

A G E N D A

EXECUTIVE COMMITTEE OF THE LEGISLATIVE COUNCIL

House Committee Room 0112
State Capitol Building

Monday, June 20, 2005
9:00 a.m.

SUMMARY FOLLOWS AGENDA

Call to Order

- I. Discussion of FY 2004-05 Dues to Professional Organizations
 - *Kirk Mlinek, Director, Legislative Council Staff*

- II. Discussion of Rules Relating to Information Technology
 - *Michael Adams, Director, Legislative Information Services*

- III. Consideration of Deadline Requests for Interim Committees
 - *Dan Cartin, Deputy Director, Office of Legislative Legal Services*

- IV. Discussion of Judicial Review Commission Appointments
 - *Dan Cartin, Deputy Director, Office of Legislative Legal Services*

Executive Session

- V. Legislative Service Agency and Director Performance Evaluations

Other Business

Adjourn

Final

STAFF SUMMARY OF MEETING

COMMITTEE ON EXECUTIVE COMMITTEE OF THE LEGISLATIVE COUNCIL

Date:	06/20/2005	ATTENDANCE
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Time:	09:09 AM to 11:04 AM	Anderson	X
		Gordon	X
Place:	HCR 0112	Madden	X
		Stengel	*
This Meeting was called to order by		Romanoff	X
	<u>Senator Fitz-Gerald</u>	Fitz-Gerald	X
This Report was prepared by			
	<u>Cathy Eslinger</u>		
X = Present, E = Excused, A = Absent, * = Present after roll call			

Bills Addressed:		Action Taken:	
Dues to Professional Organizations		-	
IMC Rules		-	
Deadline for Interim Committees		-	
Judicial Review Commission		-	
Salary Survey Information		-	

09:09 AM -- Call to Order

The meeting was called to order by the chairman, Senator Fitz-Gerald. Senator Fitz-Gerald recognized the presence of the newly elected Senator Minority Leader, Senator Anderson. Members present were Senators Anderson and Gordon; and Representatives Madden and Romanoff. Representative Stengel was present after roll call. Staff members present were Dan Chapman, Assistant Director for Administration, Legislative Council Staff, and Cathy Eslinger.

09:09 AM -- Discussion of FY 2004-05 Dues to Professional Organizations

Dan Chapman, Assistant Director for Administration, Legislative Council Staff, reviewed the General Assembly's dues payment status for FY 2004-05 for four professional organizations: the Council of State Governments, the National Conference of State Legislatures, the Education Commission of the States, and the Energy Council. A memo summarizing the balances was provided (Attachment A). Mr. Chapman noted that the amounts due to the Education Commission of the States and the Energy Council comprise the greatest portion of the balance. The balance of total outstanding dues for all four organizations is \$146,976. Senator Fitz-Gerald commented on the responsibility that she feels the General Assembly has to remit the payments. Senator Anderson asked whether there was a reserve to cover all of the outstanding balances. Mr. Chapman indicated that sufficient year-end moneys exist to pay the total outstanding balance.

BILL:	Dues to Professional Organizations		
TIME:	09:13:00 AM		
MOVED:	Anderson		
MOTION:	Moved to approve full payment of the General Assembly's outstanding balance for dues to professional organizations. The motion passed without objection.		
SECONDED:			
			VOTE
		Anderson	
		Gordon	
		Madden	
		Stengel	
		Romanoff	

Not Final YES: 0 NO: 0 EXC: 0 ABS: 0 FINAL ACTION: **Pass Without Objection**

09:15 AM -- Discussion of Rules Relating to Information Technology

Michael Adams, Director, Legislative Information Services (LIS), discussed a notice of intent for rule-making by the Commission on Information Management (IMC), pursuant to its statutory authority in Section 24-37.5-202, C.R.S. In his presentation, Mr. Adams referred to a memorandum that was provided to the committee (Attachment B) and said that upon review of the IMC draft rules, the Legislative Management Team and the LIS staff believe that there may be specific areas of concern with the draft rules as currently written. He reviewed three specific issues of concern in the draft rules:

- 1) requirements for the filing of documentation for annual Information Technology (IT) planning, IT life cycle management, security, contingency and disaster recovery, IT systems, and rule-compliance. The draft rules authorize the IMC to determine the "form, content, and due date(s)" for such filings. Mr. Adams noted that in the past, these items were subject to collective consultation among the IT directors and that the process has not taken into consideration the timing of the legislative session.
- 2) authorization for the IMC to approve or reject IT procurement for the General Assembly on the basis of its alignment and/or compliance with IMC plans, policies, and directives, which power could impede the General Assembly's prerogatives to establish IT planning and goals; and
- 3) potential extension of the IMC's authority concerning procurement into the administration and policies of agencies. The example of password policies was cited.

Mr. Adams requested a decision by the Executive Committee concerning LIS representation of the General Assembly at a public hearing on the IMC draft rules on June 30, 2005, at which requests for amendments to the rules could be made. Senator Fitz-Gerald said that she feels that there are issues of concern, as raised by Mr. Adams. Representative Madden advocated representation at the rule-making hearing and requested that the Office of Legislative Legal Services look at statutes to see if there are issues that need to be addressed legislatively.

