

OFFICE OF LEGISLATIVE LEGAL SERVICES

COLORADO GENERAL ASSEMBLY

COLORADO STATE CAPITOL
200 EAST COLFAX AVENUE SUITE 091
DENVER, COLORADO 80203-1716

TEL: 303-866-2045 FAX: 303-866-4157

EMAIL: OLLS.GA@STATE.CO.US

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RECOMMENDATIONS FOR THE IMPLEMENTATION OF UELMA

In-House Publication of the Colorado Revised Statutes On Line. In its October 15, 2014, report, the committee recommended that, in order to address critical matters preliminary to the implementation of the Uniform Electronic Legal Material Act (UELMA), the General Assembly appropriate sufficient funding for one full-time employee in the Legislative Information Systems (LIS) section of the Legislative Council Staff of the General Assembly to design a user-friendly electronic format of the legal materials identified in UELMA. [See LDPAC2 Year One Report, p. 5] While the General Assembly did not approve the funding recommendation, the offices of Legislative Legal Services (OLLS) and Legislative Council Staff Information Technology (LCSIT) have nonetheless joined efforts to proceed with work toward the realization of an improved Colorado Revised Statutes (CRS) web site. The offices determined that contracting with an outside vendor for the initial design of the web site would be the most cost-effective and advantageous approach, which site the legislative staff would thereafter assume and host, enhance, and maintain over time.

OLLS and LCSIT have jointly drafted a request for information (RFI) seeking interest from technology-based vendors interested in designing a web site that would meet the specific design features defined in the RFI, which features are intended to meet the needs of legal professionals and lay citizens alike. The RFI specifies that the design of the web site must, among other elements, be compatible with and support UELMA enhancements in the future. Although legislative staff will be contracting with an outside technology vendor to design the CRS site, LCSIT will thereafter host and enhance the site and ultimately ensure its compliance with the requirements of UELMA. While staff's primary goal is to improve the functionality of the CRS web site, ultimately staff intends that this source of Colorado's law will meet the requirements of UELMA so that it may be relied upon at some point in the future as an official version of Colorado's primary law.

Recommendation #1. The committee recommends that the General Assembly appropriate sufficient revenues from the General Fund, or

that the Executive Committee authorize a sufficient expenditure from one of the legislative cash funds, for use by the Committee on Legal Services in the Legislative Department to enter into a contract with an experienced technology vendor for the design of a feature-rich, user-friendly, intuitive web site that would provide free public access to the Colorado Revised Statutes in a manner that would support the three requirements of UELMA.

Compliance with the Three Requirements of UELMA. As described in the committee's 2014 report, UELMA requires the following three conditions be met before an official government publisher of legal material in an electronic format may designate the material as official:

- 1) The official publisher must authenticate the legal material in the electronic format;
- 2) The official publisher must provide for the preservation and security of the record; and
- 3) The official publisher must ensure that the material is reasonably available for use by the public on a permanent basis.

So long as the General Assembly continues to publish its legal material in a printed format as well as electronic, it does not have to designate the electronic format as official and meet the UELMA requirements. However, before the General Assembly may designate an electronic version of any of its legal material publications as official, the three prerequisites must first be met.

Authentication. The committee has determined that of the twelve states that have enacted UELMA or a version of it, most authenticate their electronic legal material using digital signature technology (California) or secure hashing (Minnesota). In addition, the committee has found that there are other states that have not enacted UELMA, but which nevertheless provide some type of publicly available authenticated electronic legal material, generally in a PDF format.

As the committee reported last year, the Colorado Secretary of State's office converted to an archival PDF/A document format when that office was faced with having to satisfy the UELMA requirements by March 31, 2014. The PDF/A file format is recognized by the International Organization for Standardization (ISO) and is designed to give a minimal feature set to enable long-term storage. The Secretary of State's office thereafter purchased a number of Entrust digital signature tokens to apply a custom stamp and thereby successfully and economically authenticate each PDF/A regula-

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tions document. Digital signatures is one method of authentication that is recognized by the National Institute for Standards and Technology (NSIT). Based on the experience and success of the Colorado Secretary of State's office, as well as the other states that use digital signatures to authenticate electronic legal materials, including most recently California, the committee makes the following recommendation:

Recommendation #2. The committee recommends that the General Assembly consider using digital signatures technology as a cost-effective means of assuring end users of the authenticity and integrity of the record. The committee further recommends that the General Assembly appropriate sufficient revenues in FY 2017-18 from the General Fund for use by the Legislative Council in the Legislative Department to implement a digital signature method of authenticating electronic legal materials.

