

Minutes of the Joint Legislative Oversight Committee*

November 27, 2000

Senate Majority Caucus Room

Boise, Idaho

Co-chair Senator Marguerite McLaughlin called the meeting to order at 12:35 p.m. Committee members, Senators Atwell Parry, Grant Ipsen and Lin Whitworth, and Co-chair Representative Debbie Field, Representatives Robert Geddes, June Judd, and Margaret Henbest attended. Staff members Nancy Van Maren, Paul Headlee, Ned Parrish, and Margaret Campbell also were present. Staff members Jim Henderson, Eric Milstead, Leslie Clement, and Lewissa Swanson also attended the meeting in part.

REPORT RELEASE: REVIEW OF SELECTED WILDLIFE PROGRAMS AT THE DEPARTMENT OF FISH AND GAME

Co-chair McLaughlin asked those present to introduce themselves (list attached). Ms. Van Maren recalled for the committee that the evaluative review was requested to respond to concerns about the management of the bighorn sheep lottery and auction programs and relations between and accountability of several agencies conducting wildlife disease research. **Representative Henbest moved to receive the report, and Representative Field seconded the motion. The motion passed unanimously by voice vote.**

Mr. Paul Headlee, Performance Evaluator, presented a summary of the findings and recommendations of the report and responded to questions from the committee.

Senator Whitworth asked if there had been department effort to seek input from sportsmen regarding an auction for game animal tags. Mr. Headlee said the department had not surveyed sportsmen. However, individuals had the opportunity to testify at the germane committee hearings when this practice was put into code. Minutes from the hearings indicated one sportsmen's group had voiced opposition.

Senator Whitworth also asked what the penalty would be for an individual reselling an auctioned tag. Mr. Headlee said the penalty for reselling an auctioned tag is not addressed in code. Subsequent to 1994, the contract was amended to allow redesignation of the auctioned tag to an individual. However, it was still unclear whether the tag could be transferred to an organization, as had happened in 1994.

Representative Geddes asked why the bighorn sheep tag auction contractor was allowed 5% of the highest bid and the lottery contractor was allowed 25%. Mr. Headlee explained that the lottery contractor was required to market/advertise and cover lottery ticket printing costs, which were requirements beyond those of the auction tag contractor.

Co-chair McLaughlin called on Mr. John Burns, Chairman, Fish and Game Commission, to address the committee. Mr. Burns thanked the committee for the evaluation and said he essentially concurred with the findings. The lottery and auction records should be strengthened—which was consistent with efforts the director had initiated in the department—and the department would be

* As approved by a majority of the Joint Legislative Oversight Committee (see signatures attached).

accomplishing this in the near future. Mr. Burns said they agreed terms regarding the auction tag donation and re-auctioning were unclear, but believed it could be cleared up in the contract. Finally, the informal Wildlife Disease Research Oversight Committee had been doing a good job in coordinating relations between Fish and Game and the other agencies involved in wildlife research and this arrangement could be formalized.

Also responding to committee questions, Mr. Ned Parrish, Principal Performance Evaluator, said OPE believed it would be preferable to modify the statute to address the issue of re-auctioning a tag, so that the department did not go further than its statutory authority in contract. He added that Fish and Game licenses are generally non-transferable by law, so that specifying what is allowed in statute would be more clear.

Saying that he was still concerned about solving the issue by contract alone, **Senator Parry moved to forward the report to the germane committees, asking them to consider the evaluation and make the decision as to whether code should be amended. Senator Ipsen seconded the motion.**

In discussion, Senator Parry said there were too many loopholes and that we were fortunate there hadn't been more misuse than OPE had found. He suggested the department both amend the statute and tighten the contract. Senator Ipsen concurred and said the department should not contract without knowing its authority to do so.

The motion passed unanimously by voice vote.

Representative Field moved to follow-up on report recommendations in six months. Senator Whitworth seconded the motion, and it passed unanimously by voice vote.

