

MINUTES
JOINT FINANCE-APPROPRIATIONS COMMITTEE

DATE: Tuesday, February 09, 2016
TIME: 8:00 A.M.
PLACE: Room C310
MEMBERS: Senators Co-chairman Keough, Bair, Mortimer, Brackett, Nuxoll, Johnson, Thayn, Guthrie, Schmidt, Lacey
Representatives Co-chairman Bell, Gibbs, Miller, Youngblood, Horman, Malek, Monks, Burtenshaw, King, Gannon
**ABSENT/
EXCUSED:** None
CONVENED: Chairman Keough convened the meeting at 8:00 A.M.
LSO STAFF: Burns, Hoskins
**AGENCY
PRESENTATION:** **OFFICE OF THE GOVERNOR**
Military Division
PRESENTER: **Major General Gary Sayler, Adjutant General of Idaho**

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

The Military Division has five critical priorities: 1) maintain and sustain a relevant Department of Defense force structure in Idaho, 2) coordinate statewide disaster prevention, preparedness, response and recovery, 3) organize, recruit, equip, train, and retain quality soldiers, airmen, and state employees, 4) maintain modern facilities for the Idaho Military Division, and 5) give youth a second chance to become responsible and productive citizens by helping them improve their life skills, education levels, and employment potential through the Idaho Youth ChalleNGe Academy.

Major General Sayler introduced the following members of the Military Division staff in attendance: BG Richard Turner, Ret., Assistant Adjutant General, Air Guard; BG John Goodale, Assistant Adjutant General, Army Guard; Col. Jim Heuring, Air Guard Director of Staff; COL Mike Garshak, Army Chief of Staff; CSM Steve Woodall, Senior Enlisted Leader of the IDNG; Mrs. Nancy Gollaher, State Budget Analyst and Controller; Mrs. Paula Edmiston, Human Resource Manager; and Derek Newland, Director of Idaho Youth ChalleNGe Academy.

The Idaho Military Division will have one of six new Air National Guard cyber-operations squadrons whose mission will be to combat attacks from any cyber threat, foreign or domestic, defending the state and nation in cyberspace. This new squadron will provide 71 new high-tech jobs.

The Idaho Youth ChalleNGe Academy is a 22-week in-resident and 12-month post-graduation mentorship program. The program has completed four classes with 333 graduates; the fifth class started on January 16, 2016, with 112 cadets. The goal is for cadets to either graduate from high school or earn a GED; there is an overall 80% placement rate for graduates.

Several Readiness Centers (also referred to as Armories) located throughout Idaho are being renovated at a cost of \$6.3 million with the State Division of Public Works contributing \$3 million and the federal government contributing \$3.3 million. Renovation on the Emmett Readiness Center has been completed and centers in Rexburg, Moscow, and Wilder are between 75% and 95% completed.

The Governor's FY 2017 recommended budget is \$69,783,000 broken down as follows: \$6,758,800 in General Funds, \$6,337,400 in Dedicated Funds, and \$56,686,800 in Federal Funds. Line items in the recommendation include: 1) \$50,000 for Tuition Assistance, 2) \$44,800 for Radio Communication Trunk Upgrade, 3) \$97,300 for the Youth ChalleNGe Program, 4) \$88,000 for an IT Network Security Analyst, 5) \$61,600 for a Purchasing/Accounting Assistant, 6) \$51,300 for Emergency Data Network Routers, and 7) \$87,000 for PSC Tower Endowment Land Rental. There were no findings with the most recent audit.

The Military Division has the following three bills being heard this legislative session: 1) House Bill 355 which amends and updates the duties of the Adjutant General as Military Chief of Staff, 2) House Bill 356 will change the name of the Idaho Bureau of Homeland Security to the Idaho Office of Emergency Management, and 3) Senate Bill 1212 will consolidate governance for emergency and public safety communications by merging the Idaho Emergency Communications Commission (ECC) and the Statewide Interoperability Executive Council (SIEC).

AGENCY

PRESENTATION: OFFICE OF THE ATTORNEY GENERAL (AG)

PRESENTER: Lawrence Wasden, Attorney General

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

The Attorney General complimented his attorneys and staff for outstanding work this past year. His office is committed to prosecution of public corruption and defending Idaho's marketplace. He praised his team for winning a complex case before the U. S. Supreme Court. Victories come because of hard work and dedication on the part of talented employees who provide legal advice that is accurate, objective and timely. Opinions, decisions and defense of Idaho's laws will always be provided in a manner that is straightforward and firmly grounded in the Rule of Law.

Wasden highlighted the following: 1) his office recovered over \$55.4 million during FY 2015 with an appropriation of \$21.5 million, 2) during the past six years, the AG's office has brought in an average of more than \$48 million annually (an average return of \$2.51 for every dollar appropriated), and 3) continued success in defending Idaho's annual payments from the tobacco settlement with \$24 million received in 2015 – the overall tobacco settlement total is more than \$406 million.

