MINUTES
(Subject to Approval by the Council)
Legislative Council
Friday, June 15, 2018
9:00 A.M.
WW17 (Senate Flex Room)
Boise, Idaho

Pro Tem Hill called the meeting to order at 9:03 a.m.; a silent roll call was taken. Council members in attendance: Chairmen Pro Tem Brent Hill and Speaker Scott Bedke; Senators Steve Bair, Steve Vick, Michelle Stennett, Cherie Buckner-Webb, and Grant Burgoyne; and Representatives Clark Kauffman, Jason Monks, Mathew Erpelding, Phylis King, and Sally Toone. Absent and excused: Senator Chuck Winder and Representative Mike Moyle. Legislative Services Office (LSO) staff present were: Eric Milstead, Terri Kondeff, Michelle O'Brien, and Ana Lara.

Other attendees: Kristin Ford, Matt Drake, Ryan Bush, Amy Brown, Kyle Tucker, Robyn Lockett, Jared Tatro, Keith Bybee, Paul Headlee, Christine Otto, Janet Jessup, Rob Sepich, Norma Clark, Saychelle Roberts, Ian Hill, and Glenn Harris - LSO; Annika Galliani - Senate Minority Staff; Carson Howell - Office of State Board of Education; Carlie Foster and Jason Kreizenbeck - Lobby Idaho; Jennifer Novak - Idaho Senate Staff; Carrie Maulin - Idaho House of Representatives Staff; John Foster - Kestrel West; and Phil Haunschild - Idaho Freedom Foundation.

Pro Tem Hill called for the approval of the Legislative Council meeting minutes. **Senator Bair made a motion to approve the October 27, 2017 minutes. Senator Vick seconded the motion. The motion passed by voice vote. Representative Kauffman made a motion to approve the March 15, 2018 minutes. Senator Stennett seconded the motion. The motion passed by voice vote.**

Director's Report Eric Milstead - Director Eric Milstead, LSO

Introduction of new LSO staff and staff promotions

Director Milstead introduced new LSO staff hired after the March 15, 2018 Legislative Council meeting: Ian Hill, IT Programmer; Kyle Tucker, Staff Auditor; Kristin Ford, Promotion to Manager of Research & Legislation Division; Matt Drake, Research Analyst; and Saychelle Roberts, Administrative Assistant.

LSO performance survey

Director Milstead thanked the legislative members for having taken the time to fill out the surveys. He commented that the survey results were good. His summary focused on the areas of the survey that scored lower.

Areas for improvement - survey comments included the following:

- There is a lack of understanding among some members about the administrative rules review process;
- The Audits Division should begin providing an annual summary report, including number of findings, to the Legislature. This report will serve as an opportunity to provide more details to the Legislature regarding the operations of the Audits Division;
- Apple expertise in the IT Division was requested; and
- The Administrative Division should revise the new member orientation training to provide the members with more hands-on training.

Discussion

Pro Tem Hill stressed that only four legislative members were not satisfied with the administrative rules review process. He commended LSO for taking the initiative to improve the process and emphasized the importance of working with the committee chairmen to ensure that they have a solid understanding of the process.

Senator Burgoyne referred to the comment in the survey requesting more staff support during session and possibly year-round constituent assistance for all legislators. He agreed with this request and suggested that legislators need more professional staffing in a similar manner that JFAC is staffed, especially as the state's population increases and legislative issues grow more complex.

Discussion of additional legislator orientation

Director Milstead proposed three options for additional legislator orientation. The forums would be in addition to the traditional new member orientation provided every two years in December prior to the Legislature's organizational session:

- Specific subjects - This forum, scheduled during the first three weeks of session, would include a small handful of topics (i.e., transportation funding, public school issues, health & welfare issues, tax matters, discussion on administrative rules process, etc.) and would be staffed by the LSO staff;
- Open forum - In this format, select staff would be assembled to facilitate an ad hoc Q&A with members. LSO could select one or two dates during the first three weeks of the session and provide a forum for Q&A on various topics or for more in-depth discussion on topics. LSO would select topics and then notify members of topics/dates of the events; and
- Freshmen and second- term members - LSO could poll these members and ask what they would like LSO to cover. This would be a follow-up/refresher to the topics covered during the new member orientation. There may be merit to holding this forum a little later in the session—perhaps during the fourth or fifth weeks so that the new members would have some sense of what they're facing and what they might need some additional insight on.

