



**STATE OF DELAWARE  
LEGISLATIVE COUNCIL**

**Meeting Minutes  
Wednesday, April 14, 2021**

**Members Present:** Senator David Sokola, Chair; Representative Peter C. Schwartzkopf, Vice-Chair; Senators Bryan Townsend, Elizabeth Lockman, Gerald Hocker, and Brian Pettyjohn; Representatives Valerie Longhurst, Daniel Short, and Timothy Dukes

**Members Absent:** Representative J. Larry Mitchell

**In attendance:** Mark Cutrona, Director, Division of Research/Legislative Council; Holly Vaughn Wagner, Deputy Director, Division of Research; Colinda Marker, Division of Research Staff; Ruth Ann Jones, Controller General; Bert Scoglietti, Deputy Controller General; Janet Roberson, LIS Director; Jesse Chadderdon, Senate Majority Chief of Staff; Sean Finnigan, House Majority Chief of Staff; Deanna Killen, Senate Minority Chief of Staff; Dave Deputy, House Minority Chief of Staff; Ryan Dunphy, Secretary of the Senate; Rich Puffer, Chief Clerk of the House; Valerie McCartan; Natalie Woloshin; Keri Rapa; Daniel Wolcott; Jamie Sharp; Aaron Goldstein; Maj. David Hunt, Delaware Capitol Police; Lt. Scott Simpson, Delaware Capitol Police; Jennifer Coverdale, Director Division of Facilities Management; Shree Patel, DTI

**AGENDA**

1. Welcome – Sen. Sokola, Chair
2. Approval of March 4, 2021, Meeting Minutes
3. Legislative Council Report – Mark Cutrona, Director of the Division of Research
4. Controller General Report – Ruth Ann Jones, Controller General
5. New Business
  - a. Legislative Hall Facility Use Policy – Mark Cutrona, Director of the Division of Research & Lt. Scott Simpson, DE Capitol Police
  - b. Code Revisors Report – Daniel Wolcott & Jamie Sharp
6. Executive Session\*
  - a. Legislative Hall Security - Michael Hertzfeld, Chief of Delaware Capitol Police
  - b. Pending or Potential Litigation – Mark Cutrona, Director Division of Research
7. Next Meeting – May 5
8. Adjournment

**1. Welcome**

Senator Sokola called the meeting of Legislative Council to order at 12:04 p.m. He announced due to the COVID-19 pandemic Legislative Hall remains closed to the public and Council is meeting virtually under the authority of the virtual meeting procedures adopted by the 151<sup>st</sup> General Assembly in House Concurrent Resolution No. 1. The meeting is being held via Zoom and broadcast on the General Assembly's YouTube channel. Questions or comments regarding this meeting should be directed to [legislative.council@delaware.gov](mailto:legislative.council@delaware.gov) or call the Division of Research at (302)744-4114. Senator Sokola asked Mark Cutrona to call roll.

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**Mark Cutrona called roll for attendance and voting purposes. Attendance roll call revealed the following members present:** Representative Dukes, Senator Hocker, Senator Lockman, Representative Longhurst, Senator Pettyjohn, Representative Schwartzkopf, Senator Sokola, Representative Short, and Senator Townsend.

**Absent:** Representative Mitchell

Senator Sokola noted that a quorum is present, and he has verified the identities of the members of Council.

## **2. Approval of March 4, 2021, Meeting Minutes**

**A motion was made by Sen. Pettyjohn and seconded by Sen. Hocker to approve the March 4, 2021, Legislative Council meeting minutes. Motion carried.** Vote: 9 yes. Senators Sokola, Townsend, Lockman, Hocker, and Pettyjohn; Representatives Schwartzkopf, Longhurst, Short, and Dukes. **Absent:** Representative Mitchell.

**3. Legislative Council Director's Report** - Mark Cutrona reported on Division happenings the past month. The Joint Legislative Oversight and Sunset Committee (JLOSC) has held 5 meetings since Council last met. These meetings, staffed by JLOSC analysts Mark Brainard and Amanda McAtee, include recommendations on the Health Resources Board and the Delaware Interscholastic Athletics Association. Mr. Cutrona noted that he has received a number of positive comments on the improvements Mark and Amanda have made to the information presented to the Committee and how it is presented. Next year the Committee will be taking on 7 agencies for standard review and 2 agencies for a more focused review. Additionally, Mark Brainard has been assisting with task forces that are related to the Committee's work.

