

**MINUTES**  
**Approved by the Committee**  
**State Affairs Working Group**  
**Monday, July 20, 2020**  
**9:00 A.M.**  
**Room EW42**  
**Boise, Idaho**

Co-Chair Lodge called the meeting to order at 9:05 a.m.; a silent roll call was taken.

Members attending in person: Co-Chairs Patti Anne Lodge and Steven Harris; Senators Mark Harris, Brent Hill, Chuck Winder, Mary Souza; Representatives Randy Armstrong, Brent Crane, Joe Palmer, and Jason Monks. Members attending by videoconference: Senators Steve Vick, Kelly Arthur Anthon, Michelle Stennett, and Cherie Buckner-Webb; Representatives Vito Barbieri, James Holtzclaw, Christy Zito, Heather Scott, Kevin Andrus, Linda Wright Hartgen, Julianne Young, Elaine Smith, John Gannon, and Brooke Green. Legislative Services Office (LSO) staff present: Kristin Ford, Shelley Sheridan, Soren Jacobsen, and Ana Lara

Other Attendees: Eric Milstead, LSO; Carrie Maulin, House of Representatives; Jennifer Novak, Senate; Phil McGrane, Ada County; Seth Grigg, Idaho Association of Counties; Chad Houck, Secretary of State.

Co-chairs Lodge and Harris welcomed the committee, thanked LSO staff for their assistance, and provided guidelines for conducting the meeting. Co-Chair Harris noted that the working group will be considering topics for the next session and those that may require a special session.

#### **Advance Planning for 2021 Session**

Eric Milstead, LSO Director, reported that a group consisting of LSO staff, Chief Clerk of the House, Secretary of the Senate, and several legislators, was formed to consider ways to conduct business if the pandemic continued into the next session. The group researched other legislatures and developed three options, one being a hybrid approach. Director Milstead stated that with a hybrid approach, members would work both in combined areas and remotely. The hybrid approach would require audio and visual upgrades. He noted that the Senate has decided to work from the Capitol and implement social distancing. The group proposed splitting the House floor into two chambers, utilizing the floor and conference room EW42. This would also require upgrades to provide real time audio and video exchange. Director Milstead stated that LSO was working to provide for remote testimony to allow public participation. Senator Winder added that the goal was to keep everyone in the Capitol and that each body could decide how to manage it. Senator Souza commented that an improved system for public testimony would be needed.

Carrie Maulin, Chief Clerk of the House, reported on draft [emergency Joint](#) and [House](#) rules to address remote and hybrid approaches to conducting business in and out of the Capitol. The rules provide for alternate locations for members, what constitutes a quorum, and voting. Representative Crane asked what the process would be in selecting which members would be located where. Ms. Maulin responded that the topic had not been discussed. Representative Crane asked how attendance would be monitored in two locations and who would preside over it. Ms. Maulin replied that a member of the Chief Clerk's staff would monitor attendance. Senator Souza asked if the joint rule also applied to the Senate. Ms. Maulin confirmed that the joint rule applied to the respective chambers. Representative Monks asked if installing plexiglass was considered as opposed to separating members. Ms. Maulin responded that plexiglass was considered; however, six foot social distancing could not be achieved. Director Milstead confirmed that plexiglass was an option, but that LSO would need advance notice to get it ordered. Co-Chair Harris noted that some decisions would require rules and was at each body's discretion.

Jennifer Novak, Secretary of the Senate, reported that the draft Senate rules were similar to the House rules and included broad language to allow the bodies to determine their needs. She stated that screens would be set up to allow members to view each other and to authenticate member voting. Representative Crane asked if there was leeway for members to participate and vote remotely. Ms. Novak responded that the rules would allow each body the flexibility to decide for itself. Senator Winder stated that it would be unconstitutional for anyone to participate outside of the building without using a paired vote. Representative Gannon asked what the protocol was if a member contracted the Coronavirus and if they could participate remotely. Director Milstead responded that it would be at the body's discretion. Senator Winder added that rules require a replacement if a member was out for more than three days and that, out of respect, leadership would be notified if a member contracted the virus.

