

Minutes of the Joint Legislative Oversight Committee

January 6, 1995

Senate Majority Caucus Room
Boise, Idaho

The meeting was called to order at 8:15 a.m. by Co-chair Senator Bruce Sweeney. Other members present were Co-chair Representative Bruce Newcomb; Senators Sue Reents and Grant Ipsen, and Representatives Marvin Vandenberg and John Alexander. Staff members present were Nancy Van Maren and Margaret Campbell.

Representative Alexander moved to accept the minutes as written. The motion, seconded by Representative Newcomb, was carried by unanimous voice vote.

Co-chair Sweeney welcomed Representative Vandenberg as a new member of the committee.

ADMINISTRATIVE MATTERS

Co-chair Sweeney turned over the floor to Ms. Van Maren. She went over the *Evaluation Process* handout as a summary of the process approved at the last meeting. She said the OPE's goal is to have two 6-month cycles of reports per year. One report cycle would be completed in the summer. The second would be completed before the beginning of the legislative session, to allow time for the Legislature to act on report recommendations.

As proposed, the timeline would require a minimum of four JLOC meetings per year. New background topics would be selected at the same meetings when reports are released. Approximately six weeks later the committee would meet to review background papers and make the final topic selections. The committee and asked whether background papers could be presented at the same meetings as reports. Ms. Van Maren said that it was possible, if the committee wanted to structure requests that way.

(Representative Kitty Gurnsey joined the committee meeting in progress.)

Ms. Van Maren provided an update of the OPE activities since the last meeting. In October, the OPE hosted Jim Kent and Judy Brown for training, and collaborated with DFM in providing training to agencies on performance reporting. OPE also used this time to learn the state system and the general level of data available. In November and December, OPE employees received training on the statewide accounting system, NOMAD, and OASIS. In addition, Ms. Van Maren has continued the process of establishing how the OPE will operate; the proposed rules, which will be discussed later, reflect some of this work. Staff has also started work on a workpaper process. And, in response to several invitations to speak, Ms. Van Maren has helped provide a general understanding about performance evaluation to professional organizations and conferences in Boise.

COMMITTEE MATTERS

Co-chair Sweeney asked the committee to keep in mind that topic selection was the only issue that needed a decision today. Other matters on the agenda were there for discussion, in preparation for decisions in the future.

Ms. Van Maren made the committee aware of the high cost of accessing data from the statewide accounting system. The biggest proportion of the expense would come from requests for the same information across all state agencies, as this requires extra computer time. Some evaluations may not require this level of data analysis, while others may rely heavily on it. As a result, it is difficult to budget for the information from the state system. Ms. Van Maren presented three possible options: (1) requesting a legislative exemption from the costs; (2) incurring costs, knowing they will vary; and (3) working with Larry Kirk's staff to get tapes from the Controller's office to put into a database in order to manipulate the data in-house. Ms. Van Maren said the third was likely to be the least expensive route, but was still being developed. It still entails the costs of obtaining current and previous fiscal year tapes, a position to work with the information, and the software, all of which are currently born by the legislative audit budget.

Executive Sessions

Co-chair Sweeney reminded members of the Attorney General's Guideline on executive sessions. It stated that the JLOC is not a standing committee, but, in effect, an agency. He thought the committee should consider clarifying in the statute the circumstances under which an executive session could occur.

Ms. Van Maren presented a handout clarifying the process. Co-chair Sweeney invited The Associated Press representative, Quane Kenyon, to comment. Mr. Kenyon stated that, for the record, the Associated Press "registers a continuing objection to [making] the decisions of who to investigate or evaluate in closed session, which leads to the suspicions that the committee is on a witch hunt."

Co-chair Sweeney said he did not intend for the committee to make any decisions today regarding executive sessions, but asked the committee to acquaint themselves with the issues.

Senator Reents asked if there had been a vote taken last committee meeting to enter into executive session. A voice vote had been recorded on page 17 of the minutes of the last meeting. Ms. Van Maren said that the names of each committee member present for that vote had been added to the minutes, as required by statute.

