

**MINUTES**  
**Approved by Council**  
**Legislative Council Committee**  
**Friday, June 14, 2019**  
**10:00 A.M.**  
**Room WW17**  
**Boise, Idaho**

Speaker Bedke called the meeting to order at 10:02 a.m.; a silent roll call was taken. Council members in attendance: Speaker Scott Bedke and Pro Tem Brent Hill; Senators Chuck Winder, Abby Lee, Carl Crabtree, Michelle Stennett, Cherie Buckner-Webb, and Grant Burgoyne; and Representatives Mike Moyle, Clark Kauffman, Wendy Horman, Mathew Erpelding, John McCrostie, and Sally Toone. Legislative Services Office (LSO) staff present were: Director Eric Milstead, Terri Kondeff, Michelle O'Brien, and Ana Lara.

Other attendees: Lynn Tominaga - Idaho Ground Water Association; Francoise Cleveland - AARP; Luke Kilcup - Lobby Idaho; Liz Hatter - Veritas Advisors; Fred Birnbaum - Idaho Freedom Foundation; and Mary Sue Jones - Senate staff.

Speaker Bedke called for the approval of the Legislative Council meeting minutes. **Senator Buckner-Webb made a motion to approve both the November 9, 2018, minutes and the March 26, 2019, minutes. Representative Erpelding seconded the motion. The motion passed by voice vote.**

**Director's Report - Eric Milstead, Director, LSO**

Update on Legislative Audio/Video and Other IT Infrastructure

Director Milstead stated that the Capitol Commission had approved expenditures of \$100,000 to upgrade and/or replace audio/visual and other IT systems in the capitol building. The Division of Public Works (DPW) is working with LSO to hire a consultant to formulate a master plan to assess the current state of technology in the capitol building and provide options for the future. He suggested that leadership consider appointing a small committee (e.g., Legislative Ad Hoc Technology Committee) of legislators to meet with the consultant periodically.

Discussion:

Senator Burgoyne inquired whether the project would include remote testimony technology similar to what was provided in the House Education Committee. Director Milstead responded that they had not specifically discussed this issue. He explained that the consultant would be charged with providing a comprehensive roadmap as to best practices and options to consider. He noted that technology of remote testimony could potentially fall within these parameters.

Statehouse Security Matters

- First Responders Training Exercise

Director Milstead stated that representatives from LSO, the Dept. of Administration (DOA), the Attorney General's Office (AGO), and other Statehouse elected officials met with representatives from various first responders to begin planning an incident response training exercise. This exercise will allow first responder groups to become familiar with the building's physical layout. First responders have indicated that they can develop a table-top exercise by the end of the year and an on-site exercise after the conclusion of the 2020 legislative session.

- Security Working Group

Director Milstead and Director Mooney of the DOA have asked all security related stakeholders in the capitol building to meet weekly to improve lines of communication between the various security entities. Director Milstead stated that participants include representatives from LSO, DOA

and its private mall security, AGO, Idaho State Police (ISP), the Lieutenant Governor's Office, and the State Treasurer's Office.

- Replacement of Video Camera Security System

The DOA intends to replace the current video camera security system throughout the capitol mall including the capitol building. The new system will use digital technology to replace the current aging analog system. Director Milstead stated that the new system will have a much greater storage capacity and clearer imagery.

- Capitol Door Locks

Magnetically and electronically controlled door locks will be installed on certain doors in the capitol building this fall. Once a cost estimate has been obtained, the project will be brought to the Capitol Commission for approval and funding.

### **General Fund Update & Update on Revenues - Keith Bybee, Deputy Division Manager, Budget & Policy Analysis, LSO**

Mr. Bybee stated that the General Fund's balance at the end of the legislative session was \$121,850,900. He added that at the end of the 2018 legislative session, the General Fund budget balance was about \$46 million. He explained that ,due to about \$40 million of additional economic activity and some growth from the base revenue, the budget increased 0.5% above the fiscal year (FY) 2018 budget. He also noted the transfer from the Budget Stabilization Fund into the General Fund of \$40,365,300. He explained that, while the state was closer to achieving its \$3.7 billion appropriations budget, it was still \$31.1 million behind forecast when H281's transfer of \$9 million was taken into account.

