

**MINUTES**  
**(Subject to approval by the Committee)**  
**Legislative Council**  
**Friday, June 17, 2016**  
**8:30 A.M.**  
**WW17**  
**Boise, Idaho**

Legislative Council members in attendance were Chairmen Speaker Scott Bedke and Pro Tem Brent Hill; Senators Bart Davis, Steve Bair, Clifford Bayer, Michelle Stennett, Grant Burgoyne; and Representatives Mike Moyle, Gary Collins, Jason Monks, John Rusche, and Phylis King. Also in attendance were: Kelli D. Brassfield, Idaho Association of Counties; Bob Geddes, Keith Reynolds, and Jennifer Pike, Department of Administration; Robin Lockett, Jared Hoskins, Katharine Gerrity, Mike Nugent, Cathy Holland-Smith, Paul Headlee, Keith Bybee, April Renfro, Michelle O'Brien, and Terri Kondeff, LSO; Betsy Russell, Spokesman Review; Kristen Binda, VISTA; Senator Chuck Winder, Jennifer Novak, and Diane Kelly, Idaho Senate; Mike Humrhouse, U.S. Courts, District of Idaho; Carlie Foster, Lobby Idaho; Lee Flinn, Idaho Primary Care Association; Teresa Molitor, Molitor & Associates, LLC; Emily Patchin, Risch Pisca; Martin Bilbao, Gallatin PA; Fred Birnbaum and Tiffany Stevens, Idaho Freedom Foundation; Neva Santos, Idaho Academy of Family Physicians; Christine Tiddens and Liz Woodruff, Idaho Voices for Children; Rialin Flores, Conservation Voters for Idaho; Benjamin Davenport, Associated Taxpayers of Idaho; Zach Hauge, Idaho Association of Commerce and Industry; Mary Lou Molitor, Idaho House of Representatives.

The meeting was called to order at 8:30 a.m. by Chairman Bedke. Senator Burgoyne moved that the minutes of November 6, 2015, be approved; seconded by Representative Rusche, and the motion passed unanimously by voice vote.

**LSO Director's Report**

Chairman Bedke introduced Eric Milstead, Director, Legislative Services Office (LSO). Director Milstead introduced four new LSO staff members, three were present:

- Alan Jenkins, Auditor I, Audit
- Michael Phelan, Auditor I, Audit (absent)
- Bailey Peterson, Auditor I, Audit
- Ana Lara, Administrative Assistant, Research and Legislation

LSO Staff Performance Survey

Director Milstead stated that the survey is taken every two years and provides feedback from the Legislature on how LSO is doing. The survey scores were generally high and reflect that staff is working hard and doing a good job. Director Milstead noted the following satisfaction rates for the divisions: Research and Legislation - 93%, Information Technology - 96%, Budget and Policy - 89%, Audits - 90%, and Administration - 96%. He stated that the comments received were more helpful and illuminating and provide direction for improvement. Director Milstead stated that the general tenor of the comments was that the Legislature wanted more and clearer information. He stated that the comments were summarized into four general topics:

1. Administrative Rules. Ryan Bush, Research and Legislation Division, is working on a cheat sheet to provide more explanation of the Administrative Rules review process for caucuses.

2. Staffing. More LSO staffing was needed, specifically in Budget and Policy; and more Senate and House clerical staff, which dovetailed with the recommendations from the civil discourse presentation last January.

3. Public Records Requests. LSO is working on clearer guidelines on procedures and processes.
4. New Legislator Orientation. LSO is working on revisions to orientation.

Chairman Bedke responded that the surveys were useful and that new legislators expressed that retaking the orientation midway through their term would be helpful. Director Milstead confirmed that the orientation was open to any and all members.

### **2016 Interim Committee Appointments**

#### Administrative Hearing Officer Committee (new) - SCR 151 (2016)

Sen. Steve Vick, Co-chair	Rep. Gary Collins, Co-chair
Sen. Bart Davis	Rep. Lynn Luker
Sen. Mary Souza	Rep. Steve Hartgen
Sen. Kelly Anthon	Rep. Lance Clow
Sen. Grant Burgoyne	Rep. John Gannon

Chairman Bedke noted concern about the scope of SCR 151 and deferred to the sponsor, Senator Burgoyne. Senator Burgoyne stated that he and Representative Luker requested an Office of Performance Evaluation (OPE) study through the Joint Legislative Oversight Committee (JLOC). He stated that the report was issued in February 2016 and that OPE found there was a 55% risk of bias in contested cases, which meant there were no sideboards in statute or rule on processes assuring there would be no bias. Senator Burgoyne stated that the point of the Administrative Hearing Officer Committee (AHOC) was to get sideboards in place to eliminate the risk of bias. He noted that agencies were not having problems with their contested case proceedings. Some agencies employ full-time hearing officers, in which case strengthened processes would reduce the risk of bias substantially by providing insulation so the hearing officers were free to make decisions that should be made. Other agencies have relatively few hearings and contract with outside hearing officers. The agency by law and rule is not prohibited from retaliating against a hearing officer that rendered a decision they do not like by simply refusing to hire that hearing officer again. Senator Burgoyne stated that that type of retaliatory conduct should not be permissible under rules and statutes and that there is an absence of protective requirements to ensure that bias does not creep into the process.

Chairman Bedke added that the opposite was also true, in that outside hearing officers were being rehired because of their predictable outcomes, not out of retaliation. Senator Burgoyne responded that it was two sides of the same coin and that processes need to be in place to make sure that as a matter of rule and law those risks are not incentivized or disincentivized. Senator Burgoyne stated that the Idaho Department of Water Resources (IDWR) never came up as an issue over the years until recently and noted no concern with the list of committee members. Chairman Bedke noted that the director of the IDWR acts in a quasi-judicial manner and is the hearing officer and was not in the gunsights contemplated by SCR 151. Senator Burgoyne responded that the issue was broader than an individual department. He added that there were inconsistencies between the administrative procedure act and the Attorney General's rules governing contested cases and that agencies need to have latitude in adopting rules. Senator Burgoyne stated that the interim committee needs to find out all the classifications of contested cases OPE made, the distinctions found between those cases using independent contractor hearing officers and those using employees, and look at processes to eliminate the risk of bias. He added that the review would not be personalized and that the legislature would and should not micromanage. Senator Bair believed the committee would be chasing ghosts because OPE spends considerable time defining and categorizing biases, whether low, medium, or high risk. Senator Bair noted that page 31 of OPE's report showed that less than 1% of

52,481 hearings held in the last few years were high risk for bias, which was less than 1/2 of 1% and the majority of the hearings, 73.5%, had low risk for bias, and 26% were rated moderate.

