the rule review bill passes and it often doesn't pass until much before May 15. However, I think if there was a situation that was especially egregious or worrisome, the General Assembly, with the passage of the bill, could say upon passage this rule is revoked.

10:20 a.m. -- Debbie Haskins testified before the Committee again. She said I think the Committee would have the ability to put something specific in the bill that created a separate time frame or perhaps if it was really egregious, the Committee could consider doing a separate bill to address that time frame. But, under the normal rule review process, the rule is in effect until May 15 and so can be enforced by the agency. It has arguably a bit of a cloud against it, but under our process it is dealt with through the rule review bill, which goes through both houses.

Representative Gardner said at times when this Committee has acted to not extend a rule, many departments will then not enforce the rule. There have been other cases where a rule that we were considering was the subject of pending litigation

and, by the very action of this Committee, we dictated the outcome of that litigation. If someone was being placed subject to a rule and they wished to go to the courthouse, I think the action of this Committee would probably be introduced as some persuasive evidence that the rule is not in accordance with statute.

Senator Steadman said in this instance where the rule says the authorization is valid for three years, even though that clearly contravenes what's in statute, does that create a property interest for a three-year authorization for the people who got them under the provisions of this rule? Mr. Pelegrin said I would argue that it doesn't because the rule is in conflict with the statute. Even if they thought they were getting it for three years, the statute overrides the rule, and the statute says it's valid for one year and subject to renewal two times.

10:23 a.m.

Hearing no further discussion or testimony, Senator Steadman moved to extend Rule 3.04 (2) of the State Board of Education and asked for a no vote. Representative Foote seconded the motion. The motion failed on a vote of 0-8, with Senator Brophy, Senator Roberts, Senator Steadman, Representative Foote, Representative Gardner, Representative Kagan, Representative Labuda, and Representative Scott voting no.

10:24 a.m. -- Thomas Morris, Senior Attorney, Office of Legislative Legal Services, addressed agenda item 2d - Rules of the Secretary of State, Department of State, concerning administration of the "Colorado Charitable Solicitations Act", 9 CCR 1505-9.

Mr. Morris said I have two rules from the secretary of state regarding the administration of the "Colorado Charitable Solicitations Act". The first rule relates to who must register under that act and the second rule relates to whether all registrants must have what's called a registered agent. By way of background, we have a charitable solicitations act to protect the public from bad actors who solicit contributions for charitable purposes from the public. The act requires certain categories of people to register with the secretary of state. Those people are charitable organizations, paid solicitors, and professional fund-raising consultants. I'm going to use a couple terms throughout the presentation that are defined terms. They are an "individual", which refers to a human being; an "entity", which refers to some sort of legally recognized thing other than an individual; and a "person", which is a combination of the two categories of individuals and entities. For instance, although one of the registrants is called the charitable organization, any one of those people who must register could be either an individual or an entity.

Mr. Morris said Rule 1.17 relates to the definitions that determine who must register as, in this case, a paid solicitor. Section 6-16-103 (7), C.R.S., lays out the definition of "paid solicitor" and has an exception for a person whose sole responsibility is to print or mail fund-raising literature. If that is their sole responsibility, although they might otherwise be a paid solicitor, the statute specifies that they are not a paid solicitor and they don't have to register. When the secretary of state promulgated Rule 1.17, that was to further define what "sole responsibility" means for purposes of the secretary's rules. The rule says that a person whose sole responsibility is to print or mail fund-raising literature is intended to exempt only employees of professional printing and copying businesses from the definition of paid solicitor. By failing to exclude employees whose sole responsibility is to mail fund-raising literature, Rule 1.17 conflicts with the statute and we therefore recommend that the rule not be extended. My understanding is that neither this rule and the next one are being contested by the secretary of state.

