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H.B. 6600 -- Legislative Paperless Task Force

Government Administration and Elections Committee public hearing -- March 21, 2011
Testimony of Raphael L. Podolsky

Recommended Committee action: CHANGES AS NEEDED

This bill attempts to codify the recommendations of the legislative task that was appointed to study ways to convert paper documents to electronic form. Those recommendations were dominated, to a large extent, by a \$626,000 budget cut that had been inserted into the FY 2012 and FY 2013 budgets of the Office of Legislative Management, which the Budget-in-Detail (but not the Appropriations Act itself or any implementer bill) directed the elimination of the transcription of public hearing testimony and the elimination of the printing of loose bills (public hearing bills), bill and file booklets, bill lists, and similar documents. Some of these changes would, if implemented, at best be short-sighted and at worst would undermine the legislature's own authority and make public access significantly more difficult.

Some of these changes are codified in H.B. 6600. Others are authorized, rather than mandated (e.g., by requiring the provision of calendars and journals only on regular session days). Many of the changes are either not objectionable or are problematic only because it is our belief that they are intended to eliminate the printing of certain documents, even though they do not specifically say so. As a result, it is difficult to testify to this bill in a specific way. Instead, this testimony identifies several major areas where we believe it is important to make adequate provision for paper copies. It is our hope that the Committee will find a way to make sure that the production of such copies is continued or restored.

- **Public hearing transcripts:** There seems to be a general recognition that the elimination of public hearing transcripts would be a mistake. The Task Force recommended that they not be eliminated, it is my belief that leadership has taken action to implement that recommendation, and it is my hope that state budget will restore funding. Transcripts do not involve reprints but rather the creation of the document itself and will not exist at all in an accessible form unless transcribed. This is particularly important in regard to legislative history, where public hearing transcripts, like floor transcripts, are often cited by the courts in construing statutes. In some cases, they are the only substantive legislative history on a public act. If the legislature fails to create a transcription, it is voluntarily abandoning its own role in maximizing the likelihood that courts will construe statutes in light of their actual legislative purpose. I have attached a copy of an article on public hearing transcripts from the Connecticut Law Tribune.

- Other original documents: It is essential that original documents be archived, so that all reliance for a permanent record is not placed in electronic versions. Storage in multiple locations and by more than one means is a way of preventing losses that could be catastrophic if computer systems crash. H.B. 6600 changes the number of original copies or the entities that will receive them (see, for example, lines 119-126 in Section 5). We do not claim to know how many archival copies are needed or where they should be housed, but we urge the Committee to look to the State Librarian for guidance on these matters. In addition, copies of materials relied on by the legislature itself, such as the Rulings of the Speaker, should continue to be available in print. We agree that it is not necessary to provide individual copies of the full general statutes to all legislators, as long as copies are easily available in immediate access to their offices.

- Copies of documents: Most seem to agree that, in past years, more copies of many legislative documents have been printed for public distribution than was necessary. This year, the legislature is continuing to print bill lists and copies of files but is not printing bill booklets at all and is printing calendars and journals only on regular session days. It is requiring clerks to make copies of loose bills for public hearings on copying machines. We are not sure as to what the practice will be for paper copies of engrossed bills, which in the past have been available in hard copy. We urge you to maintain the printing currently being done (files, engrossed bills, session-day calendars and journals, etc.) and to restore the printing of a reasonable number of (a) bill booklets, (b) House and Senate calendars and journals on all session days, including days of technical sessions, and (c) loose bills.
 - Importance to legislators: Bill booklets are of particular importance to legislators themselves. It is extremely difficult to read bills of any substantial length on a computer screen. If we want legislators to take their responsibilities seriously, they need to have paper copies of the bills that they are considering. The printing of the list of bills is not a substitute. That is also why it is important to continue the printing of files.
 - Importance to advocates: Bill booklets, calendars, and journals are all of major importance to those who monitor legislation for their own organizations or for others. Bill booklets are important in the same way that file booklets are important. Calendars and journals on technical session days are important for tracking bills, which can be referred or gain "stars" on those days. The need for hard copies of these materials is compounded by the sometimes erratic performance of the legislature's on-line system.
 - Importance to the general public: Both loose bills and hard copies of the Bulletin are especially important for members of the general public, who do not necessarily come to the Legislative Office Buildings armed with copies of the bills or with computers. Nor do all members of the public have a computer or have internet access. We are told that the Bill Room will not print out bills that are more than 15 pages long, and we can easily imagine the back-up that would occur if many people wanted copies of bills at the same time.

