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SUMMARY OF MEETING

COMMITTEE ON LEGAL SERVICES

March 4, 2016

The Committee on Legal Services met on Friday, March 4, 2016, at 12:07 p.m. in HCR 0112. The following members were present:

Representative Foote, Chair
Representative Dore
Representative Kagan
Representative McCann
Senator Johnston
Senator Roberts
Senator Steadman

Representative Foote called the meeting to order and said before we get started with the first thing on the agenda I thought I would turn it over to Ms. Haskins who wants to talk a little about procedure today and how we will be deciding what we're deciding.

Debbie Haskins, Assistant Director, Office of Legislative Legal Services (Office), said I wanted to go over procedurally the role for the Committee on these first two agenda items. The first agenda item is to review Rule 7.2.6 from the Secretary of State and that was a rule that was just adopted by the Secretary of State in February. When you are addressing this rule issue and what to do with that rule you are sitting as the Committee on Legal Services. When you move to agenda item 2, approval of the Rule Review Bill, then you are sitting as

the committee of reference for the bill in the House. Remember that first you are sitting as the Committee to make a legal finding about the rule issue and because it is an out-of-cycle rule, if the Committee does want to take action on it, it's not a move to extend and ask for a no vote, it's a move to repeal.

12:10 p.m. – Kate Meyer, Senior Attorney, Office of Legislative Legal Services, addressed agenda item 1a – Rule 7.2.6 of the Secretary of State, Department of State, concerning mail ballot return envelopes, 8 CCR 1505-1 (LLS Docket No. 160146; SOS Tracking No. 2015-00846).

Ms. Meyer said I am here to present to you Rule 7.2.6 of the rules of the Secretary of State's office concerning elections. To refresh the Committee's memory as to why this rule is before you today, in December of 2014 this Committee voted not to extend then Rule 7.2.6 of the rules of the Secretary of State concerning elections. That rule in particular pertained to the delivery of mail ballots by third parties. Pursuant to that vote, the rule was included in the 2015 Rule Review Bill and by operation of that bill expired on May 15, 2015. Subsequent to that expiration, the Secretary of State's office promulgated during 2015 more elections rules including the 2015 versions of Rule 7.2.6. It was my Office's position that the 2015 version of that rule constituted a repromulgation of the expired predecessor rule in violation of the Administrative Procedures Act (APA). That rule consequently was scheduled to be heard by this Committee in December 2015. I should note that the Secretary of State's office contested my Office's position of repromulgation. At the December 2015 hearing, at the request from the Secretary of State's office, this Committee withdrew that rule from consideration in order to give the Secretary of State's office more time to ameliorate the rule in light of my Office's objection to the 2015 version. They conducted elections rulemaking in early 2016, finally adopting rules on February 9th, including the new 7.2.6, and it is that 2016 version that is before you today. The first part of our analysis was whether, like the 2015 version of Rule 7.2.6, we believe that the 2016 version constituted repromulgation of an expired rule. You'll see in your memorandum on page 4 that we have excerpted in pertinent part the provision of the APA applicable here, specifically section 24-4-103 (8) (d), C.R.S., states that a rule that has been allowed to expire by action of the general assembly shall not be repromulgated absent any intervening judicial determination that authority for the rule exists or a statutory change to grant the promulgating agency authority to so repromulgate. It does state that any rule repromulgated is void. The APA does not define or describe what constitutes repromulgation and offers very little guidance on how repromulgation should be assessed. Furthermore, as you heard from Ms. Haskins at your meeting last month, there is no case law on this point interpreting this provision. This Committee has only very rarely heard cases of alleged repromulgation, but despite the infrequency with which the

