

Minutes of the Joint Legislative Oversight Committee*
October 25, 1999
Basement Conference Room, J.R. Williams Office Building
Boise, Idaho

Co-chair Senator Marguerite McLaughlin called the meeting to order at 8:35 a.m. Committee members Senators Atwell Parry, Grant Ipsen, and Lin Whitworth, and Representatives Debbie Field, Robert Geddes, and Margaret Henbest were in attendance. Staff members Nancy Van Maren, Eric Milstead, and Margaret Campbell also were present.

Co-chair McLaughlin opened the meeting by reminding the committee that the minutes from the 6/21/99 meeting had been circulated to members and approved by signature of a majority.

UPDATE ON PROGRESS REGARDING THE IDAHO HERITAGE TRUST

Ms. Van Maren reviewed committee action related to a May 1997 evaluation of the license plate royalty fees paid to the Idaho Heritage Trust. At the June meeting, due to a lack of progress on establishing a written agreement between the Trust and the State, the committee passed a motion to prepare an RS that would cancel all Idaho Code sections that govern the transfer of license plate funds to the Idaho Heritage Trust, and invite the Idaho Heritage Trust to attend the meeting at which the RS would be discussed.

Co-chair McLaughlin reminded the committee and those in attendance that the committee would not be discussing the merits of the work of the Trust, because they were not in question at this time. Rather, the committee was interested in the Trust's accountability to the state for the funds it receives. She called upon Mr. Paul Smith, Chairman, Idaho Heritage Trust, to address the committee. Mr. Smith said the Idaho Heritage Trust and the Office of the Attorney General had an agreement in draft form that the Trust believed complied with the requests stemming from the 1997 OPE report. He reviewed the Trust's projects for the committee and provided a copy of the draft agreement to the committee. In response to questions, Mr. Smith assured the committee that he had been assured that no state funds had been used to pay for the original design and no state employees had been involved.

Co-chair McLaughlin called on Mr. Nick Krema, Deputy Attorney General for the Department of Parks and Recreation, to address the committee, and recognized department Director Yvonne Ferrell. Mr. Krema reported that the outstanding issues with the Trust had been resolved, so that he could advise his client, Director Ferrell for the Department of Parks and Recreation, to sign the agreement. Director Ferrell said that in her opinion, all issues had been resolved.

Committee members discussed the collection and distribution of license plate funds to the Trust. At the time of the evaluation in May 1997, the royalty payment had been collected on some plates not bearing the trademarked design, with the funds transferred to the highway distribution account. **Committee members requested that OPE check with the Idaho Transportation Department to ensure this was no longer the case and report back to the committee what was learned.**

* As approved by a majority of members, Joint Legislative Oversight Committee (per attached signatures).

Co-chair McLaughlin said the committee would review the draft contract, although the committee had no authority to approve it. The committee thanked the Trust and Mr. Krema for their hard work on coming to an agreement. Senator Parry said there appeared to have been some misunderstanding about Ms. Van Maren's role in achieving a written agreement. He wished the record to reflect that Ms. Van Maren was acting on the advice and direction of JLOC.

Senator Parry moved that the RS to cancel all Idaho Code sections that govern the transfer of license plate funds to the Idaho Heritage Trust stay as an RS and go no further as long as the written agreement was approved. Representative Field seconded the motion, and it passed by unanimous consent.

REPORT RELEASE: *EMPLOYEE MORALE AND TURNOVER AT THE DEPARTMENT OF CORRECTION*

Co-chair McLaughlin advised those present that JLOC was different from other legislative committees, in that it did not take testimony; the committee would hear from OPE and the department only. Ms. Van Maren presented a summary of the findings and recommendations of the report and, with in-house and contract staff, responded to questions from the committee.

Co-chair McLaughlin called on Mr. Ralph Townsend, Chairman, Board of Correction, to respond to the evaluation report. He said he wanted to assure the committee that the board was responding positively to the report. He said they were focusing particularly on two areas: strengthening communication and issues related to compensation and benefits.