### **Elections Dates and Process During a Pandemic**

Phil McGrane, Ada County Clerk, stated that the public's faith in legislators is dependent on their faith in the elections process and that creating a smooth process during the pandemic had been a daunting experience for the clerks. He noted Governor Little's proclamation to change the May election to an all mail election, which put immense strain on the clerks and presented many challenges. He stated that counties did not have the infrastructure to handle all mail-in ballots and feared the same issues would occur in November. Mr. McGrane noted that the Governor's proclamation only applied to the May election and did not extend to August or November. The August election presented the same challenges; however, not to the same scale as May. The challenges included finding facilities large enough to conduct polling place voting and finding poll workers during the pandemic. He noted that larger jurisdictions have the biggest challenges.

Mr. McGrane reported that a high volume of mail-in ballots was expected for the November election. He commented that counties would essentially be running two elections - mail in and in person. Both are handled very differently and would require increased staff and resources. He stated that safety would also play a role and feared key staff being diagnosed with COVID-19 and having to implement contingencies. He added that polling places for people with the virus may be needed to ensure that the population could vote.

Senator Winder suggested prioritizing legislative needs for the November election. Mr. McGrane reviewed [proposed legislation](#) to address the counties' needs, including implementing e-poll books and early voting locations, allowing clerks extra time to open mail-in ballots, when absentee ballots are mailed, and addressing security and voter fraud. Senator Souza noted concern with rushing to vote centers and electronic poll books and asked how potential problems would be addressed. Mr. McGrane replied that testing and public notifications have been implemented. He stated that e-poll books have been successful; however, agreed with proceeding with caution. Senator Souza recommended against passing legislation for a temporary virus that could risk the integrity of future elections. She asked if using the National Guard as poll workers was discussed. Mr. McGrane replied that it was discussed, but hoped it would not get to that point. Representative Monks voiced concern with closing poll locations and its potential to benefit one candidate over another. Mr. McGrane responded that people typically vote at nearest polling location and that counties map out where people are coming from to vote. He stated that larger facilities would be considered to manage larger crowds and that the notification process was key in holding counties accountable. Senator Winder asked if the county clerks had control over the number of polling places. Mr. McGrane confirmed that counties, in conjunction with county commissioners, had the authority to control the number of polling places; however, expressed concern with having executive authority and requested the Legislature consider giving that authority to the counties. Co-Chair Harris asked how many early voting polling locations were in Ada County. Mr. McGrane responded that there were three permanent locations and one mobile. Co-Chair Harris asked how counties would make sure coverage was fair and well spaced. Mr. McGrane responded that polling locations were tied to precinct boundaries. He recommended focusing on the draft legislation affecting the

November election that would consolidate precincts and address the counties' inability to do what is typically done due to the Coronavirus. He added that the Legislature could revise the legislation during the next session if needed. Senator Buckner-Webb asked if limiting locations would reduce the populous' ability to vote. Mr. McGrane responded that the draft legislation would make it easier for voters and clerks by spreading out voting throughout the day. Representative Gannon asked what safeguards were in place to address overcrowding and health concerns. Mr. McGrane responded that it was a balancing act to stretch out voters throughout the day and having the resources to accomplish that. Senator Souza recommended a pilot for voting centers, adding sunset clauses, and supported a special session to address election security. Representative Crane asked why consolidation of election dates was not discussed. Mr. McGrane responded that consolidation of dates was considered broadly but was too late to implement. Representative Crane asked why legislation was not drafted to address a single person's ability to make decisions. Mr. McGrane responded that it was a bigger topic than he was prepared to discuss.

### **Elections Issues Across Idaho**

Seth Grigg, Idaho Association of Counties, reported that the county clerks' concerns included the volume of mail and the time needed to open and process ballots to allow timely announcement and publication of results and the need and funding for personal protection equipment and sanitization supplies. He suggested CARES Act funding to acquire those supplies. Senator Winder asked if CARES Act funding was already available. Mr. Grigg responded that it was; however, the concern was having enough available for the November election. Senator Souza asked if counties had separated funds for the elections. Mr. Grigg advised the funds were split into two buckets, but the concern was the amount of funds available. Co-Chair Lodge suggested fund raising as an option.