- Other suggestions: We urge the Committee to insist that other improvements to the document delivery system be made, including the following:

- The filing of amendments should be incorporated into the bill tracking system.
 - The existing bill tracking system should provide notice in real time rather than once a day, particularly in regard to floor amendments.
 - To the extent that the public is expected to obtain copies of documents electronically, the legislature should provide a greater number of computers, with attached printers, in the Legislative Office Building, and should assure that they are monitored for adequate paper supply, instruction, and breakdown.
 - At the committee level, copies of proposed amendments and substitute bill packets should be provided to the general public at the same time they are distributed to committee members and, in particular, before the meeting starts if they are available to committee members before the meeting starts.
- *Specific changes proposed to H.B. 6600:*
 - *We oppose the new language proposed in l. 27 of H.B. 6600, which seems to eliminate printing of calendars and journals for technical sessions, and we recommend deletion of Section 4 (l. 96-111), which seems to assume that members will not receive paper copies of files.*
 - *In Section 11(b) (l. 261-282), we suggest that the statute specifically require that, in addition to the copies for the House and Senate Clerk, at least one copy of the general statutes and the supplement be provided to the clerk of each legislative committee and that sufficient copies of the statutes and supplement be provided to each legislative leadership office. This will facilitate a reduced number of requests for statutes by individual legislators.*
 - *Section 24 of the bill (l. 566-577) should be revised to make clear that agencies cannot refuse to provide copies of notices and correspondence to a person who is not able or does not want to receive them electronically. Many people, and especially low-income people, do not have email addresses or access their email only rarely. Electronic delivery of messages on a routine basis should not be permitted except to persons who expressly and knowingly consent to such an arrangement and waive paper notice. Line 569-571 of H.B. 6600 should be changed to read: "...may [shall] use electronic notification and correspondence with such clients where deemed appropriate by such agency and where not in conflict with any provision of the general statutes, provided that such clients have expressly and knowingly consented to receive such notice and correspondence electronically and expressly and knowingly waived paper notice."*
 - *We are unsure of the intent behind the repeal of C.G.S. 3-84 in Section 30 of the bill (l. 620). If the purpose is to substitute electronic for hard copies of public acts that take effect upon passage, C.G.S. 3-84 should be amended rather than repealed.*

Legislative History May Become History

LAWYERS OPOSE MOVE TO ELIMINATE
WRITTEN HEARING TRANSCRIPTS

By THOMAS B. SCHEFFEY

When the meaning of a state statute is not clear, one of the first places judges and lawyers look is the carefully-indexed archive of public testimony and discussion in hearing of committees of the Connecticut legislature. Those words have been carefully archived in the state library in Hartford since 1911, said state librarian Kendall Wiggin.

In the modern era, there's another place to find such information. The Web pages of the legislative committees post public hearing transcripts. Thanks to computer word searches, these can be searched effortlessly — even when a day's testimony covers scores of bills and has over a hundred speakers.

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Transcripts Vital For Determining Legislative Intent

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In the June special session, the state Office of Legislative Management has stopped transcribing audio recordings of public hearings. The task force's goal is to save money by converting "legislative documents from paper to electronic form." The OLM has lopped the entire \$215,000 annual cost of public hearing transcripts from its current budget. It's also hoping to cut an additional \$430,000 from the legislature's \$2.1 million annual printing costs by halting daily printing of proposed bills.

"They're acting like this is a done deal," said Colleen Murphy, a task force member and executive director of the state Freedom of Information Commission. The committee chairs are Sen. Joseph J. Crisco, D-Bridgeport, and Beverly Henry, a legislative administrator for the Public Health Committee.

Judges, appellate lawyers, legislative lobbyists and open government groups are appalled.

"That would be a very, very bad thing, in my view," said senior Judge David M. Borden, the former acting chief justice of the state Supreme Court.

Borden, who currently is active on the Appellate Court, also teaches a course on statutory interpretation at the University of Connecticut School of Law. Early in his career, he was counsel to the legislative Judiciary Committee, and knows first-hand how the legislative process works. Public hearing testimony, and the lawmakers' discussion of policy at those hearings, can be "one of the best sources of the purpose behind a statute, which is a very important part of statutory interpretation."

At these legislative hearings, "You have people coming to the legislature saying, 'Look,

The state of Connecticut has a valuable resource in its current collection of legislative history, and officials said simply halting transcription to paper and switching to audio might not be wise.

here's this problem, and it has to be solved, and here's this statute that's being proposed! You have people speaking against it, and for it. It's a very rich source of the meaning of the statute."

