

MINUTES  
**JOINT FINANCE-APPROPRIATIONS COMMITTEE**

**DATE:** Tuesday, February 10, 2015

**TIME:** 8:00 A.M.

**PLACE:** Room C310

**MEMBERS PRESENT:** Senators Co-chairman Cameron, Keough, Mortimer, Bair, Nuxoll, Johnson, Thayn, Guthrie, Schmidt, Lacey  
Representatives Co-chairman Bell, Gibbs, Miller, Youngblood, Burtenshaw, Horman, Malek, Monks, King, Gannon

**ABSENT/ EXCUSED:** None

**CONVENED:** Senator Cameron convened the meeting at 8:00 A.M.

**STAFF PRESENT:** Burns, Houston, Hoskins

**PRESENTATION:** **OFFICE OF THE GOVERNOR**  
**Military Division**

**PRESENTER:** **Major General Gary Sayler, Adjutant General for the State of Idaho**

To view the presentation, please click on the following link: [Military Division](#)

The Military Division has five critical priorities: 1) to maintain and sustain a relevant National Guard force structure in Idaho, 2) to coordinate statewide disaster prevention preparedness, response, and recovery, 3) to recruit, train, and retain quality soldiers, airmen, and state employees, 4) to construct and maintain facilities for the Idaho National Guard and Idaho Bureau of Homeland Security, and 5) to provide adolescents who have dropped out of high school a second chance to acquire the values, life skills, education, and self-discipline necessary to succeed as productive citizens.

An update was given on the Idaho Youth ChalleNge (IDYCA), a volunteer program for 16 to 18 year old at-risk teenagers; the goal of the program is to give teens a second chance to become responsible, productive citizens by helping them improve their life skills, education levels and employment potential. IDYCA is a 22-week in-resident program with a 12-month mentorship. To date two classes have graduated a total of 152 students; the first class had an 81% placement rate which included education, employment, military or volunteer work. The second class increased the Test of Adult Basic Education (TABE) assessment by 2.9 grades (equivalent to three school years). During the 22 weeks, the two inaugural classes provided over 5,800 hours of community service at different north Idaho locations. Idaho's program received an "Excellent" rating from the National Guard during a 2014 on-site review and has been touted as one of the best programs in the country with many noted best practices.

Several renovation projects have been completed or partially completed at Readiness Centers, also referred to as Armories, throughout the state including Emmett, Rexburg, Moscow, Rexburg and Wilder. The projects represent a total of \$6.2 million in renovations with the State Division of Public Works contributing \$3 million and the federal government contributing \$3.3 million.

The Governor has recommended an FY 2016 budget of \$6,321,900 in General Fund dollars, which represents an increase of \$700,100 from the previous year. Only 9% of total funding comes from the General Fund, 82% from federal grants and cooperative agreements and the remaining 9% from dedicated funds. Last year, Idaho received \$22.3 federal dollars for every state dollar spent. There is an FY 2015 supplemental request for \$25,000 to cover inauguration expenses. FY 2016 maintenance items total \$1,607,500, only \$432,200 from the General Fund. Line items totaled \$876,800 of which \$476,800 was from the General Fund. The Governor has also recommended that \$1,300,800 be transferred from the General Fund to the endowment funds to cover the cost of a 20-year lease of mountaintop communication sites. The Military Division FY 2016 budget allows for 317.80 FTPs; currently there are no vacant positions.

There are two pieces of legislation being presented during this legislative session: 1) House Bill 52 removes a sunset date on the Youth Challenge program, and 2) House Bill 53 is a revision to the Idaho Code of Military Justice (ICMJ).

### **SPECIAL HEARING**

**PRESENTATION:** **Proposal to Prepay Lease Costs of Mountain Top Locations on Endowment Lands for State and Federal Communications System Equipment**

**PRESENTER:** **Major General Gary Saylor, Adjutant General for the State of Idaho**

To view the presentation, please click on the following link: [Endowment Lands Lease Costs Proposal](#)

The Idaho Military Division, Public Safety Communications (PSC) currently manages communication sites on six endowment trust properties. These communication sites provide critical communication services to a variety of public safety agencies. The sites have been authorized for use until August, 2015 through a Land Use Permit; when the permit expires, the fees for the sites will increase from \$5,732 to \$81,632 in the first year. The base rent fee schedule was approved on June 15, 2010; from that date rental rates were scheduled to increase at a rate of 3% per year. The Governor recommended that the Idaho Department of Lands (IDL) issue a 20-year lease for the six sites to PSC for \$1,300,800; the fee is based on a current fee schedule according to net present value and length of lease, calculated with a 6% discount rate.

