

**Legislative Council
(Approved by the Council)
Capitol Building, WW-17
Boise, Idaho
June 6, 2014**

Minutes (Revised on 10/2/14)

Legislative Council members in attendance were Co-chair, Pro Tem Brent Hill, Senators Bart Davis, Steve Bair, Clifford Bayer, Elliot Werk, Michelle Stennett and Cherie Buckner-Webb; Co-chair, Speaker Scott Bedke, and Representatives Mike Moyle, Gary Collins, Jason Monks, John Rusche, Sue Chew and Phylis King.

Also in attendance were Senator Chuck Winder; Representative Brent Crane; Mary Sue Jones and Jennifer Novak, Senate staff; MaryLou Molitor, House staff; Rakesh Mohan, Ryan Langrill, Lance McCleve, and Bryon Welch, Office of Performance Evaluations; Dennis Stevenson and Jennifer Pike, Department of Administration; Betsy Russell, The Spokesman-Review; Emily Patchin, Risch-Pisca, PLLC; Brody Aston, Lobby Idaho; Raeleen Welton, Westerberg & Associates; Bob Geddes, Idaho Farm Bureau Federation; Suzanne Budge, SBS Associates LLC; and Wendy Jaquet, New Leadership, BSU. Legislative Services Office staff in attendance included Jeff Youtz, Michelle O'Brien, Cathy Holland-Smith, Paul Headlee, Richard Burns, Keith Bybee, Robyn Lockett, Jared Hoskins, Jared Tatro, Shane Winslow, April Renfro, Aimee Hayes, Mike Nugent, Eric Milstead, Katharine Gerrity, Ryan Bush, Glenn Harris and Cyd Gaudet.

The meeting was called to order at 8:00 a.m. by Co-chair, Pro Tem Brent Hill.

Pro Tem Hill reminded the group that June 6th was the 70th anniversary of D-Day. On that day 150,000 Allied troops risked their lives on the beaches of France, and 2,500 Americans lost their lives. He indicated that without the sacrifices made by those troops he doubted that anyone in the room would be sitting where they were today, and he hoped everyone was mindful of that as they went through the meeting.

Senator Bair moved to approve the minutes of the November 8, 2013 meeting. The motion was seconded by Representative Collins and approved on a voice vote.

The Pro Tem pointed out that this would be Mr. Youtz's last Legislative Council Meeting and said that they were all grateful for his many years of service.

Director's Report: 2014 Legislative Session Review

Mr. Youtz, Director of Legislative Services, noted that the meeting, with the exception of the interviews of the Director candidates, would be streamed on the internet.

He indicated that the screening team had added one candidate, so there would be a total of four candidates who would be interviewed in an executive session. The order of the interviews would be: Eric Milstead, Dwight Johnson, Ken Roberts, and Ross Borden. Director Youtz explained that after the interviews the Legislative Council would need to come back into open session to make a motion and vote to select the new LSO Director.

Mr. Youtz began by discussing the LSO Staff Performance Report. This is the compilation of a survey given every two years to LSO's customers, the Idaho Legislature. In this survey legislators are asked to

give feedback regarding the four most important aspects of what LSO does: quality of work, nonpartisanship of the work, discretion and trust, and timeliness of the work. He explained that due to feedback received two years ago, this year the survey had been done electronically. Only 45 responses were received, which was less than the previous 65 responses; however, he felt the response rate was still good.

Mr. Youtz explained that each LSO division is rated separately in the survey, and the expectation is that each division exceeds a rating of 90% on all of the measurements. He said he was proud to report that this had been achieved again this year with ratings ranging from 90% to 96%.

This year the Research and Legislation Division achieved a 95% overall performance rating. Mr. Youtz read through the comments, and explained that they are all taken very seriously and are reviewed with the staff. One commenter requested that the bill writers give advice to legislators about the history or merit of an idea. Mr. Youtz explained that the bill drafters, because they are very experienced, are able to advise legislators of the history of a particular idea, and the problems that may have come up in the past. He stated that they will also give advice as to any constitutional or statutory issues. However, beyond that, there are many situations where a legislator may feel compelled to pursue a piece of legislation. In response to a comment on the survey about too many amendments perhaps being a reflection of drafting errors, Mr. Youtz advised that this past session the number of RSs were at a five-year high, and amendments were at a five-year low. He also read a comment about delivering bills to the floor desks instead of to a cubicle or office, and he indicated that bills could be delivered any way the legislators preferred.

The Director commented that they had quality people with great experience in the Research and Legislation Division, and that he was very proud of their efforts.

The Budget and Policy Analysis Division also received great reviews throughout, with an overall rating of 93%. In reading through the comments regarding this division, Mr. Youtz indicated that the GEMS system is always a work in progress. However, it has turned out to be a national model for information management in state legislatures. He discussed a concern that was raised regarding long hours that the analysts are required to work during session. Mr. Youtz indicated that was something that the analysts realize comes with the job.

The Legislative Audit Division received fewer responses, as they remain more in the background and do not work with legislators on a daily basis; however, they did receive high marks. Mr. Youtz explained that they are trying to get the Audit Division, along with their products and services, in front of the Legislature more. He indicated that they have a terrific audit staff that is under a lot of pressure, at times, due to findings that come out regarding different agencies, and it is helpful for them to know that the Legislature is behind them. He stated that this division does an extremely important part of legislative oversight of the executive branch agencies.

Mr. Youtz indicated that the Information Technology Division has a great staff, and received an overall rating of 96% with very positive responses. He said that this division's results are a testament to the willingness of the Legislature to invest in technology and good people. Technologically, this division is on the cutting edge nationally, and that is one of the reasons they are a model for other states. They are a consolidated staff that serves the House, the Senate, and LSO. He noted one negative comment about the public Wi-Fi system and explained that although the Department of Administration is responsible for this system, they have been very cooperative in making improvements; however, it is still a work in progress.

