

Minutes of the Joint Legislative Oversight Committee

January 31, 2022

Room EW42, Capitol, Boise, Idaho



Cochair Senator Mark Harris called the meeting to order at 4:03 p.m. Attending the meeting were Senators Michelle Stennett, David Nelson, Representatives Caroline Nilsson Troy, Paul Amador, and Steve Berch. Also present were Rakesh Mohan, director, and other staff from the Office of Performance Evaluations (OPE). In-person audience members included the following:

Matthew Reiber, Policy Advisor, Intergovernmental Affairs, Office of the Governor
Dr. Peter McPherson, Chief Deputy Superintendent, Idaho Department of Education
Julie Oberle Chief Financial Officer for Public Schools, Idaho Department of Education
Dr. Joel Wilson, Deputy Superintendent, Operations, Idaho Department of Education
Senator Janie Ward – Engelking
Senator Kevin Cook

Release of Evaluation

Cochair Senator Harris asked the committee for a motion to release the K-12 Public School Buildings report. Representative Troy moved to release report. Senator Stennett seconded the motion, there was no discussion on the motion and it passed by voice vote.

Report Presentation: *K-12 Public School Buildings*

Rakesh said that the report was requested last March by the Senate Education Committee, as well as the Senate President Pro Tem. He introduced Casey Petti, senior evaluator to present the report.

Casey began with an overview of Idaho public schools. Idaho has 115 school districts and 66 charter schools which comprise about 2,000 different buildings, and 46 million gross square feet of public school buildings. In 2005 the Idaho Supreme Court found that the Legislature was not upholding its constitutional duty to provide a uniform and thorough system of public and free education in Idaho. In 2006 the Legislature made changes to the way schools were funded and placed additional requirements on districts to maintain their facilities.

Casey provided an overview of building conditions. There is no central registry of information on school building conditions, and it is up to individual districts to track and maintain their own buildings. Districts are required to submit a 10-year maintenance plan and an update every 5 years. The study found that very few districts follow this requirement. In a period from 2016 to 2020 only 33 districts submitted maintenance plans to the state. Districts are not held accountable for failing to submit maintenance plans. Plans that were submitted varied in content and scope.

Idaho code indicates that the Division of Building Safety (DBS) should receive the plans. Historically the reports were sent to the Office of School Safety and Security within DBS. Last July the Office of School Safety and Security left DBS and joined the Board of Education. It's unclear on who's going to receive the plans going forward. Casey said it is important to note that

both the Division of Building Safety and the Office of School Safety and Security do not track maintenance of buildings. They are more concerned with schools' safety and building codes vs. whether a building needs to be renovated or replaced. Nothing is done with those maintenance plans that are submitted.

Senator Stennett asked if they do submit a plan, where is it sent to? Casey replied that districts submit their plans to a specific email account with the Office of School Safety and Security. They collect the plans, then no further action is taken.

Representative Troy expressed concern and asked what happens with the submitted plans. Casey replied that based on his discussions with the Office of School Safety and Security, nothing has ever been done with the plans.

Representative Troy noted that there was a study in 1993 and asked if this effort to collect these plans has been in place since then. Casey indicated that the plan has been in place since 2006. The impetus for the requirements for districts was driven by a supreme court case in 2005. Many of the topics being discussed today came about after the supreme court ruled that the Legislature was not upholding its constitutional duty.

Representative Burch questioned if it was possible to determine who in the Division of Building and Safety had responsibility to read emails and follow up. Casey indicated he didn't believe the reports were reviewed. He clarified that the Office of School Safety and Security would ensure buildings are up to code and compliant with safety regulations, but maintenance plans are outside of their regular duty, and they were never instructed on what to do with those plans. Plans currently reside in an email server.

Senator Stennett asked for clarification on the purpose of the Division of Building and Safety, the number of employees, building check responsibility, and email review responsibility. Casey indicated that he was unsure on the number of employees. The office is tasked with going to every school in the state on a three-year cycle with a focus on safety, resulting from an Idaho code created in 2002 to prevent school shootings. The office does trainings with school administrators and is focused on safety, not on building maintenance. The requirement to submit maintenance plans came 5 years after the office was created. Casey then clarified that it's not the Office of School Safety and Security's responsibility to track maintenance at these schools.

