

**MINUTES**  
**(Subject to approval by the Committee)**  
**Legislative Council**  
**Friday, November 11, 2016**  
**8:30 a.m. to 4:00 p.m.**  
**State Capitol**  
**Boise, Idaho**

Legislative Council members in attendance were Chairmen Pro Tem Brent Hill and Speaker Scott Bedke; Senators Steve Bair, Clifford Bayer, Michelle Stennett, Grant Burgoyne; and Representatives Mike Moyle, Gary Collins, Jason Monks, John Rusche, and Phyllis King. Absent was Senator Bart Davis.

The meeting was called to order at 8:30 a.m. by Chairman Hill.

Chairman Hill noted Representative Rusche's end of term and thanked him for his service. The council presented Representative Rusche with a letter of appreciation for his years of service. Representative Rusche thanked the council and stated that he has enjoyed his time with the Legislature, hoped for the best for the state and Legislature, and reminded the council of the importance of listening to opposing views.

Speaker Bedke recognized Veteran's Day and thanked veterans for their sacrifices. Chairman Hill added that no other nation is so willing to sacrifice blood and treasure to defend its people and recited a letter written in 2007 by a wife of a U.S. Army officer.

Senator Bair moved to approve the minutes of June 17, 2016, as amended, seconded by Speaker Bedke, and the motion passed unanimously by voice vote.

**Director's Report**

FY 2017 Strategic Plan

Eric Milstead, Director, Legislative Services Office (LSO), reviewed the recommended revisions, which included a date change and adding generic language to avoid revising the date every year, correcting grammar, clarifying a reference to staff training, and adding a reference to public records requests. Representative Rusche moved to approve the FY 2017 Strategic Plan, seconded by Representative Collins, and the motion passed unanimously by voice vote.

FY 2018 LSO Budget Request

Director Milstead reviewed LSO's budget request of \$7,725,400, which included an increase in benefit costs, the replacement of technological items, a decrease in statewide cost allocation, changes in employee compensation, the addition of an LSO Budget and Policy Analyst, and the purchase of cyber-security insurance. The request for an additional analyst is supported by the increased demands, interim committees, and the retirements of three long-standing analysts over the course of the upcoming year: Cathy Holland-Smith, Ray Houston, and Richard Burns, which constitutes 90 years of experience. He added that the position vacated by the LSO Budget and Policy Division's administrative assistant, Margaret Major, was converted to an analyst position. Representatives King, Rusche, and Monks agreed and supported the addition. Representative King moved to approve LSO's FY 2018 budget request, seconded by Senator Burgoyne, and the motion passed unanimously by voice vote.

House Interim Constituent Services Pilot Project

Terri Kondeff, LSO Chief Operations Officer, stated that, at the request of Speaker Bedke, a constituent services attache pilot program will begin for the House at the adjournment of the 2017 Legislative Session. The position will provide support such as responding to e-mails, helping with newsletters, and providing constituents with information on behalf of legislators during the

interim. Ms. Kondeff stated that Susan Werlinger has accepted the position and that the job description is a work in progress. Representative Rusche expressed concern that the job may be a big task for a part-time position. Speaker Bedke noted that the position is a pilot project and will be reevaluated at a later date.

### **Election Update, Orientation Program, and Organizational Session**

Chairman Hill highlighted dates to remember:

November 28-30, 2016: New Legislator Orientation Program

November 30, 2016: Caucus Meetings

December 1, 2016: Organizational Session

December 2, 2016: Committee Chair Training

Chairman Hill advised that all members are welcome to attend the new legislator orientation program.

Director Milstead advised that day one of the orientation includes a general overview and resources for legislators, a presentation by Dr. Gary Moncrief from Boise State University, and a tour of the Capitol. Day 2 includes an overview of the rules process, guidance on civility and decorum, standing committees proceedings, Idaho's tax structure, an overview from the State Board of Education, and a review of the organizational session. Day 3 includes a presentation on conflicts of interest by Deputy Attorney General Brian Kane and an overview by the Secretary of State of campaign and sunshine laws and working with lobbyists.

Director Milstead stated that additional topics include an overview of public records laws, an overview of the council of State Governments West, the National Conference of State Legislatures and the American Legislative Exchange Council, lobbying in the Legislature, insights from second-term members, and a mock session. He added that the orientation will conclude with a reception at 4:00 p.m. on the 4th floor rotunda.

