

**Legislative Council Meeting**  
**May 30, 2013**  
**Capitol Building, WW-17**  
**Minutes**

The meeting was called to order at 8:00 am by Co-Chair, Speaker of the House Scott Bedke. Legislative Council members in attendance were: Co-chair, Senate Pro Tem Brent Hill, Senators Bart Davis, Steve Bair, Cliff Bayer, Elliot Werk, Michelle Stennett and Cherie Buckner-Webb; Representatives Mike Moyle, Gary Collins, Jason Monks, John Rusche and Phylis King. Representative Sue Chew was absent and excused.

Also in attendance or presenting at the meeting were: Jeff Youtz, Legislative Services Office (LSO) Director; also from LSO, Michelle O'Brien, Mike Nugent, Cathy Holland-Smith, Glenn Harris, April Renfro, Eric Milstead, Katharine Gerrity, Paul Headlee, Jared Tatro, Keith Bybee, Matt Ellsworth, Ray Houston, Brooke Brouman, Jeremy Larsen, Shane Winslow, Margaret Major and Richard Burns. Others attending the meeting or presenting, whole or in-part: Rakesh Mohan, Office of Performance Evaluations; Idaho Senate, Senator Chuck Winder, Senator Jeff Siddoway, Mary Sue Jones, Jennifer Novak, and Diane Kelly; Idaho House of Representatives, MaryLou Molitor, Bonnie Alexander and Terri Franks-Smith; Spokesman-Review, Betsy Russell; Idaho Public Television, Peter Morrill and Jeff Tucker; Westerberg and Associates, Russell Westerberg, Raleen Welton and Julie Hart; Boise State University, Gary Moncrief; Office of the Governor, John Hanian; Idaho Education News, Clark Corbin; Lobby Idaho, Brody Aston; Idaho State University, Ken Kunz; Idaho State Tax Commission, Alan Dornfest, George Brown, Steve Fiscus and Mike Chakarun, and Commissioners Ken Roberts and Tom Katsilometes; Idaho State Historical Society, David Matte and Michael Davidson and Associated Press correspondent, John Miller.

Chairman Scott Bedke asked the Council for approval of the March 1, 2013 minutes. Representative Collins made the motion to approve, which was seconded by Senator Buckner-Webb and passed on a voice vote. However, later in the meeting, a request was made by Senator Davis to allow some changes in the section regarding the archiving of video and audio floor and committee action. The Council concurred with the request and final approval of the minutes from March 1, 2013 will be made at the fall Legislative Council meeting.

## **Legislative Services Office Director's Report**

For the benefit of the several new members of the Council, **Director Jeff Youtz** began his presentation with a brief orientation on the Legislative Council's role and responsibilities as the Legislative Branch's "board of directors". He then provided a similar overview of the role and structure of the Legislative Services Office as a prelude to analyzing LSO's performance during this last session. He felt that this last session was one of the agency's best sessions in over a decade, with LSO staff meeting or exceeding all performance targets in terms of turn-around time, zero error rates, key deadlines and technology performance. Director Youtz made the decision to reward LSO staff to the extent possible this spring, by giving one-time merit pay increases and a few permanent salary increases, utilizing expected salary savings. Although not everyone in the agency received an increase, he indicated that it is important to motivate and reward staff with compensation increases to the extent possible, whether there is a funded CEC or not.

Director Youtz also updated the Council on a small structural improvement to LSO in which Deputy Division Managers were created in each of the four LSO divisions. This will provide a line of authority needed when Division Managers are absent or on vacation, provide another career move in an otherwise very flat agency structure, and provide some direction for succession planning at the upper management level. The new Deputy Division Managers are Eric Milstead in Research and Legislation, Paul Headlee in Budget and Policy, and Norma Clark in Information Technology. The Audit Division already has the same type of structure with their four managing auditors. Director Youtz turned over the rest of his time to the Division Managers.

**Cathy Holland-Smith**, Division Manager, Budget and Policy Analysis, began her presentation by discussing the training for legislators new to the Joint Finance and Appropriations Committee (JFAC). At the request of the JFAC Co-chairs, a more in-depth training session was provided for new committee members and returning members as well. The session covered everything from the state constitution, rules and statutes, and the budget hearing and setting process. The additional training paid big dividends as JFAC hit its stride early and completed all its business within the targets established.

The analysts performed very well also as a team and as individuals in their assigned areas. This past session there was a rise in the number of appropriation bills generated, due to additional supplementals and trailer bills.

In addition to the appropriations process the division has completed several other budget related projects. They are: deferred maintenance issues for higher education, review of alternative recommendations for Risk Management fees (this resulted in savings of \$800,000 to the General Fund), statewide cost allocation with the Division of Financial Management (DFM) and the Attorney General's office, and a project to automate personnel cost reconciliation for the fiscal year 2015 budget development.

**Mike Nugent**, Division Manager, Research and Legislation, began his presentation by discussing the historic number of new members in the House and Senate, which may have contributed to an historic low number of total draft RS's developed. The number of bills that ultimately passed both bodies, however, was in the normal range at 354.

The Research and Legislation Division was able, even while taking on new responsibilities, to reach their five-day internal turnaround goal for development of an RS 100% of the time.

Mr. Nugent noted that there were many administrative rules that were rejected by the legislature this year, and that in his opinion, the administrative rules process may need review, to see if changes to the complexities in the process would be appropriate to simplify the administrative rules process, without surrendering oversight authority.

In the upcoming legislative session, the Research and Legislation Division will adjust their intake and assignment procedure for new RS's. This should prevent overloaded schedules for certain analysts, resulting in a better product for legislators and less stress on the staff.