Casey discussed the policy consideration and recommendations. The first recommendation is to create an office to receive maintenance plans. Next, once that office is determined, the Legislature should determine the purpose for the plans as currently there is no requirement beyond plan submission. Short of this happening, the Legislature may want to amend the relevant section of Idaho code as necessary.

Casey next presented the results of the OPE survey that was sent to 115 districts asking them to rate their building conditions by school type on a scale from excellent to poor. OPE received responses from 77 districts. The frequent "fair" and "poor" ratings for schools indicate deferred maintenance needs that must be addressed. The two largest challenges were repairs and phasing out buildings past their useful life.

Senator Nelson questioned whether definitions were provided for survey questions. Casey confirmed that brief one-sentence definitions were provided but acknowledged that responses

were subjective as the ratings were self-assessed and that outside factors can impact survey results. These results should not be used as only insight as to building conditions.

Casey presented quantified survey results designed to estimate deferred maintenance costs. \$6.5 billion is the estimated replacement value of school buildings and \$1.3 billion is estimated to be deficient. Since getting deficient buildings back to new condition is unrealistic, a better estimate is \$874 million to instead get buildings back to good condition. This likely underestimates the cost of deferred maintenance as it does not account for buildings that need to be replaced.

Casey said that a follow up survey was sent to a representative sample of 12 districts for additional information. Due to Idaho's demographics, most of the 12 schools contacted for the follow up were rural. This survey found that 52 percent of schools in the districts are estimated to need significant maintenance or repair in the next 10 years, and 20 percent need to be phased out or replaced in next 10 years. The survey also estimated that 19 new schools would need to be built in the next 10 years to accommodate growth. Casey discussed lifecycle costs with 46 of the 84 schools currently past their expected useful life of 50 years. The average building was built in 1973. By 2030 an additional 10 schools will be past their useful life.

Casey discussed additional policy considerations. First, the Legislature should commission a statewide facility condition assessment of school buildings. The last assessment was in 1993, which found under \$700 million was needed in repairs, additional facilities, or upgrades.

Casey discussed the state requirement for districts to annually allocate at least 2 percent of the replacement value of school buildings for building maintenance. The cost factor used to calculate building replacement value has not been updated since 2008 and 2 percent may not be sufficient to meet the needs of school buildings. The National Council on School Facilities recommends districts spend 7 percent of building replacement value on building maintenance per year.

In response to Senator Nelson's question, Casey said that statute places the responsibility for updating the maintenance cost factor on JFAC; JFAC must review and set the cost factor annually. He was unsure if this has been looked at since 2008.

Representative Amador asked if there was a line item in the K-12 budget for maintenance specifically. Casey indicated that he did not know if there was. Districts are responsible for maintenance, and he was unsure if it would show up in a budget line item for schools. Casey referred Representative Amador to the Department of Education.

Casey provided three different cost factors for adjusting maintenance requirements: the Bureau of Labor Statistics producer price index for new schools, RS means data for a raw construction cost estimate, and the National Center on School Facilities for total replacement costs. Estimates ranged from \$71 million to be in line with Idaho Code, to \$1.07 billion for a 7 percent full replacement cost. Currently all districts are meeting the 2 percent 2020 requirement, but only two are meeting the 7 percent full replacement cost estimate.

Casey said that districts received less discretionary funds per support unit in 2020 than in 2006. Supplemental levies are a special property tax levy that districts can use but that need to be approved by a majority of voters in the district. The number of districts using supplemental levies has increased since 2006 as well as the amount raised from those levies. From 2007 to 2020, supplemental levies raised about \$1 billion more than 2006 levels while districts received

\$1 billion less in discretionary funds. Districts are using these supplemental levies to offset the deficit that resulted from the funding change in 2006.

Representative Berch asked for clarification on if the bonds are intended for building something new, while levies are for operations and maintenance? Casey replied that yes, bonds fund new capital projects, while supplemental levies are used for general operation funds and maintenance. OPE asked districts to rank the source of funding used for routine maintenance and found that one of the top responses was supplemental levies.