The Idaho Constitution mandates that the Land Board obtain, at a minimum, a market rate of return regardless of whether the lessee is a private person or a governmental entity. Fees collected by PSC are used to pay for upkeep and operational maintenance of the sites. State agencies using these sites include: Idaho Transportation Department, Idaho State Police, Fish and Game, Department of Land, Department of Correction, Idaho Bureau of Homeland Security, Orofino Corrections, and Idaho Emergency Medical Services. Federal agencies using the sites include U.S. Forest Service, Bureau of Land Management, Federal Bureau of Investigation and the National Oceanic and Atmospheric Administration. Municipalities impacted would be Franklin County and Jerome County.

PSC does not typically pay fees for communication sites located on federal property because of reciprocal agreements with the federal government not to charge each other for the sites. If Idaho began charging federal agencies for the six sites on state land, the federal government could charge the state for the 43 federal sites used which could cost Idaho close to \$1 million per year.

Although there have been many advances in communication technology in recent years, there is indication that the mountain sites will be necessary for at least the next 20 to 30 years, if not longer.

The five sites on Public Schools endowment land are: Packer John, Sedgewick, Teakean, Flattop, and Brownlee; Woodrat Mountain is on State Hospital South endowment land.

**PRESENTER:**

**Tom Schultz, Director, Idaho Department of Lands (IDL)**

To explain *why* IDL collects rent from other State agencies to pay themselves, the Director explained that the Idaho Constitution mandates the Land Board to obtain a market rate of return regardless of whether the lessee is a private person or a governmental entity. The fact that the use of the land is for a “public purpose” does not override the constitutional mandate.

On June 15, 2010, the Land Board established the Communication Site Rental Rates that are currently in effect. Those rates were determined by contacting ten western state trust land offices and surveying their rental rates for each of the various communication use types (cell phone, microwave, etc.) Base rates were set as the average of the top one-third of rental rates being charged by those surveyed (outliers eliminated). The survey results also showed that most states charge a co-locator fee of 25% of the rental rate. Annual rental rate increases were set at 3% per year, the 20–year average for the Consumer Price Index (CPI). The previous schedule was adopted on May 27, 1998, and was based on information gathered from a market rent appraisal completed by the Bureau of Land Management in 1991 with annual CPI adjustments.

Rates were calculated for the \$1.3 million price by using the current rate schedule and adjusting the schedule for CPI (3%) annually through the 20–year period and applying the 25% co-locator rate where applicable. A 6% discount rate was applied to arrive at the Net Present Value of \$1,300,800.

By entering into a long-term agreement with a lump sum payment, the charge for the sites can be based upon the current rates (which risk potential increases beyond the 3% inflationary adjustments) and can be discounted 6% as those funds are immediately available to be invested. The Endowment Fund Investment Board (EFIB) predicts a 6% to a 6.5% rate of growth in the Permanent Fund for the endowment beneficiaries. Since the Idaho Military Division has communicated a clear need to utilize these sites for at least the next 20 years, it would be wise to pay the fees upfront rather than an annual appropriation resulting in a significantly higher overall dollar amount.

**PRESENTATION**

**OFFICE OF THE ATTORNEY GENERAL**

**PRESENTER:**

**Lawrence Wasden, Attorney General (AG)**

To view the presentation, please click on the following link: [Office of the Attorney General](#)

The Attorney General's Office offers the best possible and most cost effective legal representation for state agencies—legal counsel that is accurate, objective, and grounded in state and federal law. His office advises clients on what they *need* to hear rather than what they *want* to hear.