The Registrar of Regulations office has reviewed nearly 500 pages of regulations for the April Register. Since last year, the office has reviewed over 6,000 pages of regulations. The office acts as a clearinghouse for regulations; they review, proofread, style edit, and produce the register each month. Additionally, they codify regulations into the Administrative Code. Following Legislative Advisories, the Registrar's Office publishes each new law and updates the Delaware Code online.

Joel Rudnick, legislative librarian, has held several trainings to assist staff to better understand and use the Lexis Nexis legal database. Joel is also working to maximize legislative resources, developing research guides to assist staff and the public. He has seen an increase in research requests in the past month, including research into late Governor Wolf's tenure and a request from Yale University about §24 Article II of the Delaware Constitution.

The print shop continues to serve the General Assembly's graphics and printing needs. A reminder was sent out last month to contact the print shop for assistance with large print requests and mailings as it's more cost effective for the print shop to run these jobs on their machines.

The Legislative Information Office has provided typing and proofreading assistance to the Division attorney's this month, in addition to supporting the JLOSC, and maintaining files and subscription services. The office has seen an increase in calls for information and are working to provide appropriate agency contact information and accurate information about legislation to constituents.

The administrative office is working behind the scenes to handle the financial and human resource records and deal with the issues that come up as a result of COVID. Work is progressing to coordinate the Legislative Hall upgrades approved by Council last month.

Mr. Cutrona noted that included in the information packets distributed for the meeting was a copy of the Delaware State Bar Association's March Journal. This issue was dedicated to the role of the legislative attorney in the legislative process. This recognition comes 2 months before the Division celebrates its 55<sup>th</sup> anniversary of the beginning of its service to the General Assembly on May 4.

Mr. Cutrona noted that last month the Division's attorneys had 72 bills heard in committee. He thanked the Division's legislative fellows for assisting in attending the committee hearings and the notes they relayed, as this helps in the drafting process. He also noted the increase in depth and expertise required in drafting legislation; including legal complexity and the work that goes into creation, such as meetings and coordinating with state agencies.

Mr. Cutrona thanked Council for their support of the Division which allows them to continue to serve the needs of the legislature and improve the lives of Delawareans.

Senator Sokola inquired if the print shop was doing any printing that was directly related to COVID and is that being supported with COVID related funds. Mr. Cutrona stated he wasn't aware of a direct connection between COVID and the printing process, but he would check with the print shop supervisor and relay that information offline.

Senator Townsend thanked Mr. Cutrona for his update and acknowledged Council's engagement with the Division. He wanted to confirm his understanding that the Division remains busy. He noted an addition to the staff several months ago; but recalls previous talks indicated the need for an additional attorney, and he wanted to confirm that this was still needed. Mr. Cutrona confirmed that it is. Sen. Townsend noted another outstanding item is the lack of centralized proofreading in Delaware which will require additional resources to address as well. Mr. Cutrona agreed and acknowledged Rich Dillard, a casual seasonal hire, who has acted as a central editing and proofreader for the Division attorneys allowing them to handle the amount and type of legislation produced.

Representative Longhurst requested Mr. Cutrona provide a report summarizing how much legislation is being produced from each of the 4 caucuses from January until now. Mr. Cutrona stated he will work with DTI, Janet Roberson, and Angel Burack to pull data from DELIS. Rep. Longhurst noted he could reach out to Natalie Woloshin for a list of legislation in the works. She noted the House Democratic caucus has more people in the caucus and generates more legislation.

Senator Lockman noted she has had the opportunity to chair Sunset (JLSOC) and has been in a position to see the role the Division plays and the work that they do. **Based on the discussions today, Senator Lockman made a motion to grant the Director of the Division of Research the authority to hire an additional attorney.**

Representative Schwartzkopf recommended postponing the motion until the information requested by Representative Longhurst has been presented at the next meeting. He noted the General Assembly currently has 14 attorneys available and he is unsure if it is wise to hire another full-time attorney due to the financial commitment and 6-month timeframe of the assembly being in session. Rep. Schwartzkopf noted he has offered a compromise of part time contract attorney position for the Division during session.

