



**STATE OF DELAWARE
LEGISLATIVE COUNCIL
Meeting Minutes
Wednesday, June 12, 2019**

Members Present: Senator David B. McBride, Chair; Representative Peter C. Schwartzkopf, Vice Chair; Senators Nicole Poore, Brian Townsend, Gerald Hocker, and Catherine Cloutier; Representatives Valerie Longhurst, J. Larry Mitchell, and Timothy Dukes

Absent: Representative Daniel Short

In attendance: Mark Cutrona, Deputy Director, Division of Research/Legislative Council; Holly Vaughn Wagner, Amanda McAtee, Mark Brainard, Donald Sellers, and Colinda Marker, Division of Research/Legislative Council; Dawn Hill, Controller General Office; Janet Roberson, Director, Legislative Information Systems (LIS); Debra Allen, Senate Majority Chief of Staff; David Burriss, Senate Minority Chief of Staff; David Deputy, House Minority Chief of Staff; Sean Finnigan, House Majority Chief of Staff; Richard Puffer, Chief Clerk of the House; Valerie McCartan, Senate Staff; Chief Michael Hertzfeld and Sgt. Scott Simpson, Capitol Police; Michael Svaby, Director Facilities Management; Scott Goss

AGENDA

1. Welcome – Sen. McBride, Chair
2. Approval of May 15, 2019, Meeting Minutes
3. Legislative Council Report – Mark Cutrona, Deputy Director
4. Controller General Report – Michael Morton, Controller General
5. New Business
 - a. Legislative Hall X-Ray machine – Dawn Hill, Controller General Office
 - b. Technical Corrections Legislation – Deborah Gottschalk, Division of Research
 - c. Portrait of Vice President Joseph R. Biden, Jr. – Sen. McBride, Chair
 - d. Capitol Police Chief's Report – Chief Michael F. Hertzfeld
6. Old Business
 - Report on hiring a Director of the Division of Research - Sen. Poore and Rep. Dukes
7. Next Meeting – Wednesday, September 25, 2019
8. Public Comments
9. Adjournment

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1. **Welcome**

Sen. McBride called the meeting of Legislative Council to order at 12:12 p.m. in the Joint Finance Hearing Room.

2. **Approval of May 15, 2019, Meeting Minutes**

A motion was made by Rep. Schwartzkopf and seconded by Rep. Longhurst to approve the May 15, 2019, Legislative Council meeting minutes. Motion carried. Vote: 9 yes. Senators McBride, Poore, Townsend, Cloutier, and Hocker; Representatives Schwartzkopf, Longhurst, Mitchell, and Dukes

Absent: Representative Short

3. **Legislative Council Deputy Director's Report** – Mark Cutrona reported that the Registrar of Regulations recently published the June edition of the Register; this is a monthly publication generated by the Registrar's Office. The Office is currently working on the Administrative Code updates and the July edition of the Register. The Office received a 200 plus page regulation from the Department of Natural Resources and Environmental Control (DNREC) they are working on, as well as preparing for the next Legislative Advisory from the Governor's Office to update the Laws of Delaware and the Delaware Code.

Mr. Cutrona thanked the Print Shop for going above and beyond on June 11. In addition to the 29 pieces of pre-file legislation, the print shop produced the 300 page budget bill and supplement in 3 ½ hours.

Mr. Cutrona updated the Council on the status of the Joint Legislative Oversight and Sunset Committee (JLOSC). The Committee is wrapping up their work for the year. The final reports have been prepared and the Committee's legislation has been introduced. This legislation includes six bills that are a part of a board clean-up project that has been undertaken with the Governor's Office. The Committee has voted to holdover from this year the Council on Correction, Adult Protective Services, Delaware Advisory Council on Career and Technical Education, and Delaware Health Information Network. These entities will be reviewed over the summer. Two of the entities will have task forces associated with them to review the recommendations that have been presented; the task forces will report back to the Committee in January. The Committee will continue the clean-up project with the Governor's Office. They have selected four entities for review in 2020: the Delaware Interscholastic Athletic Association, Delaware Health Resources Board, Conservation District Operation Program, and Delaware Nursing Home Resident Quality Assurance Commission.

