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SUMMARY OF MEETING

COMMITTEE ON LEGAL SERVICES

February 5, 2016

The Committee on Legal Services met on Friday, February 5, 2016, at 12:05 p.m. in SCR 354. The following members were present:

Representative Foote, Chair
Representative Kagan
Representative Willett
Senator Heath
Senator Roberts
Senator Scheffel, Vice-chair
Senator Steadman

Representative Foote called the meeting to order. He said Senator Heath is appointed temporarily by order of the Minority Leader to substitute for Senator Johnston.

12:07 p.m. – The Committee addressed agenda item 1 – Update and Discussion of COLS-Sponsored Bill, SB 16-049, concerning the administrative duty of the office of legislative legal services to maintain files relating to bill drafts as the official custodian of those files, and, in connection therewith, permitting the transfer of those files for purposes of storage.

Senator Steadman said this is the bill I was carrying for the Committee that has run into a bump in the road. There appears to be quite a backstory to this. The

Department of Personnel and Administration (DPA) and the State Archives are not supporting the bill in its current form. There have been some alternative arrangements made that will make the bill unnecessary. The bill was taken off the calendar and didn't get a hearing.

12:08 p.m. – Debbie Haskins, Assistant Director, Office of Legislative Legal Services, addressed the Committee. She said when we became aware of these issues Senator Steadman and Senator Roberts had a discussion and the bill was taken off of the Senate Judiciary Committee calendar for a while so we could talk and work out some of the issues. In the meantime our Office has met with representatives of DPA and State Archives. We have been working on coming up with a memorandum of understanding (MOU) that would address the issues of the member files, which are confidential bill drafting files that are not public records. State Archives is the repository for public records so the two offices have different goals and things we are trying to secure and maintain. We have had discussions with them and have come up with a MOU for which the language was finalized an hour ago. We think that we have come up with an agreement that will work for the time being for both offices. I don't want to speak for the folks from State Archives and DPA, but they are here in the room and they could come and talk if you have further questions.

Senator Steadman said I did ask the folks from DPA to be here if the Committee had any questions. It's been an interesting discussion because based on how they operate and the services they perform, there's a disconnect between what we're looking for, if we were to maintain current policy that these records are work product-privileged in perpetuity. One of the options to work through is the issue that I flagged back in December for the Committee, which is should we really continue that policy of saying these records are work product-privileged in perpetuity or is there some point in time at which that confidentiality should be lifted. I know staff did some research for me on this issue and I think we surveyed 16 other states or so.

Ms. Haskins said we received 10 responses.

Senator Steadman said 10 other states responded and their policies are all over the board. There are some that don't consider the documents work product-privileged in the first place and there are some that have that confidentiality waived after a period of time or after the member is deceased. If we were to have some sort of policy like that where there was a point in time at which the work product privilege was no longer attached to these documents, the suitability of them going to the State Archives would be a different conversation. I brought this issue up a couple months ago and I still think it's kind of odd that we have a policy that shrouds these documents in secrecy

forever when they clearly have legal or historical significance. I question whether that's the right policy.

Representative Foote said it's been mentioned that there is a representative from State Archives and also DPA here. Would either of you like to say anything or would you just like to be available for questions. The representatives indicated that they were just available for questions. Does anyone have any questions for either of these two individuals?

Senator Roberts said I don't necessarily have a question for them, but are we going to find out what the settlement agreement is? Ms. Haskins said I will try to see if I can explain what we are trying to do. The MOU sets forth what the two agencies' responsibilities are, and the purpose of the MOU is to recognize that there is limited storage space available for nonpublic records at DPA's state archives and record offices. Another purpose is to differentiate between public records for which DPA is the archival repository and custodian and member files which are nonpublic records for which the Office of Legislative Legal Services (Office) is the custodian. The MOU acknowledges that the Office has historically stored and DPA has maintained our members' files going back to 1931 and mostly up to 2008. We had worked out in the past an arrangement where these records were going over to State Archives because we have very little space to store these records and the space that we have is very inadequate. It's in the subbasement and the records are subject to getting wet and there are bugs; it's very poor conditions. This is why we started down this path. What we were trying to do in the bill is align the statute with the practice that has developed. What we have worked out is that we would be able to continue to take records over to State Archives and work with them on keeping track of the files. DPA would agree to accept the files and make the files available to us, but we would have to go over to their office, instead of having the files come back to us, which was one of the issues that was in disagreement between the two offices this summer. We have agreed that we would go over there to get the records. We also put in a provision that the old record files could be returned to the Office for permanent removal or relocation if the Committee were to develop some policies regarding retention of records. As Senator Steadman was talking about, perhaps we're not going to keep the records after a certain period of time so then we wanted to have something in here that would allow the records to be returned back to the Office so that we could take care of them based on a new retention of records policy. That was part of what was added to the MOU. The other part was that we would be able to get reasonable access to review the records at State Archives within seven business days. That was another issue that we had been discussing since this summer. That is basically the agreement.

Senator Roberts said when we talk about member files, what are we talking about and how much of this is electronic versus hard copy these days? Ms. Haskins said what we're talking about with members' files are the bill requests that are filed by a legislator, any documents that were attached to that, perhaps a draft from somebody who approached the legislator or notes on the concept of the bill, and all the drafts that the Office prepared before the bill was introduced. This is all considered under the statutes confidential work product privilege. None of it is electronic, it is all paper. There is an electronic version of the bills that we've been drafting for many years, but the member's file is something that looks like a regular manila file folder, it's all paper. What has been in the subbasement and going over to State Archives is all paper.

Senator Roberts said none of this is what we talked about a couple years ago, which was access to legislative history that was on audio tape that had been disintegrating. We're not talking about that? Ms. Haskins said no, we're not talking about that.

Senator Roberts said so it's strictly the bill ideas? Is there a reason we're not scanning that? Why are we doing hard copies in today's world? Ms. Haskins said the reason we're not doing that is because we don't have the resources and the capabilities to do that. We haven't found a business need for us to do that especially since the end product, which is the introduced bill, is all available in an electronic form and there are the official records of the bill as it goes through the process. This is our staff's work prior to the bill being introduced and we've never scanned that. We've always kept a hard copy.

Senator Roberts said so if it's not legislative history and we have an introduced version and thereafter an electronic version, the value added of the members' files is what? We're transitioning into the electronic world and while it doesn't sound like there's a storage cost per se, there's time and all that kind of thing, which there would be if it was scanned as well. I'm just trying to figure out are we caught between two worlds, the hard copy and electronic. If all it is is drafting notes, who is ever going to want to go look at that, and do you need a policy that relieves you of this? Ms. Haskins said we have a statutory duty to maintain these member files, the legislative drafting files. When we look at the statute, we have a law that tells us that we have a responsibility to maintain and keep these bill drafting files. They are defined as being confidential work product.

