

Minutes of the Joint Legislative Oversight Committee  
March 10, 2014  
Lincoln Auditorium, Room WW02, Capitol  
Boise, Idaho

Cochair Representative Shirley Ringo called the meeting to order at 3:40 p.m. Attending the meeting were Senators Dean Mortimer (cochair) and Cliff Bayer and Representatives Maxine Bell, Gayle Batt, and Elaine Smith. Senators Cliff Bayer and Elliot Werk arrived shortly after the meeting started. Also present were Rakesh Mohan, director, Margaret Campbell, administrative coordinator, and other OPE staff.

**APPROVAL OF MINUTES FROM FEBRUARY 27, 2014**

**Representative Smith moved to approve the minutes of February 27, 2014. Senator Mortimer seconded the motion, and it passed unanimously by voice vote.**

**NEW EVALUATION TOPICS FOR OPE**

Cochair Ringo asked Mr. Mohan to explain the process for topic selection. Mr. Mohan said the committee had received 16 topics from 21 legislators: 16 legislators were Republicans and 5 were Democrats. He said he thought the nature and number of the requests and the complexity of questions reflected legislators' confidence in OPE to conduct thorough, nonpartisan, and objective studies.

Mr. Mohan asked the committee to consider whether the evaluation requests had a limited focus or a broad interest with statewide implications. Members could also consider whether the request was timely, how the study will be used and whether it would inform a bill, and whether it could increase efficiencies in agencies. If the request asked to look at a program for compliance, members could consider the evidence leading to the request. He encouraged the committee to discuss the requests before selecting topics.

Cochair Ringo asked the requestors to present their request and limit their comments to two to three minutes. (Proposal letters have been attached to the minutes.)

**1. Contracting for Legal Work by Agencies, Boards, and Commissions**

Representative John Gannon presented his request to look at private outsourced attorney work in the State of Idaho for the past five years and include a compilation and examination of all attorney fees and costs awarded against the state and in the state's favor.

**2. Workload of the Attorney General's Office and Contracting for Legal Work**

Representative Steven Miller presented his request to evaluate the workload of the Office of the Attorney General, the legal contract work done for all agencies, and requests submitted to the Attorney General's office.

**3. Using a Different Inflationary Index for State Contracts to Save Tax Dollars**

Senator Dan Johnson presented his request to evaluate whether using the Chained Consumer Price Index in state contracts and statutory funding requirements would more accurately measure inflation and increase general fund revenues. Representative Bell, referring to RS22185 from the 2013 session, asked if the reason the bill was never heard was because of lack of support or shortage of time. Senator Johnson indicated that time ran out to hear it.

#### **4. Advantages and Costs of Using Salary Savings for Compensation and Benefits**

Senator Tippetts presented his request to evaluate the use of salary savings to fund compensation and benefits for state employees. The evaluation would also look at holiday pay for employees working a nontraditional work schedule and the effect on department functionality of employees must take time off in lieu of paying for extra holiday hours. Senator Werk asked about the Governor's recommendation for using salary savings. Senator Tippetts said the Governor did not include funding for increased compensation in fiscal year 2015 but encouraged agencies to use salary savings.

#### **5. Policy and Procedures Review of Risk Management**

Representative John Rusche was not present to address his request.

#### **6. Usefulness and Costs of Schoolnet**

Senator Roy Lacey was not present to address his request.

#### **7. Effectiveness of Schoolnet and ISEE**

Senator John Goedde was not present to address his request.

#### **8. Efficiency of ISEE to School Districts**

Representative Darrell Bolz presented his request to evaluate the Idaho System for Educational Excellence (ISEE), specifically whether the system addressed the following superintendent concerns: (1) data returned to the districts was not the same as the data sent in, (2) number of individuals required to input data and the cost to districts, and (3) appropriate types of personal data entered into the system.

#### **9. Use and Satisfaction of the Idaho Education Network**

Senator Dan Schmidt was not present to address his request.

#### **10. Need for Public Preschools**

Representative Hy Kloc was not present to address his request.

#### **11. Operational Review of Child Protection Services**

Representative Christy Perry presented her request to evaluate the nexus between child protection services and the juvenile justice system and state and county guidelines as compared with national guidelines. She asked for a best practices review, reasonable options for placement of resources, and policy options for early intervention. Cochair Ringo asked about recent legislation. Representative Perry said the legislation was a small change that was easy to do. An evaluation might possibly complement the legislation.

#### **12. Public Health District Financing**

Senator Bert Brackett presented his request to evaluate public health district financing and the distribution formula for districts' general fund appropriation. In light of the loss of federal grant funding for STD testing, he asked for an evaluation of demands or requirements that have been placed on the districts by the Legislature.

#### **13. Fish and Game Policies and Procedures**

Senator Monte Pearce was not present to address his request.

#### **14. Management Practices of the Department of Lands**

Representative Ed Morse presented his request to evaluate whether the department was meeting its fiduciary duties in managing and exchanging properties. Senator Werk asked about the rate of return to use the land and about Morse's history with the department. Representative Morse said the rate of return has been historically low at about 1–1.5 percent. He indicated he was a real estate appraiser and had represented the Priest Lake State Lessees' Association in the past. In response to Representative Batt's question, Representative Morse indicated that his concerns could be addressed by an interim committee.

#### **15. Road Construction and Maintenance Funds Paid for Sales and Use Taxes**

Senator Jim Rice presented his request to evaluate the total road construction and maintenance dollars paid for sales or use taxes as well as costs to the Tax Commission to enforce the tax. Senator Werk said the proposal seemed to a gathering of data. Was there another way to get that data? Senator Rice referred to a recent OPE report "Assessing the Need for Taxpayer Advocacy" and it's finding that the Tax Commission did not segregate any data. He said an evaluation would need to look at road construction data in the highway districts and ITD.

#### **16. Services of the Local Highway Technical Assistance Council as Compared with ITD**

Representative Joe Palmer presented his request to evaluate whether LHTAC and ITD duplicate services to assist local transportation jurisdictions. If duplication exists, would absorbing LHTAC and its programs into ITD be more efficient and cost effective? Senator Werk asked what LHTAC's overall budget was. Representative Palmer did not know but provided staff size.

