

Minutes of the Joint Legislative Oversight Committee

February 9, 2015

Lincoln Auditorium, Capitol, Boise, Idaho



Cochair Representative John Rusche called the meeting to order at 3:05 p.m. Attending the meeting were Senators Cliff Bayer (cochair), Steve Vick, Michelle Stennett, Elliot Werk and Representatives Maxine Bell, Gayle Batt, and Elaine Smith. Also present were Rakesh Mohan, director, Margaret Campbell, administrative coordinator, and other OPE staff. Audience members included the following:

Representatives Neil Anderson, John Gannon, Wendy Horman, Steven Miller, and Eric Redman
Lawrence Wasden, Attorney General; Sherm Furey, Brian Kane, Kay Christensen, Steve Olsen,
Tara Orr, Todd Dvorak, Office of the Attorney General
Richard Armstrong, Director; Dave Taylor, Deputy Director, Russ Barron, Deputy Director,
Department of Health and Welfare
Keith Reynolds, Chief Financial Officer, Department of Administration
Charlene McArthur, Chief Administrative Officer; Dave Tolman, Controller, Idaho
Transportation Department
David Fulkerson, Interim Administrator, Division of Human Resources
Brad Foltman, former administrator of the Division of Financial Management

Approval of meeting minutes from January 12, 2015

Representative Smith moved to approve the minutes of January 12. Senator Bayer seconded the motion, and the motion passed by voice vote.

Report release: *The State's Use of Legal Services*

Senator Bayer moved to receive the report. Representative Bell seconded the motion, and the motion passed by voice vote.

Cochair Rusche called on Rakesh to introduce the report. Rakesh said the study was requested by Representatives Gannon and Miller. The request was made in part on news articles indicating the state spent \$10 million on outside counsel per year. Rakesh thanked the Office of the Attorney General, the Department of Administration, the Department of Health and Welfare, and the Idaho Transportation Department for their support and assistance on the study. Their formal responses were in the back of the report. He thanked the Office of the State Controller for providing data and assistance.

Tony Grange, Ryan Langrill, and consultant Bob Thomas presented the report. They reported that the state could save money by transferring the responsibility for some outsourced legal work to the Office of the Attorney General. They identified three programs for potential savings: child support, risk management, and transportation. Evaluators said the attorney general's office was the state's law firm. Despite this, state agencies have spent \$10 million on private law firms per year over the past four years. Three-fourths of this amount was for legal work, and the rest was used for services such as land acquisition and payments to court reporters and hearing officers. Evaluators suggested ways to ensure any insourcing would be cost-effective and risks would be mitigated. They recommended structuring such changes as pilot projects with a careful review of performance. Other evaluation findings included the following:



- The difference in cost between the attorney general's office and private firms varied by the type of legal service provided.
- Over the past 10 years, courts have awarded \$1.7 million in opposing attorney's fees and court awards from challenges to legislation. In addition, the costs to defend these challenges totaled \$869,000.
- A lack of resources at the attorney general's office has forced county prosecutors to go to peers in other counties for assistance. In 2014 the attorney general's office helped in 74% fewer cases than it did in 2005.

Senator Stennett asked about the drop in costs of a deputy attorney general from the date of hire to the second year. Mr. Thomas said costs in year one included recruitment of about \$4,000. Senator Stennett asked about the longevity of deputy attorneys general in other states and whether other states saw employment volatility of experienced attorneys. Mr. Thomas said some states have a longevity increase in pay, which helps keep deputy attorneys general around. Although Idaho does not pay for longevity, he had found deputy attorneys general with more years of experience were typically paid more.

Cochair Rusche asked if the difference in regional costs implied that a local deputy attorney lived in the region or traveled from Boise to the region. Mr. Grange said the model the team designed assumed the deputy attorneys general lived in the region and did not travel from Boise; other cost differences included more staff and rent prices. Representative Batt asked whether the cost of land acquisition included the purchase of land. Mr. Grange said payments to owners of land were made to the court or to a legal firm—payments to legal firms was part of the study.

Cochair Rusche asked about the results of liability when an agency hired outside counsel and work was faulty. Mr. Grange said the topic of faulty work did not come up in the study; most agencies said success of outside counsel was not a problem.

