Minutes of the Joint Legislative Oversight Committee
February 5, 2020
Room EW42, Capitol, Boise, Idaho

Cochair Representative Ilana Rubel called the meeting to order at 4:02 p.m. Attending the meeting were Senators Mark Harris (cochair), Dan Johnson, Michelle Stennett, Chris Mathias (substitute for Cherie Buckner-Webb), Representatives Caroline Nilsson Troy, and Paul Amador. Representative Smith was absent. Rakesh Mohan, director, Margaret Campbell, administrative coordinator, and other staff from the Office of Performance Evaluations (OPE) attended. Audience members included the following:

Senator Agenbroad
Representative Anderson
Nate Fisher, Policy Advisor, Office of the Governor
Don Drum, Director, PERSI
Bryan Mooney, Director, Department of Administration, Keith Reynolds, Deputy Director, and Steve Bailey, Administrator, Division of Purchasing
Lisa Hettinger, Deputy Director, Department of Health and Welfare, and Tamara Prisock, Administrator, Division of Licensing and Certification

Approval of minutes from January 28, 2020

Senator Harris moved to approve the minutes from January 28, 2020. Representative Amador seconded the motion, and it passed by voice vote.

Report release: *Chained Consumer Price Index*

Cochair Rubel asked for a motion to accept the report.

Senator Johnson moved to accept the report *Chained Consumer Price Index*. Senator Harris seconded the motion, and it passed by voice vote.

Rakesh said the evaluation was requested by Senators Johnson and Agenbroad. The office did not make recommendations, but rather offered policymakers information to consider when discussing policy issues. Ryan Langrill conducted the report with assistance from consultants Bob Thomas and Jim Brock. Rakesh thanked Derek Santos for providing help, as well as the Tax Commission, PERSI, and the Department of Administration. Responses from the Governor, PERSI, and the Department of Administration were posted on the website.

Ryan Langrill, principal evaluator, said inflation had widespread effects that ripple through the policy arena. How and why the state adjusts for inflation was important for policymakers to consider. He said the office was assigned to evaluate the effect of using the chained consumer price index (chained CPI) in state statute and policies.

He found that the state did not often adjust for inflation. Over time, inflation significantly impacts any statute or policy that referenced a specific dollar amount. Some amounts have not been updated for years, decades, or half centuries. Adjusting policy to allow for inflation was more important than calculating the difference between the traditional CPI and the chained CPI.

Tax revenue

Ryan said inflation changed the collection and distribution of tax revenue. Tax policy referenced a combination of fixed dollar values and percentages. Inflation shifted the balance of these two values. In addition, tax revenue went to various funds, either as a fixed dollar value or a percentage, and inflation had changed how much a fund received. Some funds, like the Permanent Building Fund, received almost all tax revenue based on fixed, unadjusted amounts.

Income tax

The state's tax brackets were adjusted using the traditional CPI. Standard deductions, tied to federal income tax code, were adjusted using the chained CPI. Idaho-specific credits and deductions were not adjusted at all.

Criminal law

Thresholds and fines in criminal law were not indexed to inflation. The threshold for felony theft declined 32 percent in value since its last update. Maximum fines for theft declined 73 percent.

Chained CPI

The chained CPI, developed in 2000, corrected biases that caused the CPI-U to overestimate inflation. The US Bureau of Labor Statistics considered the chained CPI to be the most accurate estimate of inflation. Estimates of the chained CPI (measured 45 percent inflation since 2000) were typically lower than the CPI-U (measured 53 percent inflation since 2000). For example, if Idaho tax brackets had been adjusted in 2000 using the chained CPI rather than the CPI-U, the state would have had $7.4 million more in personal income tax revenue assessed in 2017. However, numbers for the chained CPI were not finalized for two years, which could make adjustment difficult to recreate. If the Legislature were to adjust policies for inflation, it should ensure adjustments were appropriate and unambiguous.

Contracts

Adjusting for inflation in contracts was about sharing risk. A well-written adjustment clause in contracts was more important than which index was used. Of the state's major contract managers, Transportation and Public Works used automatic adjustment that was appropriate for their industry. Purchasing preferred negotiated adjustments.