**Wasden** said his office has brought in more dollars than has been appropriated to run his office. He indicated that his office has returned \$2.52 for every dollar spent and reviewed some highlights of the previous year: 1) a lawsuit with Standard and Poor's Financial Services recovered \$21.5 million (Idaho's portion) which is the second largest recovery in Idaho history, and 2) in April of 2014 Idaho received over \$27 million from the State's tobacco settlement bringing the overall total received to more than \$382 million. The tobacco industry continues to challenge Idaho's annual payments under the Master Settlement Agreement (MSA). In each of the last seven years, they have withheld millions of dollars and want to avoid their obligation to pay millions more in future payments. In the last five years Wasden's office has spent hundreds of thousands of dollars and countless hours protecting Idaho's tobacco payments. Each year's settlement dollars are deposited into Idaho's two Millennium Funds to support public health projects such as youth courts, anti-smoking ads, the Governor's Meth Project, etc.)

Last year money was appropriated for the Internet Crimes Against Children (ICAC) unit which allowed the AG's office to remodel existing space for the program. The ICAC investigators are committed to protecting the lives of all Idaho children. From May through December, 2014, the ICAC unit received 181 cyber tips, executed 78 search warrants, and launched 33 child enticement investigations and 148 child pornography investigations. It takes six months to a year to bring cases to trial but generally conviction rates are around 90% to 98% for both enticement and child pornography cases. There are nine investigators and two forensic investigators.

Last year the Legislature expanded the AG's role in investigating and prosecuting public corruption. The Special Prosecutions Unit now has 3 prosecutors and 4 investigators; citizens can file complaints against elected county officials suspected of wrongdoing. The office has received 58 complaints—30 declined, 16 pending, and 12 have been recommended for additional investigation. The workload is overwhelming and some requests to take the lead on conflict cases from county prosecutors must be declined.

After 27 years, 2014 will be remembered as the year Idaho completed the Snake River Basin Adjudication (SRBA) which began in 1987. More than 158,000 water rights claims have been resolved—which works out to be one claim every 90 minutes. Last month's settlement was reached on 23 reservoir fill claims in the Snake River Basin above Milner Dam. This optimizes the fill of the federal reservoir system while maintaining state control over Idaho's most precious resource—water. Attorneys are shifting their focus on more than 12,000 water rights claims filed in the North Idaho Adjudication.

The dispute over endowment land rentals has been resolved for residential homes around Payette and Priest Lakes; the Land Board is selling the properties at public auction. In 2014 over 80 college sites were auctioned for almost \$33 million for the endowment fund. **Wadsen** projected that over 200 additional sites will be auctioned in the next three years and estimated that 60% of the cottage sites will be privately owned by 2018. These actions will ultimately benefit the beneficiaries of endowment trust lands

Deputies in the AG's office also defended the State regarding two Public Utilities Commission (PUC) rulings: 1) a lawsuit brought by the Federal Energy Regulatory Commission (FERC) was withdrawn saving Idaho ratepayers an estimated \$500 million over a 20-year period, and 2) PUC deputies successfully resolved a series of solar power cases that will save ratepayers about \$31 million over a 20-year span.

**Wadsen** also discussed the merits and frequency of hiring outside counsel. There are unique cases when it makes sense to hire outside expertise but it is time that more of the state's legal work be brought into the Office of the Attorney General. His attorneys and staff perform at the highest level of the profession and do so without charging exorbitant hourly rates when they defend Idaho's laws and Constitution, enforce settlement payments and reimbursements, and protect Idaho's children, citizens and consumers. The Office of Performance Evaluation just issued its findings on the use of outside counsel and the advantages of assigning more to the AG's office. Two examples were given regarding attorneys' fees for outside counsel for: 1) risk management issues at \$150 per hour versus \$67 to \$86 per hour for inhouse counsel, and 2) an Idaho Transportation Department condemnation case at \$268 per hour for outside counsel versus \$93 per hour inhouse.

The Governor's FY 2016 recommended budget is for \$22,421,700 including \$374,700 to establish a Medicaid Administrative Hearing staff (the Governor recommended \$373,800); the objective is to recognize administrative appeals related to Medicaid and the state-based marketplace in order to meet current legal requirements. **Wadsen** also requested: 1) the transfer of \$185,000 to Personnel within the ICAC program, 2) additional money for the Special Litigation Fund, and 3) Lump Sum Authority which allows the Attorney General to allocate resources where they are needed most.

