

Minutes of the Joint Legislative Oversight Committee
December 10, 2013
Room EW42, Capitol
Boise, Idaho

Cochair Senator Dean Mortimer called the meeting to order at 1:30 p.m. Attending the meeting were Senator Les Bock and Representatives Shirley Ringo (cochair), Maxine Bell, Gayle Batt, and Elaine Smith. Senators Bayer and Werk were excused. Also present were Rakesh Mohan, director, Margaret Campbell, administrative coordinator, and other OPE staff. Senator Mortimer welcomed the audience, which included the following members:

Senators Steve Vick and Fred Martin

Representative Gary Collins

Brandon Woolf, Controller, Dan Goicoechea, Chief Deputy Controller, and Meredith Hackney, Division Administrator, Office of the State Controller

Tom Katilometes, David Langhorst, and Ken Roberts, Tax Commissioners

Richard Armstrong, Director, Dave Taylor, Deputy Director, Jody Osborn, Financial Executive Officer, and Joyce Broadsword, Department of Health and Welfare

April Renfro, Division Manager, Legislative Audits

Cathy Holland-Smith, Division Manager, and Paul Headlee, Deputy Division Manager, Budget and Policy Analysis

Sara Stover, Analyst Sr., and Richard Budzik, Analyst Sr., Division of Financial Management

APPROVAL OF MINUTES FROM JUNE 12, 2013

Representative Shirley Ringo moved to approve the minutes from June 12, 2013.

Representative Batt seconded the motion, and it passed unanimously by voice vote.

REPORT RELEASE: *ASSESSING THE NEED FOR TAXPAYER ADVOCACY*

Representative Smith moved to accept the report *Assessing the Need for Taxpayer Advocacy*. Representative Bell seconded the motion, and it passed unanimously by voice vote.

Mr. Mohan said amid concerns of the commission's treatment of taxpayers, JLOC had assigned OPE to look into the need for a taxpayer advocacy office. He thanked the tax commissioners and staff, indicating they were helpful not only at headquarters but also in the field offices.

Amy Lorenzo, principal evaluator, and Hannah Crumrine, senior evaluator, summarized the report. The evaluators said they were unable to determine the need for taxpayer advocacy because statewide trend data on garnishments, liens, write offs, and complaints were not maintained by the commission in a way that could be analyzed. They recommended the commission improve its current data management system as well as create more comprehensive, clear, and accessible publications. They reviewed national trends for taxpayer advocacy and indicated that an advocate is not necessarily an indication of a problem or deficiency. The evaluators presented their survey results of tax professionals and commission staff, which demonstrated a disconnect on how well the commission was viewed as fulfilling the advocacy

role. They presented statistics of the 2012 individual tax returns and indicated that 69 percent reported a taxable income of \$25,000 or less and nearly 50 percent of tax returns were filed without the assistance of a paid preparer. The evaluators concluded by outlining key questions that policymakers could consider if they determined that Idaho should pursue taxpayer advocacy.

Senator Bock said he was concerned that small claims of the Tax Commission were not worth fighting for. He asked if there was data to determine whether more Tax Commission cases were surrendered by the taxpayer because the amount was not sufficiently large enough to fight. Ms. Lorenzo said the Tax Commission maintained detailed information at the case level, but it was not kept in a way to analyze. She said that commission staff have delegated authority to write off different levels of debt as they work with taxpayers. Anecdotally, in interviews with field offices, staff indicated that lower income taxpayers were more likely to pay a deficiency because they did not have the means to fight it.

Representative Ringo said that a designee rather than a board member was attending recent taxpayer hearings and that later a board member signed off on the decision. She asked about the depth of understanding that board members had on a case before signing off and whether it was a model Idaho followed because of work volume. Ms. Lorenzo said the question was outside the scope of the study but was happy to follow up with the board and report her findings. Representative Ringo said by using district court as a remedy, the appeal was beyond the means of lower income taxpayers. She said she would also like to have the number of deficiencies that fall into this lower income category. Ms. Lorenzo said that while she cannot quantify the number of taxpayers who appeal to district court, taxpayers must pay 20 percent of the assessed debt before appealing.