The Administrative Division received some very nice comments including kudos for Dewain Gaudet who manages the Capitol Gift Shop. Mr. Youtz commended Dewain for doing a great job running the Capitol Gift Shop, adding that he is somewhat of an ambassador and a visible presence during the quiet interim when touring groups and others just drop in and need orientation. Mr. Youtz said that he appreciated the nice comments about himself. In regard to the comments about management of the bill drafting staff and communication between the drafters, Mr. Youtz explained that during the session the bill drafters are so busy that it is difficult to get them together in a weekly management or training meeting. However, they are going to make a concerted effort to meet briefly each morning and have a Friday staff meeting to enhance communication.

Representative Rusche commented that the ratings were all very good, but he noticed that the lowest point in all of the scores seemed to be the perception of the quality of the work. He asked if that was a capacity issue or something else that needed to be looked into further. Mr. Youtz said that it was possible that it was a matter of capacity, but explained that they have tried to keep the staff small due to the seasonal nature of the work. He indicated that the staff was aware that they would work long hours during the session, but that the work would ease off during the interim. He advised that they could probably use more people, and that would probably help with the quality of the work. However, he cautioned against reading too much into the percentages due to the ability of a few negative responses which could skew the results.

Senator Bair asked if it might be a good idea to provide paper copies of the survey to the legislators near the end of the session in order to get better participation. Mr. Youtz indicated that they would love to get better participation, so he will suggest to his successor that they provide both hard copy and digital surveys in the future. The Pro Tem indicated that if leadership were reminded near the end of the session they could remind legislators, perhaps in their caucus meetings, to fill out the survey. Speaker Bedke reminded the Legislative Council that it is a quirk of human behavior that no news is good news, so he thought that the 60 legislators who did not fill out the survey were actually giving LSO a passive compliment.

In closing, Mr. Youtz said that the results were very complimentary and were consistent with past surveys. He indicated that they would continue to keep the bar very high in terms of their performance in helping the legislators succeed at their jobs. The Pro Tem then requested a round of applause for Mr. Youtz.

Constitutional Amendment Ballot Statements

Next on the agenda were the Proposed Constitutional Amendment Ballot Statements.

Senator Davis was reported present at this order of business.

Eric Milstead, Deputy Division Manager, Research & Legislation, advised the Legislative Council that Idaho Code requires them to prepare a brief statement setting forth in simple, understandable language the meaning and purpose of the proposed amendment, in this case HJR 2, along with a concise presentation of argument FOR and AGAINST the proposed amendment. The brief statement will appear on the ballot along with the proposed question. The arguments FOR and AGAINST, along with the meaning statement, will appear in a publication distributed by the Idaho Secretary of State's office. This document must be submitted to the Idaho Secretary of State no less than 120 days prior to the election or, in this case, by July 7th.

Mr. Milstead indicated that the meaning statement and arguments provided to them had been prepared by LSO as a result of comments and suggestions which had been solicited from over 330

stakeholders on two separate occasions. These stakeholders included all members of the Idaho Legislature, all state agency directors, all statewide elected officials, Idaho's Congressional delegation, along with all individuals listed in the *Idaho Legislative Advisors 2014* green book. After receiving minimal input from the first request, a draft was completed by LSO and was then emailed out to the same distribution list seeking any additional input or suggestions. At this point, they received twice as many responses which had then been blended into the document that was before Legislative Council. Mr. Milstead emphasized that the document was simply an aid, or a starting point, for Legislative Council. He stated that at the end of the day, whatever they agreed upon for the meaning statement and arguments would be the Legislative Council's product.

Representative Rusche asked if adding the wording "in whole or in part" to the Constitution could cause problems later on when the court had to rule on what would be an allowable change to a rule by the Legislature. Mr. Milstead explained that wording was part of the proposed amendment and question which had been passed by the Legislature, so it was not possible to change it at this point. He stated if that question existed, it may be something that would be resolved later by the court. Representative Rusche noted that the meaning section stated that the proposed amendment "confirms and protects the Legislature's practice under existing law" and he asked if the courts would look to that. Mr. Milstead noted that was consistent with existing code, which provides for that type of activity by the Legislature, in reviewing executive branch rules.

Beginning with the Meaning, Purpose and Result section, Senator Davis called the council's attention to the sentence: "However, this legislative authority is not currently in the Idaho Constitution." He noted that the Idaho Supreme Court had found that authority, and he questioned if that sentence was accurate, or if it was needed at all. Mr. Milstead indicated that was a good point and, if the sentence were to stay in the paragraph, it could be revised to reflect that the legislative authority was not currently expressly provided for in the Constitution. He suggested that another approach would be to strike the sentence; however, he felt there was some merit in the sentence as it was an attempt to stress that this amendment strengthened and confirmed current legislative practice. Senator Davis referred to the previous sentence which said: "A rule, or a portion of a rule, that the Legislature finds to be inconsistent with ..." appeared to be more consistent with their current use of the term "portion" of a rule, and he did not know if the wording in the question "in whole or in part" meant the same thing. He also suggested that they look at the word "portion" to see if that was accurate. Mr. Milstead said that the term "portion" was seen as a lay term that was used in trying to capture the essence of "in whole or in part." Senator Davis questioned if they needed the wording "a portion of the rule" since each subpart could qualify, by definition, as a rule. Mr. Milstead indicated that made sense and that he had no problem with Senator Davis' attempt to simplify the statement. Senator Davis suggested that they strike the fourth sentence in the meaning section, and change the third sentence to read: "A rule that the Legislature finds to be inconsistent can be rejected under current law."

Senator Bair indicated that he liked the wording "portion of a rule." However, to make it more consistent with the actual ballot question, he suggested the addition of the wording "a rule or a part of a rule" to the third sentence. He said that he would hate for this statement to be misinterpreted so that the Legislature could not remove entire subsections. The Pro Tem indicated that the wording, which described parts or portions of a rule, was used in other areas within the amendment and in some of the statements further down in the document. However, the paragraph they were discussing did not contain that wording anywhere other than in the part of the third sentence which they proposed to strike. Mr. Milstead advised that the closer the wording tracked with the question, the safer it would be, and there would be less opportunity for a challenge. If they used the term "in whole or in part" it would track closer to the question itself. Senator Davis stated that he liked Senator Bair's suggestion to add the wording "a rule or a part of a rule" to the third sentence.