Senator Roberts said we know some people who could change the statute if you wanted. I'm trying to see what information are we trying to capture and if there's some value there, I don't have a problem with that, but it sounds pretty tangential to the legislative history which is preserved this other way. If we need

to fix the statute I think we could do that. In other words get rid of this requirement. Ms. Haskins said people sometimes want to look at a legislator's file to do legislative research and in my experience when we pull the file and we look at it, we almost never find anything that helps you determine the legislative intent. It usually is a fruitless effort frankly, but sometimes there's a question about why the language was written this way and so we might go back and look at the bill file and see did it change over the course of time, was there a drafting error made, did they intend this? But whenever I have done this, I have never found what people thought was going to be there. It has this protection of confidentiality anyway, so there are issues about whether you could really use it as evidence of legislative intent anyway. So yes, I think there are some questions about the efficacy of maintaining and keeping all this stuff. I don't know, that's not my call to make, but I think to your comments about the technology and how things are changing, we are at this cusp where this is a vestige of the old practice.

Senator Roberts said I have in the fee agreement with my clients to destroy their documents after seven years, and I've always had my clients leave with the originals anyway in case I get hit by a bus or ran for the legislature and was hard to find. I think in the real world today, lawyers don't keep this ad infinitum and it just seems like maybe it's time to reevaluate that.

Senator Heath said so I go to a drafter and have an idea, I get a draft, and then we go through three or four iterations of it. All of that is kept is what you're telling me. That's what's in the file? Ms. Haskins said yes, that is kept, and it does sometimes vary depending upon the attorney who's doing the work. Some of us keep absolutely every little scrap of paper that relates to that bill request prior to introduction and others of us just keep the bill draft versions. There is some variety of what's there and for the older records, the files aren't as thick.

Representative Kagan said I was thinking not about the legislative history for purposes of interpreting the legislation, but the historical interest that would be there, especially for keynote pieces of legislation. I put it to the Committee that it's of historical interest and import how certain pieces of legislation developed, not for purposes of interpretation but for historical interest. That doesn't seem to comport with the notion that they are endlessly work product-privileged because it's of historical interest but historians can't get at it. It seems that there's a serious disconnect there. I know what this bill was dealing with was who's the custodian and where are they kept, but why do we even bother keeping this stuff. I would have thought getting rid of the historical record is something not to be taken lightly, and something for consideration is how we can get access to it for historians of the future.

Senator Steadman said I just have a couple quick questions, but I think they get a little more toward where I'd like to see the conversation go. Other than the statute, does the Office have a formal record retention policy? Ms. Haskins said yes, we do have a retention of records policy that we apply to certain records. One of the categories is rules that are submitted to the Office. Under the retention of records policy we recycle those rules that have been reviewed after two years. There are other types of documents that are covered under that, but I don't believe the retention of records policy covers the members' files because we have a statute that says we need to maintain this and the Office has done that and we take that duty very seriously. I think correspondence and former director's files and things like that are covered under the retention of records policy.

Senator Steadman said for the member bill files, if I request a bill draft and we spend all kinds of time working on it and then I ultimately decide not to introduce that bill, you still maintain that as one of my member bill files? Ms. Haskins said yes.

Senator Steadman said similarly, if I request an amendment to another bill and I choose not to introduce that amendment, is that maintained in my member file or does it go with the other bill? Ms. Haskins said it's in your member file.

Senator Steadman said to me this gets to the point Representative Kagan wants to make, which is what I've been saying, is that there's historical value to these documents and there are some things that never became a public record that are stored in our member files that at some point in time may be of great interest.

Representative Willett said if we ever got to the point where we decided when to lift work product privilege from these and make them truly historical and available, I just did a tour of History Colorado and they've got this expanded space and this great storage system and it's actually like a resource museum where the public can come and they'll pull out Alfred Packer's gun or whatever you want. Especially if storage space is an issue, that might be the perfect place for these things once work product privilege is lifted. It would be a public, available thing for people who wanted to research old legislative stuff.

Representative Foote said at this point, I'm not sure what our decision point is, other than maybe giving Senator Steadman a feeling of what the Committee thinks. Am I to assume that Senator Steadman has a feeling of what we think at this point?

Senator Steadman said I do feel that I'm carrying the bill for the Committee and I would like us to have some closure or consensus on what should happen. I

asked Ms. Haskins before the meeting that, given this MOU that's now been signed, does it obviate the need for the bill, is it moot, should we just PI the bill? I think that's where we are at, but I would like the Committee's blessing for me to take it to Senator Roberts' committee and ask for a PI.

Senator Scheffel said I just want to make sure I'm understanding, because it feels like this discussion is toggling back and forth between two issues. One is the physical storage of these records, which it sounds like will moot the bill because that's been worked out consistent with the MOU. A completely separate issue is these records, their current status, and whether we should be considering a shift in that. If I understand it right, and consistent with our past discussions, these records are considered privileged unless waived. I think that addresses the historical question. Should any of Senator Roberts' bills ever become of such national import that people would like to view the internal workings of that process, then she would be contacted by historians, writers, etc., and she could waive that privilege. I'm just trying to remember back to our discussion and one oddity was what if someone passes away. Then it's kind of locked in this privileged state. If I remember, the discussion was whether or not there would be a provision for one's estate or heirs to waive that privileged status. I think to the extent that we're thinking there's historical importance here and maybe somebody will want to see that, there is a provision under current law to get through that through a permission or waiver process.

Ms. Haskins said in theory I think these things could be waived. We have tried to ask legislators at the point they are leaving the General Assembly, because they are term limited or they are no longer running for office, what would you like to do with your records. I have to tell you that most legislators don't respond to our plea and so we don't know in many cases.

Senator Scheffel said but I think we do. The default is that it's privileged. It is work product and it's privileged and if a person leaves this place and does not sign off, I think the default is that it is privileged, and should someone for whatever reason want to pursue one of us, the burden is on them to hunt us down and get the waiver. It may be cumbersome, but it's probably workable. Then we're back to having all these records whose default position is privileged, and they're voluminous and numerous and we have a storage issue, but it sounds like we've worked that out.

Representative Foote said I think Senator Scheffel put the issue very well. We've been talking back and forth about two separate issues. I think what the agenda item was and what Senator Steadman wants to get a sense of is if there is anyone on the Committee that would have concerns or object to Senator Steadman asking to PI this bill in committee. That's the immediate issue before

us. Maybe at some other point in time we could continue the discussion about work product and other important issues along those lines. Let me back up, I'm getting either no response or nods from people that they are okay with what Senator Steadman is thinking about. I don't know if we have to take a formal vote on it, but I think Senator Steadman probably has a sense of what the Committee thinks about his idea.