HEARING CITIZEN CONCERNS

Co-chair Sweeney said the handout *Hearing Citizen's Concerns* was prepared in response to a request from the committee to review the number and general content of citizen concerns lodged with the Governor's Office. Ms. Van Maren said that she looked at both systems the Governor used to track citizen concerns coming into his office. Based on the committee's agreement that

the OPE should provide necessary service to citizens and state employees but should not be bogged down responding to citizen concerns, Ms. Van Maren formulated three questions: (1) How many citizen complaints was the OPE likely to get under the recommended policy? (2) How many of those were likely to be appropriate for performance evaluation? (3) How should the OPE respond to those that are appropriate and those that are not appropriate? The committee thought that the review of the "green sheets" would give insight into the topics and number of concerns. One system to track written correspondence and another to track phone calls that come into the Governor's Office numbered approximately 240–320/month. Five assistants reviewed and distributed them to applicable agencies. The phone calls were similar to the letters in covering a variety of concerns.

Ms. Van Maren presented a proposal for dealing with concerns that come into the OPE. She noted that the changes from the 10/05 proposal were under sections 2 and 4 (*see Attachment 1*). In cases when the OPE appears to be the most appropriate place to hear the concern, Ms. Van Maren proposed that the OPE add those concerns to the potential topics list for presentation to the committee. When the concern is more appropriate for another office, she suggested first providing the members of the committee a written summary of the concern with recommendations, and asking for further direction or committee approval. This could be done by mailing the written summary to committee members with a deadline to respond with any disagreement.

Ms. Van Maren clarified that the proposed policy was for future direction, as she had received only two additional contacts since the last meeting. Senator Reents suggested a language change in the proposed policy to clarify that reports coming into the office are "alleged." She noted that it was not clear until the issue was resolved that it was indeed a problem and not just an allegation.

Representative Gurnsey and Co-chair Sweeney each said that they thought the OPE was not the appropriate place to respond to complaints. Ms. Van Maren said that she would inevitably receive some complaints and thought the committee should determine how to deal with them. Co-chair Sweeney asked for comments or objections to the proposal as presented. Senator Ipsen relayed his mixed feelings about the OPE receiving any complaints and questioned if it would be a good use of time. Co-chair Sweeney asked whether we should first ask the callers whether they had contacted their legislators. This would help route concerns through legislators.

Senator Reents suggested a presentation to legislators in order to make decisions of options under which legislators should report complaints to the OPE. Representative Newcomb said this wasn't a serious problem for Ms. Van Maren right now because she was not getting a number of calls. He was concerned that the legislators would bog down Ms. Van Maren with more problems than citizens. He felt the "Whistleblowers Act" would help protect state employees filing complaints.

Senator Ipsen said that he thought the "Whistleblowers Act" had not been communicated enough. State employees were not sufficiently aware of the law to feel safe in filing complaints. Representative Alexander asked what body of government should receive whistleblower

complaints, and whether there was an avenue established for whistleblowers to file complaints. Co-chair Sweeney said that the OPE was not very well known among state employees, but over time would be quite well known. At some point, the committee should make a decision on how to field complaints. The small size of the OPE staff limits what the committee can do.

Representative Alexander said he supported the proposal as Ms. Van Maren had written it, and felt it appropriate to forward complaints to the affected agency. Co-chair Sweeney asked if the policy was sufficient to handle any calls that Ms. Van Maren may get, and whether any members had problems with it. With no comments, he said to proceed with the proposal as outlined with the three additions of the word “alleged” as Senator Reents suggested.

PROMULGATION OF COMMITTEE RULES

Ms. Van Maren said she had compiled answers to some questions about rules that were posed in the last committee meeting. One question was whether JLOC needed to follow the APA. Idaho Code § 67-5201(2) specifically exempts the legislative and judicial branches from the APA. The authority to promulgate rules is inherent in legislative power; however, committee rules are not to go beyond what is already in statute. Laws cannot be created in rule. Rather, rules are to explain or further clarify legislative intent or direct processes. And, finally, as good practice, the committee should readopt the rules each Legislature.

Ms. Van Maren said she had requested information about oversight committee rules from eleven other states and received ten responses. States with established programs, such as Minnesota and Virginia, said they did not have rules and operated according to well-established tradition. A small group followed detailed policy manuals, and others had committee rules.

Ms. Van Maren went through the drafted *Committee Rules* handout (*see Attachment 2*). In discussion, she said that it was not typical for oversight committees to hear testimony in the process of deciding topics. More typically, oversight committees hear agency responses at the release of a report. One rule specified that no testimony would be accepted unless an invitation to present testimony had been presented by the co-chairs and approved by a majority of the committee. Ms. Van Maren affirmed Senator Reents’ question as to whether these rules would have given the committee some recourse at the last committee meeting. Ms. Van Maren added that nothing should prevent employees of an agency from contacting individuals of the committee with their input. The committee will select topics as a body, discussing their various views in the process.