Senator Davis stated there needs to be some review but recommended the concurrent resolution be rescoped to remove the IDWR, see what the committee recommends, then let the Legislature decide whether to engage. Senator Burgoyne stated he had no problem with removing IDWR from the scope of the study. He stated that the committee will need to clarify with OPE how the contested cases were classified because even though the number of cases with substantial findings were few, the issues may be big. Senator Burgoyne added that the committee could help determine if other agencies have cases.

Representative Rusche recommended replacing Representative Elaine Smith on the committee with Representative John Gannon. Senator Davis moved to approve the administrative hearing officer committee, with the tentative members as indicated and as modified, with the proviso that the scoping of the concurrent resolution be modified to expressly exclude the IDWR; seconded by Senator Burgoyne.

Representative King noted concern with removing the IDWR and suggested leaving it up to the committee. Senator Davis responded that he cannot support going forward without removing IDWR. Senator Burgoyne added that given its importance to Idaho, and its history, IDWR's inclusion threatens to dominate the committee in ways that will not be helpful or representative of administrative practice. Chairman Bedke stated that per Idaho Code, the position of director of IDWR is in many cases a judicial one and IDWR's inclusion could dominate the committee. Senator Bair stated that his concern is whether there is an actual need for the committee. He added that not one person has contacted him about a contested case involving bias and that the OPE report reflected only one contested case in 2014 where there was a potential bias. Senator Bair noted that there were eight interim committees authorized and wondered if that might be too many. Senator Davis responded that he represented constituents who felt like they got "home-towned" because of the relationship between agencies and hearing officers and that appealing the decision was too expensive. Senator Davis agreed, however, with the high number of committees. The motion to approve the Administrative Hearing Committee sans the IDWR passed by voice vote, Senator Bair voting nay.

Council on Indian Affairs (continuing) - HB 155 (1999)

Sen. Cherie Buckner-Webb

Rep. Marc Gibbs

Sen. Jim Guthrie

Rep. Donna Pence (outgoing in red)

Representative Rusche recommended deferring the replacement of Representative Donna Pence. Representative Moyle moved to approve the continuance of the Council on Indian Affairs; seconded by Representative Rusche, and the motion passed by unanimous voice vote.

Criminal Justice Reinvestment Oversight Committee (continuing) S 1393 (2014)

Sen. Patti Ann Lodge, Co-chair

Rep. Luke Malek, Co-chair

Sen. Shawn Keough

Rep. Tom Dayley

Sen. Bob Nonini

Rep. James Holtzclaw

Sen. Dan Schmidt

Rep. John McCrostie

Sen. Cherie Buckner-Webb

Rep. Mark Nye / Rep. Paulette Jordan (Ad Hoc)

Chairman Bedke noted changes due to the retirement of Representative Wills, the acting co-chairs, and the continuation of Representative Mark Nye. Representative Rusche responded that Representative Nye would likely be Senator Nye and suggested he continue to serve with

Representative Jordan as Ad Hoc until his term in the House is done. Representative Rusche moved to approve the continuance of the Criminal Justice Reinvestment Oversight Committee; seconded by Senator Stennett, and the motion passed by unanimous voice vote.

Foster Care Study Committee (new) HCR 59 (2016)

Sen. Abby Lee, Co-chair	Rep. Christy Perry, Co-chair
Sen. Bart Davis	Rep. Mike Moyle
Sen. Mary Souza	Rep. Lynn Luker
Sen. Kelly Anthon	Rep. Jason Monks
Sen. Cherie Buckner-Webb	Rep. Melissa Wintrow

Representative Moyle stated a good job was done last year in the Legislature regarding foster care, but there is a ways to go and hopes to continue the process. Representative Moyle moved to approve the Foster Care Study Committee; seconded by Representative Collins, and the motion passed by unanimous voice vote.

Natural Resources Interim Committee (continuing) HCR 31 (2013); HCR 8 (2015)

Sen. Steve Bair, Co-chair	Rep. Dell Raybould, Co-chair
Sen. Jeff Siddoway	Rep. Scott Bedke
Sen. Bert Brackett	Rep. Mike Moyle
Sen. Lee Heider	Rep. Marc Gibbs
Sen. Michelle Stennett	Rep. Donna Pence / Rep. Ilana Rubel (Ad Hoc)
Sen. Shawn Keough (Ad Hoc)	Rep. Terry Gestrin (Ad Hoc)
Sen. Jim Patrick (Ad Hoc)	Rep. Paul Shepherd (Ad Hoc)
Sen. Roy Lacey / Sen. Grant Burgoyne (Ad Hoc)	

Senator Stennett noted that Senator Roy Lacey will remain on the committee until his term ends and his replacement will likely be Senator Burgoyne serving as Ad Hoc. Representative Rusche noted that Representative Pence will remain on the committee until her term ends and her replacement will be Representative Ilana Rubel serving as Ad Hoc. Pro Tem Hill moved to approve the continuance of the Natural Resources Interim Committee; seconded by Senator Stennett, and the motion passed by unanimous voice vote.

Public School Funding Formula Committee(new) HCR 33 (2016)

Sen. Chuck Winder, Co-chair	Rep. Wendy Horman, Co-chair
Sen. Dean Mortimer	Rep. Scott Bedke
Sen. Cliff Bayer	Rep. Julie VanOrden
Sen. Steven Thayn	Rep. Sage Dixon
Sen. Janie Ward-Engelking	Rep. John McCrostie

Pro Tem Hill clarified that this is more accurately called a ratification. This committee was set up during the legislative session followed by the HCR and this committee has already met two or three times as well. Chairman Bedke added that the committee is more like a working group morphing into an interim committee. Representative King moved to approve the ratification of the

Public School Funding Formula Committee; seconded by Senator Bayer, and the motion passed by unanimous voice vote.