Mr. Morris said Rule 1.15 relates to the issue of a registered agent. A registered agent is a way to notify entities of certain things, in particular legal proceedings. Article 90 of title 7, C.R.S., comprehensively regulates the requirements relating to registered agents. Section 7-90-104, C.R.S., says registered agents exist for service of process. Service of process differs on whether it's on an individual or an entity. For an individual you simply hand the legal papers to the individual. If it is an entity you're trying to serve, then you would serve those papers on the registered agent. That's why the registered agent exists. Section 7-90-701, C.R.S., contains the only statutory requirements for who has to have a registered agent. It says every domestic entity for which a constituent filed document is on file in the records of the secretary of state and every foreign entity authorized to transact business or conduct activities in this state shall continuously maintain in this state a registered agent. A constituent filed document is something like articles of incorporation, articles of association, or partnership agreement. You file those with the secretary of state and that makes it so you are authorized to do business in this state if you are from this state, if you're a domestic entity. If you are a foreign entity, you file those types of things with the other state's secretary of state, but you are authorized to do business in this state. Those are the two categories of entities that have to have a registered agent. Nobody else, no other type of agent, and, in particular, no individuals have to have a registered agent.

Mr. Morris said the secretary is the entity that is in charge of the registered agent statute. In the secretary's rule-making authority under the act, none of it has to do with who has to have a registered agent or how to notify people who have to register under the act. In fact, even the registered agent act under article 90 of title 7, C.R.S., has no rule-making authority for the secretary with regard to who has to have a registered agent. However, Rule 1.15 says a registered agent has the same

meaning as in section 7-90-701, C.R.S., except that, if a person must register under the charitable solicitations act, the person must appoint and continuously maintain a registered agent, even if the person is not required to do so under section 7-90-701, C.R.S. The secretary has clearly gone beyond the statute; there is no rule-making authority for the secretary to do this. It is very clear that the requirement to have a registered agent only applies to two types of entities. As we saw earlier, who has to register under the solicitation act includes not only those two types of entities but also individuals. The secretary's rule is too broad in purporting to require individuals to maintain registered agents, as well as other types of entities that maybe don't fall within those two categories of the domestic entities and the foreign entities. As an aside, there are already some provisions in statute about how to serve entities that should have a registered agent but don't, such as in sections 7-90-704 (2) and 6-16-112, C.R.S. It's clear that existing law already comprehensively governs who has to have a registered agent and how do you serve these entities if they don't have a registered agent. There is no room in here for the secretary to promulgate the rule. Therefore, we recommend that Rule 1.15 not be extended.

10:34 a.m.

Hearing no further discussion or testimony, Representative Kagan moved to extend Rule 1.17 and Rule 1.15 of the rules of the Secretary of State and asked for a no vote. Senator Steadman seconded the motion. The motion failed on a vote of 0-8, with Senator Brophy, Senator Roberts, Senator Steadman, Representative Foote, Representative Gardner, Representative Kagan, Representative Labuda, and Representative Scott voting no.

10:35 a.m. -- Jery Payne, Senior Staff Attorney, Office of Legislative Legal Services, addressed agenda item 2e - Rules of the Colorado State Patrol, Department of Public Safety, concerning Part III, hazardous materials route designation, 8 CCR 1507-25.

Mr. Payne said this rule is uncontested and the state patrol has agreed to fix it but is unable to do so by the deadline. More specifically, the rule has transmogrified section 42-20-301 (1) (a), C.R.S. The section authorizes the state patrol to designate which roads must be used by motor vehicles carrying hazardous materials. However, it exempts certain fuel carriers such as gasoline, diesel fuel, and liquefied petroleum gas from route designations unless the petitioning authority specified in section 42-20-302, C.R.S., requests their inclusion. So unless an authority requests inclusion, these fuel carriers are exempt from routing regulations.