Representative Bell said the report presented some easy fixes. Referring to the survey results of tax professionals who responded less favorably about the commission, she said the professionals should know the law and questioned whether they had been fair in their responses about what the commission owed them in help. Ms. Lorenzo said she surveyed tax professionals to gauge changes at the commission in recent years. Survey results were in the back of the report. She said that of those tax professionals who work closely with the commission, 88 percent indicated their issues had been resolved and most indicated they had worked successfully with the commission. In open-ended comments, tax professionals suggested improvements to follow up, forms and procedures, and consistent application of the law.

Representative Smith asked whether the commissioners would be reporting to the committee how they were implementing recommendations. Senator Mortimer indicated he would be asking them to respond, and Mr. Mohan said the Governor and the commission had formal responses in the back of the report.

When compared with the federal revenue code, Senator Bock said Idaho lacked clarity on how to contest tax liabilities. He asked whether the evaluators compared Idaho's system with the federal system, which had no costs associated with appeals. He also asked whether taxpayers, on their own, could clearly understand commission processes. Ms. Lorenzo said she initially planned to look at taxpayer interactions to see whether there were any disproportionate increases associated with the compliance initiative. She wanted to drill down to interactions and work on specific

processes for regulations; however, without data to quantify whether appeal costs were an underlining issue, it had not made sense to examine those processes.

Senator Mortimer asked if anyone from the Governor's office wanted to respond to the report. Seeing no volunteers, Senator Mortimer called on Commissioner David Langhorst to respond to the report.

Mr. Langhorst thanked JLOC and OPE. He said the commission had supported the request for an evaluation, looked at the process as an opportunity, and subscribed to the recommendations. The commissioners and employees wanted to do the best job in helping people comply with the law.

Representative Ringo agreed that as a member of the Tax Commission, Mr. Langhorst would be as helpful as he could be. The issue boiled down to the appropriateness of his role and whether serving as an advocate in difficult situations was a conflict of interest. Mr. Langhorst said that in any kind of enforcement agency, people have different levels of sophistication and financial ability to seek out help. The commission had empathy for those who could not afford a CPA. However, the commission had an ever increasing workload and a static number of employees; it had no formal way to know whether taxpayers needed help.

Representative Bell asked whether field offices have adequate ability and necessary resources to advocate for taxpayers. Mr. Langhorst said taxpayers going to field offices may get better attention because of the size of the operation and the perceived hometown feel. In his opinion, field offices were adequately staffed to help taxpayers.

Senator Bock asked whether the amount of liability influences taxpayers to surrender the deficiency and whether there were gaps in the system where those taxpayers could be helped more. Mr. Langhorst said that if the commission were given resources for an additional advocacy, those taxpayers would be better served. He said it was hard to quantify whether the majority of taxpayers receiving deficiency notices were giving up.

Representative Smith asked how much time the commission would need to create a process for collecting data. Mr. Langhorst said the commission was changing its entire system in about nine months and would start collecting data with the new system in about a year. The commission had recently hired its first research analyst and had asked OPE staff for input. Representative Smith asked if the commission would have the ability to collect data on previous years. Mr. Langhorst said no, not the kind of information that researchers would need.

Representative Batt wanted to confirm that data was not available to get the number of complaints or the number of appeals. Ms. Lorenzo said the commission had incomplete data for both categories. The commission had tracked some data for total protests filed, and it used a taxpayer comments system sporadically to track types of complaints. She said she required statewide, comprehensive trend data, which did not exist.

Mr. Langhorst said the commission had the kind of data that Representative Batt mentioned but in a rough form. He gave the committee a handout with data that showed the total number of audits, the number protested, and the various types of resolution for fiscal years 2010–2012 (the

handout is attached to the back of these minutes). Representative Batt said she appreciated the data and wanted to compare it with data before the increase in auditors. Mr. Langhorst said he had 2009–2010 information but noticed the data for 2010 did not agree with information on the handout. In 2009 total audits were 14,000 and 2.46 percent were protested. He confirmed Representative Batt's question that audits increased by 10,000 from 2009 to 2010.