In further discussion on the rules, Ms. Van Maren noted that a copy of the report would be mailed to committee members and agency representatives one day prior to the release of the committee meeting. Senator Ipsen asked how the OPE would ensure delivery one day prior when the report is being sent through the mail across the state. Ms. Van Maren said that the committee requested at the last meeting that she mail them three to four days in advance, so that theirs would arrive at least one day in advance. The committee requested that the language in the rule be changed to say “at least” one day in advance.

The proposed rule allowed for oral and written testimony at report release. Ms. Van Maren had added the phrase “the committee may pass a motion to limit the testimony with a 2/3 vote” to account for those times when several agency representatives were present. For example, when an evaluation crosses all state agencies and all agencies want to share their responses, the committee may want to limit testimony in the interest of time. Senator Reents was concerned about the message the phrase might send. Representative Gurnsey responded to questions about how JFAC handles this type of oral testimony. Several committee members agreed that, by tradition, the chairs could establish time limits for each person, and that the phrase was not necessary.

Co-chair Sweeney asked Ms. Van Maren why the agency should provide a response to the report in front of the committee when it had already responded to the report in writing. Ms. Van Maren indicated that it was a courtesy to the agency to have its side heard in front of the committee. By this time, there should be no surprises to the agency, because of the OPE’s close working relationship with the agency in the process of a performance evaluation.

Representative Alexander recommended taking out the final sentence of rule 3 in section 4 (about limiting testimony), and Co-chair Sweeney asked the committee if there was any objection. There was no objection, and the line was removed.

Ms. Van Maren explained that the wording in section five of the proposed rules (vote to “receive” the report rather than to “accept”) was used because the committee decided at the last meeting that they did not want to attend the opening conference, and did not want to become involved in the evaluation process until the report had been bound with the agency’s response. This helped ensure the report’s independence.

In further discussion, Senator Ipsen said that recommendations need substance so that agencies will actually follow-up. Ms. Van Maren said in some cases legislation may be appropriate to ensure changes. Co-chair Sweeney said that it is the function of the committee to take legislation to the Legislature when required by report recommendations. Representative Newcomb pointed out that this was one reason the co-chairs of JFAC were included on the committee—so that appropriations could be withheld from noncompliant agencies if necessary.

The committee discussed the lack of follow-up done after financial audits. Problems with the timely release of reports may be part of the problem. Financial audits tend to take a long time, and are sometimes dated when the Legislature receives the reports. In addition, staff have sometimes been replaced in the interim by employees who had nothing to do with the work under scrutiny. The committee concluded that they needed to be involved in a follow-up process to ensure compliance with the recommendations of an evaluation report.

Co-chair Sweeney asked the committee to review the rules, and to plan on another committee meeting in two to three weeks to discuss their adoption. Ms. Van Maren said that a representative from the AG’s office had offered to review the rules if the committee wished. Hearing no objections, Co-chair Sweeney asked Ms. Van Maren to follow through with that offer.

TOPIC SELECTION

Representative Alexander requested that the OPE look into an evaluation of the Department of Fish and Game that was scheduled to be presented January 16. There were no objections to this request.

Ms. Van Maren said she had included the *Guidelines for Topic Selection* for reference when selecting a topic. To begin, she reviewed the *Progress Report of the Department of Revenue and Taxation: County Support Division*. Because the committee had not requested an evaluation, the OPE did not independently verify or investigate most information reported, as would be the practice in a performance evaluation. The OPE surveyed county treasurers to determine how their responsibilities were affected. Ms. Van Maren said that the Department of Revenue and Taxation and the counties were very cooperative in supplying information and helping compile the Progress Report. She went over the report and ways the programming problems had affected county treasurers' work, noting that some reports from the treasurers and the department conflicted.

Senator Ipsen asked if a private programming firm had been hired to help the department. Ms. Van Maren indicated that one was hired, and ended their contract with Department of Revenue and Taxation on October 1 or November 1, 1994. The State Tax Commission had called them back for occasional assistance in resolving questions after that date. To the best of Ms. Van Maren's understanding, department employees were those now working on programming glitches. Representative Newcomb asked if there were any treasurers that were out of compliance with the law because of the programming problems. Ms. Van Maren said that one treasurer relayed to the OPE that she was out of compliance and was concerned with her legal vulnerability. This treasurer has indicated that there were others with the same concern.

