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AGENDA

Committee on Legal Services

Tuesday, October 21, 2014

10:00 a.m.

House Committee Room 0112

(Lunch will be provided for the Committee members)

1. Discussion of Chair vacancy.
2. Review of New Rules (rules adopted or amended on or after November 1, 2013, and before November 1, 2014, and scheduled to expire May 15, 2015):
 - a. Rules of the State Parole Board, Department of Corrections, concerning the state board of parole and parole procedures, 8 CCR 1511-1 (LLS Docket No. 140029, SOS Tracking No. 2013-01039).
Staff: Michael Dohr
(Status: Contested)
 - b. Rules of the State Board of Education, Department of Education, concerning administration of the "Colorado Educator Licensing Act of 1991", 1 CCR 301-37 (LLS Docket No. 140250; SOS Tracking No. 2013-01195).
Staff: Julie Pelegrin

(Status: Uncontested)

3. Update on the work of the Legislative Digital Policy Advisory Committee.
Dan Cordova, Colorado Supreme Court Librarian, Chair of LDPAC Committee.
Staff: Jennifer Gilroy, Revisor of Statutes
4. Discussion of a legislative change to section 24-4-103 (8) (e), C.R.S., to delete the requirement of notification of co-sponsors under the S.B. 13-030 process when executive agencies adopt rules implementing newly enacted legislation.
Staff: Debbie Haskins
5. Discussion of a COLS Handbook and Input from the COLS on a Policy in the Handbook for Requests to Review a Rule Out of Cycle.
Staff: Debbie Haskins
6. Briefing on pending lawsuits with attorneys for the General Assembly.
(Note: The Committee will go into executive session pursuant to section 24-6-402 (3) (a) (II), C.R.S., for the purpose of conducting attorney/client discussions of pending litigation with attorneys from Holland and Hart and Heizer Paul.)
7. Other.

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Jennifer A. Berman

MEMORANDUM

TO: Committee on Legal Services

FROM: Michael Dohr, Office of Legislative Legal Services

DATE: October 14, 2014

SUBJECT: Rules of the State Board of Parole, Department of Corrections, concerning the state board of parole and parole procedures, 8 CCR 1511-1 (LLS Docket No. 140029; SOS Tracking No. 2013-01039).¹

Summary of Problem Identified and Recommendation

Section 17-2-201 (4) (f), C.R.S., authorizes the state board of parole ("parole board") to conduct a file-review parole hearing in only two circumstances. Parole board Rule 10.02 authorizes file review parole hearings in two additional situations. The parole board lacks the statutory authority to authorize additional circumstances for file reviews. **Therefore, we recommend that Rule 10.02 of the rules of the state board of parole concerning parole application file reviews not be extended.**

¹ Under section 24-4-103, C.R.S., the Office of Legislative Legal Services reviews rules to determine whether they are within the promulgating agency's rule-making authority. Under section 24-4-103 (8) (c) (I), C.R.S., the rules discussed in this memo will expire on May 15, 2015, unless the General Assembly acts by bill to postpone such expiration.

Analysis

Rule 10.02 authorizes file reviews in circumstances that are not authorized by statute.

Section 17-2-201 (4) (f), C.R.S., authorizes the parole board to conduct a parole release review without the presence of the inmate (file review) in only two situations:

17-2-201. State board of parole. (4) The board has the following powers and duties:

(f) (I) To conduct a parole release review in lieu of a hearing, without the presence of the inmate, if:

(A) The application for release is for special needs parole pursuant to section 17-22.5-403.5, and victim notification is not required pursuant to section 24-4.1-302.5, C.R.S.; or

(B) A detainer from the United States immigration and customs enforcement agency has been filed with the department, the inmate meets the criteria for the presumption of parole in section 17-22-404.8, and victim notification is not required pursuant to section 24-4.1-302.5, C.R.S.

(II) The board shall notify the inmate's case manager if the board decides to conduct a parole release review without the presence of the inmate, and the case manager shall notify the inmate of the board's decision. The case manager may request that the board reconsider and conduct a hearing with the inmate present.