Senator Steadman said I think I have a good sense of the Committee and I think we can dispose of the bill. I hope we don't dispose of the second issue that Senator Scheffel identified. It's one thing to say that someone has the ability to waive their confidentiality privilege protections, but we've got records going back to 1931 apparently, and I would say there's an awful lot of deceased members that can't waive those and a lot of old stuff that we're just hanging on to. I really think a policy that looks at ending the privilege upon the death of the member would be something that we should consider and expressly recognizing the ability to waive prior to that while the member is still alive, because that isn't in statute today.

Representative Willett said I think we went over this before, but there's attorney-client communication privilege and there's work product doctrine protections of work product. This is obviously a unique situation with these counsel that we have. They are counsel of the state and they are counsel for the members. Does the law say that some privileges die or extinguish upon death? Are these really locked in a never-never land or should we get some research on whether or not we have the ability to take all these old records and make them historically available? I think it would be a nice benefit for the citizens if we could do so legally and ethically.

Representative Foote said perhaps we could put it on the agenda in the future.

12:37 p.m. – Thomas Morris, Senior Managing Attorney, Office of Legislative Legal Services and Jennifer Gilroy, Revisor of Statutes, Office of Legislative Legal Services addressed agenda item 2 – Consideration of Draft Bill authorizing the study of a recodification of Title 12 of the Colorado Revised Statutes.

Mr. Morris said you should have a draft bill as part of your meeting packet. It is relatively short and I will walk you through it. It is based largely on some of the issues that Ms. Gilroy, Ms. Chase, and I presented to the Committee at its last meeting. The title says that it's a study of an organizational recodification of Title 12 and that adjective "organizational" will be important. The bill does have a legislative declaration and the point of including that was to put some meat on the bones of what we mean by "organizational". Some of the findings are

similar to the issues that we had presented to the Committee last time - that there is a lack of a coherent structure, there isn't a common provisions article, there are several articles that don't relate to the regulation of a profession or occupation. There's a determination that those shortcomings create some problems and that the title is unnecessarily voluminous, repetitive, and is difficult to amend, understand, and administer. It then declares that it's in the public interest to have an organizational recodification of Title 12. The guidelines, which are in subsection (3) of the bill, go into what we mean by organizational recodification. The structure of that study is laid out in subsection (2) of the new section of law. The general assembly tells the Office, overseen by the Committee, to conduct a study and to solicit input from the various departments that are involved in Title 12, the public, the local governments, the professions and occupations that are regulated, and then to keep this Committee periodically updated regarding that study and to present some proposed legislation to this Committee for introduction in the 2018 regular session. The last page of the bill talks about the guidelines that would guide the Office's conduct of the study. This is really intended to address some of the concerns that the Committee expressed at our previous presentation regarding ways that bills to recodify an entire title could veer out of control from the idea of an organizational recodification. For instance, if all the various professions and occupations were looking to amend the bill to make changes to their practice act that weren't related to an organizational recodification of the title. These guidelines direct the staff, at least while conducting the study, to avoid those kind of issues and that whatever proposed legislation comes out of that study should be limited to a nonsubstantive recodification, but if there are substantive amendments to the laws, those substantive amendments should be limited to those that are necessary to, as listed on page 4, line 5, promote the public purposes of an organizational recodification such as conforming similar provisions so that they can be placed together, eliminating redundancy, and eliminating archaic, obsolete, and fundamentally unnecessary provisions. We would also be complying with our current drafting manual regarding active voice, authority verbs, gender neutral, people first language, those kinds of things. All the stakeholders are encouraged to participate. After the last meeting I took the liberty of instructing our aide – a law student working with us the entire session – to start looking at some of these issues in terms of what are some of these redundant provisions that could be consolidated into a common provisions article. I asked the aide to look at the definitions, continuing professional competency, grounds for discipline, confidential agreements to limit practice, and mental and physical examinations. Those are provisions that are found in many articles. The preliminary results show that there are 23 different definitions of the "division of professions and occupations". There's only one such division, but we have 23 definitions of it. There are 23 definitions of the director of that division, but again, there's only one such person. In the

disciplinary provisions that tend to be many, many pages long they are largely identical. Those are the types of things that we hope to have queued up towards the beginning of this public study process to put before the entities and say, getting rid of these redundancies is the type of benefit that we're looking for and if there are subtle substantive differences in your particular practice act could you live with a minor adjustment to make a single procedure. We could always have exceptions in the individual articles, but we can work through that process to figure out which of these provisions can be consolidated or which can be moved to a different title. For instance, there's one article about money transmitters that really ought to be in Title 11, which is financial institutions. The article incorporates a bunch of things from Title 11, and the entity that is regulating those people is the banking board, which is created in Title 11, so it really might not belong in Title 12. That's kind of a brief overview of how the bill is set up. I would be happy to take any questions and feedback on how the bill might be tweaked prior to introduction if that is the Committee's interest.

Senator Steadman said when we talked about this at our last meeting, I was concerned that we also evaluate the potential cost of implementing a recodification, looking at to what extent are we requiring dozens and dozens and dozens of rule-making boards or the director of the division over at the Department of Regulatory Agencies (DORA) to repromulgate rules just to correct citations and such after the recodification. I don't see that reflected in the draft, and on a similar note, would your Office fiscal note this bill? Mr. Morris said on the first point we had a brief discussion about some of those things. The guidelines could clearly be updated to include some direction to staff to, with whatever legislation that does come forward, seek to minimize those types of costs of implementation. For instance, there could be a savings clause for all existing rules, the recodification of statute to a different place doesn't invalidate the rule, the agency doesn't need to repromulgate the rule just because the statute's been recodified. They can do that as they would otherwise repromulgate a rule for other reasons. I think there are ways to minimize those implementation costs and it would certainly be possible to add that kind of element to the guidelines, and I'm happy to do that, if that's your pleasure. On the second question, perhaps Ms. Haskins or Ms. Gilroy could talk about the fiscal impact.

Ms. Gilroy said on the first question, I'm happy to add in a clause about soliciting input from the agencies that participate about their estimation of cost impact in the guidelines. As for the second question, I think typically we would receive a request for a fiscal impact from our Office. We would put a fiscal impact on it, maybe a third of an FTE. We don't anticipate receiving that. We would expect that we would do it within existing resources. We would put

something on it as we typically do when something like that comes to our Office.

Senator Steadman said in paragraph (2) (b) at the bottom of page 3, I read this a couple different ways, because it sounds like you're going to go through this process and then you're going to draft a bill and bring it to the Committee. I'm just wondering, what if you go through the process and all you hear from everybody is please don't? This is sort of written in a way that presumes an outcome and when it says provide the proposed legislation to the Committee for introduction, does this obligate us to introduce it? Ms. Gilroy said my thought would be that there's a provision elsewhere in this proposed legislation that would require us to report to this Committee periodically and if we are hearing that kind of feedback we're going to be coming to you and saying nobody wants this or they want to narrow it in this fashion or whatever and we would change it. I don't believe that (2) (b) obligates you to introduce legislation at all – it's permissive – but we will be your staff and we will be working under your authority and your direction, so if we hear input like that we would be reporting that to you and seeking your guidance on how you would like us to proceed.

