

Minutes of the Joint Legislative Oversight Committee

March 23, 2023

Room EW20, Capitol, Boise, Idaho



Representative David M. Cannon, presiding cochair

Cochair Representative Cannon called the meeting to order at 1:01 p.m.

Committee members in attendance were Senators Melissa M. Wintrow (cochair), David Lent, C. Scott Grow, James D. Ruchti, Representatives Douglas T. Pickett, Ilana Rubel, and Steve Berch. Also present were Rakesh Mohan, director, and Office of Performance Evaluations (OPE) staff. Audience members in attendance included the following:

Representative Rod Furniss
Representative Colin Nash
Representative Clow
Keven Richert
James Dawson
Laura Guido
Clark Corbin

Approval of committee minutes

Representative Berch moved to approve the minutes from March 16, 2023.

Representative Rubel seconded the motion, and it passed by unanimous voice vote without debate.

Presentation of proposals

Director Mohan reviewed the guidelines for topic selection: applicability and interest, timeliness, use, potential for cost savings, research feasibility, state control, evidence of deficiency, and suitability.

He stated that there were six studies sponsored by senators and representatives from both parties, and all but one request was sponsored by more than one person. He suggested that the Committee hear from sponsors of the study requests to describe their projects. Cochair Cannon called on sponsors to present their study requests to the committee in about three minutes.

Public Health Data Exchange

Representative Rubel presented the Idaho Public Health Data Exchange study request that she, Speaker Moyle, Senator Grow, Representative Cannon, and Representative Pickett sponsored. The exchange was created in 2006 and filed for bankruptcy in 2022.

Senator Lent asked whether we knew the answers to some of the questions in the request. Representative Rubel stated that although it is possible that someone in the system may know the answers, she and fellow requesters did not. The bankruptcy was recent, within the past six months, and there had not been a full autopsy conducted to explain why things happened as they did. Senator Lent asked if the state was out \$4 million as a result. Representative Rubel explained that \$4 million was owed to creditors and she assumed that the state was among the creditors. She did not know if the state was the sole creditor. Senator Lent asked who in the state had control over this operation. Representative Rubel responded that she believed it was the Department of Health and Welfare.

See the attached study request for details.

Medicaid Hospital Rates

Representative Rubel presented the study request that she, Speaker Moyle, Representative Cannon, and Representative Pickett sponsored. She explained that the request was timely because the state has recently moved to value-based care, referred to as diagnosis-based grouping or DRG by the request, with the hopes that it would bring stability and predictability in the Medicaid expenses. Less than a year into the implementation, there is discussion about whether we should continue that course or move to a managed care model. Representative Rubel said that the hope for this request is that it will provide the state with the information needed to determine the direction to move forward.

Representative Rubel listed the specific questions of the study request. See the attached study request for details.

Representative Berch asked Director Mohan if this project would analyze the growth factor to understand the cost per person and provide a broader perspective about how growth may have impacted costs. Director Mohan responded that the office would be able to provide context including the impact of growth.

Child Care Shortage

Senator Wintrow asked to speak from her chair. Cochair Cannon asked and received unanimous consent.

Senator Wintrow presented the study request that she sponsored. Senator Wintrow said that there has been a lot of discussion about child care and how the child-care infrastructure impacts the overall economy in the state. Senator Wintrow said that she discussed the request with Director Mohan and that this request may be a good candidate for a general overview or review instead of a full blown OPE study that would take up so many resources. There are some studies out there, and OPE could compile the research to provide a big picture overview.

Senator Wintrow explained that the proposal. See the attached study request for details.

Senator Lent asked if this would address the space where the state will run out of funds on June 30. Senator Wintrow answered that she believed that would be part of it, but there are bigger picture questions about what the infrastructure would look like, how is it funded, how should the state support it. She stated that Senator Lent's question would be one factor. Senator Lent stated that his concern is that we are going to run out of a lot of funding and where the money would come from. He would like to know how other states are funding these programs, even if OPE did an abbreviated review. Senator Wintrow agreed and reiterated that she believed that we could get the answers in a background assessment. She said it would be helpful to look at what other solutions in the nation that our state could learn from.

Representative Berch asked for clarification that the scope would be Idaho specific. Representative Wintrow said that, yes, the information was for Idaho. Representative Berch agreed that comparing to other states would be important. He also said he saw an immediate need for funding and a long-term concern beyond the immediate hurdles. He asked whether that this project could answer some longer-term questions. Representative Wintrow answered that, yes, she is interested in knowing what are some big picture answers that will help people stay engaged in the workforce and keep the economy moving. She mentioned she wanted to know about how to fund it but also about what solutions exist that might be outside of the box.

Representative Berch asked Director Mohan whether, in light of the broader issue, there would be a need to talk to employers. He wanted to know if that would be in the scope of what OPE would do. Director Mohan answered that he was not sure what fieldwork the office would conduct because scoping had not been completed, but that OPE could talk to people in the private sector if it made sense.

