

Minutes of the Joint Legislative Oversight Committee
June 12, 1998
House Majority Caucus Room, Statehouse
Boise, Idaho

Co-chair Representative Bruce Newcomb called the meeting to order at 8:30 a.m. Committee members Senators Bruce Sweeney, Grant Ipsen and Lin Whitworth, and Representatives Robert C. Geddes, June Judd, and Larry Watson were in attendance. Staff members Nancy Van Maren and Margaret Campbell also were present, as were staff Tom Gostas, Beth Harris, Eric Milstead, and Ned Parrish, at different points during the meeting.

Co-chair Newcomb opened the meeting with a review of the minutes. **Senator Sweeney moved to approve the minutes of the March 16 meeting and Representative Judd seconded the motion. The motion passed unanimously by voice vote.**

UPDATE ON OPE ACTIVITIES

Ms. Van Maren introduced Eric Milstead, a performance evaluator who joined the staff in February. He had begun working on the evaluation of state agency passenger vehicles and assisting on other office projects as needed.

Committee members reviewed the project scope summaries of the two projects currently underway in the office, state agency passenger vehicles and the Idaho Commission for the Blind and Visually Impaired (ICBVI), and confirmed that committee concerns had been included in the scopes of the projects. However, the recent resignations of two OPE evaluators had forced OPE to table the evaluation of the Idaho Commission for the Blind and Visually Impaired until the evaluation of passenger vehicles could be completed.

Co-chair Newcomb stated that he would like the committee to consider inviting Mr. Gostas and Ms. Harris to attend part of the executive session planned for the afternoon to discuss personnel matters.

The committee reviewed OPE's budget history. At the end of each of the last four years, OPE had reverted 7-23% of its appropriation back to the general fund. However, a reversion was not anticipated for FY98; the budget was more lean than in the past, as, over time, OPE had shifted funds from operating into personnel to increase its working capacity without requesting additional positions.

UPDATE ON IMPLEMENTATION OF REPORT RECOMMENDATIONS

State-Owned Dwellings

A finding in *State-Owned Dwellings* (October 1996) indicated that rents for state-owned dwellings did not meet fair market levels. To comply with IRS regulations, agencies needed to increase rents to fair market levels or report the difference between rent and the fair market level as employee income for tax purposes. Subsequently, the Department of Administration promulgated rules to require adherence to IRS guidelines and provide direction to agencies. Also, the report

recommended that rent for state-owned dwellings at the NICI Cottonwood facility be increased to cover maintenance costs. To comply with DOA's rules and the report recommendation, the Department of Correction had the homes appraised and initiated plans to increase the rents to the determined fair market levels on July 1 this year.

After viewing the houses in early June, a group of JFAC members expressed concern that the houses needed significant repair. As a result, the proposed higher rent level may be too high, and the increase could be too large to require of employees all at once. JFAC members had discussed bringing the houses up to standard before raising rents, or incrementally raising rents as conditions were upgraded.

Cathy Holland-Smith, Budget and Policy Analyst, Legislative Services Office, reported to the committee that the approximately \$92,000 that had been appropriated for the sewer and road projects was still available, but that no additional funds were available to make repairs to the houses at this time. She advised the committee that the Division of Public Works needed direction from JLOC and JFAC to move ahead with using the funds for these purposes. Requests for funds to make additional repairs would be included in the department's budget request for next year. In the meantime, the DOC intended to evaluate each individual house with the assistance of the Division of Public Works to redetermine fair market rent. Furthermore, if the determined rental rate fell below the fair market rate, the difference would be counted to the renter/employee as income.

Senator Sweeney moved that JLOC, in agreement with JFAC's recommendation, send the Department of Administration a letter, jointly signed by JFAC and JLOC co-chairs, directing the Division of Public Works to use the approximately \$92,000 still available from what had been appropriated for the Cottonwood sewer and road projects as originally intended. Senator Whitworth seconded the motion, and it passed unanimously by voice vote.

Estimating and Reducing the Tax Gap in Idaho

Beth Harris, Performance Evaluator, updated the committee on the implementation of recommendations made in this report. She said each of the nine recommendations had been resolved or implemented and follow up on the report was now closed. Co-chair Newcomb commended OPE on an evaluation that had "worked well." Legislators had worked with the State Tax Commission to put recommended improvements in place.

License Plate Design Royalties Paid to the Idaho Heritage Trust

Tom Gostas, Performance Evaluator, updated the committee on the implementation of the report's recommendation. The evaluation called for a state agency to administer and monitor an agreement between the state and Idaho Heritage Trust. The Office of the Attorney General had drafted the agreement and the committee had referred the designation of an agency to the Governor. However, difficulties had been encountered in securing a signatory state agency. The Idaho Transportation Department had agreed to act as signatory, with clarification of its responsibilities under the agreement, but the Idaho Heritage Trust had not found this arrangement acceptable. Subsequently, the Department of Parks and Recreation had preliminarily agreed to act as the signatory to the agreement, pending approval from its board. This seemed the most likely action at this time. Once the agreement is signed, follow-up on this evaluation will be complete. OPE will forward further information to the committee when it becomes available.