Director Jim Spalding, Department of Correction, provided preliminary remarks and then responded specifically to each recommendation. He said he heard the timeframe of the report made it difficult to compare turnover at the Department of Correction to that of corrections departments in other states, although most had high turnover. Further, although turnover was not always good, it had enabled the department to meet its payroll. He said he disagreed with the report's conclusion that there was not agreement within the department on the role of the Personnel Office, and, overall, the Personnel Office had less responsibility than the report had attributed to it. Further, he was concerned there was no data to back up the conclusions about the Personnel Office in the report. Nonetheless, Director Spalding said, the department would address each of the recommendations, and, in some cases, exceed expectations.

In response to committee questions, Director Spalding said he did not know what it would cost to increase pre-service training to the previous Training Academy levels. **Members requested the department provide them with estimated costs of providing five weeks of pre-service training.**

Committee members discussed concerns they had about how the department dealt with temporary employees and employees on probation. Members asked questions about on-the-job training, the employee screening process, and the morale survey the department had conducted during the course of OPE's review. Representative Geddes said he wished to clarify that, in requesting this evaluation, it was not his or the committee's intent to "accuse anyone of anything"; rather, the committee was responding to concerns members had heard.

Representative Field asked Director Spalding what the committee could expect in terms of results from the recommendations made. Any specifics? Director Spalding said one of the problems was

that morale was a perception, not necessarily a “true thing.” He said the department would require time to study the survey results, but would not quit working on it after the report release. In response to further requests for specific actions, he said the department was studying communication and would standardize its measurement of turnover, although he wasn’t certain turnover should be a measurement of success; if it were, he could go and reduce turnover by keeping non-performing employees in place, a suggestion with which members subsequently disagreed. Also, he thought the concerns about fairness in promotions were “straightforward” and could be addressed by a policy that would be written and disseminated to staff.

Director Spalding said another problem was in determining what was meant by “management.” The committee discussed this issue, with Representative Henbest noting that, given this, she wasn’t certain where there was accountability in the system. How could the department make assignments and hold individuals accountable without understanding roles? The committee asked additional questions about the Personnel Office and the role it played in the department. Members observed that, although Director Spalding characterized the office as a payroll office, his description of the office’s responsibilities made it sound more like a personnel office.

Representative Field thanked the board for responding positively to the report and asked Chairman Townsend if the board was ready to make tough decisions to make positive change in the department. Chairman Townsend responded by saying that he thought the department was “getting there” and that this evaluation was a “useful tool.” Director Spalding asked the committee to give the department some “slack” when members considered additional potential evaluations related to the department later in the day. He said the department didn’t need another evaluation right now.

Co-chair McLaughlin said that the committee would like to see improvement in 6 months. The committee supported the board and wished them well as they move forward.

Senator Parry moved to accept and release the report, with a charge to the Senate and House germane committees to follow through on recommendations and provide a progress report to JLOC in six months, either in writing or orally. A progress report from the department was to be included in the update as well. Representative Geddes seconded the motion.

In committee discussion, Senator Whitworth said he did not see in the report a recommendation to improve the relationship between management and staff. Yet employees feared retaliation and didn’t think they could get a fair hearing on a grievance. He asked for a guarantee that these issues would be addressed. Senator Ipsen suggested that the motion would take care of it, by allowing the department time to make improvements without the committee micro-managing.

The motion passed by a majority voice vote. Senator Whitworth was recorded as voting no, saying he could not support the acceptance of the report without a guarantee that employee concerns about retaliation would be addressed. Committee members said it would be difficult to put a guarantee in a motion, but suggested to the department that they had heard the concerns and they should address them in a progress report. As a further step, by unanimous consent, committee members directed that the letter to the germane committees make note that the committee was concerned about retaliation against employees.

The co-chairs commended OPE for a job well done.