### **Statutory Changes to Elections Law**

Chad Houck, Deputy Secretary of State, stated that \$400 million was dedicated to the CARES Act, \$2.4 of that was dedicated to counties to address and mitigate issues with elections. He reiterated the concern of not having enough money. Mr. Houck reviewed [draft legislation](#) related to an emergency declaration regarding elections and requested the flexibility of the Secretary of State's Office to help the clerks do their job faster and more accurately. Co-Chair Harris asked if the draft legislation would give the Secretary of State's Office the authority to accomplish Mr. McGrane's recommendations. Mr. Houck responded that from an emergency standpoint, it would to a degree. Representative Gannon noted concern with one person having the authority to make statute changes affecting elections in emergency situations. Mr. Houck responded that quick solutions in a short window were often difficult. He clarified that the draft legislation simply requested extending what is currently in statute. Senator Souza expressed concern with one person having the authority and suggested adding a sunset clause. Mr. Houck responded that it would be reasonable to add a time limit. Co-Chair Harris asked if the draft legislation provided enough time to get people in place for the November election. Mr. Houck responded that the county clerks need answers now for the November election and that he was unable to tell how much time would be enough. Representative Crane asked if the proposed legislation would allow converting to an all mail-in ballot. Mr. Houck responded that it could; however, checks and balances were in place and that the intent was not to take away the election process but to consider the emergency and match an appropriate response. Representative Crane stated that sideboards were needed to win his support. Co-Chair Lodge asked how many ballots were requested and not returned in May. Mr. Houck responded that approximately 430,000 ballots were requested and 335,000 were returned. Co-Chair Lodge added that some people thought the ballots were junk mail and suggested making the envelopes different from other mail. Mr. Houck responded that the envelopes are currently marked to differentiate from other mail.

### **Public Testimony - Elections**

Public testimony regarding elections was heard from Diane Baumgart, Kathy Dawes, Kelly Hardy, Gretchen Wissner, Bev Robinson, and Stanford McConnehey.

The working group recessed for lunch at 11:45 a.m. and reconvened at 1:07 p.m.

### **Emergency Declarations, Duration and Power - Committee Discussion**

Representative Monks reviewed [draft legislation](#) providing that the Governor may not alter, adjust, or suspend law during a state of emergency. Representative Barbieri recommended including remedies for the Legislature in case of an executive branch violation and for the executive branch to act in case of an emergency in case the Legislature was out of session. Senator Winder stated that the remedy would be filing a lawsuit and letting the courts decide. Senator Souza asked if the insinuation was that the Legislature would call itself into session to take appropriate action if the executive branch were to overstep the statutes. Representative Monks confirmed and referenced other drafts of legislation. Representative Crane asked if emergency clauses could be included and if the Governor's Office was consulted in drafting the legislation. Representative Monks confirmed that his concerns were expressed to the Governor's Office. Senator Stennett asked if an all mail-in voting should not have occurred in May. Representative Monks responded that the concern was not with the result but that it was inappropriate to exclude the Legislature from the process. Senator Vick agreed that a remedy or automatic provision should be included to allow a special session. Senator Anthon agreed with having a remedy in place. Senator Winder reviewed a list of topics previously discussed with Senate leadership and that the intent was not to restrict the Governor when responding to emergencies, but to ensure the Legislature 's involvement. Representative Scott expressed concern that if the executive branch ignored the constitution, would it be respected if in Idaho Code. She recommended adding language requiring the Governor to convene session and get legislative approval to extend the emergency. She added that without the Legislature's ability to call itself back into session, it could at least have a conversation about impeachment. Senator Stennett requested Senator Winder share the list of topics with the group.