Mr. Nugent also noted that he received many compliments from the legislators regarding the staff of the Legislative Research Library.

Upon conclusion of the report from the Research and Legislation Division, Senator Werk agreed with Mr. Nugent that some staff appeared overloaded, and asked if the analysts were assigned to specific content areas.

Mr. Nugent replied that the research analysts do have their specialties but can cross over well into other areas, and that any legislator can go to any staff member with their ideas. There are certain issues that will go to a particular analyst, but if one does get overloaded, they will handle the distribution internally.

Representative Rusche noticed that a number of the rules were rejected because of inconsistency or because they were in error, and questioned if there could be a problem with the quality of administrative rules that are received by the Legislature, as opposed to a problem with the process.

Mr. Nugent replied that some agencies are more proficient at creating their rules and this could be due to retirements, or that a person who is new to the rules creation process might not understand it thoroughly. Mr. Nugent noted that at times there are administrative rules that do not get the attention from the public they deserve until close to the legislative session, and the agency has not performed its due diligence in creating the rules. The Legislature is required by law to review each administrative rule that is created by an agency. In the review, rules are read to check for the formatting, whether they violate current laws, and whether public hearings have been held on the changes recommended by the agency. An administrative rules review is then generated, placed on the Legislature's website, and delivered to the rules review committee.

Senator Bair stated he is troubled with the idea of revisiting the rulemaking process and feels this strong oversight role of the Legislature shouldn't be weakened. During the review process, he noticed that agencies were not using the rulemaking process properly; for example holding public hearings. Therefore, the end product was not what the public or the Legislature intended.

**April Renfro**, Division Manager for Legislative Audits, then provided an update for the Council on the activities of her division which are not necessarily tied to a legislative session.

The Legislative Audit Division performed the statewide CAFR (Comprehensive Annual Financial Report) with the finding released in February in an Internal Control Report. There were two findings at the Office of the State Controller, two findings at the Department of Labor and one finding at the Department of Transportation. The division also completed the statewide Federal Single Audit in March. There were 24 findings, which was one less than reported for fiscal year 2011. Ms. Renfro explained that findings in a Federal Single Audit are a combination of internal control weaknesses and noncompliance with federal requirements. The findings were in five of the eleven agencies visited. There will be an increase in the Audit Division's workload due to findings in programs that previously had none. Nine prior findings remain open or have been repeated, meaning that some departments are struggling to complete corrective action plans. Additionally, there were ten separate entity audits performed, or in process at this time. There were 12 management reviews completed for fiscal year 2011, and 19 planned for fiscal year 2012.

Ms. Renfro also reported that the division currently has three openings that will be filled by July 2013.

There are currently two special projects in process. The first involves the Department of Health and Welfare and is a result of H 328. The auditors will review potential accounting and staffing changes if the Division of Public Health switches from the Cooperative Welfare Fund to utilizing a three fund system. The second will entail the Audit Division completing a review to determine the number of special districts in Idaho, how they are organized, how to best obtain the required financial audits or statements to ensure compliance with current Idaho Code, and how to add the reports to the legislative website for transparency.

Ms. Renfro then stood for questions. Representative Rusche asked about the prior open findings and if a reduction in agency staff could be related to them. Ms. Renfro responded that in some cases that is true, where agency administrative staff are the first to go rather than program or field staff when there are budget reductions. This year the Audit Division also prepared statements for JFAC regarding these findings. Doing so not only assists JFAC members, but also gives agencies the ability to respond and explain their perspective on audit findings.

Speaker Bedke asked whether the Co-chairs of JFAC could contact the Legislative Audit Division ahead of time to create agenda items relating to open findings. Ms. Renfro responded

affirmatively and stated that the Co-chairs of the committee were very helpful in the process by making clear to agencies that they would need to be prepared to speak to the open findings during their JFAC hearing. The Division prepared a fact sheet, which was delivered to the JFAC committee before the hearing. In the future, they would like to deliver the information to the germane committees who oversee those agencies. Director Youtz stated that he and Ms. Renfro have discussed how the audit reports are not examined as much as they could be, noting that they offer insight into an agency, and have also looked into how to make the audit product more relevant to the work of the Legislature. This could be done by having the audit staff report to the germane committees on findings in their respective agencies. Speaker Bedke requested additional information on the taxing district project. Ms. Renfro stated that the focus of this project is to create a master list of all taxing districts in Idaho, see if they meet the minimum threshold for reporting, and ultimately provide an audit trail of all taxing districts. Identifying the taxing district and how best to receive their financial statements is the first step in the project.

**Glenn Harris**, Division Manager, Information Technology, said that each session the I.T. Division tries to implement enough new products to make the work of the Legislature more efficient, while not overloading members with many new processes. This year, with the record number of new members, the trainings went exceptionally well, and most seemed to grasp the new products easily. I.T. staff, Jeremy Larsen and Jeff McFarland, provided assistance with hardware this past session, in addition to their regular duties, leaving Mr. Harris and Soren Jacobsen available for immediate response to Help Desk requests. Two new Help Desk applications expedited the requests, as Mr. Harris and Mr. Jacobsen now receive the notifications on their cell phones, and legislators can access the Help Desk while outside of the Capitol building.

The legislative wireless network continued to function well, while the public wireless network administered by the Department of Administration functioned poorly. LSO is taking steps to break away with an independent public wireless system.

All legislators seemed pleased with the new laptops that are considerably lighter and more portable with longer battery life. The I.T. division performs an annual survey and it was reported that 97% of users gave a good or better rating for the new laptops.