Representative Berch asked if there was a crossover with bonds in the situation when a building is no longer useable and the solution was to build a new building, and if bond money would also be required for this analysis, essentially for deferred maintenance. Casey replied that yes, bonds can be used for that purpose. Districts will typically use plant facility levies, which can be used to raise funds for future maintenance of capital projects. One of the requirements for this is that a project must cost at least \$5,000. Plant facilities levies also have a lower voter threshold, making it easier to pass. However, more money can be raised with a bond.

Representative Berch asked if it would be accurate to say that the Legislature has shifted \$1 billion of responsibility to fund districts onto taxpayers via levies. Casey replied that prior to the 2006 change, the primary source of discretionary dollars were local maintenance and operations tax dollars. Under the idea that the state is responsible for discretionary dollars, it would be accurate to say that \$1 billion would have been paid for by state dollars if the state had maintained discretionary level funding to 2006 levels.

Representative Berch asked if taxpayers are paying for the \$1 billion extra because of the levies they had to pass as that money is no longer coming from the state. Casey replied that was correct.

Senator Harris left the committee meeting and Representative Troy took over as acting chair.

Casey spoke about bond passing rates and voter fatigue. He said that only 41 percent of the 120 bonds proposed between 2011 and 2020 passed. Almost all bonds proposed were in districts with an active supplemental levy. It appears that bonds in districts without supplemental levies performed better; however, it is difficult to draw conclusions from a small data set. The analysis also indicated that bonds fared better in districts with both a supplemental and plant facilities levy than with just one of the levies.

Senator Nelson indicated that communities that support their school districts by passing levies also seem to have higher chances of passing bonds. He explained that it is a situation where communities that care can get better, but other communities suffer. He asked if it was possible to tell from the survey the quality of schools without levies. Casey said he could do this type of analysis. Casey said that there are differing levels of support for districts, as indicated by the differences in the passing of bonds and levies between districts. The data is meant to show that supplemental or plant facility levies alone are inconclusive of bond passing rates.

Senator Nelson indicated that a number of communities have difficult property tax bases to pass bonds. Casey presented results on how bond passing rates are influenced by passing thresholds. More bonds would have passed with lower bond thresholds. It is conclusive that bond thresholds present a barrier to school bond passing.

Casey compared expenditures across state lines on both a per student basis and on a per building gross square footage basis. Idaho ranks last nationally in funding school buildings per student. On a per square footage basis, Idaho ranks second to last nationally. Idaho is not the only state that is struggling. All neighboring states are failing to meet the 7 percent allocation recommendation. Idaho has a two-thirds bond threshold rate, which is the highest in the nation, while most other states require a simple majority. Idaho is one of only two states in the neighboring state region that doesn't have a capital projects program to assist districts in building new schools. Idaho is the only state in the region to not have a local maintenance and operations property tax that doesn't need to be approved by voters. Finally, three neighboring states have oversight offices for school buildings with registries to track conditions, assist with asset planning, and long-term asset management.

Casey indicated that the number of charter schools has doubled in the past 10 years. He surveyed charter schools in the same way as school districts and found charter school responses were the opposite of district responses. Most charter school administrators said their building condition was excellent or good and indicated that their challenge was primarily acquiring new buildings to accommodate growth. Charter schools smallest concern was phasing out buildings past their useful life.

Casey said that a follow-up survey found issues with charter school buildings. 44 percent of charter school survey responses indicated that they did not have enough room to accommodate the growing number of students in the next 10 years, and 63 percent said they lacked adequate specialized instruction spaces such as computer labs, gyms, or special education rooms. Charter schools are different from districts in that they tend to move into existing buildings.

Representative Berch asked when the report was submitted to the Governor for review. Casey replied that it was submitted in mid-January.

Senator Nelson said that it makes sense that charter school buildings are newer because of the program giving charter schools state facility funding. He asked how it compares to the two percent replacement cost maintenance funds districts receive, and if charter schools were being maintained differently. Casey replied that charter schools receive an allotment per student, based on the amount raised by districts in bond and plant levies. The total amount raised by all districts, divided by the number of students, multiplied by a factor. Right now, the factor is 0.5, which is the highest it can be per statute. Charter schools receive more funds than districts without a plant facilities levy or bond redemption levy, but they receive less than districts with those two levies. Charter schools do receive the same funds for facilities as districts, such as discretionary funds, lottery dollars, and the state match. Charter schools that lease their buildings don't need to participate in the 2 percent allocation requirement. In 2020, charter school allocated \$1 million more than they needed to. It is difficult to determine if the 2 percent is sufficient because the buildings that charter schools are in vary so much.