Mr. Cutrona advised that the Legal and Research staff continue to draft legislation and research issues for legislators. The Legislative Information Office is processing the current legislation and assisting legal staff in drafting work. Mr. Cutrona also thanked the administrative staff for their assistance with the fiscal and administrative needs of the Division.

Mr. Cutrona projected several projects the Division will be working on over the summer. The Division will be working with Capitol Police on a new safety plan for the building, to include

policies regarding rallies. The Division along with the House, Senate, and Controller General Office will be working on building issues regarding ADA compliance. An initial meeting has already been held on this subject, the next meeting will be held over the summer.

Sen. McBride inquired if the four entities reported for 2020 review by the JLOSC are the final listing or could additional entities be added. Amanda McAtee, JLOSC Analyst, reported that the last JLOSC meeting is being held on June 13. The agenda is to review proposed legislation. Mrs. McAtee advised although the four entities referenced are the finalists set for review, additional entities could be brought up at the meeting for discussion. Mr. Cutrona mentioned the example that Adult Protective Services, which was reviewed this year, was added in August of last year. Sen. Poore inquired how an entity was added in August, and who voted on it. Mr. Cutrona advised that the Committee held a special meeting and voted to adopt review of the Adult Protective Services.

4. Controller General Report – Dawn Hill, presenting for Michael Morton, reported that the Controller General staff did an outstanding job of completing the budget bill. Ms. Hill gave special kudos to Ruth Ann Jones, Victoria Brennan, Art Jenkins and the entire staff, along with the print shop. The budget bill was introduced June 11. The Bond Bill Committee will be meeting June 13, June 19, and finishing on June 20. It is the intent of the office to have the bill completed, to the print shop, and ready for introduction on June 25. Joint Finance will be meeting on June 26 to review Grant in Aid, it is the intent for that bill to be introduced on June 30.

5. New Business

- a.** Legislative Hall X-Ray machine – Dawn Hill, Controller General Office, reviewed an issue with the x-ray machine located on the first floor, west entrance. The machine is over 15 years old and the motherboard has been replaced twice, in May 2018 and June 2018. The yearly maintenance on the machine is coordinated, conducted, and paid for by the Controller General office every July. Due to the age of the machine, a plan needs to be in place in the event the machine stops working. A new machine was purchased in 2017 and installed on the ground floor, on the loading dock. It is the recommendation of the office to initiate a project this summer to swap the two machines. Capitol Police scan every package delivered to the building at the first floor, west entrance, including FedEx, UPS, and other delivery services. The only exception is paper orders delivered to the Print Shop via the loading dock, eight to ten times a year. Ms. Hill obtained a quote from the vendor to move, clean, install, and calibrate both machines; the estimated cost is \$4,000. These funds are available in the capital budget. Ms. Hill advised she was uncertain if the older machine would be used on the ground floor; however, it is still working at this time. The other option would be to recycle the machine to Delaware City. The move of the machines in lieu of purchasing a new machine is a cost savings of \$26,000.

A motion was made by Rep. Schwartzkopf and seconded by Sen. Poore to approve the move and calibration of the 2 Legislative Hall X-ray machines. Motion carried. Vote: 9 yes. Senators McBride, Poore, Townsend, Cloutier, and Hocker; Representatives Schwartzkopf, Longhurst, Mitchell, and Dukes

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Absent: Representative Short

- b. Technical Corrections Legislation – Deborah Gottschalk, Attorney, Division of Research, reported on the technical corrections draft bill. This legislation is based on the memo of technical corrections the Code Revisors provided to the Division of Research in January. This bill corrects errors in legislation that were enacted in 2018 which are beyond the statutory authority of the Code Revisors to correct. Ms. Gottschalk has researched each of the items on the memo and included corrections where necessary in the bill. Ms. Gottschalk has shared draft corrections with the agencies responsible for the statutes. This year’s bill also includes corrections identified during drafting, or while other legislation was pending, for the current session. In consulting stakeholders, all agreed that the corrections should be made now rather than waiting a year for the next technical correction review.