Senator Sokola noted the issues that need to be addressed this year after June 30 including reapportionment and allocation of COVID relief funds. He noted generating a report of what work has been done takes time, but perhaps having caucuses report their work may help with this. He noted the Division's obligation to look over everything because we are the one state that doesn't formally have a proofreading process in place. He doesn't necessarily agree with a delay but would like to hear from others on Council.

Representative Schwartzkopf advised that he agreed there was more work this year which is why he offered the ability to hire a contract attorney. He noted every year won't be like this year and he doesn't see the need to pay a full-time salary with benefits.

Representative Longhurst stated she wanted to discuss the process before making decisions. She wants to have an understanding of how much legislation is going through each chamber and the process of hiring someone. She stated in the past Legislative Council has been in that process, electing someone from each caucus to sit in on the interviews. She asked if Mr. Cutrona had the policy for the interview process and noted they need to look at party affiliation to find a balance.

**Senator Pettyjohn noted in a point of order that a motion had been made and that he would like to formally second the motion.**

Representative Dukes stated he supports Mr. Cutrona and his leadership of the Division. He stated he supports the Division having more staff and attorneys, but he agrees with Representative Longhurst and would like to see a report before supporting the hiring.

Senator Townsend noted the data they have seen a few times the last several years and recalls the steepness of the growth curve for the work of the Division. He noted that work comes from legislators, advocates, and state agencies. In reference to the number of attorneys on staff, he noted that caucus attorneys work with Division attorneys and that there is often overlap in their work. He commented that the attorney's jobs don't stop on July 1; there are year-round efforts including task forces, commissions, and legislators working on projects. He also noted the difference between a full-time legislative attorney and other attorneys.

Representative Short echoed comments made by Representative Dukes. He noted for legislators not around for the last report that some legislators were going to the Division instead of using caucus attorneys and they were able to solve some of the workflow issues in the Division by addressing this in the past.

Representative Longhurst noted she thinks Mr. Cutrona addresses the needs of democrats and republicans equally. She asked before moving forward with the motion that Mr. Cutrona explain the hiring process for attorneys in the Division. Mr. Cutrona stated that all merit employees have been hired by the Director, the legislative attorney position would be a merit position. Rep. Longhurst stated she believes that Legislative Council should be a part of the interview process and she was a part of the process in the past. Mr. Cutrona stated he believes one of the things that helps the Division be nonpartisan is that the potential political process is removed by hiring a merit employee through a merit-based process. Rep. Longhurst asked that Council review the process prior to hiring an attorney. Mr. Cutrona advised that it was one of the recommendations from the NCSL 1990 review of the Division that the Director be given hiring authority for all employees after being selected. This helps insulate the agency and create the nonpartisanship that is necessary to serve all the members of the General Assembly.

Senator Pettyjohn noted he thinks the Division does a fantastic job and they are one of the busiest groups in the building. He wants to make sure they have the resources necessary to do their job and serve all 62 legislators. He noted his caucus has a part time per diem attorney, many of the bills they write go through the Division. He noted the Division does more than draft bills, including staffing task forces and committees. He supports additional resources for the Division but noted he wants to make sure Council is comfortable moving forward with the Division.

**Senator Lockman agreed with Senator Pettyjohn's comments and given the dialogue withdrew the motion to grant the Director of the Division of Research the authority to hire an additional attorney at this time.**

Senator Hocker agreed with Senator Pettyjohn. He noted that the Senate Republicans only have a part time attorney when they are in session. They use the Division a lot and acknowledge that they need additional help. His concern with hiring a contract attorney is the amount and time invested in training when eventually a full-time attorney will be hired. Mr. Cutrona responded that training is a lengthy and a large commitment. Contract attorneys often hold a fulltime position at a law firm, which pays better than state government, but have some time to do contract work. Likely someone trained for a contract position would not apply for a full-time position.

4. **Controller General's Report** – Ruth Ann Jones advised they have filled the vacant analyst position and hired Nicole Polite. Nicole comes from the Office of Management and Budget (OMB) where she was a policy analyst, before she was at OMB, she worked for the State Auditor's Office.

Mrs. Jones advised there is no DEFAC meeting in April, the next meeting will occur on May 17. In the interim, the Controller General office and OMB are meeting weekly with JFC chairs to discuss a path forward. Bond bill hearings are set for May 3-6. All meeting links and calendar notices have been posted; meetings will be virtual.