### **Interim Committee Updates**

#### Administrative Hearing Officers

Katharine Gerrity, LSO Research and Legislation Deputy Division Manager, advised that the committee has met twice and will meet again on November 21, 2016. The committee heard presentations from Idaho Supreme Court Chief Justice Jim Jones, the Office of Performance Evaluations, Senator Jim Rice, Professor Richard H. Seamon with the University of Idaho College of Law, Oregon Appellate Judge W. Michael Gillette, LSO Analyst Keith Bybee, and numerous state agencies. Ms. Gerrity stated that the committee will make a recommendation to the Legislature. She added that she cannot speak for the committee, but believes the committee may request that the Legislature approve another interim committee in 2017 to examine potential contested case reforms.

#### Natural Resources Interim Committee

Ms. Gerrity stated that the committee was established as a two-year committee in 2015. The committee met once, submitted a progress report to the Legislature, and has not met to date in 2016.

#### Invasive Species Working Group

Ms. Gerrity advised that the group met four times with the primary focus on quagga and zebra mussels. The group was briefed on the administration of the Invasive Species Act of 2008 by the Administrator of the Division of Plant Industries, Lloyd B. Knight, and heard presentations by various state agencies, including representatives from the U.S. Army Corps of Engineers and Pacific States Marine Fisheries. Other presenters included Senator Curt McKenzie, Amy Ferreter, LSO Analyst Ray Houston, Bob Kibler with U.S. Fish and Wildlife, and Utah Representative Lee Perry. Additionally, the

group heard testimony relating to the threat of quagga and zebra mussels in Bear Lake. Senator Stennett asked if mussels were found in Bear Lake. Ms. Gerrity responded no but that it was at risk because of boaters coming from the south. Representative Moyle asked if the northern part of the state was being watched. Ms. Gerrity responded that discussions have taken place about northern Idaho, but the primary focus has been on the southern portion of the state.

#### Foster Care Study Committee

Ryan Bush, LSO Principal Legislative Research Analyst, advised that the committee met five times and has worked closely with the Department of Health and Welfare, which discussed possible reforms to the foster care system. Presentations were made by the courts, a prosecuting attorney, a public defender, and a guardian ad litem's attorney. The committee also heard testimony from various foster parents and social workers, as well as the director of the Department of Juvenile Corrections and executive director of the Idaho Children's Trust Fund. The committee discussed possible legislation and the likely prospect of continuing its work in future years. The final meeting is scheduled for November 28, 2016.

#### Children at Risk - Faith Healing Working Group

Mr. Bush stated that the group met twice and heard presentations from the Office of the Attorney General, the Department of Health and Welfare, and Ada County Prosecutor Jean Fisher. The group's second meeting was devoted entirely to public testimony, which lasted three hours. He added that the testimonies were limited to three minutes. Mr. Bush stated that the group will not be making any recommendations to the Legislature.

#### Criminal Justice Reinvestment Oversight Committee

Mr. Bush stated that in March 2016, the committee received updates from Kevin Kempf, Director of the Department of Correction, and Sandy Jones, Executive Director of the Commission of Pardons and Parole. The committee has not yet scheduled a meeting for the remainder of 2016.

#### Public School Funding Formula Committee

Kristin Ford, LSO Legislative Research Analyst, advised that the committee met five times and was kept apprised of the Office of Performance Evaluations' public education study. The committee received public testimony and heard presentations from Paul Headlee, LSO Budget and Policy Deputy Division Manager, Michael Griffith with the Education Commission of the States, Bryon Welch with the Office of Performance Evaluations, Tim Hill with the Education Department and Blake Youde with the State Board of Education. The committee currently does not have a recommendation for the Legislature, but will meet again on December 13, 2016. Chairman Hill anticipates the committee will continue for another year. Senator Bayer added that there was a wealth of information for the committee to review and that the committee has been deliberative and has made progress.

#### State Employee Group Insurance Benefits Committee

Ms. Ford advised that the committee has had four meetings, with a fifth planned for the end of November. The committee heard presentations from the Department of Administration, Office of Group Insurance, Propel Consultants regarding the Affordable Care Act, the Department of Health and Welfare, Department of Insurance, and the law firm of Hawley Troxell. Additional presentations were made by four insurers, two major employers, Senator Steven Thayne, Milliman Associates, and Ada County. The committee does not recommend specific legislation but will have general recommendations for the Legislature.

As a general comment regarding interim committees, Senator Burgoyne recommended improving the expectations of interim committees so that recommendations are made.