issue arises, has developed a standard by which to determine whether repromulgation has occurred. That is the standard of substantial similarity. If the new rule is substantially similar to the expired predecessor rule, repromulgation has occurred. It is our opinion that unlike the 2015 version of the Rule 7.2.6, the 2016 version is not substantially similar to the expired 2014 version of the rule. If you look on page 3 of your memo we have a table comparing both versions. We believe that the differences between the two are significant enough to render the 2016 version substantially dissimilar to the expired predecessor version. There are four substantive differences that I want to zero in on. The first is that the 2016 version of Rule 7.2.6 omits entirely what we're referring to as the privacy prong of the 2014 version of the rule. This is a provision by which an elector attested to the fact that he or she marked and sealed his or her ballot in private. This provision generated a lot of discussion at the December 2014 hearing on the original version of Rule 7.2.6. It has been omitted entirely from the 2016 version, although the 2015 version also entirely omitted that privacy provision. The next crucial difference between the 2016 and 2014 version of Rule 7.2.6 is the nature of the provision being created by the rule. In 2014, the provision was referred to as an affirmation. An affirmation in law is something akin to a nonsectarian version of an oath, something to which someone swears or affirms, typically under penalty of perjury. The 2016 version of Rule 7.2.6 refers to the provision as a statement. A statement is not a term of art. It's just a very broad and general term meaning something being stated. The 2016 version is a lot less consequential than the affirmation of the 2014 version. Third, the 2016 version of Rule 7.2.6 clarifies the effect of an elector not filling out the fillable portion of the statement and that is that neglecting or opting not to do so will not nullify an otherwise valid ballot contained within the return envelope being mailed or delivered by a third party. Last and most important for our purposes, the 2016 version of Rule 7.2.6 converts an erstwhile mandate to a grant of permission. In the 2014 version, every mail ballot return envelope would have been required to feature the affirmation on the envelope. The 2016 version converts that "must" to a "may", making it completely optional. For these reasons, we believe that new Rule 7.2.6 does not constitute repromulgation in violation of the APA.

Representative Kagan said I'd like to make a comment rather than ask a question of Ms. Meyer. I'm not going to challenge the conclusion that the Office has reached that Rule 7.2.6 is neither a repromulgation nor outside the statutory authority they've been given. I do want to take issue, for the record, with the Office's policy as to what constitutes a repromulgation. What the Office has said is that in the absence of case law and any guidance, they look to whether or not the new rule is substantially similar to the old one that was not extended and if there is substantial similarity between the rules then it is a repromulgation and if there isn't, it isn't. I think more to the point would be whether it is essentially

similar, whether the essence of the new rule is similar. Not whether it's substantially similar, but whether the essence is similar. The reason I had hesitation, although I will not be challenging the Office's conclusions, is that I think these two rules are the same in essence. Do you require or do you not require, or do you put on the envelope, a statement that you've given the envelope to someone else. That's the essence of the old rule and that's the essence of the new rule. If you use an essentially similar standard then this is a repromulgation and I just urge members of the Committee and the public to consider whether or not, when we are looking at the repromulgation question, we look at the essence and see whether the essence of the new rule is similar not whether the new rule is substantially similar. I think that is more to the point and I'd like to note that for the record and put it out there for the Committee's future consideration and for the Office's future consideration. The other comment that I would have on this is whether or not there is statutory authority. I think this raises the question of what are we statutorily authorizing by section 1-7.5-106, C.R.S. I urge the Committee and future general assemblies to consider this – what we grant to the Secretary of State is the authority to adopt rules governing procedures and forms necessary to implement this article and because we're dealing with the ballot, that, to me, should be read narrowly. When we're saying you can adopt rules, Secretary of State, governing procedure and forms that are necessary for implementing this article, I think the questions should arise before we accept a rule as within the grant of statutory authority. Is this rule necessary? Not is it helpful to implement the article, not is it a good idea, not is it relevant, but is it necessary? That should be the standard and I urge that we use that word as a careful standard to make sure that we're not giving overly broad statutory authority and we're not interpreting our statutory authority overly broadly because we are in this very important area of constitutional right to vote. I'm hesitant to go along with the Office on this. I will go along with the Office, but I don't want to go along with the Office without noting that I think we should be looking at the essential similarity between two rules when deciding on repromulgation and that we should be looking at whether a form or procedure is necessary to implement the code before we say that there is statutory authority for that rule.

Ms. Meyer said I should have been more clear. I took a little break to pause between the two segments of my analysis. If the Committee would like I can actually go into the second part.