Mr. Bybee referred to the monthly revenue monitoring document and stated that, for the last five years, the state has collected 15% of its revenue in the month of April. However, in FY19, about 19% of total revenues were collected in April. He predicted that with the adjustment required by H463 (2018) and the change in the withholding table, more of the General Fund revenue (approximately one-fifth) will be collected in April. He suggested that this may affect the budgeting process in the following legislative session. He noted that the state was still running behind on individual tax income collections. He suggested that the impact of tax cuts could occur over a two-year period. He reminded the council that calendar year 2019 will be the first full year in which tax rates will have adjusted to the new withholding tables.

Mr. Bybee stated that FY2020's budget was \$8.9 billion; 44% of the budget originated from the General Fund, 36% from federal funds, and 20% from dedicated funds. He explained that the budget for Health and Human Services increased 11.9% from the previous year and the budget for education increased by 5.7% from the previous year. He further explained that the difference for both budgets was due to an increase in the federal funds budget. He stated that the budget for law and justice remained flat and noted the increase of caseloads and Medicaid users. He said that the state's total balance for its major reserve funds was \$532.8 million.

#### **Discussion:**

Speaker Bedke asked for clarification regarding individual income tax collections being below the forecasted amount. Mr. Bybee responded that the sum collected was \$170 million less than last year. He explained that the anticipated fiscal impact of H463 (2018) for individual income tax collections was \$120 million. He suggested that the difference could decrease as more individual income taxes are collected further into the year, past the current fiscal year. Speaker Bedke inquired how much of the dedicated funds were tied directly to a fee rule. Mr. Bybee was unsure and stated that he would follow up with the council.

### **Update on Technology Infrastructure Stabilization Fund & State Controller's Office' LUMA Project - Paul Headlee, Division Manager, Budget & Policy Analysis, LSO**

Mr. Headlee stated that the LUMA project is a five-year project to modernize the statewide accounting and business system; the project is managed by the Idaho State Controller's Office (SCO). This project was made official by H493 (2018) and will provide approximately \$102 million for the project over a five-year span. He said that, in an effort to build commitment to the project, committees/councils/boards were created such as:

- Leadership Council;
- Governance Boards;
- Functional Team Leaders/Members;
- Software Integrator Evaluation Committee; and
- Budget Module Implementation Team.

Mr. Headlee emphasized the importance for the LUMA system to connect to LSO's budget system seamlessly and, to that end, the necessary involvement of LSO's staff with the LUMA project. He noted, however, that during the fall of 2019 and the 2020 legislative session, LSO would be unable to commit staff to the LUMA project and still meet its commitments to the Legislature. He reported that a former LSO employee, with 28 years of budget and policy experience, would be contracted on a one-time basis during that period (six months) to work with the Software Integrator Evaluation Committee and that the Technology Infrastructure Stabilization Fund would serve as the funding source for the contract.

Discussion:

Representative Horman asked whether the \$102 million appropriation for the project covered the level of staff commitment needed from various agencies. Mr. Headlee responded that the SCO had developed a distributive workload formula so that, if an agency has an individual that can be dedicated to the project, some of those funds can be used to backfill the employee's wages. He explained that LSO does not have an employee available during the legislative session or the time leading to session to dedicate to the project.

#### **Office of Performance Evaluation (OPE) Update - Rakesh Mohan, Director, OPE**

Director Mohan listed the six performance evaluations underway by OPE:

- Operational Efficiencies in the Prison System;
- County Revenues;
- Preparedness of Idahoans to Retire;
- Chained Consumer Price Index;
- Nonemergency Medical Transportation; and
- Investigating Allegations of Child Neglect.

He encouraged the Legislature to provide any input it might have regarding the design of the study requests. He noted that some studies were not just compliance studies and impacted policy issues as well. He said that legislators, as policymakers, could be of great assistance in designing the requested studies. He listed a few follow-up reviews underway:

- Residential Care;
- Court-ordered Fines and Fees; and
- Southwest Idaho Treatment Center.