Also discussed was work being done by the Internet Crimes Against Children Unit (ICAC) and the Special Prosecutions Unit. The ICAC Unit is now centralized within the Criminal Law Division and its purpose is to keep children safe from online sexual predators. From April through December, 2015, the Unit was involved in 309 investigations, made 13 arrests and executed 55 search warrants. Some of the highest-profile criminal investigations occur in the Special Prosecutions Unit. In 2015 the AG's office received 79 complaints of public corruption; 8 cases were accepted for preliminary investigation and 9 other cases are still under review. The Special Prosecutions Unit also provides prosecutorial assistance to local prosecutors, including cases where there is a possible conflict of interest.

Wasden shared details of three important matters within the Natural Resources Division. 1) The first issue is part of the complex Coeur d'Alene Spokane River Basin Adjudication where the AG's office is working with local legislators and water users to protect existing water rights and state sovereignty. There have been three separate negotiation sessions and all parties continue to meet. 2) Last summer, Idaho joined 12 other states in suing the Environmental Protection Agency and its Waters of the United States (WOTUS) rule. The Attorney General believes the rule is an overreach of federal authority. In September, a federal judge in North Dakota issued an injunction delaying the imposition of the rule. 3) There is a long-running conflict over conjunctive management of the Snake River and Eastern Snake Plain Aquifer. The settlement agreement which the Legislature will be considering this session as well as the Governor's proposed funding for managed recharge, should bring the water budget for the aquifer back into balance.

The Consumer Protection Division continues to defend the interests of Idaho's consumers from litigating against companies engaging in fraudulent behavior to holding nonprofits accountable for how charitable assets are used. It was determined that St. Luke's Medical Center violated state and federal law with the acquisition of Saltzer Medical Group, a decision upheld by the 9th Circuit Court of Appeals. A third-party has been appointed to help oversee the sale of Saltzer to another buyer. The litigation was time consuming and expensive. On another matter, some deputy attorneys general helped resolve a case involving the Public Utilities Commission that will save Idaho ratepayers over \$12.2 million this year.

The Contracts & Administrative Law Division provided staff to conduct administrative hearings for Medicaid appeals that had previously been assigned to outside counsel. It required hiring two deputies and a paralegal to establish a Fair Hearing Unit. That team has assumed responsibility for all Medicaid appeals and to date over 150 cases have been resolved. Deputies assigned to Medicaid estate recovery cases have brought in more than \$6.6 million in FY 2015.

In March, 2015, the U. S. Supreme Court, in a 5–4 decision, reversed a lower court's ruling providing Idaho a victory in a lawsuit over Medicaid reimbursement rates. Idaho's position was that a state has the authority to set its own rates for reimbursement and that authority cannot be usurped by providers.

The Governor's FY 2017 budget recommendation for the Office of Attorney General is \$24,282,700. **Wasden**'s four budget priorities are: 1) shift in existing funding for two investigator positions within the Internet Crimes Against Children Unit, 2) three legal support positions which would be paid for through the Statewide Cost Allocation plan, 3) a hearing officer to be assigned to the Oil and Gas Conservation Commission — the Department of Lands would pay the cost through SWCAP, and 4) two deputy attorneys general and a paralegal for the Civil Litigation Division to handle Risk Management cases. (This need emerged from the Office of Performance Evaluation report that projected a cost-savings to the state if the Attorney General's office managed the workload.) An increase is also requested for Special Litigation where extraordinary cases are handled.

AGENCY

PRESENTATION: **SELF-GOVERNING AGENCIES**

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](#)

SAPD provides legal representation or right to counsel to indigent persons in the following areas: 1) appeals from convictions in district court, 2) appeals from district court in post-conviction relief proceedings, 3) appeals from district court in habeas corpus proceedings, and 4) post-conviction relief proceedings in capital cases.

Prior to 1988, county public defenders were required to handle felony appeals, adding to an already burdensome caseload. That year, the SAPD was created to reduce an extraordinary burden on counties, to provide competent counsel, and to avoid paying high hourly rates to independent counsel. The services of the SAPD are only available to those counties participating in the Capital Crimes Defense Fund (CCDF); currently Jefferson County is the only county not participating. CCDF acts like an insurance program and is managed by a seven-member Board of Directors. Counties pay an annual premium based upon population; they also pay a \$10,000 deductible per case and the CCDF covers any additional defense costs.

There are 23.5 employees on the SAPD staff: Administration has 2.5 people; 6 in the Capital Unit; and 15 in the Appellate Unit. The Appellate Unit handles direct appeals, habeas corpus appeals, and post-conviction appeals. The workload for the Appellate Unit exceeds the national standard by more than double. In FY 2015, 702 cases were filed compared to 641 in FY 2014. There are costs associated with cases which the SAPD cannot handle due to an ethical conflict of interest which requires the case being assigned to outside counsel with whom SAPD contracts.

