

Minutes of the Joint Legislative Oversight Committee\*

June 12, 2002

House Majority Caucus Room

Boise, Idaho

Co-chair Representative Debbie Field called the meeting to order at 9:15 a.m. Committee members Co-chair Senator Betsy Dunklin, Senators Grant Ipsen and Bert Marley, and Representatives Maxine Bell, Margaret Henbest, and Donna Boe attended. Senator Stan Hawkins was absent. Staff members Jim Henderson, Acting Director, and Margaret Campbell, Administrative Assistant, also were present, as were other OPE staff intermittently throughout the meeting.

The committee previously had approved minutes of the February 4, 2002 meeting.

**REPORT RELEASE: *THE DEPARTMENT OF ENVIRONMENTAL QUALITY: TIMELINESS AND FUNDING OF AIR QUALITY PERMITTING PROGRAMS***

Mr. Ned Parrish, Principal Performance Evaluator, reviewed the evaluation request.

**Representative Boe moved to receive the report. The motion passed unanimously by voice vote.** The committee distributed the report to those in the room.

Mr. Chris Shoop, Performance Evaluator, and Jim Henderson presented a summary of the report findings and recommendations. After the presentation, Representative Henbest said she had many questions, but wanted to start by framing them with a statement. If she wanted to have a non-effective program, she would enter into negotiations that took forever without anything happening; disable staff by not training them; not keep good records; and undermine the financing of the program. She would do what the Department of Environmental Quality (DEQ) had done.

The committee discussed the department's Title V program development efforts. In response to questions, Mr. Parrish said the department established a pilot operating permit group in 1997 to determine permit content and format, and develop permits for four facilities. The group consisted of department staff and industry representatives, typically from larger facilities that were members of the Idaho Association of Commerce and Industry. While not actively involved, the Environmental Protection Agency was aware of the department's program development negotiations and apparently considered the process appropriate.

Henbest said the evaluation reported serious management issues at the department and referred to problems with training and data tracking. She asked what management had done to address problems. Parrish said the department had established budgets and timelines for permitting projects and increased management oversight. However, formal training for permit writers was limited and the department still had data problems and could not produce a complete list of synthetic minor permit facilities.

\* As approved by the Joint Legislative Oversight Committee (see attached signatures).

Henbest said the report indicated the current fee structure had shifted more of the burden on the smaller facilities. She questioned whether the fee structure was equitable and asked if evaluators had sought legal advice regarding equity. Parrish said evaluators did not obtain a legal opinion, but compared DEQ's fee structure to fee structures in other states. Evaluators found that fee amounts in some of these states also varied from facility to facility. Fees varied based on complexity and other factors.

In response to questions, Parrish said the department had issued 17 permits since December 2000 and had 37 left to issue. Initially there were additional facilities to regulate, but those facilities agreed to keep their emissions below levels required by Title V permits, and obtained synthetic minor permits. As discussed, the department could not provide a complete list of these facilities.

Representative Bell asked if the department used a \$310,000 FY01 supplemental appropriation for Permits to Construct for the funding of any Title V work. Parrish said the department used the supplemental to hire an outside contractor to reduce the backlog of Permits to Construct. He said they used some Title V funds to pay the contractor to assist with the Title V workload, but did not use funds from the supplemental appropriation.

Co-chair Field called on Stephen Allred, Director, Department of Environmental Quality (DEQ) to address the committee. Mr. Allred said that when DEQ was a division under the Department of Health and Welfare (DHW), DHW was not able to provide the engineering systems or leadership necessary for a successful permit program. After the creation of DEQ in July 2000, management worked proactively to bring fairness and uniformity to the program.

Allred said he agreed with the report recommendations and outlined processes the department would take to implement them. He disagreed with research indicating permit writers did not receive formal training for preparing permits. He said the department employed experienced permit writers and provided them training, although current training schedules had been reduced with agency budget cuts. The department had temporarily assigned some inexperienced staff to the Title V program to meet their goal of issuing all remaining permits by December 2002.