Representative Berch asked for clarification about whether OPE would develop the legislation. Director Mohan confirmed that OPE does not draft legislation but makes recommendations that can be used to draft legislation.

Death Investigations

Representative Nash presented the study request that he, Representative Raybould, and Representative Furniss sponsored. Representative Nash said that the request was to explore Idaho's death investigation process. Idaho has a coroner system, but we only have a couple forensic pathology labs. He explained Ada County's office runs the lab for nearly everything south of McCall and Spokane's lab handles everything north of there. He said the system is overly reliant on an out of state office and one centralized location for forensic death investigations.

Representative Nash also explained that Idaho Code does not have many standards for coroners. He has a specific concern about the quality of forensic death investigations. For

example, there was some criticism of Idaho's process around the alleged murder in the Daybell case. Chad Daybell's wife was buried in Utah and no autopsy was conducted. He is now under investigation for her murder. Representative Nash said that there are a number of cases in the news with other situations regarding forensic death investigations.

Representative Nash said that there are always questions about resources, training, and standards. He mentioned that there is generally a push every now and then to set up another forensic pathology lab somewhere other than Ada County so that the state has those resources in other parts of the state.

Representative Nash said that the state recently, in the higher education budget, funded some resources for some forensic pathology services at Idaho State University. He did not know the status of that project.

Representative Nash said he believed that this is a critical public service. The state needs to understand if it's being done correctly and if there are better ways to do it.

Senator Wintrow asked about how this request is in the scope of OPE. Representative Nash stated that Idaho is a Dillion Rule state because local governments only have the authority granted to them by the state. For that reason, there is a state nexus. Further, the state has the responsibility for standards and has supplemented funding in the past. Representative Rubel commented that the authorizing statute for JLOC puts local governments in the purview of the committee. Senator Wintrow commented that she is intrigued by the proposal and thanked Representative Nash for the request.

See the attached study request for details.

Cash Management Policy

Representative Furniss presented the study request that he and Representative Nash sponsored. Representative Furniss said that, as a member of JFAC, he had frequent questions about the cash balances. He said that agencies have a lot of cash and there is not a congruent statewide policy. He said some agencies have as much as a billion dollars, and that money is taxpayer money.

Representative Furniss explained that now is the right time to do a study looking into cash management because interest rates have risen along with the investment potential. He said that large companies have cash managers whose job is to optimize the rate of return and use of cash balances. He said some agencies keep one or more years of operational cash.

Representative Furniss wanted to know why agencies needed that much cash. He said that investing that cash until they needed it would be financially prudent. Representative Furniss said he was concerned that agencies were not equipped to handle that investment mode.

He also wanted to know if there should be a policy to revert money back to the general fund. He said that the state does not have that policy in place.

Representative Berch asked if the scope of this project would include comparisons to other states and their best practices. Representative Furniss said that he thought other states may use cash managers and it would be good to look at their practices and make them Idahoan.

See the attached study request for details.

State and Local Regulations of Land Use

Representative Nash presented the study request that he and Representative Rabe sponsored. Representative Nash said that this request deals with housing affordability and housing inventory as it relates to local and state land use decision making. He said that the state has a serious housing crisis. He thought a lot of young people would like to stay and be close to family, but it's so difficult to buy a home here. He said people are either priced out of the market, or they have to go out of state.

Representative Nash said that the housing conversation has been focused on whether something could be funded by the state or by dedicating a new revenue source to local governments. He said he would like to change the conversation and dial down to what Idaho values are in relation to solving the crisis. He said that he saw state and local land use decision making as a red tape barrier into building more housing and more inventory. He said we can keep Idaho a great place to live with high quality of life and low cost of living.

Representative Berch asked if it became problematic to evaluate every area of the state and could the scope be modified to focus on urban areas. Representative Nash said that looking at how a few different jurisdictions conduct planning could be helpful. Sampling major metropolitan areas would tell us something, but comparing how different localities approach issues would also be informative.

See the attached request for details.

Selection of topics

Cochair Cannon explained that he met with Cochair Wintrow and Director Mohan to determine how to proceed with topic selection. He said each committee member would receive a ballot and each member could indicate which three topics they would like to pursue. He said in the past ballots had been secret but that they would be public this time. He explained that the ballot would be used to gauge interest but was not binding.

Cochair Wintrow commented that she appreciated the work of prior committees. She welcomes good debate and reiterated that the ballots are not binding.

Cochair Cannon explained that the projects appeared on the ballot in the same order that the requests were presented.

Representative Berch asked to comment on the change in the process. He said there was a reason the committee had used the private ballot. He explained that the committee members must work with their colleagues after project selection. He said he did not want to have people wondering or being concerned about how a colleague would react to their project not being selected. He said that members needed the freedom to make decisions on the merits independent of the consequence or impacts to relationships that might stem from the use of the public ballot. He asked that the ballots be private. He stated that he did not think there was a compelling reason for the public ballot and that he would defer to the cochairs for how they wanted to process his comments. He said he thought there would be unintended consequences.