Representative Foote said I'm sorry, I should have known there was a second part, go ahead.

Ms. Meyer said to Representative Kagan's second point, the second part of our analysis did examine whether, just as in any other rule we review, rule-making

authority existed for the particular rule being examined. It is our position that we do believe the Secretary of State has rule-making authority under both broad and specific rule-making authority contained in the Uniform Election Code of 1992. Section 1-7.5-107 (4) (b) (I) (B), C.R.S., does contain that limitation on the number of ballots that any nondesignated election official can accept for mail and delivery on behalf of any elector in any election, and that statute is excerpted on pages 5 and 6 of the memo. It is a 10 ballot per person per election limit. That's it for what the C.R.S. has to say about that 10 ballot limit; it's a very austere provision. Turning then to the Secretary of State's rule-making authority under section 1-1-107, C.R.S., the Secretary of State has both the duty to enforce the provisions of the Uniform Election Code of 1992 and the general authority to promulgate rules necessary for the administration and enforcement of the code. With specific regard to mail ballot elections, under section 1-7.5-106, C.R.S., the Secretary of State has quite a bit of rule-making authority. The Secretary of State is mandated to prescribe the form of materials used in mail ballot elections, to establish procedures for conducting mail ballot elections, and to otherwise promulgate rules necessary to implement the mail ballot election statutes. Looking at the totality of rule-making authority granted to the Secretary of State, it looks like Rule 7.2.6 is an attempt to fill a gap in the statute and therefore that is why we believe that is was within the rule-making authority and that is why we are recommending the Committee take no action on the rule.

Representative Foote said I'll note that Suzanne Staiert, Deputy Secretary of State, from the Secretary of State's office is here to take any questions. Are there any members that have any questions for Ms. Staiert on this particular rule? Seeing no questions, thank you Ms. Staiert for being here anyway. Is there a motion?

Senator Steadman said I don't know if a motion is required. I am concurring with the staff recommendation that we take no action. I don't know if it would be better to have a motion to that effect or if we have no motion and we just move on is the better way to proceed.

Representative Foote said I'm inclined, if there's no motion to take any action, that we just move on to the next section of the agenda.

Representative Kagan said it might be advisable to have a motion to not repeal Rule 7.2.6. That it's on the record that we chose not to. Otherwise we might say the matter is still outstanding. I don't know, I'm just making the suggestion. Ms. Haskins said our recommendation is that the Committee take no action at this time on the rule. It is subject to expiration next year in the regular rule review process, so you will be acting upon it next year when you look at the rest of the

rules. I think that's part of why we would recommend that the Committee just leave the rule in place and not take any action at this time.

Representative Kagan said I take Ms. Haskins' point.

12:28 p.m. – The Committee addressed agenda item 2 – Approval of HB 16-1257 by Representative McCann; also Senator Scheffel - Rule Review Bill.

Representative Foote said going back to Ms. Haskins' statement at the beginning, we will be sitting as the committee of reference for this particular bill. If there's no objection we will proceed as we normally would as the committee of reference and I'll ask Representative McCann to say a few words and we'll take testimony and any amendments and we'll proceed from there.

Representative McCann said I'm going to ask if Ms. Haskins can fill us in on the bill. This is the bill we voted on last time or the time before that's just to adopt the findings that we made before. Ms. Haskins can you help me out here.

12:29 p.m. – Debbie Haskins addressed the Committee. Ms. Haskins said we have handed out copies of an explanation of the Rule Review Bill and that has a brief description of the rules that are in the bill that are scheduled to expire based on the findings that the Committee made in the fall meetings. What the Rule Review Bill does is address the rules that were adopted by the executive branch agencies between November 1, 2014, and before November 1, 2015, and which are scheduled to expire pursuant to the APA on May 15, 2016. That's the year that the rules cover. The bill postpones that automatic expiration for all of the rules that were adopted or revised in that one-year period with the exception of the rules that are specifically listed in the bill. Those are the ones that the Committee made findings on in the meetings during the fall that those rules should not be extended and should be allowed to expire on May 15, 2016, because the rule either conflicts with the statute, lacks statutory authority, or a there was a finding that the agency has exceeded its rule-making authority. That's what the bill does and it is your recommendation to the general assembly about the rules. The explanation that we handed out covers a brief recap of the issues. That's the Rule Review Bill and we just need the Committee to move the bill to the floor.

