

Minutes of the Joint Legislative Oversight Committee

July 10, 1996

Budget and Policy Conference Room

Statehouse

Boise, Idaho

The meeting was called to order at 9:10 a.m. by Co-chair Senator Bruce Sweeney. Members present were Senators Atwell Parry and Grant Ipsen, and Representatives Bruce Newcomb, Kitty Gurnsey and John Alexander (by phone). Representative Vandenberg joined the meeting in progress. Staff members present were Nancy Van Maren, Tom Gostas, Dan Medenblik, Dan Kern, Beth Harris, Julie Cheever, and Margaret Campbell.

MINUTES

Co-chair Sweeney opened the meeting with a review of the minutes. **Representative Gurnsey moved to accept the minutes and Senator Parry seconded the motion.** Co-chair Sweeney said Senator Reents had suggested several revisions.

The motion, which included accepting the revisions, passed unanimously by voice vote.

STAFF INTRODUCTIONS

Ms. Van Maren said three new staff had been hired to fill the two new positions and the position held by Dan Medenblik, who was resigning. The new staff were Dan Kern, Beth Harris, and Julie Cheever. Dan Kern had contracted with the OPE on the safety busing report. He has a background in accounting and received a law degree from the University of Idaho. He will take over legal responsibilities for the office. Beth Harris worked for RAND ten years in California, Washington, D.C., and (by modem) from Burley, Idaho. She is a statistician and will also provide computer and software support for the office. Julie Cheever worked for the State of Idaho as a Public Information Officer and in the Office of the Governor as a liaison on education and social service issues. OPE will benefit from her agency expertise and writing skills.

UPDATE OF PUPIL TRANSPORTATION WORK GROUP

Tom Gostas, Performance Evaluator, updated the committee on the Pupil Transportation Work Group meeting held June 27, 1996. The goal of the first meeting was to generate ideas to meet JLOC's request for increasing efficiency incentives and district accountability. At JLOC's request, the work group was made up of the Chairs of the Senate and House Education Committees or their designees, Dr. Anne Fox, a representative of the superintendents'

association, and any member of JLOC wishing to participate. A number of options for changing the funding formula were briefly discussed. Ideas from the meeting were summarized and then mailed to the work group for decisions about how to proceed. The work group focused on four key questions: What are the funding mechanisms of other states? How could Utah's formula be applied in Idaho? What methods would equalize reimbursements for contracting and non-contracting districts in Idaho? How would specific changes to the state funding formula affect school district funding? The work group may also consider collecting "best practices" in district transportation programs. The OPE will conduct the analyses to help the work group develop recommendations.

Beth Harris, Performance Evaluator, spoke about efficiency in pupil transportation. The request to develop incentives for efficiency rested on the assumption that there was room for improvement. There were two questions: how to define and measure efficiency; and how to encourage districts to make good decisions with pupil transportation funds. The first would involve a variety of interrelated measures that even together may not indicate efficiency levels and would be time and labor intensive to develop. Regarding the second, it was important to provide incentives to all districts, regardless of a district's current level of efficiency.

Senator Parry asked how much interest the work group showed in reducing the reimbursement percentage. Mr. Gostas said there was some discussion of options for change but no decisions were made. Senator Parry asked for more information on the Utah formula. Mr. Gostas said Utah developed an average cost per mile, average cost per minute, average administrative cost, and an average depreciation cost. The districts were reimbursed according to these averages. He did not think Utah had a straight percentage for reimbursement.

Representative Vandenberg joined the meeting in progress.

Senator Parry said that an average cost per minute may not be reliable, since it was easy to slow buses down. Ms. Van Maren said Utah's system for funding was data-intensive, and was to be used with statewide routing software to determine "efficient" routes. The work group had discussed Utah superintendents' disenchantment with the system, and requested additional analysis of this formula.

Representative Gurnsey said Idaho's law allowed for pupil transportation no matter in what remote area the pupils lived. She said that laws should be changed to be more cost-effective for the state and put more responsibility on parents for transportation. Ms. Van Maren said the work group discussed whether the state should be required to transport children, and it was quickly agreed that the state should transport. The work group would be identifying needed changes in the law.