Senator Laird Noh, chairman of the Senate Resources and Environment Committee and the original requestor of the evaluation, thanked the committee for an evaluation done well. He assured JLOC that his committee would follow-up on the referral of this report. He, too, thought it was fortunate there had not been additional problems uncovered regarding the bighorn sheep tag auction and lottery.

REQUESTED REPORT FROM FISH AND GAME COMMISSION ON THE SELECTION OF A NEW METHOD FOR COLLECTING HARVEST DATA

Co-chair McLaughlin invited Mr. John Burns to address the committee to explain the commission's rationale for choosing an alternative method of collecting harvest data. Mr. Burns said the commission decided last summer to end phone surveys and adopt a new method of surveying that only required successful hunters to mail in their forms. The decision came as a compromise for members who were strongly divided in their preferences for gathering harvest data. He said there were several groups with strong feelings about the methods for estimating deer and elk harvests—some preferred phone surveys and others preferred the mandatory report.

Senator Parry asked how the commission would know if all successful hunters turned in their reports. Mr. Burns said the commission had told the department that some follow-up methods should be put in place, such as check stations, and checks with taxidermists and meat packing plants, etc. In response to committee questions, Mr. Burns said he personally advocated the mandatory report. However, other commissioners had different perspectives. Considering the

intense feelings and long history of conflicting viewpoints, he felt the commission was on the right track with the new method.

The committee also discussed the response rates of various methods and use of reminder letters, department revenue estimates in light of the fee increase, and the effect of last summer's fires on game herds.

Senator Parry moved to forward the report to the germane committees, saying that the more they were involved, the better. Senator Whitworth seconded the motion, and it passed unanimously by voice vote.

The committee took a short break.

PROGRESS REPORTS ON PREVIOUS COMMITTEE REQUESTS

The State Board of Medicine's Resolution of Complaints Against Physicians and Physician Assistants (October 1999)

Mr. Eric Milstead, Senior Performance Evaluator, reviewed the board's progress in implementing report recommendations and addressing provisions of 2000 HB 628. The board had resolved or implemented four of the six recommendations from the report. The two outstanding recommendations were options for legislative policymakers to amend statute and/or direct the board to adopt related administrative rule revisions. In addition, the board had largely adopted, pursuant to 2000 HB 628, Attorney General administrative rules governing contested cases. The rules, pending legislative review and approval, clearly restrict the board and its staff from acting in both the investigatory and adjudicatory phases of a complaint case. They also specifically afforded a health care provider the opportunity to meet with the board's Committee on Professional Discipline prior to the initiation of formal complaint proceedings.

Co-Chair McLaughlin invited Ms. Nancy Kerr, Executive Director of the Idaho Board of Medicine, to address the committee. In response to questions, Ms. Kerr stated that the board provided complaint case status reports to both complainants and respondents (the health care providers) every 45 to 60 days during the course of a complaint case. Ms. Kerr stated that under the board's new rules, copies of the original written complaint, including the complainant's name, are provided to the respondent health care provider, except in cases where sexual misconduct is alleged.

Co-Chair Field commended Ms. Kerr for implementing provisions of 2000 HB 628.

Representative Field moved to request a follow-up in six months, after the 2001 legislative session. Representative Henbest seconded the motion, and it passed unanimously by voice vote.

The Board of Pharmacy's Regulation of Prescription Controlled Substances (June 1999).

Mr. Milstead updated the committee on the impact of implementation of report recommendations at the Board of Pharmacy. Under the direction of the board's new controlled substance complaint investigator, the board had developed complaint criteria that prioritized controlled substance complaints and outlined the investigator's actions in investigating and following-up on such complaints.

There had been three outstanding recommendations from the June 1999 report. One of the outstanding recommendations called for the board to comply with statute by submitting to the Governor the board's annual report. The board did so shortly after publication of its annual report in August 2000. The other two recommendations were still outstanding. One recommendation called for policymakers to consider clarifying the role of the board and its controlled substance registration function as relates to non-pharmacist health care provider licensing boards. The other called for the board to work with other licensing boards to investigate the possibility of conducting joint disciplinary hearings when appropriate.