REVIEW OF COMMITTEE OPERATIONS

Review of 1998 Session

Last session, JLOC referred two reports to germane committees. One of these had received a hearing in each house. Also, a bill had been introduced to implement a recommendation included in the *Alternatives to Incarceration* report, but did not pass.

Further, at the direction of the committee, OPE had provided staff support to the Senate and House revenue and taxation committees in their review of the operations of the Board of Tax Appeals. Representative Watson said the changes that had come out of the session appeared to have given the board a “new breath of life” in their operations.

Co-chair Newcomb reviewed the meeting between the co-chairs, the director, and leadership. Among other issues, they discussed recent reports and implementation of OPE’s report recommendations. Leadership was supportive and pleased with the progress of the function. Senator Sweeney emphasized the importance of remembering that while OPE makes recommendations, it is up to the germane committees to determine action on matters of policy. Leadership had discussed ideas for increasing germane committee use of OPE evaluations, including the possibility of a more formal report review period at the beginning of each session. After discussing this and other potential improvements, committee members directed OPE to continue the same efforts. In particular, OPE should continue notifying committee chairs of a report release; the chairs would determine whether to hold hearings.

Topic Selection; Change in Legislative Survey; Feedback on Project Scope Summaries

To increase OPE’s ability to plan its work, increase its efficiency in preparing background materials, and improve the timely distribution of background information to committee members, Ms. Van Maren proposed holding topic selection twice a year. To date, the committee had considered potential topics at almost every JLOC meeting held. In discussion, committee members agreed this adjustment would likely improve efficiency, and wanted to ensure they could still request and receive background papers. Ms. Van Maren suggested that background papers could be requested at the meeting prior to a topic selection meeting, the background papers prepared between meetings, and provided to committee members in advance. **By unanimous consent, the committee decided to hold topic selection twice a year in the future.**

With the consent of the co-chairs, OPE had not surveyed Legislators this spring for their evaluation requests and input. A number of legislative requests were received during the legislative session, and OPE staff resources had been obligated until late in the year. Ms. Van Maren suggested that a survey could be considered for the fall, as staff resources became available.

Committee members reviewed the one-page project scope summaries they had received to date. Members said the summaries helped confirm that their questions would be addressed during the course of a project and asked that they continue receiving them.

The committee took a short break.

REVIEW OF NEWLY-RECEIVED REQUESTS FOR EVALUATION

Boards of Medicine and Pharmacy

Co-chair Bruce Newcomb explained that the House Health and Welfare Committee had made a formal request for an evaluation of the Boards of Medicine and Pharmacy.

To address the committee regarding the concerns behind the request, co-chair Newcomb called upon Dr. Russell Newcomb. Dr. Newcomb explained his understanding of the problems involved: essentially, the playing field between “bad doctors” and state oversight boards was not level. Doctors were motivated to protect their reputations because information about doctors is maintained and accessible by hospitals, insurance companies, and the public. When faced with potential disciplinary action, “bad doctors” could get the support of high-priced attorneys and the backing of “expert witnesses,” with the assistance of funding from malpractice insurers. Idaho’s boards, on the other hand, had one to one and a half investigators each and, in the case of the Board of Medicine, relied on volunteers to act as expert witnesses. His experience assisting the Board of Medicine as a voluntary expert witness had eventually led to his conclusion that the board’s resources might not be sufficient to do their jobs.

In response to questions, Ms. Darleene Thorsted, Executive Director of the Board of Medicine, and Randy Tilley, Division of Financial Management, clarified that Idaho’s 1998 profiling law required medical professionals’ self attestation to the accuracy and truth of the information reported. Hearing also from Steve Millard, Executive Director of the Idaho Hospital Association, committee members discussed what action could be taken when a doctor was suspected of having (or had been found to have) problems.

Co-chair Newcomb invited Barbara Butler, a citizen who had brought a number of related concerns to the Legislature last session, to address the committee. Ms. Butler said that her key concern was the apparent lack of communication between the Boards of Medicine and Pharmacy and hospitals. In addition, neither board had taken action in response to concerns about questionable practices that she had brought to their attention. Furthermore, the Legislature should give serious attention to the problem of prescription drug abuse, including the use of phone-in prescriptions by minors. The experiences of her daughter, who had overdosed on prescription drugs, could serve as an example of the numerous problems in the current system.