Enterprise Cloud Storage was implemented this year with 52% of legislators utilizing it to share files.

Real Time Notification was again used this past session, including automated posts to FaceBook and Twitter, posts sent from GEMS and the House Voting Program, House chamber third floor reading calendar debate and vote notification, and committee meetings and agenda availability.

In reference to problems that occur with email each session, the legislator newsletters are not in compliance with the Federal CAN-SPAM act. The email system had been blocked this session and in the prior two sessions as well. After a question from Pro Tem Hill regarding the best

solution for this issue, Mr. Harris stated that the I.T. department did set a limit on how many emails could be sent at one time, hoping to avoid the problem, and also used a program called Send Personally. Unfortunately, this did not fix the problem and they are looking into acquiring a new service in the future, which will be addressed during the next session.

Mr. Harris reported that there was a large volume of printing again this year: 93% of legislators printed legislation daily to weekly. The end of session mailings used a significant amount of resources. Research into these costs shows that color prints do cost approximately ten times more than black and white prints. Additionally, color toner cartridges are twice as expensive. There was approximately \$8,000 spent on toner this past session. To help reduce costs, the LSO Copy Center can be utilized.

Mr. Harris invited the Council members to look over the additional survey findings located in their binders.

Speaker Bedke stated that there are a few important items to be considered after hearing the reports from the Director and Division Managers. The first being to keep in mind the sequence of events that can be triggered for staff by requests for bill draft development. Legislators should be certain they are serious about a bill proposal or idea before proceeding to the RS stage, because of the impact it has on a very small bill-drafting staff. Speaker Bedke also informed the Council that he looks forward to, and is appreciative of, the biographies of the staff provided by the Director of LSO each year in the Legislative Staff Directories. He is continually impressed with the quality and experience of the legislative staff.

### **Technology Committee Update**

Mr. Harris began his second presentation, the update on the Ad Hoc Technology Committee meeting. That meeting was held on May 16, 2013. The members of the committee are Senator Russ Fulcher, Co-chair; and Senators McKenzie and Lacey; Representative Rich Wills, Co-chair; and Representatives Perry and Ward-Engelking. The committee reviewed old technologies, one being the SAN or Storage Area Network which has run out of space. During the interim, network security needs to be examined, as it is lacking in infrastructure. The phone system will become next year's project, as it is no longer supported by Cisco. Windows XP will also need to be replaced, as it will no longer be supported by Microsoft in 2014. The House Voting Program will also need to be replaced. It will be replaced with phone voting and web applications. The programming used by the Information Center during session will need to be replaced as well. The applications development staff will be replacing the program.

The committee also addressed increasing problems with the public wireless access network administered by the Department of Administration. Due to the problems encountered since returning to the Capitol, the Technology Committee recommends acquiring dedicated Ethernet connections for media, lobbyists, committee presentations and legislators' personal devices. Guests of the Capitol will remain on the public wireless.

The Technology Committee also recommends utilizing the Enterprise Electronic Newsletter Service to eliminate the issue with legislators' email and newsletters being flagged for SPAM. The cost will be about \$8,000, a one-time cost for the program which will be administered by the LSO I.T. department.

There was also a proposal to replace the SAN system. This will require purchasing two networks that will communicate with each other for backup recovery. The new system will be housed at the Idaho State Police Disaster Recovery site, which is more secure than the current location.

The Technology Committee also recommends the following budget proposal: SAN equipment for production and disaster recovery, the Enterprise Newsletter Program, dedicated Ethernet bandwidth, Box (cloud storage) licenses for all attaches, replacement of Microsoft XP on those machines that require the upgrade, upgrade Microsoft Office 2013 and an upgrade of the House Chamber Phone Voting program.

Mr. Harris then stood for questions. Senator Davis questioned the budget proposal process for the Technology Committee. Mr. Harris responded that with the budget having been approved by the Technology Committee, it now goes to the Pro Tem and the Speaker for final approval.

### **Interim Committee Appointments**

Pro Tem Hill gave a brief outline of the membership requirements for the new committees created during the 2013 Legislative Session, and how the members are appointed to the committee. A handout listing the members was distributed. Pro Tem Hill stated that members of the State Acquiring Federal Lands Study Committee will be appointed by the Legislative Council. Two of the new committees do require five members from each house. Members of the Public Defense Reform Committee will be appointed by the Legislative Council, and will consist of ten legislators. The Co-chairs of that committee are authorized to appoint advisors for their technical expertise as ad hoc members of that committee. Members of the K-12 Educational System Study Committee will be appointed by the Pro Tem and Speaker. Members of the Criminal Justice System Study Committee will be appointed by the Legislative Council and will consist of ten legislators, five from each house.

Speaker Bedke stated that the State Acquiring Federal Lands Study Committee can also have ad hoc members. After questions from Senator Davis and Representative Rusche, Speaker Bedke stated that the ad hoc members will be nonvoting, nonpaid, nonreimbursed members. Senator Stennett asked what the selection process would be for determining the ad hoc members. Speaker Bedke answered that appointments will be made by the committee chairs. The Pro Tem and the Speaker reviewed the Natural Resources Issues committee members and tried to take into account those who would want to be there.

Senator Davis made the motion to approve the list of interim committees as proposed by the Pro Tem and Speaker. The motion was seconded by Senator Bair and passed on a unanimous vote (the list can be found at Appendix A).

