

MINUTES
(Subject to Approval by the Council)
Legislative Council
Tuesday, July 13, 2021
8:00 A.M.
State Capitol
Boise, Idaho

Speaker Bedke called the meeting to order at 8:05 a.m.; a silent roll call was taken.

Legislative Council (Council) members in attendance: Speaker Scott Bedke, Pro Tem Chuck Winder, Senators Kelly Arthur Anthon, Carl Crabtree, Dave Lent, Michelle Stennett, Grant Burgoyne, and Melissa Wintrow; Representatives Mike Moyle, John Vander Woude, Wendy Horman, Ilana Rubel, John McCrostie, and Brooke Green. Legislative Services Office (LSO) staff present: Director Eric Milstead, Deputy Director Terri Kondeff, Shelley Sheridan, and Julie Cooper.

Speaker Bedke called for a motion to approve meeting minutes. **Representative Horman made a motion to approve the November 6, 2020, as corrected, and May 12, 2021, minutes; Senator Winder seconded the motion. The motion passed by voice vote.**

OVERVIEW OF AGENDA - Eric Milstead, LSO Director

Director Milstead provided an overview of the agenda, highlighting the executive session. He requested that members leave behind all confidential material provided.

UPDATE ON LSO STAFFING - Terri Kondeff, LSO Deputy Director

Ms. Kondeff introduced new LSO staff: Grace King and Justin Pasin, Research & Legislation Division; Shanna Gipson and Kirill Malevich, Information Technology Division; Alex Manser, Cecilia Merz, Ana Clements, Kathleen Ralphs, and Robert Morris, Audits Division; Max Flom, Budget & Policy Analysis Division; and Julie Cooper and Erin Phipps, Central Administration. Ms. Kondeff noted that LSO was still recruiting for the appropriated four new positions, which were expected to be filled by fall. Representative Horman thanked the LSO director and division managers for taking the time to provide input on the staffing needs of each division.

UPDATE ON REDISTRICTING - Elizabeth Bowen, Drafting Attorney, LSO Research & Legislation Division and Keith Bybee, Deputy Division Manager, LSO Budget & Policy Analysis Division

Ms. Bowen reported that the Census Bureau data is expected next month and that the Redistricting Commission plans to meet in early September and expects both plans to be adopted by Thanksgiving. Ms. Bowen highlighted the criteria considered when adopting plans. She stated that equal protection is first, meaning one person/one vote and that each district must be equal in population. Second is the preservation of counties. Counties cannot be split unless for equal protection purposes. Third is the prohibition of floterial districts, which is when a district overlays another district. Fourth is the limitation on multimember districts. Fifth is the preservation of neighborhoods and communities. Sixth is to avoid oddly shaped districts, and seventh is the preservation of precincts, which prohibits the division of an election precinct between districts. Ms. Bowen reviewed the conflicts and hierarchy of the redistricting criteria.

Ms. Bowen referenced a handout of frequently asked questions. Speaker Bedke asked how many times a larger county could be split. Ms. Bowen referenced the Twin Falls court case and responded that the requirement to divide counties within their own boundary was in the Idaho Constitution. Representative Horman asked for Ms. Bowen's interpretation of the law requiring that a person live in a district for one year prior to an election and how that requirement is affected by the Commission's adoption of plans by Thanksgiving. Ms. Bowen confirmed that a person must live in a district for one year prior to an election and that emergency legislation may be required if there

was a concern due to a redistricting delay. Representative Moyle asked if there was anything in the law or rules requiring the Commission to consider growth in county populations. Ms. Bowen responded that there was nothing in law or rules, but that the Commission had the power to consider population trends. Mr. Bybee added that elector qualifications was in the constitution. He stated that moving would be problematic within the redistricting time line and will have to see what the court decides. Speaker Bedke asked how to tell where the districts were. Mr. Bybee responded that if a plan passes, one could move within that time line; however, complications could arise if the court rejected the map.

Mr. Bybee reviewed the operating budget for the Idaho Redistricting Commission, of which \$616,700 was allocated to include staffing and computers, projectors, and software. He reported that the software used ten years ago, Maptitude, was chosen, which is user friendly and does not require GIS training. Additionally, Todd Cutler was hired to be the GIS contractor. Mr. Bybee reported that Maptitude provides an online version for the public to manipulate and submit plans. He stated that \$110,000 was spent in fiscal year 2021, with the bulk of the budget to be spent in fiscal year 2022. Representative Rubel asked if the redistricting budget would cover any litigation of map results. Mr. Bybee confirmed that the budget should accommodate litigation; however, timing was crucial. He stated that the Commission must work quickly. Pro Tem Winder asked why there was a monthlong gap between delivery of materials. Mr. Bybee responded that it took time to gather data, prepare maps, and verify data. Pro Tem Winder recommended placing urgency on staff and the Commission to complete the redistricting process. Mr. Bybee agreed and replied that the Commission would speed up the time line if possible. Representative Horman asked what was expected from the census data. Mr. Bybee responded that the ACS was going off of 2018 data, which is 12,193 people fewer than the 2020 census. He added that Idaho's redistricting population was 1,839,106. Representative Vander Woude asked what would happen to the equipment once redistricting was completed. Mr. Bybee responded that the equipment would be recycled throughout LSO and the Legislature. Speaker Bedke noted that a time line to accommodate the elections would be preferred. Representative Moyle asked what the criteria was for residency. Mr. Bybee replied that it was defined as a voter in the district. Representative Moyle commented that a statute change may be required to clarify residency. Senator Stennett asked for confirmation of residency requirements. Kristin Ford, LSO Research & Legislation Division Manager, responded that a person was required to have resided in a district for 30 days to register to vote.