Co-chair Newcomb invited Representative Twila Hornbeck to address the committee. She said that her inquiry into the issues being discussed began when she called meetings of involved parties last summer. Three bills were drafted and presented to the Legislature last session. However, the House Health and Welfare Committee had been reluctant to act on the issues involved until further information could be obtained. She summarized the key issues: doctor discipline, public protection, a computer system at the Board of Pharmacy, and the state’s responsibility and potential liability.

Dr. Newcomb suggested that there had been a general feeling that the performance evaluation should be conducted because the existing laws were sufficient, but resources to enforce them may not be.

The committee asked questions about the new computer system the Board of Pharmacy had to assist in tracking prescriptions for controlled substances. Ms. Thorsted cautioned the committee that the data from the system needed to be combined with a review of medical records to determine whether the prescribed drugs were medically indicated. Committee members discussed how the sharing of computerized information would help eliminate many of the problems, but were cautioned by Dr. Newcomb that patient confidentiality limited the information that could be shared.

Representative Geddes moved that OPE do a background paper on the Boards of Medicine and Pharmacy. Representative Watson seconded the motion. Several committee members said they thought enough was known to begin an evaluation. After further discussion, **Representative Geddes made a substitute motion that the OPE proceed with an evaluation of the Boards of Medicine and Pharmacy as they saw fit—either first compiling a background paper or commencing an evaluation. Representative Watson consented to the substitute motion and it passed unanimously by voice vote.**

Department of Health and Welfare, Information Technology staff

The committee had received a request to look into the Department of Health and Welfare's decision to contract out a portion of its information technology function. Concerns had been raised that the plan was for the contractor to hire the state employees who currently fulfill the function to do the same job, but at higher rates of pay. Ms. Van Maren reported that some of the key issues may be addressed in forthcoming financial audits.

Senator Ipsen reported that he had spoken with the department about the situation and had learned that the department had difficulty keeping IT staff, partly because they could not pay them enough. Repeatedly training people from the ground up only to have them leave became expensive over time. Contracting might also give them needed flexibility. Furthermore, given the potential that financial audits could cover some of the issues, it would be best to not duplicate efforts of the legislative financial auditors. **By unanimous consent, the committee decided to discontinue further consideration of this topic.**

Head Start

The committee had received a request to review Head Start prior to next legislative session. Questions about its effectiveness had arisen, as well as how it was funded here and in other states. Sen. Ipsen reported that he had recently met with a Head Start program in Boise. He was interested in knowing how the program determines its effectiveness and agreed to distribute to JLOC members copies of any reports on effectiveness that he received from other sources. However, OPE resources were not available for any further evaluations. **By unanimous consent, the committee decided to keep this request on the agenda for future consideration.**

Idaho Educational Public Broadcasting System (IEPBS)

Committee members discussed the questions that had been posed: How does IEPBS staffing compare to that in comparable commercial television stations? How has funding been affected by changes in the availability of federal funding? Committee members agreed the topic was of interest, but that OPE resources were not available. **By unanimous consent, the committee decided to keep this topic on the agenda for future consideration.**

Division of Aeronautics

The committee had first considered an evaluation of the Division of Aeronautics in July 1995 and, after receiving further information, in February 1996, members had decided to discuss a potential evaluation at a future meeting. Recently, questions about the need for a state fleet had again been brought forward for consideration. Bart Welch, division Administrator, responded to committee questions about the number of aircraft in the fleet and their cost-effectiveness. **By unanimous consent, the committee decided to not pursue this topic and took it off the agenda for future consideration.**

The committee took a lunch break.

REPORT RELEASE: *MEDICAID REIMBURSEMENT FOR OUTPATIENT OCCUPATIONAL AND SPEECH THERAPY*

Ms. Beth Harris, Performance Evaluator, reviewed the findings and recommendations of the evaluative review and responded to questions from the committee.

In response to committee questions, Ms. Deeanne Moore, Administrator of the Division of Medicaid, Department of Health and Welfare, explained that the difference between “fraud” and “abuse” was intent. The committee discussed the recent case of alleged fraud involving a hospital and independent provider and what was needed to avoid similar situations in the future.

Committee members discussed the anticipated impact of allowing independent providers to bill Medicaid directly and licensing of speech therapists as a way of improving oversight under direct billing. Ms. Moore acknowledged that licensure provided a level of oversight beyond the certification process. However, the department had found that increased service accessibility (due to allowing independent practitioners to bill Medicaid directly) led to the increase in the number of services provided, and, therefore, the cost. The report concluded that allowing direct billing was unlikely to reduce Medicaid costs.