Preservation. The committee discussed the best methods to provide for the long-term preservation and security of the legal materials the General Assembly publishes. Best practices for secure storage entail maintaining records in multiple copies that are geographically and administratively separated, while also providing backup and recovery in the event of disaster or other emergency. While UELMA requires that an official publisher provide for the preservation and security of electronic legal material designated as official, in doing so the act gives states with the flexibility to preserve electronic legal material in either print or electronic format. The committee observed that the print version of older materials is a practical and defensible method of preservation. In fact, the OLLS has already retained the services of an archivist to clean and preserve the historical collection of Senate Journals, House Journals, Session Laws, and Colorado Revised Statutes (and the precursors to the CRS) currently stored in the sub-basement of the state capitol.

Recommendation #3. The committee recommends that the General Assembly continue to preserve the older materials in print format. The committee further recommends that the General Assembly appropriate sufficient revenues from the General Fund in the appropriate fiscal year and thereafter for use by the Committee on Legal Services in the Legislative Department to contract for moving the valuable historical book collection and to contract for a venue that offers a secure-access, disaster-prepared, climate-controlled archival environment for the proper storage of the historical legal materials and recordings of the Colorado General Assembly.

Permanency. Finally, UELMA directs the official publisher of legal material in an electronic format to ensure that the material is reasonably available for use by the public on a permanent basis. While access to preserved electronic legal material may be limited by the state's determination of reasonableness, access must be offered permanently. The official comments to this provision of the act state that preserved electronic legal material must remain available in perpetuity so that electronic legal material is comparable to print legal material, which is stored on a permanent basis in libraries, archives, and offices. Ultimately, the permanency requirement may be the most daunting for government publishers to meet.

The Secretary of State's office stores every version of the frequently changing executive regulations in the Code of Colorado Regulations using on-premise virtualized infrastructure. The public may thereby access any electronic version of a rule at any time. The General Assembly must carefully consider the version or versions of the published legal materials it will capture and store on a permanent basis. By way of example, California codes are effective January 1st of each year. Therefore, that state authenticates the January 1st version. However, California codes are occasionally modified during the course of the year when the legislature enacts "urgency" bills that take effect immediately. Because that state authenticates at the "section" level, if a code section changes due the enactment of an urgency bill, legislative staff will authenticate a release of the newly amended version of that particular code section.

Currently, the Colorado legislature publishes the law annually, typically released in early September. The General Assembly may select a date each year that it captures the electronic legal material for that year and preserves it for posterity. In the alternative, the General Assembly may choose to store each version of the CRS when it is updated as new laws (or repealed law) become effective. For some of the legal materials such as the Session Laws and the state constitution that rarely change, this is less of an issue than it is for the statutes.

Recommendation #4. The committee recommends that the General Assembly continue to investigate best practices for preserving electronic legal material for reasonable access by the public on a permanent basis which may include working with the Governor's Office of Information Technology and others to learn more about the applicability of cloud storage the available options to achieve compliance with the "permanency" requirement of UELMA.

Advisability of Going "Official". The committee recognizes that the goals of UELMA are laudable. In government's endeavor to "go paperless" or, at least, significant:

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cantly reduce the amount of paper it generates, efforts to provide reliable official government publications electronically is commendable. "Official", reliable, and authenticated versions of the law, rules, or court opinions that are readily and perpetually available to the public on their electronic devices are not only potentially cost saving but also significantly more convenient to end users. However, certain responsibilities and obligations ensue with such a choice. The committee cautions the General Assembly (and future state government publishers of electronic legal material) to carefully consider and properly prepare for the demands, expectations, and costs that the proper fulfillment of the UELMA requirements will likely impose.

Current law identifies that only the printed version of the CRS is the official version of the statutes. [See §§2-4-207, 2-5-105, 2-5-118, and 2-5-126, C.R.S.] In order for an electronic version to also be designated as an "official" version of Colorado's primary statutory law, the General Assembly will need to enact legislation. Before that time, however, the General Assembly and its staff may continue to push out the electronic legal materials identified in UELMA, authenticating them and arranging for their preservation and perpetual availability. There is no deadline by which to designate these materials as official, so long as the legal materials are also published in a print format, which for now, they continue to be.

Recommendation #5. The committee recommends that the General Assembly continue to designate the print version of the CRS as the official version of the CRS (constitution and Session Laws) until such time as an electronic format has been consistently and sustainably proven to meet the requirements of UELMA.