## **Discussion of Legislative Fiscal Note Process**

At the previous November Legislative Council meeting, Director Youtz was requested to look at how other states, particularly in the West, handle their Fiscal Note process. Concerns about accuracy, completeness, and who should actually develop fiscal notes in Idaho's process prompted this request.

About half of the states have in-house legislative staff that creates fiscal notes. Some states require a fiscal note only on revenue or expenditure bills, some states require a fiscal note only at the request of a legislator, and some states require a fiscal note only at the request of a chairman. Nationally, there are three basic approaches to preparing fiscal notes; 1) utilizing in-house legislative staff to prepare the fiscal notes and coordinate the process; 2) relying on executive branch agencies to prepare fiscal notes and coordinate the process; and 3) a hybrid process involving both the legislative and executive branches. Director Youtz noted that 12 states use this approach in varying degrees, Idaho being one of them.

Idaho is one of 18 states that require a fiscal note on all bills. Of the western states examined, Arizona, Colorado, Utah, Oregon and Wyoming utilize legislative staff for the preparation of fiscal notes. Montana's executive branch develops the fiscal notes. California committees have professional staffs who work closely with the state agencies to prepare the fiscal notes. In both Nevada and Washington, the state agencies develop the fiscal notes. In Idaho, bill sponsors develop the fiscal note, which is then reviewed by committee. The one exception is appropriation bills, where LSO staff are responsible for preparing the fiscal notes on approximately 100 of the 350 pieces of legislation that are passed each year.

Director Youtz went on to frame the discussion by offering three basic options to the Legislative Council for discussion:

1) The first option to implement changes in the fiscal note process is to emulate the approach of about half the states and have in-house nonpartisan legislative staff develop the fiscal notes. However, this is not the least expensive option, as at least two to three additional positions would be needed and assigned to the Budget and Policy Analysis Division. The work would be divided among all of the analysts and the fiscal note review would be the responsibility of the analyst in the germane areas of their assignment. The Budget and Policy Division manager would be required to sign off on the fiscal note prior to introduction of the bill. Another drawback to this approach besides cost is the potential built-in friction this could create between staff and the legislators they are responsible to serve.

2) Amend Joint Rule 18 to strengthen the committee review process. This would require no additional investment in staff, but would require changes to the existing legislative process to

provide greater accountability. The current language for Statements of Purpose and Fiscal Notes states "No bill shall be introduced in either house unless it shall have attached thereto a concise statement of purpose and fiscal note. The contact person for the statement of purpose and fiscal note shall be identified on the document. No bill making an appropriation, increasing or decreasing revenues of the state or any unit of government, or requiring a significant expenditure of funds by the state or a unit of local government, shall be introduced unless it shall have attached thereto a fiscal note. " It was noted here, by Mr. Youtz, that many bills are put forth that simply say "no General Fund impact" as their fiscal note. However, it is written in the rule that any fiscal impact, regardless of funding source, must be noted.

The current rule goes on to state that "the fiscal note shall identify a full fiscal year's impact of the legislation. Statements of purpose and fiscal notes may be combined in the same statement. All statements of purpose and fiscal notes shall be reviewed for compliance with this rule by the committee to which the bill is assigned. A member may challenge the sufficiency of a statement of purpose."

Two options were discussed to change the language in the current rule. One was to assign the Vice-chair and a subcommittee the responsibility to review the accuracy of fiscal notes and report findings to the committee prior to a vote being taken. A second option would require the review and sign-off of the Division of Financial Management and the Tax Commission for certain fiscal notes on bills that would impact the General Fund.

3) The third option is to leave the process as is, but emphasize the importance of the fiscal note to committee chairs, urge each committee to be more aggressive in challenging fiscal notes, and provide more outreach and training to bill sponsors on the fiscal note requirements that exist currently under Joint Rule 18.

Discussion followed on the three options and Senator Bair questioned whether there has been a study of how much of an increase in time, effort and staff would go into providing LSO the resources needed to review fiscal notes. Director Youtz answered that he believes two to three positions would be sufficient. Utah and other states that prepare fiscal notes in this manner assign the task to budget analysts, who prepare the fiscal notes for their germane areas of assignment. Senator Bair stated that he doesn't much like the idea of increasing legislative staff, but is even more adamant about not wanting executive agencies to have that control. He is also concerned about whether the Vice-chair and a subcommittee is the best approach to review fiscal notes, as they may not have that expertise. He does feel LSO would be best qualified in preparing the fiscal notes.

Representative Rusche stated that the reason for a legislator to pursue a strong independent fiscal note process is to create business plans, and that the legislature needs to look at multi-year impacts. He also believes that we need to have input from all who will be impacted by the legislation including the Executive Branch.

To put the numbers in context, Director Youtz stated that there are approximately 350 to 400 bills that ultimately pass both houses each year, and approximately 120 of those are appropriations in which the fiscal notes are prepared by legislative budget staff. Another 100 or so are agency bills, and the fiscal notes are prepared by those agencies and DFM. Another 150 or so are sponsored bills where the sponsor creates the fiscal note.

Senator Stennett agrees that the committee would not have the expertise to create fiscal notes for all bills that go before them. Joint Rule 18 is designed to consider more than just the General Fund. She believes that before more resources are brought in, sponsors need to perform their due diligence in creating their fiscal notes, and that all committee members need to feel comfortable in flagging fiscal notes that they believe are in error.

Senator Bayer wanted to express appreciation for the fiscal note process they have now, and likes the professional input from appropriate agencies, lobbyists and others, but also believes the final review and approval should be the responsibility of the Legislature. He also believes that multi-year impacts need to be better addressed.