Mr. Adams said that with the direction given to him at the meeting, he would take a look at the concerns represented in the memorandum and would show the Executive Committee members plans for requests for amendments to the draft rules before he attended the public hearing. By consensus, the committee approved Mr. Adams' attendance at the public hearing to represent the General Assembly.

09:21 AM

Mr. Adams made further comments in response to questions about the legislative calendar and the budget request cycle for other agencies. He noted that other agencies begin a budget request cycle approximately six months prior to the legislative branch.

09:23 AM -- Consideration of Deadline Requests for Interim Committees

Dan Cartin, Deputy Director, Office of Legislative Legal Services (OLLS), presented a memorandum outlining a proposed policy for interim bill requests (Attachment C). He noted that these guidelines are similar to those adopted by the Executive Committee for the 2001 through 2004 interims. Mr. Cartin walked through the guidelines, which include the following:

- 1) No later than August 1, or the first interim committee meeting, whichever is later, the chair shall set a date by which all bill requests must be submitted to the Office of Legislative Legal Services and the meeting date at which the bill drafts will be considered and/or approved by the committee;
- 2) The committee shall ensure that no fewer than 21 days separate the deadline date for making bill requests and providing drafting information and the date for committee consideration and approval of the bills;
- 3) The chair shall establish specific guidelines for making bill requests, and to the extent possible, ensure that any bill request is made during a committee meeting and with the support of a majority of committee members prior to the bill being drafted; and
- 4) Interim committees are encouraged to consider bill drafts at one meeting and approve final proposed legislation at a subsequent meeting in order to allow committee members to see bill drafts in final form. The chair shall ensure that the meeting date which bill drafts will be considered and/or approved is no fewer than 14 days prior to the November 15, 2005, Legislative Council meeting.

Mr. Cartin noted that the purpose of the policy is to allow sufficient time for high quality bill drafting and to ensure that interim committee members have sufficient time to debate and consider potential legislation. He said that the guidelines allow committee members to see bill drafts

and gain a full understanding of the recommendations.

09:27 AM

Senator Fitz-Gerald asked for clarification on final approval of bill drafts and said that she wants to ensure that final bill drafts are considered at one meeting. Mr. Cartin said that the current wording does encourage consideration of bill drafts at one meeting.

BILL:	Deadline for Interim Committees
TIME:	09:29:00 AM
MOVED:	Gordon
MOTION:	Moved that the Executive Committee adopt the policy interim committee timetable for requesting draft legislation established in the Office of Legislative Legal Services memorandum dated June 16, 2005. The motion passed without objection.
SECONDED:	
	VOTE
	Anderson
	Gordon
	Madden
	Stengel
	Romanoff
	Fitz-Gerald
Not Final YES: 0 NO: 0 EXC: 0 ABS: 0 FINAL ACTION: Pass Without Objection	

09:30 AM -- Discussion of Judicial Review Commission Appointments

Mr. Cartin provided background on appointments to the State Commission on Judicial Performance and distributed a memorandum (Attachment D). Mr. Cartin provided history on appointments to the Commission, which are for four-terms terms, and the fact that appointments were made that conflict with the statutory provisions in Section 13-5.5-102 (1), C.R.S., that appointments for full terms and for any vacancies should be made so as to expire on November 30 in even-numbered years. In 1989 and 1994, the Speaker of the House and the Senate President, respectively, made appointments for four-year terms, terms that would expire in an odd-numbered year, inconsistent with statute. Appointments were subsequently made in 2001 that continued the inconsistency.

Mr. Cartin explained that in December 2004, Senator Andrews requested the Office of Legislative Legal Services (OLLS) to respond to issues regarding the removal of a current appointee or the extension of a term in order to bring the term into compliance with the statute. The OLLS provided a legal opinion determining that: the statute does require that members serve four-year terms that should expire on the same date in an even-numbered year; and that there does not appear to be any constitutional provision, statutory provision, or case law limiting the authority of the appointing authority to correct a term under these circumstances. Former Senate President Andrews and former House Speaker Spradley replaced the members that had been appointed for terms expiring on November 2005, with members for terms to expire in November 2008. Subsequently, President Fitz-Gerald and Speaker Romanoff rescinded these appointments and extended the terms of the prior members, advocating that the more appropriate method of bringing the terms into compliance with the statute is to extend, rather than shorten the terms of existing members.

The issue before the Executive Committee concerned whether a memorandum prepared by the Office of Legislative Legal Services in December 2004 concerning the authority of the Senate President to make a corrective appointment to the Commission could provide the basis for argument that the Executive Committee *should not* seek judicial clarification of the authority of the Senate President and the Speaker of the House to make corrective appointments. The memorandum concludes that the question of seeking judicial clarification of the authority to make corrective appointments and the authority to reconsider those corrective appointments are both issues that are appropriate for consideration by the Executive Committee and that "it appears to be in the best interests of the General Assembly and in the best interests of the Commission to resolve these separate issues through clarification by the courts."