Senator Parry asked whether the constitution or state law required transportation of students. Mr. Gostas said Idaho Code § 33-1501 established pupil transportation. Senator Parry asked if the statute made it impossible for parents to pay for transportation. Mr. Gostas said the statute required transportation to be provided if the pupil lived more than one-and-one half miles from their school. Districts could pay parents for transporting their children. Senator Parry said that

Idaho had been generous with transportation. He said California charged per student for transportation.

Representative Gurnsey said she was aware of a contract bus company which used its buses in the summer for nonpublic transportation activities. She asked if contractors charged all of their bus depreciation to the school district or prorated a portion. Mr. Gostas said he did not know. Representative Gurnsey asked if there was a law that required each district to have its own transportation service, or could two school districts transport together. Mr. Gostas said he would have to research that question, but thought districts' levy authority might be involved.

Co-chair Sweeney said he had learned there was no provision in JLOC's statute that allowed the committee to review contractors' books. He said the committee may want to consider adding an audit clause to the contracts to provide this authority without having to exercise subpoena power. Representative Alexander said that could be done by incorporating a paragraph in the model contract through the department. Ms. Van Maren said she had spoken with the Attorney General's office for clarification of this issue. By law, JLOC could review any document of any state agency, including school districts. However, a contractor's relationship to a school district is governed by a contract. To ensure access, the Attorney General's Office had recommended including an audit clause in the contract. As of May 1996, there was no audit clause in SDE's model contract. A second option was to invoke the committee's subpoena authority. However, she did not know if the courts would grant a subpoena, and if they did, what protections would be provided the private businesses.

Representative Alexander asked if there was still time to modify the model contract. Ms. Van Maren said they could make contact with the Deputy Attorney General at the Department of Education. Representative Alexander said it would be better to have the clause built into the contract than to use subpoena power. Senator Parry agreed.

Co-chair Sweeney asked if there were any objections from the committee. Hearing none, he asked Ms. Van Maren to contact the Department of Education and the State Board of Education to have an audit clause placed into the model pupil transportation contract.

Senator Ipsen said that some districts had only one bidder. He said that if there were several bidders, it may decrease the need for audits. In the case of one bidder, it would be more important to include an audit clause. Co-chair Sweeney said that placing the audit clause in the contract would provide the contractor with notice that records should be in order for an audit. Senator Parry said that when an entity uses state funds, there should be responsibility and accountability. He was surprised an audit function had not been in place previously. Co-chair Sweeney agreed.

Ms. Van Maren said the work group had discussed compiling districts' "best practices" to distribute to superintendents. She asked if JLOC was interested in pursuing this idea and wanted to use OPE resources this way. Co-chair Sweeney said it would be interesting to see where others have found savings, but a handout of best practices would not encourage districts to be efficient. Senator Parry said the reimbursement rate needed to be reduced, and other things

would fall into place. Representative Alexander wondered if it would be appropriate to ask the Department of Education to compile best practices and forward copies to the districts and JLOC. Senator Parry asked if there would be enough savings to compensate for the time to develop information about best practices. Representative Newcomb said that unless the reimbursement rate were reduced, the best practices may not be used. What about reducing the reimbursement rate if the districts were not implementing best practices? Senator Parry suggested that the committee leave the final decision to the work group.

Ms. Van Maren said that the work group said they did not want to make any changes to reimbursement until they had data reflecting efficiency. If the work group decided to study district efficiency, OPE would sample school districts. The work group needed to decide whether the payoff would compensate for the study. Senate Parry said that districts would not have an incentive to operate efficiently until the reimbursement percentage was changed. Representative Gurnsey said that it would be difficult to get a change into committee because Legislators would not vote on something that would cost their districts. Senator Parry agreed and said it could be looked at from a funding point of view in JFAC.

TOPIC SELECTION

Ms. Van Maren said that with the departure of Dan Medenblik, the ongoing efforts in the area of pupil transportation, and the review of state-owned housing requested at the last meeting, OPE staff could take on one additional report.

Presiding Officers/Administrative Hearing Officers

Dan Medenblik, Performance Evaluator, presented background information on administrative hearing officers.

