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SUMMARY OF MEEETING

COMMITTEE ON LEGAL SERVICES

February 6, 2015

The Committee on Legal Services met on Friday, February 6, 2015, at 12:05 p.m. in SCR 354. The following members were present:

Senator Scheffel, Chair
Senator Johnston
Senator Roberts
Senator Steadman
Representative Dore
Representative Foote
Representative Kagan
Representative McCann, Vice-chair
Representative Willett

Senator Scheffel called the meeting to order.

12:06 p.m. – The Committee addressed agenda item 1 – Action on SB 05-100 by Senator Steadman; also Representatives Foote and McCann – Rule Review Bill.

Debbie Haskins, Assistant Director, Office of Legislative Legal Services, addressed the Committee. She said the Committee is sitting as the Senate committee of reference to hear the bill. This is the annual rule review bill sponsored by the Committee on Legal Services with your recommendations to the General Assembly about the rules that are subject to review this year. The bill postpones the automatic expiration that is scheduled for May 15, 2015, for

all of the rules of the state agencies that were adopted between November 1, 2013, and November 1, 2014, with the exception of the rules that are specifically listed in the bill. Those rules that are listed in the bill will expire or not be extended on May 15, 2015. The reason for that is because the Committee had previously found that there was a conflict with statute or that the rule lacked or exceeded statutory authority. We did prepare an explanation of each of the items in the rule review bill so if you have questions about that we do have information there.

Senator Steadman said I am the Senate sponsor of the bill this year so I'm presenting Senate Bill 15-100. I was going to breeze through the memo from staff just to remind us of the rules the Committee has singled out to not be extended on May 15. The first item is a rule of the department of corrections from the parole board. It had to do with when the parole board is required to have an in-person interview with an applicant for parole and when they may just do a paper file review. We felt the rule added additional opportunities for file reviews that weren't authorized by statute, so that was listed for nonextension. Next is a department of education rule on educator licensure and career and technical education. The rule purports to authorize people who don't meet the criteria for licensure, so that's why it's being not extended. Next is the department of human services. This is the EBT card and the location of where they take withdrawals. There is a bill pending that passed second reading this morning on this issue. The agency rule was both over inclusive and under inclusive. It was lacking some things from statute and it added other things that weren't in statute. The department agrees their rule has a problem and I believe the department is supporting the bill that is being proposed this year to clarify what's in statute and they'll come back with rule-making, depending on the outcome of that bill. The next rule is also from the department of human services on the LEAP program and that's the same issue on the EBT cards – two different programs, two sets of rules. Next are rules of the oil and gas conservation commission. These rules are related to penalties. Last year the General Assembly passed legislation on the fines for violations and for some reason the rules don't sync with that and the agency agreed and they have already fixed the incorporation by reference and they are going to be working on the other issues. They may have already fixed this. That happens sometimes where, by the time we get around to not extending the rule and May 15 rolls around, they've already come back and repaired the damage or flaw that caused the problem. This can stay in here because they have a new rule that will be reviewed in the next cycle that we'll examine to see whether or not the repair on their rules was adequate and has statutory authority. Next are rules from the department of public health and environment. This actually concerns a bill I was sponsor of last year. This is the grant program to do research into medical

marijuana's efficacy. The department adopted a rule where they enlarged the jurisdiction of the advisory committee that was set up for the grant program and assigned them an additional function – one that I think makes perfect sense and is entirely logical – but staff said the department cannot enlarge the responsibilities of the advisory council beyond the duties assigned it in statute. Ironically, the department has the power to empanel its own advisory committee for this purpose and so the only problem is they assigned it to a committee that's created in statute by name and enlarged that group's responsibilities when they could have gone completely around that committee and created an advisory committee and asked it to advise them. For me, this one has a little bit of technical pettiness to it in that they could have done this by other name but because they used this name they can't do it. That's the situation we're in with that one and I don't know what the department has done to try to resolve this. Next, the department of revenue has rules on driver testing and the agency agreed with the recommendation to not extend the rules because they do not distinguish between different types of driving schools. Next are rules of the secretary of state. On one rule issue the secretary of state agreed that the rule lacked statutory authority and it's the piece about criminal history checks for election judges. The other rule is one where the Committee disagreed with staff and included another part of the same secretary of state's rules in the bill for nonextension, and this has to do with the ability to pick up and deliver for someone else their mail ballot. I think staff has done a really good job in the memo laying out what their position was for their recommendation and what the arguments on the other side were. This is in the bill for nonextension and the last paragraph gives you the reasons why the Committee decided to not extend the rule. Those are all the issues in the bill right now.