State Employee Group Insurance/Benefits Committee (new) HCR 61 (2016)

Sen. Todd Lakey, Co-chair	Rep. Fred Wood, Co-chair
Sen. Dan Johnson	Rep. Neil Anderson
Sen. Bob Nonini	Rep. Robert Anderst
Sen. Jim Patrick	Rep. Jason Monks
Sen. Dan Schmidt	Rep. Hy Kloc

Pro Tem Hill noted that the Council has the prerogative to determine the number of committee members. Pro Tem Hill moved to approve the State Employee Group Insurance/Benefits Interim Committee; seconded by Representative Moyle, and the motion passed by unanimous voice vote.

State Procurement Laws Committee (extended) HCR 48 (2016)

Sen. Fred Martin, Co-chair	Rep. Neil Anderson, Co-chair
Sen. Bart Davis	Rep. Maxine Bell
Sen. Abby Lee	Rep. Brent Crane
Sen. Lori Den Hartog	Rep. John Vander Woude
Sen. Maryanne Jordan	Rep. Mark Nye / Rep. Elaine Smith (Ad Hoc)

Chairman Bedke noted that the Council has the prerogative to determine the number of committee members. Representative Rusche moved to approve the extension of the State Procurement Laws interim committee; seconded by Senator Stennett, and the motion passed by unanimous voice vote.

Chairman Bedke presented proposed working groups established by the Pro Tem and Speaker for the Council's ratification.

**2016 Interim Working Groups Appointments**

Healthcare Alternatives for Citizens Below 100% of Poverty Level

Sen. Marv Hagedorn, Co-chair	Rep. Tom Loertscher, Co-chair
Sen. Patti Anne Lodge	Rep. Fred Wood
Sen. Steve Thayn	Rep. Judy Boyle
Sen. Jim Guthrie	Rep. John Vander Woude
Sen. Maryanne Jordan	Rep. Sue Chew

Representative Rusche asked what the scope and intent was. Pro Tem Hill responded that the scope was how to approach the healthcare problem with those in the gap and that those over 100% of the poverty level are not part of the gap, but may become part of the gap up to 138% depending on what the solution is. He added that the working group will look at and identify alternatives.

Children at Risk/Faith Healing

Sen. Dan Johnson, Co-chair	Rep. Joe Palmer, Co-chair
Sen. Jeff Siddoway	Rep. Steven Harris
Sen. Marv Hagedorn	Rep. Clark Kauffman

Sen. Mark Harris  
Sen. Dan Schmidt

Rep. Janet Trujillo  
Rep. John Gannon

(No discussion from Council members.)

### Invasive Species

Sen. Jim Rice, Co-chair  
Sen. Lee Heider  
Sen. Mark Harris  
Sen. Grant Burgoyne

Rep. Terry Gestrin, Co-chair  
Rep. Tom Dayley  
Rep. Brandon Hixon  
Rep. Mat Erpelding

Senator Davis noted that historically, working groups have not come before the Council, and asked if the Pro Tem and Speaker wanted to change that practice. Pro Tem Hill responded that the list of working groups was only for the Council's information and a motion was not needed.

Senator Burgoyne asked why Senator Lee Heider was not included in the Children at Risk/Faith Healing working group, as he was the chair of the Senate Health & Welfare Committee. The Pro Tem responded that it was a workload issue; however, Senator Heider would be a good resource.

Representative Rusche noted the importance of transparency of information and thanked the Pro Tem and Speaker for publicizing the working groups.

### **General Fund Update**

Cathy Holland-Smith, Division Manager, LSO Budget and Policy Analysis Division, presented an update on the General Fund for fiscal year 2016. Ms. Holland-Smith advised that the division recently returned from the Joint Finance Appropriations Committee (JFAC) tour. She noted that the budget/revenue situation was fairly stable and that the only difference since Sine Die was that the state was \$2.7 million below what was budgeted, which is miniscule and not material. She stated that the revised Division of Financial Management (DFM) forecast was a 4.1% increase and expecting \$17.2 million less in fiscal year 2016 as compared to that 4.1% increase. However, because of the fiscal impact of tax conformity legislation on line 5, we are budgeted at 3.6 %. Ms. Holland-Smith stated that revenue increases between 4% and 5% go to the budget stabilization fund, and then increases above that go to the strategic initiatives and budget stabilization fund. She stated that currently, the state is about \$18.7 low in individual income tax receipts and \$26.3 low in corporate income tax; or about \$40 million down in income tax collections. She added that DFM believes this is due to higher-than-expected numbers of refunds and is not expected to reverse by the end of June. Ms. Holland-Smith noted an increase in sales tax of about \$20 million, which measures the current economy and is a positive sign. Together they represent a \$2.7 million deficit, but she stated that revenue is pretty close to what was projected.

Ms. Holland-Smith noted that of the \$48.9 million transferred into other funds during the 2015 Legislative Session, \$27 million was for fires. She stated that another \$60 million was transferred this fiscal year, totaling \$87 million. She stated that with regard to appropriations, unless agencies revert a significant amount of money, there will be no money to create a surplus to transfer for either transportation or additional savings. Ms. Holland-Smith noted some surplus for the catastrophic healthcare and medicaid programs, but neither reverts its surpluses at the end of the fiscal year. If those surpluses remain, about \$5 million, the Legislature would have to appropriate and take that money through a rescission next legislative session.

Chairman Bedke asked how much reversion would there have to be in order to kick in to the savings. Ms. Holland-Smith responded that \$20 million represents 7/10 of a percent, 3.6% was budgeted, and its currently at \$3.4 million.

Senator Burgoyne asked whether the income tax numbers suggest that employment was improving, but because of the level of refunds wages were not keeping pace with the uptake in employment. Ms. Holland-Smith responded that the division is trying to figure that out because the state is at full employment.

Ms. Holland-Smith continued her presentation with an update on the General Fund for fiscal year 2017. She stated that the negative \$2.7 million carries forward, which is not significant. DFM originally forecasted growth of 4.9%. She noted that the biggest impact was federal tax conformity, which is at 4.1%. She stated that Idaho will see revenue of \$3,314,000,000. Ms. Holland-Smith stated that what could change that in August would be if there was a huge spike in revenue the prior year, then you rethink everything and ask how much of that is ongoing? Second, is when DFM sees a large increase in the prior year, they like that forecast for the next year and lower the percentage expectation. She stated that DFM would not incorporate all that growth and would tend to be conservative. She stated that the \$34 million for fire deficiency would be available for the upcoming fire season. She believed there would not be a need for fire suppression money in the next legislative session. Ms. Holland-Smith stated that fire suppression costs are getting higher, partly because of the way the state is reacting to changes in weather. She stated that the Department of Lands and the other firefighting agencies are doing more preventive work and using the fire suppression money to prepare for what they think could be a fire and extending that fire season.