Enhanced help to members for administrative rules review

Director Milstead stated that Mr. Ryan Bush and Ms. Brooke Brourman (LSO staff) invited four members of the Legislature, as well as the Clerk of the House and the Secretary of the Senate, to discuss any issues regarding the administrative rules review process. He emphasized that this discussion would be regarding LSO's role in the process (e.g., memo analysis procedure, providing details of options and consequences).

Discussion

Senator Bair suggested that the chairmen would benefit from reviewing the different types of rules, the difference in voting in the House of Representatives versus the Senate, how to "kill" a rule, etc. Speaker Bedke suggested creating a cheat sheet on the administrative rules review process.

LSO bill drafting services for executive branch and statewide elected officials update

Director Milstead explained that the Division of Financial Management (DFM) requires executive agencies to submit legislative ideas to DFM during each interim. Once DFM approves those legislative ideas, DFM (or the agency) drafts those ideas into bill format and they are delivered to LSO during the fall. LSO bill drafters then review the bills and, working with the relevant agency staff, revise them if necessary to comply with legislative form. LSO bill drafters then put those bills into "RS" form and they are returned to DFM. He stressed that the timing of these bills (mid-fall) works very well for LSO because it is months before the start of legislative session when the bulk of session-related work begins. He added that he had spoken with the Office of the Governor and they felt that the current process worked well for them.

Senator Vick stated that the intent of his proposal was to protect the Legislative Branch and the separation of powers. He suggested a policy that would require any agency bill that comes to LSO to be drafted during the legislative session, have a legislative sponsor. He stressed that this policy would require more involvement of the Legislature in the process of requesting bill drafts and some additional coordination. He stated that it was not his intent to add to LSO's workload during session.

Discussion

Representative Kauffman inquired about the number of agency bills submitted to LSO during session. Ms. Kristin Ford, LSO staff, responded that LSO received 10 agency bills in the last legislative session.

Senator Vick offered another policy proposal that each statement of purpose (SOP) would require a legislator's name as a point of contact.

Senator Burgoyne opined that there were mutual benefits to the current agency bill drafting process and felt it worked well. He commented that, according to the constitution, the Governor was a part of the legislative process.

Representative Erpelding inquired how the new process would decrease the workload; it would require an additional step. Senator Vick responded that it had the potential to reduce the workload if each draft required a legislative sponsor. He emphasized that, even if the process did not decrease the workload, it would maintain the integrity of the Legislature as a separate branch of government by involving it in the agency bill drafting process. He commented that this was the process practised in Montana.

Pro Tem Hill reminded the committee that sometimes, after an idea for a statutory change is placed in draft form and reviewed, the legislator who signed off on a draft request may no longer wish to sponsor the bill. This also occurs, at times, after committee hearings and public testimony on a bill.

Speaker Bedke inquired whether Montana's process for agency bills was a natural evolvement due to their own specific political circumstances. He reminded the council that the germane committee chairmen have the discretion to choose what bills do, and do not, get a hearing. He agreed that the proposed process would require more dialogue between the chairmen and agencies, but felt that the dialogue already existed to some degree. He stated that the system would not necessarily be improved by formalizing the process.

Senator Vick described some of the differences in the processes between Montana and Idaho. He acknowledged that chairmen ended up sponsoring many agency bills because they were asked first by the agencies. He suggested that Montana's requirement that each bill have a sponsor before it be drafted was critical because a hearing was required for each bill that was printed, while in Idaho the germane committee chairmen had more discretion in setting the agendas for hearings.

Senator Vick made a motion that, during the legislative session, executive branch legislation would require a sponsor from the Legislature before it could be drafted. The motion was seconded by Representative Monks. The motion failed on voice vote.