12:15 p.m.

Hearing no further discussion or testimony, Senator Steadman moved Senate Bill 15-100 to the Senate Committee of the Whole. The motion passed on a vote of 9-0, with Representative Dore, Representative Foote, Senator Johnston, Representative Kagan, Senator Roberts, Senator Steadman, Representative Willett, Representative McCann, and Senator Scheffel voting yes.

12:16 p.m. – Dan Cartin, Director, Office of Legislative Legal Services, and Sharon Eubanks, Deputy Director, Office of Legislative Legal Services, addressed agenda item 2 – Approval of OLLS Budget for FY 2015-16.

Mr. Cartin said on behalf of the 48 legal professionals and administrative staff in the Office of Legislative Legal Services, we appreciate the opportunity to present to you the Office budget request for the 2015-16 fiscal year. Sharon

Eubanks is going to make that presentation to the Committee. I'd like to acknowledge Matt Dawkins, our office manager, for all his work on the budget. He puts together the spreadsheet, crunches the numbers, and formats the budget documents. As you know, this is the first stop for our budget. From here it will go to the Executive Committee along with the other legislative agency budgets for incorporation into the legislative appropriation bill, which will ultimately be heard by the Appropriations committees in each house and the body in each house. Our budget request reflects the best allocation of funds to the areas of greatest need in our Office. We believe the budget supports our efforts to maintain and increase our services to you with the current FTE authorized for the Office. With that, I will turn it over to Ms. Eubanks.

Ms. Eubanks said what I'd like to do is make a very short presentation about our budget request – boiling it down to the basics – and then once I've gone through that we're happy to answer any questions or provide additional details for you. For fiscal year 2015-16, the Office is requesting \$6,094,116, which represents a 2.99% increase over our current year appropriation, not including the funding for PERA AED and SAED. When you include the AED and SAED funding, our total request is \$6,477,259 and that is a 3.59% increase over the total amount appropriated to our Office for the current fiscal year. Our budget consists of four components: Personal services, which comprises most of our budget; operating expenses; staff travel; and the Commission on Uniform State Laws. For personal services we're requesting \$5,538,439 and that is a 2.96% increase over our current year's appropriation for personal services. This amount will fund, in accordance with the Joint Budget Committee (JBC) common policies, a 1% salary survey increase and a 1% merit increase and the associated costs for those increases, such as PERA, medicare, and short-term disability. Also in accordance with the JBC common policies, it will fund an increase in the employer share of health, life, and dental. All the other budget lines would still be funded at their current levels for unemployment, comp time paid, annual leave paid, and transit allowance and the EcoPass. For the operating expenses component of our budget, we're requesting \$445,927 and this is a 0.39% increase over our current year's appropriation for operating expenses. This amount would fund most of our budget lines at their existing levels with no change. Office functions would be provided an additional \$1,500. It would also fund a 3% increase for contract printing costs to cover a potential increase in the LexisNexis contract price and it also represents a decrease for data processing supplies at a lower level. There's a \$6,500 reduction in that budget line. For staff travel we're requesting \$25,000. While the percentage increase for this component initially seems very large, it's requesting \$8,472 over our current level of appropriations for travel. All of this increase is for anticipated costs for Office staff to travel within Colorado to attend various

legislative committee meetings in fiscal year 2015-16. In addition to attending the TLRC and CDC meetings as well as attending the water congress, our Office has been asked to provide two members of staff to attend and assist with meetings throughout the state related to the state water plan. As a result we've requested more funding to cover the anticipated costs for this increased level of in-state staff travel and the funding for out-of-state staff travel remains unchanged. Our last component is the Commission on Uniform State Laws. We're requesting \$84,750, which is a 10.21% increase from the current level of funding. Most of this request is to cover the expenses of a new tenth member to the commission to attend the NCUSL annual meeting and to provide a level of funding closer to the trip expenses actually incurred by the commissioners in attending the annual meeting. A \$1,500 increase is also requested to cover the increase in annual membership dues and \$300 is requested to cover the costs of providing lunches at the commission's meetings here at the state capitol. For a brief recap, our budget request for 2015-16, not including PERA AED and SAED, is \$6,094,116, and including the funding for PERA is \$6,477,259. That concludes my presentation but I'm happy to answer any questions or provide additional details.

Representative McCann said on the salary increase and the 1% merit and 1% salary survey, is that all state employees? Ms. Eubanks said that's in accordance with the common policies that the JBC has adopted for all of state government in terms of the executive branch and the judicial branch. That's consistent with what they're looking at to provide for other state employees.

