



Executive Committee Agenda Item - Legislative Contracts

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Cc: Charley Pike, Mike Mauer, Dan Cartin, Sharon Eubanks, Thomas
Morris, Betsy Holdredge

Members of the Executive Committee:

Attached is a brief memorandum explaining an item that will be on your 11/10/2009 Executive Committee agenda regarding legislative contracts.

If you have any questions on this information prior to the 11/10/2009 meeting, please don't hesitate to contact me.

Bart

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MEMORANDUM

TO: Members of the Executive Committee

FROM: Bart Miller, Office of Legislative Legal Services

DATE: October 19, 2009

SUBJECT: 11/10/2009 Agenda Item - Legislative Contracts

On your 11/10/2009 Executive Committee agenda you will have an item relating to legislative contracts. This memorandum briefly explains the background on this agenda item.

Since 1973 the General Assembly has operated under a statute that requires the Attorney General and the State Controller to approve all legislative branch contracts in order for them to be effective. Generally, the Office of Legislative Legal Services writes and reviews contracts at the direction of legislative branch officials with the authority to enter into contracts. The contracts are then submitted to the Attorney General and the State Controller for approval under the statute.

The statute authorizes the Speaker of the House of Representatives and the President of the Senate to sign contracts to which either house or both houses are a party. The statute allows the chair or vice-chair of the Legislative Council, the Committee on Legal Services, the Joint Budget Committee, and the Legislative Audit Committee to sign contracts on behalf of the staff agencies those committees supervise.

In recent years, the staffs of the Office of Legislative Legal Services and the Legislative Council have identified a substantial duplication of effort and significant delays resulting from having attorneys in the legislative branch and the executive branch involved in contracts for the legislature. In addition, there are separation of powers issues for the legislative branch to have its contracts dependent upon approval by an executive branch official and his or her attorney.

Attached are potential changes that could be made to the legislative branch

contract statute that would allow the Office of Legislative Legal Services to approve certain types of contracts without further review and approval by the Attorney General and the State Controller in order for the contracts to be effective. These changes would relieve the duplication of effort occurring under the current process and alleviate concerns of separation of powers issues with legislative branch contracts dependent upon ultimate approval of executive branch officials.

If you have any questions prior to the 11/10/2009 Executive Committee meeting about this agenda item or the attached draft language please do not hesitate to contact me. I can be reached at (303) 866-2173.

SECTION . 2-2-320, Colorado Revised Statutes, is amended to read:

2-2-320. Legislative department contracts - approval. (1) Any contract to which the house of representatives or the senate is a party shall be approved by the speaker of the house of representatives or the president of the senate, as the case may be. Whenever the house of representatives and the senate are parties to the same contract, both the speaker of the house of representatives and the president of the senate shall approve the contract. Any contract to which the legislative council, the office of legislative legal services, the joint budget committee, the office of the state auditor, or the commission on uniform state laws is a party shall be approved by the ~~chairman~~ CHAIR or ~~vice-chairman~~ VICE-CHAIR of the governing committee of such agency, as the case may be.

(2) (a) FOR LEGISLATIVE DEPARTMENT CONTRACTS SUBJECT TO SECTION 29 OF ARTICLE V OF THE STATE CONSTITUTION, the attorney general shall approve all SUCH legislative department contracts as to form, AND the controller shall approve such contracts in accordance with section 24-30-202, C.R.S.

(b) THE DIRECTOR OF THE OFFICE OF LEGISLATIVE LEGAL SERVICES OR THE DIRECTOR'S DESIGNEE SHALL APPROVE ALL LEGISLATIVE DEPARTMENT CONTRACTS NOT SUBJECT TO SECTION 29 OF ARTICLE V OF THE STATE CONSTITUTION. NO APPROVAL BY THE CONTROLLER OR ANY ASSISTANT DESIGNATED BY THE CONTROLLER SHALL BE REQUIRED FOR THE VALIDITY OF ANY CONTRACT ENTERED INTO AND APPROVED UNDER THIS PARAGRAPH (b). THE CONTROLLER SHALL ISSUE PAYMENT FOR EXPENDITURES FOR LEGISLATIVE DEPARTMENT CONTRACTS APPROVED IN ACCORDANCE WITH THIS PARAGRAPH (b) AS SET FORTH IN SECTION 24-30-202, C.R.S. NOTWITHSTANDING THE LEGISLATIVE DEPARTMENT'S EXEMPTION FROM THE FISCAL RULES PURSUANT TO SECTION 24-2-101, C.R.S., THE OFFICE OF LEGISLATIVE LEGAL SERVICES SHALL CONSIDER THE FISCAL RULES AS GUIDELINES FOR LEGISLATIVE DEPARTMENT CONTRACTS APPROVED UNDER THIS PARAGRAPH (b) AND MAY CONSULT WITH THE CONTROLLER OR ATTORNEY GENERAL, OR BOTH, WHEN DRAFTING LEGISLATIVE DEPARTMENT CONTRACTS.

SECTION . 24-82-701 (5), Colorado Revised Statutes, is amended to read:

24-82-701. Definitions. As used in this part 7, unless the context otherwise requires:

(5) "State" means the state of Colorado or any department, agency, or commission thereof, including any state institution of higher education and the board of directors of the Auraria higher education center, BUT DOES NOT INCLUDE THE LEGISLATIVE DEPARTMENT WHEN ACTING PURSUANT TO SECTION 2-2-320 (2) (b), C.R.S.

SECTION . 24-82-801 (6), Colorado Revised Statutes, is amended to read:

24-82-801. Lease-purchase agreements for acquisition of real or personal property. (6) (a) Notwithstanding any provision of this section to the contrary, the department of transportation, institutions of higher education, and the state treasurer may enter into lease-purchase agreements if the state controller as authorized by section 24-30-202 approves each lease-purchase agreement that requires total payments in excess of five hundred thousand dollars over the term of the agreement or as otherwise provided by law.

(b) NOTWITHSTANDING ANY PROVISION OF THIS SECTION TO THE CONTRARY, THE LEGISLATIVE DEPARTMENT MAY ENTER INTO LEASE-PURCHASE AGREEMENTS PURSUANT TO SECTION 2-2-320, C.R.S.

SECTION . 24-82-1201 (3), Colorado Revised Statutes, is amended to read:

24-82-1201. Definitions. As used in this part 12, unless the context otherwise requires:

(3) "State department" means a department or agency of the state, BUT DOES NOT INCLUDE THE LEGISLATIVE DEPARTMENT WHEN ACTING PURSUANT TO SECTION 2-2-320 (2) (b), C.R.S.