EVALUATION AND REVIEW PRACTICES

Ms. Van Maren reviewed a proposed amendment to committee rules regarding the Governor's and agency's period for review of a report draft. Occasionally, the 14-day response period required flexibility because of travel schedules, holidays, etc. To account for these cases, the response period should be negotiated with the agency while still meeting the committee's needs. Representative Geddes suggested, and other members concurred, that the language in rule should be amended to say that the review period could be extended through negotiations with OPE's director--after concurring with the co-chairs. The committee decided to consider motions on committee rules after reviewing all four proposals on the agenda at the end of the day.

LIMITED SCOPE EVALUATIONS AND BACKGROUND PAPERS

Ms. Van Maren reviewed a second proposed amendment to committee rules that would replace background papers with limited scope evaluations. These evaluations had highly restricted scopes, and limited fieldwork to 100 hours. Committee members agreed to discuss the proposal after lunch.

The committee took a break for lunch.

UPDATE ON PROGRESS REGARDING THE IDAHO HERITAGE TRUST (continued)

Idaho Heritage Trust Chairman, Paul Smith, asked the committee what action they would take on the draft agreement he provided earlier in the meeting. Members asked Mr. Nick Krema about the contract's termination provisions. Mr. Krema described these provisions and said he thought all concerns had been addressed. In response to questions, he said the Legislature did not have the authority to endorse contracts.

Senator Parry moved to recommend that the Office of the Attorney General, Department of Parks and Recreation, and the Idaho Heritage Trust proceed forward with the contract. Senator Whitworth seconded the motion and the motion passed unanimously by voice vote.

REPORT RELEASE: *THE STATE BOARD OF MEDICINE'S RESOLUTION OF COMPLAINTS AGAINST PHYSICIANS AND PHYSICIAN ASSISTANTS*

Co-chair McLaughlin began with a reminder to those present that the committee did not take testimony. Mr. Eric Milstead, Performance Evaluator, and Ms. Rosemary Curtin, OPE contractor, reviewed the findings and recommendations of the report and responded to questions from the committee.

Committee members asked about the board's subpoena powers, the structure of the board and its investigation process, communication between the board and responding physicians, and hospital peer review. Members also asked about the qualifications of the board's investigator. Mr. Milstead said the quality assurance specialist was an R.N., and that the staff did not use outside consultation on the initial review of a complaint.

Co-chair McLaughlin called on Darleene Thorsted, Executive Director, Board of Medicine, to respond to the evaluation. Ms. Thorsted said the evaluation was a thorough and valuable assessment of their process. At the board's September meeting, members reviewed the report's

recommendations and decided to develop written guidelines. Also, the board will modify its written information to complainants and further review the entire report in the near future. She thanked OPE staff for being thorough, professional, and objective.

Committee members asked Ms. Thorsted about issues in the management letter. What was the board's relationship with its attorney and what steps did the board take to determine if there was a conflict of interest for this attorney who was in private practice? Ms. Thorsted assured the committee that the attorney recused herself in cases of conflict and that they would be presenting a draft of a contract with the attorney to the Board of Medicine at its December meeting.

Representative Field said and she felt that without written guidelines, the board was vulnerable to concerns about its process. Representative Henbest voiced similar concerns. Ms. Thorsted acknowledged that with the increased number of investigatory staff, the board needed guidelines to help ensure consistency. She responded to additional questions about the investigation and resolution process, due process for responding physicians, and case information that could be released, and the benefits of guidelines. Members discussed whether the guidelines should be internal or should be promulgated through the Administrative Procedures Act, and whether they should be reviewed by the Office of the Attorney General. Representative Henbest said her preference was that the guidelines be in rule. Further, she thought the terms of citizen members on the board should be increased to the same term length for physician members.

Representative Field moved to accept the report, send the report and management letter to the Senate and House germane chairs for consideration, and ask the Board of Medicine and Board of Professional Discipline to report progress on the written guidelines to the committee in six months, including whether the board was willing to take the guidelines to the Attorney General for review. Senator Whitworth seconded the motion and it passed unanimously by voice vote.