GENERAL FUND BUDGET UPDATE AND ARPA UPDATE - Paul Headlee, Division Manager, LSO Budget & Policy Analysis Division

General Fund Update Mr. Headlee stated that final numbers were unknown, but he could provide anticipated figures. He stated that fiscal year 2021 ended with a 5.5% estimated revenue growth and \$139.4 million estimated bottom line. Mr. Headlee reported that the budget was \$670.5 million ahead of forecast, with an estimated ending balance of \$809.9 million, which would be the largest cash balance since the early 1970s. He added that the \$809.9 million is expected to increase. Representative Horman asked for an explanation of the large actual amounts in fiscal year 2021. Mr. Headlee responded that those amounts could be due to stimulus money from six federal acts contributing to sales tax revenue. Speaker Bedke asked how much of the individual income tax could be explained by the stimulus and how could regular and stimulus growth be differentiated. Mr. Headlee replied that research would need to be done. Mr. Headlee stated that the August updated forecast should shed some light. Representative Vander Woude asked if the ARPA revenue would be factored into the updated forecast. Mr. Headlee replied that he believed it would.

Mr. Headlee reported that the 2021 fiscal year ending balance will carry over to fiscal year 2022 and that a 3.5% revenue growth and \$77.1 million ending cash balance is forecasted. He stated that revised forecasts would be available in August 2021 and January 2022. Mr. Headlee reported that cash balances were the largest reserves ever seen, totaling \$816.1 million. Speaker Bedke asked how much was transferred into the Public Education Stabilization Fund (PESF). Speaker Bedke requested

a report that allocates the \$15.5 million transfer. Representative Horman forwarded information directly to Speaker Bedke.

ARPA Update Mr. Headlee reported as of July 13, 2021, \$5.65 billion was available to Idaho and 54 funding programs were identified. He noted the largest fund being the State Fiscal Recovery fund, which had \$1.1 billion. Mr. Headlee referenced a tracking report for ARPA funds and reported that 48 of the 54 funds had known amounts and \$2.6 billion was available. Mr. Headlee stated that information is being tracked with CSG and NCSL on what other states are doing. Senator Stennett asked if there was a list of essential, critical employees who would receive premium pay. Mr. Headlee responded there was a list in the frequently asked questions. Senator Stennett asked how a county in a drought could participate in the assistance fund. Mr. Headlee responded that the legislators could bring requests forward and that the state had the funding and guidance. Mr. Headlee clarified that the funds would have to be appropriated. Speaker Bedke suggested the information be disseminated outside of Council. He added that legislators can expect future meetings to ensure money is used properly and responsibly. Speaker Bedke asked if Congress's infrastructure bill would reach into unspent ARPA funds. Mr. Headlee responded that it was conceivable that money could be repurposed for the infrastructure bill.

The Council recessed at 10:05 a.m. and reconvened at 10:15 a.m.

AUDIT DIVISION UPDATE - April Renfro, Division Manager, LSO Audits Division

Ms. Renfro reported that all fiscal year 2019 management reviews were completed entirely remotely. She noted difficulties encountered related to contacting agencies while they too were working remotely. Ms. Renfro advised that the Comprehensive Annual Financial Report has been renamed to Annual Comprehensive Financial Report (ACFR). She advised that the fiscal year 2020 ACFR was released on December 23, 2020, and included four findings, and fiscal year 2020 Single Audit was issued April 19, 2021, and included 17 findings; both audits were completed entirely remotely. Ms. Renfro reported that auditors were returning to agencies, which would allow for more efficient meetings. Ms. Renfro reviewed the risks identified during the pandemic while auditing CARES Act funding and the impacts of those risks. She stated that the division will continue analyzing fiscal year 2021 CARES fund expenditures to determine audit needs, will begin reviewing ARPA funding in fiscal year 2022, and LUMA related audits once LUMA is in effect, which is anticipated for fiscal year 2023. Senator Burgoyne asked for confirmation that the findings related to federal funds did not put the funds at risk of being re-funded. Ms. Renfro confirmed that there were no questioned costs related to the federal fund findings. Senator Burgoyne asked if the finding at the Department of Labor was the result of issues with unemployment payments. Ms. Renfro replied no. Representative Horman asked if it an in-house auditor with an IT skill set was possible. Ms. Renfro confirmed that the division was weak in IT experience and that the position was requested. Representative Horman asked if there were consequences to not taking federal funds. Ms. Renfro responded that if funding is accepted, guidelines are required to be followed. Senator Wintrow asked if there was anything the Council should know about in performing reviews. Ms. Renfro replied that the two major areas would be IT audits and making sure appropriate controls and the division's ability to return to the agencies to properly identify risks. Senator Stennett asked if appropriate controls were in place for LUMA. Ms. Renfro responded that IT controls and safety features are being built into the system to make it as safe as possible. Senator Stennett asked if there were conflicts in guidance when layering audits, particularly related to health district audits. Ms. Renfro responded that most guidance was clear and audits could be performed at the request of the Council.