Sen. McBride thanked Ms. Gottschalk and commented that in the years he has been involved in the technical correction legislation, he is amazed by the work done by the Division of Research, and expressed his appreciation. Sen. McBride inquired about the bill draft being a Senate bill. Ms. Gottschalk shared that in the past the legislation is started in the chamber of the Chair of Legislative Council, with all members of Council as prime sponsors. Sen. McBride requested Ms. Gottschalk draft the bill with all members of Council as sponsors and move forward with the legislation.

- c. Capitol Police Chief’s Report – Chief Michael F. Hertzfeld, Capitol Police, introduced himself to the Council. He provided a year-end report to make the Council aware of the happenings in the building. In the future, he will provide this report annually. Chief Hertzfeld advised any questions could be directed to himself or Lt. Scott Simpson, the commander in charge of Legislative Hall.

The statistical data provided includes a magnetometer count, which represents the total number of visitors to Legislative Hall, 37,453; x-ray count, which represents the total number of items screened, 24,784; property held count, 78; deliveries screened, 945; tours and meetings, 617; calls for service, 95; and investigations, 17.

Chief Hertzfeld expanded on some of the statistical information. He noted that the magnetometer count does not include entry into the building by staff at key-carded doors. He advised a number of items are discovered during x-ray, including prohibited weapons; this machine is critical to the officers. Property held includes items deemed a potential threat by officers that is held while the visitor is in the building then returned on the visitor’s exit. Chief Hertzfeld advised that calls for service includes anything that Capitol Police responds to such as legislative requests and service alarms. He noted that the building is monitored Monday through Sunday. Investigations by detectives can be prompted by harassment, threats, theft, and criminal impersonation. Chief Hertzfeld stressed the importance of reporting threats and harassment to the Capitol Police. A log is kept to monitor and track potential escalation of behavior.

Sen. McBride expressed his appreciation for the efforts of the Capitol Police staff.

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Sen. Poore commented on a situation in which two opposing groups were on site. She requested these situations be addressed in the future in a way to allow both parties to express their views while maintaining civility. Chief Hertzfeld assured the Council that anytime a rally is being held plain-clothes officers are within the crowds to monitor the crowd and diffuse potentially volatile situations. He advised they are currently working on a policy regarding rallies. Capitol Police, along with Senator Hansen, have identified two areas to place groups where each would have the opportunity to be heard, yet be separated. The rally policy has been forwarded to the Attorney General's office; once it has been approved by that office, it will be brought before Council for review and approval.

Rep. Mitchell inquired about the current policy in place regarding firearms on the property; does the prohibition of firearms in the building include the real property of Legislative Hall. Chief Hertzfeld advised there is no official policy regarding firearms in any statewide facility. He advised that Capitol Police does not allow weapons in any state facility that they monitor. This has not been an issue until recently; people typically adhere to a verbal Capitol Police mandate. Chief Hertzfeld advised they are actively working on a policy and hope to have it completed by next year. He stated the safety policy Mark Cutrona is working on, along with the rally policy, will address firearms on Legislative Hall property. He anticipates completion of the policy for Council review by January.

Sen. Cloutier expressed her thanks for the efforts of Capitol Police to ensure safety, but noted the changing times and vulnerability to attacks. She advised this is a big concern for people working in the building.

- d. Portrait of Vice President Joseph R. Biden, Jr.** – Sen. McBride stated people have brought to his attention multiple times the lack of representation for Vice President Biden at Legislative Hall. He feels it would be appropriate to pursue the hanging of a portrait of Vice President Biden.