Senator Werk questioned whether the Legislature can place the requirement on the Executive Branch to require a certification from DFM on the fiscal note through the rule process. Director Youtz answered that likely the Legislature cannot tell the Executive Branch to do this through rules, without some statutory support as well.

Senator Davis cited the Idaho State Constitution, where the Legislature determines its own rules and proceedings, including imparting direction to executive agencies. He believes Joint Rule 18 can be changed to direct state agencies to do certain things because it is in the legislature's constitutional power to do so. However, the Senator likes Joint Rule 18 the way it is, and believes the system has worked in the past, is working now, and will continue to work with the an occasional frustration surfacing.

Speaker Bedke stated that there is already a review of the fiscal notes prepared by state agencies through DFM, but he does recognize that the inaccuracy of fiscal notes, when they occur, can create large problems, and that this needs to be addressed.

Senator Werk stated that he appreciated Senator Bair's comment about the expense of adding legislative staff, but he feels that if LSO staff developed the fiscal note, while there would be expense involved, there would be a better product.

Pro Tem Hill stated that he agrees with Senator Davis, that while this has been a good discussion about fiscal notes with many good points made, he feels that overall, the current system works pretty well and he sees no compelling reason to change it.

Speaker Bedke stated that he does not want to see Idaho end up like Montana, where the Executive Branch controls the entire fiscal note process. While our current process has some acknowledged weaknesses, he is a strong proponent of legislative control, which we have now, and believes that the current fiscal note process can be strengthened through better awareness

of Joint Rule 18, which will be brought up more often now, and that is a good thing for the Legislature in creating laws.

After a short break and before moving to tab four, Speaker Bedke took the Legislative Council back to the presentation of the Technology Committee update to address Senator Davis' questions about the Technology Committee budget process. Senator Davis indicated he was mistaken about the process and was now satisfied that his questions had been answered and that the technology budget will be reviewed by the Pro Tem and Speaker for approval. In relation to the earlier approval of minutes, Senator Davis requested unanimous consent to revisit the approval of the minutes, and defer approval of the March 1, 2013 minutes until the fall Legislative Council meeting. It was so ordered.

### **Capitol Services Committee Update**

Senator Chuck Winder, Co-chair of the Capitol Services Committee, updated the Council on the Capitol Services Committee meeting that took place the previous afternoon. He began with the new Capitol Mall parking structure, which initially went through some design review issues, but was ultimately approved by the Boise City Council, after our public works and project staff worked through some of the design issues with Boise City staff. While the construction is in progress, which will make the existing surface lot unavailable, additional parking at 12<sup>th</sup> Street and Jefferson has been reserved for those who wish to utilize that option.

The re-cabling in the Lincoln Auditorium will be completed this summer, as will the expansion of the dais seating in EW05 and EW20. Total cost for these two projects is \$67,000, and has been approved by the Capitol Commission.

Senator Winder also encouraged the Council to visit the Idaho State Historical Society "Those Who Served" military exhibit on the third floor in the Public Lounge. He expressed the committee's pleasure with the exhibit.

Concerns had been raised about the safety of the low railings in the Senate and House Public Galleries. However, the existing plaster railing structure cannot support brass railings being added on top, so the current railing will continue, although the Capitol Services Committee will continue to look into other options.

There are two recommendations the Capitol Services Committee is making to the Legislative Council. The first is to provide video streaming capability in EW42, the House Revenue and Taxation Committee, and the second is to provide audio amplification in caucus rooms. The cost to add streaming capability to EW42 is still being developed, but as an example, the auditorium streaming capability was about \$60,000. The committee believes we can do this project for less after discussing it with IPTV, closer to \$50,000, and believes it is a high enough priority for the Legislature that we should proceed in approving the project. The committee also believes it would be beneficial to be able to connect a laptop to the system to allow audio portions of digital presentations to be heard over the room's in-house speaker system. The project will be

\$3,000 per house. One concern of the Capitol Services Committee was the potential for accidental streaming of meetings out of the Caucus Rooms, and the committee was very specific in directing LSO not to allow audio streaming from those rooms via the amplification software application.

Another discussion item was adding video teleconferencing capability in the Lincoln Auditorium, but after reviewing the costs, demand and other logistics, this project will be put on hold while further research is done.

Senator Winder also reported on the Capitol Gift Shop, where sales are up from last year. The Capitol Dining Room sales were also up approximately 15 to 20 percent. Rooster's reported that they had a good year and appreciate everyone who voluntarily purchased meal cards.

It was reported to the committee that visitors to the Senate sitting in the Public Gallery are having difficulty hearing the proceedings. This will be addressed and corrected during the first week of the upcoming legislative session.

Speaker Bedke reminded the Council of the two recommendations that require action; adding video streaming capability in EW42, and adding audio amplification capability in all four caucus rooms.

Pro Tem Hill asked where the funding for the projects would come from. Director Youtz responded that there are different options available for funding. The Senate and House could use their respective Legislative Facility Funds, or, the Director indicated, as a member of the Capitol Commission he would be happy to take this to the commission at their August meeting to request Capitol Commission funding. Director Youtz indicated that the cameras and video streaming capability in the Lincoln Auditorium were covered by Capitol Commission funding during the restoration and expansion project, so it would certainly be appropriate to cover a similar project in EW42. If the Capitol Commission approves the funding in August, there will be enough time to have the system installed prior to the upcoming legislative session.