#### **17. Lessons Learned from GARVEE**

Senator Chuck Winder presented his request to evaluate the GARVEE program (the request came in during the meeting and was not listed with other requests). He said he had been chairman of the Board of Transportation and brought GARVEE to the Legislature for approval. GARVEE was currently in its final stages and he wanted an evaluation to determine whether the Legislature got what he had promised. An evaluation would look at lessons learned for application in the future. Senator Werk asked if the lesson would be whether the Legislature wanted to engage in a GARVEE-style program again. Senator Winder said that would be one outcome.

Senator Mortimer indicated that he was aware of a few more proposals that did not make the committee's list and suggested postponing a vote until those proposals were submitted. Mr. Mohan said he had sent all legislators an e-mail indicating that Friday, March 7 was the deadline to submit proposals. The committee had originally planned for two meetings, one to hear topics and another to select topics, but in planning for this meeting, he found little available time to meet. Next week was the last week of session, and the committee still needed to release a report. He did not know if scheduling another date to select topics would be possible.

Representative Smith asked if proposals 1 and 2 could be combined because they were so similar. Also 6, 7, and 8 were quite similar.

Cochair Ringo said her immediate concern was to hear from those proposals that were not represented by the sponsor. Because JLOC had heard proposal 8 and proposals 6 and 7 were similar, she indicated that they had been sufficiently heard. As a result, the proposals that had not been heard were preschools, Risk Management, and Fish and Game.

Regarding the Risk Management proposal, Senator Mortimer said he had heard HB549 in committee. This bill would give universities the option to purchase certain services on their own, such as liability insurance and contracting for building. However, if universities withdraw from services provided by the Department of Administration, other agencies may see an increase in cost.

Senator Bock suggested JLOC was not positioned to take a vote because not all requestors had presented. He suggested meeting another time. Cochair Ringo indicated that once session was over, members must think about their schedules and whether they would be available to come back for another meeting. Not only did the committee need to select topics, but they had to release a report.

Mr. Mohan said he had notified all the requestors to come to the presentation today. Senator Mortimer said it was good to know Mr. Mohan had contacted requestors. He indicated that perhaps JLOC could proceed with a vote. He also indicated JLOC could narrow the proposals to a select few and hold off making a final decision until another time. Cochair Ringo said she was not comfortable ranking a few proposals if more would be coming later.

Senator Bayer said that because several proposals were similar, they could be bundled. He asked about ranking studies by size, so a combination of sizes could be selected. Representative Bell noted the contract for Schoolnet had terminated, so it may not be a good contender for an evaluation. She indicated that the need for preschool was not a performance evaluation, but she saw a need to evaluate ITD. She agreed with bundling proposals if the process did not make studies too big.

Mr. Mohan said proposals 1 and 2 should be bundled, which would make the study big. Also, proposals 6, 7, and 8 could be bundled, which would make that study big. As far as ranking the studies by size, Mr. Mohan said his efforts to do so in the past had not been accurate—estimating this early was too difficult. He said he could take four studies—five studies had been too many. If JLOC were to combine proposals 1 and 2 and proposals 6, 7, and 8, these studies would be very big and office resources could only handle one more study.

Senator Werk asked if eliminating Schoolnet from proposals 6, 7, and 8 would lessen the scope of the study. Mr. Mohan said the study would still be big, but it could be treated like any other study.

Senator Werk said LHTAC had \$11 million in expenditures in fiscal year 2012. ITD's expenditures were in the \$500 million range. Later in the meeting, Representative Batt said LHTAC expended \$11 million, but it managed \$132 million.

Senator Mortimer, referring to eliminating Schoolnet from the bundled study, said that even though the contract for Schoolnet had been terminated, the program closely intertwined with ISEE and will be maintained by the state. He asked whether JLOC wanted to pick an alternative study in case a study became too big or too small.

Cochair Ringo said she would like to discuss the two proposals that had not received a hearing. She said she would speak to the preschool proposal and asked Senator Mortimer to speak to Fish and Game. Cochair Ringo reviewed the proposal for the need for preschools and Senator Mortimer reviewed the Fish and Game proposal.

Mr. Mohan said he would provide a priority sheet for members to rank proposals. The sheet could either have members' names or the priority could be anonymous. The priority would then be viewed so members could make a motion. **Senator Werk indicated he would prefer to rank proposals anonymously and asked for unanimous consent.**

Senator Mortimer suggested prioritizing the studies twice. The second ranking would be after members determine what was most important. A second ballot would more represent the will of the committee. Cochair Ringo said that last year, the second ballot had varying degrees of change. Mr. Mohan said he had received negative comments from two legislators about the second ballot. Senator Bayer said he was aware of the pros and cons of the last deliberation; however, the process was based on what was being compared. There was some objectivity to that approach. **Senator Mortimer asked for unanimous consent to use two ballots in ranking requests.**

Members ranked their top 10 priorities on the first ballot, bundling similar proposals so only 14 proposals were voted on. The results of the first ballot were as follows:

6, 7, & 8	Effectiveness of Schoolnet and ISEE	24
1 & 2	Legal work contracted by agencies, boards, & commissions	28
4	Salary savings for compensation and benefits	34
12	Public health district financing	45
16	Services of the LHTAC as compared with ITD	48
9	Use and satisfaction of the Idaho Education Network	55
15	Road construction/maintenance funds paid	58
10	Need for public preschools	64
11	Operational review of child protection services	64
13	Fish and Game policies and procedures	66
14	Management practices of the Department of Lands	70
3	Inflationary index for state contracts to save tax dollars	74
5	Policy and procedures review of Risk Management	78
17	Lessons learned from GARVEE	84

**Senator Bayer moved to rank the top seven studies on the second ballot. Senator Werk seconded the motion, and it passed unanimously by voice vote.**

Mr. Mohan said that if JLOC selected the combined proposals for ISEE and the combined proposals for the Attorney General, then the office would be able to take one more study.