Representative Newcomb asked if OPE had taken samples of how many hearings an agency conducts. Mr. Medenblik said he had not done this for the background work. However, a survey by the legislative auditors identified agencies that hired administrative hearing officers full time.

Representative Vandenberg said he conducted public hearings in his work at the Department of Lands. He thought there was a possibility for bias, especially when the hearing was conducted by agency personnel. Outside hearing officers could also be biased toward the department that paid their salary. He said he felt a hearing officer pool or a disinterested group of people would probably be more fair in conducting public hearings.

Alternative Proposals for Evaluating State Land Transactions

Mr. Medenblik presented background information on alternative proposals for evaluating state land transactions.

Co-chair Sweeney asked if the committee was limited in their authority since the Land Board consisted of constitutional officers. Mr. Medenblik said the Constitution required the Land

Board to maximize the long-term financial return on the lands, subject to the laws of the state. Unless the Legislature were to pass a law that did not maximize long-term financial return, they had power to determine how the Land Board set and implemented policies. Representative Newcomb asked what the Legislature could do, in terms of authority. Mr. Medenblik said that several cases indicated the Legislature could pass laws to serve as guidelines for the Land Board to maximize the long-term plans for return, but it could not take decisions away from the Land Board.

Representative Gurnsey said recently the Legislature passed a law requiring leases be at fair market value, but the Land Board established lower lease rates, effective until 2000 or so. This seemed to contradict what Mr. Medenblik had said. Mr. Medenblik said he thought the Legislature would have a case in disputing the Land Board's action in this instance.

Co-chair Sweeney asked if the committee should be in the business of looking at valuations and making a judgment of the fair market value. Representative Alexander said the Legislature was responsible for upholding the Constitution and was obligated to take a stand against poor practices. Didn't they need to establish laws or procedures which assisted in the implementation of the Constitution? Representative Vandenberg agreed that the Legislature had the authority to challenge the methodology that was used for consistency with constitutional requirements, but it would have to be done through a lawsuit.

Representative Vandenberg was excused from the committee meeting.

Ms. Van Maren said the scope of the report could include an evaluation of the practices within the Department of Lands and their appraisal process. Representative Gurnsey said the Land Board was currently studying its practice of determining lease rates, and suggested that the co-chairs send a letter to the Land Board, notifying them of the committee's interest and concerns. She did not believe the committee should pursue this subject until the Land Board had an opportunity to review their leasing practices.

The "Tax Gap"

Mr. Medenblik presented background information on the state's tax gap.

Co-chair Sweeney said he did not know if the committee would benefit from a tax gap report, except to establish a dollar amount. Senator Ipsen said that if the amount were identified, it could be pinned down and recovered. Representative Gurnsey said that if Idaho becomes a state known for lax efforts in collections, it would be hard to collect. If Idaho becomes a state that pursues the non-payer, the tax debt becomes less.

Discussion

Co-chair Sweeney said the committee needed to decide on a topic. Representative Gurnsey said she did not see the administrative hearing officers as a significant problem in state government. Co-chair Sweeney asked if there was information on how many administrative hearings then go

to court; this could be an indication of whether the participants thought the hearing was biased. Ms. Van Maren said a report on administrative hearing officers would look at participants' concerns; OPE would do a sample survey to examine whether the process was satisfactory.

Representative Gurnsey said legislative staff from Budget and Policy Analysis had pointed to the tax gap as the best way to save the state money. She said she thought a postponement of the release of an audit at the Department of Revenue and Taxation indicated an existing problem.

Representative Alexander was excused from the meeting.

Senator Ipsen said he was concerned that the public was frustrated with not being able to get through the bureaucracy of government. He said an independent or unbiased means for hearings may help solve this concern. Representative Newcomb said there were examples where the public gave up because the costs to go to court were prohibitive. He said that a fair government should look at eliminating bias, so that people expect to receive a fair hearing. Senator Ipsen said that, unlike the state, the public does not have the resources to ensure an unbiased and straightforward hearing. Senator Parry said he had also received comments from the public that there was bias in the hearings.

