

Minutes of the Joint Legislative Oversight Committee  
January 16, 2008  
Basement Conference Room, JR Williams Building  
Boise, Idaho

Co-chair Shawn Keough called the meeting to order at 4:15 p.m. Attending the meeting were Senators John McGee and Elliot Werk and Representatives Margaret Henbest, Maxine Bell, Clifford Bayer, and Donna Boe. Senator Dick Sagness (substituting for Edgar Malepeai during session) was excused from the meeting. Also present were Rakesh Mohan, Director, Margaret Campbell, Administrative Coordinator, and three other OPE staff.

**APPROVAL OF MINUTES**

**Senator McGee moved to accept the minutes of the meeting on December 12, 2007. Representative Bayer seconded the motion, and it unanimously passed by voice vote.**

**DISCUSSION OF COMMITTEE RULES**

Co-chair Keough said that OPE had drafted two rules for committee consideration. Rule II.6.e allowed members to vote via teleconferencing, and rule III.3 outlined a process for developing and approving an evaluation scope. She said that Senate leadership had asked for extra time to contemplate rule II.6.e because it conflicted with a Senate rule requiring legislators to be in their seats to vote.

By request of JLOC, Mr. Mohan said he drafted rule III.3 to define the process of developing evaluation scopes—OPE would prepare an evaluation scope and provide it to members for input. If OPE needed more clear or specific direction, the director could take the scope to JLOC for a vote.

Senator McGee clarified his understanding of the rule—ultimately OPE would decide the scope and the committee would have input, but not final say. Mr. Mohan confirmed Senator McGee's understanding and said the scoping process was very close to evaluation methodology decisions. He said he would solicit committee and legislative input to clearly understand the request, but for objectivity and independence purposes, the office needed controls to ensure the process was free from influence or politics, or even the appearance of such.

Senator McGee said he understood Mr. Mohan's concerns; however, he was uncomfortable with the process. Representative Bayer asked for discussion because he had concerns about the disconnect between topic selection and scope development. He said he would like to see the rule allow for flexibility in the formation of a scope so JLOC could choose to approve, not approve, or amend it. After formal scope endorsement, JLOC would give complete control to OPE for objectivity reasons.

Representative Henbest said the proposed rule acknowledges a continuous line between the scope and the end product. If the scope asked a bad or loaded question, the end product would be compromised. She said the key to independence, objectivity, and meaningful data started with the scope. She suggested that JLOC have a more vigorous dialog about what it wants in a study so OPE can readily refine the scope and identify core information.

Representative Bayer said that if the verbiage of the rule facilitates input and the committee gets what it needs out of a scope—great, but he wanted room for negotiation if the scope needed tweaking to gain committee consensus.

Co-chair Keough asked what recourse the committee would have if a scope was headed in the wrong direction. Using input gathered from members and other legislators, Mr. Mohan said he hoped the scope would always reflect the Legislature's information needs. However, the committee could choose to cancel the study, similar to committee action last summer.

Senator McGee said he was impressed with the work of OPE and wanted to provide it with tools to preserve its objectivity and independence. He also said he was uncomfortable with some of the language of the rule.

Representative Henbest said JLOC approval of scopes was like a home inspection with restrictions. An expert hired to inspect a house is told not to look in the crawl space, closets, or attic. Because the inspection is manipulated, the likely outcome would not be a true picture of the condition of the house. She said she appreciated the explicit wording in the rule to discuss the scope with members and seek input. However, she said that going beyond discussion invited trouble.

Representative Bayer asked how the situation, under the best of intentions, would unfold if a disconnect occurred between topic selection and the scope. He said he did not want to sell the committee short. Under the proposed rule, JLOC had two choices: committee concurrence or pull the plug.

Mr. Mohan said it was not in his best interest to do a study that was not relevant to the committee or to the Legislature. Before his arrival in 2002, he said that OPE did not talk to legislators, the Division of Financial Management, Budget and Policy Analysis, or the Governor's Office. Talking to these entities was risky, but he was committed to maximizing responsiveness and independence. He said JLOC had provided OPE with much support and respect, and his concern was about the appearance of influence and the harm it could cause.

Senator Werk said adoption of the rule would codify what the committee already practiced—looking over the scope and getting consensus. He said JLOC is a consensus-based committee, unlike other committees. Partisanship occurs in choosing topics, but once selected, the committee seeks consensus. He said he was comfortable with part A of the rule, but part B left him squeamish thinking about the potential process of voting. If the director needed to bring a scope to the committee for approval, he said he would rather consider several options and get consensus on which way to go. However, he said he was willing to accept the rule as proposed. Representative Henbest said the director could also use part B when a scope had become too large and needed to be broken into multiple parts, with relevancy and timing priorities identified.

Senator McGee suggested waiting to vote on the rule until hearing from Senate leadership on rule II.6.e. He said he was not comfortable with rule III.3 and would be willing to work with Mr. Mohan and the co-chairs to find common ground.

**Senator McGee moved to delay voting on both sets of rule changes until the next meeting.**

Representative Bell said she liked the disconnect—to select the topic, hand the project over to OPE, and get out of the way—it was the safest and most professional way. She did not know how the language could be changed and leave staff protected. She said that Mr. Mohan had been very careful to achieve responsiveness and she was comfortable with the rule. Senator McGee said that while he appreciated Representative Bell’s remarks, he would still like the opportunity to work with Mr. Mohan to see if language could be changed. If it could not be changed, he said he would be the first to make a motion.

**Representative Henbest provided a substitute motion to accept rule III.3 as written and accept the clarification language for rule III.4. The motion was seconded by Representative Bell.**

Senator McGee pointed out a numbering problem on page 5 that would need correcting if the substitute motion was successful.

**The substitute motion to accept rule III.3 and the clarification language for rule III.4 passed by majority roll call vote with Senators Keough and McGee and Representative Bayer voting no.**

#### **OTHER BUSINESS**

Mr. Mohan updated members on several items of business. He provided the co-chairs with letters to sign requesting a follow-up on *Virtual School Operations*, as directed at the last meeting. Also, he said he had sent final reports on the last three health care costs studies to the Health Care Task Force and the Governor’s Special Task Force on Health Care. He indicated that he would be sending a letter to the Health Care Task Force addressing issues and questions raised in its December 13 meeting.

The meeting adjourned at 5:15 pm.