

Legislative Council Meeting Minutes

**Capitol Building, WW-17
Boise, Idaho
March 1, 2013**

Minutes

The meeting was called to order at 6:31 a.m. by Co-chair, Pro Tem Brent Hill. Legislative Council members in attendance were Senators Bart Davis, Steve Bair, Cliff Bayer, Elliot Werk, Michelle Stennett, Cherie Buckner-Webb, Co-Chair Speaker Scott Bedke and Representatives Mike Moyle, Gary Collins, Jason Monks, John Rusche, Sue Chew and Phylis King.

Also in attendance or participating in the meeting were Senator Marv Hagedorn; Mary Sue Jones, and Jennifer Novak, Senate staff; Marylou Molitor and Bonnie Alexander, House staff; Jeff Youtz, Director Legislative Services Office; Michelle O' Brien, Soren Jacobsen, Kristin Ford, Mike Nugent and Katharine Gerrity, LSO; Rakesh Mohan, Office of Performance Evaluation; Peter Morrill and Jeff Tucker, Idaho Public Television; Betsy Russell, Spokesman Review; Wayne Hoffman, Idaho Freedom Foundation; Kris Ellis, Benton & Ellis; and Dr. Gary Moncrief, Boise State University.

Chairman Brent Hill, Senate Pro Tem, brought the meeting to order and called on Jeff Youtz, Director of the Legislative Services Office, to present a brief overview of the new Capitol Virtual Tour Program. Following a short video clip of the program, Director Youtz indicated that this interactive virtual tour program is unique in the country, and offers legislators an enjoyable and informative way to directly interact with classrooms in their district, show off our beautiful Capitol Building, and give students a first-hand look at the legislative process.

Chairman Brent Hill, Speaker Scott Bedke and Representative John Rusche, the first three participants in the virtual tour, commented favorably on the program. Chairman Hill said the virtual tour is the next best thing to actually being in the classroom with the kids, and it is the next best thing for those students who cannot physically come to the building. He also stated that the script and program are much easier to use than he originally thought when first approached about the project. The Legislative Services Office and Idaho Public Television provide all the support needed. Speaker Scott Bedke indicated that the only limitation to this program is the legislator's imagination. The program would be a great platform for wider use including senior citizen centers. In the future, tours could also be tailored to particular grade curriculums. The Speaker also stated that the videos of the individual floors of the building are nearly better than being there. Representative John Rusche stated how fun it was to connect with the kids and that their questions were quite insightful.

Rep. Rusche began a discussion about the most effective way to get the word out and let other legislators know that this program is available to them and their constituents. Mr. Youtz

indicated that LSO will be sending out an email to all legislators and to all schools connected to the Idaho Education Network to begin scheduling tours. Chairman Hill also indicated this could be discussed in the caucus meetings, and they could play the short promotional video clip as well.

Confirmation of JLOC Co-chairs

Rakesh Mohan, Director, Office of Performance Evaluations, took the podium to seek confirmation of the co-chairs for the Joint Legislative Oversight Committee or JLOC, who have been previously nominated by Pro Tem Hill and Speaker Bedke. The nominees are Senator Dean Mortimer and Representative Shirley Ringo. Senator Steve Bair moved that Senator Mortimer and Representative Ringo be appointed as co-chairs for JLOC. This motion was seconded by Representative Rusche and passed on a unanimous voice vote.

Archiving Video/Audio of Floor and Committee Action

Director Youtz provided the Council an overview of the issues related to archiving video and audio recordings (*archived proceedings*) of House and Senate floor and committee proceedings. He provided a brief description of some of the expressed pros and cons of archiving proceedings from previous Legislative Council meetings, and the current policies and practices covered under the existing Memorandum of Understanding between the legislature and IPTV.

He reported that the original intent of archiving proceedings was to provide for greater public access, awareness, and understanding. He then indicated the Council needed to determine whether to permanently archive this coverage. Director Youtz reported that the Council was previously concerned that the judiciary may mistake legislative history as legislative intent, and be construed as the House and Senate journals. Finally, he reported that the Council also considered copyright issues and the potential for political or commercial abuse.