Representative McCann said so the 1% merit is given across the board. It's not really merit-based. Ms. Eubanks said no, merit is based on performance and so it is not an automatic increase for everyone. We go through a process in our Office to award merit based on performance.

Representative McCann said but the maximum would be 1%. Is that correct? Ms. Eubanks said that's correct.

Representative McCann said I know that the CSG national conference is in Vail this summer. Is your staff going to provide any staff for that and if so is that included in the budget? Ms. Eubanks said we know that that meeting is upcoming. At this point our Office has not received any information in terms of what may be asked of our staff. In the past we have provided staff assistance, but we don't know what the arrangements would be in terms of any registration fees, whether folks would be driving up to the meeting, and whether they're not staying there or if housing costs might be provided. At this point we don't have

enough information to include anything in particular in our request for that obligation.

Senator Steadman said there is money already in your budget every year for staff travel and attendance at these sorts of things. Would that be available for the CSG conference to the extent that your staff participates? Ms. Eubanks said I think we would be looking at, to be able to cover that in our budget, that sometimes with staff involvement they give us a break on costs. Again we're hoping to be able to do whatever is asked of us.

Representative Dore said on the health, dental, and life insurance and the 14% increase, is that across the board in every state department? Ms. Eubanks said it's pursuant to a JBC decision for all. I think it's actually increasing the employer share of the cost of health, life, and dental to make it 80% employer and 20% employee. That is consistent for all state employees.

Senator Steadman said Ms. Eubanks is correct – it's 80/20. The executive budget request that the JBC received this year had proposed shifting that to 75/25 and the JBC did not approve the request. We stayed with the current 80/20 split and one of the reasons for that is that the salary survey increase this year is only 1% and if we only gave employees a 1% raise and changed the employer/employee split on health care costs, that's where all the raise would have gone.

Representative Dore asked how long has it been at 80?

Senator Steadman said I think for some time.

Senator Johnston said looking at the PERA AED and SAED contributions under Senate Bill 1 from the 2010 legislative session, the trajectory we should expect for all of our employees is that these increases will remain at this scale of 12% and 15% increases for the next three years until we hit 2019 when that tapering levels off and then those increases should be stable. We have a big part of the curve over the next three years to increase the AED and SAED contribution, which is why these numbers are so big, and then after that it levels off after 2019. Is that the plan? Ms. Eubanks said I believe so but I haven't read those statutes recently. You can tell just by looking at the amounts for the past few fiscal years that it is definitely growing. For those members that aren't familiar with what AED and SAED are, they are additional amounts based on the salary base of our employees to help with the solvency of PERA.

Senator Steadman said I'm not positive it's 2019 when it hits its plateau, but we are on a steep ½ % per year increase so you're going to see this in every bit of the state budget. This is a common growth factor in agency budgets on their personal services lines because we have been ratcheting up those contributions per a statutory directive.

Senator Johnston said the original idea was that to help make PERA solvent everyone would chip in more, we'd reduce cost-of-living adjustments for current retirees, we had employees pay more, and we had employers pay more. The AED was meant to be the employer contribution and the SAED was meant to be the employee contribution, but the employee contribution came out of revenues that would have otherwise been available to go to employees, and so what we hear from a lot of our public agencies is this really results in the employer covering both percentages of the shares. That means that it's coming out of your top line in both locations, which is probably as it should be but it's just a clear indication that to get that there we have a pretty big hit that folks are taking in the next three years to meet those obligations.

Representative Willett said on the merit-based increase, how are you evaluated and reviewed? Is it by the legislators who use your services or by some SMART Act thing? Mr. Cartin said we do performance evaluations internally with our team leaders and our management team, and that's how we make our determination of salary and merit increases. My evaluation is done by some members of this Committee and by the Executive Committee. We do our own performance evaluations internally and parse out the salary increases that way. We've got a form everybody fills out and we go through a process every June. We also have a survey that we place in strategic places and try to get out to all the legislators every year to get your feedback. We may even ramp that up a little bit this year to go directly to this Committee and a sampling of the other legislators and get more direct feedback on how we're doing.

Senator Steadman said one of the things that's interesting about this institution is that this place is like a pressure cooker – there's lots of pressures from every direction. The idea that the elected political animals that we are would be involved in employee evaluations for the staff really opens up all kinds of opportunities for abuses and bad outcomes and puts the staff in a very tough spot. The more we can keep that apolitical and something that's handled by professional staff that we stay out of, the better off we are as an institution.