Mr. Payne said according to the state patrol, many local governments have not requested that fuel vehicles be included in route designations. Therefore, the roads of many jurisdictions have no routing requirements for gasoline, diesel fuel, and liquefied petroleum gas. Rule HMR 8 C. says that these carriers are generally required to use designated routes. The rule states that while generally required to employ designated state, federal, and interstate roadways, transporters of gasoline, diesel fuel and liquefied petroleum gas may routinely travel on the following roads and then the rule lists certain state and federal highways. The introductory clause asserts that these carriers are required to use designated routes. The state patrol has it backwards. They flipped the requirement with the exception. As the rule incorrectly states the statutory requirement, we recommend that Rule HMR 8 C. of the Colorado state patrol concerning hazardous materials route designation not be extended.

Representative Labuda said if I recall at the beginning of your presentation you said that the state patrol was aware of this and they are changing the rule? Mr. Payne said they've agreed to fix it but they weren't able to do it until April and that's too late for the rule review bill.

10:37 a.m.

Hearing no further discussion or testimony, Representative Kagan moved to extend Rule HMR 8 C. of the Colorado State Patrol and asked for a no vote. Senator Steadman seconded the motion. The motion failed on a vote of 0-8, with Senator Brophy, Senator Roberts, Senator Steadman, Representative Foote, Representative Gardner, Representative Kagan, Representative Labuda, and Representative Scott voting no.

10:39 a.m. -- Chuck Brackney, Senior Staff Attorney, Office of Legislative Legal Services, addressed agenda item 2f - Rules of the Director of the Division of Fire Prevention and Control, Department of Public Safety, concerning building, fire, and life safety code enforcement of inspectors for health facilities licensed by the state of Colorado, article 10, building code and fire inspector qualification, 8 CCR 1507-31.

Mr. Brackney said this rule has to do with the record-keeping requirements for third-party inspectors who do inspections regarding building, fire, and safety codes. When a health facility is constructed or substantially remodeled, it has to undergo plan reviews and inspections to ensure that the facility's structures conform to the building and fire codes. Those can be done by third-party inspectors under the statute. Section 24-33.5-1212.5 (3) (b) (II), C.R.S., says inspection records shall be retained by the third-party inspector for two years after the certificate of occupancy is issued. The statutory requirement is that these

records be kept for two years. However, Rule 10.1.3 F) says that the qualified third-party inspectors shall retain inspection records for three years after the certificate of occupancy is issued. You could be a well-meaning third-party inspector and meet the statutory requirement by keeping your records for two years but if you get rid of them before three years you would run afoul of the rule. Because Rule 10.1.3 F) conflicts with section 24-33.5-1212.5, C.R.S., in that it requires that records be kept for three years instead of two, it should not be extended. The division is not disputing our recommendation.

10:41 a.m.

Hearing no further discussion or testimony, Representative Foote moved to extend Rule 10.1.3 F) of the Director of the Division of Fire Prevention and Control and asked for a no vote. Senator Steadman seconded the motion. The motion failed on a vote of 0-8, with Senator Brophy, Senator Roberts, Senator Steadman, Representative Foote, Representative Gardner, Representative Kagan, Representative Labuda, and Representative Scott voting no.

10:42 a.m. -- Chuck Brackney addressed agenda item 2g - Rules of the State Housing Board, Division of Housing, Department of Local Affairs, concerning manufactured housing installations, 9 CCR 1302-7.

Mr. Brackney said this issue deals with what information is required by statute to be in the certificate of installation. There is also a slight quirk in the statute regarding rule-making authority that, in the interest of fairness, I should tell you about. Colorado law requires the owner or registered installer of a manufactured home to obtain an installer's certificate that certifies that the home was installed in compliance with the provisions of state law. Section 24-32-3317 (5) (a) (III), C.R.S., says the certificate of installation shall include but not be limited to the name, address, telephone number, and registration number of the registered installer who performed the installation. All those items have to be in the certificate of installation.

Mr. Brackney said next I want to show you the rule-making quirk. Section 24-32-3317 (5) (a), C.R.S., talks about how the division shall adopt rules. What we have is a situation throughout the statutes on manufactured housing where some of the rule-making authority is given to the division and some is given to the state housing board. We are rescued by another statute, section 24-32-3304 (1) (d), C.R.S., where the state board is given express authority over what we're talking about here. It says the board shall have the following powers to promulgate rules establishing standards for the installation and setup of manufactured housing units.