Mr. Morris said it would be easy enough to change that particular language to say something like "the Office shall determine whether to provide proposed legislation" or even "the Committee shall determine whether the Office shall provide proposed legislation".

Representative Willett said I get nervous whenever legal staff or agencies start changing the people's laws, especially when the term substantive is injected. On page 4 of the bill it says primarily to be nonsubstantive, but it does say "and any substantive provisions shall..." then subparagraph (II) on lines 10 and 11 includes the language any "fundamentally unnecessary provisions". In other words you can make a substantive change if you decide something is a fundamentally unnecessary provision. I get redundant and I don't have too much heartburn over getting rid of something redundant, but unless this is language that's been used consistently throughout the history of our process, I don't know if I want to cede authority for people to decide what's fundamentally unnecessary. Mr. Morris said that relates to the bill that would be presented to this Committee, and then the General Assembly would have to decide what is actually in the bill and whether something was unnecessary or not. This is just telling our Office how to conduct the study and how to draft any proposed legislation that would first go through this Committee before it went to the general assembly.

Representative Willett said but do I understand your staff would be looking for things that it or an agency decided was a fundamentally unnecessary provision

and would recommend to be stricken and then you would bring that back to us? Mr. Morris said yes, I think that is the idea. For instance, is it really necessary to have 23 different definitions of the same person when you could make due with one.

Representative Willett said and I would agree, that would be redundant, but I view there to be a significant difference between redundant and fundamentally unnecessary. If you brought back a draft bill to us, would you label or somehow footnote what you determined to be fundamentally unnecessary or redundant so that we would have an idea of the reason. Mr. Morris said we would do so if directed to by this Committee. That would be one of the points that our periodic updates to this Committee would address, of how do you want us to proceed. We would make some sort of presentation to you regarding how the process was working with the public. I don't think we would have any sort of draft bill prepared in the first year so all of this year would be spent providing input and determining where there was agreement. If the Committee is interested in getting the blow-by-blow on things, we will provide all of that information to you.

Representative Willett said in prior recodifications has this language of "archaic, obsolete, and fundamentally unnecessary provisions" been the guiding benchmark? Mr. Morris said just this morning I started asking for a little bit more detail about prior recodifications and there used to be something called the committee on statutory revision that would periodically meet and issue reports. Those would then be used as the basis for recodification of the entire C.R.S. I know the Revisor of Statutes currently has some of this language, archaic and obsolete, but I don't know about redundant. The Revisor of Statutes and our Office already have some statutory direction to do somewhat similar things, but I don't think that fundamentally unnecessary is in current law.

Ms. Gilroy said fundamentally unnecessary does not appear in the Revisor's authority to do the Revisor's Bill or revision changes. There is some language for the Revisor's Bill that is fairly broad, and it's old language, and it's questionable law. It's something that makes me feel like I have a lot of authority that I try not to abuse. I think this Committee is the oversight committee and we can certainly take out that phrase. We will still do our job the same way. If this Committee directs us to, we can chart it and tell you what category each of your changes fall under. We can do a chart describing the proposed bill if we get that far, however you all would like and the easiest and best for you to see what we did. For now, that can be taken out. We'll be doing the job essentially the same way.

Senator Steadman said I was also going to make an argument for taking it out by reminding the Committee that Title 12 is rather unique in that almost every,

if not all, of the articles of Title 12 go through periodic sunset review. There's already a lot of revision that happens in this title for archaic, obsolete, and old language, updating gender neutral or people first, or any of the other drafting conventions. You have to wonder if the fundamentally unnecessary hasn't already been addressed through the fact these articles all go through sunset periodically. There may be some articles in the title that don't sunset. I don't know. Most all of them, if not all of them do.

Representative Foote said at this point because we are talking about bringing forth a draft bill of a study that would then perhaps lead to a bill on revision of Title 12, I would need a motion for the staff to go forward on this particular draft bill.

Senator Scheffel said I'm prepared to make a motion if I understand what we're thinking would be to do without the term "fundamentally unnecessary provisions" and including a cost estimate.

12:57 p.m.

Hearing no further discussion or testimony, Senator Scheffel moved that the Committee authorize drafting a Committee bill concerning the study of an organizational recodification of Title 12 of the Colorado Revised Statutes governing the regulation of professions and occupations which would include a cost provision as discussed and would eliminate page 4, line 10, of the draft, the phrase "fundamentally unnecessary provisions". Senator Steadman seconded the motion. Ms. Haskins said so your motion is to approve the introduction as a Committee bill of this draft with the changes that you just discussed and including adding the fiscal cost and taking out the "fundamentally unnecessary provisions". It's to authorize introduction of the bill with those changes? Senator Scheffel said correct. Senator Steadman said actually I had a couple more questions about paragraph (2) (b) at the bottom of page 3. Mr. Morris suggested some language and it was the second alternative that you offered that I liked. I can't remember what it was, but it's on tape. One other issue and that is if I understand correctly, you're thinking you need a little bit of FTE support, but then you also said that this could be done within existing resources and so there's a timing issue here. If this bill's going to have a fiscal note and you're going to want a little bit of money, we really should get this in the hopper so it gets to the Appropriations Committee sooner than later, but if we agree that we can skip making an appropriation on this, that gives us a little more time. So I'm wondering given that we've got three or four different tweaks that we've made to the bill today, if it's not going to need an appropriation, if maybe we wouldn't be better off bringing a revised draft back to Committee again before we proceed to introduction. Representative Foote said I wouldn't have an objection to that. I

think that would make the most sense and we could have more discussion and then actually introduce a bill that we agree upon with the language tweaks that we've been talking about. What does everybody else on the Committee think about that? I'm seeing heads nod. Senator Scheffel said that makes sense to me, I withdraw my motion. Representative Foote asked does the second withdraw as well? Senator Steadman said yes.

Ms. Gilroy said I would just observe that although we wouldn't necessarily put a fiscal note on it, others who are directed to cooperate and participate in this study, which I have found in the past to be fiscal note kind of work, might need a fiscal note. They are not told to, but they are encouraged to, participate. I would like to think that wouldn't happen, but I don't know what to anticipate. I'm just telling you what our Office would do, but I don't know what other offices would do. Regardless, we're past the final deadline introduction day and we'd have to get delayed bill permission. You meet again in a month which means we can easily have a new draft up and ready for delayed bill permission.

Representative Foote said I was going to mention that. During session we meet once a month so it would make sense to try to have the language in a way that all the Committee members would be comfortable with and then we could proceed with delayed status assuming that leadership would grant that.

Senator Heath said having worked on a bill involving Title 12 it sure seems to me to be necessary. I ran into all kinds of issues that didn't seem to make a lot of sense. I'm glad at least we're taking a look at it.

