



**STATE CAPITOL COMMITTEE  
Special Meeting - Remote Access  
Olympia, Washington 98504**

**August 10, 2020  
3:00 PM**

**NOTE: These Draft Minutes of Meeting are subject to change u on approval of SCC their next regularly scheduled meeting.**

**Draft Minutes**

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**MEMBERS PARTICIPATING**

Cyrus Habib, Lieutenant Governor (Chair)  
Kathy Taylor (for Hilary Franz, Commissioner of Public Lands)  
Kim Wyman, Secretary of State  
Kelly Wicker, Governor's Designee

**OTHERS PARTICIPATING:**

Kevin Dragon, Department of Enterprise Services  
Jeff Even, Office of the Attorney General  
Bill Frare, Department of Enterprise Services  
Valerie Gow, Puget Sound Meeting Services  
Libby Hollingshead, Office of the Lieutenant Governor  
Nouk Leap, Department of Enterprise Services  
Chris Liu, Department of Enterprise Services  
Dave Merchant, Office of the Attorney General

**Welcome and Introductions & Approval of Agenda**

Chair Cyrus Habib called the special State Capitol Committee (SCC) virtual meeting to order at 3:00 p.m. Chair Habib introduced members present. A meeting quorum was attained.

The agenda was approved as published.

**AG Review of Statutes Pertaining to the State Capital Committee - Informational**

Chair Habib reported over the last several years, members have discussed the role of the State Capitol Committee (SCC). When he joined the committee in early 2017, he was not well versed on statutes governing the committee. Following several meetings and briefings that sparked some concerns, he initiated some conversations about the committee's statutory provisions. During that process, he discovered the committee was not operating in full compliance with statutes. Statutes were not followed by the committee as the committee was essentially serving as an advisory body providing input versus provisions of the statute directing the SCC as a decision-making body with dispositive authority on a number of issues. Consequently, he and staff worked with Deputy Solicitor General Jeff Even to review and compile current statutes, which are included in the policies and procedures to be presented as a draft for the committee's consideration to ensure the committee complies with state law. Concurrently, it was also clear the Department of Enterprise Services (DES) was interested in a review of the statutory provisions for potential changes by the Legislature. The agenda includes a briefing on the statutes followed by a briefing on the proposed draft Policies and Procedures for the SCC to comply with current statutory provisions. DES Director Chris Liu will present an action to consider establishing a work group over the next several months to review existing statutes for potential amendments.

Chair Habib recognized Dave Merchant, Assistant Attorney General, who provided a briefing on current statutes governing the actions of the SCC.

Mr. Merchant reported he serves as the Assistant Attorney General within the Transportation Public Construction Division representing DES. The initial task was a review of statutes governing directly or impacting the SCC. His efforts build on the work completed by his predecessor, Brian Fowler. The request was to compile a list of statutes and regulations directly impacting the SCC to assist the committee in its work as the first step. The list of statutes is not exhaustive and does not include statutes that might describe a duty to another agency or might impinge or duplicate duties. The statutes are only ones directly impacting the SCC that address Capitol Campus and Thurston County.

The first category includes organizational statutes under RCW 43 covering the basic creation of the SCC with provisions covering the period from 1893 until 2013 beginning with the initial land grant for the state capitol grounds until the creation of the Capitol Campus Design Advisory Committee (CCDAC) in 2013. Chapter 43 has been modified and amended over time. The chapter identifies members and establishes the limited basis for procedures with some discussions about specific properties. The RCW includes a duty to construct buildings on the Sylvester site and at Capitol Place and a provision directing oversight by the committee on the acquisition and use of real estate in Thurston County. Another provision pertains to building names.

Specific locations and budget provisions are included in RCW 79. The SCC has the authority under various provisions to be involved in the approval and budget process for capitol building lands, Sylvester Park (for parking facilities and buildings), and Capitol Campus. Specific statutes address budget items and the ability to issue bonds (various court decisions have limited the ability to bond), and specific provisions for buildings in other areas in Thurston County only if the SCC finds there is no room on Capitol Campus.

Under RCW 79, DES has the authority to lease facilities. Bond and budget authority is included in the same chapter.