Members ranked their top 7 priorities on the second ballot. The results of the second ballot were as follows:

6, 7, & 8	Effectiveness of Schoolnet and ISEE	19
1 & 2	Legal work contracted by agencies, boards, & commissions	25
4	Salary savings for compensation and benefits	30
9	Use and satisfaction of the Idaho Education Network	34
12	Public health district financing	36
16	Services of the LHTAC as compared with ITD	38
15	Road construction/maintenance funds paid	42

Senator Werk asked if Schoolnet could be pulled from the ISEE study. Senator Mortimer said that since the state would continue to maintain Schoolnet, JLOC should see what they can get. He asked Mr. Mohan about pulling it apart. Mr. Mohan said pulling Schoolnet from the ISEE study would be difficult and the study would still be big.

**Senator Werk moved to approve the combined proposals of 6, 7, and 8, the combined proposals of 1 and 2, and proposal 4 for studies in the coming year, with proposal 9 held in reserve if, when scopes were completed on the other three studies, OPE found room to add one more. Senator Bock seconded the motion, and it passed unanimously by voice vote.**

Mr. Mohan said he was happy the topics were selected today. OPE would be issuing a report on financial costs of the death penalty before session ends. Cochair Ringo announced that JLOC will meet after session for a workshop on other committee business.

The meeting adjourned at 6:00 p.m.



## House of Representatives State of Idaho

February 20, 2014

Rakesh Mohan  
Director  
Office of Performance Evaluation  
954 West Jefferson Street  
Boise, Idaho 83702

Senator Dean Mortimer  
Representative Shirley Ringo  
Co-Chairs  
Joint Legislative Oversight Committee  
Statehouse  
Boise, Idaho 83702

Dear Rakesh:

Over the past few years concerns have been raised regarding outsourcing attorney work to private contractors by the State of Idaho, which has resulted in an annual expense by one calculation of \$6 million. In addition, issues have arisen regarding the cost of attorneys fees paid by the State of Idaho to adverse parties or to the State of Idaho by adverse parties in litigation.

It is time to determine whether we are spending our money wisely when outsourcing, and to determine the cost of lawsuits which arise out of legislation. Legislators and the public need reliable estimates of legal costs when considering the laws that we pass and the appropriations we make.

Therefore, a performance audit should be made regarding private outsourced attorney work in the State of Idaho for the last 5 years. I suggest the audit review attorney outsourcing at all agencies, boards and commissions, including independent commissions. In particular, there should be an analysis of the effectiveness of attorney outsourcing.

Second, I request the audit include a compilation and examination of all attorneys fees and cost awards against the State of Idaho, and a compilation and examination of all attorneys fees and costs awards in the State's favor, in litigated cases. In addition, the costs and attorneys fees incurred by the State of Idaho in litigation should be included. This will give legislators and the public an idea of the cost of litigation and our success rate.

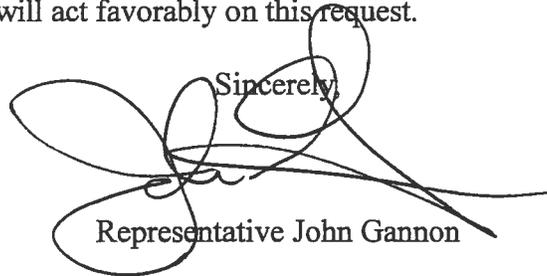
For example, in Idaho Building v Wasden, Case No 1:11-cv-00253 the District Court awarded \$237,587.50 in attorneys fees against the State on April 16, 2012. This award is stayed pending appeal

and post hearing motions, and could change, but it gives an idea of the amount that can be awarded to a prevailing party.

I am enclosing a letter I received from the Attorney General estimating the cost of an appeal of a recent decision by Judge Winmill concerning the Capitol Rules litigation (Watters v Otter No.1:12-cv-00076). It appears that around 100 hours of briefing (at a publicly stated \$54/hour) plus travel time; oral argument; certainly consultation with other staff members; paralegal time and other work would be required. Unfortunately, I didn't get a definitive answer, so it would seem best to find out total cost and total attorneys fees in past cases and reach more firm estimates. We should compare these expenses to what is paid for private attorney work.

I am hopeful that you will act favorably on this request.

Sincerely,

A handwritten signature in black ink, appearing to read "John Gannon", is written over the word "Sincerely,". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Representative John Gannon



STATE OF IDAHO  
OFFICE OF THE ATTORNEY GENERAL  
LAWRENCE G. WASDEN

January 28, 2014

*Hand Delivered*

Hon. John Gannon  
Idaho House of Representatives  
Boise, Idaho 83720

Re: Information Request—*Watters v. Otter*, No. 1:12-cv-00076-BLW (D. Idaho)

Dear Representative Gannon:

You have asked several questions concerning this litigation. I will respond in order.

1. Do you have any data on how [many of] Judge Winmill's decisions have been reversed or affirmed on appeal to the Ninth Circuit Court of Appeals?

This Office has no practicable means itself to provide the information that this question requests. However, we contacted Thomson Reuters (Westlaw) which executed a specialized search on its database. Its report is attached.

2. Approximately how much would it cost the State of Idaho to appeal, and what entity would handle to appeal?

The filing fees for an appeal would be \$455. It is difficult to estimate with any precision the amount of attorney time or additional costs (such as travel for oral argument purposes), but we estimate that the appellate briefing would likely consume 75 to 125 hours (or approximately 3.6 to 6 percent of one attorney's annual time). It is important to note that the State will incur no additional attorney expense by pursuing an appeal, which was also the case when the State defended the underlying action brought by plaintiffs. That is because no additional attorneys would be hired to pursue an appeal than are currently employed by the State, nor were there any additional attorneys hired to defend

Hon. John Gannon  
Idaho House of Representatives  
January 28, 2014  
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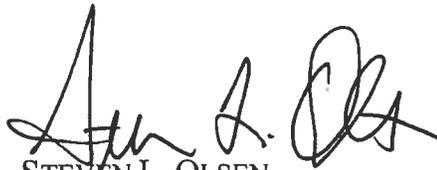
the plaintiffs' claims in the first instance. The Attorney General's Office would represent the State officials in their capacity on any appeal.

3. If the State of Idaho loses an appeal could it be liable for paying the Plaintiff's attorneys fees, and what is the approximate range of attorney fee awards in similar cases?