General Fund Update & Update on Technology Infrastucture Stabilization Fund - Division Manager Paul Headlee, Budget and Policy, LSO

Mr. Headlee began his presentation by informing the council that the FY2019 Legislative Fiscal Report (LFR) was now available online. He explained that the LFR was the official record of action taken during the legislative session, whereas the budget book was a compilation of requests.

FY2019 pie charts of general fund revenue and appropriations

Mr. Headlee referred to page 2 and explained that about half (47.3%) of the general fund revenue for FY2019 originated from individual income tax and 42.1% of the general fund originated from sales tax; the remaining 10.5% originated from a combination of corporate income taxes (6%) and all other taxes. He stated that for FY2019, 48.9% of the general fund appropriations was allocated for public schools and 21.5% was allocated for health and human services.

22-year general fund appropriation history

Mr. Headlee proceeded to page 3 and directed the council to the bottom half of the table that showed the percentages of the general fund. He referred to the last four years of the public schools (K-12) appropriation and stated that the percentage had increased each year, largely due to the career ladder.

FY2018 and FY2019 general fund updates

Mr. Headlee referred to page 4 and explained that the potential revenue for the surplus eliminator was $100,015,600. He emphasized that this number was subject to year-end cash reversions and encumbrances; those amounts were still unknown. He stated that the surplus would be distributed according to 2017 Senate Bill 1206, with 50% of the surplus being distributed to the budget stabilization fund and 50% of the fund being distributed to the strategic initiatives fund (Idaho Transportation Department/locals).

He stated that the Legislature would receive revised revenue forecasts in August and January and it would have the opportunity to consider supplemental appropriations during the legislative session.

Reserve fund balances and revenue/appropriation metrics

Mr. Headlee directed the council to page 5 and explained there are six major reserve funds. The table provided estimated balances for the funds at the end of FY2019. The total balance was $539 million or 14.7% of the general fund revenue. He emphasized that this estimate did not include the budget stabilization fund's portion of the surplus eliminator to be transferred at the end of FY2018.

FY2019 appropriation – all funds

On page 6, there was a table providing details regarding the FY2019 original appropriations by fund source and agency.

Discussion

Speaker Bedke inquired if the emergency funds were money set aside for the emergency that occurred two winters prior. Mr. Headlee responded in the affirmative; the funds had been awarded and obligated and would be spent. Speaker Bedke inquired when the funds would be depleted. Mr. Headlee responded that the funds would be depleted closer to June 2019.

Representative Monks asked if there were statutory caps on the balances of the funds. Mr. Headlee responded that there was a cap of 10%. He explained that the cap was currently lifted because the surplus eliminator was in effect, but when it sunsets, the 10% cap takes effect. He further explained that it doesn't cap the overall fund at 10%, but the automatic transfer would no longer occur once the 10% cap was reached.

Mr. Speaker asked what the net effect would be, for this fiscal year, regarding the public education stabilization fund. Mr. Headlee responded that the advanced opportunities program was seven to eight million dollars short due to good participation by students.

The council recessed for a break at 10:47 a.m.

The council reconvened at 11:02 a.m.

Report on 2018 Fiscal Note Pilot Project - Director Eric Milstead, LSO

Director Milstead stated that the 2018 legislative session was the second year of the fiscal note pilot project. He said that the average amount of time for a fiscal impact report averaged four hours. However, the project was placed on pause when the budget setting process began, similarly to the year before, due to the amount of workload and time constraints.

This year's pilot project had four more participants than last year's, with 17 completed fiscal impact reports. In this small sample size, LSO found that sponsors using fiscal impact reports as the basis for writing fiscal notes, did not have fiscal notes that were challenged or questioned. However, LSO did receive questions from outside groups or other legislators on bills where sponsors revised or did not use the information from the fiscal impact reports for the fiscal note. Most, (80%) of the draft legislation that was introduced, had fiscal notes that matched the fiscal impact report provided to the sponsor.