Kristin Ford, Legislative Research Librarian, reported the results of her research regarding other states' archiving of video and audio coverage, including identification of those states that archive video coverage. She explained that there are only two states in the ten-state western region that do not archive legislative floor proceedings: Idaho and New Mexico. She reported to the Council that (i) Utah and Nevada have archived since the 1950s and 1960s, respectively; (ii) Montana, Oregon, Wyoming, Utah, and Washington provide archived floor proceedings on their websites; and (iii) thirty-three (33) states archive video of their floor debates and twenty-seven (27) states archive committee proceedings. She also reported that several states promulgate enabling authority differently, some by legislative rule and others by statute. Ms. Ford indicated that courts pay some deference to legislative guidance provided through rule or statute in the judicial use of archived proceedings and in interpreting legislative intent.

The Chair then recognized Senator Bart Davis to present legislative alternatives. Senator Davis provided additional historical context. Senator Davis recommended deliberate legislative language so as to minimize misuse of archived proceedings. He reviewed with the Council Article III, § 13 of the Idaho Constitution regarding the journal of each House. He expressed his strong desire that archived proceedings should not be construed as legislative journals, in whole

or in part. Further, he expressed concern that litigants may attempt to use archived proceedings to impeach the integrity of the Senate and House journals. Further, he reported concern about protecting the anonymity of division votes in the committee of the whole.

Senator Davis reported that there is case law, including from other jurisdictions, which protect official legislative journals from being undermined by archived sources. He reminded the Council that these contemplated archived proceedings will show a portion of the legislative history, but may frequently fail to disclose legislative intent.

Also, Senator Davis explained that judicial probing of contemplated legislative intent has increased. He reported that the statement of purpose, required by Joint Rule 18, is not intended to express legislative intent; however, it is being used as such. He expressed his concern that archived proceedings may be similarly used. As a result, Senator Davis recommended that the Council ratify the President Pro Tem and Speaker's interim decision to temporarily archive legislative proceedings for the 2013 legislative session until the spring Council meeting. He further recommended that the legislature consider legislation to ensure appropriate use of these archived proceedings.

Senator Davis distributed four (4) possible draft legislative solutions for the Council to review. He recommended that legislature engage in an appropriate way prior to adjournment *Sine Die*. He provided the following concepts to the Council for their input and consideration:

- 1) Rewrite of Joint Rule 18 – This draft rule included two suggested additions: (i) the statement of purpose may not reflect legislative intent; and (ii) the right to revise the statement of purpose exists.
- 2) Proposed new Joint Rule 21 – This draft rule allowed the recording and archiving of legislative proceedings. Also, the proposed rule grants, by formal action, the right of either house the right suspend the rule. Finally, the proposed rule stated such archived proceedings do not constitute the journal of the Senate or the House.
- 3) Modifications to I.C. § 73-113 – This draft statutory change provided: (i) codification of current judicial statutory construction; and (ii) relevant factors in statutory interpretation by the judiciary.
- 4) Modifications to I.C. § 9-352 – This draft statutory changed provided a copyright method of archived proceedings.

Senator Davis then stood for questions from the Council. Speaker Bedke inquired if a proposed new Rule 21 pertained to committees and committee chairs that do not wish to stream their committee hearings at times. Senator Davis replied that granting committee chairman and the committee such latitude would require modifications to the proposed language. Senator Davis reported that in the Senate, such chairman's prerogative currently exists. Speaker Bedke indicated language modification might be required to address this issue.

Also, Senator Davis mentioned a clerical change to the word usage of “may” on line 16 would require modification.

Senator Elliot Werk wondered if division votes in the committee of the whole could be protected. Senator Davis reported that cultural changes practically preclude this type of protection. He explained that even before current technology, groups or associations used pencils and paper to track those division votes.

Representative Rusche asked if one of the considerations would be whether waiving the recording would be the same as waiving a rule. He expressed his initial opinion that it would be the same, which required a two-thirds vote rather than a simple majority. Senator Davis responded that it was important to preserve each body's right to waive a rule including archiving proceedings. Senator Davis reported that the decision of whether that suspension should be by simple majority or two-thirds vote would need to be determined.

Senator Steve Bair requested clarification on lines 24 and 25 of the draft modifications to § 73-113. Senator Davis replied that this rewritten language states that courts should not look at extraneous considerations to alter enacted language.

Senator Davis again reiterated that these are only initial ideas, which require feedback from the Council.

Chairman Hill asked Senator Davis to restate his recommendations. Senator Davis restated that he hoped for a ratification of the interim decision to archive proceedings, but that such ratification be revisited at the next Council meeting. He also stated that he hoped that appropriate legislative action would be taken prior to the completion of the legislative session.