Senator Davis stated that the Senate Gallery sound issues remain a very serious problem. The single most common complaint he gets is the inability of guests to hear. Past efforts to simply adjust the volume have not been successful and the problem persists. Senator Davis asked what additional authority can be given to resolve this problem. He believes having a technician onsite to manually adjust the system is a good idea, but asked, however, whether it is possible to identify backup technological solutions that can be put in place if necessary. Director Youtz responded that he will make it a priority to have representatives from System Tech present at the November Legislative Council meeting to discuss specific plans to solve this problem and to offer other backup solutions if necessary.

Senator Davis revisited the topic of funding for the projects, asking whether, if Legislative Council approves the projects and Director Youtz takes the matter before the Capitol Commission and they disapprove the funding, would it be possible to authorize House and

Senate resources as another option. Additionally, Senator Davis asked how the Capitol Commission will feel about this request. Director Youtz stated that he is comfortable taking the matter before the commission with either funding source stated in the motion. It is his opinion that the Capitol Commission will be able to appreciate how important this issue is to the Legislative Council. Pro Tem Hill stated that he is comfortable asking the Capitol Commission for funding, as these improvements are more systemic in nature.

Senator Davis made the motion to approve the audiovisual stream for EW42, and in addition, for the audio amplification for four caucus rooms to be completed as financially prudently as possible, and to ask Director Youtz to request funding from the Capitol Commission for these projects, as these items will become physically attached to the Capitol building itself. The motion was seconded by Senator Werk and passed on a unanimous voice vote.

### **Recording and Archiving Floor and Committee Action**

Director Youtz began the discussion on recording and archiving the legislative sessions with a brief review. The Legislative Council and IPTV adopted guidelines for broadcasting legislative proceedings through a Memorandum of Understanding. Until now, these recordings have not been archived, but only kept ten days to accommodate requests for copies. After much debate and consideration by the Legislative Council and the Legislature as a whole, SCR 131 was adopted in the 2013 session, creating a new Joint Rule 21 to authorize recording and archiving.

There are four basic premises to the new Joint Rule 21:

1. The proceedings of each house shall be recorded and live streamed by an authorized designee (presumably IPTV), provided that each house may suspend such recording and/or streaming with a two-thirds vote.
2. Statements made during floor or committee debate are not an expression of legislative intent by the body as a whole.
3. No recording shall substitute for the Journal of either house.
4. All recordings shall be maintained by LSO for two years, and then transferred to the state archivist.

There are many technical developments that need to occur for the new policies on archiving and recording to be implemented, but LSO, IPTV and the State Archivist believe we can utilize the existing legislative web page and develop new GEMS applications to make this new effort successful.

Senator Stennett asked about costs and how to budget for this new archiving effort for both IPTV and LSO. Director Youtz responded that at this time, it is believed we can start developing this recording and archiving effort within current budget levels. In the future, there may be costs associated with additional hardware, software or storage capacity as the archives

grow or technology changes. Senator Stennett followed up with the question of where that additional future funding may come from. Director Youtz responded that it may need to come from a General Fund request.

Senator Davis spoke to the background of the new rule, which originally contained more robust language pertaining to the committee chairs and copyright information, but over the course of several meetings that language was removed.

Speaker Bedke reiterated that the Council is acknowledging today that it remains the decision of the given committee chairman on whether to video or audio stream their committee proceedings.

Peter Morrill from IPTV came forward to comment on the project. LSO, IPTV and ISHS realize this is a challenge and an opportunity created to archive the legislative process. There is a good framework for the program. IPTV feels comfortable that this process will work and that from a funding standpoint in the near future it will work as well. If there are long term challenges for the ISHS it may be necessary to readdress the issues. Speaker Bedke stated that, speaking for the legislature, he feels they have a good partner in IPTV on this issue.

### **Discussion of Public Records Requests and Email**

Director Youtz once again took the podium to open the discussion on public records requests and email accounts. The current policy is that each legislator is the custodian of his or her email and can decide which are personal and which are considered public records.

Director Youtz quoted from the form letter posted in tab eleven of the Legislative Council Booklet regarding a public records request to illustrate current policy.

“Thank you for your letter requesting a copy of certain emails. I am enclosing a copy of the existing email you requested. Since I regularly delete email during the Legislative Session, much of my electronic correspondence no longer exists. To the extent you consider this response to be considered a denial or partial denial of a request for public records, you have the right to appeal such denial pursuant to Idaho Code Section 9-343. Under that code section, you have 180 days from the date of denial to petition a district court for an order compelling the production of the public records to which you believe you have been denied access. Pursuant to Idaho Code Section 9-339 (4), an attorney has reviewed this public records request.”

Director Youtz believes that in the case of an email public records request we have a good process in place. He reminded the Council that in the Public Records Act, entities receiving requests are entitled to compensation in satisfying the public records request. This became a factor this past session when a reporter requested what amounted to 80,000 e-mails from an entire committee. The response to that reporter indicated that there would be a cost of about \$6,000 to comply with the request.

Senator Stennett expressed concern about having to keep e-mail involved in a public records request for 180 days, which is the time frame allowed for the requestor to appeal to the courts. She also asked whether the requestor is required to pay in advance if there is a cost involved to comply with the request. Director Youtz responded affirmatively.

Senator Davis asked that since the Senate amended Senate Rule 8, will the process described by Director Youtz still work if the Pro Tem designates the Director of LSO as the custodian; will LSO approach Public Records requests differently?

The new Senate Rule 8 states "The President Pro Tempore shall designate a custodian of public records for the Senate for the limited purpose of complying with the Idaho Public Records Act..."