Mr. Cartin said that the Commission has not been able to conduct business and is waiting for determinations as to which appointees should participate on the Commission. In seeking resolution of this process, President Fitz-Gerald and Speaker Romanoff have requested that interrogatories be submitted to the Colorado Supreme Court on this matter. A draft resolution and a copy of draft alternative interrogatories for consideration were distributed (Attachments E and F). The draft resolution authorizes the Committee on Legal Services to retain legal counsel to

initiate a judicial proceeding through interrogatories submitted to the Colorado Supreme Court.

09:38 AM

Representative Stengel asked Mr. Cartin about the appropriateness of the Executive Committee considering the issue when the Executive Committee, as a body, is not the appointing authority. Mr. Cartin said that the Judicial Commission is unable to act and is seeking guidance. He stated that with the Executive Committee serving in its capacity to consider legislative management issues, it is appropriate for the Committee to consider the issue.

09:41 AM

Senator Fitz-Gerald outlined her reasons for investigating this issue and the questions regarding authority to remove members without cause. Senator Anderson discussed whether separation of powers issues exist and asked whether legislation could correct the problems when the General Assembly convenes in January 2006. Mr. Cartin said that waiting until the legislative session is an option. Senator Fitz-Gerald made further comments about timeliness of a resolution.

09:42 AM

Representative Madden moved that the Executive Committee adopt the resolution authorizing the initiation of judicial proceedings through interrogatories. She said that statutory changes may be considered during the 2006 legislative session as well. Senator Fitz-Gerald said that consideration of legislative resolution during the 2005 session was discussed, but she concluded that it could be an overly divisive issue.

09:44 AM

Mark Grueskin, Issacson Rosenbaum, P.C., came to the table to provide additional information about the issues. He discussed the fact that the Commission did try to meet recently and was unable to resolve the membership issues and or to take any formal action. Mr. Grueskin responded to earlier questions about separation of powers issues. He also discussed the timeliness issues that are impacting the Commission's work.

09:47 AM

Senator Anderson made further comments about resolution of the issue by statute. Senator Fitz-Gerald said that she had discussed such a legislative resolution with the former Senate Minority Leader during the 2005 legislative session. Mr. Grueskin said that two issues need to be addressed by the courts: 1) Does any Speaker or President have the authority to shorten a term? 2) If so, does every Speaker or President have authority to limit those terms?

09:50 AM

Representative Madden asked if there were any disadvantages to requesting interrogatories before taking legislative action. Mr. Grueskin said that the Supreme Court may provide a full answer, a partial answer, or it may not accept the interrogatories, and then the General Assembly could go forward from there.

09:51 AM

Mr. Cartin responded to a question raised by Speaker Romanoff concerning who is the suitable party to submit the interrogatories. He said that this issue is still open to question and that legal counsel would be consulted on this matter. Mr. Cartin confirmed that OLLS had not yet found an historical precedent for a President or Speaker submitting interrogatories.

09:54 AM

Representative Stengel commented further on the appropriateness of the General Assembly submitting interrogatories. He said that having the General Assembly submit the interrogatories may provide weight that is not appropriate for the issue.

09:55 AM

Representative Madden reminded the committee that the draft resolution and interrogatories before the Executive Committee leave open the question of who will submit them.

TIME:	09:55:00 AM	
MOVED:	Madden	
MOTION:	Renewed her motion that the Executive Committee adopt the draft resolution as presented to the committee. The motion passed on a 4-2 roll call vote.	
SECONDED:		
		VOTE
	Anderson	No
	Gordon	Yes
	Madden	Yes
	Stengel	No
	Romanoff	Yes
	Fitz-Gerald	Yes
Not Final YES: 4 NO: 2 EXC: 0 ABS: 0 FINAL ACTION: PASS		

09:56 AM -- Salary Survey Information

Mr. Chapman, Legislative Council, returned to the table prior to the Committee's consideration of service agency performance evaluations to discuss information provided in memos to the Executive Committee. One memorandum updates information on salaries paid to individuals who hold public agency management positions similar to the General Assembly's four service agency directors: cabinet-level positions and senior executives (Attachment G). He reviewed the information available for FY 2004-05. Senator Fitz-Gerald requested clarification of a percentage increase given to cabinet members for each year of service in the Governor's cabinet. Mr. Chapman also reviewed salaries for federal positions.

BILL:	Salary Survey Information	
TIME:	10:02:00 AM	
MOVED:	Anderson	
MOTION:	Moved that the Executive Committee go into executive session under Section 24-6-402, C.R.S., to evaluate the performance of the legislative service agency directors and service agencies. The motion passed on a 6-0 roll call vote.	
SECONDED:		
		VOTE
	Anderson	Yes
	Gordon	Yes
	Madden	Yes
	Stengel	Yes
	Romanoff	Yes
	Fitz-Gerald	Yes
Not Final YES: 6 NO: 0 EXC: 0 ABS: 0 FINAL ACTION: PASS		

10:03 AM

The Executive Committee went into executive session under Section 24-6-402, C.R.S., to evaluate the performance of the legislative service agency directors and service agencies.

11:03 AM

Senator Anderson moved that the Executive Committee come out of executive session. There was no objection to the motion.

11:04 AM

With no further business before the committee, the committee adjourned.