Under 42 U.S.C. § 1988, the plaintiffs likely would be entitled to an award of fees but only with respect to the issues on which they prevail. We cannot provide the estimate that you request. We can state that the basic formula for § 1988 fees is (1) the reasonable hourly rate for the attorney involved, given, among other factors, his/her experience, the legal community rate (Boise, Idaho) for attorneys with such experience, and the difficulty of the case, multiplied against (2) the reasonable amount of hours for the services involved. The amount of fees that could be awarded to plaintiffs is also dependent upon the extent to which each party prevailed on the underlying claims. At this point, both parties have prevailed on different claims in the lawsuit. And so, while plaintiffs might make a claim for all fees they expended in this case, that claim should be adjusted by the court based on the State's successful defense of various provisions of the rules at issue.

Please feel free to contact me if I can be of further assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Steven L. Olsen". The signature is stylized and cursive.

STEVEN L. OLSEN  
Chief of Civil Litigation

Enclosure

*Pages 1 & 11  
only.  
Complete Copy  
available*

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF IDAHO

IDAHO BUILDING AND  
CONSTRUCTION TRADES COUNCIL,  
AFL-CIO, and SOUTHWEST IDAHO  
BUILDING AND CONSTRUCTION  
TRADES COUNCIL, AFL-CIO,

Plaintiffs,

v.

LAWRENCE G. WASDEN, in his  
official capacity as ATTORNEY  
GENERAL FOR THE STATE OF  
IDAHO,

Defendant.

Case No. 1:11-cv-00253-BLW

**MEMORANDUM DECISION AND  
ORDER**

**INTRODUCTION**

Before the Court is Plaintiffs' Motion for Attorney Fees (Dkt. 72). The matters are fully briefed and at issue. Being familiar with the record and having considered the briefing, the Court will grant Plaintiffs' Motion for Attorney Fees (Dkt.72).

charged by similarly experienced attorneys in the Boise area. The hourly rates are thus objectively reasonable.

In summary the rates are objectively reasonable and no adjustment is necessary.

**C. Total Lodestar Amount**

Taking the reasonable hours and multiplying it by a reasonable rate, the Court determines that Trade Councils attorney fees are \$237,587.50.

**2. Discretionary Adjustment for Other Factors**

After determining the lodestar amount, a court may, in its discretion, adjust the amount up or down. However, the lodestar amount is a “presumptively reasonable” fee amount. *Mendez*, 540 F.3d at 1129; *Heitman v. Pope*, 4:11-cv-00080-BLW (D.Idaho Feb. 1, 2012). “Only in rare or exceptional cases will an attorney’s reasonable expenditure of time on a case not be commensurate with the fees to which he is entitled.” *Cunningham*, 879 F.2d at 488. Any modifier “must be supported by evidence in the record demonstrating why such a deviation...is appropriate,” *id.*, such as a showing at trial that the community market value “does not adequately measure the attorney’s true market value.” *Perdue*, 130 S.Ct. at 1674. Other reasons include when the litigation required extraordinary outlay of expenses, was exceptionally protracted, or required an exceptional delay in payment of fees. *Id.*

In their motion, Trade Councils seeks a “bonus of 25 percent” because Trade Councils “received a favorable ruling on all issues raised.” *Mot. Att’y Fees* at 3, Dkt. 72, *Mem. Supp. Mot.* at 11, Dkt. 72-1. Rather than providing details as to why such an



## House of Representatives State of Idaho

Senator Dean Mortimer  
Representative Shirley Ringo  
Co-Chairs  
Joint Legislative Oversight Committee  
Statehouse  
Boise, Idaho 83702

Dear Sen. Mortimer and Rep. Ringo:

I am requesting your consideration for a study of the Office of Attorney General by the Office of Performance Evaluations.

The JFAC presentations indicate the AG contracts in excess of \$6 million per year of private legal work directly or indirectly through departments with private firms and attorneys. The Statewide Cost Allocation Plan (SWCAP) for AG staff attorneys is approximately \$55 per hour. Contract attorneys cost \$125 per hour, and up depending on the kind of work and level of specialty required. It is reasonable to assume that there would not be enough specialty work in many areas to justify staff attorneys. However, it is also reasonable to assume that much of the work that is contracted by different state agencies could be done with staff attorneys. If even half of the contract work could be brought in house saving the difference between \$55 and \$125 an hour, the savings would be well in excess \$1 million.

The specific request would be:

1. An evaluation of current staff work load, completion time, timeliness of meeting agency needs, and efficiency of administration.
2. An evaluation of all contract work done for all agencies to determine specialty knowledge required, seasonal and time constraints, and possible overlap or similarity of required experience or expertise between agencies.
3. There are many anecdotal examples of requests for assistance from the AG's office (such as counties) when there is simply not enough AG staff to provide the requested assistance. There needs to be an evaluation of the requests submitted, the number and expertise of staff required in order to respond to requests and, if possible, the economic impact to those requesting assistance, not only of attorney time but the consequences of not having assistance. This would

provide a benefit/cost analysis to assist in making policy decisions regarding additional staff.

The following comments are submitted in consideration of the Guidelines for Topic Selection.

1. **Applicability and Interest** The AG's office serves interests throughout all state agencies, commissions, quasi-governmental entities, and others throughout the state. Recent newspaper articles have brought these considerations before the public.
2. **Timeliness.** Having recent public attention brought to this area is a consideration in addition to the potential savings.
3. **Use.** The results of this study will help improve efficiency, effectiveness and reduce overall cost of legal services.
4. **Potential for Cost Savings.** There is a potential of savings in excess of \$1million for contract services.
5. **Research Feasibility.** OPE has the expertise to conduct the project.
6. **State Control** The Legislature in conjunction with the AG have the ability to reorganize and appropriately fund the outcome of this evaluation.
7. **Evidence of Deficiency.** The last two JFAC presentations by the AG show the need for this evaluation.
8. **Suitability.** OPE is at hand and has experience doing similar evaluations.

Thank you for your consideration. Please feel free to contact me if I may provide further clarification.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Steven Miller", is written over a horizontal line.