Pound Foolish

Experienced lawyer-lobbyist Bourke Spellacy, of Hartford's Updike, Spellacy & Kelly, said it would be penny wise and pound foolish to stop producing public hearing transcripts.

"To deprive the public and the courts of a



State Librarian Kendall Wiggin said there hasn't been enough discussion of what sort of digital formats would be best for keeping records of committee debates.

clear understanding of the meaning of the bill is, I think, a mistake," he said. "Frankly, more often than not, it would frustrate the will of the legislature because the courts would be driven back to the [statutory] language alone, when the language itself is not always clear. I don't see this as a wise move."

According to an Oct. 5 letter to the cost-cutting task force from Office of Legislative Management financial administrator John Harnick, some 33,000 pages of hearing transcripts are produced per year. His office proposes to continue producing transcripts of debates of the full House and Senate, at a cost of \$105,000 annually, but eliminating the committee hearings.

Daniel J. Klau, a Hartford appellate lawyer and president of the Connecticut Foundation for Open Government, said the elimination of written hearing testimony would make it much more difficult to determine the context and historic purpose of a statute.

"These transcripts are an invaluable tool for statutory interpretation," he said, because they provide the context of what the lawmakers were attempting to accomplish. The proposed substitution of audio tapes would require lawyers to monitor hours of hearings. "My understanding is that there is no pro-



Former state Supreme Court Justice David Borden said judges often used transcripts of legislative hearings to figure out what legislators are trying to achieve when passing a law.

posal of a way to index the audio recordings," he said.

State librarian Wiggin, who is also on the task force, is concerned that not enough thought has gone into the preservation and accessibility of important information. The proposal to store records in an "electronic format" could mean any number of things, he said.

"If we're at all concerned about preserving any of this, we need to have some standards and we need to know what we're talking about," he said. Simply making a legislative record "digital" doesn't make it permanent, Wiggin noted. The task force has not focused on deciding which methods of making digital records: would be most practical for the long term, he said.

The state of Connecticut has a valuable resource in its current collection of legislative history, and Wiggin said simply halting transcription to paper and switching to audio might not be wise. "People who are required to file things with us now send us, maybe, a Word document, maybe a PDF, maybe an Excel file. Who knows? Can we at least talk about this before we enact a law that doesn't even define electronic format?" Wiggin asked.

Blue Volumes

At the beautifully restored state library, adjoining the Connecticut Supreme Court, library technician Laura Klotz showed a visitor the well-preserved bound volumes of committee

hearings, including an Appropriations Committee volume from the late 1800s.

The volumes are kept on metal shelves seven stories tall, and solid glass floors float around them. To reduce fire danger, the rich "wood paneling" is actually metal, carefully painted to fool the eye. Because water would be as disastrous as fire, the stacks lack fire sprinklers.

The volumes from the House floor are bound in blue, the Senate floor debate is bound in red, and the public hearing volumes are gold. And they can be a researcher's gold to a lawyer or judge attempting to discern the meaning and purpose behind a cryptic or ambiguous statute.

Many states don't transcribe public hearings, said Rep. Michael Lawlor, co-chair of the legislative Judiciary Committee. While he is in favor of saving money wisely, he said he's "not thrilled" at the idea of losing written transcripts.

"The role of [legislative] committees is minimized in a lot of different states," Lawlor said. "Very little goes on in committee, and almost everything is formulated by the legislative leaders. That's not the case here. A lot of the back and forth [debate], a lot of the content of these legislative enactments, can be gleaned from reading the public hearing transcript. And I say that because I've done it a million times. It's very typical for us to go back and figure out who said what — not just for political reasons, but also for policy reasons."

Borden, the senior appellate judge and teacher, has just concluded his fall lectures on the statutory interpretation process. He said he tells his students about an electrifying 1992 case called *in re Valerie D.*, where legislative history was critically important. In that case, a mother's parental rights were terminated because of her pre-birth use of cocaine, and the Appellate Court used criminal law theories to conclude the state had special rights to control what pregnant women did with their bodies.

The case inflamed women's groups and civil rights advocates, prompting 66 amicus curiae briefs. Borden wrote for the court, which decided the case based on research of legislative history of two different proposed bills. One bill took a punitive approach. It would make all doctors mandatory reporters of their pregnant patients. In public hearings, representatives of the social sciences testified that the punitive approach would deter pregnant women with abuse problems from seeking needed medical help.

"We used legislative history which came out mostly in committee hearings on another statute, that was about how to deal with the problem of substance-abusing pregnant women. If that material had not been printed, it would have been very difficult, if not impossible, to use that information and to make that decision in that way," said Borden. "It was very, very useful."