File reviews are permitted: (1) when the inmate is seeking special needs parole and victim notification is not required; and (2) when the U.S. immigration and customs enforcement agency files a detainer with the department for the inmate, the inmate meets the presumption for parole eligibility, and victim notification is not required. In those cases, the parole board notifies the inmate's case manager and the case manager notifies the inmate that there will be a file review. The case manager can request that the parole board reconsider and conduct the hearing with the inmate present.

Rule 10.02 authorizes file reviews, in addition to those statutorily authorized, in two situations: first, when the inmate has been convicted of a class I code of penal discipline infraction within twelve months of the scheduled parole hearing, and second, when the inmate is within six months of his or her mandatory release date.

10.02 Parole Application File Review Regarding Inmates Convicted of a Class I COPD Infraction and Inmates within Six Months of Mandatory Release Date (MRD).

A. Parole application reviews for an Inmate may be conducted by file review without the presence of the Inmate under the following conditions, in addition to other statutory provisions:

(1) The Inmate has been convicted of a Class I Code of Penal Discipline infraction within 12 months of a scheduled Parole hearing; and/or

(2) The Inmate is within six months of his or her MRD.

B. The Board shall provide electronic notice to the Inmate's Case Manager and to the CDoC VSU of the Board's decision to conduct a file review without the presence of the Inmate at least sixty days prior to the Inmate's next scheduled annual Parole application review.

C. The Board shall consider all testimony from the Victim prior to reaching a Release decision.

D. Immediately upon completion of the file review and Release decision, the Board shall electronically issue the Notice of Colorado Parole Board Action.

E. Within twenty-four hours, the Board's release decision shall be conveyed to the VSU and to the Inmate's Case Manager.

The General Assembly has specifically authorized the circumstances when a file review is appropriate and the conditions that apply to file reviews. Moreover, the General Assembly has not provided the parole board with any specific authority² to create additional circumstances when a file review may be conducted. Therefore, the General Assembly has the exclusive authority to determine when a file review may be conducted, and Rule 10.02 thus lacks statutory authority.

We therefore recommend that Rule 10.02 of the rules of the state board of parole not be extended.

² The parole board's rulemaking authority is attached as **Addendum A**.

Addendum A

17-2-201. State board of parole. (3) The chairperson, in addition to other provisions of law, has the following powers and duties:

(a) To promulgate rules governing the granting and revocation of parole, including special needs parole pursuant to section 17-22.5-403.5, from correctional facilities where adult offenders are confined and the fixing of terms of parole and release dates. All rules governing the granting and revocation of parole promulgated by the chairperson shall be subject to the approval of a majority of the board and shall be promulgated pursuant to the provisions of section 24-4-103, C.R.S.

(b) To promulgate rules for the conduct of board members, the procedures for board hearings, and procedures for the board to comply with state fiscal and procurement regulations. All administrative rules and regulations promulgated by the chairperson shall be promulgated pursuant to the provisions of section 24-4-103, C.R.S.

Brandon Shaffer, Chairperson
Rebecca Oakes, Vice-Chairperson
Denise Balazic
Dr. Marjorie Lewis
Joe Morales
John O'Dell
Alfredo Pena



Colorado Board of Parole
1600 W. 24th St., Bldg 54
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brandon.shaffer@state.co.us

MEMORANDUM

Date: October 9, 2014
To: Committee on Legal Services
From: Brandon Shaffer, Colorado Board of Parole, Chairperson
Subj.: 8 CCR 1511-1, Section 10.02 (A)

Honorable Members of the Committee on Legal Services:

Thank you for the opportunity to submit a Memorandum on the Parole Board's analysis of one of its recently updated rules. The Parole Board ("Board") conducted a wholesale revision of its rules which had been in place since 2002. The rules were badly in need of revision given the number of statutes that had been added or amended since 2002. The Board conducted significant outreach to stakeholders and received ample comments on its proposed revisions. The issue before the Committee today is a narrow one: whether the relevant statutes afford the Board the ability to conduct a file review in cases where the inmate has been convicted of a Class I infraction within 12 months of a scheduled Parole Hearing, and/or the inmate is within six months of his or her Mandatory Release Date. The Board believes the statutory framework allows for this legal conclusion.