1:01 p.m. – Debbie Haskins addressed agenda item 3 – Update on the status of rule-making by the Secretary of State, Department of State, of Rule 7.2.6, concerning third party delivery of mail ballots, and a recommendation by staff that the Committee approve the Rule Review Bill for introduction.

Ms. Haskins said I want to refresh your recollection about why this is on the agenda and where we are at this point and then give you an update on the Secretary of State's rule-making. At the December 15th meeting, upon the request of the Secretary of State that he be given time to amend Rule 7.2.6, the chair of the Committee at that time, Senator Scheffel, removed the discussion of Rule 7.2.6 from the agenda. The presentation on that rule issue was not made at the December 15th meeting and the Committee took no action on that rule. The Committee did approve the drafting of the Rule Review Bill incorporating all of the votes and the changes that the Committee had made through the December 15th meeting. The Committee specifically discussed and directed that the Rule Review Bill should not be introduced in order to give the Secretary of State some time to amend Rule 7.2.6. The Rule Review Bill is supposed to be a House

bill this year and Representative McCann agreed to be the House sponsor and Senator Scheffel agreed to be the Senate sponsor. The Rule Review Bill has not yet been introduced. Here's our understanding of what has happened with Rule 7.2.6. The Secretary of State held a hearing on a package of election rules on January 14th and that did include Rule 7.2.6. The Secretary of State held the comment period on that rule-making open until January 22nd. The final adoption date of Rule 7.2.6 is expected to happen on February 9th, which is next Tuesday. If the Attorney General's office takes the full amount of time allotted to them under the "State Administrative Procedures Act" (APA) (20 days) to prepare the Attorney General's opinion, that set of rules, including 7.2.6, will be submitted to the Office on February 29th. It could be submitted earlier than February 29th, it just depends on how long it takes the Attorney General's opinion to be issued. The next meeting for the Committee is March 4th. The Committee could hold a rule review hearing to discuss what you want to do with Rule 7.2.6 at the March 4th meeting. To recap, we don't have the Rule Review Bill introduced yet. It was pending what would happen with the Secretary of State's rule, it's not officially before this Committee, and you may not get it until February 29th. It is the staff's strong recommendation that the Committee give us permission to introduce the Rule Review Bill at this time. Doing so would allow the Committee to move faster when the rule is officially submitted to the Committee for review. If you agree that the Rule Review Bill can be introduced, then on March 4th, when you meet again, the Committee could hold the rule review hearing on that rule and take whatever action the Committee deems appropriate and then the Committee would sit as the committee of reference on the Rule Review Bill. If the Committee waits until the next meeting to give us permission to introduce the Rule Review Bill, we will have to schedule an extra meeting of the Committee during March to sit as the committee of reference in the House on this bill. That's why your staff is recommending that we introduce the bill and get this started.

Senator Steadman said when we last had the item on the agenda for December, the staff had a memo with a recommendation that the current rule not be extended because it violated the APA as an impermissible repromulgation of a voided rule. Given that that's out there and given that we don't know what's going to happen with the rule next week or going forward, why shouldn't we proceed to act on your staff recommendation? As far as the rule that's there now, there's your belief and the recommendation that it's been an impermissible repromulgation that violates APA and is void. Then if they're able to create a new rule that wouldn't get reviewed that cycle, that's a different issue. Or, is there a possibility that what they're going to do next week is to continue to tweak the language of a voided rule and it still has that repromulgation voidness problem? Ms. Haskins said the rule that you had before you in December was subject to this year's expiration. The rule that they are working on that we think

they are going to adopt on February 9th will be in the next rule review cycle. That means that normally it would not be reviewed and would not be subject to expiration until May 15, 2017. If the Committee wants to address that rule, it would be what we would refer to as out-of-cycle and that means that the Committee, if it wanted to vote on the rule, would be voting to repeal the rule. What cycle you're in makes a difference in how the motion is framed. It's our understanding that the version that they are looking at adopting is pretty similar to what you had before you on December 15th, but right now the Committee doesn't have jurisdiction over this rule because it's not officially submitted to the Office.

Senator Steadman said part of my question was the current Rule 7.2.6 is in cycle and before us and we had a recommendation from you. Why shouldn't we act on that without making any assumptions about what may or may not happen next week or in the future? Ms. Haskins said I think the Committee could take the action that you are suggesting, but once the Secretary of State's office adopts another version of 7.2.6, it will replace the version that is currently in effect right now. In a sense it will be moot in a few days. It is my understanding we did have somebody sign up to testify.

Senator Scheffel said to make sure I've got this right and maybe to refresh all of our recollections here, when this first came up in December, we had a relatively new Secretary of State and there was some contact from their office that this had just been duplicated somewhat inadvertently and they wanted the chance to reissue this rule in an attempt to avoid the duplicity that would result in it being not extended here. We delayed that with the idea that we would take it up as a new rule, out of cycle, if necessary. If I understand it right, we're now bumping into timing issues because that is going through its process and staff is starting to get nervous that we need to get the Rule Review Bill going. That resonates with me as well. My question is, is it possible that we could get the bill introduced, get it started, and then address this rule as soon as it gets here? You're right, we don't have jurisdiction of it right now. As we monitor it and it becomes available for our jurisdiction we could act upon it as part of the Rule Review Bill by amendment or in the process somewhere. Can we get this moving but also monitor it and then include it in this Rule Review Bill? That would be the best of both worlds if I'm understanding right. Ms. Haskins said yes, what we're suggesting is get the bill introduced and the next time you meet we should have the rule in front of us. Then we can see what it looks like and what the staff recommendation is and the Committee can have their hearing on it and also then amend the Rule Review Bill accordingly if you've taken a vote on the rule. That can be part of the committee report. The longer you delay, the harder it is to get things moving. The Rule Review Bill affects all the rules that

were adopted and revised in the last year and it does need to be dealt with at some point. We would encourage you to move forward on the bill.

Senator Scheffel said that makes sense. As someone who was part of the original communications back in December, I'd like this Committee to do our work and fulfill our commitment decently and in order. I'd also like to afford the Secretary of State the courtesy that was originally granted and it sounds like we can do both – get the Rule Review Bill going, monitor the rule-making process – and be prepared as soon as it is within our jurisdiction to act upon it.

Senator Roberts said I think yet another embedded option is the Secretary of State can revise the rule within his own domain, right? So if he were to agree that the issue that was raised here is going to be addressed, then, it becomes clear that we don't need an amendment to address staff's concerns. We may need an amendment, but there's yet one more avenue that could be pursued. I think we should get going on the Rule Review Bill. Ms. Haskins said we don't know what the Secretary of State is going to do on February 9th, so that is still an unknown. I suppose they could do another rule-making hearing on that issue, but maybe it would be good to hear from Mr. Bratton.