Pro Tem Hill asked Mr. Milstead to read the meaning paragraph including their proposed changes. After it was read, Senator Werk expressed concern that the wording “a part of a rule” could be misconstrued to indicate that the Legislature could remove just a word from a rule. Senator Bair suggested instead the wording “a rule, or a subpart of a rule” to define more clearly what their practice has been. Senator Werk advised that he had contacted Dennis Stevenson from the Department of Administration and that he was on his way, in case he could help with their phrasing questions. Senator Davis said that he concurred with the term “subpart,” and also suggested that the wording “passed by the Legislature” be removed from the end of the second sentence. Mr. Milstead indicated that was a good suggestion, since it simplified the sentence.

Speaker Bedke requested that Mr. Milstead read the paragraph one more time to include the latest change. After it was read, the Pro Tem expressed his concern that a lot of people may not understand what “subpart” meant, and indicated that people tend to vote against things they do not understand.

Senator Werk advised that Dennis Stevenson was present and explained to him the council’s desire to find the correct wording to indicate the piece of a rule that the Legislature could reject.

Mr. Dennis Stevenson, Administrative Rules Coordinator, Idaho Department of Administration, indicated that they use the three-section level of a rule. He stated there are a thousand major sections out of which they make subparts. He said that typically they call a subsection of a major section a subsection, and then they break it down further into paragraphs and subparagraphs. He indicated that they do not have a term to describe portions below subparagraphs, so typically when he refers to anything below the major section level he just calls them subsections.

Representative Rusche indicated his concern that a future Supreme Court could interpret their wording to mean that the Legislature could take just one word out of a rule. Mr. Stevenson suggested the wording “a section or any part thereof.” Senator Werk advised that for a number of reasons, including consistency with HJR 2, he was recommending the use of the term “part.”

Representative Rushe asked if the wording “can be rejected under current law” reflected case law or was defined in statute. He suggested that if it was defined in statute they may not need to address the detail of how it was handled in this statement. Mr. Milstead cited a case from the Idaho Supreme Court which he thought may be helpful. This was the Nez Perce Case from 1993 in which the court noted that the statement of meaning and purpose need not specify every possible reason for, or effect of an amendment; it need only set forth the general purpose to be accomplished by the amendment. He suggested that instead of getting caught up in the minutiae of the wording, they might want to keep in mind that they only needed to set forth the general purpose to be accomplished by the amendment.

Senator Bayer referred back to the original language in the amendment and suggested that the wording “in whole or in part” be mirrored in the meaning paragraph. Senator Davis proposed that the third sentence be stricken and insert in its place: “If the Legislature finds the rule *or a part of a rule* to be inconsistent with the intent of the statute, or contrary to good public policy ... ” as this would indicate that sometimes rules are consistent with the intent of the statute but are rejected for some other reason. The Pro Tem and Senator Davis further discussed this change and Senator Davis indicated that he was trying to define what the Legislature actually does and why they reject rules.

Speaker Bedke suggested that they lead the meaning paragraph with the sentence already in the Statements FOR the Proposed Amendment: “The Legislature’s ability to approve or reject executive branch rules (“in whole or in part” removed) is an important aspect in the separation of powers between the executive, legislative and judicial branches of Idaho government,” and then go on from there to support the premise of maintaining the separation of powers.

In discussing the proposed structure of the meaning paragraph, the Pro Tem suggested that Mr. Milstead put together the changes that had been discussed and then bring that back to Legislative Council later in the meeting for review and comments. Mr. Milstead indicated that he would be happy to do that.

Speaker Bedke further suggested that the sentence he proposed to lead the meaning paragraph also be woven back, with some changes to avoid redundancy, into the Statements FOR the Proposed Amendment. Because it was such a powerful statement, he recommended that it become #1 in the FOR section. Following that sentence, he suggested that they leave the next two sentences: "Executive rules are written by executive branch state agencies. These rules describe how laws passed by the Legislature will be interpreted and implemented." However, he would then change the next sentence to read: "Rules created by the executive branch have the full effect of law and impact the lives ... " He felt the need to explain that these rules are laws that are not passed by the legislative branch and that is why the legislative branch has license to come back in and sign off or reject them.

Representative Rushe indicated that as far as he was concerned, once the fourth sentence in the meaning paragraph was removed, the document would be fine. Representative Monks suggested that the wording in the question "in whole or in part" was self explanatory and he didn't feel they needed to worry too much about that. He also indicated that the words in the statements AGAINST section " ... has been upheld by the Idaho Supreme Court" were powerful and suggested they be added to the FOR section.

Senator Davis questioned why they needed the amendment if the Supreme Court has said they can approve or reject a rule. He suggested that if they lead with that wording it would plant questions in voters' minds. He indicated that he had some other proposals but, in the interest of time, he suggested the possibility of creating a drafting committee. This committee would be made up of members of the Legislative Council appointed by the Pro Tem and Speaker, who could come back with a proposal for the entire council. He expressed that, although he welcomed input from LSO, going forward, the Legislative Council should own the document. Senator Bayer expressed his concern with the term "if" as statements containing that term can be seen as exclusive or boxed-in.

Mr. Milstead suggested that a drafting committee could possibly be the most efficient way to move forward. The Pro Tem agreed that was a viable option.

Senator Davis stated that it was his position that members of the Legislative Council should do the next draft. Senator Davis moved that they appoint two members from the House and the Senate, one from each party, who could work together over the noon hour and report to the full Legislative Council in the afternoon. The motion carried on a voice vote. The Pro Tem asked Senator Davis to represent the majority on the Senate side and indicated that this subcommittee would continue to work together if it did not have a final product by the end of the meeting.

The Pro Tem acknowledged Representative Jaquet in the audience, and then called on Senator Buckner-Webb to introduce a group of women in the audience who were members of New Leadership from BSU.

Interim Committee Appointments

The Pro Tem advised that there were interim committees to discuss due to the various ways in which members are appointed. The Pro Tem and Speaker brought to Legislative Council their suggestions for input and approval.