The Board adopted the following rule on December 30, 2013:

A. Parole application reviews for an Inmate may be conducted by file review without the presence of the Inmate under the following conditions, in addition to other statutory provisions:

(1) The Inmate has been convicted of a Class I [Code of Penal Discipline] infraction within 12 months of a scheduled Parole Hearing; and/or

(2) The Inmate is within six months of his or her [Mandatory Release Date].

8 CCR 1511-1, Section 10.02.

The Office of Legislative Legal Services argues that, since there is a subsection of law that specifically spells out circumstances under which file reviews may be conducted (*see* section 17-2-201 (4) (f) (I), C.R.S.), all instances where the Board might conduct a file review must be authorized under that subsection. The Board respectfully disagrees.

First, there is already an exception in law that does not fall under § 17-2-201 (4) (f) (I), C.R.S. Specifically, § 17-2-201 (4) (c), C.R.S. provides an exception for "exigent circumstances." This contradicts the OLLS argument that all file reviews must be authorized under the same provision.

Second, the law only specifically requires a parole hearing for an inmate's initial interview with the Board:

Whenever an inmate initially applies for parole, the board shall conduct an interview with the inmate. At such interview at least one member of the board shall be present See Section 17-2-201 (9) (a) (I), C.R.S.

The statute further states:

*If the board refuses an application for parole, the board shall **reconsider** the granting of parole to such person within one year thereafter, or earlier if the board so chooses, and shall continue to **reconsider** the granting of parole each year thereafter until such person is granted parole or until such person is discharged pursuant to law See Section 17-2-201 (4) (a), C.R.S., (emphasis added).*

It is the Board's position that reconsideration may be made through a file review under the circumstances set forth in the Board's rules. The qualifying language, "in addition to other statutory provisions," ensures compliance with the initial hearing requirement.

Finally, in cases of inmate misconduct, § 17-22.5-403 (1), C.R.S., explicitly authorizes the Executive Director of the Colorado Department of Corrections ("CDoC") to promulgate guidance for extending an inmate's parole eligibility date:

The executive director shall promulgate rules and regulations concerning when and under what conditions any inmate's parole eligibility date may be extended. Such rules and regulations shall be promulgated in such a manner as to promote fairness and consistency in the treatment of all inmates.

CDoC is the parent Department under which the Parole Board is housed. The Board's Rules and Regulations, updated from the previously adopted 2002 rules, essentially exercise the authority granted under this section.

It is worth noting that the Board invited and received a significant number of comments from stakeholders. There was no disagreement from knowledgeable stakeholders on the language proposed by the Board.

Attached for review and consideration are the following exhibits: (A) opinion of the Attorney General regarding the revised Board rules and regulations; (B) current list of Class I COPDs; (C) list of the “interested parties” who were invited to comment on the rules through the rule-making process; and (D) memorandum from the Board regarding implementation of the file review policy.

EXHIBIT A (Attorney General's Letter)

11/19/13

AGOpinion Confirmation



[Attorney General Home](#)

[eDocket](#)

[Logout](#)

Attorney General Opinion Confirmation

The Attorney General Opinion has been uploaded to the eFiling system.



JOHN W. SUTHERS
Attorney General
CYNTHIA H. COFFMAN
Chief Deputy Attorney General
DANIEL D. DOMENICO
Solicitor General

STATE OF COLORADO
DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL

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Tracking Number: 2013-01039

OPINION OF THE ATTORNEY GENERAL RENDERED IN
CONNECTION WITH THE RULES ADOPTED BY THE
STATE BOARD OF PAROLE
ON 11/01/2013

8 CCR 1511-1

Rules Governing the State Board of Parole and Parole Proceedings

The above-referenced rules were submitted to this office on 11/04/2013 as required by section 24-4-103, C.R.S. This office has reviewed them and finds no apparent constitutional or legal deficiency in their form or substance.