Rep. Schwartzkopf expressed his support for the idea. He stated as the highest ranking elected official from the state a portrait is appropriate.

Rep. Dukes concurred that with the distinguished career that Vice President Biden has had within the state he supports the motion.

Sen. McBride stated he and Rep. Schwartzkopf will meet with Mark Cutrona, Deputy Director, Division of Research, to discuss and make plans for the portrait.

A motion was made by Rep. Schwartzkopf and seconded by Rep. Dukes to approve the hanging of a portrait of Vice President Joseph R. Biden, Jr. Motion carried. Vote: 9 yes. Senators McBride, Poore, Townsend, Cloutier, and Hocker; Representatives Schwartzkopf, Longhurst, Mitchell, and Dukes

Absent: Representative Short

6. Old Business – Report on hiring a Director of the Division of Research - Sen. McBride stated, per discussion at the last Legislative Council meeting, Sen. Poore and Rep. Dukes were assigned the task of reviewing, reporting, and making recommendations on the hiring of a Director of the Division of Research.

Sen. Poore shared that she and Rep. Dukes agreed on the need for a better understanding of how the Division of Research currently operates, ideas for the future, and expectations. Sen. Poore requested that Mark Cutrona, Deputy Director, Division of Research, provide these details. She complimented Mr. Cutrona on the work he did communicating this information. Sen. Poore requested Mr. Cutrona give a brief overview on how the Division should operate, and the best practices that he has provided.

Mr. Cutrona reviewed the condensed report provided to Council. He noted the report is divided into two sections: how the Division can improve to better serve the Council and the Legislature, and how the Division currently operates. Mr. Cutrona stated the ideas are expressed and flow in order of priority.

Mr. Cutrona stated one of the highest priorities is to improve communications with Legislative Council, the General Assembly, and internal staff. He has made an effort to increase and improve communication with the Council. His thoughts on improving internal communications include periodic staff meetings, reinstating weekly staff meetings of the Legal and Research staff, and annual performance reviews for Division staff.

Mr. Cutrona advised the highest priority in staffing is filling the vacancy of the Assistant Registrar in the Registrar of Regulations office. While filling the vacancy is a priority, Mr. Cutrona emphasized the need to staff the office appropriately. He noted the legalistic aspects of the work required by staff; yet the Registrar and Assistant Registrar are not currently required to be attorneys. This lack of proper position classification effects the recruitment and retention of candidates. The Registrar and Assistant Registrar provide oversight to ensure agencies are complying with law and serve as the last line of defense before a regulation is implemented; these determinations are legal in nature. The current Registrar, Yvette Smallwood, happens to be a lawyer who has served in three General Assemblies making her highly qualified. Mr. Cutrona stressed the importance of reclassifying these positions to Attorneys to attract the right candidates for the positions, and retain current incumbents. He stated the candidates who applied for the Assistant Registrar position, as currently classified, were not properly qualified. Mr. Cutrona also noted the need for updated resources in the Registrar's Office. The office can continue to operate with only three staff members if the regulation software is upgraded to automate processes that are currently done manually.

Mr. Cutrona shared his plan to work with the Print Shop Supervisor, Donald Sellers, to implement ideas to increase efficiency in that office.

Mr. Cutrona highlighted the training seminars offered by the Division for legislators and building staff. These trainings include New Legislator Orientation, and an annual Drafting Workshop. The Registrar's Office also conducts regulatory submission and drafting workshops for state

agencies. Mr. Cutrona stressed the importance of investing in these trainings to increase knowledge and effectiveness.

Mr. Cutrona detailed the current Division processes for research and drafting. Research is typically prepared for and provided to individual legislators; however, the research is on issues relevant to the entire General Assembly. Mr. Cutrona shared his thoughts for creating an Issue Brief, made available to all, which would answer legislator's questions or address current relevant topics. Other potential products suggested include a Major Issues Report, and a New Legislator Manual. Mr. Cutrona proposed providing engrossed legislation within the chambers as a working holistic document provided within the legislature.