The Capital Unit handles post-conviction proceedings in district court, consolidated appeals, and interlocutory appeals in post-conviction. The status of capital cases has a direct effect on budget requests. There are parts of a case that require the expenditure of funds (during the investigative phase or during an evidentiary hearing), and other times, the need for operating funds is at a minimum (such as an appeal to the Idaho Supreme Court). **Thomas** reviewed the status of the following four cases: Azad Abdullah, Timothy Dunlap, Erick Virgil Hall (I), and Erick Virgil Hall (II). Each capital case requires both personnel and operating funds. Capital case filings are increasing. From 2008 to 2014 a total of four death notices were filed, in 2015 four death notices were filed, in 2016 one additional death notice has been filed and five capital cases are currently scheduled for trial. The budget request for capital case costs is \$94,900. The needed funds for a capital case can change within a given fiscal year depending on the changing status of a case. Funds for capital cases are reverted to the General Fund if they are not expended during the fiscal year.

The Governor's FY 2017 recommended budget totals \$2,661,600 including personnel costs of \$2,111,500 and operating costs of \$550,100 (including \$207,500 for non-capital conflict costs and \$94,900 for capital case costs). **Thomas** is planning to restructure some operating expenditures since SAPD is not paying a facilities lease (due to unforeseen circumstances which caused her office to relocate to a temporary space) and use those funds to purchase an upgrade to the electronic case management system (latest version of Prolaw) for \$19,000 and use another \$29,000 for capital cases since the funds needed exceed what has been appropriated for capital cases.

**INTERIM
COMMITTEE
REPORT:
PRESENTERS:**

**Public Defense Reform Interim Committee
Committee Recommendations**

**Representative Christy Perry, Co-Chair
Senator Todd Lakey, Co-Chair**

Representative Perry provided the following background material. The Sixth Amendment of the Constitution of the United States provides that the accused shall enjoy the right to the assistance of counsel in all criminal prosecutions and the vindication of the Sixth Amendment right to counsel is ultimately a state responsibility. In 2009 the National Legal Aid and Defender Association (NLADA) conducted a study which suggested that Idaho is not adequately satisfying its Sixth Amendment obligations. That same year the Idaho Criminal Justice Commission formed the Public Defense Subcommittee (PDS) to develop recommendations for improvement of Idaho's public defense system.

In 2013, PDS made recommendations to the Legislature and three bills were passed as well as a House Concurrent Resolution. PDS continued to meet through 2013 and in January of 2014, recommended a \$300,000 initial budget for the Subcommittee. During the 2014 Legislative session, House Bill 542 which created the Public Defense Commission became law, and House Bill 634 which provided a General Fund appropriation of \$300,000 also became law. The Public Defense Reform Interim Committee met throughout 2014 and the following legislation became law in 2015: HB 102, reclassifying curfew violations as infractions; HB 104, reclassifying littering violations as infractions; HB 159, reclassifying certain tobacco offenses as infractions; HB 161, reclassifying

certain fish and game violations as infractions, SB 1145 appropriated \$304,300 to the Public Defense Commission for FY 2016; HB 195, reclassifying certain firework offenses as infractions; Senate Concurrent Resolution 103 was adopted continuing the Public Defense Reform Interim Committee; SB 1030 making codifier corrections to require defending attorneys to represent indigent defendants “upon...assignment” under Section 9–853, Idaho Code.

In February 2016 the Public Defense Reform Interim Committee voted to recommend legislation and funding for the Public Defense Commission in the amount of \$5,482,800 for FY 2017.

PRESENTATION: [Public Defense Commission](#)

PRESENTER: Darrell Bolz, Chairman

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 as follows: 1) two members of the Legislature, one from each chamber, 2) one person appointed by the Chief Justice of the Idaho Supreme Court, and 3) four people appointed by the Governor to include representatives from the Idaho Association of Counties, Office of the State Appellate Public Defender, and the Juvenile Justice Commission, as well as an attorney with experience defending indigent persons. The seven members are: Darrell Bolz, Chairman; Sara Thomas, State Appellate Public Defender, Vice Chair; Linda Copple Trout, Interim Administrative Director of the Courts; Kimber Ricks, Idaho Association of Counties; William Wellman, Defending Attorney; Chuck Winder, Senator; and Christy Perry, House of Representatives.

The Commission is charged with promulgating administrative rules regarding training and continuing legal educational requirements for defending attorneys and uniform data reporting requirements for annual reports. It is also charged with making recommendations to the Idaho Legislature regarding Idaho’s public defense delivery system, including: core requirements for contracts between counties and private attorneys for the provision of indigent defense services; qualification and experience standards for defending attorneys; enforcement mechanisms; and funding issues.

The Governor’s FY 2017 budget recommendation is for \$314,100 including Personnel Costs for \$132,700, Operating Expenditures for \$71,400, and Trustee/Benefits (for training) for \$110,000. The following three trainings were held in 2015: Idaho Juvenile PD training in Boise with 23 people attending; Idaho PD Summit with 133 people attending, and the Idaho Capitol Defense Seminar with 32 people attending. There are four trainings scheduled for 2016 with locations in Boise, Sun Valley, and Twin Falls. To date there are two trainings scheduled for FY 2017.

ADJOURNED: There being no further business, Chairman Keough adjourned the meeting at 10:08 A.M.

Senator Keough
Chair

Peggy Moyer
Secretary