November 19, 2013 16:31:33 MST

JOHN W. SUTHERS
Attorney General
by DANIEL D. DOMENICO
Solicitor General

[Terms and Conditions](#)

EXHIBIT B
(Class I COPD)

COPD CLASS DESCRIPTIONS:

CLASS I OFFENSES:*

- * **Attempt or Complicity** - The charges of complicity and/or attempt may be used in conjunction with any appropriate Class I offense and the hearing officer or board may impose the same penalty prescribed for the substantive offense.

Murder

Robbery/Extortion

Manslaughter

Possession of Dangerous Contraband

Kidnapping

Dealing in Dangerous Drugs

Assault on Staff

Possession of Key or Key Pattern

Assault on Offender

Possession of Escape Paraphernalia

Fighting

Tampering with Locks or Security Items

Escape with Force

Refusal to Submit to Drug Test

Escape Without Force

Threats or Intimidation of Public Officials

Engaging in Riot

Solicitation of DOC Employee, Contract Worker, or Volunteer

Inciting to Riot

Misconduct

Rape

Unauthorized Possession of Portable Electronic

Arson

Communication Device

Hazardous Liquid Assault on Staff

.....

EXHIBIT C
(List of Interested Parties)

Individual	Company / Organization Name	Email
Michael Dell	Colorado CURE	spikeco558@wmconnect.com
Dianne Trimmutois-Lawson	Colorado CURE	dianne@coloradocure.org
Brother Jeff	Brother Jeff's Cultural Center	brotherjeff1@earthlink.net
Joe Cannata	Voices of Victims	KaKnotA@aol.com
Greg Mauro	Division of Community Corrections, City and County of Denver	greg.mauro@denvergov.org
Monica Crocken	CDJC Victim Services Unit	monica.crocken@state.co.us
Hassan A. Latif CACII, Executive Director	Second Chance Center/TAV	hassanbjchi@hotmail.com
Christie Doanier	Colorado Criminal Justice Reform Coalition	christie@ccjrc.org
Glenn Tapia	Colorado Division of Criminal Justice	glenn.tapia@state.co.us
Lisa Calderon	Denver Community Reintegration	liscalderon41@gmail.com
Rudy Gonzales	Servicio de la Raza	rudy2@serviciodelaraza.org
Maureen Cain	Colorado Criminal Defense Bar	caimuraya@aol.com
Denver District Attorney's Office	Steven Siegel	sss@denverda.org
Denver District Attorney's Office	Maggie Conboy	MNC@denverda.org
Erin Jemison, SOMB Chair	Colorado Coalition Against Sexual Assault (CCASA)	director@ccasa.org
Pat Harris	AFC (Advocates for Change)	phanis7712@msn.com
Carolyn Turner	AFC (Advocates for Change)	ctcells4u@aol.com
Glenice Martinez	AFC (Advocates for Change)	sggsrout@yahoo.com
Howie Close	Good News Jail & Prison Ministry	howie.close@woodmenvalley.org
Jan Quick	Prison Fellowship	Jan_Quick@pfm.org
Rebecca Rollins	Mercy Today Ministries	mercytoday2@aol.com
Mary Ellen Joanson	Pendulum Foundation	maevellen@pendulumfoundation.com
Mark Silverstein	ACLU - Denver	msilverstein@aclu-co.org
Lisa Owen	Prison Law Project	liso@coloradoprisonlawproject.org
Steve Hager	Interim Director, Div. of Adult Parole, Community Corrections and Youthful Offender System	steve.hager@state.co.us
Jackie McCall	Administrative Officer for Offender Services	jacqueline.mccall@state.co.us
Alison Morgan	Deputy Director of Administration	alison.morgan@state.co.us
Susan White	Deputy Director, Division of Parole and Community Corrections	
Nancy Lewis	Colorado Organization for Victim Assistance (COVA)	ransutton@aol.com
Christine Murphy	Colorado Center on Law and Policy	cmurphy@ccclpcolorado.org
Jennifer Clouse	Mothers Against Drunk Driving (MADD)	Jennifer.clouse@madd.org
Joe Cannata	Parents of Murdered Children (POMC)	KaKnotA@aol.com
Rob Wells	Families of Homicide Victims and Missing Persons (FOHVAMP)	rwells@unresolvedhomicides.org
Kathy Izor	See CO CURE	

EXHIBIT C-2
(List of Interested Parties con't.)