Representative Steven Miller



## Idaho State Senate

### SENATOR DAN JOHNSON

To: Joint Legislative Oversight Committee

From: Senator Dan Johnson

Subject: Chained Consumer Price Index

Date: March 7, 2014

The Consumer Price Index (CPI-U) is a measure of the average change over time in the prices paid by consumers for goods and services. The consumer price index is more commonly known as a measure of inflation. The CPI-U was developed and is maintained by the U.S. Bureau of Labor Statistics.

The state of Idaho uses many different consumer price indexes (CPI-U) to measure inflation for food, medical services, leases, retirement benefits, fuel, taxes, contracts, and more. In fact, consumer price indexes are referenced in at least nine different titles of Idaho code.

This study requests that the state of Idaho consider using a single index, the Chained Consumer Price Index (C-CPI-U), for all inflationary adjustments that are currently using the CPI-U. Both the C-CPI-U and CPI-U are indexes designed to measure price changes for consumers. However, according to the U.S. Bureau of Labor Statistics, the Chained Consumer Price Index (C-CPI-U) is a more accurate measurement of inflation.

At the end of the legislative session last year, the House Revenue & Taxation Committee voted to print RS22185 but the bill was never heard before Sine die. That bill would have replaced the CPI-U with the C-CPI-U to adjust the Idaho tax brackets so that inflation would not result in a tax increase. The Idaho Tax Commission estimated a positive net effect on general fund revenues in the amount of \$600,000 in the first year.

The study could benefit all departments that have an inflator in their contracts. For example, the Idaho Department of Correction uses CPI-U for medical services, PERSI uses CPI-U for retirement benefits, Idaho State Liquor Division uses CPI-U for leases, higher education uses CPI-U for services, and others. Some department contracts assume a fixed rate of inflation that at times is higher than actual inflation and those departments could benefit from this study.

I believe the Office of Performance Evaluations is the most appropriate office to complete this study to provide a comprehensive, objective opinion of using a single index, the Chained Consumer Price Index (C-CPI-U), in applicable state contracts and statutory funding requirements. The information on existing contracts is available from the departments, and the past history of contract inflation could be studied to project savings into the future. The state of Idaho would be interested in this information.

Thank you for your review and consideration.

A handwritten signature in black ink, appearing to read "Dan Johnson", written over a horizontal line.



## Idaho State Senate

March 8, 2014

To members of the Joint Legislative Oversight Committee:

Please accept this letter as a formal request for a performance evaluation related to the use of salary savings to fund compensation and benefits for state employees. Specifically, we respectfully request that the evaluation address the following issues:

- Quantification of the extent of use of salary savings to provide compensation and benefits for state employees
- Inequities among state agencies regarding the availability of salary savings to provide increased compensation and benefits
- Impacts related to reliance on the use of salary savings to provide increased compensation to state employees, which may include, but are not limited to:
  - Strategies to increase salary savings—such as maintaining vacant positions. If this is a common practice, we would request an evaluation of the impacts of maintaining vacant positions.
  - Providing inappropriate promotions or reclassifying jobs in an attempt to provide increased compensation to key employees
  - Motivation to maximize revenue from other sources such as student fees or dedicated funds, and the impacts of such actions
- Positive outcomes related to the use of salary savings for employee compensation and benefits
- The appropriateness and/or desirability of encouraging the use of salary savings for employee compensation and benefits
- Identification of best practices related to the use of salary savings for employee compensation and benefits
- Identification of policy considerations the legislature may want to consider related to these issues

We also request that the evaluation take a close look at the issue of holiday pay for employees working a nontraditional work schedule that is mandated by the employer, such as a four-day 10-hours-per-day schedule or a 12-hour workday schedule. Specifically, we would like an evaluation of the degree to which agencies are consistent in how they compensate employees for holidays when working these nontraditional schedules. It is our understanding that the additional fiscal impact of compensating nontraditional employees for the extra hours they receive for holiday pay is potentially mitigated by allowing additional time off in lieu of paying the employee for those additional hours. We would like to know if this additional time off compromises department functionality.

We further understand that in the case of employee requested nontraditional work schedules, employees may be “flexed back” to a traditional schedule during the week of a holiday. We would be interested to know if this work schedule inconsistency causes problems for the department, or more importantly for the consumer.

The decision to compensate an employee more than 8 hours for a holiday is based on whether the nontraditional schedule is department mandated or employee requested. We would like to know what policies are now in place and being used to make this determination and if those policies need to be more thoughtfully developed.

On a somewhat regular basis, the legislature approves “one time” employee compensation—in the form of bonuses. We would appreciate an assessment of whether one-time compensation is an appropriate and effective method to address employee compensation needs. Any historical data on how much the state has spent on one-time compensation would be useful.

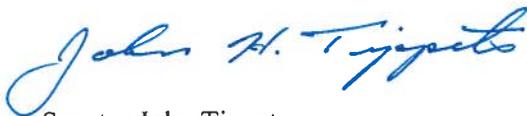
We believe an evaluation of these issues (holiday pay and one-time compensation) is appropriate for this study because of the likelihood that salary savings are being used to provide part of the holiday compensation as well as for bonuses. Furthermore, legislation was considered during the 2014 session that would have standardized pay practices for employees mandatorily working a nontraditional schedule. It was indicated during those discussions that agencies would be able to pay the additional costs that would have resulted from enactment of the legislation using salary savings.

The information derived from this evaluation would serve to inform the legislature (and specifically the Commerce and Human Resources Committees and the Change in Employee Compensation Committee) as to how salary savings are being used, the benefits from using salary savings for employee compensation and benefits, potential inequities, and other possible negative impacts of our current practices. The results of the study may influence the decisions that are made related to state employee compensation and benefits.

Sincerely,



Senator Jim Guthrie



Senator John Tippetts

**JOHN RUSCHE**  
DISTRICT 6  
NEZ PERCE & LEWIS COUNTIES



HOME ADDRESS  
1405 27TH AVENUE  
LEWISTON, IDAHO 83501  
HOME (208) 743-1339  
SESSION (208) 332-1133  
EMAIL: jrusche@house.idaho.gov

## House of Representatives State of Idaho

**MINORITY LEADER**

March 7, 2014

Dear Rakesh,

Earlier this year we heard bill H549 on the Universities desire to be able to do their own purchasing. In investigating with BSU, this bill came, at least in part, because of activities and omissions on the part of the Dept of Administration Risk Management program that they believe cost the University significant money.