Hospitals are responsible for overseeing contracted providers to ensure they adhere to the terms of their contracts. The report found the provider contracts were often weak and hospital oversight could be improved. According to Ms. Moore, the department does not oversee hospital contracts with their contractors. Instead, the Department of Health and Welfare holds hospitals accountable for adhering to applicable laws and regulations. In discussing the margins hospitals received for these services, Ms. Moore emphasized that, while reimbursement for a given service may exceed costs, Medicaid would never reimburse a hospital over 100% of costs when looked at in the aggregate. Steve Millard, Idaho Hospital Association, said Medicaid reimbursement to hospitals was often less than cost. In addition, new compliance programs should make it harder for providers to abuse the billing system. Ms. Van Maren assured Mr. Millard the office would send copies of the report to the hospitals and respond to their questions regarding their provider contracts.

Representative Geddes moved to accept the report. Senator Ipsen seconded the motion and it passed unanimously by voice vote.

The committee considered a list of “active” topics and a list of topics that had expired without committee action. Once a topic expires (or is no longer actively pursued), the related records become public. JLOC can elect to revisit a topic at any time. **By unanimous consent, the committee decided to take no action on the evaluation topics with an “active” status.**

PLANNING FOR NEXT SESSION

The committee discussed whether to hold an in-depth orientation for new committee members prior to next session. Members of JLOC who had not served on the committee originally said they appreciated the information they had received from OPE when they joined the committee. Representative Watson said, however, that he knew little about JLOC and OPE until he began serving on JLOC. Though unrelated to orientation for new JLOC members, he thought more time should be spent explaining the performance evaluation function to freshman Legislators during their orientation in December. After further discussion, committee members directed Ms. Van Maren to work with new JLOC members to ensure they had access to sufficient information about the committee and OPE. If convenient, new members could meet as a group.

Co-chair Newcomb said he was interested in committee members’ input into the long-term future of the performance evaluation function. He had heard from Legislators who wondered why their topic had not been addressed, and was concerned about the number of topics with apparent merit that could not be addressed with current office resources. On the other hand, he did not want requesting a performance evaluation to become an avenue to avoid addressing tough policy issues. Given that the office was set-up with a minimum of resources, the pending changes in committee leadership, increases in legislative requests for evaluation, and the recent resignations of two senior evaluators, Ms. Van Maren presented potential pro’s and con’s of three options for the long-term structure of the performance evaluation function:

1. Redefining the mission of OPE to focus on policy analysis;
2. Expanding OPE resources; and
3. Merging OPE with legislative audit function.

She added that OPE staff met regularly to find ways to streamline their work and had improved its own efficiency so that more projects could be released in a given period of time. In discussion, Representative Judd said she was not interested in policy analysis with less verification of information. Other members agreed the current evaluations were useful. Committee members noted that merging with the financial audit function would not necessarily fulfill the resource needs, as legislative audits likely needed the staff they had. Senator Ipsen said, and Representative Watson concurred, that he was more interested in legislative audits and OPE collaborating rather than merging, and that was apparently already occurring. A larger total staff, however, would decrease vulnerability to staff turnover. Representative Geddes said that legislative audits and performance evaluation had separate missions. He thought OPE had worked well as it was; if it were merged with legislative audits and it did not work, it would be difficult to undo. Further, while additional resources may be warranted, it would be better to make change slowly. Committee members agreed on the importance of protecting the independence of the function and the importance of the oversight committee in ensuring that topic selection and the evaluation process was not politicized. Representative Watson asked whether OPE could advertise for the two vacant positions. Co-chair Newcomb said that a decision would probably be made shortly and thanked the committee for their ideas.

EXECUTIVE SESSION

Co-chair Newcomb said he would entertain a motion to meet in executive session for the purpose of considering personnel matters.

Representative Geddes moved that JLOC meet in executive session and Representative Watson seconded. The motion passed unanimously by roll call vote.

At the completion of the committee's executive session, **Senator Sweeney moved to meet in regular session. Senator Whitworth seconded the motion and it passed unanimously by roll call vote.**

Upon reconvening, **Senator Sweeney moved to increase Ms. Van Maren's salary by 7.7% for fiscal year 1999. Senator Whitworth seconded the motion and it passed unanimously by voice vote.**

Committee members stressed the importance of finding ways to address staff burnout. Senator Ipsen suggested the possibility of contracting with retired CPA's when their expertise would be useful to an evaluation; they may be interested in contributing to several short-term projects over time.

SCHEDULE FOR FUTURE JLOC MEETINGS

The committee asked that members receive the updates on implementation of recommendations from two reports—*Alternatives to Incarceration* and *Public School Use of Tobacco Tax Funds*—when they are received instead of convening a meeting to review them. The next meeting was tentatively set for early fall, to depend on the completion of the state agency passenger vehicle report.

The meeting adjourned at 4:00 p.m.