Speaker Bedke asked if they had agreed to disband the Health Care Task Force. Pro Tem Hill said he did not believe this task force had disbanded, since important issues do come up that members should consider.

Representative Moyle indicated that the leadership team had not yet had a chance to meet to consider committee assignments, and he requested a short break to look those over. He also mentioned a possible change on the Criminal Justice Reinvestment Oversight Committee. The Pro Tem indicated that a new statute contained new membership requirements which needed to be considered. He advised that the statute required five members from each body, one of which, in their case, would be Chairman of the House Judiciary, Rules & Administration Committee, two members from the majority party, and two members from the minority party. Representative Moyle also asked about Ad Hoc members from the public. The Pro Tem indicated that statute did provide for those “advisors” at the call of the co-chairs. He then called for a recess until 9:45 a.m.

Pro Tem Hill called the Legislative Council back to order to continue their discussion of interim committee appointments.

Endowment Asset Issues Interim Committee

Senator Bayer, Co-chair	Representative John Vander Woude, Co-chair
Senator Shawn Keough	Representative Neil Anderson
Senator Jeff Siddoway	Representative Jason Monks
Senator Bert Brackett	Representative Rick Youngblood
Senator Janie Ward-Engelking	Representative John Gannon

Representative Moyle announced the House members that had been appointed to the Endowment Asset Issues Interim Committee. The Senate had no changes to the list.

Criminal Justice Reinvestment Oversight Committee

Senator Patti Anne Lodge, Co-chair	Representative Rich Wills, Co-chair
Senator Shawn Keough	Representative James Holtzclaw
Senator Jim Rice	Representative Luke Malek
Senator Dan Schmidt	Representative Grant Burgoyne
Senator Cherie Buckner-Webb	Representative Shirley Ringo

Speaker Bedke explained that the members of this committee had changed as the committee’s membership had been redefined by statute. He also indicated that they would be discussing civilian advisors to be appointed by the co-chairs of this committee. The Pro Tem advised that, due to the changes in the statute, they were recommending that Senator Guthrie be taken off this committee and be placed on the Public Defense Reform Interim Committee.

Public Defense Reform Interim Committee

Senator Todd Lakey, Co-chair	Representative Darrell Bolz, Co-chair
Senator Curt McKenzie	Representative Lynn Luker
Senator Dean Mortimer	Representative Christy Perry
Senator Jim Guthrie	Representative Janet Trujillo
Senator Cherie Buckner-Webb	Representative Carolyn Meline

The House had no changes to the Public Defense Reform Interim Committee. The Pro Tem recommended that Senator Cliff Bayer be taken off this committee to chair the Endowment Asset Issues Interim Committee. Additionally, as Senator Mortimer had some other assignments, he suggested that Senator Todd Lakey co-chair this committee.

Natural Resources Interim Committee

Senator Monty Pearce, Co-chair	Representative Dell Raybould, Co-chair
Senator Steve Bair	Representative Scott Bedke
Senator Jeff Siddoway	Representative Mike Moyle
Senator Lee Heider	Representative Marc Gibbs
Senator Michelle Stennett	Representative Donna Pence
Senator Dean Cameron (Ad Hoc)	Representative JoAn Wood (Ad Hoc)
Senator Bert Brackett (Ad Hoc)	Representative Ken Andrus (Ad Hoc)
Senator Shawn Keough (Ad Hoc)	Representative Frank Henderson (Ad Hoc)
Senator Roy Lacey (Ad Hoc)	Representative Paul Shepherd (Ad Hoc)
	Representative Grant Burgoyne (Ad Hoc)

The House did not have any changes on the Natural Resources Interim Committee; however, Speaker Bedke indicated that he suspected some of the Ad Hoc members would be dropping off.

Health Care Task Force

Senator Dean Cameron, Co-chair	Representative Gary Collins, Co-chair
Senator John Goedde	Representative Fred Wood
Senator Steve Vick	Representative Lynn Luker
Senator Marv Hagedorn	Representative Brandon Hixon
Senator John Tippets	Representative Luke Malek
Senator Lee Heider	Representative John Rusche
Senator Dan Schmidt	Representative Elaine Smith

The House did not have any changes on the Health Care Task Force. The Senate recommended removing Senator Patti Anne Lodge since she was no longer the chairman of the Health and Welfare Committee and adding Senator Lee Heider who is the current chairman of the Health and Welfare Committee.

Energy, Environment & Technology Interim Committee

Senator Curt McKenzie, Co-chair	Representative George Eskridge, Co-chair
Senator Patti Anne Lodge	Representative Maxine Bell
Senator Russell Fulcher	Representative Robert Anderst
Senator Steve Bair	Representative Eric Anderson
Senator John Tippets	Representative Jeff Thompson
Senator Elliot Werk	Representative Jason Monks
Senator Dan Schmidt	Representative Mat Erpelding

The House did not have any changes on the Energy, Environment & Technology Interim Committee. However, Speaker Bedke indicated that for this committee and the Health Care Task Force, it would take a really important matter to call a meeting.

Federal Lands Interim Committee

Senator Chuck Winder, Co-chair	Representative Lawrence Denney, Co-chair
Senator Bart Davis	Representative Mike Moyle
Senator John Tippets	Representative Stephen Hartgen
Senator Sheryl Nuxoll	Representative Terry Gestrin
Senator Michelle Stennett	Representative Mat Erpelding

Speaker Bedke indicated that on the Federal Lands Committee, Representative Anderson would be replaced by Representative Gestrin, and Representative Burgoyne would be replaced by Representative Erpelding.

Senator Werk made a motion to approve the roster of Interim Committee assignments and Speaker Bedke seconded the motion. Representative Rusche pointed out a correction to the Endowment Asset Issues Interim Committee; the final House member would be John Gannon, in place of Hy Kloc. Senator Werk indicated that his motion would include that change, and this was approved by the second. The motion passed on a voice vote.