#### Citizens' Committee on Legislative Compensation

Ms. Ford stated that the committee met once in June 2016 to set legislator rates of compensation to be effective after the November 2016 election. Presentations were made at that meeting by LSO and the Office of the State Controller, and the committee adopted the suggestions made by those two offices. The committee also heard public testimony regarding legislator retirement. After much discussion, the committee decided to recommend that the Legislature review the matter and the committee's final report was filed with the Secretary of State's office.

#### State Procurement Laws Committee

Elizabeth Bowen, LSO Senior Legislative Research Analyst, advised that the committee met three times with additional meetings tentatively scheduled for November 17 and 18, 2016. The committee considered draft legislation dealing with a host of topics, including: contracts made in violation of state law, procurement by political subdivisions, cooperative and group discount procurement, challenges and appeals of contract awards, and multiple contract awards. The committee also considered information technology procurement and periodic review of compliance by state agencies. The committee anticipates making recommendations and proposing draft legislation for the Legislature to consider.

#### Healthcare Alternatives for Citizens Below 100% of Poverty Level Working Group

Ms. Bowen stated that the group held five meetings, with a final meeting scheduled for November 22, 2016. The group heard from the Department of Health and Welfare, the National Conference of State Legislatures, and local stakeholders and advocacy organizations. Public testimony was taken from 35 individuals in person or by phone and the group received over 400 written public comments. The group will not endorse specific legislation but will make recommendations to the Legislature.

#### **2017 Legislative Session Plans**

Chairman Hill reviewed the legislative calendar and highlighted the target dates for rules review, personal bills, transmittals, and JFAC hearings and budget setting. The Legislative Session begins on Monday, January 9, 2016, at noon and has a target to conclude March 24, 2016.

#### Ethics Program

Director Milstead advised that the Ethics Program is scheduled for January 11, 2016. Scott Raecker, longtime former Iowa legislator and currently of Drake University, will speak, followed by presentations from Deputy Attorney General Brian Kane on conflicts of interest and on public records, and from the Secretary of State on money and campaigns. Legislators will then break into groups for a questions and answers session. Director Milstead will provide legislators with additional literature from Mr. Racker to read prior to the program.

The council recessed at 9:44 a.m. and reconvened at 10:00 a.m.

#### **State Budget Update**

Cathy Holland-Smith, LSO Budget and Policy Division Manager, presented a General Fund overview and stated that fiscal year 2016 was stable, with revenues ahead by \$17.3 million and distributions from the General Fund about \$26.6 million less than what was projected at sine die. Regarding fiscal year 2017, as of October, there was \$26.1 million more in cash than had been expected at sine die with an increase in forecasted revenue of \$2.1 million. The estimated ending balance for fiscal year 2017 is now about \$140 million if all supplementals are approved.

Ms. Holland-Smith highlighted supplemental requests from state agencies, and particularly from the Department of Administration in the amount of \$570,000 to enhance the agency's firewall and to purchase new insurance for cyber security. She noted that the policy is for \$25 million, with a \$1 million deductible with premiums beginning in December. Speaker Bedke asked what type of damages would have been paid in the case of the Department of Fish and Game breach. Ms. Holland-Smith responded that it depended on the data that was breached. Representative Rusche

added that a \$25 million policy is minimal considering the number of people affected. Senator Burgoyne asked if the state could recover costs incurred above the deductible. Ms. Holland-Smith responded that if a private vendor is responsible for the data and cannot absorb the loss, the state will be responsible for costs.

Regarding fiscal year 2018, Ms. Holland-Smith estimates a statewide General Fund request of \$3.35 billion, reflecting a maintenance budget. She noted that \$88 million of this is for nondiscretionary adjustments, such as public schools and Health and Welfare.

Ms. Holland-Smith concluded that the state's budget is structurally balanced and that the overall budget environment is stable.

### **Update on Statehouse ADA Compliance; Overview of Statehouse Maintenance Schedule**

Jan Frew, Division of Public Works, advised the council that the ADA improvements are nearly completed. In 2015, 73 items were completed. The remaining items, with the exception of one, are due to be completed by December 2016. The last item is due to be completed by July 2017.

Chairman Hill asked how the companion seating in the Lincoln Auditorium will be enforced. Ms. Frew responded that signs will indicate that the seats are for companion seating only; however, no other enforcement will be in place. Chairman Hill recommended Chairman Bedke work with the Department of Administration to resolve issues relating to companion seating enforcement. Senator Stennett asked if it was possible to install automatic doors to office suites within the Capitol. Ms. Frew responded that auto openers would need to be added to both sides and would be too expensive. Chairman Hill asked if original door hardware would go to the Idaho Historical Society. Ms. Frew stated that the hardware will be kept by the Division of Public Works and possibly reused.