Mr. Cutrona proposed a project to research and review the reports required to be submitted to the General Assembly. Currently over 300 reports are mandated from state agencies, the Legislative Librarian does not receive many of these. An internal tracking system needs to be developed, as well as a review of requirements, and potential termination of reports no longer needed.

Mr. Cutrona also proposed a centralized proofreading process for all legislation. The plan would be to build, over time, a two-tiered review process to proof legislation for legal and general editing review. Delaware is one of two states that do not conduct proofreading by a centralized agency. This recommendation was noted by NCSL in their 1991 study of the Division.

Mr. Cutrona suggested the centralization of facility management within one office, currently different aspects of facility management are split between the Division of Research and the Controller General Office.

Mr. Cutrona wrapped up by addressing additional staff restructuring needs in the Division. Currently, Executive Branch classifications are used for many staff positions. The duties and requirements associated with some of these classifications do not necessarily fit legislative functions. Mr. Cutrona is proposing a review of the class specifications to ensure proper classification in able to attract and retain qualified staff. He pointed to the success of the hiring of the newest Joint Legislative Oversight and Sunset analysts.

Rep. Dukes commented that prior to undertaking this review his work with the Division was limited. He highlighted the Division areas he was interested in including vision, communication, training, organization, and performance review. Rep. Dukes thanked Mr. Cutrona for his comprehensive breakdown of Division. It helped to provide a better understanding of the Division.

Sen. Poore agreed with Rep. Dukes, the information Mr. Cutrona provided gave insight into areas where improvement is needed, where the Division is meeting expectations but could grow, and where enhancements in technology can make processes and jobs more efficient and effective. Sen. Poore agreed with the success of the hiring process used for the Joint Legislative Oversight and Sunset analysts. Sen. Poore stated with the information now available to the Council, a decision needs to be made on how to proceed with the hiring process.

Sen. McBride complimented Mr. Cutrona on the report he provided. He also thanked Sen. Poore and Rep. Dukes for taking the time to meet with Mr. Cutrona. Sen. McBride inquired the next

steps to discuss filling the position and whether the Council needs to go into executive session. Mr. Cutrona confirmed if individual candidates are to be discussed the Council needs to adjourn into executive session.

Rep. Schwartzkopf expressed his intention to go into executive session after accepting public comments.

Rep. Mitchell inquired about the number of legal research and legislative requests the Division receives, and how that number is trending. Mr. Cutrona stated that as of the last time he looked at the numbers, at the end of last session, the trend was going up. While he did not have the exact numbers, he recalls an increase of over 50% in work for the House and the Senate, and the fact that the Division had produced over 40% of the total legislation in last session. Mr. Cutrona stated that numbers pulled in January 2019 detailed 57 drafting requests were received during the lead up to the 149th General Assembly, in the same period leading up to the 150th General Assembly 168 requests were received. He feels this upward growth trend has continued during this session. Rep. Mitchell inquired about staffing trends. Mr. Cutrona confirmed that staffing has not increased.

7. **Next Meeting** - Wednesday, September 25, 2019

8. **Public Comments** – None

9. **Adjournment**- Sen. McBride called for a motion to adjourn the public portion of the meeting at 1:01 p.m. and enter into executive session.

A motion was made by Rep. Schwartzkopf and seconded by Sen. Hocker to resolve into executive session to discuss personnel matters. Motion carried. Vote: 8 yes. Senators McBride, Poore, Townsend, Cloutier, and Hocker; Representatives Schwartzkopf, Longhurst, Mitchell, and Dukes

Absent: Representative Short

Respectfully submitted,
Mark Cutrona
Deputy Director
Division of Research/Legislative Council