Allred estimated the Title V program would be less costly after December 2002. However, income to the fund may not be enough to meet reduced expenditures. Representative Bell asked if the department would try to limit program spending to avoid raising fees. She also asked if it was adequate leaving fees at an average of \$19 per ton or would they need to be raised. Allred discussed the history of the reduced fee schedule and said the current fee did not meet federal guidelines. In response to questions about the potential decline in revenue from INEEL, Allred said it was the Department of Energy's position that INEEL's fees should be calculated like other facilities, but said he did not think their fees would drop as much as indicated in the report. He said before a change occurred, there would be further discussion between the Department of Energy and DEQ. He also said that industry and Idaho's congressional delegates were working to make sure INEEL pays its fair share.

Representative Henbest said fairness was an integral issue. INEEL's fee structure should be the same as any other facility. She said the fee structure could not work both ways—the department

could not dissect the rules to make the federal government pay more. In response, Allred indicated that when it appeared less expensive to pay by lump sum, INEEL pushed to negotiate lump sum fees. Now it appeared less expensive to pay fees based on emissions so INEEL was pushing for fees to be determined using the correct fee structure. He said facilities in general tried to structure fees to their advantage.

In response to questions, Allred said the cap on fees came out of the rule process as a proposal from industry. The addition of caps in the fee schedule changed the balance of who paid fees. Fee caps lowered fees for the highest paying facilities and increased fees for the lowest paying. He said the department fully discussed the cap change with facilities whose fees increased.

Allred said the department worked with five deputy AG's and filed an Attorney General's opinion regarding permitting fees with the federal government. He did not think the fee structure was a liability to the State.

Co-chair Field welcomed Senator Robert L. Geddes, President Pro Tem, to the meeting and invited him to ask questions, if he had any. Senator Geddes declined.

The committee discussed the causes for the decrease of fund balance. Allred said the number of facilities originally covered by the program had substantially declined from an estimated 170 to 60 because many facilities obtained synthetic minor permits or ceased operation. Other decreases to the fee schedule occurred when actual emissions replaced potential emissions, and legislative action dropped carbon monoxide. Parrish added the decline in the Title V fund balance was not due solely to reductions in fee revenues, but also resulted from expenditure of funds for Title V activities during the years when no permits were issued and the use of Title V funds to develop Permits to Construct and Tier II permits at Title V facilities. He noted that the department established separate fees for their permits and had agreed not to use Title V funds for those activities in the future.

Representative Boe asked if industries agreed to all conditions of the fee schedule during negotiations. Also, who determined penalties when a facility was out of compliance? Allred said the department gave facilities an opportunity to discuss the fee schedule, although they did not always agree. The department had a penalty matrix to provide guidance after a facility was determined out of compliance.

Representative Henbest asked about those facilities that were waiting for the department to issue a permit. Do they pay fees? Allred said facilities pay fees in May and August each year, and the department reconciled those fees each year.

Referencing the director's dispute on the need for formal training of permit writers, Representative Henbest asked how well the department trained writers. Allred said the department could do a better job, but also needed to make budget choices. Their priority was to get Title V permits completed by December 2002.

**Representative Henbest moved to request a progress report of the evaluation in six months and forward a copy of the report to the germane committees and JFAC. The motion passed unanimously by voice vote.**

*The committee took a short break.*

#### **AGENCY STATUS REPORTS ON IMPLEMENTATION OF PREVIOUS REPORT RECOMMENDATIONS**

*Improvements in Data Management Needed at the Commission of Pardons and Parole:  
Collaboration with the Department of Correction Could Significantly Advance Efforts*

Ms. Lewissa Swanson, Performance Evaluator, reviewed efforts to implement recommendations from the report released in May 2001. The commission had implemented two recommendations and were working on six others. Co-chair Field called on Olivia Craven, Executive Director, Commission of Pardons and Parole, to address the committee. Craven said the commission intended to implement most of the recommendations by August. Representative Boe said she was amazed by what the commission had accomplished without additional staff, and the number of hours saved by entering data electronically.

**Representative Boe moved to request another progress report of the Commission of Pardons and Parole and the Department of Correction evaluation in six months, with particular emphasis on the recommendation for the Department of Correction to obtain an opinion from the Utah Attorney General. The motion passed unanimously by voice vote.**

*Employee Morale and Turnover at the Department of Correction*

Mr. Ned Parrish said this update was the fifth progress report to the committee, and the department had implemented all of the recommendations. Co-chair Field called on Thomas Beauclair, Director, Department of Correction, to address the committee. Beauclair said the department had worked hard to improve morale. They had visited all the correctional sites to communicate their vision and values. They had mentored supervisors, trying to change previous paradigms, and changed their recruiting and hiring patterns to reflect their vision. He said they had held quarterly conference calls with supervisors and some staff for better communication. In addition, they had merged their five divisions into two divisions to save money and make the system more efficient.