Representative Gurnsey questioned whether there was a problem with treasurers not understanding the technical programs. Ms. Van Maren responded that there were clearly programming glitches. Representative Gurnsey asked if the programs were more or less efficient compared to what the treasurers used previously. Ms. Van Maren said the OPE did not make a determination on this, but saw enough questions about the issue to make it worth investigating. Co-chair Sweeney asked if a determination of whether the new system was efficient could be made before all the glitches were corrected. Ms. Van Maren said it would be difficult until the programs functioned correctly. Co-chair Sweeney asked if there was a timetable for all problems to be solved. Ms. Van Maren said she received a department timetable, but was unsure about the final dates. The department and counties had expressed understanding that further problems would arise with implementation of Phase III (primarily Assessor) programs.

Representative Newcomb asked whether treasurers who are late in the distribution of funds become financially liable? Ms. Van Maren indicated that she did not know.

Co-chair Sweeney said that it appeared the Tax Commission was moving to make sure the programs work, and said he was not sure the committee could do anything to improve the efforts

at this point. However, Representative Gurnsey voiced her feelings that the committee would have success from an evaluation of the Tax Commission, because it was a new subject.

Representative Alexander asked what the potential cost savings of an evaluation of the Tax Commission would be and what the time limits involved were. Ms. Van Maren said that there were potential *long term* savings from ironing out underlying issues and administrative procedures, but the savings would likely be minimal. The report's timeliness depended on what the committee requested the OPE to do. The department will continue working on problems for approximately six months. An OPE report issued in six months could describe the problems, determine the costs associated with addressing the problems, and consider whether the program changes had actually improved operations for county treasurers.

Representative Newcomb said that this issue brings out questions Representative Alexander had raised earlier about state agencies' need to contract for computer programming services. How many agencies have problems when trying to develop their own software programs? How many agencies contract out? Should state agencies contract out to have their software developed, or develop their own software? He said he thought part of the problem in this situation had been the loss of programmers who had expertise.

Ms. Van Maren presented an additional list of potential topics from the legislative survey, citizen phone calls, and other sources.

Representative Gurnsey said that the committee should look at the issues where most of state money is spent. She suggested issues within Health and Welfare, Education, or Corrections. Topics could be the operation of the veterans nursing homes, the reimbursement of providers of various services in Health and Welfare, colleges and universities which do not undergo audits, or space allocation between state agencies. Regarding Medicaid reimbursement, an evaluation could ask how we are making decisions about what should be a fair Medicaid reimbursement rate to the hospitals.

Co-chair Sweeney reminded the committee that any issue mentioned could be selected as a topic today. He asked Ms. Van Maren what the OPE could be expected to do or accomplish in any one of the examples cited by Representative Gurnsey. Ms. Van Maren said that, for example, the OPE could prepare a report that looked at administrative arrangements in the Department of Corrections in approximately 6 months. The OPE could also do a study on space allocation in approximately six months time.

Co-chair Sweeney said that the committee could select any topics they like, but should limit the topics to two. Representative Newcomb said that the most appropriate starting place was with the three background papers. He said the committee could select none of them, one, or two. Ms. Van Maren added that if the committee was interested in some of these different issues, the OPE could provide cursory background papers in 3 to 3 ½ weeks, although they would not be as in-depth as those received today.

Representative Alexander referred back to the *Guidelines for Topic Selection*. He said he thought that two of the background papers fit nicely within the Guidelines, one of which was State Travel. Why had earlier attempts failed?

Representative Gurnsey said a motor pool was established under recommendation of the Legislator Auditor a number of years ago. Later it was shown that the motor pool was not efficient. Need for vehicles varied across the state. For example, the Department of Health and Welfare may need to have a motor pool because of the high number of employees. But an agency that travels occasionally may find it less expensive to reimburse employees to use their personal vehicles. The Department of Administration should be providing guidelines for judging when one is more efficient. The same principles apply for travel. Employees want to be able to deal with local people for travel arrangements. Furthermore, who determines which travel agent in the state of Idaho gets all the business?

Senator Ipsen asked what the number of personal miles was compared with the number of state-owned vehicles miles. Referring to Representative Gurnsey's prior remarks, he said the JLOC had hired a performance evaluator to come in and look at the problems with no ax to grind except to work for the taxpayers. If the committee's attitude was to turn problems back to the departments, then the committee was saying they do not need a performance evaluator. What they should say is that they want a nonpartisan evaluation with reliable numbers to make solid decisions regarding changes. That is done with the performance evaluator. Senator Ipsen also said that he wanted the committee to select a topic that would provide immediate cost savings to build the OPE from the start.