OFFICE OF PERFORMANCE EVALUATIONS (OPE) UPDATE - Rakesh Mohan, Director, OPE

Director Mohan reported on newly assigned projects, including Medicaid provider payments, public K-12 facilities, volunteer emergency services responders, and criminal justice. He stated that OPE was open to the Council's input to ensure useful information. Director Mohan reviewed recently released evaluations, which included investments in postsecondary education, designing a review

of tax preferences, driving authority for unauthorized immigrants, county revenues, state response to Alzheimer's disease and related dementias, and the preparedness of Idahoans to retire and deciding the state's role. Representative Moyle asked if the chart of county revenue included all revenue. Director Mohan will research the data.

UPDATE ON STATEHOUSE/CAPITOL MALL SECURITY - Director Milstead and Sgt. Blake Higley, Idaho State Police

Director Milstead stated that the Legislature may want to consider revising Idaho Code to provide law enforcement indefinitely. Senator Wintrow asked what initiated the change. Director Milstead responded that it would align the law with the practice. Pro Tem Winder noted the need to have security available and to provide protection and security for employees. Senator Burgoyne appreciated the proposal and agreed that professionals were needed year-round. Senator Wintrow noted that JFAC discussed security extensively. She expressed her support and stated that the Capitol building and people's lives were worthy of law enforcement protection. Sgt. Higley reported that no additional funding would be needed to allocate eight troopers for the Capitol mall complex during the session. Sgt. Higley highlighted the revised organizational chart. Senator Wintrow asked what the philosophy was in working with the public. Sgt. Higley responded that the primary function was to provide protection while allowing people to voice their opinions without infringing on others' rights. Senator Burgoyne recommended a security subcommittee for next fall and expressed the need for legislators to have expertise on security issues. Speaker Bedke commented that the Capitol Services Committee might be a good fit.

STATEHOUSE FACILITY UPDATE - Barry Miller, Public Works Division, Department of Administration

Mr. Miller reported that the scaffolding to replace the glass in the Capitol rotunda ceiling was erected and would take about a month to install. He stated that part of the first floor and east portico would be closed during the replacement. Mr. Miller reviewed a diagram of impacted areas. Speaker Bedke asked what the completion date was. Mr. Miller responded the end of September.

MISCELLANEOUS ANNOUNCEMENTS - Betsy Russell, President, Capitol Correspondents

Ms. Russell and Melissa Davlin reported on the concerns of committee hearing notices being posted with little to no notice. Ms. Russell and Ms. Davlin request that legislators return to notifying the public in advance to avoid hampering transparency and to have the ability to share information with constituents. Brian Kane, Deputy Attorney General, Office of the Attorney General, responded that Ms. Russell's and Ms. Davlin's concerns were valid and recommended practicing good government by posting notices if there was a potential meeting and posting a cancellation if necessary. He added that a balance between public interest and completion of session was needed. Senator Stennett commented that frequently meetings were scheduled without notifying committee members. She asked what was a good time line on notifications. Mr. Kane responded that it depended and that the House and Senate could adopt minimums. Senator Wintrow noted a group of students who expressed their concerns with the minimal to no notice. She stated that students needed the ability to participate in their government. Senator Burgoyne agreed that the Legislature needs to be better disciplined to notify the public if government was going to work effectively. Speaker Bedke expressed his appreciation to Ms. Russell and Ms. Davlin as well as members' comments. He apologized for any notices that were missed and would try to balance discretion and the people's right to be informed.

The Council recessed for lunch at 12:00 p.m. and reconvened at 1:06 p.m.

Pro Tem Winder made a motion for the Council to move to executive session in accordance with Senate Rule 20e and House Rule 26(2) and Idaho Code Section 74-105(4)(b) to interview LSO director candidates; Senator Wintrow seconded the motion. The motion passed by voice vote.

Pro Tem Winder made a motion for the Council to move out of executive session; Senator Wintrow seconded the motion. The motion passed by voice vote.

LEGISLATIVE COUNCIL APPOINTMENT OF NEW LSO DIRECTOR

Representative Horman mad a motion to appoint Terri Kondeff as the new LSO director; Pro Tem Winder seconded the motion. The motion passed by voice vote.

ADJOURNMENT

There being no additional business, the Council adjourned at 3:09 p.m.