Chair Habib asked about provisions assigning the SCC with the responsibility to ensure there is adequate space on Capitol Campus for executive departments, agencies, and legislative branches. Mr. Merchant advised that RCW 79.24.650 speaks to the SCC providing for the construction, remodeling, and furnishing of capitol office buildings, parking facilities, the Governor's Mansion, and such other buildings and facilities as they are determined by the SCC to be necessary to provide space for the Legislature by way of offices, committee rooms, hearing rooms, and work rooms, executive office space, housing for the Governor, and executive space for other elected officials and such other state agencies as may be necessary, and pay for all costs and expenses in issuing bonds and paying interest thereon during the construction. Chair Habib commented that the provisions in the statute speak to an active role by the SCC in terms of policy and a strategic level role that the Legislature intended for the SCC. He asked Mr. Merchant whether his interpretation is similar. Mr. Merchant responded that the statute includes different provisions designating the SCC in an advisory role and provisions that speak to the SCC taking actions. Some actions speak to "provide for" that is unclear as to the intent because it is such a broad term. Chair Habib commented that since the statute speaks to the SCC issuing bonds, it appears that "provide for" would harmonize with financial arrangements as mentioned in the same section and could be interpreted in the most ordinary meaning, which speaks to the SCC acting to appropriate. Mr. Merchant cited previous action involving Sylvester Park that spoke to bonds. The language referred to the role of the SCC while not acting alone as there was a requirement for approval for the issuance of bonds. He agreed

the language includes “active verbs” but is unsure of the intent. The provisions might be reflective of the need for some harmonization.

Chair Habib referred to the committee’s pending consideration on the L&I/WSDA Safety & Health Lab and Training project. The Office of the Attorney General (AG) is required to defend the state in litigation actions. It is the policy of the AG never to state in writing or orally that the state might be legally wrong. One of the reasons for his concerns pertains to a statute that would apply to the proposed L&I facility as it is not located on Capitol Campus. Mr. Merchant said the language resides in RCW 79.43 for approval or rejection of any and all acquisitions of real estate in Thurston County. Chair Habib said the proposal is not acquisition of real estate. Mr. Merchant cited RCW 43.79 that speaks to the approval or rejection of construction of state buildings in Thurston County not located on the capitol grounds. Chair Habib said it also appears that the provision under state law requires the SCC to approve or reject the L&I facility. No vote was ever rendered by the SCC and the project has proceeded. It appears the provision in the law would either need to be suspended or repealed. Mr. Merchant said he does not believe the statute has ever been repealed. Chair Habib added that there was some belief by others that if funds were appropriated for the L&I Building, other legal requirements would not apply, which speaks to the importance of following the statute or repealing the statute if the proposal is at odds with the appropriation because budgets cannot codify or affect substantive law. The statute would need to be either repealed or suspended. That never occurred with the L&I building. His intent is to ensure transparency with respect to his concerns in reserving the right of the state to defend itself in the event of litigation while also acknowledging the stakes in terms of the statute as the L&I building was not approved by the SCC. Similar to other actions in other cities or towns, if a planning commission does not authorize construction, the construction would not be lawful.

Chair Habib invited questions from members. With there being no further questions, Chair Habib thanked Mr. Merchant for briefing the committee.

#### **Draft Policies and Procedures for SCC – Action**

Chair Habib reported the draft Policies and Procedures were developed in consultation with the Jeff Even, Deputy Solicitor General. He recognized Libby Hollingshead, Chief of Staff, Lt. Governor’s Office, to provide an overview of the draft policies and procedures.

Ms. Hollingshead said the effort to draft the policies and procedures was focused on existing state statute and necessary policies and procedures to comply with current statutes. The document is divided into two sections of internal operating procedures and procedures for engaging with external stakeholders.