12:31 p.m.

Hearing no further discussion or testimony Representative McCann moved HB 16-1257 to the committee of the whole with a favorable recommendation. Representative Kagan seconded the motion. The motion passed on a vote of 7-0 with Representative Dore, Senator Johnston, Representative Kagan,

Representative McCann, Senator Roberts, Senator Steadman, and Representative Foote voting yes.

12:32 p.m. – Thomas Morris, Managing Senior Attorney, Office of Legislative Legal Services, addressed agenda item 3 – Consideration of revised draft bill authorizing the study of a recodification of Title 12 of the Colorado Revised Statutes.

Mr. Morris said this is the bill that was presented to you at your last meeting and the direction at that point was to massage it a bit. There were three changes. The first one is page 3 of the bill, lines 12 through 14, and involves the input that we will be soliciting from people including state agencies and input regarding unofficial estimates of the fiscal impact that an organizational recodification of Title 12 might entail. The next change is on the top of page 4, but starts at the bottom of page 3. Previously it had said staff would present a draft bill to the Committee two years from now and that was changed so that the Committee will now tell staff whether to present a bill to it by that deadline. The third change is on lines 14 and 15 of page 4. The purposes of the recodification used to say eliminating archaic, obsolete, or fundamentally unimportant provisions and that was deleted. Now it's just eliminating provisions that are archaic or obsolete. Those are the changes and the issue before the Committee would be whether the Committee wishes to introduce this bill or something like it.

12:34 p.m.

Hearing no further discussion or testimony Representative McCann moved to file the bill on behalf of the Committee. Senator Steadman seconded the motion. The motion passed on a vote of 7-0 with Representative Dore, Senator Johnston, Representative Kagan, Representative McCann, Senator Roberts, Senator Steadman, and Representative Foote voting yes.

Representative Foote asked for sponsors. Representative Kagan agreed to be the sponsor in the House and Senator Johnston agreed to be the Senate sponsor and that the bill would start in the Senate. Mr. Morris asked if the Committee was interested in soliciting cosponsors. Representative Foote, Senator Steadman, Senator Roberts, Representative McCann, and Representative Dore agreed to be cosponsors.

12:37 p.m. – Jennifer Gilroy, Revisor of Statutes, Office of Legislative Legal Services addressed agenda item 4 – Publications Matters.

Ms. Gilroy said I'm here today to talk to you about three separate items that relate to publications. The first one is dealing with the copyright. I want to start by saying very clearly on the record that the state of Colorado does not copyright its laws. Anything about the laws in terms of the headnotes, the numbering, any of that sort of thing, we consider to be part of the public domain. However, pursuant to section 2-5-115, C.R.S., the Committee or its designee may register copyright in matters that are ancillary, publications that are ancillary, to the law such as our source notes, editors' notes, annotations, etc. Historically, our Office, on your behalf, has been registering a copyright with the federal copyright office every year for these publications for a long time. I'm coming to you today to ask you to consider whether or not you would like to suspend this practice. Here are the reasons I'm bringing it to your attention. One is that we put all of these publications up on the internet for free. They are accessible to the public. For that reason alone it's hard to argue that you have a protected interest in them. The second reason is that it's state employees who are creating these. It's not a contract for hire situation like some states that actually hire private publication companies to write their annotations for example on a contract for hire basis. Your staff actually writes all the source notes, editors' notes, annotations, etc., so it is actually taxpayer dollars that are paying for the creation of these original works. I would also point out that there are some, I don't know that I necessarily agree with this, but some might argue that things such as annotations are actually derivative works of the statute themselves and help the public in understanding and interpreting the law. That actually is the basis of a counterclaim and a lawsuit that was filed in federal district court in Atlanta, Georgia, where Georgia has sued publicresources.org, a nonprofit organization, for publishing their statutes and all their ancillary work. There hasn't been a ruling on it yet so I'm tracking it very closely and I'll keep you advised of the results on that particular case. I understand from a copyright attorney at Holland and Hart, Jessica Neville, that copyright protection subsists within the original works of authorship, so even if you don't register a copyright with the federal copyright office you can actually enforce it should you be so compelled to do so. We pay \$55 each year to register that copyright and about \$45 to ship the books out, the whole set of Colorado Revised Statutes, to the copyright office in Washington. My feeling is that it's not necessary. We would probably never want to try to enforce a copyright on these kinds of publications because we want the people to have access to them. We put them online without charge for that very reason. It seems as I keep jumping through these hoops every year I keep thinking do you really want to continue on with the practice of registering a copyright. I'm seeking your direction on that. I'm happy to continue doing it, but if you're of the same opinion that really it's time we don't need to, I would be happy to suspend that practice. It's just about this time of year that we do that.