Senator Bock said that media reports have suggested a disparate treatment of taxpayers. He wanted to know if a system was in place to ensure taxpayers with the same case gets the same treatment. Mr. Langhorst said the commission treated all taxpayers equally. Every decision or settlement was routed to every commissioner and to each department involved. At one time, the commission was accused of going too easy on taxpayer settlements; this practice had changed immensely in the past five years.

Commissioner Ken Roberts addressed the committee. Referring to Representative Batt's comment about the initiative, he said there was a lag time of two to three years between the tax year and the time audits looked at returns. He said the commission dealt with complex issues in tax law and it worked to be as fair as possible. In response to Representative Bell's question about outreach and training of tax professionals, he said the commission conducted a thorough training on new tax laws for taxpayer professionals twice a year. He clarified that the cost for filing an appeal took place at the Board of Tax Appeals after the Audit Division had attempted to resolve it. Only a small number go to the board. As the newest commissioner, he said it had been enlightening to see the changes in the past two years in how taxpayers were treated.

Senator Bock asked for specific changes of how taxpayers have been treated. Mr. Roberts said the tax laws had been created at different times in history. As taxpayers' business transactions change, the commission looked at whether transactions were covered in current law. Where needed, the commission processed rules to adapt the laws to be friendly to taxpayers and businesses but maintain the intent of the law.

Representative Ringo asked whether taxpayers with no taxable income were part of the 69 percent who reported taxable income of \$25,000 or less. Ms. Lorenzo said taxpayers reporting zero taxable income were included in the percentage.

Mr. Roberts said the commission was taking the report seriously and working on implementing recommendations. As of noon today, the bill of rights had been posted to the website. The commission was including data management in the new GenTax upgrade, updating pamphlets and brochures, and proactively giving guidance to specific top 10 issues.

Senator Bock said he would like a follow-up review in a year. Representative Ringo said the commission had been moving in a positive direction and had provided services to help taxpayers; however, a conflict of interest existed, particularly in difficult cases. She recommended pursuing an advocacy service using information from the report.

Representative Ringo moved to enlist a volunteer from JLOC to draw up legislation to pave the way for a taxpayer advocacy office. Senator Bock seconded the motion.

Representative Bell, in a substitute motion, moved for no legislation at this point because the need had not been proven. The committee would wait until enough time went by to see how the recommendations worked out. Representative Batt seconded the motion.

Senator Bock said advocacy was important and necessary, particularly for lower income taxpayers. He thought JLOC needed to provide a legislative response and offered to be one of the volunteers to draw up legislation. If the committee did not recommend this action, he said he would probably draw up legislation anyway.

Senator Mortimer said that even if the committee did nothing on legislation, each legislator had the opportunity to bring legislation forward. He did not think the committee should recommend legislation. JLOC should receive the reports and forward them to committees for additional consideration.

Representative Smith indicated that she would be supporting the substitute motion because of the data limitations from the commission and unknown costs and options to start an advocacy function. She said an advocate needed to be in the field offices instead of the state level.

Addressing unknown costs, Representative Ringo said the JLOC member volunteering to draw up legislation would need to formulate ideas for how the office would be designed and how it would reach field offices. She indicated that the tax return data was compelling proof that an advocacy office was needed.

Representative Smith, in an amended motion, moved for the commission to collect data and for OPE to conduct a follow-up review in six months. The motion died for lack of a second.

The substitute motion for no advocacy legislation passed by voice vote. Senator Bock and Representative Ringo were recorded as voting no.

Senator Bock moved to ask the commission to return in a year and report on its implementation of recommendations. Representative Bell seconded the motion.

Representative Batt said she agreed with the motion and would also like to see conclusive data. Mr. Mohan asked whether the committee would want OPE to complete an analysis of any data for the follow-up report. Senator Bock said that JLOC was in the position to decide whether further study is required based on data from the Tax Commission. Also within JLOC authority was to ask for an additional report, but members would not know what the parameters of the study would be without seeing commission data.

Senator Bock amended his motion to include commission data and an OPE analysis of that data in the follow-up review. Representative Bell, as the second, agreed. The motion to conduct a follow-up review in one year passed unanimously by voice vote.