Mr. Brackney said turning to the rule, Section 12 of Resolution 38, the second paragraph refers to the "insignia" and the insignia is the term they use in the manufacturing world for the certificate of installation. The second paragraph says the insignia shall include, but not be limited to, the name, telephone number, and registration number of the installer who performed the installation. What's not there is the address, which was required by statute. By omitting the installer's address, Section 12 of Resolution 38 fails to meet the requirements for the certificate of installation found in section 24-32-3317, C.R.S., and we recommend that it not be extended. The board is not disputing our recommendation.

Representative Labuda asked is the board changing the rule? Mr. Brackney said yes, they are, but they have not gotten to it yet.

10:47 a.m.

Hearing no further discussion or testimony, Senator Roberts moved to extend Section 12 of Resolution 38 of the rules of the State Housing Board and asked for a no vote. Representative Kagan seconded the motion. The motion failed on a vote of 0-8, with Senator Brophy, Senator Roberts, Senator Steadman, Representative Foote, Representative Gardner, Representative Kagan, Representative Labuda, and Representative Scott voting no.

10:48 a.m. -- Dan Cartin addressed agenda item 3 - Report from the Legislative Digital Policy Advisory Committee.

Mr. Cartin said for some brief background information, the advisory committee was created by House Bill 13-1182 last session. This was a JBC-sponsored bill. It created a seven-member advisory committee composed of the State Archivist, the Supreme Court Librarian, the State Librarian, the Director of Legislative Council, the Secretary of the Senate, the Chief Clerk of the House, and the Director of Legislative Legal Services. The bill required the advisory committee to report to the Committee on Legal Services and the JBC by November 1, 2013. That's why I'm here and the report is before you. We met 12 times from June to October. As the report indicates, we had a very collegial and cooperative group. Before I go over the highlights of the report, you may recall that in September 2011, Ed DeCecco in our Office made a presentation to the Committee on two issues. One was the fee charged by State Archives to legislators and legislative staff to access archived legislative audio recordings. This issues arose from some questions that had been raised by Senator Roberts. The second issued involved the various stages of deterioration of the legislative audio recordings that were made from 1973-2001, and the attendant deterioration of the equipment used to play those tapes. Terry Ketelsen of Archives estimated at that time that it would take a cost of \$2.5 million to preserve and digitize the tapes, which would take place over multiple

years. Last year in December 2012, you again discussed these legislative audio and access issues. The Committee, with Senator Roberts and Representative Gardner as prime sponsors, sponsored Senate Bill 13-076, which eliminated fees related to archived material for the legislative branch. That passed last session and legislators and staff now access the legislative audio at Archives at no charge. That issue has been resolved. This Committee also expressed support for the Department of Personnel and State Archives to make a budget request to the JBC to fund the digitization and preservation of the legislative audio tapes. The department did make a budget request to the JBC in its fiscal year 2013-14 funding request for approximately \$370,000 and 0.9 FTE for the preservation of records at Archives including the legislative audio tapes. The request was not approved but the JBC sponsored House Bill 13-1182, creating the advisory committee.

Mr. Cartin said the advisory committee was generally charged with developing a plan to convert the legislative audio tapes from 1973-2001 to a digital format and to implement the uniform electronic material act (UELMA). That plan is in the report before you today. The first part of the report addresses the digitization and preservation of the legislative audio tapes. The executive summary in the report contains the advisory committee's charge, relative to the audio tapes, and its recommendations. The recommendations include the optimal digital audio format for archival purposes and for public access; the process that would be undertaken for converting the audio tapes into the digital file formats; a plan to digitize and migrate the tapes for 1973 and 1974 first, followed by the 1975-1997 tapes, and then the 1998-2001 recordings last; the storage locations of both the original tapes and the digitized versions of the tapes; a plan for the Department of Personnel and Archives to make a request for a benchmark five-year general fund appropriation to the JBC and spending authority of cash surplus from current fees that Archives receives to pay for the digitization of the audio tapes; and eventually customer and public access through the General Assembly's web page to the audio tapes. The report also recommends that the advisory committee continue after January 1, 2014, when it is scheduled to sunset. That can be accomplished statutorily, which is probably appropriately addressed first by the JBC as the sponsor of the legislation creating the advisory committee. If there is no statutory continuation, the advisory committee agreed that we should continue our inter-branch collaboration informally on the legislative audio piece.