12:41 p.m.

Hearing no further discussion or testimony Senator Steadman moved that the Committee establish a policy where we do not copyright the ancillary materials that are prepared by staff to accompany our statutes. Representative McCann seconded the motion. The motion passed on a vote of 7-0 with Representative Dore, Senator Johnston, Representative Kagan, Representative McCann, Senator Roberts, Senator Steadman, and Representative Foote voting yes.

Ms. Gilroy said I'll move on to my second issue that has to do with our database that we actually publish the C.R.S. from. Again I want to point out that we put our C.R.S. online, free of charge, for public access. It's on the general assembly's webpage. We have it in both a PDF version that you can download by title and a searchable version that LexisNexis hosts on our behalf. However, when our office creates the statutory database each year we put in a lot of effort and a lot of work coding, formatting, inserting all of the new law, repealing all of the repealed law, and doing all the work that is needed each year after the conclusion of a legislative session. It actually takes us close to three months to get all that work done and we send the giant database by title to the LexisNexis, our contract publisher, who then formats it into book size, prints and binds it, and distributes it. However, we do sell this database on some rare occasions. We have three business interests that purchase the database and we charge between \$2,000 and \$6,000 depending on whether or not they want just the statutory information or if they want the statutory information with all the ancillary publications including source notes, editors' notes, annotations, indices, etc. Last year the Office realized about \$16,000 in revenue from that that goes to the general fund. We anticipate \$10,000 this year. We have three vendors currently. There was a time when we had up to eight vendors, but now we have just three. We do provide a valuable service. There is value added by the work that we do and it's not the law that we are selling. I want to be clear about this because there is some misconception about that in the public; we are not selling the law. What we are selling is a convenience, a package that we have coded, formatted, ensured the accuracy of, and done all the revision work on and you can publish from that database that we sell. Thomson Reuters, commonly known as West, the Colorado Bar Association, and Fastcase are the three entities that currently purchase it. I used to argue that there's a very good reason why we charge for it and I still believe that. I can actually argue both sides of this particular issue. I think that we've come to a point where the information sharing in this day and age is such that we want to make sure the public has access to Colorado's primary law that is accurate. The best way to make sure that is the case is to make our database available without cost for those business entities that are interested in using it to build search engines or other means of creating a product or a service for the public to search the law as well as other state's law

and federal law in an easy format. I am asking this Committee to consider whether or not they would recommend that I no longer charge for that. Again, it's only three vendors. Right now it's not a big deal either way, but I feel like we've come to a point in society and the level of information sharing that we're at that it's the perfect time to consider this. So I would put that before the Committee to think about and I would ask for a decision if you are ready for that at this point.

Representative Foote said I do have some thoughts on this particular issue and we've talked about this before and I, like you, could argue both ways. It's a lot different than putting up the statutes of course when you're talking about the value added. You mentioned that it takes about three months for the formatting and the coding. To me that seems like it's a significant value added. A lot of information is free, but a lot of information is still something that we charge for, it's still intellectual property. I see a distinction here, but I'm not sure if other members of the Committee see it the same way and I'd like to open it up for discussion.