Representative Troy then invited Matthew Reiber to share the Governor's perspective. Matthew confirmed that the Governor's Office received the report two weeks earlier and indicated that the report was thorough in looking at deferred maintenance. The Governor holds education as a top priority. Currently the Governor is interested in figuring out the deferred maintenance problem along with other priorities, working in conjunction with the Legislature. The dollar amount is quite large between where districts are and where they need to be.

Representative Berch referred to the \$874 million required to get schools in good condition considering the \$600 million taken out of the surplus. He questioned if the problem stems from

not taking the Supreme Court's ruling seriously in terms of the state's responsibility for funding school building maintenance. He suggested that the recommendation should come from the Governor's office to submit this as a line item in the budget and indicated a need for a standardized form for building maintenance in order for the assessment to have a consistently calculated dollar value. He said that the Legislature needs to play the role of changing the 2 percent to somewhere closer to 7 percent and that central leadership needs to drive this change. He asked if this recommendation has enough merit for the Governor to take leadership on, and if so what kind of action can be expected.

Mr. Reiber agreed that the Governor is a leader in education in the state. In terms of this specific problem for education, deferred maintenance is handled at the local level with bonds and supplemental levies. He was unsure if the only solution is to add a line item for deferred maintenance in the budget. There are multiple options to solve the problem such as looking at the thresholds for bonds, or different types of supplemental levies. Looking at all options would be valuable in helping schools.

Representative Berch said that bonds and levies are not the best way to approach this problem. The Governor needs to take the lead on the state funding this maintenance, and it would be a good way to lower property taxes if the state resumes its constitutional responsibility. Mr. Reiber indicated that Representative Berch's comment mirrors constituents' opinion regarding property tax and deferred maintenance for schools. The Governor's office is willing to work on solutions.

Representative Troy invited Dr. Peter McPherson from the State's Superintendents Office to address the report. Dr. Peter McPherson invited Julie Oberle of his office to join him. He directed the committee's attention to the response letter from Superintendent Ybarra. The Superintendent was interested in the comparison of school facilities with surrounding states, as well as the potential formation of a facilities condition assessment, and asked if that assessment proceeds to involve her staff. Dr. McPherson indicated that prior to his current job, he was a Superintendent of Schools in the Challis district and can speak to the rural and remote challenges in Idaho. Since he left the district, they have shuttered two schools in the Challis district partially due to low enrollment numbers and the high cost of maintenance.

Senator Nelson asked about compliance of the maintenance reports. He asked if the department had a suggestion on where in state government the office should live. He also asked about a permanent building fund and for suggestions. Dr. McPherson indicated that he could take that question back to Superintendent Ybarra. There have been discussions between the department and the Office of the State Board Education and the Office of School Safety and Security, however there is no definitive answer at this time.

Senator Nelson asked if there are other likely areas in state government to house the maintenance reports? Dr. McPherson deferred the question to Julie Oberle, CFO for Public Schools. Ms. Oberle said that the Department of Public Schools collected the plans for the first few years but did not have the capability or knowledge to review these reports. She said they do collect a school building maintenance report from schools providing a summary of current spending, funding sources, and planned uses for the following year. This report can be provided to the committee. In fiscal year 2021, schools were required to spend \$74.2 million on maintenance in order to meet the 2 percent requirement, but actually spent \$149.5 million. She said that parking lots, playgrounds, and other areas were not an eligible use of the 2 percent requirement. She reiterated that charter schools tend to have brand new buildings. In the case of Garden Valley, they just replaced their building and find it difficult to meet the 2 percent

requirement. Charter schools receive the charter school's facility funding as well as the state match requirements if they have student-occupied buildings. If charter schools have buildings they do not own, they still receive a lottery distribution.

Representative Troy requested a motion on the report. Rakesh indicated that there was not a quorum to take action and suggested taking action at the next meeting.

Representative Troy adjourned the meeting at 5:08 p.m.