Legislative Council Interviews for the New LSO Director

Speaker Bedke made a motion that the Legislative Council dissolve into an executive session for the purpose of interviewing candidates for the position of LSO Director. Senator Stennett seconded the motion, which passed on a voice vote.

Legislative Council Appointment of the New LSO Director

The Pro Tem called the public meeting back to order at 1:35 p.m.

Senator Davis moved, and the motion was seconded by Representative Rusche, that the Legislative Council authorize the Pro Tem of the Senate and the Speaker of the House to negotiate with and to hire Eric Milstead as the new Director of the Legislative Services Office (LSO). Senator Davis explained that the Legislative Council had interviewed four very capable candidates, and it was clear that he and his colleagues had utmost confidence in each of the four. However, after considering a variety of factors, Eric Milstead was chosen as the next Director of LSO. The motion passed on a unanimous voice vote.

Capitol Services Committee

Senator Chuck Winder and Representative Brent Crane were present on behalf of the Capitol Services Committee. Representative Crane advised that the Committee had met the prior day and discussed five issues on which he would report.

The first was in regard to the complaint which had been filed with the Department of Justice in 2012 indicating that the Capitol Building had some deficiencies with respect to the current Americans with Disabilities Act (ADA) regulations. He advised that in 2013 the Department of Justice delivered a detailed list of 110 changes which they were requesting, and that the Department of Public Works is currently negotiating with them to reach a reasonable compromise. He explained that most of the items dealt with signage; however, there were some issues with respect to handicapped accessible seating in the gallery. They have discussed with the architect some of the issues and problems that this poses due to the historical nature of the building. Director Youtz reported to the committee that the negotiations are going well, and they are hopeful that through the negotiation process they will be able to come up with a solution. One of the issues raised was about doing tenant improvements in the building in the future, after they reach an agreement with ADA. The concern was that the Department of Justice would be

able to come back in the future and require the state to meet current ADA standards. He explained that this negotiation would not be binding in that it would help them in mitigating future ADA issues that might arise.

The second item was the selection of a vendor for the Capitol Dining Room. Two bids had been received, one from the current vendor, Roosters, and the second from The Galley. Representative Crane stated that both vendors made very good presentations; however, the committee felt that Roosters had done a fine job. There was some concern regarding prices which Director Youtz will address with Roosters. Representative Crane also explained that Roosters will be adding a grab-and-go menu which will consist of small food items such as parfaits or cheese and crackers which can be picked up from a visible refrigerator/freezer for takeout.

The third item was the tour program and the Capitol Gift Shop, both of which are going very well. Michelle O'Brien advised the committee that the building receives 8,000 to 10,000 visitors per year who came from 48 states and 46 foreign countries. Since the virtual tour program is not taking off as well as anticipated, they will be doing some outreach to increase notoriety and accessibility.

Item four was an update on the third floor public lounge which currently houses a military display. With respect to the issues regarding ADA, there was a discussion about putting television monitors from the House, Senate, and JFAC in the lounge, which would allow persons in wheelchairs to watch those proceedings. Another idea was to make it a very relaxing space with soft comfortable furniture where members could go for some privacy. Additionally, the lobbying community had approached the committee to discuss the possibility of relocating from the west garden level up to the third floor. He advised that there was no consensus in the lobbying community on this issue, as some like being in the garden level. Some think, if the lobbyists were on the third floor, this might draw members up there from their offices. This remains open for discussion.

The next item was about noise caused by the HVAC system in some of the committee rooms on the Senate side. Representative Crane reported that this has been addressed, and there were no noise complaints reported this year.

Representative Crane advised that the parking garage is about three weeks ahead of schedule and should be completed by the first of August. He noted that the parking fees will go up; a general pass was going from \$5 to \$8 per month, and a reserved spot from \$35 to \$40 per month. The issue of security in the parking garage, especially for female legislators, had also been brought up. Possible solutions discussed were giving female legislators first choice of the reserved spaces, or keeping the lights on later at night. They also discussed the problem with legislators who are at the Capitol in the interim and are not able to find parking. A possible solution of creating eight to ten designated parking spaces for legislators, which could be used on a first-come basis, was discussed.

Representative Rusche moved that the Legislative Council accept the report of the Capitol Services Committee including their recommendation on the contract for the dining room.

Speaker Bedke said he believed the monthly rate for reserved parking was going from \$25 to \$35, not \$35 to \$40. Representative Crane confirmed that to be correct.

The motion to accept the report and recommendation of the Capitol Services Committee passed on a voice vote.

General Fund Budget Update

Ms. Cathy Holland-Smith, Division Manager, LSO Budget and Policy Analysis, in responding to a question from the Pro Tem, stated that the latest budget numbers were not incorporated in her presentation, as they had not yet been officially released.

She began her presentation by advising that JFAC had determined the way they were going to track revenue, and accept a budget target this year, was to accept whatever surplus or shortfall there may be as compared to the revenue projection. With that she explained that although they had a 2.1% revenue projection, as of sine die, they actually had a surplus of just about \$3.5 million. With transfers and appropriations it was projected that the carry-forward balance would be \$26,864,200. As of April 2014 she advised that because they had a shortfall, they now had a swing of \$7.4 million negative, as compared to sine die. The agreement had been that they would maintain at least a \$26 million carry-forward balance for 2015, and if there was a shortfall, it would come out of transfers to the Budget Stabilization Fund, the Public Education Stabilization Fund, and the Higher Education Stabilization Fund. The transfers to those funds would be reduced by \$6.6 million. She indicated that she did not believe that was going to occur since they are tracking excess appropriations in Medicaid, the CAT fund, and also in the Department of Welfare, where they have an enhanced match rate now coming from the federal government. She estimated that there will be \$8 million to \$10 million coming back into the General Fund, and because it is a cash reconciliation process, once that occurs they will have the \$26 million plus, and the full transfers will go to those savings accounts.

Ms. Holland-Smith advised that the ceiling for the Budget Stabilization Fund increased from 5% to 10% on the 1st of July for FY 2015. As such, the \$24 million which was expected, or at least projected, to go into the Budget Stabilization Fund actually represents what that transfer would have been if the 10% had been in place for 2014. She indicated that right now the state is so close to the revenues meeting the forecast that it is a time of stability, and although there is still some slowness in the economy, it does reflect growth and they are hitting the target.