Senator Ipsen moved that OPE conduct a study of the administrative hearing procedures and see what alternative patterns could be followed to help ensure the public citizen can be heard.

Senator Parry asked if the motion could include the tax gap. Ms. Van Maren said the office resources were not available for both studies at once. She said the committee had discussed at their April meeting a need to meet again in October for topic selection. She suggested one of these topics could be reconsidered at that time.

Representative Gurnsey said there were many avenues for citizens with complaints, if they chose to pursue it. She said the committee and staff would better spend their time on an evaluation of the tax gap. Senator Ipsen said the tax gap could be studied and more quickly disposed of than the administrative hearing officers. Ms. Van Maren said either study could be scoped for a release in October. She said it would be difficult to come up with an accurate estimate for the tax gap, because part of the tax gap was unreported or unknown. The same limits applied to the study of administrative hearing officers. Senator Sweeney asked if one topic was chosen now and another chosen in October, would there be enough direction to make change to statutes in the next session. Ms. Van Maren said the study selected now, would, but not a study selected in October.

Senator Parry moved to do an evaluation of the tax gap.

He said that he would like to move ahead on the administrative hearing officers at a later date. Senator Sweeney said this was a substitute motion.

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

The committee took a five-minute break.

Proposals to Improve JLOC/OPE Effectiveness

Ms. Van Maren said that OPE practice had been to include all suggested topics in one document for the full committee to review. However, the committee had not had sufficient opportunity to discuss a number of topics. One option for increasing the review of potential topics was the creation of a topic selection subcommittee to review legislative surveys and request background papers. This would narrow the number of potential topics and provide the full committee more information with which to discuss topics. Co-chair Sweeney said that since topics had been selected during this meeting, the committee could discuss this idea at the October meeting. Senator Ipsen asked if the committee was not considering all the topics. Ms. Van Maren said OPE compiled all the topics for committee meetings, but there was not enough time to discuss all of them. Also, because of office resources, OPE did not collect background information on topics unless requested.

Ms. Van Maren said a second option to increase the number of topics reviewed was to specify certain circumstances under which OPE could investigate an allegation without the committee's vote. The committee had decided early on that approving all requests would help reduce fears of a "witch hunt" and demonstrate legislative interest in topics. Also, the committee makes major resource decisions about staff time; approving topics helps protect OPE from having to put out brush fires. However, as a result, evaluations have tended to be fairly broad, lengthy, and involve policy analysis. Yet, a number of smaller-scoped issues are regularly reported to OPE, and no staff resources are available to address them. Ms. Van Maren provided examples of allegations she had recently received.

Ms. Van Maren asked that the committee consider establishing the circumstances under which her office could investigate an allegation without the time delay of coming to the full committee. She suggested cases in which less than \$500,000 was involved, took fewer than two weeks to complete, and received the advance approval of the co-chairs. The final correspondence would be sent out to all JLOC members so everyone would be aware of the findings once the case was closed. Alternatively, if the investigation revealed much larger concerns, she would present the topic to the committee as an evaluation proposal.

Senator Parry said he had confidence in the co-chairs, and had no objection. However, he said it was important that the committee members stay informed of the issues.

Senator Parry moved that Ms. Van Maren contact the co-chairs on minor issues, and, with their permission, move ahead on investigating the allegations. Notice of the results should be mailed to all members of the committee. Senator Ipsen seconded the motion. The motion passed unanimously by voice vote.

REVIEW OF OTHER LEGISLATIVE REQUESTS FOR EVALUATION

Ms. Van Maren said at the last committee meeting, JLOC referred the legislative survey topics to the Legislative Services Office (LSO), where analysts could answer some of them without a great deal of work. At that time, it was suggested that JLOC devote time in October to reviewing topics in greater detail. The committee will receive a compilation from LSO of the information, and OPE will send information to the Legislators who submitted the topics.

Ms. Van Maren said that she had received a response from the Director of the Department of Health and Welfare to the reminder letter sent by the co-chairs of the Medicaid subcommittee. In summary, there were two points: 1) The department's position remained unchanged. They said the report recommended a significant expansion of the Medicaid program and they would not take steps without stronger direction. 2) Future funding will be based on a fiscal year no later than 1995, so there was little Idaho could do to affect its future funding base.