Representative Kagan said I don't quite understand what we're selling to West and these folks. You are saying that this database, that we put the information on the internet, is being sold separately in a coded fashion rather than downloading it? Ms. Gilroy said the difference would be that we provide to West, for example, the electronic version of the entire database. They actually build their own database and they run a comparison because they want to know exactly what kinds of revision changes I've made that aren't evident from the bills. I have the authority to make certain revision changes. For example, if two bills created a new subsection (3) in the same section of law, I make one of them a subsection (4). West may not know which one I made a subsection (4) so they run this comparison and they see all those differences and can correct those. What you can get online if you're a member of the public is access to the law. If you go to the general assembly's website and you look at the C.R.S. you can scrape off one section at a time. If you wanted to build your own database, if you were Justia or the Colorado Bar Association creating that case product, it would be very laborious and difficult to scrape that off and have it in a format that you could do other things with, to combine it with other state's laws and create a product that might be very useful to the public. Whereas you could take our electronic database in SGML and move forward with that and create other products that would be very useful. We also do put up online a PDF version. Again that's not something that someone can work with very much. A lot of people do download information off of the PDF that we put up on the internet, but as you know there's nothing you can do to manipulate that data. A lot of these entities are pulling it off of our internet already, but those that want to know right off the bat that this is formatted and coded exactly like the state of

Colorado's official version will use the database. In fact, although there's only one official version, those red books are the official version of Colorado's primary law that a court can take official, judicial notice of, if you purchase and use the database you may, by statute, state in your publication that it's an officially sanctioned publication using the official text of the C.R.S. You have a little bit of a leg up in terms of reliability in the product you're producing. And West does do that in their publications.

Representative Foote said if it turns out that the sense of the Committee is that we should discontinue charging for this value added product, then you mentioned it would be a loss of \$16,000 or something to that effect. Would there be any other committee that this would need to go through since that would be \$16,000 less that's brought in, a very small part of the budget of course, but is there any procedure that would need to be followed other than just us as the Committee saying go forth and don't worry about charging for this? Ms. Gilroy said I do not believe so and the reason I say that is because back in 2005 the Committee made the decision to reduce the amount that was then being charged which was up to \$14,000 for the statutory database with all the ancillary publications. They reduced it down to the amounts you see today, that I've told you about, and there was no process like that at all. I'm actually anticipating with the three vendors that remain about \$10,000 in revenue this fiscal year. We invoice in the beginning of June, so I typically receive payment before July 1 so it would probably be in this current fiscal year. But no, I do not believe that's necessary. That's within the discretion of the Committee pursuant to the statute to set the amount of the fee as it's described in the statute and it's not specified as an amount in statute so we're not amending the statute at all, so I don't believe so.

Representative Kagan asked do you anticipate that if we stop charging more people will avail themselves of this resource and if we continue to charge maybe people will stop purchasing? In other words, will it have any effect on who gets this? Ms. Gilroy said I don't think people would stop purchasing by us continuing to charge. We have seen a decline. We had up to eight vendors, last year we had four, and this year we had three. There are various reasons for that. I don't think it's because of the charge, I may be wrong, but I don't think it is. If we stop charging I don't know how many people will come to the trough. I've wondered that. As I've said, we do put it up online and a PDF version. It's not difficult for us to be responsive should someone want the database, more people than the three vendors we currently have. We can very easily meet the need. I don't know; I'll keep you posted on that. It will be interesting to see how many people are listening today and will even know.

Representative McCann asked essentially is it your feeling that because this is a public product and your staff is paid by the taxpayers that this is something the public should not be charged for even if it's being used by a corporate entity? Because I know a lot of companies do charge for databases so I don't think that's inappropriate, but I'm just curious why you think we shouldn't charge. Ms. Gilroy said that is part of it and I think the other part of it is my concern that when a member of a public goes to the internet and they pull up what they think is Colorado primary law that it's accurate. That's my biggest concern, that accuracy. I don't want someone relying on something that isn't accurate. I think that if we make it more available for entities interested in creating electronic resources for folks searching law, including Colorado law, that have relied on our database it actually brings me comfort. And yes, it's because it is a public product. It's something that's created by state paid staff.

12:41 p.m.

