

MINUTES
(Subject to Approval by the Committee)
Finance-Appropriations Working Group
Wednesday, October 14, 2020
2:30 P.M.
Room WW02
Boise, Idaho

Cochair Youngblood called the meeting to order at 2:33 p.m.; a silent roll call was requested.

Members attending in person: Cochairs Representative Rick Youngblood and Senator Steve Bair; Representatives Wendy Horman, Neil Anderson, Paul Amador, Clark Kauffman, Britt Raybould, Scott Syme, Melissa Wintrow and Sally Toone; Senators Dan Johnson, Jeff Agenbroad, Carl Crabtree, Scott Grow, Van Burtenshaw, and Janie Ward-Engelking. Members attending by videoconference: Representative Caroline Nilsson Troy; Senators Mark Nye and Jim Woodward. Members absent/excused: Senator Abby Lee. Legislative Services (LSO) staff present: Paul Headlee and Christine Otto.

Note: Presentations, handouts, and other materials provided or referenced by the presenters are posted to the Idaho Legislature website <https://legislature.idaho.gov/sessioninfo/2020/interim>; and copies of those are also on file at the Legislative Services Office in the State Capitol.

Recap of August 11 Meeting

Cochair Youngblood introduced Paul Headlee, Division Manager of the LSO Budget and Policy Office, to open the meeting's agenda. Mr. Headlee gave a brief overview of the working group's initial charge and the non-cognizable funds process, as discussed at the previous meeting. He also reviewed the information presented by Alex Adams, Administrator of the Division of Financial Management (DFM), who covered DFM's approval process regarding non-cognizable funds received through the CARES Act and the Coronavirus Relief Fund.

- Rep. Anderson asked when IC 67-3516 was established. Mr. Headlee did not know the exact date (later identified as 1941) but noted that it had existed for decades. He clarified that non-cognizable funds were those items as described in the first sentence of Sec. (2). Rep. Anderson asked for clarification that the Administrator of the DFM and the members of the Board of Examiners, as detailed in the paragraph, were both entities that report to the governor; in fact, the governor is the head of the Board. Mr. Headlee agreed with the statement but explained that the funds went through a two-step process for approval. Rep. Anderson inquired whether there were any grounds for authorizing responsibilities to other entities. Mr. Headlee reported that there was a statute that allowed the Board of Examiners to delegate responsibilities as long as the action did not conflict with current law.

How Other States Address Unanticipated Federal Funds

Mr. Headlee presented information on how other states process funds identified as non-cognizable (non-cog). He also expounded the information to show how Idaho's process was similar to other states to identify precedence and/or similarities. This information can be found on pages 6-7 of the [packet](#) distributed at the meeting.

- Rep. Amador requested information about the process for a state with binding control on unanticipated federal funding, particularly a state like Nevada which meets every other year. Mr. Headlee responded that he did not know how the process worked but suspected that it would then become an appropriation; he would follow up with staff in Nevada. Rep. Amador then asked whether, in the issue of *Dollar Threshold or Limits on Use*, making a commitment

to funds was in as much an appropriation. Mr. Headlee stated that a commitment and an appropriation were two different items.

- Rep. Syme inquired whether JFAC (Joint Finance-Appropriations Committee) could meet outside of the legislative session to obligate funds (i.e., could JFAC meet to appropriate any non-cog funds). Mr. Headlee responded that it could not because the full Legislature had to approve JFAC appropriation legislation.
- Rep. Wintrow asked for clarification on the "spirit of the law" regarding non-cog funds. Mr. Headlee responded that it was to allow funds to get to agencies when the Legislature was not available to make appropriations. Rep. Wintrow inquired about the typical amount tagged as non-cog funds by an agency. Mr. Headlee reported that it typically would be \$400,000 to \$2 million; though he noted that the CARES Act funds were outliers in their amounts. Rep. Wintrow then asked whether the governor could use the current non-cog process whether an emergency was declared or not. Mr. Headlee stated that the non-cog process was irrelevant to an emergency declaration.
- Rep. Horman wondered why Idaho was in the "conditional" category per his report. Mr. Headlee explained that, per the report, the Idaho Legislature did defer to the executive branch when between sessions and that was true in some aspect. Rep. Horman noted that the non-cog process was probably somewhat foreign to members not serving on JFAC and that Mr. Headlee's presentation was appreciated for explaining the process and for showing how differently the funds could be handled.
- Rep. Raybould asked whether non-cog funds were treated as a separate item when an audit was performed on an agency's funds. Mr. Headlee believed it to be "lumped together" with other funds. Rep. Raybould asked whether the role of the Board of Examiners was a statute-based decision rather than a constitutional-based decision. Mr. Headlee agreed that it was a statute-based decision previously made by the Legislature.
- Cochair Bair asked whether legislation could be done in statute or required a change to the constitution to remove the Board of Examiners as the deciding entity of non-cog funds, thereby allowing a board consisting of legislative leadership and the governor to make those decisions. Mr. Headlee believed that it could be done by making changes to IC 67-3516.
- Cochair Bair added that the CARES Act funds received in April were accompanied by at least ten different guidelines over the following five months; as such, it would have required multiple meetings by legislative members to designate the funds. Rep. Anderson commented that citizens and legislative members were bothered that the CARES Act funds were delegated by two entities (the DFM administrator and the State Controller's staff) that were not elected directly by the people.
- Sen. Agenbroad commented that more members of JFAC should have been present on the decisions of the CARES Act funds since they were rather knowledgeable of the state funding process. He also noted that JFAC would have to deal with the ramifications of those decisions even though they had no say in the original spending. He suggested establishing a monetary limit that would require JFAC members to be called in to session to assist with such delegations when necessary.

With no action taken and no further business to discuss, the meeting was adjourned at 3:30 p.m.