However, the OPE had learned that in May, prior to the letter being sent, there was a bill introduced by Republicans in both houses of Congress that would base funding on 1996 information, which seemed to contradict the department's assertion. At this point, FY96 was also past, although the OPE report was originally issued during FY96.

Representative Newcomb said that opportunities had been lost because the department refused to act on the findings. A letter from the Director said everything would be based on the 1995 year, when, in fact, research showed that bills were introduced based on the 1996 year. The recommendations were divided between findings pertinent without reform on a national level and those that might be affected by the reform. But the department chose to ignore them. He said he thought it was appropriate for JFAC to consider this in the next appropriation process.

Senator Ipsen said the state had applied for what federal waivers it could. He said that the state did not know what the federal government would do in Medicaid. Medicaid was bigger than the welfare reform problem, with many issues to consider. He said the Medicaid advisory council needed to be given time to work through the issues.

Representative Newcomb said that he felt Senator Ipsen's explanation came from the stand point of the department's response to the report and not the report itself. The report did not recommend expansion; the department head only interpreted it that way. The committee should remember the department was unable to justify their interpretation during the report release. However, apparently there were other department employees that interpreted the report as written, referencing a letter of appreciation from a department employee. Co-chair Sweeney agreed, and said the state was spending state money on projects instead of applying for federal money and receiving a match. The department had determined policy itself rather than going to the appropriate committee for direction.

Co-chair Sweeney said the committee could apply pressure. It was unfortunate that the Health and Welfare Committees did not have the time to look at all these issues at the last Legislative session and make policy decisions. Senator Ipsen said that the advisory council had been asked

to submit recommendations to the Governor by the first of December for action in the next legislative session.

ADMINISTRATIVE MATTERS

Ms. Van Maren said the office planned to move to the east side of the basement in the Hall of Mirrors. Currently, the area was largely unoccupied, with the exception of a few ICSES employees who would move into a vacant space on the other side of their current space. The larger space became necessary with the addition of new staff, and the need for work space for contracted staff. The space was determined to be the least expensive and least disruptive to other agencies of all options available. The Department of Administration estimated the remodeling costs at \$55,200. At the direction of the Pro Tem and the Speaker, OPE designated \$9,000 in encumbered FY96 funds for part of the remodeling, and the co-chairs of JLOC asked the Legislative Services Office for funds since LSO will benefit from the office space OPE vacates. The Pro Tem and the Speaker had asked Pam Ahrens, Director of the Department of Administration, to move ahead with plans for the move and remodeling, using funds from the permanent building fund to pay for the remainder of the costs.

Ms. Van Maren reviewed the budget report for FY96. She said \$35,000 had been encumbered to pay for moving expenses such as a phone system, photocopying machine, (OPE currently uses Legislative Services machine and reimburses expenses), and office furniture. Committee members clarified that OPE did not own part of the copier and only a small part of the phone system.

Ms. Van Maren said in the FY97 appropriation, \$14,000 was granted for contracting out computer software support. Since the approval of these funds, there had not been a high demand for computer support. In addition, some of the individuals recently hired have additional computer software abilities. With ongoing legislative network support, most of the \$14,000 appropriation was not needed. Co-chair Sweeney asked if those funds could be designated to the remodeling costs. Ms. Van Maren said she needed a small buffer to cover computer support expense during the year and additional salary expenses for the three new employees. Senator Parry said it was much better to pay for all the moving costs possible and, if necessary, request needed funds later. Co-chair Sweeney said it showed fiscal responsibility in priorities. Ms. Van Maren said she could designate \$7,000 of the computer support appropriation to moving costs. **Co-chair Sweeney asked for any objections: hearing none, it was approved by unanimous consent.**

Ms. Van Maren recognized Eileen Tremblay, Legislative Analyst, who will be leaving her position with the Legislative Services Office. The new analyst assigned to OPE will be Cathy Holland-Smith.

Committee members were invited to tour the new office space for OPE. The meeting adjourned at 11:45.