Director Milstead lamented that LSO did not have the resources available to continue this project. He added that, in the event that the council wished to proceed with the pilot project for every piece of legislation, LSO would need additional resources. He reminded the council that the Budget and Policy Division would still be available to help with fiscal notes regarding who to contact for the fiscal note information.

After some discussion, the council declined to continue the pilot project.

Capitol Services Committee - Senator Vick

Senator Vick summarized the completed and ongoing capitol projects.

Completed projects

- Copper domes on the capitol were replaced;
- Electrical transformers were replaced;
- Committee doors were restructured, but some warping remains; and
- Bell yolk was replaced.

Ongoing projects

- Fire alarm system is beginning to age and fail. DPW is working on an upgrade to the system;
- Lighting control system will be replaced due to system failures;
- Window glazing is delaminating and has produced single or multiple bubbles in the panels. There is pending litigation to address this manufacturing defect;
- Exterior stairs/porticos have experienced significant moisture intrusion in the porticos. DPW is trying to find a method to track the moisture back to the source so that necessary repairs can be made;
- Door leading from the capitol into the pedestrian tunnel will be replaced with code compliant fire-rated doors with vision panels; and
- The Capitol Commission approved a project to determine how to provide fully code compliant roof fall protection.

He added that the Capitol Services Committee also reviewed a fifteen-year look ahead detailing projects for the future.

Senator Vick informed the council that a new dining room vendor would need to be selected since the prior vendor would not be returning by his own accord. He stated that two new monitors would be added to the Senate chamber. He explained that the two-tone blue colors in the Idaho flag had been corrected by the vendor at no additional cost.

Discussion

Representative Erpelding inquired about the status of placing the tribal flags in the Idaho Capitol. Senator Buckner-Webb explained that the Idaho Council on Indian Affairs was currently working with the Office of the Governor on the details regarding where the flags would be placed, size of the flags, etc.

Senator Bair inquired whether the Idaho Capitol was ADA compliant now. Senator Vick responded that, with the exception of the door to the Office of the Attorney General, the building was ADA compliant.

Office of Performance Evaluations Update - Director Rakesh Mohan, Office of Performance Evaluations (OPE)

Director Mohan explained that OPE performed two reports regarding child protection and, as a result, Senate Bill 1341 was passed. He explained that there were many changes to the Child Protective Act, but two significant provisions included in S1341 were a Citizen Review Panel that would be managed by public health districts and a legislative review panel, consisting of members from both chambers, tasked with examining child protection.

Director Mohan stated that another report that OPE issued was on residential care. He explained that there were many complaints made regarding how the Dept. of Health and Welfare's (DHW) licensing bureau was treating the providers of residential facilities. The report commented on these complaints and made some recommendations, but the most significant finding they had was that there were internal personnel problems within the licensing bureau and OPE made the concerns known to the director of DHW. He explained that JLOC wanted to ensure there was no retaliation or negative effects upon reporting concerns and asked OPE to conduct a three-month follow-up.

OPE has four new projects and Director Mohan commented that the projects were increasingly more policy oriented and more complex, which OPE welcomed. The four projects were regarding:

- Child neglect - continuation of the child protection work that OPE has done in the past;
- Collection of court fees and fines - tasked with researching why fees are not being collected as they should be;
- Impact of state mandates on local government - OPE is meeting with stakeholders to identify the issues of concern in an effort to narrow the scope; and
- Southwest Idaho Treatment Center (SWITC) - examining the complaints regarding residential treatment toward patients.

Director Mohan stated that OPE would be presenting these four reports sometime in December and January.

Technology Update - Division Manager Glenn Harris, IT, LSO

Mr. Harris explained that IT had updated some of the computers with the Microsoft 365 version. He stated that the legislative laptops were now more expensive to repair than they were to replace with used laptops. He also stated that, during the legislative session, they had some issues with Apple devices due to counter-syncing problems. He assured the council that IT was working on how to resolve the compatibility issues with Apple devices and the network. There were also some occasional WI-FI issues; IT planned on replacing the WI-FI this interim.