Pursuant to committee discussion, co-chair McLaughlin asked OPE staff to determine whether agencies may contract with private attorneys and report back what they had learned.

LIMITED SCOPE EVALUATIONS AND BACKGROUND PAPERS (continued)

The committee returned to discuss limited scope evaluations. The committee amended the language in the rules to specify that limited scope evaluations were limited to 150 hours of fieldwork. In addition, members simplified the process of approving these evaluations to be upon the written direction of co-chairs, with the approval of five committee members. If a committee member objected to an assignment, he or she should respond within ten business days after the written direction for the limited scope evaluation was distributed. After discussion, members decided to maintain the same release procedures as for full evaluations outlined elsewhere in rule.

REVIEW OF CURRENT ASSIGNMENTS AND PROJECT SCOPES

Ms. Van Maren reviewed current OPE assignments with the committee to provide a context in which to consider new requests. Related to the requested evaluation of the administration of public works projects, Senator Whitworth said that an interim committee was currently investigating related issues, and it would make better use of OPE time to wait for their results before pursuing an evaluation.

Senator Whitworth moved to postpone an evaluation of the Division of Public Works for six months before deciding whether to continue. Representative Field seconded the motion and it passed unanimously by voice vote.

Related to the requested follow-up report on requests JLOC made of the Department of Correction after receiving *Alternatives to Incarceration* in December 1997, Representative Field suggested the committee hold off on the follow-up until they saw progress on today's assignments.

Representative Henbest moved that OPE continue with the follow-up report. Representative Field seconded the motion. In discussion, it was clarified that the department had previously provided a follow-up report to JLOC; however, it left the committee with unanswered questions, leading to the request to OPE to do some work to follow-up. **Representative Henbest withdrew her motion.**

Representative Henbest moved to notify the Department of Correction of the committee's intent to review progress on committee direction related to the evaluation *Alternatives to Incarceration* at the same time the department reports on progress related to *Employee Morale and Turnover at the Department of Correction*. Representative Field seconded the motion, and the motion passed unanimously by voice vote.

The committee reviewed the estimated scope and resources to complete the evaluation of the delivery of community college services in Idaho. **Senator Parry moved to consider this topic as an evaluation request at the next meeting, in light of OPE's current workload and other issues that have taken precedence. Senator Whitworth seconded the motion and it passed by unanimous consent.** The committee suggested that Representative Doug Jones be invited to review the estimated scope and prioritize those issues he considered the most important and communicate this prioritization along with one paragraph explanation for the request, back to the committee.

REVIEW OF ADDITIONAL REQUESTS FOR EVALUATION

Co-chair McLaughlin called on Mr. Bill Larsen, representative of the Consortium for Idahoans With Disabilities, to address the committee regarding the Consortium's request for an evaluation of the Division of Public Transportation within the Idaho Transportation Department. Mr. Larsen said the Consortium was concerned that public transportation for those with disabilities was not efficient or effective and inhibited their ability to work. In response to questions, he clarified that they felt the division was not using its funds well, and was not attempting to get additional available funding.

Carri Rosti, Internal Review Manager, Idaho Transportation Department, who was present as an observer at the meeting, responded to technical questions from the committee. Sen. Ipsen asked if the committee had taken requests from private entities before and wondered if conducting this evaluation would be precedent-setting for the future. The committee concluded that most requests had come from Legislators or legislative committees.

In response to questions about whether JLOC was the appropriate avenue to address the Consortium's concerns, which appeared to involve some policy issues, Mr. Kelly Buckland, Executive Director, State Independent Living Council, said the key problems with public

transportation were the hours of service, the cost per ride, and efficiency. When asked if the Consortium had used the means available to address their concerns with the agency, Mr. Buckland said they had not requested a hearing, but had talked to them many times and had not made progress. Rep. Geddes noted that it would be appropriate to inform ITD about the Consortium's concerns.

Rep. Geddes moved that the co-chairs, with the full support of JLOC, send the Division of Public Transportation a letter requesting they consider the Consortium's concerns, with the understanding that if concerns could not be adequately addressed, the committee may consider an evaluation of the division at a later date. The motion passed by unanimous consent.