Individual	Company / Organization Name	Email
Independence Institute	Mike Krause, Vice President of Operations & Justice Policy Center Director	mkrause@i2i.org
Bell Policy Center		
Pendulum Foundation	See Mary Ellen Johnson	
CCA Bent County Correctional Facility	PIO	Keith.Proctor@cca.com
CCA Crowley County Correctional Facility	PIO	Marty.Fleischacker@cca.com
CCA Kit Carson Correctional Center	PIO	Todd.Holmes@cca.com
CFC Cheyenne Mountain Re-Entry Center (CMRC)	Ron Murray, Warden	Ron.Murray@cccincil.com
Colorado District Attorney's Council (CDAC)	Craig Evans	

EXHIBIT D
(Memorandum Concerning Implementation of File Review Policy)

Brandon Shaffer, Chairperson

Rebecca Cakes, Vice-Chairperson
Denise Balazic
Joe Morales
John O'Dell
Alfredo Pena
Dr. Anthony Young



Colorado Board of Parole

1600 W. 24th St., Bldg 54
Pueblo, CO 81003

MEMORANDUM

Date: January 7, 2014
To: Colorado Department of Corrections
From: Brandon Shaffer, Colorado Board of Parole, Chairperson
Subj.: Parole Application File Review Regarding
Inmates Convicted of a Class I COPD Infraction and
Inmates Within Six Months of Mandatory Release Date

In accordance with the provisions of section 17-2-201 (4) (a), C.R.S. (2014), and the Rules governing the State Board of Parole and Parole Proceedings, 8 CCR 1511-1 (2014), it is the policy of the State Board of Parole to conduct a parole application interview with an inmate within ninety days prior to the inmate's first Parole Eligibility Date (PED). This initial parole application interview may be conducted by video conferencing, telephone, or face-to-face.

Subsequent parole application reviews for an inmate may be conducted by file review without the presence of the inmate under the following conditions (in addition to other statutory provisions):

(a) The inmate has been convicted of a Class I Code of Penal Discipline infraction within 12 months of a scheduled parole hearing by the board; or

(b) The inmate is within six months of his or her Mandatory Release Date (MRD).

The board shall provide electronic notice to the inmate's case manager and to the Department of Corrections Victim Services Unit (VSU) of the board's decision to conduct a file review without the presence of the inmate at least sixty days prior to the inmate's next scheduled annual parole application review. In accordance with section 17-2-214, C.R.S. (2014), this will afford sufficient time for VSU to notify victims of crimes (or their representatives) in order to exercise their right to appear personally, telephonically, or provide written input regarding this file review proceeding. The board shall consider all expressed views received from victims of crimes prior to reaching a parole release decision. Immediately upon completion of the file review and release decision, the board shall electronically issue the Notice of Colorado Parole Board Action. Within twenty-four hours, the board's release decision shall be conveyed to the VSU and to the inmate's case manager. The VSU shall inform the victims of crime (or their representative) of the board's decision. The case manager shall notify the inmate of the board's decision.