Mr. Harris referenced the Technology Committee meeting where they discussed the remote testimony project and the effort and time taken to make changes to the website and to coordinate with the other facilities. With respect to cellular coverage in the Idaho Capitol, Verizon installed a new system that increased coverage in the lower level and the tunnel. The committee also discussed the network infrastructure, specifically that the switches and wireless were so old that they could not patch them for security purposes in the current system. They are proposing to update both the switches and wireless in the next session.

Mr. Harris commented that there were some shared calendar issues which caused some rooms to be overbooked during session. He mentioned that the members expressed some dissatisfaction with being sent social calendar events where a request to RSVP was included and there was no consistent, sole method to RSVP; some requested an e-mail reply and others an envelope mailed.

Mr. Harris proceeded to address the Legislative website hack and explained that the Dept. of Administration had hosted the website in the past until they lost the personnel with the skills to update LSO's system. The IT division in LSO had been in the process of moving the website to its own server and administering it internally. With the hack having taken place, IT was taking the steps to make sure the website was secure.

Mr. Harris stated that IT was planning on replacing the projectors in the committee rooms. He added that the committee recommended purchasing new laptops, docking stations, and new laptop bags.

Audit Update - Amy Brown, Managing Auditor, Legislative Audits Division, LSO

Ms. Brown began her presentation by discussing the makeup of the Legislative Audits Division staff. She was proud to inform the council that over half of the auditors were certified public accountants. She stated that the audit division worked on two significant projects each year, the Statewide

Financial Statements (CFR) and the Statewide Audit Report (single federal assistance). She explained that the CAFR contained two findings in the Internal Control Report: 1) relating to the calculation and documentation of the distribution of excess funds at the State Liquor Division, and 2) closing package errors at the Idaho Transportation Department. The single audit report was completed and issued March 29, 2017 and contained 15 findings across five agencies.

Entity reports and findings

Ms. Brown explained that there were two types of entity reports: a full opinion report on the financial statements of a given entity (Idaho Public Television) and an agreed-upon procedures report for the Division of Environmental Quality.

Management review reports

Ms. Brown stated that, during the summer, the bulk of their work consists of management review reports. She explained that FY2015 activity was reviewed in the summer of 2016. She briefly summarized the last three years of reviews scheduled and the findings. The Audits Division had scheduled 17 agencies for review this summer and the reports would be issued in the next six months.

Local governing entity registry status

Ms. Brown said that the Audits Division was in its third year of managing the local governing entity registry. She explained that, over the last three years, the Audits Division had been able to narrow the list of entities required to register from 1,524 entities to 1,365 entities. The current registry year of 2017 had not yet lapsed. She explained that, of the 229 entities that were found to be non-compliant, 98 entities had not yet registered. She further explained that 131 entities had incomplete registrations and 23 entities had completed registration, but had not uploaded audits. The final compliance would be determined and reported on September 1, 2018.

Upcoming work

Ms. Brown summarized the work that the Audits Division would perform for the next few months:

- Finalizing and issuing remaining opinion and management review reports from fiscal years 2016 and 2017;
- Completing FY2018 Statewide CAFR audit by December 31, 2018 and issuing the Internal Control Report within 60 days;
- Completing FY2018 Statewide Single Audit by March 31, 2019; and
- Continuing to monitor compliance with the local government registry and responding to information requests.

Discussion

Senator Stennett asked what the reason was for less compliance over time and inquired if it was due to a lack of resources. Ms. Brown stated she was unsure, but would follow up with more information soon. Pro Tem Hill inquired about the actions the Audits Division takes when there is a finding and what type of follow-up is done to correct the finding. Ms. Brown explained that the guidelines had recently changed. She further explained that, from a reporting standpoint, the CAFR and the single audit report are issued from the State Controller's Office (SCO) and the Audits Division issues an opinion on the report; the duties with respect to follow-up with the agencies have somewhat shifted to the SCO.

Miscellaneous Announcements and Adjournment

There were no miscellaneous announcements before the council. A motion was made to adjourn and was seconded. The motion passed by voice vote. The council adjourned at 12:02 p.m.