Ms. Frew provided an update on the delamination of the wire glazed windows. The manufacturer does not feel it is responsible and that the delamination was an inherent problem. Ms. Frew does not believe the contractors claim has merit as windows subsequently replaced have not had that problem. The state's insurance company hopes to resolve the situation without litigation. Chairman Hill asked how long negotiations will last. Ms. Frew responded that a resolution should be made by the end of the session.

Ms. Frew advised the council that a master list of upcoming statehouse maintenance projects has been developed to keep people better informed. Chairman Hill noted appreciation to the Department of Administration for its work.

### **Technology Update**

Glenn Harris, LSO Information Technology (IT) Division Manager, highlighted work being completed by the IT Division. He noted the LSO website upgrade, which will move into a test phase soon. Software for the new front desk voting program in the House is working and the new information center call program will be replaced this session. Mr. Harris stated that legislators will not be getting new laptops; however, updates will need to be done. He requested that legislators contact him to schedule the replacement. Twenty-five older desktop computers have been replaced and can be used by legislators, a universal imaging machine is being used, and committee office phones have been replaced. Mr. Harris stated that network reliability and security have been upgraded as well. Chairman Hill thanked Mr. Harris for the division's work and responsiveness.

The council recessed at 11:55 a.m. and reconvened at 1:15 p.m.

Director Milstead provided an overview of the changes to the updated LSO website with a rollout scheduled for early December. The website has a cleaner and more modern look. He noted that legislators can subscribe to standing and interim committee meetings and minutes. He emphasized that the update is a work in progress and suggested legislators check it out while in the Capitol and advise of any comments.

## **Fiscal Note Voluntary Pilot for 2017 Session**

Ms. Holland-Smith reviewed the pilot program involving fiscal notes during the 2017 session. The pilot will be to provide fiscal information analysis to legislator bill sponsors. Keith Bybee, LSO Analyst, will be the coordinator who will review the fiscal note and identify an LSO analyst to perform the work. The analyst will confer with the legislator to discuss the specifics of the fiscal analysis relating to the bill. All internal and external resources will be utilized by the analyst at the legislator's request. Ms. Holland-Smith stated that the bill sponsor will be in control of what information is shared with individuals. It will also be up to the sponsor's discretion to inform others that LSO staff participated in preparing the fiscal note. Senator Davis asked via e-mail if the pilot would present an uneven playing field in creating good versus bad fiscal notes. Chairman Hill responded that the burden of asking if a legislator had help with the fiscal note and whether LSO's recommendation was followed would lie with the individual legislator.

Representative Rusche agreed that the program may create two categories of fiscal notes. Senator Burgoyne stated the intent was for legislators to gain control of fiscal notes and they will need to defend the fiscal note. He stated that the intent was not to make this a mandatory program. Representative Rusche stated the pilot will improve the quality of fiscal notes and bills and supports the pilot. Representative Monks asked if the legislator could select a particular analyst. Chairman Hill responded that Mr. Bybee will still be the coordinator, but will consider the legislator's request. Ms. Holland-Smith added that some analysts are more skilled in certain areas than others and that there will be an internal review process. Ms. Holland-Smith will meet the analyst and review the fiscal report to make sure it complies with Joint Rule 18, includes underlying assumptions, describes the source of data, and provides a methodology.

Speaker Bedke stated there was a process already in place and was not convinced that a formalized process was necessary. Senator Burgoyne responded that the pilot was about communication, providing a regular approach to getting assistance, and is voluntary. Director Milstead added that the pilot is voluntary and will not take priority over other work the division is doing.

Ms. Holland-Smith reminded the council that analysts do not prepare fiscal notes, but do provide information for legislators to do so. She added that the pilot will not preclude legislators from asking analysts for help.

Chairman Bedke agreed with formalizing an informal process and with proceeding with the pilot.

Representative Rusche moved to approve the pilot project for the 2017 session and that it be evaluated the following session, seconded by Senator Stennett, and the motion passed by roll-call vote; 8 ayes, 4 nays, 2 absent.

## **Legislative Audits Update**

April Renfro, LSO Legislative Audits Division Manager, presented an overview of the Audit Division's work. She explained the difference between audits and reviews performed by the division. The fiscal year 2016 Comprehensive Annual Financial Report (CAFR) audit is underway and includes visits to 15 agencies. An opinion about the state's financial statements through evaluation of internal controls and the accuracy of information presented will be prepared by the division, and an Internal Control Report will be issued 60 days following completion of that opinion.