Senator Werk thanked the OPE staff for their work. Referring to 8 of 9 challenges to legislation that did not have an attorney general opinion, he asked about the one with an attorney general opinion and whether the Legislature went in the opposite direction or followed the opinion. Mr. Langrill said the one was *Latta v. Otter* in which the attorney general opinion said same sex marriage would likely be challenged, but the legislation would survive given the 2006 legal environment. The Legislature followed the opinion.

Cochair Rusche asked whether rates for private firms will increase. Mr. Grange said increases to the child support contractual rates had been discussed, and risk management rates had recently been increased.

Referring to incentive to save dollars, Cochair Rusche asked whether savings would revert to the general fund or stay within the department if a department found services at a lower cost. Mr. Grange said he did not know the budget mechanism, but he added that real costs were not known before this study.

Representative Bell said she appreciated the report. She pointed out that no agency was now staffed at 2008 levels. She asked how large Idaho wanted its government and expertise. Departments may always have some contractual activity. She thanked the deputy attorneys general for their public service, acknowledging that they were not earning what private attorneys earned. She said for expertise and specialized service, contractual services were needed, and when all those elements came together, the issue was not easy.



Cochair Rusche asked if a representative wanted to respond to the report from the governor's office. No one was present.

Cochair Rusche invited Mr. Lawrence Wasden, Attorney General, to respond to the report. Mr. Wasden thanked JLOC and OPE for their efforts to look at this complex issue. The report identified areas for cooperation with other agencies and opportunities to be more efficient. In response to an earlier question from Representative Rusche, Mr. Wasden said that when an agency hired outside counsel, the firm had responsibility for defending the agency. But the duty of defending the advice fell to the attorney general's office. He indicated he was often put in hard positions such as these.

Cochair Rusche invited Keith Reynolds, Department of Administration, to respond to the report. Mr. Reynolds said he appreciated the work of OPE. With studies like this, you learn things that you should have known better. He said the department welcomed the recommendation to work with the attorney general's office. The department would strengthen communication and standardize its approach about why it chooses outside counsel.

Cochair Rusche invited Richard Armstrong, Department of Health and Welfare, to respond to the report. Mr. Armstrong said he agreed with the recommendation to engage the attorney general's office to look at ways to conduct child support legal services. He was willing to report on deliberations through the next year. He said the second recommendation to look at federal funding matches for child welfare had been a complex, long-running debate. He wanted to continue studying the subject. Success depended on the cooperation of prosecutors, and they had various opinions. He said if the department could gain party status, he could shorten the timeframe.

Representative Batt asked why securing federal matching funds had not been accomplished. Mr. Armstrong said prosecutors were not billing Health and Welfare; therefore, Health and Welfare was not able to bill the federal government. He indicated the issue had not been pursued, and Representative Batt asked if the issue was something he would pursue. Mr. Armstrong said he would have conversations—the subject had been dicey for agencies to go after federal money because it had not been welcomed in the past.

Cochair Rusche called on a representative from the Idaho Transportation Department (ITD) to address the committee. Ms. Charlene MacArthur, ITD, said the department had no exceptions to the report—it accurately represented what ITD did for legal services. The department would be happy to forecast its varied legal needs to find a pattern in the future.

Senator Werk said there was a lot of meat in the report. Because of the many moving parts, he thought it would be logical for OPE to check back in a year on the recommendations.

Senator Werk moved for OPE to conduct a follow up in one year on the report. Senator Bayer seconded the motion. Representative Bell noted the lack of funding will be a factor in increasing the attorney general's staff. **The motion passed by voice vote.**

Rakesh said OPE had provided the report to the Senate and House judiciary and rules committees and will give to the state affairs committees with an offer to present.



Other business

Cochair Rusche said the committee had a matter of old business for the report *Using Salary Savings to Fund Employee Compensation*. Rakesh said he talked with Senator John Tippets and Representative Neil Anderson about any issues that needed OPE follow up. He said he did not get a good sense that the CEC Committee cochairs required follow up. He recommended not taking action at this time.

Senator Bayer said JLOC had time during session to revisit the report. He would rather wait. Cochair Rusche said JLOC would wait until later in the session.

Rakesh reminded the committee of the meeting on Monday, February 16, when OPE would release the ISEE report.

The meeting adjourned at 4:25 pm