Co-Chair McLaughlin invited Mr. Richard Markuson, Executive Director of the Idaho State Board of Pharmacy, to address the committee. In response to questions, Mr. Markuson explained that health care practitioners received their licenses from respective licensing boards, and the board of pharmacy needed the consent of the appropriate licensing board to act against the provider's *controlled substance registration* in a complaint case. Mr. Markuson stated the board would be taking legislation to the 2001 Legislature to address the two outstanding recommendations.

Representative Henbest noted that the outstanding issues were policy-based issues and she suggested referring these to the germane committees. **Representative Henbest moved to follow-up on the outstanding recommendations in six months to allow time for passage of legislation. Senator Whitworth seconded the motion, and it passed unanimously by voice vote.**

Executive Order regarding management of state agency passenger vehicles (October 2000)

Mr. Milstead updated the committee on the October 2000 Governor's executive order regarding management of agency passenger vehicles. The order calls for agencies to develop policies governing the use, safety, and inspection of state vehicles and vehicle disposal and replacement criteria, and to develop information systems to adequately and accurately track and record fleet management information.

The committee discussed reports addressing shortcomings in the state's attempts at a central motor pool. Senator Ipsen noted that it appeared the motor pool, when it existed, had never really been used in Idaho, although other states had found them beneficial. Representative Henbest said she was interested in pursuing the idea of a state motor pool, which her review had shown had reduced vehicle costs and improved vehicle care in those states that had them. Senator Parry said he thought the executive order should be given some time to work.

Senator Parry moved that JLOC discuss with the Governor and others the status and impact of the Executive Order in the Fall of 2001 before moving forward with another evaluation. Representative Geddes seconded the motion, and it passed unanimously by voice vote.

Employee Morale and Turnover at the Department of Correction

Mr. Ned Parrish, Principal Performance Evaluator, updated the committee on the implementation of report recommendations, a number of which were still "in process." The committee asked if the department was dragging its feet or putting forth a solid effort to implement the recommendations. Mr. Parrish said he thought the department was trying and had invested a great deal of time and energy to involve employees in the process.

The committee discussed external and internal turnover in the department—those who leave the department and those who transfer to other areas of the department. At the invitation of Co-chair McLaughlin, Bona Miller, Deputy Director for Prisons, responded to questions about exit interviews. The department had found that employees were more honest with their reasons for leaving if they filled out forms rather than having personal interviews. The department had begun to develop a database to record the information gathered by position, such as reason for leaving, impressions about the department, working conditions, etc., and would be submitting reports to the board and administration for review. So far, the database was small, but the department should have good information for the committee at the next follow-up.

Co-chair McLaughlin invited Mr. Ralph Townsend, Chairman, Board of Correction, to address the committee. Mr. Townsend said nothing less than a culture change had been required in some areas of the department, and the headway made to date has taken some time. His foremost concerns were communication and compensation.

Senator Whitworth asked about employee dismissal while on probation. Ms. Miller said that prior to last year, the department had been prevented by rule of the Division of Human Resources (DHR) from providing a reason to employees for termination. However, DHR had recently revised its rules and now the department did provide employees the reason for termination. She thought this might help in this area. In response to further questions, she said OPE's report may have helped improve morale and that addressing salary issues would help too.

Co-chair McLaughlin thanked the department for its work. **Representative Henbest moved to request a follow-up in six months. Representative Geddes seconded the motion, and it passed unanimously by voice vote.**

Attorney General analysis of legal issues regarding Fish & Game's automated licensing system acquisition and oversight

Co-chair McLaughlin directed the committee's attention to a newspaper article appearing in state newspapers on October 31, 2000 regarding the Attorney General's response to OPE's analysis of Fish and Game's relationship with its license system vendor, GTECH. At the request of the co-chair, Ms. Van Maren reviewed the history of OPE's communication with the Office of the Attorney General (AG) on this issue. In April 2000, prior to the evaluation's release in June, the AG had declined to provide a requested "second opinion" of the legal analysis OPE had received on this issue. Although the committee was told at the release that the AG disagreed with OPE's analysis and that a response would be forthcoming, attempts to obtain the AG's response during the summer were unsuccessful. As a result, the co-chairs had invited the AG to attend the September meeting. However, discussion of the matter was tabled when the AG's response was received at 4:15 the day before, leaving little time for advance review.