REPORT RELEASE: *THE DEPARTMENT OF HEALTH AND WELFARE'S MANAGEMENT OF APPROPRIATED FUNDS*

Representative Ringo moved to accept the report *The Department of Health and Welfare's Management of Appropriated Funds*. Representative Smith seconded the motion, and it passed unanimously by voice vote.

Mr. Mohan thanked the department for its assistance and the State Controller for his technical comments. Their responses, along with the Governor's, were supportive of the report and located at the back of the report. He said that Lance McCleve and Tony Grange would present the report. The request had asked OPE to review the department's management of funds, which was difficult to understand. He said the study had been complex considering Health and Welfare was the largest state agency with a budget of \$2.4 billion.

Lance McCleve, principal evaluator, and Tony Grange, senior evaluator, summarized the report. Mr. McCleve said the department's financial information was complex but understandable. The complexity was driven by federal reporting requirements and data systems' limitations. The cooperative welfare fund gave the department flexibility to efficiently process payments and receipts. After reviewing more than 2 million transactions, he said he found no evidence that the department took advantage of that flexibility. He recommended the department increase automation of its year-end reporting processes and the Legislature make inquiries of the department early in the budget setting process and request a report of the department's transfers.

Representative Bell, referring to transactions coming out of the cooperative welfare fund, asked why STARS did not match the information that went into FISCAL. Mr. McCleve said the problem was not the fund itself, but how the fund allowed the department to spend money without identifying a fund source. After acquiring enough information to correctly allocate an expenditure, the department entered missing fund sources in its FISCAL system (STARS had no fund detail). Alternatively, the department could report fund detail from the cooperative welfare fund or split out the fund sources from the cooperative welfare fund. Both alternatives came with trade-offs such as high costs, and the only information gained would be expenditures by fund source.

Senator Mortimer said he was concerned about this large pot of money that had been appropriated with different funds. During the year, funds were transferred and spent. He asked whether Legislative Audits monitored the transfers and determined whether transfers met the criteria of the original appropriation. Mr. McCleve said he went through the department's documentation of transfers and found it was not always possible at the reporting level to make a determination of whether transfers were compliant.

Senator Mortimer called on April Renfro, manager of Legislative Audits, to respond to his question. Ms. Renfro said that neither a financial audit nor a single audit looks closely at whether transfers meet the criteria of the original appropriation. However, her office had identified a problem with transfers: difficulty getting back to the source document, which lists a specific transaction for a specific client allowable under the federal grant. As part of a financial audit, her office was obligated to see whether the department complied with laws, rules, and regulations in

a material aspect. Her office was trying to balance the challenges of materiality threshold with what JFAC needed to know for its appropriation budgeting.

Senator Mortimer clarified that when Legislative Audits does a financial audit of the department, it was primarily ensuring that funds were expended according to federal guidelines. He said the Legislature had appropriated money in funds, and those funds went into a pot where transfers of different amounts were made. He asked whether Legislative Audits conducted audits from that general revenue source to see whether those sources were appropriate to the individual accounts. Ms. Renfro said her office had not done so until this year.

Senator Mortimer asked about information for the automation of year-end reporting. Mr. McCleve said the year-end reporting will help Health and Welfare provide information on appropriate fund sources and where those funds were spent. OPE's policy consideration was geared toward saying that instead of a high-level summary that reported transfer totals by categories, the information could include all transfers the department made.

Senator Mortimer asked what rule or statute authorized the right for transfers to occur. Mr. McCleve said that Idaho Code stipulated transfers as a percentage of dollars appropriated and defined which transfers were acceptable. Within the cooperative welfare fund, transfers between fund sources required legislative approval. Senator Mortimer asked for the percentage of transfers based on the overall budget. Mr. Grange said of the total \$2.4 billion appropriation, slightly more than 4 percent or \$101.3 million was transferred between budget units.

Senator Mortimer asked if anyone from the Governor's office wanted to comment on the report. Seeing no volunteers, Senator Mortimer called on Dave Taylor, deputy director of Support Services, Idaho Department of Health and Welfare, to address the committee.