The first section covers sections 1-4 and part of Section 8. The sections cover Membership, Committee Records, Officers, Meetings, and Meeting Agendas. The procedures were compiled from various state statutes and many are existing common practices of the committee or represent best practices from other similar statutory committees. The draft references requirements under the Washington Open Public Meetings Act. The most current draft incorporates several changes at the request of DES and the Office of Financial Management (OFM) adding Reeds Rules of Order as the operating procedure for the committee to serve as a stopgap for any procedural issues not covered by the policies and procedures. That jurisdiction touches on a number of committees and processes throughout state government. The second section addresses the committee’s role and timing. Section 5 addresses communicating with other agencies or state work groups involved in the process to ensure communications channels exist between the different agencies. In Section 6, the list of statutes is cited as organized by the Deputy Solicitor General Even. Section 7 recognizes the intertwined processes that have been established in state statute. The section addresses projects funded through a request from DES and included within the Governor’s Budget with the committee receiving briefings and following through the process for a final vote to

approve the project. The section enables the committee to provide input and ask questions as the project moves through the process with the idea to keep projects moving and avoiding burdensome stops and processes and procedures. Section 8 addresses meeting agendas and how the agenda is established and distinguishes the type of agenda topics. Section 9 speaks to requests for committee approval. The section outlines processes on how the committee interacts with various statutes and when voting is required. Subsection B includes a process to enable the committee to take actions on the various statutes as outlined in Section 6. Other procedural items include signature sheets and operating under Reeds Rules of Order.

Chair Habib invited questions from the committee.

Secretary Wyman commented that her questions speak to the interaction and the role and responsibility of the committee and how it relates to the legislative and budgetary process as those processes appear to have been employed to construct numerous projects over the last 10 years during her membership on the committee. She expressed appreciation for the work completed by the Lt. Governor's Office to develop the draft as it emphasizes the importance of the issues the committee should consider when discussing the relevance and role of the committee today. She continues to wrestle with the process as she spent time as a member on the Capitol Campus Advisory Design Committee subcommittee working on various master plans, which were never utilized during decision-making processes during the budgeting process through the Legislature. Of particular concern was the Helen Sommers Building, which was developed through a legislative process. That action should inform the committee when it considers adoption of the policies and procedures in terms of the relevance and importance of the committee with respect to the Governor's Budget and the legislative process to ensure the SCC process is a meaningful process with value added procedures that are statutorily driven to create a better Capitol Campus over the long term. She appreciates the work invested in developing the draft as it has been a source of frustration to her since she began serving on the committee.

Chair Habib agreed and shared information on the development of several campus buildings that occurred outside the committee's process. None of the proposals were malicious as everyone's goal was to achieve efficiencies. However, the statutes were adopted for a reason. This year has demonstrated the emotions and disagreements surrounding confederate monuments and other monuments that have become controversial, as well as displaying different types of flags at state capitals. The state campus represents spaces that have captured emotion, history, and philosophies. It would be important to have a planning commission to ensure the campus is protected as a place where the peoples' work is completed and where the public should feel welcome and their values are reflected in the spaces. The proposed policies and procedures, if adopted, would ensure the proper place of the committee, which is likely closer to what he and Secretary Wyman believe should be how the committee operates.

Kelly Wicker thanked Chair Habib for his efforts in developing the draft as she agrees the committee needs to modernize the work of the SCC. She continues to worry about the duplicative or competing statutes and supports forming a work group to begin alignment of the statutes and other authorizing documents. She questioned the proposal to approve the document prior to the work group commencing and working through the process.

Chair Habib said the committee has the option of adopting amended policies and procedures as needed. The purpose of the work group is to work with the chairs of the legislative budget committees and/or key legislators to develop a bill of amendments. Should the law change, the work group would likely need to meet and update the policies and procedures to ensure the committee complies with any new statutes. There are many areas where the statute should provide more clarity, such as the issuance of bonds.

Chair Habib thanked Ms. Hollingshead and Mr. Even for their efforts.

***Secretary Kim Wyman moved, seconded by Chair Habib, to adopt the proposed Policies and Procedures as presented with edits pursuant to input from DES and OFM prior to the meeting. Motion carried unanimously.***

**DES Recommendation to the SCC – Action**

Chair Habib recognized and thanked DES Director Chris Liu for his willingness to collaborate and work with the committee. The existing statutes and the newly adopted Policies and Procedures speak to some differences moving forward. It is important the committee recognizes the needs and concerns of DES to ensure the outcome is effective.