My request is that OPE look at the policies and procedures of Risk Management in Admin, assure that there are policies and that the policies are followed. I also suggest that the scope and primary customers of the Risk Management function (ie, Risk Management for the State general fund or for all State entities) be reviewed.

Thanks,

John Rusche, MD  
Minority Leader  
Idaho House of Representatives

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## Idaho State Senate

**SENATOR ROY LACEY**

February 4, 2014

Hand Delivered

Senator Dean Mortimer  
Representative Shirley Ringo  
Co-Chairs, JLOC

Dear Senator Mortimer and Representative Ringo,

For many years the State of Idaho has been funding a program called "Schoolnet" in conjunction with donations from the J.A. and Kathryn Albertson Foundation.

I request a study from the Office of Performance Evaluation to determine the rationale of continuing to fund a program that has not provided results.

To this end, I request the following information:

1. A study from the Office of Performance Evaluation to determine the rationale of continuing to fund a program that has not provided results as evidenced in the Institute for Evidence-Based Change's external study commissioned by JKAF.
2. How much money has been expended on Schoolnet to date?
3. Why is this program still being called a "pilot" project after so many years with all schools being required to participate?
4. An analysis of acceptance from the school districts regarding the validity of this program, including accuracy and ease of use.
5. What other systems are the local school districts using to track students in longitudinal studies to ensure accuracy?

I would like to have this completed by December 31, 2014.

Thank you for your consideration.

Respectfully,

A handwritten signature in black ink, appearing to read "Roy Lacey".

Senator Roy Lacey



## **Idaho State Senate**

State Capitol  
P.O. Box 83720  
Boise, Idaho 83720-0081

February 26, 2014

Mr. Rakesh Mohan, Director  
Office of Performance Evaluations  
State of Idaho  
STATEHOUSE MAIL

Dear Mr. Mohan:

Idaho was the last state in the country to develop their longitudinal data system for public education. The Idaho System for Educational Excellence (ISEE) is that system. ISEE is coupled with an instructional improvement system, currently Schoolnet, to form a statewide platform. Both systems have had implementation issues with local school districts concerns about the additional cost of gathering and submitting data into ISEE as well as accuracy. There are many examples of data systems available for comparison where service oriented architecture enables the free flow of data from a local level to a state level and back.

We, the Senate Education Committee, request an Office of Performance Evaluations study of both the ISEE system and the instructional improvement system with the focus directed on how both systems can be made to work effectively without additional pressure on local school district staff.

Respectfully,

A handwritten signature in blue ink, appearing to read "John W. Goedde".

John W. Goedde  
Chairman  
Senate Education Committee

JWG/esl

**DARRELL BOLZ**  
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COMMITTEES  
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## House of Representatives State of Idaho

March 6, 2014

To: Joint Legislative Oversight Committee

Subject: Study Proposal

Attached please find a proposal to study the Idaho System for Educational Excellence (ISSE).

The State Department of Education (SDE) had a study entitled "Idaho State Department of Education Data Element Review Report" done by Applied Engineering Management Corporation, but it did not focus on the issues that have been presented to me by the school districts. The Department also issued their report entitled "Idaho Statewide Longitudinal Data System (SLDS)". This report did not, in my opinion, address issues that school districts have reported to me.

Thank you for your consideration of this study.

  
Darrell Bolz

## **Office of Performance Evaluations Study Request**

Over the past two years a number of School District Superintendents have expressed a concern about ISSE. A request for a study of Idaho System for Educational Excellence (ISSE) was contemplated during the 2012 legislative session, but was not submitted in order to see if an additional year would provide time for the situation to improve. Superintendents continue to express concern of the program.

Concerns expressed include, but not limited to, the following:

- (1) Data submitted to the State Department of Education (SDE) is returned differently than what was submitted.
- (2) Districts are spending numerous hours preparing data for submission.
- (3) Districts are allocating personnel to input data taking them away from other duties. This is particularly true in the case of the smaller districts who may not have the personnel who might already be doing data entry work.
- (4) Some districts are concerned about some of the data that is required to be reported.

It is believed a study at this time would answer many questions in regards to the applicability of ISSE. It should also help superintendents understand why certain data is being requested by SDE. The State Department of Education could benefit from a study of ISSE as it could shed light on the issues that the school districts face in their attempts to comply with the data submission being requested by the department. Isolation of problems that deal with the data submission could be identified and enumerated. Why data returned to the districts is different than that submitted to SDE needs to be identified.

Based on information from the districts, there is a potential savings to the local school districts. Although the amount will vary, for some districts the amount could be substantial.



## Idaho State Senate

### SENATOR DAN J SCHMIDT

February 21, 2014

Hand Delivered

Senator Dean Mortimer  
Representative Shirley Ringo  
Co-Chairs, JLOC

Dear Senator Mortimer and Representative Ringo,

Since 2008 the State of Idaho has been using the Idaho Education Network. Office of Performance evaluation did a study of ISIMS in August 2006 and supplied a checklist for future technology projects in Idaho.

I request a study of Idaho Education Network (IEN) by the Office of Performance Evaluation to address:

1. Has the check list been followed, should it be or instead, modified?
2. What is the comparison of Idaho's cost to other state's costs for a similar program?
3. Is there consumer/ user satisfaction with IEN service?
4. What is the quality of service provided by the Idaho Education Network?
5. What is the usage of the Idaho Education Network?
6. Is there adequate oversight and governance of the Idaho Education Network and contract oversight?

I would like to have this completed by December 31, 2014.

Thank you for your consideration.

Respectfully,

Senator Dan Schmidt

I surveyed school district superintendents through the ISSA with a 4 question email survey February 2014 regarding their use and satisfaction with IEN.