The Clearinghouse Committee met on March 31 and held an emergency meeting to approve the \$410 million dollar grant that is going to the Department of Education, which is then distributed out to the districts to address learning losses associated with COVID-19 and the pandemic. The emergency meeting was called because there is a 60-day clock on dispersing those funds. The next meeting is scheduled for April 20 at 10:00am. Additional federal funds will be reviewed at that meeting.

Mrs. Jones echoed Mr. Cutrona's sentiment about staying busy. She noted that the Controllers office has already completed 37 fiscal notes this year, with another 7 in the queue to complete, and staff has been asked to

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provide drafts on at least another 10. To put this in perspective, in both legs of the 150<sup>th</sup> General Assembly they completed a total of 94 fiscal notes; in both legs of the 149<sup>th</sup> they completed 107 fiscal notes. She noted they are well above their normal workload and grateful to be fully staffed. Mrs. Jones thanked members of the caucuses who reach out early allowing analysts an opportunity to gather data and fully vet the information before issuing a fiscal note.

Grant In Aid applications are under review again. The office's legislative fellow is helping draft one pagers on all 320 applications received to inform JFC members as they move into decision making time for the Grant In Aid bill.

Senator Sokola asked about the accuracy of a fiscal note. He inquired if, after a bill passes with a fiscal note, the office goes back to review how accurate that fiscal note was once the law is enacted and in place. Mrs. Jones advised occasionally they will go back to check how close they were, but it is not something that has been actively done by the office. It is something that they could explore. Senator Sokola inquired if there is a state with a process for this with a model we could adopt. Mrs. Jones stated this is something on her radar, to look at how they can better present a fiscal note. She noted that many times fiscal notes are mistaken for appropriations when that is not the case.

## **5. New Business**

- a. Legislative Hall Facility Use Policy – Mark Cutrona advised he and Lt. Scott Simpson worked on the Facility Use Policy, Lt. Simpson took the lead on presenting the policy. He advised the work on the draft proposal began in 2019. This policy provides a clear, written directive for the usage of the interior and exterior spaces of Legislative Hall, currently there are no policies in place for the exterior usage of Legislative Hall. Mr. Cutrona noted the importance of having a holistic policy as it provides Lt. Simpson and his officers the ability to enforce it. Lt. Simpson noted the need to have a policy for the use of the exterior grounds came out of an event that occurred in 2019 when opposing groups gathered within inches of each other on the grounds. Previously there were discussions on not allowing open carry of firearms on the grounds of Legislative Hall, as well as discussions pertaining to moving demonstrations and rallies to the Legislative Mall. Lt. Simpson noted the policy was written after research of best practices from other state capitol complexes and has been reviewed by legal counsel. The purpose of the policy is to ensure the wellbeing of legislators, legislative staff, and the public

Mr. Cutrona noted the policy lays out the process to obtain a permit to use interior or exterior space, includes an updated application, and makes clear the restrictions in place regarding usage of space. He noted another addition is the authority to impose limits based on a state of emergency.

Senator Sokola inquired if the permit holder needs to have a bond. Mr. Cutrona stated it is not part of the requirements, however the Legislative Mall has a requirement of insurance; he will follow up to see if these events should be similarly insured. Lt. Simpson noted he thought this was discussed in the past and was a factor in moving rallies and those types of events to Legislative Mall.

Representative Schwartzkopf inquired about differentiating between the events outlined and displays like those set up by the Heart Association. Mr. Cutrona clarified that the policy regulates those areas in Legislative Hall not regulated by the House or Senate. He noted it does apply to table displays, but that the current process already requires groups to apply for permission to set up and schedule a display. He explained the policy differentiates between inside displays and rallies or demonstrations that are held outside. Rep. Schwartzkopf thanked them for the inclusion of verbiage about political signs being displayed.

Representative Short wanted to clarify the maximum capacity in the areas outlined in the policy and the mechanism to handle groups exceeding this. Mr. Cutrona noted that at the time of application, a conversation would take place regarding a possible move to the Legislative Mall.