Mr. Taylor referred the committee to the exhibit title on page 23 of the report, which said "the department spent 99.7% of funds appropriated to Physical Health as stipulated in its fiscal year 2013 appropriation." Mr. Taylor said of the \$101.3 million transferred last year, 82 percent was trustee and benefit transfers among the state's three Medicaid programs. He said the department followed legislative intent language for what it could do. As a point of clarity, when the department transferred funds—particularly federal funds—it transferred the authority to spend those funds, not the actual dollars. He expressed appreciation for OPE's work and said the department planned to use the report. The department would consider increasing the automation of its year-end reporting after it reviewed steps to make sure the right processes were automated.

Senator Mortimer asked about the time needed to provide a detailed report of transfers to the Legislature. Mr. Taylor said the information was already available; it just needed to be put in a useable format.

Senator Mortimer asked Mr. Taylor to elaborate on transfers of spending authority instead of dollars. Mr. Taylor cited an example. Referring to the same exhibit, he said that if the department were appropriated \$40 million in federal funds for Physical Health, the department would have to spend the award according to that function. However, if the department only spent \$38 million and needed spending authority for an award in Self-Reliance, it could transfer the spending

authority from Physical Health to Self-Reliance within the 10 percent limitation of appropriations. The department did not move dollars from one area to another; it moved the authority to spend those funds.

When Senator Mortimer asked what type of action the committee would like to see on the report, Representative Bell asked whether the purpose of the request was for more transparency or to examine the flow of money in and out of the cooperative welfare fund. She said she was grateful for what OPE had found, and she knew the department was not misusing its funds. She appreciated the offer for more documentation on the transfers, but she was not sure the committee wanted to refer the report to the entire legislative body.

Representative Bell moved to send the report to the germane committees. If the committees felt a need for more transparency in the budgeting process, they could pursue the concern.

Senator Mortimer asked for clarification of which committees. Representative Bell said she was referring to the House and Senate Health and Welfare committees. **The motion was seconded by Representative Batt, and it passed unanimously by voice vote.**

Representative Batt reminded OPE to include the original request in the report. Mr. Mohan apologized and briefly explained why the study was requested. Senator Schmidt was concerned that the budget was complex and difficult to know how funds were moved. The request did not cite concerns about wrong doing but asked OPE to make suggestions for improvements. OPE found that some things could be changed and outlined them as policies for considerations.

At 4:00 p.m., Senator Mortimer announced that the committee was going into executive session to discuss personnel matters. He requested that the OPE staff and audience exit the room. The open portion of the meeting adjourned.

CLOSED FILES BY LEGAL/POLICY
FOR THE FISCAL YEARS 2010, 2011, AND 2012

	Fiscal Year 2010		Fiscal Year 2011		Fiscal Year 2012	
Total Number of Audits	24723		24646		26874	
Total Protested Audits	843	3.41%	980	3.98%	844	3.14%
Total Protests Closed in Audit/Collections	310	1.25%	392	1.59%	277	1.03%
Total Protests Closed in Legal/Policy	533	2.16%	588	2.39%	567	2.11%
Protests Closed by Type - Legal /Policy						
180-day Statute			1	0.17%	1	0.18%
Bankruptcy	1	0.19%	1	0.17%		
BTA - Dismissed	16	3.00%	17	2.89%	13	2.29%
BTA - Upheld	1	0.19%	8	1.36%	4	0.71%
Cancelled	142	26.64%	97	16.50%	83	14.64%
Closed Misc.	17	3.19%	11	1.87%	37	6.53%
Closing Agreement	42	7.88%	50	8.50%	50	8.82%
Comp & Close	3	0.56%	1	0.17%		
Decision	248	46.53%	304	51.70%	279	49.21%
District Court Dismissed	7	1.31%	9	1.53%	8	1.41%
ID Supreme Court					3	0.53%
ID Supr. Court - Dismissed	2	0.38%	2	0.34%		
Modified NOD			2	0.34%	3	0.53%
Returns Filed	9	1.69%	18	3.06%	25	4.41%
Settlement Agreement < 50K					21	3.70%
Settlement Agreement > 50K					4	0.71%
Unperfected	4	0.75%	1	0.17%		
Untimely					2	0.35%
Withdrawn	41	7.69%	66	11.22%	34	6.00%
Total	<u>533</u>		<u>588</u>		<u>567</u>	