Ms. Holland-Smith stated that she does not foresee large unexpected supplementals, and that things are occurring as expected, which speaks to the efforts of the revenue and budgeting committees.

Ms. Holland-Smith announced that Richard Burns will be retiring after 37 years on June 30 and a farewell reception will be held from 2:00 p.m. - 3:30 p.m. in the JFAC room. Chairman Bedke wished Mr. Burns well. Senator Davis moved that the Council commend Mr. Burns for his excellent service to the state of Idaho and the Legislature; seconded by Representative Rusche, and the motion passed by unanimous voice vote. Chairman Bedke added that Mr. Burns has been a good employee through the years and added that when he was first on JFAC and sat with him to learn the ropes, was impressed with Mr. Burns' background.

### **State Controller's Office - Records Retention**

Chairman Bedke welcomed staff from the Office of the State Controller (SCO). Dan Goicoechea, Chief Deputy Controller, introduced himself along with Brian Benjamin, Assistant Chief Deputy, and Audrey Musgrave, Deputy State Controller of payroll. Mr. Goicoechea stated that the SCO was required to come before the Council to receive the Council's approval before records were destroyed. He added that these records are not governed by the statutory requirements relating to retention; they are reports compiled from raw data that will not be destroyed. Mr. Goicoechea stated that a committee within the SCO was assigned to review records retention and that historically records have been stored in paper form. He noted that there are record retention facilities throughout Ada County that hold mountains of paper records. Mr. Goicoechea stated that keeping unnecessary records (never-requested records) creates costs for storage, risk of loss and security, and is not a best practice. Mr. Goicoechea also asked the Council to allow the SCO to automatically destroy records, if Council knew what records were being destroyed. Senator Davis asked about the policy reasons for destroying electronic records. Mr. Goicoechea responded that there is a significant cost associated with storing electronic data. Senator Davis asked how much the state would save by destroying the data. Mr. Goicoechea responded he did not have a number. He added that if the Council preferred the records be retained, a statutory examination would be necessary to determine why records are being retained when they are not required. Senator Davis noted the importance of saving electronic data. Mr. Goicoechea clarified that the SCO is not requesting that raw data be destroyed, but the reports generated from that raw data.

Senator Burgoyne asked what the advantage was of getting rid of reports versus the detriment of having to later reconstruct them. Mr. Goicoechea responded that none of the records being

destroyed are being requested and that input was received from Director Milstead and April Renfro, LSO Audit Division Manager. Pro Tem Hill noted concern with retained unneeded data and the increased risk of a data breach because some of the data is not public information. He added that the reasons for records retention statutes were to avoid continually searching through old information and information getting into the wrong hands. Pro Tem Hill asked how old the records were that were being destroyed. Mr. Benjamin confirmed the risk of data breaches and added that some of the data is on microfiche, which is not hackable nor is it easily readable. He responded that it was a good question and that the SCO's request was a specific one-time request to destroy specific electronic SCO records; payroll records prior to July 2011 and accounting records pre-July 2009. Mr. Benjamin stated that five years of payroll and seven years of accounting records will be retained. He stated that the online reports were electronic records generated automatically through the SCO's online reporting application and can be accessed by state agencies. He added that stored paper or electronic records have costs and storage limits will be reached. Mr. Benjamin stated that the records were a snapshot in time and that disposing of them would not affect any underlying data, which could still be accessed through Idaho Business Intelligence Solution (IBIS). He noted that agencies would be given at least two weeks' notice before records were destroyed.

Representative King asked what was new about the process since records have been destroyed for years. Mr. Benjamin responded that since technology has changed, systems have been automated, and that the statute requires the SCO to ask the Council for permission. Representative Rusche asked for an example of the kind of records being destroyed. Mr. Benjamin responded that the records were financial data from payroll and accounting showing earnings, employer benefits, employee gross pay, leave balances, employee deductions for their specific pay period for that agency. He added that the reports were very specific and a snapshot in time, and after that payroll runs, there may be corrections. Representative Rusche asked if the Audits Division had concerns with the deletions. April Renfro, Division Manager, Audits Division responded no, and that audit has regular conversations with agencies about records retention and that the division's primary concern was maintaining records for at least three years, or until the agency is audited, barring any other federal requirements. Senator Stennett asked how specific are the reports. Mr. Benjamin responded that daily, weekly, monthly are different reports and are run for that payroll or that batch of accounting transactions; they are not cumulative and only reflect that specific snapshot of time. Senator Davis noted that the statute does not give the Council the power to give permission to dispose of records, but rather indicates whether there is a need. He added that the decision belongs with the controller. Mr. Benjamin responded that perhaps the SCO only needs to ask Council if there is a need for the records. Senator Davis stated he and the Audits Division knows of no reason to have a further need of the records. Chairman Bedke clarified that an action item by the Council was necessary regarding need and whether to revise the process. Senator Davis moved that the Council has reviewed the summary-type reports and, based on the advice from the Audit Division, the Council expresses no further need for the records to be retained and allows the controller to use judgment; seconded by Senator Bayer, and the motion passed by unanimous voice vote.

Mr. Benjamin clarified that the one-time request was for the records currently before the Council and that there would be a different set of records next time. The second item before the Council was for the consideration and understanding of whether the SCO should pursue streamlining the processes. Senator Davis asked if the Council was weighing in on whether that legislation should or should not pass. Chairman Bedke responded that it was similar to the working groups.