Co-chair McLaughlin said she did not mind negative press as long as she was provided the opportunity to respond. She said that prior to receiving the AG's response, the co-chairs had decided to proceed cautiously and, if mistakes were made in Fish and Game's relationship with GTECH, ensure that things would be made right. However, she felt that the article had left a black mark on the committee, and the co-chairs had planned to respond to the article with an editorial but wanted to discuss it with JLOC first.

Representative Field added that she wanted to acknowledge Fish and Game for making improvements in their contract with GTECH. It is always harder, she said, to admit when things are wrong, but if so, changes should be made and then we should move on.

Co-chair McLaughlin asked Mr. Phil Oberrecht, OPE's attorney from Hall, Farley, Oberrecht, & Blanton, to address the committee. Mr. Oberrecht said there were a number of areas in which he and the AG's office agreed: there was no evidence of willful disregard for the law; over \$1 million was due and owing GTECH before any agreement was signed with the contractor; and the first \$1 million was spent without an enforceable contract.

The disagreement between the AG's analysis and his concerned the way the procurement process went forward. The AG's office had concluded that since the Legislature had approved the appropriation for IDFG, the Legislature also approved the department's decision to "piggy back" onto the Idaho State Lottery's exemption from purchasing laws. However, he had reviewed all documentation and could not find an authorization for an exemption. Nor could he find anything in the records to indicate the Legislature authorized the exemption or a negotiated contract. For example, the last time the department contracted with GTECH, Fish and Game did it correctly – Fish and Game went directly through the Division of Purchasing and acquired a sole source determination to negotiate with the contractor; why would Fish and Game do this if the Legislature had already authorized their exemption from purchasing laws?

Senator Whitworth asked if we would be better off if it were outlined in code how the automated licensing system should be purchased. Mr. Oberrecht said that if the intent of the Legislature was to allow Fish and Game an exemption from purchasing laws, then the statute needed to be changed. However, existing purchasing laws had most everything already in place for the reverse case.

Co-chair McLaughlin called on Mr. Dave High, Chief of the Division of Civil Litigation and the attorney assigned to this review from the Office of the Attorney General, to address the committee. Mr. High said the fundamental disagreement was whether an appropriations statute was a sufficient indication of the Legislature's approval. There had been no option of bidding, so implicit in the appropriation decision was the use of Lottery's system. He added that he believed that the committee's work was important and he didn't want to undermine it or be perceived to be undermining it in any way. He thought it was time to move on.

Senator Whitworth asked Mr. High why the AG did not correct the appropriations bill before it was passed. Mr. High said he had not been involved, unlike what Fish and Game believed, but that had he been involved, he would have told them to do what they did. Representative Henbest said the debatable issue seemed to be that the Legislature created the approval of the exemption by approving the appropriation. Mr. High responded that the AG's position is that the Legislature can do anything it wants with an appropriations bill.

Committee members asked Mr. High why the AG had not responded to the several requests for input until the night before the September JLOC meeting. Mr. High said he knew of few letters from OPE; Co-chair McLaughlin said the earlier letters were available and asked Ms. Van Maren to provide copies of them to Senator Parry. Representative Geddes said the budget committee always assumes laws are being followed when an appropriation is submitted. He said it was not JFAC's intent to go one way or another in these matters with an appropriation. He wondered if it was

JFAC's responsibility to ensure everything was legal before making the appropriation. Co-chair McLaughlin said it was the agency's responsibility. Representative Henbest said she thought accountability to citizens—what the committee was all about—required that agencies follow purchasing laws.

Co-chair McLaughlin said she strongly disagreed with the use of the word "sloppy" to describe the report analysis. Senator Parry asked Mr. High if he had used the word "sloppy" in his analysis or if it had been the reporter's interpretation. Mr. High said it was not his quote. Representative Geddes said he thought it would be appropriate for the AG to go back to the press and clarify this.