Director Liu said DES requests the SCC create a work group of government stakeholders to review the statutes, identify any conflicts of primary statutes and WACs, and develop recommendations for resolution in the appropriate manner for a period of one year. The work group may be dissolved once the work is completed or sooner upon majority vote of the SCC. The proposal satisfies and accounts for all issues that have been discussed about existing rules and statutes.

Chair Habib supported the proposal. Mr. Merchant's briefing highlighted the appropriateness to review current statutes and possibly develop some recommendations.

Secretary Wyman asked about the membership of the work group. Director Liu said membership would represent a broad representation of government stakeholders to include the appropriate legislative committees, representation from each of the agencies that comprise the membership of the SCC, and assistance from the Attorney General's Office (Mr. Merchant or Mr. Even) to work through the legal issues. Other stakeholders may also be identified.

Chair Habib asked about the timeline for convening the work group. Director Liu said he supports moving forward immediately to develop a list of members. It will be important to charter the group to ensure the mission has been identified and how the work group will proceed. A reporting structure will be developed. He anticipates initial efforts to commence within 30 days.

***Secretary Wyman moved, seconded by Chair Habib, to establish a work group tasked with reviewing statutory provisions and existing rules overseeing the State Capitol Committee, and consider the future interactions of the State Capitol Committee with other interested stakeholders. Motion carried unanimously.***

**Review L&I/WSDA Capital Projects Update - Informational**

Chair Habib recognized Bill Frare, DES Assistant Director of Facility Professional Services. Assistant Director Frare presented the proposal for consideration.

The Department of Labor and Industries (L&I) and the Washington State Department of Agriculture (WSDA) initiated a predesign in 2018 to create a facility to address L&I's need for a laboratory for testing of materials and a training facility and WSDA's laboratory needs. L&I and WSDA currently operate from leased facilities that do not meet program needs. The predesign evaluated six alternatives and selected a site adjacent to the Edna L. Goodrich Building near the Linderson and Tumwater Boulevard intersection within the City of Tumwater. DES presented the proposal to the SCC at its July 2019 meeting. The committee did not act to approve the predesign for moving forward on construction. The request is to approve the predesign and subsequent construction for the L&I/WSDA Laboratory Training Facility. The project is currently in the design phase. Funds for construction would likely be requested during the next legislative session.

Chair Habib requested clarification as to the committee's statutory role to approve construction or the design. Director Frare responded that the powers and the duties of the committee are somewhat unclear as the statute speaks to approval of construction of state buildings in Thurston County not located on the state capitol grounds. Since the L&I facility is located in the City of Tumwater, DES is seeking approval of the predesign, which would be analogous to approving construction at that location.

Chair Habib noted that the work group would be helpful as the Policies and Procedures are limited and do not address all the questions. He invited questions from members.

Secretary Wyman commented that the proposal serves as a good example as to the confusion about the role of the SCC because the request is to approve the predesign of a building the committee has not seen. It speaks to the role of the committee and the purpose of its action. Although she supports approving the proposal because she has faith all parties have exercised due diligence and are moving forward in the best interests of the state. However, the SCC is asked to approve a proposal the committee has not reviewed. Director Frare clarified that staff did not anticipate reviewing the predesign in detail as the predesign was reviewed by the committee at its July 2019 meeting. The briefing materials from that initial briefing in 2019 were included in the agenda packet to include a description of the building and the analysis completed on the proposal. Secretary Wyman said she likely was not in attendance at the meeting but pointed out the importance of referencing the prior presentation for the benefit of the public.

Chair Habib recalled his frustration when the SCC was presented with the proposal in July 2019 as the predesign had already moved forward. The SCC was presented with the proposal after action had already proceeded and he was not supportive of the SCC rendering a symbolic vote. He shares Secretary Wyman's frustration; however, the discussion points to an understanding of what the law requires and confusion surrounding actions by the Legislature. More clarity could have existed with respect to the project. It is also important to recognize that a similar situation will not occur in the future as the SCC will not be disenfranchised from its proper statutory role. He feels comfortable moving forward with the proposal as his issue with the proposal was rendering a symbolic and meaningless vote. Nevertheless, it is important the SCC vote on the proposal because it is a statutory requirement for the construction to move forward.