Director Mohan noted that he's received numerous invitations from entities outside of Idaho to explain how Idaho's Legislature has been able to use evaluations to improve Idaho's government.

Discussion:

Representative Horman inquired about the possibility of LSO surveying other states regarding their respective performance evaluations operations to see whether there might be methods to modify or

improve Idaho's performance evaluations operations structurally. She explained that this could make it easier for the Legislature to better evaluate, for example, budget investments. Director Milstead responded that LSO would work towards obtaining information regarding other states' performance evaluations models, probably through the National Conference of State Legislatures (NCSL) or another medium, and provide it at the following Legislative Council meeting. Representative Erpelding emphasized the importance of OPE retaining its independence and continuing to be a nonpartisan entity.

Director Mohan stated that OPE would be happy to assist in evaluating budget investments, etc. He reminded the council that any study requests must first be approved by the Joint Legislative Oversight Committee (JLOC).

Representative Horman suggested that independent evaluations of state expenditures should be more routine and the Legislature should have a method to obtain the information from an independent source (e.g., OPE) without reducing the focus on other important studies. She inquired about different structures used in other states that could assist legislators with more routine study requests. Director Mohan informed the council that a study request for OPE could be submitted to Director Mohan and JLOC for potential approval outside of the legislative session as well.

Speaker Bedke stated that Senator Harris and Representative Erpelding had been nominated as co-chairs for JLOC and called for a motion. **Senator Buckner-Webb made a motion to approve Senator Harris and Representative Erpelding as co-chairs for JLOC. Senator Stennett seconded the motion. The motion passed by voice vote.**

#### **Technology Update - Glenn Harris, Division Manager, IT Division, LSO**

Mr. Harris provided a brief summary of the 2019 legislative session with regard to IT. He was pleased to report that even with new network infrastructure there had been no downtime. He noted that new legislative laptops had been provided, and that the House's use of *OneDrive* in an effort to share documents electronically and go paperless had been successful. He listed the items discussed during the 2019 Technology Committee meeting on May 29, 2019:

- Capitol commission building A/V evaluations;
- Hardware replacement schedule;
- Cross-committee room streaming discussion;
- Social calendar event scheduling discussion;
- VTC with zoom connector discussion;
- Interim projects; and
- 2020 legislative technology budget proposals.

Mr. Harris stated that the VTC discussion was directed toward expanding the capitol building's video conferencing capabilities. He explained that the current system cannot connect to personal systems (e.g., zoom system), but for a small cost, the committee rooms could be connected to a personal computer. This would provide the capability for someone to simply click on a link and use zoom to join and participate in a meeting.

Mr. Harris summarized some of the interim projects which included: replacing Apple mobile printing devices, replacing outdated network storage, replacing Helpdesk Solution, and upgrading GEMS for Windows 10 compatibility. He stated that moderate recommendations to the legislative technology budget were approved.

#### **Update on Administrative Rules for 2019 Interim Session - Eric Milstead, Director, LSO**

Director Milstead reminded the council that all administrative rules would expire at the end of the month; this represented about 736 chapters or 8,000 pages of administrative rules. He stated that, at the direction of the Governor, executive branch agencies were submitting temporary and

proposed rules to replace the expiring rules and would be published in a special June 19, 2019, administrative bulletin. He explained that there were two reasons for this approach:

1. As temporary rules, they take effect immediately. However, they will expire at the conclusion of the 2020 legislative session if they are not also approved as proposed and pending rules; and
2. As proposed rules, they will be governed by the Legislature's approval and rejection process.

Director Milstead noted that, during the entire 2018 year, executive branch agencies submitted 1,234 pages of proposed rules to LSO. In 2017, they submitted a total of 1,160 pages. This year, LSO estimates that 8,000 pages of proposed administrative rules will be submitted in a single month (June 2019) for the drafting attorneys to review and write memos opining whether the proposed rules are in compliance with existing statutes. He explained that the executive branch's approach is to reauthorize some chapters in full, but other chapters may be allowed to expire due to being obsolete or antiquated. He further explained that other chapters may have individual subparts deleted or may have provisions that are reorganized, reordered, or have clerical corrections or updates. He noted that the executive branch stated that some of the changes are not substantive changes. He listed the four categories of temporary and proposed rules to be submitted as identified by the Division of Financial Management (DFM) to LSO:

1. Chapters of rules to reauthorize in full;
2. Chapters of rules set to expire;
3. Chapters of rules with individual rule subparts set to expire; and
4. Chapters of rules that have been rewritten and simplified.