Beer tax and cigarette tax

Senator Stennett asked about the beer tax and the cigarette tax, neither of which were adjusted for inflation in policy. Ryan said the beer tax, last updated in 1961, was $4.65 per barrel of beer that contains less than 5.1 percent alcohol by volume. If adjusted with the CPI-U (which includes data back to 1913), that amount would have been $38.94 in December 2018. The tax on wine and beer that contains more than 5.1 percent alcohol by volume was set at $0.45 per gallon in 1971. It would have been $2.77 in December 2018 dollars. The cigarette tax, set at $0.57 per pack in 2003, would have been $0.78.

Tax credits

Pointing out tax credits that were substantially lower because of inflation, Senator Stennett asked if this lower amount was because policy had not been changed. Ryan said the Legislature had made intentional changes to some credits. Other credits may not be a priority, but more likely, the Legislature had not looked at them.

Fuel contract

Senator Johnson said the report offered potential for policy change. Agencies in attendance may have a different opinion, and he respected that. He asked why Purchasing used the CPI West, which included food and clothes, to index to fuel cost instead of a producer price index. Ryan said the fuel adjustment referred to the Energy Price Index published by the US Department of Transportation. There were producer price indexes for the trucking industry. Indexing for the cost of fuel may not fully account for labor, and producer price indexes may be more appropriate to use.

Agency responses

Cochair Rubel called on Nate Fisher, policy advisor, Office of the Governor, to address the committee. Mr. Fisher thanked OPE for the evaluation and thanked the committee for the opportunity to respond. He said the evaluation showed many implications across policy areas. He referred to the Governor's formal response for more information.

Cochair Rubel called on Don Drum, director, PERSI, to address the committee. Mr. Drum thanked Rakesh and Ryan. He said his formal response outlined his concerns with the chained CPI as an index to the retirement system. Retirees were sensitive to changes in statute, especially their COLA. Under the chained CPI as the index, retirees would get less in COLA and might want to litigate. The report pointed out implementing the chained CPI for new hires. Mr. Drum said his concern would be administering two different systems. Other than this, Mr. Drum said Ryan had done a good job on the evaluation.

Cochair Rubel called on Steve Bailey, administrator, Division of Purchasing, to address the committee. He thanked the office for the report and said since coming to his position eight months ago, he had worked with his team on improvements to drive higher performance. The report highlighted an area that Purchasing had not yet considered: how it reviewed prices and best practices when using indexes in contracts.

Mr. Bailey said Purchasing used two primary methods to adjust prices, which were terms for negotiating and indexing. Due to the variety of contracts, Purchasing did not often tie price adjustments to an index for reasons outlined in its formal response. He said Purchasing intended to follow the recommendation to use the checklist for best practices when an index was applied to a contract. Purchasing distributed a comprehensive, development questionnaire to agencies statewide. One of its questions was about price adjustments. Purchasing planned to link the best practices checklist to the question, which would increase consistency of application and appropriate index selection. He said he would ensure staff were aware of and trained on the checklist. He would also train staff on indexing and how to apply it.

Senator Johnson asked whether Purchasing broke out fixed costs, variable costs, or parts of the cost that were inflatable when negotiating contracts. Mr. Bailey said in many of the contracts, Purchasing tried to break out costs as much as possible in ongoing negotiations.

Senator Stennett referred to slide 21 in the presentation that said Purchasing rarely chose "to use automatic adjustment clauses, but preferred negotiated adjustments initiated by the vendor." She said this preference put Purchasing at a disadvantage and asked why it would prefer to negotiate adjustments as suggested by the person doing the service. Mr. Bailey clarified that Purchasing used two standard terms in contracts: (1) If prices went up, the vendor would be required to let Purchasing know about price increases, which he believed was what the slide statement referred to. (2) Contracts were usually renewable year over year, so Purchasing reviewed as many contracts as it could for service, delivery, and prices and renewed those contracts with adjustments.