Hearing no further discussion or testimony Representative McCann moved to discontinue charging vendors for the use of the C.R.S. database. Senator Johnston seconded the motion. Representative Dore said I want to make sure I heard the motion right. Was the motion to continue to charge vendors? Representative McCann said the motion was to discontinue. Representative Dore said okay, thank you. Senator Johnston said I just want to say quickly that I appreciate Ms. Gilroy bringing this. I think it is in the spirit of government to make it as open and accessible as possible in light of maybe de minimis charges and there are plenty of other ways to get around it. I think the spirit of saying let's make this maximally available to people at no cost to them is an improvement and I'm glad to support it. Thanks for doing this. Senator Steadman said I had a question just sitting here thinking about this. Is the database public record and if someone were to make a CORA request how would you respond? Ms. Gilroy said that has happened. Last fall we received an open records request. I don't remember exactly how it was worded, but it was essentially asking for an electronic version of the C.R.S. and source notes, editors' notes, annotations, all the ancillary publications. I am the custodian of record of such a record and we did in fact respond and provided the database to that requestor. Senator Steadman asked were they required to pay any fees for the storage media or paper copies? I'm assuming they wanted it electronically, so did you send that to them on a disc? Did they incur a cost? Ms. Gilroy said it's a huge file. I believe that we sent it through a zip file to the requestor and it was very little time. We normally charge for time, copies, CD, or whatever, and it was pretty easily handled. So no, we did not charge. Senator Steadman said I think that makes my vote very clear and very easy, thank you. The motion passed on a vote of 7-0 with Representative Dore, Senator Johnston,

Representative Kagan, Representative McCann, Senator Roberts, Senator Steadman, and Representative Foote voting yes.

Ms. Gilroy said thank you and I will keep you advised. If suddenly we're overwhelmed with requests I'll be coming back to you just to keep you informed. The last of the three issues I wanted to raise to your attention today is not a decision item for today, but I want to keep it on your radar. We have just entered into the fourth year of a five year publications contract with LexisNexis. As I mentioned, this contract is primarily for formatting, printing, binding, and distributing. We do all the editorial work in our Office. We have excellent legislative editors and revisors. The reason I'm bringing this up is because you will be at a decision point very soon here and you have a choice of either extending that existing contract for up to an additional five years or putting out to bid again. The last time this went out to bid was in 2011 and it was about a two-year process. I gave the Committee a timeline starting in February 2011 and a contract that became effective January 2013. This current contract will expire December 31, 2017. The statute requires the new contract, whether an extension or brand new, to be in effect at least six months prior to the expiration of the existing contract. Really our deadline is June 30, 2017. Just a little over a year. I'm coming to you for you to think about allowing us to continue with the existing contract. One of the compelling reasons I have is because behind the scenes we are changing. Staff is going about investigating and changing the method by which we draft our legislation and ultimately publish it. As you're aware we currently use Word Perfect as our drafting software and it's kind of a dinosaur. We love it because it shows coding and we live by our coding, but we have real concerns about it not being available in the future, that it will become obsolete, and also the fact that the macros that we use daily for our drafting purposes are becoming more and more tenuous in their relationship to Word Perfect as each generation of Word Perfect moves on. These macros were drafted in the 1980's, which seems like a long time ago. We're working with legislative council's IT staff to investigate the technology that is out there. We would like to be able to draft in a more agnostic, XML format that would not be wedded to a particular product that's subject to the market and that would also allow us to have a much more vibrant work horse for purposes of publication, that would automatically build our session laws potentially, that would automatically build amendments as we amend a document, and would automatically do enrolling. We think we can do a lot more than what we're doing currently with a Word Perfect drafting machine and a lot of manual effort in doing that publication work for three months after you all leave. I would like to really dedicate our resources and our staff time to working on that project which will be a multiyear project rather than redirecting energies toward the RFP process which will take a lot of our time, but it will also take a lot of your time, from about this fall through next session. Think about that. I will be

coming back to you in September with a timeline if you want to put it out to bid or more information about the tax and economic impact to the state and citizens of the state of Colorado if we were to just extend the existing contract.

1:01 p.m.

The Committee adjourned.