Mr. Cartin said the second part of the report addresses the implementation of UELMA. UELMA was enacted in Colorado in 2012 in legislation that was sponsored by Representative Gardner and Senator Carroll. It is the legislative response to the increasing electronic distribution of legal information by state governments and the potential alteration of that information, either accidentally or maliciously, before it reaches an individual user. The legal materials covered by

UELMA under Colorado law are the Colorado Constitution, the Session Laws, and the Colorado Revised Statutes, for which the General Assembly is the official publisher, and state agency rules for which the Secretary of State is the official publisher. UELMA requires that if the General Assembly or the Secretary of State publishes any of these legal materials only in an electronic record, they must designate the electronic record as official and take steps related to the electronic record on authentication, preservation, and permanent availability by March 31, 2014. A printed version of the Colorado Constitution, Session Laws, and Colorado Revised Statutes that are published by the General Assembly is now the official record of these materials. The General Assembly is not required to comply with UELMA until it identifies the electronic format for these legal materials as official. For the Colorado Revised Statutes, that would at some point require legislation, changing the law that currently designates only the print version as official. On the other hand, the Secretary of State publishes the official version of agency rules in electronic format and it must therefore comply with UELMA's requirements by March 31, 2014. The advisory committee looked at the best digital authentication system for an official electronic record of these legal materials, as well as other legal materials potentially that UELMA might apply to such as court opinions, court rules, or other legislative records. The advisory committee concluded that additional research into the digital authentication area is necessary; we couldn't come up with a best authentication method just yet. Currently, the Secretary of State is in the midst of implementing a plan for authenticating agency rules using a specific technology and is managing that authentication in-house. The Secretary of State's experience will be watched for how best to authenticate legislative digital records for purposes of making them official at some point. The Office has a contract with LexisNexis to publish the Constitution, Statutes, and Session Laws. The interaction between our publication function, LexisNexis, and the best means for electronic authentication of the Statutes, Constitution, and Session Laws to comply with UELMA is something I anticipate that Jennifer Gilroy, Revisor of Statutes, will have a large role in. The report mentions other steps to be taken to determine the best electronic records authentication system and the potential funding options for that system. The report recommends, as it does with the legislative audio, that the advisory committee continue to meet for the purpose of evaluating information that best implements UELMA and facilitates access to electronic legal materials by Colorado citizens at no charge. It states that electronic legislative records should be easily accessible and widely available to the public at no cost. One possible future outcome that the advisory committee talked about is, beyond preserving the deteriorating legislative audio and finding the best means for electronically authenticating legal materials, an individual in the public could go to the General Assembly's web site, click on a link for a particular bill in the past year, access the bill and all its versions, the committee records, journal entries, and legislative audio for each time the bill was heard, and any other attending information that would all be authenticated for

UELMA purposes and that would be free. The devil is in the details, of course, and that is one of the main reasons the report recommends continuing the advisory committee. No further action is required by this Committee at this time. The JBC either has or will have this report and it's my understanding that the Department of Personnel and Archives will make a budget request consistent with the benchmark funding approach to begin the process of digitizing the audio tapes. If it is agreeable to the Committee, you might communicate an expression of support to the JBC for continuing the advisory committee's work in furtherance of preserving legislative audio and the electronic authentication of a variety of legal materials for UELMA purposes.