1:15 p.m. – Troy Bratton, Colorado Secretary of State's Office, testified before the Committee. Mr. Bratton said we don't have a position on the timing or the procedures you're talking about. Maybe I can put the Committee at ease a little bit. We are planning on next Tuesday, February 9th, promulgating Rule 7.2.6, but it is substantially different. I'll just read it to you since you don't have copies. The rule previously said "Effective January 1, 2016, each mail ballot return envelope must include the following statement 'I am voluntarily giving my ballot to (name and address) for delivery on my behalf.'" That was the entirety of the rule that both the Office and this Committee were discussing as far back as 2014. The rule we will be promulgating on Tuesday will read "Each mail ballot return envelope may include the following statement 'I am voluntarily giving my ballot to (name and address) for delivery on my behalf.'" and there's a new sentence at the end that says "If the voter leaves this fillable portion of the statement blank the county clerk must accept the ballot for counting if it is otherwise valid." So before, it was mandatory that that statement be on the mail ballot envelope and now it's permissive for county clerks to do that and there's clarification that a county clerk may not reject a ballot for that statement not being on there. That's the rule we will promulgate on Tuesday. I'm happy to send this to Committee members. Again, as Ms. Haskins said, the Attorney General has a 20-day period. We've tried in the past asking them to make that a little bit shorter, but they are very hesitant to do so. We'll be promulgating on the 9th and we'll file it with the Secretary of State's office and with the Office on February 29th, if that's helpful.

Representative Foote said it is helpful. I would like to have that information that you mentioned and the new proposed text. You can send that my way. I don't know if any other Committee members feel the same way, but at least for me that was new information.

Senator Steadman said I'm just wondering if there's case law or anything that helps elucidate the meaning of "repromulgation" within the APA, because the Office's opinion about the current Rule 7.2.6, which is within our jurisdiction right now, is that it was an impermissible repromulgation. They took out a clause, but otherwise it was the same. Here we've got a "must" becomes a "may" and a new sentence, but it's really still otherwise very similar. How different does it have to be before it is no longer a repromulgation? Ms. Haskins said to my knowledge there is no case law interpreting this provision in the APA. The Committee specifically amended the APA to add this language in there, because we were having a cycle with a couple of agencies that were repromulgating rules that were not extended in the Rule Review Bill. To my knowledge we've had no litigation about that. It has been something that the staff has interpreted and we've brought it to the Committee and had the Committee make the determination. It hasn't happened very often since that language was added to the APA. We bring it to the attention of the Committee and let the Committee decide.

Senator Steadman said that's one of the reasons why I keep coming back to your recommendation from December because it seems like this is an area where there's not a lot of guidance for the agencies and some action and policy from this Committee could be helpful. I'm still of a mind of wanting to accept your recommendation for the current rule and we can be concerned at our March meeting about what, if anything, happens on February 9th. Ms. Haskins said I do need to point out that you asked a question earlier about could the Committee vote on the rule that was before us on December 15th and there's kind of a notice problem with the Committee taking that action today. That was not really noticed and we have never had the full discussion and presentation about that issue or the opportunity for the Secretary of State's office to respond to that. It was taken off the table and it wasn't presented today as being something you were going to be voting on. There is kind of an issue about that that I feel obligated to bring up.

Senator Scheffel said we're starting to repeat ourselves. I see where Senator Steadman is going and I think that will be a relevant discussion. As I was hearing Mr. Bratton I almost jumped in to cut him short because the discussion of this is what the Secretary of State will be promulgating next Tuesday – I don't know. We don't have jurisdiction of that. If that's the game plan, so be it,

but we don't know that, it's not here yet, and we can't predict what's going to happen next week. What we do know is something will happen or not happen, it may pass muster with this Committee or it may not. What is before this Committee is kind of the ground work we laid back in December, and at the root of that was really an extension of a courtesy to the Secretary of State to give them a chance to revisit this and I think we ought to give them a chance to do that and at the same time honor the request of staff to get this bill going so we're not watching the grass grow. I'm for that.

1:23 p.m.

Hearing no further discussion or testimony, Senator Steadman moved the Committee approve the Rule Review Bill for introduction. Senator Roberts seconded the motion. The motion passed on a vote of 7-0 with Senator Heath, Representative Kagan, Senator Roberts, Senator Steadman, Representative Willett, Senator Scheffel, and Representative Foote voting yes.

Representative Foote asked if other members would like to be cosponsors on the Rule Review Bill. Senator Steadman, Representative Kagan, and Representative Foote said yes.

1:24 p.m. – Jennifer Gilroy and Dan Cordova, Colorado Supreme Court Librarian and Chair of LDPAC, addressed agenda item 4 – Presentation of Year Two Report from the Legislative Digital Policy Advisory Committee.

Ms. Gilroy said now I am wearing my Legislative Digital Policy Advisory Committee (LDPAC) hat because I'm a member of that committee that was created by legislation back in 2013 and recreated in 2014. We've provided reports to you annually about our progress. I am here with Mr. Cordova from the Supreme Court Library because he is the chair of that committee and he can tell you how we have proceeded and what our goals are and answer any questions that you might have.

Mr. Cordova said it's a privilege to have done this worthwhile work under the UELMA act, the "Uniform Electronic Legal Material Act", for the purpose of verifying legislative work over time and also for preserving the history of it. We've already talked about that around the table in a different setting, but it's connected here. One of the benefits of the committee has been opening communication between three branches of government with regard to identifying specific common issues, complete awareness, and discussion about ongoing initiatives and projects, and all of that hopefully resulting in a more efficient service to the citizens of Colorado and cost containment now and in the future. We're here to summarize and take questions on the Year Two

Report of the recreated committee. I apologize for the length of it with the appendices, but the idea there was to incorporate all three years' work in one submission, so I hope that that is helpful. The successes over the last three years have been that after year one, when the Secretary of State was required by law to comply with the authentication preservation requirements of the act, they did so and they won awards within their own national association and they are being emulated. They use a digital signature. The Office, on your behalf, has been better informed as a result of the work that we've done and the emerging best practices materials that we've compiled, but they're not yet required to act. Recommendations that were made on pages 4 and 5 with respect to that might be a little bit different because of the dynamic change of circumstances with regard to resources and/or what other jurisdictions are doing elsewhere. I would take those questions if you had them later. The cooperative and emerging program between the Supreme Court Law Library and the State Librarian, which is not covered by this act at all, has come about as a result of the cooperation and collegiality of the group and we're hoping that that will act as a hub and spokes portal online for the work that is being published by the legislature, the Governor's office, and the Secretary of State. The historical records audio preservation portion of this, the legislative history that goes back to 1973, which was also made part of the act, the recommendation of a solution was required by that first years' act. That was undertaken, the work was started, and in the last two years the monitoring aspect of that by the committee really has not been as effective as we'd have liked largely because of lack of control over decision-making, resources, and also again changing circumstances between branches, but the recommendation of the committee as a whole was that that might be benchmarked and tied to future revenue. As I said, it's a dynamic process nationally, not just here in Colorado. Local circumstances inform the recommendations that are made in any given place largely because not everybody has the same IT technology capabilities and not everybody has the money. In fact, of the 12 jurisdictions that have actually adopted UELMA, nine of them didn't even see a fiscal impact. Colorado did. It was underspent with respect to what the Secretary of State did because of the small scope and scale of their undertaking, but that will not be the case with the legislature itself. We're hoping that that would be something that's placed before you at the appropriate time to take that action as you move forward.