Ms. Renfro stated that the statewide single audit is a two-part audit covering financial statement accuracy for both statewide basic financial statements and the schedule of expenditures of federal awards and also compliance with federal requirements. The division generally visits 6-10 state agencies and results in a report that includes agency findings, LSO Audit Division recommendations, agency's corrective action, and the auditor's response. The 2015 Single Audit included 12 findings and recommendations at 5 agencies.

Ms. Renfro stated that the division completes management reviews for all state agencies at least once every three years, which generally focus on internal controls over revenues and expenditures. Risky areas or unique activity, such as travel, purchasing cards, and legislative compliance may also be targeted for review. Ms. Renfro stated that the division started 17 management reviews in the summer of 2015, resulting in 13 reports issued with 8 findings and recommendations at 4 agencies. Four reports covering fiscal years 2012-2014 are still in process, and 21 reviews were completed in the summer of 2016. In addition to management reviews, six to ten opinion audits are completed each year; seven health districts, Idaho Public Television, and two programs at the Department of Environmental Quality.

Senator Burgoyne stated that the value of audits is that they assure taxpayers that agencies are doing a good job. Representative Jordan asked how often the Lottery Commission was audited. Ms. Renfro responded that the Lottery Commission is audited by an outside auditor, as are the institutions of higher education and PERSI. Chairman Hill added that outside auditors are also required to evaluate internal controls. Representative Rusche asked about agencies correcting findings. Ms. Renfro responded that JFAC is kept informed of audit findings, resulting in the division having good luck with agencies correcting findings.

Ms. Renfro provided an update on the Local Government Registry created by Idaho Code Section 67-450E. Entities were initially required to register by March 1, 2015, then by December 1 each succeeding year, and entities with audit requirements must submit audit reports within 9 months of their fiscal year-end. LSO is required to determine compliance and report noncompliance to the Idaho State Tax Commission and county clerks by September 1 each year. Ms. Renfro stated that the number of entities identified has increased from 1,387 to 1,808, and compliance has improved from 35.5% in 2014 to 92% as of October 2016. Representative King asked how to tell if an entity is using its money appropriately and if fraud can be identified. Ms. Renfro responded that the division will begin pulling samples for review to identify risky areas and then provide that information to the entity. The division's role as repository for local government audits is to receive completed audits, and those audits are intended to obtain reasonable assurance that the financial statements are free of material misstatement that could be caused by fraud or error and that standards are not focused specifically on detecting fraud, but rather material accuracy of financial statements. She added that fraud is often identified through tips or concerns from employees, and fraud hotlines are a key way to collect that information. Senator Burgoyne asked if the division reports findings of fraud or other serious issues. Ms. Renfro responded that the division is statutorily required to report those kinds of matters and will report such to the Governor's Office, Attorney General's Office, Speaker, and Pro Tem. She added that the seriousness of the finding will be identified in the Cause section of the division's report.

### **Office of Performance Evaluations Update**

Rakesh Mohan, Office of Performance Evaluations (OPE) Director, reported that OPE received the Outstanding Evaluation Award for its work on Idaho's statewide K-12 longitudinal data system and instructional management system. Director Mohan thanked staff, agencies, and legislative leadership for its support and for giving OPE the independence and latitude to do its job. He stated that Idaho's report was chosen as a model example.

Director Mohan highlighted two reports that will be issued soon: public education funding and foster care. The public education funding report will complement the work of the interim committee and covers 22 programs and special education, constituting \$450 million. The report will cover how much money was received, the funding mechanisms, the rationale for funding, and whether there is a link between funding and program need.

The foster care report complements the work done by the interim committee on that topic. The report will be issued during the first week of session. OPE has talked with the Department of Health and Welfare in all seven regions and has conducted scientific surveys so they can project

results on a broader population. Chairman Hill asked how the surveys were conducted. Director Mohan responded that the surveys were sent by e-mail to foster care case workers, foster parents, court-appointed special advocates, and judges. Senator Burgoyne acknowledged and commended OPE staff for their great work.

Senator Bayer thanked Representative Rusche for the opportunity to serve as his co-chair and also commended OPE's work.

Representative Rusche reminded the committee that OPE reports are a major way of doing quality improvement and encouraged the council to continue reading the reports and to see what can be done to make state government better.

Having no other business, the council adjourned at 3:10 p.m.