Director Milstead requested some direction or feedback from the Legislative Council on how LSO should proceed. He inquired whether LSO staff should conduct a comprehensive review of all reauthorized rules (8,000 pages). He asked whether LSO should review a percentage of reauthorized rules to confirm what the Legislature has received. He stated that, while the Legislature has the legal authority to review rules, it is not *required* to review rules. He informed the council that the usual rule amendment process would occur in the July bulletin and all subsequent bulletins in 2019, in addition to the reauthorization of all the temporary and proposed rules in June 2019. He cautioned that, depending on the amount of staff time involved in the reauthorization of the rules process, the review may propose some challenges to LSO's responsibilities to interim committee work.

#### Discussion:

Representative McCrostie inquired about reviewing rules with subparts or provisions that have expired. Director Milstead said he did not believe expired provisions could be reviewed. He suggested that during the session the committee could call the rule before the committee and request the agency to speak to the expired portions. He elaborated that the reauthorized rule dockets would not actually contain any stricken text to explicitly show what subparts had been allowed to expire.

Representative Erpelding inquired whether the dates for the origination of the reauthorized rules would remain the same or change. Mr. Alex Adams, Administrator for DFM, responded that the history notes were retained for the reauthorized chapters with no substantive changes.

Senator Burgoyne referred to the four categories of temporary and proposed rules and stated that he had no personal issue if LSO wished to review chapters that were being reauthorized in full, but personally didn't believe it necessary if confirmation was provided by the executive branch that no substantive changes had been made. In regards to chapters of rules and chapters of rules with individual subparts set to expire, he reminded the council that the Legislature has the ability to enact a rule into statute. As for categories two and three, he suggested that the Legislature examine which rules or subparts had been allowed to expire. Regarding category four, he suggested that they should be reviewed for any substantive changes. He noted that even small word changes can have a major impact in a statute or rule. He stated that the process would require consensus from the legislative bodies.

Senator Winder asked that the record reflect that the Legislative Council was not directing the legislative bodies regarding the reauthorization of administrative rules; it was simply providing guidance regarding LSO's question pertaining to the increased workload.

Director Milstead stated that LSO staff would perform a comparison for a statistically valid number of the reauthorized rules, and LSO would follow their traditional process for new administrative rules throughout the rest of the year.

The council recessed at 12:13 p.m.

The council reconvened at 1:08 p.m.

### **Appointment of Medicaid Study Interim Committee**

Speaker Bedke called for a motion regarding the appointment of the Medicaid Study Interim Committee. **Representative Kauffman made a motion to adopt the Medicaid Study Interim Committee members. Representative Horman seconded the motion. The motion passed by voice vote.** The council noted the potential for the co-chairs to appoint ad hoc members, both legislative and nonlegislative.

### **Update on Public Records Requests - Terri Kondeff, Chief Operations Officer, LSO**

Ms. Kondeff stated that public record requests to LSO had increased by 55% over last year and 35% since 2017. She elaborated that LSO had received 762 public record request so far this year, reviewed 50,758 pages, and spent 98.5 hours on searching, reformatting, reviewing, redacting, and responding to public record requests. She stated that 70% of requests had come from members of the press and 30% from the public. She explained that while most requests are received during session, LSO received a substantial amount of public record requests in the two months after the end of the legislative session.