Chairman Hill asked in what form Senator Davis would like feedback and whether he sees the Council meeting on this before the end of the 2013 Session. Senator Davis responded that it is not his intent for the council to meet again, and that IPTV and LSO to continue to keep the recordings for the session with the intent that it will likely become the more permanent policy of the legislature. He also stated that it was his desire that at the spring Legislative Council meeting that the issue be revisited, and if appropriate legislative action has occurred, then the Council may choose to address the interim designation.

Representative Rusche moved that the Legislative Council ratify the President Pro Tem and Speaker's interim decision to temporarily archive legislative proceedings for the 2013 legislative session, seconded by Senator Bair.

Chairman Hill called for discussion on the motion. At that time Senator Davis offered a substitute motion that was accepted by Representative Rusche and Senator Bair as a friendly amendment to their motion. The motion is as follows: "The actions of the President Pro Tem and the Speaker of the House are ratified and LSO and IPTV continue, on an interim basis, the recording and archiving of the session subject to a final decision at the spring Legislative Council meeting." This motion was passed on a unanimous voice vote.

Legislative Internship Program

Mr. Youtz introduced the next item on the agenda and began the discussion of the internship program within the legislature. Currently, there is no standard approach to acquiring an intern. Katherine Gerrity, LSO, oversees some of the interns, but there are legislators who recruit their own interns, as do the caucuses. Senator Marv Hagedorn would like to look into compensation for the interns which is not implemented at this time, and possible statutory changes regarding work study programs through the universities.

Prior to moving on to the presentation by Senator Hagedorn, Chairman Hill requested a motion to approve the minutes from the November 9, 2012 Legislative Council meeting. The motion to approve the minutes came from Representative Rusche and was seconded by Senator Stennett, and passed on a unanimous voice vote.

Senator Marv Hagedorn began his discussion on the internship program within the legislature with his explanation of his personal experience of requiring an intern to help with the amount of work load during the session. After review, the senator discovered there is no mechanism to pay an intern. It was discovered that with a few changes to Idaho Code it might be possible to combine programs to be able to pay interns who are on a work study program. This could provide the opportunity for students to participate in a work study program in the field they are studying to be in. Work study programs pay at an eighty percent rate from the university, so the additional twenty percent would need to be addressed in funding issues. There is also a mechanism in place where the work study pays on a fifty-fifty ratio instead of the eighty-twenty ratio. Additionally, interns do not have an orientation or training program they go through in the legislature, and this needs to be addressed as well.

Chairman Hill did have a concern since some of the work the interns are asked to do can be of a partisan nature, and as monetary compensation might come from taxpayer monies, this could become an issue. The question, was also raised by Chairman Hill, if there would need to be rules placed on what an intern can or cannot do if any taxpayer funds would be used to supplement the salaries.

Senator Hagedorn responded that there would need to be a better definition of what a legislative intern is and what their duties could be and possibly another category or distinction besides "intern."

Representative Rusche asked about interns who are not college students and do not fit within a work study program or working for college credits. "Intern" is a very broad term and applies to many who are here during the session, including those who come from the state political parties. This would need to be kept in mind in further discussions. Senator Hagedorn agreed, and restated that the definition phase would help with this problem.

Senator Bair would like more insight on where to find the twenty percent or possibly fifty percent to pay the wages of interns. Senator Hagedorn responded that some research has been done into the amount it would be and because the legislature would only be responsible for part of the amount, it would be nominal depending on how many interns were hired. Representative

Chew asked for clarification on the dollar amount which was provided from Senator Hagedorn. The current Idaho Code Section 33-4404 indicates what work study interns can currently be paid. Senator Werk also stated that the main portion of the funding currently comes out of the universities financial aid budget so that could be important in further discussions also.

Katherine Gerrity, LSO, came forward at the request of the chair to add other considerations; one being that not all students who qualify for work study programs also qualify for the rigorous standards universities set for their monitored internship programs. The legislature does currently go through the universities to employ their formal legislative interns. One very large benefit to this is that the interns are then vetted by the universities before they are sent to the legislature to work.

Adjournment

Speaker Bedke made the motion to adjourn, which was seconded by Senator Werk, and passed on a unanimous voice vote. Chairman Hill adjourned the Legislative Council meeting at 7:56 a.m.