### Survey Responses

60 completed responses out of 106 delivered surveys

#### **Question 1: Does your school district use the Idaho Education Network (IEN) services for your high school(s)?**

55 school districts DO use the IEN 92%

5 school districts do NOT use IEN 8%

- 2 of the 5 also do not use an alternate provider.
- The other 3 DO use an alternate provider

#### **Question 2: Does your school district use an internet provider for your high school(s) in addition to the IEN?**

35 school districts DO use an alternate internet provider 58%

25 school districts do NOT use an additional internet provider 42%

#### **Question 3: If the IEN services were no longer available to your high school(s), would your school district have access to an alternative provider?**

48 responded "Yes" 80%

12 responded "No Alternate Provider Available" 20%

1. Weiser Schools
2. Bruneau/Grand View 365
3. West Bonner County #83
4. Clark County #161
5. Gooding Schools
6. Murtaugh School District
7. South Lemhi School District
8. Post Falls #273
9. [lantisd@mudlake.net](mailto:lantisd@mudlake.net)
10. Fruitland Schools
11. Homedale Schools
12. Buhl Schools

#### **Question 4: Please provide any additional comments here. For example, for what functions does your school district use the IEN service or an alternative service?**

Of the 60 responses 43 responded to the open ended question

Of those 43 responses –

- 19 Positive comments in regards to IEN
- 7 Negative comments in regards to IEN
- 17 Neutral comments in regards to IEN



## House of Representatives State of Idaho

February 26, 2014

Rakesh Mohan  
Office of Performance Evaluations  
954 West Jefferson Street  
Boise, Idaho 83702

Mr. Mohan,

For years the question has been asked if Idaho is ready for preschool.

On behalf of Representatives Hancey, Perry, and me, I request that your office research and provide a report on the state of preschool in Idaho.

The question I am looking to answer is – Is there a need for public preschool in Idaho? My colleagues and I believe there is, based on the national data that is available. Idaho is only one of eight states not currently providing public preschool; we would like to know why. We request that your office research, compile, organize, assess, and analyze the data in the most up-to-date studies and programs.

This data will be critical to determine if we move forward with our preschool legislation.

Please determine:

- What is going on now in Idaho, if anything?
- What are test results currently for reading and math in kindergarten and third grade in Idaho?
- What are the results in neighboring states like Washington, Oregon, Nevada, and Utah?
- Are there noticeable differences between students who went to preschool and those who did not?
- Are those academic differences? Social? Are they measureable?
- How are they funded?
- How much does Idaho spend (total) on remediation for K-12?
- How much would it cost to fund a three-year pilot program in five schools with 100 students participating per year?

Thank you for your research efforts on this topic.

Sincerely,

Representative Hy Kloc



## House of Representatives State of Idaho

To: Joint Legislative Oversight Committee

From: Representative Christy Perry, Representative Mike Moyle

Subject: Child Protection Services

Date: February 26, 2014

This month, the Idaho Office of Performance Evaluations completed a study of the process of committing juveniles to the Idaho Juvenile Corrections Department. The study found some interesting and alarming trends especially as they relate to child protection services. The study noted that "most frequently, juveniles committed to state custody from January to May 2012 showed up in Health and Welfare's child protection and children's mental health systems" and many have "a serious emotional disturbance" (p. 32). Further, one judge stated that of the 11 children from his county "currently committed to state custody... 9 have unaddressed child protection issues" (p. 45). Clearly, there is a correlation between child protection services and confinement in juvenile corrections.

This proposal requests the Office of Performance Evaluations to undertake the following:

- 1) Continue to develop and understand the nexus between child protection services and the juvenile justice system as a whole.
- 2) Complete a literature review for best practices in child protection policies and guidelines.
- 3) Evaluate our state and county guidelines and compare them to national standards.
- 4) Help determine reasonable options for placement of resources with an emphasis on maintaining the family unit and minimizing trauma to children.
- 5) Discuss policy options for early intervention and move Idaho away from operating in "crisis mode" in regards to child protection services.

The report, "Confinement of Juvenile Offenders" by the Idaho Office of Performance Evaluations has noted that "national literature clearly supports prevention and early intervention for at-risk children and their families" (p. 53). This proposal seeks to expound on those ideas and determine what efforts may successfully be enacted here in Idaho.

The information from this proposal can be utilized by both the Idaho Department of Health and Welfare and the Idaho Juvenile Corrections Department to enable them to work cohesively with child protection issues and better understand the relationship to each other.

The ultimate goal is to develop policies which will minimize trauma to children, support the family unit, and lower the societal cost of placing children in child protection services and the juvenile correction system, both of which may have long lasting detrimental effects.

Thank you for your consideration,

Handwritten signature of Christy Perry in black ink.

Handwritten signature of Mike Moyle in black ink.

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## Idaho State Senate

### SENATOR BERT BRACKETT

March 7, 2014

The Honorable Dean Mortimer and Shirley Ringo  
Co-Chairs, Joint Legislative Oversight Committee (JLOC)  
Statehouse

**H A N D D E L I V E R E D**

**RE: Proposal for Consider: Public Health Districts**

Dear Senator Mortimer and Representative Ringo,

We ask that the Office of Performance Evaluations investigate and report on the general issue of Public Health District financing and, in particular, the distribution formula for the districts' general fund appropriation.

The last time there was an outside review was done in 1993 and was a result of Boise State University, University of Idaho and Idaho State University examining the issue and making a recommendation.

There are a number of factors that are considered in the current formula which include population, poverty level, county contribution and public assistance (Medicaid billing). There are factors that may be considered in the discussion, such as disease investigation, account balances and levy rates. Then these factors are weighted or assigned a percentage to make up the total to calculate the distribution to the districts from the state allocation.

The primary purpose of this request is to provide an in-depth, impartial review of the current distribution formula and develop some alternatives that the trustees of the Public Health Board could consider if they were interested in taking a look at the distribution formula for the state general fund appropriation. The overall goal is to achieve equity between the districts when distributing the state general fund appropriations to best meet the needs of the people of the State of Idaho.

In addition, if the Office of Performance Evaluation could, in light of the recent announcement of loss of federal grant funding for STD testing and evaluate what other additional demands or requirements have been placed on the public health districts by the Legislature. Furthermore, evaluate, if additional State resources need to be allocated to the public health districts as a result of legislative decisions or actions.