Representative McCann said I am looking at the Office's organizational chart. How do you determine the Government Team, the Law Team, and the Business Team? Do they do bills in certain areas? I thought you were all lawyers so why

do you have a Law Team? What's the difference between that and the Government and Business Teams? Ms. Eubanks said the Government Team, Law Team, and Business Team are what we refer to as subject matter teams. They are organized based on individuals that work on bills on particular subject matter. The Law Team, for example, does judicial, criminal law, civil law, human services, education. Each team is done that way to draw on the subject-matter expertise of individuals on a particular team. Way back in the day when I first joined the Office, people just got to pull bill requests out of a file and so they could pick all of Representative McCann's bill requests regardless of the scope of your subject matter just because they liked working with you. We figure that this way it's probably a much more efficient use of our resources to have folks concentrated in particular subject matter. The Administrative Team and the Publications Team aren't subject matter teams per se although they have more specialized functions. The Government, Law, and Business Teams are primarily your drafting teams.

Representative McCann asked what are the areas for the Government Team? Ms. Eubanks said the Government Team deals with everything from fiscal matters, state and local government, election law, special districts, and TABOR – government-based issues.

Representative Dore said the organizational flowchart states “Reflects funded FTE positions only”. When I look at the flowchart there are some half positions, such as on the PUB Team and the senior attorney for annotations. Is that half then shared somewhere else or are there other people not in this chart that are part of that team that aren't full FTE? Ms. Eubanks said in terms of the attorney that deals with annotations, that is actually a half time position. On our budget spreadsheet where it has our FTE, you'll notice that our authorized FTE is 53.3, so it's not always an even, whole number, and that's because a lot of times a bill might give us 0.1 or 0.2 FTE for staffing. For example, the Joint Technology Committee that was created last session gave us a 0.2 FTE to assist in staffing that committee. We don't always get whole numbers. You think of bodies and cutting people up. Also, I would point out that our funded FTE level is not 53.3; our budget is only requesting funding for 50.25 FTE. We fit in that allocation in the organizational chart even though we're not actually cutting people up.

12:37 p.m.

Hearing no further discussion or testimony, Senator Steadman moved approval of the draft budget for forwarding to the Executive Committee. Ms. Eubanks said because, as Mr. Cartin explained, this will go to the Executive Committee

and there might be additional decisions that the Executive Committee or the JBC makes that might affect our budget, we ask for the proviso of being able to adjust our budget – for the Committee to approve it with permission for us to make adjustments as directed by the Executive Committee. Senator Steadman said I modify my motion to include permission for staff to make those adjustments. The JBC has made preliminary decisions about common policy salary survey increases. We may revisit those before the budget is set and if that changes as a matter of common policy for all state employees, it would change for this budget as well. This is something standard we do in the budgeting process. The motion passed on a vote of 9-0, with Representative Dore, Representative Foote, Senator Johnston, Representative Kagan, Senator Roberts, Senator Steadman, Representative Willett, Representative McCann, and Senator Scheffel voting yes.

Senator Steadman said I want to thank the Committee for spending time on this budget because as a member of the JBC – and with no offense to those who sit on the Executive Committee – we’ve had quite a bit of frustration about the legislative budget and the little scrutiny it gets. The JBC doesn’t write the legislative budget. It’s written by the Executive Committee, which is why my motion was to forward this recommendation to the Executive Committee. They’ll actually put it into a bill. From the perspective of this JBC member – and I think I speak for my colleagues – there’s not a great deal of transparency or participation in the crafting of the legislative budget. For those of you who have spent some time looking at this one, watch the legislative budget bill when it comes out. The JBC does this for the JBC staff, the Legislative Council committee does this for the Legislative Council staff, and the Audit Committee does this for the state auditor staff. Those are the four staff agencies within the legislative branch and all of those budgets go to the Executive Committee, which is leadership, for them to put it together in a bill. They just send a message across the street to the JBC saying here is what the legislative budget is this year and put it into your balancing calculation. The bill doesn’t get a lot of scrutiny from my perspective and I’m glad you all spent some time on this and hope you will keep engaged in looking at the legislative budget.

12:41 p.m. – The Committee addressed agenda item 3 – Discussion on rescheduling April 3 meeting.

The Committee decided to reschedule the April 3 meeting to March 27 upon adjournment of the House and Senate. The Committee also decided to change the meeting time of the March 6 meeting from 12:00 noon to upon adjournment of the House and Senate.

12:51 p.m. – Ms. Haskins distributed copies of the Committee on Legal Services Handbook to members of the Committee.

12:52 p.m.

The Committee adjourned.