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Rep. Short inquired who the contact is for the Mall. Mr. Cutrona noted those reservations are handled by the Division of Facilities Management. He deferred to the Director, Jennifer Coverdale, for any further questions on their process. Mrs. Coverdale confirmed applicants reserving the Mall must have a minimum of \$1 million dollars in liability insurance to hold an event.

Lt. Simpson advised the areas identified for larger groups and the application process provides Capitol Police a mechanism to communicate with the applicant about group size. It is up to the applicant to cut off participants at the number specified for the area and use the identified overflow areas. The numbers set for these areas came from the State Fire Marshals office and take into account handicapped accommodations and possible signage.

Senator Sokola asked if an event is partially sponsored by a state agency, are they also required to hold insurance. Mrs. Coverdale advised the process is the same for everyone.

Mr. Cutrona advised he'd like to clarify the indemnification question before the Council votes on the policy.

- b. Code Revisors Report – Dan Wolcott introduced and provided background information on himself and his history as a Code Revisor. He deferred to James Sharp to present today's report. Mr. Sharp introduced himself and reviewed the issues they have encountered during contract renewals with Lexis Nexis. These developments have created both a short term and long-term problem requiring discussion. He explained the roles of the revisors and Lexis Nexis. The substantial proofreading work that Lexis Nexis has provided to date is not directly compensated. Lexis Nexis approached the Revisors in an ongoing discussion as they are not comfortable making the scope of the edits they currently make in their proofreading. They've identified what they are willing to do going forward.

The short-term problem with this change is possible inconsistencies and the ability to get proper code out. Mr. Sharp noted that code revisors consist of Mr. Wolcott and himself, they do not have staff, an office, or assistants. He reviewed the funds that are budgeted for personnel costs and the purchase of code books. He noted they have been running at a surplus budget for several years.

Mr. Sharp advised the long-term problem is the change in publishing. People are getting away from books and are going online; most states now have a self-publishing arm. As the demand for books decreases, editing needs are increasing with the passage of more legislation. The current contract with Lexis Nexis goes to the end of 2022. The concern is that in the future Lexis Nexis will decline to make all edits.

Mr. Sharp suggests with the surplus in budget, the solution to the short-term problem is to create a dedicated position for someone to proofread or edit passed legislation, preferably an attorney. The Code Revisors would still act as the last line to provide an independent review of legislation. He stated the solution to the long-term issue still needs to be considered. He suggests it may lead to the creation of some type of department or proofreading arm. Mr. Wolcott added how important the Delaware Code is not only locally but also the underpinnings of corporate law and alternate entity law.

Senator Townsend thanked the Revisors for their work behind the scenes and sharing their concerns.

**A motion was made by Rep. Schwartzkopf and seconded by Sen. Hocker for the Code Revisors to move forward with a more detailed plan to present at a future meeting with specifics of what the cost would be and including the transfer of existing funds into another line. Motion carried. Vote: 8 yes. Senators Sokola, Townsend, Lockman, Hocker, and Pettyjohn; Representatives Schwartzkopf, Short, and Dukes. Absent: Representatives Longhurst and Mitchell**

6. **Executive Session\***

**A motion was made by Rep. Schwartzkopf and seconded by Sen. Lockman to resolve into executive session to further discuss with Chief Hertzfeld of the Capitol Police the contents of documents excluded from the definition of a “public record” under 29 Del. C. § 10002(17)a. as these documents could jeopardize the security of Legislative Hall, that they remain in executive session to discuss pending or potential litigation, and that the following individuals join them during executive session because they have a relationship to the matter to be discussed or are needed to provide assistance to Legislative Council: Director and Deputy Director of the Division of Research; Controller General; Director of Legislative Information Systems; Chief Clerk of the House; Secretary of the Senate; the Chiefs of Staff for the House and Senate Majority and Minority Caucuses; Natalie Woloshin, Lead Attorney for the House Majority Caucus; Chief Hertzfeld, Major Hunt; Lieutenant Simpson; and Aaron Goldstein**

**Motion carried.** Vote: 8 yes. Senators Sokola, Townsend, Lockman, Hocker, and Pettyjohn; Representatives Schwartzkopf, Short, and Dukes. Absent: Representatives Longhurst and Mitchell

Senator Sokola noted for the public that Council will not be reconvening after executive session concludes and streaming will end when Council enters executive session.

7. **Next Meeting – May 5, 2021**

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