Director Youtz responded that an individual legislator will still be the custodian of his or her own email and documents. LSO staff will not review a legislator's e-mail and determine what is personal and what is public. Each legislator has their own password, controls the content, and remains the statutory "custodian" of those records. He went on to explain that his perception of the rule change was to make the process more efficient, particularly for the media, by designating a facilitator/coordinator of public records requests so there is a central point in processing the requests. The term "custodian" in the new rule might be problematic since it has statutory implications.

Pro Tem Hill agreed that further discussion is needed. One of the reasons to name a person to coordinate the process is to recognize that complying with the statute reflects not only on the individual senator's reputation, in a matter such as this, but also upon the body as a whole.

Senator Bayer requested clarification regarding whether the process would be handled administratively, without the individual's knowledge, and wanted additional clarification on the timeline of a request; specifically, whether email received and deleted *after* a request would apply.

Director Youtz stated that the individual legislator would always be contacted if a public records request coordinator received a request concerning him/her. Once a public records request has been received, the legislator will have three days to confirm that they have received the request. There will then be a ten day period to produce the documents, or longer, as needed, if there is a large volume of information. E-mails received after the request are not applicable.

Senator Werk asked if that is three days from the date of a public records request being opened. Director Youtz stated yes, that is correct, and that the date of receipt could be stated in the response letter.

## General Fund Budget Information

**Cathy Holland-Smith**, Manager, Budget and Policy Analysis Division, reported on the current status of the General Fund Budget for FY 2013 and FY 2014. The Governor recommended and the Economic Outlook Committee (EORAC) agreed on a 2.7% revenue growth for FY 2013. At the end of the 2013 session, the Legislature also estimated that if revenue stayed on target there would remain a \$59.9 million cash balance in the General Fund to be carried over for FY 2014. As of April, there was a revenue surplus of \$79 million, and in accordance with H345 approximately \$59 million will be transferred into the Budget Stabilization Fund, with the remaining \$20 million staying in the General Fund to be available for deficiency warrants and supplemental appropriations during the 2014 legislative session.

Revenues are now growing at 6.7%, exceeding the 4% required to trigger a statutory transfer to the Budget Stabilization Fund in the next fiscal year; it is estimated that an additional \$27.4 million may be transferred in FY 2014. This figure will change depending on the final year-end numbers.

For FY 2014, a 5.3% revenue growth was projected by DFM and the EORAC. The Joint Finance-Appropriations Committee used a target of 3% appropriation increase to set budgets for the year. Ms. Holland-Smith reviewed the state stabilization funds. At the beginning of FY 2013 the Budget Stabilization Fund (BSF) had a balance of \$23.8 million. There are four payments totaling \$25.9 million to be deposited this year for an expected balance of \$49.7 million at the end of FY 2013. However, because of H345 and the requirement to add additional surplus funds to the BSF, an amount in excess of \$58 million could also be transferred, growing the projected balance to \$136 million. By statute, the BSF cannot hold more than the equivalent of 5% of the previous year's General Fund revenues, and this ceiling could easily be reached by the end of FY 2013, or in FY 2014. If there is additional surplus generated this year, it will be deposited into the BSF at the end of 2013, but not more than \$28 million can be deposited due to the cap. The Legislature may want to look at the adequacy of the 5% cap on the BSF.

The Public Education Stabilization Fund (PESF) is projected to have a balance of \$48.9 million at the end of FY 2013. PESF does not have a statutory mechanism to trigger transfers into the fund. During the session it was estimated that an additional \$4.5 million would be transferred from the Public School Income Fund at the end of FY 2013.

A chart was presented that showed the history of the state reserve funds beginning in FY 2005 and projected through FY 2014. State reserve funds include the non-endowed portion of the Millennium Fund, the Higher Education Stabilization Fund, the Public Education Stabilization Fund, the Economic Recovery Fund, and the Budget Stabilization Fund. Ms. Holland-Smith requested that it be kept in mind that the chart does not include \$250 million that was in the General Fund at the beginning of the last economic downturn, in addition to the almost \$400 million in reserve funds.

## **Office of Performance Evaluations Update**

Rakesh Mohan, Director, Office of Performance Evaluations, updated the committee on current work by the office and the upcoming Joint Legislative Oversight Committee (JLOC) meeting where OPE will be issuing a report titled the Guide to Comparing Business Tax Policy. The idea for this project was to compare different state tax reports on businesses and also the ranking of states. A tool for policy-makers and stakeholders has been designed as a result of the research. The tool has been written for legislators to test their assumptions of how a tax policy change would impact revenues and state entities. Also on that agenda are four follow-up reports on Equity in Higher Education funding, Realizing Barriers to Post-secondary Education, the Lottery Commission and the Emergency Medical Services.

Mr. Mohan stated that five new projects have begun: Budgeting and Financing within the Department of Health and Welfare, and Creating a Taxpayer Advocacy Office, both to be released in October; as well as: Juvenile Confinement Rates, Managing Water Quality Programs, and the Death Penalty System, which will be issued in January of 2014.

It was discovered in a national study by the Annie E. Casey Foundation that almost every state has lowered their juvenile confinement rates except Idaho. When this issue was discussed with the Department of Juvenile Corrections, it was found that the national study had incorrect data. OPE will verify all information, and also look at the best practices and at evidence-based options available to help further reduce Idaho's juvenile confinement rates.

Speaker Bedke then requested confirmation from Mr. Mohan that Senators Bayer and Werk were still members of JLOC. Mr. Mohan responded in the affirmative.