Ms. Kondeff stated that the process and timeline for completing public record requests can be challenging both during session and in the interim. She proposed a change to the process by providing legislators the ability to opt-in to allow LSO to conduct initial email searches without waiting to receive a permission notification each time from the legislator. She clarified that, even after opting into email searches without permission notifications, the member would still be notified of the public record request. She explained that this would allow LSO to immediately conduct the initial review of how many emails might pertain to the topic and then work with the requester to possibly narrow the search, obtain fees, etc. This would speed up the process to better conform within the public record request statutory timeframe. She further explained that LSO would always request permission from members to do the final review of the emails. She referred to the opt-in form and encouraged the council members to share it with their caucuses; she was happy to present on the topic to other members if desired.

Discussion:

Speaker Bedke inquired about the timeline for public record requests. Ms. Kondeff explained that the timeline begins at the receipt of a public record request. Representative Horman inquired about public record request charges. Ms. Kondeff responded that a fee was incurred when more than two hours of work or more than 100 paper copies is needed to complete the public record request. She noted that LSO rarely provides paper copies; usually it's an electronic document.

Senator Burgoyne suggested that the Legislature discuss with the press any concerns regarding sensitive information pertaining to constituents that are included within public records.

Speaker Bedke inquired about the redaction policies. Ms. Kondeff responded that anything to do with draft legislation and research requests are exempt. She explained that, in many cases, emails are nonresponsive. She further explained that medical information is exempt unless it is part of public testimony. She reminded the council that the final product would not be forwarded to the requestor

until the legislator had seen the material. Pro Tem Hill suggested that it may be time to review the open record request laws and its exemptions to protect constituents' sensitive information.

Representative Horman inquired about the consequences of not responding to a requestor within the timeframe. Ms. Kondeff responded that the requestor could compel a response in court and there may be fees associated with it.

Senator Lee suggested a discussion regarding the legislators' personal devices and how applications on the phones are perceived as public. Ms. Kondeff explained that public record requests regarding legislative business is focused on the content regardless of the device where the material was saved or the device in which the emails reside. Senator Burgoyne noted that state work done on private computers or personal devices is usually a public record, especially email. He suggested that additional education regarding the Public Record Act might be beneficial for everyone.

Representative Horman inquired whether there were different standards for public records found on personal devices (i.e., texts, emails, etc.) for different levels of officials. Ms. Kondeff responded that she did not believe so and suggested that there may be different interpretations of the public record statutes by other levels of government. Speaker Bedke suggested that the public record statutes should be reviewed for potential changes to address the concerns expressed by the council members. Representative Erpelding suggested the Legislature implement a record retention schedule.

**Discussion: Requirement of a Legislator's Name To Be Listed on All Statements of Purpose (SOP) - Speaker Scott Bedke, Idaho State Legislature**

Speaker Bedke relayed requests from legislators to alter the policy so as to require a legislator's name be listed on all SOPs. He inquired whether the policy should be changed to honor the request. The council declined to do so.

Director Milstead stated that the Secretary of the Senate and the Clerk of the House would be making a change to the SOPs. He explained that when SOPs are revised, a date and timestamp will be included to reflect the date and time of the revision. The revised SOPs will also include stricken and underlined text to reflect the revisions.

Senator Winder suggested that the council consider the use of independent and unbiased professionals, with budget expertise, to assist with drafting fiscal notes to ensure accuracy. Senator Burgoyne lamented that the pilot program for fiscal note drafting within LSO was discontinued due to lack of resources. He noted that, while LSO does continue to provide some assistance and guidance with fiscal notes, it would be worth discussing the staff resources needed for the Idaho State Legislature.

**Discussion: Should Bills Have Floor Sponsors Before a Bill Receives a Hearing in Committee - Speaker Scott Bedke, Idaho State Legislature**

Speaker Bedke noted that while most legislation has a floor sponsor, quite a bit of legislation does not. He relayed the request from some legislators to require a bill to have a floor sponsor before it can receive a hearing in committee. Speaker Bedke stated that many agency bills leave it up to the chairmen and germane committees to determine who will sponsor the bill instead of finding a sponsor to carry the bill. He noted that requiring the agencies to do so would also present a different set of problems.

Representative Erpelding suggested that most agency bills are committee bills and pass committee. He opined that agency bills should continue to be left to committee chairman to determine who will sponsor the bill on the floor. He noted that it has proven useful in providing experience to new legislators to be a floor sponsor. Senator Winder advised agencies, or anyone bringing a bill forward, to have a sponsor before committee hearings, but was unsure whether it should be a requirement.