Cochair Cannon said he appreciated the input and that the cochairs discussed the public ballot earlier in the day. He said that a private ballot is not the normal way proposed pieces of legislation were addressed. He acknowledged that there were legitimate concerns on both sides of the issue. He said that after discussing the issue with Cochair Wintrow, and at their discretion, the committee would move forward with a public, nonbinding vote and that the comments would be public as well.

Cochair Wintrow said she recognized that the committee was bipartisan for a reason and that there was a need to keep politics out of the selection of research that could impact legislative decisions.

Representative Berch explained that what makes this voting different than the voting on the floors of the House and the Senate is that there is a need to take every possible precaution to protect the nonbiased, nonpartisan nature of OPE. Representative Berch asked for an opportunity to vote on rule changes in an upcoming committee meeting.

Cochair Cannon said he would look into the issue before the committee reconvenes next year. He further explained that it was his understanding that the public ballot process was not a rule change but a discretionary call within the purview of the cochairs. He said that the cochairs will discuss how to proceed in the future.

Senator Lent suggested that it would be helpful if the requests began with a clear statement of the problem. He said it would be helpful to see upfront what the problem is and then whether a proposed solution is legislative action. He said he wasn't sure what the action items would be once information was provided for some of the study proposals. He would appreciate a clear problem statement that tells legislators where to go and their role in solving that issue.

Senator Grow echoed Senator Lent's comments. He wanted to ensure there would be teeth in the actions of the committee and the reports.

Cochair Wintrow said she appreciated the comments of Senator Grow and Senator Lent. She explained a difficulty this year was the late formation of JLOC. She apologized for the rushed

nature of decision making, but looked forward to future meetings where the cochairs can integrate the feedback of the committee members. She said that she did not want to politicize data.

Cochair Cannon said that he also appreciated the comments made by committee members. He said that evaluations, data, and answers to questions are valuable even when there isn't a roadmap. He said there is value in having data that 105 legislators can use to decide if there needs to be action taken and if legislation should be drafted.

Representative Pickett said that he appreciated the comments. He said that there could be some value in the public seeing the reports before conclusions about solutions are reached. He said solutions can come from anywhere including OPE, legislators, the committee, and the general public without any presupposed conclusions.

Cochair Cannon asked Casey Petti and Sasha O'Connell for a tabulation of the votes. Sasha said the top two projects received seven votes each: Public Health Data and Medicaid Hospital Rates. She said the death investigations proposal received three votes.

Director Mohan said that OPE is small agency of eight positions, including one vacancy. The office can take no more than three new projects. He said that the office was already working on the second phase of a criminal justice evaluation.

Director Mohan said that some important comments and questions were asked. He explained that for past projects, OPE would have about two weeks with a study request to do some background work and ask questions of the study sponsors. He said that this year, he had received only two projects early – Medicaid payments and the data exchange proposal. Director Mohan suggested that the committee approve those two projects. Then OPE could conduct background work to answer questions about the feasibility of the other four requests. He said that OPE could bring back the information, which might be sufficient to answer the study sponsor's questions. At that time, JLOC could decide whether to approve a full evaluation of any of the four requests.

Senator Grow motioned to move ahead with a full evaluation of two proposals, Public Health Data Exchange and Medicaid Hospital Rates, and to look at Death Investigations at the call of the chair.

Representative Pickett seconded the motion.

Representative Rubel asked for clarification on why the committee could not select all three right now. She asked Director Mohan if the committee deferred the selection of the third, when would that decision be made. She said her preference is to take the top three.

Director Mohan explained that it was the committee's choice whether to take three. His suggestion was based on his past experience where at times a proposal was approved, but challenges or limitations emerged during scoping. He said that since OPE did not know much about four of the proposals, the office could scope the projects and then report back to the

committee. He said that the committee could then come back was at the call of the chair. He said that he would work with the committee to determine the best method to facilitate the meeting.

Cochair Wintrow asked if it was too late for Senator Ruchti to be given a ballot. Cochair Cannon said he believed that the committee should proceed with the debate and voting on the motion.

Senator Wintrow stated that she would prefer to approve three reports. She said that if challenges emerged during scoping of the death investigations project, then the committee could determine how to proceed at that time.

Senator Grow made a motion to call the question on the first motion because JFAC was scheduled to meet. Senator Lent seconded the motion.

Cochair Cannon called for a voice vote. The vote was split. Cochair Cannon asked for a hand count of the votes. Ayes: Cochair Cannon, Senators Grow and Lent, and Representative Pickett. Nays: Cochair Wintrow, Senator Ruchti, and Representatives Rubel and Berch. Needing a two-thirds majority, the motion failed.

Representative Rubel made a substitute motion that the committee approve full evaluations of Public Health Data Exchange and Medicaid Hospital Rates, and Death Investigations. Cochair Wintrow seconded the motion.

Cochair Cannon Called for a vote on the substitute motion. The motion passed with a unanimous voice vote.

Cochair Cannon adjourned the meeting at 2:01 pm.