### **Statehouse ADA Compliance and Maintenance Issues - Update**

Bob Geddes, Director, Department of Administration, presented a review of the Capitol improvements on behalf of Jan Frew. Director Geddes stated that 13 items have been completed and are now in compliance with the Americans with Disabilities Act (ADA), which included:

- Plexiglass on water fountains was installed to warn that they protrude from the wall

- Bases were made using existing marble and installed to historic mailboxes warning that they protrude from the wall
- Exterior signage utilizing universal blue signage with ADA symbols and custom posts were installed
- Picnic tables inaccessible in grassy areas were moved to concrete areas on the Statehouse grounds
- Ramps were installed in east and west porticos, at a cost of \$149,061.25

Director Geddes noted seven items are expected to be complete by July 2016, which will include removing seats in the Lincoln Auditorium to make room for wheelchair access, companion seating, and aisle seat modifications. Fourteen items are expected to be complete by December 2016, which will include:

- Removal of seats, and wall and door modifications in the House and Senate Galleries to accommodate wheelchair access and companion seating. Seats will be repurposed and installed beneath voting monitors, which will be changed from a fixed position to a bracket extending from the wall to accommodate the seating. Interior work will cost approximately \$82,000 - \$109,000 excluding the House cubicle work, and the exterior work will cost approximately \$42,000 - \$60,000.
- Jefferson Street ramps leading to the garden level will not need to be removed and replaced as originally thought, significantly minimizing the cost. Five sections of concrete need to be replaced to tie in to the sidewalk, which will meet ADA requirements. Handrails will need to be extended and a secondary handrail will need to be installed.
- Additional water collection strips will be wider and installed along the ramps to collect water. Drainage from the roof will be diverted allowing for more capacity in the water collection basins.

Director Geddes stated that costs will be shared with the architectural firm in charge of the Capitol renovations.

Director Geddes stated that existing door knobs will be replaced as the original knobs with the Idaho Seal have been deemed inappropriate. The original design thought that we could qualify for that based on the historical nature of the building and those historic door knobs. The Department of Justice advised the knobs do not meet the ADA standard and will be replaced with a lever-type knob allowing easier access, since knobs with the state seal are very expensive. Senator Davis asked if the front plates with the state seal could be placed on other doors. Director Geddes responded that he was not sure what will be done with the old knobs, but will find out. He added that the original knobs were cast with the state seal, so the entire door knob will be replaced.

Director Geddes reviewed the modifications planned to the House and Senate garden level offices, which will include 12 new workstations, adding additional security, new walls to separate the accessible pathway of travel from workstations, new card system, relocation of conference room and break area counters, and new storage areas. He stated the cubicles have been cleared of furniture and the construction will start soon and will be complete before the start of the 2017 legislative session.

Director Geddes stated the wire-glazed windows around the Capitol dome are delaminating, causing significant aesthetic problems. Additionally, the windows no longer open and do not provide access from the outside into the rotunda so light bulbs could be changed. He hopes both issues can be resolved once windows are replaced. He stated that the company that produced the glass confirmed they had a failure in their laminating process, so the resolution is still in process. Director Geddes hopes that the scaffolding used to replace the windows would not be as extensive or expensive as when the renovations were done.

Senator Burgoyne asked if the federal government agreed to the modifications to the exterior ramps. Director Geddes responded that they have not but the changes from an architectural standpoint will be in compliance with the ADA. He added that bark and vegetation along the slope will also be changed to allow better collection of water. Chairman Bedke commented that the bark appeared to

be part of the problem. Director Geddes agreed and stated that a number of issues have been identified that can be improved.

Director Geddes stated that electrified pads will be placed on second-story areas to help manage the pigeon issue. He added that the pads come with a five-year guarantee that they either work or will be replaced.

The Council recessed at 10:34 a.m. and reconvened at 10:54 a.m.

### **HJR 5 Ballot Statement**

Director Milstead stated that Idaho Code requires the Council to prepare a brief statement setting forth in simple understandable language the meaning and purpose of the proposed amendment as well as a concise presentation of the arguments advanced by the proponents and opponents. He stated that only the statement of meaning will appear on the ballot, but both the statement and the arguments for and against are included in the publications that the Secretary of State is required to publish prior to the election. Director Milstead noted that the Council is required to submit these statements and arguments to the Secretary of State 120 days prior to the election, which is no later than July 11, 2016.

Director Milstead stated that LSO solicited and received comments from a host of stakeholders regarding the statement and arguments and worked those comments into a draft, which was completed in mid to late May. He stated that a small council subgroup was formed, comprised of Pro Tem Hill, Speaker Bedke, Senator Davis, Senator Stennett, Senator Burgoyne, Representative Rusche, and Representative Moyle, to prepare a draft for the Council to consider. Director Milstead deferred to Senator Burgoyne to explain further.

Senator Burgoyne stated that his efforts were related to the Statement of Meaning, Purpose, and Result and statements for the proposed amendment. He believed some history was important as to where legislative power resides and that some power has been granted to administrative agencies with the caveat that the Legislature is entitled to review and reject rules that are in violation of legislative intent. He stated that the second paragraph tracks closely what staff came up with, in terms of the ramifications of administrative rules, and the most substantive change relates to paragraph 4 and addresses the absence of provisions for a Governor's veto and explains why.

Representative Rusche noted concern with having more pro than con arguments and finds paragraph 4 confusing and not necessary. (2:32:35) The Council discussed at length the language and format of the draft amendment and additional drafts were prepared by members.

Senator Davis moved to adopt the revisions to the pro and con arguments of HJR 5; seconded by Representative Monks, and the motion passed by unanimous voice vote.

Chairman Bedke recommended the Council recess and resume discussion of HJR 5 after lunch.

Chairman Bedke advised that the letter of commendation for Richard Burns would be circulated for the Council's signature and would be presented to Richard Burns at a later date.

The Council recessed at 12:16 p.m. and reconvened at 1:09 p.m.

### **HJR 5 Ballot Statement (Continued)**

Senator Bayer presented revised language to replace the opening paragraph under the Statement of Meaning, Purpose, and Result to Be Accomplished. Representative King suggested adding the word "intent." Representative Monks responded it is more important what the law says, not necessarily the intent. Pro Tem Hill noted that Senator Bayer's proposed language did not state the intent of the amendment. Representative Rusche presented revised language and added that he preferred the language prepared by the Council in 2014. Representative Moyle recommended the Council proceed with the agenda while copies of the proposed drafts be made for the Council's review.