Ms. Van Maren reviewed the other requests for evaluation the committee had received, and briefly reviewed a number of issues that had emerged during OPE's evaluation of employee morale and turnover at the Department of Correction that had been outside the scope. They could be considered as topics for future evaluations, should the committee wish to pursue them. Related to these issues, Rep. Field said she had heard a number of concerns about parole and wondered if the same for other members of the committee.

Returning to a review of current assignments, **Senator Parry moved to continue with a follow-up review of specified issues involved in the report, *Management of State Agency Passenger Vehicles*, as assigned at the 6/21/99 meeting. Senator Ipsen seconded the motion. Both Legislators indicated they felt this follow-up was "very important" and should be continued. The motion passed unanimously by voice vote.** Senator Parry indicated that it was his intent in making this motion that OPE begin this evaluation now, rather than waiting until Spring 2000.

FEDERAL MANDATE REVIEWS

The committee discussed OPE's "trial" federal mandate review last session and the request to do federal mandate reviews for all germane committees starting next session. Members discussed OPE's limited, "stretched" resources and how the reviews would likely be of interest to the Office of the Governor. Members considered suggesting the Governor pursue a review of federal mandates, then reconsidered in light of how the request for federal mandate reviews had emerged – as a means to provide the Legislature an independent review of bills that agencies said were required to meet federal mandates.

Senator Parry moved to have the Office of Performance Evaluations conduct federal mandate reviews for germane committees beginning next session. Representative Field seconded the motion, saying that she could support the motion as long as it was put out to all germane committees that the reviews were available.

In discussion, the committee amended the draft rule language to specify that requests were to go through the co-chairs of JLOC and that requests would be addressed in the order in which they were received.

The motion passed by unanimous consent.

Representative Geddes moved to accept all committee rules as amended regarding review practices, limited scope evaluations, and federal mandate reviews. Representative Henbest seconded the motion and the motion passed unanimously by voice vote.

COMMITTEE FY2001 BUDGET REQUEST

Ms. Van Maren reviewed the status of OPE's FY2000 budget, including the cost of the evaluation of morale and turnover at the Department of Correction. She also reviewed staff leave balances accrued in recent months to respond timely to the committee's requests.

Ms. Van Maren reviewed an FY 2001 budget proposal for three additional evaluative staff: a research coordinator, senior performance evaluator, and performance evaluator. As proposed, the addition of three staff would increase the number of evaluations that could be undertaken at one time, ensure OPE remained timely in responding to legislative needs, and reduce the need for overtime in responding to the committee's direction. The research coordinator would divert some of the project coordination responsibilities from the director, while the two performance evaluator positions would create to an additional evaluation team.

In discussion, committee members suggested that the proposed budget be submitted to JFAC, prioritized according to what was needed most, as JFAC would have to consider whether an increase of all three would be possible. Senators McLaughlin and Parry and Representative Geddes indicated they would have to abstain from voting on a motion regarding the budget, as voting on JLOC's budget request created a conflict for them in their decision-making capacity on JFAC.

Representative Henbest moved to approve a budget increase for additional staff to meet the current workload without the need of staff overtime and the use of a contractor. The motion did not receive a second.

Rep. Henbest said it was clear that staff were overworked and JLOC was asking more of them than they could provide with the current FTE's. Further, more work was being requested. Either the committee needed to cut back on the work or increase FTE's. **Representative Henbest moved to support three additional staff in FY2001 with a lump sum budget of \$691,200. Representative Field seconded the motion and the motion passed unanimously by voice vote, with Senator McLaughlin, Senator Parry, and Representative Geddes abstaining.**

The committee discussed whether JLOC's request should be presented to Legislative Council for a vote before going to JFAC, or given to Council on an informational basis. After discussing past practice, members decided this decision should be left to the co-chairs of Legislative Council.

The meeting adjourned at 5:30 p.m.