The committee reviewed the editorial letter written by the co-chairs. After making a minor modification, **Senator Parry moved to send the letter out as corrected to newspapers around the state. Senator Whitworth seconded the motion, and it passed unanimously by voice vote.**

Legislative Audit's response to request for inquiry into Lottery's purchase of GTECH equipment

Co-chair McLaughlin said JLOC had been concerned about Lottery's decision to sign a contract to buy hardware from GTECH for \$888,000 when under a previous contract, the Lottery had the option to buy the same equipment for \$1. At a previous meeting, JLOC requested Mr. Larry Kirk, Supervisor, Legislative Audits, to review that decision. Mr. Kirk summarized his review and provided the committee with two schedules comparing the old contract with the new contract.

Mr. Kirk found that payment of the additional amount came out of a negotiation process that resulted in a new payment structure. Under this structure, with consistent sales, the Lottery would profit after four years, while with a three percent increase in sales, the Lottery would profit after three years. Lottery had decided that the new contract would be most profitable for the state. However, sales dipped in FY00 and profits had not been realized as projected.

Members asked what would happen to the equipment after it became obsolete. Mr. Kirk said Lottery expected it to last eight years total, at which point it would be worthless. Mr. Kirk concluded that Lottery had done what they thought was best at the time. In hindsight, they could have probably done things better.

Co-chair McLaughlin invited Mr. Steve Woodall to address the committee. In response to questions, Mr. Woodall said Lottery was exempt from state purchasing laws because the agency needed to become operational quickly. Representative Geddes asked if there were any reason it still needed its exemption now, to which Mr. Woodall responded there was not.

APPROVAL OF REQUESTED REVISIONS TO JLOC RULES

Ms. Van Maren reviewed rule changes as requested at the last meeting. **Representative Henbest moved to accept the rule changes as written. Senator Ipsen seconded the motion and it passed unanimously by voice vote.**

TOPIC REVIEW:

Proposed scope for evaluation of inmate rehabilitation and parole

Ms. Van Maren presented a proposed scope for an evaluation of inmate rehabilitation and parole. She said the scope did not include one issue the committee had discussed—the impact of prison programming on recidivism—because this one issue itself constituted a separate evaluation topic and it wasn't clear if data were available to study it. Representative Henbest said she thought the scope looked good, but didn't want to lose the recidivism/offender programming piece. She suggested that OPE conduct a preliminary review to determine whether there were sufficient data to allow an evaluation.

Representative Field moved to accept the proposed scope of an evaluation of inmate rehabilitation and parole. Senator Whitworth seconded the motion, and it passed unanimously by voice vote.

Other evaluation requests

Ms. Van Maren reviewed work currently in process, and said staff could take on one more evaluation. Senator Ipsen said he would like to know the total fees charged to people in the state. Did the fees even cover the costs of the guy collecting them? Did they go overboard? Other committee members voiced their approval.

Senator Ipsen moved that OPE determine the nature and extent of all state fees assessed on individuals. Representative Field seconded the motion.

In discussion, the committee acknowledged that this was a huge undertaking and that OPE may have to limit it in some way. Senator Whitworth asked if this study would include all municipality, county, and local government fees. Members suggested starting with state fees and, in reviewing the scope, others could be added. The committee asked to review the scope in January.

Senator Ipsen amended his motion to conduct a study on all fees including taxes on all services by state agencies. Representative Field concurred with the amendments, and the amended motion passed unanimously by voice vote.

Representative Field moved that OPE conduct preliminary research to determine if there were data available to conduct an evaluation of the impact of prison programming on recidivism. Representative Henbest seconded the motion and it passed by voice vote.

In discussion, Representative Henbest said this preliminary review could result in an evaluation being undertaken at some point, or could result in making recommendations to start collecting data so that an evaluation could be conducted at a later date.

The meeting adjourned at 4:50 p.m.