Sincerely,

Handwritten signature of Senator Bert Brackett in blue ink.

Senator Bert Brackett  
Legislative District 23

Handwritten signature of Senator Les Bock in blue ink.

Senator Les Bock  
Legislative District 16

Handwritten signature of Senator Cliff Bayer in blue ink.

Senator Cliff Bayer  
Legislative District 21

**MONTY J. PEARCE**  
DISTRICT 9  
PAYETTE, ADAMS &  
WASHINGTON COUNTIES



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## Idaho State Senate

State Capitol  
P.O. Box 83720  
Boise, Idaho 83720-0081

March 7, 2014

Margaret Campbell  
Administrative Coordinator  
Office of Performance Evaluations  
INTEROFFICE MAIL

Dear Ms. Campbell:

I see a need to study the relationship of how Idaho Fish and Game implements legislature policy to funding decisions and outcomes.

I will refine this request in a few days.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink that reads "Monty Pearce".

Monte J. Pearce, Senator

Chairman, Senate Resources & Environment

PERFORMANCE EVALUATION REQUEST FOR DEPARTMENT OF LANDS – TRUST  
LAND MANAGEMENT

1. The Department of Lands manages 1 to 2 billion dollars of land and trust land (endowment) assets; with low investment returns, and expensive, botched programs to exchange lands into return assets.
2. The Dept. of lands had a fiduciary duty to manage endowment lands for the highest long term returns for education and schools.
3. The Dept. of Lands regularly and continually leases lands and grants easements. Each one of those decisions requires professional appraisal and valuation expertise; yet the Director of the Dept. of lands informs me they have not a single appraiser on staff.
4. The inability of the Dept. of Lands to invest in higher yielding assets; and comply with professional standards in the management and leasing of lands raises issues of breach of fiduciary duty of statewide importance.
5. A study of this agency's management practices are both timely and of statewide importance.
6. A study of the leasing practices and management talent, or lack thereof is needed for legislative oversight; for a determination of whether we are meeting our fiduciary duties in managing these endowment lands, and in our duty to the school children of the state.
7. The state has total control of this program, and responsibility for it.

I request the OPE study and evaluate the leasing and land management practices of the Idaho Dept. of Lands.

Rep. Ed Morse

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## Idaho State Senate

### SENATOR JIM RICE

March 5, 2014

Senator Dean Mortimer & Representative Shirley Ringo  
Joint Legislative Oversight Committee  
Idaho State Senate  
P.O. Box 83720, Boise ID 83720-0081

Dear Senator Mortimer & Representative Ringo,

When the Department of Transportation or a local highway district hires a contractor for road construction or maintenance projects, the contractor is required to pay sales/use tax on the materials used in the road construction project. This diverts highway dollars from road construction to the general fund. This is occurring despite the fact that there is substantial underfunding of transportation in the State of Idaho. This underfunding is estimated to be approximately \$260,000,000.00. In addition, the funds being diverted to the general fund are dedicated funds required to be spent on transportation.

#### Proposal

An evaluation seeking to analyze the total road construction and maintenance dollars that are paid for sales/use taxes as a result of the current tax policy. Also, the enforcement costs to the Tax Commission associated with enforcing the tax the way it is currently administered. It is anticipated that the information could be gathered from ITD, the highway districts in the State of Idaho and the Idaho Tax Commission.

The results of this study will allow the legislature to know the amount of tax dollars being diverted from highway maintenance and construction through the sales/use tax. This can be used to draft legislation that puts these dollars back into highway construction and maintenance.

Sincerely,

Senator Jim Rice



## House of Representatives State of Idaho

March 6, 2014

The Honorable Dean Mortimer and Shirley Ringo  
Co-Chairs, Joint Legislative Oversight Committee (JLOC)  
Statehouse

**H A N D D E L I V E R E D**

**RE: Proposal for Consider: Efficacy of LHTAC Services vs. ITD Services**

Dear Senator Mortimer and Representative Ringo,

The Local Highway Technical Assistance Council (LHTAC) was established under Idaho Code Title 40, Chapter 24 in 1994 to assist local governments and their highway districts with obtaining and administering federal funding for roadway projects within those jurisdictions.

LHTAC has requested help from the Idaho Transportation Department (ITD) on several occasions to provide services that LHTAC was created to solely perform. In short, this leads me to conclude that LHTAC is providing the same services that ITD is capable of performing on its own but instead is assisting statutorily created LHTAC to perform them. Given transportation in Idaho has many needs and limited resources, it may be more efficient to allow funding currently allocated to LHTAC to be redirected to ITD and bring the total of LHTAC's services in-house at ITD. This could eliminate some administrative and overhead costs, thereby putting more dollars "on the road."

Specifically, my concerns are:

1. Are LHTAC and ITD both capable of offering duplicate services in the realm of assisting local transportation jurisdictions?
2. What is the budget breakdown of administrative and overhead costs that LHTAC bears with its federal funding, and compare that to what it expenses to local transportation projects less administrative costs?
3. In the long run, would it be more efficient and cost-effective to have ITD absorb LHTAC and its programs?

I would like to have this study analysis completed by December 1, 2014 in time for the 2015 Legislative Session.

Thank you for your consideration.

Respectfully,

A handwritten signature in black ink, appearing to read "J.A. Palmer".

Representative Joe Palmer  
Chairman, House Transportation and Defense Committee  
Legislative District 20A

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## Idaho State Senate

**SENATOR CHUCK WINDER**  
ASSISTANT MAJORITY LEADER

March 10, 2014

Co-Chairman Mortimer  
Joint Legislative Oversight Committee  
Re. What did we learn from Garvee?

Dear Senator Mortimer,

Per our previous discussions, I request that JLOC consider, over the interim, looking at lessons learned from Garvee. As you are aware, I have been working with Director Rakesh Mohan regarding how to structure the proper questions for this study. We will continue to work on those questions and develop them so that his staff will be able to address our issues.

Thank you for your consideration of my request. I think it will be very beneficial to have a third party look at the Garvee Program.

Respectfully Submitted,

A handwritten signature in blue ink, appearing to read "Chuck Winder".

Senator Chuck Winder  
Assistant Majority Leader  
Idaho State Senate