Representative Boe said she also had seen improvements in communication with legislators. She sensed a more positive, upbeat environment since the director's appointment. Co-chair Field thanked Director Beauclair for his efforts and leadership.

**Representative Henbest moved to close follow-up on the evaluation and send letters to the germane committees indicating there would be no further action by JLOC. The motion passed unanimously by voice vote.**

## **REVIEW/APPROVAL OF THE EVALUATION SCHEDULE**

Mr. Henderson reviewed the evaluation schedule for the office: The *Idaho Child Care Program* and the *State Passenger Vehicle Follow-up* evaluations would be ready at the next meeting. He said the next two assigned evaluations, *Residency Requirements at State Institutions of Higher Education* and *Programming for Female Inmates and Their Children*, could possibly be ready by session. There were two potential evaluations the committee had considered previously: *Handling of Investigations by the Bureau of Occupational Licensing* and *State Agency Fees Follow-up*. Henderson noted that he should not have listed the *Medicaid Benefits Expiration* because it was merely a question raised at the previous meeting and not a proposed evaluation topic. In addition, Representative Gary Young had requested an evaluation of Occupational Licensing, but had since written the committee a letter stating his concerns had been resolved.

**Representative Henbest moved to remove the request for an evaluation of the Bureau of Occupational Licensing from the list of topics under consideration. The motion passed unanimously by voice vote.**

Mr. Henderson reviewed two new requests for evaluation: an anonymous letter—sent to Senator Ipsen and forwarded to the committee by Senator Ipsen—regarding the Idaho State Lottery’s scratch ticket distribution to vendors, and a letter of request from Representative Tom Trail regarding a progress report of the Western Governor’s Virtual University.

Representative Bell said an evaluation was not necessary of the Western Governor’s Virtual University. She suggested Representative Trail submit his request for information to the State Board of Education.

Representative Henbest said the evaluation of *Residency Requirements at State Institutions of Higher Education* was timely given heavy financial burdens place on educational institutions. She said she would like to expand the scope to look for other ways to increase revenues. She said it was her understanding that Idaho was one of a few western states to grant financial aid to students taking only eight credit hours of class per semester. She said an expanded scope could include policy decisions for financial aid and other reforms to increase the bottom line of higher education. Committee members voiced concerns that expanding the scope might make the evaluation too big. Representative Henbest asked if it was easier for OPE to research a number of issues within a system at the same time or research several related, narrowly focused scopes at different times. Co-chair Field asked Representative Henbest to work with Mr. Henderson for an answer to her question.

Regarding the anonymous letter, Senator Ipsen said he had no preference of whether the committee selected this particular request for an evaluation of the Idaho State Lottery. However, he said he was concerned that the State had not conducted a periodic audit of the Lottery as outlined in its original legislation. A periodic audit, different from a financial audit, would ensure the Lottery was following constitutional guidelines of operation. Senator Dunklin asked if anyone had spoken with the Lottery about concerns in the anonymous letter. Committee members discussed the need for an evaluation of management questions that went beyond a

financial audit, although it was the committees' practice to ignore anonymous letters. Senator Ipsen said he would develop a scope of issues for the next meeting, and in the meantime, discuss the contents of the letter with the director of Lottery.

Senator Ipsen said he did not know whether to request a follow-up to the evaluation of state agency fees. He said he had spoken with assessors who saw a need to study the State's taxing structure, and agency fees would be one leg of that study. **Co-chair Field moved to postpone a follow-up of state agency fees until the committee received more information about a study on the State's taxing structure. The motion passed by unanimous consent.**

#### **STATUS REPORT ON DIRECTOR SEARCH**

Co-chair Field said Legislative Council had assigned Senator Marley, Senator Andreason, Representative Cuddy, and herself to be on the search committee for a new director. She asked Ms. Campbell to provide a position announcement to Carl Bianchi, Director, Legislative Services Office, who would be staffing the committee.

*The meeting adjourned at 12:15 p.m.*