Senator Reents pointed out that the background paper identified problems with agency information within agencies for the motor vehicle study. As a result, she thought the travel study might be better. Perhaps a request should be made to the Department of Administration to collect data on state vehicle use and reimbursement for personal travel so that if the committee wanted to look at an evaluation proposal in this area a year from now, they would have data to use in making a topic decision.

In response to questions, Ms. Van Maren clarified that some of the reimbursement numbers for personal vehicle use coming from the statewide accounting system was misleading because some agencies also used the code for parking and fees. To get a clear picture, one would have to look at travel vouchers.

Representative Alexander moved to request an evaluation of state travel management. Senator Reents seconded the motion.

In discussion, Co-chair Sweeney said that he supported the motion. Travel management crossed all state agencies. In addition, this could give the committee an opportunity to examine higher education travel, related to Representative Gurnsey's remarks earlier.

Representative Newcomb suggested the OPE may also want to examine frequent flyer miles accumulated for state travel but taken for personal use by employees. He said he supported Co-

chair Sweeney's comments and felt travel management would be a good topic for the committee to pursue.

Ms. Van Maren said that Senator Parry asked her to share his comments when appropriate. He ranked the topics in order from motor vehicle, to travel, and then nonprofits. Senator Parry said that the state travel background paper had been an "eye opener" and would be worth doing.

The motion was approved unanimously by voice vote.

Co-chair Sweeney asked if the committee would like to select another topic or ask for additional background on another subject. He said there would probably have to be another meeting before the session ends this year. Representative Newcomb asked the committee to consider two things: (1) gathering more information from the Department of Administration on motor vehicles, as Senator Reents suggested; and (2) examining reimbursement of Medicaid. He said there would probably be more savings in that particular program than any others, and he would like a background paper before deciding on what the next evaluation topic will be.

Representative Vandenberg then requested that the OPE look into the reasons why the motor vehicle pool didn't work the last time.

Representative Gurnsey asked if the OPE could pursue following up on the tax issue. Can the OPE continue to monitor the problem and make sure it is being resolved?

Ms. Van Maren said she was happy to carry out the committee's requests. The difficulty she saw with pursuing the Tax Commission issue was that further monitoring would entail further inquiry. Ms. Van Maren said she would need a motion by the committee to continue monitoring the situation.

Representative Alexander asked if it would be more appropriate for the Revenue and Taxation Committee to pursue this topic during the session. Co-chair Sweeney said that it may very well be the appropriate thing to do, but that it didn't preclude the Oversight Committee from doing an evaluation.

Representative Gurnsey moved that the OPE prepare a background paper on Medicaid reimbursement to be presented in about three weeks to the committee. The motion was seconded by Representative Alexander.

In discussion, Co-chair Sweeney asked Ms. Van Maren if the travel topic and the Medicaid background would be too much of a time commitment for the OPE staff. Ms. Van Maren said she had heard an additional third and fourth request. One came from Representative Newcomb to pursue the Department of Administration for additional motor vehicles information, and another from Representative Vandenberg that the OPE look into the motor pool. Ms. Van Maren said she thought she would be able to organize the work to meet the committee's requests.

Senator Ipsen suggested the committee prioritize the requests for the OPE. Representative Gurnsey asked if there were some resources in legislative services that could be utilized for the OPE's assistance, specifically the legislative auditors and budget analysts. She said she thought they would be good resources for Ms. Van Maren, but that she would probably have to check with Carl Bianchi. Representative Newcomb indicated that the organizational chart provided for cooperation between the Legislative Services Office and the OPE.

The motion was passed by unanimous voice vote.

Co-chair Sweeney asked if the committee wanted to establish priorities in terms of the other two subjects. Representative Alexander said he thought that Ms. Van Maren had an idea of what the committee was looking for, and suggested that they allow her to manage the OPE staff accordingly.

Ms. Van Maren asked Representative Newcomb and Senator Reents if they wanted her to request that the Department of Administration gather travel information on motor vehicles in a three week period, or over a longer period of time. Senator Reents said she meant over time: if information could be gathered by the Department of Administration over a six month period, or even a year, then the committee could look closer at this topic in the future. Ms. Van Maren said she would request this information from the Department of Administration on behalf of the committee.

With no further discussion, Co-chair Sweeney adjourned the meeting at 10:50 a.m.