Ms. Holland-Smith indicated that FY 2015 is the first year since 2009 that they have actually set a budget using the forecast that DFM prepared and the Economic Outlook Committee agreed to. She said that there had been agreement in the past, but one of the ways that the risk had been managed was to not budget to that level. This is the first year coming out of the recession that choices of JFAC were not necessarily dampened by concerns for the future. However this does mean that they have additional risk now that they are not managing in the traditional way; they will have to be more sensitive when looking at projected ending balances and when implementing large efforts. She explained that right now, for 2015, the only shortfall based on 2014 revenues is a negative \$864,200.

Ms. Holland-Smith advised that at the end of 2014, the Budget Stabilization Fund at \$137.5 million was capped. As the cap will not be lifted until 2015, the interim solution was that when the cash reconciliation was done at the end of the fiscal year, another \$19.6 million would go into the fund. She indicated that her belief was that it would actually be \$24 million and the balance would go up to \$157.1 million, or higher. She projected that the Public Education Stabilization Fund will go up to \$70.6 million; however, there will be positive and negative variances in this fund. She also projected that the Higher Education Stabilization Fund will go up to \$3.1 million for a grand total of \$230.8 million in all of the State Stabilization Funds by the end of this year, based on April's revenue.

Representative Rusche asked if there was an Economic Recovery Fund. Ms. Holland-Smith advised that there was the Economic Recovery Reserve Fund that had been zeroed out during the budget downfall, and she didn't see it as a viable fund any longer.

In comparing the General Fund budget numbers from FY 2009 to FY 2015, Ms. Holland-Smith explained that 2015 is the year that the state is the closest to where it was in 2009, in terms of original appropriations and the dollar amount appropriated, although it is appropriated in very different ways. She then outlined the differences in the various functional areas beginning with Education where the current appropriation is 5.3% less than it was in 2009, even though there has been an increase in attendance. In Health & Human Services she advised that although Medicaid grew by nearly 36%, the appropriation has increased by 10%, which indicates that efforts the Legislature made towards cost containment have worked. She advised that Public Safety has been fairly resistant to decreases in that the Idaho prison population has increased by 10%, with a 13.1% increase in funding. The biggest increases were in the Department of Correction, as the conclusion was that there were not a lot of places where they could make cuts without affecting public safety. She indicated that the significant reduction of 35.2% in Natural Resources was mostly in the Department of Parks and Recreation that received quite a bit of one-time money in 2009, which now exaggerated the decrease. There was also some one-time money in Economic Development in the Department of Commerce in 2009 which makes the reduction of 16.1% look a little more severe. In General Government there is a 3.1% increase which mainly has to do with the Department of Administration and the implementation of the Idaho Education Network (IEN). Ms. Holland-Smith said that between 2009 and 2015 where the money has gone is substantially different, and the number of people that have been supported by those dollars has, in some places, increased. She indicated that for the future she did not see where there was a lot of money that could be reallocated to Education, so they would have to look to new revenues.

Representative Rusche asked if the enhanced Federal Medical Assistance Percentages (FMAP) were recognized in 2009. Ms. Holland-Smith indicated that the enhanced FMAP occurred in 2009 after they had made cuts, so it was then backfilled.

Representative Monks referred to the one-time money in the areas of Natural Resources and Economic Development which skewed the numbers in 2009, and asked if there was any one-time money in any of the other categories that the Legislative Council should be aware of. Ms. Holland-Smith advised that there was not a lot of one-time money going into Public Education or Higher Education at that time. She advised that the one-time money tended to go into the traditional state agencies.

Ms. Holland Smith said that the updated numbers had been released and that the state was now in a little better position at only \$1.2 million upside-down from the revenues. She indicated that this would restore the transfers that were to occur into the stabilization funds. She stated that they were now really hitting their targets, and that the state was experiencing 2% growth, just below the 2.1% forecast.

Legislative Technology Committee Update

Mr. Glenn Harris, Division Manager, LSO Information Technology, advised Legislative Council that the Technology Committee, chaired by Senator Russ Fulcher, had met the previous day. The consensus was that, for the most part, things had run very smoothly during the session. He reviewed the new technologies that had been put in place which included the Legislative Digital Archive which worked very well, the new display board in the House which was positively received, increased use of cloud storage, real time notifications, Outlook agency address books, agenda QR codes, and the availability of video conferencing, as well as streaming through Idaho Public Television in one of the committee rooms. He indicated that they had seen increased use of video conferencing this session; several times both of the rooms were in use.

He indicated that the Help Desk Program had been improved and had become the most popular and best way to get in touch with the Help Desk staff. He advised that for the next session they are planning an Android version for the legislators' phones.

He also reviewed old technologies including the phone system which will be updated during the interim and will allow voice mail messages to be delivered to members' Outlook in-boxes, and the upgrade of any remaining computers with Windows XP to Windows 7. Additionally, the House laptop voting program will be put to rest, the Information Center program will be replaced, and the ten-year old code on the legislative website will be upgraded.

Mr. Harris explained that during the prior interim they had moved the disaster recovery site to the Idaho State Police headquarters. Since they now have virtual servers, the servers themselves are duplicated off-site, as well as all of the data, so in case of a disaster they can recover quickly. To verify this he advised that they will be running disaster recovery tests at the site.

He indicated that in their survey 60% of the legislators said that it was somewhat important that they be able to print from their iPads or other mobile devices. This had been possible during the last session; however, it entailed a long manual process, so for next session it will be a much easier process and the built-in printer keys will be functional. Mr. Harris also talked about the Enterprise Electronic Newsletter Service problem, and advised the Legislative Council that they are in the process of selecting and purchasing a tool which will resolve the problem.

Mr. Harris indicated that although many people liked the look of the current legislative website, the coding is very old and does not work well with new browsers, and it is not mobile device-friendly. The committee has recommended that the website be updated by the staff to be ready for the 2016 session.