***Secretary Wyman moved, seconded by Chair Habib, to approve the findings and recommendations as outlined in the L&I/WSDA Safety & Health Lab and Training Center Predesign Report, prepared by KMB Architects and dated October 11, 2018. Motion carried unanimously.***

#### **Public Comments and Closing Remarks – Informational**

Chair Habib asked Assistant Director Frare to recognize any citizens wishing to speak. Assistant Director Frare advised that because the meeting is virtual, citizens have the option of utilizing the Q&A option to summarize their comments. Additionally, DES advertised an email address on Friday, August 7, 2020 for submittal of written comments. To date, four email comments have been received. He summarized the comments from four individuals.

Patricia McClain referred to the Nisqually Earthquake in 2001 and over \$120 million in damage to campus structures. Any success in completing on time and within budget with a near perfect safety record is directly attributed to the active and sometimes daily engagement of the SCC House and Senate Oversight members both in laying the foundation of policy through a rigorous planning process and during construction. That standard of management and engagement has been sadly lacking in subsequent years and the result is clear in the current state of historic buildings on the campus and in many cases vacant and deteriorating. People across the state care about the Capitol and the historic buildings on the

campus. Following the earthquake, phone calls and emails were received from people across the state including Spokane, Ritzville, Yakima, and Bellingham, asking about the fate of the State Capitol. Many had visited the campus as children and remembered the awe they felt walking into the historic buildings. It is time for the SCC to take a more active role in managing the historic building of national significance. She fully supports the recommendations offered by Marygrace Gardu and others regarding the need for a capitol architect reporting directly to the SCC with expanded membership to include Senate and House members and a recommitment to historic preservation and a foundation of value. She thanked the SCC for consideration.

Tom Henderson wrote that while working on the capital budget with the OFM and later with the Facilities Assistant Director with DES, he often worked with and presented to the SCC and the CCDAC. Early in his experience with the state, Fred King also worked at the Department of General Administration as the Capitol Campus Architect supporting both committees. Unfortunately, there was always a serious lack of funds to manage the maintenance of facilities. The master plan started directing attention away from the main campus seeking to expand the state facilities off campus in Lacey and Tumwater. After Fred King retired from the position, it was not filled. He has always believed that the Capitol Campus Architect is an essential position to maintain strong leadership and master planning, as well as facility maintenance stewardship on the Capitol Campus. A dedicated architect with a strong background in historical preservation is essential in overseeing construction and renovation on Capitol Campus. Further, there needs to be sustainable and adequate funding available to ensure investments are made every biennium to protect and preserve the campus architectural heritage.

Marygrace Gardu submitted several pages of comments. She wrote that the first SCC was distinguished, powerful, active, and contentious. It was created for the purpose of constructing the State Capitol and the originating statute dates to the Remington Code which predates the current Revised Code of Washington (RCW). The statute speaks to the buildings on the campus being audacious as characterized by Norman Johnson at the University of Washington. Her comments speak to the history of the campus and include some recommendations about active recognition and professional historical preservation expertise on the campus. The SCC should take an active role to direct and advance the inclusive campus planning processes that are broadly shared and thoroughly vetted as a result of well-supported information. She urges active advocacy and education with the Legislature and institutionalizing a strong and steady voice for historic preservation.

Jane Rushford served as a Deputy Director for the Department of General Administration and DES. She submitted a letter of support for the evaluation and review of the statutes for SCC and DES.

Chair Habib said the amount of public comment is a good snapshot of the strong feelings about the State Capitol. After preparing to leave government after eight years of working on the campus, he is keenly aware that the campus is a very special place and those who work on the campus are privileged to work in the buildings on such a beautiful campus.

Assistant Director Frare cited another comment received from Sue Lean who states that she is happy to see the commitment of stewardship of the remarkable capitol buildings, which are recognized as the crowning achievement of the architectural style known as American Renaissance. Ms. Lean supports and concurs with Marygrace Gardu.

## **Adjournment**

**Chair Habib thanked staff for their technological assistance to sponsor the virtual meeting. The next meeting is scheduled on October 15, 2020 at 10 a.m. to noon. With there being no further business, Chair Habib adjourned the meeting at 4:16 p.m.**

Prepared by Valerie L. Gow, Recording Secretary/President  
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