10:59 a.m. -- Dan Cordova, Law Librarian, Colorado Supreme Court, testified before the Committee. He said in support of Mr. Cartin's very fine summary, there is a lot at work here. It all stems on the UELMA side and free access to materials that we all must abide by as members of Colorado and folks that do business here, and for which taxpayer dollars have already been expended but which we currently have to purchase back in multiple formats. That's a big point of interest, not only for the legislature but also for the law librarians. We're the place where people come to get that information and we have to spend, in some years, hundreds of thousands of dollars for that access. This is one part of our solution to that problem, but it's a wonderful place to begin. What you have in front of you in the form of the report is really a sketch outline of how we can move forward and include everybody statewide - not just government but other academic institutions - in the solution.

Representative Labuda said Mr. Cartin mentioned that the statute currently authorizes only a print version of the official records. Does the statute need to be changed now to allow for electronic versions, too? Will that be a bill that will originate with the JBC or with us? Mr. Cartin said that's probably an area Jennifer Gilroy is best-suited to answer. I don't think that the statute needs to be changed at this time and UELMA doesn't require that the General Assembly go to an official electronic version of the Statutes, Session Laws, and Constitution at any particular date. It seems to me that based on the advisory committee's report, there's work to be done in that area before legislation to authorize an electronic official of the Statutes, Session Laws, and Constitution.

Representative Labuda said I was just wondering because as electronic versions become available, I should think the statute should be changed sooner to allow for electronic versions in addition to the print version.

Representative Gardner said when I introduced UELMA, we wanted to make sure that we did not go to an electronic version before we were ready to have a an electronic version that can always be relied upon. That requires some work. We're

working in that direction and I think we want to get there. I know Ms. Gilroy has done a lot of hours on this, but to put in statute that we must have an electronic version creates a lot of problems for all of us until we're ready to do it.

Representative Labuda said what you were envisioning in the statute is that there will come a time when the electronic is finally all in place and we would just make a one-time shift and say print no longer and electronic only or print and electronic.

Representative Gardner said there has to be an official version and it's either the printed version or the electronic version.

11:03 a.m. -- Jennifer Gilroy, Revisor of Statutes, Office of Legislative Legal Services, testified before the Committee. Ms. Gilroy said that's correct. We're not in a position quite yet to have our electronic version be one that's recognized as official by courts and others, because in order to do that we have to meet those three requirements that Mr. Cartin just described. It has to be authenticated, that any user has to know where that source or document originated. They have to be assured that it originated with the General Assembly and that it's authentic. In addition, it has to be perpetually available and at this point we're not prepared to be able to continually add on years and years for our electronic version. We have some work to do and we want to work with other branches of government to dovetail all these resources as the advisory committee envisioned. We're looking forward to that down the road but we're not quite there yet. It is interesting to watch the Secretary of State's office proceed with this because they have to meet those standards by March 2014 because they are subject to UELMA immediately due to the fact that their only version is the electronic version. We still have the books. There is quite a demand for the books in Colorado and we don't know if that's because it is the only official version or if there are people who just prefer using the books. There may always be both types of users. I'm looking in the future about how to handle that and whether we're going to nominate both types of formats as official or not. It poses a problem when there are changes to the law and we can't get that hard version corrected right away but the electronic version can be updated and then they start to differ. We have more work to do ahead of us and we look forward to partnering with the executive and judicial branches as well.

Senator Steadman said I see two different issues in this report. One is this policy about the statutes and our official publications and if more work has to happen, that is something that would be funded through the legislative budget. I don't know what the costs might be to get ready and I don't know if that's happening. On the other hand as far as the tapes at the archives, there is a budget request and if I recall it would be to do this over a series of years.