## **Legislative Technology - Update**

Glenn Harris, Division Manager, LSO Information Technology, provided a recap of the 2016 Legislative Session:

- Two Core Network Incidents: Once was when the firewall's memory was maxxed out due to a bug in the firmware, and again where the same problem occurred with the main fiber switch. Both occurrences were quickly diagnosed and resolved. A second firewall will be installed during the interim to prevent the system from going down in the future.
- GovDelivery replaces Send Personally: Recent blacklist of email demonstrated the need, and 25% of members have set up their accounts.
- Jabber Smartphone: Member smartphones could be configured so that statehouse number would be displayed instead of private cell number on outgoing calls. 26 smartphones are currently set up; 72% preferring that function.
- Committee Computer Presentations Added to Internet Stream: All committee rooms either have full video streaming or streaming computer presentations. Audio switches were installed to include audio only and audio/video options.

Mr. Harris provided a recap of the 2016 Technology Committee:

- Interim Projects & Other Needs: Idaho Public Television changed streaming from analog to digital signals, then analog was reintroduced for House display boards so audio and visual would be in sync. Changes resulted in some rooms not receiving all channels, which will be worked on during the interim. Price quotes are being obtained for replacing cell phone hardware to improve Sprint and Verizon signals. The LSO website is being upgraded to improve ADA compliance and to make more mobile-device-friendly. Network redundancies will be added to make sure network stays running. An ADA hearing loop is being considered. Telephone handsets will be replaced during the interim.
- Laptop Recommendation: New hardware options were discussed. Current laptops are holding up quite well despite being four years old, are not breaking rapidly, and repairs are inexpensive; therefore, 40% of members agreed not to replace.
- Legislative Technology Budget Recommendation: Recommendation was to add failover for firewall and main fiber switch and to replace chairman and secretary phones as well as older attache desktop computers.

Representative Rusche encouraged the Council to review other states' policies on public testimony and to consider allowing the telephonic testimony. Chairman Bedke agreed. Senator Bayer asked about the intermittent static and crackling noises during committee meetings. Mr. Harris responded a faulty ethernet switch and loose connections in microphones were the cause, which were remedied. He added that cell phones placed too close to microphones will cause interference.

Chairman Bedke asked about the Senate electronic voting. Mr. Harris responded it was being worked on day and night. Chairman Bedke thanked the IT staff for their work.

### **HJR 5 Ballot Statement (Continued)**

Chairman Bedke redirected the committee to continue its discussion of HJR 5. Senator Davis provided proposed language. Representative Rusche recommended explaining what a rule is. Senator Bayer noted that the original draft language provided more detail defining rules. Senator Davis stated that the proposed language is basically the same as the original but adds an explanation and resolution of the problem. Director Milstead recommended consistency in terminology when referring to rules, whether they be executive, administrative, or adopted. The Council further discussed revisions to the HJR 5 language.

Pro Tem Hill moved to adopt draft language as revised by the Council (see attached addendum); seconded by Representative Monks, and the motion passed by unanimous voice vote.

Director Milstead stated that LSO will quickly redraft the statement for the Council to review. Senator Davis recommended a small subcommittee to assist LSO in crafting the language. Chairman Bedke recommended the subcommittee consist of Senators Burgoyne and Davis and Representatives Monks and Rusche, with a deadline of next week, so a revised draft can be submitted to the Secretary of State by July 11, 2016.

### **Fiscal Notes - Discussion of Voluntary Program**

Senator Burgoyne noted the Council's extensive fiscal note discussion during the last Legislative Council meeting. He stated he worked with LSO staff to provide guidance to legislators in preparing fiscal notes. Senator Burgoyne reviewed the guidelines for a proposed pilot project:

1. Fiscal notes would be prepared on a voluntary basis for the legislator; legislators would not be required to go to budget analyst for assistance. This pilot is limited to RSs that have a fiscal impact on general fund. Budget analysts could also assist if there is an impact on other funds.
2. A checklist would be completed by the budget analyst, and a copy of the RS would be required from the legislator along with written permission to do the work.
3. The analyst would prepare the fiscal note to include: complying with Joint Rule 18, underlying assumptions, describing source of data, and providing methodology. Senator Burgoyne noted the value of consistency in fiscal notes. The format would be concise and explainable.
4. When data is not available, the analyst would provide an explanation of what is known and why an impact cannot be calculated.
5. Legislators could add additional information, such as dynamic forecasts, and could choose not to use the analyst's fiscal note.
6. Staff would not be able to comment or review other legislators' fiscal notes. A question remains as to leadership's role in asking staff for assistance in reviewing fiscal notes.
7. Confidentiality: Analysts may need to contact an executive agency to get information; identify of legislator would not be shared, staff would not disclose whether a fiscal note was prepared for a particular piece of legislation, legislators or sponsors could state that LSO had prepared the fiscal note if information was unchanged upon introduction.

Senator Burgoyne recommended starting the voluntary pilot project next session and hoped staff could provide feedback as to whether the project was worthwhile. Chairman Bedke asked Director Milstead how much work it would be for LSO. Director Milstead responded that the project would be doable on a pilot, limited, and voluntary basis and if staff had latitude to "pause" the work in light of workload. Representative King asked if fiscal notes were public. Senator Burgoyne responded that fiscal notes become public when the legislator uses them. He added that if the legislator does not use the fiscal note, then the fiscal note is not public. Director Milstead agreed and added that LSO workpapers are exempt from disclosure. Chairman Bedke asked how the legislator would know if a fiscal note had the seal of approval. Director Milstead responded that he was unsure. Chairman Bedke stated that LSO needs to be prepared if the pilot becomes bigger than anticipated. Director Milstead responded that if it does, LSO could not manage it with existing resources.

Senator Davis clarified that if the request is made before the RS is introduced and goes to print, the RS would be exempt from public record; however, if the RS has been introduced to print, and the legislator decided to amend or revise the statement of purpose, it would not be exempt from public record. Director Milstead acknowledged Senator Davis' point and responded that discussions were centered around creating the fiscal note at the outset. Ms. Holland-Smith added that the federal court has found, in the *Idaho, Jeff D.* case, that all verbal and written work by budget analysts to legislators was not public record. Pro Tem Hill stated the pilot project was worth looking into and was confident that LSO could work out the details. Pro Tem Hill moved to adopt the fiscal note pilot program; seconded by Representative Rusche. Senator Davis confirmed that pilot meant the project

was voluntary. Pro Tem Hill clarified that the pilot would be voluntary and temporary and would be reviewed during the Spring 2017 Legislative Council meeting.