Representative Monks reviewed [draft legislation](#) requiring the Governor to convene the Legislature within 15 days in order to declare an emergency declaration. Senator Souza asked to clarify if the Governor would have to wait for the Legislature to convene in order to respond to an emergency. Representative Monks clarified that the executive order could be in effect immediately and the Legislature would convene within 15 days of when the order was issued. Senator Stennett asked what would happen if the Legislature convened and disapproved with the emergency response that was already in place and whose jurisdiction would preside. Representative Monks replied that the Legislature needed the opportunity to be a part of the process and that the courts could be involved. Senator Stennett discouraged unnecessary waste of resources and taxpayer dollars by going to court. Representative Gannon expressed opposition to restricting executive action and stated it was inherent that, with executive power and in an emergency, some statutes would be overridden. Representative Monks responded that the draft legislation would not prevent declarations from becoming effective immediately, but would involve the Legislature in the process. Senator Winder clarified that he was not opposed to providing a remedy, but that determining if something was constitutional would need to go through the courts. He added that defining a remedy would be difficult and would require more thought.

Representative Gannon reviewed [draft legislation](#) establishing an emergency election commission to provide a checks and balance to the election process during an extreme emergency. He recommended the commission be balanced and consist of stakeholders.

### **Public Testimony - Emergency Declarations**

Public testimony regarding emergency declarations was heard from Fred Birnbaum, Kathy Dawes, Diane Baumgart, and Gretchen Wissner.

### **Constitutional Amendment Regarding Special Legislative Session - Committee Discussion**

Co-Chair Harris reviewed [draft legislation](#) allowing the Legislature to convene itself. Senator Winder asked how members would vote to convene the Legislature. Co-Chair Harris responded that the Pro

Tem and Speaker would receive written requests by a majority of the members. Representative Crane asked if any topic could be addressed during that session. Co-Chair Harris confirmed that there would be no topic constraints. Representative Crane noted that the draft legislation would segue with legislation previously passed by the Senate. Senator Souza expressed concern with ending up with a year-round legislature and recommended limiting topics. Co-Chair Harris responded that the Legislature currently had the ability to go year-round and questioned who would determine the topic. Pro Tem Hill recommended limiting the topic and suggested issuing a proclamation on the first day stating the subject. Representative Crane preferred the flexibility to discuss multiple topics and suggested a defined length of time. Senator Vick suggested adding "as provided by law" and that draft legislation include language that would assure voters that there would not be a year-round Legislature. Senator Stennett asked how the written requests for a session would be verified. Co-Chair Harris responded that written requests would be counted.

### **Public Testimony - Constitutional Amendment Regarding Special Legislative Session**

Public testimony regarding the constitutional amendment for a special session was heard from Diane Baumgart, Kathy Dawes, Gretchen Wissner, and Valerie James.

### **Committee Discussion and Adjournment**

Senator Winder noted a constitutional amendment would be required for the Legislature to call itself into session. Representative Monks noted that the current statutes did not allow him to represent his constituents. Co-Chair Lodge expressed appreciation for the Governor's weekly updates. Senator Harris commended LSO staff for how the meeting was conducted. Senator Souza preferred attending in person and asked for input from the Zoom participants. She expressed concern with conducting a full session through a hybrid approach. Senator Souza asked if the direction of the working group was to request a special session to address election issues. Co-Chair Harris responded that the group may need to review the draft legislation further to decide, but will need to do so soon. Representative Scott commented that other areas like health districts' authority, the reopening of businesses and schools, and liability also need to be discussed as well as how the state moved forward. She added that the people need leadership. Co-Chair Lodge responded that another committee was meeting to discuss education. Senator Vick stated that conducting the meeting by Zoom worked well and expressed his support for a special session to address elections. Representative Crane also supported a special session to address elections and that the group could provide predictability and security in the drafts of legislation that the people deserve. Co-Chair Harris recommended that the special session not be limited to a single topic. Representative Armstrong expressed appreciation for conducting the meeting and keeping the public involved. Pro Tem Hill agreed that a special session was needed to address elections and suggested the work group make a recommendation. Representative Green suggested future meetings include closed captioning for the hearing impaired. Soren Jacobsen, LSO Staff, responded that closed captioning capabilities were being considered.

Co-Chair Lodge recommended the work group meet again on August 10, 2020 at 9:00 a.m. There being no additional business, the meeting was adjourned at 3:04 p.m.