## **Legislative Intern Program**

Katharine Gerrity, LSO, provided background on LSO's current internship program. In the fall, LSO contacts Idaho's colleges and universities for submissions to the program. Students from these locations are required to submit letters of recommendation and meet any prerequisites outlined by their university. LSO generally has five to eight interns per session. LSO interns are not compensated, but do receive college credit.

Prior to the legislative session, a training session is held to outline procedures, prohibitions and guidelines for the interns. Interns are assigned to committee chairs based on their class schedules and committee schedules. Legislators have personal interns that are not affiliated with LSO and who may or may not be students. Minority Caucuses in the Senate and House also retain interns that are not affiliated with LSO.

Some legislators have questioned whether interns should be monetarily compensated and whether the program should be opened to nonstudents. LSO is requesting direction from Legislative Council on how to proceed. Director Youtz indicated the need for structure and consistency with the possibility of LSO functioning as a central clearinghouse for interns

including an application, training and supervision of work. Compensation and status as an employee, contractor or volunteer would also need to be considered.

Senators Davis and Werk and Pro Tem Hill, along with Speaker Bedke and Representative Rusche agreed that a central registry or clearinghouse is necessary. Speaker Bedke also asked the council members if an ad hoc committee or a task force should be created to look into options for the Legislative Intern Program. Ms. Gerrity indicated that she would draft an informational summary that could be used to begin discussions for an ad hoc committee or task force. Senator Davis requested legislative input as well as input from staff, colleges and universities.

The consensus of the council is for LSO to begin creating a working document to generate discussions of the issues brought up in the meeting which will be distributed to Legislative Council by Director Youtz.

With no objection from the council members, Pro Tem Hill and Speaker Bedke indicated that they would assign a task force to study the Legislative Intern Program.

### **Discussion of H 315 by the Idaho State Tax Commission**

Alan Dornfest began the presentation from the Tax Commission by informing the Council of the main issues created from H 315, the personal property tax bill that was retroactive to January 1, 2013. There are issues with: filing and reporting for taxpayers with multiple properties in multiple counties; operating property versus personal property; no replacement money for the "per item" part of the exemptions, and questions on definitions of words within the bill such as "personal property", "taxpayer" and "item".

Most of the "per item" issues are not pressing, as they will not come into effect until 2014 reporting. The word "item" causes issues in relation to items that cannot "stand alone", which is a stipulation written into the current code, but that could still fall under "personal property". Personal property must pass the traditional three factor test; yet this causes problems because of a conflict between the three factor test and the exemptions. Items such as cell towers, signposts, and pipelines cause reporting issues when the county assessors are unsure of under which category (operating or personal property) they belong. This can cause inequality for taxpayers between different counties. Taxpayers are supposed to declare their personal property, but assessors have reported that a large number have not turned in their declarations and the assessors must assign a value to the property. Additionally, taxpayers with multiple properties in multiple counties can, in the future, choose within which single county to claim their personal property, potentially resulting in tax shifts and issues with replacement money. There are also inherent issues with operating property that crosses counties, as a taxpayer must choose one county for the exemption at this time.

George Brown from the Attorney General's office described an issue that arose due to the interpretation of H 315, which is: if an individual owns multiple businesses, is that individual

entitled to receive multiple \$100,000 exemptions or only one. They have been working under the interpretation that each business receives the \$100,000 exemption. Pro Tem Hill stated this is disconcerting as he voted based on the knowledge that each taxpayer received the \$100,000, not each business if an individual owns multiple businesses. Mr. Dornfest explained that the assessors have had to make decisions quickly. Some have reached different conclusions, leading to inequality between counties, a concern for us all.

Mr. Dornfest listed six items for future legislative consideration, those being: 1) does the Tax Commission remove expired voter-approved levy amounts, and it is necessary to consider a cap; 2) is it possible to remove the five-year reporting requirement and substitute a verification if the value is less than \$100,000; 3) should they move operating property decisions regarding eligible property to a system value; 4) redefine the word "taxpayer"; 5) develop a list of definitions for controversial items, and 6) create a State Tax Commission audit and recovery program.

The following questions were raised by the Council members for Mr. Dornfest. They include: the current auditing capacity of the Tax Commission, oversight ability, accrued foregone levy amounts for counties, upcoming proposed legislation for the 2014 session, creation of definitions by rules from the Tax Commission or upcoming proposed legislation, the option of adding additional audit and recovery staff to review the different taxing districts and counties, and how to create equal taxation under the law for each taxpayer this year.

Mr. Dornfest replied that the Tax Commission performs some review but the appeals process is where equality between counties can be addressed for 2013, as the Tax Commission does not have the resources to staff a complete audit and recovery division within their agency. Because they do not have that staffing ability, the counties are self-policing through the appeals process for taxpayers. It is noted that most taxpayers will not file an appeal, as it is traditionally a small dollar figure for each taxpayer.

The Idaho Association of Counties and the Tax Commission are looking into proposed corrective legislation to provide for technical corrections and other issues. The Tax Commission is looking into proposed rules changes for some of the main issues addressed today.

As for replacement money, since there is no time limit for accrued foregone amounts to counties; the need to adjust the \$20 million projected replacement money amount could increase. Mr. Dornfest also recommends the creation of an ad hoc committee to study issues arising from H 315, and proposed changes to correct the problems and provide direction for the State Tax Commission and county tax assessors.

Upon the conclusion of the presentation from the State Tax Commission, Speaker Bedke stated that the agenda before them has been completed and that the next Legislative Council meeting is traditionally the Friday following the November election, which would be Friday, November 8. Speaker Bedke asked if there was any additional business to come before the Council; there being no response, the meeting was adjourned at 3:25 p.m.