Senator Steadman said I just want to thank you for the work that you've done on the committee. I don't know if everyone knows, but this actually arose out of the issue Senator Roberts raised earlier about the decaying old tapes of these hearings that we have. The issue was brought up to the Joint Budget Committee (JBC) as a budget request and the JBC is the one that sponsored the legislation that created this committee and continued this committee and we've been interested in your work. I see some of your recommendations probably need to

go back to the JBC because you have recommendations for some appropriations in future years. I'm not quite sure what the mechanism is to get those there, and maybe it's really not the JBC but perhaps the Executive Committee because I think your recommendations are for appropriations in the legislative budget. I don't know if you'll be seeking direction from this Committee in future years or budget requests for the Office to the Executive Committee, but I hope this all moves forward. I won't be here to see it through, but I'm really pleased with how seriously you've taken this and the work that's gone into it to get it to this point.

Ms. Gilroy said thank you Senator Steadman, I appreciate that. I too want to just echo what Mr. Cordova said. It's been a privilege to work on this committee. Dan Cartin, the director of our Office, and George Orłowski are present and also are members of the committee. I have learned a lot because of the Secretary of State's experience. They actually spent less than what the General Assembly appropriated them in order to do the complete conversion of the rules. They were forced to comply with UELMA immediately since they only publish an electronic format. We still publish books so we are not in the big push that they are. However, in the future our Office along with Legislative Council IT staff are looking toward a whole new world of drafting through publications which we have great vision will allow us to comply with UELMA. At the times that we need it, we will probably come to this Committee for your endorsement and questions in order to move forward on fiscal impact or fiscal requests that we may have because I anticipate that there will be some technologically. We have some really great ideas; we've got a good group downstairs working on it. Although LDPAC actually sunsets this year, Mr. Cordova and I have made a commitment that we're going to meet quarterly and hopefully the executive branch agencies will as well because it's been a great resource for me and I'm going to turn to them and further develop this hub and spokes concept where there'll be one source, one place, where a citizen can go to get anything that they need of government data. I'm excited about it, I don't understand it all, I turn to other experts, and this is a great organization to keep the conversation going.

Representative Foote said I'd also like to say thank you for all your work and for being here to update us and I'm sure that we'll have you back in the near future for another update.

1:33 p.m. – Dan Cartin, Director, Office of Legislative Legal Services and Sharon Eubanks, Deputy Director, Office of Legislative Legal Services addressed agenda item 5 – Approval of the OLLS Budget for FY 2016-17.

Mr. Cartin said we appreciate the opportunity to present to you the Office's budget request for the 2016-17 fiscal year. First of all, on behalf of the Office thank you all for all the support you give our Office. We are grateful for the opportunity to serve you all and the institution. Ms. Eubanks is going to present our budget to you. I'd like to thank and acknowledge Matt Dawkins who crunches the numbers and puts together the budget documents for you. This, as many of you are familiar with, is the first step with the Office budget. With your approval our budget usually undergoes some adjustments during the session when it first goes to the Executive Committee, of which Senator Scheffel is a member, along with the other legislative staff agency budgets for approval and then ultimately as part of the legislative budget bill that is considered by the entire General Assembly. With that I will turn it over to Ms. Eubanks.

Ms. Eubanks said I am giving you a brief summary of our budget request for the fiscal year 2016-17. What I'd like to do is a very brief overview of our budget request and then if members have questions and want more details I'm happy to provide those. For our budget request for 2016-17 our total request without Amortization Equalization Disbursement (AED) and Supplemental Amortization Equalization Disbursement (SAED) amounts for the Public Employees' Retirement Association (PERA) is \$6,245,046. That represents a 2.48% increase over our current year's appropriation. Our total request with the AED and SAED amounts for PERA is \$6,681,427 which is a 3.15% increase over our current level of appropriations. Our budget request covers four major categories of expenditures for the Office – personal services, operating expenses, the Office travel expenses, and the Commission on Uniform State Laws (CUSL). I'd like to touch upon each of those major categories in reverse, so we'll start with CUSL. The total amount requested for the CUSL's functions is \$92,350. That's an 8.97% increase over our current appropriation. The increase is due to an increase in the membership dues to a total amount of \$56,000; it's a \$2,600 increase. The increase in the funding would cover that as well as we're requesting an additional \$5,000 for anticipated increased travel costs for up to 10 commissioners attending the national NCUSL meeting that's being held in Vermont this year. Again, the total for CUSL that we're requesting is \$92,350. The next category is Office travel. The total amount we're requesting is \$24,472. This is a 2.11% decrease. That's a whole \$528, and the reason for that reduction is that we had previously been provided funding to travel to attend meetings across the state for the state water plan for the past two years. Those meetings have concluded and we no longer need that funding for that travel expenditure. For operating expenses, the total amount that we're requesting is \$445,927. This amount is unchanged from our current level of funding for 2015-16. Operating expenses include everything from pencils and paper to funding for contract printing, which is a publications function, as well as legal fees when we're involved with litigation. The lion's share of our Office budget goes for personal

services. The total amount that we're requesting is \$5,682,297. This is a 2.60% increase over our current level of funding. This appropriation covers our current salaries, which right now are \$4,463,138. It also provides for one month salary survey and one month merit promotion increase to cover for June of 2016. While those are increases for the current fiscal year, those paychecks are actually issued in July of 2016 and so that's why we have to have that amount in our budget, to actually pay for the first month of the 2016-17 fiscal year. Because of the changes in salary survey and merit promotion we have a small reduction in associated costs which are things like insurance, PERA contributions, those types of things. That's because we only have the one month of salary survey and merit increase as well as there was a change in the employer contribution rate for health and dental insurance per the JBC common policies. Our request also includes an attorney pay parity amount of \$140,182, and with the associated cost built in we're asking for a total of \$145,530. The other budget lines in our personal services category are remaining at their current or slightly lower funding levels – that's for unemployment, comp time pay, annual leave pay, transit allowance, and ecompass. Again to summarize, the total amount that we're requesting for our budget for 2016-17 without AED or SAED for PERA is \$6,245,046 and when you add in the AED and the SAED for PERA we're requesting \$6,681,427.

1:40 p.m.