## **SELF-GOVERNING AGENCIES**

**PRESENTATION:** **STATE APPELLATE PUBLIC DEFENDER (SAPD)**

**PRESENTER:** **Sara Thomas, State Appellate Public Defender**

To view the presentation, please click on the following link: [State Appellate Public Defender](#)

The work of the State Appellate Public Defender's office fulfills constitutional and statutory obligations for Idaho that include the following: 1) the right to effective assistance of counsel in an appeal from a felony conviction, and 2) the right to counsel in a post-conviction action. Idaho Code, Section 19-868 regarding legislative intent in creating the SAPD recognizes the cost of representing indigent defendants on appeal is an extraordinary burden on counties.

The Capital Crimes Defense Fund (CCDF) was created in 1998 and is managed by a seven-member Board of Directors elected by the counties. The CCDF acts like an insurance program whereby: 1) counties pay an annual premium based on population, and 2) counties pay a \$10,000 deductible per case and the Fund covers additional defense costs. SAPD has an administrative staff, a Capital Litigation Unit and an Appellate Unit for a total of one part-time and 23 full-time employees.

The Appellate Unit handles direct appeals, Habeas Corpus appeals, and post-conviction appeals. The average workload exceeded the national standard by more than 100% (the national standard workload is 22 points per attorney per year. Workloads dropped with the addition of a new attorney position. Capital Unit case types include post-conviction proceedings in District Court and Consolidated Appeals. The status of capital cases has a direct effect on budget requests. There are parts of a case which require the expenditure of operating funds and other times where the need for operating funds is at a minimum, such as during an appeal in the Idaho Supreme Court. Current capital cases include: Azad Abdullah, Timothy Dunlap, Erick Virgil Hall, and Darrell Payne.

The Governor's budget recommendation for FY 2016 is \$2,490,100. The SAPD is a General Fund appropriation agency. **Thomas** requested spending authority for the Idaho Criminal Justice Commission (ICJC) dedicated fund so she could manage the funds within her own office. Thomas has also requested an increase of \$91,900 in order to have the SAPD's compensation more closely aligned with what counterparts are paid in the Attorney General's office. An example of the disparity occurs when comparing the average SAPD's Appellate Unit attorney salary of \$26.81 an hour or \$55,763.46 annually with the average Appellate Unit attorney at the AG's office which is \$34.48 an hour or \$71,723.60 annually. Increasing deputy SAPD salaries is key to being able to recruit qualified applicants.

**PRESENTATION: STATE PUBLIC DEFENSE COMMISSION (PDC)**

**PRESENTER: Ian H. Thomson, Executive Director**

To view the presentation, please click on the following link: [Public Defense Commission](#)

The Public Defense Commission was created by statute in 2014. Pursuant to Section 19-849, Idaho Code, the commission consists of seven members: two members of the Legislature, one from each chamber; one person appointed by the Chief Justice of the Idaho Supreme Court; and four people appointed by the Governor to include representatives from the Idaho Association of Counties, Office of the State Appellate Public Defender, Juvenile Justice Commission and an attorney experienced defending indigent persons.

Currently there are 44 different public defender systems in Idaho, one in each county; there is no uniformity, no training or qualification standards, and the general consensus is that the current system is inadequate. The Commission is charged with promulgating administrative rules regarding training and continuing legal education requirements for defending attorneys and uniform data reporting requirements for the annual reports required under Idaho Code. The Commission is to serve as a clearinghouse of information for relevant stakeholders, and inform the Legislature on Sixth Amendment issues and make recommendations.

Because the PDC was just organized a few months ago, anticipated program expenses are still uncertain. The Commission will seek other revenues, such as grants, and continue to identify additional expenses. The Governor recommended an FY 2016 budget of \$304,300.

**ADJOURNED:** There being no further business, the meeting was adjourned at 10:20 A.M.

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Senator Cameron  
Chair

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Peggy Moyer  
Secretary