Senator Davis asked what would happen if the proponent was not a legislator. Senator Burgoyne responded that the pilot is applicable to legislators only. Senator Davis asked if a legislator could review another legislator's fiscal note. Senator Burgoyne responded that there was not a definitive answer. Senator Davis suggested providing instructions for the pilot. Pro Tem agreed, and added that the pilot project guidelines state that staff would not be able to comment on or review other legislators' fiscal notes. He recommended the pilot be kept simple and limited to legislators. Director Milstead stated that the pilot would be done as time and workload permits.

Senator Davis recommended adding language that would allow the chairman to request help on a fiscal note. Pro Tem Hill agreed that the resources continue to be available to the chairman. Representative Rusche noted that analysts currently look at fiscal notes when bills pass through both houses. He added that Joint Rule 18 requires a statement of at least a year's duration of effect on finances. Senator Burgoyne agreed with Representative Rusche and responded that the general fund limitation is just for screening and to keep the pilot project within the parameters that the Budget and Policy Division could handle. He reiterated that if an RS impacts the general fund, another state fund, and local government, the analyst would assist the legislator on all three items. Senator Bayer stated that objectivity in collecting data and numbers is critical and that the legislator owns the language and fiscal note. He added that it is important to draw a line as to where responsibility lies.

The motion to proceed with the pilot project with the parameters as outlined was approved by voice vote, with one voting nay.

#### **Capitol Services Committee - Dining Room Vendor Recommendation**

Senator Chuck Winder reported that Statehouse repairs will be done on sagging doors, splitting drywall, and the HVAC in the rotunda. He stated the committee interviewed three cafeteria vendors and reviewed issues such as quality of food and food safety. Senator Winder stated that after several votes, the committee recommends the Council accept a new vendor, "It's All About You Catering." Senator Winder added that there was not a lot of dissatisfaction with the current vendor, most were very complimentary, but most felt it was time for change.

Senator Winder stated that Michelle O'Brien, LSO Special Projects Coordinator, will be the single point of contact for legislators and staff relating to Statehouse maintenance and janitorial issues.

Senator Winder stated that Dewain Gaudet, LSO Gift Shop Manager, will retire in September. He commended Mr. Gaudet for being an ambassador for the Capitol and doing a great job.

Senator Winder closed by stating that staff at all levels, as well as the public, loves and respects the Capitol and are dedicated to its preservation.

Senator Stennett noted concern that the current vendor was being penalized even though she was liked for seven years. She asked Senator Winder to clarify the committee selection process. Senator Winder responded that LSO solicited vendors for proposals, and three written proposals were received, which included menus. He stated that the three vendors were interviewed separately in an open meeting and that the vendors were not allowed to hear the other vendors' presentations. Senator Winder stated that the recommendation was not an effort to penalize anyone, but was the result of the quality of the menu, of staff, and a level of excitement in providing good service to meet the needs of the Legislature, staff, public, and anyone else wanting to enjoy the cafeteria. Chairman Bedke stated the decision was not easy and reiterated that it took the committee several ballots to come to a determination. Senator Burgoyne asked about the history of the new vendor. Senator Winder responded that It's All About You Catering has been in business for at least 14 years, does wholesale sandwiches, and caters to a list of excellent clients. Representative Rusche moved to accept It's All About You Catering as the new cafeteria vendor; seconded by Representative Collins.

Senator Davis noted the 30-day termination in the contract. Chairman Bedke acknowledged that the contract could be terminated within 30 days. The motion passed by unanimous voice vote.

### **Legislative Audits - Update**

April Renfro, Division Manager, LSO Audits Division, presented an update on the Audits Division:

- **Audit Status:** The 2015 Comprehensive Annual Financial Report (CAFR) audit and Internal Control Report were issued with three findings at three state agencies. The 2015 Single Audit of federal funds was issued with twelve findings, which was significantly fewer than the prior year because the Division was able to close some open findings at the Department of Health and Welfare. The twelve findings were at five state agencies. Pro Tem Hill asked Ms. Renfro to clarify the meaning of single audit. Ms. Renfro responded that audits are broken down into two sections: the standard financial statement audit (CAFR), which is part of the single audit package that is sent to the federal Department of Health and Human Services and supports the single audit that identifies the federal assistance the state receives by agency, grant, and federal grantor. Ms. Renfro stated there are a lot of requirements in the Single Audit Act that help govern what programs are reviewed. The programs are broken down by type and dollar value and then a risk analysis is done. Programs are reviewed every three years. She added that the federal grantor designates certain major programs as high risk that need to be audited every year. One audit could include multiple programs. Ms. Renfro referenced a schedule of agencies visited to support major programs identified in the Division's single audit work. She noted that the audit reports are available on the LSO website.
- **Auditors are currently working on fiscal year 2015 management reviews at various agencies.** Statutes require the Division to visit every agency at least once every three years. Those reviews should be issued this fall. Ms. Renfro stated that once the report is completed, the agency responds, the report is provided to the JFAC co-chairs for approval for release, then the report is released and made public and posted on the LSO website. She stated that opinion audits are typically done every two years, except the health district, Department of Environmental Quality Clean Water and Drinking Water State Revolving Funds, and Idaho Public Television opinions, which are issued yearly.
- **Electronic Workpapers:** Electronic workpapers were approved and purchased last year. Training and implementation has been completed and the new workpapers are being used for the 2016 CAFR and Single Audit assignments. Ms. Renfro believes the electronic workpapers will make the Division more efficient.
- **Local Government Entity Registry Progress:** Lists of known local government entities were submitted to the Division by counties, the Tax Commission, and other entities like the Department of Water Resources. Preliminary reports were sent to each county reflecting the entity reported, whether the registration was completed, whether an audit is required and whether the audit was submitted. She stated that the registry is a two-part compliance perspective; first, local government entities have to register to be compliant, and second, if they are required to submit an audit, they must submit it. September 1 is LSO's deadline to notify the counties and Tax Commission of any non-compliant entities. The Tax Commission will then impose the penalties provided in Idaho Code Section 67-450E.
- **New Audit Staff:** Three new staff auditors have been hired, who were introduced by Director Milstead earlier. Additionally, the Division hired Anastasia Leonova who will start June 20, 2016.

Representative Rusche asked if there has been an assessment of additional risk or potential losses as it pertains to the Office of the State Treasurer. Ms. Renfro responded that the Division does not typically assess risk related to wrongful termination claims since they do not affect audit; however, most of the information is part of discussions of risk assessment during the audit process.

