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**SUMMARY OF MEETING**

**COMMITTEE ON LEGAL SERVICES**

**February 7, 2014**

The Committee on Legal Services met on Friday, February 7, 2014, at 12:00 p.m. in HCR 0111. The following members were present:

Representative Labuda, Chair  
Representative Foote (present at 12:02 p.m.)  
Representative Gardner  
Representative Kagan (present at 12:07 p.m.)  
Representative Scott (present at 12:03 p.m.)  
Senator Brophy  
Senator Guzman  
Senator Johnston  
Senator Roberts (present at 12:05 p.m.)  
Senator Steadman, Vice-chair

Representative Labuda called the meeting to order.

**12:01 p.m.** – Dan Cartin, Director, Office of Legislative Legal Services, and Sharon Eubanks, Deputy Director, Office of Legislative Legal Services, addressed agenda item 1 – Approval of OLLS Budget for FY 2014-15.

Mr. Cartin said on behalf of the 25 lawyers and 22 legal professionals in Legislative Legal Services, we appreciate the opportunity to present to you the OLLS budget request for the 2014-15 fiscal year. Ms. Eubanks is going to make that presentation to the Committee. I want to acknowledge Matt Dawkins, our

Office Manager, for his work on the budget. He crunches the numbers and formats the budget document. As most of you know, this isn't the last stop for our budget. It usually undergoes some adjustment during the session. It goes to the Executive Committee and then, as part of the legislative budget bill, is ultimately considered by the General Assembly. Our budget request reflects the best allocation of funds to the areas of greatest need in our Office. We believe it is a positive step towards ensuring we maintain and increase our services to you within the current number of FTE authorized to the Office. With that, I will turn it over to Ms. Eubanks.

Ms. Eubanks said since the Committee has been provided with the budget documents – the narrative, the spreadsheet, the organizational chart, and information regarding the attorney pay parity proposal – I'm going to give you the cliff notes version of the budget and then we're available to answer any questions or provide more detail as you desire. Our total request for fiscal year 2014-15 without the AED and SAED amounts is \$5,916,459. When you add in the AED and SAED amounts, our total is \$6,252,098. Our budget request covers four major categories of expenditures: Personal services, operating expenses, travel expenses, and the Colorado Commission on Uniform State Laws. In terms of the Commission on Uniform State Laws, the total amount requested is \$76,900. Most of the budget for the commission remains unchanged from the current year's budget. The only increase is to cover an increase in the membership dues for a total amount of \$51,900. In terms of OLLS travel, the \$16,000 amount requested is the same that is currently budgeted for both in-state and out-of-state travel.

Representative Labuda said the cost of gas is going up somewhat. Is \$16,000 enough two years in a row for this line item? In fiscal year 2012-13 it was \$14,187. This year it goes up to \$16,000 because of expected increase in costs. Do you think that's going to be sufficient for variations in fuel for instance? Ms. Eubanks said in terms of travel costs, the vast majority of travel costs is for out-of-state rather than in-state. Fuel costs for flights to attend professional development opportunities or conferences are always a variable. Sometimes we exceed the amount budgeted but we have the flexibility within our budget to cover that. We always take that into consideration when we make determinations on who to send and where we send them and how much the trips will cost.

Ms. Eubanks said with operating expenses, the total amount requested is \$444,211. For most of the budget items under this category, the funding remains unchanged from our current funding. However, there are increases requested for several budget items and those budget items are for annual membership dues,

official functions, registrations fees, contract printing, and professional services other than legal fees and contract printing.

Ms. Eubanks said in terms of personal services, which is the lion's share of our Office's budget, the total amount we are requesting is \$5,379,348. The budget items under personal services include our current salaries, salary survey and associated costs, merit promotion increases and associated costs, and attorney pay parity and associated costs. Of those components, we're requesting \$115,013 for salary survey and that is to comport with the common policies adopted by the JBC of a 3% salary survey increase. We're also requesting \$59,410 for merit/promotion increases, which comports with the common policy of the JBC for a 1.5% increase. We are also requesting \$247,129 for our attorney pay parity proposal that all of you are aware of, that we've discussed with you, and that you have information about. There are associated costs with those increases also, but the total amount requested is \$5,379,348. Again, our total request without AED and SAED is \$5,916,459, and with AED and SAED it's \$6,252,098.