Senator Stennett asked whether Purchasing was at more risk contracting with smaller vendors. Price might be the pivotal point of a contract, but vendors needed the bandwidth to meet contractual requirements. Mr. Bailey said Purchasing managed larger suppliers differently from smaller suppliers. In most cases, the agency receiving the services managed requirements and only included Purchasing with escalations or at the annual contract review. Purchasing recently hired two administrators to focus on statewide contract administration and management. They would be looking at adjustments in agencies and Purchasing. He said that all suppliers were being treated as fairly as possible given their differences.

Senator Johnson acknowledged one of the requesters in the audience, Senator Agenbroad.

Cochair Rubel asked if the committee would like to follow up on this report. Senator Johnson said he would talk with OPE about a possible follow up on some items. Senator Stennett said she would follow up with OPE about more thorough information on percentages and indexes.

Follow-up report release: *Residential Care*

At 5:00 p.m., the scheduled ending time of the meeting, Cochair Rubel said the committee was behind schedule and had another follow-up report to hear. She asked for a motion to accept the report.

Senator Harris moved to accept the follow-up report *Residential Care*. Senator Stennett seconded the motion, and it passed by voice vote.

Rakesh said the initial report was released in 2018. Because serious personnel issues were reported, the committee asked OPE to conduct a limited follow up on personnel issues in October 2018. Today, Ryan would present a complete follow up.

Senator Johnson left the meeting.

Ryan said he completed work on the follow up in February 2019. For the most up-to-date information, Licensing and Certification had been invited to address to the committee. The initial report made 11 recommendations. Six had been implemented, three had taken measurable steps to meet the intent of the recommendation, and two had no change.

He found the nursing home survey team had addressed workplace issues that caused serious personnel issues. It had also taken steps to improve retention. Facility administrators had indicated an improved level of confidence in the survey team even though confidence remained low. The nursing home survey team caught up with overdue surveys when the initial report had been released, but it quickly fell behind again.

Senator Amador left the meeting.

The assisted living survey team had begun efforts to address workload and support team supervision. It had also begun the process of allowing noncore citations to be challenged by facility administrators.

The children's residential care survey team had extended dispute resolution process, reduced survey timelines for facilities, and explored options to certify adolescent psychiatric facilities.

Chris Mathias (substitute for Senator Buckner-Webb) left the meeting.

Representative Troy said she was pleased to see significant progress in several areas. She said she was troubled that some of the most powerful recommendations, such as collecting licensing fees from assisted living and nursing facilities, went unaddressed. She was also concerned about the continued backlog of the nursing home survey team and how quickly the team got behind, particularly considering increased growth of the aging population. She asked why licensing fees were not implemented to make the programs self-funded and why the state was not pursuing third-party accreditation, which was a brilliant recommendation.

Ryan said Idaho was the only state of neighboring states that did not have licensing fees. The Legislature passed third-party accreditation in 2019, and the provider community came to third-party accreditation in lieu of licensing fees. He did not consider the third-party recommendation to be addressed because even though accreditation could help workload, it was not a full solution. He said the department could impose licensing fees through the rulemaking process if the Legislature wished that to happen.

Referring to surveys of children's residential care facilities, Senator Stennett asked about the number of facilities and timeframes that two surveyors were required to complete. Did the team need more staff? Ryan said there were 35 facilities and 80 adoption agencies that surveyors visited every year. Surveyors spent two days on-site in small homes. Large facilities took longer. Licensing and Certification had not considered hiring additional staff. Rather, Licensing and Certification used existing staff in a different way to finish bigger facilities more quickly.

Cochair Rubel called on Tamara Prisock, administrator, Division of Licensing and Certification, to update the committee. Ms. Prisock's update has been attached to the minutes.

Representative Troy said she was impressed with Licensing and Certification's progress. She said a lot of things were still coming together, but the division had a long way to go.

Representative Troy moved to conduct a follow up in one year. Because the committee had lost its quorum, Rakesh suggested revisiting this motion at the next meeting.

Other committee business

Rakesh said the office would release two more reports during session: child neglect and county revenues.

The meeting adjourned at 5:37 p.m.