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STAFF ATTORNEY
Jennifer A. Berman

MEMORANDUM

TO: Committee on Legal Services

FROM: Julie Pelegrin, Office of Legislative Legal Services

DATE: October 14, 2014

SUBJECT: Rules of the State Board of Education, Department of Education, concerning administration of the "Colorado Educator Licensing Act of 1991", 1 CCR 301-37 (LLS Docket No. 140250; SOS Tracking No. 2013-01195).¹

Summary of Problem Identified and Recommendation

Section 22-60.5-111 (9), C.R.S., directs the Department of Education (Department) to issue a career and technical education authorization to a person who holds a career and technical education credential issued by an institution of higher education within the state system of community and technical colleges. But the State Board of Education (State Board) Rule 4.04 conflicts with the statute because it authorizes the Department to issue a career and technical education authorization to a person who meets requirements established by the Department that apparently do not include holding a credential issued by an institution of higher education. **We therefore recommend that Rule 4.04 of the rules of the State Board concerning administration of the "Colorado Educator Licensing Act of 1991" not be extended.**

¹ Under section 24-4-103, C.R.S., the Office of Legislative Legal Services reviews rules to determine whether they are within the promulgating agency's rule-making authority. Under section 24-4-103 (8) (c) (I), C.R.S., the rules discussed in this memo will expire on May 15, 2015, unless the General Assembly acts by bill to postpone such expiration.

Analysis

Rule 4.04 conflicts with §22-60.5-111 (9), C.R.S., because it does not require a person who applies for the authorization to hold a credential issued by an institution of higher education.

Under Colorado law, each teacher who is employed by a school district must hold either a license or an authorization. The Department issues these licenses and authorizations based on the requirements specified in the "Colorado Educator Licensing Act of 1991", article 60.5 of title 22, C.R.S., and in rules that the State Board promulgates.

Section 22-60.5-111, C.R.S., describes the types of authorizations that the Department may issue. Subsection (1) of this section states that the Department may issue authorizations to persons "who meet the qualifications prescribed by this section and by the rules" of the State Board.

Subsection (9) of §22-60.5-111, C.R.S., specifically describes the career and technical education authorization as follows:

22-60.5-111. Authorization - types - applicants' qualifications - rules. (9) Career and technical education authorization. (a) The department of education may issue a provisional career and technical education authorization to a **person who holds a provisional career and technical education credential issued by an institution of higher education** within the state system of community and technical colleges established pursuant to section 23-60-201, C.R.S. A provisional career and technical education authorization is valid for three years and may not be renewed.

(b) The department of education may issue a professional career and technical education authorization to a **person who holds a standard career and technical education credential issued by an institution of higher education** within the state system of community and technical colleges. A professional career and technical education authorization is valid for five years. The department of education may renew a professional career and technical education authorization for succeeding five-year periods when the person holding the authorization completes the renewal requirements of the state system of community and technical colleges and submits a copy of the renewed professional credential to the department. **(Emphasis added)**

The State Board adopted Rule 4.04 to establish the qualifications for a career and technical education authorization as follows:

Rule 4.04 Authorization: Career and Technical Education

The secondary career and technical education authorization may be issued to a candidate who meets the requirements for a career and technical education credential, as issued by the Colorado Department of Education.

- 4.04(1) A three-year Initial Career and Technical Education Authorization may be issued, by the Colorado Department of Education, to an applicant who:
 - 4.04(1)(a) complies with all Colorado Department of Education authorization application requirements, including
 - 4.04(1)(b) **evidence of the successful completion of required relevant training, occupational experience, and coursework.**
- 4.04(2) A five-year professional career and technical education authorization may be issued to an applicant who holds an Initial career and technical education authorization.
- 4.04(3) A professional career and technical education authorization may be renewed for five-years, if the holder of the authorization completes **the credential renewal requirements** and presents a renewed professional credential application and appropriate fees to the Colorado Department of Education.
- 4.04(4) Postsecondary CTE credentials are issued by the Colorado Community College System, and are governed by the Rules for the Administration of the Colorado Vocational Act, 8 CCR 1504-2. **(Emphasis added)**

Rule 4.04 appears to establish qualifications for obtaining a career and technical education authorization that do not include holding a career and technical education credential issued by an institution of higher education within the community college system, as required by section 22-60.5-111 (9), C.R.S. Thus, the rule conflicts with the statute.