Mr. Cordova said yes, the idea was that rather than pick a number out of the air that may or may not actually be the number required to migrate and preserve all the audio tapes, we would put a year date on it with each year's budget request being established for purposes of bench-marking progress. Judge Azer, who is the director of the Archives in the Department of Personnel and who is on the advisory committee, spoke about that with us and how he thought that would be a good way to proceed and a way to show good faith in moving forward to the JBC and the legislature and the state as a whole about what can be done with the dollars given over time. We selected a five-year horizon because it corresponds nicely with the contract the state currently has with LexisNexis, though we would have to be talking about some of these concerns moving forward, and it will also give us the opportunity to look at what the Secretary of State has done with regard to how they've chosen some format solutions for UELMA. Ultimately they all come together with respect to service because the audio is a part of the history, but until we can get to a solution where those are available and can be put together with extant text it's difficult to know how we're going to make that available. The idea was to try to migrate those to a uniform or agnostic platform and then to put them together on a number of different formats. Maybe one is mobile, maybe one is on-line, maybe one is textual, because we do know that people are going to consume those different ways.

Senator Steadman said if the General Assembly were to consider extending the life of the advisory committee, would it make sense to do so over the course of that five-year horizon so they can supervise and keep an eye on this process? Mr. Cordova said yes it would. We didn't have an outside idea about how long the advisory committee could continue, but certainly another year would give us time to look into formatting and also address contracting issues. I should mention that part of the request of continuing into next year was to add Ms. Gilroy and to add the Secretary of State's business and licensing representative to the advisory committee since they are going to be active members of whatever happens moving forward. We think within a year or year-and-a-half we'll have some good benchmarks and progress to demonstrate.

Senator Steadman said I'm just trying to decide whether the advisory committee should be in existence for the full five years of the project for the archived tapes or if it's going to take you a year-and-a-half to two years to have in place all the policies and guidance that are necessary. Mr. Cordova said the idea is that we would continue to work with Archives for the entire five years whether we continue or not. That was the beauty of the collegiality process. It was the first time, as I understand it, that all three branches of government have gotten together with regard to publication of laws in Colorado and everybody came to the table both ready and interested and willing to contribute time, energy, and money to solutions.

Senator Steadman said you mentioned all three branches. We've heard about the legislative archives and our work product in terms of the statutes and the executive branch in terms of the secretary of state's role, but what about the judicial branch and court decisions? Are there plans to transition to electronic formats? Mr. Cordova said yes and while I'm not going to speak for the judicial branch as a whole, I can tell you that in the same way that the legislature is not required at this time to do anything under the act, neither is the judicial branch. I can also tell you that we are looking at different ways to make our cases as well as the rules and jury instructions available to the general public as rapidly as we can. We feel keenly the same need as the legislature and the Secretary of State. Speaking for the library and the budget that we have to dedicate to these types of issues, such as pro se representation, we would like to make available to everyone regardless of their status in Colorado our materials as soon as possible in both formats.

Senator Steadman said if we're adding the Revisor of Statutes and someone from the Secretary of State's office to the advisory committee, are you an adequate representative of the judicial branch because you're the only one there now? Mr. Cordova said I don't know that I can speak for the state court administrator's office but I can tell you that everything that we're doing has been shared back with Mr. Marroney and his team and if there is any concern from the trial courts specifically with regard to that we would certainly be open to adding someone else.

11:15 a.m. -- Debbie Haskins addressed agenda item 4 - Scheduled Meetings During the Session - Organizational Meeting in January and Scheduled Meetings on the First Friday of the Month: February 7, March 7, April 4, May 2 - Noon to 2:00 p.m.

Ms. Haskins said we just put this on the agenda to remind you of our meetings during the session. We will have an organizational meeting sometime in January, but we don't have the date yet, at which you will elect a Chair and Vice-chair. The Committee has a dedicated time for meetings during session and it is the first Friday of the month from noon to 2:00 p.m. for the months February through May. We will send you an e-mail with those dates so you can mark your calendars.

Representative Labuda said we also have a December meeting coming up. Ms. Haskins said yes, it's December 18 at 10:00 a.m. in HCR 0112.

11:16 a.m. -- The Committee addressed agenda item 5 - Recognition of Chuck Brackney's service with the Office of Legislative Legal Services and the Committee on Legal Services.

The Committee recognized Chuck Brackney's service to the Office and the Committee.

11:24 a.m.

The Committee adjourned.