Representative Labuda said I have a question about the \$100,000 requested for the payment of legal fees, as requested in prior years. Would you explain a bit about that? Maybe some of our cases have gone away but I'm wondering if \$100,000 is sufficient from year-to-year. Have we been below that or have we gone over it? Ms. Eubanks in terms of the \$100,000 figure, that's something that we've had for the last couple of years. Prior to that we were up to \$160,000 in terms of our budget line item for legal fees. Over time, although we had a period where we had a lot of activity in terms of litigation and incurred a lot of legal fees, that had decreased to where we thought the \$100,000 would be sufficient. Right now, even though we have the LVW litigation, which is a very unusual circumstance in terms of how much that particular litigation has generated in terms of legal fees, we're not anticipating that type of legal activity. We can't ever predict who is going to file a lawsuit against the General Assembly, but right now we feel that the \$100,000 is sufficient in terms of prospective matters going forward, with always knowing there are additional sources available, just like we're going to be seeking LVW legal fees from the legislative department cash fund. We think it is sufficient in terms of what the trend has been for legal fees for litigation.

Senator Johnston said in the past when you've had high-profile cases that have outrun that need, do you come for a supplemental or are there pro bono services? What happens if you have a high-profile, highly expensive case? Ms. Eubanks said in terms of that circumstance, to my knowledge, there's only been two of those situations: The current one with LVW and then with redistricting. In the

redistricting instance, because there were no other resources available at that point in time, the legislature department did not have any cash funds and they did a supplemental appropriation. In the current situation with LVW, we're seeking additional funding from the legislative department cash fund. Right now, in terms of legal fees in general, the attorneys that we retain agree to a decreased hourly rate of \$200. Most of the cases right now are still under the old \$160 per hour rate. They already accept working for the General Assembly at a reduced rate. It's always been funded by the General Assembly one way or another, through a supplemental or through accessing additional funding sources within the legislative department.

Senator Johnston said you have 500 hours of legal services allocated. Ms. Eubanks said like I said the LVW situation is unusual. We're moving towards trial in March and it's just generated many more hours than we normally would. Most of the litigation doesn't involve going to trial.

Mr. Cartin said this is probably the first instance in our recollection where the General Assembly has been involved in a commercial litigation case. So far, cases involving constitutional issues with legislation and whatnot don't drive the amount of fees that a commercial litigation case will with nine witnesses, 60,000 documents, multiple motions, and an eight-day jury trial. It's an aberration.

Representative Labuda said can you give us a short précis (i.e., synopsis) of what caused the case and what's going on? Mr. Cartin said basically, this involves an electronic voting system that the General Assembly contracted for with the entity LVW back in 2008. There was a contract price for a full amount to perform the services. There were some cost overruns and some change orders. It's the General Assembly's position in the litigation that this is a fixed-price contract. LVW is claiming amounts in the litigation in excess of the fixed-price contract, exceeding the contract amount by \$500,000. It's our position in the litigation through the pleadings that the amount is not covered by the terms of the contract. Also, it was necessary to hire another firm to reverse-engineer much of what was done with the House and Senate voting system. There were expenditures to the tune of about \$150,000 in that regard, and the General Assembly has a counterclaim for that amount. There have been two mediations. One about a year ago and one that wrapped up within the past month and neither were successful. The General Assembly, represented by Maureen Witt and Diego Hunt, will be proceeding to

trial on March 24 in Denver district court for an eight-day jury trial. We have a motion before the court now to make it a bench trial instead of a jury trial, but the judge has not ruled on that motion to date.

Representative Kagan said I missed the factual basis for the counterclaim. Mr. Cartin said it was necessary for the General Assembly and Legislative Council IT staff to contract with another vendor to complete the work and reverse-engineer much of what had been done prior to that time, to basically get everything up and running.

**12:16 p.m.**

Hearing no further discussion or testimony, Representative Gardner moved that the Committee approve the OLLS FY 2014-15 budget request as presented and forward it to the Executive Committee recommending approval. Representative Kagan seconded the motion. The motion passed on a 10-0 vote, with Senator Brophy, Representative Foote, Representative Gardner, Senator Guzman, Senator Johnston, Representative Kagan, Senator Roberts, Representative Scott, Senator Steadman, and Representative Labuda voting yes.

**12:18 p.m.**

The Committee adjourned.