### **CSG West Annual Meeting in Coeur d'Alene - Update**

Representative Jeff Thompson, Chairman, Council on State Governments West (CSG), provided an update on the planning of the CSG West Annual Conference in Coeur d'Alene, Idaho. Joining Chairman Thompson on the phone was Edgar Ruiz, Jennifer Schanze, and Nicole Francl. Chairman Thompson stated the conference will be held at the Coeur d'Alene Resort September 6 - 9, 2016, and is anticipating 350-500 attendees. He encouraged everyone to register. Chairman Thompson stated that registrations are trending higher than the 2015 conference in Vail, Colorado.

- Speakers: Idaho Governor, C.L. "Butch" Otter will be speaker and will be a part of a discussion potentially with western governors about western state issues. Other speakers include: Ken Adelman, Amy Walter, and Kenneth Gronbach, whose bios were provided to the Council.
- Policy Tours: Tours will include the Chilco Mill in Athol, Navy Acoustic Research Detachment in Bayview, Hecla's Lucky Friday Mine in Mullan, and North Idaho College in Coeur d'Alene.
- Committee Meetings: Committees will meet on various topics appropriate to the 13 western state legislatures. The annual standing committee meetings will be scheduled during the conference.
- Evening Social Events: The Plaza Lawn Opening Reception and Dinner, Lake Coeur d'Alene Boat Cruise, and the Chairman's Initiative Charity Fundraiser and Closing Event. The charity supported will be the Idaho Food Bank. The event will be held on the final night in conjunction with a golf shoot-out on the Coeur d'Alene floating green.
- Fundraising is in full progress and as of May 27, 2016, roughly \$200,000 has been raised.
- The Promotional Flyer and Sponsorship Guide have been developed and distributed and are available on the CSG website.

Chairman Thompson recommended the Council review the conference schedule of events, information about the committees, policy tours, keynotes, and levels of sponsorship as provided to the Council.

Mr. Ruiz stated that CSG is working to secure Secretary Jewell, U.S. Department of the Interior, and Montana's Governor Steve Bullock as speakers. Chairman Thompson added that 144 registrations have been made as of June 15, 2016, and thanked LSO and CSG staff, as well as the Speaker and Pro Tem, for their support, making calls, and financially supporting this endeavor for the state of Idaho. Pro Tem Hill expressed appreciation to everyone for their efforts in coordinating the conference.

### **Office of Performance Evaluations**

Rakesh Mohan, Director, Office of Performance Evaluations (OPE) stated OPE is working on three exciting and challenging projects that are complex and have big policy implications:

1. Distribution of state funds for K-12 public education
2. Foster Care/Child Protective Services System
3. Public Law 280 involving tribal jurisdiction

Director Mohan suggested the Council contact him if anyone has input on these projects. He stated that the projects involve legislative interim committees. He encouraged the Council and members of the interim committees to review OPE's Highlight Report covering three main evaluation reports: 1) involving average daily attendance issues completed in 2007; 2) involving adequacy of public education funding completed in 2009; and 3) involving policy differences between charter and traditional schools completed in 2013. The topics addressed in these reports are still relevant.

Director Mohan stated that OPE's role is different from that of interim committees. He stated that OPE is independent, non-partisan, and has an analytical role. OPE will keep the interim committees updated on the progress of the projects and attend meetings to avoid duplication of work.

Senator Davis noted that OPE's work is confidential until released by the Joint Legislative Oversight Committee (JLOC) which would make it difficult for committees to make recommendations to the Legislature without OPE's assistance. Director Mohan confirmed that information is confidential until

released. He stated that the foster care study should be completed in January, and the public education study should be completed in December, so interim committees could make their final recommendations to the Legislature. Director Mohan stated that if the interim committees are kept informed and OPE is apprised of what the interim committees are doing, it should work well without OPE disclosing confidential information. Senator Davis responded that interim committees do not meet once the session begins and that there needs to be a more open, collaborative process and that waiting until January or February for OPE's report does not work. Director Mohan responded that it is the prerogative of the Council and Legislature to make rules of how JLOC operates. He cautioned that if changes are made to release information, boundaries and limits need to be defined to preserve OPE's independence and credibility.

Representative Rusche suggested it was possible to have meetings earlier than January, but believed issuing the OPE reports late is not a problem. He added that the differences between the legislative committees and OPE are complimentary. Senator Bayer agreed that the relationship between legislative committees and OPE is complimentary and lends itself to a better result. He stated that OPE's objectivity is critical, and asked if the Council could address any down time between the studies and JLOC proceedings and help facilitate the availability of information. Director Mohan responded that OPE is ready to meet the needs of the Legislature and added that JLOC is very accommodating in releasing reports.

Senator Stennett asked whether OPE projects could be completed sooner and JLOC could meet earlier. Director Mohan responded that some reports could be issued earlier; however, all information is required before an evaluation is made. Senator Hill appreciated the director's willingness to attend interim committees and believes a balance of communication between OPE and committees can be achieved. Senator Davis noted concern with OPE's lack of commitment to include committee co-chairs in discussions about OPE findings. He encouraged OPE to be more engaged. Chairman Bedke asked why OPE's analysis could not be done parallel with interim committees and agreed that the sooner information is available, the better. Director Mohan understood the issue and stated OPE will do their best to issue reports sooner and accommodate the needs of the interim committees; however, it will need to be handled carefully.

Representative Rusche stated that rational decisions cannot be made without OPE's performance audit and legislative interim committees. Chairman Bedke asked how to address the gap between the completion of OPE's report and the end of the interim committee. Representative Rusche responded that some interim committees meet later and stated that acquiring information takes time. He added that not all interim committees lead to legislation and suggested committees take the time to get all the information and do it on a rational and logical basis based on the information and data available.

Senator Burgoyne summarized by stating that the resources available to meet deadlines are potentially inadequate. He stated that there may be a longer-term issue that needs to be considered.

Director Mohan stated that to do a meaningful study takes time and to complete it by August or September would be challenging. Chairman Bedke noted that it is either feast or famine when it comes to studies. He expressed appreciation to Director Mohan for his presentation. Chairman Bedke acknowledged that the issue will need to be addressed to maintain meaningful analysis.

Chairman Bedke adjourned the meeting at 3:33 p.m.