In addition, Rule 4.04 refers to completion of "required relevant training, occupational experience, and coursework", but the rule does not explain what those requirements are. Without an explanation of these requirements, an applicant does not know what he or she must do to qualify for a career and technical education authorization. An applicant who holds a career and technical education credential issued by an institution of higher education may actually qualify for an authorization under Rule 4.04. But since the rule does not explain the requirements that an applicant must meet, an applicant would not know that he or she qualifies for the authorization. Rule 4.04 appears to be void for vagueness.

We therefore recommend that Rule 4.04 of the rules of the State Board concerning administration of the "Colorado Educator Licensing Act of 1991" not be extended.

Requests to Review a Rule Out of Cycle

- 1) As explained in the section on the Rule Review Process, under the "Administrative Procedures Act", article 4 of title 24, C.R.S., all rules adopted or amended during the one-year period that begins each November 1 and continues through the following October 31 expire on the May 15 that follows the one-year period, unless the General Assembly passes a bill to postpone the expiration. This one-year period followed by an expiration date is referred to as the "rule review cycle," and rules that are adopted or amended and reviewed during this period are referred to as being "within cycle."

On occasion, the OLLS is asked to review a rule that was not adopted or amended during the current rule review cycle or asked to re-review a rule that the OLLS found to be within the agency's authority during the current rule-review cycle. These rules are referred to as "out-of-cycle rules." This section addresses the process by which the OLLS will review out-of-cycle rules.

- 2) Any legislator, regardless of whether he or she is a member of the COLS, may ask the OLLS to review a rule out of cycle. When the OLLS receives the request, the staff will explain to the requesting legislator the procedures described in this section and that the staff will notify [the Chair of the COLS] [all of the members of the COLS] of the request. The OLLS will tell the COLS members the name of the requesting legislator.
- 3) The OLLS will review the out-of-cycle rule using the same grounds specified in the APA for an in-cycle rule: does the rule lack statutory authority; does the rule exceed the agency's statutory authority; or does the rule conflict with the statutes or the constitution. When reviewing the out-of-cycle rule, the OLLS may need to discuss the rule and any identified issues with the state agency that adopted the rule, in which case the staff will keep confidential the name of the requesting legislator.
- 4) Following the review, if the OLLS has identified an issue, the staff will follow the same procedure that applies to a rule within cycle: the staff will prepare a rule review issue memo and place the issue on the agenda for the next meeting of the COLS. The Chair of the COLS may choose to call a meeting sooner to hear the issue. The OLLS will also follow the same confidentiality protocols that apply to in-cycle rule review issues: the staff will provide a copy of the rule review issue memo, in advance of the meeting, to the members of the COLS and to the affected state agency and will post the agenda with links to the memos on the OLLS website one week before the meeting. The staff will also provide a copy of the memo to the requesting legislator in advance of the meeting.
- 5) Following the review, if the OLLS does not identify an issue with the rule, the staff will notify the requesting legislator and the members of the COLS. The staff will not

take further action regarding the rule unless the requesting legislator or a member of the COLS asks the Chair to place the rule on the Committee's agenda for review. In this event, the OLLS staff will prepare a memo explaining its findings. The staff will provide a copy of the memo, in advance of the meeting, to the members of the COLS, the affected state agency, and the requesting legislator. The OLLS staff will explain its conclusion regarding the authority for the rule at the meeting. The burden of persuasion that the rule is not authorized will be on the legislator who requested the review and continues to assert that the rule is not authorized.

- 6) At the meeting, the COLS will have at least three options that it may exercise by majority vote: 1) find that there is no issue with the rule and take no action on the rule, which has the effect of continuing the rule; 2) find that there is an issue with the rule and vote to repeal the rule in the Rule Review Bill, effective the following May 15; or 3) agree to consider the rule during the regular review cycle that applies to the rule. Regardless of the action the COLS takes, the Rule Review Bill is subject to the legislative process and any legislator may try to amend the bill on second or third reading in either chamber to address the out-of-cycle rule.

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