Hearing no further discussion or testimony, Senator Steadman said I move approval of the Office's budget for 2016-17 for submission to the Executive Committee. Senator Roberts seconded the motion. Ms. Eubanks said if I could just ask that as part of your motion, because as Mr. Cartin explained, the process goes to the Executive Committee and there may be some changes with JBC common policies coming up, you could include permission to adjust our budget as necessary as it moves through the process at the direction of the Executive Committee and JBC. Senator Steadman said I would amend my motion to include that flexibility to staff. Senator Roberts said second as well. Representative Kagan said as I understand it, this budget that we would be moving to the Executive Committee does provide for salary increases for the staff and would therefore become the only recommendation of salary increases within the government. Am I wrong on that? Senator Steadman said State Patrol is getting an increase this year.

Representative Foote said I have an understanding of what the Governor's request has been with the budget and I'm not sure what part of the process that is in. I don't think that's gone through the entire JBC process. I'm not sure what the final result will be. Of course, we're not sure what the final result would be of this because it still needs to go through the Executive Committee for approval

and perhaps modified as well. Mr. Cartin said as I communicated to you, it's our understanding that the common policies for the JBC right now and the Governor's recommendation is that there's a 0% salary survey and 0% merit pay at this stage. Senator Steadman's a member of the JBC and he can speak for himself, but part of that discussion was that at some point after the March forecast they may come back and revisit that. That's where things are right now relative to state employees. We are making a request in our budget for an amount for salary increases based on the salary survey that we participate in. I won't speak for the other legislative staff agencies that will be a part of this budget, they're on their own, but they may make requests as well for an increase in their budget. Ultimately it will be the Executive Committee's decision first before it goes into the bill that's introduced. We're making the request to this Committee at this point. Senator Steadman said I support your request. The Governor has requested that the preliminary action by the JBC be 0% on salary surveys, 0% on merit. However, there are statutory requirements that affect the salary of State Patrol troopers. They will be seeing an increase because of those statutory requirements. There are also those in the judicial branch that have requested an increase. We've not acted on those increases yet, but in all likelihood there will be some employees in the judicial branch that will see salary adjustments. Finally, if your concern is just consistency across state government, there have been initiatives over the past several years to address, in particular, attorney salary parity and we have made adjustments in the Department of Law, the Attorney General's office, and the Public Defender's office that have been out of line with the increases that other state employees got through the common policy for salary survey. I see this as being akin to those past situations. It's not unprecedented. Representative Kagan said it also strikes me that if we don't put in the recommendation then it rules out the opportunity to even get that increase if they become available so that really addresses my concern. Representative Foote said I had the same thought process that Representative Kagan did as well when looking at the Governor's recommendation at this point of no increases for state employees or attorneys. That always brings up concerns in this context, but as you mentioned this is just putting the request in, it will be decided later. If you don't request it now then it can't be anything later, so that's what brought me to thinking that this would be an appropriate request at this point. Of course, we don't know how it's going to turn out, but that's why I'm comfortable putting in the request at this point. Representative Willett said coming from a district where I voted against a pay increase for myself – and that was appreciated – and being a lawyer on the line of recommending increased pay for lawyers, it would not go over well with some of my constituents. Having said that, I very much respect this Office and working with them. My question is, is there some discussion about this survey that's been done and who's going to get these increases? Is that done by the Executive Committee? Will somebody at least look at this, or are we the

committee that's supposed to ask a whole bunch of questions and do due diligence? Senator Scheffel said I'm kind of reserving comment because I know I get another bite at this apple. I do appreciate the work of Mr. Cartin and his department and one of the issues that they face is retention. I can assure you, this gets thoroughly vetted and discussed at the Executive Committee level, which doesn't take away from the important work of this Committee. It's very, very thorough and very comprehensive. Representative Willett said thank you for the comments and I'm satisfied. Senator Heath said I was just going to second what Senator Scheffel said. Believe me, that's the place where all this gets compared and we try to equalize. I'm not on it anymore, but certainly I felt very good about the process. Representative Kagan said I just want to state for the record, less there be any misunderstanding, the quality of the work that the lawyers do in the Office is stellar and worth far more than they are getting paid or would get paid if this budget was approved, in my opinion. I don't want any misunderstanding as to whether or not I was of the opinion that the quality of the work does not merit much greater pay. My only concern was with the consistency of the approach. I think our lawyers are fantastic.

Senator Roberts said just for the record, the effect of term limits and the impact on legislator memory and institutional memory certainly leads me to think that the importance of our attorneys in the drafting on our behalf is extremely important. We come into it knowing we're term limited and our pay was \$30,000 and that was the price we paid, but I think if we're going to have good help of the kind that we just talked about we have got to be competitive. We're still not competitive; these folks are public servants as well, but that leads me to support this.

Representative Foote said at the risk of drawing it out too much, I have said this to you, and I'm sure many of have said it as well to our attorneys, that you all do a fantastic, top notch job and it's a pleasure working with you and you really make this place go, as far as I can see. I really appreciate that.

The motion passed on a vote of 7-0 with Senator Heath, Representative Kagan, Senator Roberts, Senator Steadman, Representative Willett, Senator Scheffel, and Representative Foote voting yes.

1:50 p.m. – The Committee addressed agenda item 6 – Appointment of a legislator to fill a vacancy on the Colorado Commission on Uniform State Laws.

1:50 p.m.

Senator Steadman moved that the Committee appoint Representative Yeulin Willett to fill the vacancy on the Uniform Law Commission occasioned by the resignation of Representative Jon Keyser. Representative Kagan seconded the motion. Representative Willett said I appreciate the motion. I appreciate the second. I appreciate the confidence from whoever decided I could fill the shoes. I'm glad to accept the nomination. Representative Foote said thank you Representative Willett. When I heard that you were interested in it I thought that you would be the perfect candidate. I'm glad that you're interested in doing it. The motion passed on a vote of 7-0 with Senator Heath, Representative Kagan, Senator Roberts, Senator Steadman, Representative Willett, Senator Scheffel, and Representative Foote voting yes.

1:52 p.m. – Debbie Haskins addressed agenda item 7 – Scheduled Meetings During the Session.

Ms. Haskins said I just wanted to remind you to please put in your calendars that we have a scheduled time for the Committee to meet during session and it's the first Friday of the month. I know this one kind of snuck up on folks. The next meeting would be March 4th and then April 1st and May 6th from noon to 2:00 p.m. We expect that we will need to meet on each of those days so try to keep that time in your calendar.

Senator Roberts said when we go a little bit long I have to take an evening plane instead of an afternoon plane, so to the extent we could front load decision items that need a vote of the Committee forward I might still be able to get an afternoon plane. If there's a way to arrange the agenda I'd appreciate that.

Representative Foote said that's a fair request for sure.

Ms. Haskins said we can try to accommodate that as much as we can.

1:53 p.m.

The Committee adjourned.