The committee also recommended that a media contact distribution list be supplied, through Outlook, to the committee secretaries, and that they acquire an 800 number for people outside of Boise to use when dialing in to conference calls. This number can then be given out at the Legislature's discretion as it does cost \$.04 per minute, per user. In answering a question from the Pro Tem, Mr. Harris clarified that each person calling in on the 800 number would be considered a user. Additionally, the technology staff will be looking into the possibility of remote public testimony via videoconferencing.

Lastly, Mr. Harris advised Legislative Council that the technology budget came in at \$300,000, which was \$50,000 less than in FY 2014.

Senator Werk asked that Mr. Harris communicate to his staff how much the legislators appreciate the support they receive from his team.

Legislative Intern Program Update

Ms. Katharine Gerrity, Principal Legislative Research Analyst, LSO Research and Legislation, reminded the Legislative Council that the new guidelines, which they had adopted for the Legislative Intern Program, had been implemented prior to the 2014 Legislative Session. She indicated that overall the program went quite smoothly during the session and that they had received some positive feedback regarding the mandatory orientation which 29 students attended. She also advised that the luncheon following the orientation had been a great opportunity for the students to interact with leadership and other members in a relaxed setting. Other positive outcomes were the placement process, the identification of key staff in the House and Senate to act as liaisons, and the increase in the number of badges being utilized which helped everyone to know who was working in the building at any given

time. She suggested that next session it would be helpful if members obtained badges for any volunteers they bring onboard.

She indicated that among the suggestions they received for the future were for a lengthier orientation session, leadership involvement in reviewing the applications, guidance for legislators on how best to utilize their interns, and the ongoing concern regarding the lack of compensation.

Senator Stennett asked if there were deficiencies noted in the orientation program that would require a longer session. Ms. Gerrity advised that it had been suggested that the orientation include a panel discussion which would include members of the media, lobbyists, and former interns who had used their experience as a stepping stone on their career path. Senator Stennett asked if the interns felt they were well utilized or received enough direction, and Ms. Gerrity replied that opinions varied among interns. During orientation, interns could be encouraged to approach their supervisors for more work if they feel underutilized. Senator Stennett suggested that it would be helpful to have some guidelines on how to best direct their interns.

Office of Performance Evaluation Update

Mr. Rakesh Mohan, Director, Office of Performance Evaluations (OPE), updated the Legislative Council on the projects his office was currently working on and what the council could expect over the upcoming seven months.

OPE's four new projects are:

1. Challenges and Approaches to Meeting Water Quality Standards, which has an evaluative component, but is mostly informational, will be released July 14, 2014.
2. The Use of Salary Savings to Increase Compensation and Benefits, which will also address holiday pay for those who do not work a traditional week, will be released in December 2014.
3. Efficiencies of ISEE and Schoolnet, in which OPE will be visiting the school districts to see how the implementation of the project has affected the districts, will be released in January 2015.
4. Workload Assessment of the Office of the Attorney General and Costs of Contracting for Legal Assistance, in which OPE will be looking at the capacity and workload of the AG's Office, as well as the pros and cons of contracting out legal services, will also be released in January 2015.

The three follow-up studies included:

1. Strengthening Contract Management, which is a follow-up report to indicate how the Department of Administration has implemented OPE recommendations, will be released July 14, 2014.
2. State Employee Compensation and Turnover which will be released with the Salary Savings report in December 2014.
3. Assessing the Need for Taxpayer Advocacy, which will assess how well the Tax Commission has implemented OPE recommendations, should also be released in December 2014.

Senator Werk stressed the value and the trust in the quality of work that OPE does, due to their nonpartisan status. He asked if OPE had received any new awards in 2014, and also inquired about turnover. Mr. Mohan advised that they are receiving a lot of recognition in the form of awards and in the form of other associations in the U.S., and in other countries, using their work. He noted that they had just published a few articles in good journals which showcase how important it is to do nonpartisan work for the public policymakers. He advised that they had some turnover this year, but they had been able to hire three great new employees.

The Legislative Council then returned to the Constitutional Amendment Ballot Statements. The Pro Tem called Mr. Milstead back to the podium where he congratulated him, and indicated that they looked forward to working with him in his new capacity. Mr. Milstead said that he wanted to thank the council for the incredible honor and advised that he would do his absolute best for them.

Mr. Milstead then pointed out that he had distributed to the members a revised meaning statement, and statements FOR and AGAINST, which had been emailed to him by Senator Davis. He said that he understood the wording had been further revised and asked if Senator Davis would like to walk them through the latest changes. Senator Davis indicated that the first sentences in each of the FOR and AGAINST sections were basically summaries of the entire paragraph, and that the first sentence in the meaning paragraph had been strengthened.

The meaning paragraph now began: "The Legislature's ability to approve or reject executive rules is an important aspect of the separation of powers, because these rules have the force and effect of law." Senator Davis explained that the first paragraph in each of the FOR and AGAINST statements spoke about the protection of the rights in the lives of Idahoans, and the second paragraph spoke about the separation of powers. He then proposed removing the third sentence in the second paragraph of the FOR statements, and instead insert: "Legislative review of agency rules ensures agency restraint and adherence to the law." The other proposed change was the beginning of the next sentence where he suggested that they remove "HJR 2," and replace it with "The proposed amendment ... " After Senator Davis read the revised paragraph, the Pro Tem suggested that the last two sentences seemed redundant. Senator Davis agreed and stated that it appeared they did not need the second-to-the-last sentence.

The Pro Tem indicated that it was his understanding that the meaning paragraph was supposed to be neutral, and suggested that with these changes it was much more an advocacy statement than it had been before. He then asked Mr. Milstead if he felt they had gone too far. Mr. Milstead said that he didn't think the first sentence was a problem as it simply stated that this was part of the separation of powers, and he didn't think it had gone past the point of being an advocacy piece. Senator Davis said that he thought it was appropriate because he had used the same word, in reverse, in the statements AGAINST the proposed amendment, so they were advocacy statements for the position, either FOR or AGAINST. The Pro Tem indicated that he agreed that the FOR and AGAINST statements could be contrary to each other; however, he was referring to the meaning paragraph which was supposed to be neutral. Mr. Milstead reiterated that he felt that sentence was stating this was an aspect of the separation of powers. Representative Rusche said he thought the wording was appropriate because a lot of people did not know that rules were laws.