Representative Moyle expressed concern that agency bills are not required to have a sponsor before being granted a committee hearing. He stated that the requirement would help ensure that the

agency or individual provides enough background and education regarding the bill before a legislator would feel comfortable sponsoring it.

Senator Lee noted that sometimes the committee will print a bill out of deference. She stated that debating the bill in committee has proven beneficial, particularly for agency bills, and it might be that those discussions would never have taken place otherwise due to the lack of a floor sponsor.

Representative McCrostie inquired whether the requirement for a floor sponsor would be for a print hearing or committee hearing. Senator Burgoyne opined that the requirement for a floor sponsor should be before a committee hearing, which is when the committee hears and debates the merits of the bill. He suggested that chairmen be provided with the ability to make rare exceptions given the points raised by Representative Erpelding. Senator Buckner-Webb opined that it should not be left to the Legislature to micromanage the agencies. She stated that agencies should do their due diligence if they wish to see their agency bills pass.

#### **Discussion: Session Deadlines - Senator Grant Burgoyne, Idaho State Legislature**

Senator Burgoyne stated that not abiding by the transmittal deadlines can be problematic and prolongs the legislative session unnecessarily. He expressed concern regarding legislation that is introduced after transmittal deadline given the risk that it will have had little time to be researched and vetted. He suggested the quality of legislation is better when legislators have had enough time to research and prepare it, which is at the beginning, or before, the legislative session.

Senator Burgoyne observed that privileged committees are allowed to continue printing bills, but the number of print hearings seem to increase more and more toward the end of session, which in turn prolongs the legislative session. He questioned whether some of the bills printed well after the transmittal date by privileged committees could have been heard in the next legislative session instead and whether the Legislature had done its due diligence in researching and vetting those bills. He suggested that the enforcement of deadlines would be beneficial to the Legislature. He believed that adhering to deadlines would also allow the legislative session to end on time and on a more positive note.

Senator Winder agreed that applying a more firm deadline to transmittal dates and committee deadlines would be beneficial. He suggested that some of the animosity felt at the end of session could be avoided if transmittal dates were adhered to better. He suggested that both bodies could review potential deadlines and agree to adhere to them before the beginning of the legislative session. He acknowledged that exceptions would need to be made at times and that there should be a process for how to handle those exceptions.

Senator Stennett suggested that there is a lack of consistency for how bills are received by committee members after the transmittal date and some bills are judged more harshly than others because of it. She noted that the inconsistency can be perceived as some bills being treated unfairly and is difficult to explain to constituents. She believed that consistency would improve the process.

Representative Erpelding suggested that structural problems can lead to incivility. He believed that the enforcement of deadlines was an example of a structural change that could help improve civility in the Legislature.

Representative Moyle stated that he was more inclined to remove deadlines rather than to enforce a specific deadline.

Representative McCrostie suggested that if the Legislature treated the target dates as deadlines, and enforced those deadlines, the process would be improved.

Representative Horman suggested that a deadline for the 2020 legislative session could be problematic given the high number of administrative rules to review in the upcoming session. She stated that she was open to further discussion on ways to make the process more equitable and accessible for everyone.



Senator Burgoyne suggested that a "special sessions test" could be applied to any bill that came forward after the transmittal date. He explained that if a bill was significant enough to call a special session then he would be willing to suspend the rules to avoid having a special session. He stated that deadlines are generally disliked, but they provide a level of discipline and help prioritize much in our lives.

Pro Tem Hill reminded the council that, in order to change a target date to a deadline, a rule change must be made and would require a two-thirds vote in both chambers. He personally would like to discuss the matter further before supporting the measure. He stated that, short of a rule, there are other options that could be taken to address the matter. Speaker Bedke concurred with Pro Tem Hill.

**Senator Winder made a motion to adjourn. Senator Buckner-Webb seconded the motion. The motion passed by voice vote.**

The meeting adjourned at 3:06 p.m.