Senator Werk asked if they should replace the words "necessary" with "important" in both of the FOR paragraphs because those words conveyed very different things to a reader. He also suggested that in each of the AGAINST paragraphs "HJR 2" be removed, and "The proposed amendment ... " be inserted.

Representative King suggested that instead of "The proposed amendment ... " that the AGAINST statements begin with "Legislative review of executive rulemaking ... " just as in the FOR statements. She also asked about the second sentence in the second paragraph of the FOR statements and suggested the addition of the words "after public comment periods" to the end of the sentence: "Executive branch agencies write and adopt rules." The Legislative Council discussed the process of agency rulemaking and review, saying that agencies did not always have negotiated rulemaking.

Representative King also indicated that agency personnel she has talked to indicate that the system now in place to review rules is inefficient. She suggested the possibility of adding a third reason AGAINST the

proposed amendment indicating that legislative review may not be the most efficient method. Senator Davis indicated that they had discussed that possibility; however, he had wanted to make sure that they had the same numbers FOR as AGAINST. He said they could add that as a reason; however, he did not think there was anything in the language that indicated they could not do it a different way, as long as it was under the direction of the Legislature. The Pro Tem indicated that in going back to the amendment itself there was nothing that dictated that it had to be done exactly the way in which they were doing it; it just provided the authority for the Legislature to do it.

Senator Davis then summarized the proposed changes: 1) In the statements FOR the proposed amendment, the third and fourth sentence be struck and the sentence "Legislative review of agency rules ensures agency restraint and adherence to the law" be put in its place; 2) In the statements AGAINST, "HJR 2" be removed and the wording "Legislative review of executive rulemaking may infringe upon ... " be put in its place; 3) In the second sentence of the statements AGAINST, "HJR 2" be struck and "The proposed amendment is unnecessary" be put in its place.

Senator Werk moved that the Legislative Council adopt the statements with the changes which had been indicated by Senator Davis.

Representative King called the council's attention to the last sentence in the first statement AGAINST the proposed amendment that read: "The proposed amendment potentially could impact the ability of the governor ... " and asked if they should add " ... and agencies to direct and manage the affairs of the state." She indicated that this would more closely track with the wording used in the statement FOR the proposed amendment. Senator Davis suggested this wording: "The proposed amendment potentially could impact the ability of the executive branch to direct and manage the affairs of the state."

Senator Davis then read the second paragraph in the statements FOR the proposed amendment, and Senator Werk moved that the Legislative Council adopt the language in the HJR 2 Ballot Question with the second and third sentences in the second paragraph of the FOR section replaced by "Legislative review of agency rules ensures agency restraint and adherence to the law," and the word "all" be removed from the last sentence of that paragraph. In the statements AGAINST the proposed amendment, the wording "HJR 2" in the first paragraph would be replaced with "Legislative review of executive rulemaking" along with changing the word "governor" to "executive branch." Also in the second paragraph, the wording "HJR 2" would be replaced with "The proposed amendment." Representative Monks seconded the above motion made by Senator Werk.

Senator Davis suggested that they should allow Mr. Milstead, along with the appointed subcommittee, the ability to make any necessary grammatical or stylistic changes. Senator Werk and Representative Monks agreed, and the motion passed on a voice vote.

The Pro Tem asked if it would be helpful in the future to appoint a subcommittee ahead of time to work on the language of a ballot question before the full meeting of the Legislative Council. After some discussion, he suggested that they wait until the next time to see how complicated an amendment was.

Speaker Bedke made a motion to adjourn, seconded by Representative Monks; the motion was adopted and the council adjourned at 3:15 p.m.

Note: The final language approved by the Legislative Council for the ballot statement and voters' guide can be found in its entirety below, as an addendum to these minutes.

Shall Article III, of the Constitution of the State of Idaho be amended by the addition of a new section 29, to confirm that the legislature may authorize executive rulemaking; however, the legislature shall not relinquish oversight, which such oversight is done by approval or rejection, in whole or in part, of an executive rule; and to provide that the legislature's approval or rejection of such a rule shall not require the approval of the governor?

Meaning, Purpose and Result to be Accomplished

The Legislature's ability to approve or reject executive rules is an important aspect of the separation of powers, because these rules have the force and effect of law. Existing law allows Idaho state agencies to make rules that implement or interpret statutes passed by the Legislature. The Legislature currently oversees that rulemaking process by accepting or rejecting adopted rules. The proposed amendment confirms and protects the Legislature's practice to authorize executive branch rulemaking, and to accept or reject adopted rules.

Statements FOR the Proposed Amendment

1. Legislative review of executive rulemaking is necessary to ensure that Idahoans have a responsible state government. Executive rules are written by executive branch state agencies. These rules describe how laws passed by the Legislature will be interpreted and implemented. These rules impact the lives of Idaho citizens, as state agencies regulate businesses, licenses, benefits, and fees. The Legislature's oversight of agency rules can limit agency overreaching into the rights and lives of Idahoans and its businesses.
2. Legislative review of executive rulemaking is necessary to ensure the separation of powers between the legislative, executive, and judicial branches of Idaho government. Executive branch agencies write and adopt rules. Legislative review of agency rules ensures agency restraint and adherence to the law. Placing the Legislature's review authority in the Idaho Constitution protects that authority and the rights of Idaho citizens.

Statements AGAINST the Proposed Amendment

1. Legislative review of executive rule making may infringe on executive branch power by the Legislature. By providing that the Legislature shall not relinquish its executive rulemaking oversight, the proposed amendment potentially could impact the ability of the executive branch to direct and manage the affairs of the state.
2. The proposed amendment is unnecessary. Legislative review is currently authorized by statute, and affirmed by the Idaho Supreme Court. As a result, legislative authority is adequately protected.